

Larry Southall
11560 SE Stark
Portland, OR 97216

9 May 2012

To Portland City Council

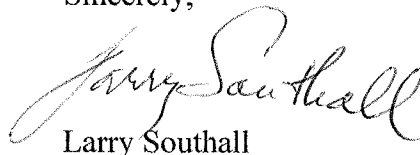
Dear Mayor Adams and Fellow Council Members,

I am a rental property owner in Portland and have been actively engaged in the controversy surrounding the very unfair discrimination audit testing performed by the Fair Housing Council of Oregon in 2010-11. As you know, the test summaries from FHCO showing 64% discrimination levels in the tests were discredited by BOLI's review last August. After obtaining the original test documents from BOLI as public information in January, I was shocked by the disparities between FHCO's summary statements and the statements of the testers themselves. This prompted me to complete a detailed analysis of all (32) test cases claimed as positive for discrimination by FHCO, and also complete a review of the 2011 Analysis of Impediments Report. In large part, the AI Report was wrapped around FHCO's test summaries.

I have submitted my review, which included detailed requests for retraction and correction of the false information embedded in the AI Report and derived Action Plan, and received a courteous letter from Commissioner Fish denying my requests. I am turning to the Council for help in obtaining honesty and fairness on this issue.

I have included my working notes on ten of the test cases in question. The original test documents can be obtained by contacting Kate Newhall in the Commissioner's office at BOLI. Her email is kate.newhall@state.or.us. I hope you will request your own set of original documents from Kate and contact me regarding how you might help us obtain fair treatment.

Sincerely,



Larry Southall

A Review of the *Analysis of Impediments to Fair Housing Choice Report* for Portland/Gresham/Multnomah County, 2011

The principle of fair housing is critically important to all of us, including members of the housing industry. Congress acted over forty years ago to make this point: Americans have a fundamental right to seek and obtain housing without impediments because of who they are or what they believe. The Fair Housing Act came from a time when many homeowners, tenants, and housing providers challenged that point, openly and covertly. Housing providers then were no better or worse than the society to which they belonged, and the same is true today. Our society has changed dramatically since 1968, and few today challenge the principle of fair housing; it is generally held to be a fundamental right of free people. The struggle to establish that right in the 1960's has been superseded by a new struggle: How to ensure that right, today and in the future; how to define and set boundaries to that right; how to require respect for that right from all Americans, and when and how does that right trump or bend to other rights held equally dear.

Facing strong opposition to integration in public and private housing, Congress wrote several broad directives into the FHA in 1968. They proscribed speech, both written and verbal, that was discriminatory against a person due to his race, color, religion, sex or national origin within the context of seeking, obtaining, and enjoying housing. They gave the Department of Housing and Urban Development broad powers and responsibilities to educate, regulate and enforce, and they sanctioned the use of non-government entities in the promotion and enforcement of fair housing law. In their eyes, these were necessary tools to meet the opposition to integrated housing within the society of their day. They were upholding a compelling obligation to end bitter discrimination and extend fair housing rights to all Americans.

Our struggle four decades later is quite different. Racial discrimination in housing is at an all-time low. Most housing discrimination claims are over disability and alleged failures to fairly accommodate it. The definition of discriminatory language has crept from blatant racial slurs to subtle, chilling phrases like, "this place would be great for a family," or "this house has a great view". Four decades of case law have made the subject of compliance the domain of specialized attorneys, and housing providers constantly jump through ever more costly hoops to prevent a discrimination claim. God help you if you have to defend against one. HUD issues guidance on a regular basis to address the constant changes in interpretation, both the courts' and theirs. Non-government fair housing advocates have become an industry unto themselves, aggressively seeking judicial confirmation of their newest subjective interpretations of the FHA, and operating as HUD's paid bounty hunters. Housing providers are no longer seen as an integral part of society, reflecting what bias might remain in society at large, but as the source of that bias. After four decades, the principle of fair housing has floundered with ambition that overleaps itself and falls upon the other side.

A short list of the very real impediments facing housing providers today is:

- 1) Overly broad statutes.
- 2) The complexities of judicial interpretation in case law.
- 3) Real confusion regarding compliance in detail.
- 4) Aggressive, subjective interpretations by fair housing advocates.
- 5) A culture of bias within government and non-government agencies.
- 6) Intimidating, over-the-top enforcement with little or no due process.
- 7) A paralyzing inability to stand up and oppose fair housing abuse.

If fair housing laws and compliance were clear, straightforward and enduring, we would have far fewer cases of alleged non-compliance. The assertion that non-compliance is rampant and driven by “historical and institutional racism in the housing industry” is just not true. If enforcement were as fair as the principle it purports to defend, and relied on due process instead of intimidation, there would be more successfully defended cases and far lower costs born by all. If non-government fair housing advocates backed away from enforcement and did a better job of educating, housing costs in America would actually go down. If cities and counties and states listened to housing providers and proactively addressed their concerns, agency bias might evaporate, and the challenges of ensuring fair housing might be met together.

In the spirit of proactive cooperation, we have prepared this review of the metropolitan area’s *Analysis of Impediments to Fair Housing Choice Report* for 2011 (*AI Report*), and submit it to the jurisdiction members for this consideration: the local housing industry was seriously maligned by some of the *Report’s* statements and conclusions based on faulty and misrepresented data; we seek retraction and correction of the statements, conclusions and data identified in this review.

REVIEW

Through application of various tools, including a housing discrimination audit test, seven impediments were identified in the 2011 *AI*:

- 1) Discrimination in housing
- 2) Fair housing understanding
- 3) Areas of reduced access to opportunity
- 4) Insufficient fair housing data
- 5) Shortage of accessible, affordable housing stock
- 6) Unintended gentrification through policies
- 7) Low-income and vulnerable populations

We would agree that all of these represent impediments to fair housing choice, and further agree with many of the recommendations proposed in the *AI* to reduce them. Rather than review all the recommendations, we will focus on those we feel derive from incorrect data or conclusions.

