

# THE BAD HOUSING BLUES

**TMI** | REPORT

Discrimination in the  
Housing Choice Voucher  
Program in Memphis, TN





ABOUT LDF’S THURGOOD MARSHALL INSTITUTE AND THE NATIONAL FAIR HOUSING ALLIANCE

Founded over 80 years ago, the NAACP Legal Defense and Educational Fund, Inc. (LDF) is America’s premier legal organization fighting for racial justice. Through litigation, advocacy, and public education, LDF seeks structural changes to expand democracy, eliminate disparities, and achieve racial justice in a society that fulfills the promise of equality for all Americans.

The Thurgood Marshall Institute is a multidisciplinary center within LDF. Launched in 2015, the Institute complements LDF’s traditional litigation strengths and brings critical capabilities to the fight for racial justice, including research, public education, and targeted advocacy campaigns.

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.

Today, NFHA is a consortium of more than 200 private, non-profit fair housing organizations, state and local civil rights agencies, and individuals from throughout the United States. NFHA recognizes the importance of “home” as a component to the American Dream and hopes to aid in the creation of diverse, barrier-free communities across the nation.

CONTRIBUTING AUTHORS

Coty Montag (formerly of LDF)

Simeon Spencer (formerly of LDF)

Jason Bailey, Assistant Counsel, LDF

Morgan Williams, General Counsel, NFHA

Justin Monteiro, Vice President of Enforcement, NFHA

Lindsay Augustine, Senior Associate Director of Enforcement, NFHA

Camille Brown (formerly of NFHA)

In addition to the authors listed above, Janell Byrd-Chichester, Bill Cooper, Megan Haberle, Anne Houghtaling, Taylor Fatherree, Leigh Logan, Akosua Twum-Antwi, Kiana Noor Taghavi, Rachel Casper, Chase Leito, Cathy Cloud, and Shivaughn Ferguson provided editorial and research assistance for the report.

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I woke up this morning, rainwater in my bed  
I woke up this morning, rainwater in my bed  
You know, my roof was leaking, Lord, leaking on my head

Now there ain't no reason I should live this way  
Now there ain't no reason I should live this way  
I done lost my job, can't even get on the WPA

Lord, I wonder when I'll hear good news  
Lord, I wonder when I'll hear good news  
Right now I'm gonna tell you how I got them bad housing blues

I'm goin' to the capitol, goin' to the White House lawn  
Well, I'm goin' to the capitol, goin' to the White House lawn  
Better wipe out these slums, been this way since I was born

—*Bad Housing Blues*, Joshua White, 1941

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# EXECUTIVE SUMMARY

Memphis, Tennessee has a long history of racial bias and economic inequality, and often, these forces have worked hand-in-hand. Memphis is where Dr. Martin Luther King, Jr. traveled to stand with Black sanitation workers in protest of inequitable wages and unsafe working conditions in April 1968. While it has been 54 years since Dr. King was assassinated in Memphis, Black Memphians still find themselves fighting against the injustices of racism and economic inequality. Today, the continued convergence of these two problems has manifested quite conspicuously in housing availability. This reality prompted the Legal Defense Fund (LDF) and the National Fair Housing Alliance (NFHA) to interrogate economic and racial discrimination in housing, with a specific focus on the Housing Choice Voucher (HCV) Program—otherwise known as “Section 8.” Together, LDF and NFHA conducted a study of Memphis, Tennessee and the greater Shelby County area where Memphis is located, examining the local rental

market and performing a fair housing testing audit of housing providers to assess attitudes and identify policies and practices that impede the ability of voucher holders to secure safe and affordable housing.

Fair housing testing is a controlled method of determining whether housing providers are complying with the Fair Housing Act’s prohibition against discrimination because of race or other protected classes. For this fair housing testing audit, we deployed testers throughout Shelby County in 2019 and 2021 to determine whether housing providers were engaging in source of income or race discrimination against potential HCV tenants. In part, the testing in 2021 attempted to determine whether there were any changes to the Memphis rental housing market due to the COVID-19 pandemic. Single-part testing (the use of a single tester) and matched pair testing (the use of two similarly-situated testers) were employed for

the audit. Single-part tests involved a single Black cisgender female tester. During the “matched-pair” tests, one Black tester and one White tester with similar personal and financial profiles contacted or visited the same housing provider within a short period of time of each other and their experiences were analyzed for any differences in treatment due to their race. Each tester in the audit was assigned to have an HCV. Our audit sought to determine, at the pre-application stage of the rental process, whether potential tenants with HCVs were subject to discrimination because of their status as voucher holders and whether Black testers were treated differently from White testers because of their race.

**This audit consisted of five phases of testing, using trained and experienced testers:**

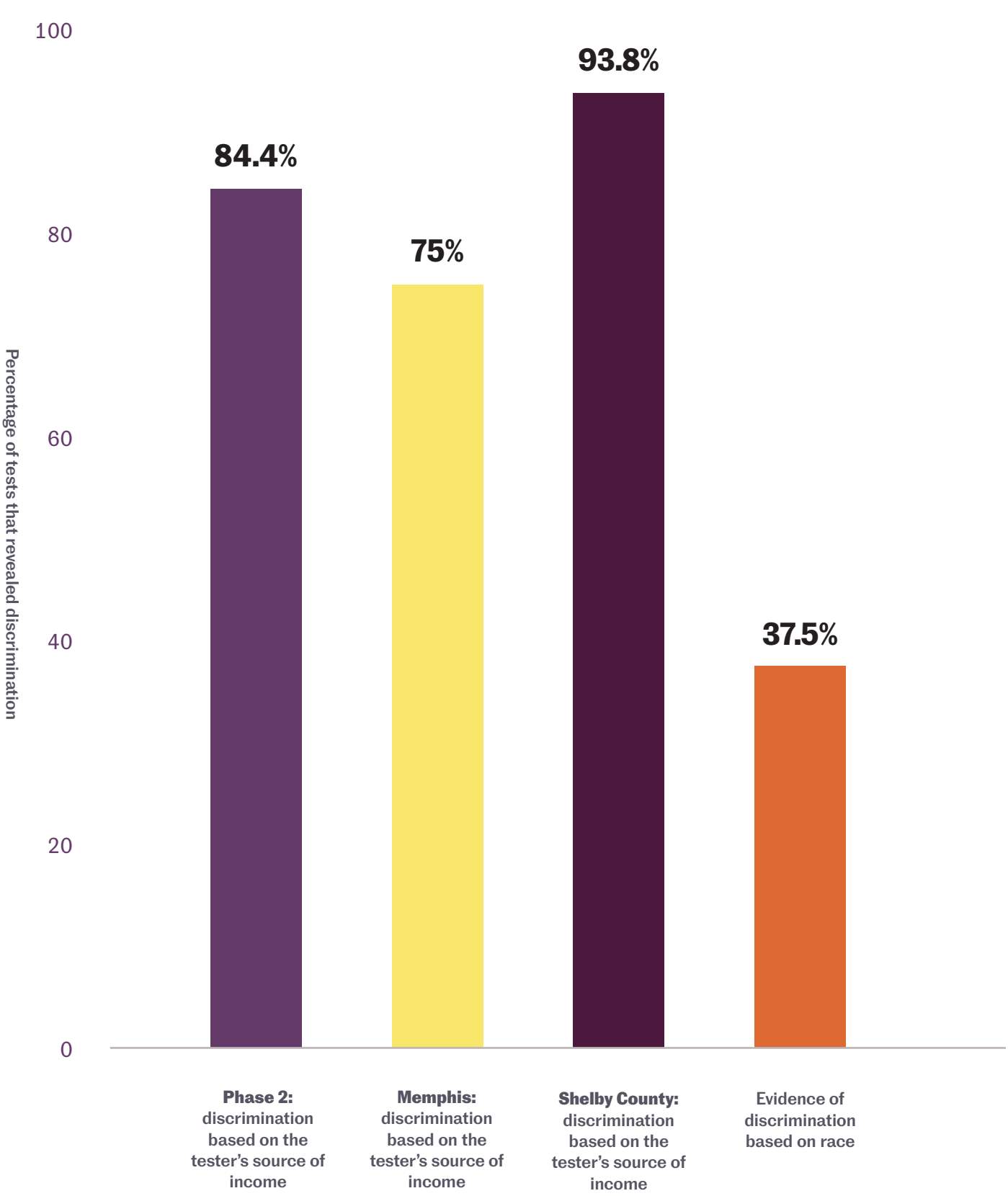
- The focus of Phase One of the audit assessed how rental housing providers’ policies and practices impact HCV recipients.
- The focus of Phase Two assessed if housing providers treat Black HCV recipients and White HCV recipients the same.
- The focus of Phase Three assessed if the experiences of testers using an HCV in high-opportunity tracts mirrored that of testers using an HCV in lower opportunity tracts.
- The purpose of Phase Four was to re-test housing providers from Phase Two to further explore potential race discrimination.
- The focus of Phase Five, like Phase One, assessed how rental housing providers’ policies and practices impact HCV recipients albeit under housing market and economic conditions affected by the COVID-19 pandemic.

This testing audit utilized targeted data to select a localized sample of housing providers in Memphis and Shelby County. This report focuses on the findings from the testing evidence. These tests have revealed direct evidence of housing discrimination, including potential racial discrimination, and paints a concerning picture about source of income bias.

Our report finds that there is significant discrimination based on source of income in both Memphis and Shelby County. For instance, out of the 32 tests conducted in Phase Two, 84.4% of tests, or 27 out of 32 test parts, documented discrimination based on the tester’s source of income. In Memphis, 75% of tests (12 of 16) showed evidence of source of income discrimination. In Shelby County, a total of 93.8% of tests (15 of 16) revealed evidence of source of income discrimination. **Our report identifies the following policies and practices as barriers to finding safe, affordable housing for HCV recipients:**

- “No Section 8” policies.
- HCV Tenant Quotas.
- Steering or restricting access to housing.
- Employment requirements.
- Minimum Income Requirements.
- Payment Requirements.

In addition to the policy and procedural obstacles, Black testers faced added barriers to finding housing due to race. For example, out of 16 matched-pair tests between Black and White female testers, six tests, or 37.5%, showed evidence of discrimination based on race. The housing providers for three of these tests were in the City of Memphis and three were located in Shelby County. Racial discrimination manifested as differences





# LDF AND NFHA WILL CONTINUE TO FIGHT INEQUALITY AND DISCRIMINATION IN HOUSING IN THEIR RESPECTIVE EFFORTS TO CREATE A MORE JUST AND INCLUSIVE SOCIETY FOR ALL.

in customer service, differences in pricing or availability, differences in access to housing, and differences in terms and conditions.

Some White testers were coached on how to navigate the rental process in general as well as the specific company's processes; some White testers were provided with leasing agents' contact information and were encouraged to follow up with questions or updates; and leasing agents told some White testers that they themselves would follow up if any new properties became available.

During one test, the Black tester was told that units would not be available until two weeks after her desired move-in date, but the White tester was given information about units that were available during her move-in time frame, which was the same time the Black tester had requested.

In one test, the White tester was told that to apply she must have a credit score of at least 580, while the Black tester was told that she must have a credit score of at least 600 to qualify for a single-family home.

Based on these findings, the history of race discrimination in Memphis, data, reports, and cases from testing in other jurisdictions, LDF and NFHA recommend a number of legislative and policy fixes to strengthen the HCV Program, reduce discrimination, and add more protections for individuals and families with vouchers.

## **The recommendations include:**

### **Prohibit Discrimination Against HCV Families.**

To better protect voucher holders from discrimination, the Fair Housing Act should be amended to include source of income as a protected class.

### **Expand the HCV Program.**

The HCV Program only serves about a quarter of low-income families that need housing assistance. Absent an initiative to provide for universal vouchers, the HCV Program should certainly be expanded to provide for significantly more vouchers.

### **Expand the Use of the SAFMR.**

HUD's Small Area Fair Market Rents (SAFMR) Rule is an important step in increasing access to high-opportunity areas for voucher holders.

### **Change PHA Administration & Improve Services to Voucher Holders.**

While Public Housing Agency (PHA) independence can help ensure that local community needs are met, PHA administration issues can deter property owners from participating in the HCV Program and ultimately prevent individuals and families with vouchers from accessing safe and affordable housing, especially in high-opportunity neighborhoods.

### **GSE-financed Multi-family Housing Should Promote Voucher Use.**

The Government Sponsored Enterprises (GSEs) play a critical role in financing multi-family housing. GSEs could do more to ensure that they meet the greatest needs of the nation's lowest-income renters including voucher holders, by banning source of income discrimination by recipients of GSE financing.

In Memphis, Tennessee, more work needs to be done to ensure that voucher recipients have access to safe and affordable housing. Any solutions to the crisis in housing must take into account both racial and economic considerations.





# INTRODUCTION

“Blues is easy to play,  
but hard to feel.” —*Jimi Hendrix*

These words could aptly explain how Memphis became the “Home of the Blues.” From great pain, something beautiful was created. The stories told through the music of individuals like B.B. King, Howlin’ Wolf, and others were a microcosm of some of the painful experiences of Black people all throughout the Deep South. This dichotomy of the Blues, namely between pain and artistic expression, is personified in Memphis. While Memphis has flourished as a city of music, the weights of racism and discrimination continue to be felt by those Black Memphians trying to find home within its boundaries. For many, finding “home” has not only been tenuous in a metaphorical sense, but also in a physical sense. This reality elicits some important questions: What have been the difficulties? How did they develop? Lastly, what remedial policies can assuage those problems? The Thurgood Marshall Institute (TMI) at the NAACP Legal Defense and Educational Fund, Inc. (LDF) and the National Fair Housing Alliance (NFHA) seek to provide answers to those questions in a joint report, “The Bad Housing Blues: Discrimination in the Housing Choice Voucher Program in Memphis, Tennessee.”

MEMPHIS, TENNESSEE, May 11, 2015 : City neon lights on Beale Street. Blues clubs and restaurants that line Beale Street are major tourist attractions in Memphis. Photo by Shutterstock / Pierre Jean Durieu



## HOUSING ASSISTANCE:

# The Housing Choice Voucher Program



A group of young children from the Mount Morris Children's Center and their teacher, Ruth Smith, look over a model of a post-war housing project at an exhibition, New York City, US, circa 1950. *Photo by FPG/Archive Photos/Getty Images*

### A Brief History of Public Housing and Vouchers in the United States

Government-assisted housing was established in the wake of the Great Depression and expanded by the United States Housing Act of 1937, which provided funds for the construction of public housing complexes.<sup>1</sup> During this period, working-class families were overcrowded in tenements in large cities throughout the U.S.<sup>2</sup> The first public housing developments were intended as “slum” clearance, replacing these tenements with low-rise garden-style housing or modern high-rise towers.<sup>3</sup> According to the U.S. Department of Housing and Urban Development (HUD), public housing was established “to provide decent and safe rental

housing for eligible low-income families, the elderly, and persons with disabilities.”<sup>4</sup>

At its inception, public housing was not subsidized, not for the poor, and excluded Black Americans. Instead, public housing complexes, which opened to great excitement and fanfare,<sup>5</sup> were built to address the housing shortage for White working-class and lower middle-class families who could afford rent.<sup>6</sup> From the very start, the U.S. government used public housing programs to discriminate against Black people, who were either relegated to separate buildings from Whites or excluded entirely from developments.<sup>7</sup> Throughout the 1930s, and as was typical during the Jim Crow era, public housing complexes were constructed for White families in established White neighborhoods and for Black

people in Black neighborhoods.<sup>8</sup> In 1937, a manual provided by the U.S. Housing Authority (an early predecessor of HUD) stated that it was undesirable to have complexes built for White families “in areas now occupied by Negroes” and noted that “the aim of the [local housing] authority should be the preservation rather than the disruption

of community social structures which best fit the desires of the groups concerned.”<sup>9</sup> In addition to Black-White segregation, public housing officials also steered other groups (like Irish or Italian renters) into certain complexes and favored two-parent households with a few young children over other family structures.<sup>10</sup>

The segregation of Black and White families in public housing continued in the 1940s and was codified into law through the Housing Act of 1949.<sup>17</sup> The Act, which permitted local public housing agencies (PHAs) that managed public housing units to continue to separate Black and White families, also provided funding for the construction of major high-rise public housing complexes.<sup>18</sup> Complexes constructed with funds from the Act include Robert Taylor and Cabrini Green Homes in Chicago, Van Dyke Houses in New York City, and the Pruitt-Igoe towers in St. Louis (the Pruitt half of the complex was originally intended for Black residents; Igoe was for White families).<sup>19</sup> More Black families had a need for public housing throughout this period (particularly because the Act also expanded mortgage insurance programs to make homeownership more accessible for White families only),<sup>20</sup> so these complexes remained segregated by race.<sup>21</sup> Over time, this governmental policy of forced segregation in public housing relegated Black families to large high-rise buildings located outside of mainstream society in under-resourced, high-poverty neighborhoods.<sup>22</sup> These isolated towers were frequently poorly constructed and lacked sufficient funding for maintenance and improvements; they fell into disrepair quickly.<sup>23</sup>

By the 1960s, middle-class families were no longer eligible for public housing, which was now limited to the poorest families.<sup>24</sup> This ultimately led to further deterioration of the complexes, both from budget cuts and from the loss of middle-class families with more political power to insist on upkeep and improvements.<sup>25</sup> In the mid-1960s, the federal government began to look to the private market to help increase the supply of affordable housing throughout the nation. In 1965, Congress passed the Housing and Urban Development Act, which, in addition to creating HUD, allowed PHAs to pay market-rate rents to privately-owned apartment buildings in exchange for leasing units to

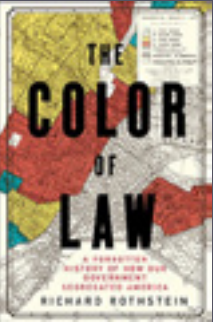
low-income tenants, who paid minimum-rate rents back to the PHAs.<sup>26</sup> This was called the Section 23 Program.<sup>27</sup>

In February 1968, the Kerner Commission released its report on residential segregation in the U.S. It concluded that public housing suffered from a lack of funding and a concentration of complexes in low-income neighborhoods.<sup>28</sup> The report noted the dilapidated, overcrowded living conditions of public housing buildings, particularly those located in Black neighborhoods.<sup>29</sup> To address these issues, the report recommended more “scattered site” housing, meaning the construction of smaller public housing developments in predominantly White, well-resourced neighborhoods, and an expanded rent supplement program to enable low-income tenants to afford better quality housing.<sup>30</sup>

Weeks after the publication of the Kerner Commission Report and just days after the assassination of Dr. Martin Luther King, Jr. on April 4, 1968, the Fair Housing Act was enacted.<sup>31</sup> In addition to prohibiting housing discrimination on the basis of race and other protected categories, the Act requires HUD and PHAs (and other recipients of federal funding) to affirmatively further fair housing within their programs.<sup>32</sup> This duty, known as affirmatively furthering fair housing (AFFH), requires HUD and PHAs to, “as much as possible,” achieve “the goal of open, integrated residential housing patterns” and “prevent the increase of segregation.”<sup>33</sup> Unfortunately, by the time the Fair Housing Act was passed, the geographic concentration of race and poverty was firmly entrenched in public housing and beyond.<sup>34</sup>

In the 1970s, it was clear that public housing was racially identified as Black housing and associated with poverty, and public attitudes toward government-subsidized housing reflected negative stereotypes about Black people and the

## Racist Housing Policies in Mid-Century America



As detailed by Richard Rothstein in *The Color of Law: A Forgotten History of How Our Government Segregated America*, Black people faced overt discrimination in the mid-20th century through state, local, and federal governmental policies—including but certainly not limited to the public housing policies described in this report—and through private action.<sup>11</sup>

For example, the Federal Housing Administration and Veterans Administration refused to make or insure loans to Black people, including Black veterans, preventing these families from acquiring affordable mortgages in the suburbs where White families lived.<sup>12</sup> The Home Owners’ Loan Corporation (HOLC),

created by the federal government during the Great Depression to rescue households that were near default on their mortgages, engaged in the practice of redlining by creating color-coded maps of the supposed risk of default. The HOLC labeled Black neighborhoods as red (the highest level of risk), meaning that those areas should be avoided.<sup>13</sup> Federal, state, and local governments promoted the use of racially restrictive covenants in property deeds to prevent the sale of homes to Black families.<sup>14</sup> Real estate agents would persuade White families to sell their homes at a bargain (preying on the fear of an influx of new Black neighbors) and then resell the vacant homes to Black families at inflated prices, a practice known as blockbusting.<sup>15</sup> By 1970, the dissimilarity index (a measure of segregation) was up to 90 (out of 100) in some cities, meaning that 90% of one group would have to move to be distributed the same way as the second group.<sup>16</sup> The legacy of these practices continues today through the stark residential segregation that is a feature of many cities and towns throughout the United States.





Cabrini-Green, a Chicago Housing Authority public housing project in the Near North Side of Chicago, USA, 12th September 1966. Photo by Pix/Michael Ochs Archives/Getty Images

poor.<sup>35</sup> In 1973, President Richard Nixon amplified these stereotypes, declaring that many buildings were “monstrous, depressing places—rundown, overcrowded, crime-ridden.”<sup>36</sup> It is accurate that many public housing complexes were in deteriorating condition; for example, prior to being demolished in the mid-1970s, Pruitt-Igoe in St. Louis had malfunctioning heaters, toilets, garbage incinerators, and electricity, and raw sewage flooded the hallways.<sup>37</sup> However, instead of allocating more funds to improve public housing, the federal government retreated. Citing high costs and government waste (but in reality, driven by a desire to curtail housing assistance to the poor),<sup>38</sup> in 1974 Nixon imposed a moratorium on federal spending for subsidized housing, which began the government’s long period of disinvestment in public housing that continues today.<sup>39</sup>

As an alternative to federal spending support for subsidized housing, the federal government looked to the private market. In 1974, Congress enacted the Housing and Community Development Act,<sup>40</sup> which created the Section 8 Certificate Program (so named because it was authorized by Section 8 of the statute).<sup>41</sup> The Certificate Program replaced the Section 23 Program and, among other goals, was intended to reduce the isolation of income groups within communities and increase the economic diversity and vitality of neighborhoods.<sup>42</sup> Through the program, a tenant would choose their own housing and pay 25%<sup>43</sup> of their income directly to the landlord, and the PHA would enter into a contract with the landlord to pay the remaining rent balance.<sup>44</sup>

Despite these new programs, throughout the 1980s and 1990s, public housing complexes remained segregated and in failing condition, particularly when located in Black neighborhoods. In 1984, the Dallas Morning News investigated public housing complexes in 47 cities and found that tenants were almost always racially segregated and that

buildings located in Black neighborhoods had worse facilities, amenities, services, and maintenance.<sup>45</sup> In 1989, Congress appropriated \$600 million to the HOPE VI Program (which originally stood for Homeownership and Opportunity for People Everywhere)<sup>46</sup> to demolish the most severely distressed public housing units and replace them with mixed-income housing.<sup>47</sup> This program displaced tens of thousands of public housing residents, many of whom could not afford rent in the mixed-income complexes.<sup>48</sup>

In 1987, the Rental Voucher Program was formally authorized as a program in the Housing and Community Development Act.<sup>49</sup> Like the Certificate Program, the Voucher Program allowed tenants to choose their own housing, but offered more options because the program did not have a fair market rent limitation.<sup>50</sup> Depending on the actual cost of the housing they rented, families could pay more or less than 30% of their adjusted income toward rent.<sup>51</sup> In 1999, HUD officially combined the Certificate Program and Rental Voucher Program into what is now known as the Housing Choice Voucher (HCV) Program, the focus of this report.<sup>52</sup> The HCV Program is now the largest rental housing assistance program in the country, with a focus on promoting choice in where a person may live.<sup>53</sup>

### **Groundbreaking Litigation to Challenge Segregation in Public Housing and Discrimination in the HCV Program**

#### ***Gautreaux et al. v. Chicago Housing Authority***

By the 1960s, few White families were in public housing and civil rights groups focused their attention on combating the placement of public housing complexes in predominantly Black areas of cities.<sup>54</sup> Several court cases recognized the segregation caused or perpetuated by the siting of public housing complexes in Black neighborhoods and attempted remedies to disperse public housing



residents into the broader, more integrated community.<sup>55</sup>

Filed in 1966, *Gautreaux et al. v. Chicago Housing Authority* became the nation's first major public housing desegregation lawsuit.<sup>56</sup> In *Gautreaux*, plaintiffs alleged that HUD and the Chicago Housing Authority (CHA) violated the Equal Protection Clause of the 14th Amendment of the U.S. Constitution by concentrating public housing units in Black neighborhoods of Chicago and by segregating tenant assignment by race. In 1969, the district court judge ruled for the plaintiffs, finding that CHA had engaged in a pattern of racial discrimination in selecting public housing sites.<sup>57</sup> The judge's order prohibited CHA from constructing any new public housing in predominantly Black areas of Chicago unless it also built new public housing elsewhere, placed restrictions on the type of public housing CHA could build, and mandated the implementation of a new tenant assignment plan.<sup>58</sup>

Remedies stemming from the judge's 1969 order and subsequent decisions in the *Gautreaux* case—including from the U.S. Supreme Court—have changed the face of public housing in Chicago since the case was filed nearly 60 years ago. First, small scale public housing has been scattered throughout the city and is now present in all of Chicago's neighborhoods.<sup>59</sup> Another remedy provided for the construction of public housing units in mixed-income developments in revitalizing areas of Chicago.<sup>60</sup> As of 2019, more than 3,000 such units had been built throughout the city.<sup>61</sup>

Third, and perhaps most significantly, after the Supreme Court ruled in 1976 that HUD could be required to use the entire Chicago metropolitan area to remedy its past discriminatory conduct,<sup>62</sup> HUD and the plaintiffs created the Gautreaux Assisted Housing Program, a housing voucher program.<sup>63</sup> Families who participated in the

program received certificates that allowed them to move to private housing in neighborhoods that had a population that was no more than 30% Black.<sup>64</sup> They also received counseling from local fair housing organizations to locate housing in areas that met their needs, known as mobility counseling.<sup>65</sup> When the program ended in 1998, over 7,500 families had moved out of high-poverty, racially-concentrated neighborhoods into other parts of Chicago that provided more opportunities.<sup>66</sup>

This third remedy, the voucher program, was the subject of a study by James Rosenbaum from Northwestern University.<sup>67</sup> Research demonstrated that the program resulted in significant improvements for many participating families, including in employment outcomes, safety, education, and more.<sup>68</sup> Even two decades after their original placement, two-thirds of participating families still lived in lower-poverty areas and had higher educational outcomes.<sup>69</sup>

The *Gautreaux* case reached a final settlement in 2018, modernizing the three types of remedies described above and providing additional benefits for plaintiffs.<sup>70</sup> The case is expected to be formally closed by 2024.<sup>71</sup>

### *Comer v. Kemp*

In 1989, LDF, the Greater Upstate Law Project, and Neighborhood Legal Services filed *Comer v. Kemp*, a class action lawsuit challenging discrimination in public housing and in the HCV Program in the City of Buffalo and Erie County, New York.<sup>72</sup> *Comer* was filed on behalf of eight individual plaintiffs and the Buffalo League of Public Housing Tenants against HUD, then-HUD Secretary Jack Kemp, the City of Buffalo, the Buffalo Housing Authority, and others.<sup>73</sup> At the time of the filing of the lawsuit, nearly all public housing complexes in Buffalo were racially identifiable as almost exclusively White or Black.<sup>74</sup> Plaintiffs challenged policies that reinforced and



A wrecking crew begins the demolition of the last remaining high-rise building from the infamous Cabrini-Green housing project March 30, 2011 in Chicago, Illinois. Cabrini was knocked down in part because of the *Gautreaux* lawsuit. Photo by Scott Olson/Getty Images

contributed to racial segregation in public housing complexes in Buffalo, including separate waiting lists; inferior living conditions at predominantly Black public housing complexes as compared to predominantly White complexes; and a pattern of discriminatory administration of the HCV Program. The complaint about the HCV program was that it limited voucher holders to the City of Buffalo, prohibiting them from using vouchers in the surrounding suburbs.<sup>75</sup> After the district court judge severed the public housing claims from those challenging discrimination in the HCV Program, the case was litigated for several years.<sup>76</sup>

In 1996, both parts of the case (regarding public housing and the HCV Program) settled.<sup>77</sup> As part of the settlement, defendants agreed to demolish

existing public housing units, replacing them with new public housing in lower-poverty areas, and to allocate hundreds of new housing vouchers to affected families.<sup>78</sup> The Community Housing Center was established as part of the settlement to help families secure housing in the Buffalo metropolitan area and to act as a central repository for government-assisted housing.<sup>79</sup> Defendants also agreed to decrease the concentration of high-rise, low-income housing in the predominantly Black areas of Buffalo where the city had previously relegated all government housing and to spend \$9 million to redevelop those areas.<sup>80</sup> With respect to the HCV Program, HUD agreed to provide 800 additional vouchers for families and the City ended the local policy restricting voucher holders to the City of Buffalo.<sup>81</sup>



While the *Comer* litigation and resulting settlement aided many low-income families in Buffalo, more work remains to be done. In 2019, among 50 metropolitan areas, Buffalo had the highest concentration of voucher holders living in high-poverty areas.<sup>82</sup> For more information about *Comer*’s legacy, read Scott W. Gehl’s account of the case for the Poverty & Race Research Action Council (PRRAC), entitled *The Legacy of Buffalo’s Landmark Desegregation Case, Comer v. Kemp*.<sup>83</sup>

### *Thompson v. HUD*

In 1995, the ACLU of Maryland and several co-counsel law firms<sup>84</sup> filed *Thompson v. HUD*, one of the most important fair housing lawsuits ever litigated.<sup>85</sup> LDF joined the case as co-counsel in 2005. “*Thompson* sought to eradicate the legacy of racially segregated public housing in Baltimore, Maryland, the hometown of Thurgood Marshall, LDF’s first Director-Counsel and the first Black U.S. Supreme Court Justice.<sup>86</sup> Baltimore’s public housing had “suffered from nearly a century of segregation that left thousands of low-income Black families perpetually locked in neighborhoods of concentrated poverty.”<sup>87</sup> “By 1995, when *Thompson* was filed, housing experts considered Baltimore to be one of the most racially segregated cities in America.”<sup>88</sup>

In January 2005, after nearly ten years of litigation, the district court held that HUD violated the Fair Housing Act by unfairly concentrating Black public housing residents in the most impoverished, segregated areas of Baltimore City.<sup>89</sup> The court found that HUD’s programs “failed to achieve significant desegregation” in the Baltimore region.<sup>90</sup> The court further faulted HUD for treating Baltimore City as “an island reservation for use as a container for all of the poor of a contiguous region.”<sup>91</sup> The court ruled that HUD must take affirmative steps to implement an effective regional strategy for promoting fair housing opportunities

for Black public housing residents throughout the Baltimore region.<sup>92</sup>

After issuing the 2005 order, the court ordered that a trial should be held to determine whether HUD’s conduct also violated the Equal Protection Clause and to decide on an appropriate remedy for the plaintiff class of approximately 14,000 Black families who were tenants, former tenants, and prospective tenants of Baltimore public housing developments.<sup>93</sup> The parties went to trial in 2006. At trial, HUD’s own witnesses confirmed that Baltimore’s public housing had always been racially segregated and had never offered low-income Black residents any meaningful opportunity to live in integrated areas of the region.<sup>94</sup>

### *Thompson v. HUD*

“In November 2012, the court approved a historic settlement to resolve the case.”<sup>95</sup> Through the settlement, thousands of families were eligible to participate in Baltimore’s Housing Mobility Program, enabling them to move from public housing to high-opportunity areas of the city using a housing voucher.<sup>96</sup>

## Defining “High-Opportunity” and “Low-Opportunity” Areas

In this report, we reference “high-opportunity” and “low-opportunity” areas. In using these terms, we do not place worth on or indicate validity of any community. All neighborhoods are valuable. In general, high-opportunity areas have less poverty, well-resourced schools, living wage employment opportunities, mainstream financial services, quality healthcare, green spaces, healthy food/shopping options, and adequate transportation.<sup>97</sup> Low-opportunity areas lack these amenities, are typically disinvested by local, state, and federal governments, and have higher poverty rates. Studies repeatedly show benefits to living in low-poverty, well-resourced, high-opportunity areas.<sup>98</sup> In Part Two, we define “high-opportunity” areas as those with a poverty rate of 15% or less. Other studies may use a different metric.

Today, because of a continued lack of federal funding and backlog of deferred maintenance (nearly \$70 billion in 2022, by HUD’s estimate),<sup>99</sup> public housing remains synonymous with poor, decrepit living conditions. In fact, almost two-thirds of public housing complexes that are still occupied today were built in the 1970s or earlier.<sup>100</sup> Tyrone Garrett, former executive director of the District of Columbia Housing Authority, estimated in 2019 that roughly a third of Washington, DC’s public housing stock was unfit for human habitation.<sup>101</sup> In 2015, the *Baltimore Sun* reported that the Housing Authority of Baltimore City faced a backlog of more than 4,000 work orders, and some public housing residents waited for more than a year for repairs to their units.<sup>102</sup> The neglect in repairs is also affecting public housing communities outside of major cities. For instance, in East St. Louis, Illinois—where roughly one in four residents lives in public housing—nine out of 12 public housing complexes failed safety inspections due to various health and safety violations.<sup>103</sup> In 2018, Pro Publica and the Southern Illinoisan reported that residents in public housing complexes in Cairo, Illinois, were forced to live in neglected buildings without heat and with ceiling leaks, broken windows, mold, rodents and insects, and clogged plumbing.<sup>104</sup>

### The Low-Income Housing Tax Credit (LIHTC) Program

The LIHTC Program was created by the Tax Reform Act of 1986,<sup>105</sup> which streamlined the income tax code.<sup>106</sup> The program, administered by the Internal Revenue Service, offers state and local “LIHTC-allocating agencies” around “\$8 billion in annual budget authority to issue tax credits for the acquisition, rehabilitation, or new construction of rental housing targeted to lower-income households.”<sup>107</sup> The program aims to help develop affordable housing communities with reduced rent via tax incentives to the property owners (LIHTC does not provide tax credits to the tenants themselves).<sup>108</sup> LIHTC is now the largest source of new affordable rental housing in the United States facilitated by the federal government. It is estimated to cost the government an average of \$10.9 billion annually.<sup>109</sup>

### The LIHTC Process

Each state has a designated tax credit allocating agency, through which the LIHTC tax incentives are distributed.<sup>110</sup> States are issued LIHTCs based on their population.<sup>111</sup> If a state uses its entire allocation, it can apply for an excess credit

allocation.<sup>112</sup> Agencies assess potential developers of rental units who can either use the tax credit themselves or sell it to investors in exchange for equity.<sup>113</sup> The agencies determine allocation of these credits through Qualified Allocation Plans (QAPs) that are federally mandated to give priority to developments that serve the lowest-income households and that stay affordable for longer periods of time.<sup>114</sup> There are two kinds of LIHTC credits: (1) the 9% credit is generally available for new construction; and (2) the 4% credit is usually reserved for housing rehabilitation or for developers leading new construction financed by tax-exempt bonds.<sup>115</sup> LIHTC credits are often layered with other HUD-administered subsidies (including HCVs) in order to make units sufficiently affordable.<sup>116</sup>

Once a developer receives an allocated tax credit, it generally has two years to complete construction.<sup>117</sup> Developers may construct apartment buildings, single-family dwellings, duplexes, and town-houses.<sup>118</sup> To be eligible for a LIHTC allocation, developers must satisfy several requirements, including having income eligibility limits for tenants.<sup>119</sup> Additionally, a developer must ensure that rents do not exceed a certain percentage of the area's gross median income.<sup>120</sup>

Importantly, LIHTC owners are explicitly prohibited from discriminating against HCV holders and must accept families with vouchers into their buildings.<sup>121</sup>

### Recent Changes/Developments

In 2018, the Consolidated Appropriations Act made two changes to the LIHTC program. First, the Act boosted the credits available to states each year by 12.5% through 2021.<sup>122</sup> Second, it altered the income test that determines the maximum income a LIHTC tenant can have, allowing a property owner to use the average of tenant incomes to demonstrate

it meets the maximum income threshold.<sup>123</sup> The Further Consolidated Appropriations Act in 2020 increased California's LIHTC allocation to mitigate some of the state's natural disasters in 2017 and 2018.<sup>124</sup> Most recently, the Taxpayer Certainty and Disaster Tax Relief Act of 2020 set a minimum credit of 4% for the housing tax credit typically used to rehabilitate affordable housing.<sup>125</sup>

### Criticism

LIHTC has been heavily criticized for perpetuating racial segregation by concentrating affordable housing in predominantly Black inner-city areas and low-income neighborhoods, as it gives preference for developments located in high-poverty Census tracts.<sup>126</sup> This has been addressed in litigation, including in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project*,<sup>127</sup> the 2015 Supreme Court case addressing whether disparate claims are cognizable under the Fair Housing Act. The Inclusive Communities case and other litigation are described in further detail below.

