

Qualified Renters Need Not Apply: Race and Housing Voucher Discrimination in the Metropolitan Boston Rental Housing Market*

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Black, Indigenous, and People of Color have long had to navigate the barriers of racist laws, policies, and actions in housing. Housing discrimination perpetuates segregation and contributes to maintaining the status quo of disparities with respect to health inequities as well as income, wealth, and opportunity gaps. The COVID-19 pandemic has put these inequities in stark relief. Data on the current status of such discrimination is valuable for policy makers who should develop anti-racist policies that dismantle structural racism and its attendant harms.

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Using matched-pair testing, we measured the level of discrimination based on race and income level in the Greater Boston rental housing market, where both race- and income-based housing discrimination is illegal. Data from the study shows high levels of discrimination against both Black people and individuals using housing vouchers throughout the pre-rental application process, with evidence of race-based discrimination in 71% of tests and voucher-based discrimination in 86% of the tests. In the vast majority of cases, real estate professionals discriminated against Black people and voucher holders, beginning with the initial interaction and continuing throughout the process. The promises of the Fourteenth Amendment, Civil Rights Act of 1866, and the Fair Housing Act remain unfulfilled, caught in a cycle of new forms of discriminatory behavior and enactment of policies and laws that are ineffective in combating discrimination. Policy makers should heed the findings from this study and work to enact measures that can curb housing discrimination effectively.

I. INTRODUCTION	37
II. BRIEF OVERVIEW OF RACE AND VOUCHER DISCRIMINATION	38
A. <i>Race Discrimination in Housing</i>	43
B. <i>A Brief Overview of Housing Vouchers</i>	47
C. <i>Voucher Discrimination</i>	48
III. METHODOLOGY.....	49
A. <i>Assembling Testers</i>	49
B. <i>Site Selection: Rental Ad Scraping, Selection, and Randomization</i>	51
C. <i>Conversion of Tester's Reports into Variables Used in Analysis</i>	52
IV. FINDINGS.....	52
A. <i>Measurement of Discrimination by Analysis Group</i>	52
B. <i>Initial Interactions with the Housing Provider</i>	53
C. <i>Opportunity to Visit the Site</i>	55
D. <i>Housing Provider On-Site Behavior</i>	56
E. <i>Measurement of Discrimination by HDTP</i>	61
V. TESTER ANECDOTES.....	61
A. <i>Biased Ghosting</i>	62
B. <i>Discrimination with a Smile</i>	63
C. <i>Differential Criteria</i>	63
D. <i>Outright Refusal</i>	64
E. <i>Steering</i>	65
VI. RECOMMENDATIONS.....	65
A. <i>Increase penalties and training for real estate professionals and prohibit them from charging broker's fees.</i>	65
B. <i>Strengthen anti-discrimination laws and fair housing enforcement and education and increase resources for testing.</i>	67
C. <i>Improve and streamline the system for using vouchers.</i>	68

VII. CONCLUSION.....	69
VIII. APPENDIX	70

I. INTRODUCTION

Housing has a major impact on a person’s health, economic, and social outcomes.¹ The inability to obtain quality housing has negative health and social consequences that can perpetuate the cycle of poverty and detachment from the labor market.² Discrimination prevents a person from living in a neighborhood that can provide easy access to economic and educational opportunities and lowers the ceiling on that individual’s future success.³ These negative effects harm not only the individual facing discrimination, but also society in general. This study, conducted by the Housing Discrimination Testing Program (HDTP), measured race and source of income discrimination in the Greater Boston rental market and examined whether source of income discrimination was a proxy for race-based discrimination. The results revealed a high level of discrimination based on both race and source of income (i.e., housing vouchers), and that source of income discrimination was not a proxy for race-based discrimination, as the impact of source of income on the level of discrimination was not equivalent to the impact of race across the variety of measures used in the study. Overall, the HDTP, a full-service non-profit fair housing organization, found that the housing providers discriminated based on source of income in 86% of the tests and based on race in 71% of the tests.

Section II of this Article briefly describes the history of race and source of income discrimination. Section III describes the design and parameters of the study. Section IV describes the study’s findings, including a wide disparity between the treatment of white testers with no voucher, Black testers and those with a voucher. For example, white market-rate testers were able to view 80% of the apartments they sought to visit, while similarly situated Black market-rate renters were only able to view 48% of the same apartments. Compared to market-rate testers, both Black and white voucher holders were only able to view a substantially lower fraction of the same apartments. Black voucher holders were able to view only 18% of the same apartments and white voucher holders viewed only 12%. Section V gives anecdotal examples from numerous testers who

1. See NAT’L FAIR HOUSING ALLIANCE, WHERE YOU LIVE MATTERS: 2015 FAIR HOUSING TRENDS REPORT 1 (2015), <https://nationalfairhousing.org/wp-content/uploads/2017/04/2015-04-30-NFHA-Trends-Report-2015.pdf> (“Where you live determines whether or not you have access to a high-performing school, fresh foods, reliable transportation, good job, quality health care, and recreation in a green space. It often determines even how long you will live.”).

2. See JOHN YINGER, CLOSED DOORS, OPPORTUNITIES LOST: THE CONTINUING COSTS OF HOUSING DISCRIMINATION 158 (Russel Sage Foundation, 1997) (referring to research that discrimination restricts the access of minority workers to suburban jobs and making the connection between housing discrimination leading to lower educational attainment for minorities having an indirect impact on the labor market).

3. See Raj Chetty, John N. Friedman, Nathaniel Hendren, Maggie R. Jones & Sonya R. Porter, *The Opportunity Atlas: Mapping the Childhood Roots of Social Mobility* 1 (Nat’l Bureau of Econ. Rsch., Working Paper No. 25147, 2018), https://opportunityinsights.org/wp-content/uploads/2018/10/atlas_paper.pdf.

participated in the study. Finally, Section VI gives policy recommendations to address the discrimination the study revealed.

II. BRIEF OVERVIEW OF RACE AND VOUCHER DISCRIMINATION

The place where a person lives impacts much more than their future success or long-term well-being. It can contribute to their vulnerability to a host of other immediate adversities. The coronavirus (COVID-19) pandemic and the protests that swept the country following the killings of Ahmaud Arbery, George Floyd, Tony McDade, Breonna Taylor, and so many others painfully illuminated the related inequities that have always existed in American society, and in particular residential segregation.⁴

The current pandemic only emphasized the long-standing structural inequities that leave low-income people and Black, Indigenous, and People of Color (BIPOC) vulnerable in our country. The Centers for Disease Control and Prevention (CDC) highlighted living conditions as an important factor for determining health,⁵ recognizing that, among other factors, “residential segregation is a fundamental cause of health disparity.”⁶ In particular, residential segregation and structural disadvantages lay the groundwork for racial disparities in exposure to infectious diseases.⁷ The COVID-19 pandemic has shown that a person’s neighborhood, often segregated by race and/or socioeconomic status, can have an enormous impact on a person’s health. According to the CDC, COVID-19 has disproportionately affected people of color.⁸ As of November 30, 2020, Black or African American, Non-Hispanic people accounted for 1.4 times the rate ratio of known COVID-19 cases in the United States as compared to white, Non-Hispanic people.⁹ Further, they had a hospitalization rate of 3.7 times that of white, Non-Hispanic people, are 2.8 times more likely to die from COVID-19,¹⁰ and are also

4. See generally NAT’L ADVISORY COMM’N ON CIVIL DISORDERS, REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS 207-8 (1968) [hereinafter Kerner Report] (“The events of the summer of 1967 are in large part the culmination of 300 years of racial prejudice.” The Commission goes on to state: “Racial violence was present almost from the beginning of the American experience” and outlines hundreds of years of racial prejudice against Black people in America.)

5. Ctr. for Disease Control and Prevention, *Health Equity Considerations and Racial and Ethnic Minority Groups* (July 24, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/racial-ethnic-minorities.html> [hereinafter CDC COVID-19 Data].

6. *Id.*

7. D. Acevedo-Garcia, *Residential segregation and the epidemiology of infectious diseases*, 51 Soc. Sci. Med. 1143, 1143–1161 (2000).

8. See Erin K. Stokes, Laura D. Zambrano, Kayla N. Anderson, Ellyn P. Marder, Kala M. Raz, Suad El Burai Felix, Yunfeng Tie & Kathleen E. Fullerton, *Coronavirus Disease 2019 Case Surveillance — United States, January 22–May 30, 2020*, 69 Morbidity & Mortality Wkly. Rep. 759, 763 (2020). See also CDC COVID-19 Data, *supra* note 5 (recognizing that there is increasing evidence that some racial and ethnic minority groups are disproportionately affected by COVID-19 and identifying discrimination, including in housing, as a contributing factor to that risk.); Ctr. for Disease Control and Prevention, *COVID-19: Demographic Trends of COVID-19 cases and deaths in the US reported to CDC*, <https://www.cdc.gov/covid-data-tracker/index.html#demographics> (last visited Dec. 7, 2020).

