Fair Housing In The Hudson Valley Region
Testing Report - 2012-2015

Westchester Residential Opportunities, Inc.
The presentation and analysis in this report reflect the results of the specific project and do not purport to make any further general statements about a particular area or housing provider.

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Acknowledgments

The tests that form the basis of this report were conducted over a three-year period under the direction of three testing coordinators, Dan Kane, Jay Stevens and Amrita Narasimhan; two program assistants, Ariana Calderon and Laura Morris; the Fair Housing Director, Marlene Zarfes; and the Executive Director, Geoffrey Anderson.

This report could not have been prepared without the diligent and very capable efforts and vision of Amrita Narasimhan, whose dedication to the mission and the program are both gratefully appreciated.
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THE TIME IS ALWAYS RIGHT TO DO WHAT IS RIGHT.

- Martin Luther King, Jr.
EXECUTIVE SUMMARY

This report presents the results of a three-year testing investigation by WRO pursuant to a Private Enforcement Initiative grant from the U.S. Department of Housing and Urban Development (HUD).

What is testing?
Testing is an investigative tool used to uncover evidence of housing discrimination. Testing evidence has been used for decades, including in cases decided by the U.S. Supreme Court. Testing may be either complaint-based or conducted on a systemic basis (also called “audit-based”). Complaint-based testing is used to confirm or refute a suspicion or claim that a potential home seeker has been discriminated against. This is done by comparing how a housing provider treats one or more testers against how the complainant is treated. Audit-based testing is designed to uncover discrimination that exists on a systemic basis and might not be discovered without testing. In either case, testing is intended to confirm or refute compliance with fair housing laws.

Why does WRO Test?
Housing discrimination is an entrenched problem that will continue to take concerted effort and time to remedy. Because it may manifest itself in so many different ways, it is often difficult to detect.

Like many other fair housing organizations and governmental agencies (including the U.S. Department of Justice and New York State Attorney General’s Office) WRO conducts tests to uncover housing discrimination that might not otherwise come to light. Different testing methods may be used, including paired testing, where one tester acts as a “control” and another as the “protected” tester. This method of testing allows us to see differences in treatment that might not be detectable without the counterpart tester.
Summary of Findings

Of the 234 tests conducted:

- 73 (approximately 31.2 %) were categorized as “unequal” or “violative/prima facie violation, discriminatory conduct or statement”;
- 92 (approximately 39.3%) were categorized as “equal” or “no apparent violation”;
- and
- 69 (29.5%) were categorized as “unclear.”

Recommendations

WRO recommends a multi-pronged approach to fighting housing discrimination.

Educate: Sometimes discrimination is due to a lack of information. We are still surprised to hear that people do not realize that it is illegal to discriminate against families with children. Fair housing education is an important tool in providing the public with the information they need to help comply with fair housing law.

Investigate: Testing is an effective means of determining where discrimination exists to enable effective enforcement measures against violators of fair housing laws.

Advocate: WRO believes that mandatory co-op disclosure laws and statewide source of income protection would help reduce the incidence of housing discrimination. Accordingly, we will continue to partner with like-minded organizations toward the goal of effecting both forms of legislation.

1. Please review the Findings section below for more information on the results of this testing grant. The presentation and analysis in this report reflect the results of the specific project and do not purport to make any further general statements about a particular area or housing provider.
Background

Westchester Residential Opportunities. Inc. (WRO) is a 501(c)(3) non-profit organization founded in 1968. It is not coincidental that WRO’s founding came within months of the passage of the federal Fair Housing Act, the first comprehensive federal statute enacted (in April 1968) to promote equal housing opportunities and prevent discrimination. The civil rights movement highlighted the need for fair housing and fair lending advocacy, investigation, and education. The specific impetus for WRO’s creation was to counteract the discrimination in mortgage lending against African Americans in Westchester County, many of whom were unable to secure a mortgage as a result of their race.

Today WRO is a full-service housing counseling organization providing assistance free of charge in the areas of fair housing and fair lending; senior housing counseling; mortgage default prevention counseling; eviction prevention and utility turn-off protection services; independent living; and first-time home buying. WRO’s service area has grown beyond Westchester County and now extends throughout the Hudson Valley Region and portions of New York City. Our mission is to promote equal, affordable and accessible housing opportunities to all residents of our region.

WRO’s Fair Housing department is tasked with educating, advocating, investigating and enforcing fair housing laws. We educate all segments of the public in small and large groups through community organizations, houses of worship, disability organizations, LGBT groups, grassroots organizations, non-profit agencies, housing providers (co-ops, condos, property managers and landlords), municipalities and industry trade organizations. We advocate on behalf of individuals and organizations as well as in support of policies, such as promoting co-op disclosure legislation. WRO investigates complaints of unfair housing and conducts systemic investigations of housing discrimination. As a qualified fair housing organization funded by HUD, WRO is authorized to investigate and enforce fair housing laws and does so by bringing complaints through HUD’s administrative process, through local HUD-partners, such as the Westchester County Human Rights Commission, and through litigation in federal and state courts.

