



INDIANA STATEWIDE FAIR HOUSING TESTING PROGRAM

Prepared by Engaging Solutions, LLC
on behalf of the Indiana Civil Rights Commission



Executive Summary
2014

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All views expressed are those of the authors and should not be attributed to the Indiana Civil Rights Commission or its Directors.

BACKGROUND AND INTRODUCTION

Housing is one of the basic fundamental rights of mankind,¹ encompassing far more than four walls and a roof. Research has consistently shown that where one lives has consequential and lasting effects on all other aspects of life including but not limited to the availability and quality of employment, cost of goods and services, access to a quality education, accessibility of healthy and fresh produce, quality of healthcare, and a sense of well-being. Correspondingly, when access to equal housing is impeded by discrimination, one's quality of life is diminished.

Fair housing laws were established to eliminate discriminatory practices in the housing market

Generally, enforcement of anti-discrimination laws is complaint-driven, relying upon individuals to file complaints when they suspect they have encountered discrimination. However, this system leaves larger patterns, including community segregation, unchanged. Further, citizens may interpret the lack of dialogue regarding these issues to mean that discrimination no longer exists within their community.

and to promote housing integration. In 1966, President Lyndon B. Johnson called for the enactment of the "first effective federal law against discrimination."² In response, Congress passed the Fair Housing Act of 1968 prohibiting housing discrimination in regards to sale, rental, and financing on the basis of race, color,

national origin, religion, gender, (and as amended) disability, and familial status. Yet, more than 45 years after the law's enactment, equal housing opportunity remains a major challenge. To that end, and in an effort to affirmatively further fair housing, the Indiana Civil Rights Commission ("ICRC") organized and commissioned the implementation of the nation's first statewide fair housing testing program to measure the incidence and forms of discrimination experienced by home seekers across the state of Indiana. The ICRC partnered with Engaging Solutions, LLC to design and implement the statewide testing program.

¹ Akintund, Otubu, "Fundamental Right to Property and right to Housing in Nigeria: A Discourse," Academia.edu, 2015, http://www.academia.edu/1318351/Fundamental_Right_to_Property_and_Right_to_Housing_in_Nigeria_A_Discourse

² History.com staff, "Fair Housing Act of 1968," *History.com*, 2010, <http://www.history.com/topics/black-history/fair-housing-act>

IMPORTANCE OF TESTING

Housing discrimination takes many forms. Although the most blatant forms have declined, overt acts of discrimination still exist. For instance, a “Public Pool, Whites Only” sign was posted on an apartment complex pool in 2011;³ similarly, in 2008, a disabled obese rental seeker was denied a unit because the landlords were concerned about his weight and believed that the home was not equipped for a man of his size.⁴ However, it is more common for housing providers to engage in differential treatment such as offering the minority rent seeker (or persons of other protected groups) fewer units, informing them of higher deposits or fees, providing less favorable rental terms, and/or steering them into particular units or areas of the complex. Individuals who are given misleading or inaccurate information about the availability of housing may never know that they have been involved in differential treatment because they have no way of comparing their treatment to another home seeker. Frequently, the only way to uncover differences in treatment is through the use of testing. For decades, testing has been performed as an effective and efficient method for identifying such practices and is a unique as well as effective tool for directly observing differential treatment of equally qualified rental seekers.

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³ *Landlord Defends Hanging ‘White Only’ Sign at Duplex Pool, Time, December 17, 2012*
<http://abcnews.go.com/blogs/headlines/2012/01/white-only-pool-sign-discriminatory-not-decorative-commission-rules/>

⁴ *Family Settles Disability Discrimination Claim, Law Foundation, August 24, 2010*
http://www.lawfoundation.org/cases_fhlp.asp

TESTING METHODOLOGY

Fair housing testing is a revolutionary investigative tool designed to gather information regarding practices utilized in the housing (in this case, rental) market. As information regarding these practices is difficult to ascertain, testing uses trained individuals, or testers, to pose as potential housing seekers and document their experience. However, the testers do not discuss their experiences with each other; rather, the results are only revealed to approved personnel. During testing, testers make initial inquiries into unit availability, costs, ability to view units and amenities, rental terms, and ability to modify conditions; however, testers did not submit to background checks or complete rental applications.

