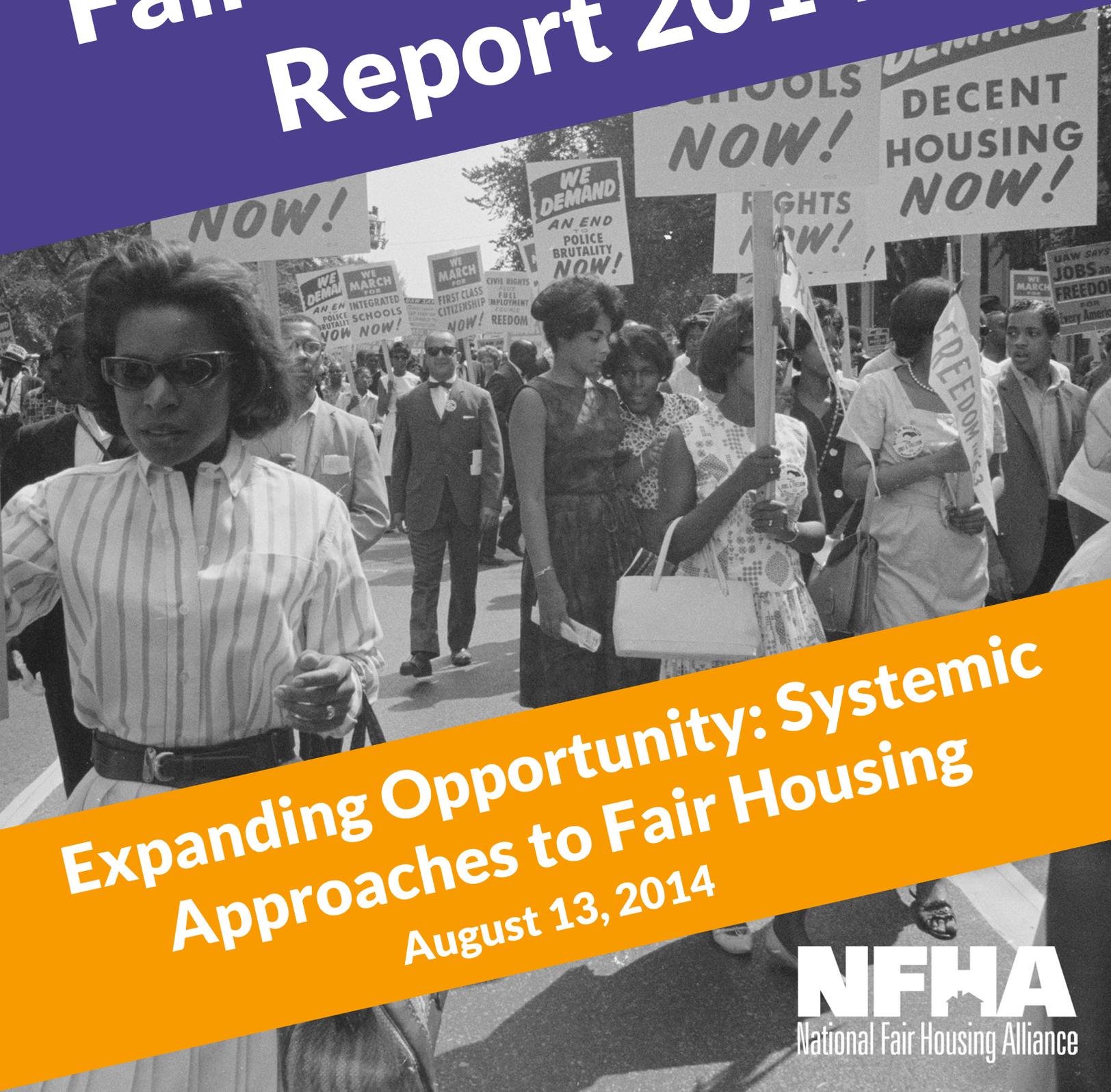


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# Fair Housing Trends Report 2014



Expanding Opportunity: Systemic  
Approaches to Fair Housing  
August 13, 2014

**NFHA**  
National Fair Housing Alliance



## **ABOUT**

### THE NATIONAL FAIR HOUSING ALLIANCE

Founded in 1988 and headquartered in Washington, DC, the National Fair Housing Alliance is a consortium of more than 220 private, non-profit fair housing organizations, state and local civil rights agencies, and individuals from throughout the United States. Through comprehensive education, advocacy and enforcement programs, NFHA protects and promotes equal access to apartments, houses, mortgage loans and insurance policies for all residents of the nation.

## **ACKNOWLEDGMENTS**

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# TABLE OF CONTENTS

|   |    |
|---|----|
| INTRODUCTION .....  | 2  |
| SECTION I. SYSTEMIC APPROACHES TO FAIR HOUSING .....  | 4  |
| <b>A. Highlights of U.S. Department of Housing and Urban Development Action</b> .....                       | 5  |
| <b>B. Highlights of U.S. Department of Justice Action</b> .....   | 6  |
| <b>C. Highlights of Consumer Financial Protection Bureau Action</b> .....                                   | 6  |
| <b>D. Highlights of Private, Non-Profit Fair Housing Action</b> .....                                       | 7  |
| <b>E. Analysis of Recent Administration Policy</b> .....  | 11 |
| SECTION II. NATIONAL DATA ON FAIR HOUSING TRENDS .....  | 14 |
| <b>A. Housing Discrimination Complaints for 2013</b> ..   | 14 |
| <b>B. U.S. Department of Housing and Urban Development &amp; Fair Housing Assistance Program Data</b> ..... | 20 |
| <b>C. U.S. Department of Justice Data</b> .....   | 25 |
| <b>D. Consumer Financial Protection Bureau Data</b> ...   | 26 |
| <b>E. Private, Non-Profit Fair Housing Data</b> .....   | 27 |
| SECTION III. A REGIONAL LOOK AT HOUSING DISCRIMINATION IN 2013 .....  | 29 |
| SECTION IV. CONCLUSION .....  | 34 |

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## INTRODUCTION

2013 was a banner year for the fair housing movement with bold moves by HUD, DOJ, and private non-profit fair housing organizations to promote diverse, inclusive communities in our nation. In recent years, there has been a sea change in the federal government's approach to fair housing, with an emphasis on broad-based systemic actions rather than individual case enforcement.

This past year the U.S. Department of Housing and Urban Development (HUD) took a strong stand for fair housing enforcement when it issued three important fair housing policies: a final discriminatory effects regulation; *Olmstead* guidance for the integration of people with disabilities into all settings; and the proposal of a rule concerning implementation of the Fair Housing Act's affirmatively furthering fair housing (AFFH) provision. The AFFH draft rule is a long-awaited regulation with the potential to establish a new era of fair housing planning in which local and state government entities that receive federal funds will foster inclusive communities with equal access to community assets. In addition to these major policy announcements, HUD initiated many more of its own complaints than in years past in a wide variety of cases.

The U.S. Department of Justice (DOJ) continued its bold enforcement work. They continued to bring fair lending cases, holding banks accountable for their treatment of African American and Latino borrowers. They also addressed sexual harassment by a large apartment complex in Michigan and racial discrimination by a local housing authority in Louisiana, among other major cases.

Private non-profit fair housing organizations, seeing an increase in resources over the past five years and with a renewed focus by the federal government on broad-based approaches to fair housing, undertook a number of significant cases that revealed and eliminated systemic discrimination around the country. NFHA and many of its members continued to combat discrimination in the maintenance and marketing of bank-owned foreclosed homes (also known as real estate owned or REO properties). Private organizations challenged exclusionary zoning ordinances and discrimination against people of color in the administration of housing choice vouchers, and undertook a far-reaching investigation of discrimination against the deaf and hard of hearing.

Title VIII of The Civil Rights Act of 1968 (Fair Housing Act), as amended by the Fair Housing Amendments Act of 1988, prohibits housing discrimination based on race, color, religion, national origin, sex, familial status, and disability. In passing this law, Congress made equal access to housing opportunity the policy of the United States. In the 46 years since the passage of the Fair Housing Act, our country has made progress in building more inclusive communities across America, but some landlords, real estate agents, mortgage lenders, insurance companies, and communities still try to limit or deny equal housing opportunity.

In 2013, private fair housing organizations, state and local governments, civil and human rights agencies, HUD, and DOJ collectively reported handling 27,352 complaints of housing discrimination. Overall, complaints of housing discrimination were relatively steady, dipping only slightly below 2012, but remaining

above 2011 levels. More importantly, there were more systemic complaints and investigations in 2013, leading to broader implications and results for complainants and communities.

This year, NFHA has added something new to our annual data analysis – a breakdown of all complaint data by HUD region. HUD has ten regional offices around the country. New maps and data analyses show where complaints were filed most often with private organizations, HUD, DOJ, and state and local government agencies. While housing discrimination occurs everywhere, racial discrimination was most often reported in the most racially and ethnically segregated metropolitan statistical areas (MSAs) in the United States. Half of these complaints were reported in just two of HUD’s 10 regions – Regions 4 and 5, which include many Midwestern and Southern states and 16 of the 25 most segregated MSAs in the country.<sup>1</sup> Such a connection between existing segregation patterns and the incidence of housing discrimination deserves the full attention of policymakers and advocates alike. Discrimination and residential segregation remains a significant barrier to the ability to access quality life opportunities.

Section I of this report describes the systemic enforcement and policy changes brought by HUD, DOJ, and the Consumer Financial Protection Bureau (CFPB) as well as private systemic enforcement actions by private fair housing organizations and other groups. Section II describes national data for fair housing complaints in 2013, including complaints investigated by private nonprofit fair housing organizations, state and local government (FHAP) agencies, HUD, and DOJ. These data are broken down by HUD

region to demonstrate geographic trends in complaints of housing discrimination in Section III. ♦

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<sup>1</sup> Harrison Jacobs, Andy Kiersz, and Gus Lubin, “The 25 Most Segregated Cities in America,” *Business Insider*, Nov. 22, 2013.

## SECTION I. SYSTEMIC APPROACHES TO FAIR HOUSING

In recent years, enforcement of the Fair Housing Act has expanded to address barriers to housing opportunity through more systemic actions and investigations and policy changes. Historically, the federal government's enforcement of the Fair Housing Act has often focused on addressing individual acts of housing discrimination, bringing action against a single landlord or assisting families on a case-by-case basis, for example. This approach was effective in helping individual victims of housing discrimination, but the underlying factors contributing to housing discrimination and segregation remained largely unaddressed.

HUD and DOJ have recently acted to protect the public from housing discrimination by taking on widespread discriminatory practices by mortgage lending companies, large rental companies, and city governments and housing authorities whose discriminatory practices have prevented entire communities from accessing housing of their choice. This systemic work has increased the overall impact of fair housing enforcement, allowing for greater access to housing free from discrimination. DOJ has used its authority to bring more pattern or practice cases that address intentional discrimination as well as policies or practices that result in barriers to housing choice, opening up thousands of housing units and providing a wake up call to housing providers that have broken the law for decades without repercussions. The CFPB has also worked with DOJ and independently to address unfair lending practices.

The federal government provided additional guidance to help housing providers avert systemic violations of the Fair Housing Act through several critically important

regulations. Last year, HUD finalized a regulation clarifying the disparate impact liability standard under the Fair Housing Act and offered guidance to ensure people with disabilities have access to living in integrated housing settings. HUD also proposed a regulation to support the creation of diverse, inclusive communities, a critical component, and possibly the most unrealized provision, of the Fair Housing Act to date.

Congress has also shown its support for fair housing enforcement by increasing federal appropriations between 2008 and 2014 to help private fair housing groups enforce fair housing laws in their local housing markets. This funding has allowed private fair housing organizations to conduct regional and multi-state investigations of widespread discriminatory housing policies and practices.

This section begins with several notable cases of systemic fair housing enforcement and investigations conducted by the federal government and private fair housing organizations. This section concludes with an analysis of policies recently issued by HUD.