2. WRO is sometimes asked to provide fair housing training to parties who are mandated to accept such training, such as under consent decrees or settlement agreements or to entities outside of our geographic service area. In such cases, WRO may accept a fee for providing such education.
3. The majority of tests (86%) conducted under this grant were in Westchester County. Thirteen percent of the tests were in Rockland County and 1% of the tests were in Putnam County.
4. Systemic investigations are sometimes referred to as “audit investigations.” The terms are used interchangeably in this report.
As long ago as 1866, with the enactment of the Civil Rights Act of 1866, the United States government recognized a need to protect people from discrimination in housing based on their race, color and national origin. Although this law covered all real property, it was limited in that it applied only to non-white citizens, which did not include women at the time, and could only be enforced by a private civil action. It took more than 100 years for housing discrimination based on personal characteristics (called protected classes), other than race, color and national origin, to become illegal throughout the United States.

In April 1968, just after the assassination of Dr. Martin Luther King, Jr., Congress passed and President Johnson signed the Fair Housing Act, the bedrock of the United States’ fair housing laws. This law prohibits discrimination in housing based upon a person’s race, color, national origin or religion. Since its enactment, the Act has been amended twice, first to protect against discrimination based on gender and subsequently to prohibit housing discrimination based on disability and on familial status (families with children under eighteen and pregnant women).

State and local laws may provide protections in addition to those provided under federal law.

5. The following is a summary of fair housing laws. For questions or more information, please contact Westchester Residential Opportunities.

6. 1866 Civil Rights Act, 14 Stat. 27-30, April 9, 1866 A.D. reads, in relevant part, as follows: “Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all persons born in the United States and not subject to any foreign power….., are hereby declared to be citizens of the United States; and such citizens, of every race and color, without regard to any previous condition of slavery or involuntary servitude……, shall have the same right, in every State and Territory in the United States, to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property…..”


10. New York State’s Human Rights Law prohibits housing discrimination based on age, marital status, military status and sexual orientation. Gender identity was recently added by Executive Order.

11. Westchester County adds the following as protected classes: victims of domestic abuse, sexual abuse and stalking; citizenship or alienage; and source of income.
Who is protected?
Virtually everyone is protected by fair housing laws. For example, consider a single, twenty-year-old black man, who walks with a cane and has two children. He cannot be denied housing because a housing provider doesn’t want to rent to single fathers or because the housing provider thinks he may have to reasonably accommodate him by providing a parking space near the entrance to the building.

Or consider a fifty-five-year-old white woman. She is protected from discrimination on the basis of her age, gender and race. She is also protected on the basis of her marital status whether she is married, single, divorced or widowed. If she has children under eighteen, her family is protected based on familial status. If she has bipolar disorder, she cannot be discriminated against on the basis of her mental disability.

On the other hand, let us assume that both of these people have dyed their hair green and are applying to rent an apartment offered by a landlord who detests green hair. In such a case, the landlord may refuse to rent to either of these people without violating fair housing laws as long as the refusal is based on his feelings about green hair.\footnote{12 The landlord may still be found to have discriminated if it can be shown that his dislike of green hair was merely a pretext for discrimination based on a protected class.}

What actions are prohibited by the Fair Housing Act?
• Refusing to rent, sell, finance, insure, negotiate for “or otherwise make unavailable or deny” housing based on membership in a protected class;
• Discriminating in terms or conditions or providing facilities or services unequally based on membership in a protected class;
• Misrepresenting availability of a dwelling based on membership in a protected class;
• Making or publishing a statement or advertisement indicating a preference, limitation or discrimination based on membership in a protected class;
• Steering individuals toward or away from an area based on membership in a protected class;
• Failing to make reasonable accommodations in policies or practices required by a person’s disability;
• Failing to allow or make reasonable modifications to premises required by a person’s disability; and
• Failing to construct new multi-family dwellings (built since March 1991) in an accessible manner.
What types of housing are covered?
Virtually all housing, whether public or private, is covered by the Fair Housing Act, including co-ops, condos and mobile homes.

Exemptions
• Single family homes if the owner does not own more than three homes and the home is sold without a broker or agent. The owner may only sell one exempted home every twenty-four months;

• Owner-occupied multifamily dwellings with four or fewer units as long as the owner continues using the dwelling as his residence;

• Housing owned and operated by religious organizations may limit housing to members of their religion as long as the religion does not discriminate based on race, color, or national origin; and

• Housing for older persons (if it is intended for, and 80% occupied by, persons over fifty-five, or solely occupied by persons sixty-two and over).

