

SECTION III: EVALUATION OF THE JURISDICTION'S CURRENT FAIR HOUSING LEGAL STATUS

A. The Fair Housing Act and Local Anti-Discrimination Law

The Fair Housing Act, Title VIII of the Civil Rights Act of 1968, 42 USC 3610, *et seq.*, as amended in substantial part in 1988, is a legislative enactment enforcing, with exceptions, a policy of equal access to all types of housing for classes of persons within its protection. To this end, the Act prohibits not only intentional discrimination, but also practices that, applied equally to all without any intent to discriminate, have the effect of discriminating against groups protected by the Act. This Report analyzes violations of this Act, both intentional actions and intentional practices that restrict housing choices.

The Fair Housing Act prohibits discrimination on the basis of race, color, religion, sex, disability, familial status, or national origin (the protected classes). The State of Oregon and the City of Portland and Multnomah County have additional protected classes: marital status, sexual orientation, source of income, military status, gender identity, and domestic violence victims. This Report addresses all of the above-named protected classes.

Portland and Multnomah County Anti-Discrimination Ordinances

The City of Portland and Multnomah County have passed ordinances that outlaw discrimination in housing against a broader set of protected classes than Federal Law. Both the Portland Ordinance 164709 (City Code Chapter 23, Title 1, passed in 1991) and the Multnomah County ordinance (No. 969, passed in 2001) prohibit discrimination in selling, renting or leasing real property on the basis of race, religion, color, sex, national origin, marital status, familial status, disability, sexual orientation, source of income, or age (if 18 or older). Section 8 Vouchers are not protected under "source of income." Both ordinances include an exception that allows landlords or property managers to refuse to rent to persons with a federal rent subsidy.

Oregon State Anti-Discrimination Statutes

Oregon law parallels federal law, but also bars discrimination based on marital status and source of income (except for Section 8). Oregon law also specifically bars discrimination in real estate listings or advertising [ORS 659A.421(1)].

ORS 659A.424(2) enhances these provisions in cases involving rental properties by expressly prohibiting practices which have a disparate impact even in cases where an explicit intent to discriminate cannot be proven.

A claim of discrimination against transgender persons is usually asserted under the provision of civil rights laws that protects persons with a disability or perceived disability. Oregon law goes a step further, providing some level of explicit protection to transgender persons. In Oregon, OAR 839-006-0206 provides that, while there is no duty to make reasonable accommodation to an individual based

on his/her gender identity in employment settings, the individual is otherwise protected from discrimination.

Violations of Fair Housing Law can be enforced by a complaint to the Commissioner of the Bureau of Labor and Industries or through a civil complaint pursuant to ORS 659A.870.

B. Fair Housing Complaint Data

Multnomah County is home to an increasing number of protected class members. Data reviewed in Section II of this plan shows an increased number of members of communities of color, low-income, people with disabilities, and varying family sizes.

A useful indicator of Fair Housing violations against protected classes is the number of complaints registered through various government and advocacy groups. Table 18 gives a summary of complaints based on protected class reported by the Bureau of Labor and Industries (BOLI) and the U.S. Department of Housing and Urban Development (HUD) for 2009 and 2010¹. The data represents the number of “suspected” or “possible” violations based on protected class, but does not represent the number of cases where a violation was determined.

Table 18: Fair Housing Complaints on the Basis of Protected Class: U.S. Dept of Housing and Urban Development & the Bureau of Labor and Industries - Multnomah County, Two Year Period: 2009-2010			
PROTECTED CLASS & Complaint Classification	U.S. Dept of Housing & Urban Development	Bureau of Labor and Industries	Total
DISABILITY TOTAL	27	25	52
- Failure to Allow Reasonable Accommodation	22	20	42
- Failure to Permit Reasonable Modification	0	0	0
- Eviction	0	0	0
- Refusal to Rent	7	10	17
- Unfair Terms & Conditions	13	11	24
- Harassment/ Discriminatory Statements	6	8	14
- Design/Construction	0	0	0

¹ The raw complaint data can be found in Appendix C.

