

Race Discrimination in Rental Housing in Marin and Solano Counties

An Audit Report By

FAIR HOUSING ADVOCATES OF NORTHERN CALIFORNIA,
formerly Fair Housing of Marin

Fair Housing Advocates of Northern California
1314 Lincoln Ave., Ste. A, San Rafael, CA 94901
phone: 415.457.5025 / fax: 415.457.6382
website: <http://www.fairhousingnorcal.org>
email: fhanc@fairhousingnorcal.org

June 2017

FOREWORD

Discrimination in rental housing on the basis of race is illegal under state and federal law. The purpose of this audit was to assess the extent to which African American renters experience discrimination or differential treatment in the initial stages of home seeking process, based on their race.

Those responsible for this report hope the results and recommendations contained herein will heighten awareness and encourage a cooperative effort by all segments of the communities in Marin County and Solano County to eliminate differential treatment of persons by virtue of their race.

The audit was carried out by Denise Bashline and Michelle Rosales, Testing Coordinators at Fair Housing Advocates of Northern California, under the supervision of Executive Director Caroline Peattie.

Support for this project came from the United States Department of Housing and Urban Development. Fair Housing Advocates of Northern California is solely responsible for the contents of this report.

TABLE OF CONTENTS

FOREWORD	2
I. <u>INTRODUCTION</u>	4
A. FAIR HOUSING ADVOCATES OF NORTHERN CALIFORNIA	4
B. LEGAL BACKGROUND	4
1. Federal Fair Housing Law	4
2. California Fair Housing Laws	6
C. AUDIT BACKGROUND	6
1. Previous Race Audits Conducted by FHANC in Marin/Solano	6
II. <u>AUDIT GOALS AND METHODOLOGY</u>	7
A. WHAT IS A FAIR HOUSING AUDIT?	7
B. AUDIT GOALS	7
C. GEOGRAPHIC SCOPE OF AUDIT	8
D. AUDIT METHODOLOGY	8
1. Sampling Techniques	8
2. Matched Pair Testing	8
3. Recruitment, Screening, and Training	9
4. Testing Procedure	9
5. Test Analysis	10
III. <u>RESULTS</u>	10
A. TEST OUTCOMES	12
B. TYPES OF DISCRIMINATION OR DIFFERENT TREATMENT BASED UPON RACE	14
1. Refusal to Rent or Negotiate for Rental	14

2. Offering Different Rental Terms and Conditions	15
3. Making False Representations About Availability	15
4. Otherwise Making Housing Unavailable	15
5. Comments, Steering and General Treatment	15
6. Quality/Quantity of Information	16
7. Screening/Follow Up	16
 C. OTHER TYPES OF DISCRIMINATION OR DIFFERENT TREATMENT REVEALING A NEED FOR FUTURE TESTING	 16
 D. TYPES OF DIFFERENTIAL TREATMENT, BY TEST	 17
 IV. <u>CONCLUSIONS</u>	 20
 A. GENERAL	 20
 B. AUDIT LIMITATIONS	 21
1. Pre-Application Testing Underestimates Discrimination	21
2. Scheduling Factors May Have Influenced Audit Results	22
3. Housing Providers' Use of Third-Party Rental Scoring/RMS Databases May Have Influenced Audit Results	22
 C. RECOMMENDATIONS	 22

RACE DISCRIMINATION IN RENTAL HOUSING

AUDIT REPORT

I. INTRODUCTION

This report presents results of an audit for race discrimination against African-American renters in Marin County and Solano County in California. The audit took place between August 2016 and March 2017.

A. FAIR HOUSING ADVOCATES OF NORTHERN CALIFORNIA

Fair Housing Advocates of Northern California (FHANC), formerly Fair Housing of Marin, is a private nonprofit agency dedicated to assisting individuals experiencing housing discrimination and educating the community, including tenants, managers, property owners, and residents, as to their rights and responsibilities under federal and state fair housing laws.

B. LEGAL BACKGROUND

1. Federal Fair Housing Laws

Housing discrimination based on race, color, religion, national origin, sex/gender, disability, or familial status (the presence of children in the household) is illegal under Title VIII of the Civil Rights Act of 1968, as amended in 1988, commonly known as the Fair Housing Act (FHA).

The FHA as enacted by Congress in 1968 prohibited discrimination based on race, color, religion or national origin in the sale, rental or financing of housing. In 1974, Congress expanded the FHA to prohibit discrimination based on sex/gender. In 1988, Congress passed the Fair Housing Amendments Act (FHAA), which added families with children and persons with mental and physical disabilities to the categories of people protected from housing discrimination.

The FHAA specifically states that because of race, color, religion, sex/gender, national origin, disability or familial status, it is illegal to:

- Refuse to sell or rent after the making of a bona fide offer, or refuse to negotiate for

the sale or rental of, or otherwise make unavailable or deny, a dwelling;

- Discriminate in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities;
- Make, print, or publish, or cause to be made, printed, or published, any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates discrimination, preference, or limitation; or
- Represent that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact available.

