



To: FHCO Board of Directors
Date: December 6, 2011
Re: Results of independent evaluation of FHCO audit process
From: Moly Good, Executive Director

Attached please find the independent evaluation of FHCO's 2010 audit testing project for the City of Portland Housing Bureau. This evaluation was performed at the board's request by Anne Houghtaling, current Executive Director of the HOPE Fair Housing Center in Wheaton, Illinois, and former Director of Investigations and Enforcement for the National Fair Housing Alliance (NFHA).

As a reminder, we requested this review be conducted in order to identify and correct issues in our audit process and assure that our future audit work is of the highest quality and credibility.

Clarification of Nomenclature

By way of introduction and also as a reminder, I'd like to clarify a couple of concepts:

First, not every instance of different treatment amounts to illegal discrimination; testing serves to gather evidence and is thus useful in providing information and in enforcement. The FHCO audit testing performed for the City of Portland revealed high incidences of different treatment, but not all such incidents necessarily amounted to illegal discrimination.

Second, FHCO, and other private fair housing organizations, perform testing in two main instances. One instance is **complaint-based testing**, which follows a complaint made by an individual who believes he or she has experienced different treatment by a housing provider (e.g. landlord, lender, insurer), and that different treatment may be due to the individual's protected class (e.g. race, gender, disability). However, unlawful discrimination can be very subtle, to the point that victims may not even realize they've experienced it. Therefore we also perform **audit testing**, in which we gather data intended for informational purposes (such as the testing we conducted for the City of Portland's Analysis of Impediments). Audit testing has also been called "snatch sampling" and is not intended to be statistically valid or predictive. Instead, audit testing is intended to reveal instances of different treatment on individual bases and provide a snapshot of what's happening in the community.

Both complaint-based and audit testing can serve as the basis for an enforcement action if and when there is sufficient evidence that the different treatment observed amounts to illegal housing discrimination.

In contrast to all of the above testing, “**research-based testing**” is intended and designed to be a statistically valid assessment of the incidence of discrimination in the market at large. Because of the large sample sizes required, research-based testing requires extensive planning, implementation and analysis (and significantly higher costs). That is not what was undertaken for, or expected by, the City of Portland.

Summary of Evaluation

Ms. Houghtaling’s findings are summarized on page 5 of the evaluation report (attached). Following are the key findings:

1. The independent review concludes that FHCO’s audit protocols for both in-person and phone-testing conform to industry standards, and FHCO’s implementation, analysis and record-keeping methods are appropriate. This includes our use of phone testing as a means of measuring different treatment.
2. The review also confirms that the tests revealed a significant amount of different treatment. The reviewer states that she would have recommended additional follow-up testing to enable FHCO to determine more conclusively whether the different treatment demonstrated in the audit tests amounted to illegal discrimination. However, such follow-up was precluded by the public release of the landlords’ names.
3. The evaluation found that FHCO staff made errors in summarizing the test results in the final audit report. Although different treatment was found in the tests, our report incorrectly identified the details of the treatment. These errors caused confusion and should have been avoided. The evaluation recommends that FHCO enact additional review protocols to prevent such analytical errors in the future.
4. The reviewer agreed with BOLI’s assessment that none of the tests provided sufficient evidence to merit a BOLI commissioner-initiated complaint. She notes that “an audit such as the one conducted by FHCO is generally the first step in an enforcement process, and in many cases, unless there is clear evidence of discrimination, additional investigation is generally required to determine whether different treatment amounts to discriminatory behavior” (page 6).

Actions to Address Findings

FHCO takes responsibility for the errors identified. We also acknowledge that we could have better explained to the City how the results of the audit should be used, and avoided the confusion that followed.

