

**Testimony of Lisa Rice, President & CEO**

**National Fair Housing Alliance**

**February 24, 2021**

**Oversight and Investigations Subcommittee Hearing**

**How Invidious Discrimination Works and Hurts: An Examination of Lending Discrimination and Its Long-term Economic Impacts on Borrowers of Color**

**Introduction**

Housing and lending discrimination have been a part of the United States since its inception. Due to government-sanctioned discriminatory policies as well as private market practices Blacks, Latinos, Native Americans, Asian Americans, people with disabilities, women, and many other groups have been systematically excluded from wealth-building opportunities such as homeownership. Redlining, which persists in various forms today, real estate sales discrimination, appraisal bias, lending discrimination, and tech bias are significant barriers that keep the dream of homeownership from becoming a reality for many people and contribute to the racial wealth gap.

Moreover, structural barriers such as the dual credit market, segregation, and restrictive zoning ordinances create systemic impediments which significantly prohibit the ability of People of Color to access fair housing and lending opportunities and perpetuates the racial wealth and homeownership gaps. The homeownership rate for Black Americans is still where it was when the Fair Housing Act was passed in 1968; White homeownership is 73.4%; Latinx homeownership is 47.8%; and Black homeownership is 42.7%. This translates to a homeownership gap between Blacks and Whites that is as wide now as it was in 1890.

Systemic barriers that impede access to housing and lending opportunities for millions of people will require a long-term commitment to overcoming those impediments and a comprehensive set of tools to create a fairer marketplace where everyone has equitable access.

Congress has a ripe opportunity to create a just society by ensuring full and complete enforcement of our nation's fair housing and lending laws, closing loopholes established by the previous administration, beefing up oversight, clarifying guidance and regulations, and providing robust support for groups working on the ground to advance fair housing and lending goals.

**Biased Technology**

Algorithmic systems are increasingly deciding many aspects of everyday life; as we gain more insights about these systems we are also learning about their discriminatory impacts. Whether applying for a job, renting an apartment, getting a mortgage or seeking insurance coverage, algorithmic systems will likely be used to decide whether a person will be approved or denied.

Algorithmic systems hold great potential since they can minimize human subjectivity, facilitate more consistent outcomes, increase efficiencies, and can be more accurate and easier to audit. These are powerful utilities that, if built and used correctly, can expand opportunities for people. At the same time, because of limitations in data and math, inherent biases in the data, a lack of diversity in the technology field, limited or no training in the field about civil rights issues, and systemic inequalities, algorithmic decisions can also be prone to discriminating<sup>1</sup> against historically underserved groups.

These systems have been shown to inappropriately deny Black, Brown and Female loan applicants or approving them on worse terms than their white counterparts. Goldman Sachs, Ally, Toyota, Honda and many other lenders have all been subject to charges of algorithmic bias. Researchers at Berkeley found that traditional and FinTech lenders using algorithmic risk-based pricing systems charge Black and Latino borrowers higher rates for purchase and refinance mortgage loans to the tune of \$765 Million each year.<sup>2</sup> This discriminatory pricing may likely be occurring because algorithmic systems are designed to optimize for profit and may be penalizing consumers who have low-shopping behavior. The systems may also be amplifying and mimicking discrimination that exists in the marketplace.

Fair housing groups have challenged digital advertising systems, operated by algorithms, that manifest discrimination against protected groups.<sup>3</sup> Fair housing groups are also challenging the use of tenant screening tools due to their ability to arbitrarily discriminate against underserved groups.<sup>4</sup>

Credit scoring systems can also manifest bias against Communities of Color and other underserved groups unnecessarily restricting their access to credit and keeping them locked out of the financial mainstream.<sup>5</sup> These systems are built using information primarily contained in the repositories of credit reporting agencies which creates systemic challenges for consumers of color who disproportionately live in credit deserts. Consumers who live in credit deserts disproportionately rely on non-traditional lenders like payday lenders and check cashers who typically do not report consumers' positive behavior to credit repositories.<sup>6</sup> These consumers are often credit invisible – not because they are not responsible but rather because their responsible payment behavior is not reflected in traditional financial databases. Credit scoring systems can perpetuate discrimination not only because of the information contained in the data sets used to build them but also because of the data that is not

---

<sup>1</sup> Kareem Saleh, "Black Wealth Matters. AI Can Help Create It. Here's How," Forbes, June 24, 2020. Available at <https://www.forbes.com/sites/kareemsaleh/2020/06/24/black-wealth-matters-ai-can-help-create-it-heres-how/?sh=71e83aff7d0b>

<sup>2</sup>Robert Bartlett et al., Consumer-Lending Discrimination in the FinTech Era, available at [http://faculty.haas.berkeley.edu/morse/research/papers/discrim.pdf?\\_ga=2.174884706.1580350990.1613713379-766650251.1611367030](http://faculty.haas.berkeley.edu/morse/research/papers/discrim.pdf?_ga=2.174884706.1580350990.1613713379-766650251.1611367030)

<sup>3</sup> Tracy Jan and Elizabeth Dwoskin, "Facebook Agrees to Overhaul Targeted Advertising System for Job, Housing, and Loan Ads After Discrimination Complaints," The Washington Post, March 19, 2019. Available at [https://www.washingtonpost.com/business/economy/facebook-agrees-to-dismantle-targeted-advertising-system-for-job-housing-and-loan-ads-after-discrimination-complaints/2019/03/19/7dc9b5fa-4983-11e9-b79a-961983b7e0cd\\_story.html](https://www.washingtonpost.com/business/economy/facebook-agrees-to-dismantle-targeted-advertising-system-for-job-housing-and-loan-ads-after-discrimination-complaints/2019/03/19/7dc9b5fa-4983-11e9-b79a-961983b7e0cd_story.html)

<sup>4</sup> Shannon Houston, "Center Files Federal Lawsuit Against National Tenant Screening Company," Connecticut Fair Housing Center Blog, August 24, 2018. Available at <https://www.ctfairhousing.org/corelogic/>

<sup>5</sup> Lisa Rice and Deidre Swesnik, Discriminatory Effects of Credit Scoring on Communities of Color. 2013. 46 Suffolk University Law Review 935. Available at [https://cpb-us-e1.wpmucdn.com/sites.suffolk.edu/dist/3/1172/files/2014/01/Rice-Swesnik\\_Lead.pdf](https://cpb-us-e1.wpmucdn.com/sites.suffolk.edu/dist/3/1172/files/2014/01/Rice-Swesnik_Lead.pdf)

<sup>6</sup> See National Fair Housing Alliance website "Access to Credit" available at <https://nationalfairhousing.org/access-to-credit/>

included in these data sets. Credit scoring systems also often reflect the inequities of the environment in which a consumer is utilizing credit.

In the 1990s and early 2000s, NFHA brought administrative complaints and lawsuits against Prudential and other insurers over the discriminatory effects their decision-making systems were having on consumers.<sup>7</sup> NFHA is currently suing Redfin for discriminatory offering of their services in non-White areas.<sup>8</sup> Redfin hosts a website that perpetuates discrimination against Communities of Color. In NFHA's investigation, fair housing groups found that Redfin offered "No Service" for homes in non-White areas at a greater rate than for homes in White areas.

