

Fair Housing for Ohio Municipalities 2023 OCCD Spring Conference

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Today we will look at

- Review Basic Responsibilities of Municipalities under the Act
- Review Fair Housing Trends
 - Data on Source of Income Protections which can benefit Ohio communities
 - Data on Fair Housing Complaints Nationally
- Review Proposed Rule Affirmatively Furthering Fair Housing (AFFH)
 - This proposed rule implements the Fair Housing Act's affirmatively furthering fair housing mandate, which **directs the government to promote fair housing choice, eliminate disparities in housing, and foster inclusive communities.** Jan 19, 2023

Introduction

- The Fair Housing Act applies to virtually all types of housing, public and private

The Fair Housing Act applies to all Dwellings

- Dwelling means
 - Any building, structure or portion thereof which is occupied as, or designed or intended for occupancy as a residence ...

24 CFR 100.20

It is illegal to discriminate based on:

- Race
- Color
- Religion
- National origin
- Sex
 - Sexual Orientation
 - Gender Identity/Expression
- Disability
- Familial Status
- Ancestry & Military Status – Ohio
- Age and Marital Status – Dayton and other cities across the state
- **Source Of Income (SOI)** – Columbus, and 18 other Ohio cities

Sample definition of SOI

“Source of income” means any lawful source of income which can be verified and substantiated, from:

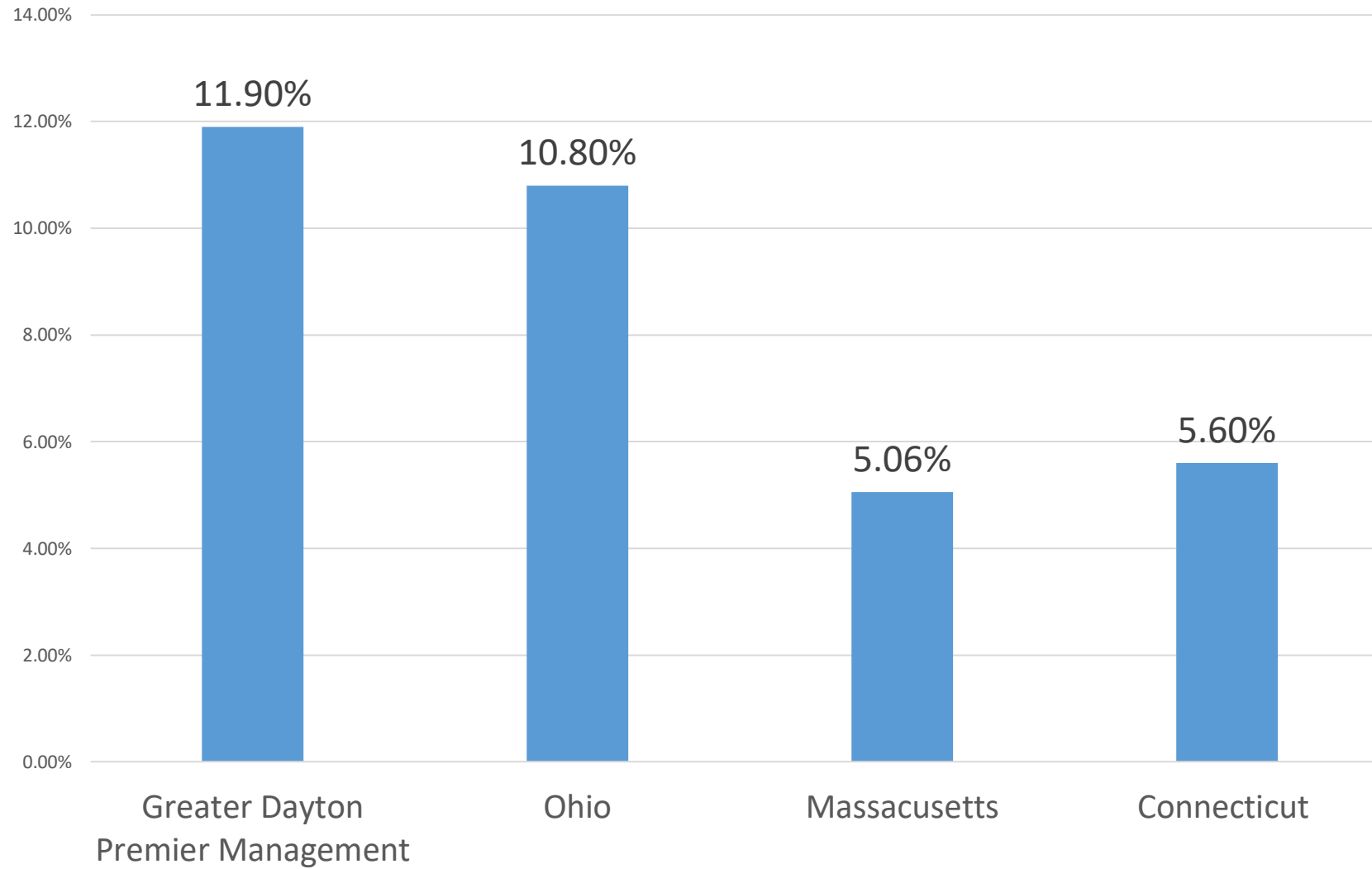
- wages, social security, supplemental security income,
- public or private sources,
- all federal, state or local assistance payments or subsidies, including
 - rent vouchers,
 - child support,
 - spousal support, and
 - public assistance.