9. Ctr. for Disease Control and Prevention, *COVID-19: Hospitalization and Death by Race/Ethnicity* (Nov. 30, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html#footnote01>.

10. *Id.*

much more likely to contract the disease.¹¹ While the data are incomplete due to inconsistent reporting, it is incontrovertible that the burden of COVID-19 has disproportionately fallen on minority communities.¹² In New York City for example, Latinx and Black people represent 34% and 29% of the COVID-19 deaths but comprise only 28% and 22% of the population respectively.¹³ Additionally, a survey of 14 states found that, where race was reported, 33.1% of hospitalized COVID-19 patients were non-Hispanic Black people.¹⁴

Also, a recent investigation of New York and Illinois found geographic county and socioeconomic measures—specifically social crowding,¹⁵ demographics, and a measure of racialized economic segregation—were indicative of higher COVID-19 infections and mortality.¹⁶ In Massachusetts, researchers found higher mortality rates in areas with higher percentages of people of color, poverty, crowding, and racialized economic segregation.¹⁷ According to one Boston study, “Boston has the highest density of physicians per population compared to any other city in the United States,” but it “also has high concentrations of poverty correlated with concentrations of poor health, including diabetes and premature death.”¹⁸ The experience of Chelsea, a city just outside Boston, illustrates the correlation between socioeconomic status, race, and infection rates.¹⁹ People of color make

11. Clyde W. Yancy, *COVID-19 and African Americans*, 323 *J. of the Am. Med. Assn.* 1891, 1891 (2020).

12. See Utibe R. Essien & Atheendar Venkataramani, *Data and Policy Solutions to Address Racial and Ethnic Disparities in the COVID-19 Pandemic*, *JAMA NETWORK* (Apr. 28, 2020), <https://jamanetwork.com/channels/health-forum/fullarticle/2765498>; See also Reis Thebault, Andrew Ba Tran & Vanessa Williams, *The coronavirus is infecting and killing black Americans at an alarmingly high rate*, *WASH. POST* (Apr. 7, 2020), <https://www.washingtonpost.com/nation/2020/04/07/coronavirus-is-infecting-killing-black-americans-an-alarmingly-high-rate-post-analysis-shows/?arc404=true>; see also, Maria Godoy & Daniel Wood, *What Do Coronavirus Racial Disparities Look Like State by State*, *NPR* (May 30, 2020, 6:00 AM), <https://www.npr.org/sections/health-shots/2020/05/30/865413079/what-do-coronavirus-racial-disparities-look-like-state-by-state>.

13. Daniel Carrión, Elena Colicino, Nicolo Foppa Pedretti, Kodi B. Arfer, Johnathan Rush, Nicholas DeFelice & Allan C. Just, *Assessing capacity to social distance and neighborhood-level health disparities during the COVID-19 pandemic*, 2 medRxiv 1 (preprint 2020), <https://ncbi.nlm.nih.gov/pmc/articles/PMC7302284>.

14. *Id.*

15. *COVID-19’s Disparate Impact on Low-Income Communities of Color*, *BOSTON INDICATORS* (Aug. 12, 2020), https://www.bostonindicators.org/reports/report-website-pages/covid_indicators-x2/2020/august/equity-brief (Crowding is defined here as “the number of housing units with more than 1.0 occupants per room (including bedrooms, living rooms, kitchens and bathrooms”).).

16. Jarvis T. Chen & Nancy Krieger, *Revealing the unequal burden of COVID-19 by income, race/ethnicity, and household crowding: US county vs. ZIP code analyses 1-9* (Harvard Ctr. for Population & Dev. Stud., Working Paper 2020), https://cdn1.sph.harvard.edu/wp-content/uploads/sites/1266/2020/04/HCPDS_Volume-19_No_1_20_covid19_RevealingUnequalBurden_HCPDSWorkingPaper_04212020-1.pdf.

17. Jarvis T. Chen, Pamela D. Waterman & Nancy Krieger, *COVID-19 and the unequal surge in mortality rates in Massachusetts, by city/town and ZIP Code measures of poverty, household crowding, race/ethnicity, and racialized economic segregation 1-9* (Harvard Ctr. for Population & Dev. Stud., Working Paper 2020), https://cdn1.sph.harvard.edu/wp-content/uploads/sites/1266/2020/05/20_jtc_pdw_nk_COVID19_MA-excess-mortality_text_tables_figures_final_0509_with-cover-1.pdf.

18. Rebekah Rollston and Sandro Galea, *COVID-19 and the Social Determinants of Health*, 34 *AM. J. OF HEALTH PROMOTION* 687, 687 (2020).

19. See Simón Rios and Tibusay Zea, *As COVID-19 Cases Mount in Chelsea, City Leaders Cry for Help*, *WBUR* (Apr. 10, 2020), <https://www.wbur.org/news/2020/04/10/covid-19-coronavirus-chelsea-massachusetts>; see

up 79% of Chelsea's population, but only 28% of the population statewide.²⁰ Chelsea has had the highest COVID-19 case rate in Massachusetts with 756 cases per 10,000 residents (the statewide rate was 159 per 10,000).²¹ Chelsea also has the highest rate of "crowding" within homes, which, when a person in the household becomes ill, can make social distancing difficult.²² Disparities also exist in the location of testing sites. An NPR investigation in Texas found, for example, that testing sites were disproportionately located in predominantly white neighborhoods.²³ A similar study in Texas found that rural counties and those with a larger non-white or uninsured populations faced higher travel times to test sites, suggesting that cases are potentially under-counted in these areas.²⁴

We are also witnessing the grave consequences of segregation and discrimination across all levels of society in the continued and senseless killings of Black Americans by white people and by police officers, individuals whose duties are characterized as service and protection to all people within our communities. Indeed, research from Boston University's School of Public Health found that states with higher degrees of structural racism, particularly residential segregation, have increased disparities in fatal police shootings of unarmed people.²⁵ On June 12, 2020, an Atlanta police officer shot Rayshard Brooks twice in the back and killed him.²⁶ On May 25, 2020, Minneapolis police officers killed George Floyd by pinning him to the ground with a knee on his neck for eight minutes and 46 seconds, despite his pleas that he could not breathe.²⁷ On March 13, 2020, plainclothes Louisville police officers shot and killed Breonna Taylor in her bed, after they entered her house using a no-knock warrant.²⁸ These are just

also Ellen Barry, *In a Crowded City, Leaders Struggle to Separate the Sick from the Well*, N.Y. TIMES (Apr. 28, 2020), <https://www.nytimes.com/2020/04/25/us/coronavirus-chelsea-massachusetts.html>.

20. BOSTON INDICATORS, *supra* note 15.

21. *Id.*

22. See Haru Coryne, *In Chicago, Urban Density May Not Be to Blame for the Spread of the Coronavirus*, PROPUBLICA (Apr. 30, 2020, 3:00 PM), <https://www.propublica.org/article/in-chicago-urban-density-may-not-be-to-blame-for-the-spread-of-the-coronavirus> (finding that crowding as opposed to density of housing better explained higher infection rates).

23. Sean McMinn, Audrey Carlsen, Bret Jaspers, Ruth Talbot & Stephanie Adeline, *In Large Texas Cities, Access to Coronavirus Testing May Depend on Where You Live*, NPR (May 27, 2020, 5:00 AM), <https://www.npr.org/sections/health-shots/2020/05/27/862215848/across-texas-black-and-hispanic-neighborhoods-have-fewer-coronavirus-testing-sit>.

24. Benjamin Rader, Christina M. Astley, Karla Therese, Kara Sewalk, Yulin Hswen, John S. Brownstein & Moritz U.G. Kraemer, *Geographic access to United States SARS-CoV-2 testing sites highlights healthcare disparities and may bias transmission estimates*, 27 J. OF TRAVEL MED 1, 2 (2020).

25. See Aldina Mesic, Lydia Franklin, Alev Cansever, Fiona Potter, Anika Sharma, Anita Knopov & Michael Siegel, *The Relationship Between Structural Racism and Black-White Disparities in Fatal Police Shootings at the State Level*, 110 J. OF THE NAT'L AM. MED. ASSN. 106, 112 (2018).

26. Richard Fausset et al., *Atlanta Police Chief Resigns After Officer Shoots and Kills a Black Man*, N.Y. TIMES (June 22, 2020) <https://www.nytimes.com/2020/06/13/us/atlanta-police-shooting-rayshard-brooks.html>.