Algorithmic systems have been found to perpetuate discrimination beyond the financial services space. Researchers found that they discriminate against Black patients by prioritizing care for healthier White patients.<sup>9</sup> This discrimination resulted in Black patients receiving less care than healthier White patients. The system may have also contributed to extremely harmful outcomes for Black patients including death. Algorithmic systems have also been found to discriminate in hiring potential job candidates<sup>10</sup>, determining who is eligible for bail<sup>11</sup>, and how much time a person may serve in jail.<sup>12</sup>

We are now learning that algorithmic systems do not have to perpetuate bias. Researchers at universities like Stanford<sup>13</sup>, Carnegie Mellon<sup>14</sup>, Berkeley, and elsewhere are developing techniques that allow fairness

---

<sup>7</sup>NFHA, et al v. Prudential Insurance, Motion to Dismiss decision, 208 F. Supp. 2d 46 (D.D.C. 2002) which acknowledges the following bases for the plaintiffs' lawsuit against Prudential – 1) Prudential's minimum underwriting requirements for obtaining replacement cost coverage include the age of the home, the market value of the home and the difference between the replacement cost and the market value; (2) Since 1994, Prudential does not have a policy of selling homeowners insurance policies in the District of Columbia; to the extent that Prudential has re-entered the District, it has done so for select clients and without notice to the D.C. Insurance Commissioner or the public; (3) Prudential rates territories by segregating neighborhoods into zones that reflect their racial composition; (4) Prudential uses credit scores or credit ratings of applicants to determine eligibility for homeowners insurance policies. Available

at <https://casetext.com/case/national-fair-housing-alli-v-prudential-ins-co>

<sup>8</sup> See NFHA, et al. v. Redfin investigation summary, available at <https://nationalfairhousing.org/redfin-investigation/>

<sup>9</sup> Melanie Evans and Anna Wilde Mathews, "New York Regulator Probes UnitedHealth Algorithm for Racial Bias," The Wall Street Journal, October 26, 2019. Available at <https://www.wsj.com/articles/new-york-regulator-probes-unitedhealth-algorithm-for-racial-bias-11572087601>

<sup>10</sup> Alex Engler, "For Some Employment Algorithms, Disability Discrimination by Default," Brookings Institution, October 31, 2019. Available at <https://www.brookings.edu/blog/techtank/2019/10/31/for-some-employment-algorithms-disability-discrimination-by-default/>

See also Jeffrey Dastin, "Amazon Scraps Secret AI Recruiting Tool That Showed Bias Against Women," Reuters, October 10, 2018. Available at <https://www.reuters.com/article/us-amazon-com-jobs-automation-insight/amazon-scraps-secret-ai-recruiting-tool-that-showed-bias-against-women-idUSKCN1MK08G>

See also Miranda Bogen, "All the Ways Hiring Algorithms Can Introduce Bias," Harvard Business Review, May 6, 2019. Available at <https://hbr.org/2019/05/all-the-ways-hiring-algorithms-can-introduce-bias>

<sup>11</sup> Tom Simonite, "Algorithms Were Supposed to Fix the Bail System. They Haven't," WIRED, February 19, 2020. Available at <https://www.wired.com/story/algorithms-supposed-fix-bail-system-they-havent/>

<sup>12</sup> Karen Hao, "AI is Sending People to Jail-and Getting it Wrong," MIT Technology Review. January 21, 2019. Available at <https://www.technologyreview.com/2019/01/21/137783/algorithms-criminal-justice-ai/>

<sup>13</sup> Pratyusha Kalluri, "Controllable Fairness in Machine Learning," The Stanford AI Lab Blog, May 27, 2019. Available at <http://ai.stanford.edu/blog/controllable-fairness/>

<sup>14</sup> Amanda Coston, Edward H. Kennedy, Alexandra Chouldechova, Counterfactual Predictions under Runtime Confounding, Cornell University. 2020. Available at <https://arxiv.org/abs/2006.16916>

considerations to be embedded into algorithms so that banks, insurers, landlords, employers and others that make high-stakes decisions can use technology that's fairer and ultimately more profitable<sup>15</sup>.

Legislators, regulators and policy makers must do more to encourage the development and use of algorithmic fairness technologies. As an initial matter, the users of algorithmic systems in high-stakes applications ought to be required to do much more rigorous fairness testing. Today many lenders are afraid that efforts to root out bias in their automated decisioning systems will expose them to liability. Consequently, many companies choose not to look for bias in their algorithms or use rudimentary fairness assessment methods that overlook biases in these systems.

Companies using algorithmic systems to decide important aspects of our lives need to be required to do more rigorous fairness testing and, when factors and methodologies that result in biased outcomes are identified, they ought to be required to correct for bias in these systems.

Other steps policymakers can take to ensure the fairness of algorithmic systems include:

1. **Require and Support Data Sharing.** The federal government must mandate that the FHFA, GSEs, FHA, and CFPB release more loan-level data into the national mortgage survey and the national mortgage databases so researchers, advocacy groups and the public can study bias in the housing market.
2. **Improve Consumer's Awareness of Algorithmic Systems.** Since algorithms have such profound impacts on people's lives, they must be more explainable. Companies must be required to give consumers a roadmap for being approved by algorithmic systems that have denied them, for example by requiring adverse action reasons to be actionable not merely descriptive.
3. **Provide Clear Guidance on Defining and Measuring Fairness.** Though the law currently prohibits discrimination in lending, lending rules do not specify the dimensions on which fairness should be evaluated or the thresholds that ought to be used for bias measurement. This has led to wildly varying approaches to fairness by lenders and uneven standards across the industry.
4. **Use Disparate Impact to Increase Fairness.** Lenders who rely on "Business Necessity" must be required to justify disparities in their loan portfolios to document and justify how they balance fairness considerations with profitability objectives.
5. **Expand Application of Guidance to All Industry Players.** Congress and regulators must extend the Fed/OCC/FDIC model risk management guidance to non-bank FinTechs, specialty finance companies and other lenders.
6. **Increase Fair Lending Practices.** All algorithmic-based systems can be improved to be fairer and responsibly expand credit access to underserved consumers. Lenders must be required to search more rigorously for less discriminatory alternative algorithms.
7. **Improve Fairness in Credit Scoring Systems.** Credit scoring systems can be improved in many ways to lessen discriminatory impacts. Regulators must require examiners of financial institutions to evaluate how 3rd party credit scores contribute to loan portfolio bias.

---

<sup>15</sup> Nick Noel, Duwain Pinder, Shelley Stewart, and Jason Wright, "The Economic Impact of Closing the Racial Wealth Gap," McKinsey & Company. August 13, 2019. Available at <https://mck.co/2NrVddw>

8. **Support the Public’s Ability to Advance Fairness.** Increasing funding for fair housing, academic, and public policy organizations to conduct research, education, and enforcement activities to help effectively address algorithmic bias.

Artificial Intelligence (“AI”) has the potential to expand the availability of affordable credit to thin-file, no-file and other hard-to-score borrowers, but AI models can be so complex that even their developers lack visibility into how they work. This opacity and the complex data interactions relied upon by AI can result in discrimination and digital redlining if algorithms are not designed and governed to address these risks. We believe sensible updates to our laws and regulations can help to ensure that the power of AI is harnessed and managed for good.

### **The Need for Increased Support for Real Estate Sales Testing**

We are particularly encouraged by the Subcommittee’s attention to the importance of testing as a powerful civil rights enforcement tool. The widely acclaimed *Newsday* investigation shows the tragic persistence of housing discrimination in the real estate market more than fifty years after passage of the Fair Housing Act. It also demonstrates the continuing, vital role of fair housing testing in ensuring our national commitment to ending housing discrimination and advancing racial integration is fully and finally realized.