The Fair Housing Act and Criminal History

In April 2016, HUD's Office of General Counsel issued guidance detailing how the Fair Housing Act (FHA) applies to the use of criminal history by housing providers or operators and others involved in real-estate related transactions. While having a criminal record is not considered a protected class under the FHA, given the reality in the United States of the disproportionate rates African Americans and Latinos are arrested, charged, convicted, and incarcerated, criminal history-based restrictions on housing opportunities can violate the Act under two theories of liability - either discriminatory effects liability (i.e. disparate impact) or disparate treatment liability (i.e. intentional discrimination).

To comply with the Act, housing providers who implement policies excluding individuals based upon criminal history must tailor those policies to serve the housing provider's substantial, legitimate, non-discriminatory interest. In order to meet this burden, an individualized assessment is required, taking into account factors such as the type and severity of the crime and the length of time since the conviction, for example. Arbitrary and overbroad bans will lack a legally sufficient justification, including blanket bans on any criminal history.

In the course of conducting the present race audit in Marin and Solano Counties, FHANC discovered that a number of housing providers were implementing problematic policies related to criminal history. In one instance (test #108952), a rental application provided to a tester asked whether the individual had *ever* been *arrested* for a felony or convicted for a misdemeanor. In another instance (test #108956), a rental application confirmed that criminal background checks would be performed, listing as a basis for

denial for occupancy *all* felony convictions. While the focus of this audit was not related to criminal history, when feasible, FHANC will respond to the concerns of race and/or national origin discrimination it uncovered, conducting investigations into housing providers implementing such overbroad and arbitrary bans (e.g. bans without a look-back period and/or inquiring about past arrests, which do not indicate proof of past unlawful conduct).

2. California Fair Housing Laws

The two primary state fair housing laws are the Fair Employment and Housing Act (FEHA) and the Unruh Civil Rights Act. These laws incorporate the same protected classes of persons as federal law, and also prohibit discrimination based on marital status, sexual orientation, source of income, ancestry, immigration status, citizenship, primary language and arbitrary factors such as age or occupation.

C. AUDIT BACKGROUND

While real estate transactions, including rentals, purchases, and obtaining mortgage loans and homeowner's property insurance, are often conducted in whole or part over the telephone, in-person site testing is likely to reveal further details of unintentional and intentional discriminatory practices. Over the past 20 years, FHANC has conducted multiple in-person audits in several Bay Area counties designed to measure the extent of discrimination in rental housing against members of protected classes. Historically, the results of these audits suggest that unlawful discrimination based on race continues to be pervasive.

1. Previous Race Audits Conducted by FHANC in Marin and/or Solano Counties

In 2001, 2008, 2009, and 2010-2011, FHANC conducted race audit testing in Marin and/or Solano Counties. Results of this testing indicated discrimination against African-American renters whether the testing was conducted over the telephone or in person. In 2001, FHANC found that African-American testers encountered less favorable treatment than Caucasian testers 33% of the time. In 2008, FHANC conducted a race voice ID audit in Marin County, finding a similar proportion of differential treatment disfavoring African-American renters (32%). In 2011, FHANC found that the prevalence of this differential treatment was nearly double in Solano County, with 60% of African-American testers experiencing less favorable treatment than Caucasian

testers. FHANC had previously conducted race site with site testing in Marin County in 1993 and 1997; those audits showed evidence of differential treatment based on race in 33%-47% of tests.

II. AUDIT GOALS AND METHODOLOGY

A. WHAT IS A FAIR HOUSING AUDIT?

A fair housing audit is a way to assess compliance or non-compliance with federal and state fair housing laws. It is a controlled measurement of the difference in quality, quantity, and content of information and services accorded to paired customers (testers) by housing providers. An audit differs from a complaint-based test in that it gives a broad overview of housing provider behavior in a given market during a certain time period. Public governmental bodies and private agencies throughout the country routinely conduct audits as an educational and enforcement tool.

B. AUDIT GOALS

1. To identify instances of differential treatment at available rental sites, including duplexes and larger multi-family complexes, thus indicating the extent to which African-American renters face difficulty in securing rental housing in Marin and Solano Counties due to race discrimination.
2. To conduct additional on-site tests where results indicate potential discrimination, and to conduct additional investigations at sites where results suggest that further investigation could yield stronger evidence of discrimination.
3. To bring minor violations to the attention of housing providers, in order to increase awareness of the potential consequences of engaging in discriminatory practices and prevent future transgressions.
4. To file enforcement proposals in cases with strong evidence of differential treatment.
5. To increase awareness by housing providers of the difficulties African-American renters experience in securing rental housing.
6. To make African-American home seekers aware of discriminatory practices they

may experience and the services provided by FHANC to secure housing rights.

7. To offer training to housing providers on fair housing laws and practices in order to forestall future discrimination.

