



## FOREWORD

Housing is more than merely a roof over a person's head. The ability to freely seek out and choose one's housing, in any community, without facing actual or perceived barriers, is crucial in allowing a person to achieve independence, economic self-sufficiency, social acceptance, and professional and educational opportunities. Since 1923, the U.S. Supreme Court has recognized the right to "establish a home" as one of the fundamental liberties protected by the Due Process Clause of the U.S. Constitution.<sup>i</sup> In 1968, Congress passed the Fair Housing Act to prohibit discrimination in housing on the basis of race, color, religion, sex, and national origin; which was amended in 1988 to also include familial status and disability. However, despite legislative progress; discrimination in housing is still a reality for many individuals, particularly women who have survived incidents of domestic violence and who may also be members of other protected classes.

One in four women in the United States experience severe physical violence by an intimate partner within their lifetime.<sup>ii</sup> Domestic violence survivors face significant barriers to accessing and/or maintaining safe stable housing due to safety concerns, trauma symptoms, limited incomes, poor credit, and other factors, including discrimination.<sup>iii</sup>

Domestic violence is one of the most common reasons that women end up homeless.<sup>iv</sup> In some cases, this occurs when a landlord enforces a policy that explicitly treats women differently from men based on gendered stereotypes about abused women. For example, a landlord may tell an applicant that he will not rent to women with histories of domestic violence because "they always go back to the men who abuse them."<sup>v</sup> Courts have also found that "zero-tolerance" policies, under which the entire household is evicted for the criminal activity of one household member, to be discriminatory because these types of policies disproportionately effect women who are more likely to be survivors of domestic violence and thus evicted for the actions of their abusers.

Housing discrimination against a survivor of domestic violence is compounded when she is also a member of other protected classes. "Survivors from marginalized communities—that is communities that have been historically and structurally excluded from social, economic, and political resources—face additional challenges weathering domestic/sexual violence and housing crises."<sup>vi</sup> Data shows that LGBTQ people and people of color experience heightened and more severe instances of interpersonal violence.

The purpose of this audit was to assess the extent to which housing providers are complying with their obligation under the Fair Housing Act not to discriminate on the basis of sex/gender by determining whether housing providers have policies that disparately impact survivors of domestic violence. To that end, FHANC conducted an investigation of 18 rental properties in Marin, Sonoma and Solano counties and found that despite recent court victories, some landlords continue to have policies that discriminate on the basis of sex/gender.

This audit was carried out from February through June 2023 by FHANC's Investigation Coordinators, Ursula Lindsey, Maria Callahan and Quinn McFeeters, under the supervision of Supervising Attorney, Julia Howard-Gibbon, and Executive Director, Caroline Peattie. Ms. Howard-Gibbon analyzed the investigations and prepared this audit report, under the supervision of Ms. Peattie. Those responsible for this report hope the results contained herein will heighten awareness of sex/gender discrimination in housing and housing providers' obligation to comply with fair housing laws.<sup>vii</sup>

## EXECUTIVE SUMMARY

This report details the results of an investigation by FHANC of sex/gender discrimination against survivors of domestic violence in Marin, Sonoma, and Solano counties (FHANC's service area). While federal and state fair housing laws have prohibited housing discrimination on the basis of sex/gender for decades, research and the results of this audit show that domestic violence survivors continue to experience discrimination as a barrier to housing choice.

This audit investigated eighteen (18) landlords operating rental properties in FHANC's service area. Each "test" or investigation of a particular property involved one female tester posing as a renter calling to inquire about a listing and to ask whether the landlord had a policy of evicting tenants for calling police to the property. Each tester was instructed to tell the housing provider that her previous landlord forced her to move out after the police were called to her unit in response to a report of domestic violence in which she was the victim and her ex-partner was the abuser. She was to explain that she was unaware of her previous landlord's "zero tolerance" policy prior to moving in and thus wanted to get that information in advance this time before moving to a new unit.

