



2020 FAIR HOUSING TRENDS

Equal Housing Opportunity remains elusive in the wake of the
Coronavirus COVID-19 Pandemic



Remarks to the Lakeshore Friends of Fair Housing

November 5, 2020

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President/CEO Miami Valley Fair Housing Center



what year is it?



2020

FAIR HOUSING IN JEOPARDY:

Trump Administration Undermines Critical Tools for Achieving
Racial Equity

FAIR HOUSING TRENDS from 2019

- There is a strong correlation between residential segregation and inferior health outcomes for people of color.
- There are significant impacts from global warming and climate change on people and communities of color.
- There is a compelling need to address algorithmic bias in technologies used in the housing and lending sectors.

FAIR HOUSING TRENDS from 2019

- There was a small decline in the number of housing discrimination complaints from an all-time high in 2018 to a still significant 28,880 in 2019.
- Private fair housing organizations continue to process more complaints, 73.12%, than all government agencies combined.
- Private fair housing organizations and civil rights agencies led the way in bringing and winning significant victories designed to redress discrimination throughout the nation.

FAIR HOUSING TRENDS from 2019

- The Trump administration continues its efforts to undermine enforcement of fair housing and fair lending laws, including measures to eviscerate Affirmatively Furthering Fair Housing requirements and the Disparate Impact legal tool.
- Since selecting Ben Carson as the Secretary of HUD, the Trump administration has made every attempt to eliminate the ability to stop systemic discrimination, uplift disinvested communities of color, and safely shelter homeless LGBTQ people and religious minorities.
- The Trump administration's actions fortify residential segregation and promote discrimination.

FAIR HOUSING TRENDS from 2020

- The COVID-19 pandemic amplifies the great disparities consequential to every analysis of Fair Housing Trends to date.
 - Adverse health outcomes for people of color, and especially for Black Americans, are a manifestation of segregation and absence of opportunity in neighborhoods of color.
 - People of color live in communities with more concrete, toxic facilities, and pollution, but fewer fresh foods or health care facilities.
 - The disparities in economic outcomes reflect the disparities in education and job opportunities linked to differences in school quality, transportation, and employment networks.
 - People of color, especially Latinos, are overrepresented in service industry jobs, those hardest hit by the pandemic.
 - The differences in long-term housing stability relate directly to centuries of differences in housing opportunities—people of color are predominantly renters, while White people are predominantly homeowners.

THE **GAP IN HOMEOWNERSHIP** BETWEEN BLACKS AND WHITES, **AT 30 POINTS**, IS BACK TO WHERE IT WAS **IN 1890**.

- The overwhelming majority of Whites, roughly **76% of White households, are homeowners**, giving them great benefit from the year-long protection from foreclosure and generous post-forbearance options available to homeowners impacted by the pandemic.
- In contrast, the majority of Blacks, Latinos, Native Americans, and certain Asian-American groups are renters. In 2018, **58.3% of Black households were renters, as were 52.5% of Latino households and 40.5% of Asian households**, compared to only 27.8% of White households.

There were **28,880 reported complaints of housing discrimination in the U.S. in 2019.** This is a reduction of approximately 7.5% from 2018's total of 31,202, which was the largest total since the National Fair Housing Alliance (NFHA) began tracking and releasing reports in the early 1990s.

