

NATIONAL ORIGIN AND SOURCE OF INCOME DISCRIMINATION IN RENTAL HOUSING

IN MARIN, SONOMA, & SOLANO COUNTIES



**FAIR HOUSING ADVOCATES
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FORWARD

DISCRIMINATION IN RENTAL HOUSING ON THE BASIS OF NATIONAL ORIGIN IS ILLEGAL UNDER STATE AND FEDERAL LAW. IN ADDITION, IN THE STATE OF CALIFORNIA IT IS UNLAWFUL TO DISCRIMINATE ON THE BASIS OF SOURCE OF INCOME.

Until January 1, 2020, California was one of a few states with an exception excluding Housing Choice Vouchers (HCVs) from source of income protections. In California, source of income had been defined as lawful verifiable income, interpreted by the courts as being paid directly to the tenant. This definition thereby excluded individuals who received housing subsidies, as the local Public Housing Authority pay subsidies directly to the housing providers.

In 2019, Senate Bill (SB) 329 amended the Fair Employment and Housing Act (FEHA) to expand the definition of source of income to include federal, state, and local public assistance and housing subsidies, effective January 1, 2020. While numerous city and county governments in California had already enacted similar ordinances (including some jurisdictions in Marin County), SB 329 expanded source of income protections for HCV holders throughout the state of California.

The purpose of this audit was to assess the extent to which Latinx Housing Choice Voucher holders experience discrimination or differential treatment in the initial stages of home seeking process based on their national origin. This audit follows a prior audit in 2018-2019 that assessed the extent to which Housing Choice Voucher holders experience race discrimination.

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, Sonoma County, and Solano County to eliminate discrimination of persons by virtue of their national origin. Local Public Housing Authorities should pay close attention to the lessons learned and relevant recommendations.



The audit was carried out by Julia Howard-Gibbon and Abraham Ramirez, Investigation Coordinators for Fair Housing Advocates of Northern California, under the supervision of Executive Director Caroline Peattie. Under the supervision of Ms. Peattie, Supervising Attorney Casey Epp analyzed the investigations and prepared this audit report.

EXECUTIVE SUMMARY

This report details the results and subsequent recommendations following an investigation of discrimination against prospective renters who are Latinx and/or Housing Choice Voucher (HCV) holders in Marin, Sonoma, and Solano Counties. While discrimination on the basis of a renter's source of income has been illegal in California, until only recently have these protections extended to HCV holders, who are individuals who have historically experienced a number of barriers to housing opportunity.

The Fair Housing Advocates of Northern California (FHANC) 2019-2020 investigation ("the investigation") examined sixty-three (63) rental properties in the tri-county area through 139 individual site, phone, and email tests. The investigation tested rental properties advertised online that were within the payment standard (or very close to it) for the relevant bedroom size and jurisdiction for the property in question. In addition, the investigation excluded any advertisements that made any statement related to the housing providers willingness to rent to voucher holders, whether it was positive or negative. The investigation followed a similar investigation conducted in early 2019 that assessed the extent to which prospective renters who are Black and/or HCV holders experienced discrimination in the tri-county area (67% of tests showed at least some level of discrimination based on race and/or source of income).

In 2019-20, FHANC conducted 139 individual investigations, 45 in Marin County, 49 in Solano County, and 45 in Sonoma County. Over the course of its investigation, FHANC found that housing providers discriminated on the basis of national origin and/or source of income in approximately **eighty-three percent (83%)** of the time, either demonstrating an outright refusal to rent to HCV holders or requiring an improper application of the minimum income requirement (which effectively prohibits voucher holders from accessing housing) and/or providing inferior terms/conditions and general treatment to Latinx voucher holders as compared to non-Latinx White voucher holders. **Of the 83% of investigations revealing discrimination, 69% were based on source of income, 17% were based on both source of income and national origin, and 13% were based on national origin¹.** Even in some instances within the 17% of investigations that did not reveal any significant difference indicating discrimination, housing providers still demonstrated reticence to engage in the voucher program, noting that they are required to consider voucher holders following the passage of the new law, referring to SB329.

Marin and Solano Counties showed the lowest levels of discrimination of the tri-county area; however, they were still strikingly high at 81%, particularly considering the local source of income ordinances in place in Marin County (since 2016) and various towns/cities in Marin County since (2018). Sonoma County showed the most discrimination at approximately 86%. Solano County showed the highest levels of national origin discrimination with 29% of landlords discriminating either on the basis of national origin or both national origin and source of income. However, Marin and Solano Counties were not far behind at 24%. The highest level of source of income discrimination was in Sonoma County with 62% of landlords discriminating against HCV holders; followed by Marin County at 57% and Solano County at 52%.

¹ Please note that these percentages have been rounded and are approximate.

The data speaks loudly and clearly: regardless of local ordinances in place in Marin County and the recent expansion of the Fair Employment and Housing Act's definition of source of income, voucher holders still face significant barriers in housing, even when advertisements are seemingly neutral toward voucher holders and refrain from including language such as "No Section 8."

Based upon the results of its investigations, including the results of FHANC's audit looking at race and source of income discrimination in 2019, FHANC has proposed a number of recommendations for the housing industry and community at large to help remove the barriers in housing that exist for voucher holders, particularly those who are racial/ethnic minorities. Considering the lack of affordable housing in the Bay Area, the HCV system is a crucial means for low-income families to access areas of high opportunity and it is critical that we address the systemic discrimination these families face in their housing search.

NATIONAL ORIGIN AND SOURCE OF INCOME DISCRIMINATION IN RENTAL HOUSING

AUDIT REPORT

I. INTRODUCTION

This report presents results of an audit for national origin discrimination against Latinx renters in Marin, Sonoma, and Solano Counties in California. The audit took place between December 2019 and March 2020.

A. FAIR HOUSING ADVOCATES OF NORTHERN CALIFORNIA

Fair Housing Advocates of Northern California (FHANC), 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. The mission of FHANC is to ensure equal housing opportunity and to educate the community on the value of diversity in our neighborhoods.

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 the cities of Fairfield and Vallejo in Solano County. FHANC also provides other services, such as foreclosure prevention counseling and trainings to housing providers, in other neighboring counties.

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 national origin, race, color, or religion 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 national origin, race, color, religion, sex/gender, disability or familial status, it is illegal to:

- 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, handicap, familial status, or national origin; and
- f. A refusal 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.

2. California/Local 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.

In late 2016, Marin County passed a local fair housing ordinance that established protections for renters based upon source of income, including renters using third-party housing subsidies such as Housing Choice Vouchers (HCVs). While California state law provided that it was unlawful to discriminate based upon one's source of income, at that time the definition was narrow and did not include third-party housing subsidies such as HCVs, Veterans Affairs Supportive Housing (VASH), Housing Opportunities for People with Aids (HOPWA), and Shelter Care Plus vouchers. The ordinance made it unlawful for housing providers in the unincorporated parts of Marin County to refuse to consider renters using housing subsidies, to offer different terms and conditions, such as higher security deposits, or to make discriminatory statements, such as "No Section 8."

Following the County, a number of other jurisdictions also adopted similar policies in order to address some of the barriers to housing choice faced by individuals using these subsidies, who are often members of other protected classes. In April 2018, the town of Fairfax implemented a similar ordinance, followed by the city of Novato in September 2018, and the cities of San Anselmo and San Rafael in December 2018. During the period in which audit testing was conducted, all local ordinances in the County of Marin were in effect.

Then in 2019, in response to the severe shortage of affordable housing in the state and barriers preventing low-income, vulnerable families from accessing housing of their choice, the California Legislature passed Senate Bill (SB) 329. SB 329 is a bill that amended the Fair Employment and Housing Act (FEHA) to clarify that HCVs and other types of housing

subsidies and third-party rental assistance are included within the definition of source of income. Effective January 1, 2020, nearly all housing providers in the state of California are required to accept applicants or tenants who have Section 8 or other housing subsidies, the only exception being owner-occupied single-family dwellings with only one renter in the same shared living space.