Enforcement
• Administrative complaints may be filed with HUD or substantially similar organizations that partner with HUD, such as the Westchester County Human Rights Commission, the Rockland County Commission on Human Rights and the New York State Division of Human Rights;

• Private civil actions in state and federal court;

• U.S. Department of Justice has authority to prosecute patterns and practices of housing discrimination; and

• The Secretary of HUD is authorized to initiate investigations and complaints.

How do you know if you have been discriminated against?
Often, you do not. That is when investigation and testing can help and when you should contact WRO or another fair housing agency or organization for guidance and/or for help in filing a complaint. Please see the list of agencies or organizations at the end of this report for contact information.

Sometimes, though, it may be obvious that a housing provider is discriminating. If you are told, either in an advertisement or verbally, that children are not allowed, or wheelchairs are not allowed, or that service animals are not allowed, we suggest that you contact WRO or another appropriate organization provided in the list of contacts at the end of this report. WRO may investigate, refer you to HUD or a substantially similar state or local agency, or refer you to an attorney who may be able to represent you in a lawsuit filed in court on a pro bono or contingency fee basis.

13. Today, despite exemptions in other fair housing laws, discrimination based on race, color and/or national origin is virtually always prohibited under the Civil Rights Act of 1866, and a lawsuit for discrimination may be brought under that Act.

14. Unless the housing offered is in a qualifying “fifty-five and over” or “sixty-two and over” building.
What remedies are available to victims of discrimination?
Penalties for violation of fair housing laws may be steep and range from a court order (such as an injunction) to punitive damages.

**Court orders or injunctions:** When prompt legal action is required, a court may issue a variety of orders, including an injunction prohibiting the housing provider from continuing to violate fair housing laws. Generally, an attorney is required to obtain this type of assistance and WRO may be able to assist with a referral. For instance, consider an example of an unmarried couple making an offer to rent an apartment and being rejected because the owner did not want to rent to unmarried couples. An injunction may be required to prevent the homeowner from renting the apartment to someone else. Other types of injunctions may also be available.

**Monetary damages:** A court may award a victim of discrimination monetary damages to compensate for the harm caused by discrimination. Harm may include such things as lost housing opportunity, emotional distress and out-of-pocket costs.

**Civil penalties and punitive damages:** Courts may award civil penalties and/or punitive damages as a way of emphasizing the extent of the damage done by discrimination. Punitive damages may be awarded to the victim of discrimination, particularly in egregious cases. Civil penalties, if awarded, are paid to a governmental entity to compensate for the harm done to the public by the discriminatory behavior.

**Attorneys’ fees and disbursements:** If discrimination is established, a court may award attorneys’ fees and disbursements to cover the plaintiff’s legal costs.

What to do if you suspect discrimination
Contact WRO if you suspect housing discrimination against yourself or against someone else. You may also contact another qualified fair housing agency, an administrative agency authorized by HUD to investigate your claim or contact HUD directly. Please see the list of contacts at the end of this report.

*It is important to report claims of discrimination promptly. Statutes of limitations may apply to your claim and may limit the period of time within which you may bring a lawsuit or an administrative proceeding. If you fail to file your complaint within the applicable period of time you may be permanently precluded from recovering damages or other relief based on discrimination.*
Why Do We Test?

Housing discrimination appears in many guises. The “No Jews or Blacks” or “Irish Need Not Apply” signs restricting housing in the past have given way, to a large extent, to more subtle but just as pernicious treatment.

Some blatant discrimination still appears: newspapers and online media regularly discriminate against families with children by advertising “No Children.” However, when someone seeking housing meets with a housing provider, whether a realtor, property manager, landlord or homeowner, it is often difficult to detect discrimination.

For example, a Hispanic woman may meet with a landlord to inquire about renting an apartment that was just advertised. The landlord may be polite and friendly while telling her that the apartment has just been rented. The prospective tenant would have no way of knowing for certain whether the apartment had actually been rented or whether the landlord told her that because he does not want to rent to Hispanics. In such an instance, the testing process, particularly a paired test, can reveal whether the apartment actually has been rented or whether it is still available, for instance, to a white applicant. If the apartment is still available to a white applicant, it may be that the first applicant was turned away due to the landlord’s discrimination. Additional testing might be conducted to corroborate or refute the presence of discrimination.
The following are some of the real-life situations encountered by our testers.

• Following up on a complaint, testers reached out by email in response to a listing on Craigslist for a three-bedroom unit on the third floor of a three-family building. One tester indicated in her email that the three-bedroom unit would be for herself, her husband and her son and daughter-in-law. The other tester wrote that the unit would be for his wife and children. The tester whose family did not include children received a reply e-mail stating that the apartment was still available and that the tester could see the apartment that same day. In contrast, the tester who indicated that his family included children received a reply e-mail asking the ages of his children. When he replied and provided the ages (six, seven and ten), he never received a response from the landlord.