27. Vanessa Romo, *County Officials Rule George Floyd Death Was A Homicide*, NPR (June 1, 2020, 4:53 PM), <https://www.npr.org/2020/06/01/867219130/george-floyd-independent-autopsy-homicide-by-asphyxia>.

28. Darcy Costello and Tessa Duvall, *Minute by minute: What happened the night Louisville police fatally shot Breonna Taylor*, Louisville Courier Journal (Sep. 15, 2020, 3:05 PM), <https://www.courier-journal.com/story/news/2020/05/14/minute-minute-account-breonna-taylor-fatal-shooting-louisville-police/5182824002/>.

three examples in a long list of recent extrajudicial killings of Black people. They are painful reminders of the systemic inequity that exists in our society and the trends that will continue without targeted and sustained government action and a concerted change in the actions of individuals to dismantle that structural racism.

Combating residential segregation is truly a matter of life and death. Segregation, discrimination, and killings of Black people are not isolated incidents from our past, but are ongoing, interconnected actions that must be addressed today.²⁹ To address segregation and discrimination in the housing market, particularly that of the Greater Boston area, this Article will analyze a study conducted of the pre-rental application process of Black and low-income prospective renters and the level of discrimination the study revealed. Data from this study demonstrates that housing discrimination is still occurring at alarmingly high rates in Greater Boston. Federal, state, and local governments created and nurtured the racist policies that led to the segregated society that we live in.³⁰ It reasonably follows that relying on individual private enforcement of fair housing violations is not and cannot be enough to undo hundreds of years of racist legislation, policies, and behaviors. Dr. King wrote “[h]ousing is too important to be left to private enterprise with only minor government effort to shape policy.”³¹ The government can and must do more. “There is no such thing as a nonracist or race-neutral policy. Every policy in every institution in every community in every nation is producing or sustaining either racial inequity or equity between racial groups.”³² Laws outlawing race-based discrimination in housing have been in place for over 150 years. If the laws and the enforcement of those laws were working, this study would not demonstrate what many know to be true: that race discrimination is rampant throughout the housing market.

This study measures the levels of discrimination in the Greater Boston rental housing market based on race and source of income (i.e., the use of a housing voucher). Data from this study show that high levels of discrimination exist throughout the pre-rental application process against both Black people and individuals using housing vouchers,³³ beginning with the very first interaction between a prospective tenant and the person advertising housing (hereinafter housing provider).³⁴ In the vast majority of cases, real estate professionals—people working on behalf of property owners to find tenants—perpetuated the discrimination.

29. See, e.g., Monica C. Bell, *Anti-Segregation Policing*, 95 N.Y.U. L. REV. 650, 672 (2020) (“When groups of people are cordoned off into stigmatized places, “correlated adversity” or “compounded deprivation” emerges, affecting family formation, school test scores, mental and physical health, crime, employment, and even speech patterns.”).

30. See, e.g., RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* (1st ed. 2017).

31. MARTIN LUTHER KING, JR., *WHERE DO WE GO FROM HERE: CHAOS OR COMMUNITY?* 214 (Beacon Press 2010).

32. IBRAM X. KENDI, *HOW TO BE AN ANTIRACIST* 18 (One World 2019).

33. Housing vouchers are documents reflecting a subsidy that is issued by the government to assist very low-income families, the elderly, and disabled people in renting housing in the private market. See *Housing Choice Vouchers Fact Sheet*, U.S. DEP’T OF HOUS. & URB. DEV., https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/about/fact_sheet (last visited Dec. 7, 2020) [hereinafter HUD Fact Sheet].

34. “Housing provider” refers to the people that advertise and/or show apartments to prospective renters. This term includes owners, real estate agents and brokers, and property managers.

A variety of factors affect an individual's housing choice, including affordability, proximity to work or family, quality of schools, and the availability of green spaces.³⁵ In a fair housing market, all prospective renters should have equal opportunity to choose where they want to live based on the factors that are most important to them (including affordability). These prospective renters should also have the same opportunities to make appointments to view, collect information on, and submit an application for a rental property. Housing providers should select tenants based on their ability to pay the rent, and the belief that the tenant will be a good caretaker of the property and a good neighbor to others. Through data gathered from "matched pair"³⁶ testing conducted from August 2018 to July 2019, this study demonstrates, however, that the reality is far from this ideal in the Greater Boston area. Findings from this study indicate that prospective tenants face high levels of illegal discrimination based on factors unrelated to their ability to afford the rent or their rental history. Specifically, the study shows that applicants were screened out and improperly treated based on their use of a housing voucher and/or their race.

Testing uncovered evidence of discrimination based on voucher status in 86% of the tests. In many instances, housing providers screened out voucher holders by ceasing all communication with them after learning that the individuals intended to use a voucher. There was evidence of discrimination based on the prospective renter's race in 71% of the tests. The data also suggests that voucher discrimination is not a proxy for race discrimination as the impact of source of income on the level of discrimination was not equivalent to the impact of race across the variety of measures used in the study.

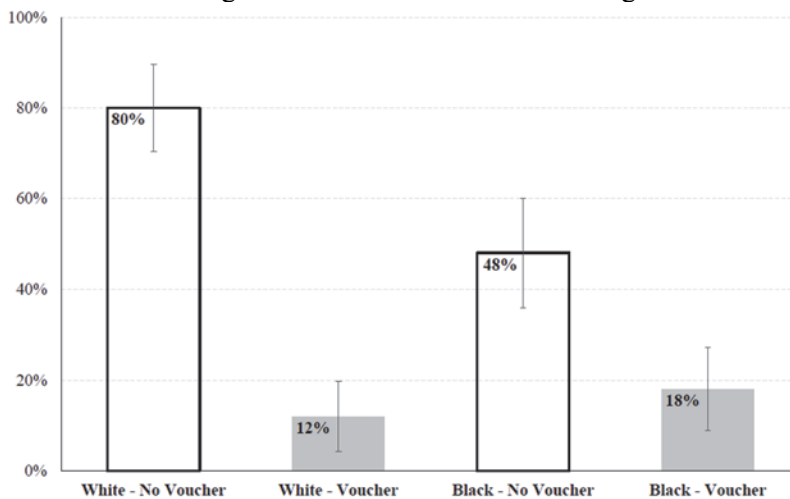
Results indicate that white market-rate testers (meaning white testers not using vouchers) were able to arrange to view apartments 80% of the time. Similarly situated Black market-rate testers seeking to view the same apartments were only able to visit the property 48% of the time. Meanwhile, testers who had vouchers, regardless of their race, were prevented from viewing apartments at very high rates. Specifically, white voucher holders were able to view rental apartments only 12% of the time, and Black voucher holders were able to view such apartments 18% of the time (see Figure 1 below). In addition, housing providers showed white market-rate testers twice as many apartment units as Black market-rate testers and provided them with better service as measured by a number of different testing variables.³⁷ The results also show that testers who were offered site visits by the housing provider received differential treatment at the visit based on race and voucher status.

35. See MICHAEL LEPLÉY & LENORE MANGIARELLI, THE HOUSING CTR., HOUSING VOUCHER DISCRIMINATION AND RACE DISCRIMINATION IN CUYAHOGA COUNTY 3-4 (2017), <http://www.thehousingcenter.org/wp-content/uploads/2017/12/Voucher-and-Race-Discrimination.pdf> (authors surveyed 532 voucher holders regarding desired neighborhood traits and found that 73% wanted low crime, 51.7% wanted quality schools – other responses included proximity to public transportation, schools, grocery stores, parks, and hospitals).

36. See *infra* Section III.

37. See *infra* Section II.C.

Figure 1:³⁸
Percentage of Testers Who Visited Housing Site



The testing that is the basis for this research all occurred in jurisdictions that have laws prohibiting both race-based and voucher-based discrimination. More must be done to ensure that those in the business of providing housing comply with their legal obligations.

A. Race Discrimination in Housing

Technically, housing discrimination based on a person’s race first became illegal in the 1800s. The Civil Rights Act of 1866 declared that all people born in the U.S. had the same rights as white citizens, regardless of race and color.³⁹ The Act stated, “all persons born in the United States . . . shall have the same right, in every State and Territory in the United States, to make and enforce contracts, to sue, be parties, and give evidence, inherit, purchase, lease, hold, and convey real and personal property . . . as is enjoyed by white citizens . . .”⁴⁰ Notably, although the word all was used, Native Americans were specifically excluded. Further, the law made discrimination in housing based on race illegal, but it did not provide for any federal penalties for violations. This meant that individuals had to seek legal relief and enforcement of this law.