FHANC analyzed the narratives provided by each tester after each investigation to determine whether there was evidence that the housing provider had a discriminatory policy and/or made statements that could be considered discriminatory on the basis of sex/gender or some other protected class. Of the eighteen (18) investigations conducted, two clearly indicated that the housing provider had a policy that would result in the eviction of a domestic violence survivor were she to call the police on her abuser following an incident of violence. Two additional tests showed some or potential evidence of a discriminatory policy or practice based on sex/gender. And one other test revealed discrimination based on other protected classes, including marital status, disability, and source of income.

**AN INVESTIGATION OF OBSTACLES TO HOUSING CHOICE  
FOR SURVIVORS OF DOMESTIC VIOLENCE**

**AUDIT REPORT**

**I. INTRODUCTION**

This report presents results of an audit investigation conducted to assess the extent to which housing providers are complying with their obligation under the Fair Housing Act not to discriminate on the basis of sex/gender by determining whether housing providers have policies that disparately impact survivors of domestic violence, who are disproportionately women.

**A. FAIR HOUSING ADVOCATES OF NORTHERN CALIFORNIA (FHANC)**

FHANC is a private nonprofit organization dedicated to assisting individuals experiencing housing discrimination and educating the community, including tenants, housing providers, and government employees, as to their rights and responsibilities under federal and state fair housing laws. The mission of FHANC is to ensure equal housing opportunity and to educate the community on the value of diversity in housing.

FHANC provides free comprehensive fair housing counseling services to individuals alleging housing discrimination in Marin County, Sonoma County (except the incorporated city of Petaluma), and Solano County. FHANC also provides other services, such as foreclosure prevention counseling and trainings to housing providers, in other neighboring counties.

In addition to counseling and education services, FHANC recruits, trains and employs fair housing testers in order to investigate claims of housing discrimination and to assist in conducting systemic investigations, such as the one described in this report.

**B. LEGAL BACKGROUND**

**1. Federal and State Fair Housing Laws**

Title VIII of the Civil Rights Act of 1968, commonly known as the Fair Housing Act (FHA), prohibits discrimination in housing on the basis of race, national origin, color, religion, sex/gender, disability, or familial status. Under the Act, it is illegal to engage in the following activities because of a person's membership in a protected class:

- a. 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;
- b. Discriminate in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities;
- c. 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;
- d. Represent that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact available;

- e. For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, disability, familial status, or race; and/or
- f. Refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

The two primary state fair housing laws in California are the Fair Employment and Housing Act (FEHA) and the Unruh Civil Rights Act. These laws incorporate the same protected classes as the Fair Housing Act, 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.

## **2. Domestic Violence and Sex/Gender Discrimination**

Both federal and state fair housing laws prohibit housing discrimination based on sex. (See 42 U.S.C. §3604(a); Cal. Gov't Code §§ 12955(a). In many contexts, these protections have been extended to survivors of domestic violence, who often face housing discrimination because of their history or the acts of their abusers. Congress has acknowledged that “women and families across the country are being discriminated against, denied access to, and even evicted from public and subsidized housing because of their status as victims of domestic violence.” (42 U.S.C. § 14043e(3) (findings published in the Violence Against Women Act)).

There are two theories of liability under fair housing law: disparate treatment and disparate impact. Policies that specifically apply to women or treat women less favorably than men are considered facially discriminatory under the theory of disparate treatment because they explicitly target and exclude a group that is protected by fair housing laws. Such policies are often based on gender stereotypes about abused women. For example, if a landlord tells a female domestic violence victim that he does not accept women with a history of domestic violence as tenants because they always go back to the men who abuse them, his statement is evidence of sex/gender discrimination.

However, even policies that are neutral on their face may violate fair housing laws if they have a disproportionate impact on women. Such policies have a “discriminatory effect” or “disparate impact” based on sex, gender, gender identity, gender expression, and/or sexual orientation, regardless of whether the housing provider has an intent to discriminate. Policies with a “discriminatory effect” or “disparate impact” are considered discriminatory because they unreasonably limit housing choices for members of protected classes, even if the housing provider has no intent to discriminate.