## **A. HIGHLIGHTS OF HUD ACTION**

HUD more than doubled its number of Secretary-initiated complaints in 2013 from 16 to 37. Please see Section II for additional detail on these complaints. Some of HUD's enforcement actions include a Secretary-initiated complaint that addressed widespread discrimination in rental housing and a major settlement in a mortgage lending discrimination complaint.

### **National Origin Discrimination: *U.S. Department of Housing and Urban Development v. TriTex Real Estate Advisors, Inc., et al.***

In May 2013 HUD filed a Secretary-initiated complaint against TriFex Real Estate Advisors, Inc. and Greystar Management Services after receiving word that Latino tenants of a Nashville apartment complex had been subjected to different terms and conditions and had been intimidated and harassed by other tenants. The companies terminated leases, ignored requests for maintenance, and harassed Latino tenants. The case was settled in a conciliation agreement for a total of \$170,000 of which \$150,000 establish a fund to compensate victims of discrimination at the apartment complex. The Tennessee Fair Housing Council has been selected to identify former Latino residents who may be eligible for compensation.

### **Parental Leave Lending Discrimination: *Jane Doe and John Doe v. SunTrust Mortgage, Inc.***

HUD reached a major settlement in two conciliation agreements in May 2013 with SunTrust Bank over allegations that the bank's mortgage lending practices discriminated against women on maternity leave. In one complaint, a couple from Port St. Lucie, Florida stated to HUD that SunTrust Bank had pre-approved them for a mortgage loan, but were informed by a loan officer two weeks before closing that they would not be approved unless the woman returned to work. In another complaint, a pregnant woman in Ashland, Virginia alleged that SunTrust had provided a home loan to build a construction-to-permanent mortgage loan but later delayed converting it into a permanent loan until after the woman returned to work from maternity

leave. SunTrust was required to pay \$18,000 to each of the two couples, and to adopt a policy prohibiting discrimination against mortgage applicants on parental leave. SunTrust was also required to train its employees about its fair lending requirements under the Fair Housing Act.

## **B. HIGHLIGHTS OF DOJ ACTION**

DOJ took significant actions in 2013 to abate mortgage lending discrimination as well as filing cases against property managers and a local housing authority.

### **Sexual Harassment: *United States v. VanderVennen (W.D. Mich.)***

In 2013, DOJ took on a case alleging that a property manager of a large apartment complex in Grand Rapids, Michigan engaged in a pattern or practice of sexually harassing female tenants, prospective tenants and guests. DOJ gathered evidence that the property manager would enter residences of female tenants without permission or notice and took adverse actions against female tenants or prospective tenants who refused to provide sexual favors. A consent decree was filed with the court and is pending approval by the judge assigned to the case.

### **Racial Steering by a Housing Authority: *United States v. Housing Authority of the City of Ruston (W.D. La.)***

In September 2013, DOJ alleged that the Housing Authority in the City of Ruston, LA engaged in a pattern or practice of racial discrimination in the way it placed new residents in its housing units or transferred current residents in the authority's properties. The city allegedly steered and assigned applications to its five apartments based on

race, instead of abiding by an applicant's place on the city's waiting list. DOJ also alleged that these discriminatory policies resulted in the preservation of existing segregation in effect since the authority began operating in the 1950s.

### **Lending Discrimination Based on Race and National Origin: *Plaza Home Mortgage, Inc.; Southport Bank; Chevy Chase Bank, F.S.B***

DOJ continues its work to hold mortgage lenders accountable for their discriminatory practices during the housing boom. DOJ worked during the last year to identify and include the largest number of victims possible for its 2011 and 2012 fair lending cases against Wells Fargo Bank, N.A., Countrywide Financial Corporation, and SunTrust Mortgage, Inc. During FY 2013, it added three more major cases with similar allegations. DOJ entered consent orders against Plaza Home Mortgage and Southport Bank for charging higher broker fees on wholesale mortgage loans made to African American and Latino Borrowers, acquiring a combined total of \$3.7 million for victims of discrimination. It also reached a settlement with Chevy Chase Bank for a pattern or practice of pricing discrimination on the basis of race and national origin, resulting in \$2.85 million to borrowers.

## **C. HIGHLIGHTS OF CFPB ACTION**

In 2013, the CFPB reached an important moment as a new federal regulator and enforcer of the Equal Credit Opportunity Act (ECOA), filing and settling its first joint lawsuit with DOJ in federal court in *Consumer Financial Protection Bureau and United States of America v. National City Bank (W.D. Pa.)*. In December 2013, the CFPB, with representation by the Department

of Justice, filed a joint complaint against National City Bank, through its successor PNC Bank, for allegedly charging African American and Hispanic borrowers higher prices for mortgage loans than similarly creditworthy white borrowers between 2002 and 2008.

The CFPB and DOJ began a joint investigation into the bank in 2011. The investigation documented evidence to allege that National City Bank's discretionary pricing policies gave its retail loan officers and brokers discretion to set rates and fees for borrowers and that National City compensated them from the extra costs consumers paid. These discriminatory pricing and compensation policies resulted in over 76,000 African American and Latino borrowers paying more for mortgages than similarly situated white borrowers. Along with the complaint, CFPB and DOJ filed a proposed consent order, which is subject to court approval, requiring that PNC Bank, as the successor of National City Bank, pay \$35 million to go toward a settlement fund dispersed among affected African American and Hispanic borrowers.

#### **D. HIGHLIGHTS OF NON-PROFIT FAIR HOUSING ORGANIZATION ACTION**

Several notable fair housing cases brought by private fair housing and advocacy organizations had significant impact in 2013. These include cases challenging exclusionary zoning ordinances, discrimination against people of color in the administration of housing choice vouchers, and the first case to hold Wall Street accountable for the targeting of toxic and overpriced mortgages to communities of color in the run up to the foreclosure crisis. They also include the first-ever settlement

regarding discrimination in bank-owned properties and a far-reaching investigation of deaf and hard of hearing discrimination.

#### **Exclusionary Zoning: *New York Communities for Change, et al. v. Garden City and County of Nassau (E.D.N.Y.)***

In 2004, the Village of Garden City, NY which is 90 percent white but bordered by villages with large populations of color, rejected a proposal to use a large plot of land for sale by Nassau County for the development of 331 affordable housing units. After hearing numerous racially-charged objections to the proposed plan during public meetings, the Village council voted to reject the zoning for the affordable housing project and instead approved a low-density zoning proposal that favored high-priced single-family homes and townhomes. In 2005, New York Communities for Change and MHANY Management Co., a nonprofit community-based developer of affordable housing, filed suit in the Eastern District of New York alleging that the village and county violated the Fair Housing Act through their use of discriminatory zoning policies to obstruct the development of affordable housing. In December 2013, the district court ruled that the actions of the village discriminated on the basis of race and national origin and violated the Fair Housing Act, other statutes, and the U.S. Constitution. In the same ruling, the court ordered the Plaintiffs to submit a remedial plan to the court to serve as a guide for Garden City to take affirmative steps to remedy the effects of the village's discrimination and such discrimination in the future.

**Zoning against People with Disabilities: *Oxford House, Inc., et al. v. City of Baton Rouge (M.D. La.)***

In 2011, the City of Baton Rouge, LA filed a lawsuit in state court against the owners of two Oxford House group homes for persons recovering from alcoholism and drug addiction. The Fair Housing Act considers residents of Oxford House recovering from substance abuse to be people with disabilities. The city alleged that the houses were in violation of its Uniform Development Code because more than two unrelated persons were living in a single-family home in a restricted zone. Oxford House made multiple requests for a reasonable accommodation for the two houses and all were denied by the City. Oxford House and the Greater New Orleans Fair Housing Action Center subsequently filed a fair housing complaint with HUD and later filed in federal district court alleging violations of the Fair Housing Act and Americans with Disabilities Act.

As the case progressed, numerous documents revealed that the City of Baton Rouge had a history of enforcing a blatantly discriminatory zoning ordinance against people with disabilities and that city officials intentionally used enforcement of the Unified Development Code to shut down Oxford House homes after local constituents complained about their presence. In March 2013, the district court ruled that the City of Baton Rouge violated the Fair Housing Act and Americans with Disabilities Act by refusing to grant Oxford House a reasonable accommodation under the zoning ordinances, intentionally discriminating against Oxford House because it was associated with people with disabilities, enforcing a facially discriminatory zoning provision called

the “Special Homes” ordinance, and retaliating against Oxford House after it filed a complaint with HUD and a lawsuit in federal court.

**Residency Preferences: *Carter, et al. v. Housing Authority of the Town of Winchester (D. Conn.)***

In 2012, Crystal Carter and the Connecticut Fair Housing Center filed a fair housing complaint against the Winchester Housing Authority. Ms. Carter and the Center alleged that the Authority systematically discriminated against African Americans and Hispanics in the operation and administration of the Authority’s Section 8 housing choice voucher program. Crystal Carter was a single mother of six children living with her father in crowded and substandard housing. Upon hearing that the Winchester Housing Authority’s voucher waiting list was open, she immediately called to request an application. The authority told Ms. Carter that it would not provide applications to people who lived outside of the 17 (overwhelmingly white) communities in northwest Connecticut in its jurisdiction. Beyond that, the Winchester Housing Authority actively discouraged Ms. Carter from applying and attempted to steer her to Section 8 programs in cities including Bridgeport and New Haven, which are majority people of color. The authority told Ms. Carter that Winchester was not on a bus line, that there were no jobs in the area, and that Winchester was “in the woods.”

Ms. Carter and the Center filed a lawsuit in federal district court alleging that the unlawful residency requirement intentionally discriminated against African Americans and Hispanics who would attempt to apply for admission into the Section 8 program. The lawsuit also alleged that the residency

requirement favored applicants of the 17 approved communities, whose populations were more than 90 percent white, thus systematically excluding African American and Hispanic families from participating in the Section 8 program in the Town of Winchester. The case was settled and the Winchester Housing Authority was required to end its residency preference and treat all Section 8 applicants equally. The Authority was also required to undergo fair housing training, educate all future applicants of their fair housing rights, and pay \$350,000 in damages, attorneys' fees and costs.

**Mortgage Lending and Securitizations: *Adkins, et al. v. Morgan Stanley (S.D.N.Y.)***

In October 2012, the American Civil Liberties Union and the National Consumer Law Center filed a case on behalf of five African American residents of Detroit, MI, harmed by the purchase and financing of predatory home mortgages packaged into mortgage-backed securities by Morgan Stanley. The lawsuit alleges that as the primary financier and buyer of home mortgage loans originated by New Century Mortgage Corporation, a leading subprime lender, Morgan Stanley pressured New Century to originate a high volume of increasingly unsustainable loans that were disproportionately marketed and sold to borrowers of color. Taking full advantage of the history of discrimination against borrowers of color starved of access to quality sources of credit in the Detroit region, Morgan Stanley became the principal financier of New Century to ensure a reliable supply of subprime loans it would then package and sell off to investor institutions and pension funds. Loans originated by New Century and secured by Morgan Stanley sold to African Americans included large prepayment penalties and increased payments after an introductory

period, making them highly volatile and likely to become unaffordable. An analysis of Home Mortgage Disclosure Act data revealed that African American borrowers in the Detroit area were 70 percent more likely to receive subprime loans from New Century than white borrowers, even after controlling for income, loan amount and loan features.