Although the federal government passed this legislation, federal, state, and local authorities also ignored private actions that violated that law and passed laws that legalized race-based discrimination. For example, “sundown towns” were established across the United States beginning around 1890 and continued to exist

38. The error bars in the figures represent the 90% confidence intervals around the estimated percentages. The 90% confidence intervals are shown because of the small sample sizes. The confidence interval provides a measure of the uncertainty associated with the estimated parameter and shows the range of likely values for the population parameter.

39. 42 U.S.C. § 1982.

40. *Id.*

until at least 1968.⁴¹ “A sundown town is any organized jurisdiction that for decades kept African Americans or other groups from living in it”⁴² Many of these jurisdictions were integrated communities prior to becoming sundown towns.⁴³ White residents, often violently, would riot and drive their Black neighbors out of the town.⁴⁴ The name said it all—African Americans were not allowed within a sundown town’s city limits after sunset, which meant people of color could work in those towns, but not live in them.

Exclusionary zoning laws, passed at the city level, which prohibited the sale of property to people of color, are another example of legal tools used to exclude and segregate people based on race.⁴⁵ The Supreme Court eventually declared such zoning ordinances unconstitutional in 1917 in the case of *Buchanan v. Warley*.⁴⁶ The Buchanan case involved the sale of real estate by a white man to a person of color. In the case, Mr. Warley, a Black man, made an offer in writing to purchase property from Mr. Buchanan, a white man.⁴⁷ The offer from Mr. Warley included his proposal to use the property as his residence.⁴⁸ At the time of the sale, the city of Louisville had an ordinance that would have prohibited Mr. Warley from residing on the property.⁴⁹ The verbose title of the ordinance makes clear the intention to segregate Black and white residents to whatever extent possible:

An ordinance to prevent conflict and ill-feeling between the white and colored races in the city of Louisville, and to preserve the public peace and promote the general welfare, by making reasonable provisions requiring, as far as practicable, the use of separate blocks, for residences, places of abode, and places of assembly by white and colored people respectively.⁵⁰

Mr. Warley withdrew his offer after acceptance due to the city ordinance and Mr. Buchanan sued him for specific performance.⁵¹ Although the Court found that exclusionary zoning laws violated the Fourteenth Amendment of the Constitution, it did so while agreeing with the argument that this effort towards segregation was meant to promote public peace by preventing race conflicts—and the Court noted that aim was desirable.⁵²

After *Buchanan*, many homeowners began using restrictive covenants in their deeds that included commitments from homeowners to never sell or lease their houses to African Americans.⁵³ In 1926, the Supreme Court ruled that such restrictive covenants did not violate the Constitution because they were private

41. JAMES W. LOEWEN, *SUNDOWN TOWNS: A HIDDEN DIMENSION OF AMERICAN RACISM* 4 (Touchstone 1st ed. 2006).

42. *Id.*

43. *See id.* at 9.

44. *Id.* at 92.

45. ROTHSTEIN, *supra* note 30, at 53.

46. 245 U.S. 60, 82 (1917).

47. *Id.* at 72-73.

48. *Id.* at 69.

49. *Id.* at 70.

50. *Cf. id.* at 70.

51. *Id.*

52. *Id.* at 81.

53. See ROTHSTEIN, *supra* note 30, at 78.

agreements, not government action.⁵⁴ The Court stated that although the Thirteenth and Fourteenth Amendments granted Black citizens equal rights with white citizens to hold property and make contracts, those Amendments do not prohibit contracts entered into by private individuals, even if those contracts prohibited the sale or lease of property based on race.⁵⁵ It was not until over 20 years later, in 1948, that the Court found that judicial enforcement of the contracts that included restrictive covenants was a state action and violated the Fourteenth Amendment.⁵⁶

The 1930s brought the New Deal and the founding of the Federal Housing Administration, an agency created to address the needs of middle-class Americans who could not afford to purchase single-family homes.⁵⁷ The Federal Housing Administration's underwriting manual and influence over mortgages created white suburbs and Black city centers through a process known as redlining.⁵⁸ Redlining was eventually outlawed in 1968 with the passage of Title VIII, also known as the Fair Housing Act (FHA).⁵⁹ The FHA is a much more comprehensive and effective fair housing law than the Civil Rights Act of 1866, because of the penalties and remedies that it provides. It provides causes of action for both private enforcement and complaints initiated by government agencies on behalf of its residents.⁶⁰

It was also in 1968 when residential segregation along racial and income lines emerged as a significant national concern. In that year, the National Advisory Commission on Civil Disorders, formed in response to growing violence and civil unrest in cities, released a report declaring that the United States was "moving toward two societies, one Black, one white—separate and unequal."⁶¹ The Commission identified "pervasive discrimination and segregation" in housing as one of the main causes of this division.⁶²

High levels of residential segregation persist across the country to the present day, despite the passage of the FHA and corresponding state and local laws, which have prohibited housing discrimination for decades.⁶³ According to a 2015 report of the Center for American Progress, a non-partisan public policy research and advocacy organization, residential segregation has actually increased over the

54. *Corrigan v. Buckley*, 271 U.S. 323, 331-32 (1926).

55. *Id.* at 331.

56. *See Shelley v. Kraemer*, 334 U.S. 1, 23 (1948).

57. *See* ROTHSTEIN, *supra* note 30, at 64.

58. *Id.* at 65. Redlining got its name from the color of ink used to draw lines around neighborhoods that indicated desirable or undesirable areas for home mortgages. The decision was based on the racial make-up of the neighborhoods.

59. Fair Housing Act of 1968, Pub. L. No. 90-284, §§ 801-19, 82 Stat. 73, 81-89 (1968) [hereinafter FHA]. The FHA, as amended, is codified at 42 U.S.C. §§ 3601-19 (2012).

60. *Id.* at §§ 3610 – 3614.

61. Kerner Report, *supra* note 4, at 1.

62. *Id.* at 9.

63. The Fair Housing Act provides protections in the housing context, but only on the basis of race, color, national origin, religion, disability, familial status, and sex. Massachusetts' anti-discrimination law provides protections based on those classes and also based on age, ancestry, gender identity, sexual orientation, marital status, military status, receipt of public assistance, and genetic information. *See* FHA, Title VIII of the Civil Rights Act of 1968, Pub. L. No. 90-284, 82 Stat. 73, 81-89 (1968), codified as amended at 42 U.S.C. § 3604(a) (2000); Mass. Gen. Laws ch. 151B, § 4(6), (10), (11) (2012).

previous three decades, creating a deeply divided America along both racial and income lines.⁶⁴

Greater Boston is not exempt from this problem. A 2015 index created by the financial news website 24/7 Wall Street identified the Boston-Cambridge-Newton area of Massachusetts as the seventh most segregated area in the country.⁶⁵ The Urban Institute ranked 274 of the largest U.S. cities based on racial, economic, and overall inclusion.⁶⁶ Boston ranked 204th out of the 274 cities for racial inclusion.⁶⁷ Boston's schools also reflect the high level of segregation in the city. A 2018 report by The Boston Globe found that almost 60% of schools in the Boston Public Schools system are "intensely segregated," meaning that students of color make up almost 90% of those schools' student populations.⁶⁸ A 2020 Boston Indicators report on changes in the school-aged population in the city also found intensifying segregation in schools by both race and income.⁶⁹ Black and Latinx students most often attended schools where the majority of students were of their own race and low-income families are increasingly attending schools in which low-income students constitute the vast majority of the student population.⁷⁰

The highly segregated society in which we live in today did not occur organically. Racist laws, court enforced racist private agreements, and racist policies all contributed to the racist patterns that persist today. The Center for Investigative Reporting found that in 2018, fifty years after the FHA outlawed redlining, it still persisted in 61 metro areas.⁷¹ This study examining the Greater Boston area also demonstrates that race-based discrimination is still occurring in the housing market more than fifty 50 years after the FHA outlawed that action (and more than 150 years after the Civil Rights Act of 1866).

64. David Sanchez, Tracey Ross & Julia Gordon with Sarah Edelman, Michela Zonta & Andrew Schwartz, *Opportunity Agenda for Renters*, CTR. FOR AM. PROGRESS 3 (Dec. 2015), <https://cdn.americanprogress.org/wp-content/uploads/2015/12/16050037/LowIncomeRenters-report1.pdf>.

65. Alexander Kent & Thomas C. Frohlich, *America's Most Segregated Cities*, 24/7 Wall Street (Dec. 4, 2019, 9:54 AM), <https://247wallst.com/special-report/2015/08/19/americas-most-segregated-cities/2/>.

66. *Measuring Inclusion in America's Cities*, URBAN INSTITUTE (Sept. 15, 2020), <https://apps.urban.org/features/inclusion/?topic=map>.

67. *What Would Providing Every City with High-Quality, Zero Emissions Public Transportation Look Like*, URBAN INSTITUTE (Nov. 23, 2020), https://apps.urban.org/features/inclusion/index.html?city=boston_MA.