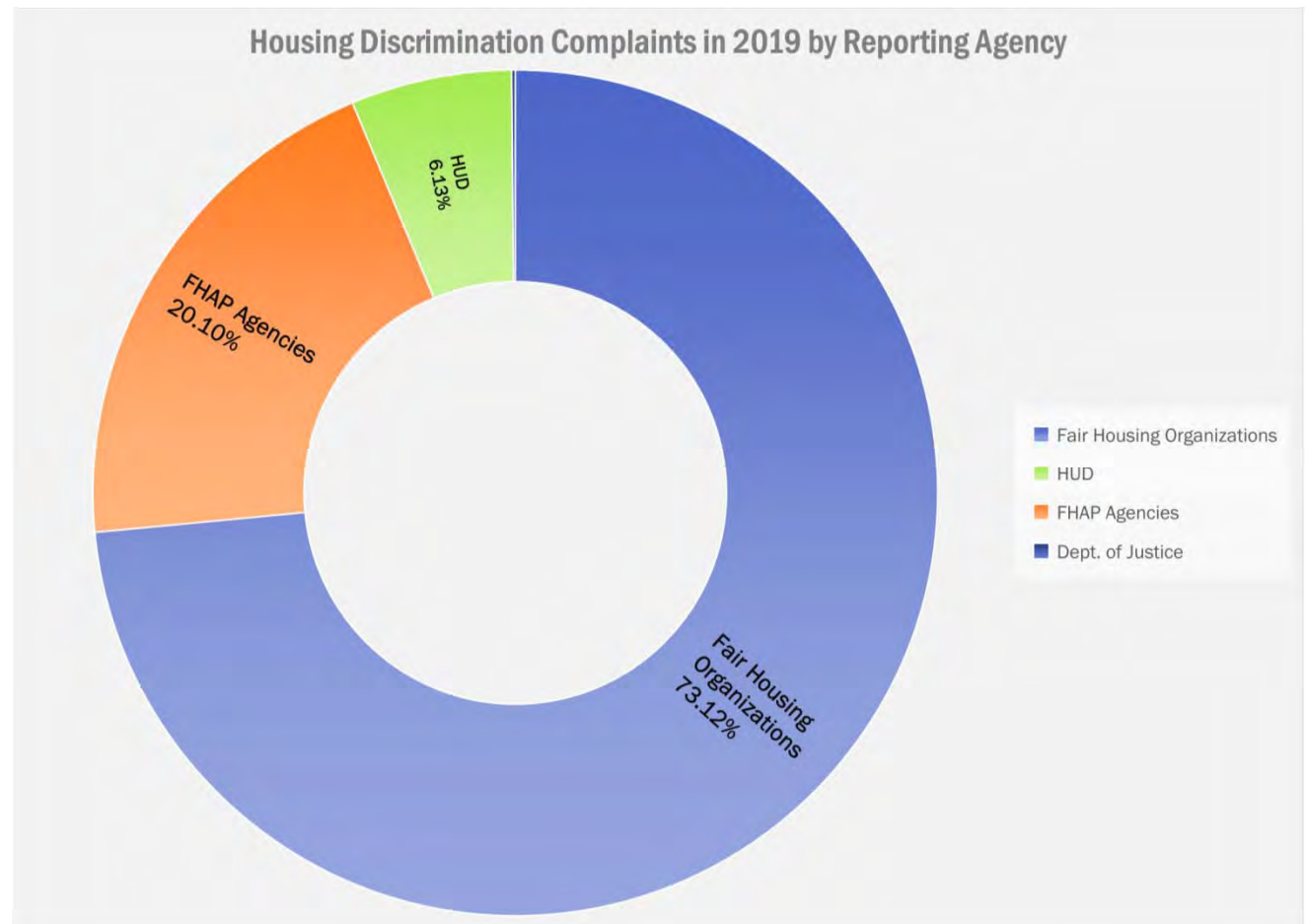
The data collected and reported by NFHA represents only a small portion of the estimated **four million incidents of housing discrimination that occur each year.**

Housing discrimination often goes undetected and unreported because it is difficult to identify or document. It is common for victims of discrimination to feel that nothing can or will be done about the discrimination they experience and to fear retaliation by their housing provider, landlord, or even neighbors.

NFHA's data is composed of submissions from **85 NFHA Operating Member organizations**, all of which are private nonprofit fair housing organizations or fair housing programs of legal aid agencies. It also includes data from the **10 regional HUD offices** and approximately **80 state and local government agencies that participate in the FHAP program at HUD**, from which they receive annual funding to support fair housing administrative and enforcement activities. FHAP agencies conduct complaint investigation; conciliation; administrative and/or judicial enforcement; training; implementation of data and information systems; and education and outreach.

Fair Housing Trends Data for 2019

Overview of Housing Discrimination Complaints Reported in 2019



Private fair housing organizations continue to process the majority of reported complaints

- Of the 2019 complaints, 21,117 (73.12%) were processed by fair housing organizations (FHOs), compared to 1,771 complaints processed by HUD, 5,953 processed by FHAP agencies, and 39 cases processed by DOJ. This data is included in the table on the next slide, along with data from previous years.
- It must be noted that FHOs continue to address approximately **three times as many complaints as the government agencies combined**. This is true despite the fact that in 2019, FHOs saw protracted delays in funding as well as increased regulatory and legal challenges to the federal Fair Housing Act and other civil rights laws.