### RAD Program

Faced with chronic underfunding and an enormous backlog of deferred maintenance, in 2012 Congress authorized HUD to administer the Rental Assistance Demonstration (RAD) Program, which permits PHAs to convert their complex-based rental assistance programs into other types of subsidized housing.<sup>128</sup> The conversion allows PHAs to borrow funds from private developers for the purpose of making much needed repairs to aging buildings.<sup>129</sup>

Congress has not provided PHAs with enough funding to keep up with the maintenance requirements of public housing complexes, resulting in a multi-billion-dollar repair backlog nationwide.<sup>130</sup> RAD was created to address the backlog by offering PHAs a different way to

generate funds to make improvements to public housing buildings.<sup>131</sup> The current program allows 455,000 public housing units to participate in the program.<sup>132</sup> As of 2016, RAD conversions accounted for 6% of the total public housing stock.<sup>133</sup>

To access more funding, RAD allows PHAs to convert public housing units into one of two types of housing via the project-based voucher program (PBV) or the project-based rental assistance program (PBRA).<sup>134</sup> PBV is a part of the HCV Program, providing residents with vouchers to be used in the private rental market.<sup>135</sup> PBV contracts last for 15 to 20 years. For PBRA, rental assistance is tied to specific units in a property.<sup>136</sup> The units are typically owned and operated by private owners.<sup>137</sup> These contracts make it easier for PHAs to gain access to funds and use LIHTCs and other forms of financing.<sup>138</sup> In addition, both types of contracts must be renewed in perpetuity.<sup>139</sup> Thus, these units will permanently become affordable housing for low-income residents.<sup>140</sup>

Due to issues with other HUD programs where residents were permanently displaced, RAD was designed to protect tenants. There are processes built into the program to protect public housing residents.<sup>141</sup> For example, a resident's public housing rights are incorporated into the property after the RAD conversion. Before applying to participate in the program, PHAs must notify all residents about the process and hold at least two meetings where residents can ask questions, discuss any concerns, and provide feedback.<sup>142</sup> PHAs are required to submit all comments and their responses along with the application.<sup>143</sup> If the PHA is selected for RAD, another meeting must be scheduled with residents to address any additional



Boys playing near the Anacostia, D.C. Frederick Douglass housing project. Photo by Heritage Art/Heritage Images/via Getty Images



questions or comments.<sup>144</sup> When PHAs participate in RAD, residents in the selected housing units do not lose their housing assistance and they do not have to be rescreened.<sup>145</sup> Residents are also unlikely to see an increase in their rent, which is currently set at 30% of household income.<sup>146</sup> If residents are paying a flat rent, they may have to gradually pay slightly more in rent over time.<sup>147</sup> If the rent increases more than 10% and that increase requires residents to pay an additional \$25 per month, the rent increase will be phased in over several years.<sup>148</sup> A key feature of RAD is the “Choice-Mobility” option, which allows certain tenants to obtain an HCV after a period of occupancy and move to the housing of their choice.<sup>149</sup>

Some have mixed feelings about RAD. Some advocates claim that tenant protections have not been properly enforced, which has led to people being evicted or placed in uninhabitable housing during the renovation period.<sup>150</sup> Additionally, residents have claimed that they were illegally rescreened after renovations were complete.<sup>151</sup> HUD has experienced issues tracking tenants throughout the conversion process, which makes it difficult to monitor issues that arise.<sup>152</sup> Advocates also fear that RAD privatizes public housing, which can lead to other challenges for residents.<sup>153</sup> If the program is overseen by different private property owners, residents might have difficulty adjusting to the new owners, building rules, payment methods, and other regulations.<sup>154</sup> However, the Urban Institute interviewed RAD tenants and found that most of them were satisfied with the renovations, even if they did not notice any specific or significant changes to their unit.<sup>155</sup> Tenants were also satisfied with their PHAs’ communication and management during the process.<sup>156</sup> A slight majority of those interviewed preferred the voucher option as opposed to continuing to live in public housing.<sup>157</sup>

While there have been challenges with RAD, PHAs across the country have been participating in it for

the last decade. As of October 2020, 140,000 units had been converted and over \$10 billion had been invested in the units.<sup>158</sup> Ninety percent of residents have remained or returned to their housing property after the RAD conversion.<sup>159</sup> While more oversight is necessary to protect all tenants, expanding the program could help many vulnerable residents, so their housing can be preserved and remain affordable.<sup>160</sup>

Despite the shift in focus to housing vouchers and the demolition of hundreds of thousands of subsidized units,<sup>161</sup> public housing remains critical for low-income families throughout the U.S. Today, there are approximately 1.2 million households living in public housing complexes that are managed by over 3,300 PHAs throughout the country.<sup>162</sup> But federal housing policy has clearly prioritized vouchers and has increased that prioritization over time. The number of vouchers issued in 1990 was just 5,966; that number had increased to over 17,000 by 2011.<sup>163</sup> In large part, the shift to vouchers reflects a recognition of the harms caused by residential segregation and the concentration of poverty through public housing, which has been worsened by HUD’s (and PHAs’) failure to abide by their statutory duty to affirmatively further fair housing.<sup>164</sup> The shift also reflects a belief that the private market may be able to provide higher quality housing for low-income people and avoid the pitfalls caused by a lack of funding for public housing.<sup>165</sup> More than anything, the shift acknowledges the importance of place in determining life outcomes—an awareness that neighborhoods with more resources can offer more opportunities and benefits across the full spectrum of someone’s life, from education to employment to health—and in the importance of giving poorer families a choice in where to live.<sup>166</sup>

The HCV Program has worthy goals, but whether it has met those goals merits further discussion, as follows below.



Elevated view of demonstrators, many of whom carry signs, during the March on Washington for Jobs and Freedom, Washington DC, August 28, 1963. Photo by Marion S. Trikosko/PhotoQuest/Getty Images



## The HCV Program

The Housing Choice Voucher Program is the largest national rental assistance program for low-income households. It provides a housing subsidy to 2.3 million households (consisting of 5.2 million people) nationwide, enabling them to secure affordable, decent quality housing in the private market.<sup>167</sup> As described above, the program was developed to utilize the private housing market to address some longstanding issues with public housing, including the concentration of housing complexes in lower-opportunity areas.<sup>168</sup> As noted above, research shows that people benefit when they can move to higher-opportunity areas that have quality housing and employment options, good schools, public

transportation, and green spaces.<sup>169</sup> The HCV Program was intended to facilitate housing choice and assist families in moving to these areas.<sup>170</sup>

The HCV Program primarily serves families of color led by women. As of 2020, 78% of families with vouchers nationwide had a female head of household and 37% had a female head of household with children.<sup>171</sup> In 2020, half of all program participants were Black (including those who identify as Black and Hispanic/Latinx).<sup>172</sup> Vouchers also serve a significant population of people with disabilities: a quarter of all voucher recipients nationwide reported a disability.<sup>173</sup>

## Section 8 or Housing Choice Vouchers?

There are several terms related to government-assisted housing or other programs that have become recognized as pejorative over time. For example, public housing complexes, particularly those in deteriorating conditions in high-poverty neighborhoods, are regularly referred to as “the projects”<sup>174</sup> or as being located in “the ghetto.”<sup>175</sup> Additionally, many know the Housing Choice Voucher Program as “Section 8,” referring to the authorization of the program in Section 8 of the Housing Act of 1937.<sup>176</sup> Like the myth of the “welfare queen,”<sup>177</sup> these words are frequently used as derogatory code words for predominantly Black, low-income neighborhoods or buildings, or to refer to Black families with vouchers (particularly those headed by women).<sup>178</sup> These terms are often based on stereotypes about public housing or families with vouchers and reflect racist attitudes toward Black people, harmful stereotypes about women, and hostility toward the poor.<sup>179</sup>

For example, at a 2015 pool party in McKinney, Texas that resulted in police officers pinning a Black teenager to the ground and handcuffing her, the underlying dispute allegedly began when a White neighbor told the Black teens to “go back to your Section 8 home.”<sup>180</sup> In another example, a controversial 2008 article published by The Atlantic suggested that an increase in crime in Memphis was attributable to the location of voucher holders,<sup>181</sup> even though this was later refuted by researchers.<sup>182</sup> Because of the negative association with the term “Section 8,” HUD began referring to the program explicitly as the “Housing Choice Voucher Program” in the late 1990s.<sup>183</sup> But many courts,<sup>184</sup> the media,<sup>185</sup> housing advertisements,<sup>186</sup> and HUD itself<sup>187</sup> still use the term “Section 8.” Throughout this report, we use the terms “public housing complexes” or “developments” instead of “projects” and generally refer to the HCV Program by its name rather than using “Section 8.” However, our testing audit, described in Part Two of this report, did use the term “Section 8” when conducting tests to determine if landlords would accept HCVs, given that housing providers are more familiar with this term.



Protester seen holding a sign at the protest. Photo by Erik McGregor/LightRocket via Getty Images

The HCV Program is overseen by HUD and administered by more than 2,200 PHAs throughout the country.<sup>188</sup> PHAs that administer the program handle a number of responsibilities, including establishing local policies; determining family eligibility; maintaining waiting lists; and approving units, including ensuring compliance with housing quality standards.<sup>189</sup>

In order to participate in the HCV Program, a voucher recipient must be low income. HUD requires that a family’s income not exceed 50% of the median income for the county or metropolitan area where they live.<sup>190</sup> Additionally, PHAs must provide 75% of their vouchers to applicants whose income does not exceed 30% of the area’s median income, defined as “very low income.”<sup>191</sup> As of 2020, 78% of voucher recipients fall within this extremely low-income category.<sup>192</sup> There are other eligibility requirements: at least one member of the household needs to have legal documentation to live in the

United States and certain convictions which vary by PHA, or a prior eviction within the last three years for drug-related reasons, will render an applicant ineligible.<sup>193</sup>

Through the HCV Program, a voucher holder may choose their own housing, within certain specified limits.<sup>194</sup> The voucher holder must find and secure the housing themselves, with the landlord agreeing to accept the voucher.<sup>195</sup> Typically, a voucher holder has 60 days to find housing with their voucher.<sup>196</sup> The housing unit must meet the program’s housing quality and rent standards and must be approved by the PHA. Vouchers can be used anywhere in the United States, allowing voucher holders to move and keep their voucher, although restrictions on moving to new areas can apply.<sup>197</sup>

The amount of a voucher is based largely on HUD’s determination of the “fair market rent” (FMR) for the size and type of dwelling in question (e.g.,



two-bedroom unit). HUD estimates FMRs to set limits on the cost of standard quality housing units for voucher holders in specific geographic regions.<sup>198</sup> HUD is required to calculate FMRs annually for different unit sizes in each market area and publish them in the Federal Register.<sup>199</sup> Local PHAs use those FMRs to establish payment standards for each unit type, effectively setting a cap on permissible “gross rent” (which includes utilities). As long as a dwelling’s actual gross rent is at or below the relevant payment standard, the

participating household usually pays the landlord 30% of its monthly income toward the rent, while the PHA pays the balance directly to the landlord. If, however, the actual rent for the unit exceeds the payment standard, the voucher holder is usually responsible for the balance.<sup>200</sup> Regardless, the family cannot pay more than 40% of its adjusted monthly income on rent.<sup>201</sup> As of 2020, the average subsidy per voucher household nationwide was \$886 per month and the average family contribution was \$390 per month.<sup>202</sup>

### SAFMRs

One of the primary criticisms of the HCV Program is that FMRs are generally too low because they are based on the average rental prices in a broad geographic area. This can prevent families with vouchers from moving to high-opportunity areas where rental prices are higher.<sup>203</sup>

As described above, a voucher’s value is calculated based on HUD’s determination of the FMR for a dwelling of a particular size and type.<sup>204</sup> FMRs are calculated based on an average of rent prices for a particular geographic area, including high-end and low-end properties in a region.<sup>205</sup>

Because of the wide variation in rental prices in particular markets in the United States and even within regions, HUD determined that FMRs do not always reflect the rental prices actually charged in certain areas.<sup>206</sup> Within one large geographic region, rents may widely fluctuate among neighborhoods. As a result, voucher amounts are often too low to reach many regional submarkets,

preventing voucher recipients from moving to high-opportunity areas where rental prices may be higher.<sup>207</sup>

As an alternative, HUD developed Small Area FMRs (SAFMRs), which reflect fair market rents in individual zip codes, rather than in broad metropolitan areas.<sup>208</sup> Studies have shown that SAFMRs are more effective in ensuring that families with vouchers can move to higher-opportunity areas.<sup>209</sup> As of 2021, SAFMRs are required to be used in only 24 metropolitan areas, but HUD publishes SAFMRs for all jurisdictions and PHAs may opt to use them.<sup>210</sup>

A number of civil rights and fair housing organizations have successfully advocated for the use of SAFMRs, including PRRAC, the National Housing Law Project, the Inclusive Communities Project, and the Center on Budget and Policy Priorities, as well as NFHA and LDF. These organizations urge further reform in this area, discussed further in Part Three of this report.

Landlord participation in the HCV Program is voluntary (subject to state and local laws prohibiting source of income discrimination applicable to vouchers, discussed further below),<sup>211</sup> and the landlord may apply its standard eligibility criteria to voucher holders. This was not always the case. In 1987, Congress amended the voucher program to mandate that landlords who participated in the program could not refuse to rent to future voucher-holding applicants. This was called the “Take One, Take All” requirement.<sup>212</sup> In 1998, Congress repealed the requirement after it was seen as discouraging landlord participation in the program.<sup>213</sup>

When a landlord agrees to participate in the HCV Program, they negotiate the contract rent with the PHA and sign a Housing Assistance Payments (HAP) Contract, which is an agreement between the landlord, tenant, and PHA.<sup>214</sup> The landlord also separately enters into a lease with the tenant.<sup>215</sup> In order for the process to be finalized, the PHA must inspect the unit for housing quality standards.<sup>216</sup> HUD has developed a checklist for tenants to consider when selecting a unit to maximize the likelihood of passing the inspection, including to look for “must haves” such as a bathtub or shower with hot and cold running water, walls in good condition, at least one window in every room used for sleeping, and a plumbing system served by the local water supply.<sup>217</sup> HUD also has a form checklist for PHAs to use in conducting the inspections.<sup>218</sup> If the unit passes inspection, the lease may be signed.<sup>219</sup> If it fails, the voucher holder or PHA can try to convince the landlord to make repairs so that it will pass.<sup>220</sup> Otherwise, the voucher holder must look for alternate housing.

Once a home is selected and approved, the voucher family must comply with the lease and the PHA’s requirements. The family must also pay its rent on time, maintain the condition of the home, and notify the PHA of any changes in income or family

composition.<sup>221</sup> A landlord may terminate the lease for four reasons: (1) serious or repeated violations of the terms and conditions of the lease; (2) violations of federal, state, or local law that directly relate to the occupancy or use of the unit or premises; (3) criminal activity or alcohol abuse; or (4) other good cause.<sup>222</sup> However, the owner may not terminate tenancy if the PHA fails to make their share of the payment or pays it late.<sup>223</sup> (However, this is not often an issue, and one of the benefits of the HCV program is that the landlord can expect the rent to be paid every month, even if the tenant experiences a job loss or income reduction).<sup>224</sup> A PHA must revoke a voucher if: (1) a family member fails to sign consent forms required for obtaining information on family status as part of any reexamination conducted by the PHA; (2) any family member fails to declare citizenship or provide documentation of eligible noncitizen status; or (3) the family is evicted from their housing for a serious or repeated violation of the lease.<sup>225</sup> Additionally, a PHA may revoke a voucher for a number of other reasons, including for criminal activity, abusive behavior to PHA personnel, or breach of a repayment agreement.<sup>226</sup> Families who remain eligible may stay in the program indefinitely, although studies have shown that the typical household remains in the program for six years.<sup>227</sup>

As of 2020, the average subsidy per voucher household nationwide was:

\$886 /month

and the average family contribution was:

\$390 /month

## Benefits of the HCV Program

### The HCV Program Improves Housing Stability and Locational Outcomes

Studies have shown that the HCV Program has succeeded in improving housing affordability and stability and in reducing homelessness.<sup>228</sup> For example, HUD’s Welfare-to-Work experiment, which assigned vouchers to eligible households in six cities between 2000 and 2004, found that a voucher reduced the probability of a homelessness spell from 45% to 9%.<sup>229</sup>

As described throughout this report, one purpose of vouchers is to improve locational outcomes for low-income families by reducing the concentration of poverty that can occur in public housing complexes.<sup>230</sup> On this front, the program has succeeded in this goal by facilitating families’ access to higher-opportunity areas when compared to public housing.<sup>231</sup> Generally, studies have found that voucher holders live in lower-poverty areas as compared to public housing residents.<sup>232</sup> (However, as described below, voucher recipients remain concentrated in high-poverty areas.) In 2003, HUD determined that 22% of HCV families lived in neighborhoods at or above the moderate-poverty threshold (defined as 30% or less poverty), while close to 46% of families in public housing complexes lived in such neighborhoods.<sup>233</sup> In fact, HUD found that almost half of public housing families live in neighborhoods above the 40% poverty threshold.<sup>234</sup>

### The HCV Program Is Flexible

Another positive aspect of the HCV Program is the flexibility given to PHAs to develop standards for their respective voucher programs based on the needs of their local community. For example, PHAs may develop preferences for selecting applicants, such as prioritizing families experiencing homelessness or paying more than 50% of their incomes on rent.<sup>235</sup> This can ensure that the program benefits those most in need and who may

have changing circumstances that urgently require government assistance for housing.<sup>236</sup>

### Moving to Opportunity Study

Scholars have studied the HCV Program for decades to measure its effectiveness in enabling low-income families to move to higher-opportunity areas. Perhaps the best known of these studies is the Moving to Opportunity (MTO) experiment. Originally inspired by the success of the Gautreaux Assisted Housing Program described above,<sup>237</sup> MTO was a randomized experiment conducted by HUD over several decades. Authorized under the Housing and Community Development Act of 1992, MTO enabled 4,600 low-income families with children who were living in public housing in higher-poverty communities to move into private market housing in higher-opportunity areas.<sup>238</sup> HUD enrolled families in MTO between 1994 and 1998 in five cities (Baltimore, Boston, Chicago, Los Angeles, and New York) and randomly assigned them into three groups.<sup>239</sup> The first group, which consisted of 1,819 households, received housing vouchers to enable them to live in high-opportunity neighborhoods (although they were later permitted to move anywhere with their vouchers) and received mobility counseling to help them locate housing in low-poverty areas.<sup>240</sup> The second group, consisting of 1,346 households, was offered traditional housing vouchers to live anywhere and was not offered mobility counseling.<sup>241</sup> The third group was the control group. This group, consisting of 1,439 households, maintained the status quo and remained in public housing.<sup>242</sup> Unlike the Gautreaux Assisted Housing Program, which used racial criteria to determine where participants could move, MTO only targeted the poverty levels of neighborhoods. MTO was intended to improve the participating families’ housing, economic, and educational achievements.<sup>243</sup>

To measure the success of the program, MTO researchers followed the progress of participating

families over time. Initial findings from the program were not entirely promising: while about half of the MTO families moved to lower-poverty areas, researchers determined that the move had no effect on adult earnings or employment and no consistent positive effects on children, although it improved some aspects of adult mental and physical health.<sup>244</sup> These early findings contradicted other studies and experimental evidence demonstrating significant positive effects from living in lower-poverty areas.<sup>245</sup>

In 2015, researchers published updated findings from MTO, providing strong evidence of the positive impacts of the program, particularly as observed in tracking the outcomes for young children over time.<sup>246</sup> The researchers determined that moving to a less impoverished neighborhood before the age of 13 increased future annual income, and improved college attendance rates.<sup>247</sup>

Other significant benefits have been observed by researchers studying MTO, in both adults and children: positive changes in physical and

mental health; lower rates of obesity, diabetes, and depression; fewer debts and improved credit scores; and an overall reduction in the intergenerational persistence of poverty.<sup>248</sup>

## Pitfalls of the HCV Program

### The Program is Not Large Enough to Serve All Low-Income Families in the U.S.

Despite the benefits of the HCV Program, it is not large enough to adequately serve the needs of all low-income families in the United States. Only about 21% of an estimated 22 million low-income households receive assistance through vouchers, leaving over 17 million households without assistance.<sup>249</sup> A 2016 study of HCV waiting lists found that more than 2.8 million families were waiting to be accepted into the program as of 2012.<sup>250</sup> Nationwide, families spend an average of 28 months on the voucher waiting list.<sup>251</sup> The waiting period for families can range from two to 10 years.<sup>252</sup> As one example, in Los Angeles, the estimated waiting period for a voucher is eight years.<sup>253</sup>

## The Mortgage Interest Deduction

While the HCV Program is not large enough to meet the needs of all low-income families in the U.S., millions of wealthier, predominantly White households benefit from a different government subsidy each year: the mortgage interest deduction. The mortgage interest deduction allows homeowners to deduct the interest they pay on any loan used to build, purchase, or make improvements upon their residence, from taxable income. The deduction provides \$25 billion a year in tax savings to homeowners.<sup>254</sup>

White and wealthier households disproportionately benefit from the mortgage interest deduction. The National Low Income Housing Coalition and the Institute for Economic and Racial Equality at Brandeis University recently found that White households receive 71% of the benefits from the deduction, despite only comprising 66% of the U.S. population.<sup>255</sup> Further, 90% of the deduction’s benefits go to households that earn over \$100,000 a year.<sup>256</sup> Advocates have repeatedly called for the deduction to be eliminated and for the savings to be repurposed as a tax credit to benefit individuals and families that rent.<sup>257</sup>



**Families with Vouchers Face Difficulties in Utilizing Vouchers and Encounter Discrimination**

After years of waiting for a voucher, due to insufficient funding of the HCV program, the families who are able to receive a voucher may not even be able to utilize it. HUD has conducted various studies on this issue. In the early 1980s, only half of voucher holders were successful in finding housing with their voucher. That percentage increased to 68% by the late 1980s.<sup>258</sup> By 2000, the percentage was still around 69%,<sup>259</sup> where it remains. Today, up to 30% of voucher recipients may be unable to use their voucher.<sup>260</sup>

One contributing factor is timing. Families who receive a voucher typically have only 60 days to locate housing. If they are unable to find housing that meets the program requirements, the voucher expires and is reissued to another household on the waiting list.<sup>261</sup> One study found that the average search time for families with vouchers was 83 days and nearly a quarter of families took more than 120 days to find housing.<sup>262</sup> While some PHAs will grant extensions for families to locate housing or will provide longer search periods as of right, others will not.<sup>263</sup> This may pressure voucher holders to choose the first available housing they can find, securing low-quality housing as a result.<sup>264</sup> Other rental requirements may prevent a voucher holder from finding housing, including a credit check, a review of past evictions, or a security deposit (which is not covered by the voucher and must be paid by the voucher family from other funds).<sup>265</sup>

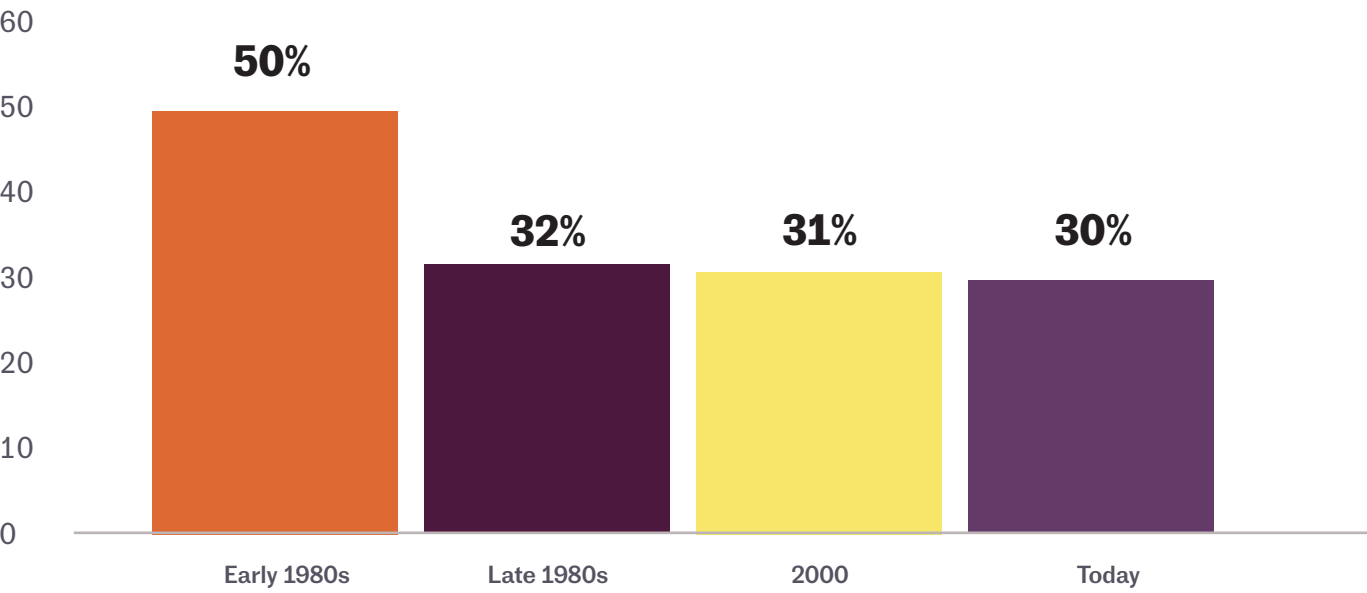
In addition to these difficulties in acquiring housing, the limited services provided by PHAs, and other restrictions may impede voucher holders from locating housing in high-opportunity areas. Despite the known positive results of mobility counseling, as shown by various programs including from the *Gautreaux* litigation and MTO, PHAs typically do not provide counseling or housing search assistance

to voucher holders (beyond cursory briefings), preventing families from becoming aware of the full array of options they may have for using their voucher.<sup>266</sup> It can also be difficult for families to move outside the jurisdiction that originally issued their voucher. While vouchers are technically “portable” among PHAs, in practice it can be very difficult for families to move to a new location. A PHA may restrict portability in the first year, preventing families from finding a new residence if problems arise at their original location.<sup>267</sup> PHAs may have different rules and requirements regarding income, billing, permissible unit size, and search time extensions.<sup>268</sup> This can even be true when families are trying to move within the same metropolitan area. For example, a large metropolitan area may have one PHA administering the HCV Program in the central city and have other PHAs serving the suburbs and each may require separate application and administrative processes, which can impede the efforts of families to move to higher-opportunity areas within the same region using their voucher.<sup>269</sup>

Landlord refusal to participate in the HCV Program and accept vouchers is also a significant hurdle. HUD has estimated that only 695,000 unique landlords participate in the program, out of the 10 to 12 million total landlords in the United States.<sup>270</sup> In a 2009 study conducted by the Louisiana Fair Housing Action Center in New Orleans, 82% of landlords refused to accept vouchers or had stringent requirements (such as fees, rental deposits, or additional screening measures) that made it impossible for voucher holders to rent units.<sup>271</sup>

In a more recent study funded by HUD in five major cities (Fort Worth, Los Angeles, Newark, Philadelphia, and Washington, DC), the Urban Institute found that the rate of landlords refusing to accept vouchers as a form of payment was 67% or higher, reaching 78% and 76% in Fort Worth

**Percentage of families that receive a voucher but are unable to utilize it**



Estimated number of landlords that participate in the HCV program

695,000

Estimated total number of landlords in the United States

10-12 M

**Landlord refusal to participate in the HCV Program and accept vouchers is also a significant hurdle.**



and Los Angeles, respectively.<sup>272</sup> The study did determine that there were lower landlord denial rates in cities with source of income protections, which are generally discussed further below, like Newark and Washington, DC.<sup>273</sup> The study also found that landlord denial rates were higher in low-poverty neighborhoods.<sup>274</sup> Overall, the landlord denial rate was so high that it undermined the researchers’ ability to test for whether voucher holders were treated differently because of their race (meaning whether White voucher holders were treated more favorably than Black voucher holders).<sup>275</sup>

Many landlords refuse to accept vouchers because they do not want to deal with the program requirements and bureaucracy.<sup>276</sup> As noted above, voucher properties must be inspected and approved by the PHA and securing approval may require repairs that the landlord would not have to make for a non-voucher tenant. The local PHA may make this process more complicated: for example, there may be a significant delay in waiting for the PHA to conduct the required inspection and approve the property, and landlords are not compensated for that lost rent.<sup>277</sup> Additionally, complaints are frequently raised about poor customer service at PHAs and the failure to send rent checks on time.<sup>278</sup> If the local housing market is tight, making it difficult for any renter to secure housing, the landlord may not have an incentive to participate in the HCV Program.<sup>279</sup> Indeed, “many landlords . . . refus[e] to accept the vouchers when they can get higher rents, without the bureaucratic red tape that plagues the program, on the open market.”<sup>280</sup> As alleged in a case challenging a New York City landlord’s refusal to accept housing vouchers, the landlord gave the following explanation to a Black tester seeking to use a voucher at one of his properties:

I do not deal with programs, ma’am . . .  
I just . . . I cannot deal with programs . . .  
there is so much red tape. These people,  
any program people, usually they drive  
you crazy . . . I’m not in situation that I  
want to be . . . in same position, that they  
can play around and drive me crazy. I  
don’t need that. At my age, I don’t need  
that.<sup>281</sup>

As an alternative to the outright refusal to accept vouchers, some landlords may technically accept vouchers as a form of payment but will also impose minimum income requirements for renters that make it impossible for voucher holders to qualify.<sup>282</sup> An example of a minimum income policy is a requirement that the potential tenant must earn three or even four times the full amount of rent per month (meaning both the amount the voucher holder and the PHA would pay) to qualify as a renter. For example, if the total rent on a particular unit is \$1,000 per month, a minimum income amount policy may require a tenant to have \$3,000 in income per month, even if the tenant has a voucher and is only personally responsible for \$200 or \$300 of the monthly rent. Given that most voucher holders are considered extremely low income and many do not have additional sources of income outside of the voucher, these policies prevent voucher holders from renting in high-opportunity areas. These policies are especially

View of marchers during the ‘Walk for Understanding’ through the Central Ward neighborhood on the national day of mourning for assassinated Civil Rights and Religious leader Dr Martin Luther King Jr, Newark, New Jersey, April 7, 1968. Visible at left are several unidentified, high-rise, public housing buildings (probably the Hayes Homes housing project) near Hunterdon Street. The Palm Sunday march, conceived earlier in the year as, in part, a peaceful response to rioting in the city during the previous summer, became an impromptu memorial for Dr King, who had been assassinated, in Memphis, three days earlier. *Photo by Ann E. Zelle/Getty Images*





prevalent in jurisdictions that have laws that prohibit landlords from discriminating against voucher holders based on their source of income, because they allow a landlord to assert that it accepts vouchers but acts as a barrier for families with vouchers to actually acquire housing.<sup>283</sup> As demonstrated in Part Two, we found significant evidence of minimum income policies in Memphis that prevent HCV holders from renting properties in higher-opportunity areas. Additionally, housing providers may use revenue management systems that fluctuate the advertised rent for their units on a daily or weekly basis based on local conditions, which can turn an affordable unit into an unaffordable one (based on HUD’s FMR limits) on any given day.

Landlords may also refuse to participate in the HCV Program or may impose other restrictions to prevent voucher holders from renting one of their units because of racist beliefs or notions about voucher holders. Racial discrimination against HCV recipients is commonplace, even in areas where local or state laws prohibit landlords from refusing to accept vouchers. In the Urban Institute’s recent HUD-funded study, researchers identified 16 studies examining the extent of landlord discrimination against voucher holders that were conducted between 2000 and 2017.<sup>284</sup> While the studies varied, all found evidence of discrimination against voucher holders.<sup>285</sup> Additionally, several studies, including by the Louisiana Fair Housing Action Center, have found evidence of preferential treatment of White voucher holders as compared to Black voucher holders.<sup>286</sup>

### **Families with Vouchers Remain Concentrated in Poor and Racially Segregated Areas**

Finally, research has shown that the HCV Program has failed to fulfill its goals of decreasing the perpetuation of poverty and enabling lower-income families to move to higher-opportunity areas.<sup>287</sup> While voucher holders are better

situated than public housing residents in terms of poverty concentration, only a small proportion of voucher holders live in low-poverty neighborhoods.<sup>288</sup> Instead, families with vouchers are disproportionately located in lower-opportunity, racially segregated areas and are underrepresented in higher-opportunity neighborhoods.<sup>289</sup> In measuring the success of the HCV Program over time, voucher holders are less likely to live in high-poverty neighborhoods (defined as more than 30% poverty) now than at the start of the program in the 1970s, but are still more likely to live in a neighborhood with 20 to 30% poverty, which is still a very poor neighborhood.<sup>290</sup>

This is due to a variety of factors, including the general lack of affordable housing in the United States; exclusionary zoning, which often clusters multi-family housing opportunities in segregated areas; the limitations of FMRs, particularly when calculated on a market-wide basis; and other regulatory limitations in the HCV Program. In 2014, 46 affordable housing units were available for every 100 low-income households.<sup>291</sup> In the recent Urban Institute study, researchers screened an average of 39 advertisements to find one unit that was affordable with a voucher.<sup>292</sup> When HUD sets FMRs for an entire region, rather than by smaller geographic components like zip code, the payment standards are generally too low for high-cost, higher-opportunity areas, relegating families to low-cost, lower-opportunity neighborhoods.<sup>293</sup>

In a study of the distribution of HCV households in the San Francisco Bay Area region from 2000 to 2010, researchers found that voucher holders were more likely to locate in areas with lower housing prices, lower percentages of educated people, higher rates of poverty, and higher concentrations of Black people.<sup>294</sup> And affordability is just one factor—as discussed above, many landlords do not accept vouchers at all. Landlords who are willing to participate in the program are disproportionately



At 46th street and Green Tree Road in the Green Tree Acres neighborhood in Exeter Township Thursday afternoon August 9, 2018. For a Business Weekly story on the anniversary of the Fair Housing Act, and the need for affordable houses like in this neighborhood. Photo by Ben Hasty /MediaNews Group/Reading Eagle via Getty Images

located in lower-opportunity areas. For example, some landlords advertise available properties on affordablehousing.com (known as gosection8.com until September 2021), a privately administered website that is recommended by many PHAs.<sup>295</sup> Researchers have determined that listings on the site are typically located in disadvantaged neighborhoods.<sup>296</sup>

These poverty issues are more likely to have an impact on Black families with vouchers and other families of color. Black and Latinx families with vouchers are more likely to live in predominantly minority neighborhoods with the highest levels of poverty,<sup>297</sup> while White families with vouchers are more likely to live in neighborhoods with a higher White population and with lower levels of poverty.<sup>298</sup> One study in Chicago found that voucher holders were denied access to approximately 70% of the

market rate units that should have been available to them, and once race and ethnicity were accounted for, Black and Latinx voucher holders had an even lower chance of locating suitable housing.<sup>299</sup> Another found that White voucher holders were twice as likely as Black and Latinx families to live in low-poverty neighborhoods.<sup>300</sup>

While all voucher holders may encounter difficulties in finding suitable housing due to the lack of affordable options, PHA requirements, and landlord refusal to participate in the program, Black voucher holders and other families of color with vouchers may be subject to discrimination that White voucher holders do not experience, and they may have less success in using their voucher to move to areas with less poverty and more opportunity. Black families in the HCV Program are also generally disproportionately affected by

# THE FAIR HOUSING ACT BROADLY PROHIBITS HOUSING DISCRIMINATION ON THE BASIS OF:

- **RACE**
- **COLOR**
- **NATIONAL ORIGIN**
- **SEX**
- **RELIGION**
- **FAMILIAL STATUS**
- **DISABILITY**

discrimination given that half of all voucher holders are Black (far exceeding their general share of the population in the U.S., which is 13.4%).<sup>301</sup> In addition to racial discrimination, other forms of discrimination are rampant against voucher holders, including discrimination based on disability, gender, and familial status. Aside from advocating for changes to the HCV Program to address these critical issues, civil rights advocates have attempted to combat discrimination against voucher holders in two primary ways: litigation and legislation. These efforts are discussed further below.

## Addressing Discrimination Against Voucher Holders: Legislative Initiatives

### Federal Law

The Fair Housing Act broadly prohibits housing discrimination on the basis of race, color, national origin, sex, religion, familial status, or disability.<sup>302</sup> The statute can be enforced in court by private litigants or the U.S. Department of Justice (DOJ) or through administrative complaints filed with HUD.<sup>303</sup> While the Fair Housing Act does not explicitly prohibit discrimination based on the source of income used to pay for the housing, courts have repeatedly emphasized that the statute is to be interpreted broadly.<sup>304</sup> This supports plaintiffs' use of the Act to combat discrimination against voucher holders because of their membership in one or more of the enumerated classes covered by the statute. Voucher holders have brought numerous challenges under the Fair Housing Act based on discrimination they have experienced due to the program because of their race, gender, familial status, or disability. A selection of these cases is discussed further below.

Plaintiffs in Fair Housing Act cases may bring a claim of intentional discrimination, known as the disparate treatment theory of discrimination, or a claim that the defendant's policies had a

discriminatory impact on members of a protected class, known as disparate impact.<sup>305</sup> Given that source of income or status as a voucher recipient is not protected under the Act and the relative difficulty in proving intentional discrimination, most cases involving voucher holders have been brought under a disparate impact theory, as discussed further throughout this section. As set forth by the Supreme Court in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project*, a plaintiff may establish a prima facie case of disparate impact discrimination under the Fair Housing Act by demonstrating: (1) a specific policy that is being challenged; (2) disparately impacts a protected class; and (3) a causal connection between the challenged policy and the disparity.<sup>306</sup> Once the plaintiff establishes a prima facie disparate impact case, the burden shifts to the defendant to prove that the challenged policy or practice is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests.<sup>307</sup> Even if the defendant can make this showing, the plaintiff may still prevail by proving that the interests supporting or justifying the challenged policy or practice could be accomplished by other means that have a less discriminatory effect.<sup>308</sup>

In addition to the Fair Housing Act, there are other sources of federal law that protect voucher holders, including the Equal Credit Opportunity Act,<sup>309</sup> the Cranston-Gonzalez National Affordable Housing Act (the HOME Program),<sup>310</sup> the LIHTC Program,<sup>311</sup> and the National Housing Act.<sup>312</sup>

### State and Local Source of Income Laws

Many state and local governments have responded to discrimination against voucher holders by enacting protections for HCV recipients, known as source of income or SOI laws. These laws generally prohibit the rejection of rental applicants (or home buyers) based on the source of the applicant's income, such as salary, Social Security Disability





A mixture of new buildings and public housing is pictured along K Street SW in the Southwest Waterfront neighborhood in Washington, DC on March 08, 2021. Photo by Shuran Huang for The Washington Post via Getty Images

Insurance (SSDI), Supplemental Security Income (SSI), or use of an HCV.<sup>313</sup> Between 1971 and 1993, eight states adopted SOI laws.<sup>314</sup> Starting in the early 1990s, source of income ordinances became more popular at the local level, with more than 30 cities and counties adopting measures prohibiting discrimination against voucher holders.<sup>315</sup> PRRAC recently determined that, as of October 2021, 20 states and 112 cities or counties had SOI protections.<sup>316</sup> These laws are important: several HUD studies have found that voucher holders are more likely to find suitable housing that will accept their vouchers in jurisdictions with SOI laws.<sup>317</sup> Still, other studies have found that SOI laws do not disperse concentrations of voucher holders in particular areas.<sup>318</sup>

For states or localities with these protections, source of income is typically included as a protected class in the state or locality's general civil rights or human rights law or in a specific law or ordinance related to fair housing. For example, source of income is included as a protected class in the District of Columbia's Human Rights Act with respect to housing, public accommodations, and educational institutions.<sup>319</sup> Source of income laws are generally not limited to HCVs (and can include income sources such as SSDI, disability benefits, and Temporary Assistance to Needy Families), but may explicitly refer to vouchers as an example of a covered source of income or may more generally refer to benefits provided by the government. In Washington, DC, "source of income" is defined as

follows, with the reference to "federal payments" covering HCVs:

'Source of income' means the point, the cause, or the form of the origination, or transmittal of gains of property accruing to a person in a stated period of time; including, but not limited to money and property secured from any occupation, profession or activity, from any contract, agreement or settlement, from federal payments, court-ordered payments, from payments received as gifts, bequests, annuities, life insurance policies and compensation for illness or injury, except in a case where conflict of interest may exist.<sup>320</sup>

The strongest version of an SOI law contains an explicit private right of action for aggrieved persons to pursue claims in court.<sup>321</sup> For example, the District of Columbia's Human Rights Law expressly provides that aggrieved persons can bring an action in court for damages or other remedies.<sup>322</sup> The City of Los Angeles's SOI law, which went into effect in January 2020, provides that "[a]n aggrieved person may bring a civil action for injunctive relief and damages," including punitive damages.<sup>323</sup> The ordinance further authorizes courts to award reasonable attorney fees and costs.<sup>324</sup> Similarly, San Diego's law, which was passed in 2018, provides that "[a]n aggrieved person claiming a violation of this Division may file an action against a person in a court of competent jurisdiction for a violation(s) that is alleged to have occurred on or after August 1, 2019, within one year after discovery of the alleged violation."<sup>325</sup> As of October 2019, one attorney was credited with filing more than 50 lawsuits against landlords alleging source of income discrimination in violation of the San Diego ordinance.<sup>326</sup>

While beneficial in explicitly recognizing the barriers faced by voucher holders in acquiring housing, there are limitations to state and local

SOI laws. Not all of these laws explicitly cover housing vouchers, which has sometimes limited their application to HCVs. For example, Wisconsin's Open Housing Act prohibits discrimination against "lawful source of income" and the state Administrative Code defines income as "includ[ing] but . . . not limited to lawful compensation or lawful remuneration in exchange for goods or services provided, profit from financial investments, any negotiable draft, coupon, or voucher representing monetary value such as food stamps, social security, public assistance or unemployment compensation benefits."<sup>327</sup> Despite this fairly broad definition, in a legal challenge to the Act, the federal court for the Western District of Wisconsin determined that vouchers were more like subsidies than income and awarded summary judgment to the defendants.<sup>328</sup> On appeal, the Seventh Circuit Court of Appeals acknowledged Wisconsin's expansive definition of income, but agreed with the trial court that vouchers did not amount to a "lawful source of income," because they do not have "monetary value independent of the voucher holder and the apartment sought," in addition to the fact that payments are not made to the voucher holder.<sup>329</sup> The court was also concerned that reading the statute to protect vouchers would result either in the state making the HCV Program mandatory or that it would limit the statute to participating owners only.<sup>330</sup> Accordingly, the appellate court held that Wisconsin's SOI law did not apply to housing vouchers.<sup>331</sup>

Other state statutes have similar limitations. In addition to Wisconsin, Minnesota's law does not cover vouchers.<sup>332</sup> Delaware's SOI law currently exempts housing vouchers, but the state legislature is seeking to amend the law to include them.<sup>333</sup> California's law previously did not include vouchers but was amended to include them as of January 2020.<sup>334</sup>

Legal challenges to these laws have included arguments that federal law, which makes landlord



acceptance of vouchers voluntary, preempts state and local SOI laws. While the Fair Housing Act does not preempt any state or local SOI laws,<sup>335</sup> which would have the effect of nullifying them, SOI laws have faced frequent legal challenges on the grounds that they are preempted by the Housing Act of 1937. However, several state courts have found that SOI laws prohibiting voucher discrimination are not preempted by federal law.<sup>336</sup> For example, in *Commission on Human Rights and Opportunities v. Sullivan Associates*, the Supreme Court of Connecticut found that “nothing in the federal program prevents a state from mandating participation” and held that Connecticut’s law was not preempted by the voluntary nature of the federal program.<sup>337</sup> In another case, the federal district court in the District of Columbia found that the city’s law prohibiting discrimination against voucher holders did not mandate participation in the program, because it did not categorically bar landlords from refusing to rent to them—instead, it simply banned landlords from refusing to rent to someone due to their status as a voucher holder.<sup>338</sup> The court failed to find a conflict between the federal and local law that would trigger federal preemption and noted that the city’s law advanced the federal statute’s goals of helping low-income people find housing.<sup>339</sup>

In addition to federal preemption issues, state preemption has been a barrier to local SOI ordinances. State legislatures, frequently but not exclusively in the South, often enact laws to prevent local ordinances in progressive cities from taking effect.<sup>340</sup> Preemption can be used as a tool for conservative state governments to obstruct Black communities and other communities of color from taking local action to protect their rights.<sup>341</sup> For example, in 2015, Texas enacted legislation banning any local ordinances that would protect voucher holders, in response to an ordinance passed in the City of Austin.<sup>342</sup> Austin sued the Texas Attorney General and the Texas Workforce Commission in

an effort to have the statute’s enforcement enjoined, but the Fifth Circuit dismissed the suit on grounds of lack of standing and sovereign immunity.<sup>343</sup> Indiana also has a state law prohibiting localities from adopting or enforcing an ordinance requiring participation in the HCV Program or other similar program, in response to a law passed in Indianapolis.<sup>344</sup> In 2021, Iowa passed a law barring localities from enacting laws that prevent landlords from discriminating against HCV holders.<sup>345</sup> Set to take effect in 2023, the statute will prevent three cities—Des Moines, Iowa City, and Marion—from enforcing their local SOI laws.<sup>346</sup> Finally, as discussed further below in Part Two, Tennessee adopted a general anti-discrimination preemption law in 2019 that may affect the City of Memphis’ source of income ordinance.<sup>347</sup>

In addition to these issues, SOI laws may be easily evaded by housing providers by setting rental rates above the market rate, citing other reasons (like credit score) to reject potential tenants with vouchers, requiring that tenants have a minimum income independent of the voucher, or by intentionally failing the required inspection.<sup>348</sup>

### Litigation

To address discrimination against voucher holders and other inadequacies in the HCV Program, civil rights plaintiffs frequently have pursued legal claims against housing providers and HUD. Some general categories of cases are described in this section.

