Update on Fair Housing Law

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The Fair Housing Act, as Amended

- 42 U.S.C.A. § 3601

“It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.”
Costs of Housing Discrimination

- Impedes access to neighborhoods with educational, employment, and wealth opportunities;
- Perpetuates safety disparities;
- Marginalizes protected class families, including families with children and individuals with disabilities.
The State of Fair Housing: Complaints Filed

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![Bar graph showing complaints filed from FY2010 to FY2013.]

- **FY2010**
  - Total: 8,212
  - HUD: 1,943
  - FHAP: 6,269

- **FY2011**
  - Total: 9,354
  - HUD: 1,847
  - FHAP: 7,507

- **FY2012**
  - Total: 8,818
  - HUD: 1,857
  - FHAP: 6,961

- **FY2013**
  - Total: 8,368
  - HUD: 1,849
  - FHAP: 6,519

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**Fiscal Year**
### Number of Complaints by Bases

#### Table 1: Bases of HUD and FHAP Complaints (FY 2010-FY 2013)

<table>
<thead>
<tr>
<th>Basis</th>
<th>FY 2010</th>
<th>% of Total</th>
<th>FY 2011</th>
<th>% of Total</th>
<th>FY 2012</th>
<th>% of Total</th>
<th>FY 2013</th>
<th>% of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Disability</td>
<td>4,839</td>
<td>48%</td>
<td>4,498</td>
<td>48%</td>
<td>4,379</td>
<td>50%</td>
<td>4,429</td>
<td>53%</td>
</tr>
<tr>
<td>Race</td>
<td>3,483</td>
<td>34%</td>
<td>3,025</td>
<td>32%</td>
<td>2,597</td>
<td>29%</td>
<td>2,337</td>
<td>28%</td>
</tr>
<tr>
<td>Familial Status</td>
<td>1,560</td>
<td>15%</td>
<td>1,425</td>
<td>15%</td>
<td>1,301</td>
<td>15%</td>
<td>1,149</td>
<td>14%</td>
</tr>
<tr>
<td>National Origin</td>
<td>1,177</td>
<td>12%</td>
<td>1,195</td>
<td>13%</td>
<td>1,114</td>
<td>13%</td>
<td>1,040</td>
<td>12%</td>
</tr>
<tr>
<td>National Origin- Hispanic or Latino</td>
<td>722</td>
<td>7%</td>
<td>759</td>
<td>8%</td>
<td>691</td>
<td>8%</td>
<td>629</td>
<td>8%</td>
</tr>
<tr>
<td>Sex</td>
<td>1,139</td>
<td>11%</td>
<td>1,033</td>
<td>11%</td>
<td>1,067</td>
<td>12%</td>
<td>985</td>
<td>12%</td>
</tr>
<tr>
<td>Retaliation</td>
<td>707</td>
<td>7%</td>
<td>856</td>
<td>9%</td>
<td>970</td>
<td>11%</td>
<td>928</td>
<td>11%</td>
</tr>
<tr>
<td>Religion</td>
<td>287</td>
<td>3%</td>
<td>262</td>
<td>3%</td>
<td>229</td>
<td>3%</td>
<td>220</td>
<td>3%</td>
</tr>
<tr>
<td>Color</td>
<td>219</td>
<td>2%</td>
<td>185</td>
<td>2%</td>
<td>155</td>
<td>2%</td>
<td>170</td>
<td>2%</td>
</tr>
<tr>
<td>Number of Complaints Filed</td>
<td>10,155</td>
<td></td>
<td>9,354</td>
<td></td>
<td>8,818</td>
<td></td>
<td>8,368</td>
<td></td>
</tr>
</tbody>
</table>

Source: TEAPOTS
Rank and Order of Complaints

- Has remained constant the last three fiscal years.
- With 43% of the complaints, disability is the most common basis of complaints.
  - Includes: Reasonable Accommodation, Reasonable Modification, and accessible design and construction.
- Race is second, with 28%
- Familial status is third, 14%
- National Origin, 12%
  - This can be broken down further, to show Hispanic/Latino complaints at 8%
- Sex, 12%
- Religion, 3%
Most Common Issues in Complaints

- Roughly 2/3 of complaints allege discriminatory terms, conditions, privileges, services in the rental or sale of property – §§ 804(b) & 804(f)(2)
- Approximately 30% allege failure to make a reasonable accommodation – § 804(f)(3)(B)
- 27% allege refusal to rent – §§ 804(a) and 804(f)(1)
- 23% allege coercion or intimidation, threats, interference and retaliation - § 818
Complaint Outcomes

The chart illustrates the distribution of complaint outcomes by fiscal year from 2010 to 2013. The outcomes are categorized as:

- DOJ Referral
- Charge/Reasonable Cause
- Administrative
- Conciliated/Settled
- No Reasonable Cause