C. GEOGRAPHIC SCOPE OF AUDIT

The audit included properties in the Marin County cities of Corte Madera, Fairfax, Kentfield, Larkspur, Mill Valley, Novato, San Anselmo, San Rafael, Sausalito, and Tiburon. The audit also included properties in Benicia, Fairfield, Suisun City, Vacaville, and Vallejo in Solano County. These locations represent both the most densely populated cities in Marin and Solano Counties (Novato, San Rafael, and Vallejo), as well as more suburban communities with lower population densities. FHANC estimates that the 46 paired tests for this audit reached agents administering the rental of more than 5,500 units in various apartment complexes.

D. AUDIT METHODOLOGY

1. Sampling Techniques

The audit coordinator selected appropriate properties to test within the target geographic areas from advertisements posted on Craigslist, a popular online listing service.

2. Matched Pair Testing

- a. In-person tests involved pairs consisting of one African-American (“Protected”) and one Caucasian (“Control”) tester. Each tester will be matched to their counterpart as closely as possible in age, gender, and family composition.
- b. The audit coordinator assigned profiles to each tester, with roughly equivalent rental credentials, except that the protected class (African-American) testers were assigned slightly higher incomes and more stable employment and rental histories than their control (Caucasian) tester counterparts. Both profiles for each test pair were designed to satisfy typical rental eligibility requirements and to avoid any indication of difference in other protected class characteristics such as disability, national origin, religion, or familial status. The audit coordinator instructed testers to express identical housing needs. For example, each member of a pair might have been instructed to ask for a one or two-bedroom apartment at the advertised complex.

3. Recruitment, Screening, and Training of Testers

- a. All testers received fair housing tester training, and specialized training in audit procedures.
- b. Only testers whose physical appearances are clearly identifiable as “African-American” or “Black” were selected as African-American testers for this audit.

4. Testing Procedure

- a. The audit coordinator called a phone number corresponding to a subject housing advertisement during regular business hours designated time frame. The purpose of the “advance call” was to determine the availability and location of the advertised unit, as well as to determine whether the listing agent keeps regular office hours whereby he or she is likely to schedule appointments to show the advertised unit.
- b. The audit coordinator created a test assignment based on the information collected from the advertisement and advanced call. The test assignment included each tester’s profile information as well as instructions for how to conduct the test (i.e., contact information for making appointments or date/time for “drop-in” visits).
- c. The audit coordinator briefed the testers chosen for each test via phone or email. Each tester was sent a Tester Assignment form, which included test-specific instructions. All testers reviewed their test assignment and protocols, acknowledged receipt and understanding of the test instructions. Testers discussed any questions or concerns about the test protocol or their assignments with the audit coordinator.
- d. Each tester visited the housing provider after either: making an appointment or dropping-in during the hours specified in the advertisement (or confirmed during the advanced call). Testers scheduling appointments attempted to reach the housing provider via telephone unless the advertisement clearly indicated an email address instead of a phone number. The tester documented all contacts with the housing provider.
- e. Testers conducted a site visit using standardized test protocols designed to gather key information to assess differential treatment. Testers introduced themselves to the housing provider, and asked about the advertised unit, or if it was not available, about any other comparable units in their price range, minimum number of bedrooms (based on the family composition of the tester’s profile), and move-in date range. Testers did

not agree to undergo a credit check. The second tester visited the housing provider within 24 hours of the first tester's visit, with the exception of two tests where doing so was not feasible.

f. For each test, testers completed a Tester Report Form documenting, when applicable: the housing provider's name/title; exact address of the unit; number of bedrooms; rent amount; amount of security deposit and any other fees; the length of the lease; the date of availability; and any other information about the tester gathered by the housing provider (i.e., income, employment, and family size). Each tester wrote and submitted a narrative description of the initial contact as well as any subsequent contact from the housing provider by phone or email.

g. FHANC staff debriefed (in person or via telephone) testers upon completion of each test and reviewed their written reports. During the debriefing, testers discussed any issues or concerns regarding the test.

h. Testers documented any follow-up contact from the housing provider by completing a form to record any email or telephone calls received by the tester from the housing provider.

5. Test Analysis

a. FHANC staff compared the two tester reports for each test to assess whether the testers received the same treatment and information from the housing provider. Staff compared information in the following areas:

- i. Unit availability;
- ii. Rental terms and conditions (including amenities and special offers);
- iii. Screening and follow-up;
- iv. Information about applicant qualifications, eligibility, or rental criteria; and
- v. Comments, encouragement, and general treatment.

b. Tests with evidence of discriminatory statements or differential treatment disfavoring African-Americans may form the basis of further investigations.

III. RESULTS

Between August 2016 and March 2017, FHANC conducted **46 tests** in Marin and Solano Counties. The tests fell into several broad groups: those showing no differential

treatment or inconclusive outcomes, those revealing some differential treatment, and those evincing clear differential treatment.

