

2015

# Regional Analysis of Impediments to Fair Housing for Montgomery County and the Cities of Dayton and Kettering, OH

## Section 3 — Existing Fair Housing Structure

*This PDF contains only a section of the AI.  
For the other sections or the entire AI,  
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## Section 3 — Existing Fair Housing Structure

### *A. Fair Housing Overview and Federal, State, and Local Structure*

The Fair Housing Act—Title VIII of the Civil Rights Act of 1968—as amended in 1988 makes it unlawful to discriminate in the sale, rental, advertising, or financing of most housing based on race, color, religion, sex, handicap/disability, familial status, or national origin. Congress gave the Department of Housing and Urban Development (HUD) the authority to implement and oversee Title VIII, and for this purpose HUD created the Office of Fair Housing and Equal Opportunity (FHEO). HUD’s website describes FHEO’s mission as being:

to eliminate housing discrimination, promote economic opportunity, and achieve diverse, inclusive communities by leading the nation in the enforcement, administration, development, and public understanding of federal fair housing policies and laws.<sup>1</sup>

FHEO operates both educational and enforcement activities related to fair housing and fair lending. FHEO publishes public service announcements, flyers, and posters, and it develops and conducts fair housing trainings, in-services and symposia. People who think they’ve faced housing discrimination can file complaints directly with FHEO, which will either handle the investigation itself or refer it to an authorized local agency (one deemed substantially equivalent to FHEO).

The Fair Housing Act authorizes federal funding for state and local agencies to implement and enforce fair housing laws through grant programs administered by HUD. HUD funds two types of agencies—public and private. Public entities such as the Ohio Civil Rights Commission (OCRC) and the City of Dayton’s Human Relations Council (HRC) are funded through the Fair Housing Assistance Program (FHAP), a formula grant program. Private agencies such as the Miami Valley Fair Housing Center (MVFHC) are funded through the Fair Housing Initiatives Program (FHIP), a competitive, discretionary grant program.

A FHAP agency “must demonstrate to HUD that it enforces a fair housing law that is substantially equivalent to the Fair Housing Act.”<sup>2</sup> FHAP agencies primarily investigate and enforce discrimination complaints, working to “protect families and individuals who believe they have been victims of discrimination on the basis of race, color, national origin, religion, sex, disability or familial status (i.e., the presence of children) in the sale, rental, or financing of housing.”<sup>2</sup>

In addition to funding for investigations and enforcement, FHIP program recipients may apply for funding to operate fair housing testing programs. HUD describes fair housing testing as:

FHIP organizations [...] conduct preliminary investigation of claims, including sending “testers” to properties suspected of practicing housing discrimination. Testers are minorities and whites with the same financial qualifications who evaluate whether housing providers treat equally-qualified people differently.<sup>3</sup>

Both FHAP and FHIP agencies can also receive funding for education and outreach. In addition, the FHEO also funds special grants for FHAP/FHIP collaborations in which a public entity and a private agency work together on fair housing or fair lending education or enforcement. Locally, MVFHC and HRC collaborate under such grants when available.

Those who believe they have experienced housing discrimination—whether they are individuals, community groups, or agencies—can seek resolution of their concerns either through an administrative complaint process or civil litigation with state or federal courts. Although a plaintiff may choose between the state or federal system when filing in court, the forum for the administrative process is dictated by HUD. All administrative housing discrimination complaints are dually filed with HUD and the substantially equivalent agency.

For example, a home-seeker who believes she was denied rental housing in the City of Kettering because she has children may file an online housing discrimination complaint with HUD, and HUD may in turn refer the complaint to the state level (OCRC) for processing. In contrast, an African-American tenant being racially harassed by a neighboring Caucasian may file a complaint with OCRC, and HUD will retain jurisdiction and investigate the complaint itself since there is Ohio state case law on tenant on tenant harassment that HUD deems to be incompatible with its interpretation of federal laws.