Housing providers may still deny the ability to rent to someone with Section 8, but not because they have a voucher; furthermore, they may not use more stringent requirements or have different eligibility criteria for such applicants. In addition, while housing providers may require that an applicant meet an income threshold based on the rent for a particular unit in order to qualify for the rental, income requirements must be assessed for voucher holders in accordance with California state law. Pursuant to Cal. Govt. Code §12955(o), if such applicant is a voucher holder, that income threshold must be calculated based on the amount of rent that will be paid by the tenant (i.e. the tenant's portion), rather than the entire contract rent. Unfortunately, housing providers seem to be unaware of the proper applicability of income requirements with voucher holders or intentionally misapplying the income requirement to make voucher holders ineligible.

While California has now expanded the definition of source of income, and other jurisdictions enacted similar local ordinances over the past couple of years, there has been and still remains significant opposition from the landlord community. FHANC monitors advertisements online with potentially discriminatory statements and sends notification letters, sharing its fair housing concerns. Since the enactment of these local ordinances and SB329, FHANC has made concerted efforts to focus its education efforts on source of income protections, highlighting the change in the law and how income requirements work. The response from housing providers has varied from hostility to appreciation.

C. OVERVIEW OF HOUSING CHOICE VOUCHER PROGRAM

The Housing and Community Development Act of 1974 developed Section 8 rental housing assistance programs to assist low-income families, seniors, and people with disabilities to access safe, affordable housing. The Quality Housing and Work Responsibility Act of 1988 combined the Section 8 voucher and certificate programs under the HCV program. The HCVP is the Department of Housing and Urban Development (HUD)'s largest rental assistance program, providing assistance to more than 2.2 million low-income families². HUD funds Public Housing Authorities (PHAs) nationwide; the PHAs administer the HCV program and pay funds directly to private landlords, with the HCV recipient paying the remaining portion of contract rent, which is an amount determined based upon the household income. HCV holders pay approximately 30% of the household income toward rent (but it may be up to 40%) and the PHA covers the balance, and in order to be eligible their income must not exceed 50% of the Area Median Income. Local payment standards based upon HUD Fair Market Rents set a cap for contract rent, which limits the pool of available housing where participants may use their HCVs.

While housing providers are not obligated to consider HCVs – that is, unless a state or local

² U.S. Department of Housing and Urban Development, Office of Policy Development and Research, September 20, 2018. <https://www.huduser.gov/portal/sites/default/files/pdf/Landlord-Acceptance-of-Housing-Choice-Vouchers.pdf>

government passes a law that provides such a protection, as California recently did – refusal to accept HCVs is often a pretext for discrimination based upon race (tested in early 2019) or national origin (the focus of the 2020 audit). There are many barriers in housing faced by HCV holders, who often represent members of protected classes, such as people with disabilities, families with children, and racial and ethnic minorities. These barriers and concerns of disparate impact discrimination are some reasons why certain jurisdictions (such as the state of California) have enacted local ordinances that establish additional source of income protections including HCV holders.

Over 300,000 families in California receive an HCV to help make rent more affordable and ensure that lower-income families can afford to rent in a variety of neighborhoods, including those with higher opportunity, with the goal of limiting segregation and homelessness. However, to date, the voucher program has been unable to accomplish its goals in many jurisdictions due in large part to private landlords' refusal to consider renting to such individuals. In order for the HCV program to function as it was intended and provide safe, stable housing for low-income individuals and families in a manner that promotes racial/ethnic integration, greater participation is required from a broader range of housing providers. In theory, this should happen as a result of the passage of SB329; however, it is evident that continued education and testing are necessary to address and assess the extent of the problem.

D. AUDIT BACKGROUND

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. For more than 20 years, FHANC has conducted multiple telephone, in-person, and email audits in several Bay Area counties designed to measure the extent of discrimination in rental housing against members of protected classes, particularly ethnic and racial minorities. While FHANC has found significant discrimination through phone testing, in-person site testing is likely to reveal further details of unintentional and intentional discriminatory practices. In addition, FHANC also has experience conducting email audit testing based upon national origin, using email addresses with common, ethnically identifiable names. Historically, the results of these audits suggest that unlawful discrimination based on national origin continues to be pervasive.

1. Previous National Origin Audits Conducted by FHANC in Marin/Sonoma/Solano

In 2004-20005, 2013, and 2015-2016, FHANC conducted national origin audit testing in Marin, Sonoma, and/or Solano Counties. Results of this testing indicated discrimination against Latinx renters whether the testing was conducted over the telephone or in person. In 2004-2005, FHANC found that Latinx testers encountered less favorable treatment than White testers 55% of the time in Marin County and 80% of the time in Sonoma County. In 2013, FHANC conducted a Latinx Voice Identification audit in Solano County, revealing that Latinx testers received less favorable treatment in the rental housing market 50% of the time. In 2016-2017, FHANC conducted a national origin/familial status audit in Marin and Sonoma Counties, indicating significant discrimination in both counties, with 42% of tests conducted in Marin County and 57% of tests conducted in Sonoma County indicating less favorable treatment toward Latinx testers (including families with children).

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 applicants (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/discrimination at available rental sites**, including duplexes and larger multi-family complexes, thus indicating the extent to which Latinx renters using HCVs face difficulty in securing rental housing in Marin, Sonoma, and Solano Counties due to national origin discrimination.
2. **To conduct additional on-site tests** (or other types of investigations as appropriate given COVID-19) 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/discrimination.
5. **To increase awareness by housing providers** of the difficulties Latinx renters and HCV holders experience in securing rental housing.
6. **To make Latinx home seekers, including HCV holders, 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

FHANC tested properties in Marin, Sonoma, and Solano Counties, with 48, 45, and 46 investigations conducted in each county, respectively. The audit consisted of a combination of site, phone, and email investigations throughout the tri-county area, without any differences in geographic scope. (As opposed to the race/source of income audit conducted in early 2019 in which email testing was only conducted in areas of Marin County with local source of income ordinances).

In Marin County, tested properties were located in the cities of Fairfax, Kentfield, Lagunitas, Larkspur, Mill Valley, Nicasio, Novato, San Anselmo, San Rafael, Sausalito, and Tiburon³. The audit also included properties in the Sonoma County cities of Glen Ellen, Healdsburg, Penngrove, Petaluma, Rohnert Park, Santa Rosa, Sebastopol, and Windsor⁴. In addition, the audit also included properties in Benicia, Dixon, Fairfield, Rio Vista, Vacaville, and Vallejo in Solano County⁵. These locations represent both the most densely populated cities in Marin, Sonoma, and Solano Counties (e.g. Novato, San Rafael, Santa Rosa, and Vallejo), as well as more suburban and rural communities with lower population densities.

D. AUDIT METHODOLOGY

1. Types of Investigations

Investigations coordinators conducted a total of one hundred and thirty-nine (139) individual email, phone or site investigations within the target geographic areas. Phone and site investigations consisted of two-part tests⁶ and email investigations consisted, as appropriate, of three-part tests.

For each site/phone investigation, the investigations coordinator selected two testers – a “protected tester” and a “control tester” – to carry out each test part. The investigations coordinator selected a White Latinx tester (hereafter “Latinx tester”) as the protected tester and a White non-Latinx tester (hereafter “White tester”) as the control tester⁷. Each tester was given a profile that included an HCV. Each tester called or visited the selected property posing as a prospective renter.