Testing, frequently used by the U.S. Department of Justice as well as private, nonprofit fair housing agencies, has been endorsed by courts and is recognized as an effective method by which to acquire information that cannot be ascertained through other means. Despite popular belief, fair housing testing does not always reveal a violation; rather, it can be an effective tool by which to demonstrate compliance with the fair housing laws. In this instance, the program used a diverse group of male and female testers from a myriad of racial, ethnic groups, over a broad range of ages, with and without disabilities. All participants were trained and screened using HUD approved-guidelines.

Rental units, otherwise known as test sites, were randomly selected from public advertisements such as local apartment guides, newspapers, internet classifieds, and google maps.⁵ While hundreds of housing providers were identified, testing sites such as student-oriented housing and more traditional rental units were randomly selected for actual testing. Additionally, diverse income levels were represented with monthly rents of selected properties ranging from \$300 per month to \$2,800 per month.⁶

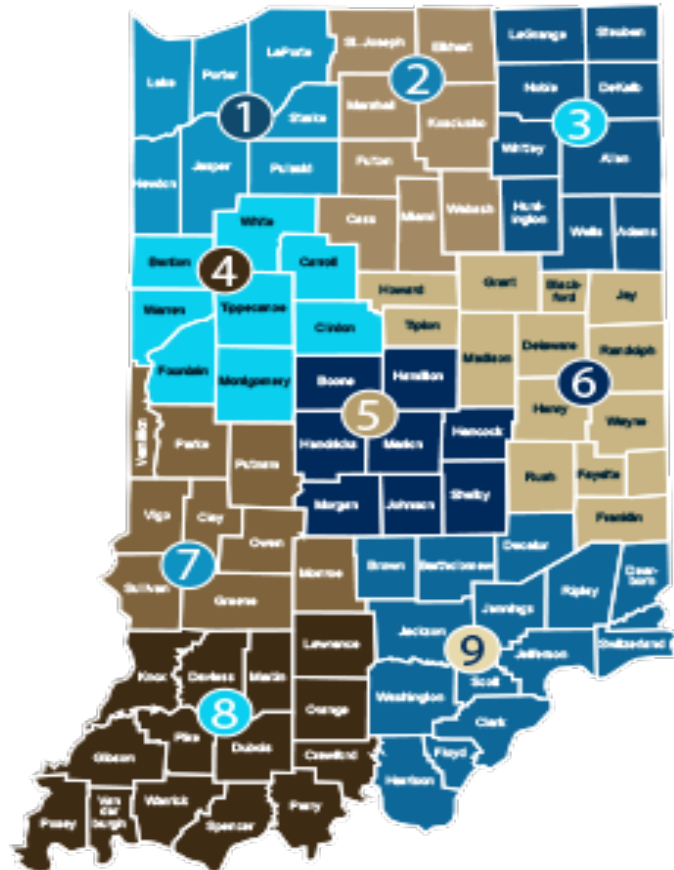
⁵There was no attempt to test a specific housing provider or housing unit for individual discrimination cases.

⁶Tests were not conducted at properties solely offering Section 8; low-income; tax credit units.

Testing was conducted in Indiana’s nine regions, as designated below. Paired testing, the most common method, was conducted in seven of the nine regions. In a paired test, two individuals who possess similar credentials, often with the protected class tester possessing slightly better credentials, are sent to visit a housing provider at different times. These individuals are paired, or matched, in all aspects other than the element which is being tested.

Similarly, single-contact testing was used to gauge whether a housing provider has policies or practices that discriminate against certain characteristics. These tests are commonplace when used to assess compliance with disability based accessibility or accommodation/modification regulations and involve one tester, either participating in person or via telephone.