• A black tester posing as someone looking to rent an apartment was asked about his income and credit score, whereas the counterpart, an equally financially qualified, white tester was not asked those questions. In this case, paired testing was used to detect discrimination when testers were presented with different treatment based on race.

• In another paired test, both the white tester and the black tester asked about availability of one- or two-bedroom apartments. The white tester was told that there were no two-bedroom apartments available, but that there were a couple of one-bedroom units available that the agent could show her. The agent then took the white tester around and showed her the available units. The black tester subsequently visited the office and met with the same agent. The black tester asked to see a model apartment or vacant unit and was told there was nothing she could show her. The agent told the black tester to call her in a couple of weeks, if the agent had not called her. The next day, the white tester called the agent back to ask whether the one-bedroom apartment that she saw was still available. The agent promptly called the white tester back and left a voicemail message saying that the apartment was still available and that she had put it on hold for the white tester. The agent asked the white tester to call her back and let the agent know when she would be bringing her husband in (the tester had mentioned that her husband was interested in seeing the unit). The agent also stated that if she was unable to reach her, the white tester should leave a message indicating what day and time they would be coming and the agent would make herself available. In this test the agent discriminated against the black tester by providing misleading information about the availability of a unit.
• A tenant in a multifamily apartment building asked the property manager to repair a cracked walkway to her apartment because it interfered with the walker she used for her mobility disorder. The property manager refused and told that he never would have rented to her if he had known that she had a disability. WRO decided to conduct a disability based test as a result of this complaint. In the test, this same property manager told a tester inquiring about renting in the same building that the building would not be suitable for her brother who has multiple sclerosis.

• A person seeking to rent an apartment in a two-building complex with at least thirty units in Westchester was told that the building does not accept Section 8 vouchers. This is in violation of the County Law that prohibits discrimination on the basis of source of income, except in co-ops, condos and buildings with six or fewer units. This home seeker works as a paralegal, is very involved in her community, and strongly advocates for her daughter who has a disability. They needed decent and stable housing to avoid exacerbating her daughter’s disability. Since her income was limited because she had to reduce her work hours to care for her daughter, she receives a Section 8 voucher. The combination of the Section 8 voucher and her income more than qualified her financially to rent the apartment. The housing provider did not inquire into her financials, her character or anything else before rejecting her simply because she would be paying her rent using a Section 8 voucher. Our follow-up testing confirmed that the housing provider was discriminating based on the complainant’s source of income in violation of the county law.
Methodology

Testing is a valid, and sometimes the only, investigative tool used to gather credible, objective and admissible evidence of discrimination. There are three characteristics common to all testing investigations: they require the participation of one or more persons; they are covert in nature; and they collect information that is gathered to compare the conduct of a housing provider to the requirements of fair housing laws.

Applicants for tester positions provide resumes and are interviewed by WRO staff to determine whether they are likely to perform effectively as testers, including learning their profile, applying the profile correctly during tests, following directions, and accurately reporting the events of a test. Accepted applicants are trained by WRO staff in fair housing laws and in the specifics of testing. Testers are paid for their time.

There are a variety of test structures that can be used to determine a housing provider’s compliance with fair housing laws. Tests can be conducted over the phone or in person, as a walk-in or with an appointment.

Tests can be structured where only one tester makes a call to or pays a visit to a housing provider, in order to obtain information on the housing provider’s policies, while inquiring into specific housing. Tests can also be designed as paired tests, where two testers are sent out, one who is a “protected” and another who is considered a “control” tester. All testers are given a profile with instructions and other basic information; paired testers are given similar profiles (e.g. they would be looking for similar type of housing in the same area, with similar financial attributes). Testers are debriefed promptly following the test, and site visit testers complete a report form (with questions regarding information they gave to the housing provider, information the housing provider gave to them, statements made to the housing provider, location and description of apartments that were shown, etc.).

After reviewing and analyzing the reports and recordings, WRO staff categorizes the results of the test. Paired tests are deemed unequal where there are differences in treatment that materially affect housing choice, and such information cannot be explained by discrepancies, if any, in the information provided by the tester. WRO fair housing staff will categorize a paired test as equal where there were no differences in treatment that materially affect housing choice. A paired test is categorized as unclear where there are differences but it is unclear if the differences are material or if further evidence is required.

Examples of unequal paired tests include: when one tester is told there is nothing available while the other tester is shown apartments; when one tester is quoted higher rental prices or fees than the other tester; when one tester is shown less desirable apartments than the other tester; when one tester is steered toward a particular neighborhood or building; and

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15. WRO records most of its tests. The State of New York is a one-party consent state, and as the testers are a party to the conversation and consent to the conversation being recorded, no further consent is needed to record tests. For site visits, testers are required to return to WRO after the test to provide WRO fair housing staff with the recorders, be debriefed by WRO fair housing staff and complete the test report forms. Chain of custody is maintained should there be the need for litigation at any point.
when one tester is told that a credit check, background check or other procedure is required while the other tester does not have to follow these requirements. In all of these examples, the differences in treatment can be attributed to the differences in the testers’ protected class.