For each email investigation, the investigations coordinator created three separate profiles – a “protected profile,” a “control profile” and a “vacancy-check profile” – and created corresponding email addresses for each profile. The protected profile included a Latinx-sounding name and an HCV, the control profile included a White-sounding name and an HCV, and the vacancy-check profile included a White-sounding name but did not include an HCV. The investigations coordinator then emailed the listed agent from each profile’s email account, posing as prospective renters, utilizing the vacancy-check profile as appropriate to help determine whether there is source of income discrimination (for instance, when neither the Latinx tester nor the White tester received a response and the advertisement was still posted).

3 The audit did not include the smaller unincorporated townships such as Inverness or Bolinas in Marin County because of the smaller population and lack of available rental housing, particularly complexes with more than 2-3 units. In addition, some larger cities were not tested due to lack of eligible availabilities (for instance, the contract rent was significantly above the relevant payment standard).

4 The audit did not include the smaller cities and unincorporated townships such as Monte Rio and Guerneville in Soma County because of the smaller population size and lack of eligible properties for the reasons noted in Footnote 2.

5 The audit did not include the smaller cities and unincorporated townships of Elmira and Birds Landing because of the smaller population size and lack of available rental housing, particularly complexes with 2-3 units and those within the eligibility requirements for Section 8 (relevant payment standards).

6 On three occasions, investigations consisted of only one test part (for instance, because one tester failed to make contact with the housing provider), but the investigation was still considered complete because of the information gathered.

7 FHANC acknowledges that the term “Latinx” refers to an ethnicity (not a race) and the term “White” refers to a race (not an ethnicity), however, for the purpose of this Methodology the term “Latinx” will refer to a White person of Latinx origin and the term “White” will refer to a White person of non-Latinx origin.

2. 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) and sign postings. Shared homes were not tested, nor were vacation homes or short-term rentals.

The investigations coordinators did not select any properties where the advertisement included any statement as to whether the housing provider accepts or does not accept HCV subsidies. For example, listings that advertised either “no Section 8” or “Section 8 welcome” were not selected for testing.

The investigations coordinators selected properties where the advertised rent did not exceed the maximum payment standard for the size of the unit, pursuant to the Housing Authority’s payment standards for each jurisdiction. However, if no such property could be identified in a particular geographic area, the investigations coordinators selected properties in the target area that were as close to the payment standard as possible⁸.

3. 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 the HCV program so they were able to competently speak about the program with rental agents.

b. Tester Selection

For site tests, only testers whose physical appearances are clearly identifiable as Latinx were selected as protected testers and only those whose physical appearances are clearly identifiable as White were selected as control testers. For phone tests, only testers with voices clearly identifiable as Latinx were selected as protected testers and only testers with voices clearly identifiable as White Non-Latinx were selected as control testers.

4. Site/Phone Investigations 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

The investigations coordinator assigned two testers to the investigation – one Latinx tester

⁸ Please note one investigation (A1920-69) involved a property where the rent was \$25 above the payment standard; however, FHANC deemed the property still eligible for testing given the negligible difference and the fact that HCV holders can pay the difference out of pocket, provided that their payment is no more than 40% of household income (which was the case given the tester’s specific profile).

as the protected tester and one White tester as the control tester. Each tester was matched to their counterpart as closely as possible in age, gender and temperament. However, a tester may be matched with a person of the opposite gender if both testers' profiles include spouses. Neither of the testers selected would have visible or obvious disabilities.

c. Profiles

The investigations coordinator created a profile for each tester. If a protected tester's name is not clearly identifiable as Latinx, the tester may be given an alias. The matched profiles were designed to avoid any indication of difference in protected class characteristics other than national origin. For example, if the protected profile included a spouse, it was matched with a control profile that also included a spouse. None of the profiles included children or disabilities. None of the profiles had a race other than White and all profiles had an ethnicity/national origin of either Latinx or non-Latinx.

All profiles included participation in the HCV program and information about the voucher, such as the applicable housing authority, the payment standard for the jurisdiction, the voucher size (i.e. number of bedrooms), the expiration date of the voucher, and an approximation of the tenant's monthly rent portion. All profiles included employment and income information. Household employment incomes were low enough to qualify for the HCV program but high enough to cover basic monthly expenses. No profiles included any source of income other than employment and HCVs.

Matched profiles included roughly equivalent rental credentials, including similar household incomes and similar rental histories. However, the protected profiles had slightly higher incomes and slightly more stable rental histories than their control counterparts. Both testers were instructed to express identical housing needs, such as the number of bedrooms and price range.

Each profile included an email address, which testers may provide to the housing provider. The email accounts were created and managed by the investigation coordinators. The email address assigned to each tester corresponded with the tester's name or alias (if an alias is used).

d. Test Assignments

The investigations coordinator created a test assignment for each tester based on the information collected from the rental listing. The 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.

Prior to starting the test, the investigations coordinator briefed each tester via phone and/or email and sent each tester their test assignment.

e. Site Tests

For site tests, each tester started the test by calling the rental agent and asking to schedule an appointment to view the advertised unit or, in the event that the listing did not include a phone number, the test coordinator posed as the tester and contacted the housing provider

from the profile's email account in order to get a phone number or to set up an appointment for the tester.

The protected tester was instructed to start the test (i.e. schedule an appointment) as soon as possible after reviewing the assignment. The control tester was instructed to start the test after the protected tester (generally after the protected tester has already scheduled an appointment). The control tester was instructed to schedule their appointment for a time after the protected tester's scheduled appointment (ideally within 24 hours, if possible).

Each tester then visited the property at the date and time of their scheduled appointment and sought 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 are included, and any other information about the rental.

If the tester was asked any questions about themselves by the agent, the tester answered according to the tester's profile. During the test, the tester disclosed that they have an HCV and asked if the landlord accepts vouchers. If the tester was told that the landlord does not accept vouchers, the tester was instructed to ask why not. If the tester was told that the landlord does accept vouchers, the tester was instructed to ask for a rental application (provided they had not already been offered one by the rental agent).

While testers were instructed to obtain a rental application, testers will never be instructed to submit a completed rental application nor agree to a credit check. If a tester was asked to complete a rental application during the test, the tester provided a reason consistent with their profile for why they would not submit an application at that time (e.g. "I need to speak to my wife first").

f. Phone Tests

For phone tests, each tester started the test by calling the listed rental agent. The protected tester was instructed to start the test as soon as possible after reviewing the assignment. The control tester was generally instructed to start the test within a reasonable amount of time after the protected tester completes the test (ideally within 24 hours, if possible).

If the tester reached an answering machine, the tester was instructed to leave a message stating their name, phone number and their 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 (e.g. the owner or agent), the tester introduced themselves and stated that they are calling about the advertised unit. Each tester sought information from the rental agent about the rental unit and the rental process. If the tester was asked any questions about themselves by the agent, the tester answered according to the tester's profile.

During the test, the tester disclosed that they have an HCV and asked if the landlord accepts vouchers. If the tester was told that the landlord does not accept vouchers, the tester was instructed to get more information about the policy (e.g. "Can I ask why not?" or "Is that

management's policy or the owner's policy?"). If the tester was told that the landlord does accept vouchers, the tester stated their interest in viewing the property.

However, phone testers did not schedule appointments to view the property (unless otherwise instructed by the investigations coordinator), nor would they submit a completed rental application or agree to a background check. If the agent asked to schedule a viewing during the test, the tester would give a reason consistent with their profile for why they could not schedule a viewing at that time (e.g. "I have to check with my wife about her availability first and then call you back").

g. Debriefs

After each test, the investigations coordinator would debrief the tester in person, via phone, or email within twenty-four (24) hours of completing the test. During the debriefing, the tester 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, they may have instructed the tester to call the agent back or the investigations coordinator may have emailed the agent from the tester's email, posing as the tester.

h. Test Reports

After each test, the tester completed a Report Form in which the tester 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 wrote and submitted a narrative description of what happened during the test, including all interactions with the rental agent(s).