Discrimination in Housing

The metrics used to gauge levels of illegal discrimination were the complaint data of the various agencies involved in fair housing enforcement and the audit testing data submitted by the Fair Housing Council of Oregon (FHCO). These sets of data are plagued by inadequate and less-than-factual representation.

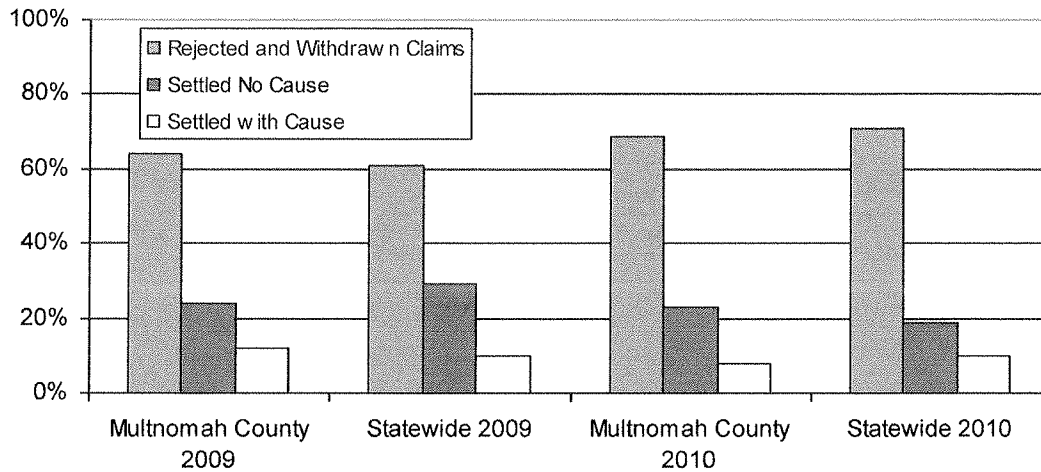
Raw Complaint Data

For example, the complaint data of five separate agencies are tabulated in pages 72 through 78 and in Appendix C. However, many of the complaints were referred from one agency to another and are counted two or even three times. In Table 18, it is reported that HUD received (75) complaints in 2009/2010, and the Bureau of Labor and Industries (BOLI) received (68). The total of (143) complaints is reported as an aggregate, when, in fact, all (68) of the BOLI cases were referred to BOLI by HUD, and appear in the HUD count, as well. They were counted twice on every line of the table. To make matters worse, at least (53) of these cases were referred to HUD/BOLI by FHCO and were also included in FHCO's complaint count in Table 20. No effort was made to reduce these complaints to a single set of alleged discrimination events with redundancies removed. This grossly overstated the number of these alleged discrimination events by a factor of at least 261%. If raw complaint data is to be used, it is critical to remove redundant counts. The total number of complaints arriving at BOLI, the state-authorized investigating agency, over the two-year period was only (68), quite low for the hundreds of thousands of housing interactions in Multnomah County during the same period.

Also, insufficient effort was made to grade the complaints according to merit and outcome. Some of these complaints represented potential acts of illegal discrimination, but the vast majority did not. For this reason, they make a very poor metric of actual discrimination levels. From an analysis of closed case dispositions at BOLI for both Multnomah County and the entire state of Oregon in 2009 and 2010, on average, 66% of the complaints were rejected or withdrawn, 24% of the complaints were settled by the defendant without any finding of substantial evidence, and only 10% of the complaints were settled with findings or indications of substantial evidence (See chart below).

The actual counts of Multnomah County cases settled at BOLI with findings or indications of substantial evidence were (4) cases in 2009 and (2) cases in 2010, which are arguably more reliable metrics of *potential* discrimination than raw complaint counts. Again, relative to the number of housing transactions, these numbers are exceedingly low. So low as to indicate real housing discrimination in Multnomah County is actually quite rare (See table below). Unfortunately, the *AI Report* does not arrive at this conclusion.

Housing Discrimination Claims Closed by BOLI in 2009 and 2010



		2009	2010
*	Total rental units in Multnomah County	~125,000	~125,000
x	Vacant units at any time 5.5% rate for 2009 and 4.55% for 2010	6,875	5,688
x	Total units vacated and re-rented 26-day turnover in 2009 and 19-day in 2010	96,514	109,260
	Total showings Based on average of 3 per re-rented unit	289,543	327,780
*	Discrimination claims received by BOLI	33	35
*	Cases resolved by settlement at BOLI	12	8
*	Substantial evidence cases resolved by settlement at BOLI	4	2

(*) From figures reported in the 2011 AI

(x) From MMHA Apartment Report Fall 2009 and Fall 2010

A BOLI finding of substantial evidence is analogous to a grand jury finding of sufficient evidence to justify a criminal indictment. It is not a finding that illegal discrimination actually occurred. Following a finding of substantial evidence, a hearing before an administrative law judge or a trial in civil court is required to prove illegal discrimination occurred. There has never been a hearing at BOLI in a housing discrimination case. Almost uniformly, defendants in substantial evidence cases have chosen to settle with the complainant because the cost of legal defense is so high. For

example, the defendant chooses between settling for \$5,000 to \$15,000 vs. going to hearing at an estimated legal cost of \$20,000. Even with his own attorney's assurance of success at hearing, a defendant is prone to settle, especially if an insurance company is involved. To our knowledge, all defendants to date have done so, except one in 2009 who refused to settle, faced the complainant in civil court and fought the case to a withdrawal. There is more of expediency than justice in the outcome of claims at BOLI. Nonetheless, as a metric of housing discrimination, BOLI findings of substantial evidence are far more accurate than raw complaint count.