### Refusal to Participate in the HCV Program

Plaintiffs have repeatedly asserted that a housing provider’s refusal to participate in the HCV Program and accept vouchers constitutes race discrimination in violation of the Fair Housing Act, given that half of all voucher holders in the United States are Black.<sup>349</sup> Additionally, disparate impact cases involving landlords’ lack of participation in or withdrawal from the HCV Program have



Erica Chance, 35, left, plays with her 5-year-old son, Ayden, who has cerebral palsy. She and her three children were approved for a housing transfer in 2016. The family’s three-bedroom house in the Kenilworth public housing projects in Northeast Washington does not have enough space for Ayden to use his walker or wheelchair. Right now, she has to carry him everywhere in the home, including up and down a flight of stairs daily. Photo by Sarah L. Voisin/The Washington Post via Getty Images

been brought on behalf of other protected classes, including women, people with disabilities, and families with children.<sup>350</sup>

There is a split of authority regarding whether a landlord’s participation and subsequent withdrawal from the HCV Program can be sufficient to support a disparate impact claim of discrimination under the Fair Housing Act. Some courts have allowed plaintiffs to challenge a landlord’s refusal to accept vouchers or to withdraw from the program under a disparate impact theory.<sup>351</sup> For example, in *Crossroads Residents Organized for Stable and Secure Residency (CROSSRDS) v. MSP Crossroads Apartments*, a case filed in 2016, the District of Minnesota denied a motion to dismiss in a case

challenging an apartment complex’s withdrawal from the program to attract higher-income young professionals to the complex.<sup>352</sup> The case subsequently settled.<sup>353</sup>

However, several circuit courts have refused to hold landlords liable for refusing to rent to voucher holders.<sup>354</sup> In *Knapp v. Eagle Property Management Corp.*, the Seventh Circuit refused to apply the disparate impact theory of discrimination to any landlord who refuses to rent to voucher holders, including those who participate in the HCV Program and those who do not.<sup>355</sup> In that case, the plaintiff, who had a housing voucher, was rejected from a housing opportunity from a landlord who participated in the HCV Program.<sup>356</sup> The court





noted that participation is voluntary, and that non-participating landlords regularly reject voucher holders.<sup>357</sup> To hold participating landlords liable for discriminating against voucher holders, the court reasoned, would deter further involvement in the program.<sup>358</sup> The Second Circuit quoted *Knapp v. Salute v. Stratford Greens Gardens Apartments* in holding that landlords may refuse to participate in the program and may reject voucher holders: “non-participation constitutes a legitimate reason for their refusal to accept [voucher holders] and . . . we therefore cannot hold them liable for . . . discrimination under the disparate impact theory.”<sup>359</sup>

Some circuits have drawn a distinction between withdrawal from the HCV Program and the refusal to participate. In *Graoch Associates #33, L.P. v. Louisville/Jefferson County Metro Human Relations Commission*, the Sixth Circuit addressed the question of whether a “landlord’s withdrawal from the [HCV] program [could] ever violate the FHA solely because it has a disparate impact on members of a protected class.”<sup>360</sup> In that case, a private landlord that owned an apartment complex that participated in the voucher program informed the PHA of its intent to withdraw from the program.<sup>361</sup> Although the landlord stated that it would honor the leases of existing voucher tenants, it did not intend to renew those leases or sign any new leases for voucher holders.<sup>362</sup> At the time of the landlord’s announcement of its intent to withdraw from the program, 18 families with vouchers lived at the apartment complex.<sup>363</sup> Seventeen of the families were Black.<sup>364</sup>

Ceola Lewis is a person with a disability and only receives \$16 a month in food stamps, has been on a housing wait list for 37 years. She is photographed in her apartment that she can barely afford in Washington, D.C. on October 23, 2012. Ms. Lewis, who is on disability, has been on the housing wait list for 37 years. She’s on both the voucher list and the public housing list with the city. Both her disability check and social security check are barely enough for her to pay her rent, pay utility bills and make ends meet. *Photo by: Marvin Joseph/The Washington Post via Getty Images*



In evaluating the case, the Sixth Circuit distinguished between withdrawal and non-participation, stating “[w]hile we agree that a landlord should never face disparate-impact liability for non-participation in [the HCV Program], we do not think that withdrawal and non-participation are functionally identical.”<sup>365</sup> The court reasoned that withdrawal affected an identifiable group—tenants receiving vouchers—while the size and composition of the group affected by landlord’s non-participation was indeterminate.<sup>366</sup>

The court also reasoned that it would be difficult for a plaintiff to overcome the burden of showing that a housing provider’s business justification for non-participation in the voucher program was a pretext for discrimination or that an alternative practice would serve the same business goal with less discriminatory effect.<sup>367</sup> As the court explained, “[a] non-participating landlord presumptively can appeal to his interests in not wanting to spend time learning about the program and not wanting to become entangled in government bureaucracy, while a withdrawing landlord who fails to cite any reason why participation in [the HCV Program] hurt his business cannot do so.”<sup>368</sup> Accordingly, the court concluded that its “view that it is possible to bring disparate impact challenges to withdrawals from [the HCV Program] is consistent with [its] view that one cannot bring a disparate impact challenge to . . . non-participation.”<sup>369</sup>

Courts have also used challenges to non-participation in the HCV Program to limit the scope of defendants’ liability under the Fair Housing Act. In *Inclusive Communities Project v. Lincoln Property Company*, a not-for-profit organization filed suit under the Fair Housing Act against the owners and management company of apartment complexes, alleging that the defendants’ policy of not accepting housing vouchers at their properties disproportionately excluded Black potential tenants. To support its allegations, the plaintiff offered

statistical evidence showing that voucher holders in the Dallas metropolitan area are disproportionately Black and located in minority census tracts.<sup>370</sup> The district court dismissed the plaintiffs’ disparate impact claim, and the Fifth Circuit Court of Appeals affirmed.<sup>371</sup>

In affirming the ruling of the district court, the Fifth Circuit found that the plaintiff failed to show a robust causal connection between defendants’ voucher policy and the alleged statistical disparities, one of the required elements in establishing a prima facie case of disparate impact discrimination under the Fair Housing Act.<sup>372</sup> In reaching this conclusion, the court relied on a narrow approach to causation that arguably imposes impossible burdens on disparate impact plaintiffs. It determined that the statistical data provided by the plaintiff did not support an inference that the implementation of defendants’ “no vouchers” policy caused Black persons to be the dominant group of voucher holders in the Dallas metro area.<sup>373</sup> Nor did the plaintiff allege any facts supporting an inference that the defendants bore any responsibility for the geographic distribution of minorities throughout Dallas prior to the implementation of the policy.<sup>374</sup>

According to the Fifth Circuit, if the racial composition of an area is an independent factor contributing to a disparity, the defendant cannot be held responsible.<sup>375</sup> To hold otherwise, the court reasoned, would put landlords at risk of a disparate impact challenge “any time a less than statistically proportionate minority population lived in that landlord’s census tract.”<sup>376</sup> The Fifth Circuit further held that because participation in the voucher program is voluntary, there was no actionable claim.<sup>377</sup> Judge Davis issued a strong dissent in the case, making clear that the majority fundamentally misunderstood what disparate impact liability requires and that the plaintiff’s statistical evidence was sufficient to establish a prima facie case of disparate impact.<sup>378</sup> Nonetheless, the en banc Fifth Circuit denied a petition to rehear the case and



A person walks past a mural advocating for housing in the Anacostia neighborhood of Washington, D.C on Tuesday, November 24, 2021.  
Photo by Amanda Andrade-Rhoades/For The Washington Post via Getty Images

the Supreme Court declined to review the case in 2019.<sup>379</sup>

In 2020, the Fifth Circuit reaffirmed its restrictive holding in *Lincoln Property* in another lawsuit alleging that a housing association’s policy forbidding the rental of units to voucher holders discriminated against Black tenants in violation of the Fair Housing Act. In that case, *Inclusive Communities Project v. Heartland Community Association*, the appellate court affirmed the lower court’s dismissal of the case.<sup>380</sup> The court noted with approval the district court’s conclusion that the plaintiff failed to adequately plead a prima facie disparate impact claim because “it did not allege the policy . . . caused the racial make-up of the 96 current rental tenants” using vouchers.<sup>381</sup>

Moreover, the “statistical racial disparities relied upon by [the plaintiff] preexisted the March 2018 enactment of the policy and, therefore, cannot be shown to have been caused by it.”<sup>382</sup> Discussing the Fifth Circuit’s interpretation of “robust causality” in *Lincoln Property* at length,<sup>383</sup> the court held that the plaintiff failed to state a claim.<sup>384</sup>

Despite this mixed case law, plaintiffs continue to challenge restrictive voucher policies under the Fair Housing Act. On March 15, 2021, the Legal Aid Society filed a lawsuit on behalf of the Housing Rights Initiative against 88 New York landlords and brokers.<sup>385</sup> The lawsuit, *Housing Rights Initiative v. Compass, Inc.*, alleges that the defendant landlords and brokers refuse to rent apartments to voucher holders in violation of the Act and state law.<sup>386</sup>



Plaintiffs contend that the defendants’ policy of automatically denying housing to any person with a voucher has a disparate impact on the basis of both race and disability in violation of the Fair Housing Act.<sup>387</sup>

To support their disability claim, plaintiffs allege in their complaint that 9.2% of New York’s entire population with disabilities use HCVs to obtain housing, compared to just 2.8% of the city’s non-disabled population.<sup>388</sup> The complaint also notes that voucher holders are 2.9 times more likely to have disabilities than non-voucher holders.<sup>389</sup> To support their race claim, plaintiffs contend that the defendants’ policy prevents 5.5% of all Black and Latinx New Yorkers from securing housing in their buildings, while only preventing 1.7% of White New Yorkers from doing so.<sup>390</sup> The complaint also notes that voucher holders are 1.6 times more likely to be Black or Latinx than non-voucher holders.<sup>391</sup> As of the time of this writing, the case continues to be litigated.<sup>392</sup>

Additionally, plaintiffs have successfully brought disparate impact claims under the Fair Housing Act against insurance companies that refuse to provide insurance to landlords who rent to housing voucher recipients. For instance, in *National Fair Housing Alliance v. Travelers Indemnity Co.*, NFHA alleged that the defendant’s policy of refusing to provide habitation insurance to landlords who rented to voucher holders had a disparate impact on Black people and women in violation of the Act.<sup>393</sup> To support its claim, NFHA conducted fair housing testing in Washington, DC, using five testers who posed as potential buyers of apartment buildings in the city’s Anacostia neighborhood who were looking for insurance.<sup>394</sup> In concluding that NFHA sufficiently alleged a claim of disparate impact discrimination under the Fair Housing Act and denying Travelers’ motion to dismiss, the court noted that NFHA “focused on the relevant geographic region of the District: it ensured that

testers claimed they were buying properties in the Anacostia neighborhood, which is also the area with the highest portion of voucher recipients.”<sup>395</sup> The court found that NFHA pleaded facts showing that, “because of the different composition of the affected population (voucher recipients) as compared to the District’s population as a whole, members of a protected class are more likely to be harmed by [defendant’s] policy than are other individuals.”<sup>396</sup> The case reached a favorable settlement in early 2018, requiring Travelers to pay monetary damages and change its insurance practices.<sup>397</sup>

Similarly, a court in the District of Connecticut refused to dismiss a disparate impact claim alleging racial discrimination against an insurer that either charged higher premiums or refused to provide insurance to landlords renting to housing voucher recipients, finding that the plaintiffs’ claims were not barred despite Second Circuit precedent holding that landlords cannot be held liable for discrimination under the disparate impact theory for refusing to rent to housing voucher recipients.<sup>398</sup>

#### Minimum Income Requirements

Plaintiffs have repeatedly challenged housing providers’ minimum income policies that can prevent potential tenants with vouchers or other government provided sources of income from acquiring housing. In the 1970s, a group of Black tenants receiving public assistance challenged a landlord’s policy of requiring a weekly net income of at least 90% of the monthly rent as having a disparate impact against them on the basis of race.<sup>399</sup> While the district court ruled for the plaintiffs and enjoined the policy, the Second Circuit reversed and found that the plaintiffs could not utilize the disparate impact theory of discrimination, stating that “[a] private landlord in choosing his tenants is free to use any grounds he likes as long as no discriminatory purpose is shown.”<sup>400</sup>

Over a decade later, plaintiffs had more success in challenging a similar policy. In *Bronson v. Crestwood Lake Section 1 Holding Corp.*, a case filed in 1989, the plaintiffs alleged that the policies of Crestwood Lake, an apartment complex in Yonkers, New York, had a disproportionate impact on Black and Latinx applicants in violation of the Fair Housing Act.<sup>401</sup> Crestwood Lake refused to rent to voucher recipients or those whose income was not at least three times the rent of the apartment for which they were applying. In addition to their complaint, the plaintiffs sought a preliminary injunction requiring the defendants to (1) evaluate their applications for tenancy without regard to income criteria; and (2) immediately provide plaintiffs with available apartments of their choice unless defendants could demonstrate that there were other applicants who were more “desirable” tenants based on other objective criteria.<sup>402</sup>

In considering plaintiffs’ motion for preliminary injunction, the court first found that the plaintiffs successfully demonstrated that they would be irreparably harmed in the absence of preliminary injunctive relief given that the apartments at issue were likely to be filled during the pendency of the lawsuit.<sup>403</sup>

Next, the court found that the plaintiffs successfully demonstrated a likelihood of success by making a prima facie showing that Crestwood Lake’s application policies had a disproportionate impact on Black and Latinx applicants.<sup>404</sup> Specifically, plaintiffs used census data to identify a “general applicant pool” of all Yonkers residents “who, after payment of taxes and rent required for residence at Crestwood, would have income equal to or greater than the New York State-determined standard of need.”<sup>405</sup> They then measured the effect of each policy on minority households as compared to non-minority households within the pool.<sup>406</sup> This showed that minority households were 25 times more likely than Whites to be rejected based on the HCV policy,

Percentage of New York’s population  
with disabilities that use HCVs

9.2%

How much more likely voucher holders  
are to be disabled in New York

2.9X

How much more likely voucher holders  
are to Black and Latinx in New York

1.6X





and twice as likely to be rejected based on the “triple income test.”<sup>407</sup>

In addition, the court found that defendants failed to show that the challenged policies served legitimate and genuine business goals.<sup>408</sup> First, the court rejected Crestwood Lake’s assertion that the policies were necessary to ensure the payment of rent and adequate protection in the case of a default because they failed to offer any evidence that the policies were reasonably necessary to ensure payment, or that they had suffered previous losses from renting to voucher tenants who failed to meet the triple income test.<sup>409</sup> Moreover, the court reasoned that the defendants’ position was undermined by the fact that they had previously participated in a certificate program that was similar to the HCV Program.<sup>410</sup> Based on this, the court granted the plaintiffs’ request for injunctive relief.<sup>411</sup>

Challenges to minimum income policies have also arisen in the disability context. In *Giebler v. M & B Associates*, a person living with AIDS challenged a landlord’s policy requiring tenants to have a gross income of at least three times the monthly rent, which the tenant could not meet based on his income from SSDI and other benefits.<sup>412</sup> In evaluating the tenant’s request for an exemption from the policy as a reasonable accommodation because of his disability, the Ninth Circuit noted that “[i]mposition of burdensome policies, including financial policies, can interfere with disabled persons’ right to use and enjoyment of their dwellings, thus necessitating accommodation.”<sup>413</sup> The appellate court ultimately found that the tenant’s request was reasonable and should have been honored.<sup>414</sup>

Delories Williams with her late grandson Tyree Williams, age 26. They live in a multi-room apartment at Kenilworth Courts and fear that they will have to relocate when the redevelopment of the area begins. Photo by Michael S. Williamson/The Washington Post via Getty Images

In a more recent case currently pending in the Southern District of New York, *Fair Housing Justice Center v. Goldfarb Properties, Inc.*, plaintiffs allege that a rental company’s annual income requirement of 43 times the monthly rent has a disparate impact on people with disabilities.<sup>415</sup> They specifically allege that Olmstead Housing Subsidy (OHS)<sup>416</sup> recipients and HIV/AIDS Services Administration (HASA) clients, all of whom have disabilities, can only have an annual income up to 40 times their monthly rent, making it impossible for them to meet the company’s requirements.<sup>417</sup> Plaintiffs also allege that most HCV recipients are excluded, a large number of whom have disabilities.<sup>418</sup> They contend that 39.5% of households with disabilities in New York City rely on either OHS, HASA, or vouchers to pay their rent, as opposed to 4% of households without disabilities.<sup>419</sup>

While the case continues to be litigated, the defendant has changed its income policy for subsidized tenants.<sup>420</sup> The new policy “requires subsidized tenants to have gross income 40 times just the portion of the monthly rent that they would have to pay after the subsidy.”<sup>421</sup> The defendant has filed a counterclaim seeking a declaratory judgment that the new policy is lawful,<sup>422</sup> which the court has allowed to proceed.<sup>423</sup>

Likewise, in another pending case, *Long Island Housing Services, Inc. v. NPS Holiday Square LLC*, plaintiffs allege that a company’s minimum income requirement of at least double the rent and refusal to calculate the applicant’s income based on their required monthly contribution disparately impact people with disabilities.<sup>424</sup> Plaintiffs assert that those on SSI would almost always be ineligible for apartments due to the defendant’s “double-income-to-rent ratio” policy, even if they have a voucher that requires them to pay only 30% of their income in rent.<sup>425</sup> The case continues to be litigated.





There is often a police presence near several small businesses on Division Street NE, across the street from the Lincoln Heights public housing units. Photo by Michael S. Williamson/The Washington Post via Getty Images

### Police Targeting of Voucher Holders

Voucher holders can be subject to discrimination based on stereotypes or bias, and with the large number of Black voucher holders, racially biased stereotypes connecting voucher status and criminality have been problematic. This has sometimes resulted in the outright targeting of voucher holders by police departments. For example, after receiving complaints that voucher holders were “dragging the city down by increasing crime and blight,”<sup>426</sup> the police department in the City of Antioch, California created an action team designed specifically to target Black residents that they believed were voucher holders.<sup>427</sup> When responding to a disturbance or nuisance complaint, the team would try to determine if the person involved was a voucher holder, and if so, would

report them to the local PHA in an attempt to get their voucher revoked.<sup>428</sup> While the housing authority would typically reject these requests as “unfounded,” about 72% of unfounded requests involved Black residents and only 18% involved White residents.<sup>429</sup> A group of Black voucher holders in Antioch who had been subject to this harassing conduct by the action team sued the city and police department, alleging that Antioch had discriminated against them, and other Black residents of the city, based on race in violation of the Fair Housing Act.<sup>430</sup> After granting plaintiffs’ motion for class certification,<sup>431</sup> the case settled, requiring the city to cease the targeting of voucher holders and pay damages to the plaintiffs.<sup>432</sup>

### Due Process

Voucher holders have sometimes challenged the termination of their benefits on due process grounds. They are generally recognized to hold a property interest in their voucher benefits and in continued occupancy of their homes through the end of their leases.<sup>433</sup> This entitles voucher holders to due process protections, including a hearing prior to the revocation of a voucher.<sup>434</sup> For example, in *Hardee v. City of New Rochelle Section 8 Housing Agency*, the Southern District of New York found that a plaintiff’s due process rights were violated when her benefits were terminated without a hearing, and she had responded in time to request one.<sup>435</sup>

### Calculating Voucher Amounts

In 2017, during the Trump Administration, LDF and several other organizations challenged HUD’s delay in implementing its rule requiring some PHAs to calculate voucher amounts based on SAFMRs, as opposed to metropolitan-wide rates.<sup>436</sup>

As described above, HUD developed SAFMRs to more accurately reflect fair market rents in submarkets in particular geographic areas.<sup>437</sup> After a demonstration project to test the effectiveness of using SAFMRs in certain locales, which arose out of litigation filed in 2007 by the Inclusive Communities Project,<sup>438</sup> HUD published a final rule on November 16, 2016, requiring 24 metropolitan areas (covering 200 PHAs) to implement SAFMRs (the SAFMR Rule).<sup>439</sup> The rule was set to go in effect by January 1, 2018.<sup>440</sup>

However, in 2017, HUD delayed implementation of the SAFMR Rule for a projected two-year period—without the notice and comment period required under the Administrative Procedure Act. The delay was purportedly in response to concerns over a net loss in affordable units for voucher holders, due to the reduction of available units based on the new fair market rent calculations in

low-opportunity areas.<sup>441</sup> In response, two Black women and a non-profit organization, represented by LDF, PRRAC, and other co-counsel, filed suit against HUD and then-Secretary Ben Carson, alleging that HUD’s failure to implement the SAFMR Rule prevented them from accessing housing in higher-opportunity areas. Plaintiffs moved for a preliminary injunction to require HUD to implement the SAFMR Rule on time. The court granted the injunction, finding that the plaintiffs had shown a likelihood of success on the merits and that HUD “made no such area-specific showing” to support its defense with respect to the metropolitan areas subject to the Rule.<sup>442</sup> Shortly after the court granted the preliminary injunction, the parties settled, and HUD implemented the SAFMR Rule as scheduled.<sup>443</sup>

Given that discrimination remains an ongoing issue in the HCV Program, LDF and NFHA conducted a study of Memphis, Tennessee and the greater Shelby County area where Memphis is located, examining the local rental market and performing a fair housing testing audit of housing providers to assess attitudes and identify policies and practices that impede the ability of voucher holders to make full use of the program to find safe and affordable housing. The results of this study are described in Part Two below.



## HOUSING AVAILABILITY:

# A Study of Memphis and Shelby County, Tennessee



The civil rights leader Martin Luther King (C) waves to supporters 28 August 1963 on the Mall in Washington DC (Washington Monument in background) during the “March on Washington”. - King said the march was “the greatest demonstration of freedom in the history of the United States.” Martin Luther King was assassinated on 04 April 1968 in Memphis, Tennessee. *Photo by AFP via Getty Images*

### A Brief History of Housing Issues in Memphis

Running along the Mississippi River is Tennessee’s second largest city: Memphis.<sup>444</sup> It is known as “the Home of the Blues”<sup>445</sup> and the birthplace of rock n’ roll.<sup>446</sup> Memphis is a city with a rich and diverse cultural identity aptly expressed through its music. However, the richness of these diverse cultures has not come without its challenges. The racial history of Memphis is as mournful as the Blues itself.

Memphis is where Ida B. Wells began documenting the horrors of lynching in the 1890s after her friend, Thomas Henry Moss, Sr., was lynched in South Memphis.<sup>447</sup> He had done nothing more than run a successful business.<sup>448</sup> It was at the Lorraine Motel

in Memphis where Dr. King was assassinated in 1968, setting off uprisings across the nation and resulting in the passage of the Fair Housing Act. Racial injustice in Memphis has not been limited to physical violence—it has been pervasive throughout the city’s policies, public discourse, and laws from the 1800s through the present. As described below, violence was integral to establishing and maintaining segregated neighborhoods in Memphis. Despite its racial and cultural diversity, segregation has long kept the city from uniting. Racial segregation is a defining feature of the city’s past and present that has been maintained and extended through unfair housing practices.

Memphis was a forerunner in public housing administration in America: it was only the second



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city in the United States to establish a local housing authority.<sup>449</sup> The first two public housing developments in Memphis, Lauderdale Courts and Dixie Homes, were built in 1935 in an area that was considered by some to be “slums.”<sup>450</sup> As was typical throughout the U.S. during this time, these developments were segregated by race. Lauderdale Courts was reserved for White families and Dixie Homes for Black families.<sup>451</sup> The “Dixie Homes” name alone, harkening back to the Antebellum South, certainly served as a reminder to Memphis’ Black residents of exactly where they were.

This segregation in public housing in Memphis may have been typical for the era, but Memphis was atypical of many Southern cities in that there were many integrated neighborhoods and significant cross racial political engagements in the early 20th century. Preston Lauterbach’s *Memphis Burning* tells the history of a Memphis in which Black Republicans and White Democrats together formed a political machine in the city.<sup>452</sup> During the 1920s, Robert “Bob” Church, Jr., the son of the first Black millionaire in the South, Robert Church, formed a coalition with Edward Hull “Boss” Crump—a White former Memphis mayor turned machine boss.<sup>453</sup> Both individually and together, they held tremendous power in the political activity in Memphis. Crump encouraged the suffrage of Black citizens and, in exchange, Church used his influence with Republican presidents to influence appointees that would turn a blind eye to Crump’s machine.<sup>454</sup>

The success of the machine was nominal proof that Black and White Memphians could coexist. For Church, this was not an unfamiliar phenomenon. Church grew up in a mansion in the South Lauderdale neighborhood.<sup>455</sup> South Lauderdale was a neighborhood of Memphis elites that had been integrated since the 1880s when Bob Church’s father built his home there.<sup>456</sup> Due to the power and status of the Church family, that home became a representation of the possibilities of political power

and success for Black people in Memphis. Bob Church’s success and the success of Black people in Memphis were intimately woven together. Whereas Robert Church was not an equal partner in Crump’s machine, neither were Black people, as Crump was a fervent segregationist.<sup>457</sup> Their partnership was a matter of political convenience. However, the onset of the Great Depression began the dissolution of this coalition and brought on the reversal of the gains made by Black people in Memphis. Chief among the gains lost were those in housing.

Crump’s machine turned on Church in the late 1930s, seized his property, and began dismantling the political power of Black people in Memphis.<sup>458</sup> Robert Church declined to support Crump’s chosen gubernatorial candidate in 1938 and thus, with a Democrat occupying the presidency at the time, Crump’s betrayal was politically convenient.<sup>459</sup> The ire of Crump was not limited to Church. It extended to the Black residents of Memphis. During this time Crump’s machine initiated the clearance of property near the Church mansion in Lauderdale in the name of “slum clearance.”<sup>460</sup> In reality, some of the areas considered “slums” were very successful middle-class Black neighborhoods. For example, the clearance of the area to the west of Lauderdale from Vance Avenue to Mississippi Boulevard razed homes that ranged in size from the Church mansion to single-family homes.<sup>461</sup> The destruction was not limited to homes but extended to Black-owned businesses in the neighborhood.<sup>462</sup> Both federal and state policy were integral to this effort; “urban renewal” laws passed by Congress and the Tennessee General Assembly enabled governmental entities to unjustly destroy Black neighborhoods.<sup>463</sup> The Wagner-Steagall Act of 1937 laid the

View of several men on the sidewalk in front of a secondhand clothing store on Beale Street, Memphis, Tennessee, 1939. On the second floor is the Clark Hotel (at 144 Beale Street), who’s sign reads ‘The Best Service for Colored Only.’ Photo by Marion Post Wolcott/PhotoQuest/Getty Images





framework for urban renewal, which authorized the federal government to subsidize public housing developments initiated by PHAs.<sup>464</sup> In 1945, the Slum Clearance and Urban Redevelopment Act was passed by the Tennessee General Assembly, which authorized local PHAs to condemn blighted areas.<sup>465</sup> The definition of “blighted” was up to the discretion of those local authorities and often ended with Black neighborhoods being destroyed. Under the rule of Crump, the destruction of Black neighborhoods began in Memphis even prior to the passage of this law.

In the mid-20th century, two additional public housing complexes were constructed in Memphis. In 1940, William H. Foote Homes was built on property that previously was the site of a bustling middle-class Black community—which had been razed—directly across the street from the Church home.<sup>466</sup> According to Lauterbach, Foote Homes was deliberately placed in a Black community to depress property home values and prevent Black families from moving into White neighborhoods.<sup>467</sup> Later, Cleaborn Homes would be built on the lot where the Church mansion once stood.<sup>468</sup> These actions were carried out by the Memphis Housing Authority (MHA) despite complaints from local Black leaders about the displacement and destruction of the established Black community caused by the construction of these complexes.<sup>469</sup> Ironically, the early establishment of a local housing authority in Memphis sometimes worked to the detriment of its Black citizens through its involvement in neighborhood clearance.

As Black Memphians were being displaced and segregated due to urban renewal, others looking to move into integrated neighborhoods were faced with mob violence. In 1953, a Black family sought to move into the East Olive neighborhood of South Memphis, which then had only six or seven Black families.<sup>470</sup> It appeared that was the tipping point for this neighborhood. The home the

family purchased was bombed and mobs of White Memphians patrolled the streets of East Olive, tearing down “for sale” signs and threatening to “tar and feather” homeowners that sold property to Black people.<sup>471</sup>

The combination of displacement due to urban renewal and the prospect of reactionary violence to integrating neighborhoods precipitated a housing crisis for Black Memphians. According to one historian,

the callous disregard for the misfortunes of uprooted slum dwellers confirmed what many [B]lack leaders had adduced—that the primary function of public housing was not only to maintain existing patterns of racial segregation, but also to further concentrate [Black people] in designated sections of the city increasingly being vacated by suburban-bound [W]hites.<sup>472</sup>

Not only were urban renewal and neighborhood clearance systematically disastrous for Black Memphians, they were also intentional.

Ultimately, Foote Homes and Cleaborn Homes were able to house 6,338 people, becoming the second largest public housing development for Black people in the country.<sup>473</sup> Despite the neighborhood destruction that preceded these developments, the complexes were advertised as opportunities to access the middle class.<sup>474</sup> An article reporting on the grand opening of Foote Homes said “[Foote Homes is] built for you, your family, and your children, and you must accept the opportunity for improvement. If you fail us, you will fail America. But we are confident you will not fail.”<sup>475</sup> In reality, the location of these complexes ensured that Black Memphians remained segregated from Whites in concentrated poverty.<sup>476</sup> By 2017, the zip code where Foote Homes and Cleaborn Homes were located had a poverty rate of 62%.<sup>477</sup>



William H. Foote Homes housing project on March 1, 2016 in Memphis, Tennessee. Photo by Andrea Morales/Getty Images





“Map of the city of Memphis & vicinity (1925),” Ohman Map Co., 1925, TSLA Map Collection, 42361, Tennessee State Library and Archives, Tennessee Virtual Archive, <https://teva.contentdm.oclc.org/digital/collection/p15138coll23/id/8885>, accessed 2022-12-05.

By the late 1950s, attitudes about public housing had shifted both for Memphis’ Black and White residents. Neither Black nor White Memphians desired the construction of additional public housing developments, which necessitated a restructuring of the ideas behind urban renewal. Memphis pivoted to its own version of the “Baltimore Plan,” [Initiated in 1945, the Baltimore Plan was an urban renewal program that sought to improve neighborhoods without expanding social welfare] locally known as the “Memphis Plan,” which involved a neighborhood rehabilitation program that included code inspections and voluntary compliance by property owners.<sup>478</sup> It aimed to maintain the prevailing neighborhood balance by discouraging new public housing and instead focusing on rehabilitating existing properties.<sup>479</sup> To garner more support for urban renewal, Mayor Edmund Orgill made assurances that further funding for urban renewal would not go toward public housing and would be exclusively for private housing developments.<sup>480</sup> Unfortunately, this initiative was limited to buildings that were “redeemable,” which excluded many of the buildings in the most dilapidated neighborhoods in Memphis.<sup>481</sup> Thus, urban renewal under the Memphis Plan often ignored persisting problems of infrastructure in Black communities, leading to significant residential displacement.<sup>482</sup> As a local newspaper noted in 1958, the “\$70 million urban renewal program for Memphis is endangered by the community’s slowness in providing new housing for negroes.”<sup>483</sup> Even this modified version of urban renewal exacerbated housing disparities for Black Memphians.

Conversations about “redeemability” via urban renewal and its corresponding benefit for White families were not novel in Memphis. Redlining, which long predates the Memphis Plan, is based upon a similar presupposition about the danger of investments in a Black community. As in other parts of the U.S., redlining had deterred investment in

Black communities in Memphis from as early as the 1930s.<sup>484</sup> Banking and insurance companies worked in tandem with federal and local governments to create policies that both gutted investments and concentrated poverty in minority communities.<sup>485</sup> The rehabilitation strategy under the Memphis Plan may be considered an example of this phenomenon.