<i>PROTECTED CLASS & Complaint Classification</i>	<i>U.S. Dept of Housing & Urban Development</i>	<i>Bureau of Labor and Industries</i>	<i>Total</i>
- Discriminatory Advertising, Statements, or Notices	2	0	2
- Steering	1	0	1
- Other	0	0	0

RACE/COLOR TOTAL	21	20	41
- Failure to Allow Reasonable Accommodation	0	2	2
- Harassment/ Discriminatory Statements	4	14	18
- Refusal to Rent	12	10	22
- Unfair Terms & Conditions	11	11	22
- Discriminatory Advertising, Statements, or Notices	6	0	6

RACE/COLOR AND DISABILITY TOTAL	5	0	5
- Failure to Allow Reasonable Accommodation	3	0	3
- Harassment/ Discriminatory Statements	2	0	2
- Unfair Terms & Conditions	5	0	5
- Refusal to Rent	1	0	1

FAMILIAL STATUS TOTAL	15	14	29
- Unfair Terms & Conditions	8	5	13
- Refusal to Rent	12	10	22
- Discriminatory Advertising, Statements, or Notices	6	0	6
- Harassment/Discriminatory Statements	0	6	6

<i>PROTECTED CLASS & Complaint Classification</i>	<i>U.S. Dept of Housing & Urban Development</i>	<i>Bureau of Labor and Industries</i>	<i>Total</i>
- Steering	1	0	1

RELIGION TOTAL	1	1	2
- Unfair Terms & Conditions	1	1	2
- Refusal to Rent	1	1	2

SEX/GENDER TOTAL	1	1	2
- Unfair Terms & Conditions	1	1	2
- Discriminatory Advertising, Statements, or Notices	1	0	1
- Refusal to Rent	0	1	1

NATIONAL ORIGIN TOTAL	5	7	12
- Unfair Terms & Conditions	5	5	10
- Harassment/Discriminatory Statements	2	3	5
- Refusal to Rent	1	4	5
- Discriminatory Advertising, Statements, or Notices	1	0	1

TOTALS*	U.S. Dept of Housing & Urban Development	Bureau of Labor and Industries	Total
	75	68	143

* Totals include the total number of complaints per protected class. Sub-totals by Complaint Classification may include some duplication with cases where more than one complaint basis was filed.

In 2009 and 2010, The U.S. Department of Housing & Urban Development received 75 total complaints, and the State of Oregon Bureau of Labor and Industries received a total of 68 complaints.

The most frequently reported complaints were registered by people with disabilities, most often reporting refusal to allow reasonable accommodations. These can include a housing provider's refusal to allow a service animal in the home, quoting different rental terms, evictions, and others.

The second most frequently reported complaints were registered by people on the basis of on race/ethnicity (people of color). Of these cases, “terms and conditions” and “refusal to rent” were high-reporting trends.

Other protected classes registered fewer complaints, but studies show that very few people who experience discrimination go on to report it. Trends and estimates from the state suggest that only about 22% of possible complaints are reported. In addition, many people do not realize they have experienced discrimination or disparate treatment. This contributes greatly to underreporting of Fair Housing Law violations.

Disability Rights Oregon is a non-profit, 501(c)3 organization, dedicated to advocacy that promotes Opportunity, Access and Choice for individuals with disabilities by assisting them with legal problems directly related to their disabilities. The organization also gathers complaints submitted from people with disabilities who feel they have experienced discrimination in housing due to their disabilities. Table 19 provides a summary of the complaints received in 2009 and 2010, as well as the alleged discriminatory act(s)².

Table 19: Fair Housing Complaints on the Basis of Protected Class: Disability Multnomah County, Two Year Period: 2009-2010	
PROTECTED CLASS & COMPLAINT CLASSIFICATION	Disability Rights Oregon
DISABILITY TOTALS*	100
- Failure to Allow Reasonable Accommodation	53
- Failure to Permit Reasonable Modification	5
- Eviction	16
- Refusal to Rent	0
- Unfair Terms & Conditions	1
- Harassment/ Discriminatory Statements	15
- Design/Construction	7
- Discriminatory Advertising, Statements, or Notices	0
- Steering	0
- Other	3
* Total includes the total number of complaints received. Sub-totals by Complaint Classification may include some duplication with cases where more than one complaint basis was filed.	

The majority of complaints made to Disability Rights Oregon were for housing providers failing to allow reasonable accommodation related to disabilities.

It has been found that most issues can be solved through additional education and explanation of Fair Housing Law as it relates to people with disabilities. The Fair Housing Act of 1968 makes it quite

² The raw complaint data can be found in Appendix C.

clear that people should not receive disparate treatment when accessing housing; however, the Protected Class of people with disabilities has additional specific parameters for complying with Fair Housing Law: reasonable accommodation. Housing providers and their agents sometimes become confused about how to follow the law to avoid disparate treatment while making reasonable accommodations for this group.