5. Email Investigations Procedure

a. Property Selection

For each email investigation, the investigations coordinator searched online listings within the target geographic area and selected a listing that met the sampling techniques set forth above and that also included an email address for the rental agent or an online form used to contact the rental agent electronically.

b. Profiles

The investigations coordinator then created three separate profiles – a protected profile, a control profile, and a vacancy-check profile. The protected profile had a Latinx-sounding

name⁹ while the control and vacancy-check profiles had White-sounding names¹⁰. Only names that were clearly identifiable as Latinx were used for the protected profiles and only names that were clearly identifiable as White were used for the control profiles and the vacancy-check profiles.

All profiles were designed to avoid any indication of difference in protected class characteristics other than national origin and source of income. For example, if a protected profile included a spouse, it was matched with a control and a vacancy-check profile that also included spouses. None of the profiles included children or disabilities. None of the profiles had a race or national origin other than White Latinx or White non-Latinx.

Both the control and protected profiles included participation in the HCV program and information about the voucher, such as the applicable housing authority, the payment standard for the jurisdiction, the voucher size (i.e. number of bedrooms), the expiration date of the voucher, and the tenant's monthly rent portion. The vacancy-check profile did not include a voucher.

All profiles included employment and income information. For the protected and control profiles, household employment incomes were low enough to qualify for the HCV program but high enough to cover basic monthly expenses. For the vacancy-check profile, the monthly household income was equal to at least three times the monthly rent. No profiles included any source of income other than employment and/or an HCV.

The protected profile and the control profile had roughly equivalent rental credentials, including similar household incomes and similar rental histories. However, the protected profiles had slightly higher incomes and slightly more stable rental histories than their control counterparts. All profiles included identical housing needs (e.g. number of bedrooms, date of availability, etc.).

The investigations coordinator created an email address for each profile. The email address for each profile included some variation of either the first, last or full name of the name associated with the profile. The investigations coordinator also assigned a Google Voice phone number to each profile, which was linked to the email account for the profile. The investigations coordinator had control over the Google Voice accounts and the email accounts for each profile.

c. Email Tests

The investigations coordinator then emailed the rental agent from each profile's email address, posing as prospective renters. The investigations coordinator first emailed the agent from the protected profile stating his/her interest in the property, his/her household

⁹ For "Latinx-sounding" names, the investigations coordinators will likely choose first names from a list of the 200 most popular Mexican names, which can be found at https://www.momjunction.com/articles/mexican-baby-names-for-girls-and-boys_00401444/#gref, and pair them with last names from a list of the most common surnames for "Hispanics," based on the United States Census, which can be found at <https://names.mongabay.com> and is based on the 2000 U.S. Census.

¹⁰ For "White-sounding" names, the investigations coordinator will likely choose first names from a list of the twenty (20) "Whitest" first names, based on a large data set of birth-certificate information for every child born in California since 1961, which can be found at <https://abcnews.go.com/2020/top-20-whitest-blackest-names/story?id=2470131>, and pair them with last names from a list of the most common surnames for "Whites" based on the United States Census, which can be found at <https://names.mongabay.com> and is based on the 2000 U.S. Census.

size (e.g. “My husband and I are interested at the apartment you have listed on craigslist...”), and that he/she has an HCV (e.g. “We have Section 8”).

The investigations coordinator then, after an appropriate amount of time, sent an email to the agent from the control profile, which included the same information as the email from the protected profile, except the wording of the email was changed enough to avoid detection that the email was a test.

If either the protected or the control profile received no response, or if either profile received a response stating that the unit is no longer available, or if for some other reason determined by the investigations coordinator, the investigations coordinator may, at any reasonable time during the investigation, have sent an email from the vacancy-check profile stating his/her interest in the property and asking if the unit was still available.

The investigations coordinator regularly checked the email accounts and the Google Voice accounts associated with each profile. If after a reasonable amount of time an email from either the protected profile or the control profile received no response from the listing agent, the investigations coordinator sent a follow up email. If at any time during an email test the rental agent requested information about the sender, the investigations coordinator responded according to the profile for that test.

6. Audit Analysis

For site and phone investigations, FHANC compared the Report Forms and narratives for each test to assess whether matched testers received the same or different treatment from each other. For email investigations, FHANC compared the email exchanges between the agent and the matched profile(s) and any follow up from the housing provider to see whether the matched profiles received the same or different treatment from each other. Please note that given the differing number of email, phone, and site investigations that were conducted in each county, FHANC is presenting results from the tri-county area rather than differentiating by county.

For each investigation, FHANC prepared a comparison and analysis sheet, and recommended follow-up where appropriate. FHANC compared information in the following areas to assess whether the testers received the same treatment and information from the housing provider, including the following:

- a. Refusal to rent or negotiate for rental;
- b. Offering different rental terms and conditions (including amenities and special offers);
- c. Screening and follow up;
- d. Response (or failure to respond) to initial contact or subsequent contacts;
- e. Unit availability;
- f. Information about applicant qualifications, eligibility, or rental criteria; and

- g. Comments, encouragement, steering, and general treatment.

Tests showing discriminatory statements or differential treatment on the basis of national origin or voucher status may form the basis of further investigations.

III. RESULTS

Between December and March 2020, FHANC conducted **139 individual tests** in Marin, Sonoma, and Solano Counties. The tests fell into several broad groups: those showing no significant difference indicating discrimination, those revealing some differential treatment/discrimination, and those evincing clear differential treatment/discrimination.

“Clear differential treatment/discrimination” 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/discrimination” refers to statutory violations, such as:

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

“Some differential treatment/discrimination” 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, or there was no significant difference in treatment between the protected and control testers but the housing provider’s responses to the testers’ disclosure of their voucher was problematic in some fashion. In some cases, the differences involved factors characterized as less significant than those counted in the “clear differential treatment/discrimination” category. “Some differential treatment/discrimination” includes statutory violations that do not materially affect the housing transaction and other less significant types of differential treatment/discrimination, such as:

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

For purposes of this report, “no significant difference in treatment” means each paired or three-part tester received substantially similar information and there were no demonstrable differences, or if there were demonstrable differences, they benefitted the protected tester.

A. TEST OUTCOMES

FHANC conducted **139 tests** for the 2019-2020 Marin, Sonoma, and Solano County National Origin/Source of Income audit. Forty-five (45) individual site/phone/email tests were conducted in Marin county; forty-five (45) individual site/phone/email tests were conducted in Sonoma County; and forty-nine (49) individual site/phone/email tests were conducted in Solano County.

1. Site Testing

Twenty-three (23) individual site tests out of the thirty (30) conducted showed at least some discrimination based on source of income and/or national origin discrimination in the tri-county area. 7% of the site tests conducted showed discrimination based on national origin; 20% of the site tests conducted showed discrimination on both national origin and source of income and 53% showed discrimination based on source of income. At twelve (12) out of the fifteen (15) properties that were site tests (80%), there was at least some discrepancy or disadvantage in treatment for the Latinx tester and/or for testers using HCVs, which is considered a protected class in the state of California.

Responses from housing providers unwilling to consider HCVs or offering inferior terms/conditions to HCV holders included the following:

- We require that voucher holders meet the income requirement based on the full contract rent **in case they ever lose their voucher**, so that we know they can still afford the rent. However, the housing provider offered preferential terms to the control tester, saying the amount of the voucher would be included in the determination for income eligibility (still improper but it gave the non-Latinx voucher holder a chance at qualifying).
- We **already rented out our allotted 10%** of our units for people with Section 8 but I will try to advocate for you with the owners (neither tester heard back).
- **I'm not sure how the income requirement works with Section 8.** I would have to speak with the owners about this (neither tester heard back).
- We used to rent to voucher holders but I'm not sure. **Housing was paying the rent late.**

Results of Site Tests in Tri-County Area*

	<u>Source of Income</u>	<u>Source of Income & National Origin</u>	<u>National Origin</u>	<u>TOTAL</u>
Differential Treatment/ Discrimination	8/15 (53%)	3/15 (20%)	1/15 (7%)	12/15 (80%)

*Please note: All percentages have been rounded to the nearest whole number.