As the Memphis Plan failed to revitalize Black neighborhoods in the city in the mid-20th century, the question remained of how to contend with the need to provide housing opportunities for displaced Black Memphians, especially with the opposition by White communities to neighborhood integration. Instead of changing existing neighborhoods, Memphis sought to grow its boundaries. The intent was twofold. It enabled Memphis to recapture within its boundaries White families who had begun to spread outside of the old city boundaries. Secondly, it allowed more space for Black citizens to spread without disrupting existing White communities. This plan put forth by Mayor Orgill initially failed in its attempt to expand areas for Black community growth.<sup>486</sup> Between 1951 and 1960, Memphis added 25 square miles of land by expanding into White communities northward and eastward.<sup>487</sup> From 1961 to 1967, Memphis annexed more land in the south to provide room for its expanding Black community.<sup>488</sup> However, land annexation did not translate into more housing opportunities in those locales for Black people. Post-Orgill city governments refused to develop more public housing or push for private development in Black communities.<sup>489</sup> The displacement crisis along with the refusal by city officials to provide additional housing left Memphis’ Black residents with very few housing opportunities.<sup>490</sup>

The continued legacies of explicitly racist governmental policies have done much to shape Memphis into what it is today—a city with extremely high racial residential segregation and concentrated poverty.<sup>491</sup> Following the passage of



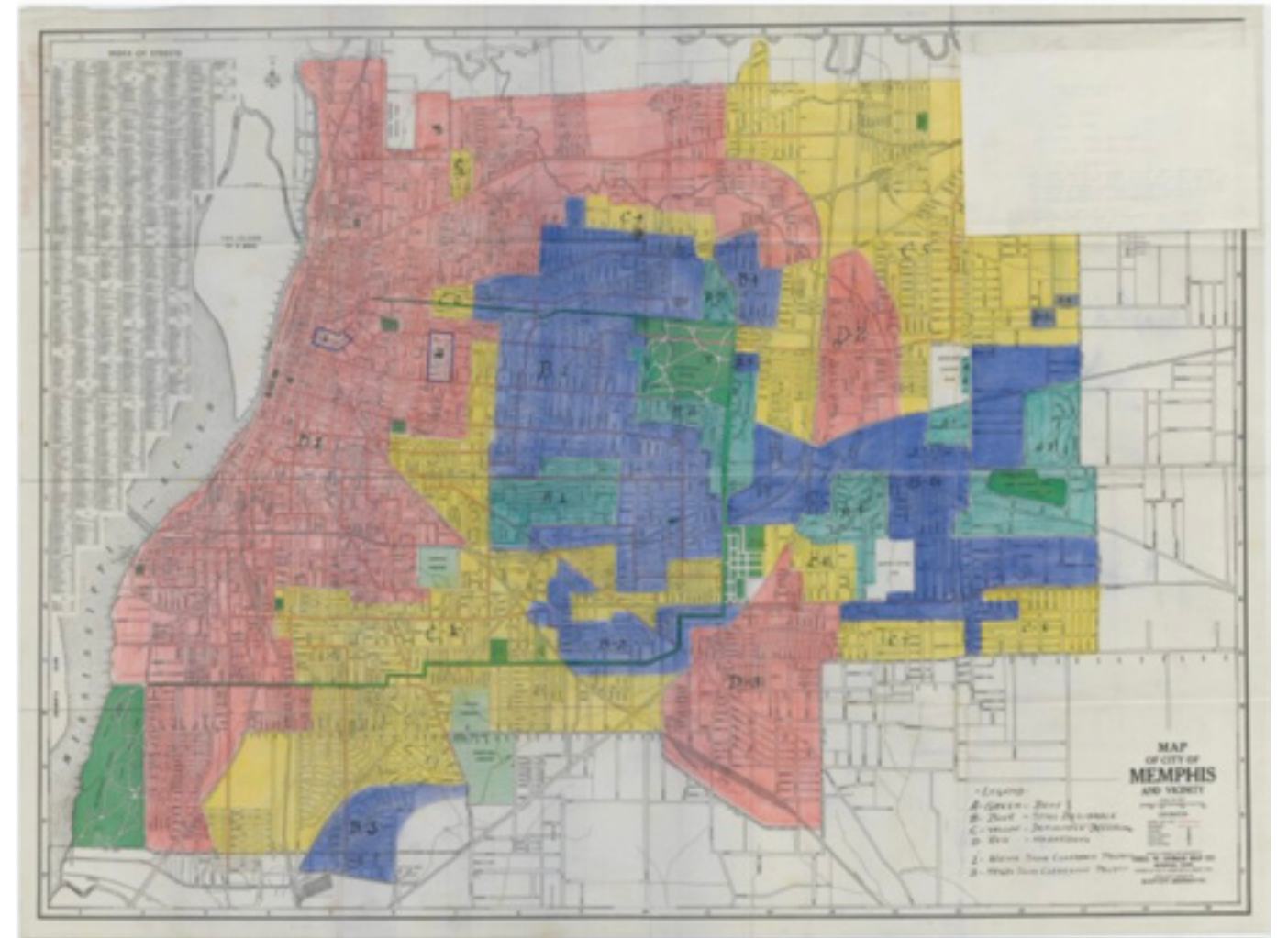
the Civil Rights Act of 1964 and the Fair Housing Act, which formally ended Jim Crow segregation and redlining, many White Memphians moved even further away as Black families moved into White neighborhoods.<sup>492</sup> While redlining has been explicitly unlawful for more than 50 years, it has continued as many financial institutions are still guided by the same principles, refusing to extend credit in predominantly Black neighborhoods. In the years leading up to the Great Recession of 2008, Black families in Memphis who qualified for prime loans were disproportionately issued subprime and adjustable mortgage loans with inflated interest rates.<sup>493</sup> In 2012, Wells Fargo settled a lawsuit for \$432.5 million for targeting minority neighborhoods in Memphis with predatory loans prior to the 2008 crash.<sup>494</sup>

Memphis is still feeling the effects of the Great Recession. In 2018, Memphis was the fastest-growing rental market in the country.<sup>495</sup> This can largely be attributed to the increase in real-estate owned (REO) properties for which foreclosure proceedings had begun in the years following the recession.<sup>496</sup> REOs with incomplete foreclosure proceedings presented great difficulties for lending institutions—and they were concentrated in Memphis neighborhoods with high subprime lending rates, such as the predominantly Black neighborhoods of Frayser (38127), Raleigh (38128), Hickory Hill (38118 & 38115), Whitehaven (38109 & 38116), Cordova (38134 & 38133), and others.<sup>497</sup> When many of these REOs were sold to private equity owners to be used as rental properties, rental prices increased.<sup>498</sup> Rising costs in the single-family rental housing market along with persistent hyper-vacancy has resulted in the loss of quality affordable housing in the city.<sup>499</sup> In October 2021, a study by Zillow found that rent prices in Memphis had increased 14% in the year prior and that Black Memphians spend 8% more of their incomes on rent than White residents.<sup>500</sup> Another study found a 19% increase in rental rates in Memphis between September 2020 and September 2021.<sup>501</sup>

It is clear that many housing “opportunities” for Black Memphians over the course of its history have not lived up to their billing. Public housing was presented as a vehicle of upward mobility. It instead became a tool to concentrate poverty and Black people. Homeownership was touted as an avenue to generational wealth. In the Black neighborhoods of Memphis, however, home values were manipulated through practices like redlining and predatory lending. Indeed, the legacy of segregation-era housing in Memphis continues to impact current housing outcomes for its residents. Though many of the buildings have been torn down and redeveloped through HOPE VI initiatives, the lasting effects on the communities are still felt.<sup>502</sup>

Still, there is some promise on the horizon in Memphis, exemplified by the legacy of Foote Homes. Foote Homes was the last standing segregation-era public housing development in Memphis until its demolition in 2017.<sup>503</sup> The demolition was carried out to make room for a new-and-improved development to which Foote Homes residents could return upon its completion.<sup>504</sup> The redevelopment was funded by a \$30 million grant from HUD’s Choice Neighborhoods program, which went toward property revitalization as well as the investment in and leveraging of effective schools, education programs, public assets, public transportation and job access.<sup>505</sup> This presented a unique opportunity, as HOPE VI restricted funds to property renovation.<sup>506</sup> This new Choice Neighborhoods grant presented the opportunity to invest in a building and, more importantly, in people. Still, at the time of its demolition, Foote Homes residents were scrambling to find new housing, with many receiving HCVs just weeks before the building shut down.<sup>507</sup>

Foote Park at South City is the new apartment complex that took the place of the old Foote Homes development. It has been hailed as a model of success for public housing.<sup>508</sup> This new community features both former Foote Homes residents



A redlining map of Memphis drawn in the 1930s by the Home Owners' Loan Corporation. *National Archives and Records Administration*

Memphis rent had a

**14%**

increase in 2020

Black Memphians pay

**8%**

more rent than  
White residents

Between 9/2020 and  
9/2021 there was a

**19%**

increase in rental  
rates in Memphis



and new residents, with a number of units being reserved for voucher holders and qualified for reduced rent through the LIHTC program.<sup>509</sup> The greatest success of this revamped community is not necessarily the new structures, but rather that program partners have been able to keep displaced residents connected and supported throughout their displacement.<sup>510</sup> Since September 2019, when the first section of the complex opened for residents, the employment rate for these families increased from 22% to 60%; over 90% of families have health insurance, and there has been a three year-long stretch of 100% graduation rate for high school seniors from these families.<sup>511</sup> Their success has inspired a high rate of return of former Foote Homes residents to Foote Park. As of June 2021, with only two out of six construction phases completed, 54 of the 386 families that were displaced had returned.<sup>512</sup>

While Foote Park at South City is certainly a story worth celebrating, it does not tell the full story of the housing landscape in Memphis. Many issues still exist, and the COVID-19 pandemic could complicate that picture. Particularly, some believe that the health crisis could mirror and exacerbate some of the effects of the 2008 mortgage crisis.<sup>513</sup> Just as they did during the Great Recession, Black Memphians will bear the brunt of potential economic downturns. This is likely to be especially true for the city’s families with vouchers, who face a lack of affordable housing options, a tight rental market, and rampant discrimination when trying to use their vouchers, as documented in our testing audit. The results of our audit are described below.

**The HCV Program in Memphis and Shelby County**

According to data reported by the U.S. Census Bureau, as of July 2019, the population of Memphis was 651,073.<sup>514</sup> Approximately 64% of the city’s population was Black; nearly 26% was White; and 7% was Hispanic or Latinx.<sup>515</sup> Just over a quarter of the city’s population was impoverished,<sup>516</sup> and

in 2018, Memphis was reported to be one of the poorest cities in the country for its size.<sup>517</sup> Shelby County, which encompasses the entirety of the City of Memphis, had an overall population of 937,166 as of July 2019.<sup>518</sup> In 2019, approximately 54% of the county’s population was Black; 35% was White; and close to 7% was Hispanic or Latinx.<sup>519</sup> The county’s poverty rate was 17.2%.<sup>520</sup>

According to HUD, as of 2020, there were 7,889 households with vouchers in the City of Memphis, assisting 21,912 people.<sup>521</sup> The average annual household income for these families was \$12,309, and 77% of these households were considered extremely low income.<sup>522</sup> The average HUD expenditure per month per family was \$587, and the average monthly family contribution was \$304 (almost precisely 30% of the average household income of families with vouchers).<sup>523</sup> Ninety percent of families with vouchers in Memphis had a female head of household and 58% had a female head of household with children.<sup>524</sup> In 2020, voucher holders in the city were overwhelmingly people of color; 99% were Black or African American (including Black/Latinx) and only 1% were White.<sup>525</sup> Regarding voucher availability in Memphis, as of 2020 the average amount of time spent on the voucher waiting list was 22 months.<sup>526</sup> The Memphis waiting list for the HCV Program is currently closed,<sup>527</sup> and has amassed 15,000 people when it last reopened in 2017.<sup>528</sup>

In Shelby County overall, as of 2020, there were 8,350 households with vouchers (including the households in Memphis), assisting 23,526 people.<sup>529</sup> The county statistics for average expenditures, female head of household, racial demographics, and average time on the waitlist mirror that of Memphis.<sup>530</sup>

There is stark geographic racial segregation in the HCV Program in Memphis and Shelby County. In Memphis, 90% of voucher households live in majority-minority Census tracts.<sup>531</sup> In Shelby

County, 89% of voucher households live in Census tracts with a majority-minority population.<sup>532</sup>

Approximately 53% of all Memphis residents rent their homes, compared to about 45% in Shelby County.<sup>533</sup> As noted above, Memphis was the fastest-growing rental market in the nation as of 2018.<sup>534</sup> From 2015 to 2019, the median gross rent in Memphis was \$905; in Shelby County, it was \$942.<sup>535</sup> In the greater Memphis area, defined by HUD to include Shelby County as well as Crittenden County, AR; DeSoto County, MS; Fayette County, TN; and Tipton County, TN (collectively, the Memphis Metro FMR Area), HUD has calculated the FMRs listed below in Table 1 for Fiscal Years 2019 through 2022.<sup>536</sup> As described in Part One, FMRs are used by HUD to calculate caps on the payment standard amounts for the HCV Program. While voucher holders may secure housing with a monthly rent that exceeds the relevant FMR, they must pay the difference between the FMR and the rent with an additional source of income.

SAFMRs are not required in Memphis, nor does the MHA use them. However, as it does for all geographic regions, HUD publishes SAFMRs for each of the 104 zip codes in the Memphis Metro FMR Area. For a two-bedroom unit, SAFMRs in

Memphis-area zip codes for fiscal year 2022 range from a low of \$820 to a high of \$1,370.<sup>537</sup> While only 29 zip codes have an SAFMR that exceeds \$912 (the FMR for a two-bedroom unit in FY 2022), all of these zip codes are located in lower-poverty areas.<sup>538</sup> Based on census data from 2015 to 2019, in 23 of the 29 Memphis-area zip codes, less than 10% of families are impoverished. Only one zip code (38115) had a family poverty rate that exceeded 20%.<sup>539</sup> In that zip code, the payment rate for a two-bedroom unit using the SAFMR payment standard is \$950.<sup>540</sup>

As explained in Part One, families with vouchers are required to locate housing that fits within the PHA’s payment standards and where a voucher will be accepted by the landlord. To take a closer look at available properties in Memphis where vouchers are accepted, we examined the advertisements for properties in Memphis on gosection8.com (now known as affordablehousing.com) in December 2020.<sup>541</sup> While landlords who are willing to accept vouchers may not advertise on the site, an examination of the available properties is useful to identify possible housing options for voucher holders. Based on these rent ranges, the available properties advertised on the site met the FMR standards set for the Memphis Metro FMR Area.

**TABLE 1. FY 2019-2022 Fair Market Rents in the Memphis Metro FMR Area**

Year	Efficiency	1-Bedroom	2-Bedroom	3-Bedroom	4-Bedroom
FY 2022	\$694	\$792	\$912	\$1,219	\$1,404
FY 2021	\$686	\$784	\$911	\$1,228	\$1,412
FY 2020	\$665	\$755	\$884	\$1,203	\$1,374
FY 2019	\$658	\$742	\$875	\$1,194	\$1,372



**TABLE 2.** Available Memphis Properties Accepting Vouchers on gosection8.com in December 2020

Number of Bedrooms	Number of Available Properties	Rent Range
1	4	\$200-\$450
2	15	\$400-\$750
3	6	\$650-\$1000
5	2	\$1000-\$1250

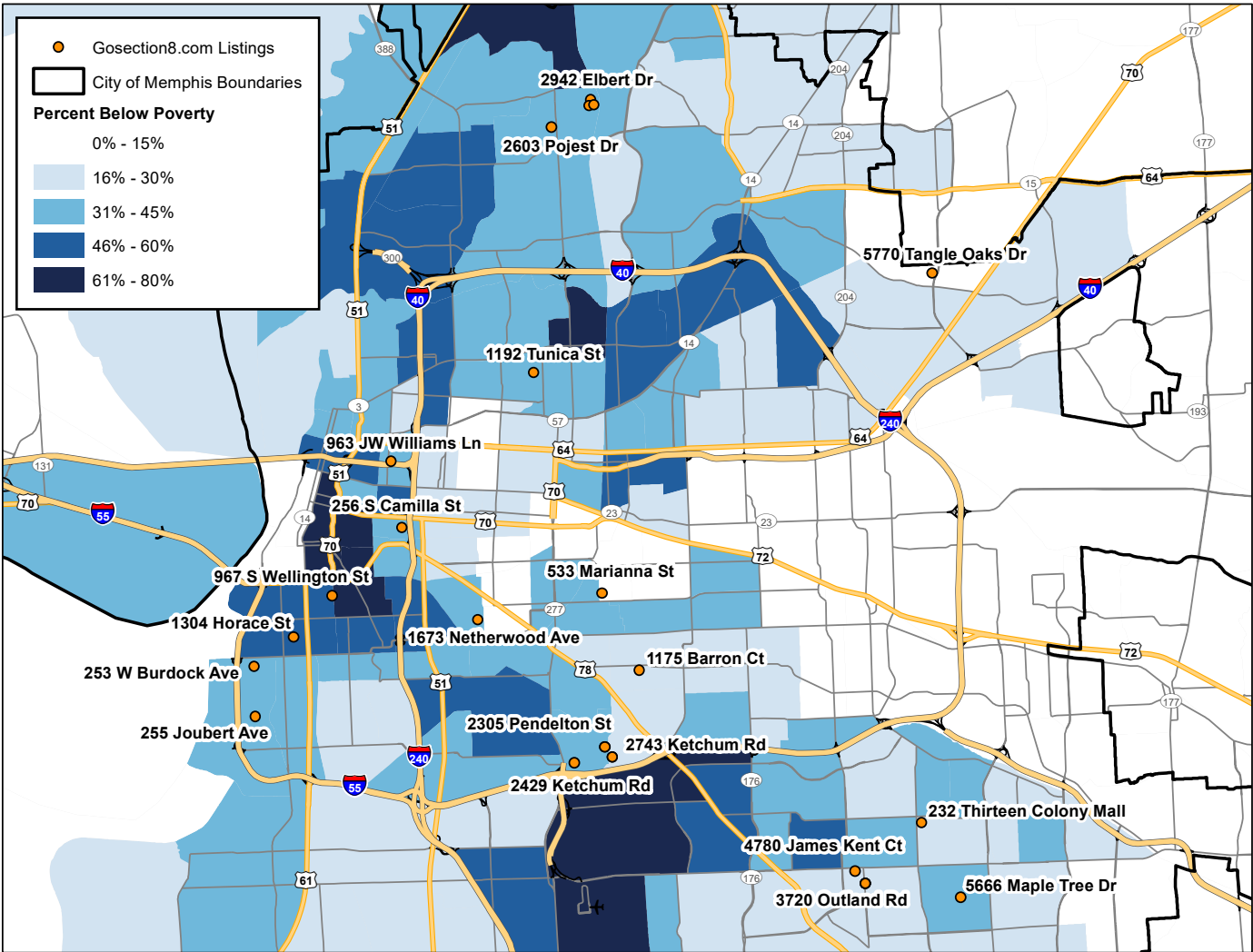
Given that most families with HCVs in Memphis live in majority-minority Census tracts, we also mapped the location of these advertised properties to determine if there were any patterns with respect

to racial demographics and poverty level. Of the 27 properties available for rent,<sup>542</sup> all but one were located in Census tracts with a population that was 60 to 100% Black—and most were located in tracts with a population that was at least 80% Black—as shown in Map 1 below.



Mural honoring Memphis rapper Young Dolph at the Castalia Supermarket, Memphis TN. Photo by Noah Stewart

**MAP 1.** Location of Available Voucher Properties on gosection8.com in December 2020 & Percentage of Black Population



Source: 2015-2019 American Community Survey Estimates by Census Tract

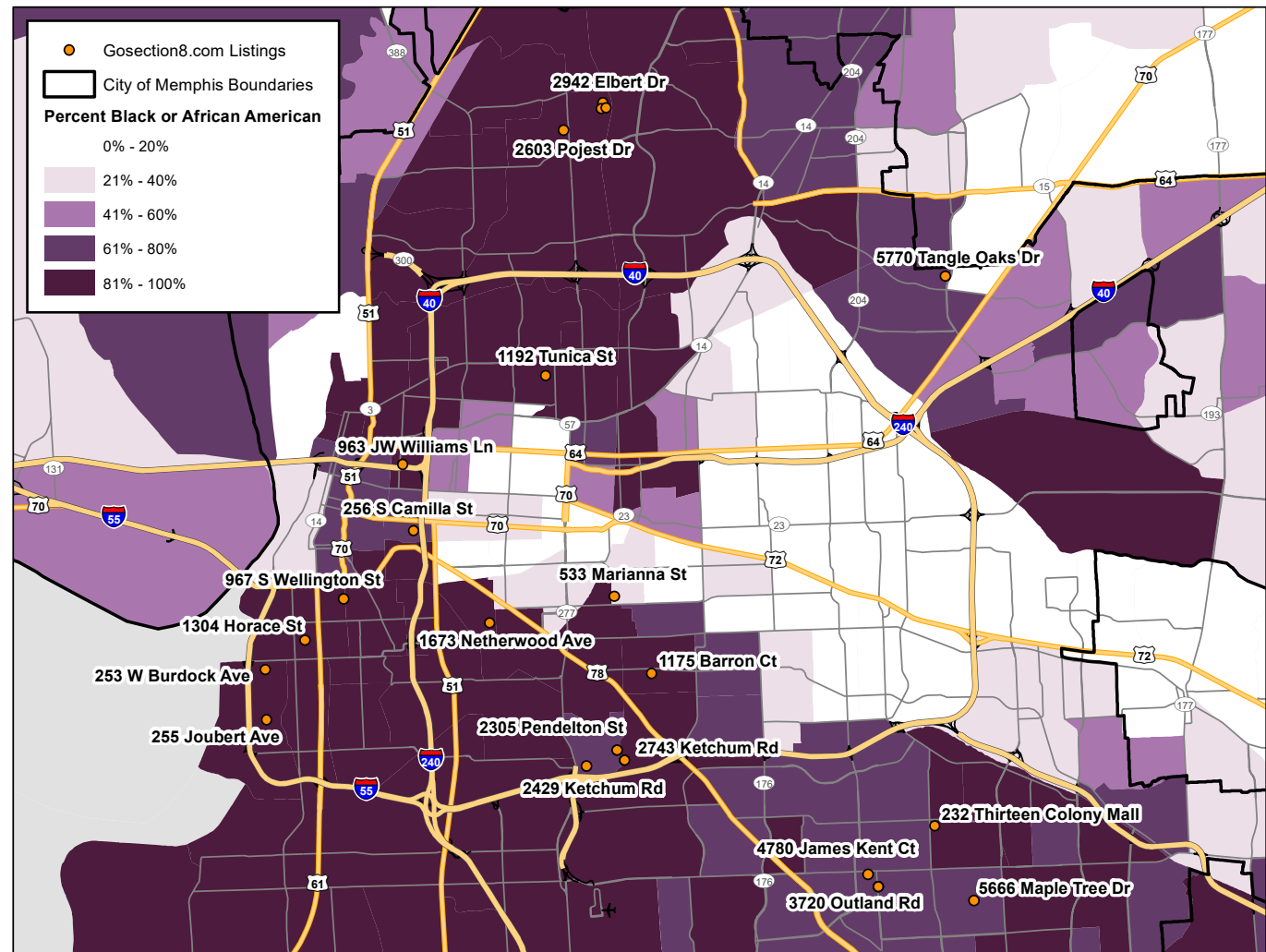
Additionally, when examining the poverty levels of the Census tracts where the available properties were located, most properties were located in areas of the city with between 30 and 50% poverty, which would be considered a high level of poverty.

The City of Memphis has an SOI law in its Fair Housing Ordinance. Enacted in 2002, Memphis’ ordinance prohibits housing discrimination because of race, color, religion, national origin, sex, age, familial status, source of income, or handicap/

disability.<sup>543</sup> Among other practices, it prohibits “any direct or indirect act or practice of exclusion, distinction, restriction, segregation, limitation, refusal, denial, or differential or preference in the treatment of a person or persons” based on their membership in a protected class.<sup>544</sup> The ordinance defines “source of income” as “regular, verifiable income, or its equivalent, from which an individual can pay rental, mortgage or other payments associated with the provision of housing.”<sup>545</sup> The definition specifically includes HCVs or other



## Location of Available Voucher Properties on gosection8.com in December 2020 and Percentage of Impoverished Population



Source: 2015-2019 American Community Survey Estimates by Census Tract

certificates issued by HUD.<sup>546</sup> This means that housing providers in Memphis cannot reject a potential tenant based on their use of a housing voucher. There is no similar law in Shelby County: only the Fair Housing Act and Tennessee’s Human Rights Act<sup>547</sup> apply in the areas of the county not included in the city limits, and source of income is not included as a protected class under either statute.<sup>548</sup> In March 2021, a bill was introduced in the Tennessee General Assembly to amend the

Human Rights Act to include source of income as a protected class, but the bill has stalled.<sup>549</sup>

Under the Memphis ordinance, victims of unlawful housing discrimination have up to one year after the alleged discriminatory act to file a written complaint with the city’s fair housing officer, who subsequently conducts an investigation into the allegations.<sup>550</sup>

The penalties for violating the ordinance are not harsh: housing providers may be punished by a fine

of \$50 and a penalty of up to \$200 if the officer’s investigation determines there is “sufficient merit” to the complaint.<sup>551</sup> Fines collected pursuant to the ordinance are deposited into an educational outreach fund.<sup>552</sup>

As detailed in Part One, SOI laws are stronger when they explicitly provide for private enforcement, as the voucher holder can directly challenge the discrimination in court. But Memphis’ law is not explicit with respect to whether it grants complainants a private right of action, as it provides that “[n]othing herein contained shall be construed so as to preclude any aggrieved person from pursuing such other and further and equitable relief to which he or she may be entitled.”<sup>553</sup>

The Memphis ordinance may also be preempted under Tennessee law. In 2019, the Tennessee General Assembly enacted a law prohibiting local governments from passing anti-discrimination regulations that deviate from state law.<sup>554</sup> Because source of income is not currently a protected class under the Tennessee Human Rights Act, the Memphis ordinance may be void under Tennessee’s preemption statute. However, we are not aware of any litigation specifically challenging the validity of the Memphis SOI law under the state statute.

### Fair Housing Testing Audit

Given the history of housing discrimination in Memphis, the research showing that voucher holders are likely to live in predominantly minority and impoverished areas, and Memphis’ SOI law, we took a closer look at how housing providers treat families with vouchers through a fair housing testing audit in the City of Memphis and Shelby County. The testing described throughout this report was conducted by NFHA in consultation with LDF’s Thurgood Marshall Institute.

### Overview of Fair Housing Testing

Fair housing testing is a controlled method of determining whether housing providers are complying with the Fair Housing Act’s prohibition against discrimination because of race or other protected factors. Testing is a widely accepted methodology that has been utilized for decades for enforcement, research, public policy, education, and compliance monitoring purposes. DOJ, which established a Fair Housing Testing Program in 1991 within the Housing and Civil Enforcement Section of the Civil Rights Division, defines testing as “the use of individuals who –without any bona fide intent to rent or purchase housing, purchase a mortgage or vehicle loan, or patronize a place of public accommodation –pose as prospective renters, borrowers, or patrons for the purpose of gathering information.”<sup>555</sup> These individuals are known as testers and are assigned a set of personal, financial, and home-seeking characteristics (called a tester profile) to utilize when they pose as prospective renters or buyers. For its testing program, DOJ contracts with private fair housing organizations and uses non-attorney agency employees who have been trained as testers. Since 1992, DOJ has resolved 109 pattern and practice testing cases with evidence directly generated from its program, leading to the recovery of more than \$14.3 million, including over \$2.3 million in civil penalties and nearly \$12 million in other damages.<sup>556</sup>

HUD has noted that the premise of testing “is that applicants, tenants, or home-buyers who differ only in terms of race, color, religion, etc., should be treated in a nearly identical manner unless the housing provider intended to treat one of the individuals less favorably because of the prohibited factor.”<sup>557</sup> The Fair Housing Act directly authorizes the use of testing by HUD. For example, in administering the Fair Housing Initiatives Program (FHIP), which provides grants to organizations to carry out fair housing enforcement activities,



HUD “shall use funds . . . to carry out testing”<sup>558</sup> and the agency is required to “establish guidelines for testing activities . . . to ensure that investigations in support of fair housing enforcement efforts . . . shall develop credible and objective evidence of discriminatory housing practices.”<sup>559</sup> The Fair Housing Act also authorizes testing through the Fair Housing Assistance Program (FHAP), which provides funding to state and local entities to investigate fair housing complaints.<sup>560</sup> In an August 2021 memorandum to staff and FHIP grantees, HUD reaffirmed its commitment to support fair housing testing designed to determine if policies and practices discriminate in any form that violates the Fair Housing Act.<sup>561</sup> In its memorandum, HUD specifically pointed to the discrimination experienced by Black and Latinx participants in the HCV Program and noted that testing designed to root out hidden discrimination is a vital tool for fair housing enforcement.<sup>562</sup>

### Testing Litigation

The use of testing to establish discrimination in Fair Housing Act cases is supported by a long-standing Supreme Court precedent. In 1982, the Supreme Court held in *Havens Realty Corp. v. Coleman* that a Black tester who was given false information about the availability of a housing unit had standing to challenge the action under the Act.<sup>563</sup> Federal courts of appeal have repeatedly followed the *Havens* precedent and even extended the concept of tester standing into other civil rights domains.<sup>564</sup>

### Background of Testing Audit

For this fair housing testing audit, we deployed testers throughout Shelby County in 2019 and 2021 to determine whether housing providers were engaging in source of income or race discrimination against potential HCV tenants. In part, the testing in 2021 attempted to determine whether there were any changes to the Memphis rental housing market due to the COVID-19 pandemic. Single-part testing (the use of a single tester) and matched pair

testing (the use two similarly-situated testers) were employed for the audit. Single-part tests involved a single Black cisgender female tester. During the “matched-pair” tests, described further below, one Black tester and one White tester with similar personal and financial profiles contacted or visited the same housing provider within a short period of time of each other and their experiences were analyzed for any differences in treatment due to their race. Each tester in the audit was assigned to have an HCV. Our audit sought to determine, at the pre-application stage of the rental process, whether potential tenants with HCVs were subject to discrimination because of their status as voucher holders and whether Black testers were treated differently from White testers because of their race. The audit also aimed to assess if there was a difference between the experiences of potential tenants with HCVs in Memphis, which has an SOI law, compared to Shelby County, where there is currently no source of income protection.

One key component of this audit involved testers attempting to move from areas of Memphis and Shelby County that had a predominantly Black population (80% or higher non-white population) with a high number of HCVs and a high poverty rate (46% or higher) into high-opportunity areas. As discussed in Part One of this report, research has shown that residents who live in neighborhoods with lower rates of poverty usually have better access to employment opportunities, improved mental and physical health, higher educational attainment, and more.<sup>565</sup> For purposes of this audit, we defined “high-opportunity” areas in Shelby County as Census tracts with a poverty rate of 15% or less.<sup>566</sup> Seventy-nine of Shelby County’s 221 Census tracts qualified as high-opportunity areas under this metric. While we did not include race in the criteria for determining whether an area was high-opportunity, 72% of the county’s Census tracts with a poverty rate of 15% or less had a majority-White population.

Midtown Memphis Apartment Building. Photo by Noah Stewart



### OUR TESTING AUDIT

This testing audit utilized targeted data to select a localized sample of housing providers in Memphis and Shelby County. This report focuses on the findings from the testing evidence. These tests have revealed direct evidence of housing discrimination, including potential racial discrimination, and paints a concerning picture about source of income bias. LDF and NFHA have identified policies and practices that impede voucher holders from fully accessing affordable housing and offer recommendations to overcome these obstacles.



This audit consisted of five phases of testing, using trained and experienced testers. **In Phase One**, we conducted 32 single-part tests by telephone. Sixteen of these tests were conducted on housing providers located within the city limits of Memphis; the other 16 tests were conducted on housing providers located elsewhere in Shelby County. Black cisgender female testers were deployed during Phase One of testing to conduct these 32 tests and their test profiles included the use of an HCV as a source of income.

**In Phase Two**, we conducted 16 matched-pair tests (32 test parts) in person. Eight matched-pair tests involved rental housing opportunities located in Memphis and eight matched-pair tests involved rental housing opportunities located outside of the city limits but within Shelby County. For Phase Two’s matched-pair tests, Black and White cisgender female testers with HCVs and similar tester profiles (with the Black testers having slightly better qualifications) visited rental housing providers within 48 hours of each other.

**In Phase Three**, we conducted a round of 16 telephone test parts in Memphis using Black cisgender female testers. As in Phase One, the test profiles included the use of an HCV as a source of income to pay their rent. In this phase, all 16 housing providers were located at apartment complexes in Census tracts in the city limits with poverty rates of 31% or higher.

**In Phase Four**, three housing providers that had been tested in Phase Two were retested to determine if there were any changes from the findings in the previous round of testing. We conducted matched-pair in-person tests (six test parts) using Black and White testers with HCVs and similar tester profiles.

Phases One through Four took place in 2019. We conducted a fifth phase of testing in 2021 to determine whether there were any changes to our

findings in light of shifts to the housing market due to the COVID-19 pandemic. **In Phase Five**, 30 single-part telephone tests were conducted by Black cisgender female testers at targets located in the City of Memphis as well as in Shelby and Tipton Counties. Tipton County, Shelby County’s neighbor to the north, is an outlying county included in the Memphis metropolitan area for MHA voucher holders and its rental housing stock was included during Phase Five due to availability constraints in Shelby County.

**Testing Audit Methodology**  
**Tester Profiles**

For the audit, testers were assigned a tester profile with certain characteristics to use. To accurately reflect the background of an average HCV holder in Shelby County, the tester profiles were structured around Shelby County’s HCV demographic data. For all Phases of testing, testers were currently living in highly racially segregated areas in which there was an above-average concentration of active HCVs and high levels of poverty. The profiles were also structured so that the testers were looking to move into rental housing in high-opportunity census tracts. The tester profiles also specified that children were living in the home.

Of all persons in the county utilizing a subsidized housing program in 2019, 90% were female-headed households, 59% were female-headed households with children, and 74% were considered extremely low income.<sup>567</sup> Within Shelby County, 27% of all HCV holders rented a two-bedroom unit and 59% rented a three-bedroom or larger unit. For these reasons, we used cisgender female testers, provided testers with extremely low family incomes, as defined by HUD, and selected providers with two- and three-bedroom units for rent. According to HUD’s 2019 income limit calculations for housing programs in the Memphis, TN-MS-AR HUD Metro FMR Area, the extremely low-income limit for a family of three was \$21,330 and for a family of four, \$25,750.<sup>568</sup>

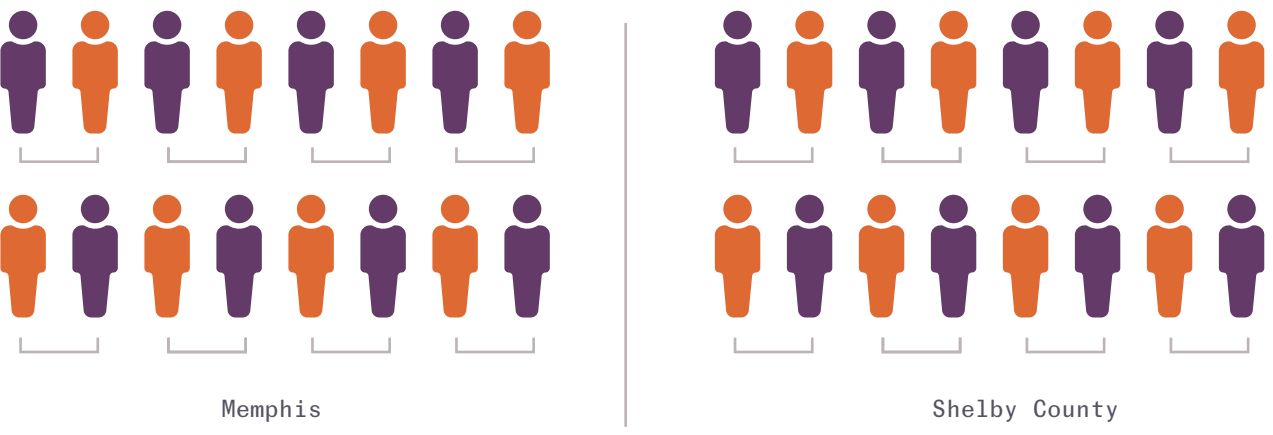
**PHASE 1**

Black cisgender female testers were deployed to conduct 32 single-part tests by telephone. Their test profiles included the use of an HCV as a source of income.



**PHASE 2**

Black and White cisgender female testers were deployed to conduct 16 matched-pair tests involving rental housing opportunities located in Memphis and Shelby County. Testers visited rental housing within 48 hours of each other.





### PHASE 3

Black cisgender female testers were deployed to conduct 16 single-part tests by telephone in Memphis. All housing providers in complexes with poverty rates of 31% or higher.



### PHASE 4

Three housing providers that had been tested in Phase Two were retested. We conducted matched-pair in-person tests using Black and White testers with HCVs and similar tester profiles.



### PEOPLE IN THE COUNTY UTILIZING A SUBSIDIZED HOUSING PROGRAM IN 2019

90%

female-headed households

59%

female-headed households  
with children

74%

considered extremely  
low income

27%

two-bedroom unit renters

59%

three-bedroom or larger  
unit renters

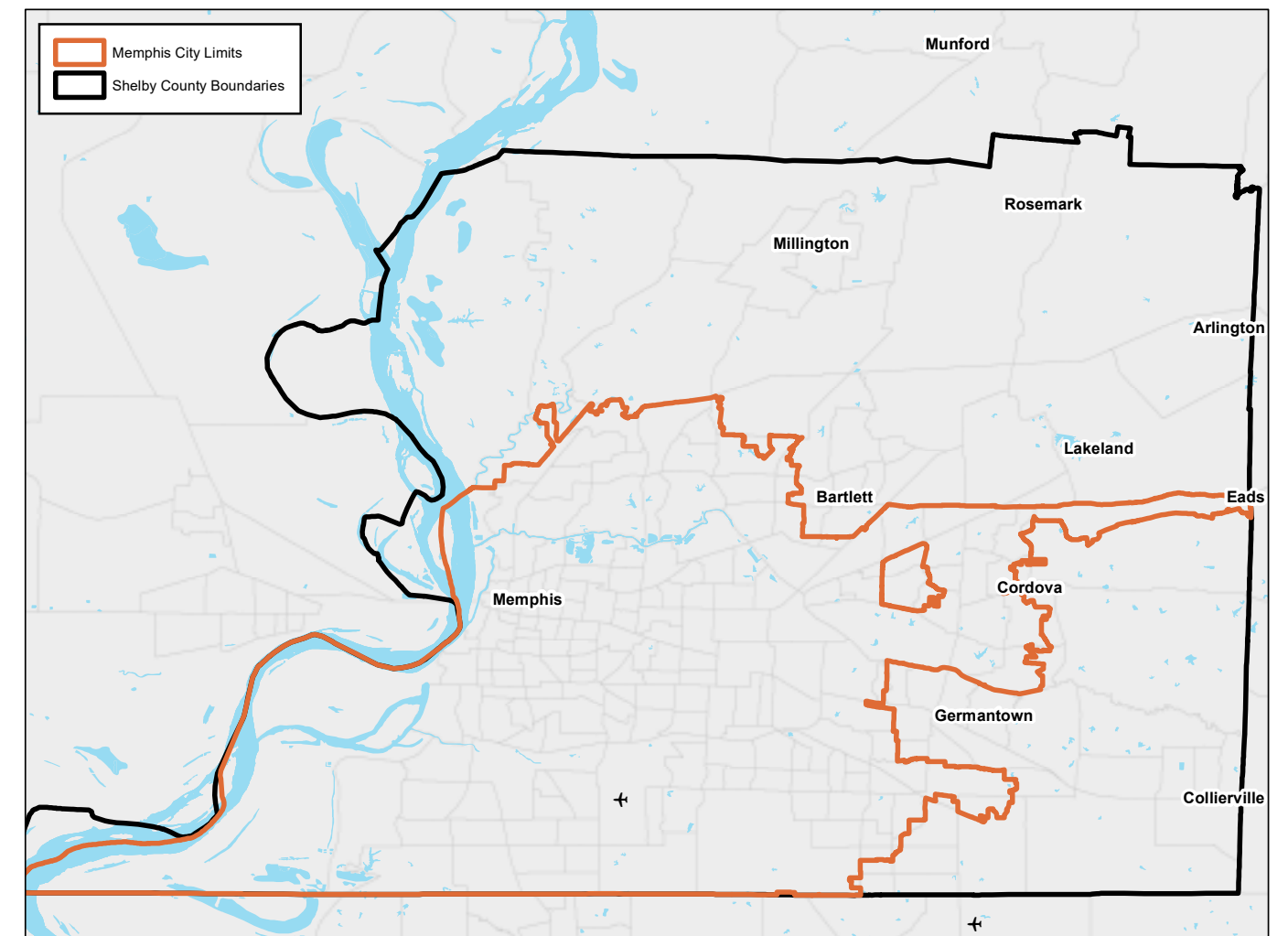
Maximum monthly rent budgets for the testers were selected by utilizing HUD's 2019 or 2021 FMR payment standards for the Memphis Metro FMR Area, corresponding with the year that the testing was conducted (see Table 1 above). While HCV holders may be permitted to select housing options above HUD's payment standards if they can pay the additional amount in excess of the FMR, this audit used FMRs as a firm maximum budget limit, particularly because 74% of Memphis-area HCV holders were categorized as extremely low income in 2019.

### Rental Housing Provider Selection

Rental housing providers investigated in Phases One through Four of the audit were located within Shelby County, both within and outside of the Memphis city limits. Phase Five also included some housing providers in Tipton County. City boundary lines were determined using spatial data from Memphis' Planning and Development Department alongside mapping software (see Map 3 below). This geographic distinction was made to assess the effectiveness of Memphis' source of income ordinance and to evaluate the actual mobility of an HCV holder living and renting in the Memphis metro area.