On p. 77, "In Multnomah County, according to the 2009 U.S. Census, approximately 26.4% of the population identifies as non-White. Given the relative percentage of persons of color in the County, this group is disproportionately represented in the number of complaints of illegal housing discrimination submitted, especially given the number of cases that go unreported." Since LASO is the sole agency that reported race of complainants, it is difficult to tell how this conclusion was reached. If it was reached over the number of complaints based on Race/Color, it mistakenly assumes there should be parity between the ratio of non-Whites-to-Whites in the community and the ratio of Race/Color-complaints-to-all-complaints. This would only be true if there were just two bases for discrimination complaints: Race/Color and White. Nonetheless, the ratio of Race/Color-complaints-to-all-complaints from four agencies is 76:442 or 17.2%, which is 9.2 points lower than the non-White population. This statement is in serious error and needs to be removed.

On p. 78, "Similarly, the number of complaints for persons with disabilities is also very high given the estimate that only about 16% of the county's population identifies as having a disability." In referencing the ratio of disabled-to-total-population, this statement is similarly illogical and needs to be re-stated. Nonetheless, it does point to the fact that (323) of the (542) complaints reported by all five agencies (redundancies retained) are based on disability. This is an alarmingly high ratio of disability complaints, and underscores the likelihood for housing providers to be challenged in the most confusing and unsettled area of fair housing law.

In Table 20, LASO reports that (121) of its (151) complaints were based on disability. LASO also reports in Appendix C under Alleged Acts associated with all complaints, (34) were over Reasonable Accommodation and (77) were over Eviction. It is assumed from their report that the majority of disability complaints at LASO involved eviction actions in which the tenant counterclaimed the eviction was due to a disability. Since only (40) of all LASO complaints resulted in Successful Negotiation/Litigation, and these are not correlated to Alleged Acts, it can only be said that most of these disability counterclaims were lacking in merit. It is suggested that LASO clarify by correlating Disability complaints with Alleged Acts and Case Outcome. In comparison, Disability Rights Oregon reports in Table 19 that only (16) of its (100) disability complaints involved Evictions, and (53) were over Reasonable Accommodation.

Unreported Cases

In several instances, the *Report* refers to a high ratio of unreported vs. reported cases of housing discrimination. For example, it is stated on p. 75, "Trends and estimates from the state suggest that only about 22% of possible complaints are reported", a 4.55 ratio of unreported-to-reported cases. This statement morphs from one on p. 23 of the 2005 AI Report, "Studies conducted at the State level suggest that only about 22% of the people who may experience housing discrimination actually report their experiences." The study referenced is a telephone survey of (385) Oregon citizens conducted by the state in preparing the State AI Report for 2005, in which they were asked their opinion of whether or not they would report housing discrimination against themselves, should it ever occur. In contrast, on p. A-7, in a presentation by FHCO to the Advisory Committee, "Studies show that *only one in ten people* who experience discrimination actually end up reporting it," a ratio of 10:1. Although we requested references to these studies from FHCO, we did not receive any response. Unless this ratio of unreported-to-reported cases can in some way be substantiated, the statement about a 10:1 ratio should be removed.

Audit Testing Data

To provide data for the *AI*, the City of Portland contracted with FHCO to perform "audit testing" of illegal discrimination by sending out undercover testers ostensibly looking for rental housing, but in fact only looking for evidence of illegal discrimination. They used the technique of "parallel testing", in which a Hispanic or black tester was followed by a white tester to gauge discriminatory treatment from an unsuspecting rental property manager. FHCO submitted a summary of the results, included in the *AI*, showing that 64% of the tests supported evidence of discriminatory treatment. FHCO did not release the actual test narratives, only the summary. It is doubtful that the City read any of the actual test narratives before incorporating the test summary data into the *AI* and submitting it to HUD in June. This was an unfortunate oversight, as the test summary figures proved unreliable, at best. Pressed by the City to investigate the test cases, BOLI requested, then subpoenaed the original test documents from FHCO, and analyzed them toward further investigation. BOLI released their analysis to the press in late August, discrediting most of FHCO's conclusions and raising questions about their test methodology and reporting. Also during August, the City of Portland suspended contract negotiations with FHCO for more audit testing after finally reading the original test documents.

Being part of a closed case file at BOLI, the original test documents have been released as public information. Upon perusing them, one might conclude that BOLI was overly kind in their analysis. In our opinion, an objective reader would rate that three to five of the fifty tests *might* indicate some low level of bias based on race or national origin. In our opinion, none of the tests would come close to meeting BOLI's state-mandated standards for substantial evidence. This is a far cry from the 64% evidence of discrimination reported by FHCO.

Promoting the objectivity of FHCO's test methodology, on page 78 the *Report* states, "For each paired test, two testers ... were sent to the same property to gather information about available units ...", and, "Testers were also sent to speak to the same provider agent." On page 79, "Six tests were inconclusive, meaning that disparate treatment could not be determined because the testers ended up speaking to different housing provider agents." On page A-7, Appendix A, from a presentation by FHCO to the Advisory Committee, "Tests were done using the same agent at the same property..." From the following reviews, it is obvious these guidelines were not upheld.

BOLI reviewed (20) of the (32) cases claimed by FHCO as showing evidence of discrimination. Of the (20) cases, (15) were rejected by BOLI, (3) were acknowledged as showing evidence, and (2) were neither accepted nor rejected. Of the (12) cases not reviewed by BOLI, our own review acknowledged (1) as showing evidence.

From our own detailed review of all (32) evidence cases, we found that:

- The testers met with different agents in (8) cases.
- FHCO reversed tester statements in (11) cases.
- FHCO made conclusions not in evidence in (17) cases.
- Difference in treatment was not adverse or based on a protected class in (4) cases.
- Material documents received by testers were not used or released in (11) cases.
- Test was performed, in whole or in part, by telephone in (3) cases.
- No test report was available from the Protected Tester in (1) case.