Discrimination in the real estate market perpetuates racial segregation of communities. Subjecting customers of color to more onerous conditions of sale deprives them of opportunities to purchase homes in which they can build equity and thereby contributes to the substantial racial gap in wealth accumulation. When realtors steer potential home-seekers to neighborhoods based on their race or the racial composition of the neighborhood, they are reinforcing long-established geographic boundaries that were rooted in segregationist policies and now still separate communities. They are also violating the law.

The Fair Housing Act was intended to redress these practices, and some of the earliest cases filed under the Act addressed this form of discrimination in home sales.<sup>16</sup> As the *Newsday* investigation demonstrates, real estate agents still impose differential conditions upon customers and direct them to different locations based on race at startlingly rates.<sup>17</sup> Even to veteran fair housing advocates like members of the National Fair Housing Alliance (NFHA), it was stunning to learn that 40 percent of the tests conducted by *Newsday* showed discrimination against Customers of Color, with Black testers experiencing differential treatment 49% of the time; Hispanic testers 39% of the time; and Asian American testers 19% of the time.<sup>18</sup>

The value of testing to support strong enforcement of fair housing laws within the residential sales market cannot be overstated. The practice involves pairing an individual belonging to a protected class with someone outside of that class to pose as home-seekers in order to “test” whether a real estate agency treats their qualifications differently or sends them to different neighborhoods. Fair housing testing is well-established and a tremendously effective method for detecting housing discrimination. As early as 1982, the Supreme Court

---

<sup>16</sup> See e.g., *United States v. Pelzer Realty Co.*, 484 F.2d 438 (5<sup>th</sup> Cir. 1973), cert. denied, 416 U.S. 936 (1974) (telling Black potential homebuyers they can live in some developments but not others).

<sup>17</sup> Ann Choi, Bill Dedman, Keith Herbert & Olivia Winslow, *Long Island Divided*, *NEWSDAY*, Nov. 17, 2019, available at <https://projects.newsday.com/long-island/real-estate-agents-investigation/>

<sup>18</sup> *Id.*

authorized the use of tests by recognizing the legal standing of testers to sue under the Fair Housing Act. *In Havens Realty Corp. v. Coleman*, the Court acknowledged that “a tester who has been the object of a misrepresentation made unlawful under § 804(d) [of the Fair Housing Act] has suffered injury in precisely the form the statute was intended to guard against.”<sup>19</sup>

Over the years, a substantial amount of enforcement of the Fair Housing Act against real estate companies has often involved testing, largely because of the difficulty in comparing the treatment of an individual home-seeker with similarly situated individuals. Testing evidence provides additional proof of discrimination to support the discrimination claims of bona fide home-seekers. As the *Havens* case from 1982 made clear, testing alone can serve as proof of discrimination and form the basis of a lawsuit. Some of the most seminal fair housing cases involving sales of homes have relied exclusively on testing to prove discrimination by realtors.<sup>20</sup>

Testing is still widely used by NFHA and its members to affirmatively investigate potential violations of the Fair Housing Act in the sales market. We have also relied on testing to identify and challenge discrimination in the rental of housing, appraising of housing, and within the lending and insurance markets. The Department of Justice has recognized the value of testing, and its testing program has operated for thirty years.<sup>21</sup> As long as our communities remain segregated, it is important to have available all of the enforcement tools for detecting and redressing discriminatory practices. While testing originated as a method for uncovering race discrimination, it is deployed to detect all forms of discrimination prohibited by the Fair Housing Act, including national origin, religion, color, gender, disability, and familial status.

Importantly, testing assists real estate companies in complying with fair housing laws. The real estate industry has a tremendous role to play in helping to challenge and overcome both discrimination and the segregated housing patterns we still see today. Through testing and fair housing training and education, companies and agents can learn how their actions and statements can signal to customers—either consciously or unconsciously—characteristics of neighborhoods that can have racial significance. Discussion of schools, crime rates, and even access to grocery stores and transportation can serve as code words for describing neighborhoods in racialized terms, without mentioning the neighborhood’s racial composition, which most agents know by now is prohibited by law.

The real estate industry also has an opportunity to join others in the housing industry to work together to promote fair housing and advance integration. In addition to ensuring they are not committing acts of discrimination, there are numerous affirmative actions they can take to foster integration and equal housing opportunity.

Real estate agents play a significant role in the decisions that potential homebuyers make about where to buy a home. In many ways, agents are gatekeepers, with the power to determine which buyers get the chance to view and bid on different properties and the power to influence which bids are presented to and accepted by

---

<sup>19</sup> 455 U.S. 363, 373 (1982).

<sup>20</sup> *Chicago v. Matchmaker Real Estate Sales Ctr.*, 982 F.2d 1086 (7th Cir. 1992), *cert. denied*, 113 S. Ct. 2961 (1993) (upholding steering claims by City of Chicago and others against real estate agents); *Heights Community Congress v. Hilltop Realty*, 774 F.2d 135 (6<sup>th</sup> Cir. 1985), *cert. denied*, 475 U.S. 1019 (1986) (racial steering proven through use of testers contracted by City of Cleveland Heights).

<sup>21</sup> Fair Housing Testing Program Civil Rights Division, U.S. Department of Justice, *available at* <https://www.justice.gov/crt/fair-housing-testing-program-1>

home sellers. Historically, discriminatory practices in the real estate sales market were among the major forces driving segregation and to the extent those practices continue today, they contribute to the perpetuation of segregation. But just as real estate agents can help sustain a segregated and discriminatory housing market, they can also be a force for good, helping to eliminate discrimination and segregation from the market. Agents that play this positive role can help move us toward the kind of diverse, inclusive communities our fair housing laws envision and from which our entire society benefits.

### *NFHA's Redfin Investigation*

NFHA and nine of its member fair housing organizations conducted a comprehensive investigation of Redfin, one of the nation's largest real estate companies. The investigation uncovered disturbing practices that suggested widescale discrimination and modern-day technology-based real estate redlining. The groups found that Redfin offered its "Best Available Service" at a significantly greater rate in extremely White communities and offered "No Service" for homes in Communities of Color at much greater rates than in predominately White areas. The groups filed a lawsuit alleging violations of the Fair Housing Act in October 2020.<sup>22</sup>

The following maps depict the alleged discriminatory impacts of Redfin's policies. In the maps, a green dot represents a property that received the "Best Available Service" designation. Orange dots represent properties designated for "No Service" based on the area in which the property is located. Red dots represent properties that received the "No Service" designation based on price. The darker shaded areas in the maps represent communities heavily populated with People of Color.