### MAP 3.

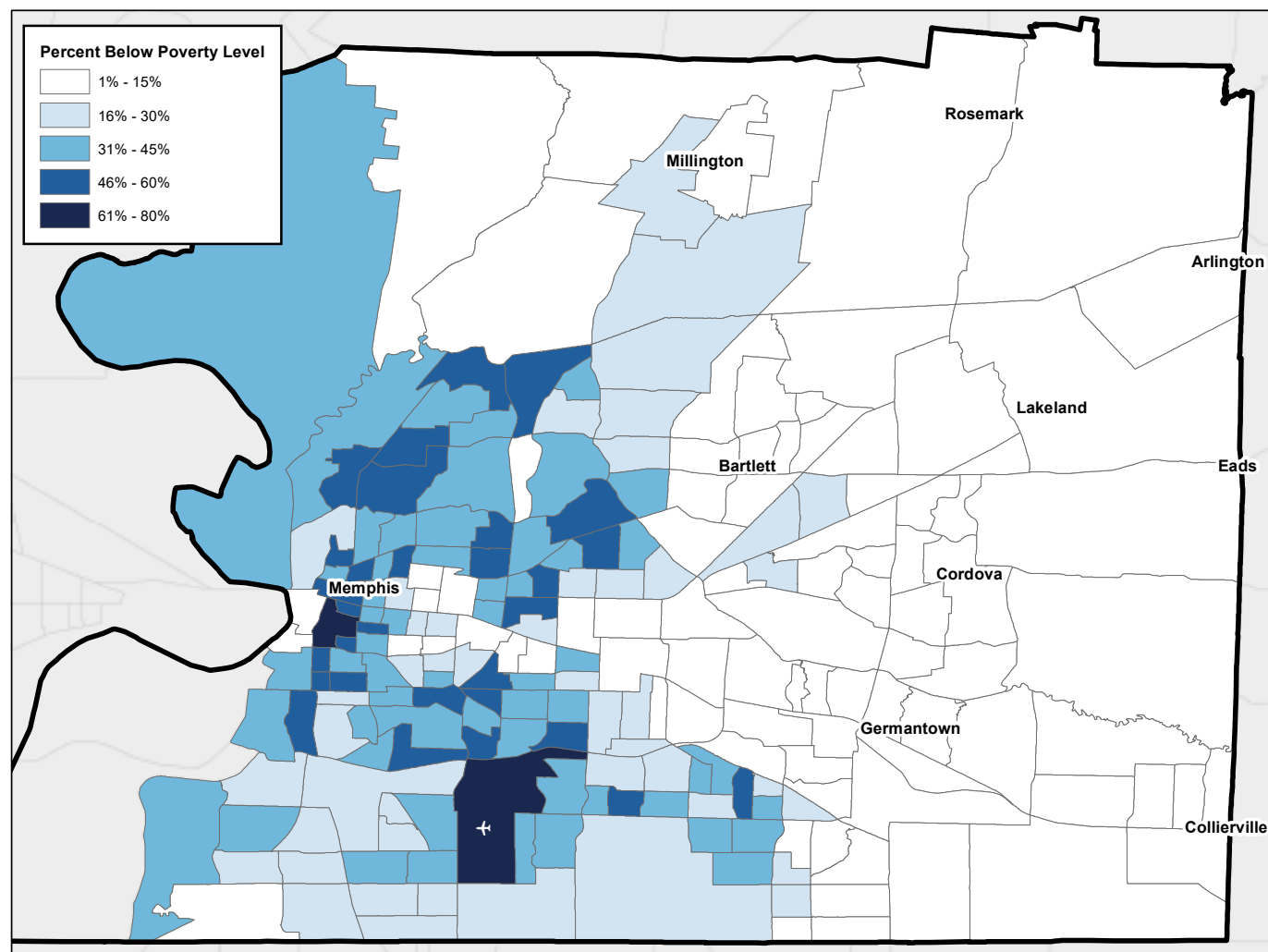
### Memphis and Shelby County Boundaries



Source: City of Memphis Planning and Development Department



## Shelby County, TN Poverty Rates by Census Tract



Source: U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimates, Selected Economic Characteristics

To identify rental housing providers and specific sites to test, we conducted a comprehensive scan of online rental housing syndication websites including Craigslist, Zillow, Trulia, Apartments.com, ApartmentGuide.com, Hotpads, and more. We then used mapping software and Census data to narrow the list of potential test sites to those that were in census tracts with poverty rates less than 15%. We then further narrowed the list of potential test sites by eliminating those with advertised rents amounts that exceeded HUD's

FMR payment standard limits for two- and three-bedroom apartments. This resulted in a list of over 60 potential test sites that included apartment communities and off-site property management companies that manage single-family home rentals.

The focus of Phase One of the audit was to assess how rental housing providers' policies and practices impact HCV recipients. To select the test sites for this, we narrowed the list of over 60 potential sites down to 40. Twenty sites were selected within

Memphis and 20 were selected outside Memphis but within Shelby County. Although only 32 sites were tested during Phase One, 40 sites were selected to account for fluctuations in pricing and availability. Providers were sorted by the individual high-opportunity census tracts in which they were located. To ensure that Phase One surveyed as many high-opportunity tracts as possible, at least one provider was selected from every high-opportunity tract represented in the housing provider dataset. For property management companies, providers were selected randomly once all apartment complex options were exhausted. For each property management company, a single-family rental home was selected for which the tester would inquire, and these single-family homes were located in high-opportunity census tracts.

The focus of Phase Two was to assess if housing providers treat Black HCV recipients and White HCV recipients the same. To select the targets for this phase we chose 20 test sites, and ultimately tested 16—eight from within Memphis and eight from outside. Some housing providers tested in Phase One that demonstrated problematic policies or practices for HCV recipients were selected for re-testing in Phase Two but at different locations; and the remaining test sites were companies that had not previously been tested. While Phase One test sites were selected, in part, because they were in census tracts with poverty rates less than 15%, in Phase Two we were unable to locate enough test sites in high-opportunity areas that had monthly rent amounts at or below HUD's FMR payment standard limits. After exhausting all possible housing opportunities in those Census tracts, we reviewed housing opportunities in Census tracts with a poverty rate up to 30%. Ultimately, in Phase Two, we tested 13 sites in tracts with poverty rates under 15%, and three in tracts with poverty rates between 16 and 30%.

The focus of Phase Three was to assess if the experiences of testers using an HCV in high-opportunity tracts mirrored that of testers using an HCV in lower opportunity tracts. To select test sites for this phase, we conducted a second comprehensive scan of online rental housing syndication websites and followed the steps we followed in Phase One; however, for this phase we only selected test sites in census tracts with poverty rates greater than 30% and these low access to opportunity neighborhoods were also highly racially segregated. Ultimately 16 sites were tested, each managed by a company not previously tested. Ten sites were in census tracts with poverty rates between 31 and 45%, and six sites were in census tracts with poverty rates at 46% or greater.

The purpose of Phase Four was to re-test housing providers from Phase Two to further explore potential race discrimination. Three Memphis sites tested in Phase Two showed discernible levels of disparate treatment that appeared to favor the White tester and were selected for re-testing.

The focus of Phase Five, like Phase One, was to assess how rental housing providers' policies and practices impact HCV recipient albeit under housing market and economic conditions affected by the COVID-19 pandemic. We employed the same method for identifying test sites as we did for Phase One, however due to a limited availability of housing priced within HUD's FMRs, we included sites in Census tracts with poverty rates up to 30%, and that were in Tipton County. Also because of the lack of available housing priced within HUD FMRs, we had to select one company tested in Phase One and one company tested in Phase Two for testing, but tested sites we had not previously investigated. We tested 30 sites: 19 tests were conducted at sites inside Memphis, five tests were conducted outside Memphis but within in Shelby County, and six tests were conducted in neighboring Tipton County.



Audit Results

Phase One of Testing

In Phase One of testing, we conducted 32 telephone test parts in late March and early April 2019. Sixteen of the test parts were conducted at two- and three-bedroom rental housing properties in Memphis and 16 were conducted at two- and three-bedroom rental housing properties in Shelby County but outside the city limits. A total of 16 apartment complexes and 16 property management companies were tested.

In Phase One, it became clear that there is a dearth of affordable housing options for voucher holders operating under HUD’s FMR payment standards. This was especially true for apartments and home rentals located outside of the Memphis city limits, in the suburbs of Shelby County such as Collierville, Germantown, and Cordova. When we surveyed housing provider targets for Phase One, there were multiple zip codes in Shelby County that had high-opportunity Census tracts but no affordable rental units for someone using a voucher.

To illustrate this point, in April 2019, we surveyed two Memphis-area zip codes that had a high number of HCV holders and a high rate of poverty and two Memphis-area zip codes with low to no HCV holders and a low rate of poverty. Zip codes 38127 and 38115 had multiple Census tracts with 75 or more HCV counts in each tract, and rates of poverty of at least 31% or higher. Zip codes 38133 and 38138 had multiple Census tracts with 25 or less HCV counts in each tract and poverty rates of under 30%. To conduct this survey, we looked through online rental listings to determine available rental properties within HUD’s voucher payment standards for two- and three-bedroom units. While most rental properties in the high-HCV, high-poverty zip codes met the HUD FMR payment standards, there were fewer options in the low-HCV, low-poverty areas. In fact, in one zip code, there were no properties available within the HCV payment standards.

Our Phase One testing also demonstrated that business practices throughout the Memphis region

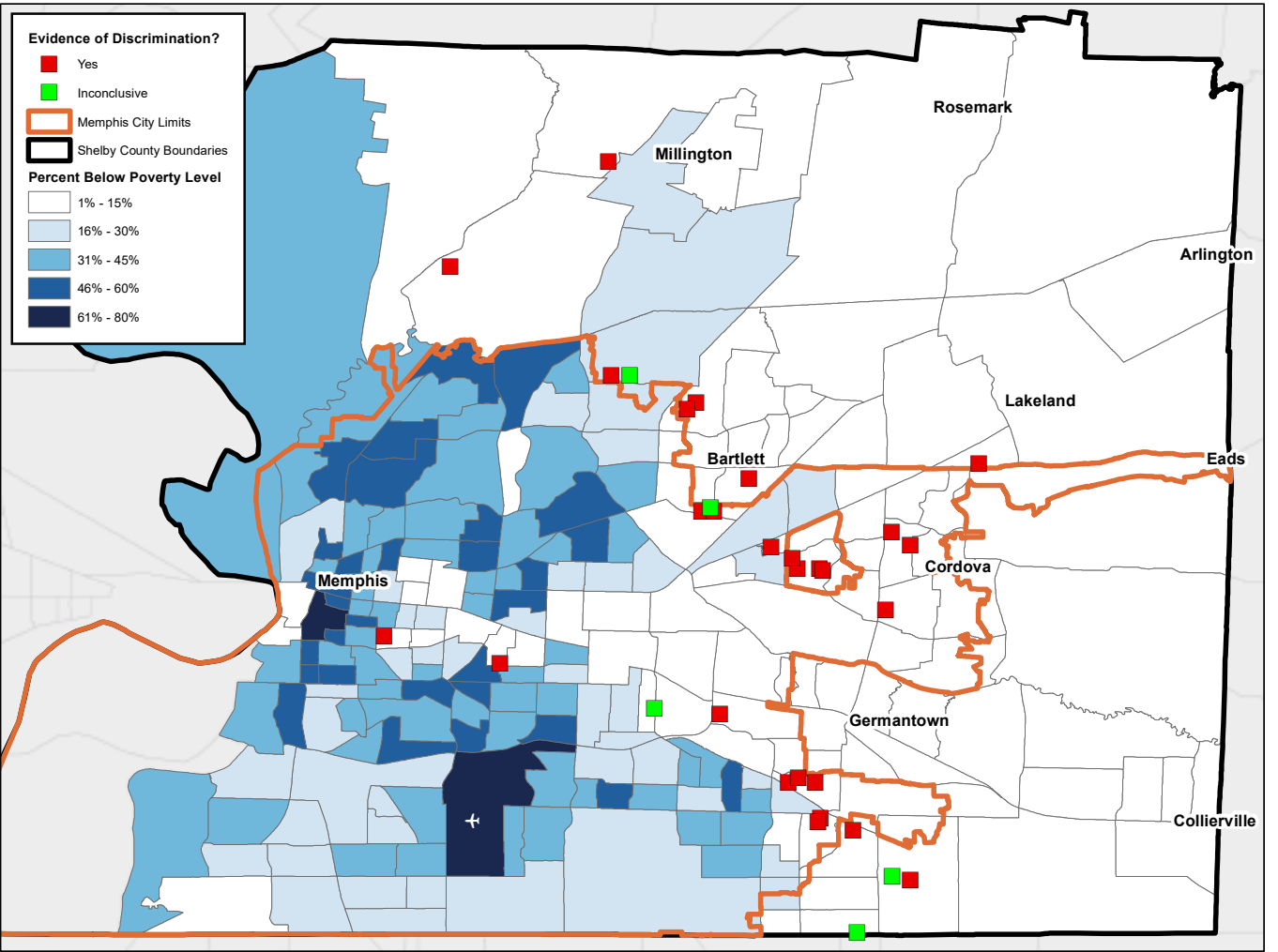
may present significant barriers to housing choice and mobility for HCV recipients. Specifically, the use of revenue management systems at rental apartment communities that maximize profits through daily or weekly rent amount changes may make affordability uncertain for HCV recipients. Due to daily or weekly rent price fluctuations, a unit for rent may fall under the allotted HCV monthly rent amount one day and fall outside of the maximum rent range on another day.

Of the 32 Phase One test parts that were conducted by Black female testers over the phone, 84% (27 of 32 tests) showed evidence of source of income discrimination. In Memphis, 14 of 16 test parts uncovered evidence of source of discrimination (despite the local SOI ordinance); in Shelby County, 13 out of 16 tests revealed discrimination against voucher holders.

TABLE 3. April 2019 Survey of Available Rental Units within HUD’s FMR Payment Standards in High- and Low-Opportunity Areas of Shelby County

Zip Code	% of Two-Bedroom Units Within the HCV Payment Standard	% of Three-Bedroom Units Within the HCV Payment Standard
High HCV, High Poverty		
38127	100.0%	100.0%
38115	89.1%	93.8%
Low HCV, Low Poverty		
38133	25.0%	43.8%
38138	0.0%	0.0%

MAP 4. Phase One Source of Income Discrimination Test Results



Source: American Community Survey 2013-2017 Estimates by Census Tract



Evidence of discrimination against voucher holders manifested in various ways, including a refusal to accept housing vouchers or a statement that the provider did not have any HCV-approved homes or units at that time,<sup>569</sup> minimum income requirements

for voucher holders, and steering voucher holders to particular homes or units and denying them access to others.

Supermarket in Memphis, TN. Photo by Noah Stewart



The most prevalent discriminatory policy involved rental housing providers applying income requirements to HCV holders even though they were using a voucher to help pay their monthly rent. In 11 out of 32 test parts, or 34.4%, the rental housing provider told the tester that they still must meet or exceed the property’s income requirements to qualify for the home or rental unit. These minimum monthly income requirements ranged from having to have income 2.5 times the monthly rent up to 4.25 times the monthly rent, and in seven out of the 11 instances in which income requirements were applied, the tester did not qualify for the home or unit even if the provider included the amount of the HCV as income. In one instance where the tester still qualified for the property, the apartment complex only imposed an income requirement of 2.5 times the monthly rent and included the tester’s HCV as income, so the tester was able to qualify. Another imposed an income requirement of three times the monthly rent, but the rent amount was \$225 lower than HUD’s FMR limit, so the tester was able to qualify. The third and fourth housing providers told the tester that they accepted HCVs as long as the applicant had an additional form of income. While our test profiles included monthly income from an employer, some HCV families do not have any other source of income and would be barred from renting at these locations.

The MHA has recognized that minimum income policies pose a hurdle to acquiring housing in Memphis. In its 2020 Statement of Housing Needs submitted to HUD, MHA stated:

Housing is being built by the private sector, but for a great number of people in Memphis, it is still unattainable due [to] landlords requiring a person to have an income three times the cost of the unit to rent. This requirement places many of the employed in a position where they are

paying more than 40% of their income which is the basis for affordability for shelter, if they can save enough for the deposit or even find a co-signer for the lease.<sup>570</sup>

These income limits allow housing providers to assert that they accept vouchers and still deny potential tenants with vouchers from acquiring housing due to their low-income (or very low-income) status and the FMR payment standard rate. Of the 11 housing providers in our tests that imposed income requirements on HCV holders, six out of 11 were located within the Memphis city limits. Below are a few examples of denials from apartment complexes and property management companies once the tester’s HCV and income were disclosed:

Apartment Complex

**Tester:** “Do you all accept Section 8 vouchers?”

**Agent:** “We do, but it still has to be three times the rent.”

**Tester:** “Okay, and so . . . just trying to understand, so I bring in before taxes \$1,750 a month, how does that work with me having a Section 8 voucher?”

**Agent:** “Let me ask my property manager, hold on one second. How much is your voucher for?”

**Tester:** “My voucher is up to \$1,194.”

*Tester on hold, conversation continues*

**Agent:** “Okay, there you go, I got the numbers for you. I just added everything up . . . based on what you’ve given me, \$1,194 which is the voucher, and \$1,750, it’s not even going to be \$3,000 a month. It’s still going to be too short, you wouldn’t qualify still for the apartment.”



Property Management Company

**Tester:** “Do you all accept the Section 8 voucher?”

**Agent:** “We do, but you still have to qualify under our requirements . . . we will accept the voucher as a form of payment, but you still have to qualify under our requirements which is what I just expressed to you—the 600 credit score, three and a half times the rental amount, no past evictions, can’t be in an active bankruptcy, and things like that.”

Conversation continues

**Tester:** “So if I make \$1,750 a month and my voucher is \$1,194 which it is, um, I’m just adding those amounts together to get what my income would be considered per month?”

**Agent:** “Yes, so at \$1,750 and \$1,194 you’re looking at \$2,944 a month, and divide that by three and half. You’re looking at about \$829 a month is what you would qualify for, with us. This property would be a little bit over your price range.”

The next most prevalent discriminatory policy observed was the apartment complex or property management company refusing to accept vouchers at all. In seven out of 32 tests (21.9%), the housing provider informed the tester that they did not accept HCVs as a form of income. Three of the seven providers were located in Memphis and the other four were in Shelby County.

Of the seven housing providers with a blanket “no voucher” policy, some stated that they did not accept HCVs and did not provide the tester with a reason for this policy. One apartment complex told the tester that they did not accept vouchers because there is no way for them to verify the voucher as they would verify employment or income; another told the tester that they do not accept HCVs because they do not have any properties approved by the MHA. Another property management company texted the tester the company’s qualifications and

stated that they do not accept vouchers; when the tester texted back for clarification twice, the agent did not respond to either text message.

A total of five out of 32 tests, or 15.6%, displayed discriminatory evidence of steering or restricting access to housing. In every test, the tester inquired about particular units priced below the monthly HUD FMR payment standard and within her voucher’s range. Nonetheless, in three of the five instances in which steering occurred, the tester was told that she did not qualify for certain units because of the complex or property management company’s monthly income requirement. The tester was told that she may only consider lower-priced units and would not qualify for the higher-priced units about which she was inquiring. For example, one tester called an apartment complex regarding a two-bedroom apartment for rent and was told that there were two-bedroom apartments priced at \$770 and \$870 a month, with the more costly unit having a larger square footage. The tester informed the leasing agent that her two-bedroom voucher allowed for a monthly rent of up to \$875, but she was informed that because she must make at least three times the monthly rent she will only be able to consider the smaller, lower-cost two-bedroom unit.

The remaining two out of five test parts that displayed evidence of steering involved property management companies that give their property owners the discretion to choose whether to accept HCVs. When the tester inquired about a particular property that she saw advertised online for rent, one leasing agent informed her that the particular property does not accept HCVs but they may have other properties that do accept HCVs. Another leasing agent told the tester that they unfortunately do not have a filter for HCVs, so she must call the company regarding each property that she is interested in so that they may look it up and tell her if vouchers are accepted.

MINIMUM INCOME REQUIREMENTS ARE GENERALLY AN ACCEPTABLE METHOD OF ASSESSING PROSPECTIVE TENANTS’ ABILITY TO AFFORD RENT.

It is common for landlords to apply a “three-times-the-monthly-rent” policy. Here are two different models for how this requirement might be applied.





“No  
Section 8.”

“You don’t  
meet our  
income  
require-  
ments.”



“We  
met our  
voucher  
quota.”

“We only  
take payment  
by check.”

Another four property management companies, or 12.5% of the Phase One tests, told testers that they did not have any properties approved for HCVs at this time. Each of these four property management companies indicated that they allow property owners to decide whether to accept vouchers, and there were currently no such property owners. When the tester asked one particular property management company within the city limits why none of their owners were currently accepting HCVs, she received the following response:

**Property Management Company**

**Tester:** “Do you all accept Section 8 vouchers? Because that’s what I’ll be using.”

**Agent:** “Right now I don’t have any of our owners that are accepting it, um, that’s always up to them as to what they accept and what they don’t, but right now, they do not.”

**Tester:** “Oh.”

**Agent:** “You might try [another property management company], they might . . . I don’t know if they accept them anymore or not, either.”

**Tester:** “Is there a reason why they don’t accept it?”

**Agent:** “Uh, a lot of the owners that I have had have just had bad experiences with folks that tore stuff up and then they had to fix it, and they would complain to Section 8 but they’re the ones that tore it up and the owner didn’t want to fix it because the tenant tore it up, and then, it just became a power struggle so a lot of my owners just said I can’t do it anymore. Folks tore it up and Section 8 just moved them to another house instead of saying okay, well, you owe this person this kind of money and you’ve got to pay it, so a lot of them have just not, not been able to keep with that program.”

This quote highlights the negative and unfounded stigmas that surround HCV families and serves to demonstrate why property management companies should not allow their property owners to apply personal discretion to accept or deny HCVs. These property owners are also violating Memphis’ local ordinance if their property is located within the city limits, and the property management company itself may also be held liable for a source of income discrimination claim.

In addition to these various forms of discrimination, housing providers also occasionally imposed additional conditions to voucher holders. One apartment complex told the tester that, while they do accept HCVs, the tester must still make four times the monthly rent and must provide the voucher payment in the form of a check. The leasing agent stated that their company is not set up for direct deposit and admitted that, in effect, they have never had a tenant with an HCV, since the MHA only issues voucher payments in the form of direct deposit. Another housing provider told the tester that they do accept HCVs but the home for rent in question must pass the MHA’s inspection without any additional cost to the property owner.

Only five tests (at three apartment complexes and two property management companies) in Phase One revealed no discrimination based on the use of a housing voucher. Of the five test parts where no discrimination was observed, two were located within the city limits of Memphis and three were in Shelby County outside the city. Two of the three test parts conducted outside of the city limits were at apartment complexes that are LIHTC properties, which cannot discriminate against voucher holders. These housing providers all stated that they do accept HCVs and do not impose any additional qualifications on the tester. Below are two examples of housing providers willing to work with HCV holders:



Apartment Complex

Tester: “Do you all accept the Section 8 vouchers?”

Agent: “Yes ma’am, we do.”

Tester: “Great.”

Agent: “It has to cover the entire rent portion I believe.”

Tester: “Do I have to make a certain amount of money to qualify even though I’m using the voucher?”

Agent: “No ma’am, you don’t have to make a certain amount, because they’ll [the MHA] contact us and let us know what they’re paying.”

Property Management Company

Tester: “Let me ask you a question, do your properties accept the Section 8 voucher?”

Agent: “Yes, in our Memphis market we do.”

Tester: “Would I have to call each [property] and find out?”

Agent: “No, for our Memphis market, we do accept it for all of our homes there.”

Tester: “With the voucher, do you have to make a certain amount of money to qualify for the home?”

Agent: “No, so under proof of income you will have to upload a copy of the voucher, and the voucher must completely cover the rent.”

Phase Two of Testing

In Phase Two of testing, we conducted 32 in-person test parts (16 matched-pair tests) across Shelby County in May 2019. Sixteen of the test parts (eight matched-pair tests) were conducted at two- and three-bedroom rental housing properties in Memphis, and another 16 test parts (eight

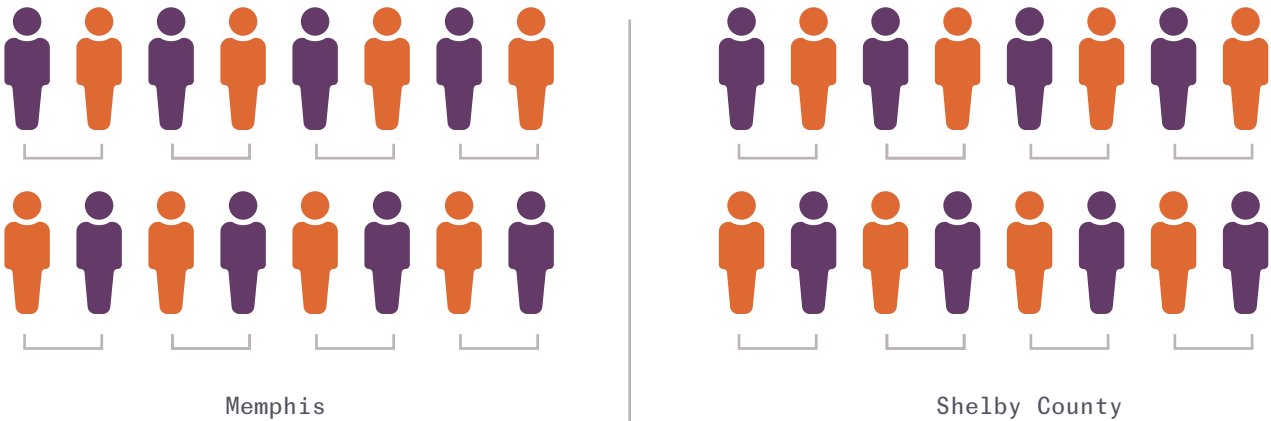
matched-pair tests) were conducted at two- and three-bedroom rental housing properties in greater Shelby County. A total of 13 apartment complexes, one mobile home community, and two property management companies were tested. In addition to testing to determine whether source of income discrimination remained an issue, Phase Two was also structured to assess if the race of the potential tenant with an HCV had a detectable impact on housing opportunity at the pre-application stage of the rental process.

During Phase Two of testing, a Black female tester and a White female tester visited each rental housing provider separately but within 48 hours of each other. In every matched-pair test, the Black tester was slightly more qualified than the White tester with respect to her income and work experience. Both testers requested the same move-in date and provided the same monthly rental budget, and both expressed that they would be using an HCV to pay their rent.

As was observed in Phase One, there was a lack of affordable housing options in high-opportunity areas for voucher holders in Phase Two. Phase Two testing was conducted in the late spring, when rent amounts generally start to increase as demand rises.<sup>571</sup> As rent prices increased, the availability of affordable housing options for HCV recipients declined. Additionally, housing providers’ use of revenue management systems also surfaced again as a barrier to housing choice and mobility in Phase Two, with daily or weekly rent price fluctuations affecting whether an HCV holder could qualify under HUD’s payment limits. For example, in one matched-pair test, advance calls indicated that the rent was below HUD’s FMR limit. However, when the Black and White testers arrived at the location and inquired about the rent, they were both informed that the monthly rent quote for that particular day was above their allotted HCV amount.

PHASE 2

Black and White cisgender female testers were deployed to conduct 16 matched-pair tests involving rental housing opportunities located in Memphis and Shelby County. Testers visited rental housing within 48 hours of each other.



QUESTION 1

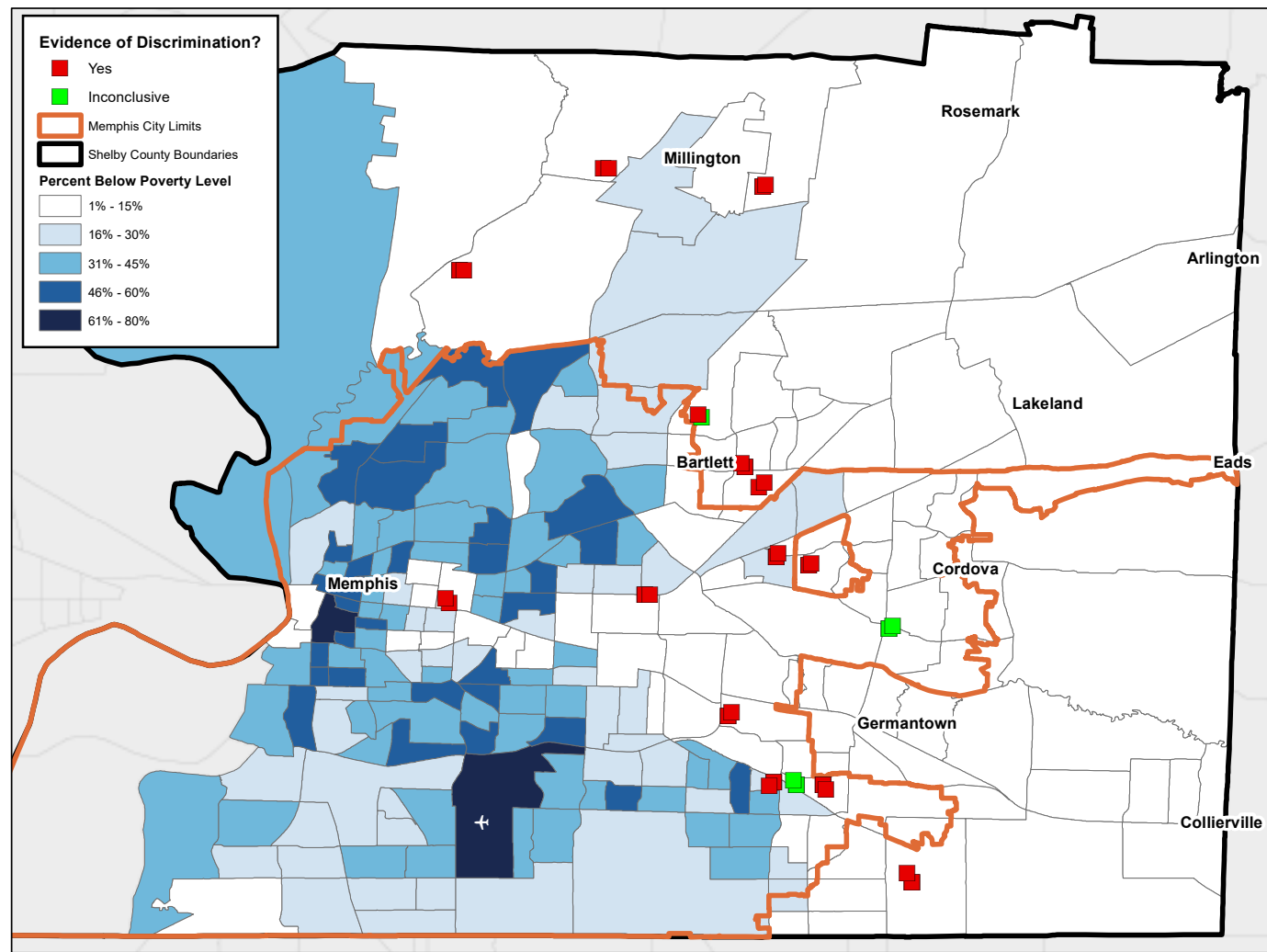
Determine whether source of income discrimination remained an issue.

QUESTION 2

Assess if the race of the potential tenant with an HCV had a detectable impact on housing opportunity at the pre-application stage of the rental process.



**MAP 6. Phase Two Source of Income Discrimination Test Results**



Source: American Community Survey 2013-2017 Estimates by Census Tract

In Phase Two, we uncovered evidence of discrimination against voucher holders based on source of income as well as discrimination against Black voucher holders because of race.

**Source of Income Discrimination**

Out of the 32 tests conducted in Phase Two, 84.4% of tests, or 27 out of 32 test parts, documented evidence of discrimination based on the tester's source of income. In Memphis, 75% of tests (12 of 16) showed evidence of source of income

discrimination. In Shelby County, a total of 93.8% tests (15 of 16) revealed evidence of source of income discrimination.

In 21 of 32 tests (65.6%), testers were told they must meet the housing provider's minimum income requirements even when using a voucher. Twelve of these test parts were conducted in the City of Memphis and nine were conducted outside of the city boundaries in Shelby County. Testers were told a variety of different income requirement amounts,

**13X**

Minimum Income Excluded  
HCV Holders



**6X**

No Voucher Policy  
Excluded HCV Holders



**6X**

HCV Holders Encountered  
Race Discrimination



ranging from 2.5 times the monthly rent to as high as 4.25 times the monthly rent. In 13 of the 21 tests in which the tester was told applicants must meet minimum income requirements, the tester would not have qualified even if the voucher was considered as income.

In six out of 32 tests (18.8%), testers were informed that the housing provider did not accept HCVs as a form of payment. All six of these housing providers

were located outside of the Memphis city limits. One housing provider acknowledged to the tester that they were located outside of the city limits and were thus not required to accept HCVs and had chosen not to do so.

**Race Discrimination**

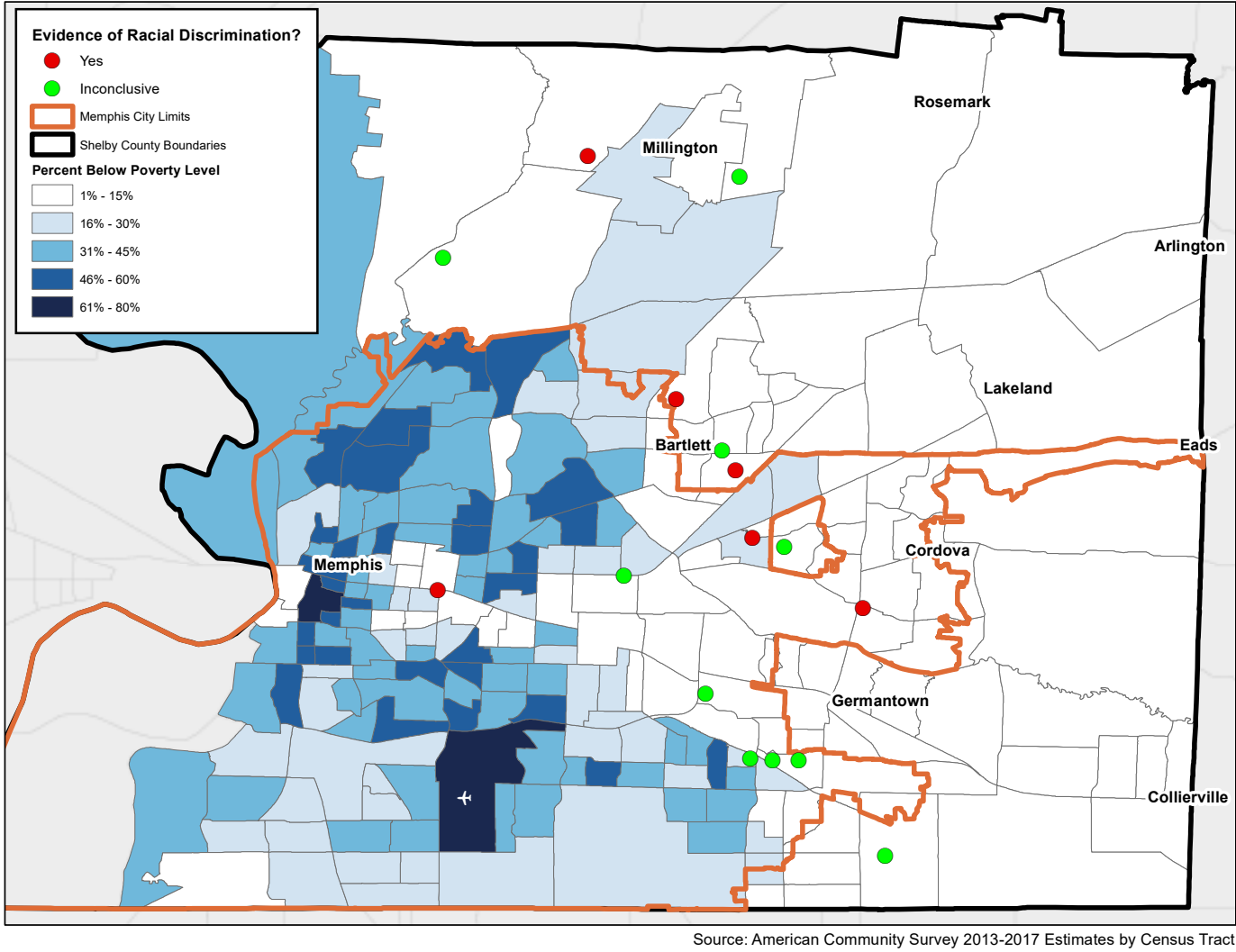
Phase Two also assessed if discriminatory barriers to housing choice and mobility existed because of race. Out of 16 matched-pair tests between



Black and White female testers, six tests, or 37.5%, showed evidence of discrimination based on race. The housing providers for three of these tests were in the City of Memphis and three were located in

Shelby County. Racial discrimination manifested itself as differences in customer service, differences in pricing or availability, differences in access to housing, and differences in terms and conditions.

MAP 7. Phase Two Race Discrimination Test Results



All six matched-pair tests showing evidence of racial discrimination involved differential customer service given to Black and White testers. In each test pair, the White tester received favorable or advantageous information that was not provided to the matched Black tester. For example, some White testers were coached on how to navigate the general rental process as well as the specific company’s processes; some White testers were provided with leasing agents’ contact information and encouraged to follow up with questions or updates; and leasing agents told some White testers that the agent would follow up if any new properties became available. Leasing agents also spent more time with White testers during site visits and White testers were subsequently provided with more information, including more detailed information about rental units and community amenities. In some tests, the testers spoke with different representatives of the housing providers; in others, White testers received more favorable treatment even when interacting with the same company representative, as shown below:

Black Tester

Receptionist: “Can I help you?”

Tester: “Hi, how are you doing? I was just reading the sign on the door, I don’t have an appointment, but I was trying to speak to somebody about a vacant house?”

Receptionist: “Are you wanting to lease something?”

Tester: “Mmhmm.”

Receptionist: “We don’t have leasing agents here, they’re all a remote team, but you can call the number to get our leasing department or I can give you our leasing manager’s direct number if you’d rather do that.”

Tester: “Okay. I’m wondering, I just . . . I’m going to do that because I have to have somewhere to move by June 1st, but just wondered, was there anyone to just give me some general information?”

Receptionist: “Yeah, the leasing department will do that for you. I’m not a leasing agent, so I don’t have that information.”

Tester: “Okay.”

Receptionist: “Her name’s Ms. [leasing agent], you can call her and she can help you with any house that you’re interested in.”

Tester: “Okay, all right, but nobody’s here on-site that I can speak with today?”

Receptionist: “No ma’am, we do everything remotely, so if you want to go to our website you can look at houses that way; they’ll send you a code through a text so you can look at houses on your own or call Ms. [leasing agent].”

White Tester

Receptionist: “Can I help you?”

Tester: “Um, yes, I wondered if I could speak with a leasing agent? I saw online a house at [street address] and I was interested in seeing if I can see it.”

Receptionist: “Did you get it on our website? Because all of our homes are self-shows.”

Tester: “Okay.”

Receptionist: “You go on our website, and you find the house that you . . . I’ll show you how.”

Tester looks at receptionist’s computer screen

Receptionist: “So when you go to our website, it’s [website address].com, and if you go over here to ‘I’m a Renter’ it says ‘Properties for Rent,’ you can pull it up that way. You can pull it up by the address, do you remember the address?”

Tester: “Yeah, it’s [street address].”

Receptionist enters in address



**Receptionist:** “It says it’s coming soon, \$1,065 a month. If you wanted to view it you would push ‘schedule viewing’ and then you put in all your information and follow the steps, and it will send you a code to your phone.”

**Tester:** “Okay.”

**Receptionist:** “And then you can go there and punch in the code, the buttons on the tenant lockbox, and the key will pop out.”

**Tester:** “Oh, okay!”

**Receptionist:** “And then, say you go in there and you like the house, then you can go back to this website and apply for it.”

**Tester:** “Okay, perfect. And what all is required for applying?”

**Receptionist:** “Umm . . . I’m not really sure, you would need to speak with a leasing agent. What I can do is give you this card, this is our leasing department, I know that there is an application fee, deposits, they do a credit check I’m sure, criminal background check, they verify your income, but I’m not sure how much you’re required to make or any of that.”