The Fair Housing Council of Oregon (FHCO) provides fair housing services, including education and enforcement, throughout the state of Oregon. FHCO is a non-profit civil rights organization dedicated to eliminating illegal housing discrimination. Legal Aid Services of Oregon (LASO) is a non-profit organization that provides representation on civil cases to low-income clients throughout Oregon. LASO, along with their partner Oregon Law Center, also gathered complaint data from people who believe they have experienced discrimination in housing. Table 20 provides a summary of the complaints received by these two organizations, as well as the alleged discriminatory acts for Fiscal Years 2008-2009 and 2009-2010.³

Table 20: Fair Housing Complaints on the Basis of Protected Class & Alleged Complaints: Fair Housing Council of Oregon and Legal Aid Services of Oregon – Multnomah County, FY2008/2009 and FY2009/2010¹.			
PROTECTED CLASS	Fair Housing Council of Oregon (FHCO)	Legal Aid Services of Oregon (LASO)	TOTAL
Race/Color	25	5	30
National Origin	18	3	21
Religion	3	1	4
Sex	9	16	25
Familial Status	30	5	35
Disability	45	121	166
Age	3	0	3
Sexual Orientation	5	0	5
Income Source	7	0	7
Marital Status	3	0	3
TOTAL	148	151	299

³ The raw complaint data can be found in Appendix C.

ALLEGED ACT	FHCO	LASO	TOTAL
Eviction	25	77	102
Failure to Provide Reasonable Accommodation	21	34	55
Discriminatory Advertising, Statements, or Notices	11	0	11
Refusal to Rent	29	12	41
Steering	2	0	2
Harassment	31	1	32
Terms and Conditions	24	3	27
Retaliation	5	0	5
Other	0	24	24
TOTAL	148	151	299

¹ Fair Housing Council of Oregon and Legal Aid Services of Oregon count complaints on a Fiscal Year basis. These complaints span July 2008-June 2010

For Fiscal Years 2008-2009 and 2009-2010, the Fair Housing Council received a total of 148 complaints in Multnomah County. Legal Aid Services of Oregon received 151 during that same time period. With this complaint data we again see the largest number of complaints received from people with disabilities and people of color and differing National Origin. The Fair Housing Council of Oregon also received a significant number of complaints regarding familial status.

Comparing this data to previous years shows that the number of complaints may be on the rise. For the *2005 Fair Housing Plan*, for example, 87 complaints were recorded by the Fair Housing Council over a one-year period in FY2004-2005; for FY2009-2010, a total of 90 were reported. However, looking over the years at Fair Housing Council complaint data, the numbers ebb and flow sometimes dramatically; it is more difficult to draw conclusions about an increase in complaints with absolutely certainty. For FY2005-2006, 138 complaints were filed, while only two years later in 2008, 58 were filed. Perhaps more importantly, illegal housing discrimination is widely underreported. This illustrates the importance of continued education and awareness of Fair Housing Law and the methods by which to report housing discrimination.

In Multnomah County, according to the 2009 U.S. Census, approximately 26.4% of the population identifies as non-White. Given the relative percentage of persons of color in the County, this group is disproportionately represented in the number of complaints of illegal housing discrimination

submitted, especially given the number of cases that go unreported. Similarly, the number of complaints for persons with disabilities is also very high given the estimate that only about 16% of the county's population identifies as having a disability⁴.

The complaint data does not necessarily all lead to substantiated claims or legal action, it is important to capture the real numbers coming in to these organizations to influence the enforcement and education of fair housing. The aggregated complaint data provides helpful information on who is reporting violations and their causes, but more in-depth "testing" can provide more substantial, specific information that can help form recommendations for action.

C. Fair Housing Council of Oregon Audit Testing

In 2010, the City of Portland contracted with the Fair Housing Council of Oregon (FHCO) to conduct a series of "audit tests" to determine if persons seeking housing were facing disparate or discriminatory treatment.

Testing is effective in determining if a housing provider is violating Fair Housing law by discriminating against possible renters/buyers, or giving disparate treatment between renters/buyers. FHCO conducted a total of 50 paired tests of persons seeking rental units, 25 testing race/color and 25 testing national origin. The race/color test was between an African American and a White person. For national origin, the test was between a Latino and a White person.