In the following section we describe these federal, state and local processes in more detail. We focus on administrative complaints, which usually cost less and take less time than do court cases.

## *B. Complaint Process Review*

### *U.S. Department of Housing and Urban Development (HUD)*

HUD accepts housing discrimination complaints by phone, by postal mail, and online.<sup>4</sup> HUD's complaint form is available online in seven languages (English, Spanish, Arabic, Chinese, Korean, Russian, and Vietnamese). HUD also has a TTY phone number for the hearing impaired. There is no cost to file a complaint with HUD.

The steps for HUD's housing discrimination complaint process are as follows:

**Step 1 — Intake:** Someone who believes s/he has faced housing discrimination files a complaint with HUD by calling, by mailing a hardcopy form, or by completing a form online.

**Step 2 — Filing:** After HUD confirms that the complaint does pertain to housing discrimination (as opposed to other issues such as landlord/tenant disputes), a HUD investigator drafts a formal complaint on HUD's standard form and sends it, typically by postal mail, to the complainant to be signed and returned.

**Step 3 — Investigation:** HUD's investigators interview the complainant, the respondent, and pertinent witnesses, collecting relevant documents and conducting onsite visits as appropriate.

**Step 4 — Conciliation:** The Fair Housing Act requires HUD to attempt conciliation between the parties in every fair housing complaint, although either the complainant or the respondent may decline to do so. Any conciliation agreement brokered by HUD must protect the public's interests.

**Step 5 - No Cause Determination:** After a thorough investigation, HUD may find no reasonable cause to believe that housing discrimination occurred or is about to occur. In this case, HUD issues a determination of "no cause" and closes the case.

**Step 6 - Cause Determination and Charge:** If, however, the investigation does produce reasonable cause to believe that discrimination has occurred or is about to occur, HUD issues a determination of "reasonable cause" and charges the respondent with violating the

law. HUD will adjudicate the complaint administratively, unless either party elects, within 20 days of receipt of the charge, to have the case heard in federal court.

**Step 7 - Hearing in a U.S. District Court:** If either party does elect to go to federal court, the Department of Justice (DOJ) files a civil action in U.S. district court on behalf of the aggrieved party. If the court finds that a discriminatory housing practice has occurred or is about to occur, the court can award actual and punitive damages as well as attorneys' fees.

**Step 8 - Hearing before a HUD Administrative Law Judge (ALJ):** If neither party opts to have the case heard in court, an ALJ hears the case. A HUD attorney represents the aggrieved party before the ALJ.

With its complaint form online HUD also provides additional options and information related to complaints.<sup>5</sup> One option is a complaint line specifically handling calls about properties insured by HUD and properties whose rent is completely or partly paid by HUD-issued Housing Choice (Section 8) Vouchers. On its website HUD also offers information about discrimination on the basis of actual or perceived sexual orientation, gender identity and marital status in such properties. HUD also has a web page specifically addressing discrimination based on sexual orientation, gender identity and marital status<sup>6</sup>, on which HUD provides a list of states that include sexual orientation and/or gender identity in their non-discrimination laws.

### *Ohio Civil Rights Commission*

Because HUD has determined that Ohio's fair housing laws are substantially equivalent to the federal Fair Housing Act, Ohio may investigate complaints of housing discrimination in the state and does so through OCRC. OCRC's main office is in Columbus, and OCRC also has regional offices throughout the state, including in Dayton. OCRC's complaint process is similar to that of HUD and is documented in Chart 3.1 on the following page.<sup>7</sup>

OCRC accepts complaints in person and by telephone. OCRC offered an online portal for filing complaints, but it has not been functional recently. OCRC's website does not offer Google's translation feature, nor does it appear to have information in languages other than English.

When OCRC finds that a housing discrimination complaint has probable cause, OCRC works with the Ohio Attorney General's office to resolve the complaint, either through conciliation, a hearing before an administrative law judge, or litigation in civil court.