In four out of the six matched-pair tests where discrimination based on race was observed, the Black and White testers received different information about pricing and availability. For example, during one test, the Black tester was told about pricing and availability for three-bedroom apartments, but the White tester was offered pricing and availability for both three-bedroom apartments and three-bedroom townhomes. During another test, the Black tester was told that units would not be available until two weeks after her desired move-in date, but the White tester was given information about units that were available during her move-in time frame, which was the same as the Black tester’s time frame.

In one of the six tests showing evidence of racial discrimination, the Black and White testers were given differential access to viewing available units during their on-site visits. During that test, the Black tester was told to come back over the weekend (three days later) if she would like to view the model because there were no two-bedroom units she could view and the model was not available at that time. However, the White tester was invited to view a one-bedroom unit during her visit since no two-bedrooms were available. During this same test, the White tester was also offered an application without requesting one herself, but the Black tester was not offered an application at any point during her visit.

In another of the six paired tests showing evidence of racial discrimination, the Black and White testers were told different terms and conditions when applying for a single-family home for rent. The White tester was told that to apply she must have a credit score of at least 580, while the Black tester was told that she must have a credit score of at least 600 to qualify.

**Phase Three of Testing**

In May 2019, we conducted a third round of testing, consisting of an additional 16 test parts conducted by Black female testers via telephone. During these phone calls, testers informed housing providers that they would be using a voucher to pay their rent. All 16 housing providers were located at apartment complexes inside the City of Memphis, in Census tracts with poverty rates of 31% or higher. We conducted Phase Three testing to assess whether the same discriminatory patterns found in Phases One and Two would emerge in neighborhoods with less access to opportunity, which were also frequently racially segregated.

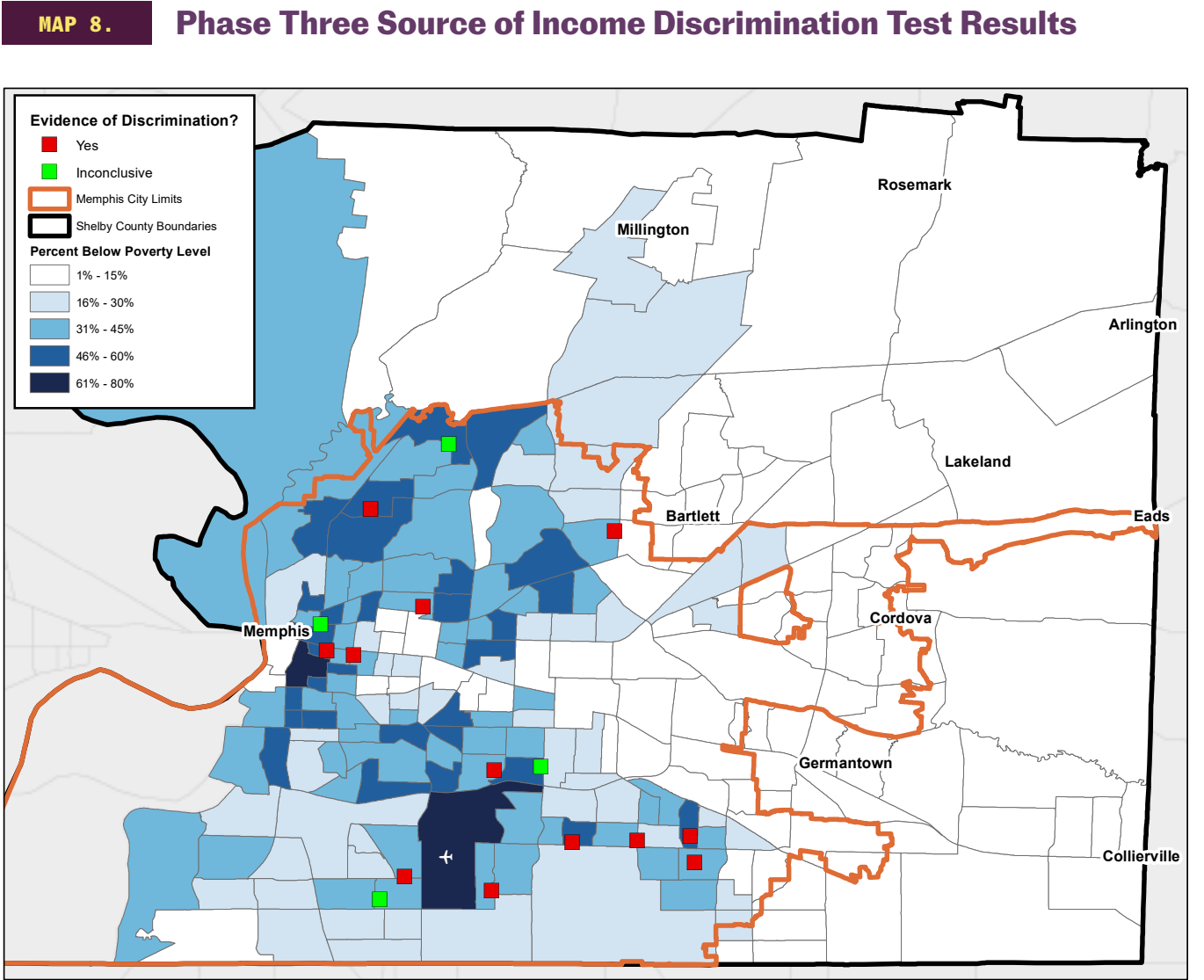
During Phases One and Two, 84.4% of the test parts documented evidence of discrimination based on source of income. During Phase Three, the rate of discrimination was slightly lower but still

significant: 12 out of 16 test parts, or 75%, revealed evidence of source of income discrimination. Unlike Phase One and Phase Two’s findings, Phase Three’s lower-income Census tracts had many affordable housing options for HCV recipients. In these lower-opportunity areas, the monthly rents for two- and three-bedroom units were often hundreds of dollars below HUD’s FMR limits.

However, a housing voucher still presented a significant barrier to housing choice in Phase Three. In 11 out of 16 test parts (close to 70%), housing providers told the testers that they must meet the company’s income requirements even when using an HCV. (In Phase One, 34.4% of providers gave testers this same message, and close to 66% did in Phase Two.) Nonetheless, testers were more likely

to qualify for housing with their income in Phase Three, given that the rents were lower than those in previous phases.

In Phase Three, only one housing provider of the 16 tested had a company policy of not accepting HCVs as a source of income, compared to nearly 22% in Phase One and close to 19% in Phase Two. During this test part, the housing provider told the tester that they did not accept HCVs because they are a Second Chance property<sup>572</sup> and their guidelines do not coincide with the MHA’s guidelines. More specifically, they told the tester that at their property, applicants must pay their security deposit before they will assign them an address, but MHA requires an address before they will conduct a property inspection.



Source: American Community Survey 2013-2017 Estimates by Census Tract



Phase Four of Testing

In Phase Four, which took place in December 2019, we conducted three matched-pair in-person tests, with each tester using an HCV to pay the rent. In each matched-pair test, the Black and White testers visited the same complex on the same day. Additionally, in each test, the Black tester was more qualified than the White tester with respect to monthly income, monthly budget, and time spent in current employment and housing. We tested three properties (labeled Properties A, B, and C below) that had previously been tested in Phase Two in May 2019.

Property A

During the Phase Two testing of Property A, the testers were each seeking two-bedroom apartments for themselves and two children, both using vouchers. The testers visited the properties on different days and spoke with different agents. During this initial test, the testers were informed that the property had a minimum income requirement of 4.25 times the monthly rent, which would have precluded both testers from qualifying. The testers were, however, given different information about unit availability and about the property generally, with the White tester receiving more favorable treatment.

During the Phase Four round of testing, the testers visited the property on the same day. The testers were single and looking for one-bedroom units with a voucher. During this test, the White tester met with the agent that had assisted the Black tester during the Phase Two test. In this round, this agent communicated different information about the property’s voucher policy. The White tester was not told that income requirements would preclude the tester from leasing. Instead, the agent indicated that leasing would be an easy process if the voucher covered the rent. The Black tester spoke with a different agent, who said that there was a minimum income requirement of four times the monthly rent,

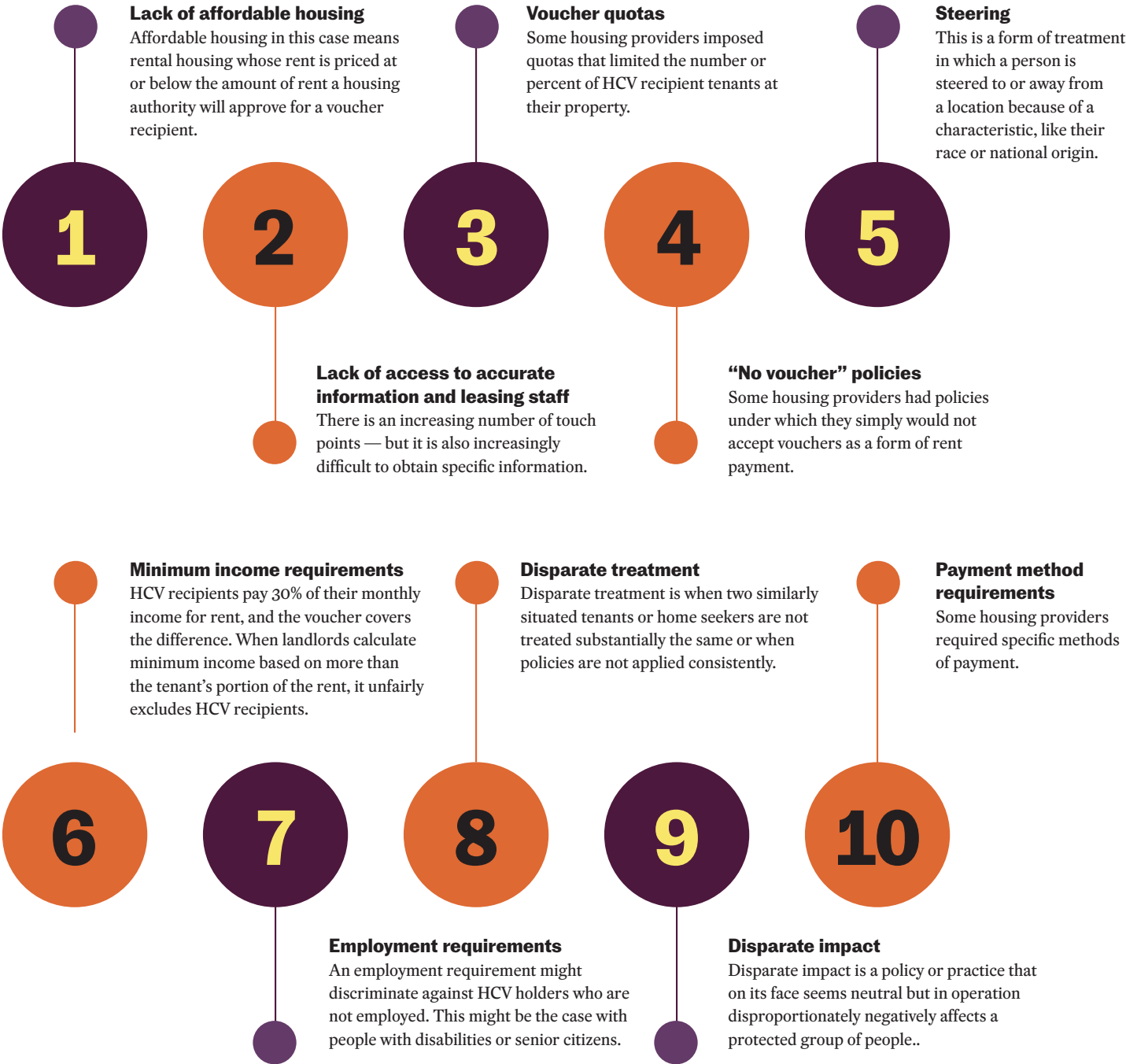
but the voucher could be counted as income. The Black tester was also told that this policy was the same at all of the company’s properties. The two testers were given similar information regarding unit availability and pricing, although the White tester was shown more amenities.

Property B

When we tested Property B in Phase Two, the testers, one Black, and one White, were each seeking a two-bedroom unit for themselves and two children, using a voucher. The testers visited the property on contiguous days and spoke with different agents. They were both informed that the property required a minimum income amount of 3.5 times the rent amount, which, even considering the voucher as income, precluded them from renting. Both testers received information that indicated there were no apartment available that were within their prices ranges and moving timeframe in their price ranges. The White tester, however, was told there are apartments that met her criteria that were being held for applicants and she would be contacted if any became available, while the Black tester was not. Additionally, the White tester was referred to two other multi-family properties to check for availability.

During the second test in Phase Four, the testers were single and seeking information on one-bedroom units, using a voucher. The two testers saw different agents on the same day. Both testers were told that the community accepts vouchers, and they would be counted toward minimum income requirements. However, given that the property still had an income requirement of 3.5 times the amount of monthly rent, neither tester would qualify for a unit. The agent who assisted the White tester informed her that she would not qualify based on her income. The agent suggested the White tester look at income-based properties near the location of Property B. The Black tester was not told on-site that she would not qualify. The testers also

10 BARRIERS TO HOUSING FOR VOUCHER HOLDERS





had different experiences at Property B during Phase Four. The testers were given information on different available units. Additionally, the White tester was given information on less expensive units and was told that utilities were cheaper.

**Property C**

During the Phase Two testing of Property C, the testers were each seeking a two-bedroom unit for themselves and two children, using a voucher. The testers, a Black tester, and a White tester, went on different days and spoke with different agents. Both testers were informed that the property had an income requirement of three times the monthly rent. The Black tester was told that if her voucher covered the rent, she would qualify; the white tester was given a less sanguine assessment, namely that the Request for Tenancy Approval (RTA) packet needed to be submitted and evaluated before they would know if she qualified. In other aspects, the White tester’s experience was more favorable than the Black tester’s. The Black tester arrived at the leasing office at a moment when it was busy, short staffed, and the phone system was malfunctioning; the White tester walked into an observably less busy leasing office the next day and spoke with a different leasing agent. The White tester was engaged in conversation and salespersonship that the Black tester didn’t experience. This appears to have created an exchange of information between the White tester and the leasing staff which further drove the conversation forward, ultimately resulting in the tester receiving more detailed and specific information on pricing and availability, coaching on how to move forward with the voucher paperwork, and a recommendation to seek security deposit assistance through the housing authority.

For the Phase Four test of Property C, the testers were single and seeking information on one-bedroom units, using a voucher. The two testers saw different agents on the same day. Both testers were told that the community accepts vouchers and they

would be counted toward the company’s minimum income requirement. While neither tester had an income that would have met the requirements, both testers were told that they would be able to rent there. One agent told the White tester that she should be able to lease after learning the tester’s monthly income. The White tester was then referred to the property manager for more information, but she was not able to contact the property manager that day. An agent told the Black tester that she would be able to rent there after learning the tester’s annual income and doing the math.

**Phase Five of Testing**

In Phase Five of testing, we conducted 30 telephone test parts in July 2021. Nineteen of the test parts were conducted at rental housing properties in Memphis, five were conducted in Shelby County outside the city limits, and six were conducted in neighboring Tipton County. We tested 26 multi-family apartment complexes, three off-site property management companies, and one mobile home community.

Like Phase One, each test was a single-part test, and all the testers were Black women. Each tester portrayed a single parent seeking to rent a two- or three-bedroom housing unit for which she would be using an HCV to cover part of her rent. Black female testers were used because HUD’s data indicate that Black female-headed households are overrepresented among HCV recipients in Memphis. Each tester was given employment, income, and other characteristics that made them favorable potential tenants.

Much of Phase Five observations and results mirrored Phase One, from the challenges of finding available affordable rental housing in low-poverty Census tracts, to business practices that adversely impact HCV recipients, to intentional discrimination. However, in some regards the

**PHASE 5**

Black cisgender female testers conducted 30 telephone test parts in July 2021 in Memphis, Shelby County, and Tipton County.



26

multi-family  
apartment complexes

3

off-site property  
management companies

1

mobile home  
community



Each tester portrayed a single parent seeking to rent a two- or three-bedroom housing unit for which she would be using an HCV to cover part of her rent. Each tester was given employment, income, and other characteristics that made them favorable potential tenants.

barriers documented in Phase Five suggest that access to housing may be more limited as result of circumstances related to the COVID-19 pandemic.

The scarcity of rental housing priced at or below HUD’s FMR has already been noted and continued to be an issue when identifying sites to test for Phase Five. Additionally, overlays of limited access to leasing staff and/or information, low vacancy rates, and discriminatory barriers resulted in only four of 30 sites, or 13%, potentially being available to the testers. Only one site of these four did not impose minimum income requirements or other potential barriers that may adversely impact HCV recipients.

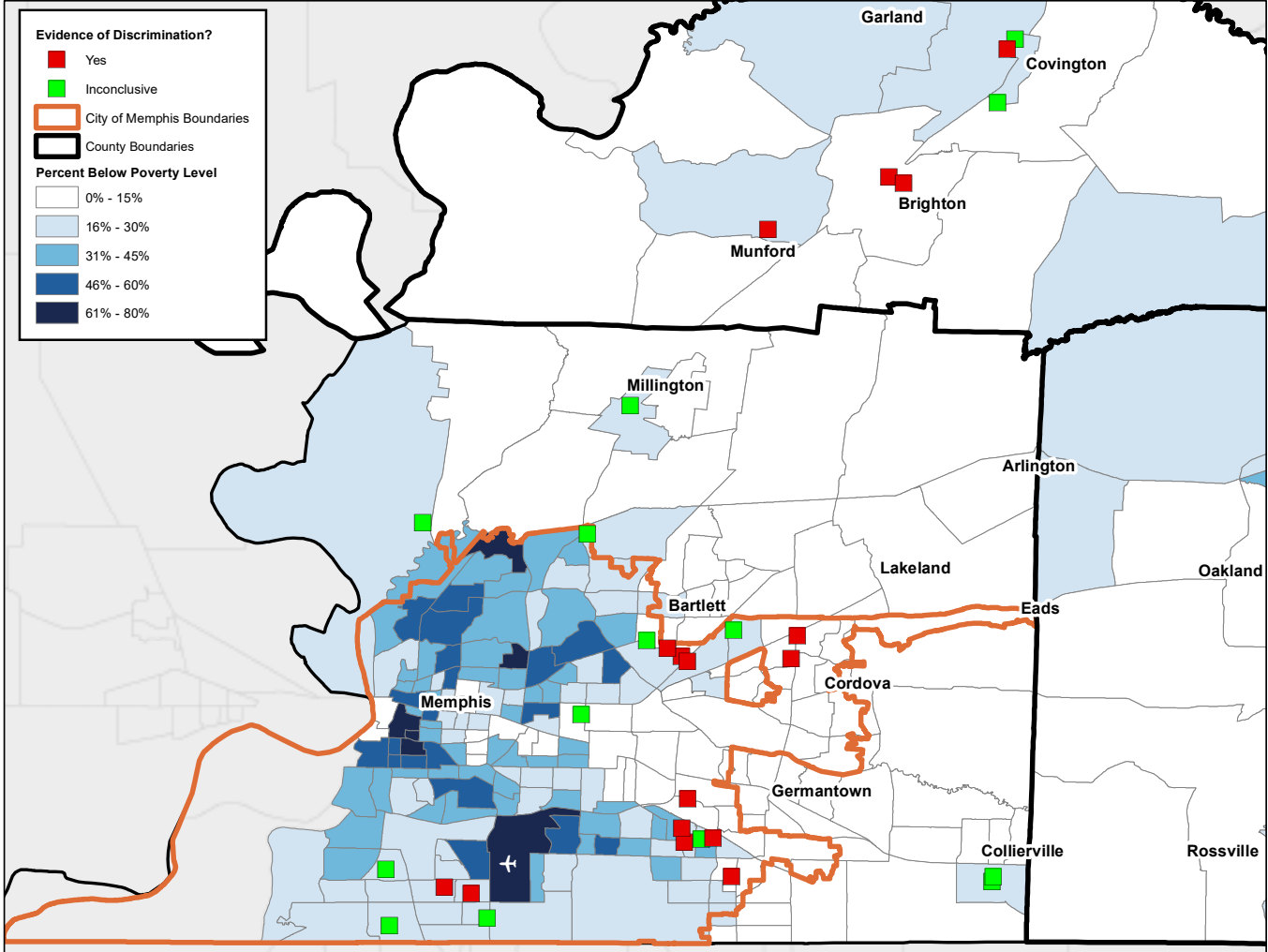
In four tests of 30 (13%), the testers were not able to speak with leasing staff about available housing. In these instances, testers made at least three phone calls and left at least one voicemail message over the course of a week. In one instance the tester reached leasing staff who represented she was unable to speak at that moment and would call the tester back but never did. The tester was not able to contact her or other staff again. In the other four tests, testers were not able to reach anyone. In these tests, the testers did not reveal anything about having an HCV and these were not matched pair tests, so we cannot make any inferences about discrimination. However, in other testing (outside the scope of this audit) NFHA conducted during the COVID-19 pandemic, it observed that while there is an increasing number of touch points—multiple telephone numbers, online chat, email, text message—to access information, it is also increasingly difficult to obtain specific information. For example, during the site selection process for this phase of testing, we visited the website of an apartment complex where we observed floor plans and rents ranges for each floor plan and were instructed to call for details about deposits. The website also promoted a chat bot and a phone number to “text” with a representative. We attempted to obtain specific availability and pricing

information through the chat and the text interfaces, but both appeared to be bots and did not provide the detailed information we inquired about. As the use of revenue management systems increasingly becomes the norm in the rental markets, and contactless options become more broadly available during pre-leasing and leasing, access to accurate and reliable information is arguably more impactful to renters working within the confines of HUD FMRs or who otherwise have restricted incomes.

For the 26 housing sites that testers were able to reach, the lack of available housing was a barrier at 20 of them. It is not uncommon for housing providers to misrepresent the availability of housing as a form of discrimination, but in these tests, we cannot make any inferences about disparate treatment because these were not matched pairs. Also, because the testers asked about availability before revealing that they use an HCV, it seems unlikely that statements related to lack of vacancies were discriminatory on the basis of SOI.

Furthermore, around the time of testing, vacancy rates in Memphis were low. In one instance in which lack of available housing was an issue, the tester was told to check back in August, leaving her little time to complete the leasing process and MHA inspections for a September 1 move in date. However, in all other instances the testers were told that vacancies were not expected until late September 2021 at the earliest and as far out as January 2022. Low housing availability seems to be a corollary of the COVID-19 pandemic. One test highlighted how a low vacancy rate and the scarcity of affordable housing options in high-opportunity tracts can serve to promote economic and racial segregation. In this test, after the tester learned there would be no current or anticipated vacancies, she asked about eligibility in case she was to return in the future and noted that she had an HCV. The leasing staff confirmed the tester would be eligible despite the income requirements,

MAP 9. Phase Five Results



Source: American Community Survey 2015-2019 Estimates by Census Tract

and then suggested she inquire at a companion property managed by the same company that had vacancies. In this instance the target property (with no available units) was in a Census tract that had a poverty rate between 15 and 30%, while the companion property (with available units) was in a Census tract with a poverty rate above 60%. While the test indicated that the leasing staff understood the voucher program and was trying to help the tester find housing, the available options for the tester would not have allowed her to move to a high-opportunity area.

In the 26 tests in which the testers spoke to leasing staff, a myriad of policies and practices emerged that presented barriers to HCV recipients:

**“No Section 8.”** Six test sites (23%) maintained policies that prohibit the use of HCVs. Four sites enforce a “No Section 8” policy; while one site enforces a “No Third-Party Payments” policy. One site stated it is not set up for “Section 8.”

**HCV Tenant Quotas.** One test site imposed a quota on the number of HCV tenants it allows at its property. Given that nearly all voucher recipients



in Memphis are Black, such quotas can operate to limit the number of Black tenants at any particular property. Often, quotas are driven by insurance providers, as was the case in NFHA’s litigation against Travelers Insurance, described above in Part One.

**Apartment Complex, Black Tester**

**Tester:** “Do you all accept the Section 8 voucher?”

**Leasing Agent:** “We are at our limit right now. Right now we are not accepting them.”

**Tester:** “Okay . . . is there a reason? When you say at your limit, what do you mean?”

**Leasing Agent:** “That’s what the manager had advised me when I asked her the other day, but I can check into it further, because I don’t know for sure about the limit . . . I just know that that is what she had explained to me.”

**Steering.** One site delegated the decision to accept HCVs to the individual homeowners whose properties it manages. In this particular test, there were rental vacancies, but none were available to HCV recipients.

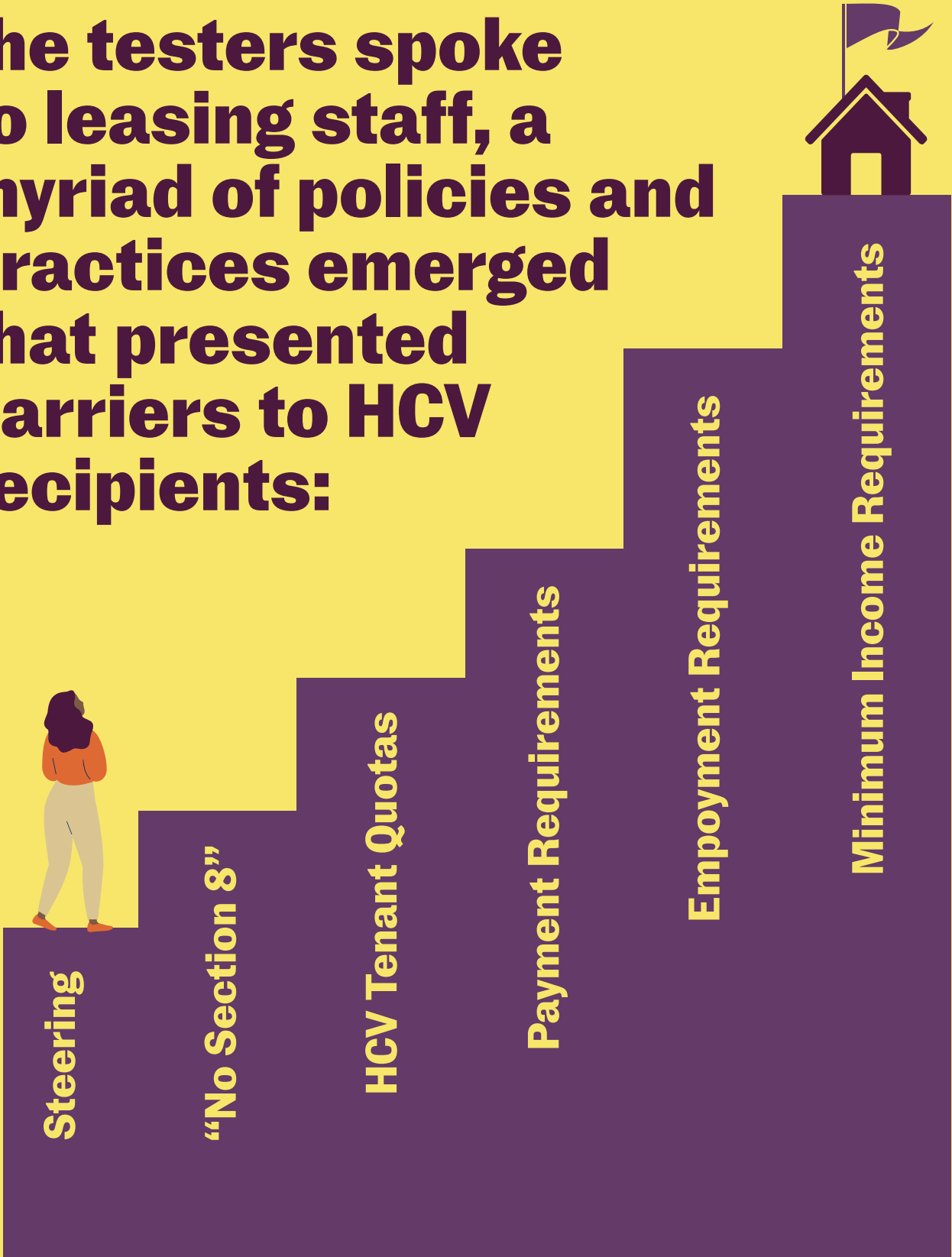
**Employment requirements.** In this phase of testing, three sites had minimum employment policies that required tenants to have been employed for a certain period of time. One site required “permanent” employment, while the other two required the applicant to document that they had been with their current employer for the past

six months. Generally, employment is viewed as a traditional eligibility factor when applying for rental housing, but these policies present barriers to HCV recipients (and recipients of other assistance, benefits, or non-employment income, such as SSDI). According to HUD’s data for Memphis for 2020, only 28% of households report having wages as a major source of income.<sup>573</sup> The national unemployment rate skyrocketed to between 15 and 20% in spring 2020 at the onset of the COVID-19 pandemic.<sup>574</sup> While it has been steadily declining since then, it was approximately 6.3% in Memphis when testing began (higher than the national rate of 6.2%).<sup>575</sup>

**Minimum Income Requirements.** In six tests (23%), minimum income requirements were actual or potential barriers to HCV recipients. In Phase Five, these policies ranged from 2.5 to four times the monthly rent. At five sites, the housing providers required a minimum income independent of the tenant’s rent share or voucher amount, making it impossible for the voucher holders to meet the requirement. Additionally, one site required additional income other than the voucher, which can be a barrier to voucher holders who do not have additional sources of income.

**Payment Requirements.** Three sites told testers that tenants were required to pay rent via check, money order, or electronically through an online service. As noted above, the MHA does not disburse voucher share rent payments to landlords as check or money orders, but instead issues payment via direct deposit.

**In the 26 tests in which the testers spoke to leasing staff, a myriad of policies and practices emerged that presented barriers to HCV recipients:**



# HOUSING ACCESS: Strategies for Change

- ✓ **Prohibit Discrimination  
Against HCV Families**
- ✓ **Expand the HCV Program**
- ✓ **Expand the SAFMR Rule**
- ✓ **Change PHA Administration &  
Improve Services to Voucher  
Holders**
- ✓ **GSE-financed Multi-family  
Housing Should Promote  
Voucher Use**

LDF and NFHA recommend a number of legislative and policy fixes to strengthen the HCV Program and add more protections for individuals and families with vouchers. These strategies will help increase housing choice for HCV recipients and better enable them to move to higher-opportunity areas.

## **Prohibit Discrimination Against HCV Families**

To better protect voucher holders from discrimination, the Fair Housing Act should be amended to include source of income as a protected class. This amendment has been repeatedly introduced in Congress, most recently in the Fair Housing Improvement Act of 2019.<sup>576</sup> Any amendment should be explicit that “source of income” includes HCVs. Additionally, states and localities should continue to enact SOI laws that are meaningful, effective, enforced, and provide a private right of action for aggrieved persons. Advocates should also continue to urge states not to enact (or to repeal) preemption laws that render local SOI laws ineffective and unenforceable. In Tennessee specifically, the state Human Rights Act should be amended to include source of income as a protected class, which would ensure that all residents of the state are protected from this type of discrimination and ensure that Memphis’ local SOI ordinance is not preempted. Even without a Fair Housing Act amendment, HUD should meaningfully and efficiently investigate complaints of discrimination in the HCV Program and take appropriate action to enforce the law.<sup>577</sup> HUD should also continue to support fair housing testing seeking to uncover discrimination in the HCV Program.

HUD and housing authorities should also carefully examine housing providers’ policies that appear to accept vouchers but restrict the ability of HCV families to rent their properties. As described throughout this report, minimum income policies serve as a significant barrier to HCV holders

acquiring housing in high-opportunity areas. If these policies prevent voucher holders from renting when they otherwise would qualify, they should be considered a violation of any applicable state or local SOI laws. Private litigants should also consider litigation on these grounds.

## **Expand the HCV Program**

As noted throughout this report, the HCV Program only serves about a quarter of low-income families that need housing assistance. Housing has never been an entitlement in the U.S. like Social Security or food stamps.<sup>578</sup> As suggested by Matthew Desmond in *Evicted: Poverty and Profit in the American City*, Congress should consider enacting a universal voucher program for every American who needs it.<sup>579</sup> In September 2021, the Housing Initiative at the University of Pennsylvania released a report finding that 4.9 million families would be lifted out of poverty if every family with an annual income at or below 50% of area median income was given a housing voucher.<sup>580</sup>

Absent an initiative to provide for universal vouchers, the HCV Program should certainly be expanded to provide for significantly more vouchers. In March 2022, President Biden signed into law a fiscal year 2022 Budget which includes funding for 25,000 new HCVs and \$25 million for housing mobility services.<sup>581</sup> While this is an important step forward, it is not enough to meet the demand for the program, particularly considering that one in seven Americans were projected to live below the poverty line in 2021.<sup>582</sup>

## **Expand the SAFMR Rule**

HUD’s SAFMR Rule is an important step in increasing access to high-opportunity areas for voucher holders. But it currently is only required in 24 metropolitan areas and must be expanded further. As has been noted by other housing policy experts, concerns in expanding the SAFMR Rule include the overall cost and possible reduction in



the total number of available housing for voucher holders (particularly if housing opportunities in lower-income areas becomes more limited under the adjusted payment standards).<sup>583</sup> But the Rule is intended to be relatively cost-neutral when payment standards are lowered in lower-cost areas and raised in higher-cost ones.<sup>584</sup> As noted above, PRRAC and other organizations have advocated for years for the implementation and expansion of SAFMRs.<sup>585</sup> As PRRAC recommends, HUD should allocate additional administrative fees to PHAs and permit them to apply different payment standards to different parts of a SAFMR zip code when appropriate, which could help offset additional cost burdens.<sup>586</sup>

### **Change PHA Administration & Improve Services to Voucher Holders**

While the independence of PHAs can be beneficial in ensuring that the needs of the local community are met, issues at PHAs can deter landlords from wanting to participate in the HCV Program and ultimately prevent individuals and families with vouchers from accessing safe and affordable housing, especially in well resourced, high-opportunity neighborhoods. Several policy experts have suggested that PHAs in regional housing markets be consolidated to provide more services for tenants and protections against discrimination.<sup>587</sup> Consolidation could help reduce the restrictions on voucher holders looking to move across jurisdictional lines to a higher-opportunity neighborhood administered by a different PHA.<sup>588</sup> Experts have also recommended that PHAs simplify their administrative processes, including inspection procedures, to improve landlord participation.<sup>589</sup> PHAs should also improve their customer service and offer more support to landlords through trainings and other outreach.<sup>590</sup>

Additionally, PHAs should provide more assistance to families with vouchers, including through mobility counseling services.<sup>591</sup> As discussed in this report, mobility counseling has been shown to increase the ability of families with vouchers to find housing in high-opportunity neighborhoods.<sup>592</sup> PHAs should also be flexible in extending the time to locate approved housing, when needed.<sup>593</sup> Financial assistance to families to help with security deposits and other fees would also help reduce barriers to entry in higher-opportunity neighborhoods.<sup>594</sup>

In April 2021, HUD announced its new HCV Mobility Demonstration, funded by the Housing Choice Voucher Mobility Demonstration Act of 2019.<sup>595</sup> Nine PHAs (including New Orleans, Nashville, Minneapolis, and Los Angeles) will participate in the demonstration.<sup>596</sup> The program will provide \$10 million for new vouchers and \$40 million for mobility-related services.<sup>597</sup> Mobility services provided through the demonstration will include a range of services, such as customized plans for families who encounter barriers to acquiring housing, such as criminal records or lower credit scores; information on schools for families with children; financial assistance for application fees and security deposits for voucher holders; and signing bonuses for landlords.<sup>598</sup> The demonstration will run for several years, during which HUD will study the effect of the mobility services offered to determine whether they increase housing choice and expand access to high-opportunity neighborhoods.<sup>599</sup> Additional funding for programs like these could provide critical services to families that need them most, and PHAs should independently look to increase the services they offer to voucher recipients and landlords to encourage their participation in the program.



(above) Traditional Brick Home in Memphis, TN 2022. (right) Traditional brick apartment complex in Memphis, TN 2022. Photos by Noah Stewart.

### **GSE-financed Multi-family Housing Should Promote Voucher Use**

The Federal Housing Finance Agency (FHFA) could do more to ensure that the GSEs meet the greatest needs of the nation's lowest-income renters. The nation's lowest-income renters often require the use of housing vouchers, Social Security Disability Insurance, or other sources of lawful income to pay rent. Yet, currently, there is no requirement for multi-family rental owners receiving GSE financing to accept all forms of lawful income from new applicants and no protections in place to ensure that existing renters do not face eviction when attempting to pay rent using a government source of income. Such requirements would greatly improve the GSEs' ability to fully serve communities and renters with the greatest needs.





# WE ALL DESERVE A HOME THAT IS SAFE AND AFFORDABLE.

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LEGAL DEFENSE FUND

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NATIONAL FAIR HOUSING ALLIANCE

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Pamela Mims waters her front yard at the Alice Griffith housing project in San Francisco, Calif. on Tuesday, August 30, 2011, which has received a \$30 million redevelopment grant from the federal government. *Photo By Paul Chinn/The San Francisco Chronicle via Getty Images*

## CONCLUSION

We all deserve a home that is safe and affordable. Racial bias coupled with economic inequality in Memphis have had a severe impact on the availability of safe and affordable housing for families. Throughout 2019 and 2021, LDF and NFHA conducted a fair housing testing audit of housing providers to assess attitudes towards HCV voucher holders and identify policies and practices that deter families' ability to secure housing. In Part One of the report, LDF and NFHA traced the history of public housing and the HCV program, concluding that the shift from conventional public housing to the HCV program acknowledges the

importance of place in determining life outcomes and giving families a choice in where to live. After describing the HCV Program, LDF and NFHA identified benefits of the Program, which include stability, reducing homelessness, improving housing affordability, and flexibility provided to PHAs to develop standards for their respective voucher programs based on the needs of their local community. LDF and NFHA also set forth drawbacks to the HCV Program, including that the program is not large enough to adequately serve the needs of all low-income families in the United States, families with vouchers remain concentrated





Anacostia, D.C. Frederick Douglass housing project.  
Boys overlooking the project. Artist Gordon Parks.  
*Photo by Heritage Art/Heritage Images/via Getty Images*

in under-resourced and racially segregated neighborhoods, and families with vouchers face difficulties in utilizing vouchers and encounter discrimination.

LDF and NFHA’s research documented legislative initiatives and surveyed litigation to address discrimination against voucher holders. The strongest state and local legislation explicitly include voucher recipients as protected classes under state or local fair housing or human rights laws and provide private rights of action allowing victims of voucher discrimination to sue in court to enforce their rights. Legal efforts directed to remedying refusals to participate in the HCV Program, minimum income requirements, police targeting of voucher holders, lack of due process, and insufficient voucher amounts have had mixed results.

Part 2 of the report documented the history of housing in Memphis and the HCV Program in Memphis and Shelby County and described the results of LDF and NFHA testing audit. Memphis residents have contended with a history of segregation and housing disparities, with people of color having less access to opportunity. There is stark geographic racial segregation in the HCV Program in Memphis and Shelby County. Ninety percent of voucher households in Memphis and nearly 90% of voucher holders in Shelby County live in majority-minority Census tracts. Memphis has a local ordinance that bans source of income discrimination including discrimination against HCV holders, but the ordinance does not include an explicit private right of action allowing victims of discrimination to sue in court and it is unclear whether Memphis’ source of income ordinance is preempted by state law.