*Adkins* is the first case of its kind to attempt to hold the mortgage securities industry accountable for its role in encouraging the proliferation of abusive and discriminatory mortgage lending which has disproportionately brought to ruin homeownership and asset-based wealth in entire communities of color. This is also the first case that seeks to affirm that Wall Street banks that play a role in home mortgage financing must also comply with the Fair Housing Act. In July 2013, the district court for the Southern District of New York denied in part a motion to dismiss *Adkins*, ruling that as a loan purchaser and mortgage securitizer, Morgan Stanley is subject to the Fair Housing Act and is prohibited from discriminating in making available real-estate transactions or in the terms or conditions of its real-estate transactions. *Adkins* is ongoing.<sup>2</sup>

**Sexual Orientation Harassment: *State ex rel Morehouse and Anderson v. Sherwood Forest Estates, LLC, et al. (Pottawattamie County, CVCV107026)***

In June 2013, a jury in Council Bluffs, Iowa issued a verdict in favor of a gay male couple alleging that they were subjected to repeated harassment based on their sexual orientation by their former apartment complex's management company, New Life Multi-Family Management, LLC (New

<sup>2</sup> See <https://www.aclu.org/racial-justice/judge-rules-landmark-lawsuit-first-link-bundling-mortgage-backed-securities-and>.

Life). Filed in Iowa state court, the case cited violations of the Iowa Civil Rights Act and the Fair Housing Act. The gay couple had been repeatedly harassed by an on-site maintenance technician who made derogatory statements and offensive gestures on a daily basis for two months during the couple's residency at the apartment complex. The couple complained to the onsite manager and to New Life's corporate offices, but neither did anything to stop the harassment. The couple could no longer bear such treatment and moved from the apartment complex. A case against New Life was brought by the Iowa Civil Rights Commission. After reviewing convincing evidence of the harassment, the jury awarded the couple \$72,000 and required New Life to change its tenant complaint process and train all staff regarding their obligations under civil rights laws.

**REO Discrimination: *NFHA, et al. v. Wells Fargo Bank N.A., et al***

In June 2013, NFHA and 13 of its member organizations announced a collaboration with Wells Fargo Bank, N.A. that will provide funds in 19 cities to foster homeownership, assist with rebuilding neighborhoods of color impacted by the foreclosure crisis, and promote diverse, inclusive communities. The settlement provides for \$27 million to benefit 19 cities and promote home ownership, neighborhood stabilization, property rehabilitation, and development in communities of color. NFHA and the 13 local non-profit fair housing organizations manage the funds and provide a range of grants for activities including down payment assistance to owner-occupants seeking to purchase homes in targeted neighborhoods and renovation efforts for homes that languished in foreclosure, including creative programs to increase homeownership and neighborhood stabilization.

Real Estate Owned (REO) properties are homes that have gone through foreclosure and are now owned by banks, investors, Fannie Mae, Freddie Mac, the Federal Housing Administration, or Veterans Affairs. This is the first-ever agreement regarding the equal maintenance and marketing of REO homes. The agreement is the result of a federal housing discrimination complaint filed in April 2012 with the U.S. Department of Housing and Urban Development (HUD). The complaint alleged that Wells Fargo's REO properties in white areas were much better maintained and marketed by Wells Fargo than REO properties in African-American and Latino neighborhoods. As part of the agreement, Wells Fargo will provide an additional \$11.5 million to HUD to support neighborhoods in an additional 25 cities.

NFHA and its members have similar housing discrimination complaints pending against Bank of America, Deutsche Bank, and US Bank, and Fannie Mae servicers Asset Management Services, Inc., Cyprex, and Safeguard, the largest property preservation company in America.

**Deaf and Hard of Hearing Discrimination**

Following a year-long investigation by NFHA and 11 of its members, NFHA filed nine HUD complaints for discrimination against the deaf and hard of hearing against major apartment complex owners and management companies around the country in January 2014. Joining NFHA in the filing of one of the complaints were the National Association of the Deaf and the Austin Tenants' Council. Other NFHA members filed independent complaints. The results of the investigation are detailed in a report entitled, *Are You Listening Now? A National Investigation Uncovers Housing*

## *Discrimination Against the Deaf and Hard of Hearing.*

NFHA and its members conducted 304 tests of 117 apartment complex owners and management companies in 98 cities (25 states). Of the 117 apartment complex owners and management companies tested, one out of four treated deaf callers differently from hearing callers in a manner that appeared to violate the Fair Housing Act. NFHA and its members conducted additional testing of the 25 percent of apartment complex owners and management companies that clearly discriminated during the first round of testing. Of those additionally tested:

- 40 percent hung up on deaf callers at least once;
- 86 percent gave more information to hearing persons about available apartments and the apartment complex than to deaf callers, including stating that there were more apartments available (76 percent), and providing information on specials and discounts (36 percent);
- 56 percent described additional financial qualifications and background checks to deaf or hard of hearing callers, including criminal background checks, prior evictions policies, or credit checks.

All complaints resulting from this investigation are currently pending review at HUD.

## **E. ANALYSIS OF RECENT ADMINISTRATION POLICIES**

Three important milestones for fair housing policy occurred in 2013. First,

HUD issued a proposed regulation to implement the “affirmatively furthering fair housing” provision of the Fair Housing Act, a regulation which will undoubtedly help realize the systemic value of the Fair Housing Act. Second, HUD finalized its rule concerning the use of the disparate impact doctrine under the Fair Housing Act. Third, HUD also issued its final Olmstead guidance meant to ensure that people with disabilities have the opportunity to live in the most integrated settings possible.

### **Affirmatively Further Fair Housing Draft Regulation Proposed**

In July 2013, HUD issued a draft regulation to implement the “affirmatively furthering fair housing” provision of the Fair Housing Act. NFHA and 40 national civil rights, fair housing, women’s, disability, LGBT, consumer, and labor organizations submitted comments in September responding to the draft regulation.<sup>3</sup> Many others around the country did so as well, including numerous local fair housing organizations.

The Act requires that federal housing and community development programs be administered in ways that help overcome the problems associated with racial segregation and expand the housing choices available to families in America, regardless of race, color, religion, sex, national origin, familial status or disability. There are a number of important provisions in the regulation, including:

- a clearer definition of affirmatively furthering fair housing making the link between where people live and their access to opportunity;

<sup>3</sup> This letter and much more about AFFH and the draft regulation can be found at <http://nationalfairhousing.org/PublicPolicy/AffirmativelyFurtheringFairHousing/tabid/4261/Default.aspx>.

- a requirement that participants spell out how they will use all of their housing and community development resources, including their zoning, planning, permitting and other powers and authorities;
- require consultation with fair housing organizations and organizations that represent protected classes in the development of the required Assessment of Fair Housing (AFH);
- the requirement that the AFH be conducted in advance of a jurisdiction's plan (Consolidated Plan) or a public housing authority's plan, and that there be a direct link to those plans; and
- HUD's provision of data for participants to use in conducting their AFHs and HUD's encouragement of participants to include other relevant local data in their assessments.

However, there are also a number of ways in which the rule should be made stronger and more effective. The final rule should include:

- stronger standards and higher expectations for performance by participants;
- HUD review of the plans and ongoing compliance reviews;
- a requirement that grantees invest in "Racially and Ethnically Concentrated Areas of Poverty" and increase residential mobility and access to community assets; and
- additional requirements to encourage and facilitate public participation and to provide transparency.

This regulation has the potential to make a real difference in our communities, making them more diverse, inclusive, and economically vibrant. NFHA urges HUD to move quickly to make these changes and publish the final AFFH regulation. In addition, HUD should use its authority under Section 3608 of the Fair Housing Act and Executive Order 12892 to work with other federal agencies that administer housing and community development programs and activities to ensure that those agencies' programs and activities also affirmatively further fair housing.

### **Disparate Impact Final Regulation Issued**

In February 2013, HUD released a disparate impact regulation that establishes a standard for assessing claims under the Fair Housing Act.<sup>4</sup> The Fair Housing Act has a framework to root out both plainly intentional discriminatory acts and seemingly "neutral" policies that have a discriminatory effect. HUD has long interpreted the Fair Housing Act to prohibit practices with an unjustified discriminatory effect, regardless of whether there was an intent to discriminate and has held housing providers who engage in these kinds of acts liable for Fair Housing Act violations. The Fair Housing Act's disparate impact doctrine is widely established. HUD's regulation reflects the settled case law of 11 federal appellate courts, the U.S. Department of Housing and Urban Development, the Justice Department, and many other federal, state, and local agencies, and creates a uniform standard of proof. The rule makes it clear—once again—that housing, lending, insurance, and other providers cannot use proxies and seemingly neutral policies to deny equal housing opportunity.

4 24 CFR Part 100 Implementation of the Fair Housing Act's Discriminatory Effects Standard; Final Rule, Federal Register Vol. 78 No. 32, February 15, 2013.

Under HUD's new regulation, a prima facie disparate impact claim under the Fair Housing Act can be made in one of two ways – by demonstrating that a facially neutral policy or practice of a defendant results in a discriminatory effect or disparate impact on a protected class, or by demonstrating that a policy or practice harms a protected class by perpetuating or exacerbating residential segregation. Parties can show a discriminatory effect by statistically establishing that protected classes are disproportionately harmed by a housing practice. Parties claiming that a policy or practice perpetuates or exacerbates residential segregation can show that such a policy or practice tends to reinforce patterns of segregation by excluding protected classes. If a plaintiff party can make a prima facie case the burden of proof shifts to the defendant who must evidence that there is a legally sufficient justification, such as a business necessity, for the policy or practice that has been challenged. If a defendant can show that there is a legally sufficient justification, it may still be found liable for violating the Fair Housing Act if the plaintiff can show that an alternative policy or practice could serve the same purpose with less discriminatory effect. This regulation (specifically the burden-shifting standard) was recently recognized by the Fifth Circuit Court in a decision regarding *The Inclusive Communities Project, Inc. v. Texas Department of Housing and Community Affairs et al.*

### **Olmstead Guidance Issued**

Another priority of civil and housing rights organizations in 2013 was the issuance of HUD guidance regarding the *Olmstead* decision. In June 2013, organizations applauded the Administration for releasing this long-awaited guidance and called it “a

step in the right direction.”<sup>5</sup>

This guidance was based on the U.S. Supreme Court's ruling in *Olmstead v. L.C.* that people with disabilities have the right to housing that is in the most integrated setting possible. In this case, two women who had completed their psychiatric treatment in Georgia Regional Hospital and were ready to move to a community-based program instead remained confined in the hospital. In 1999, they won the lawsuit they brought under the Americans with Disabilities Act.<sup>6</sup> According to the new HUD guidance, integrated settings are “those that provide individuals with disabilities opportunities to live, work, and receive services in the greater communities, like individuals without disabilities.”<sup>7</sup> In its guidance, HUD recognized that this is a “dramatic shift” in the way HUD programs and activities have worked in the past and asserted that HUD is “committed to offering housing options that enable individuals with disabilities to live in the most integrated settings possible and to fully participate in community life.” ♦

5 Judge David L. Bazelon Center for Mental Health Law, “New Olmstead Guidance Step in Right Direction,” June 5, 2013, <http://www.bazelon.org/News-Publications/Press-Releases/6.05HUD-Olmstead-Guidance-Step-in-Right-Direction.aspx>.

6 United States Department of Justice, Civil Rights Division, website [www.ada.gov/olmstead](http://www.ada.gov/olmstead)

7 “Statement of the Department of Housing and Urban Development on the Role of Housing in Accomplishing the Goals of Olmstead,” June 4, 2013. <http://portal.hud.gov/hudportal/documents/huddoc?id=OlmsteadGuidnc060413.pdf>

## SECTION II. NATIONAL FAIR HOUSING TRENDS

### A. HOUSING DISCRIMINATION COMPLAINTS IN 2013

In order to document the trends in access to housing in the United States each year, NFHA collects fair housing data from private, nonprofit fair housing organizations and local, state and federal agencies that conduct enforcement of the Fair Housing Act. Data providers this year include 97 private, nonprofit fair housing agencies or legal services organizations, up from 92 in 2012, and 95 Fair Housing Assistance Program (FHAP) agencies, i.e. state and local governmental agencies such as human rights commissions that accept fair housing complaints, up from 94 in 2012. Governmental agencies include state and local FHAP agencies, HUD, and the DOJ. The data consist of information about the protected class(es) at issue in each complaint and the type of housing entity or transaction involved, including rental housing, real estate sales, mortgage lending, homeowners insurance, advertising, harassment, and zoning.