Fair Housing Complaint Data by Agency

2009–2019

| YEAR | NFHA MEMBERS | HUD | FHAPs | DOJ | TOTAL |
|------|--------------|-------|-------|-----|--------|
| 2009 | 19,924 | 2,091 | 8,153 | 45 | 30,213 |
| 2010 | 18,665 | 1,943 | 8,214 | 30 | 28,852 |
| 2011 | 17,701 | 1,799 | 7,551 | 41 | 27,092 |
| 2012 | 19,680 | 1,817 | 6,986 | 36 | 28,519 |
| 2013 | 18,935 | 1,881 | 6,496 | 43 | 27,355 |
| 2014 | 19,026 | 1,710 | 6,758 | 34 | 27,528 |
| 2015 | 19,645 | 1,274 | 6,972 | 46 | 27,937 |
| 2016 | 19,740 | 1,371 | 7,030 | 40 | 28,181 |
| 2017 | 20,595 | 1,311 | 6,896 | 41 | 28,843 |
| 2018 | 23,407 | 1,784 | 5,987 | 24 | 31,202 |
| 2019 | 21,117 | 1,771 | 5,953 | 39 | 28,880 |

- As has been true for a number of years, complaints by persons with disabilities account for the majority of complaints filed with FHOs, HUD, and FHAP agencies.
- There were 17,010 cases that involved discrimination against a person with a disability, or 58.90% of all cases.
- Discrimination against persons with disabilities is the easiest to detect, as it most often takes place as an overt denial of a request for a reasonable accommodation or modification to the housing unit.
- The second most reported type of housing discrimination was on the basis of race, with 4,757 or 16.47% of all cases. This was followed by familial status as the third most frequent basis for discrimination, with 2,228 cases or 7.71% of all cases of housing discrimination. The fourth most frequent basis of discrimination was sex, with 1,948 complaints or 6.75% of all complaints. Followed by national origin, with 1,730 reported cases or 5.99% of all complaints, then Color as a basis of discrimination for 646 complaints or 2.24% of all complaints, and religion was the basis of 328 complaints or 1.14% of all complaints nationwide.

Fair Housing Complaint Data by Basis and Agency in 2019

| Basis | NFHA Members | HUD | FHAPs | DOJ |
|-----------------|--------------|-------|-------|-------|
| Race | 13.0% | 24.3% | 26.4% | 7.7% |
| Disability | 57.9% | 64.5% | 60.9% | 35.9% |
| Familial Status | 7.0% | 8.8% | 10.1% | 5.1% |
| Sex | 5.2% | 10.4% | 11.2% | 15.4% |
| National Origin | 4.7% | 9.8% | 9.6% | 5.1% |
| Color | 1.6% | 1.6% | 4.8% | 0.0% |
| Religion | 0.6% | 2.7% | 2.6% | 7.7% |
| Other | 10.1% | 7.1% | 14.3% | 23.1% |

NOTE: Some reported complaints included more than one basis of discrimination.


National Data by Transaction Type in 2019

| | Rental | Sales | Lending | Insurance | Harassment | Advertising | HOA/Condo | Other | TOTAL |
|-------------------------|--------|-------|---------|-----------|------------|-------------|-----------|-------|---------|
| NFHA Members | 18,889 | 289 | 70 | 18 | 761 | 120 | 157 | 813 | 21,117 |
| HUD | 1,119 | 123 | 69 | 1 | 0 | 0 | 0 | 459 | 1,771 |
| FHAPs | 4,166 | 367 | 93 | 2 | 0 | 0 | 0 | 1,325 | 5,953 |
| DOJ | 12 | 0 | 2 | 0 | 0 | 0 | 0 | 25 | 39 |
| TOTAL | 24,186 | 779 | 234 | 21 | 761 | 120 | 157 | 2,622 | 28,880 |
| Percent of Total | 83.75% | 2.70% | 0.81% | 0.07% | 2.64% | 0.42% | 0.54% | 9.08% | 100.00% |

- While fair housing organizations primarily receive complaints of discrimination based on federally protected classes, they also receive complaints of discrimination based on protections provided only by state and/or local fair housing laws.
- In 2019, 3,117 complaints (10.68% of all complaints) involved a basis of discrimination in the “other” category. The “other” category of complaints reported by fair housing organizations included the following:

Source of Income (1,086)
Age/Student Status (253)
Sexual Orientation (160)
Gender Identity/Expression (125)
Marital Status (112)
Criminal Background (65)

Victims of Domestic Violence (32)
Arbitrary (in California Rentals Only) (28)
Military Status (18)
Retaliation (12)
Immigration Status/Citizenship (3)
Zoning (1)



2019–2020

**HOUSING
DISCRIMINATION CASE
HIGHLIGHTS**

Persistent economic exclusion of Black and Latino households lies at the core of the recent protests in cities throughout the U.S. demanding justice with the Black Lives Matter movement; it is also central to the litigation goals of the fair housing movement.