“Clear differential treatment” means there was a demonstrable discrepancy in the amount, quality, or substance of the information received by the testers, to the disadvantage of the protected tester. “Clear differential treatment” refers to *statutory violations*, such as:

- Refusing to rent or negotiate;
- Making a false representation about availability;
- Offering different terms, conditions, privileges or services;
- Otherwise making housing unavailable; or
- Making discriminatory statements

“Some differential treatment” means there was a discrepancy in the information received by each tester. The discrepancies favored the control tester, but not to the clear detriment of the protected tester. In some cases, the differences involved factors characterized as less significant than those counted in the “clear differential treatment” category. “Some differential treatment” includes *statutory violations that do not materially affect the housing transaction* and other less significant types of differential treatment, such as:

- Offering information that varies in quality;
- Encouraging a caller to apply; and
- Following up with a caller after his or her initial inquiry.

In a couple instances, tests were rated “clear differential treatment,” given the multiple examples of differential treatment of the type listed under “some differential treatment”.

For purposes of this report, “no differential treatment” means each paired tester received substantially similar information and there were no demonstrable differences.

“Inconclusive outcome” includes those tests where the discrepancies did not favor the control tester (e.g. tests with conflicting instances of differential treatment favoring both the protected tester and the control tester - for instance, the protected tester was told about a move-in special while the control tester was provided a lower rental rate), or tests where mitigating factors might explain certain differences (e.g. rental prices were higher for the protected tester but it was evident that the housing provider utilizes a Revenue Management System (RMS), which can cause rental prices to fluctuate on a

daily basis or even throughout the day¹).

A. Test Outcomes

FHANC conducted forty-six paired tests for the 2016-2017 Marin and Solano County Race audit. Twenty-two tests were conducted in Marin County and twenty-four tests were conducted in Solano County.

Marin County

Seven tests (32%) showed clear differential treatment favoring the control tester. Seven Marin County tests (32%) showed some differences in treatment favoring the control tester. Eight tests (36%) resulted in no differential treatment or an inconclusive outcome. **Thus, in 14 out of 22 tests (or 64%), there were at least some discrepancies or disadvantages in treatment for the African-American tester.**

Solano County

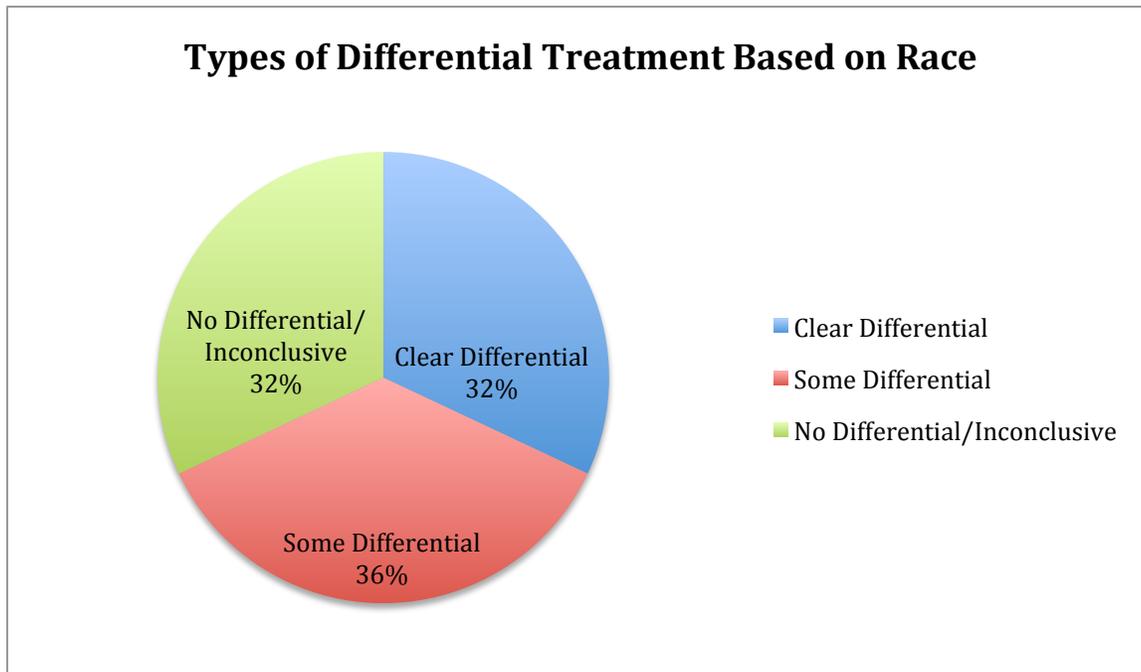
Five tests (21%) showed clear differential treatment favoring the control tester. Four Solano County tests (17%) showed some differences in treatment favoring the control tester. Fifteen tests (63%) resulted in no differential treatment or an inconclusive outcome. **Thus, in 9 out of 24 tests (or 38%), there were at least some discrepancies or disadvantages in treatment for the African-American tester.**

Results of Tests in Marin and Solano Counties

	Marin County	Solano County
Clear Differential Treatment	7 (32%)	5 (21%)
Some Differential Treatment	8 (36%)	4 (17%)
<i>Subtotal/ Some Differential Treatment</i>	<i>15 (68%)</i>	<i>9 (38%)</i>
No Differential Treatment/Inconclusive	7 (32%)	15 (63%)
Grand Total	22 (100%)	24 (100%)

¹ RMS databases are sometimes used by large housing providers to set rental prices based upon market competition and a number of factors, including what is most important to the housing provider (e.g. highest rents, highest occupancy rate, etc.). The resulting fluctuation in rental prices must be investigated further to determine whether the difference is merely a result of the use of RMS or if the housing provider is providing different terms and conditions to one tester.