Although the attorney general’s office must file administrative complaints within a set time limit, administrative hearings may be delayed for multiple years because of staffing capacity limits.

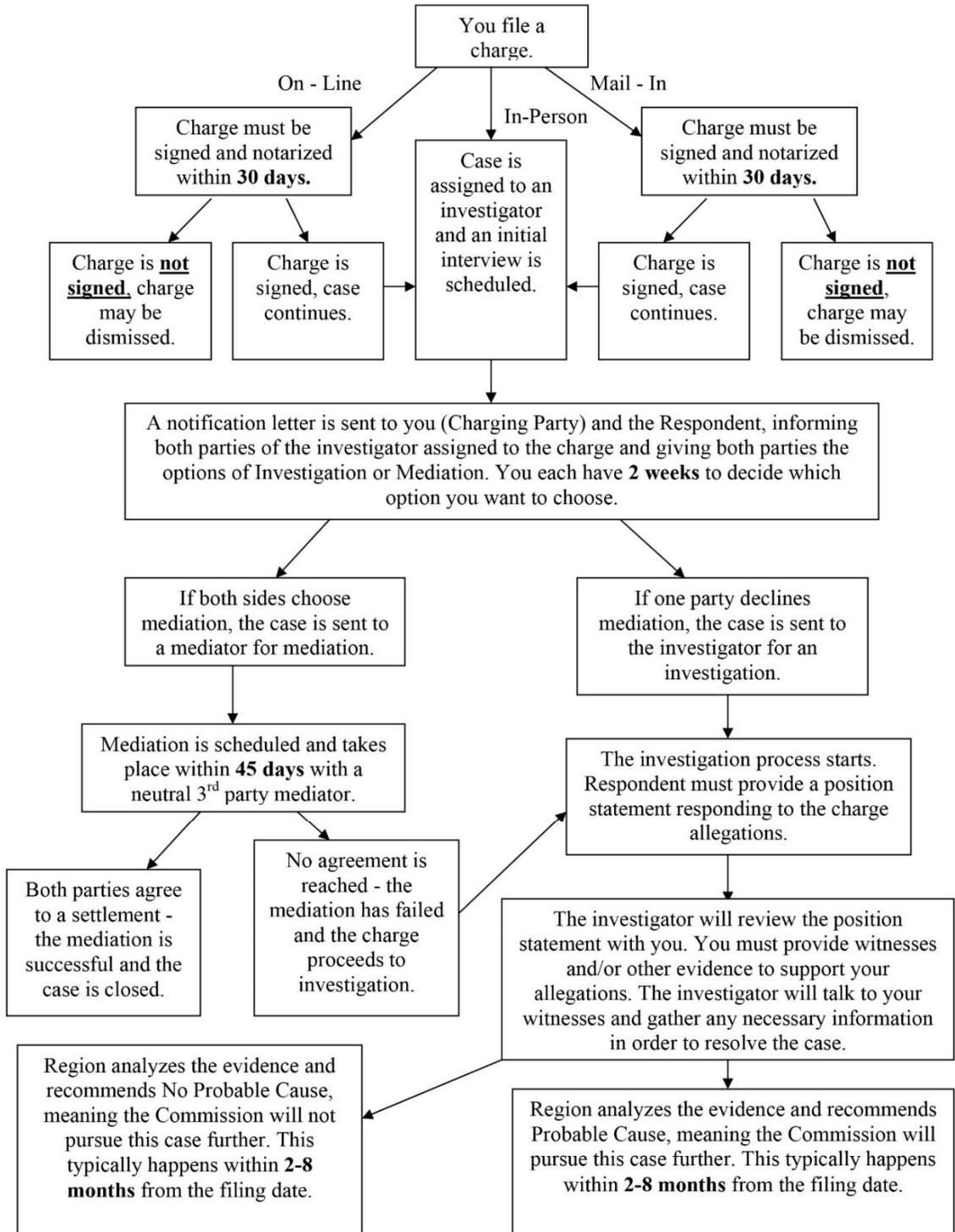


Chart 3.1: General overview of the OCRC charge filing process<sup>8</sup>

*City of Dayton Human Relations Council*

Because HUD has determined that the City of Dayton’s Human Rights Ordinance is substantially equivalent to the federal Fair Housing Act, Dayton may investigate complaints of housing discrimination in the city and does so through HRC.