The first three of these were the most damaging to FHCO's findings in both BOLI's review and ours. An example of reversed tester statement is FHCO's assertion in two tests that both protected testers were *not* offered a two-months-free-rent move-in special, when both testers clearly stated in their reports *they had been offered the special*. To have this occur once is unsettling, but to have it occur in (11) of the (32) cases is indefensible.

We are glad to defer to BOLI's analysis for the purpose of this review, as they are the only agency in Oregon authorized by the State to investigate complaints of housing discrimination toward a determination of substantial evidence. Their analysis gives sufficient reason to remove the FHCO test data from the *AI* altogether as simply not credible. These data are reported in the *AI* on pages 78 through 80, pages A-7 through A-8, and in Appendix D.

Following the BOLI analysis discrediting FHCO's test summaries, staff and supporters of FHCO have taken the position that the tests merely showed *different treatment* of the testers, backing away from their original assertions of *discriminatory treatment* to the City and press. However, the language in the *AI* is quite clear: "Thirty-two of the 50 tests had positive results, showing discrimination" (p 78). Table 21 categorizes the tests as "Positive Result – Shows Discrimination, Negative Result – Does Not Show Discrimination, or Inconclusive", (p 79). Perhaps the most outrageous is, "These data sets show an alarming number of cases of discrimination in housing. The

audit testing done by the Fair Housing Council of Oregon especially gives *concrete examples of the historical and institutional racism in the housing industry* that continues in Oregon and Multnomah County today.” (p 80, with italics added). In fact, the audit testing showed nothing of the kind.

These audit test reports provoked an alarming response from jurisdiction officials and stakeholders in the non-profit housing community: They always suspected it was bad and now their suspicions were confirmed. This response permeated much of the *AI Report*, purportedly an analytical document, at times coloring it more a diatribe supporting a predetermined conclusion. An offensive picture appears on page 81, without caption, explanation or credit, obviously included for shock value, and without any concern for the housing industry’s image. The picture depicts a sign with large black letters on a white background topped by two small American flags. The sign reads, “WE WANT WHITE TENANTS IN OUR WHITE COMMUNITY”. There was no indication of where this picture was taken, or when, and no indication of what it had to do with housing in Portland, Oregon in 2011. Upon investigation, it was found to belong to the federal government, taken at a public housing project in Detroit in 1942 during violent protests against proposed integration. The sign was erected by tenants. Contrary to staff assertions, this picture does not demonstrate our city’s dedication to eradicating discrimination. It is inflammatory, maligns the housing industry and our city, and needs to be removed.

Sign erected by tenants at a federal housing project in Detroit in 1942, included in the *AI Report* on p. 81 without caption or explanation:



On p. 82, "As shown in Section III of this Plan, audit testing conducted by the Fair Housing Council of Oregon for FY2010-2011 shows patterns of discrimination throughout the city. This data set shows an important need for continued testing to discover these trends of discrimination that otherwise may go unnoticed or unreported. Several of the testers experienced different terms and conditions when seeking housing, but would never have known if it were not for the control tests." This statement should be removed as untrue.

On p. 88, "In the Audit Testing the Fair Housing Council of Oregon conducted in 2010, fair housing violations were found when housing providers gave different information to the two testers: Agent did not offer laminated floor plan and brochure to Protected Tester but did to Control Tester. Agent volunteered positive information about unit to Control Tester but needed to be prompted by Protected Tester in order to give info. These actions may not have been deliberate acts of discrimination, but rather the housing providers simply may not understand that their services and communications must be consistent among housing consumers to avoid disparate treatment." This statement needs to be removed as untrue.

On p. 100, "The small complaint numbers for some classes do not necessarily mean these groups are not facing discrimination in housing. The complaint data from Fair Housing Council of Oregon shows significant levels of possible discrimination, such as 21 claims of discriminatory treatment on the basis of National Origin over a two year period. However, from the audit testing data also outlined in Section III, the problem of discrimination based on National Origin is a much more serious problem. In just 25 tests for this Protected Class, 17 showed positive results for discrimination." This statement should be removed as untrue.

Requested Changes to AI Report Recommendations

From Table 29 of the *Report, Identified Impediments and Recommendations*.

Under Impediment A, Discrimination in Housing:

Recommendation 2. "Commit to county-wide funding and support to continue and enhance enforcement of fair housing laws."

We request you add the clause, "with safeguards to protect housing providers from unwarranted accusations and ensure due process."

Recommendation 3. "Conduct audit testing to document discrimination against Protected Classes seeking housing, with special focus on homeownership and affordable rental units."

We request you add the clause, "with safeguards to ensure fairness, objectivity and transparency to the entire housing community."

Under Impediment D, Fair Housing Data:

Recommendation 1: “Fund audit testing for all areas of the County using the most inclusive list of Protected Classes to document discrimination.”

We request you add the clause, “with safeguards to ensure fairness, objectivity and transparency to the entire housing community.”

We also request you add,

“Recommendation 5. Establish count of cases determined to have substantial evidence by BOLI as the primary metric of discrimination levels throughout Multnomah County, with raw complaint data and audit testing data as secondary indicators.”

Requested changes to the Fair Housing Action Plan derived from the AI Report

I. End Discrimination in Rental Housing:

1. *Work with partners to secure County-wide funding and support to continue and enhance enforcement of fair housing laws.*

Action Step A. “Work with the Civil Rights Division of the Oregon Bureau of Labor and Industries (BOLI) to ensure that discrimination complaints are appropriately addressed.”

We request you add the clause, “and fairly investigated, with safeguards to protect housing providers from unwarranted accusations and ensure due process.”

Action Step D. “Convene and actively participate in regular meetings with BOLI, HUD, the United States Attorney, and the Oregon Department of Justice to better coordinate enforcement of our Fair Housing laws.

Outcome: Better coordinated enforcement will increase the number of litigated Fair Housing cases referred by PHB contractors by the end of the June 2012.”

We request you add, “housing provider representatives” before BOLI, and the clause, “with assurances of due process and equal access to justice for both complainants and respondents.”