SOI protections for HCV holders as of April 1, 2023

- 20 states have SOI protections
 - Wyoming also has SOI protections but not for people with HCVs
- 127 cities/counties across the country have SOI protections
- 19 municipalities in Ohio
- 4 states have incentives to promote acceptance of HCVs
- 4 states and 1 county have pending SOI legislation
 - A statewide source of income discrimination bill, HB 150, was introduced in the Ohio House on April 4.
<https://www.legislature.ohio.gov/legislation/135/hb150>

Summary of data on HCV usage

- Attrition rates are higher when there are no source of income protections
 - Even when the cost of the housing unit is higher, attrition rates in Ohio and Dayton are higher than Connecticut and Massachusetts
- Ohio and Dayton have higher percentages of unused HCVs than in jurisdictions with SOI protections
- More than 500 vouchers in Dayton and 7,500 in Ohio are not under lease

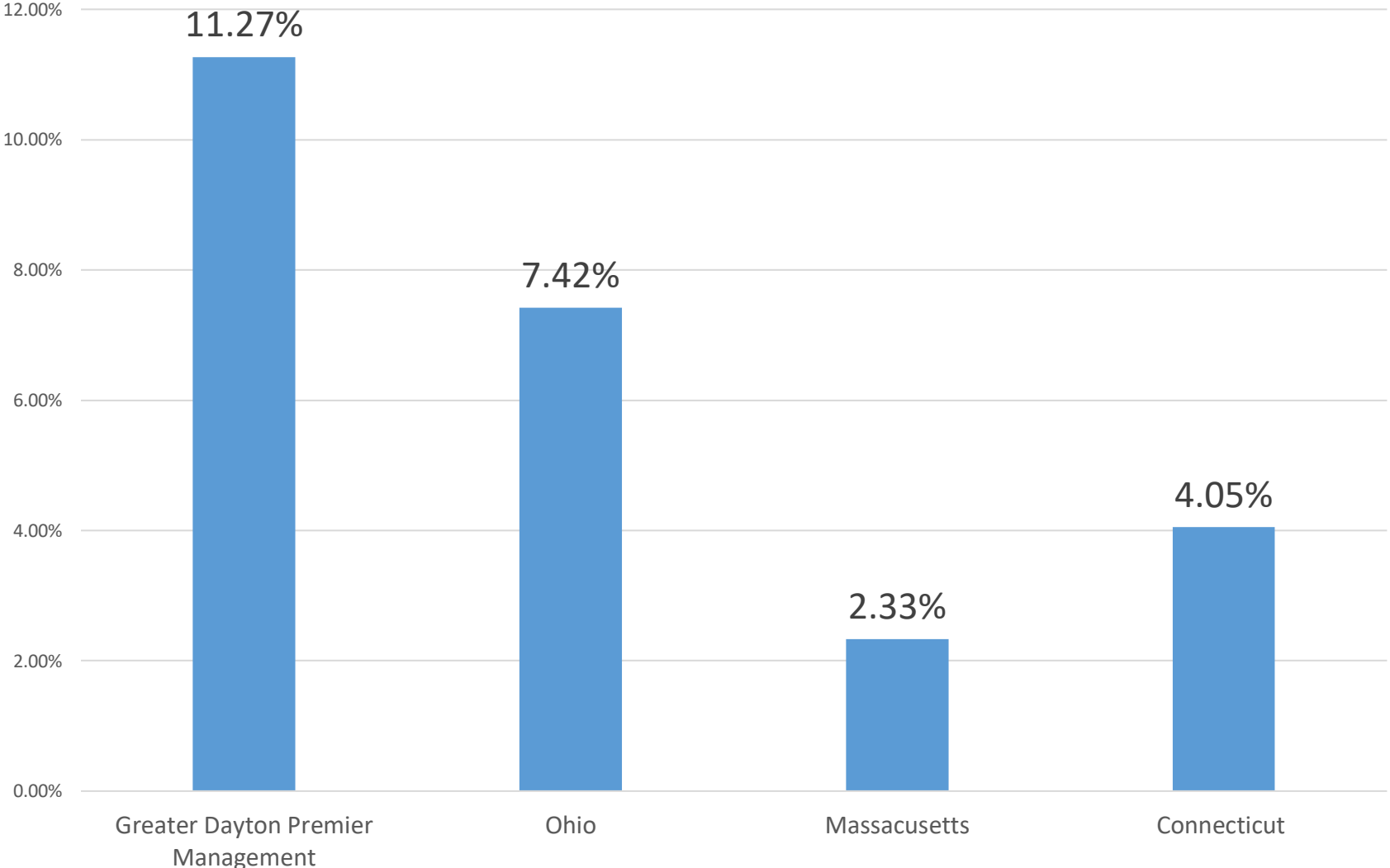


Attrition rates as of November 2022



Cost per unit as of November 2022

Leasing potential



Leasing potential by number of vouchers

- Ohio—7,529 additional families could be assisted
- Dayton—508 additional families could be assisted

Source of data/information

- https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/dashboard
- Miami Valley Fair Housing Center—internal documents
- https://www.huduser.gov/portal/datasets/assthsg.html#2009-2021_query
- <https://www.prrac.org/appendixb/>

Source of data/information

- <https://www.naacpldf.org/wp-content/uploads/2022-11-14-Fair-Housing-2-web-1.pdf>
- <https://www.census.gov/quickfacts/fact/table/montgomerycountyohio,daytoncityohio,US/PST045221>

Fair Housing Prohibitions are based on protected class affiliation of individual, group, or neighborhood composition – professionals cannot:

- Refuse to sell or rent
- Discriminate in the terms, conditions
- Discriminate in advertising
- Misrepresent the availability of housing
- Engage in steering someone towards or away from a unit
- Refuse people w/disabilities modifications
- Discriminate in making loans, insurance policies, appraisals, & other real estate transactions
- To coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of a fair housing right

Who can file a fair housing complaint?

Aggrieved persons, including real estate professionals and testers, who believe that they have been injured by a discriminatory housing practice.