68. James Vaznis, *Boston's schools are becoming resegregated*, BOSTON GLOBE (Aug. 4, 2018, 7:17 PM), <https://www.bostonglobe.com/metro/2018/08/04/boston-schools-are-becoming-resegregated/brwPhLuupRzkOtSa9Gi6nL/story.html#:~:text=An%20alarming%20pattern%20of%20racial,did%20prior%20to%20court%2Dordered>.

69. Peter Ciurczak, Antoniya Marinova & Luc Schuster, *Kids Today Boston's Declining Child Population and Its Effect on School Enrollment*, BOSTON INDICATORS 26 (Jan. 2020), <https://www.bostonindicators.org/-/media/indicators/boston-indicators-reports/report-files/kids-today.pdf?la=en&hash=AFEE64818EA25B5A8428ABDE8A51D5D142305CB3>.

70. *Id.* at 28.

71. Aaron Glantz & Emmanuel Martinez, *Kept Out: For people of color, banks are shutting the door to homeownership*, REVEAL NEWS (Feb. 15, 2018), <https://www.revealnews.org/article/for-people-of-color-banks-are-shutting-the-door-to-homeownership/>.

B. A Brief Overview of Housing Vouchers

The Housing Choice Voucher Program (HCV) is a long-standing federal government program aimed at providing access to quality housing to low-income families. It sits under the purview of the U.S. Department of Housing and Urban Development (HUD), which “pays rental subsidies so eligible families can afford decent, safe, and sanitary housing.”⁷² Congress created the program in the 1970s to help low-income families access private housing.⁷³ State or local governmental entities (housing agencies) administer the HCV program (often referred to as Section 8).⁷⁴ Eligibility for a housing voucher is determined based on total annual gross income and family size with eligibility thresholds varying by location.⁷⁵ Once approved, individuals or families must find a place to live within a certain price range and then seek approval of that unit from the housing agency.⁷⁶ If the apartment meets the agency’s quality and payment standards,⁷⁷ the agency contracts with the owner and pays a portion of the rent directly to the owner.⁷⁸

The present-day impact of the HCV is far-reaching. The program is the nation’s largest rental assistance program providing subsidies to more than 5 million people in 2.2 million low-income households.⁷⁹ According to the Center on Budget and Policy Priorities,⁸⁰ “[c]hildren in families that use housing vouchers to move to better neighborhoods are more likely to attend college, less likely to become single parents, and earn more as adults.”⁸¹ The HCV is becoming increasingly important as the cost of housing has risen rapidly across the country. According to a 2019 report from the National Low Income Housing Coalition, “[i]n no state, metropolitan area, or county in the U.S. can a worker earning the federal or prevailing state minimum wage afford a modest two-bedroom rental home at fair market rent by working a 40-hour work week.”⁸² With quality housing

72. 24 C.F.R. § 982.1 (2015).

73. Linda Couch, *Housing Choice Vouchers*, *National Low Income Housing Coalition* 16 (2015), https://nlihc.org/sites/default/files/Sec4.12_Housing-Choice-Vouchers_2015.pdf.

74. 24 C.F.R. § 982.1 (2015).

75. 24 C.F.R. § 982.201 (2016).

76. 24 C.F.R. § 982.302 (2015).

77. 24 C.F.R. § 982.4 (2015) (“payment standard” is defined as “[t]he maximum monthly assistance payment for a family assisted in the voucher program (before deducting the total tenant payment by the family)”).

78. HUD Fact Sheet, *supra* note 33.

79. *Housing Choice Voucher Fact Sheet*, CTR. ON BUDGET & POL’Y PRIORITIES (Aug. 9, 2017), <https://www.cbpp.org/housing-choice-voucher-fact-sheets> [hereinafter CBPP Fact Sheet]. Although the HCV program is the nation’s largest rental assistance program, the largest housing subsidy program is the Mortgage Interest Deduction program, which largely benefits high income Americans. Danya Keene, *Affordable Housing is at Crisis Levels – here’s how tax reform can help*, THE HILL (Nov. 10, 2017, 4:40 PM), <https://thehill.com/opinion/healthcare/359836-affordable-housing-is-at-crisis-levels-reforming-mortgage-interest>.

80. The CBPP’s stated mission is to work toward federal and state policies to reduce poverty and inequality. *See About the Center*, CTR. ON BUDGET & POL’Y PRIORITIES, <https://www.cbpp.org/about/mission-history> (last visited Dec. 7, 2020).

81. CBPP Fact Sheet, *supra* note 79.

82. NAT’L LOW INCOME HOUSING COALITION, *OUT OF REACH 2* (2019), https://reports.nlihc.org/sites/default/files/oor/OOR_2019.pdf; *see also* JOINT CTR. FOR HOUSING STUD. OF HARVARD UNIV., *AMERICA’S RENTAL HOUSING 2020* 38 (2020),

out of reach for many low-income families, the promise and the benefits of the HCV program are becoming more critical.

C. Voucher Discrimination

Although the HCV is a federal program with proven benefits, there is no federal law prohibiting discrimination against those using housing vouchers. Legislation protecting voucher holders from discrimination exists only at the local or state level. Currently, sixteen states, including Massachusetts, prohibit discrimination based on source of income.⁸³ In addition, many cities and counties—including Boston, Cambridge, Quincy, and Revere in Massachusetts—have local ordinances prohibiting housing discrimination based on source of income.⁸⁴ Nationally, only about 50% of voucher holders live in a jurisdiction that protects voucher holders from discrimination.⁸⁵

The fact that there is no federal protection against housing discrimination based on source of income exists is important, because studies indicate that individuals seeking rental housing with the aid of a voucher face strong stigma associated with receiving public assistance⁸⁶ and many owners will not accept vouchers.⁸⁷ In areas without legal protections for individuals who are denied housing due to their voucher status, there is no legal recourse to combat the discrimination that they face in the housing market. While there is some evidence that living in a jurisdiction with laws against discrimination based on source of income provides individuals with vouchers easier access to rental units,⁸⁸ the effectiveness of such laws in fighting discrimination depends critically on the knowledge and enforcement of these laws.

https://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_Americas_Rental_Housing_2020.pdf [hereinafter America's Rental Housing 2020].

83. *Expanding Choice: Practical Strategies for Building a Successful Housing Mobility Program, Appendix B, State, Local, and Federal Laws Barring Source-of-Income Discrimination*, POVERTY & RACE RES. ACTION COUNCIL 2 (Nov. 2020), <https://prrac.org/pdf/AppendixB.pdf> [hereinafter PRRAC].

84. *Id.* at 2 - 5 (PRRAC identified local ordinances in 95 cities and counties).

85. *Id.* at 1.

86. See Emily Badger, *How Section 8 became a 'racial slur'*, WASH. POST (June 15, 2015, 7:53 AM), <https://www.washingtonpost.com/news/wonk/wp/2015/06/15/how-section-8-became-a-racial-slur/>; see also Norrinda Brown Hayat, *Section 8 is the New N-Word: Policing Integration in the Age of Black Mobility*, 51 WASH. U. J. L. & POL'Y 61 (2016).

87. U.S. DEP'T OF HOUSING & URB. DEV., A PILOT STUDY OF LANDLORD ACCEPTANCE OF HOUSING CHOICE VOUCHERS xi (2018), <https://www.huduser.gov/portal/sites/default/files/pdf/Landlord-Acceptance-of-Housing-Choice-Vouchers.pdf> [hereinafter Voucher Pilot Study].

88. See Alison Bell, Barbara Sard & Becky Koepnick, *Prohibiting Discrimination against Renters Using Housing Vouchers Improves Results*, CTR. ON BUDGET & POL'Y PRIORITIES (Dec. 20, 2018), <https://www.cbpp.org/research/housing/prohibiting-discrimination-against-renters-using-housing-vouchers-improves-results>.

III. METHODOLOGY

The FHA entitles all people to truthful information about housing.⁸⁹ It also prohibits differential treatment based on a protected class.⁹⁰ A “protected class” is a category of people who benefit from protection under anti-discrimination laws. Housing discrimination against protected classes can take many forms.⁹¹ It is sometimes overt but often takes the form of subtle behavioral differences that may be difficult to detect or identify.⁹² This is because when one person interacts with another, there are limited data to evaluate the nature of the interaction. The matched pair testing methodology used in this study, however, allows researchers to evaluate the nature and the extent of housing discrimination by comparing data on the interactions with the same housing provider between multiple individuals who are similarly situated but for the protected class status (i.e., race and voucher status).⁹³ In this section, we provide a detailed description of the study design that we employed.