We request you delete the sentence, “Better coordinated enforcement will increase the number of litigated Fair Housing cases referred by PHB contractors by the end of June 2012.”

3. *Conduct audit testing to determine discrimination levels for Protected Classes seeking housing, with special focus on homeownership and affordable rental units.*

Action Step A. “Contract annually with a HUD-approved agency to conduct Fair Housing testing. At least annually, the newly-formed Fair Housing Advocacy Committee will review the results and release them to the public.

Outcome: Reliable and independent information about possible fair housing violation trends in rental and ownership housing.”

We request that you replace the term, “HUD-approved agency” with, “fair and objective provider”, and add the clause “with safeguards to ensure fairness, objectivity and transparency to the entire housing community” at the end of the first sentence.

III. Strengthen Public Awareness Of Fair Housing Laws

1. *Partner with landlord trade associations and other community organizations to ensure frequent and accurate trainings for property managers, owners, regulators and social service providers to understand Fair Housing law and reasonable accommodations and modifications.*

Action Step A. “Work with Metro Multifamily Housing Association, Oregon Opportunity Network, Home Forward and the Fair Housing Council of Oregon to increase Fair Housing education for landlords.

Outcome: The increased investment in Fair Housing-specific training to landlords as part of membership in each association will result in a quantifiable increase in training opportunities by the end of the fiscal year.”

We request that you add, “Rental Housing Association of Greater Portland” after Metro Multifamily Housing Association.

Action Step A (sic). “Actively participate in regular meetings with BOLI, HUD, the United States Attorney, and the Oregon Department of Justice to better coordinate enforcement and education of Fair Housing laws.

Outcome: Better coordinated enforcement and education will increase the number of litigated Fair Housing cases referred by PHB contractors by the end of the June 2012.”

We request you add, "housing provider representatives" before BOLI, and the clause, "with assurances of due process and equal access to justice for both complainants and respondents."

We request you delete the sentence, "Better coordinated enforcement and education will increase the number of litigated Fair Housing cases referred by PHB contractors by the end of the June 2012."

V. Expand Fair Housing Testing

1. *Work with partners and the Fair Housing Advocacy Committee to design and secure funding for audit testing for all areas of the county using the most expanded list of protected classes to determine levels of discrimination.*

Action Step A. "Contract annually with a HUD-approved agency to conduct Fair Housing testing. Each year the Fair Housing Advocacy Committee will review the results and release them to the public."

We request that you replace the term, "HUD-approved agency" with, "fair and objective provider", and add the clause "with safeguards to ensure fairness, objectivity and transparency to the entire housing community" at the end of the first sentence.

CONCLUSION

Studying and reviewing the *AI Report* has been a tedious but learning experience. In particular, we were struck by the responses to one question in the (63) interviews of housing industry stakeholders in Appendix B. Each person was asked the question, "What population or populations in Multnomah County face the greatest challenges finding desirable homes to rent or buy?" We would like to close with a few of those answers:

A representative from the Portland Commission on Disabilities answered, "People with disabilities".

Representatives from the Asian Family Center answered, "new comers from African, Russian, Hispanic, Asian, Asian Pacific Islander."

A Portland disability coordinator answered, "People who use mobility devices, the deaf, the blind or people who have chemical sensitivities."

A businessman who employs mostly African American and Mexican American workers answered, "African Americans and Mexican Americans."

A person who works with homeless youth answered, "People who are currently homeless."

A person from the Multnomah County Equity office answered, "People of Color."

A representative from the Native American Youth and Family Center answered, "Communities of color, in particular Native Americans."

A representative from the rental housing industry answered, "People who do not meet the basic screening criteria."

A representative from an LGBTQI retirement community answered, "LGBTQI who need care."

A pastor who works with homeless people answered, "Felons. No ID. Transgender. Credit Error in past."

A mental health professional answered, "People with mental and cognitive health issues."

A bank mortgage officer answered, "The Latino and Black community and recent immigrants (mostly those of color)."

A person who works with the Q Center answered, "LGBTQI population."

A professional property manager answered, "Individuals with screening issues."

A representative from the African American Alliance for Homeownership answered, "African Americans."

A person who works with survivors of crime and people convicted of crime answered, "Ex-offenders."

A person who works with homeless youth answered, "Seniors, people without rental history and students."

A representative from Elders in Action answered, "Middle income households and retirees face the most difficult challenges."

A representative from the PSU Center for Aging answered, "People on a fixed income."

A representative from ARC answered, "People with disabilities and on Social Security Income."

A representative from a neighborhood association answered, "The City needs to focus more on neighborhoods."

A representative from the Housing Authority of Portland answered, "The unemployed and homeless."

A representative from the Office of Neighborhood Involvement answered, "Trafficking victims, homeless, homeless youth especially."

A representative from a non-profit providing housing to people with disabilities answered, "People with disabilities."

A small-time landlord who was not interviewed would have answered, "Poor people."

From these varied responses, one could conclude it is difficult for us to address this issue outside of our own perspective. This makes it even more important that all voices in the discussion are fairly heard and objectivity remains our goal.

Submitted by:

A handwritten signature in cursive script that reads "Larry Southall". The signature is written in dark ink and is positioned above the printed name and title.

Larry Southall
Portland Rental Property Owner
28 March 2012

Portland Audit Test Working Notes

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In Appendix D of the Portland AI, under "Positive Test Results Expanded", brief statements are made about each of the (15) Race tests and (17) National Origin tests judged positive for discrimination by Fair Housing Council of Oregon (FHCO). I am presenting here (10) typical test cases. FHCO's statements about each case are underlined and italicized, followed by my notes from reviewing the actual test documents.