State and Federal Fair Housing Resources for filing a complaint



- Ohio Civil Rights Commission (**OCRC**)
- Visit <https://civ.ohio.gov/>
- **Email:** PACE@civ.ohio.gov
- **Phone:** [\(888\) 278-7101](tel:(888)278-7101)

- Department of Housing and Urban Renewal (**HUD**) contact The Office of Fair Housing and Equal Opportunity (**FHEO**)
- Visit <https://www.hud.gov/fairhousing>
- You can speak with an FHEO intake specialist by calling 1-800-669-9777 or TTY: 1-800-877-8339.

Ohio Private and Public Fair Housing Organizations



PRIVATE

- Fair Housing Advocates Association -Akron-
<https://www.housingassistanceonline.com>
- Fair Housing Contact Service, Inc. –Akron-
<https://fairhousingakron.org/>
- Fair Housing Resource Center, Inc. –Painesville- <https://fhrc.org/>
- Housing Opportunities Made Equal, Inc. –Cincinnati-
<https://homecincy.org/>
- Fair Housing Center for Rights & Research –Cleveland-
<https://www.thehousingcenter.org/>

Ohio Private and Public Fair Housing Organizations

PRIVATE

- Miami Valley Fair Housing Center, Inc. –Dayton- www.mvfhc.com
- Toledo Fair Housing Center –Toledo- <https://www.toledofhc.org/>

PUBLIC

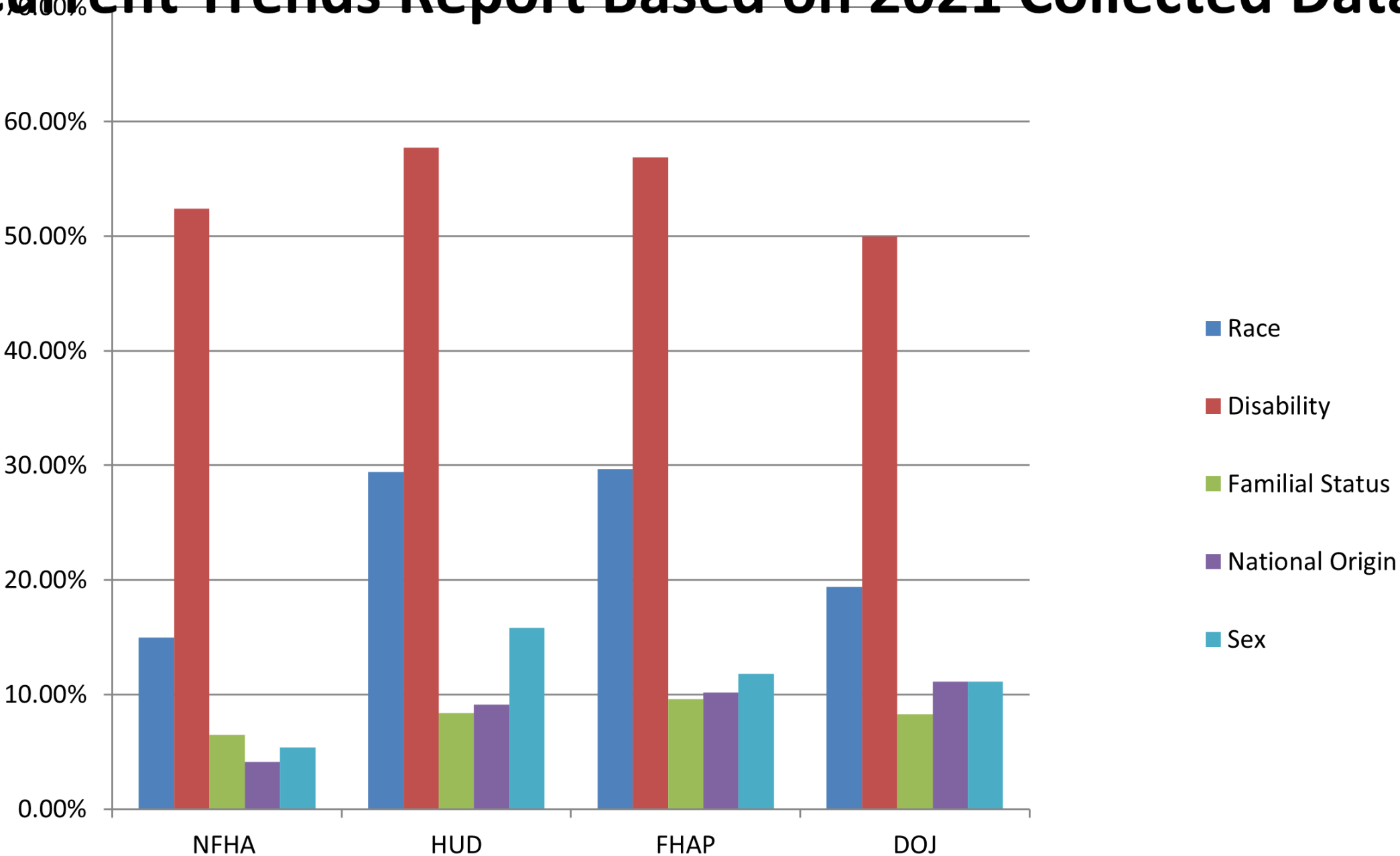
- Ohio Civil Rights Commission –Columbus- <https://crc.org/>
- HUD Fair Housing Office –Columbus- <https://www.hud.gov/states/ohio/working/fheo>