The percentages for each category are as follows:

- **2010:**
  - DOJ Referral: 46%
  - Charge/Reasonable Cause: 14%
  - Administrative: 0%
  - Conciliated/Settled: 6%
  - No Reasonable Cause: 7%

- **2011:**
  - DOJ Referral: 33%
  - Charge/Reasonable Cause: 6%
  - Administrative: 13%
  - Conciliated/Settled: 1%
  - No Reasonable Cause: 0%

- **2012:**
  - DOJ Referral: 48%
  - Charge/Reasonable Cause: 6%
  - Administrative: 6%
  - Conciliated/Settled: 26%
  - No Reasonable Cause: 1%

- **2013:**
  - DOJ Referral: 45%
  - Charge/Reasonable Cause: 4%
  - Administrative: 24%
  - Conciliated/Settled: 22%
  - No Reasonable Cause: 0.21%
Update on LGBTQ Issues

- Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity
  - [www.hud.gov/lgbthousingdiscrimination](http://www.hud.gov/lgbthousingdiscrimination)

- Review of Sexual Orientation and Gender Identity under the Fair Housing Act
The final rule, issued on February 3, 2012, went into effect on March 5, 2012.

Applies to HUD-assisted and HUD-insured housing, including:

- Public Housing, Section 8, Housing Choice Vouchers, Section 202, Section 811, CPD programs, CDBG, HOME, HOPWA, and Federal Housing Administration (FHA) mortgage insurance programs.
The Final Rule

- Defines sexual orientation (homosexuality, heterosexuality, or bisexuality) 24 CFR § 5.100
- Defines gender identity (means actual or perceived gender-related characteristics) 24 CFR § 5.100
- Clarifies the definition of family to include persons regardless of actual or perceived sexual orientation, gender identity or marital status. 24 CFR § 5.403
- The final rule also makes corresponding changes in the program regulations to the definitions of family
The Final Rule

- Defines “Household”: Household means all persons occupying a housing unit. The occupants may be a family, as defined in 24 CFR 5.403; two or more families living together; or any other group of related or unrelated persons who share living arrangements, regardless of actual or perceived, sexual orientation, gender identity, or marital status. 24 CFR 570.3
• Adds a general equal access provision: Housing assisted by HUD or insured by FHA shall be made available without regard to actual or perceived sexual orientation, gender identity or marital status. 24 CFR § 5.105(a)(2)

• Prohibits inquiries regarding sexual orientation and gender identity for the purpose of determining eligibility. 24 CFR § 5.105(a)(2)(ii)
  ○ (with limited exceptions: emergency shelters with shared sleep space, determining number of bedrooms to which a household is entitled)
  ○ Individuals not prohibited from voluntarily self identifying
Federal Housing Administration Equal Access Provision

- Prohibits FHA-approved lenders from basing eligibility determinations for FHA-insured loans on actual or perceived sexual orientation and gender identity
- 24 CFR 203.33
Fair Housing Act

- Sexual orientation and gender identity are not explicitly protected classes under the federal Fair Housing Act
  - Protected classes under some state and local ordinances

- However, *sex discrimination based on nonconformity with gender stereotypes* may be jurisdictional under the Fair Housing Act
Price Waterhouse v. Hopkins, 490 U.S. 228 (1989) provides the narrow but important exception on “sex stereotyping,” established it is unlawful discrimination to take adverse actions against an employee on the basis of the employee’s failure to conform to gender norms (involved a woman who was not “feminine” enough for her supervisors, who advised her to wear make up and told her she was too macho).
Macy v. DOJ (EEOC Apr. 20, 2012)

- Plaintiff was a police detective who applied to the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) for a position at a crime lab, while presenting as a male.
- Informed the background check investigator that she was transitioning to female, and was told five days later that the position was no longer available.
- ATF argued that Title VII did not protect against transgender discrimination. EEOC determined the complaint, including claims on sex, gender identity, and sex stereotyping fell under Title VII, and should be processed.

[https://www.eeoc.gov/decisions/0120120821%20Macy%20v%20DOJ%20ATF.txt](https://www.eeoc.gov/decisions/0120120821%20Macy%20v%20DOJ%20ATF.txt)
EEOC SEP

- EEOC adopted its current Strategic Enforcement Plan (SEP) in December 2012, which includes “coverage of lesbian, gay, bisexual and transgender individuals under Title VII’s sex discrimination provisions, as they may apply” as a top Commission enforcement policy.

https://www.eeoc.gov/eeoc/litigation/selected/lgbt_facts.cfm
Complainant believed he was denied a position at the Federal Aviation Administration because he was gay.