Race

1. *Agent told PT (Protected Tester) that the unit was available a week later than what agent told CT (Comparative Tester). Agent also disclosed an application fee to PT and not to CT. Agent was clearly less friendly towards the PT and very friendly towards CT.*

According to the test summary report released by FHCO, this is test number POR 10011, performed in person at Sunshine Meadows Apts. The original test documents show FHCO's statements about this test are seriously flawed: The agent actually told the PT the apartment would be available *a week earlier* than what agent told the CT, *not a week later* as stated above. The PT viewed the property on 6/29, the CT on 6/30, and the apt was still occupied. Agent told PT it would be available on 7/7, but moved the date to 7/14 when talking to the CT one day later, possibly due to new developments.

The agent actually *discussed the application fee with the CT and the PT gave no record of a similar discussion*, not vice versa as stated by FHCO. Agent gave both testers an application, which should have shown any required application fees in writing; however, FHCO apparently did not surrender these documents to BOLI. Incredibly, it is clear that in preparing the summary, FHCO staff *actually reversed the PT and CT statements*.

BOLI's analysis of this case states, "A review of the actual tester narratives does not appear to demonstrate facts sufficient to support a similar conclusion by this agency. The narratives from the protected class tester and the control tester

indicate that they were both given applications, and the same information regarding rent and deposits. The protected-class tester's narrative describes the agent as "not very friendly," but offers no descriptive information supporting the statement, while the control tester's narrative offers no suggestion that the agent was "friendly" to that tester." And yet FHCO states, *Agent was clearly less friendly towards the PT and very friendly towards CT.*

2. *Agent asked more questions of PT regarding ability to pay rent before showing unit. Agent disclosed to CT that rent included water/sewer/garbage but did not disclose to PT. CT was encouraged to apply while PT was not.*

This is test number 10012, performed in person at Arbor Glenn Apartments. BOLI's analysis of this case states:

"FHCO's summary characterized the onsite test as positive for race discrimination, finding that the agent screened the protected-class (Black) tester by using more personal questions prior to showing the unit. A review of the actual tester narratives does not appear to demonstrate facts sufficient to support a similar conclusion by this agency. The narrative from the protected-class tester indicates that the agent asked the tester for ID to hold during the tour of the property, and also asked:

??if the tester would meet the income qualifications;

??how many people would be living in the unit;

??how the tester found out about the unit;

??why the tester was moving;

??where the tester worked.

The narrative from the control (Caucasian) tester indicates that the agent asked the tester for their ID, that the tester gave their ID to the agent, and that the agent also asked:

??how the tester found out about the unit;

??if the tester would meet the income qualifications;

??what the tester did for employment;

??whether the tester's salary included tips.

While the testing narratives do suggest that there was some difference in the information requested of the testers, it is not clear that there was any qualitative distinction in those requests, or that any difference in the questions was based on race."

In the actual test documents, it is stated that the agent asked both PT and CT about their incomes because *the property is an income restricted property, not because she was questioning their ability to pay rent.* Both testers were treated in a cordial and businesslike manner, and both were given lots of positive verbal information about the property. The CT does report the information about W/S/G and the PT does not, but it is possible both were given the information and the PT did not recall this detail when writing her report. Both the PT and CT were given applications and encouraged to apply. The PT states in her report, "she thanked me for coming and said I should turn in my application soon because their

properties go quickly.” Incredibly, despite this statement, FHCO concluded *CT was encouraged to apply while PT was not.*

3. *Agent disclosed move in special of 2 months free rent to CT but not to PT. Agent also told CT about other available units but did not for protected tester.*

This is test number POR 10021, conducted in person at the Park Village Apartments. Three testers were sent to this property, as well. A black and a Hispanic tester met with an agent at different times on 10/7/10, and a white tester met with the same agent on 10/8. The black tester narrative states, “Received call from manager the next day (which would have been 10/8) thanking me for coming in and encouraging me to get application in ASAP... Also mentioned that if we get our application in quickly we might be able to get two free months rent.” The Hispanic tester states he was told, “talk to your wife and you know this is a very good deal if you rent the apartment for one year you are paying just 10 months or rent (sic).” The white tester states that on 10/8, “He said that there were two units currently available; a one-bedroom studio and a two-bedroom. The one bedroom had a move-in bonus of one-month free rent and the two bedroom had a bonus to two months free rent.” Incredibly, despite these statements, FHCO claimed that *the agent did not disclose the move-in special to the black and Hispanic testers.*

BOLI’s analysis of this case states,

“Given tester narratives that clearly contradict the conclusions reported by Fair Housing Council of Oregon, this test should be disregarded as a possible source of evidence supporting any allegations of unlawful discrimination.”

4. *Agent quoted a higher amount for rent to PT. Agent did not give an application to PT while CT was given one with agent stating “I don’t usually give out applications.” Agent also told CT that most of deposit would be refunded and that there was a 12-month lease, information not provided to PT.*

This is test number POR 10018, performed in person at Terwilliger Terrace Apartments. The PT visited the site on 10/6/10 and the CT visited on 10/8/10. Both dealt with the same agent. PT states in his narrative that he was “encouraged to get applications filled out completely soon as few apartments come open”, and that the agent “Called again next day to encourage me once again to get application in quickly”. Later in his report, he answered the question, “Did you receive an application?”, yes, by changing to bold font the word Yes in the questionnaire. He uses this same method of answering all the Yes/No questions in the questionnaire. Incredibly, *despite these clear indications that he did receive an application, FHCO stated that he did not*, claiming that as evidence of discrimination.

The CT also received an application, and quoted the agent saying, "I usually don't give them out". The applications received by both testers should have contained or been accompanied by written notification of rent, deposit and fees. There is a discrepancy in what the testers report being told verbally: the PT reports the rent as \$655 and the CT as \$635, however, it was clear the testers were shown different apartments, which could have slightly different rents. As no units were available for viewing on 10/6, the PT was shown the manager's own apartment as typical. Also, the agent was not sure when one would be available, but expected one open by 10/15. On 10/8, the CT was shown a different unit, 9b, "downstairs", where the current occupants were in the process of moving out. She said 9b would be available 10/13 and another unit with a fireplace would be available the end of October. It is typical for many complexes that rents vary slightly due to location (upstairs vs. downstairs), floor plan, and amenities (such as fireplaces).