2. Phone Testing

Forty-two (42) individual phone tests out of the forty-six (46) conducted showed at least some discrimination based on source of income and/or national origin discrimination in the tri-county area. 17% of the phone tests conducted showed discrimination based on national origin; 13% of the phone tests conducted showed discrimination on both national origin and source of income and 61% showed discrimination based on source of income. At twenty-one (21) out of the twenty-three (23) properties that were phone tests (91%), there was at least some discrepancy or disadvantage in treatment for the Latinx tester and/or for testers using HCVs, which is considered a protected class in the state of California.

Responses from housing providers unwilling to consider HCVs or offering inferior terms/conditions to HCV holders included the following:

- To the protected tester, the housing provider said (twice during the same phone call), **“I don’t want someone kicking in my doors,”** or words to that effect. To the control tester, she said the property **“was not eligible for Section 8”** or words to that effect.
- In response to a question about why the housing provider would not take Section 8, she responded that she **did not know**, but they are a small building and it was the **owners’ policy**.
- **I can’t make exceptions for voucher holders because of discrimination issues**, so still need to make \$5500/month to meet our income requirement.
- **We are just the management company** and the owners don’t accept vouchers, **don’t know why**.
- **Because of the virus we are no longer accepting Section 8, as the owner does not want to be dealing with too many people...Won’t deal with any third parties until the Coronavirus is over.**

Results of Phone Tests in Tri-County Area*

	<u>Source of Income</u>	<u>Source of Income & National Origin</u>	<u>National Origin</u>	<u>TOTAL</u>
Differential Treatment/ Discrimination	14/23 (61%)	3/23 (13%)	4/23 (17%)	21/23 (91%)

*Please note: All percentages have been rounded to the nearest whole number.

3. Email Testing

Forty-nine (49) individual email tests out of the sixty-three (63) conducted showed at least some discrimination based on source of income and/or national origin discrimination in the tri-county area. 8% of the email tests conducted showed discrimination based on national origin; 12% of the email tests conducted showed discrimination on both national origin and source of income and 56% showed discrimination based on source of income. At nineteen (19) out of the twenty-three (25) properties that were email tests (76%), there was at least some discrepancy or disadvantage in treatment for the Latinx tester and/or for testers using HCVs, which is considered a protected class in the state of California.

Some housing providers failed to respond to the protected and/or control tester(s)' multiple contacts, despite the advertisement continuing to run. Even more frequently, housing providers misapplied minimum income requirements, requiring that testers with vouchers make a specific amount of income based on the contract rent rather than based on the testers' portion of rent (thereby making the testers ineligible for the rental). In addition, numerous housing providers flat out refused to consider renting to testers whose profiles included a voucher. This misapplication of income requirements, or a refusal to consider a tester with a voucher, resulted in clear differential treatment/discrimination based on source of income in twenty-nine individual email tests (49%). Six additional individual email investigations revealed some level of differential treatment/discrimination based on source of income – for instance, telling testers with HCVs that any special promotion or discount on rent would not apply to voucher holders.

As noted above, some email investigations revealed discrimination based on both national origin and source of income and some revealed discrimination based on national origin alone. However, the large majority of email investigations revealing at least some level of differential treatment/discrimination included source of income discrimination, despite the protections that exist on the state and – to some extent – local level (parts of Marin County).

Results of Email Tests in Tri-County Area*

	<u>Source of Income</u>	<u>Source of Income & National Origin</u>	<u>National Origin</u>	<u>TOTAL</u>
Differential Treatment/ Discrimination	14/25 (56%)	3/25 (12%)	2/25 (8%)	19/25 (76%)

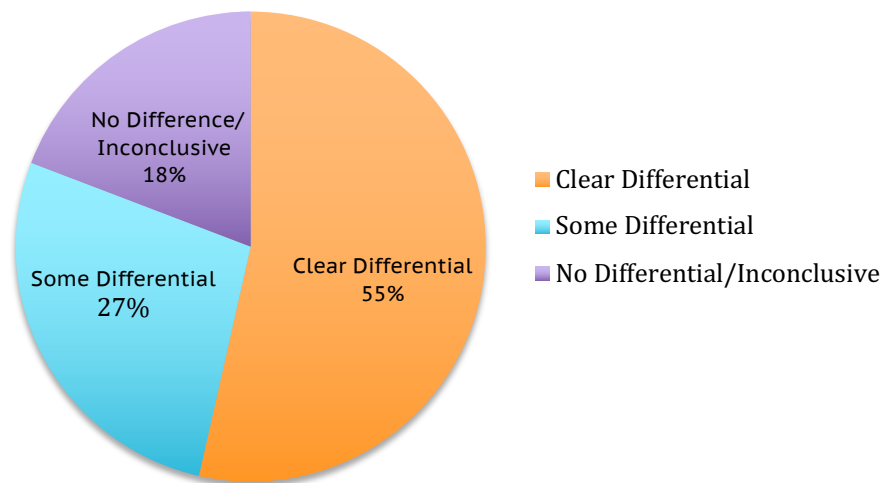
*Please note: All percentages have been rounded to the nearest whole number

Results of Site/Phone/Email Tests in Tri-County Area*

	<u>Source of Income</u>	<u>Source of Income & National Origin</u>	<u>National Origin</u>	<u>TOTAL</u>
Differential Treatment/ Discrimination	36/63 (57%)	9/63 (14%)	7/63 (11%)	52/63 (82%)

*Please note: All percentages have been rounded to the nearest whole number

Types of Differential Treatment Based on National Origin and/or Source of Income (Site/Phone/Email)



B. TYPES OF DISCRIMINATION OR DIFFERENTIAL TREATMENT BASED ON NATIONAL ORIGIN/SOURCE OF INCOME

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 or respond to multiple attempts to communicate, 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 can be 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. It may also include a move-in special or discount off the monthly rent, which can provide both access and encouragement.

3. Making False Representations About Availability

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. 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, refusing to confirm whether the housing provider accepts vouchers or how the minimum income requirement would work with vouchers – arbitrarily restricts the availability of a housing opportunity for a member of a protected class, and 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. Given the specific manner in which income requirements are supposed to be applied to voucher holders (applied to their portion of rent rather than the contract rent), improperly applying an income requirement is likely to make voucher holders otherwise ineligible and was prevalent in this audit.

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 national origin context might include directing a caller to a different complex based on the housing provider's assumptions about appropriateness of an applicant's tenancy in a particular location. General treatment may also include encouraging only one tester by providing additional information on the application process or having a more positive response to the disclosure of the voucher profile.

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.

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

1. Familial Status

While children were not included within the profiles of any testers, FHANC uncovered one instance of familial status discrimination during a paired investigation, where the housing provider indicated that the property was best for only one occupant. In addition, in a few investigations, only the Latinx tester was asked if s/he had a child, which could indicate possible screening for Latinx families with children. In response, when feasible, FHANC will conduct follow up investigations testing for familial status discrimination.

2. Disability

In addition to familial status discrimination, FHANC uncovered at least one example of a discriminatory statement that raised concerns of disability discrimination. In this instance, the housing provider told FHANC's control tester that he was looking for someone who was the "right fit" and "did not want anyone crazy," or words to that effect. In response, when feasible, FHANC will conduct follow up investigations testing for disability discrimination (mental disability).