---

<sup>22</sup> See National Fair Housing Alliance, et. al. v. Redfin Corporation, U.S. District Court Western District of Washington. Available at <https://nationalfairhousing.org/wp-content/uploads/2020/10/Redfin-Filed-Complaint.pdf>

# Home Listings by Redfin Service Type, March 29, 2019 City of Memphis and Shelby County, TN

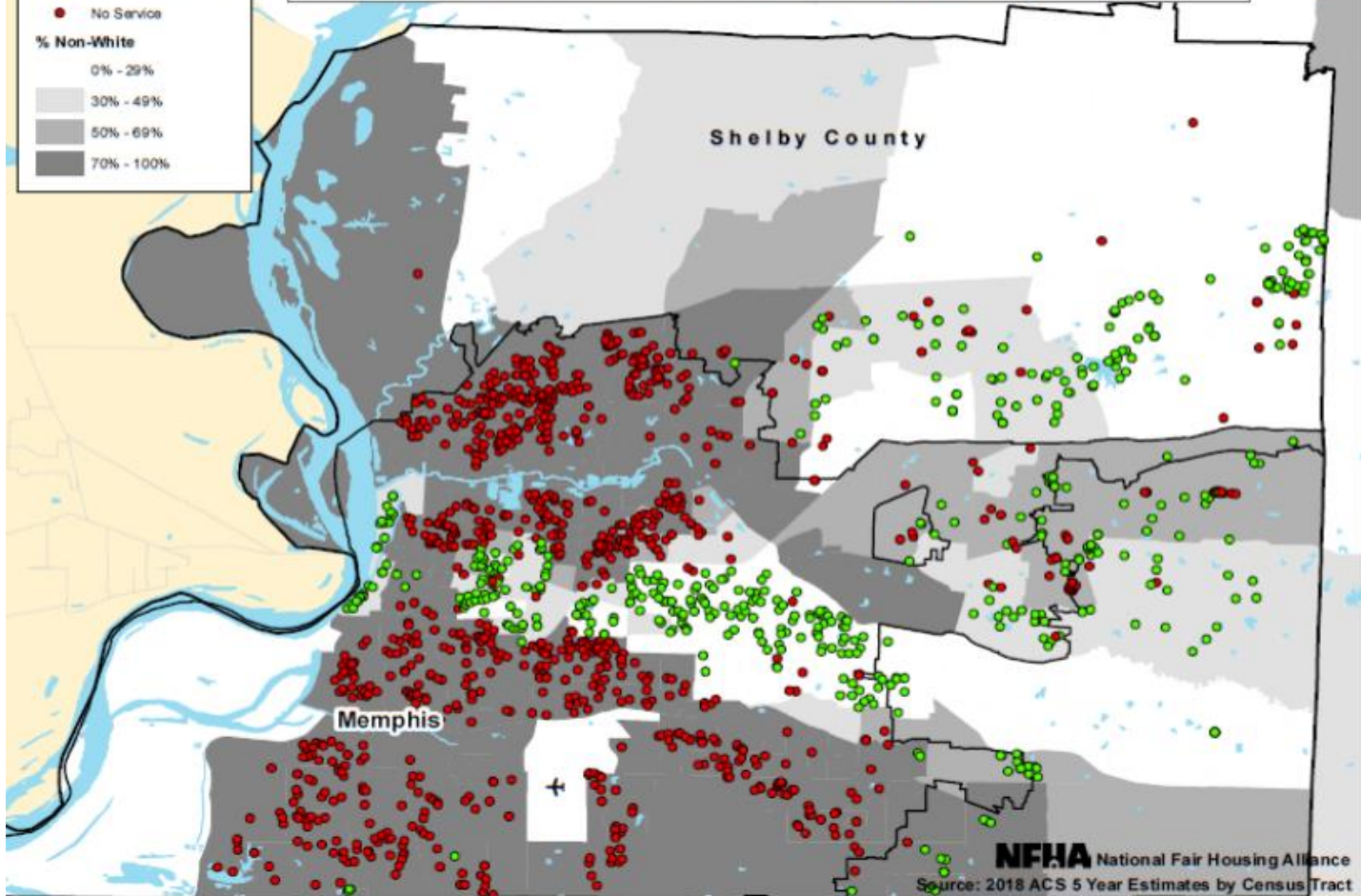