An example of a policy that has a disparate impact on women is a “zero-tolerance” policy, under which the entire household is evicted for the criminal activity of one household member. The theory is that, even when consistently applied, women may be disproportionately affected by this policy because, as the overwhelming majority of domestic violence survivors, women are often evicted as a result of the violence of their abusers.<sup>viii</sup> Courts and HUD have consistently found that such policies violate the Fair Housing Act because of their disparate impact on women, who are overwhelmingly more likely to be victims of domestic violence. (See *e.g.*, *Cleaves-Milan v. AIMCO Elm Creek LP*, 1:09-cv-06143 (N.D. Ill., filed October 1, 2009); *Jones v. Housing Authority of Salt Lake County* (D. Utah, filed 2007); *Lewis v. North End Village*, Case No. 2:07-cv-10757 (E.D.Mich. 2007); *Brooklyn Landlord v. R.F.* (Civil Court of Kings County 2007); *Bouley v. Young-Sabourin*, 394 F. Supp. 2d 675 (D. Vt. 2005); *T.J. v. St. Louis Housing Authority* (2005); *Warren v. Ypsilanti Housing Authority*, Case No. 4:02-cv-40034 (E.D. Mich. 2003); *Alvera v. CBM Group*, Case No. 01-857 (D. Or. 2001)).

## 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 afforded to home seekers (testers) by housing providers. An audit differs from complaint-based testing in that it gives a broad overview of housing provider behavior in a given market during a certain time period. Fair housing organizations routinely conduct audits as an educational and enforcement tool.

### B. DEFINITIONS

1. **Testing** – an investigative tool used to gather evidence of potential housing discrimination that involves one or more testers and is generally covert in nature.
2. **Test** – an investigation of a particular property, involving one or more testers/ test parts.
3. **Investigation** (multiple meanings) – one test targeting a single housing provider (with one or more test parts); a series of tests targeting a single housing provider; OR an audit of multiple housing providers in a target geographic region.
4. **Test Part** – a contact or series of contacts via phone and/or email by a single tester/profile with a target housing provider (eg: a match paired test consists of two test parts).
5. **Complaint Test** – a test conducted to corroborate (or refute) existing evidence of discriminatory practices.
6. **Audit** – a controlled and systematic way to assess compliance or non-compliance with fair housing laws by housing providers in a particular housing market by using testers to determine how people with protected characteristics are treated in the rental or homebuying process.
7. **Single-Part Test** – a test that involves only one tester; usually used to determine whether a discriminatory policy exists.
8. **Match Paired Test** – a two-part test that involves two similarly matched testers – one control and one protected – posing as comparably qualified home seekers, on personal, financial, and other characteristics; used to detect differences in service, information, or treatment.
9. **Control Tester** – a tester whose profile does not include the protected characteristic(s) tested.
10. **Protected Tester** – a tester whose profile includes one or more protected characteristic tested.
11. **Tester Profile** – the characteristics and backstory assigned to a tester prior to conducting a test, which may include an alias, financial characteristics (such as income and credit information), an address, employment, a spouse, and/or one or more protected characteristic.

## C. AUDIT GOALS

1. **To identify instances of discrimination at available rental sites** in Marin, Sonoma, and Solano Counties.
2. **To conduct additional 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 actions** (lawsuits or administrative complaints) in cases with strong evidence of discrimination.
5. **To increase awareness by housing providers** of the difficulties survivors of domestic violence experience in securing rental housing.
6. **To make women and domestic violence survivors aware of discriminatory practices** they may experience and the services provided by FHANC to assist people in securing housing rights.
7. **To offer training to housing providers** on fair housing laws and practices in order to forestall future discrimination.

## AUDIT METHODOLOGY

### 1. Types of Investigations

Investigations coordinators conducted a total of eighteen (18) phone investigations within the target geographic area. Investigations consisted of all single tests to determine whether the housing provider tested had a policy that was discriminatory on the basis of sex/gender.

### 2. Target Geographic Areas

All investigations took place in the geographic areas of Marin County, Sonoma County, and Solano County.