5. Agent disclosed many more positive features about both property and neighborhood to the CT than to the PT.

This is test number POR 10046, conducted in person at the Uptown Arms. Both testers met with the same agent on the same day. These appear to be the same testers who performed test POR 10051, and they reported in the same styles: the PT writes a great deal and includes many details, while the CT uses fewer words and less detail. The lack of objectivity by FHCO staff in evaluating these reports is even more pronounced. Even though the PT gives many examples in detail of positive features disclosed by the agent, these were apparently not noticed by FHCO staff.

The PT states, "She told me to make myself at home and check out everything I wanted to see... The windows of the living room and dining room area were facing the north direction of the building and (the agent) explained how you have a great view of the Fremont Bridge. She also pointed out from the window how we could see the rooftop terrace of the other building by which they like to have gathers over the summer where they get together and enjoy the sun... She told me that it was a great unit because it was right on the corner of the building, allowing for a lot of natural light to come into the place... (The agent) took me downstairs to where the laundry room was. She showed me the machines by which cost \$0.75 for the washer and \$0.25 for the dryer." The PT also indicated in the questionnaire that the agent spoke positively about the unit and the neighborhood. *How was all of this detail ignored by FHCO staff?*

The CT gave a similar report, in his more abbreviated style, of the agent's friendliness and description of amenities. He uses different words and highlights different points of the conversation, but FHCO's statement that he was given *many more positive features about both property and neighborhood* is simply not true, and further underscores the lack of objectivity in FHCO's evaluation.

National Origin

1. Agent told PT that she would need to provide pay stubs to verify income but did not state this requirement to CT.

This is test number POR 10001, conducted *by telephone* regarding an apartment at 1530 SE Reedway. On 6/25/10 a female tester with a Spanish-accent called about an apartment for her mother, whose English was limited. She spoke with an agent named Angie, whom she described as “nice and friendly”. Angie spoke “positively” about the apartment and was “OK with (the) mother being a limited English speaker”. The tester asked numerous questions, including whether there was an application fee, to which Angie gave information about the application process and what would be required. Angie asked the tester if her mother was working, the tester responded yes, and Angie told her they would require a pay stub with the application. Angie encouraged the tester to come see the unit. The tester stated in her report that what was said about the application process had been tester initiated.

Three days later, a white female tester called the same office and inquired about the same apartment. She spoke with a *different person* named Debbie who identified herself as the secretary. The tester said she had a “friendly female voice” and “spoke very clearly”. The second tester was given the same information as the first tester about move-in costs and fees. Debbie spoke positively about the neighborhood and said they would be showing the apartment from 9 to 5 on the next two days. Again, what was said about the application process was identified as tester initiated and described as, “There was an application fee for your basic renters history and credit.”

Neither of the testers visited the apartment nor picked up an application. If they had, they would have no doubt both been given a printed list of criteria for application acceptance, as is required in Oregon if an application fee is charged. There were no recordings of the phone conversations, and the FHCO employee reviewing the test narratives had no other declared information upon which to base a judgment. Nonetheless, he judged this test as positive, “evidence of discrimination based on national origin”. The fact that these were phone calls fielded by different people who were asked different questions was apparently not considered.

BOLI’s analysis of this case states, “A discrepancy in information provided by a secretary and information provided by a leasing agent does not seem sufficient on its face to conclude that the reason for the discrepancy was some discriminatory bias.”

2. Agent did not disclose 1 month free move in special to PT.

This is test number POR 10023, performed in person at the Crescent Hill Apartments. The above statement by FHCO is totally false. Deferring to BOLI's analysis of this case:

"The narrative by the protected-class (Black male) tester indicates that on October 6, 2010, manager Josh Preston showed him an apartment and informed him of a special of *one month's free rent* with a 12-month lease.

The narrative by the control tester (White male) indicates that on October 7, 2010, an agent named Josh showed him unit #304. The narrative indicates that when the tester asked how long the lease was, Josh said it could be 12 months, with *one free month's rent, or 6 months, with one half of one month being free.*

The narrative by the protected-class (Hispanic male) tester indicates that on October 6, 2010, the tester met an agent named Josh; that narrative includes that Josh made the following statement: "The apartment that I have available is next to this building the rent is \$750 is on the 3er floor (#304) and *we have a special if you rent the apartment for one year we will give you the first or last month for free*, the application fee is \$42 per person."

Given tester narratives that clearly contradict the conclusions reported by Fair Housing Council of Oregon, this test should be disregarded as a possible source of evidence supporting any allegations of unlawful discrimination."

3. Agent quoted deposit as \$845 to PT but only \$250 to CT. CT was given a brochure, application, and other materials by agent, but PT was not.

This is test number POR 10024, performed on site at Sylvan Heights Apartments. A Hispanic tester and a white tester both visited the site on 10/7/10, but dealt with different agents. According to FHCO's test guidelines, this test should have been ruled inconclusive, but it was not.

Addressing the claim that the CT was not given a brochure, application and other materials: The Hispanic tester reports the first agent told him, "The application fee is \$40 per person and the security deposit will be \$845", to which the tester replies, "I will need two." A few lines later the agent replies, "I have the application in my office." In response to the report form question "Did you receive an application?" he types "2" under "Offered by Agent", and removes the word "No" from the Yes/No selection, leaving only the word "Yes". Incredibly, despite these obvious responses, *FHCO claimed he was not given an application.*

Since each tester was instructed to submit with his report “any materials that were given to you”, it is assumed that this tester did not comply.