**Redfin Service Type**

- Best Available Service
- No Service

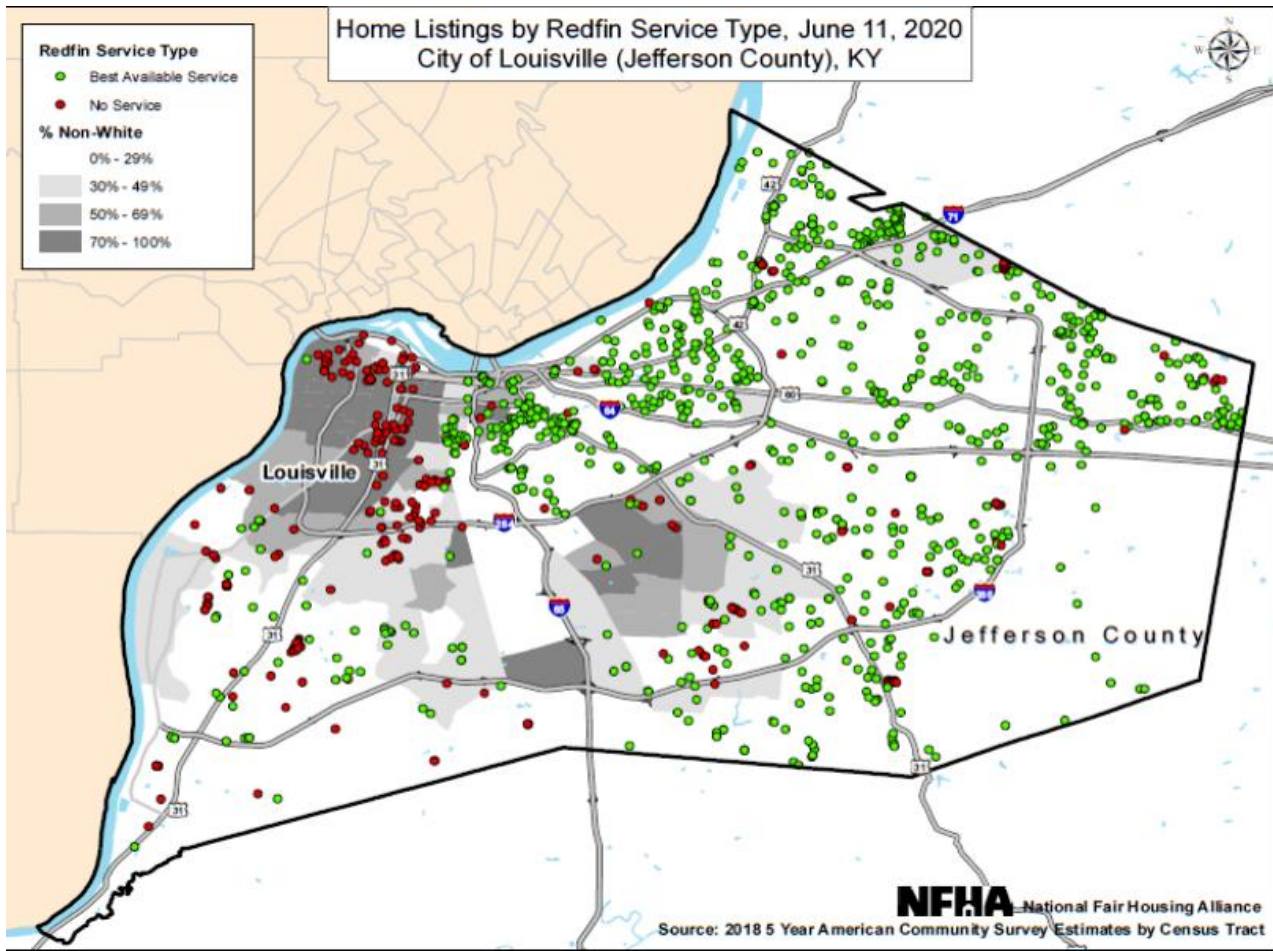
**% Non-White**

- 0% - 29%
- 30% - 49%
- 50% - 69%
- 70% - 100%

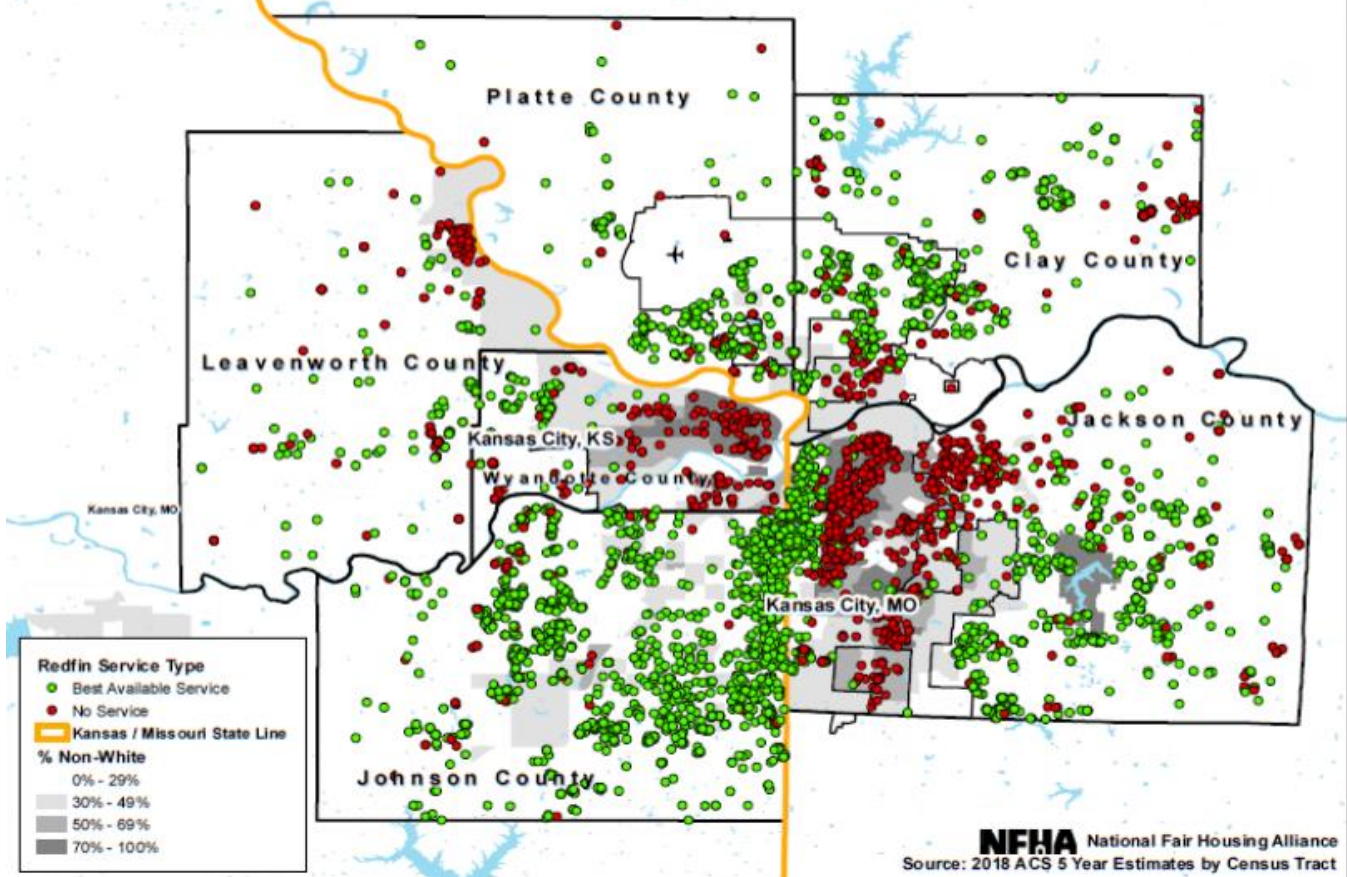


**NFHA** National Fair Housing Alliance  
Source: 2018 ACS 5 Year Estimates by Census Tract

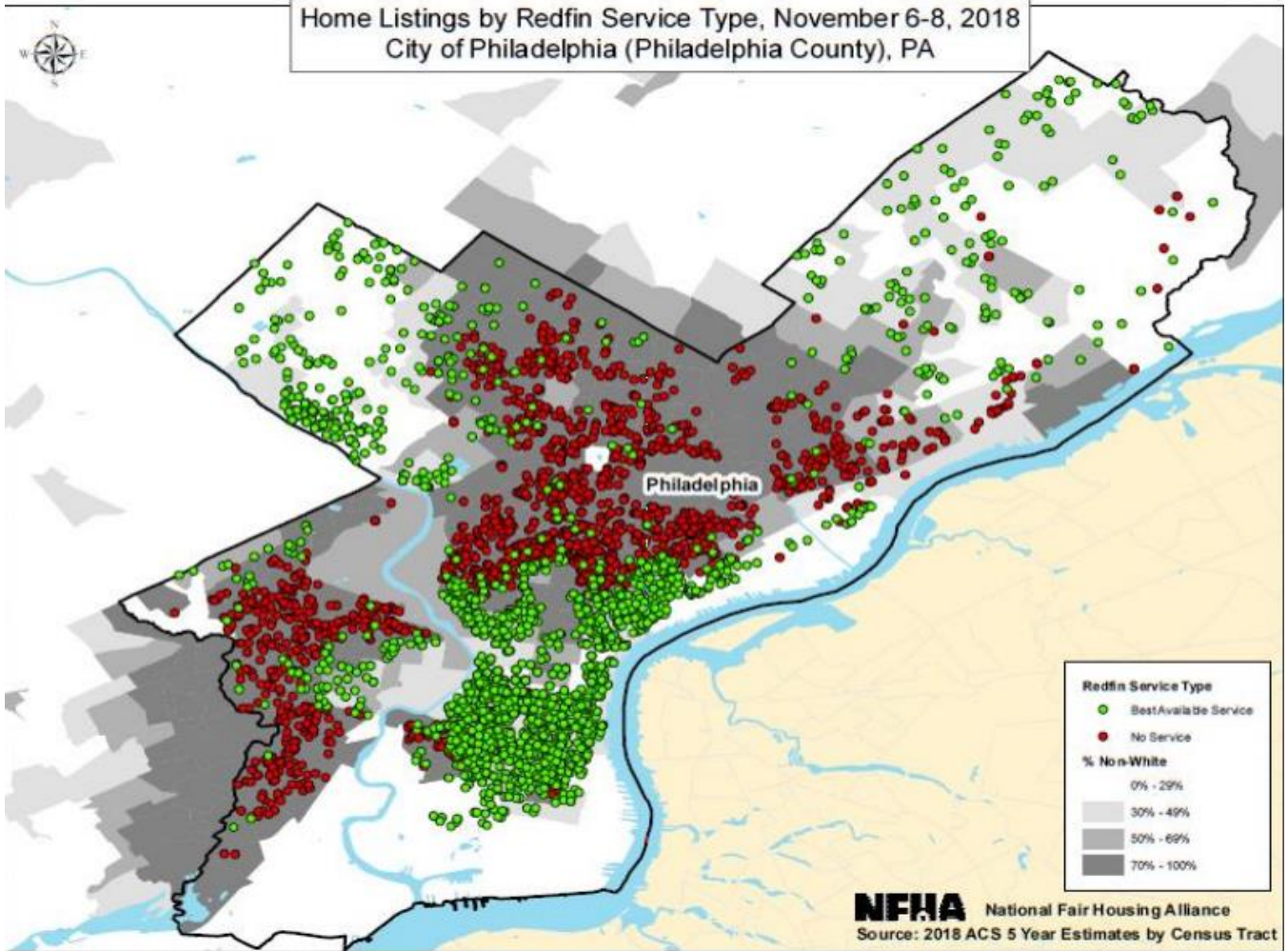