### 3. Sampling Techniques

Investigation coordinators selected appropriate properties to test within the target geographic areas from advertisements posted on online sources, including but not limited to Craigslist.com, Trulia.com, Hotpads.com, Apartments.com, and Zillow.com. Shared homes were not tested, nor were vacation homes or short-term rentals.

### 4. Recruitment, Screening, and Training of Testers

#### a. Tester Training

All testers received fair housing tester training and training in investigations procedures. All testers also received specialized training in gender discrimination in relation to domestic violence in order to be able to competently speak generally about domestic violence with rental agents.

## 5. Test Procedure

### a. Property Selection

For each investigation, the investigations coordinator conducting the investigation identified a rental property in the target geographic area, pursuant to the sampling techniques set forth above.

### b. Tester Selection

Only testers with voices that are clearly identifiable as white non-Latinx and female were selected as testers.

### c. Profiles

For each test, the investigations coordinator created an alias and profile for the tester. The profiles were designed to avoid any indication of protected class characteristics other than sex/gender. None of the profiles included children or were of a race/ethnicity other than white non-Latinx. All profiles included employment and income information.

Each profile included relevant details about the tester's history of domestic violence and why their previous housing was lost. Testers were instructed to state that they previously lived with an abusive partner and were kicked out after calling the police on him during a domestic violence incident because their previous landlord had a zero tolerance policy.

Each profile included an email address for tester to give to the housing provider if necessary. The email accounts were created and managed by the investigations coordinators. The email addresses assigned to each tester corresponded with the tester's alias.

### d. Test Assignments

The investigations coordinators created a test assignment for each test based on the information collected from the rental listing. Test assignments included information about the listing (i.e.: the phone number of the agent and the address of the property), instructions for conducting the test, the tester's profile, and a copy of the rental listing. If the tester was asked any questions about themselves by the agent, the tester was instructed to answer according to their assigned profile.

Prior to starting the test, the investigations coordinator briefed each tester via phone and/or email and sent each tester their test assignment. All testers reviewed their test assignments, acknowledged receipt and understanding of the test instructions, and discussed any questions or concerns about their assignments with the investigations coordinator prior to starting the test.

### e. Conducting the Test

Testers were instructed to start the test as soon as possible after reviewing the assignment by calling the listed rental agent. If the tester reached an answering machine, she was instructed to leave a message stating her name, phone number and her interest in the listed property. Testers were instructed not to include any other information about their profile in the message other than their name and phone number.



If the tester reached a person associated with the listed property (eg: the owner or agent), the tester was instructed to introduce herself and state that she was calling about the advertised unit. Testers were instructed to seek information from the rental agent about the rental unit and the rental process, including the rent, the security deposit, the application process, the application fee, the credit check process, whether any utilities and/or amenities were included, and any other information about the rental. If the tester was asked any questions herself by the agent, she was instructed to answer according to her tester profile.

During the test, testers were instructed to disclose that they had to leave their previous apartment because they called the police on their abuser and the landlord had a zero-tolerance policy regarding law enforcement being called to the property. Testers were instructed to ask the agent or the owner if they had any policies regarding tenants calling law enforcement. If the tester was told that the landlord did have such a policy, the tester was instructed to get more information about the policy (eg: “Are there any exceptions in cases of domestic violence?” or “Is that management’s policy or the owner’s policy?”).

f. Debriefs

After each test, testers debriefed with the investigations coordinator within 24 hours after completing the test. During the debriefing, testers gave the investigations coordinator a description of what happened during the test and discussed any issues or concerns that may have arisen. If the investigations coordinator determined that additional information was needed, testers were instructed to call the agent back and ask follow-up questions.

g. Test Reports

After each test, testers completed a Phone Test Report Form in which they documented all the information gathered during the test, including the agent’s name/title, the address of the unit, the number of bedrooms, the monthly rent amount, the security deposit amount, any lease options, the date of availability; plus any other information that the agent may have provided or sought from the tester (e.g.: the tester’s income, employment, family size, etc.). In addition to the Report Form, each tester drafted, signed, and submitted to the investigations coordinator a narrative description of what happened during the test, including all interactions with the rental agent.