A. Assembling Testers

To gather the necessary data, HDTP recruited and trained 200 individual testers to contact the housing providers of 50 different apartments in the Greater Boston area that were randomly selected from common rental property listing sites from August 2018 to July 2019.⁹⁴ Each apartment met the payment standards for the use of a voucher from the Boston Housing Authority. The test coordinator assigned a test group consisting of two matched pairs (i.e., four individuals) to each apartment. Each test group consisted of two market-rate testers (one white and one Black) and two testers with vouchers (one white and one Black).

All four individuals within a given test group were carefully matched to be as similar as possible except for their race and voucher status. Specifically, the test coordinator created matched pairs who were demographically similar (i.e., cisgender,⁹⁵ same sex, no visible disabilities, age) and assigned the testers similar

89. *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 373 (1982).

90. FHA, *supra* note 59, at § 3604(a).

91. *See Class*, BLACK’S LAW DICTIONARY (11th ed. 2019).

92. *See e.g.*, DOUGLAS S. MASSEY & NANCY A. DENTON, AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS 97 (Harvard Univ. Press 1993) (“Black homeseekers now face a more subtle process of exclusion . . . they are met by a realtor with a smiling face who, through a series of ruses, lies, and deceptions, makes it hard for them to learn about, inspect, rent, or purchase homes in white neighborhoods.”).

93. This is a longstanding research methodology that has been used in the housing market since the 1960s and also by the federal government starting in the 1970s. U.S. DEP’T OF HOUS. & URB. DEV., EVIDENCE MATTERS: PAIRED TESTING AND HOUSING DISCRIMINATION STUDIES 12 (Spring/Summer 2014), https://www.huduser.gov/portal/periodicals/em/EM_Newsletter_spring_2014.pdf.

94. *See infra* Section II.B.

95. Cisgender describes a person who is not transgender. “The prefix cis- is Latin meaning ‘on this side of,’ whereas trans- means ‘on the other side of.’” Katy Steinmetz, *This Is What ‘Cisgender’ Means*, TIME (Dec. 23, 2014, 7:00 AM), <http://time.com/3636430/cisgender-definition/>. “Transgender” is an adjective used to describe “people whose gender identity, expression or behavior is different from those typically associated with their assigned sex at birth.” *Understanding Transgender People: The Basics*, NAT’L CTR. FOR TRANSGENDER EQUALITY (July 9, 2016), <https://transequality.org/issues/resources/understanding-transgender-people-the-basics>.

characteristics like income, family size, and credit score. The test coordinator instructed testers to contact housing providers within a short time period of one another and via the same communication method (i.e., call or text). The test coordinator assigned all voucher testers a housing voucher from the same housing authority. The test coordinator interacted individually with all of the testers and did not share with the testers anything about the experiences of others in the same test group. Neither did the test coordinator discuss with the testers if their experiences differed from those of others.

The test coordinator also instructed the voucher testers to inform the housing provider that they were using a voucher as early as possible in their interactions with the housing provider (prior to the property visit, if possible). Further, the researchers introduced race from the very beginning of every test by assigning each tester a “race-associated” name based on a previous study that examined name-based racial discrimination in employment practices in the Boston and Chicago labor markets.⁹⁶ Randomized names were used for each test and they were used repeatedly for all 50 tests.⁹⁷ The testers were instructed to provide their name in their very first contact they had with the housing provider.

The researchers limited the scope of the investigation of race in this study to Black and white testers to identify the effect of race from housing vouchers more precisely. Further research is required to understand the extent of discrimination that Latinx, Asian, and other people of color may also face in the rental housing market when using vouchers.⁹⁸

Testers meticulously⁹⁹ recorded the details of their interactions with housing providers in written reports.¹⁰⁰ The cumulative nature of the reports provide multiple comparative data points to determine whether testers received truthful information and whether housing providers treated testers differentially, including more subtle forms of discrimination that housing advocates commonly refer to as “discrimination with a smile.”¹⁰¹ Discrimination with a smile describes

96. Marianne Bertrand & Sendhil Mullainathan, *Are Emily and Greg More Employable Than Lakisha and Jamal? A Field Experiment on Labor Market Discrimination*, Appendix Table 1, (Nat'l Bureau of Econ. Rsch., Working Paper No. 9873, 2003) <https://www.nber.org/papers/w9873.pdf> (examples of “Black” names used are: Aisha, Latonya, Jamal, and Kareem and “White” names included: Anne, Carrie, Brad, and Neil. The full list is in Appendix 1. The names were assigned by the test coordinator and were reused throughout the 50 tests).

97. The only instances that the test coordinator did not assign the randomized name was if two similar names were called for (i.e., Latonya and Latoya). This was to avoid confusing the housing provider.

98. Cf. U.S. DEP'T OF HOUSING & URB. DEV., HOUSING DISCRIMINATION AGAINST RACIAL AND ETHNIC MINORITIES xi (2012), http://www.huduser.gov/portal/Publications/pdf/HUD-514_HDS2012.pdf [hereinafter Racial and Ethnic Minorities]. The report is the fourth national study of housing discrimination that measures the incidence and forms of housing discrimination experienced by Black, Latinx, and Asian market-rate renters and homebuyers and demonstrates varying levels of discrimination based on race.

99. The test coordinator debriefed testers at the end of the process by reading the testers' reports to them and providing them the opportunity to add any additional information.

100. Generally fair housing testers either fill out forms after a site visit or record audio of the interaction depending on the jurisdiction that the test takes place in and that jurisdiction's audio recording laws and whether consent is necessary from both parties. Testers filled out forms for this study, no audio was recorded.

101. See MASSEY & DENTON, *supra* note 92, at 96-98.

interactions that appear to be neutral or even positive to the protected class renter, but when compared to the treatment of the non-protected class renter, the inequality becomes apparent.¹⁰²

HDTP required the testers to memorialize their interactions with the housing providers as soon as possible after each interaction. Although every tester's goal was to make an appointment and tour the advertised property, not every tester was given that opportunity. Testers who only had phone and/or email interaction with a housing provider filled out a form with 20 questions and a narrative section.¹⁰³

Testers who toured one or more apartments completed forms with 24 questions (including 37 parts) and a narrative section. The detailed forms were designed to help testers recall as much of the interaction with the housing provider as possible. This is important because it allowed for the most accurate comparison of the experiences of each tester. The test coordinator met with each tester after the tester submitted their report to review the reports and to inquire about any missing information (i.e., dates and times).

B. Site Selection: Rental Ad Scraping, Selection, and Randomization

Researchers from Analysis Group (AG) scraped listings in the Boston Metro area from a website that advertised rental apartments on a weekly basis from August 2018 to July 2019. The researchers limited listings to one-bedroom apartments with monthly rents under \$1,563 per month and studio apartments with monthly rents under \$1,378 per month and excluded short-term rentals.¹⁰⁴ AG randomly selected a subset of 50 apartments from the listings in each week using a random number generator and manually verified that the random sample of listings met the criteria for apartment type and price and did not contain duplicates of listings previously contacted.

AG sent the HDTP test coordinator randomized rental listings each week. The test coordinator reviewed each individual listing to determine whether the listing was still posted online and that the listing contained a telephone contact number.¹⁰⁵ If the listing was over a week old, the test coordinator called the phone number listed in the advertisement under a blocked number to confirm that the apartment was still available. If the test coordinator was able to confirm the unit was still available, or if the unit had been posted online for less than one week, the test coordinator assigned testers to the listing. If, during the course of the test, the test coordinator learned that the apartment had already been rented prior to the completion of the test, the test coordinator would assign the test group to a new listing using the process described above.¹⁰⁶ In these cases, tester reports and final assessments were based only on the final, active listing for which testing was

102. *See id.* at 97-98.

103. For the HDTP Study Test Form that testers who only had phone and/or email interaction with a housing provider completed, see *infra* Appendix, p. 70.

104. These rents represent the amounts associated with the Boston Housing Authority's payment standards for one-bedroom and studio apartments, effective July 1, 2018. The payment standard is the maximum subsidy the Boston Housing Authority would pay on behalf of family for a unit of a given size.

105. The test coordinator selected advertisements that included a telephone contact number to ensure that all testers initiated contact with the housing provider in the same manner.

106. This was the only scenario where any individual tester contacted more than one housing provider, as the study design called for each tester to complete only one test.

completed. The design of the study, therefore, allowed the researchers to approximate the housing search of an individual with a voucher in the Greater Boston Area. The properties tested were located in nine cities in the Greater Boston area and 10 neighborhoods of Boston.¹⁰⁷ The geographic range was limited to those locations that testers could access via public transportation.