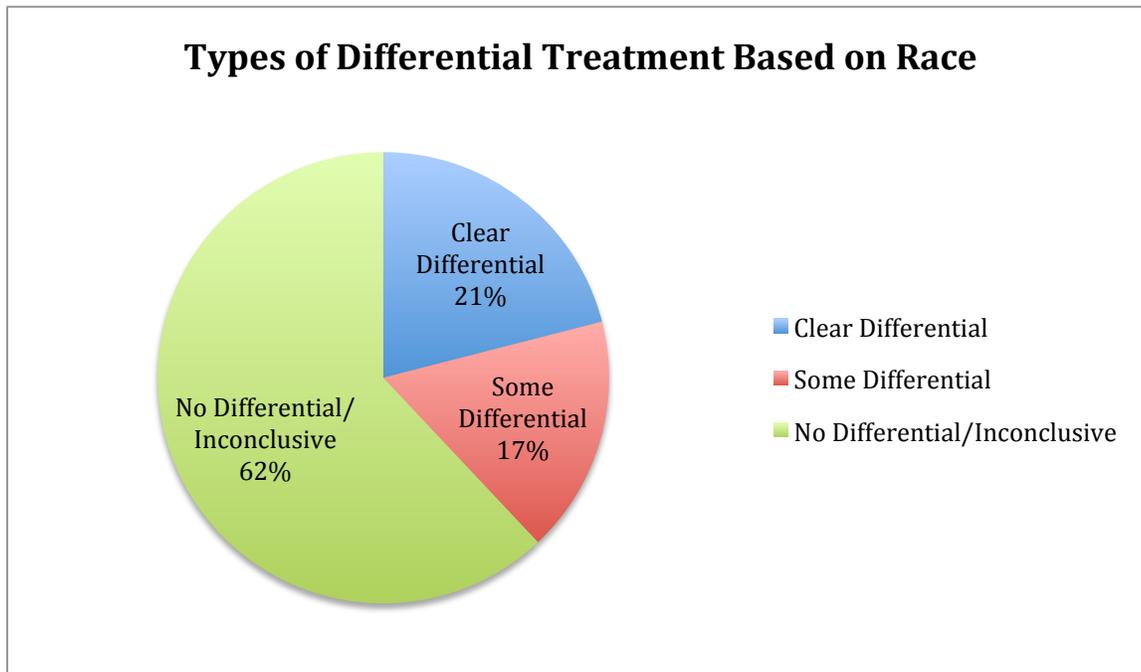
Marin County



Test Results by City in Marin

City	Percentage of Tests Conducted in City Indicating Differential Treatment
Corte Madera	1/1, or 100% of tests
Fairfax	1/1, or 100% of tests
Kentfield	1/1, or 100% of tests
Larkspur	0/2, or 0% of tests
Mill Valley	2/2, or 100% of tests
Novato	2/4, or 50% of tests
San Anselmo	2/2, or 100% of tests
San Rafael	3/6, or 50% of tests
Sausalito	2/2, or 100% of tests
Tiburon	1/1, or 100% of tests

Solano County



Test Results by City in Solano

City	Percentage of Tests Conducted in City Indicating Differential Treatment
Benicia	2/3, or 66% of tests
Fairfield	2/6, or 33% of tests
Suisun City	1/2, or 50% of tests
Vacaville	2/6, or 33% of tests
Vallejo	2/6, or 33% of tests

B. TYPES OF DISCRIMINATION OR DIFFERENTIAL TREATMENT BASED ON RACE

The following is a description of types of discrimination encountered by testers during the audit, as well as a chart indicating the frequency of the types of differential treatment by test.

1. Refusal to Rent or Negotiate for Rental

A housing provider's explicit refusal to rent or to negotiate for the rental of a dwelling to a person in a protected class, including a refusal to engage in conversation, wholly forecloses an individual's ability to access housing opportunities.

2. Offering Different Rental Terms and Conditions

Differences in rental terms offered may indicate a housing provider's desire to discourage – or encourage – specific types of prospective tenants. The terms and conditions of a rental unit may have a significant impact on an applicant's interest in pursuing a unit and financial ability to procure a rental unit. Rental terms and conditions include the amount of rent or deposits, the manner of payment of deposits, and minimum income requirements. Minimum income requirements are particularly important, as a minimum income standard acts as an inflexible threshold question for an applicant: a caller who does not meet an income standard will be immediately discouraged from applying.