On its frequently-asked questions web page, HRC says that it requires that housing discrimination complaints “be written, signed, and, when possible, notarized.”<sup>9</sup> However, HRC does have an online complaint form<sup>10</sup>, although it does not specify whether HRC follows a process similar to HUD’s whereby a hard copy of an online complaint is sent back to the complainant for signing. HRC offers assistance in completing its complaint form, encouraging people to visit HRC’s office between 8:00 a.m. and 5:00 p.m. to file complaints.

HRC’s website does not offer Google’s translation feature, nor does it have any web page in languages other than English. HRC does have hard-copy brochures in six additional languages—Turkish, French, Spanish, Arabic, Kiswahili and Russian—about its services.

In addition, HRC has language-access complaint forms available online in English as well as in Turkish, Kiswahili, Spanish, Russian, and Arabic. Using these forms people may let HRC know of language-related problems such as not being offered interpreters or forms in a particular language.

HRC assigns an investigator for each complaint it processes. HRC promotes conciliation throughout the process. Failing conciliation, the HRC investigator submits a final investigative report to HRC’s board, which has the authority to decide whether there is probable cause to file a formal administrative complaint. HRC selects outside legal counsel to represent it, and complainants may hire their own legal representation if they so choose. A formal administrative complaint is presented at a public hearing overseen by a Hearing Examiner, who makes a decision and may issue penalties. Alternatively, HRC may decide not to file a formal complaint but instead to give the complainant a “Notice of Right to Sue.” In the past several administrative complaints were pending over multiple years, but within the past year HRC increased its capacity to proceed more speedily with public hearings.

### *Miami Valley Fair Housing Center*

The Miami Valley Fair Housing Center (MVFHC) is a private fair housing agency that is recognized by HUD as a Qualified Fair Housing Organization. MVFHC provides full-services fair housing assistance, including professional counseling and guidance to individuals who encounter discrimination in their search for housing; informing consumers of their options under local, state, and federal fair housing laws; and providing support for consumers going through the process of asserting their housing rights.

For each housing discrimination complaint it receives, MVFHC develops a specific investigatory plan. MVFHC may decide to conduct testing to substantiate a claim of housing discrimination by duplicating the circumstances of a complaint, potentially finding additional evidence of discrimination. MVFHC maintains a diverse pool of testers to carry out its testing program.<sup>11</sup> On behalf of clients who have experienced housing discrimination and on its own behalf in cases arising from audit tests, MVFHC files complaints with HRC, OCRC and HUD. MVFHC's services to its clients are provided at no charge.

On its website MVFHC offers many housing-related resources, including an online complaint form and information on housing discrimination, information on reasonable accommodations and modifications for disability-related needs, information for real estate agents and landlords, and information on landlord/tenant issues. MVFHC's website includes Google's translation service.

## *C. Future of Local, State, and Federal Fair Housing Structure*

### *Regulatory Change and the Obligation to Affirmatively Further Fair Housing (AFFH)*

The process for getting certification of compliance with AFFH statutes and regulations is changing for entitlement jurisdictions including Montgomery County, the City of Dayton, and the City of Kettering. On July 8, 2015, HUD issued a new regulation, "Affirmatively Furthering Fair Housing—Final Rule."<sup>12</sup> In its summary of this rule, HUD describes it as having "an approach to more effectively and efficiently incorporate [...] the duty to affirmatively further the purposes and policies of the Federal Fair Housing Act." HUD describes the previous approach to AFFH—the one under which this AI has been completed—as having "not been as effective as originally envisioned." The new rule, HUD says, will "better inform program participants' planning processes with a view toward better aiding program participants to fulfill this statutory obligation" to affirmatively further fair housing.