Although there have been relatively few national studies to analyze the lack of accessible housing stock, the State of Indiana Analysis of Impediments to Fair Housing Choice (AI) noted that “. . . many stakeholders commented on the lack of



It is important to note that fair housing testing does not always reveal a violation but can also be used to demonstrate compliance with the housing laws.

affordable, accessible housing for persons with disabilities as being a major barrier to housing choice in the State.”⁷

The majority (78%) of the paired tests were in-person site visits and 22% were conducted telephonically (see Figure 2). Race based testing occurred in regions 1, 4, 5, 6, 7, 8, and 9; national origin testing occurred in regions 1 and 3; and disability-based testing occurred in regions 2 and 8.

SUMMARY OF FINDINGS

Race-based Findings

Although insidious discriminatory housing practices persist, more explicit forms have declined. However, despite these advancements, discrimination on the basis of race was prevalent. Race based testing occurred between February 2014 and December 2014 in regions 1, 4, 5, 6, 7, 8, and 9. In these tests, matched pairs, one black and one white, inquired about rental properties located in predominately white areas (as defined by the 2010 Census as having a population with a demographic composition of at least 75% white.)

Not every instance of treatment favoring the white tester should be interpreted as systematic discrimination. Rather, random factors may contribute to observed differences in treatment. Similarly, minorities may experience more favorable treatment than their white counterparts for various reasons. Therefore, we report the share of tests in which the white tester was favored over the minority, the share in which the minority was favored over the white, and the difference between the two.

⁷ The Indianapolis 10 State of Indiana Analysis of Impediments to Fair Housing Choice 2010-2014, Section III, Page 2. Choice 2010-2014. http://www.in.gov/ocra/files/Indiana_AI_2010-2014.pdf

Results of Race Audits

During the applicable timeframe, 166 race-based tests were completed. Of those tests, 39% or 64 tests showed differential treatment favoring the white tester, 20% or 34 tests showed differential treatment favoring the black tester, and 41% or 68 tests revealed similar treatment amongst both testers.

National Origin Findings

The Latino population is the fastest growing demographic in the United States; however, other groups are increasingly immigrating to Indiana, including populations from Southeastern Asia. As a result of these trends, national origin was selected as a basis for testing in Northern Indiana. Similar to race-based testing, matched pairs consisting of one Latino or Asian tester and one white or black tester inquired about rental properties located in predominately white or black areas as defined by Census data.⁸ As with all tests, the protected class tester was slightly more qualified than the control group tester. Testing on the basis of national origin occurred between April 2014 and September 2014 in regions 1 and 3, and all tests were conducted in person.

Forty-four (44) Latino/white tests were conducted in region 3 and region 1, one Latino/black tests was also conducted in region 1, and two Asian/white tests were conducted in region 3. Although differential treatment percentages for national origin tests (34%) are slightly lower than race-based tests (39%), the analysis revealed that non-Latino testers were treated more favorably than their Latino counterparts. Additionally, results for Asian/white paired tests revealed that the Asian tester received more favorable treatment than their white counterpart.

Results of National Origin Audits

In total, 47 national origin tests were completed during the applicable timeframe, with 44 Latino/white tests, one Latino/black test, and two Asian/white tests. Of those tests, 34% or 16 tests favored the non-Latino tester, 28% or 13 tests revealed more favored treatment toward the

⁸ As certain testing sites in Region 1 had a demographic composition of 84.4% black (according to 2010 Census data), a black tester was used as the control tester rather than a white tester.

Latino tester, and 38% or 18 tests showed similar treatment of both testers. Both Asian/ white tests revealed that the Asian tester received more favorable treatment than the white counterpart. All forty-seven or 100% of the tests were conducted in person.

Disability-based findings: Reasonable Accommodation

As the number of disability-based complaints filed with the ICRC continues to rise, the tester program also focused on the areas of reasonable accommodation/modification and accessibility as barriers to equal housing. Regulations regarding reasonable accommodation were designed to provide disabled home seekers with full and equal access to housing units as that possessed by their non-disabled counterparts. One of the most common accommodation requests by potential tenants is the ability to reside with a service animal. Nonetheless, despite regulation clearly removing service animals from the realm of “pets,” some housing providers continue to include service animals in their ‘no-pet’ policies, charge patrons pet fees for their service animals, and even subject them to breed, size, and species restrictions.⁹ Tests on the basis of reasonable accommodation occurred between April 2014 and September 2014 in regions 2 and 8.