Exemptions

- Religious Groups and Private Clubs
- Advertising for gender specific roommates
- Senior Complexes
- Commercial Zoned Land/Dwellings
- owner-occupied buildings with fewer than four rental units – federal only but are not exempt from the State of Ohio law, which does not allow for such an exemption. This is sometimes referred to as Mrs. Murphy's exemption.

Current Trends Report Based on 2021 Collected Data



Notes on Report

- Complaints alleging discrimination because of

1. **Disability:** 53.68% or 16,758

2. **Race:** 18.97% or 5,922 (up over 2% from prior year)

3. **Sex:** 7.40% or 2,309 (from 5th place in 2020 to now 3rd most complaints)

4. **Familial status:** 7.24% or 2,261

5. **National Origin:** 5.68% or 1,774

The “other” category of complaints:

- 3,744 complaints in 2020 increased to 4,276 in 2021 which is 13.7% of all complaints.
- These areas were of special concern:
 - **Retaliation** complaints **increased sixfold** from 22 in 2020 to 127 in 2021 > 105
 - **Criminal background** - increased almost **fivefold** from 66 in 2020 to 314 in 2021, > 248
 - **Domestic violence** complaints **doubled** from 86 in 2020 to 172 in 2021 >85

Notes

- What is **retaliation**? Retaliation means to pay back an injury in kind. You hurt me; I'll hurt you. Under federal law, it is unlawful to coerce, intimidate, threaten, or interfere with any person because he exercised a Fair Housing right. Sometimes people file a fair housing complaint, and they are, in turn, evicted.

Notes

- National Commission on COVID-19 and Criminal Justice noted an 8.1 percent rise in **domestic violence (DV)** cases.
 - The ongoing effect of “shelter in place” mandates resulting from the COVID-19 pandemic is one reason for the rise in DV complaints.

Notes

- In the past five years, a national policy on **Fair Chance at Housing** has emerged and laws limiting consideration of criminal records in housing were passed in the
 - District of Columbia 2017;
 - Colorado, Illinois, and New York 2019;
 - New Jersey 2021.
 - HUD also issued guidance in 2016 on this topic.
 - Miami Valley Fair Housing Center premiered the nation's first 3-hour continuing education course certified by the Ohio Division of Real Estate called *Fair Housing and Fair Chances for People with a Criminal History*

Complaints by industry segment

	Rental	Sales	Lending	Insurance	Harassment	Advertising	HOA/Condo	Other	Total
NFHA Members	20,085	653	188	31	882	271	150	414	22,674
HUD	1,304	199	114	3	0	0	0	476	2,093
FHAPs	4,090	556	92	2	0	0	0	1,675	6,413
DOJ	22	0	1	0	4	0	0	9	36
Total	25,501	1,408	395	36	886	271	150	2,574	31,216
Percent of Total	81.69%	4.51%	1.27%	0.12%	2.84%	0.87%	0.48%	8.25%	100.00%

Notes on Rental Market

- 2020 saw 20,860 complaints - 72.65% of complaints
- 2021 saw 25,501 complaints - 89.61% of complaints
 - Rental transactions most frequent type of housing transaction, the simplicity of the transaction can make it easier to identify discrimination.