*Changes in Compliance Process*

Instead of requiring an Analysis of Impediments, the new rule requires an **Assessment of Fair Housing (AFH)**. Each HUD program participant, including, for example, local public housing authorities such as Greater Dayton Premier Management, will decide whether to develop an AFH on its own or by partnering with jurisdictions regionally. Participants will also have to decide whether to have internal staff or outside consultants develop their AFHs. Smaller jurisdictions belonging to Ohio's Small Cities Community Development Block Grant Formula Allocation Program will have to wait until HUD releases a template for small cities before beginning the AFH process. A schedule for entitlement jurisdictions has been developed. The City of Hamilton will be the first in the region to go through the process, with its AFH due in 2017. Montgomery County, the City of Dayton and the City of Kettering will have their first AFHs due in 2020 or 2021.<sup>13</sup>

The new AFH rule allows for cooperation beyond a single county. A best practice in the future might be assessing the entire Metropolitan Statistical Area (MSA) as a whole. For the Dayton MSA that would include Miami, Greene and Preble counties in addition to the three entitlement jurisdictions covered by this AI. Examples of regional approaches that extend beyond county boundaries already exist in economic development, transit, and business development through planning commissions and boards.

Ohio State University describes planning commissions from a statutory point of view:

The powers and duties of planning commissions are explained in Ohio Revised Code 713. According to the statute, such planning commissions “may make studies, maps, plans, recommendations and reports concerning the physical, environmental, social, economic, and governmental characteristics, functions, services, and other aspects” of their particular area of concern. Such studies may extend well beyond municipal, county, or regional boundaries or may be limited to a specific location within the area.<sup>14</sup>

The Fair Housing Act addresses not just discrimination but also segregation. As shown in Section 1 on page 23, the Dayton MSA is hyper-segregated. All jurisdictions in the Dayton MSA are required to do Assessments of Fair Housing. Can any single jurisdiction in isolation set programs in motion that will truly ameliorate the effects of historic patterns of segregation, as required by the new AFFH rule? Now is the time for discussing the best approach regionally for AFFH compliance, so as to ensure compliance under the FHA for land use, planning, and zoning policies.

*Disparate Impact*

During the preparation of this AI, on June 25, 2015, the U.S. Supreme Court ruled, in *Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc.*, that disparate impact cases may be brought against jurisdictions that are obligated to affirmatively further fair housing.<sup>15</sup>

In this case the merits of HUD’s 2012 rule on “Implementation of the Fair Housing Act’s Discriminatory Effects Standard”<sup>16</sup> were debated. Although this rule was finalized in 2012, the discriminatory effects, or disparate impact, standard has been considered essential to fighting housing discrimination and patterns of segregation that have persisted in America for decades. Moreover, civil rights and fair housing advocates argue that “disparate impact claims are vital to dismantling policies and practices that sound like they have little to do with race at all, such as zoning laws that bar multi-family apartment construction in wealthier white suburbs.”<sup>17</sup>

Therefore decisions on the siting of housing in our region must be examined for disparate impact in order to ensure compliance with the Fair Housing Act.

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<sup>1</sup> Fair Housing and Equal Opportunity. U.S. Department of Housing and Urban Development. Retrieved from [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opp](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp).

<sup>2</sup> Fair Housing Assistance Program (FHAP). U.S. Department of Housing and Urban Development. Retrieved from [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opp/partners/FHAP](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/partners/FHAP).

<sup>3</sup> What is the Fair Housing Initiatives Program (FHIP)? U.S. Department of Housing and Urban Development. Retrieved from [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opp/partners/FHIP/fhip](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/partners/FHIP/fhip).