Tests may also be characterized as either “Prima Facie Violation, Discriminatory Conduct, or Discriminatory Statement” when there was conduct or statements by the housing provider that, at face value, may indicate discrimination or violations of fair housing law; or as “No Violation” when no statements or conduct occurred that indicate discrimination or violations of civil rights laws. WRO may conduct additional tests of the same housing provider.

16. Tests involving a single tester, rather than a pair, are deemed either “Prima Facie Violation, Discriminatory Conduct, or Discriminatory Statement” or “No Violation” unless categorized as unclear.
**Findings**

WRO Fair Housing staff conducted 234 rental and sales tests during this grant period.

**Overall results**

WRO categorized the 234 tests as follows:

- 73 (approximately 31.2%) as “unequal” or “violative/prima facie violation, discriminatory conduct or statement”;
- 92 (approximately 39.3%) as “equal” or “no apparent violation”; and
- 69 (29.5%) as “unclear.”

When categorized by protected class, of the 234 tests:

- 27 tested discrimination on the basis of disability;
- 20 tested discrimination on the basis of familial status;
- 2 tested discrimination on the basis of marital status;
- 19 tested discrimination based on national origin;
- 99 tested discrimination based on race;
- 54 tested discrimination based on source of income;
- 7 tested discrimination on the basis of age;
- 5 tested discrimination on the basis of religion; and
- 1 test was conducted to test discrimination on the basis of military status.

**Results by protected class**

**Disability**

Over the last five years, WRO received more complaints based on disability than any other protected class.18 This phenomenon is not unique to the Hudson Valley region. Nationally, fair housing organizations and HUD receive more complaints based on disability than any other class.19 WRO conducted twenty-seven tests on the basis of disability. Of those:

- 11 (40.7%) were categorized as unequal;
- 10 (37%) were categorized as equal; and
- 6 (22.2%) were categorized as unclear.

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17. Protected in Westchester County
18. During 2015, for the first time, WRO received more complaints based on source of income discrimination than any other protected class, including disability.
Some of the tests conducted on the basis of disability were complaint-based. In one case, a tenant with a mobility impairment was told that this was not a place for handicapped individuals, and that if the landlord had known that he would need to make modifications, he would not have rented to her. WRO’s testing substantiated the complainant’s claim. Testing confirmed statements made to the effect that this would not be a place for a person with a handicap. WRO and the complainant are now co-plaintiffs in an action in federal court against the property manager, the landlord and individuals who acted on their behalf. Additional tests were conducted in an “audit-based” manner.

People with disabilities may face discrimination when a housing provider applies its “No Pets” policy to service animals. This is a frequent source of complaints. “No Programs or Vouchers” policies and advertisements may also limit opportunities for people with disabilities living on disability income or for people who rely on Section 8 vouchers to supplement their rent.

**Familial Status**

While the ongoing civil rights movement may have made people more aware that racial discrimination is illegal, WRO’s testing reveals that people either do not know that refusing housing to families with children is discrimination or do not appreciate the seriousness of such discrimination.

Of the 234 tests, twenty were based on familial status. Of those:

- 8 (40%) were categorized as unequal;
- 8 (40%) were categorized as equal; and
- 4 (20%) were categorized as unclear.

Similar to tests conducted on the basis of disability, one or more tests may have been conducted on the basis of a complaint. For example, in one situation the non-residing owner of a three-family property had no problem renting a bottom-floor unit to people with children, but refused to rent the top unit to people with children because she did not want to disturb the second floor tenant. WRO’s testing and advocacy confirmed the familial status violation.

Familial status violations are being seen more frequently as a result of a wave of designing and marketing of housing aimed at millennials and empty-nesters. Designing and building housing with two or fewer bedrooms with no amenities for children and marketing this housing specifically to people least likely to have children living with them may violate the Fair Housing Act’s prohibition on discrimination against families with children.

In September 2015, WRO settled a lawsuit for alleged discrimination against families with children by the Village of Bronxville, NY, and Gateway Kensington LLC, an arm of

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20. Typically, in WRO’s experience, issues with a “No Pet” policy arise in connection with co-ops.
21. A “No Pet” policy that prohibits tenants from having pets is within the housing provider’s rights. However, with certain exceptions, housing providers may not preclude service animals or emotional assistance animals for people with disabilities. Please contact WRO with questions concerning service animals or emotional assistance animals.
22. Such as SSI (Supplemental Security Income) or SSDI (Social Security Disability Insurance).
Greenwich, CT-based developer Fareri Associates. Filed by WRO in federal court on January 15, 2015, the lawsuit claimed that the actions of the defendants violated the Fair Housing Act and New York State Human Rights Law. Bronxville had granted to Gateway Kensington an “age-targeted” special permit for 54 condominiums to be “designed to appeal primarily to individuals and couples without children,” according to the Village’s zoning code.