For the last two years, private fair housing organizations have investigated 69 percent of all housing discrimination complaints, more than twice as many as all governmental agencies combined. Private fair housing organizations have an average staff size of five. With extensive local knowledge, these groups are able to investigate more complaints, educate their local service areas about their fair housing rights, and train more local landlords and real estate professionals about the requirements of the Fair Housing Act than all other entities in the country combined, including state, local and federal agencies charged with enforcing the federal Fair Housing Act. It should be noted

that many cases filed with HUD and FHAP agencies originated with private fair housing organizations.

The data collected in this report are but a snapshot of the actual level of discrimination that occurs in the country. Most housing discrimination goes unreported in all transaction areas, but possibly most often in real-estate transactions, including home sales, mortgage lending, and homeowners insurance, in which discrimination is often very subtle and difficult to detect. A conservative estimate puts the number of violations of fair housing laws at four million every year. Many people do not report housing discrimination because they cannot identify it, do not know where to go for help, believe nothing will be done about it, or fear the consequences.<sup>8</sup>

Housing discrimination occurs at the individual level as well as at the institutional level in the form of policies and practices that limit the opportunities of many individuals. Fortunately, sometimes addressing just one single complaint of housing discrimination opens up housing opportunities for many others. For example, an investigation into a complaint about an apartment building's refusal to make a reasonable modification for someone in a wheelchair may reveal that the entire apartment complex is inaccessible to people in wheelchairs or with other mobility impairments. A resolution in such a matter may result in the entire building's being retrofitted to meet the design and construction and accessibility standards of the Fair Housing Act.

Overall, complaints of housing discrimination were relatively steady in

2013, dipping only slightly below 2012, but remaining above 2011 levels. Private fair housing organizations received more complaints of discrimination in real estate sales and homeowners insurance, as well as complaints of discriminatory housing advertisements by housing providers. Private groups saw a decrease in complaints of discrimination in rental and mortgage lending transactions, and in harassment complaints. Fair housing organizations saw the share of racial and disability-based discrimination increase by one percent each, and a nearly two percent decrease in national origin-based complaints. HUD had a spike of 29.7 percent in residential mortgage market complaints in 2013, from 168 to 239; HUD received fewer complaints of discrimination in all other types of housing transactions. HUD also filed an impressive 37 Secretary-initiated complaints in 2013. For the second year in a row, FHAP agencies saw a decrease in complaints in each transaction category except in the homeowners insurance category. DOJ filed 43 Fair Housing Act cases in 2013, an increase from 36 cases in 2012. DOJ also received 1,200 complaints from individuals.

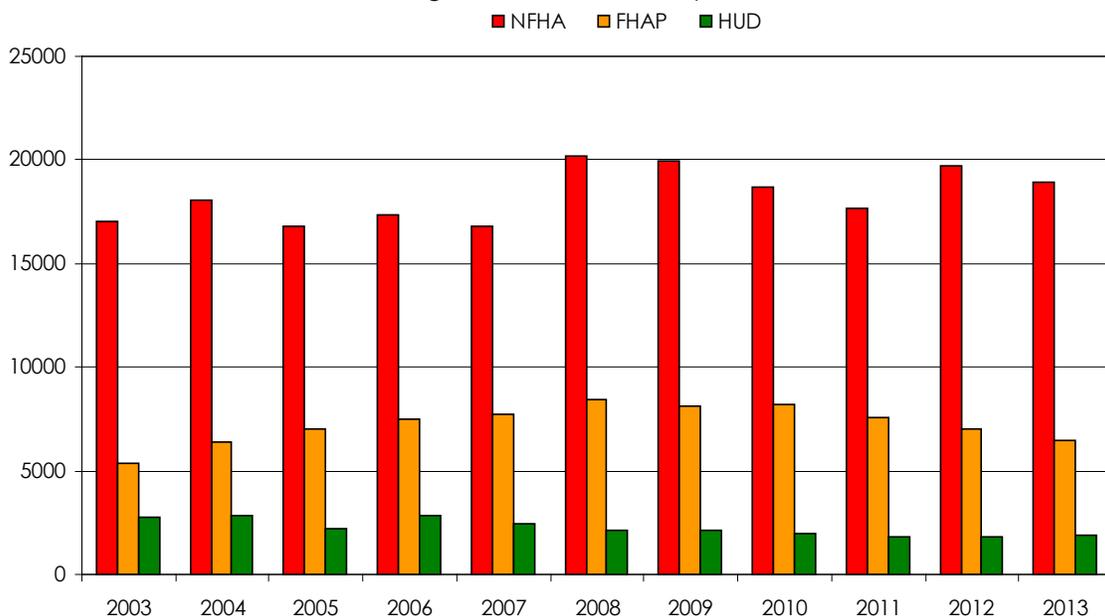
The following chart and bar graph lay out the complaint and case filings reported by private and governmental fair housing agencies and organizations in 2013. According to the Fair Housing Act, HUD is required to refer cases to FHAP agencies if the agencies are "substantially equivalent" under the law, i.e. that the state or local law offers protections and other provisions equal to the federal law. NFHA members count as complaints all cases investigated for fair housing violations.

8 Martin D. Abravanel & Mary K. Cunningham, Urban Institute, *How Much Do We Know? Public Awareness of the Nation's Fair Housing Laws*, 2002.

| <b>TOTAL FAIR HOUSING COMPLAINTS FILED</b> |                                       |   |  |                                 |              |
|--|---------------------------------------|---|--|---------------------------------|--------------|
|  | <b>NFHA<br/>Member<br/>Complaints</b> | <b>FHAP<br/>Claims &amp;<br/>Complaints</b> | <b>HUD<br/>Claims &amp;<br/>Complaints</b> | <b>DOJ<br/>Case<br/>Filings</b> | <b>Total</b> |
| <b>2003</b>                                | 17,022                                | 5,352                                       | 2,745                                      | 29                              | 25,148       |
| <b>2004</b>                                | 18,094                                | 6,370                                       | 2,817                                      | 38                              | 27,319       |
| <b>2005</b>                                | 16,789                                | 7,034                                       | 2,227                                      | 42                              | 26,092       |
| <b>2006</b>                                | 17,347                                | 7,498                                       | 2,830                                      | 31                              | 27,706       |
| <b>2007</b>                                | 16,834                                | 7,705                                       | 2,449                                      | 35                              | 27,023       |
| <b>2008</b>                                | 20,173                                | 8,429                                       | 2,123                                      | 33                              | 30,758       |
| <b>2009</b>                                | 19,924                                | 8,153                                       | 2,091                                      | 45                              | 30,213       |
| <b>2010</b>                                | 18,665                                | 8,214                                       | 1,943                                      | 29                              | 28,851       |
| <b>2011</b>                                | 17,701                                | 7,551                                       | 1,799                                      | 41                              | 27,092       |
| <b>2012</b>                                | 19,680                                | 6,986                                       | 1,817                                      | 36                              | 28,519       |
| <b>2013</b>                                | 18,932                                | 6,496                                       | 1,881                                      | 43                              | 27,352       |

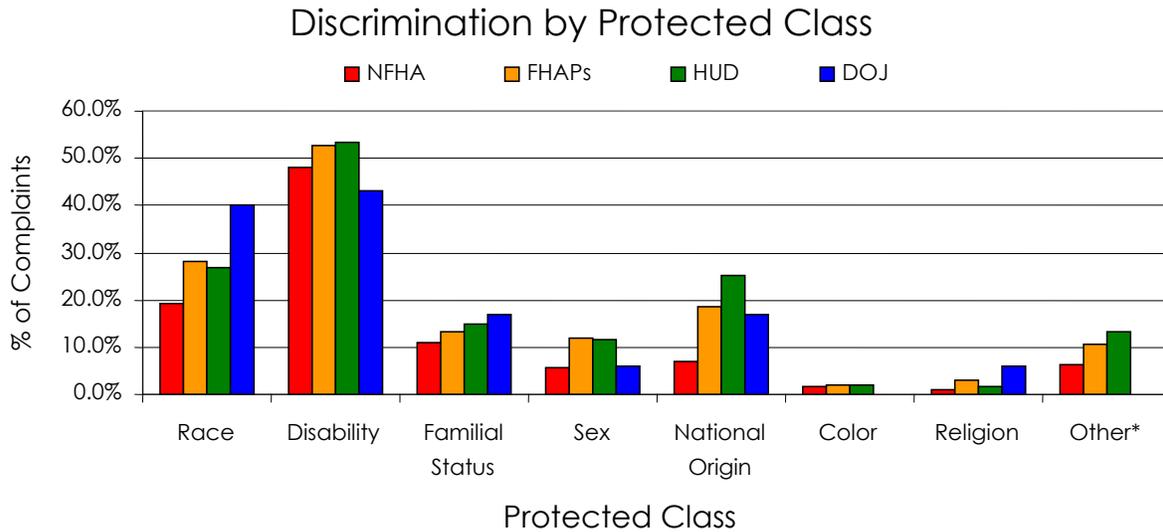
NFHA member data are for calendar year 2013. HUD, FHAP and DOJ data are for fiscal year 2013. HUD and FHAP data represent actual complaint filings, many of which may include allegations of discrimination based on multiple protected classes. DOJ data represent case filings of HUD election and enforcement cases, and pattern or practice cases. HUD, FHAP and NFHA data represent fair housing complaints received and/or investigated.

Housing Discrimination Complaints/Claims



## 1. Discrimination by Protected Class

The following graph and chart break out the percentage of complaints (fair housing organizations), claims (HUD and FHAP), and case filings (DOJ) investigated by each type of agency by protected class.



| <b>BASIS</b>           | <b>NFHA Members</b> | <b>HUD</b>    | <b>FHAPs</b>  | <b>DOJ</b> |
|------------------------|---------------------|---------------|---------------|------------|
| <b>Race</b>            | 19.3% (3,656)       | 26.8% (504)   | 28.3% (1,838) | 40% (14)   |
| <b>Disability</b>      | 48% (9,088)         | 53.5% (1,006) | 52.8% (3,429) | 43% (19)   |
| <b>Familial Status</b> | 11.1% (2,097)       | 14.9% (280)   | 13.4% (868)   | 17% (7)    |
| <b>Sex</b>             | 5.6% (1,064)        | 11.6% (219)   | 11.8% (767)   | 6% (2)     |
| <b>National Origin</b> | 7.1% (1,339)        | 25.1% (472)   | 18.4% (1,198) | 17% (6)    |
| <b>Color</b>           | 1.6% (301)          | 1.9% (36)     | 2.1% (135)    | NA (0)     |
| <b>Religion</b>        | 0.9% (169)          | 1.7% (32)     | 2.9% (189)    | 6% (2)     |
| <b>Other*</b>          | 6.4% (1,218)        | 13.1% (246)   | 10.5% (684)   | 0% (0)     |

\* The "other" category for NFHA members represents complaints arising from categories protected at the state and local levels, including age, criminal background, ancestry, "alienage," military status, victim of domestic violence, student status, lawful occupation, place of residence, family responsibility, and arbitrary. ("Arbitrary" is a catchall class under California state law in rental transactions). Retaliation complaints reported by fair housing organizations are categorized in the applicable protected class. The "other" category for HUD and FHAP complaints represents complaints of retaliation, which may not necessarily have a tracked protected class basis. NFHA member data are for calendar year 2013. HUD, FHAP, and DOJ data are for fiscal year 2013. Totals may exceed 100 percent because a single complaint may allege multiple bases of discrimination.