<sup>4</sup> HUD's Title VIII Fair Housing Complaint Process. U.S. Department of Housing and Urban Development. Retrieved from [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opp/complaint-process](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/complaint-process).

<sup>5</sup> Filing Your Housing Discrimination Complaint Online. U.S. Department of Housing and Urban Development. Retrieved from [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opp/online-complaint](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/online-complaint).

<sup>6</sup> Ending Housing Discrimination against Lesbian, Gay, Bisexual and Transgender Individuals and Their Families. U.S. Department of Housing and Urban Development. Retrieved from <http://www.hud.gov/lgbthousingdiscrimination>.

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<sup>7</sup> What Happens Next? Ohio Civil Rights Commission. Retrieved from <http://crc.ohio.gov/FilingaCharge/WhatHappensNext.aspx>.

<sup>8</sup> A General Overview of the Charge Filing Process for the Charging Party. Ohio Civil Rights Commission. Retrieved from <http://crc.ohio.gov/Portals/0/Flow%20Chart.pdf>.

<sup>9</sup> Complaint Process. City of Dayton, Human Relations Council. Retrieved from <http://daytonhrc.org/wp-content/uploads/2014/08/HRC-Complaintant-Brochure-.pdf>.

<sup>10</sup> HRC Civil Rights Discrimination Complaint Form. City of Dayton, Human Relations Council. Retrieved from <http://daytonhrc.org/civil-rights-enforcement/hrc-civil-rights-discrimination-complaint-form/>.

<sup>11</sup> Client Services. Miami Valley Fair Housing Center. Retrieved from [http://www.mvfairhousing.com/client\\_services.php](http://www.mvfairhousing.com/client_services.php).

<sup>12</sup> RIN No. 2501-AD33: Affirmatively Furthering Fair Housing. U.S. Department of Housing and Urban Development. Retrieved from [http://www.huduser.org/portal/sites/default/files/pdf/AFFH\\_Final\\_Rule.pdf](http://www.huduser.org/portal/sites/default/files/pdf/AFFH_Final_Rule.pdf).

<sup>13</sup> For more information, see ConPlans by HUD Region and Field Office 2016–2017 at [http://www.mvfairhousing.com/AI2015/ConPlans\\_by\\_HUD\\_region\\_and\\_field\\_office\\_2016-2017.PDF](http://www.mvfairhousing.com/AI2015/ConPlans_by_HUD_region_and_field_office_2016-2017.PDF).

<sup>14</sup> Davis, G.A. Planning Commission Basics. (2009). The Ohio State University. Retrieved from [http://ohioline.osu.edu/cd-fact/pdf/CDFS\\_1556\\_09.pdf](http://ohioline.osu.edu/cd-fact/pdf/CDFS_1556_09.pdf).

<sup>15</sup> *Texas Department of Housing and Community Affairs et al. v. Inclusive Communities Project, Inc.*, 576 U.S. \_\_\_\_ (2015). Retrieved from [http://www.supremecourt.gov/opinions/14pdf/13-1371\\_m64o.pdf](http://www.supremecourt.gov/opinions/14pdf/13-1371_m64o.pdf).

<sup>16</sup> RIN 2529-AA96: Implementation of the Fair Housing Act’s Discriminatory Effects Standard. (2013, February 15). *Federal Register* (Vol. 78, No. 32, pp. 11460–482). Retrieved from <http://portal.hud.gov/hudportal/documents/huddoc?id=discriminatoryeffectrule.pdf>.

<sup>17</sup> Badger, E. Supreme Court Upholds a Key Tool Fighting Discrimination in the Housing Market. (2015, June 25). *Washington Post*. Retrieved from <http://www.washingtonpost.com/news/wonkblog/wp/2015/06/25/supreme-court-upholds-a-key-tool-fighting-discrimination-in-the-housing-market/>.