### **III. AUDIT ANALYSIS**

#### **A. ANALYSIS PROCESS**

FHANC reviewed the narratives and report forms submitted by each tester to determine whether there was evidence that the housing provider tested had any discriminatory policies or practices related to domestic violence and/or whether they made any discriminatory statements related to sex/gender or any other protected class.

#### **B. CLASSIFICATIONS BASED ON STRENGTH OF EVIDENCE**

After analyzing the tests, FHANC categorized each investigation as either: 1) showing no significant evidence of sex/gender discrimination, 2) revealing some or potential evidence of sex/gender discrimination, or 3) showing clear evidence of sex/gender discrimination.

##### **1. Clear Discrimination**

For the purposes of this report, “clear evidence of discrimination” refers to clear violations of the Fair Housing Act (FHA) and/or the Fair Employment and Housing Act (FEHA), including but not limited to:

- Having a policy or practice of evicting or penalizing tenants because of a domestic disturbance at the property and/or because the police were called to the property in response to a disturbance;
- Refusing to rent to or negotiate with a person because of their sex/gender and/or status as a domestic violence survivor;
- Offering inferior terms, conditions, privileges or services to a person because of their sex/gender and/or status as a domestic violence survivor;
- Suggesting another neighborhood or property would be more suitable because of a person’s sex/gender and/or status as a domestic violence survivor (steering);
- Making discriminatory statements regarding a person’s sex/gender and/or status as a domestic violence survivor;
- Stating or indicating a preference for certain applicants based on their sex/gender and/or status as a domestic violence survivor or implying that a person’s application would likely be denied because of their sex/gender and/or status as a domestic violence survivor; and/or
- Discouraging a person from applying because of their sex/gender and/or status as a domestic violence survivor.

##### **2. Some/ Potential Discrimination**

For the purposes of this report, “some/ potential evidence of disability discrimination” refers to some, but not clear, evidence of a discriminatory policy and/or other evidence that indicates a likelihood of discrimination, including but not limited to:

- Making comments that could indicate a potential policy or practice that could have a disparate impact on women and/or survivors of domestic violence;
- Making comments that could indicate a preference based on the applicant’s sex/gender and/or a preference for renting to someone who is not a domestic violence survivor;
- Causing delays in the application process by failing to answer questions about policies related to domestic violence and/or “nuisance” policies; and/or
- Making negative comments about a housing provider’s legal obligation to comply with fair housing laws (despite being willing to rent to a tester with protected characteristics).

### 3. No/ Insufficient Discrimination

For the purposes of this report, “no/insufficient evidence of sex/gender discrimination” refers to tests where:

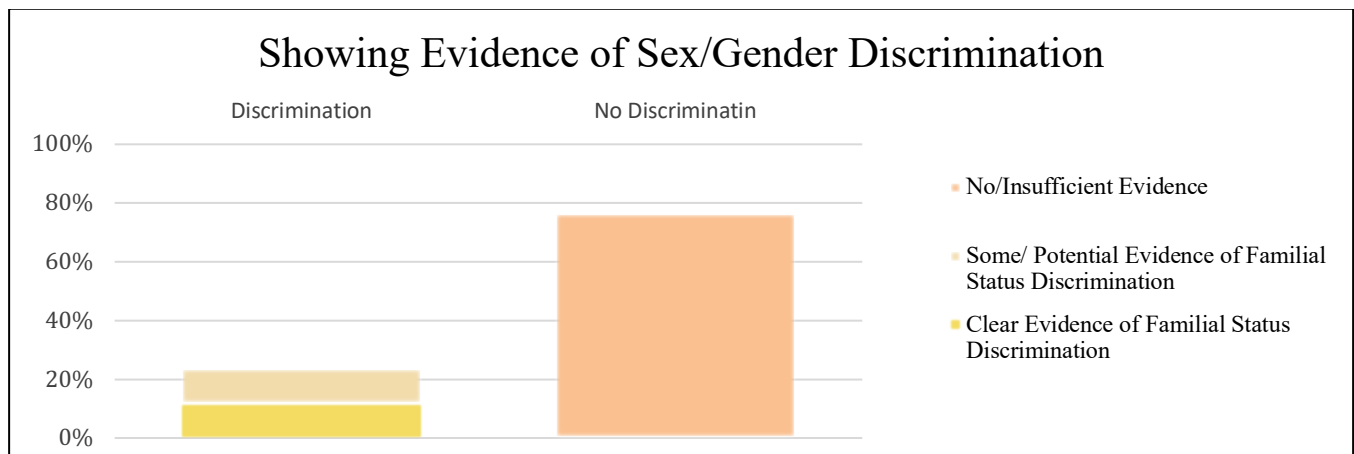
- The housing provider did not make any statements that could be interpreted as discriminatory on the basis of sex/gender; and
- The housing provider did not make any statements indicating the existence of a discriminatory practice or policy regarding sex/gender or a policy that has a disparate impact on women and/or survivors of domestic violence.