The terms of the settlement include the elimination by Bronxville of an “age-targeted” special permit from its zoning code. The Kensington site will now offer purchasers a den/bedroom option, will include a sandbox play area for children, and its marketing materials will incorporate images of families with children. WRO will train Bronxville officials and staff in fair housing laws. The Village will host a fair housing workshop for the public. Defendants agreed to allow WRO to monitor its records on settlement compliance for four years. The Village will pay WRO $95,000 in damages and attorneys’ fees. Bronxville and Gateway Kensington denied the allegations and did not admit liability in the settlement.

**Race**

Ninety-nine of the 234 tests were determined on the basis of race. Of those:

- 27 (27.3%) were categorized as unequal;
- 45 (45.5%) were categorized as equal; and
- 27 (27.3%) were categorized as unclear.

We tested a property manager who manages multiple properties of over 100 apartments each. In one test of this company we sent a white tester, an African-American tester and then another white tester. The first white tester was shown an apartment, provided information on how to apply and told about the application and other fees. The African-American tester was simply told that there were no apartments available. The property manager offered to show an apartment to the second white tester, who was also told about the process of applying and fees associated with the application process. All testers were looking for the same type of housing at the same complex, and the African-American tester had better financial qualifications than the two white testers.

**Source of Income**

In 2013, Westchester County enacted source of income legislation.\(^{23}\) As a result, it is a violation of the Westchester County Fair Housing Law to discriminate in housing on the basis of a person’s lawful, verifiable source of income. The law is set to expire five years from enactment. The law does not apply to co-ops,\(^ {24}\) condos or housing with six or fewer units.\(^ {25}\) Given this background, WRO conducted fifty-four tests on the basis of source of income.

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24. This exemption is particularly unfortunate from the standpoint of fair housing advocacy, since co-ops are among the most affordable form of housing in the county. Further, co-ops are not required to explain their rationale for rejecting applicants. This is why WRO and others concerned with fair housing advocate for co-op disclosure legislation.

25. The landlord’s reasonable business judgment is an additional exemption that may hinder realizing the full potential benefit of the law.
Of those:

- 20 (37%) were categorized as unequal (or violative);
- 14 (25.9%) were categorized as equal (or no apparent violation); and
- 20 (37%) were categorized as unclear.

**National Origin**

Nineteen of the 234 tests were conducted to determine the extent, if any, of national origin discrimination. Of those:

- 2 (10.5%) was categorized as unequal;
- 11 (57.9%) were categorized as equal; and
- 6 (31.6%) were deemed unclear.

**Age**

Of the 234 tests, seven were conducted on the basis of age. Of those:

- 4 (57.1%) were categorized as unequal;
- 1 (14.3%) was categorized as equal; and
- 2 (28.6%) tests were deemed unclear.

The unequal tests showed a preference for younger applicants and older applicants, as opposed to applicants between ages thirty and sixty-two.

**Marital Status**

We conducted two tests of the 234 total on the basis of marital status under this grant. Of those:

- 1 (50%) was categorized as unequal; and
- 1 (50%) as unclear.

**Religion**

Five of the tests under this grant were conducted on the basis of religion. Of those:

- 2 (40%) were categorized as equal or no apparent violation; and
- 3 (60%) were categorized as unclear.

**Military Status**

In response to a complaint, WRO conducted one test on the basis of military status. This test found no apparent violation.
Recent Developments in Fair Housing Law

Disparate Impact
Can a policy or practice that looks neutral on its face be discriminatory? What if the impact of a seemingly neutral policy or practice has a disproportionate negative impact on a particular protected class? Is this a legitimate claim under the Fair Housing Act?

In a landmark case\(^{26}\) decided in June 2015, the United States Supreme Court confirmed what has long been the practice in fair housing litigation: a neutral policy or practice that negatively impacts a protected class may be discriminatory and that intent to discriminate need not be shown.

The case involved the building of low-income housing in Dallas, Texas using low income housing tax credits (LIHTC). Inclusive Communities Project, Inc. (ICP) sued the Texas Department of Housing and Community Affairs (Texas) claiming that the manner in which the Department allocated LIHTC (too many in largely black areas and too few in largely white areas) furthered segregation in violation of the Fair Housing Act. Texas argued that its policy was not discriminatory because it was neutral.

In recognizing that discrimination is not always evident, the Court found that a disparate impact claim is necessary to allow “plaintiffs to counteract unconscious prejudices and disguised animus that escape easy classification as disparate treatment.”\(^{27}\) Plaintiffs must prove that the defendants’ policies or practices caused the alleged disparate impact on a protected class of individuals.