C. Conversion of Tester's Reports into Variables Used in Analysis

After completion of all testing, HDTP provided AG with 200 reports from the 50 test groups (four reports for each test). After an initial review of these reports, AG identified and defined 44 outcome variables of interest. The variables included, for example, whether the testers were invited by the housing provider to visit the housing site, were greeted by the housing provider in a cordial fashion, were asked about their occupation or credit history, were shown different numbers of apartments, or received follow-up communication from the housing provider.

AG then coded the written information in each test report into a variable form using pre-defined definitions. To ensure accuracy and reduce the level of individual bias in this coding process, two members from the AG team independently coded the information in each test. The coders resolved discrepancies through joint discussions and involved a third member of the team when necessary. This process resulted in a complete dataset of all 200 tests that AG analyzed using statistical methods.

IV. FINDINGS

The researchers completed two types of analysis for this study. First, AG performed a separate analysis, examining each of the variables identified at the outset of the study to determine whether there was statistical evidence of disparate treatment across race and voucher status. Second, HDTP staff analyzed each of the four test reports for each of the 50 tests to assess whether there was evidence of discrimination based on source of income, race, or both. For purposes of discussion, this Article will refer to testers as follows: Black market-rate testers (BMR), white market-rate testers (WMR), Black voucher holders (BV), and white voucher holders (WV).

A. Measurement of Discrimination by Analysis Group

Discrimination could occur at two distinct points in the housing search process. First, housing providers could discriminate against the testers in their initial interactions, prior to the tester even seeing the housing unit. For example, a housing provider could be less likely to respond, more likely to break off contact without explanation (“ghosting”)¹⁰⁸, or less likely to offer a site visit to Black and

107. The towns that were tested included Arlington, Boston, Brookline, Chelsea, Malden, Medford, Newton, Quincy, and Watertown. Neighborhoods tested in Boston were Allston, Brighton, Dorchester, East Boston, Jamaica Plain, Kenmore, Mission Hill, North End, South Boston, and West Roxbury.

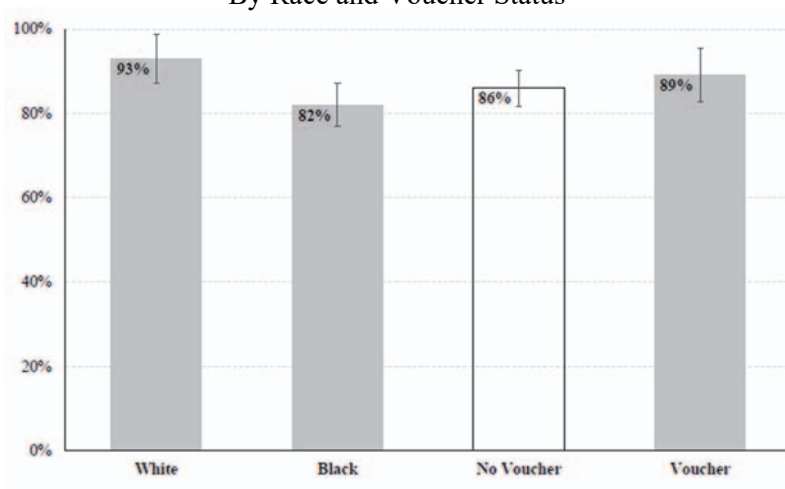
108. Ghosting refers to the ceasing of communication with someone without notice. *Ghosting*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/ghosting> (last visited Dec. 7, 2020).

voucher-holding testers. Second, housing providers could discriminate when testers visit the apartment. Housing providers may deliver a more positive apartment viewing experience to white testers or non-voucher holding testers by, for example, shaking their hand or commenting on positive aspects of the unit or neighborhood. Housing providers could also be more likely to offer the apartment to the tester or follow-up after the apartment showing. This section will discuss whether there is statistical evidence of discrimination at each of these two points in the apartment search process.

B. Initial Interactions with the Housing Provider

As discussed in the Methodology section, prior to visiting an apartment, a tester would initiate contact with the housing provider, usually via phone. Receiving a response from the housing provider to arrange a visit to the site represents a critical step, as it sets in motion the rest of the engagement. Figure 2 presents the results of the “contacted” variable by race and voucher status. The error bars in the figure indicate the 90% confidence interval.¹⁰⁹ The results indicate that white testers were significantly more likely to receive a response from the housing provider than Black testers ($p = 0.019$).¹¹⁰ Because testers were assigned race-associated names, testers stating their name in a call or message to a housing provider signaled their race to the providers. Testers typically did not announce their voucher status in this first message if they were leaving a voicemail. Therefore, it is not surprising that contact rates are similar between voucher and market-rate testers at this stage.

Figure 2:
Percentage of Testers Making Contact with Housing Provider,
By Race and Voucher Status



109. Given the small sample sizes, the 90% confidence intervals are shown. The confidence interval provides a measure of the uncertainty associated with the estimated parameter and shows the range of likely values for the population parameter.”

110. The “p” refers to the “p-value” from the statistical test comparing the rates between the two groups. The p-value is the probability of observing a difference between the rates of the two groups equal to or greater than the observed rate, under the assumption that the rates for the two groups are the same.

The effect of voucher status on the initial interaction between a tester and housing provider becomes more pronounced if the tester receives a response from the housing provider. Results indicate that testers were significantly more likely to be “ghosted.” Figure 3 shows that the WV and BV testers were ghosted at a significantly higher rate than BMR and WMR (< 0.001 and p = 0.019, respectively).

Figure 4 presents the same data as in Figure 3 but focuses on showing the average impact of voucher status across the two race groups. It shows that the testers with vouchers were ghosted at a significantly higher rate than those without vouchers (p < 0.001). This finding makes sense given that testers with vouchers were instructed to inform the housing provider of their voucher status as soon as possible after making the first contact. One would only observe this effect after the tester has an opportunity to interact with the provider.

Figure 3:
Percentage of Testers Ghosted by Housing Provider

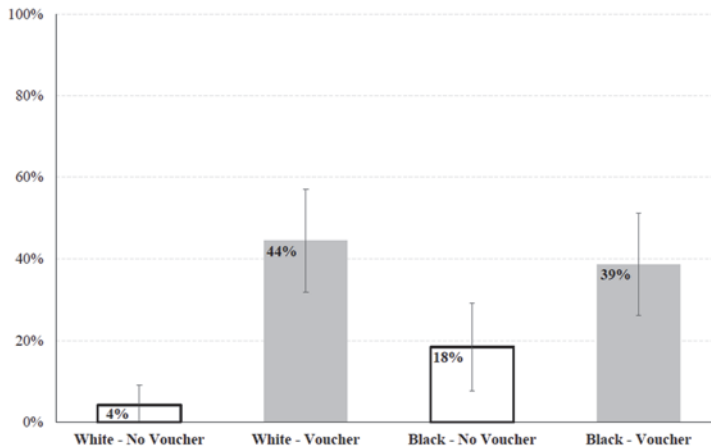
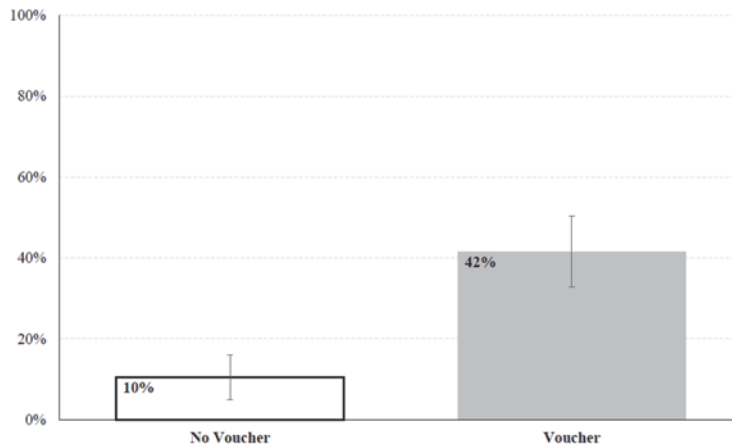
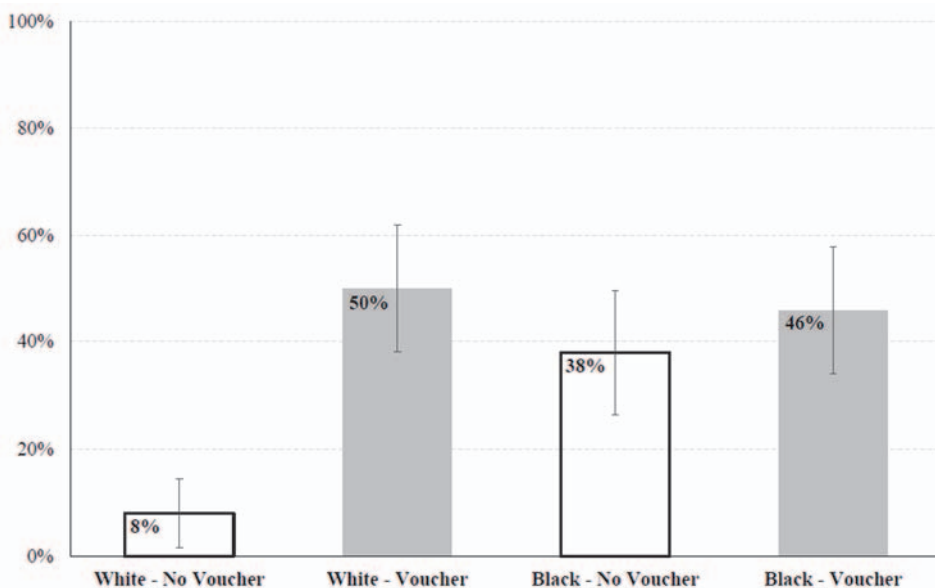