3. Making False Representations About Availability

A housing provider who misrepresents the availability of a dwelling, telling a prospective renter that there are no vacancies when in fact there are, forecloses an individual's ability to access housing opportunities, as is the case with a refusal to rent or negotiate. Often, renters who are told false information about availability are unaware of the housing provider's discriminatory acts. In addition, the number of current and future units offered to an applicant may indicate whether a housing provider is seriously interested in making housing opportunities available.

4. Otherwise Making Housing Unavailable

A housing provider who, through either words or actions – for example, placing a caller on hold for an interminable period of time – arbitrarily restricts the availability of a housing opportunity for a member of a protected class may be engaging in a practice of otherwise making housing unavailable.

5. Comments, Steering, and General Treatment

The manner in which an owner or manager communicates regarding units for rents is often an important indication of their interest – or lack thereof – in a potential tenant.

Discouraging remarks directed at an applicant from a protected class may be evidence of an attempt to discourage that applicant from pursuing a housing opportunity. Discriminatory statements are illegal under both federal and state fair housing laws. Steering speaks to the practice of arbitrarily restricting an applicant's choice of available units, based on their membership in a protected class; for example, steering in the race context might include directing a caller to a different complex based on the housing provider's assumptions about appropriateness. General treatment may also include encouraging only one tester by providing additional information on the application process.

6. Quality/Quantity of Information

Differences in the amount and/or type of information a housing provider gives to callers about who will qualify for tenancy may indicate a housing provider's desire to discourage or encourage specific types of prospective tenants. Selective provision of information about minimum income requirements, minimum credit scores, documentation of income, and the application process may indicate that a housing provider employs different standards for evaluating prospective tenants based on their membership in a protected class.

7. Screening & Follow-Up

The decision to accept a potential applicant's call or to follow up with a potential applicant after his or her initial inquiry may indicate whether a housing provider is excluding people in protected classes from their tenant selection process or arbitrarily restricting an applicant's choice of available units and information received based on their membership in a protected class. In addition, a housing provider's decision not to return a potential applicant's voicemail message or follow up with a potential applicant after his or her initial inquiry speaks to the practice of arbitrarily restricting an applicant's choice of available units and information received, based on their membership in a protected class.

C. OTHER TYPES OF DISCRIMINATION OR DIFFERENT TREATMENT REVEALING A NEED FOR FUTURE TESTING

1. Familial Status

Approximately nine percent of the tests conducted indicated differential treatment on

the basis of familial status. While children were not included within the profiles of any testers, in at least four tests housing providers initiated discussion regarding the presence of children at the property, or lack thereof, indicating a likely preference or discrimination on the basis of familial status. In one case (#108894), for example, the housing provider told the Caucasian tester that it was a very quiet complex and no children lived there. In another case (#108891), for example, the housing provider told the Caucasian tester that the property was very quiet, stating that if one is looking for a quiet place, “this is it,” or words to that effect. In another case (#108946), the housing provider told the Caucasian tester that most of the tenants work, with a few retired, and it is a pretty quiet complex that discourages noisy tenants. In response, when feasible, FHANC will conduct follow up investigations testing for familial status discrimination at properties that indicated the complex was quiet and/or there were no children at the complex.

2. Criminal History

While having a criminal history is not considered a protected class, as discussed earlier (pages 5-6), housing providers who implement arbitrary or overly broad policies restricting those with criminal history in housing can be liable for violating the federal Fair Housing Act based upon race and/or national origin. During the course of this audit, FHANC discovered a number of housing providers implementing problematic policies, including blanket bans on any conviction without a look-back period, for example. In response, when feasible, FHANC will investigate these properties for race and/or national origin discrimination.

D. TYPES OF DIFFERENTIAL TREATMENT, BY TEST

Test #	Refusal to Rent/ Negotiate	Different Terms & Conditions	False Representation About Availability	Otherwise Make Housing Unavailable	Comments, Steering, & General Treatment	Quantity/ Quality of Information	Follow- Up/ Steering
108944	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		
108945		<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>
108946		<input checked="" type="checkbox"/>					
108943		<input checked="" type="checkbox"/>					
108955		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>				
108929	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		
108932	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			
108891					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
108904		<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>	

108928		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>
108931					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
108934		<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>
108909			<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		
108912		<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>	
108915			<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
108936			<input checked="" type="checkbox"/>				
108894					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
108917							<input checked="" type="checkbox"/>
108902					<input checked="" type="checkbox"/>		
108887		<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>		
108888		<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
108926			<input checked="" type="checkbox"/>				
108924			<input checked="" type="checkbox"/>				
108916							<input checked="" type="checkbox"/>
Total	3	12	10	3	11	7	6

Tests Indicating Clear Differential Treatment

Twelve tests showed evidence of **clear differential treatment** based on race. In three tests, the housing provider otherwise made housing unavailable for the African-American testers; this figure includes two tests where the housing provider refused to negotiate for the rental of a dwelling and one test in which the housing provider expressed false denial of availability. In three other tests, the housing provider told only the Caucasian tester about additional available units or units that would become available in the near future.