However, showing disparate impact, with nothing more, is not sufficient to prove discrimination. Defendants must “state and explain the valid interest served by their policies.”\(^{28}\) If the defendants are able to “prove [the policy or practice] is necessary to achieve a valid interest,”\(^{29}\) the burden then shifts to the plaintiff to show that there are less discriminatory alternatives to achieve the policy.\(^{30}\) While the recent Supreme Court case concerned a claim of racial discrimination, the disparate impact theory can be used in cases based on any federally-protected class.

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27. Id. at 3.
28. Id. at 18.
29. Id. at 19.
30. Id. at 10.
As a result of this decision, housing advocates can continue to use the disparate impact theory that has been in use for over forty years to fight discrimination and increase housing opportunities.

**Affirmatively Furthering Fair Housing (AFFH)**

Another “recent” development in fair housing law is HUD’s issuance of a final regulation detailing the obligation of recipients of governmental funding to affirmatively further fair housing (AFFH). Although the regulation became effective in 2015, the obligation to AFFH is as old as the Fair Housing Act and the regulation codifies the already existing obligation to AFFH.

AFFH means more than prohibiting discrimination: it means taking meaningful action to overcome existing patterns of segregation and foster inclusive communities. To assist with this obligation, HUD provides data and assessment tools that help promote fair housing policies and practices. Recipients of HUD funding are required to seek community participation to develop and plan their communities in a way that avoids segregation and encourages inclusive, diverse communities. The simple but, as yet, elusive goal is for all members of the community to have an equal opportunity to enjoy their housing.

WRO is hopeful that the AFFH regulation will provide a blueprint for community members to collaborate to develop their communities in a way that reflects both the values of the community and the fair housing laws.
**Recommendations**

**Educate**
Fortunately, education can be an effective means of combatting ignorance. Unfortunately, not all discrimination can be attributed to ignorance.

Fair housing education is crucial in informing people of the law and disabusing them of myths that may influence their discriminatory actions so they may make intelligent choices to avoid discriminating.

Fair housing education is also an effective way of informing people – home seekers and housing providers alike – of their rights so they may enforce those rights, through legal action if necessary, thus diminishing the likelihood of further discrimination. Sometimes the only way to stop discrimination is by hitting the discriminator in the pocketbook.

**Investigate**
The “unequal” results in this report indicate a continuing presence of discrimination. Given that discrimination is often subtle, uncovering and proving illegal discrimination can be challenging. As the number of “unequal” and “unclear” results indicates, additional investigation, including testing, is warranted.

**Advocate**
The Fair Housing Act and its state and local counterparts are extremely effective tools in the fight against housing discrimination. However, much remains to be done.

In the Hudson Valley Region, housing opportunities are further limited by the lack of inventory, high costs and inaccessible housing for people with disabilities. WRO strongly supports co-op disclosure laws and statewide source of income protection.

Co-ops are among the most affordable types of housing, particularly in Westchester. Unfortunately, although they are subject to fair housing laws just as all other housing, co-ops have been known to make use of a loophole in the law, that does not require them to disclose reasons for rejecting applicants or to respond to an application within a specific time. As a result, people looking to buy or rent in a co-op may find themselves rejected without knowing whether they were rejected for a solid reason (generally financial unsuitability) or due to discrimination. Further, buyers may watch their mortgage qualifications expire when the Board does not respond to an application, sometimes for months at a time. Legislation that would require co-op boards to respond to an application within a reasonable period of time and to provide a reason for a rejection would be a step towards reducing the possibility of discrimination.

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31. Co-ops often require Board of Directors’ approval to buy or rent a unit.
32. Some co-ops allow their shareholders (owners) to rent their apartments but most require the proposed tenant to be approved by the Board of Directors.
Affordability is a significant obstacle to finding housing in our region, particularly for people living on fixed incomes. WRO regularly receives inquiries from single mothers and people with disabilities who are unable to find and keep affordable, accessible housing. On the other hand, providing housing is a business for landlords and other owners. They are entitled to make a fair living. Responsible source of income legislation allows them to do this. Generally, source of income laws require housing providers to accept verifiable, lawful forms of payment, such as SSI, SSDI, Section 8 vouchers,\textsuperscript{33} HOPWA,\textsuperscript{34} and veterans’ benefits. In actuality, these forms of income are guaranteed and therefore more reliable than payment directly from a tenant who may become unemployed. In order to be truly constructive, however, source of income laws should have limited exemptions. Excluding affordable forms of housing such as co-ops, condos and small multifamily houses defeats the purpose of the law. Further, while a property owner’s reasonable business judgment should clearly be considered (providing housing is, after all, a business) owners who purposely raise rents above the Section 8 guidelines to subvert the law should face sanctions, which should be built into the law.

WRO believes that thoughtful enactment of source of income protection on a statewide basis could go a long way towards equalizing housing opportunities.