E. DIFFERENTIAL TREATMENT/ DISCRIMINATION BY TEST & PROTECTED CLASS

Test #	Type	City	County	Refusal to Rent	Different Terms & Conditions	False Denial of Vacancy	Otherwise Make Housing Unavailable	Comments, Steering, & General Treatment	Quantity, Quantity of Info	Follow-Up	TOTAL
A1920-01	Site (2)	Novato	Marin								
A1920-02	Site (1)	Novato	Marin	SOI			SOI	SOI			SOI
A1920-03	Site (2)	San Rafael	Marin	SOI			SOI	SOI			SOI
A1920-04	Site (2)	Santa Rosa	Sonoma	NO	NO		NO	NO, SOI			NO, SOI
A1920-06	Site (2)	Vallejo	Solano								
A1920-07	Email (3)	San Anselmo	Marin	FS			FS	NO, FS			NO, FS
A1920-08	Email (2)	Novato	Marin								
A1920-09	Site (2)	Fairfax	Marin					SOI			SOI
A1920-10	Email (3)	San Rafael	Marin								
A1920-11	Site (2)	Mill Valley	Marin	SOI			SOI	SOI			SOI

A1920-12	Phone (2)	Kentfield	Marin	SOI			SOI	SOI			SOI
A1920-13	Email (3)	Novato	Marin	SOI		SOI	SOI	SOI		SOI	SOI
A1920-14	Site (2)	Fairfield	Solano	SOI			SOI	SOI			SOI
A1920-15	Phone (2)	Sebastopol	Sonoma	SOI			SOI	SOI			SOI
A1920-16	Phone (2)	San Anselmo	Marin	SOI			SOI	NO, SOI			NO, SOI
A1920-17	Site (2)	Santa Rosa	Sonoma				SOI	SOI			SOI
A1920-18	Phone (2)	Santa Rosa	Sonoma								
A1920-19	Site (2)	Santa Rosa	Sonoma	NO	NO		NO	NO	NO		NO
A1920-20	Site (2)	Santa Rosa	Sonoma								
A1920-22	Phone (2)	Fairfield	Solano					SOI			SOI
A1920-24	Site (2)	Mill Valley	Marin		NO			NO, SOI			NO, SOI
A1920-25	Phone (2)	Tiburon	Marin								
A1920-26	Site (2)	San Rafael	Marin	SOI	NO		SOI	SOI			NO, SOI
A1920-28	Phone (2)	Rio Vista	Solano					NO			NO
A1920-29	Phone (2)	San Rafael	Marin	SOI			SOI	SOI			SOI
A1920-30	Site (3)	Nicasio	Marin	SOI			SOI	SOI			SOI
A1920-31	Phone (2)	Rohnert Park	Sonoma	SOI			SOI	SOI			SOI
A1920-32	Phone (2)	Santa Rosa	Sonoma					NO, SOI			NO, SOI
A1920-33	Email (3)	Benicia	Solano				SOI	NO, SOI		NO	NO, SOI
A1920-34	Phone (2)	Benicia	Solano	SOI			SOI	SOI			SOI
A1920-35	Email (3)	Dixon	Solano	SOI			SOI	SOI			SOI
A1920-36	Email (2)	Fairfield	Solano					SOI			SOI
A1920-37	Email (2)	Fairfield	Solano								
A1920-38	Phone (2)	Vallejo	Solano	SOI			SOI	SOI			SOI
A1920-40	Email (3)	Vacaville	Solano					NO			NO
A1920-41	Email (3)	Vallejo	Solano	SOI			SOI	SOI			SOI
A1920-42	Phone (2)	Fairfield	Solano	SOI			SOI	SOI			SOI
A1920-43	Email (3)	Vacaville	Solano	SOI			SOI	SOI			SOI
A1920-44	Email (3)	Fairfield	Solano	SOI			SOI	SOI			SOI
A1920-45	Email (3)	Vacaville	Solano								
A1920-47	Email (2)	Healdsburg	Sonoma	SOI			SOI	SOI			SOI
A1920-48	Email (2)	Rohnert Park	Sonoma	SOI			SOI	SOI			SOI
A1920-49	Email (2)	Penngrove	Sonoma	NO			NO	NO, SOI		NO	NO, SOI

A1920-50	Phone (2)	Rohnert Park	Sonoma				SOI	SOI			SOI
A1920-51	Email (2)	Novato	Marin		SOI			SOI			SOI
A1920-52	Site (2)	Windsor	Sonoma	SOI			SOI	SOI			SOI
A1920-53	Phone (2)	Petaluma	Sonoma					SOI			SOI
A1920-54	Email (2)	Santa Rosa	Sonoma								
A1920-55	Email (3)	Healdsburg	Sonoma	SOI			SOI	SOI			SOI
A1920-57	Phone (2)	San Rafael	Marin		SOI						SOI
A1920-58	Email (3)	Santa Rosa	Sonoma		NO			NO, SOI			NO, SOI
A1920-62	Phone (2)	Sausalito	Marin				SOI	SOI			SOI
A1920-63	Phone (2)	San Rafael	Marin					NO		NO	NO
A1920-64	Phone (2)	Vallejo	Solano	NO	NO		NO, SOI	NO, SOI			NO, SOI
A1920-66	Email (3)	Petaluma	Sonoma	SOI			SOI	SOI			SOI
A1920-67	Email (2)	Vallejo	Solano								
A1920-68	Phone (2)	Glen Ellen	Sonoma					SOI			SOI
A1920-69	Phone (2)	Vacaville	Solano	NO			NO	NO			NO
A1920-70	Phone (2)	Santa Rosa	Sonoma	SOI			SOI	SOI			SOI
A1920-71	Email (2)	Santa Rosa	Sonoma	SOI			SOI	SOI			SOI
A1920-72	Email (2)	Larkspur	Marin	SOI			SOI	SOI			SOI
A1920-73	Phone (2)	Vallejo	Solano					NO			NO
A1920-74	Email (2)	Vallejo	Solano					SOI			SOI
Property Totals	63	63	63	33	8	1	37	51	1	4	52
Subtotals	Email: 25		Sonoma: 21	NO: 5	NO: 6	SOI: 1	NO: 4	NO: 6	NO: 1	NO: 3	NO: 6
	Phone : 23		Solano: 21	SOI: 27	SOI: 2		SOI: 31	SOI: 36		SOI: 1	SOI: 36
	Site: 15		Marin: 21	FS: 1			NO, SOI: 1	NO, SOI: 8			NO, SOI: 9
							FS: 1	NO, FS: 1			NO, FS: 1
Test Part Totals	139	139	139	74	17	2	68	86	1	5	87
Subtotals	Email: 63		Sonoma: 45	NO: 5	NO: 13	SOI: 2	NO: 4	NO: 6	NO: 1	NO: 3	NO: 6
	Phone : 46		Solano: 49	SOI: 61	SOI: 4		SOI: 62	SOI: 71		SOI: 2	SOI: 71
	Site: 30		Marin: 45	FS: 1			NO, SOI: 1	NO, SOI: 8			NO, SOI: 9
							FS: 1	NO, FS: 1			NO, FS: 1

****Please note some tests revealed more than one type of discrimination and on the basis of more than one protected class. The total provides the number of paired tests with each prohibited activity noted above.***

Key:

National Origin = NO
Source of Income = SOI
Familial status = FS
Disability = D*

1. Tests Indicating Clear Differential Treatment

74 individual tests (**53%**) showed evidence of **clear differential treatment** based on national origin and/or source of income. The chart above details the significant number of tests where housing was denied, otherwise made unavailable, and/or there were discriminatory comments, steering, and inferior general treatment for Latinx testers and/or testers with HCVs – 33, 37, and 51 tests, respectively – in addition to false denial of availability in two individual tests.