LDF and NFHA’s testing audit found that there is significant discrimination based on source of income in Memphis and Shelby County. For example, 84.4% of tests, or 27 out of 32 test parts, documented discrimination based on the tester’s source of income. The testing audit identified several policies and practices impacting the ability of voucher holders to obtain safe and affordable housing. The policies and practices include “No Section 8” policies, quotas on the number of HCV tenants, steering or restricting access to housing and employment, minimum income and payment requirements.

Black testers faced barriers to finding housing in Memphis and Shelby County due to their race. For example, six out of 16 matched-pair tests between Black and White female testers or 37.5%, showed evidence of discrimination based on race. Differences in treatment included differences in

customer service, pricing or availability, access to housing, and terms and conditions. For example, White testers were coached on how to navigate the rental process in general as well as the specific company’s processes; White testers were provided with leasing agents’ contact information and were encouraged to follow up with questions or updates; and leasing agents told the White testers that they themselves would follow up if any new properties became available.

Concrete steps can be taken to strengthen the HCV Program and better protect individuals and families with vouchers.

Memphis faces many challenges to address racial bias and economic inequality and ensure that voucher recipients have access to fair and affordable housing. This report documents critical information about the incidence of discrimination against voucher recipients in Memphis and Shelby County. There are several solutions to address these issues and NFHA and LDF encourage policy makers to implement them as quickly as possible. Dr. King’s assassination in Memphis on April 4, 1968 ultimately led to the passage of the federal Fair Housing Act on April 11, 1968.

**It is time to fulfill his dream of quality, affordable, and decent housing for all.**

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## Endnotes

- 1     42 U.S.C. § 1437.
- 2     Eva Rosen, *The Voucher Promise: “Section 8” and the Fate of an American Neighborhood* 243 (2020).
- 3     *Id.* at 8.
- 4     U.S. Dep’t of Hous. & Urban Dev., *HUD’s Public Housing Program*, [https://www.hud.gov/topics/rental\\_assistance/phprog](https://www.hud.gov/topics/rental_assistance/phprog) (last visited July 28, 2021) [hereinafter *Public Housing Program*].
- 5     Susan J. Popkin, *Public housing and the legacy of segregation*, Urban Inst.: Urban Wire (Aug. 19, 2003), <https://www.urban.org/urban-wire/public-housing-and-legacy-segregation>.
- 6     Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America* 17 (2017); see also Lawrence J. Vale, *After the Projects: Public Housing Redevelopment & the Governance of the Poorest Americans* 4 (2019).
- 7     Rothstein, *supra* note 6, at 19.
- 8     *Id.* at 21.
- 9     *Id.* at 23.
- 10    Vale, *supra* note 6, at 5.
- 11    Rothstein, *supra* note 6, at vii.
- 12    *Id.* at 70.
- 13    *Id.* at 63-64.
- 14    *Id.* at 78-79, 82.
- 15    *Id.* at 95-96.
- 16    Douglas S. Massey, Jonathan Rothwell & Thurston Domina, *The Changing Bases of Segregation in the United States*, *Annals Am. Acad. Pol. & Soc. Sci.* 626 (2009), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3844132/>.
- 17    See 42 U.S.C. § 1441. See Rothstein, *supra* note 6, at 31. The Act permitted PHAs to continue to separate Black and White families in public housing complexes.
- 18    Nat’l Low Income Hous. Coal., *Public Housing History* (Oct. 17, 2019), <https://nlihc.org/resource/public-housing-history> [hereinafter *Public Housing History*].
- 19    See *id.*; see also Colin Marshall, *Pruitt-Igoe: the troubled high-rise that came to define urban America – a history of cities in 50 buildings, day 21*, *Guardian* (Apr. 22, 2015), <https://www.theguardian.com/cities/2015/apr/22/pruitt-igoe-high-rise-urban-america-history-cities>.
- 20    Vale, *supra* note 6, at 5.
- 21    Rothstein, *supra* note 6, at 32.

- 22    *Id.* at 31-32.
- 23    Rosen, *supra* note 2, at 9.
- 24    Rothstein, *supra* note 6, at 36-37.
- 25    *Id.* at 37.
- 26    See Housing and Urban Development Act of 1965, Pub. L. No. 89-117, 79 Sta. 451 (codified as amended at 12 U.S.C. § 1701s).
- 27    U.S. Dep’t of Hous. & Urban Dev., *Housing Choice Voucher Program Guidebook* Chapter One 1-2, [https://www.hud.gov/sites/documents/DOC\\_35611.PDF](https://www.hud.gov/sites/documents/DOC_35611.PDF) [hereinafter HUD Guidebook].
- 28    Nat’l Crim. Just. Reference Serv., *Report of the National Advisory Comm’n on Civil Disorders* 262 (1968), <https://www.ojp.gov/ncjrs/virtual-library/abstracts/national-advisory-commission-civil-disorders-report> [hereinafter *Kerner Commission Report*].
- 29    *Id.* at 26.
- 30    *Id.* at 13, 261–263.
- 31    42 U.S.C. §§ 3601–3631.
- 32    42 U.S.C. § 3608(d), (e)(5).
- 33    *Otero v. New York City Hous. Auth.*, 484 F.2d 1122, 1134 (2d Cir. 1973).
- 34    Rosen, *supra* note 2, at 12.
- 35    Richard Rothstein, *Race and public housing: Revisiting the federal role*, Econ. Pol’y Inst. (Dec. 17, 2012), <https://www.epi.org/publication/race-public-housing-revisiting-federal-role/>.
- 36    Rothstein, *supra* note 6 at 37; see also Rosen, *supra* note 2, at 12.
- 37    Marshall, *supra* note 19; U.S. Dep’t of Hous. & Urban Dev., *Why Did Pruitt-Igoe Fail?*, PD&R Edge Magazine, [https://www.huduser.gov/portal/pdredge/pdr\\_edge\\_featd\\_article\\_110314.html](https://www.huduser.gov/portal/pdredge/pdr_edge_featd_article_110314.html) (last visited May 17, 2022).
- 38    See, e.g., Joseph P. Fried, *Nixon’s Housing Policy*, N.Y. Times (Sept. 29, 1973), <https://www.nytimes.com/1973/09/29/archives/nixons-housing-policy-opponents-say-proposal-for-cash-payments-wont.html> (citing Nixon’s statement regarding the “inevitability” of giving subsidized poor families new housing while taxpayers often “must make do with inferior older housing”).
- 39    *Public Housing History*, *supra* note 18; see also Agis Salpukas, *Moratorium on Housing Subsidy Spells Hardship for Thousands*, N.Y. Times (Apr. 16, 1973), <https://www.nytimes.com/1973/04/16/archives/moratorium-onhousing-subsidy-spells-hardship-for-thousands-stricter.html>.
- 40    Pub. L. No. 93-383, 88 Stat. 633 (codified as amended at 42 U.S.C. § 5301).
- 41    42 U.S.C. § 1437f.



42 See Pub. L. No. 93-383, § 8(a), 88 Stat. 633, 662 (codified as amended at 42 U.S.C. § 1437f) (noting that the statute was enacted to “aid[] lower-income families in obtaining a decent place to live and . . . promot[e] economically mixed housing”).

43 In 1983, this increased to 30%. *HUD Guidebook, Chapter One*, *supra* note 27, at 1-3.

44 See *id.*

45 Rothstein, *supra* note 6, at 34.

46 See Vale, *supra* note 6, at 13; *Public Housing History*, *supra* note 18.

47 *Public Housing History*, *supra* note 18.

48 *Id.*

49 *HUD Guidebook, Chapter One*, *supra* note 27, at 1-4.

50 *Id.*

51 *Id.*

52 *Id.*

53 See Rosen, *supra* note 2, at 14.

54 Rothstein, *supra* note 6, at 34.

55 *Id.* at 36.

56 Complaint, *Gautreaux v. Chicago Hous. Auth.*, 66-c-1459 (N.D. Ill. filed 1966).

57 *Gautreaux v. Chicago Hous. Auth.*, 296 F. Supp. 907 (N.D. Ill. 1969).

58 See *Housing: The Gautreaux Lawsuit*, BPI, <https://www.bpichicago.org/programs/housing-community-development/public-housing/gautreaux-lawsuit/> (last visited May 17, 2022) [hereinafter *Gautreaux Lawsuit*].

59 See *id.*

60 *Id.*

61 *Id.*

62 *Hills v. Gautreaux*, 425 U.S. 284, 306 (1976).

63 See, e.g., *Gautreaux Lawsuit*, *supra* note 58.

64 *Id.*

65 See *id.*

66 *Id.*

67 *Id.*

68 See Susan J. Popkin, James E. Rosenbaum & Pamela M. Meaden, *Labor Market Experiences of Low-Income Black Women in Middle-Class Suburbs: Evidence from a Survey of Gautreaux Program Participants*, 12 J. Pol’y Analysis & Mgmt. 556, 571–72 (1993), <https://www.jstor.org/stable/3325306>; James E. Rosenbaum & Julie E. Kaufman, *The Education and Employment of Low-Income African-American Youth in White Suburbs*, 14 Educ. Evaluation & Pol’y Analysis 229 (1992), <https://journals.sagepub.com/doi/10.3102/01623737014003229>.

69 Micere Keels et al., *Fifteen Years Later: Can Residential Mobility Programs Provide a Long-Term Escape from Neighborhood Segregation, Crime, and Poverty?*, 42 Demography 51, 63 fig. 4 (2005), <http://read.dukeupress.edu/demography/article-pdf/42/1/51/883884/51keels.pdf>.

70 *Gautreaux Lawsuit*, *supra* note 58.

71 *Id.*

72 Complaint, *Comer v. Kemp*, 89-cv-1556C (W.D.N.Y. Dec. 4, 1989), <https://prrac.org/pdf/comer-complaint.pdf>; see also Scott W. Gehl, *The Legacy of Buffalo’s Landmark Housing Desegregation Case*, *Comer v. Kemp*, Poverty & Race Research Action Council, <https://prrac.org/pdf/buffalo-comer-history-2020.pdf>.

73 Complaint, *supra* note 72, at 5–9.

74 *Id.* at 11–13.

75 Gehl, *supra* note 72, at 8; see generally Complaint, *supra* note 72.

76 Gehl, *supra* note 72, at 8.

77 *Id.* at 8; see generally Stipulation of Settlement and Consent Decree, *Comer v. Kemp*, 89-cv-1556C (W.D.N.Y.), <https://prrac.org/pdf/comer-section-8-consent-decree.pdf>.

78 Gehl, *supra* note 72, at 8–9.

79 *Id.* at 9.

80 *Id.* at 5, 9.

81 *Id.* at 10.

82 *Id.* at 17–18.

83 See *id.*

84 The co-counsel firms on the *Thompson* case were Morgan Lewis & Bockius LLP, Brown Goldstein & Levy LLP, and Levy Ratner LLP.

85 *Thompson v. HUD*, No. 95 Civ. 309 (MJG), 1995 WL 17209874 (D. Md. Jan. 31, 1995).

86 See NAACP Legal Def. & Educ. Fund, Inc., Case: *Thompson v. HUD*, <https://www.naacpldf.org/case-issue/thompson-v-hud/> (last visited May 17, 2022) [hereinafter *Thompson Summary*].

87 *Id.*

88 *Id.*

89 *Thompson v. U.S. Dep’t of Hous. & Urban Dev.*, 348 F. Supp. 2d 398, 409 (D. Md. 2005).

90 *Id.* at 461.

91 *Id.* at 408.

92 *Id.* at 409.

93 *Thompson Summary*, *supra* note 86.

94 *Id.*

95 *Id.*

96 *Id.*

97 See, e.g., Edward G. Goetz et al., ‘Opportunity Areas’ Shouldn’t Just be Places with a lot of White People, Shelterforce (Jan. 4, 2021), <https://shelterforce.org/2021/01/04/opportunity-areas-shouldnt-just-be-places-with-a-lot-of-white-people/>.

98 See, e.g., Robert Collinson & Jens Ludwig, *Neighborhoods and Opportunity in America*, Brookings (Sept. 19, 2019), <https://www.brookings.edu/research/neighborhoods-matter-for-opportunity-time-for-more-place-conscious-policy/>; Raj Chetty et al., *The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Experiment*, 106 Am Econ Rev. 855–59 (2015), [https://scholar.harvard.edu/files/lkatz/files/chk\\_aer\\_mto\\_0416.pdf](https://scholar.harvard.edu/files/lkatz/files/chk_aer_mto_0416.pdf); Barbara Sard & Douglas Rice, *Creating Opportunity for Children: How Housing Location Can Make a Difference*, Ctr. on Budget & Policy Priorities (2014), <https://www.cbpp.org/research/creating-opportunity-for-children>; Margery Austin Turner et al., *Benefits of Living in High-Opportunity Areas*, Urban Inst. (2012), <https://www.urban.org/sites/default/files/publication/32821/412648-Benefits-of-Living-in-High-Opportunity-Neighborhoods.PDF>.

99 Bulletin Letter from U.S. Dep’t of Hous. & Urban Dev., Office of Public and Indian Hous. (Nov. 14, 2018), [https://nlihc.org/sites/default/files/Repositioning\\_Public\\_Housing-PIH.pdf](https://nlihc.org/sites/default/files/Repositioning_Public_Housing-PIH.pdf).

100 Pam Fessler, *Trump Administration Wants to Cut Funding for Public Housing Repairs*, NPR (May 16, 2019), <https://www.npr.org/2019/05/16/723231160/trump-administration-wants-to-cut-funding-for-public-housing-repairs>.

101 *Id.*

102 Yvonne Wenger & Mark Puente, *Baltimore Public Housing Residents Wait Months for Repairs*, Balt. Sun (Nov. 14, 2015), <https://www.baltimoresun.com/news/investigations/bs-md-ci-work-orders-20151114-story.html>.

103 Molly Parker, *Ben Carson Declared Mission Accomplished in East St. Louis—Where Public Housing is Still a Disaster*, Southern Illinoisan (Aug. 8, 2018), <https://www.propublica.org/article/east-saint-louis-public-housing-ben-carson-declared-mission-accomplished>.

104 Molly Parker, *HUD Long Neglected These Residents. Now As They Move Out, Some Feel HUD Let Them Down Again*, Southern Illinoisan (Apr. 6, 2018), <https://www.propublica.org/article/cairo-thebes-hud-long-neglected-these-residents-now-as-they-move-out-some-feel-let-down-again>.

105 Tax Reform Act of 1986, Pub. L. No. 99-514, § 252, 100 Stat. 2085, 2189–2208 (1986) (codified as amended at 26 U.S.C. § 42).

106 Investopedia, Tax Reform Act of 1986, <https://www.investopedia.com/terms/t/taxreformact1986.asp>.

107 U.S. Dep’t of Housing & Urban Dev., Office of Policy Development and Research, *Low Income Housing Tax Credit (LIHTC)*, <https://www.huduser.gov/portal/datasets/lihtc.html>.

108 Congressional Research Serv., *An Introduction to the Low-Income Housing Tax Credit 1* (updated Jan. 26, 2021), <https://fas.org/sgp/crs/misc/RS22389.pdf> [hereinafter *LIHTC Introduction*].

109 *Id.*

110 See, e.g., U.S. Dep’t of Housing & Urban Dev., *LIHTC Database: List of LIHTC-Allocating Agencies Providing Data for the LIHTC Database and their Web Addresses*, [https://lihtc.huduser.gov/agency\\_list.htm](https://lihtc.huduser.gov/agency_list.htm) (last visited May 17, 2022).

111 *LIHTC Introduction*, *supra* note 108, at 4.

112 *Id.*

113 *Id.* at 4, 5.

114 *Id.* at 4.

115 *Id.* at 1.

116 Corianne Payton Scally et al., *The Low Income Housing Tax Credit: How it Works and Who it Serves* 7, 9, Urban Inst. (2018), [https://www.urban.org/sites/default/files/publication/98758/lihtc\\_how\\_it\\_works\\_and\\_who\\_it\\_serves\\_final\\_2.pdf](https://www.urban.org/sites/default/files/publication/98758/lihtc_how_it_works_and_who_it_serves_final_2.pdf).

117 *LIHTC Introduction*, *supra* note 108 at 4.

118 *Id.* at 5.

119 *Id.*

120 *Id.*

121 Nat’l Hous. Law Project, *LIHTC Admissions, Rents, and Grievance Procedures* (Apr. 28, 2018), <https://www.nhlp.org/resources/lihtc-admissions-rents-grievance-procedures/#:~:text=To%20qualify%20for%20admission%2C%20applicants,accept%20Section%208%20voucher%20tenants>

122 *LIHTC Introduction*, *supra* note 108, at 4.

123 *Id.* at 5.



124 *Id.* at 7.

125 *Id.* at 1.

126 See Rigel C. Oliveri, *Vouchers and Affordable Housing: The Limits of Choice in the Political Economy of Place*, 54 Harv. C.R.-C.L. L. Rev. 795, 803 (2019) (citing Florence Wagman Roisman, *Mandates Unsatisfied: The Low Income Housing Tax Credit Program and the Civil Rights Laws*, 52 U. Miami L. Rev 1011 (1998)).

127 *Texas Dep’t of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519 (2015).

128 U.S. Dep’t of Hous. & Urban Dev., *About RAD Public Housing*, <https://www.hud.gov/RAD/program-details> (last visited Aug. 12, 2021).

129 *Id.*

130 U.S. Dep’t of Hous. & Urban Dev., *Rental Assistance Demonstration (RAD), Toolkit #1: Why RAD? A Rental Assistance Demonstration (RAD) Overview* 1, <https://www.hud.gov/sites/documents/TOOLKIT1WHYRAD.PDF> [hereinafter Toolkit #1].

131 U.S. Dep’t of Hous. & Urban Dev., *Rental Assistance Demonstration (RAD)* 1, [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/repositioning/rad\\_key\\_takeaways](https://www.hud.gov/program_offices/public_indian_housing/repositioning/rad_key_takeaways) (last visited June 28, 2021).

132 *Id.*

133 Benny Docter & Martha Galvez, *The Future of Public Housing: Public Housing Fact Sheet*, Urban Inst., (updated Feb. 20, 2020), [https://www.urban.org/sites/default/files/publication/101482/the20future20of20public20housing20public20housing20fact20sheet\\_0.pdf](https://www.urban.org/sites/default/files/publication/101482/the20future20of20public20housing20public20housing20fact20sheet_0.pdf).

134 U.S. Dep’t of Hous. & Urban Dev., *Rental Assistance Demonstration (RAD), Fact Sheet #10: The Difference Between Project-Based Vouchers and Project-Based Rental Assistance* 1, [https://www.hud.gov/sites/documents/RFS10\\_PBV\\_PBRA.PDF](https://www.hud.gov/sites/documents/RFS10_PBV_PBRA.PDF).

135 *Id.* at 1.

136 *Id.*

137 *Id.*

138 *Id.*

139 *Id.*

140 *Id.*

141 Shamus Roller & Jessica Cassella, *The Promise and Peril of HUD’s RAD Program*, Shelterforce (July 30, 2018), <https://shelterforce.org/2018/07/30/the-promise-and-peril-of-huds-rad-program/>.

142 See *Toolkit #1*, *supra* note 130, at 2.

143 *Id.*

144 *Id.*

145 *Id.* at 1–2.

146 *Id.* at 2.

147 *Id.*

148 *Id.*

149 Poverty & Race Research Action Council, *Guidance for Successful Implementation of Rental Assistance Demonstration (RAD) Choice-Mobility* 1 (2020), <https://www.hud.gov/sites/dfiles/Housing/documents/guidance-implementation-of-rad-choice-mobility.pdf>.

150 Danielle McLean, *Trump’s HUD Wants to Expand Flawed Program That Is ‘Privatizing Public Housing,’ Think Progress* (Feb. 27, 2019), <https://archive.thinkprogress.org/a-flawed-public-housing-program-leaves-vulnerable-residents-at-the-mercy-of-developers-66a0ee5b2321/>.

151 *Id.*

152 *Id.*

153 *Id.*

154 Roller et al., *supra* note 141.

155 Matthew Gerken et al., *How Has HUD’s Controversial Rental Assistance Demonstration Affected Tenants?*, Urban Inst.: Urban Wire (Oct. 30, 2019), <https://www.urban.org/urban-wire/how-has-huds-controversial-rental-assistance-demonstration-affected-tenants>.

156 *Id.*

157 *Id.*

158 U.S. Dep’t of Hous. & Urban Dev., *Rental Assistance Demonstration (RAD), \$10 Billion Invested in RAD-Converted Public Housing*, [https://www.hud.gov/sites/dfiles/Housing/documents/RAD\\_10B\\_Flyer\\_10-2020.pdf](https://www.hud.gov/sites/dfiles/Housing/documents/RAD_10B_Flyer_10-2020.pdf).

159 *Id.*

160 See Will Fischer, *Expanding Rental Assistance Demonstration Would Help Low-Income Families, Seniors, and People with Disabilities*, Ctr. on Budget and Policy Priorities (Nov. 7, 2014), <https://www.cbpp.org/research/expanding-rental-assistance-demonstration-would-help-low-income-families-seniors-and>.

161 Rosen, *supra* note 2, at 14.

162 U.S. Dep’t of Hous. & Urban Dev., *Public Housing: What is Public Housing?*, [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/ph](https://www.hud.gov/program_offices/public_indian_housing/programs/ph) (last visited July 28, 2021).

163 Rosen, *supra* note 2, at 15.

164 *Id.* at 1-2. See also Nat’l Low Income Hous. Coal., *Preliminary Overview of Final Affirmatively Furthering Fair Housing Rule* (July 13, 2015), [http://nlihc.org/sites/default/files/Preliminary-Overview\\_Final-AFFH-Rule.pdf](http://nlihc.org/sites/default/files/Preliminary-Overview_Final-AFFH-Rule.pdf) (discussing the long-standing issues with the implementation of AFFH by HUD and PHAs).

---

165 See Rosen, *supra* note 2, at 19.

166 See *id.* at 10; Mary Cunningham et al., *A Pilot Study of Landlord Acceptance of Housing Choice Vouchers* 3, Urban Inst. (2018), <https://www.huduser.gov/portal//portal/sites/default/files/pdf/Landlord-Acceptance-of-Housing-Choice-Vouchers.pdf>.

167 U.S. Dep’t of Hous. & Urban Dev., *Housing Choice Vouchers Fact Sheet*, [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/hcv/about/fact\\_sheet](https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/about/fact_sheet) (last visited May 18, 2022) [hereinafter HCV Fact Sheet]; see also U.S. Dep’t of Hous. & Urban Dev., Office of Policy Dev. & Research, *Assisted Housing: National and Local, Picture of Subsidized Households*, <https://www.huduser.gov/portal/datasets/assthsg.html> (last visited May 18, 2022) [hereinafter Picture of Subsidized Households]; see also Barbara Sard et al., *Federal Policy Changes Can Help More Families with Housing Vouchers Live in Higher Opportunity Areas*, Ctr. on Budget and Policy Priorities (Sept. 4, 2018), <https://www.cbpp.org/research/housing/federal-policy-changes-can-help-more-families-with-housing-vouchers-live-in-higher>.

168 Glenn Thrush, *With Market Hot, Landlords Slam the Door on Section 8 Tenants*, N.Y. Times (Oct. 12, 2018), <https://www.nytimes.com/2018/10/12/us/politics/section-8-housing-vouchers-landlords.html>.

169 See *supra* note 98.

170 See Rosen, *supra* note 2, at 1–2.

171 *Picture of Subsidized Households*, *supra* note 167.

172 *Id.*

173 *Id.*

174 See, e.g., Janet Abrahams, *Opinion, Don’t Refer to Public Housing as ‘Projects,’* Balt. Sun (Jan. 4, 2009), <https://www.baltimoresun.com/opinion/readers-respond/bs-ed-rr-projects-letter-20190104-story.html>.

175 In the 1968 report by the Kerner Commission, the term “ghetto” is used repeatedly and is defined as an area within a city characterized by poverty and acute social disorganization and inhabited by members of a racial or ethnic group under conditions of involuntary segregation. *Kerner Commission Report*, *supra* note 28, at 6 n.1. The term actually originated in the 16th century to refer the confinement of the Jewish population in Venice. Daniel B. Schwartz, *How America’s Ugly History of Segregation Changed the Meaning of the Word ‘Ghetto,’* Time (Sept. 24, 2019), <https://time.com/5684505/ghetto-word-history/>. Over time, the term when used to refer to predominantly Black communities became controversial, often seen as slanderous and racist. *Id.*

176 U.S. Dep’t of Hous. & Urban Dev., *Section 8 Rental Certificate Program*, <https://www.hud.gov/programdescription/cert8> (last visited Aug. 9, 2021).

177 Rachel Black & Aleta Sprague, *The Rise and Reign of the Welfare Queen*, New America (Sept. 22, 2016), <https://www.newamerica.org/weekly/rise-and-reign-welfare-queen/>.

178 Emily Badger, *How Section 8 Became a ‘Racial Slur,’* Wash. Post (June 15, 2015), <https://www.washingtonpost.com/news/wonk/wp/2015/06/15/how-section-8-became-a-racial-slur/>.

179 *Id.*

---

---

180 Abby Phillip, ‘Go back to your Section 8 home’: Texas pool party host describes racially charged dispute with neighbor, Wash. Post (June 8, 2015), <https://www.washingtonpost.com/news/morning-mix/wp/2015/06/08/go-back-to-your-section-8-home-texas-pool-party-host-describes-racially-charged-dispute-with-neighbor/>.

181 Hanna Rosin, *American Murder Mystery*, Atlantic (July/Aug. 2008), <https://www.theatlantic.com/magazine/archive/2008/07/american-murder-mystery/306872/>.

182 Ingrid Gould Ellen et al., *American Murder Mystery Revisited: Do Housing Voucher Households Cause Crime?* 2–3, N.Y.U. Wagner Sch. & Furman Ctr. for Real Est. & Urb. Pol’y (2011), [https://shnny.org/uploads/American\\_Murder\\_Mystery\\_Revisited.pdf](https://shnny.org/uploads/American_Murder_Mystery_Revisited.pdf).

183 Badger, *supra* note 178 (citing U.S. Dep’t of Hous. & Urban Dev., Office of Policy Dev. & Research, *Tools and Strategies for Improving Community Relations in the Housing Choice Voucher Program* (2001), [https://www.huduser.gov/portal/publications/pubasst/hcvpguide\\_execsum.html](https://www.huduser.gov/portal/publications/pubasst/hcvpguide_execsum.html)); see also Rosen, *supra* note 2, at 243.

184 See, e.g., *Hayes v. Harvey*, 903 F.3d 32, 40 (3d Cir. 2018) (en banc).

185 See, e.g., Kriston Capps, *The Incentives That Might Make Landlords Take Section 8 Tenants*, Bloomberg CityLab (May 20, 2021), <https://www.bloomberg.com/news/articles/2021-05-20/landlord-bonuses-aim-to-reform-section-8-housing>.

186 We found that close to 150 housing rental listings on Washington, DC’s Craigslist page as of August 5, 2021 mentioned “Section 8.” See *Craigslist, Washington, DC, Apts/Housing*, [www.washingtondc.craigslist.org](http://www.washingtondc.craigslist.org) (last visited Aug. 5, 2021).

187 *HCV Fact Sheet*, *supra* note 167.

188 Rosen, *supra* note 2, at 249. Some PHAs oversee public housing complexes only; others exclusively manage the HCV Program. Some PHAs do both.

189 *HUD Guidebook*, Chapter One, *supra* note 27, at 1-13 – 1-14.

190 *HCV Fact Sheet*, *supra* note 167.

191 *Id.*

192 *Picture of Subsidized Households*, *supra* note 167.

193 Maya Miller, *What You Need to Know About How Section 8 Really Works*, ProPublica (Jan. 9, 2020), <https://www.propublica.org/article/what-you-need-to-know-about-how-section-8-really-works>.

194 *HCV Fact Sheet*, *supra* note 167.

195 *Id.*

196 Miller, *supra* note 193.

197 See *HCV Fact Sheet*, *supra* note 167; see also Antonia M. Konkoly, *Portability Rights of Housing Choice Voucher Participants: An Overview*, 38 Hous. L. Bulletin 170, [https://www.prrac.org/pdf/Portability\\_Rights\\_of\\_Housing\\_Choice\\_Voucher\\_Participants\\_-\\_NHL.P.pdf](https://www.prrac.org/pdf/Portability_Rights_of_Housing_Choice_Voucher_Participants_-_NHL.P.pdf).

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198 24 C.F.R. § 888.113(a).

199 42 U.S.C. § 1437f (c)(1)(B); 24 C.F.R. § 982.503(a)(1).

200 *See* 24 C.F.R. § 982.1(a)(3).

201 *HCV Fact Sheet*, *supra* note 167.

202 *Picture of Subsidized Households*, *supra* note 167.

203 *See*, e.g., Cunningham et al., *supra* note 166, at 7.

204 24 C.F.R. § 982.503(a)(1).

205 24 C.F.R. § 888.113(a).

206 *See Establishing a More Effective Fair Market Rent System; Using Small Area Fair Market Rents in the Housing Choice Voucher Program Instead of the Current 50th Percentile FMRs*, 81 Fed. Reg. 80,567, 80,567 (Nov. 16, 2016), <https://www.federalregister.gov/documents/2016/11/16/2016-27114/establishing-a-more-effective-fair-market-rent-system-using-small-area-fair-market-rents-in-the> [hereinafter SAFMR Rule].

207 *Id.*

208 *Id.* at 80,570.

209 Cunningham et al., *supra* note 166, at 7-8.

210 U.S. Dep’t of Hous. & Urban Dev., Office of Policy Dev. & Research, *Small Area Fair Market Rents*, <https://www.huduser.gov/portal/datasets/fmr/smallarea/index.html> (last visited Aug. 6, 2021). *See also* Ctr. on Budget & Pol’y Priorities, Poverty & Race Research Action Council, *A Guide to Small Area Fair Market Rents (SAFMRs) How State and Local Housing Agencies Can Expand Opportunity for Families in All Metro Areas* (May 4, 2018), <http://www.prrac.org/pdf/cbpp-prrac-guide-to-safmrs.pdf>.

211 *Salute v. Stratford Greens Garden Apts.*, 136 F.3d 293, 300 (2d Cir. 1998).

212 *See* 42 U.S.C. § 1437f(t)(1)(B) (1988).

213 Robert G. Schwemm, *Source-of-Income Discrimination and the Fair Housing Act*, 70 Case W. Res. L. Rev. 573, 588 (2020).

214 U.S. Dep’t of Hous. & Urban Dev., *Housing Assistance Payments Contract*, [https://www.hud.gov/sites/documents/DOC\\_11737.PDF](https://www.hud.gov/sites/documents/DOC_11737.PDF).

215 *HCV Fact Sheet*, *supra* note 167.

216 U.S. Dep’t of Hous. & Urban Dev., *A Good Place to Live!* 2, [https://www.hud.gov/sites/documents/DOC\\_11735.PDF](https://www.hud.gov/sites/documents/DOC_11735.PDF) [hereinafter *Good Place*].

217 *Id.* at 3, 9, 13, 15.

218 U.S. Dep’t of Hous. & Urban Dev., *Inspection Checklist*, <https://www.hud.gov/sites/documents/52580.PDF>.

219 *Good Place*, *supra* note 216, at 21.

220 *Id.*

221 *HCV Fact Sheet*, *supra* note 167.

222 *HUD Guidebook, Chapter Fifteen: Terminations of Assistance and HAP Contracts* 15-1, [https://www.hud.gov/sites/documents/DOC\\_35625.PDF](https://www.hud.gov/sites/documents/DOC_35625.PDF).

223 *Id.*

224 Philip Garboden et al., *Urban Landlords and the Housing Choice Voucher Program* 26, Johns Hopkins Univ. (2018), <https://www.huduser.gov/portal/sites/default/files/pdf/Urban-Landlords-HCV-Program.pdf>.

225 *Id.* at 15-5.

226 *Id.* at 15-5 to 15-6.

227 Kirk McClure, *How Long Do Households Stay in Assisted Housing Programs?*, Urban Inst. (2018), <https://housingmatters.urban.org/research-summary/how-long-do-households-stay-assisted-housing-programs>.

228 *See*, e.g., Rosen, *supra* note 2, at 19; *see also id.* at 110–11; Cunningham et al., *supra* note 166, at 3, 6; Ingrid Gould Ellen, *What Do We Know About Housing Choice Vouchers?* 4, Working Paper, New York Univ. Furman Center (2017), [https://furmancenter.org/files/fact-sheets/HousingChoiceVouchers\\_WorkingPaper\\_IngridGouldEllen\\_14AUG2017.pdf](https://furmancenter.org/files/fact-sheets/HousingChoiceVouchers_WorkingPaper_IngridGouldEllen_14AUG2017.pdf) [hereinafter Ellen 2017].

229 Ellen 2017, *supra* note 228, at 3-4.

230 Oliveri, *supra* note 126, at 797. *See also* Housing and Community Development Act of 1974, Pub. L. No. 93-383, 88 Stat. 633 (codified as amended at 42 U.S.C. § 5301).

231 Ellen 2017, *supra* note 228, at 4-5; Kirk McClure, *Deconcentrating Poverty with Housing Programs*, 74 J. Am. Plan. Ass’n 90, 91 (2008).

232 Deborah J. Devine et al., U.S. Dep’t of Hous. & Urban Dev., Office of Policy Development and Research, *Housing Choice Voucher Location Patterns: Implications for Participants and Neighborhood Welfare* (2003), [https://www.huduser.gov/publications/pdf/Location\\_Paper.pdf](https://www.huduser.gov/publications/pdf/Location_Paper.pdf).

233 *Id.* at 33.

234 *Id.*

235 *HCV Fact Sheet*, *supra* note 167; *see also* Rosen, *supra* note 2, at 103.

236 Rosen, *supra* note 2, at 247.

237 *Gautreaux Lawsuit*, *supra* note 58.

238 Nat’l Bureau of Econ. Rsch., *Moving to Opportunity*, <https://www.nber.org/programs-projects/projects-and-centers/moving-opportunity?page=1&perPage=50> (last visited July 19, 2021); U.S. Dep’t of Hous. & Urban Dev., *Moving to Opportunity for Fair Housing*, <https://www.hud.gov/programdescription/mto> (last visited July 19, 2021).

---

239 Jeffrey Liebman et al., Evaluating the Impact of Moving to Opportunity in the United States, Abdul Latif Jameel Poverty Action Lab, <https://www.povertyactionlab.org/evaluation/evaluating-impact-moving-opportunity-united-states> (last visited Aug. 24, 2021).

240 *Id.*

241 *Id.*

242 *Id.*

243 *Id.*

244 Jonathan Rothwell, *Sociology’s Revenge: Moving to Opportunity (MTO) Revisited*, Brookings Inst. (May 6, 2015), <https://www.brookings.edu/blog/social-mobility-memos/2015/05/06/sociologys-revenge-moving-to-opportunity-mto-revisited/>.

245 *Id.*

246 Chetty et al., *supra* note 98.

247 *Id.*

248 *Id.*; Jens Ludwig et al. *Neighborhoods, Obesity, and Diabetes — A Randomized Social Experiment*, New England J. Med., Oct. 2011, at 1509, 1509–1519, <https://www.nejm.org/doi/full/10.1056/nejmsa1103216>; Sarah Miller & Cindy K. Soo, *Do Neighborhoods Affect Credit Market Decisions of Low-Income Borrowers? Evidence from the Moving to Opportunity Experiment*, Nat’l Bureau of Econ. Rsch. (March 2020), <https://www.nber.org/papers/w25023>.

249 Cunningham et al., *supra* note 166, at 4; *see also* Ctr. on Budget & Pol’y Priorities, *Policy Basics: Federal Rental Assistance*, (Jan. 11, 2022), <https://www.cbpp.org/research/housing/policy-basics-federal-rental-assistance>.

250 Nat’l Low Income Hous. Coal., *Millions of Families on Voucher and Public Housing Waiting Lists* (Mar. 7, 2016), <https://nlihc.org/resource/millions-families-voucher-and-public-housing-waiting-lists>; *see also* Cunningham et al., *supra* note 166, at 4.

251 *Picture of Subsidized Households*, *supra* note 167.

252 Erin Graves, *Rooms for Improvement: A Qualitative Metasynthesis of the Housing Choice Voucher Program*, Hous. Pol’y Debate, 2016, at 346, 355, <https://www.tandfonline.com/doi/full/10.1080/10511482.2015.1072573>.

253 *Id.*

254 Tatjana Meschede et al., Nat’l Low Income Hous. Coal. & Inst. for Econ. & Racial Equity, *Misdirected Housing Supports: Why the Mortgage Interest Deduction Unjustly Subsidizes High-Income Households and Expands Racial Disparities* (2021), [https://nlihc.org/sites/default/files/NLIHC-IERE\\_MID-Report.pdf](https://nlihc.org/sites/default/files/NLIHC-IERE_MID-Report.pdf).

255 *Id.* at 6.

256 *Id.* at 4.

---

257 *Id.* *See also* Natalie Bicknell Argerious, *Eliminate the Mortgage Interest Deduction: Part One*, Urbanist (June 12, 2020), <https://www.theurbanist.org/2020/06/12/eliminate-the-mortgage-interest-deduction-part-one/>; William G. Gale, *Chipping Away at the Mortgage Deduction*, Brookings (May 13, 2019), <https://www.brookings.edu/opinions/chipping-away-at-the-mortgage-deduction/>; Will Fischer & Chye-Ching Huang, *Mortgage Interest Deduction Is Ripe for Reform*, Ctr. on Budget & Pol’y Priorities (June 25, 2013), <https://www.cbpp.org/research/mortgage-interest-deduction-is-ripe-for-reform>.

258 Meryl Finkel & Larry Buron, Abt Assocs. Inc., *Study on Section 8 Voucher Success Rates: Volume I Quantitative Study of Success Rates in Metropolitan Areas* (2001), <https://www.huduser.gov/Publications/pdf/sec8success.pdf>.

259 *Id.*

260 Pam Fessler, *Government Housing Vouchers Are Hard to Get, and Hard to Use*, NPR (May 11, 2021), <https://www.npr.org/2021/05/11/995446771/government-housing-vouchers-are-hard-to-get-and-hard-to-use>.

261 Cunningham et al., *supra* note 166, at 5.

262 *Id.* at 68 (citing Finkel & Buron, *supra* note 258).

263 For example, one study found that two PHAs in Alabama almost never granted extensions. Stephanie DeLuca et al., *Segregating Shelter: How Housing Policies Shape the Residential Locations of Low-Income Minority Families*, Annals of American Acad. of Pol. & Soc. Sci., May 2013, at 268, 278, [https://krieger.jhu.edu/sociology/wp-content/uploads/sites/28/2012/02/Segregating-Shelter\\_How-Housing-Policies-Shape-the-Residential-Locations-of-Low-Income-Minority-Families.pdf](https://krieger.jhu.edu/sociology/wp-content/uploads/sites/28/2012/02/Segregating-Shelter_How-Housing-Policies-Shape-the-Residential-Locations-of-Low-Income-Minority-Families.pdf).

264 Graves, *supra* note 252, at 356.

265 *Id.* at 354–57.

266 Stacy Seicshnaydre, *Missed Opportunity: Furthering Fair Housing in the Housing Choice Voucher Program*, 79 L. & Contemp. Probs. 173, 178–79 (2016).

267 Konkoly, *supra* note 197, at 171.

268 *Id.* at 172.

269 Barbara Sard & Deborah Thrope, *Consolidating Rental Assistance Administration Would Increase Efficiency and Expand Opportunity*, Ctr. on Budget & Pol’y Priorities (Apr. 11, 2016), <https://www.cbpp.org/research/housing/consolidating-rental-assistance-administration-would-increase-efficiency-and>.