We have **already implemented** the following policy and organizational changes in order to guarantee the quality of our audit results and ensure that we and our partner organizations are prepared for proactive follow-up investigation and enforcement actions based on future audit results:

1. All testing results, analyses and reports will be reviewed by two staff people prior to external release.
2. We have hired an additional full-time Assistant Testing Coordinator, who will focus solely on audit testing. Over the past two years we have seen all testing responsibilities increase dramatically. In order to meet these new obligations, and to continue to meet the needs of potential victims of housing discrimination, it is necessary to expand our capacity. While the Enforcement Coordinator will continue to oversee all testing (audit, enforcement and complaint-based), the new staff person will focus solely on the day-to-day management of audit and enforcement testing. The new Assistant Testing Coordinator has already received at least 40 hours of testing training in addition to several months of on-the-job training.
3. We have already provided our testing coordinators and testers with additional training provided by the National Fair Housing Alliance on mortgage-lending and homeowner's insurance testing. Ms. Houghtaling also provided additional information and tips to strengthen the work of our testers.
4. Our future agreements with organizations/jurisdictions for whom we provide audit testing will clearly state the purpose of each fair housing audit (e.g., whether it is designed for enforcement or only for data-gathering) and will make clear that instances of different treatment may require additional investigation prior to pursuit of enforcement action. All future audit reports will also include recommendations for next steps by FHCO and by the client organization and a detailed timeline for appropriate actions.

FHCO Internal Review

In order to ensure accountability and transparency, I also re-assessed the audit report that FHCO staff originally prepared for the City of Portland. As noted above, Ms. Houghtaling's evaluation confirmed that there was indeed evidence of different treatment in each of the tests we originally classified in the "different treatment" category. Upon further review, however, the differences in treatment were subtle enough in two of these tests that I believe we should have classified them as "inconclusive" rather than "different" in our original audit report for the City of Portland; thus, our reported numbers should have been that 30 (rather than 32) of the 50 tests showed different treatment.¹ Per Ms. Houghtaling's recommendation, follow-up testing would have been required to conclusively determine whether all of the providers (both those originally categorized as "different" and those categorized as "inconclusive") were operating in a discriminatory fashion.

¹ Our original audit report categorized 15 of the 25 tests based on race as showing "different treatment;" I would revise this to 13 showing "different treatment" and 2 "inconclusive." In the category of tests based on national origin, I would maintain the original categorizations of 17 out of 25 showing "different treatment."

By adding a two-staff review protocol for all testing and reports (described in Action #1 above), we will ensure that all testing is appropriately categorized in the future. And by working with all client organizations to clearly agree upon the purpose and timeline for all future audits (Action #4 above), we will ensure that future audits can be followed up by comprehensive investigation and enforcement as appropriate.

Next Steps

Thus far in 2011 BOLI has issued four charges in fair housing cases, all stemming from prior FHCO testing. Two more charges are pending before BOLI's Hearings Unit. We will continue to refer cases to BOLI and are in regular contact with its staff. In addition to these six cases, we have 35 other cases pending in court or with HUD/BOLI.

We are negotiating a contract with the City of Portland for fair housing services. We are looking forward to our participation in the City's Fair Housing Advocacy Committee, which had its first meeting yesterday.

We are also starting to work on the following projects:

- Translating fair housing materials into French, Korean, Laotian, Vietnamese, Chinese, Arabic, Russian and Spanish
- Providing accessibility seminars for designers and constructors of new multifamily housing
- Holding a Mortgage Lending discrimination seminar
- Training lawyers on fair housing litigation
- Developing new fair housing materials for new landlords and real estate agents
- Updating existing fair housing materials for shelter providers and nonprofit housing providers
- Conducting additional bus tours of historic discrimination in the Portland area

Conclusions

HUD has observed (as noted in the report, page 5) that testing "is the **most effective fair housing enforcement tool** currently available and private fair housing organizations are best qualified to undertake testing." (Emphasis added).

The audit we conducted for the City of Portland was not designed to be a statistically valid research evaluation of the incidence of housing discrimination in the Portland housing market. However, it provides valuable information on what homeseekers are currently experiencing and clearly indicates that housing discrimination is happening in the Portland market.

A similar audit of the Seattle housing market conducted recently by the Fair Housing Center of Washington found that nearly 70 percent of the race-based tests showed a pattern of discrimination favoring white renters. This is consistent with the percentages we found in our audit test.

We have learned from the Portland audit work and are becoming a stronger organization as a result of the extra scrutiny our work has received. We welcome the public attention, as it reflects the same high level of concern over housing discrimination that motivates us. Our intention remains to provide excellent and reliable services to the public and those discriminated against and to work collaboratively with our stakeholders to end unlawful housing discrimination in Oregon.