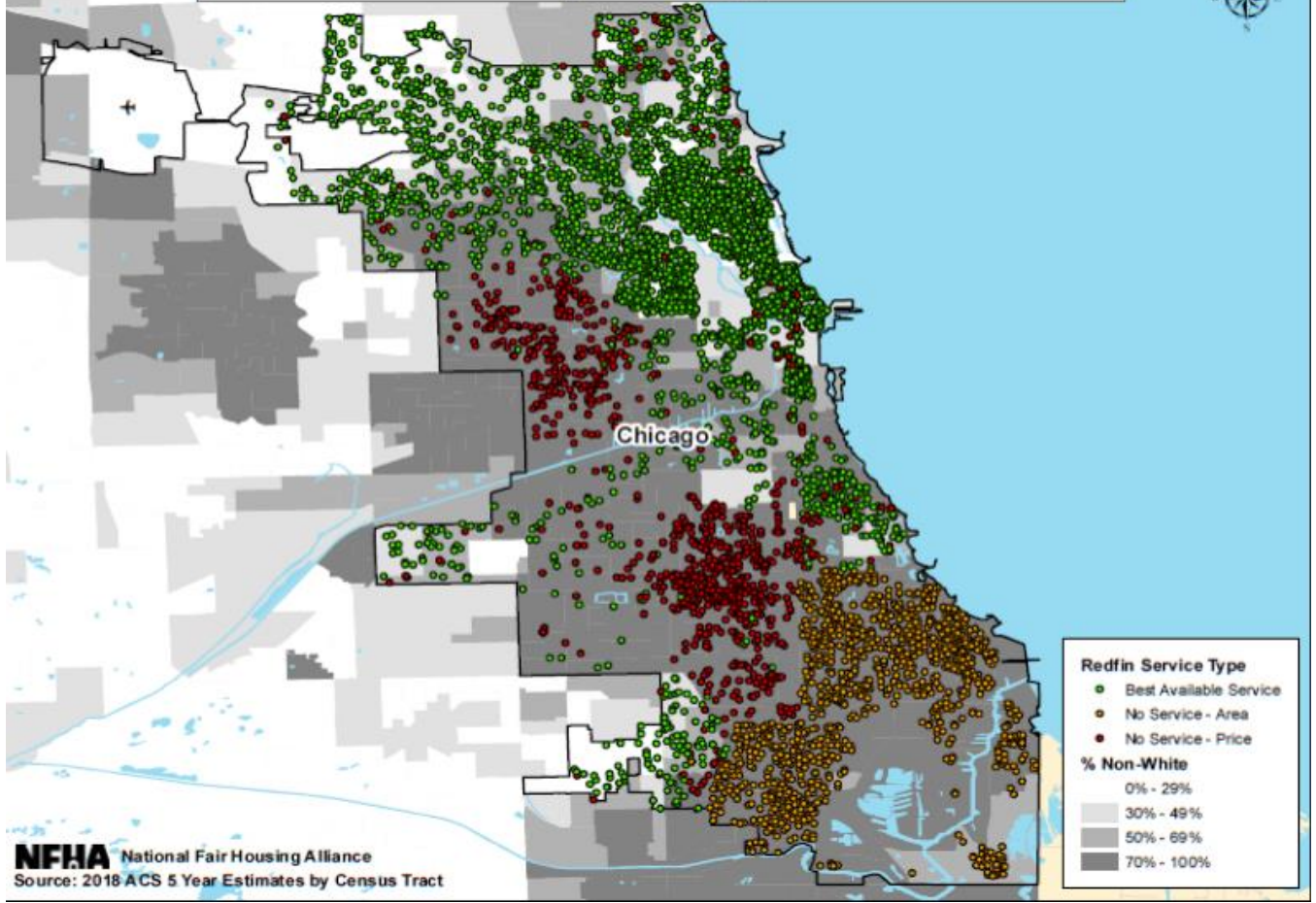
Home Listings by Redfin Service Type, January 2, 2019  
 Wyandotte County, Leavenworth County, and Johnson County, KS  
 Jackson County, Clay County, and Platte County MO



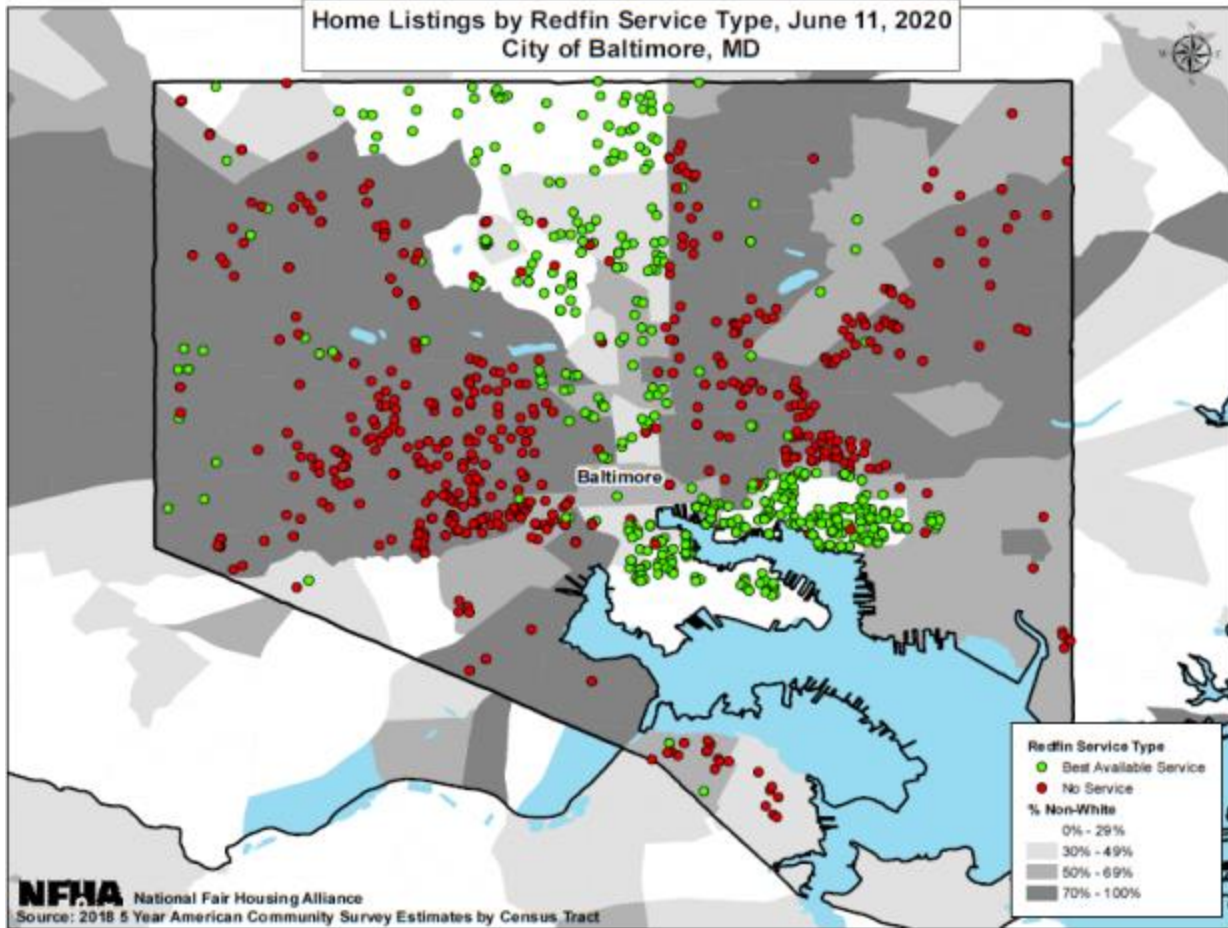
Home Listings by Redfin Service Type, November 6-8, 2018  
City of Philadelphia (Philadelphia County), PA