- Commission held: Title VII’s prohibition of sex discrimination means that employers may not “rely upon sex-based considerations” or take gender into account when making employment decisions. This applies equally in claims brought by lesbian, gay, and bisexual individuals under Title VII.
- “In the case before us, we conclude that Complainant’s claim of sexual orientation discrimination alleges that the Agency relied on sex-based considerations and took his sex into account in its employment decision regarding the permanent FLM position. Complainant, therefore, has stated a claim of sex discrimination. Indeed, we conclude that sexual orientation is inherently a “sex-based consideration,” and an allegation of discrimination based on sexual orientation is necessarily an allegation of sex discrimination under Title VII.”

https://www.eeoc.gov/decisions/0120133080.pdf
Amicus Brief (statement of interest) – addresses the applicable scope of Title VII’s prohibitions of sex discrimination in employment.

Plaintiff (a transgender woman) alleged she was harassed and discharged because of her sex/gender. Called by male pronouns, was told to adopt a more masculine appearance, told not to wear make up.

EEOC argued that:

- Title VII's prohibition on sex discrimination encompasses discrimination based on the failure to conform to gender expectations
- Consideration of gender stereotypes is inherently part of what drives transgender discrimination
Thomas v. FHEO Region IV Director (N.D. Ala. 2015)

Claimant filed suit against FHEO for not processing his claim which alleged he was discriminated against for not being gay. Not a petition under a theory of gender nonconformity, but rather that he was discriminated against because he conformed.

Court outlined that HUD “has taken several steps to clarify and reinforce the fact that certain acts of discrimination based on sexual orientation are within its jurisdiction.”
Thomas v. FHEO continued

- Court noted:
  - HUD guidance indicating gender identity discrimination as gender discrimination
  - The Final Equal Access Rule ensuring access to HUD programs for all regardless of sexual orientation or gender identity.
  - “Considering the deference due by the court to agency interpretations, HUD’s narrow tailoring of jurisdiction to discrimination based on sexual orientation to protections for gender stereotyping in this interpretation of the Fair Housing Act is a permissible reading of “sex.”
HUD received complaint alleging that borrowers at Bank of America seeking FHA insured loans were denied a loan based on marital status/sexual orientation.

Settlement agreement included training on Equal Access Rule and provision of Rule to all loan originators, processors, and underwriters.
Complainant, transgender woman, filed a complaint alleging that the housing provider discriminated against her by prohibiting her from wearing feminine attire in the public places on the property as it was “not the type of atmosphere we want to promote on private property” and by not renewing her “site service agreement” (property was an RV Park).

Charge was filed August 15, 2013.

Mediated Settlement Order filed 7/17/2014 – Updated RV Park rules to not discriminate based on sex or familial status, award of $3,000 to one Complainant, and $1,000 to a second Complainant
Additional Specific Cases
Familial Status Cases

- **U.S. v. Brisben**
  - Defendant managed 8 multifamily properties in Kansas & Missouri, adopted rules and policies that required adult supervision of children under the age of 16 at all times, restricted the activities of children in the common areas of property (including prohibitions on the use of bicycles and sports equipment). $100,000 victims fund, $60,000 to the identified victim, and $10,000 civil penalty.
  - [https://www.justice.gov/sites/default/files/crt/legacy/2015/03/31/brisbensettle.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2015/03/31/brisbensettle.pdf)

- **Dumas v. Sunview Properties (S.D. Cal.)**
  - Apartment complex maintained rules that prohibited playing with balls, bicycles, roller blades, and other toys on the property and required that all children were supervised by an adult. Settled for $35,750.
Race Cases

- **Fair Housing Justice Center v. Kara Realty LLC**
  - $212,000 settlement. 4 African American testers were repeatedly lied to when they inquired about available units, while white applicants were shown and encouraged to rent apartments. [http://www.fairhousingjustice.org/2014/03/05/opening-acts-newsletter-march-5-2014/](http://www.fairhousingjustice.org/2014/03/05/opening-acts-newsletter-march-5-2014/)

- **U.S. v. Los Angeles County Sheriff’s Department**
43. LASD-AV’s enforcement of Section 8 targeted African-American voucher holders.

44. LASD-AV deputies joined HACoLA investigators and acted independently to pursue enforcement efforts at voucher program households, including by intimidating, harassing, and facilitating the termination of voucher holders from the program. LASD departed from ordinary procedures employed elsewhere in the county by:

a. accompanying HACoLA on a disproportionately large percentage of compliance checks in the Antelope Valley as compared to other areas of Los Angeles County where HACoLA’s and LASD’s jurisdictions overlap;

b. sending deputies, sometimes as many as nine, on HACoLA compliance checks of the homes of voucher holders in the absence of any legitimate justification;

c. questioning voucher holders about their compliance with the voucher program’s rules;

d. referring voucher holders for criminal prosecution for voucher program violations;

e. independently using law enforcement tools, such as probation and parole checks and arrest warrants, to obtain information about voucher program violations;
f. failing to properly issue *Miranda* warnings even when deputies had a legitimate reason to enter voucher-holder homes; and
g. providing confidential information about voucher holders to third parties.