In one case (email test A1920-13) in Novato (Marin County), for example, the housing provider told both testers who disclosed a voucher that the unit had already been rented and he refused to confirm whether he accepted Section 8 vouchers. In contrast, he told the non-voucher control (vacancy check) to call him to discuss the matter and reached out to the non-voucher control two weeks later to confirm the unit was still available. His statement that the unit had been rented (when in fact it had not) and his refusal to confirm whether he accepts vouchers demonstrates false denial of availability, a refusal to rent or negotiate and otherwise making housing unavailable based on source of income; in addition, it also indicates inferior general treatment and lack of follow up based on source of income.

In another case (site test A1920-19) in Santa Rosa (Sonoma County), the agent told the protected tester that he must make \$5,000 per month and that the income requirement was the same for voucher holders; in contrast, she told the control tester that the income requirement would be applied to the portion of rent they pay, thereby making the control eligible to rent the premises while discouraging the protected tester and indicating he was not qualified to rent. In addition, the agent offered an additional move-in special only to the control, told only the control about a free carport/storage, provided greater information/availability, and encouraged the control to submit an application soon.

In another case (phone test A1920-64) in Vallejo (Solano County), the agent told the protected tester who has an ethnically identifiable Latinx voice and name that he did not qualify based on his income, improperly applying the minimum income requirement to the contract rent. In contrast, the agent told the control tester whose voice and name are identifiable as White was told that the amount of the voucher could be applied toward the income requirement; although this was still an improper application of the income requirement, it permitted the control tester to qualify for the unit while the protected tester was discouraged and told he did not qualify (though his household income was just higher than the control tester's).

In one more case (phone test A1920-16) in San Anselmo (Marin County) the agent told the protected tester who has an ethnically identifiable Latinx voice and name that she did not want someone who would be “kicking in her doors,” or words to that effect, repeating the statement twice during the phone call, stating she just wants “good tenants.” In contrast,

the made no such similar statement to the control tester, though she told her the property was not eligible for Section 8 because the kitchen lacked a sink. The housing provider in question refused to allow either tester to negotiate for the rental but treated them both differently based on national origin and source of income.

Numerous other tests resulted in evidence of clear differential treatment with respect to refusal to rent/negotiate, otherwise make housing unavailable, and making discriminatory statements.

2. Tests Indicating Some Differential Treatment

38 individual tests (27%) showed evidence of **some differential treatment** based on national origin and/or source of income. While the majority of the tests showing evidence of differential treatment based upon national origin and/or source of income showed clear discrimination, a significant number demonstrated at least some differential treatment, most often related to general treatment and misapplication of the income requirement (but in a manner that did not clearly make the specific voucher profile ineligible for the rental). A number of email tests showed evidence of some differential treatment based upon source of income due to the response to the voucher disclosure and refusal to answer follow up questions, particularly questions regarding how the minimum income requirement would work for a voucher holder. In the tight rental market that exists in the Bay Area, delays that are a number of days long can mean the difference in whether an individual is able to access a property.

In one case (email test A1920-07) in San Anselmo (Marin County), the agent's general treatment of the Latinx tester was notably inferior to that toward the White tester, particularly with regard to the response to the disclosure of the HCV. The agent refused to answer the Latinx tester's question regarding whether she accepts Section 8, while telling the White tester that she does accept Section 8, noting that she "can't discriminate" but she "can require good credit score, rental history [and] income verification," or words to that effect. In addition, despite the Latinx tester contacting the agent first, she responded to the White tester sooner. General treatment is a consistent difference in national origin discrimination tests conducted, indicating a reticence to fully engage with the Latinx testers or encourage them to apply.

In another case (email test A1920-33) in Benicia (Solano County), the agent refused to answer whether he accepts vouchers and merely said they could "go through the process"; however, after the Latinx tester asked for clarification, he said that the income is three times the contract rent and that questions could be answered in person, refusing to discuss or negotiate. The agent also called both White testers (the voucher control and non-voucher control), while he never called the Latinx tester; in addition, he only told the Latinx tester that no felonies were permitted. In another case (email test A1920-51), the agent told one of the testers who had a voucher that the free rent special listed in the advertisement does not apply to vouchers.

3. Tests Indicating No Significant Differential Treatment

27 individual email, phone, and/or site tests (19%) did not show evidence of differential treatment or were tests where the control tester received inferior treatment. In tests with

no differential treatment, testers received similar treatment and were given the same substantive information regarding acceptance of the voucher and income requirement application, availability, rent, security deposit, and other terms. These tests also included those where mitigating factors might explain certain differences. For instance, in one test (A1920-01), the housing provider told the control tester more available units, but the control tester inquired while the protected tester did not; in addition, the agent told the protected tester about an included parking space while refraining from sharing such information with the control.

D. DIFFERENTIAL TREATMENT/ DISCRIMINATION BY GEOGRAPHIC AREA

Of the twenty-one (21) properties tested in Marin County, 2 (10%) showed discrimination on the basis of national origin, 3 (14%) showed discrimination on the basis of national origin and source of income, and 12 (57%) showed discrimination on the basis of source of income. In San Rafael, at five (5) out of the (6) properties tested (83%), there was at least some discrepancy or disadvantage in treatment for the Latinx tester and/or for testers using HCVs. Similarly, in central and southern Marin (San Anselmo, Fairfax, Mill Valley, Kentfield, Tiburon, Sausalito, and Larkspur), eight (8) of the nine (9) properties tested (89%) showed evidence of discrimination. Novato was the area in Marin county with the least discrimination toward Latinx renters and HCV holders; however, even in Novato 60% of the properties tested showed evidence of either source of income discrimination, national origin discrimination or both.

Of the twenty-one (21) properties tested in Sonoma County, 1 (5%) showed discrimination on the basis of national origin, 4 (19%) showed discrimination on the basis of national origin and source of income, and 13 (62%) showed discrimination on the basis of source of income. While 86% of the tests in Sonoma County revealed evidence of discrimination, in Santa Rosa, the largest and least rural city in Sonoma County, that number was only 70%. However, 40% of the properties tested in Santa Rosa showed evidence of discrimination on the basis of national origin.

Of the twenty-one (21) properties tested in Solano County, 4 (19%) showed discrimination on the basis of national origin, 2 (10%) showed discrimination on the basis of national origin and source of income, and 11 (52%) showed discrimination on the basis of source of income. In Vallejo, two (2) of the seven (7) landlords tested showed favorable treatment toward the White tester as compared to the Latinx tester. Additionally, four (4) of the properties tested in Vallejo showed evidence of discriminatory treatment and/or a discriminatory policy as applied to HCV holders.

IV. CONCLUSIONS

A. GENERAL

Of the 63 different properties tested Marin, Sonoma, and Solano Counties (21 properties in each county), 52 housing providers (83%) showed some differences in treatment favoring the White tester and/or problematic policies for testers using HCVs (such as an improper application of the minimum income requirement). Only 11 housing providers tested (17%) showed no significant differential treatment or discriminatory policy. **In 112 out of 139 individual tests - or 81% of all tests - there were at least some discrepancies or**

disadvantages in treatment for the Latinx tester or based on source of income.

The data is striking: Despite having a number of local ordinances in place in Marin County for over a year, and the recent expansion of the definition of source of income throughout the state of California (providing protections for HCV holders), housing providers are either freely discriminating on the basis of source of income or they are doing so in a manner where the voucher holder might not realize they are being discriminated against – for instance, by quoting an improper application of the minimum income requirement, which would preclude the voucher holder from being eligible for the rental while they are still clever enough not to say “we don’t accept Section 8”. In addition, housing providers are making exceptions to discriminatory policies for White HCV holders, granting them access into areas of high opportunity and low poverty.