270 U.S. Dep’t of Hous. & Urban Dev., Office of Pol’y Dev. & Rsch, *Landlords: Critical Participants in the Housing Choice Voucher Program* (Winter 2019), <https://www.huduser.gov/portal/periodicals/em/winter19/highlight1.html>.

271 Louisiana Fair Housing Action Center (formerly the Greater New Orleans Fair Housing Action Center), *Housing Choice in Crisis: An Audit Report on Discrimination Against Housing Choice Voucher Holders in the Greater New Orleans Rental Housing Market* 8, 11 (2009), <https://storage.googleapis.com/wzukusers/user-33549461/documents/5b47887358f3cNIEd9KN/HousingChoiceInCrisis2009.pdf> [hereinafter New Orleans Housing Choice].



272 Cunningham et al., *supra* note 166, at xi.

273 *Id.* at 30.

274 *Id.*

275 *Id.* at xv.

276 Manny Fernandez, *Despite New Law, Subsidized Tenants Find Doors Closed*, N.Y. Times (Sept. 19, 2008), <https://www.nytimes.com/2008/09/20/nyregion/20housing.html>.

277 Graves, *supra* note 252, at 354.

278 Cunningham et al., *supra* note 166, at 67–68.

279 Schwemm, *supra* note 213, at 590.

280 Thrush, *supra* note 168.

281 Complaint at 14, *Fair Hous. Just. Ctr., Inc. v. Kosova Properties, Inc.*, No. 1:16-cv-3537 (S.D.N.Y. 2017).

282 Aastha Uprety, *Impossible Minimum Income Requirements Prevent Voucher Holders from Finding Housing*, Equal Rts. Ctr. (July 18, 2019), <https://equalrightscenter.org/income-requirements-voucher-discrimination/>.

283 *Id.*

284 Cunningham et al., *supra* note 166, at 9.

285 *Id.* at 10.

286 *Id.* at 11 (citing *New Orleans Housing Choice*, *supra* note 271).

287 See, e.g., Alicia Mazzara & Brian Knudsen, *Where Families With Children Use Housing Vouchers: A Comparative Look at the 50 Largest Metropolitan Areas*, Ctr. on Budget and Pol’y Priorities, Poverty & Race Rsch. Action Council (2019), [https://prrac.org/pdf/where\\_families\\_use\\_vouchers\\_2019.pdf](https://prrac.org/pdf/where_families_use_vouchers_2019.pdf); Florence Wagman Roisman, *Keeping the Promise: Ending Racial Discrimination and Segregation in Federally Financed Housing*, 48 How. L.J. 913, 925–26 (2005).

288 Devine et al., *supra* note 232, at 33.

289 Tracy Jan, *Housing Vouchers Mostly Move Families into Impoverished Neighborhoods, Even When Better Apartments Exist Elsewhere*, Wash. Post (Jan. 3, 2019, 11:19 AM), <https://www.washingtonpost.com/business/2019/01/03/housing-vouchers-mostly-move-families-into-impoverished-neighborhoods-even-when-better-apartments-exist-elsewhere/>; Alex Schwartz et al., *Vouchers and Neighborhood Distress, The Unrealized Potential for Families with Housing Choice Vouchers to Reside in Neighborhoods with Low Levels of Distress*, Cityscape: J. Pol’y Dev. & Rsch., 2016, at 207, 215–16, <https://www.huduser.gov/portal/periodicals/cityscpe/vol18num3/article14.html>; Devine et al., *supra* note 232.

290 Rosen, *supra* note 2, at 20.

291 Liza Getsinger et al., *The Housing Affordability Gap for Extremely Low-Income Renters in 2014*, Urban Inst. (Apr. 28, 2017), <https://www.urban.org/research/publication/housing-affordability-gap-extremely-low-income-renters-2014>.

292 Cunningham et al., *supra* note 166, at xi.

293 *Id.* at 7.

294 Jane Rongerude & Monica Haddad, *Cores and Peripheries: Spatial Analysis of Housing Choice Voucher Distribution in the San Francisco Bay Area Region*, 2000–2010, Hous. Pol’y Debate, 2016, at 417, 418, <https://www.tandfonline.com/doi/abs/10.1080/10511482.2015.1128958>.

295 Rosen, *supra* note 2, at 120.

296 *Id.* at 121. See also Poverty & Race Rsch. Action Council, *Constraining Choice: The Role of Online Apartment Listing Services in the Housing Choice Voucher Program* (2015), <https://prrac.org/pdf/ConstrainingChoice.pdf>.

297 Schwartz et al., *supra* note 289, at 208, 215–216; see also Devine et al., *supra* note 232, at 26.

298 Schwartz et al., *supra* note 289, at 215.

299 Lawyers’ Comm. for Better Hous. Inc., *Locked Out: Barriers to Choice for Housing Choice Voucher Holders, Report on Section 8 Housing Choice Voucher Discrimination* 11 (2002), <https://lcbh.org/sites/default/files/resources/2002-lcbh-housing-voucher-barriers-report.pdf>.

300 Rosen, *supra* note 2, at 21.

301 U.S. Census Bureau, *QuickFacts: United States* (July 2019), <https://www.census.gov/quickfacts/fact/table/US/PST045219>.

302 42 U.S.C. § 3601 et seq.

303 *Id.* at §§ 3610, 3613.

304 See, e.g., *Trafficante v. Metro. Life Ins. Co.*, 409 U.S. 205, 209, 212 (1972) (recognizing that the Fair Housing Act’s terms are “broad and inclusive” and must be subjected to “generous construction”).

305 *Texas Dep’t of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519.

306 *Id.* at 542–43.

307 *Id.* at 527.

308 *Id.*

309 15 U.S.C. §1691 et seq.

310 42 U.S.C. § 12745 (a)(1)(D); 24 C.F.R. § 92.252(d).

311 26 U.S.C. § 42(h)(6)(b)(iv).

312 12 U.S.C § 1701z-12.

313 Schwemm, *supra* note 213, at 576.

314 Martha Galvez et al., Urban Inst. *Protecting Housing Choice Voucher Holders from Discrimination: Lessons Learned from Oregon and Texas* 3, (2020), [https://www.urban.org/sites/default/files/publication/103088/protecting-housing-choice-voucher-holders-from-discrimination\\_3.pdf](https://www.urban.org/sites/default/files/publication/103088/protecting-housing-choice-voucher-holders-from-discrimination_3.pdf).

315 *Id.*

316 Poverty & Race Rsch. Action Council, *Expanding Choice: Practical Strategies for Building a Successful Housing Mobility Program, Appendix B: State, Local, and Federal Laws Barring Source-of-Income Discrimination* (Jan. 2022), <https://www.prrac.org/pdf/AppendixB.pdf>.

317 Cunningham et al., *supra* note 166, at xii; Finkel & Buron, *supra* note 258, at 3-17 (finding that the success rate in locating suitable housing was 76% in jurisdictions with SOI laws and 69% with no protections).

318 Cunningham et al., *supra* note 166, at 12 (citing studies).

319 D.C. Office of Hum. Rts., *Protected Traits in the DC Human Rights Act*, [https://ohr.dc.gov/sites/default/files/dc/sites/ohr/publication/attachments/protectedcategories\\_111319.pdf](https://ohr.dc.gov/sites/default/files/dc/sites/ohr/publication/attachments/protectedcategories_111319.pdf).

320 D.C. Human Rights Act of 1977, D.C. Code Ann. § 2-1401.02.

321 Poverty & Race Rsch. Action Council, *Crafting a Strong and Effective Source of Income Discrimination Law* (2020), <https://prrac.org/pdf/crafting-a-strong-and-effective-source-of-income-discrimination-law.pdf>.

322 D.C. Code Ann. § 2-1401.16.

323 Los Angeles Ord. 186191, § 45.68.

324 *Id.*

325 San Diego Mun. Code § 98.0806(a).

326 Ashly McGlone & Jack Molmud, *A Single Attorney Has Filed More Than 50 Lawsuits Under New Section 8 Discrimination Law*, Voice of San Diego (Oct. 24, 2019), <https://www.voiceofsandiego.org/topics/government/a-single-attorney-has-filed-more-than-50-lawsuits-under-new-section-8-discrimination-law/>.

327 Wis. Admin. Code § IND 89.01(8).

328 Knapp v. Eagle Prop. Mgmt. Corp., 54 F.3d 1272, 1282 (7th Cir. 1995).

329 *Id.*

330 *Id.* at 1282–83.

331 *Id.*

332 Alison Bell et al., *Prohibiting Discrimination Against Renters Using Housing Vouchers Improves Results*, Ctr. on Budget and Pol’y Priorities (Dec. 20, 2018), <https://www.cbpp.org/research/housing/prohibiting-discrimination-against-renters-using-housing-vouchers-improves-results>.

333 Nat’l Apartment Ass’n, *Delaware Seeks to Strengthen Source of Income Protections* (Apr. 6, 2021), <https://www.naahq.org/news-publications/delaware-seeks-strengthen-source-income-protections>.

334 Cal. Dep’t of Fair Emp’t & Hous., *Source of Income FAQ*, [https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2020/02/SourceofIncomeFAQ\\_ENG.pdf](https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2020/02/SourceofIncomeFAQ_ENG.pdf).

335 42 U.S.C. § 3615; *see also* 24 C.F.R. § 982.53(d) (noting that nothing in the section is intended to preempt operation of state and local laws that prohibit discrimination against voucher holders).

336 *See, e.g., Rosario v. Diagonal Realty, LLC*, 8 N.Y.3d 755, 760 (NY Ct. App. 2007).

337 Comm’n. on Hum. Rts. & Opportunities v. Sullivan Assocs., 250 Conn. 763, 772 (1999).

338 *Bourbeau v. Jonathan Woodner Co.*, 549 F. Supp. 2d 78, 87 (D.D.C. 2008).

339 *Id.*

340 For examples of landlord challenges to source of income ordinances as being preempted by state law, *see Fletcher Props., Inc. v. City of Minneapolis*, 931 N.W.2d 410, 429 (Minn. Ct. App. 2019) and *Apartment Ass’n of Metro. Pittsburgh, Inc. v. City of Pittsburgh*, No. 107 WAL 2019, 2019 WL 4253476 (Pa. Sept. 9, 2019); *City & Cnty. of San Francisco v. Post*, 22 Cal. App 5th 121, 124–25 (2018). *See also generally* Hunter Blair et al., *Preempting Progress*, Econ. Pol’y Inst. (Sept. 30, 2020), <https://www.epi.org/publication/preemption-in-the-south/>.

341 Blair, *supra* note 340.

342 Tex. Loc. Gov’t Code Ann. § 250.007 (West 2017).

343 *City of Austin v. Paxton*, 943 F.3d 993, 996 (5th Cir. 2019).

344 Ind. Code § 36-1-3-8.5.

345 Jerusalem Demsas, *Iowa Is Making It Harder to Be a Low-Income Renter*, Vox (May 5, 2021), <https://www.vox.com/2021/5/5/22417878/iowa-kim-reynolds-section-8-housing-vouchers-renters>.

346 *Id.*

347 Tenn. Code Ann. § 7-51-1802.

348 Rosen, *supra* note 2, at 118–19.

349 *Picture of Subsidized Households*, *supra* note 167.

350 *See, e.g., Complaint at 24, Crossroads Residents Organized for Stable & Secure ResiDencieS (CROSSRDS) v. MSP Crossroads Apartments, LLC*, No. 16-cv-233 (D. Minn. Feb. 1, 2016) (case challenging apartment complex’s withdrawal from HCV as a violation of the Fair Housing Act’s prohibition against discrimination based on race, national origin, disability, and familial status).

351 *See Green v. Sunpointe Assocs. Ltd.*, No. C96-1542C, 1997 WL 1526484, at \*7 (W.D. Wash. May 12, 1997) (finding that plaintiff was entitled to summary judgment in class action case challenging landlord’s withdrawal from HCV Program as discrimination based on race, sex, and familial status under the Fair Housing Act).



352 *Crossroads Residents Organized for Stable & Secure ResiDencieS (CROSSRDS) v. MSP Crossroads Apartments*, No. 16-cv-233, 2016 WL 3661146 (D. Minn. July 5, 2016).

353 Memorandum Opinion and Order Granting Final Approval of Class Settlement, *Crossroads*, No. 16-cv-233 (D. Minn. Feb. 2, 2018).

354 *See, e.g., Inclusive Cmtys. Project, Inc. v. Lincoln Prop. Co.*, 920 F.3d 890, 912 (5th Cir. 2019) (rejecting a claim that a landlord caused an unlawful disparate impact based on race when it refused to participate in the HCV Program); *Knapp*, 54 F.3d at 1280 (“Owner participation in the [HCV Program] is voluntary and non-participating owners routinely reject [HCV] voucher holders. We assume that their non-participation constitutes a legitimate reason for their refusal to accept [voucher] tenants and that we therefore cannot hold them liable for racial discrimination under the disparate impact theory.”); *Salute v. Stratford Greens Garden Apartments*, 136 F.3d 293, 302 (2d Cir. 1998) (same).

355 *Knapp*, 54 F.3d at 1280.

356 *Id.* at 1275.

357 *Id.* at 1280.

358 *Id.*

359 *Salute*, 136 F.3d at 302 (quoting *Knapp*, 54 F.3d at 1280).

360 508 F.3d 366, 369 (6th Cir. 2007).

361 *Id.* at 369–70.

362 *Id.* at 370.

363 *Id.*

364 *Id.*

365 *Id.* at 377.

366 *Id.*

367 *Id.*

368 *Id.*

369 *Id.*

370 *Lincoln Prop. Co.*, 920 F.3d at 897.

371 *Id.* at 912.

372 *Id.* at 908–09.

373 *Id.* at 907.

374 *Id.*

375 *Id.*

376 *Id.* The dissenting opinion noted that the Fifth Circuit’s standard imposes a heavy burden on plaintiffs to provide that only the challenged policy could have possibly caused the resulting disparity, requiring far more robust statistical analysis. *Id.* at 922 (Davis, J., concurring in part and dissenting in part).

377 *Id.* at 907.

378 *Id.* at 914, 920 (Harris, J., dissenting in part and concurring in part).

379 *Id.*, *petition for reh’g denied*, 930 F.3d 660 (5th Cir. 2019), *cert. denied*, — U.S. —, 140 S.Ct. 2506, 206 L.Ed.2d 462 (2020).

380 *Inclusive Cmtys. Project, Inc. v. Heartland Cmty. Ass’n, Inc.*, 824 F. App’x 210 (5th Cir. 2020).

381 *Id.* at 213 (citations omitted).

382 *Id.* (citations omitted).

383 *See id.* at 217.

384 *Id.* at 213, 220.

385 Complaint, *Hous. Rts. Initiative v. Compass, Inc.*, No. 21-cv-2221 (S.D.N.Y. 2022).

386 *Id.* at 2.

387 *Id.* at 49, 55–58.

388 *Id.* at 49–50.

389 *Id.*

390 *Id.* at 50–51.

391 *Id.*

392 Answer to Complaint, *Compass*, No. 21-cv-2221 (S.D.N.Y. 2022); Answer to Complaint, *Compass*, No. 21-cv-2221 (S.D.N.Y. 2022).

393 261 F. Supp. 3d 20 (D.D.C. 2017).

394 *Id.* at 22.

395 *Id.* at 34.

396 *Id.*

397 Nat’l. Fair Hous. All., Press Release, *National Fair Housing Alliance Settles Disparate Impact Lawsuit with Travelers Indemnity Company* (Feb. 23, 2018), <https://nationalfairhousing.org/2018/02/23/travelers/>.

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398    *Viens v. Am. Empire Surplus Lines Ins. Co.*, 113 F. Supp. 3d 555, 572 (D. Conn. 2015).

399    *Boyd v. Lefrak Org.*, 509 F.2d 1110, 1112 (2d Cir. 1975).

400    *Id.* at 1112, 1114.

401    *Bronson v. Crestwood Lake Section 1 Holding Corp.*, 724 F. Supp. 148, 149 (S.D.N.Y. 1989).

402    *Id.* at 152.

403    *Id.* at 153.

404    *Id.* at 153–54

405    *Id.* at 154.

406    *Id.*

407    *Id.*

408    *Id.* at 155.

409    *Id.* at 156.

410    *Id.*

411    *Id.* at 159-60.

412    343 F.3d 1143 (9th Cir. 2003).

413    *Id.* at 1155.

414    *Id.* at 1159.

415    Second Amended Complaint at 21, *Fair Hous. Just. Ctr. v. Goldfarb Props., Inc.*, No. 1:18-cv-01564 (S.D.N.Y. July 2, 2019).

416    The Olmstead Housing Subsidy is named after the Supreme Court’s decision in *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581 (1999), which held that the unjustified institutionalization of persons with disabilities is a form of discrimination.

417    Second Amended Complaint at 18-19, *Goldfarb*, No. 1:18-cv-01564.

418    *Id.* at 19.

419    *Id.* at 20.

420    See First Letter Motion of Defendant for Pre-Motion Conference at 1, *Goldfarb*, No. 1:18-cv-01564 (S.D.N.Y. July 12, 2021).

421    *Id.* (emphasis in original).

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422    Answer to Second Amended Complaint and Counterclaim at 21, *Goldfarb*, No. 1:18-cv-01564 (S.D.N.Y. 2019 July 23, 2019).

423    Opinion and Order Denying Motion to Dismiss Counterclaim, *Goldfarb*, No. 1:18-cv-01564 (S.D.N.Y. July 24, 2020).

424    Amended Complaint at 32, *Long Island Hous. Servs., Inc. v. NPS Holiday Square LLC*, No. 2:18-cv-03583 (E.D.N.Y. Mar. 22, 2019).

425    *Id.* at 31.

426    *Williams v. City of Antioch*, No. 08-cv-2301, 2010 WL 3632197, at \*2 (N.D. Cal. Sept. 2, 2010).

427    *Id.* at \*3.

428    *Id.*

429    *Id.*

430    *Id.* at \*1.

431    *Id.* at \*12.

432    Joint Motion for Preliminary Approval of Class Action Settlement at 3-4, *Williams*, No. 08-cv-2301 (N.D. Cal. Dec. 20, 2011); see also Dismissal Order, *Williams*, No. 08-cv-2301 (N.D. Cal. Apr. 6, 2012).

433    *Ressler v. Pierce*, 692 F.2d 1212, 1215 (9th Cir. 1982); *Jeffries v. Georgia Residential Fin. Auth.*, 678 F.2d 919, 925 (11th Cir. 1982); *Guerrero v. City of Kenosha Hous. Auth.*, No. 10-cv- 1090, 2012 WL 139390, at \*4 (E.D. Wis. Jan. 18, 2012).

434    *HUD Guidebook*, Chapter Fifteen, *supra* note 222, at 15-6.

435    *Hardee v. City of New Rochelle Section 8 Hous. Agency*, No. 18-cv-11215, 2019 WL 3564550, at \*5 (S.D.N.Y. Aug. 6, 2019).

436    *Open Cmtys. All. V. Carson*, 286 F. Supp. 3d 148, 152 (D.D.C. 2017).

437    *SAFMR Rule*, 81 Fed. Reg. at 80,570.

438    Complaint, *Inclusive Cmtys. Project, Inc. v. U.S. Dep’t of Hous. And Urb. Dev.*, No. 3:07-cv-0945 (N.D. Tex. May 29, 2007).

439    *SAFMR Rule*, 81 Fed. Reg. at 80,567; see also *Small Area Fair Market Rents in Housing Choice Voucher Program Values for Selection Criteria and Metropolitan Areas Subject to Small Area Fair Market Rents*, 81 Fed. Reg. 80,678, 80,679 (Nov. 16, 2016).

440    *SAFMR Rule*, 81 Fed. Reg. at 81,569.

441    *Open Cmtys.*, 286 F. Supp. 3d at 156-57.

442    *Id.* at 162.

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443 Open Cmty.s.. All., *Judgment Entered For Plaintiffs in Open Communities Alliance v. Carson Ensures Greater Housing Opportunities For Low-Income Families* (Feb. 22, 2018), [https://www.ctoca.org/oca\\_v\\_carson](https://www.ctoca.org/oca_v_carson).

444 Memphis was Tennessee’s largest city until 2017, when Nashville overtook it in population. See Associated Press, *Nashville Overtakes Memphis as Tennessee’s Largest City*, News Channel 9 (May 26, 2017), <https://newschannel9.com/news/local/nashville-overtakes-memphis-as-tennessees-largest-city>.

445 Downtown Memphis Comm’n, *Beale Street—Home of the Blues*, <https://downtownmemphis.com/experience-downtown/events/beale-street-home-of-the-blues/> (last visited Aug. 24, 2021).

446 Wichita Eagle, *Birthplace of Rock N’ Roll? Memphis Has Plenty of Evidence in its Favor* (Aug. 19, 2012), <https://www.kansas.com/living/travel/article1097464.html>.

447 Nathaniel C. Ball, *Memphis and the Lynching at the Curve, Uplift Memphis, Uplift the Nation: The Blog for Community Engagement* (Sept. 30, 2015), <https://blogs.memphis.edu/benhooksinstitute/2015/09/30/memphis-and-the-lynching-at-the-curve/>.

448 *Id.*

449 Memphis Hous. Auth., *History of MHA*, [https://www.memphisha.org/about\\_mha/history\\_of\\_mha.php](https://www.memphisha.org/about_mha/history_of_mha.php) (last visited June 30, 2021).

450 *Id.*

451 *Id.*

452 Preston Lauterbach, *Memphis Burning*, Places Journal (Mar. 2016), <https://doi.org/10.22269/160307>.

453 *Id.*

454 *Id.*

455 *Id.*

456 *Id.*

457 University of Memphis, *The Crump Era*, <https://www.memphis.edu/benhooks/mapping-civil-rights/crump-era.php> (last visited Mar. 30, 2022).

458 Lauterbach, *supra* note 452.

459 *The Crump Era*, *supra* note 457.

460 Lauterbach, *supra* note 452.

461 *Id.*

462 *Id.*

463 Tennessee State Library and Archives, *Mapping the Destruction of Tennessee’s African American Neighborhoods*, <https://www.arcgis.com/apps/MapSeries/index.html?appid=8dba65584072450ca8928a5f3408373f> (last visited Aug. 24, 2021) [hereinafter *Mapping the Destruction*].

464 *Id.*

465 *Id.*

466 Lauterbach, *supra* note 452..

467 *Id.*

468 *Id.*

469 *Id.*

470 *Id.*

471 *Id.*

472 John Moeser & Christopher Silver, *The Separate City: Black Communities in the Urban South, 1940-1968*, at 132, Project Muse (2015), <https://muse-jhu-edu.i.ezproxy.nypl.org/chapter/1537367/pdf>.

473 Madeline Faber, *The Last Major Vestige of Segregation-Era Housing Set for Demolition*, High Ground (May 10, 2017), <https://www.highgroundnews.com/features/FooteHomesHistory.aspx>.

474 *Id.*

475 *Id.*

476 *Id.*

477 *Id.*

478 Moeser & Silver, *supra* note 472, at 134.

479 *Id.*

480 *Id.*

481 *Id.*

482 *Id.*

483 *Id.*

484 Cole Bradley, *Seeing Red I: Mapping 90 Years of Redlining in Memphis*, High Ground (Mar. 31, 2019), <https://www.highgroundnews.com/features/SeeingRedlining.aspx>.

485 *Id.*

486 Moeser & Silver, *supra* note 472, at 145-7.

487 *Id.*

488 *Id.*

489 *Id.*

490 *Id.*

491 Jacob Steimer, *Do You Live In One of Memphis' Blackest, Whitest or Most Segregated Neighborhoods?*, MLK 50 (Aug. 6, 2021), <https://mlk50.com/2021/08/06/do-you-live-in-one-of-memphis-blackest-whitest-or-most-segregated-neighborhoods-read-this-story-to-find-out/>; see also John Klyce, *Why Memphis' Under-Resourced Communities Rank Among Most Disadvantage in U.S.*, Memphis Business Journal (Nov. 2, 2020), <https://www.bizjournals.com/memphis/news/2020/11/02/icic-report-under-resourced-areas-memphis-poverty.html>.

492 Bradley, *supra* note 484.

493 See Complaint, *United States v. Wells Fargo*, No. 12-cv-1150 (D.D.C. July 12, 2012); see also Joint Ctr. for Hous. Stud. of Harv. Univ., *The State of the Nation's Housing 2018* (2018), [https://www.jchs.harvard.edu/sites/default/files/Harvard\\_JCHS\\_State\\_of\\_the\\_Nations\\_Housing\\_2018.pdf](https://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_State_of_the_Nations_Housing_2018.pdf).

494 See Complaint, *City of Memphis v. Wells Fargo*, No. 09-cv-2857 (W.D. Tenn. Dec. 30, 2009); see also Bradley, *supra* note 484.

495 Toby Sells, *'Eviction Crisis' Plagues Memphis' Fast-Growing Rental Market*, Memphis Flyer (Oct. 29, 2019), <https://www.memphisflyer.com/eviction-crisis-plagues-memphis-fast-growing-rental-market>.

496 City of Memphis, *The State of Memphis Housing 2020: Rising to Respond to Crisis* (2020), <https://www.memphistn.gov/wp-content/uploads/2020/09/Housing-Report-V8.1.pdf> [hereinafter *State of Memphis* 2020].

497 *Id.*

498 *Id.*

499 *Id.*

500 Tom Dees, *Black Renters Spend 8 Percent More on Rent in Memphis than White Renters*, Zillow Reports, Fox 13 Memphis (Oct. 13, 2021), <https://www.fox13memphis.com/news/local/african-americans-spend-8-percent-more-rent-memphis-than-white-people-zillow-reports/27FEAMGP3ZFHRJACDTRL6ZLOZY/>.

501 Jacob Steimer, *Rising Rent, Fixed Income: Housing Inflation Hits Disabled Memphians Hard*, MLK 50 (Oct. 19, 2021), <https://mlk50.com/2021/10/19/rising-rent-fixed-income-housing-inflation-hits-disabled-memphians-hard/>.

502 Faber, *supra* note 473.

503 *Id.*

504 *Id.*

505 Press Release from Congressman Steve Cohen, *Congressman Cohen: Memphis Wins \$30 Million Choice Neighborhood Grant from HUD* (Sept. 28, 2015), <https://cohen.house.gov/press-release/congressman-cohen-memphis-wins-30-million-choice-neighborhood-grant-hud>.

506 Faber, *supra* note 473.

507 Katie Kull, *As Memphis' Last Public Housing Project Closes, Neighborhood Schools and Families Scramble*, Chalkbeat Tennessee (Aug. 4, 2016), <https://tn.chalkbeat.org/2016/8/4/21098844/as-memphis-last-public-housing-project-closes-neighborhood-schools-and-families-scramble>.

508 Chris Jones & Cole Bradley, *Could Memphis' South City Be the New Gold Standard for U.S. Public Housing?*, High Ground (June 23, 2021), <https://www.highgroundnews.com/features/foote-homes-residents-return-to-south-city-could-memphis-be-US-model.aspx>.

509 *Id.*

510 *Id.*

511 *Id.*

512 *Id.*

513 *State of Memphis* 2020, *supra* note 496.

514 U.S. Census Bureau, *QuickFacts: Memphis city, Tennessee* (July 2019), <https://www.census.gov/quickfacts/memphiscitytennessee> [hereinafter *QuickFacts: Memphis city*].

515 *Id.*

516 *Id.*

517 According to the Memphis Housing Authority, in 2018 Memphis was the second most impoverished city with a population over 500,000, only second to Detroit. Memphis Hous. Auth., 2020 *Statement of Housing Needs* 3 (2020-2021), <https://www.memphisha.org/Exhibit%202-Statement%20%20of%20Housing%20Needs-2020.pdf> [hereinafter 2020 Statement].

518 U.S. Census Bureau, *QuickFacts: Shelby County, Tennessee* (July 2019), <https://www.census.gov/quickfacts/shelbycountytennessee> [hereinafter *QuickFacts: Shelby County*].

519 *Id.*

520 *Id.*

521 *Picture of Subsidized Households*, *supra* note 167 (select Year: “2020 based on 2010 Census,” Summary Level: “City,” State: “TN Tennessee,” City: “4748000 Memphis City,” and Program: “Housing Choice Vouchers”) (last visited Apr. 26, 2021).

522 *Id.*

523 *Id.*

524 *Id.*

525 *Id.*

526 *Id.*



527 Memphis Hous. Auth., *Public Housing*, [https://www.memphisha.org/programs/public\\_housing.php](https://www.memphisha.org/programs/public_housing.php) (last visited Aug. 12, 2021).

528 2020 Statement, *supra* note 517, at 3.

529 *Picture of Subsidized Households*, *supra* note 167 (select Year: “2020 based on 2010 Census,” Summary Level: “County,” State: “TN Tennessee,” County: “TN Shelby County 47157,” and Program: “Housing Choice Vouchers”) (last visited Apr. 26, 2021).

530 *Id.*

531 *Id.*

532 *Id.*

533 *QuickFacts: Memphis city*, *supra* note 514; *QuickFacts: Shelby County*, *supra* note 518.

534 Sells, *supra* note 495.

535 *QuickFacts: Memphis city*, *supra* note 514; *QuickFacts: Shelby County*, *supra* note 518.

536 U.S. Dep’t of Hous. & Urban Dev., *FY 2022 Fair Market Rent Documentation System for Memphis*, TN-AR-MS, [https://www.huduser.gov/portal/datasets/fmr/fmrs/FY2022\\_code/2022summary.odn](https://www.huduser.gov/portal/datasets/fmr/fmrs/FY2022_code/2022summary.odn) (last visited Aug. 12, 2021).

537 U.S. Dep’t of Hous. & Urban Dev., *FY 2022 Small Area FMRs for Memphis*, TN-MS-AR HUD Metro FMR Area, [https://www.huduser.gov/portal/datasets/fmr/fmrs/FY2022\\_code/2022summary\\_sa.odn](https://www.huduser.gov/portal/datasets/fmr/fmrs/FY2022_code/2022summary_sa.odn) (last visited Aug. 12, 2021).

538 *See id.* The 29 zip codes are: 38002, 38004, 38011, 38016, 38017, 38018, 38028, 38054, 38058, 38060, 38103, 38104, 38115, 38117, 38119, 38120, 38125, 38133, 38134, 38135, 38138, 38139, 38141, 38632, 38637, 38651, 38654, 38671, and 38672. We used family poverty data from the American Community Survey (2015 to 2019) to conduct this analysis.

539 *Id.*

540 *Id.*

541 The list of 27 available properties was compiled from <http://www.gosection8.com> (now [www.affordablehousing.com](http://www.affordablehousing.com)) on December 8, 2020 by searching “Memphis, TN.”

542 There were several advertisements for multiple available properties at one location.

543 *See* Memphis, Tenn. Code § 10-36-1 et seq. (2002).

544 *Id.*

545 Memphis, Tenn. Code § 10-36-3.

546 *Id.*

547 Tenn. Code Ann. § 4-21-101 et seq.

548 *See* 42 U.S.C. § 3604 (enumerating the protected classes covered by the Fair Housing Act, which are race, color, religion, sex, disability, familial status, and national origin); Tenn. Stat. Ann. § 4-21-601 (prohibiting housing discrimination on the basis of race, color, creed, religion, sex, disability, familial status or national origin).

549 Tenn. HB 593 (2021), <https://trackbill.com/bill/tennessee-house-bill-593-real-property-as-introduced-enacts-the-tennessee-source-of-income-protection-and-fair-access-to-housing-act-amends-tca-title-66-chapter-28/2019986/>.

550 Memphis, Tenn. Code of Ords. § 10-36-6(B)-(C).

551 Memphis, Tenn. Code of Ords. § 10-36-7.

552 *Id.*

553 *Id.*

554 *See* Tenn. Code Ann. § 7-51-1802 (“No local government shall by ordinance, resolution, or any other means impose on or make applicable to any person an anti-discrimination practice, standard, definition, or provision that shall deviate from, modify, supplement, add to, change, or vary in any manner from [state law.]”).

555 U.S. Dep’t of Justice, Civil Rights Division, *Fair Housing Testing Program*, <https://www.justice.gov/crt/fair-housing-testing-program-1> (last visited May 6, 2021).

556 *Id.*

557 U.S. Dep’t. of Hous. & Urban Dev., *Title VIII Complaint Intake, Investigation and Conciliation Handbook* (8024.01 REV-2) at 7-14, <https://portal.hud.gov/hudportal/documents/huddoc?id=80241c7FHEH.pdf>.

558 42 U.S.C. § 3616a(b)(2)(A).

559 42 U.S.C. § 3616a(f)(2)

560 *Id.* at § 3610.

561 Memorandum from Jeanine M. Worden, Acting Assistant Sec’y for Fair Hous. & Equal Opportunity, U.S. Dep’t of Hous. & Urban Dev., to Off. of Fair Hous. & Equal Opportunity and Fair Hous. Initiatives Program Grantees, *Testing that Qualifies as an Eligible Activity under the Private Enforcement Initiative of the Fair Housing Initiatives Program 2* (Aug. 2, 2021), <https://prrac.org/pdf/fhip-testing-enforcement-activities-aas-memo-08-02-2021.pdf>.

562 *Id.*

563 455 U.S. 363, 373-379 (1982).

564 For example, tester standing has been extended to challenges under 42 U.S.C. § 1982, the Americans with Disabilities Act and the Fair Debt Collections Practices Act, among other statutes. *See, e.g., Houston v. Marod Supermarkets, Inc.*, 733 F.3d 1323, 133033 (11th Cir. 2013) (status as tester did not deprive plaintiff of standing under the Americans with Disabilities Act); *Meyers v. Pennypack Woods Home Ownership Ass’n*, 559 F.2d 894, 898 (3d Cir. 1977) (authorizing tester standing in claims brought under 42 U.S.C. § 1982); *Church v. Accretive Health*, 654 F. App’x 990, 993-94 (11th Cir. 2016) (recognizing tester standing under the Fair Debt Collections Practices Act).

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565 See *supra* note 98.

566 This measurement was based on data from the 2017 American Community Survey, the most recent data available to the public at the time of the housing provider selection of the audit.

567 U.S. Dep’t of Hous. & Urban Dev., *Assisted Housing: National and Local Picture of Subsidized Households*, Shelby County TN 2019, <https://www.huduser.gov/portal/datasets/assthsg.html>.

568 U.S. Dep’t of Hous. & Urban Dev., *HUD Metropolitan Fair Market Rent/Income Limits*, Memphis, TN-MS-AR HUD Metro FRM Area, 2019, <https://www.huduser.gov/portal/datasets/il.html>.

569 However, as described throughout this report, properties are not pre-approved by the MHA. Once an application has been accepted by the housing provider, the unit is then inspected by the MHA and subject to approval for the applicant to move in.

570 2020 Statement, *supra* note 517, at 2.

571 See, e.g., Sydney Bennet, *How Does Seasonality Impact Rent Prices?*, Apartment List (Feb. 6, 2018), <https://www.apartmentlist.com/research/best-time-of-year-to-rent>.

572 HUD’s Second Chance Housing Program provides housing for teenage mothers and their children who cannot live at home because of abuse, neglect, or other extenuating circumstances. U.S. Dep’t of Hous. & Urban Dev., *About Second Chance Homes*, [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/other/sch/about](https://www.hud.gov/program_offices/public_indian_housing/other/sch/about) (last visited Apr. 20, 2021).

573 *Picture of Subsidized Households*, *supra* note 167.

574 Rachel Siegel & Andrew Van Dam, *3.8 million Americans sought jobless benefits last week, extending the pandemic’s grip on the national workforce*, Wash. Post (Apr. 30, 2020), <https://www.washingtonpost.com/business/2020/04/30/weekly-jobless-claims-unemployment/>.

575 U.S. Bureau of Lab. Stat., *245 metro areas had unemployment rates below 6.2 percent U.S. rate in March 2021*, TED: The Economics Daily (May 4, 2021), <https://www.bls.gov/opub/ted/2021/245-metro-areas-had-unemployment-rates-below-6-2-percent-u-s-rate-in-march-2021.htm>.

576 Fair Housing Improvement Act of 2019, H.R.3516 — 116th Congress (2019-2020).

577 U.S. Dep’t of Hous. & Urban Dev., *Learn About the FHEO Complaint and Investigation Process*, [https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/complaint-process](https://www.hud.gov/program_offices/fair_housing_equal_opp/complaint-process) (last visited Aug. 16, 2021).

578 Vale, *supra* note 6, at 9.

579 Matthew Desmond, *Evicted: Poverty and Profit in the American City* 308-309 (2016); see also Philip Tegeler, *Housing Choice Voucher Reform: A Primer for 2021 and Beyond* 5, PRRAC (2020), <https://www.prrac.org/pdf/housing-choice-voucher-reform-agenda.pdf>.

580 Vincent Reina et al., *Exploring a Universal Housing Voucher*, Hous. Initiative at U. Penn (2021), <https://www.housinginitiative.org/universal-voucher.html>.

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581 Nat’l Low Income Hous. Coal., *President Biden Signs into Law FY22 Spending Bill with Increased Funding for Housing* (Mar. 14, 2022), <https://nlihc.org/resource/president-biden-signs-law-fy22-spending-bill-increased-funding-housing>; see also Consolidated Appropriations Act, 2022, H.R. 2471, 117th Cong. § 6 (2021).

582 Linda Giannarelli, Laura Wheaton & Katie Shantz, *2021 Poverty Projections*, Urban Inst. (2021), [https://www.urban.org/sites/default/files/publication/103656/2021-poverty-projections\\_1.pdf](https://www.urban.org/sites/default/files/publication/103656/2021-poverty-projections_1.pdf).

583 See, e.g., Cunningham et al., *supra* note 166, at 67; see also Ctr. on Budget and Pol’y Priorities & PRRAC, *A Guide to Small Area Fair Market Rents (SAFMR)* (May 4, 2018), <https://www.cbpp.org/research/housing/a-guide-to-small-area-fair-market-rents-safmrs>.

584 Tegeler, *supra* note 579, at 6.

585 See *id.*

586 *Id.* at 6-7.

587 See, e.g., Rosen, *supra* note 2, at 248; Tegeler, *supra* note 579, at 12-13; Sard & Thrope, *supra* note 269.

588 Tegeler, *supra* note 579, at 12-13.

589 *Id.* at 810.

590 *Id.*

591 See, e.g., Tegeler, *supra* note 579, at 14-15; Cunningham et al., *supra* note 166, at 68.

592 U.S. Comptroller General, B-171630, *Major Changes are Needed in the New Leased-Housing Program* 44 (1977), <https://www.gao.gov/assets/ced-77-19.pdf> (stating that PHAs could promote greater choice of housing by “advising families of their opportunity to lease housing in all such areas”).

593 See, e.g., Tegeler, *supra* note 579, at 9; Cunningham et al., *supra* note 166, at 68.

594 Tegeler, *supra* note 579, at 9.

595 U.S. Dep’t of Hous. & Urban Dev., *Housing Choice Voucher (HCV) Mobility Demonstration*, [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/hcv/mobilitydemo](https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/mobilitydemo) (last visited Aug. 13, 2021).

596 *Id.*

597 *Id.*

598 *Section 8 Housing Choice Vouchers: Implementation of the Housing Choice Voucher Mobility Demonstration Program*, 85 Fed. Reg. 42890 (July 15, 2020), <https://www.federalregister.gov/documents/2020/07/15/2020-15037/section-8-housing-choice-vouchers-implementation-of-the-housing-choice-voucher-mobility>.

599 *Id.*

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