Disability complaints have remained the greatest percentage of all complaints for the past several years for a few reasons. Many apartment owners make direct comments refusing to make reasonable accommodations or modifications for people with disabilities so discrimination is easier to detect. A reasonable accommodation is paid for by the housing provider; an example is providing a handicapped parking spot with a curb cut for a resident in a wheelchair. A reasonable modification is paid for by the resident; an example is making a structural change inside an apartment which can then be reversed when the resident leaves. Architects and developers continue to design and construct inaccessible apartment buildings and condominium complexes that do not meet the Fair Housing Act's standards, despite HUD's 10 year "Fair Housing Accessibility FIRST" education campaign educating architects and builders about their fair housing responsibilities. HUD also has resources and an office devoted solely to disability issues.

Most complaints received by private fair housing organizations are based on discrimination against federally protected classes, but these agencies also receive complaints of discrimination against groups protected only by state and/or local fair housing laws, or on a characteristic not protected at all. Last year, NFHA began collecting this state and local law information. This year, NFHA members reported receiving housing discrimination complaints from several classes of persons currently not protected by the federal Fair Housing Act. Of the complaints in this category, NFHA members reported a total of 1,135 complaints including:

- 527 complaints based on source of income (down from 569 the previous year);
- 268 complaints based on sexual orientation (up for the second year in a row from 175 in 2012, and 101 in 2011);
- 200 complaints based on age (down from 222 the previous year);
- 113 complaints based on marital status (down from 135 the previous year); and
- 27 complaints based on gender identity or expression (down from 45 the previous year).

NFHA members also reported a total of 84 complaints that involved discrimination based on physical appearance, criminal background, ancestry, alienage, military status, domestic violence, student status, lawful occupation, place of residence, family responsibility, or "arbitrary" status ("arbitrary" is a class covered only in the California rental market).

In 2012, HUD and FHAP agencies began investigating complaints of gender identity and sexual orientation discrimination to the extent that they may be classified under the seven protected classes.<sup>9</sup> Some complaints may be qualified as sex discrimination if people are discriminated against because, for example, they do not conform to stereotypes of how people of a certain gender should behave. There may also be discrimination based on familial status and/or disability depending on the circumstance. HUD investigated 15 complaints and FHAP agencies investigated 72 complaints under this new guidance in FY13.

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<sup>9</sup> For more information on HUD's guidance on LGBT housing discrimination complaints, please see [http://portal.hud.gov/hudportal/HUD?src=/press/press\\_releases\\_media\\_advisories/2010/HUDNo.10-139](http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2010/HUDNo.10-139).

## **2. Discrimination by Transaction/ Category Reported by Private Fair Housing Groups**

Housing discrimination often is not detectable without testing and investigations. There are exceptions including, but not limited to, apartment buildings that violate the fair housing accessibility standards, landlords who boldly state, “no kids allowed,” and harassment. The rental housing market is often the easiest to investigate and also yields the highest number of complaints, in part because the interactions are quick and rental rates are usually advertised. Home sales, loans, and insurance are another story altogether. It is nearly impossible for someone to know when he or she is being steered into a different home, a worse loan, and/or worse insurance because of discrimination. Testing can sometimes be used to determine if there are differences in treatment because of someone’s protected class status. It is time-consuming and work-intensive in these more difficult housing transactions, as well as extremely important and necessary.

### **Rental Market—Private Groups Report 16,694 Complaints<sup>10</sup>**

Rental discrimination far outweighs all other types of housing discrimination reported in the United States. Private fair housing groups reported 16,694 complaints of housing discrimination in the rental market, down from 17,117 complaints in 2012, but still higher than the 14,782 rental complaints in 2010. In 2013, FHAP agencies reported 4,686 rental complaints, down from 5,202 in 2012; HUD reported 1,095 rental complaints, down from 1,106 complaints in 2012.

<sup>10</sup> Complaint data by transaction type does not equal the total number of complaints because not all organizations provided this type of information.

### **Home Sales— Private Groups Report 472 Complaints**

Private groups reported 472 complaints in the real estate sales market, up for the second year in a row from 381 in 2012 and 302 complaints in 2011. Sales complaints are still fewer than the high of 649 in 2009. FHAP agencies reported 319, down from 384 in 2012; a HUD reported 119, down from 165 in 2012 and only slightly up from 117 in 2011.

### **Mortgage Lending— Private Groups Report 1,078 Complaints**

Private groups reported 1,078 complaints of mortgage lending discrimination, down from 1,101 complaints in 2012 and 1,243 complaints in 2011. HUD reported 239 mortgage lending complaints, up from 168 in 2012. FHAP agencies reported 148 mortgage lending complaints in FY13, down from 187 in FY12.

### **Homeowners Insurance— Private Groups Report 53 Complaints**

Private fair housing groups reported 53 complaints in the insurance market, compared to 22 in 2012, and 24 insurance complaints in 2011; FHAP agencies reported six insurance complaints and HUD reported one in 2013. It should be noted that discrimination related to homeowners insurance can be difficult to identify because it is rarely overt which makes it difficult to address discrimination in this transaction category.

### **Harassment—Private Groups Report 453 Complaints**

The Fair Housing Act makes it illegal to coerce, intimidate, threaten or interfere with the fair housing rights of persons because

of their membership in any of the federally protected classes, or to someone helping a person exercise his or her fair housing rights. Harassment can rise to the level of a criminal violation under the Fair Housing Act. Fair housing advocates continue to urge HUD to release a regulation on prohibited harassment under the Fair Housing Act to inform housing providers and the public what constitutes this type of discrimination and how the Department will address it.

Private fair housing groups reported 453 complaints of harassment, a significant drop from 851 in 2012, but closer to the 552 reported in 2011. Of the complaints investigated, 28.4 percent were based on race; 26.1 percent were based on disability; 20.3 percent were based on sex; 13.9 percent were based on national origin; and 6.84 percent were based on familial status. Harassment against persons in housing remains under-reported.

### **Other Housing and Housing Related Transactions – Private Groups Report 208 Complaints**

NFHA began tracking this metric last year. In 2013, private fair housing organizations reported acts of discrimination in a number of areas: 92 complaints of discriminatory advertising by housing providers, up from 44 in 2012; 47 complaints of discriminatory zoning and land use, down from 66 in 2012; 28 complaints against homeowners' and condo associations, down from 46 in 2012; 8 acts of retaliation, down from 49 in 2012; and 7 acts of discrimination in homeless shelters, up from 3 in 2012. Of all these combined instances of discrimination, 58.8 percent were based on disability; 9.9 percent on race; 11 percent on familial status; 5.5 percent on national origin; 5.5 percent on sex; 2.2 percent on

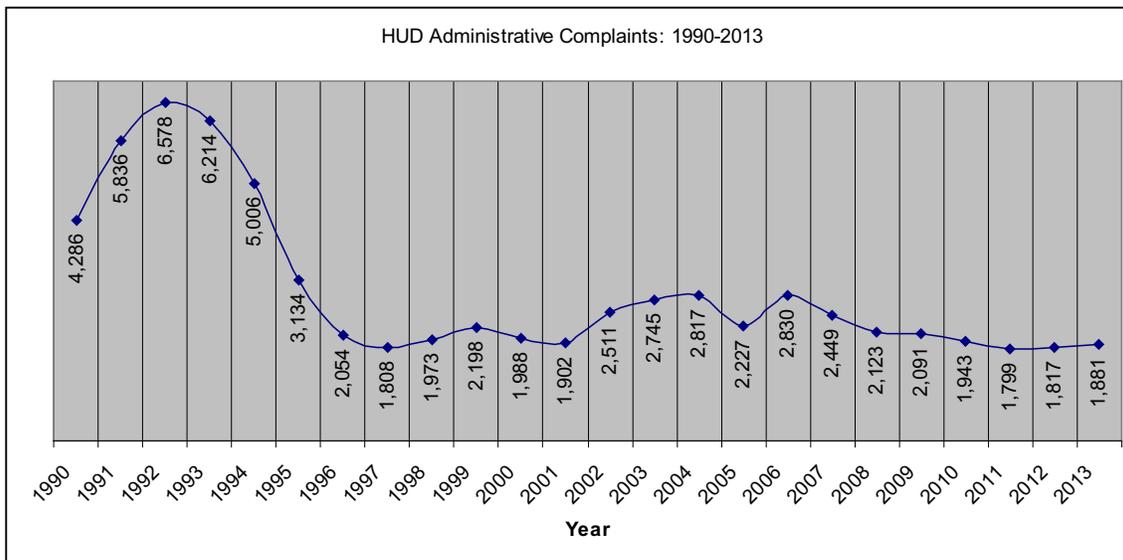
religion, and 1.7 percent on color.

### **B. U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND FAIR HOUSING ASSISTANCE PROGRAM DATA**

HUD is charged with carrying out the Fair Housing Act's mandate to eliminate housing discrimination. To that end, FHEO is charged with enforcing the Act as well as other civil rights laws, including Title VI of the Civil Rights Act of 1964, Section 109 of the Housing and Community Development Act of 1974, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Title IX of the Education Amendments Act of 1972, and the Architectural Barriers Act of 1968. HUD has the authority to investigate, conciliate and charge meritorious claims of housing discrimination filed under the Fair Housing Act. It can also initiate investigations and file complaints on behalf of the HUD Secretary, as authorized under Section 810 of the Fair Housing Act. FHEO also publishes and distributes educational materials that provide information on how to report unlawful discrimination; administers and manages the Fair Housing Assistance Program (FHAP) and the Fair Housing Initiatives Program (FHIP); establishes fair housing and civil rights regulations and policies for HUD programs; publishes guidance on complying with the requirements of fair housing and various civil rights laws; and monitors and reviews HUD programs and activities for compliance with federal nondiscrimination requirements and the requirement to affirmatively further fair housing.

HUD investigated 1,881 cases in FY13, 64 more cases than in FY12. The number of fair housing cases HUD investigated in FY13

is only 29 percent of its 1992 high of 6,578 cases. HUD has increasingly referred cases to FHAP agencies for investigation, which explains HUD’s gradually decreasing numbers over time. The graph on the following page depicts the number of administrative cases handled by HUD since 1990.



## 1. Charged Cases

If an investigation yields a determination by HUD that there is reasonable cause to believe that illegal discrimination has occurred, the agency will issue a charge of discrimination. The parties to a case may elect to have the case filed by the Justice Department heard in federal district court or, if no election is made, a HUD administrative law judge will hear the case. The majority of complainants and respondents elect to proceed in federal court.

Although HUD received more complaints in 2013, it issued just 37 charges in cases in which it determined that there was reasonable cause to believe that unlawful discrimination occurred. This is a decrease from last year’s 43 charged cases and the 55 charged cases in FY12, and is the lowest level since 2007. For the second year in a row, HUD’s charges amount to only two percent of HUD’s total complaint load.

| <b>FAIR HOUSING ACT CASES IN WHICH HUD ISSUED A CHARGE</b> |             |             |             |             |             |             |             |             |             |             |
|--|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| <b>2003</b>  | <b>2004</b> | <b>2005</b> | <b>2006</b> | <b>2007</b> | <b>2008</b> | <b>2009</b> | <b>2010</b> | <b>2011</b> | <b>2012</b> | <b>2013</b> |
| 23   | 43          | 47          | 34          | 31          | 48          | 54          | 45          | 55          | 43          | 37          |

FHAP agencies issued 359 causes in FY13, a decrease of 192 in FY12. This decrease is significant, considering that one additional FHAP agency reported in FY13 than in FY12.

## **2. Aged Cases**

With the exception of complex or systemic cases, the Fair Housing Act regulations require that HUD and FHAPs complete their investigations of cases in 100 days or less. After a complaint is filed, the appropriate agency must perform an investigation in order to determine whether there is reasonable cause to believe discrimination has occurred. The result can be that the relevant agency finds cause to believe that discrimination occurred and issues a charge, finds no cause to believe that discrimination occurred, or other alternatives laid out in the chart below. There are many cases which may merit more than 100 days to investigate, especially cases involving real estate sales steering, mortgage lending, or insurance discrimination.