# Home Listings by Redfin Service Type, December 17-19, 2018 City of Chicago, IL



**NFHA** National Fair Housing Alliance  
Source: 2018 ACS 5 Year Estimates by Census Tract



To see more maps, [click here](#).<sup>23</sup>

In 2019, after the release of the *Newsday* investigation, NFHA published a report describing the ways that discrimination occurs in real estate sales, and outlining a number of strategies to combat this discrimination and the segregation that it perpetuates.<sup>24</sup> That report recommends a variety of steps that members of the real estate industry can take to help eliminate discrimination in the market. They include:

1. **Promote diversity in the real estate industry.** We need more real estate agents of color in this field, serving all communities, not just communities of color. This will require aggressive, meaningful and impactful initiatives to increase racial diversity throughout the industry, including paid internships and mentoring programs for young real estate professionals of color and partnerships with Historically Black Colleges and Universities (HBCUs).
2. **Encourage the establishment of sales offices in communities of color.** There are too few sales offices in communities of color, and too many of those that do exist are staffed exclusively by real estate agents of

<sup>23</sup> See National Fair Housing Alliance Redfin Investigation. Available at <https://nationalfairhousing.org/redfin-investigation/>

<sup>24</sup> Cloud, Cat, Debby Goldberg, Lisa Rice, Jorge Soto and Morgan Williams, “Fair Housing Solutions: Overcoming Real Estate Sales Discrimination,” National Fair Housing Alliance, December, 2019. Available at <https://nationalfairhousing.org/wp-content/uploads/2019/12/Fair-Housing-Solutions-Overcoming-Real-Estate-Sales-Discrimination-2.pdf>.

color. This must change, so that real estate offices are diverse and all agents are conversant with all neighborhoods in their region and willing to show homes and encourage buyers in every community.

3. **Provide financial support for fair housing testing, research and education.** National real estate associations, local real estate boards and individual real estate offices should be closely aligned and financially supportive of fair housing efforts at the local level, aiding efforts to conduct testing and other research and develop education and outreach materials and activities designed to inform consumers about their rights and industry about its fair housing obligations. They should help establish and support new full-service fair housing organizations in underserved areas.
4. **Provide better comprehensive training for real estate professionals.** Agents should be required to go through comprehensive training prepared by experts in housing discrimination and fair housing. Such training should cover the history of discrimination and segregation and the role of the industry in establishing and perpetuating both; fair housing laws and implementing regulations; recent case examples of discrimination; information about the costs of segregation for families, communities and the nation; and best practices to ensure compliance with fair housing.
5. **Implements serious consequences for violations of fair housing laws.** Education and training alone cannot achieve full compliance with fair housing by the real estate industry. There is too much deep-seated and unwarranted bias and too few consequences for failure to comply. Those who violate the law should face license restrictions or revocations, financial penalties and other consequences. There should be a national, neutral entity to adjudicate violations, applying a single set of standards of behavior, rather than leaving these decisions to a plethora of local real estate boards.
6. **Provide fair housing policies and best practices for real estate professionals.** Just like other professionals, real estate agents need established protocols and best practices for how to engage with customers and the public. These should cover providing information and assistance to consumers in a consistent fashion, treating every consumer fairly, and requiring that consumers be shown houses that fit their needs. They should also address how to market schools and neighborhoods appropriately, as these often drive steering and discriminatory practices.
7. **Establish transparency around pocket listings.** Pocket listings are not places on the Multiple Listing Service (MLS) or otherwise made public, but rather shared with a limited number of agents, shielding properties that are available for sale from most potential buyers. This practice makes it easy to support discrimination. The industry should adopt systems and rules to bring pocket listings into the open so that all eligible buyers, regardless of race or national origin, have a fair opportunity to submit bids.
8. **Support fair housing policies and initiatives, including affirmatively furthering fair housing.** Real estate professionals and trade associations must be fully involved in the process conducted by state and local governments to assess the barriers to fair housing that communities face and identify meaningful solutions to overcome those barriers. They should also be fully committed to supporting, funding and helping to implement the strategies and activities to overcome fair housing barriers that state and local governments generate through this fair housing planning process.

Real estate agents cannot solve this problem alone. Government, at the local, state and federal levels, state real estate commissions, and other industry players – including lenders, appraisers, insurance companies and others – must also be part of the solution. But real estate agents can lead the way in helping to eliminate discrimination from our housing markets and dismantling the segregated living patterns that reflect our nation’s history of systemic racism and undermine our prosperity today.

## Congress Must Provide More Resources for Private Fair Housing and Lending Testing

NFHA represents the nation's network of private, nonprofit, qualified fair housing enforcement organizations (QFHEOs) and knows firsthand the challenges in conducting housing and lending testing. Fair housing and lending testing require highly technically expert staff that employ complex investigation methodologies to unearth and accurately assess discrimination. It takes time and program continuity to ensure reliable results that can be acted on in HUD's administrative complaint process or via federal or state courts.

Housing discrimination is pervasive. There are over 4 million instances of housing discrimination each year. The news media is full of stories about the invidiousness of housing and lending discrimination. Recently, the stories of Black families facing appraisal bias have drawn scrutiny over the lack of effective fair lending enforcement.<sup>25</sup> In one case, a Black family in San Francisco had their home appraisal increase \$500K in value after they demanded their lender perform a second evaluation. A White friend had offered to assume the family's identity and greeted the second appraiser. The value of the home increased from \$989,000 to \$1,482,000.<sup>26</sup> Analysis of HMDA data also reveal that Communities of Color are still being redlined by mainstream lending institutions. In one study by WBEZ in Chicago, found that even though Chicago is almost evenly split in racial composition – 33.3% Non-Hispanic White; 29% Black; 27% Hispanic; and 6.65% Asian American – lenders invested 68.1% of mortgage dollars in majority-White areas while just 8/1% went to majority-Black areas and 8.7% went to majority-Latino areas. One major lender, JPMorgan Chase, invested 41 times more mortgage dollars in majority-White communities than majority-Black communities. In fact, the study revealed that lenders invested more money in one majority-White area – Lincoln Park – than in all of Chicago's combined majority-Black communities.<sup>27</sup>

Moreover, industry practices in the housing and lending markets are changing at an alarming pace, especially through the increased use of third-party service providers that operate biased machine learning systems to help providers make housing and credit decisions. And in the age of social media, dynamic online platforms like Facebook are playing a larger role in the placement of housing and credit product advertisements. The current funding available to address these challenges is simply not enough and, now more than ever, Congress must commit to providing more financial support to challenge pervasive housing and credit discrimination and better implement the nation's fair housing and lending laws.