In one case (#108944), for example, the African-American tester phoned to inquire about available one-bedroom apartments; the agent told this tester there was one available one-bedroom apartment for \$1673/mo and suggested she could visit the property that afternoon. The African-American tester visited the property that day as instructed; however, the agent she met with stated there were no available apartments and nothing to view. In sharp contrast, when the control tester met with an agent on site just a couple of days later, the tester was informed there *was* an available one-bedroom unit with a move-in date in just four days (so the difference in availability cannot be explained by the difference in the date of the site visits). While that unit was not available to be viewed, the agent showed the control tester a similar unit and mentioned an upcoming vacancy for an additional unit as well. The agent also quoted the tester a lower rental price (\$1556), lower minimum income requirement (2.5 times vs. 3), and emailed the tester a link to the online rental application during the site visit.

In another case (#108929), the African-American tester phoned to inquire about an advertised unit. The housing provider told the tester that an open house was scheduled on Saturday of that week, and refused to meet with her during any of the dates she requested (before or after the open house), stating he was not available and could only show the property on Saturday. The tester ultimately agreed to attend the open house; however, he stood her up and never followed up or returned her voicemail. In sharp contrast, when the Caucasian tester phoned to inquire about the advertised unit, the same agent agreed to schedule an appointment prior to the open house on the date the African-American tester had requested. The Caucasian tester toured the property and was offered and provided with an application to apply, and was told no other applicants were ahead of her. The agent also quoted the control tester favorable terms and conditions (\$2,250 for the security deposit and \$0 application fee compared to \$2500 security deposit and \$35 application fee for the protected tester).

In a follow-up test at the same property (#108932), another African-American tester called the same agent to schedule an appointment to view the advertised unit. The agent told the tester that there was an open house later that week and refused to schedule an appointment on any of the dates she requested. In contrast, when the control tester called the same agent less than two hours later, he stated that viewing the unit tomorrow (the date both protected testers had requested) was “fine, weather permitting,” or words to that effect.

Several other tests resulted in evidence of clear differential treatment with respect to material rental terms and unit availability. For example, in one test (#108904), the housing provider offered the Caucasian tester a lower rental rate and lower security deposit than the African-American tester, in addition to spending much more time with the control tester and providing better quality and greater quantity of information. In another test (#108928), only the control tester was offered a move-in special, informed about a refundable holding deposit, provided more information about availability, and received follow-up contact.

Tests Indicating Some Differential Treatment

Twelve tests showed evidence of **some differential treatment** based on race. In nearly all of these tests, the quality of the interaction was heavily weighted in the favor of the Caucasian tester. For example, in multiple tests, though both testers spoke with the same agent, the agent told the Caucasian tester about additional available units that were not mentioned to the African-American tester and spent a significant amount of time with the Caucasian tester. In multiple tests, only the Caucasian tester was offered a rental application and encouraged to apply, while African-American testers often had to request applications and did not receive similar levels of encouragement. This reflected

a larger trend relating to the quality of the interaction: in numerous tests, the leasing agent provided a much greater level of detail to Caucasian testers regarding availability, amenities, and the application process, for example. This indicates a general reticence to fully engage with the African-American testers or encourage them to apply.

Tests Indicating No Differential Treatment or Inconclusive Outcome

Twenty-two tests did not show evidence of differential treatment or were inconclusive. In tests with no differential treatment, testers received similar treatment and were given the same substantive information regarding availability, rent, security deposit, and minimum income requirement. Inconclusive tests included those where the testers received slightly different information, yet the differential treatment did not clearly benefit the control tester over the protected tester. Inconclusive tests also included those where the protected tester and control tester received conflicting instances of differential treatment or where mitigating factors might explain certain differences.

	Marin County	Solano County
Clear Differential Treatment	7 (32%)	5 (21%)
Some Differential Treatment	8 (36%)	4 (17%)
<i>Subtotal/ Some Differential Treatment</i>	<i>15 (68%)</i>	<i>9 (38%)</i>
No Differential Treatment/Inconclusive	7 (32%)	15 (63%)
Grand Total	22 (100%)	24 (100%)

IV. CONCLUSIONS

A. GENERAL

Out of 46 tests in Marin Solano Counties, twelve of the tests (26%) showed clear differential treatment favoring the Caucasian tester. Twelve tests (26%) showed some differences in treatment favoring the Caucasian tester. Twenty-two tests (48%) resulted in no differential treatment or an inconclusive outcome. **Thus, in 24 out of 46 tests - more than half of all tests - there were at least some discrepancies or disadvantages in treatment for the African-American tester.**

The data is striking: 28% of the tie, the Caucasian tester was provided with more favorable terms and conditions than the African-American tester, including move-in

specials, lower minimum income requirements, and lower security deposits than African-American testers. 22% of the time, the Caucasian tester was provided with better general treatment than the African-American tester and was informed about availability not provided to the African-American tester. African-American testers were provided with information about rentals that was significantly lower in quality than that provided to the Caucasian tester. And, eleven percent of the time, housing providers encouraged the Caucasian tester to apply. This testing evidence suggests that more than half of the time, African-American home seekers will not be told about as many available apartments, will not be offered move-in specials or other incentives, will not receive follow up contact, and/or will not be told about apartment amenities or the application process: all information that the Caucasian home seeker *will* be provided with.