Case Highlights

- The cases that follow represent only a handful of the complaints filed in 2019 and highlight the issues and challenges that millions of consumers face each day as they attempt to gain access to housing opportunities.
- These sample cases reveal the types of impediments consumers face in the housing market, and they illustrate the variety and extent of housing discrimination and how it affects many segments of our society.
- These cases are also emblematic of the variety of litigation strategies the fair housing movement uses to challenge discriminatory practices that perpetuate segregation, ultimately working to dismantle systemic racism and other forms of prejudice and exclusion.

Criminal Records Bans Create Disparate Impact

Housing Opportunities Made Equal of Virginia, Inc. v. Wisely Properties

08/2019, the Sterling Glen Apartments in Chesterfield, Va., settled a case regarding its policy excluding persons with felony records or certain other criminal histories from renting apartments. In its federal lawsuit, Housing Opportunities Made Equal of Virginia, Inc. (HOME) charged that the complex's tenant-screening policy had a disparate impact on Black applicants.

Sterling Glen agreed to provide individualized consideration for every application and will consider only certain categories of felony convictions when reviewing housing applications, including: property offenses, major drug offenses, major violent offenses against persons, and sex offenses, not including prostitution or solicitation. The apartment complex donated \$15,000 to HOME, and Sterling Glen employees will participate in fair housing training.

The Fortune Society Inc. v. Sandcastle Towers Housing Development Fund Corporation

11/2019, the owners and operators of the Sandcastle apartment complex in Queens, N.Y., agreed to resolve longstanding charges that its blanket policy excluding persons with a criminal record from living in the complex is discriminatory.

The Fortune Society, Inc., a New York nonprofit that supports the formerly incarcerated, brought the case in federal district court in 2014, charging that the policy disproportionately impacted Black and Latino renters. Following a summary judgment decision in 2019 allowing the case to proceed to trial, Sandcastle agreed to pay The Fortune Society \$1.1875 million.

The owners of the complex when the case was initiated in October 2014 no longer own or manage real estate.

Accessible and Affordable Housing

United States v. Epcon Communities, LLC

03/2020, the DOJ announced a consent decree with Epcon Communities, LLC and Epcon Communities Franchising, Inc., to pay up to \$2.2 million to retrofit inaccessible features of 32 multi-family properties in Ohio that violated the design and construction requirements of the Fair Housing Act.

The modifications include removing steps and steep walkways, adding accessible routes to community amenities, providing accessible parking, and correcting inaccessible features in individual units.

In addition, the defendants will establish a \$300,000 settlement fund for those harmed by the lack of accessible features in their units and pay \$40,000 in damages to the Fair Housing Advocates Association. The developer and franchiser must also pay a civil penalty of \$51,303 to the United States.

Fair Housing Justice Center, Inc. v. JDS Development LLC, et al.

03/2020, a New York federal district court ruled that the statute of limitations in design & construction claims under the FHA begins to run when a person alleging discrimination “encounters the allegedly unlawful building elements.”

The Fair Housing Justice Center brought the case against the developers and owners of an apartment building in the Park Slope neighborhood of Brooklyn, alleging that testing revealed the building, which opened in 2011, did not comply with FHA accessibility requirements.

Defendants moved to dismiss the lawsuit under the law’s two-year statute of limitations and a three-year statute of limitations for claims brought under state and city law. The court, however, denied the motion, finding the “statute of limitations is triggered when someone is aggrieved by one of the unlawful actions.” Thus, the statute of limitations began to run when testers visited the building and witnessed the violations in August 2018.

Segregation in Affordable Housing

United States v. Crimson Management LLC

In May 2020, the United States filed a race discrimination lawsuit in federal court against the owners and managers of two Cedartown, Ga., apartment complexes. The complaint alleges that the defendants steered elderly and disabled Black applicants to Cedartown Commons, whose residents are predominantly Black, and away from the predominantly White Cedarwood Village, perpetuating the racial segregation of elderly and disabled residents at the two federally subsidized complexes.