BOLI’s analysis of this case states: “The testers met with *different agents*; Agent Melissa cited a flat deposit amount of \$845 to the Hispanic tester, while agent Aryn described a deposit structure to the White tester that could be as low as \$250 or as high as \$845 (“one month’s rent”). Given that the ceiling on the deposits quoted was the same, and that the quotes were stated by different agents, it is not reasonable to conclude that the difference in the information provided was based upon a protected class.”

4. *Agent told CT of more vacancies than PT. Agent told PT that range of move-in costs was \$1415 to \$2130, but told CT that move-in costs ranged from \$720 to \$740.*

This is test number POR 10025, performed in person at the Nob Hill Apartments. Three testers were sent to this site and the claim relative to the race test is addressed in the first case 6, above.

Both the Hispanic tester and white tester met with the same agent. Both were treated in a friendly and courteous manner, and both were given applications and encouraged to apply. The information regarding costs is consistent in both tester reports. FHCO’s claim about a disparity in move-in costs is not true. The agent discussed the security deposit structure with the PT, and the exchange is characterized as “Asked by tester” in the PT’s report. The CT does not report any conversation about the security deposit, so obviously did not ask about it. When asked, “What is the total move-in cost?” in the report questionnaire, the PT gives no answer at all, and the CT answers, “Not Discussed”. And yet, FHCO claimed *agent told PT that range of move-in costs was \$1415 to \$2130, but told CT that move-in costs ranged from \$720 to \$740*. Again, both testers received rental applications that would have clarified in writing the issue of security deposit, but FHCO makes no mention of these documents.

FHCO’s statement about disclosed vacancies is *exactly the opposite of statements made by the testers*. The Hispanic tester states that while being shown a studio he asked, “Is this one the only ready to move in?” to which the agent responded, “Yes, it is. I will have two more by next month. One will be ready in November 3 and the second one by November 7.” The Hispanic tester reiterates these same numbers in his report questionnaire, a total of three apartments, one now and two in early November. In his questionnaire, the white tester reports that the agent “mentioned 2 studio apartments that would be available within the next month (early November).” The white tester visited the apartments a day later than the Hispanic tester, and the one that was “available now” the day before could have been taken. The testers *clearly* state in their reports that the PT was told about three vacancies and the CT was told about two. *How could FHCO staff miss this?* Incredibly, FHCO stated that the *agent told CT of more vacancies than PT*.

5. Agent told PT that rent could be as high as \$695, but told CT that rent had been reduced to \$675.

This is test number POR 10020, performed in person at the Lancaster Apartments.

The Hispanic tester reports, "The rent is \$695 but now we have a special move-in, if you rent this apartment for 12 months you will pay \$675 x month." The white tester reports, "I told her I had seen the ad on Craigslist. She asked me if I knew the price had been reduced to \$675. I told her that I did." *Both testers were quoted the same rent.* Incredibly, on the Evaluation Memorandum FHCO staff claimed the test revealed evidence of discrimination because *Agent quoted higher rent to PT than to CT.*

(2)

Moore-Love, Karla

From: Larry Southall [larry.southall@gmail.com]
Sent: Saturday, April 07, 2012 11:10 AM
To: Moore-Love, Karla
Subject: Re: City Council Agenda

Thank you for this info, Karla. I would like to put my name in for the May 9th meeting:

Larry Southall
11560 SE Stark St.
Portland, OR 97216

Cell 503-819-2119

Topic: A request to retract and correct the City's 2011 Analysis of Impediments to Fair Housing Choices Report (AI Report) submitted to HUD last June, and the derived Fair Housing Action Plan adopted by the Council last September. The AI Report was written and submitted without adequately proofing the discrimination audit test data provided by Fair Housing Council of Oregon in summary form only. These summaries were discredited by the Bureau of Labor and Industries last August after obtaining the original test documents by subpoena. In our opinion, Fair Housing Council's summaries grossly misrepresented the true test results. Thank you for your help. Please advise if I am definitely on the list to speak so I can plan to attend.

Best regards,

Larry Southall

On Fri, Apr 6, 2012 at 4:29 PM, Moore-Love, Karla <Karla.Moore-Love@portlandoregon.gov> wrote:

Hello Larry,

At the beginning of our Wednesday morning City Council meetings, we have time scheduled for the first five people who sign up in advance to speak to Council for three minutes about any subject they would like. Communications are the first item on the official agenda and we start at 9:30 a.m. You have to sign up in advance by the Thursday before the meeting. As we only have the five spots they sometime fill up and the next time I have available is not until May 9th.

Your request has to include your name, address, phone number and what it is you will be speaking about. Let me know as soon as possible if May 9th will work for you or if another Wednesday in May would be better.

Regards,
Karla

Karla Moore-Love | Council Clerk
City of Portland | Office of the City Auditor
1221 SW 4th Ave Rm 140
Portland OR 97204-1900

4/10/2012

email: Karla.Moore-Love@portlandoregon.gov

503.823.4086 | fax 503.823.4571

Clerk's Webpage: www.portlandoregon.gov/auditor/councilclerk

From: Larry Southall [<mailto:larry.southall@gmail.com>]

Sent: Friday, April 06, 2012 4:12 PM

To: Moore-Love, Karla

Subject: City Council Agenda

Hi Karla,

I have some questions about getting onto the Council's Agenda.

- 1) Can a private citizen request time to present an issue to the Council?
- 2) If so, how does one do that?
- 3) If I do submit a request, how long does it take before I could be added to an agenda?

I have never done this before, so please bear with me.

Thank you,

Larry Southall
Cell [503-819-2119](tel:503-819-2119)

Request of Larry Southall to address Council regarding a request to retract and
correct the City 2011 Analysis of Impediments to Fair Housing Choices Report
(Communication)

MAY 09 2012

PLACED ON FILE

Filed MAY 03 2012

LaVonne Griffin-Valade
Auditor of the City of Portland

By 

COMMISSIONERS VOTED AS FOLLOWS:		
	YEAS	NAYS
1. Fritz		
2. Fish		
3. Saltzman		
4. Leonard		
Adams		