Results of Disability-based (Reasonable Accommodation) Audits:

Thirty-seven (37) tests were completed during this timeframe. Amid those tests, 31% of tested housing providers either rejected, discouraged, imposed fees or certifications, or were otherwise

NO DOGS ALLOWED...Tester identified as disabled with a service dog. The tester was told no dogs were allowed due to barking. The housing provider asked if the tester was in a wheelchair. The tester answered no. The provider informed the tester that she would text the property manager to verify the no dog policy. The property manager confirmed the no dog policy and further explained that the policy was due to the design of the apartments, potential barking, and the lack of separate outside entrances for walking the dog.

reluctant to grant the tester’s request for a service animal. Specifically, of the non-favorable results, 9% of providers outright rejected the request for a service animal, 27.3% imposed pet deposits and fees, 27.3% required the service animal to be certified, 9% stated that dogs would disturb “downstairs tenants,” but could

⁹ It is important to note that emotional support animals as well as service animals are permitted under the Fair Housing Act.

REQUEST DENIED...The tester identified as disabled (but did not convey a specific disability) then inquired about installing grab bars in the bathroom. The housing provider responded “probably not” further stating that the bathroom and stairway were not wide enough for a wheel chair.

be approved on a “case-by-case” basis, and another 27.3% steered the potential applicant to another property. All of the reasonable accommodation tests were conducted telephonically.

Disability based findings: Reasonable modification

Reasonable modification is defined as physical changes or alterations to a housing unit, common use areas, and/or amenities. Fair housing laws require housing providers to permit reasonable modification requests for persons with disabilities to housing units of any age and include structural changes to interior as well as the exterior of a dwelling, common areas, and public use areas. While housing providers must permit reasonable modification requests, they are permitted to require the resident to cover the costs associated with the modification as well as restore the interior of the premises to its original condition.

Results of Disability-based (Reasonable Modification) Audits:

Thirty-seven (37) reasonable modification tests were completed between April 2014 and September 2014 in regions 2 and 8. Of the single contact tests completed, 9% of housing providers rejected or discouraged the installation of grab bars in the bathroom.

Disability based findings (Accessibility):

The Fair Housing Act requires multi-family housing, constructed for first occupancy after March 13, 1991, to be accessible to people with physical disabilities or mobility impairments. Multi-family units are defined as housing encompassing four or more units. If such a residence has an elevator, all floors serviced by the elevator must meet the aforementioned housing requirement; nonetheless, in buildings without an elevator, the ground floor units must be accessible. Similarly, the property’s common use areas and amenities must be accessible.

Results for disability based (Accessibility) Audits:

Five disability-accessibility tests were completed between June of 2014 and September of 2014 in region 2. These single-contact tests were conducted by a tester with a mobility disability at communities constructed for first occupancy after March 31, 1991 and complexes advertising disability-accessible units. Of the tests, 100% were conducted in person and 80% revealed violations of the accessibility design and construction regulations.

NEXT STEPS

Testing is an inexact science; as such, additional testing in these, as well as additional areas, is necessary to distinguish between differential treatment and unlawful discriminatory housing practices. As mentioned above, differential treatment cannot be solely attributed to systemic discrimination. Rather, random benign factors may contribute to observed differences in treatment. Thus, continued efforts in reaching the public through outreach are necessary to educate housing providers and potential housing seekers about rights and obligations under the Fair Housing laws. Moreover, tools such as audit testing are imperative in gauging the true state of fair housing in Indiana. Audit testing involves retesting previously tested sites and comparing the results to those obtained in prior testing. In the event similar differential results are observed, one can conclude with reasonable certainty that unlawful discrimination is occurring at that site. Alternatively, testing can reveal consistent compliance with the fair housing laws. These results can be used to target outreach efforts as well as to initiate Director-Initiated complaints against offenders. Despite continued outreach and the uptick in housing related complaints filed in our agency, it is important to remember that less than 10% of housing discrimination is ever reported. Ultimately, we are all Hoosiers and methods such as testing are imperative in eliminating insidious discrimination in housing on all bases.