The government alleges that the defendants also subjected Black residents to less favorable rental terms, conditions, and privileges. The complaint seeks an order from the court requiring defendants to fix these practices and to pay monetary damages and a civil penalty.

Racial Discrimination in Home Buying

Conciliation Agreement between California Reinvestment Coalition and CIT Group Inc.

In July 2019, HUD approved a conciliation agreement between the California Reinvestment Coalition (CRC) and the CIT Group, Inc. and CIT Bank N.A., which do business as OneWest Bank. CRC alleged that OneWest discriminated against Black borrowers in the Los Angeles area in both the marketing and origination of mortgage loans. As a result of the agreement, OneWest will originate \$100 million in loans to borrowers in majority-minority census tracts for home purchases, home improvements, and home refinancing. The bank will also invest \$5 million in a loan subsidy fund for neighborhoods of color, provide \$1 million in grants to government agencies and nonprofits that provide community services in the bank's assessment areas, and allocate \$1.3 million for marketing and outreach to consumers in majority-minority census tracts. Employees involved in residential mortgage lending will attend fair housing training.

Discrimination in Access to Basic Utilities

Georgia State Conference of the NAACP v. City of LaGrange, Ga.

In October 2019, the Eleventh Circuit ruled that Section 3604(b) of the Fair Housing Act may apply to some post-acquisition conduct, including obtaining basic utility services. The Georgia State Conference of the NAACP and other plaintiffs filed a lawsuit against the City of LaGrange, Ga., over two city policies requiring applicants to (1) present photo identification and a Social Security number and (2) pay any city debts, before receiving access to electricity, gas, and water services. The City of LaGrange is the sole provider of the utilities in the city. The NAACP argued that these policies disproportionately impact Black and Latino residents. A federal district court judge initially dismissed the case, but on appeal, the decision was overruled. The Eleventh Circuit found that access to basic utilities is “essential to the habitability of a dwelling and closely connected with the sale or rental of housing” and, therefore, “unambiguously fall[s] within the scope” of the fair housing provision.

Reverse Redlining and Rent-to-Buy

Fair Housing Center of Central Indiana v. Rainbow Realty Group

In March 2020, a federal district court judge in Indiana granted class certification in a lawsuit alleging that a real estate company's rent-to-buy program is discriminatory. The Fair Housing Center of Central Indiana and five individual plaintiffs sued Rainbow Realty Group Inc. on behalf of themselves and other similarly situated persons. The case charged that Rainbow Realty engaged in reverse redlining and predatory lending through the program, which requires buyers to make 30 years of monthly payments on their home before obtaining ownership. Rainbow opposed the plaintiffs' motion for class certification, in part because variable conditions of the homes at the time of sale precluded a class-wide claim. But the federal judge rejected this argument, ruling that the reverse redlining charge could be resolved without analyzing the condition of each home.

Disparities in REO Maintenance

National Fair Housing Alliance et al. v. Bank of America; National Fair Housing Alliance at al. v. Fannie Mae; National Fair Housing Alliance at al. v. Deutsche Bank

NFHA, numerous private fair housing organizations, and a few individual owners are litigating three ongoing federal cases against two nationwide banks and the government-sponsored enterprise Fannie Mae. The allegations include a failure to provide routine exterior maintenance, such as grass cutting, and marketing, such as posting “for sale” signs, to bank-owned homes in communities of color relative to similarly situated homes in White neighborhoods. Improper REO maintenance contributes to blight, reduces home values, and creates additional challenges for Black and Latino neighborhoods. The lawsuits stem from a large-scale, multi-year investigation of thousands of real estate-owned properties (REOs) throughout the country.

THE ONGOING ASSAULT ON FAIR HOUSING

HUD Eviscerates Critical Disparate Impact Legal Standard

The disparate impact standard is established legal doctrine. It is a critical legal tool for challenging policies or practices that have a discriminatory effect on protected classes under the Fair Housing Act. The doctrine has been upheld in every federal court in which it has been challenged, and in 2013, HUD promulgated a rule that unified the standards of the various federal circuit courts for bringing and defending against disparate impact claims.