QFHEOs compete for grants under HUD's Fair Housing Initiatives Program (FHIP) to test for discrimination in all types of housing transactions, including in mortgage lending and real estate sales. FHIP is the only funding source of this type. FHIP grantees must share a total of \$40 to \$46 million annually to uncover, investigate, and address ALL reported housing and mortgage discrimination cases, as well as conduct education and outreach to consumers, and train local housing professionals in a nation with a population of 328,000,000 people. Of those grantees who are able to secure a FHIP grant, many are the only QFHEO in their entire state and therefore have to stretch grant funding even further. Congress has also mandated that HUD use a minimum of 17 to 20 percent

---

<sup>25</sup> Debra Kamin, "Black Homeowners Face Discrimination in Appraisals," New York Times, August 25, 2020. Available at <https://www.nytimes.com/2020/08/25/realestate/blacks-minorities-appraisals-discrimination.html>

<sup>26</sup> Julian Glover, "Black California Couple Lowballed by \$500K in Home Appraisal, Believe Race was a Factor," ABC News, February 12, 2021. Available at <https://abc7news.com/black-homeowner-problems-sf-bay-area-housing-discrimination-minority-homeownership-anti-black-policy/10331076/>

<sup>27</sup> Linda Lutton, Andrew Fan, Alden Loury, "Where Banks Don't Lend," WBEZ, June 3, 2020. Available at <https://interactive.wbez.org/2020/banking/disparity/>

annually on education and outreach grants, leaving less money available for enforcement grants which make up the most effective component of FHIP in curbing discrimination. Additionally, constant delays by HUD in making available Notices of Funding Availability and award decisions each year has created recurring delays in grant cycles, leaving many QFHEOs in limbo as they wait for the next round of enforcement funding.<sup>28</sup>

	2014	2015	2016	2017	2018	2019	2020	2021
FHIP (millions)	\$40.10	\$40.10	\$39.20	\$39.20	\$39.60	\$39.60	\$44.95	\$46.3
Reported Complaints	27,528	27,937	28,181	28,825	31,202	28,880 <sup>29</sup>	NA	NA

During the last six years for which we have reported complaint data (2014-2019), complaints increased by nearly 10 percent all-the-while FHIP funding decreased by 10 percent. In (2019), 3.5 percent of all complaints (1,013) involved either a real estate sales or mortgage lending basis.<sup>30</sup> However, that is not an indication that discrimination does not occur at higher levels than what the fair housing movement can currently ascertain. NFHA estimates that at least 4 million incidents of housing discrimination occur each year just in rental housing alone,<sup>31</sup> yet the fair housing movement is only provided resources to tackle a small fraction of it. Indeed, the recent Newsday Investigation revealed rampant real-estate sales discrimination that mirrored past real-estate sales investigations NFHA has conducted on its own, and it showed that when QFHEOs are provided adequate resources to conduct testing pervasive discrimination is brought to light and addressed.

We are grateful for the work Congress has done to require HUD to administer FHIP in a timelier manner, but more must be done. Congress must fund FHIP at a minimum of \$55 million each year and begin the process of converting it into an entitlement program to ensure its reliability and efficacy. This nation’s ability to tackle the scourge of housing and lending discrimination rests on the reliability of the resources it provides to QFHEOs. Congress must eliminate all possible avenues through which this work can be stalled, whether that happens through willful disregard for its importance or simply a matter of poor administration. Converting FHIP into an entitlement program will remove the risk of funding delays; ensure that there is at least one QFHEO per MSA; appropriately scale available funding to QFHEOs according to the population they serve; and it will provide a

<sup>28</sup> Testimony of Keenya Robertson before House Appropriations Committee’s Subcommittee on Transportation, Housing, & Urban Development and Related Agencies, February 27, 2019, available at <https://www.congress.gov/116/meeting/house/108964/witnesses/HHRG-116-AP20-Wstate-RobertsonK-20190227.pdf>.

<sup>29</sup> See National Fair Housing Alliance, “Fair Housing in Jeopardy: Trump Administration Undermines Critical Tools for Achieving Racial Equity,” available at <https://nationalfairhousing.org/wp-content/uploads/2020/09/NFHA-2020-Fair-Housing-Trends-Report.pdf>.

<sup>30</sup> *Ibid.*

<sup>31</sup> Simonson, John, *Report for the National Fair Housing Alliance on the Incidence of Housing Discrimination Based on HDS 2000*, Center for Applied Public Policy at the University of Wisconsin-Platteville. The HDS reported on the probability (using percentages) that discrimination would occur; NFHA’s commissioned study reports instead on the number of instances of discrimination.



better way to calibrate annual funding to the actual costs of conducting fair housing and lending testing in a marketplace that continues to grow in complexity.

### **NFHA Supports the Fair Lending for All Act**

Fair lending enforcement saw a dramatic turn during the Trump Administration, beginning with actions taken by Acting Director of the CFPB, Mick Mulvaney. On February 1, 2018, then Acting Director Mulvaney took action to strip away the CFPB's Office of Fair Lending's enforcement powers and diminish its role within the Bureau. The signal this sent to the lending industry suggested it could operate with lowered expectations of being held accountable for discriminatory practices. However, issues related to the efficacy of the Equal Credit Opportunity and the Home Mortgage Disclosure Acts began long before even the establishment of the CFPB.

NFHA strongly supports the Fair Lending for All Act as major step forward in addressing the limitations of fair lending enforcement. Rep. Green's legislation addresses long-standing barriers to fair and equal credit by adding sexual orientation and gender identity protections to ECOA, bringing LGBTQ people closer to reaching equity in the credit markets. The bill also makes it unlawful to discriminate against a person on the basis of geographic location, directly addressing rampant discrimination perpetuated through the use of geography as a proxy for race and ethnicity. The Fair Lending for All Act also adds critical data reporting requirements to the Home Mortgage Disclosure Act to ensure that the CFPB and other enforcement agencies can better ascertain discriminatory patterns in the mortgage market and act upon them.

The Fair Lending for All Act also re-empowers the CFPB to conduct meaningful fair lending compliance and take appropriate enforcement action to address credit discrimination. By establishing the requirement to conduct fair lending testing at the CFPB, we can be assured that the CFPB's civil rights authority is used to the fullest extent regardless of who runs the Bureau. Additionally, the bill's provision which requires the CFPB to review the loan application process of covered institutions will help unearth and address critical flaws in the credit application process where discrimination occurs and require corrective changes to that process.

Among the most meaningful changes in the legislation is the establishment of stronger criminal penalties for individuals who engage in a pattern or practice of knowingly or willfully violating ECOA, as well as personal liability for executive officers at lending institutions who knowingly and willfully direct an institution to violate the Act. Together, these changes will finally create a lending environment in which the intentional reverse-redlining and other forms of systemic discrimination that prevailed in the run up to the 2008 foreclosure crisis can no longer be repeated. It is well past time that leaders in finance and lending officers who knowingly cause people of color and other protected classes to lose their homes face criminal consequences akin to the disruption they cause to the lives of underserved communities which they have targeted.

NFHA has long been a proponent of these changes and we thank Rep. Green for his leadership. We also look forward to working with Mr. Green and the Committee to ensure that additional changes in the Fair Lending for All Act can be made to further meet the legislation's goals.