Municipalities and Fair Housing

- Municipalities carry out four broad categories of activities that affect their fair housing responsibilities:
 - Regulatory Activities,
 - Provision of Services,
 - Provision of Subsidies, and
 - Proprietary Activities

Municipalities and Fair Housing

- *Regulatory Activities:*

- When a municipality enacts and administers regulations that affect existing or potential residential properties usually through zoning or building/housing codes.

- *Provision of Subsidies:*

- Financial incentives offered to residential property owners such as grants, loans, or loan guarantees for rehab or building projects;
- Special services such as infrastructure projects or housing rehabilitation services using funds like CDBG.

Municipalities and Fair Housing

- *Proprietary Activities:*

- When a municipality buys or sells real property, particularly if the property was used or will be used as a residence.
- Eminent domain acquisitions can have fair housing consequences

- *Provision of Services:*

- When a municipality provides routine services in residential areas or to residents.
- Water, sewer, trash pickup etc.

Cautionary Note

- Cities that receive federal funding either directly or indirectly should have a policy of reasonable accommodation/reasonable modification and this policy should be available to all residents by publishing it in a variety of communication forms. For Example:
 - LEP guidance should be observed
 - Audio and Digital forms should be published

Santa Rosa - 20-02.310 Applicability.

- “A request for reasonable accommodation may be made by any person with a disability, their representative or any entity, when the application of a zoning law or other land use regulation, policy or practice acts as a barrier to fair housing opportunities.”
 - Our note: This is an example of best practices at the local level to limit liability under fair housing laws

Affirmatively Furthering Fair Housing or AFFH

All Parties to Federal Affordable Housing \$'s must

- make an affirmative plan with concrete actions
- to remove the barriers in a community that **limit choice** and **limit availability** in housing based on a protected class status.

Definitions

- “Impediments” are any actions, omissions, or decisions taken which have the effect of **restricting a person’s housing choice** by protected class.
- “Barriers” to housing choice are factors that **limit a person’s ability to choose** from a variety of housing types.
 - Factors may include housing supply and location, physical accessibility of housing, zoning for group homes, source of income, accessibility of financing, and limited English proficiency to name a few.

Link to AFFH Proposed Rule

- <https://www.federalregister.gov/documents/2023/02/09/2023-00625/affirmatively-furthering-fair-housing>
- The following slides have been developed from seminars given to fair housing professionals by the National Fair Housing Alliance in Washington D.C.
- See <https://nationalfairhousing.org/issue/affirmatively-furthering-fair-housing/>

Summary begins:

- The proposed rule retains much of the framework of the 2015 AFFH Rule.
- Under the proposed rule, as under the 2015 AFFH Rule, program participants will identify
 - fair housing issues,
 - prioritize the fair housing issues they will focus on overcoming in the next three to five years, and
 - develop the **goals which have concrete and meaningful outcomes** they will implement to overcome those fair housing issues.