The U.S. Supreme Court affirmed the use of disparate impact in its 2015 ruling in *Texas Dept. of Housing & Community Affairs v. Inclusive Communities Project* (“*Inclusive Communities*”). Despite the well-established history of the disparate impact doctrine, lending and insurance industry trade associations have made every attempt to challenge the legitimacy of the 2013 Disparate Impact Rule by falsely claiming that it conflicts with the *Inclusive Communities* decision. They found a great friend in the Trump administration.

In early September 2020, HUD issued a final rule that severely weakens the disparate impact standard under the Fair Housing Act. In essence, the Trump administration’s new rule further exacerbates racial inequality, makes our communities less safe, undermines our economic prosperity, and lessens our children’s ability to succeed.

Disparate Impact

This chart compares the 2013 HUD Rule to the 2020 final rule and shows how the Trump administration is attempting to make a successful disparate impact claim nearly impossible. These changes are not grounded in established law.

| PRIMA FACIE CASE STANDARDS FOR CURRENT AND PROPOSED RULE | |
|---|---|
| CURRENT RULE | PROPOSED RULE |
| The Plaintiff or Charging Party bears the burden of proving its prima facie case by showing that a policy or practice: | The Plaintiff or Charging Party bears the burden of proving a prima facie case by showing that a specific, identifiable policy or practice has a discriminatory effect by stating facts plausibly alleging each of the following elements: |
| A. Caused or predictably will cause a discriminatory effect on a group of persons or a community on the basis of race, color, religion, sex, disability, familial status, or national origin. | <ul style="list-style-type: none"> A. That the challenged policy or practice is arbitrary, artificial, and unnecessary to achieve a valid interest or legitimate objectives such as a practical business, profit, policy consideration, or requirement of law; B. That there is a robust causal link between the challenged policy or practice and a disparate impact on members of a protected class which shows the specific practice is the direct cause of the discriminatory effect; C. that the alleged disparity caused by the policy or practice has an adverse effect on members of a protected class; D. That the alleged disparity caused by the policy or practice is significant; and E. That there is a direct relationship between the injury asserted and the injurious conduct alleged. |

THE ONGOING ASSAULT ON FAIR HOUSING

Elimination of the AFFH Rule Further Cements Segregation

The historical context, legislative history, and jurisprudence related to the Fair Housing Act's AFFH provisions all serve to make clear the intent of Congress, which was to use the programs administered by HUD and other federal agencies to eliminate segregation, expand opportunity, and create a more equitable society.

In 2015, HUD finally adopted a new AFFH regulation that had the potential to be a powerful tool for racial equity. The rule conditioned continued receipt of HUD funding on jurisdictions making progress toward accomplishing their fair housing goals. This promising regulation went into effect in 2016, and 39 jurisdictions completed the process of developing their fair housing plans and having them approved by HUD.

THE ONGOING ASSAULT ON FAIR HOUSING

Elimination of the AFFH Rule Further Cements Segregation

In 2018, the Trump administration halted implementation of the 2015 rule and reinstated the ineffective 1995 regulation. In January, 2020, HUD proposed a new AFFH regulation, one almost entirely divorced from the meaning and intent of the AFFH provision of the Fair Housing Act.

On July 23, 2020, HUD abandoned that proposed rule, and adopted a new, previously unseen, final rule to replace the 2015 AFFH regulation. That rule went into effect on September 8, 2020.

HUD's new rule, called "Preserving Housing and Neighborhood Choice," cannot truthfully be labeled an AFFH rule, although it purports to implement the AFFH provisions of the Fair Housing Act.

Segregation and
Disinvestment in
Communities of
Color Have Created
Conditions That
Exacerbate the
COVID-19 Pandemic



The Lack of Effective Response to the Immediate Needs of Vulnerable Communities Threatens to Magnify Disparities and Exacerbate Racial Inequality

Both during and after the coronavirus pandemic, people of color will once again be at high risk of housing instability, and with it, the loss of financial security, homeownership, and wealth.

As the Urban Institute noted, “Black and Latino people have been hardest hit by stay-at-home orders and other public health measures put in place to slow the spread of COVID-19 because of a legacy of occupational segregation that has led to them being overrepresented in low-wage jobs and in jobs that can’t transition to remote work . . .”

Questions?

All data and material for this presentation was sourced from the National Fair Housing Alliance's 2020 Fair Housing Trends Report.

<https://nationalfairhousing.org/wp-content/uploads/2020/09/NFHA-2020-Fair-Housing-Trends-Report.pdf>