45. LASD deputies improperly commingled their law enforcement functions with HACoLA’s administrative process and participated in HACoLA investigations without justification.

46. As a result of these practices, LASD deputies were able to interview people and conduct searches before the individuals understood their rights, including that they might be incriminating themselves by participating in the housing contract compliance check.

47. LASD-AV deputies’ questions often had no purpose other than to substantiate voucher program violations. LASD deputies also used information gathered during these administrative compliance checks to further criminal investigations based solely on the voucher holders’ alleged voucher program violations.

48. LASD’s role in the enforcement of the voucher program’s rules was motivated, at least in part, by the unsubstantiated perception among some members of the Antelope Valley community, including public officials, press, residents and deputies themselves, that African Americans in the voucher program had brought increased crime to the region.
Disability Cases

- **HUD v. Community Redevelopment Agency of Los Angeles**
  - (disability) (terms and conditions – accessibility) Onsite compliance review revealed physical accessibility deficiencies in units and common areas. Contained non accessible: bathrooms, sinks, counters, routes. Voluntary Compliance Agreement $2,800,000 to retrofit; $500,000 for consultations. Sept. 2014  [http://nlihc.org/article/los-angeles-agency-signs-accessible-housing-voluntary-compliance-agreement](http://nlihc.org/article/los-angeles-agency-signs-accessible-housing-voluntary-compliance-agreement)

- **Young v. District of Columbia Housing Authority**
  - $350,000 for two individuals, the organization and attorney’s fees, disability involving reasonable accommodation for communications with deaf tenants. [https://www.courthlistener.com/opinion/2658390/young-v-district-of-columbia-housing-authority/](https://www.courthlistener.com/opinion/2658390/young-v-district-of-columbia-housing-authority/)

- **Oxford House, Inc. & Chris & Rob Properties, LLC. v. City of Scranton**
Bank Cases

- **HUD v. Freedom Mortgage Corp**
  - (disability)(terms and conditions) Conciliation Agreement with $104,000 to 69 aggrieved applicants.

- **HUD v. Wells Fargo Bank**
  - (sex and familial status) (terms and conditions) Conciliation Agreement with $5 mill victims fund, and $160,000 to six identified complainants.

- **HUD v. Associated Bank, N.A.**
  - (race and national origin) (mortgage redlining) Conciliation Agreement with $205,750,000 increased mortgage commitments in minority areas + other relief.
Sex Cases

- **Jennings v. Housing Authority of Baltimore City**
  - Included allegations that the HA violated the Act when one of the incidents taken into consideration when the Complainant’s voucher was terminated was an incident of domestic violence. However, two other incidents considered did not involve domestic violence but other criminal activity.
  - [http://www.leagle.com/decision/In%20FDCO%2020150417903/JENNINGS%20v.%20HOUSING%20AUTHORITY%20OF%20BALTIMORE%20CITY](http://www.leagle.com/decision/In%20FDCO%2020150417903/JENNINGS%20v.%20HOUSING%20AUTHORITY%20OF%20BALTIMORE%20CITY)

- **ACLU & Briggs v. City of Norristown**
  - $495,000 Conciliation Agreement with ACLU
  - Secretary Initiated Complaint was settled, Norristown must now publish a notice of repeal of its ordinance in the local newspaper; offer fair housing training to city and public safety officials; print and distribute a fair housing rights brochure that specifically encourages all tenants to call the police when they are in need of help; and work with a local domestic violence advocacy group to develop and promote an annual community service day or other activity to raise awareness of domestic violence.
More information relating to Domestic Violence

HUD memo on VAWA – which provides protections for victims of domestic violence in public housing, but the Fair Housing Act may still be implicated.

- “[T]he Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA) protects victims of domestic violence, dating violence, sexual assault and stalking.

VAWA provides that being a victim of domestic violence, dating violence, or stalking is not a basis for denial of assistance or admission to public or Section 8 tenant-based and project-based assisted housing. Further, incidents or threats of abuse will not be construed as serious or repeated violations of the lease or as other “good cause” for termination of the assistance, tenancy, or occupancy rights of a victim of abuse. Moreover, VAWA prohibits the termination of assistance, tenancy, or occupancy rights based on criminal activity directly relating to domestic violence, dating violence, or stalking, engaged in by a member of a tenant’s household or any guest or other person under the tenant’s control if the tenant or immediate member of the tenant’s family is a victim of that domestic violence, dating violence, or stalking.
Additional Resources

- http://www.nationalfairhousing.org/LinkClick.aspx?fileticket=SYWmBgpwazA%3d&tabid=3917&mid=5321