HUD and FHAPs routinely carry an “aged” case load—that is, cases that have surpassed the 100 day benchmark without an outcome. In FY13, there were 1,210 cases at HUD past the 100 day mark, the second year in a row in which an increase has been observed. However, this is still a marked improvement from the 1,353 aged cases in FY07. Aged cases increased for FHAP agencies in 2013—there were 3,420, which is 55 more than in FY12.

## **3. Administrative Closures and No Cause Cases**

Together, HUD and its FHAP agencies administratively closed or found no cause to believe discrimination occurred in 4,802 cases in FY13. Some of these closed cases may be from previous years’ complaints, and do not match the number of cases filed in a particular year. The chart below lists the number of closed cases by HUD and FHAPs. In FY13, HUD administratively closed 216 cases and found no cause to believe discrimination occurred in 557 cases, totaling 773 cases. FHAP agencies administratively closed 653 cases and found no cause in 3,397, totaling 4,050.

HUD conciliated or settled a total of 576 cases, and 166 cases were withdrawn after resolution. FHAP agencies conciliated or settled a total of 1,453 cases, and 896 cases were withdrawn after resolution.

Administrative closures at HUD and FHAPs decreased significantly in FY13, at 869, compared to FY12 at 1,223. HUD and FHAP agencies found no cause to believe discrimination occurred in 3,954 cases, compared to 4,101 cases in FY12. Overall, HUD and FHAP closures in FY13 amounted to 892 less than in FY12. Most of these were FHAP cases closed due to a no-cause finding.

| <b>2013 HUD AND FHAP CASES CLOSED NATIONWIDE</b>       |            |              |              |
|--|------------|--------------|--------------|
| <b>Type of Closure</b>                                 | <b>HUD</b> | <b>FHAP</b>  | <b>Total</b> |
| Administrative Closure                                 | 216        | 653          | 869          |
| No Cause   | 557        | 3,397        | 3,954        |
| Conciliation/Settlement/Withdrawn after Resolution     | 742        | 2,349        | 3,091        |
| ALJ Consent Order Entered After Issuance of Charge     | 9          | n/a          | 9            |
| Election to Go to Court                                | 25         | n/a          | 25           |
| DOJ Dismissal  | 5          | n/a          | 5            |
| DOJ Filed Suit   | n/a        | n/a          | 0            |
| DOJ Settlement   | 12         | n/a          | 12           |
| FHAP Judicial Consent Order                            | n/a        | 89           | 89           |
| FHAP Judicial Dismissal                                | n/a        | 46           | 46           |
| Litigation – Discrimination Found                      | n/a        | 5            | 5            |
| Litigation – No Discrimination Found                   | n/a        | 6            | 6            |
| Administrative Hearing Ended – Discrimination Found    | n/a        | 6            | 6            |
| Administrative Hearing Ended – No Discrimination Found | n/a        | 8            | 8            |
| <b>Total Closures</b>                                  |            | <b>6,559</b> | <b>8,125</b> |

The chart below contains a breakdown of reasons for administrative closures at HUD and FHAPs.

| <b>2011 HUD and FHAP ADMINISTRATIVE CLOSURES</b>      |            |              |
|---|------------|--------------|
| <b>Reason for Closure</b>                             | <b>HUD</b> | <b>FHAPs</b> |
| Untimely filed  | 2          | 9            |
| Dismissed for lack of jurisdiction                    | 48         | 68           |
| Unable to locate complainant                          | 13         | 31           |
| Complainant failed to cooperate                       | 69         | 280          |
| Unable to identify respondent                         | 0          | 2            |
| Complaint withdrawn by complainant without resolution | 82         | 246          |
| Unable to locate respondent                           | 0          | 6            |
| Closed because trial has begun                        | 2          | 11           |
| <b>Total</b>  | <b>216</b> | <b>653</b>   |

#### **4. Administrative Law Judge Consent Orders**

If a case is charged by HUD but the parties do not elect to have the case heard in federal district court, it will go before an administrative law judge (ALJ) who will decide the case and in some instances assess a civil penalty and award compensatory damages, affirmative relief, or attorneys' fees. Punitive damages may not be awarded by an ALJ. In 2013, parties entered into nine ALJ consent orders after issuance of a charge. This is a significant drop compared to FY12 when 17 ALJ consent orders were entered into, and the lowest since 2008 when eight ALJ consent orders were issued.

## 5. Secretary-Initiated Complaints

According to HUD, it “files a Secretary-initiated complaint when it has evidence that a discriminatory housing practice has occurred or is about to occur. HUD also may file a Secretary-initiated complaint when it has received an individual complaint, but believes there may be additional victims of the discriminatory act or wants to obtain broader relief in the public interest.”<sup>11</sup> HUD filed 37 Secretary-initiated complaints in FY13, more than double the 16 in FY12, and nearly four times as many as the 10 cases in FY10. The chart below lists the protected-class bases and types of housing or housing-related transactions included in the complaints. These include a major case against SunTrust Mortgage, Inc. for discrimination against women on maternity leave, and another case against a property management company for repeated harassment and intimidation of Latino tenants.

| <b>FY13 Bases and Issues of Secretary Initiated Complaints</b>                  |           |
|---|-----------|
| <b>Bases</b>  |           |
| Color   | 1         |
| National Origin   | 4         |
| National Origin, Sex, and Retaliation   | 1         |
| Race  | 1         |
| Race, Disability, and Familial Status   | 1         |
| Race and National Origin  | 6         |
| Race, National Origin, and Sex  | 1         |
| Race and Retaliation  | 1         |
| Familial Status   | 3         |
| Disability  | 9         |
| Sex   | 2         |
| Familial Status and Sex   | 7         |
| <b>Total Cases</b>  | <b>37</b> |
| <b>Issues</b>   |           |
| Discriminatory refusal to sell  | 2         |
| Discriminatory refusal to rent  | 7         |
| Discriminatory advertising, statements and notices                              | 11        |
| Discriminatory financing (includes real estate transactions); Discrimination in | 5         |
| Discrimination in the terms/conditions for making loans                         | 2         |
| Discriminatory terms, conditions, privileges, or services and facilities        | 1         |
| Discriminatory terms, conditions, privileges, or services and facilities        | 6         |
| Discrimination in terms/conditions/privileges relating to rental                | 2         |
| Failure to make reasonable accommodation  | 1         |

11 Annual Report on Fair Housing Fiscal Year 11, US Department of Housing and Urban Development, p. 37.

**C. U.S. DEPARTMENT OF JUSTICE DATA**

The Housing and Civil Enforcement Section is responsible for enforcing a number of civil rights laws including the Fair Housing Act. The 1968 Fair Housing Act gave DOJ the authority to prosecute cases involving a “pattern or practice” of housing discrimination, as well as cases involving acts of discrimination that raise “an issue of general public importance.” The 1988 Fair Housing Amendments Act increased the Department’s authority to include cases in which a housing discrimination complaint has been investigated and charged by the Department of Housing and Urban Development and one of the parties has “elected” to go to federal court.

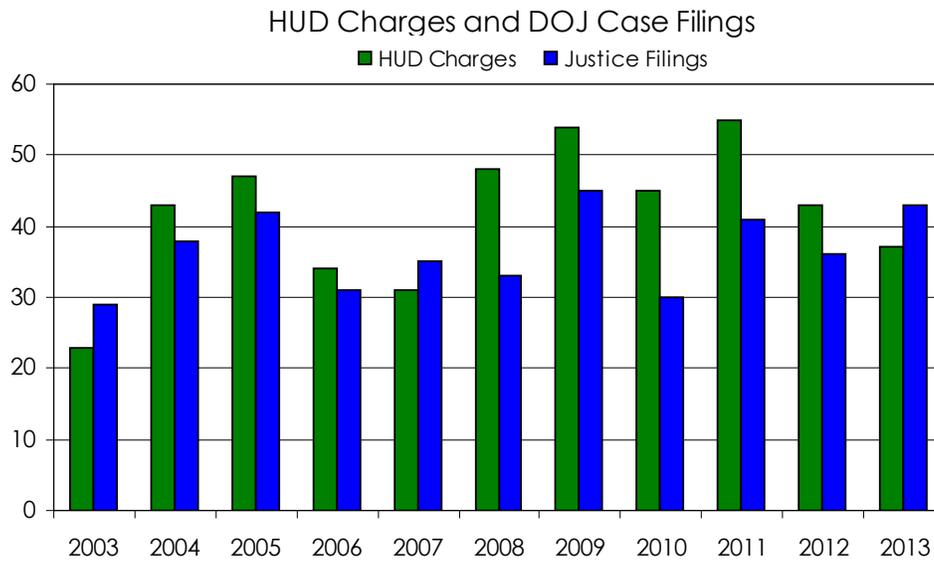
During FY13, DOJ reviewed and responded to more than 1,200 written complaints from individuals, compared to 1,100 in 2012 and 800 in FY11. Because most individual complaints were out of DOJ’s jurisdiction, DOJ opened 153 new matters for further inquiry or investigation, most of which involved analysis of whether a pattern or practice of discrimination existed. This is a decrease from the 160 new matters DOJ opened in FY12 and the 170 in FY10.

In FY13, the Department of Justice’s Housing and Civil Enforcement Section obtained consent decrees or favorable judgments in 38 cases in 2013 compared to 45 in 2012 and 60 in 2011. The Housing Section filed 43 cases in 2013, including 24 cases involving pattern and practice claims, compared to 36 cases of which 21 involved pattern and practice in 2012. Of these pattern or practice cases, five alleged fair lending claims; 11 alleged rental discrimination on the bases of race, disability, sex, familial status, national origin, or religion; three alleged violations of the accessibility provisions of the Fair Housing Act; three alleged discrimination in land use and zoning practices or policies by local governments; and one alleged disability discrimination by a homeless shelter. Of new cases filed, four cases were rental cases filed on the basis of race or national origin developed through the Housing Section’s Fair Housing Testing Program. HUD election cases in FY13 were down to 16 from 18 in 2012, furthering an overall downward trend from the 24 HUD election cases in FY09.

The chart below shows the number of cases filed by DOJ between FY02 and FY14.

| <b>TOTAL DOJ CASES FILED BY YEAR</b> |             |             |             |             |             |             |             |             |             |             |             |
|--------------------------------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| <b>FY02</b>                          | <b>FY03</b> | <b>FY04</b> | <b>FY05</b> | <b>FY06</b> | <b>FY07</b> | <b>FY08</b> | <b>FY09</b> | <b>FY10</b> | <b>FY11</b> | <b>FY12</b> | <b>FY13</b> |
| 49                                   | 29          | 38          | 42          | 31          | 35          | 33          | 45          | 30          | 41          | 36          | 43          |

The chart below compares the numbers of DOJ case filings and HUD charges.



**D. CONSUMER FINANCIAL PROTECTION BUREAU DATA**

The Consumer Financial Protection Bureau (CFPB) has the authority to ensure that no extension of credit, including in the mortgage market, violates the Equal Credit Opportunity Act. The CFPB’s Office of Fair Lending and Equal Opportunity provides guidance to the CFPB’s supervision staff as they assess fair lending compliance by financial companies regulated by the CFPB, and it coordinates with other prudential regulators regarding analysis and examination of supervised institutions. In addition, the Office of Fair Lending works with the CFPB’s Office of Enforcement to conduct research and investigations in anticipation of filing public enforcement actions against institutions, and provides legal and analytical support in the investigation of discrimination complaints.