It is already incredibly difficult to access affordable housing in the Bay Area. For a voucher holder who has likely waited years – sometimes decades – to receive their housing subsidy, the realities of navigating the housing search process can be devastating. Housing providers have found a number of ways to discriminate on the basis of source of income, and it is clear that if the voucher holder is Black or Brown, the likelihood of receiving inferior treatment preventing one access to the housing of their choice is much greater. Every time a housing provider gives incorrect information regarding the voucher holder’s income requirement, it is likely to discourage them from following through; in addition, while the testers’ profiles in this audit included income from employment, it is often the case that a voucher holder may not be employed and rely on other means of income, or the sole support of the voucher. Anecdotally, the results of the audit indicate that whether a voucher holder is employed may make a difference in a housing provider’s willingness to consider them for tenancy and whether they would meet an improperly applied minimum income requirement.

Furthermore, even in the case when FHANC determined there was no significant evidence of discrimination, housing providers can still engage in behavior that is problematic for a voucher holder applicant, particularly in a tight rental market. For instance, in one three-part email investigation, the housing provider’s agent informed both voucher holder testers that they accepted Section 8, but she did not know how the income requirement would work with a voucher and could not confirm they would be eligible to apply. She suggested the voucher holder contact the manager of the premises directly and provided her contact information; however, the manager never responded to the voucher holders. When they contacted the agent they had communicated with initially again, she said that the unit had already been rented.

Because FHANC used a third tester whose profile did not include a voucher, and who was also told the unit was already rented, FHANC determined there was no significant evidence of discrimination. With that being said, had the agent been familiar with the voucher process or indicated to the voucher holder testers that they could apply, they may have had an opportunity to rent the premises before it was no longer available. Particularly in tight rental markets, even a couple of days can make the difference in whether someone has an opportunity to rent.

The results of this audit are striking, but what is even more concerning is that this is likely to be just the tip of the iceberg. If data were available showing how many applications

voucher holders actually received and how many housing providers rented to voucher holders, the landscape is likely to be even more dismal than the 81% of tests that indicated some level of discrimination here.

B. LESSONS AND FEEDBACK FOR PUBLIC HOUSING AUTHORITIES

In addition to the barriers faced by HCV holders related to the private landlord's behavior, FHANC encountered additional difficulties in even locating eligible properties to test in Solano County and more remote parts of Sonoma County. Given the methodology, FHANC excluded advertisements that made any statement regarding Section 8 (either a refusal or willingness to accept), which limited the housing stock available to search; however, this is just one piece of the picture. **One major lesson learned from the last audit and remained relevant in the current audit is that the payment standards for rental units in Solano County are far too low given the current market.** Two FHANC staff members devoted countless hours searching for properties online within the eligibility criteria and with availabilities in Solano, and it was incredibly difficult locating eligible properties, let alone finding a landlord who would actually consider renting to an HCV recipient.

One must remember that HCV holders are often people with disabilities, families with children, and racial/ethnic minorities, and therefore are likely to experience discrimination and other barriers in housing aside from the difficulties faced navigating the voucher program. Consistent across the tri-county area was a clear message that landlords would prefer not to rent to individuals using HCVs, and this was the case for a variety of alleged reasons ranging from concern about requirements under the government program to concern about stereotypes of the holders themselves. Most often, the housing provider indicated that they were unsure how the minimum income requirement would work or they provided an incorrect income requirement that deemed the voucher holders ineligible. There must be greater outreach to a wider variety of landlords to encourage participation and to provide necessary education, and not just among smaller housing providers.

The difficulties faced by these individuals in securing housing is exponentially worse for residents in Solano County given the combination of landlord antipathy and artificially low payment standards. Finding new housing, particularly if one has specific needs in their housing, is becoming increasingly difficult, especially following the loss of available housing stock after the fires in Sonoma and Solano Counties. Given these difficulties, it is incumbent upon Public Housing Authorities (PHAs) to share data with the Department of Housing and Urban Development (HUD) and try to help achieve higher payment standards for the various jurisdictions it serves or to consider alternatives.

In addition to working to increase the payment standards or use more appropriate standards for the market, PHAs must assess the length of the search times they are providing their participants to find new housing, as the results of this investigation indicate search times should be increased given the lack of available housing, discrimination and general refusal to participate in the program by landlords, and often disability-related needs of the HCV holders. Taking into account the current pandemic, this need is even greater.

The need to assess and increase voucher search time is not limited to Solano County, as it is evident that the majority of Marin and Sonoma County landlords are not inclined to

participate in the voucher program. While locating properties within the payment standard was less of a hurdle in Marin County and the majority of Sonoma County, finding housing providers willing to consider an HCV recipient in any parts of the tri-County area tested was a difficulty. Accordingly, PHAs should continue outreach to different types of landlords so that it can effect necessary changes within the program that will increase greater landlord participation and should support local efforts to implement legal protections for HCV holders.

C. AUDIT LIMITATIONS AND LESSONS

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 could encounter at the pre-application stage. Because testers did not submit applications, this audit cannot identify housing providers who dispense information and applications 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. Completed application tests could yield evidence of housing providers turning down qualified Latinx applicants because of their national origin; in addition, it could demonstrate whether housing providers are truly willing to consider HCVs.

Even application tests would not detect the full extent of discrimination against in-place Latinx tenants, as opposed to applicants. Latinx renters report discrimination based on national origin, for instance, in the terms, conditions, privileges or services associated with their housing (e.g. a housing provider's failure to respond to Latinx tenants' repair requests, or delayed responses, while White 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. Difficulties Locating Eligible Properties

As discussed, there were a number of difficulties in locating eligible properties to test given the methodology and specifics related to the HCV program. In addition, once an eligible property was located, FHANC experienced a number of difficulties that led to some paired tests being deemed failed or attempted.

For example, some properties required applications to be submitted in person prior to any

information being provided regarding the unit or any other available units; in addition, there were difficulties with call centers and being able to access the same agent/property. Given the difficulties encountered in locating eligible properties, at times FHANC had to pick a property that was slightly above the payment standard; and in this case, the housing provider refused to negotiate with FHANC's protected tester because the property was \$25 above the payment standard.

D. RECOMMENDATIONS

- 1. Disseminate audit results** to Marin County, Sonoma County, and Solano County officials, the general public, media, and advocacy groups as an important educational tool. Meet with local governments and partner organizations to inform them of the results of the audit and what steps need to be taken to combat national origin and source of income discrimination. Social media posts and press releases should focus on informing the public about barriers faced by Latinx people and people with even in the pre-application stage. Media efforts should also be devoted to try to counteract housing providers' views regarding the HCV program and its holders.
- 2. Monitor sites** where there was an indication of differential treatment. FHANC may take further action.
- 3. 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, over the phone, or by email. FHANC 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. Furthermore, training is necessary for Public Housing Authorities and voucher holders so that they can be educated and trained about how income requirements work, and PHAs should play a large role, both with tenants and private landlords. Voucher holders should be provided with information and referrals for how to proceed with a complaint if they are denied or given incorrect information and this should be included as part of their voucher briefing.
- 4. Work with housing providers** to ensure that they are following fair housing laws and that they understand the laws. Send flyers to properties where testing showed some differential treatment. Flyers should inform housing providers that source of income laws have changed and inform them of the new protections for people with HCVs. 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. Recommend that these organizations publicly declare their support with a statement on their letterhead, outreach materials, and forms. 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.

5. **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, Sonoma County, and Solano County consider funding similar studies in the future.
6. **Public Housing Authority action.** Assess whether payment standards are at appropriate levels for your jurisdiction, perhaps considering alternatives, particularly in Solano County. Increase search times for HCV holders given the barriers faced and limited housing options for holders. Improve communication with participants and landlords to have a better appreciation of the difficulties faced on both sides.
7. **Spread the word to potential targets.** Work with other agencies serving the Latinx community, as well as HCV holders, to inform their clients of their fair housing rights and available services.