### 4. Inconclusive Tests

Tests were only classified as inconclusive in circumstances where it was clear that the housing provider did not understand the question and/or if there was insufficient information gathered during the test to make a determination as to whether a discriminatory policy may exist. Tests that were determined to be inconclusive were not considered in the overall analysis.

## III. AUDIT RESULTS

### A. TESTS SHOWING EVIDENCE OF DISCRIMINATION



Of the 18 tests conducted, 4 revealed evidence of sex/gender discrimination; with 2 showing clear evidence of discrimination and an additional 2 showing some or potential evidence of discrimination. 13 tests revealed no/insufficient evidence of sex/gender discrimination,<sup>ix</sup> 1 test that showed no evidence of sex/gender discrimination did reveal evidence of discrimination based on disability, marital status, and source of income but was not considered a discriminatory test for the purpose of this audit. 1 test was inconclusive and was therefore not considered in the denominator.

Evidence of Discrimination	# of Tests	% of Tests
Clear Evidence of Sex/Gender Discrimination	2	11.8%
Some/ Potential Evidence of Sex/Gender Discrimination	2	11.8%
<b>Total Sex/Gender Discrimination</b>	<b>4</b>	<b>23.5%</b>
<b>No/Insufficient Evidence of Sex/Gender Discrimination</b>	<b>13</b>	<b>76.5%</b>
<b>Total</b>	<b>17</b>	<b>100.0%</b>

## ENDNOTES

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<sup>i</sup> See *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923).

<sup>ii</sup> Black, M.C., Basile, K.C., Breiding, M.J., Smith, S.G., Walters, M.L., Merrick, M.T., Chen, J., & Stevens, M.R. (2011), *The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Summary Report*. Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention.

<sup>iii</sup> Kulkarni, Shanti & Hill, Evelyn (2020), “Understanding the Cycle of Housing Insecurity for Marginalized Survivors of Domestic and Sexual Violence.”

<sup>iv</sup> *Id.*

<sup>v</sup> U.S. Dept of Housing and Urban Development Office of Fair Housing and Equal Opportunity, February 9, 2011, “Assessing Claims of Housing Discrimination against Survivors of Domestic Violence under the Fair Housing Act (FHAct) and the Violence Against Women Act (VAWA).”

<sup>vi</sup> Kulkarni, Shanti & Hill, Evelyn (2020), “Understanding the Cycle of Housing Insecurity for Marginalized Survivors of Domestic and Sexual Violence.”

<sup>vii</sup> Note: This material is based on work supported by the Department of Housing and Urban Development (HUD) under FHIP Grant FPEI190035. Any opinion, findings, and conclusions or recommendations expressed in this material are those of the authors and do not necessarily reflect the views of HUD.

<sup>viii</sup> U.S. Dept of Housing and Urban Development Office of Fair Housing and Equal Opportunity, February 9, 2011, “Assessing Claims of Housing Discrimination against Survivors of Domestic Violence under the Fair Housing Act (FHAct) and the Violence Against Women Act (VAWA).”

<sup>ix</sup> One test was found to be inconclusive and was not included in the final analysis.