Overview of HUD's 2023 Proposed AFFH Rule

- Consistent, focused, and flexible structure
- Data-driven
- Community-focused
- Goal-oriented, with metrics and timelines
- Reviewed by HUD
- Linked to other plans
- Balanced Approach
- Connect housing and access to opportunity
- Allow for and encourage regional approach
- Enforceable

Consistent, focused, and flexible structure

- Equity Plan (EP) replaces AFH and AI
 - 7 specified fair housing goal categories (similar, but not identical to 2015 rule)
 - Must identify/prioritize fair housing issues in each goal category
 - No separate template (unlike 2015 rule)
 - Streamlined set of questions
 - No analysis of contributing factors

Fair housing goal categories

- (1) Integration and segregation;
- (2) Racially or ethnically concentrated areas of poverty (R/ECAPs);
- (3) Significant disparities in access to opportunity;
- (4) Inequitable access to affordable housing and homeownership opportunities;

Fair housing goal categories

- (5) Laws, ordinances, policies, practices, and procedures that impede the provision of affordable housing in well-resourced areas of opportunity, including housing that is accessible for individuals with disabilities;
- (6) Inequitable distribution of local resources, which may include State or municipal services, emergency services, community-based supportive services, and investments in infrastructure; and
- (7) Discrimination or violations of civil rights law or regulations related to housing and access to community assets.

Data Driven

- HUD will continue to produce raw data, mapping/analytical tools from 2015 rule (AFFH-T)
 - Good Equity Plans and its subsequent Fair Housing Plan will acknowledge **local data and local knowledge** and, it is required in the EP.

Community Focused

- Seeks robust community engagement process
- Requires engagement at different stages of the process

Community Engagement

- Definitions section of the Proposed Rule:

“Community engagement means a solicitation of views and recommendations from members of the community and a process for **incorporating such views into planning processes, decisions, and outcomes.**”

Goal- oriented, with metrics and timelines

- Requires goals for priority issues identified in each goal category
 - Goals may be short-term or long-term
 - Must have timelines and metrics and identify funding sources, if any
 - Must report annually on progress;
 - Can adjust goals if needed (with approval from HUD)
 - Must achieve meaningful progress [concrete touchable and viewable outcomes]

Submitted to and reviewed by HUD

- Plans must be submitted to HUD 365 days before ConPlan or PHA plan is due
 - HUD has 100 days to review, accept or reject
 - If not accepted, HUD will provide detailed feedback
 - Grantees have 60 days to revise and resubmit
- Rule allows for multiple iterations if needed
 - Has provisions to deal with delays that might interfere with funding
- HUD acceptance of EP does not mean grantee is fulfilling its AFFH obligation

Linked to other plans

- Fair housing strategies and meaningful actions must be incorporated in ConPlan and PHA plan (and annual action plans)
- Fair housing goals must also be incorporated into plans required in conjunction with other federal programs

Balanced Approach – Allows both Placed Based and Mobility Based Options

- “Affirmatively furthering fair housing can involve both
 - bringing investments to improve the housing, infrastructure, and community assets in underserved communities as well as
 - enabling families to seek greater opportunity by moving to areas of the community that already enjoy better community infrastructure and community assets.”
- One must read this section carefully
 - Specific strategies for balance will vary based on local conditions and resources.

Recognizes where you live matters

- The development of the Equity Plan should connect housing and access to opportunity
 - Proposed rule guides grantees to consider whether all communities and members of protected classes have equitable access to assets
 - If not, the EP must take steps to create greater equity: advance fair housing goals

Other Points to consider

- Promotes regional approaches
 - Promotes collaboration in the (process)
 - Must consider issues beyond jurisdiction's borders (analysis)
- HUD will enforce but seeks voluntary compliance
 - Describes process by which HUD will investigate and resolve violations
 - If compliance is not possible, enforcement options include discontinuation of funding and a referral to Dept. of Justice (DOJ).

Other Points to consider

- Phased in over 4 years
- Timing based on size of grantee
- Many states in first 2 rounds
- Most grantees will do EPs in 2029
- During transition period, grantees must update/ conduct new AIs (if AI is more than 3 years old and EP is not required within 2 years)
- AIs will be submitted to HUD for potential review

Other Points to consider

- Grantees must make draft EPs public; encouraged to make final EPs public
 - Submitted plans + annual progress reports will be posted on HUD website
- Grantees must certify:
 - They will take meaningful actions to AFFH
 - They will take no actions materially inconsistent with their AFFH obligation