\textsuperscript{33} Housing Choice Voucher program  
\textsuperscript{34} Housing Opportunities for People with AIDS
Conclusion

“It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.”35

Housing is so much more than a roof over our heads. Where we live affects virtually every aspect of our lives and the opportunities that are available to us throughout our lives. Our health (including risks of lead poisoning and asthma), education, employment and social interaction (including networking opportunities) are all influenced by where we live.

The Fair Housing Act and its state and local counterparts were put into effect because our elected representatives recognized the harm that illegal discrimination can inflict on society. Given the significance of housing we, as a society, cannot afford to allow illegal discrimination to exist.

In view of the unique importance of housing, WRO believes that we must continue to fight discrimination until everyone has an opportunity to secure safe, affordable, accessible housing. We invite you to join us in this endeavor.

AGENCIES AND ORGANIZATIONS TO CONTACT FOR ASSISTANCE

For Fair Housing Assistance and Information on Filing Complaints
Westchester Residential Opportunities, Inc.
470 Mamaroneck Ave., Ste. 410
White Plains, NY 10605
914-428-4507
http://www.wroinc.org

For Fair Housing Information and to File Complaints
Federal Government

U.S. Department of Housing and Urban Development
New York Regional Office
Jacob K. Javits Federal Building
26 Federal Plaza, Ste. 3541
New York, NY 10278
Local office: 800-496-4294; 212-542-7109
National office: 800-669-9777 (English and Spanish); TTY: 800-927-9275
http://hud.gov/fairhousing

U.S. Department of Justice (for discrimination under ADA)
950 Pennsylvania Ave., NW
Civil Rights Division
Disability Rights Section, 1425 NYAV
Washington, DC 20530
Voice and TTY: 202-307-0663
ADA information: 800-514-0301;
TTY: 800-514-0383
http://www.justice.gov/crt/about/drs

State Government

New York State Division of Human Rights
(for all housing cases)
1 Fordham Plaza, 4th floor
Bronx, NY 10458
888-392-3644; 718-741-8400
TTY: 718-741-8300
http://www.dhr.ny.gov
New York State Division of Human Rights  
(for assistance in Putnam, Rockland, and Westchester counties)  
8 John Walsh Blvd., Ste. 204  
Peeptskill, NY 10566  
914-788-8050  
http://www.dhr.ny.gov/how-file-complaint

New York State Office of the Attorney General  
Civil Rights Bureau  
120 Broadway, 23rd floor  
New York, NY 10271  
212-416-8250  
http://www.ag.ny.gov/civil-rights/complaint-forms

County Government

Rockland County Commission on Human Rights  
50 Sanatorium Rd., Building G  
Pomona, NY 10970  
845-364-3886; TTY: 800-662-1220  
http://rocklandgov.com/departments/human-rights

Westchester County Human Rights Commission  
112 E. Post Rd., 3rd floor  
White Plains, NY 10601  
914-995-7710; TTY: 914-995-7754  
http://humanrights.westchestergov.com

Yonkers

City of Yonkers Human Rights Commission  
87 Nepperhan Avenue, Room 310  
Yonkers, NY 10701  
914-377-6280  
http://www.cityofyonkers.com/play/departments-g-w/human-rights-/welcome

Other Government Agencies and Websites

Federal

National Council on Disability (policy)  
202-272-2004; TTY: 202-272-2074  
http://www.ncd.gov/policy/housing

U.S. Access Board (UFAS standards)  
Technical assistance: 800-872-2253;  
TTY: 800-993-2822
State

New York State Justice Center (special needs)
Information and referrals: 800-624-4143; TTY: 800-624-4143
http://www.justicecenter.ny.gov

New York State Office for People with Developmental Disabilities
866-946-9733; TTY: 866-933-4889
http://www.opwdd.ny.gov

County

Putnam County Office for People with Disabilities
845-808-1641
http://www.putnamcountyny.com

Putnam County Office for the Aging
845-808-1700
http://www.putnamcountyny.com

Rockland County Department of Mental Health
845-364-2378
http://rocklandgov.com/departments/mental-health

Rockland County Office for the Aging
845-364-2110
http://rocklandgov.com/departments/aging

Westchester County Department of Community Mental Health
914-995-5220
http://mentalhealth.westchestergov.com

Westchester County Department of Planning
(affordable rental and ownership housing listings)
914-995-4400
http://homes.westchestergov.com/homeseeker

Westchester County Department of Senior Programs and Services
914-813-6300
http://seniorcitizens.westchestergov.com

Westchester County Office for the Disabled
914-995-2957; TTY: 914-995-7397
http://disabled.westchestergov.com
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FOR QUESTIONS OR FURTHER INFORMATION, PLEASE CONTACT MARLENE ZARFES, WRO’S FAIR HOUSING DIRECTOR, AT MZARFES@WROINC.ORG