The CFPB currently accepts complaints alleging unlawful abuses in mortgages, debt collection, credit reporting, bank accounts, consumer credit cards, money transfers, and payday, student, and auto loans. Once a complaint is screened, it is sent to the company that provided the service in question to review the complaint, communicate with the consumer, and determine what actions may be taken in response to the complaint. The company has 15 days to respond to a consumer and the CFPB, and the company is expected to close a complaint within 60 days. The CFPB prioritizes for its own review complaints wherein a consumer disputes a lender’s response or when a lender fails to respond in a timely manner. Consumers have 30 days to dispute a company’s response to their complaint. In 2013, 23 percent of company responses were disputed by consumers.<sup>12</sup>

More public data on the fair lending trends contained in CFPB complaints are necessary for advocates and the public to better understand and respond to emerging mortgage lending practices. In March 2013, the CFPB began making information about consumer mortgage complaints public on its Consumer Complaint Database, a live database of complaints submitted by consumers that includes anonymized information such as the type of complaint,

12 Consumer Financial Protection Bureau, “Consumer Response Annual Report, January 1 – December 31, 2013,” March 2013.

date of submission, a consumer's zip code, and the company about which the consumer complained.

A major issue with the database is that records do not include protected class data of the consumer, making it extremely difficult to ascertain overall fair lending trends that emerge in real time. NFHA and other advocates have urged the CFPB to collect protected class information from each complainant and to make the narrative information that each complainant provides a matter of public record. In July 2014, the CFPB issues a Proposed Policy Statement to provide consumers who have submitted a complaint with the option to make their narrative information provided in a complaint public in the CFPB's complaint database.

Between January 1, 2013, and December 31, 2013, the CFPB received approximately 59,900 mortgage complaints from consumers, making up 37 percent of the 163,700 complaints it received. Of the mortgage complaints, 29 percent concerned conventional fixed rate mortgages, 10 percent concerned conventional adjustable rate mortgages, eight percent concerned Federal Housing Administration mortgages, four percent concerned home equity lines of credit, two percent concerned Veterans Administration mortgages, one percent concerned reverse mortgages, and another one percent concerned second mortgages. Another 45 percent concerned a vague "other mortgages" category.

Of all complaints in 2013, an overwhelming 59 percent of mortgage complaints were based on problems when homeowners were unable to make their monthly loan payments and may have been looking for a loan modification, or facing foreclosure or collections. Another 26 percent of

complaints were related to making payments involving loan servicing and escrow issues. Eight percent of complaints were made based on issues with a loan application, loan originator, or mortgage broker at the application stage. Four percent of complaints had to do with issues related to the settlement process and closing costs. One percent of complaints were based on issues with a credit decision or underwriting of a loan.

Of these 59,900 complaints, 77 percent were closed with explanation; seven percent were closed with non-monetary relief; six percent were closed while the company was still reviewing the complaint; five percent were closed with an administrative response; three percent were closed without relief or explanation; and two percent were closed with monetary relief. Companies did not respond to consumer complaints less than one percent of the time in 2013.

### **E. PRIVATE, NON-PROFIT FAIR HOUSING AND OTHER ORGANIZATION DATA**

Private fair housing organizations educate the public about their fair housing rights and the housing industry on how to provide nondiscriminatory housing services, and they enforce the laws intended to protect all of us against housing discrimination. In 2013, private fair housing organizations investigated 18,932 complaints, 69 percent of the total 27,352 complaints. While this is less than in 2012, it is still higher than in 2011.

Many fair housing organizations are funded in large part by the Fair Housing Initiatives Program (FHIP). FHIP is authorized under Section 561 of the Housing and Community Development Act of 1987, is administered by HUD, and is the primary federal program

that funds private fair housing groups throughout the country. FHIP provides funding to groups to assist people who believe they have been victims of housing discrimination, to conduct testing and investigations to identify systemic patterns of discrimination, and to promote awareness of fair housing laws. Components of the program include the Private Enforcement Initiative (PEI) that enables private fair housing groups to carry out testing and other enforcement activities; the Education and Outreach Initiative (EOI) that funds groups to educate the general public about fair housing rights, responsibilities and compliance with the law; and the Fair Housing Organizations Initiative (FHOI) that builds the capacity and effectiveness of fair housing groups and funds the creation of new organizations.

FHIP-funded fair housing organizations are the only private groups with the capacity to investigate and test complaints of housing discrimination. Courts, researchers, and practitioners have all recognized testing as the most effective way to detect housing discrimination. HUD, DOJ, and state and local civil rights agencies often rely upon the testing capacity of FHIP-funded organizations to further investigate complaints.

President Obama has requested \$45.6 million for FHIP in FY15. Fair housing organizations know their communities best and are well-positioned to determine what is most needed at the local level. As such, FHIP funding should be flexible without set-asides for specific projects. ♦

| <b>Fair Housing Initiatives Budget in Recent Years</b> |                     |
|--|---------------------|
| <b>Fiscal Year</b>                                     | <b>FHIP Funding</b> |
| 2003   | \$ 20.25 million    |
| 2004   | \$ 20.25 million    |
| 2005   | \$ 20 million       |
| 2006   | \$ 20 million       |
| 2007   | \$ 20 million       |
| 2008   | \$ 23.5 million     |
| 2009   | \$ 27.5 million     |
| 2010   | \$ 42.5 million     |
| 2011   | \$42 million        |
| 2012   | \$42.5 million      |
| 2013   | \$40.3 million      |
| 2014   | \$40.1 million      |

## SECTION III. A REGIONAL LOOK AT HOUSING DISCRIMINATION IN 2013

In addition to an analysis of national fair housing data, this year's report has a new component – analysis of 2013 data by the 10 HUD regions. The office in each HUD region is responsible for managing the administration of HUD's various housing and community development programs in particular states. The data are broken down a number of ways, including looking at all of the data from all private and public sources. The regions are as follows:

**Region 1** – Connecticut, Vermont, Massachusetts, Maine, New Hampshire, Rhode Island;

**Region 2** – New York, New Jersey;

**Region 3** – Pennsylvania, Virginia, West Virginia, Maryland, Delaware, Washington, DC;

**Region 4** – Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, U.S. Virgin Islands;

**Region 5** – Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin;

**Region 6** – Arkansas, Louisiana, New Mexico, Oklahoma, Texas;

**Region 7** – Kansas, Iowa, Missouri, Nebraska;

**Region 8** – Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming;

**Region 9** – California, Arizona, Hawaii, Nevada;

**Region 10** – Washington, Alaska, Idaho, Oregon.

The populations of the regions vary. For example, Region 4 has the highest population of 66,024,000, while Region 8 has the lowest at 11,157,404. The number of NFHA members reporting in each region also varies. For example, 26 NFHA members in Region 5 reported data for this year's report, making up 27 percent of all reporting members. Only two NFHA members reported data in Region 7, making up less than two percent of all reporting members.

The number of reporting NFHA members in each region also influences the number of total complaints in each region. Eighteen NFHA members reported complaints from Region 9, representing 32.2 percent of complaints reported by NFHA members. Twenty-six NFHA members from Region 5 reported, making up 24.6 percent of complaints reported by NFHA members. Twenty NFHA members reported from Region 4, making up 11.1 percent of complaints reported by private fair housing groups. Together, Regions 4, 5, and 9 reported 60 percent of all complaints nationally, including those reported by government civil and human rights agencies.

The regions with the highest number of complaints are also the regions with the most reporting private fair housing agencies and where the most FHIP funding was awarded. With adequate funding, private nonprofit fair housing organizations can address housing discrimination that would otherwise go unreported. This is reflected in the regional concentration of complaints reported and the presence of private nonprofit fair housing organizations. Together Regions 4, 5 and 9 received over half of all FY12 FHIP funding provided to fair housing organizations,<sup>13</sup> making

<sup>13</sup> FY13 FHIP grants were awarded near the end of FY13, causing FHIP recipients to draw out use of FY12 funding to cover enforcement and educational activities during FY13.

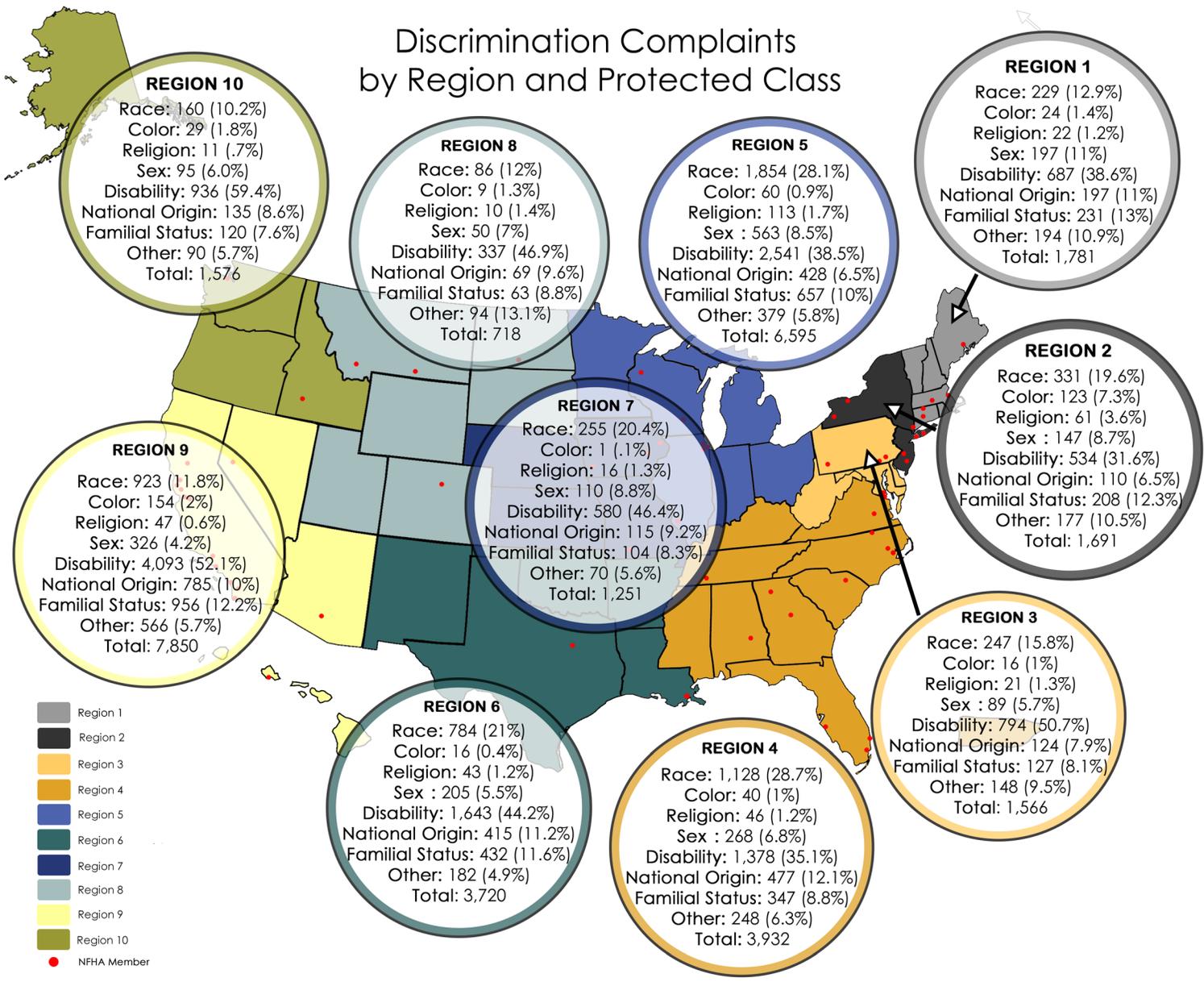
it possible for them to provide greater enforcement and educational services for their constituent areas.

- Region 5 received \$8.5 million in FHIP funding, 22.3 percent of the annual total and the most of any region for FY12. Region 5 also had 6,595 complaints, the second highest number of complaints, and had most private fair housing groups with 26 organizations reporting complaints.
- Region 4 had the second highest amount of FHIP funding, with \$6.9 million and 18.2 percent of the FY12 total funding. Region 4 also had 3,932 complaints with 20 private fair housing groups reporting complaints.
- Region 9 had the third highest amount of funding, with \$6.1 million and 16 percent of the FY12 total. Region 9 had the highest number of complaints, with 7,850 complaints, and the third most private fair housing groups with 18 reporting complaints for 2013.