Testers are given a false profile, including income, employment, family status (married, if children and how many), why they are seeking housing, and other pertinent information. The goal of the false profile is to ensure the two testers have nearly identical backgrounds apart from the protected class status. For the purposes of these tests, which were done specifically to document discrimination based on race and national origin, the testers were also identical in gender and age.

To avoid the possibility of a housing provider using a first-come, first-serve excuse, the protected class tester is usually sent to the property first, and is given a slightly more "attractive" profile. This can mean a slightly higher income or longer employment history. Testers were also sent to speak to the same provider agent.

For each paired test, two testers, one a Protected Tester (either African American or Latino), and one a Control Tester (White), were sent to the same property to gather information about available units including terms, conditions, rent levels, available units, and other pertinent information. Upon completion of a test, the testers submitted reports to FHCO documenting their experiences.

Table 21 shows the summary results of the 50 audit tests⁵. Thirty-two of the 50 tests had positive results, showing discrimination. Fifteen positive results were from Race tests, and 17 were from

⁴ 2000 U.S. Census; more recent data is unavailable.

⁵ Complete results, including additional methodology information provided by FHCO can be found in Appendix D.

National Origin tests. Six tests were inconclusive, meaning that disparate treatment could not be determined because the testers ended up speaking to different housing provider agents. Removing the six inconclusive tests from those tested for National Origin reveals a more shocking result as then out of 25 tests, only 19 were usable, and 17 of those show positive results for discrimination.

Table 21: Fair Housing Council of Oregon Audit Testing Data – City of Portland, 2010¹

Portland Location	Positive Result – Shows Discrimination		Negative Result – Does Not Show Discrimination		Inconclusive		Total
	Race	National Origin	Race	National Origin	Race	National Origin	
Inner Southeast	0	3	0	1	0	2	6
Inner Northeast	1	2	3	0	0	0	6
Outer Southeast	4	1	0	0	0	0	5
Outer Northeast	2	1	1	0	0	2	6
North	0	2	0	0	0	0	2
Northwest	4	2	2	0	0	2	10
Southwest	4	6	3	1	0	0	14
Downtown	0	0	1	0	0	0	1
Sub-Totals	15	17	10	2	0	6	50
TOTALS	32		12		6		50

¹ Complete test results can be found in Appendix D

Many of the tests that showed positive results were regarding different terms and conditions of the rental:

Agent told Protected Tester that range of move-in costs was between \$1,495 and \$2,040. Agent told Control Tester range of move-in costs was \$720 to \$740.

Agent told Protected Tester of numerous requirements to qualify for unit including providing pay stubs, but did not share these requirements with the Control Tester.

Agent told Protected Tester a deposit amount \$450 higher than Control Tester.

Other testers faced what is referred to as a “chilling effect.” Actions that have a chilling effect can range from unfriendliness, cancelling appointments, failing to share extra property amenities, and other actions that would likely discourage a possible renter from applying. A chilling effect may not

seem as serious as a housing provider quoting different rent conditions, but is still a form of disparate treatment, and still leads to restricting housing choice:

Agent failed to show up for multiple appointments with Protected Tester and never called Protected Tester back.

Agent did not offer laminated floor plan and brochure to Protected Tester but did to Control Tester.

Agent volunteered positive information about unit to Control Tester but needed to be prompted by Protected Tester in order to give info.

The results from these tests were quite disappointing, and they illustrate an important need for Multnomah County to continue enforcement of Fair Housing violations. Using the testing method also aids in discovering Fair Housing issues; without the comparison between the two testers, it may never be known that a housing provider was giving disparate treatment.

D. Conclusions

These data sets show an alarming number of cases of discrimination in housing. The audit testing done by the Fair Housing Council of Oregon especially gives concrete examples of the historical and institutional racism in the housing industry that continues in Oregon and Multnomah County today.

It is clear that continued enforcement and education of Fair Housing Law is vital to affirmatively furthering fair housing. While the audit testing conducted for this report has not yet resulted in enforcement action against the housing providers, the jurisdictions should consider how to best act upon the possible fair housing violations displayed in these and future audit testing results. Referring results to the Bureau of Labor and Industries is an important step. Additional audit testing of all protected classes can provide a broader, comprehensive set of data from which to draw conclusions about the Protected Classes for whom data is not always readily available. People with different sexual orientation, religion, ages, disabilities, and other protected classes may be experiencing disparate treatment when seeking housing, but may not necessarily be aware of the problem.