B. AUDIT LIMITATIONS

1. Pre-Application Testing Underestimates the Degree of Discrimination

By virtue of its very design and purpose, this audit does not identify the full scope of discriminatory conduct. This audit sought to measure only the degree of discrimination an individual would encounter in the pre-application stage. Because testers did not submit applications, this audit cannot identify housing providers who dispense information freely but discriminate later in the tenant selection process. This suggests the need to perform follow-up site visits and application tests in addition to the site tests conducted to date, especially in those instances where initial tests suggest differential treatment. For instance, manipulation Completed application tests could yield evidence of housing providers turning down qualified African-American applicants because of their race.

Even application tests would not detect the full extent of discrimination against in-place African-American *tenants*, as opposed to *applicants*. African-American renters report discrimination based on race, for instance, in the terms, conditions, privileges or services associated with their housing (e.g. a housing provider's failure to respond to African-American tenants' repair requests, or delayed responses, while Caucasian tenants requests are responded to promptly). This audit cannot purport to examine evidence of that kind of discrimination.

2. Scheduling Factors May Have Influenced the Audit Results

The audit coordinators opted to alleviate unreasonable delays between the first and second testers' contacts by having them call at specified times. Although that solution reduced the volume of failed tests, the resultant pattern of calling may have subtly affected the test results.

In some of the tests, for example, the two testers spoke with different agents. Although the most direct comparison takes place in instances where each member of a paired test has contact with the same agent, a test remains valid under generally recognized principles of testing if testers speak with different agents representing the same housing provider.

3. Housing Providers' Use of Third-Party Rental Scoring/Revenue Management Systems May Have Influenced Audit Results

A number of the housing providers tested (approximately 15-20%) appeared to use a Revenue Management System (RMS), which uses a variety of factors to determine rental amounts for available units (e.g. current occupancy, market competition, time of year, etc.). Use of a RMS results in frequent fluctuations in rental prices, even within the same day. Typically, the rental rate for available units are set in the morning and can change in price by that afternoon. As a result, some testers might have been provided with different rental amounts for the same unit when testers visited the property on the same day or within twenty-four hours.

Differential treatment in housing manifests in many forms, and providing different rental rates is just one example. In some of the tests conducted, even when it appeared that the housing provider used a RMS, the protected tester experienced other forms of discrimination as well (e.g. differences in availability, follow-up, quality of information, etc.). In those instances where the housing provider utilized RMS and the only type of differential treatment was reflected in different rental rates, those tests were classified as inconclusive, requiring additional investigation.

C. RECOMMENDATIONS

- **Disseminate audit results** to Marin County and Solano County officials, the general public, media, and advocacy groups as an important educational tool.
- **Monitor sites** where there was an indication of differential treatment. FHANC may take further action.

- **Offer Fair Housing training** seminars to the owners, managers, and agents audited in this report. The audit points out the need for continuous training in fair housing laws for all owners and managers of rental property, with an emphasis on the subtleties of differential treatment and the need to supply uniform information and treatment to all potential applicants, whether in person or over the phone. Fair Housing Advocates of Northern California has conducted *Fair Housing Law and Practice* seminars throughout the North Bay for many years. Such educational endeavors should be supported by public officials and aggressively marketed to housing industry providers through housing associations and elected officials. It is important to ensure that all housing providers and their staffs receive fair housing information and training.
- **Send notification letters to housing providers** of properties where testing showed some differential treatment.
- **Increase media coverage.** Request that newspapers in Marin County and Solano County feature articles on race discrimination and barriers faced by African-Americans even in the pre-application stage, and consider providing free advertisements on recognizing and avoiding housing discrimination as a public service.
- **Conduct additional audits.** Because discrimination is so often subtle or cloaked as helpful suggestions, it may go undetected. Comparative studies such as this one are the best way to bring such practices to light. We recommend that Marin County and Solano County consider funding similar studies in the future.
- **Housing Industry Action.** Ask members of the housing industry, such as property management firms in the area and local rental housing associations, to take a positive stance that fair housing is good business and good *for* business. We recommend that these organizations publicly declare their support with a statement on their letterhead, outreach materials, and forms.
- **Spread the word to potential targets.** Work with other agencies serving the African-American community to inform their clients of their fair housing rights and available services.

- **Promote display of required HUD poster.** Ask that rental property owners and real estate offices check to make sure that the required HUD equal opportunity housing provider logo is posted in plain view for applicants. The poster can be downloaded from the HUD website at <http://www.hud.gov/offices/adm/hudclips/forms/files/928-1.pdf> or a copy can be obtained by calling toll free 800-347-3739.