Private groups also refer complaints to FHAPs and HUD for investigation, adding to the numbers these public agencies report in the regions where private fair housing groups are located.

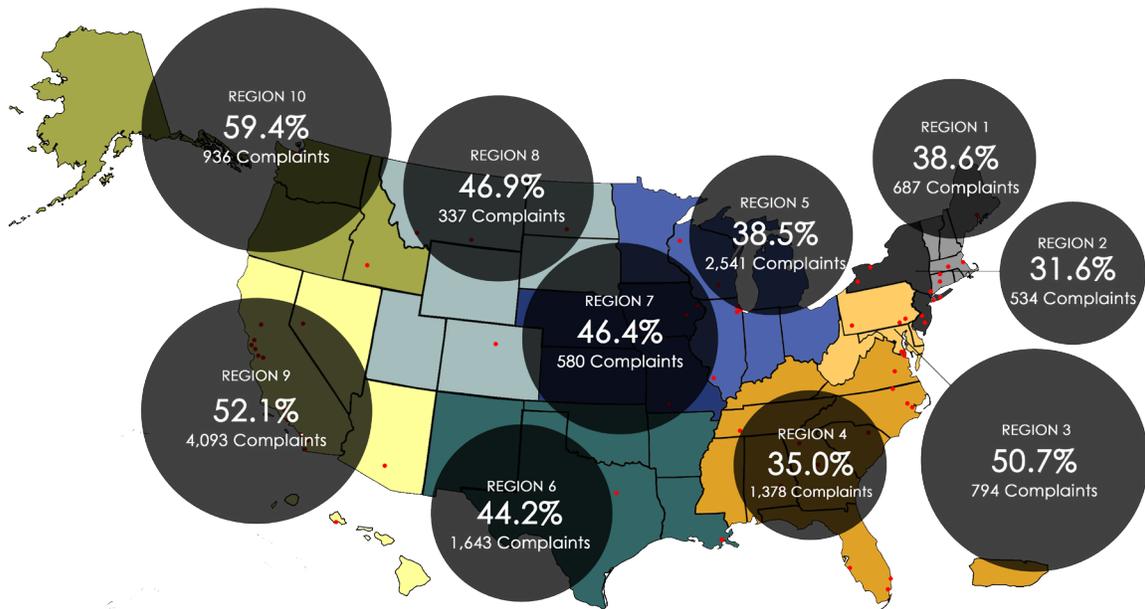
In this section, we show the breakdown of fair housing complaints based on all groups protected under the Fair Housing Act as well those only protected by some state or local laws, such as marital status, sexual orientation, or source of income. This section also includes a regional breakdown of top three categories in which complaints are received: race, disability, and family status.

The map below provides a breakdown of complaints by protected class within each of HUD's 10 regions. The rate of disability discrimination was the highest of any other protected class in each of HUD's 10 regions, however, there are many variations in the rates of discrimination based on the other protected classes. For example, at 19.5 percent, race-based complaints were the second most common nationally, but race was the third most common type of discrimination in Region 1 with 12.9 percent. Familial status discrimination was the third most common type of housing discrimination at 10.6 percent nationally, but it was the fourth most common type in Region 10 at 7.6 percent.



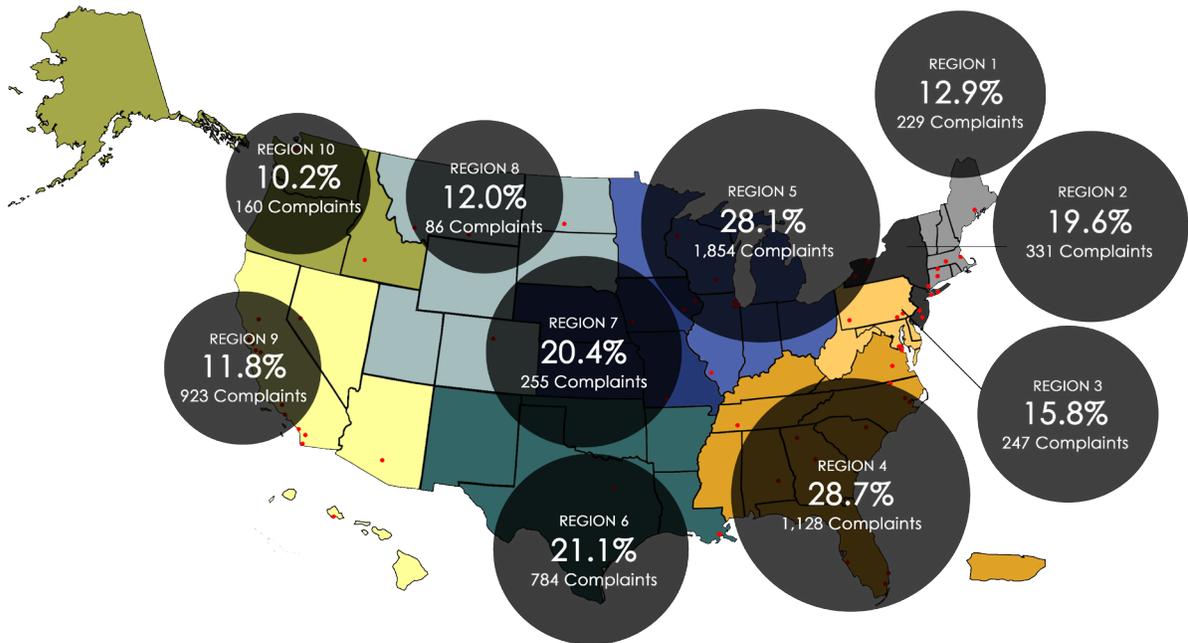
Figures in this map represent allegations of discrimination categorized by protected classes. The actual number of cases reported by HUD or FHAPs may be lower due to cases with multiple class bases.

The map below shows the percentage of disability-based complaints within each region.



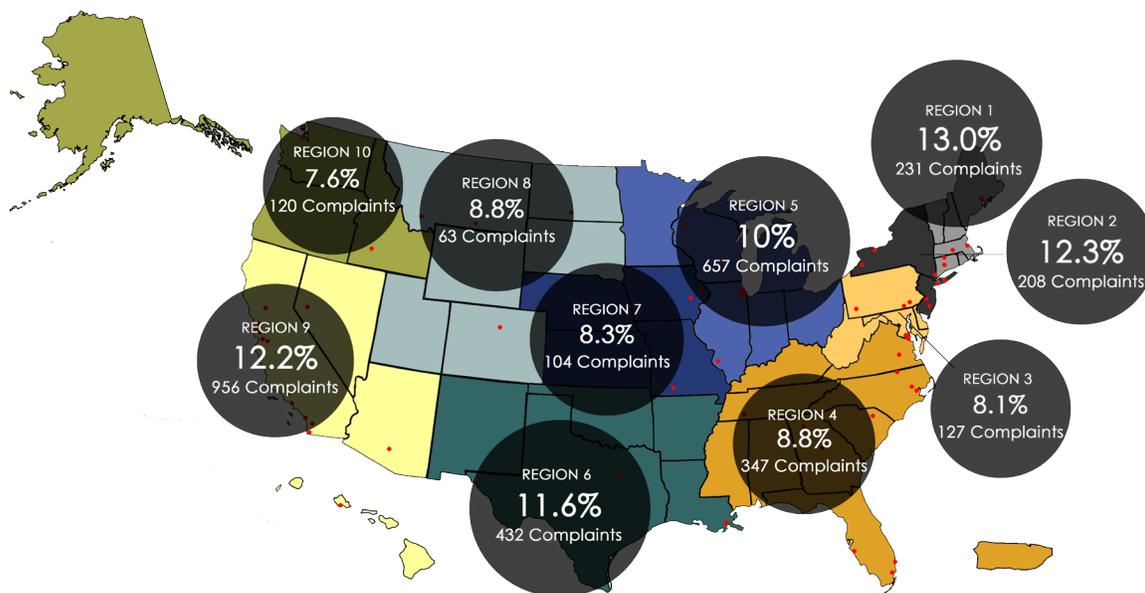
Disability complaints made up the highest percentage share in Region 10, at 59.4 percent (936) of all complaints received in the region. The total number of complaints based on disability was highest in Region 9, where 4,093 complaints based on disability were reported.

Race-based complaints made up the second highest number of complaints nationwide. The map below shows the percentage share of race-based complaints within each region.



Race-based complaints made up the highest percentage share in Region 4, at 28.7 percent (1,128) of complaints in the region. However, Region 5 reported the highest number of complaints based on race, with 1,854 complaints.

Familial status complaints made up the third highest number of complaints nationwide. The map below shows the percentage share of familial status-based complaints within each region.



Familial status discrimination complaints made up the highest percentage share in Region 1 at 13 percent (231) of complaints in that region. Region 9 reported the highest number of complaints, with 956 complaints.

National origin discrimination complaints made up the highest percentage share in Region 4, at 12.1 percent (477) of complaints in the region. Region 9 reported the highest number of complaints, at 785.

Sex discrimination complaints made up the highest percent share in Region 1, at 11 percent (197) of complaints in the region. Region 5 reported the highest number of complaints, at 563.

Housing discrimination based on color made up the highest percentage share in Region 2, at 7.3 percent (123) of complaints in the region. Region 9 reported the highest number of complaints, with 154 complaints.

Housing discrimination based on religion was most pronounced in Region 2, as both a share of complaints at 3.6 percent and number of complaints, at 61. ♦

## CONCLUSION

As we look forward to the next year in fair housing, we recognize that there is still a lot of important work left for us to do. HUD has an important responsibility to finalize its draft “affirmatively furthering fair housing” regulation to move the nation closer to the two goals of the Fair Housing Act – eliminating discrimination and building diverse inclusive communities. HUD, DOJ, and fair housing organizations have to be ready to implement this regulation, to educate cities and states about their responsibilities, and to hold them accountable where necessary.

Investigating close to 30,000 fair housing complaints is a tremendous accomplishment, but we all need the resources to do more. With a conservative estimate of 4,000,000 violations annually, the fair housing community is just scratching the surface. It comes as no surprise that the most complaints are filed in places with the most fair housing organizations. We need more funds to focus attention on parts of the nation where education and enforcement are currently absent, and help the millions of people victimized by discrimination each year. We should not see such disparities among the different regions of our country. Regional disparities in complaint data underscore the importance of addressing fair housing through a systemic approach.

We also need more information about the nature of discrimination in various markets. The CFPB is a new force in town and the information collected through its complaint process and its regulatory and enforcement capacity could be key in understanding the complex picture of discrimination in lending. Under the current system, the CFPB is not collecting enough information and the public

is not getting enough information from the CFPB. This government watchdog should be collecting the fair lending data they need so that the federal government and advocates do not have to use inaccurate proxies – that rely on the very geographic segregation we are trying to eliminate - to uncover discriminatory practices.

Finally, HUD should finalize a regulation addressing sexual harassment and other types of harassment covered by the Fair Housing Act. The first lawsuit brought successfully addressing sexual harassment in housing was in 1982 and we still await a HUD regulation more than 30 years later. HUD issued a proposed regulation on this subject in 2000, but it was never finalized. Such a regulation would be consistent with judicial decisions interpreting the Fair Housing Act to cover sexual harassment and other harassment in housing and would provide victims of harassment discrimination, the housing industry, and the public with clearer information about the type of conduct that is prohibited by the Act.

The coming years hold great promise and fair housing organizations are at the ready. Recent federal policy announcements and enhancements show that non-profit organizations and the government can work together to take the next step in working to build a nation closer to the values of equality and opportunity that we all hold true. ♦





# NFHA

National Fair Housing Alliance

.....  
NATIONAL FAIR HOUSING ALLIANCE

1101 VERMONT AVENUE, NW

SUITE 710

WASHINGTON, DC 20005

(202) 898-1661

[www.nationalfairhousing.org](http://www.nationalfairhousing.org)

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