Figure 4:
Percentage of Testers Ghosted by Housing Provider,
By Voucher Status



Analyzed together, the observed differences in contacting and ghosting rates provide strong evidence of discrimination based on race and voucher status in the initial interactions between the tester and the housing provider. Figure 5 presents a comprehensive look at differences in the testers' initial contact with the housing provider by showing the percentage of testers that the housing provider did not contact or ghosted across the four test groups. As the figure shows, the housing provider was significantly more likely to either not contact or ghost WV and BMR testers than WMR testers ($p < 0.001$ for both comparisons). However, differences between WV and BV groups and between BMR and BV groups, are not statistically significant at the conventional levels. This finding suggests that the effect of race and voucher status on the initial interaction with the housing provider may not be necessarily additive.

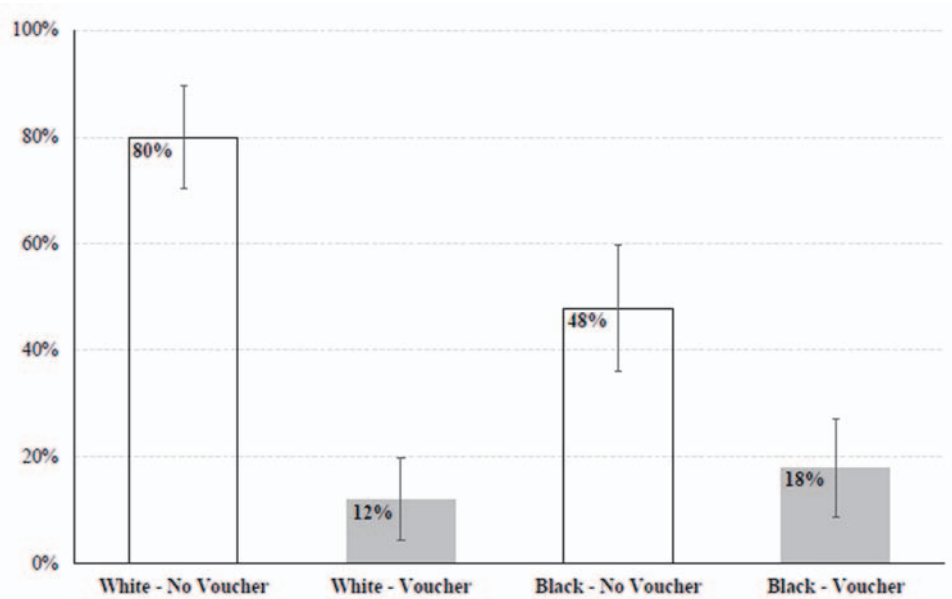
Figure 5:
Percentage of Testers that Housing Provider Did Not Contact or Ghosted



C. Opportunity to Visit the Site

If their initial interaction with the housing provider goes well, testers can have the opportunity to visit the site in person. As shown in Figure 6, data from the study show that WMR testers were able to view apartments at a much higher rate than similarly situated BMR testers (80% compared to 48%, $p = 0.001$). Most testers who had vouchers, regardless of their race, were not given the opportunity to view apartments. WV testers were able to view rental apartments only 12% of the time, while BV testers were able to view apartments, they were interested in renting only 18% of the time. These site visit rates were statistically different from those experienced by WMR and BMR testers, respectively ($p < 0.001$ and $p = 0.001$).

Figure 6:
Percentage of Testers Who Visited Housing Site

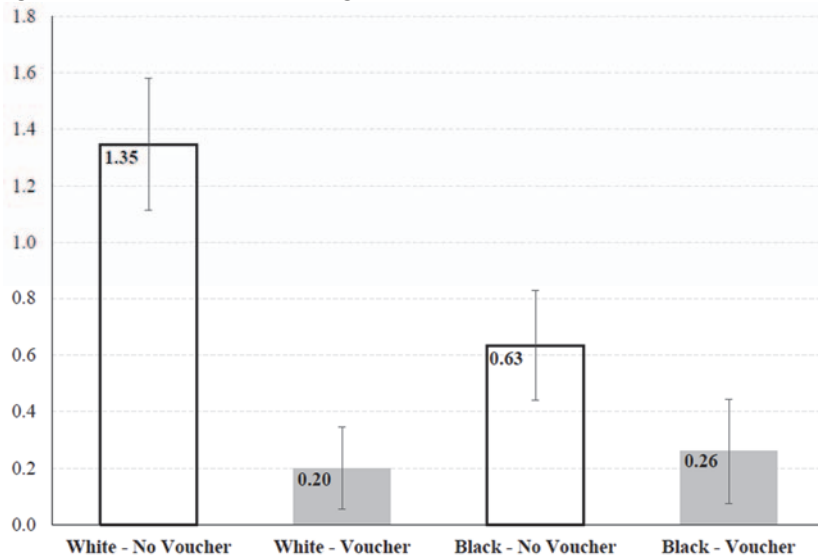


D. Housing Provider On-Site Behavior

Results from the study also show that testers who were offered a site visit by the housing provider received differential treatment during the visit based on race and voucher status. Although testers recorded a number of different aspects of housing provider's behavior on site, we focus on presenting data on aspects of the interaction that were associated with statistically significant differences in treatment based on voucher status or race.

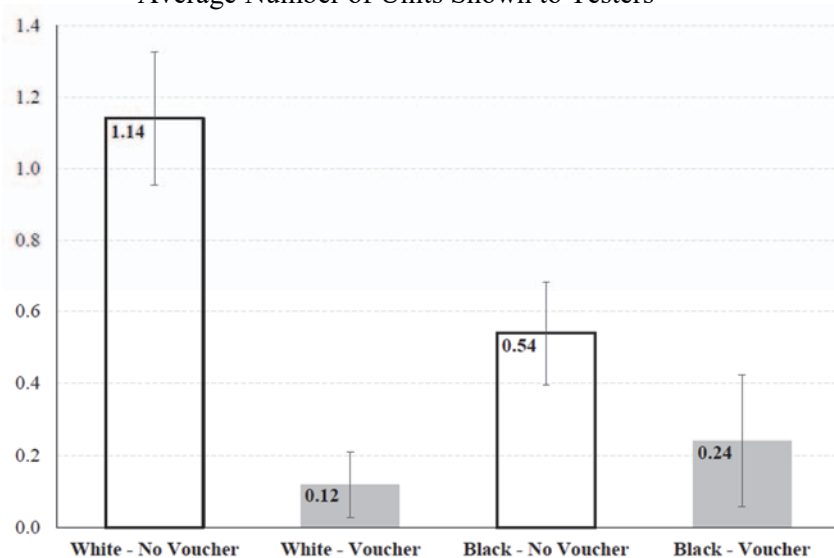
Housing providers sometimes informed testers about and/or showed testers multiple units during a site visit. As shown in Figure 7, housing providers told Black and voucher testers about fewer available units than their white and market-rate counterparts. WMR testers were informed that there were more units available than BMR testers were informed on average (1.35 units v. 0.63 units, $p < 0.001$). Testers with a voucher were told that even fewer units were available, with WV and BV testers being informed of only 0.20 and 0.26 units on average, respectively. Regardless of race group, housing providers informed market-rate testers about more units than they informed voucher testers.

Figure 7:
Average Number of Units Housing Providers Said Were Available to Testers



The results on the number of units shown to testers exhibit a similar pattern. As shown in Figure 8, WMR testers were shown, on average, 1.14 units, while BMR testers were shown only 0.54 units. Testers with a voucher were shown fewer units than testers without a voucher: WV and BV testers were shown only 0.12 and 0.24 units, respectively. All differences between four groups were statistically significant at a 95% confidence interval, except for the difference between WV and BV testers.

Figure 8:
Average Number of Units Shown to Testers

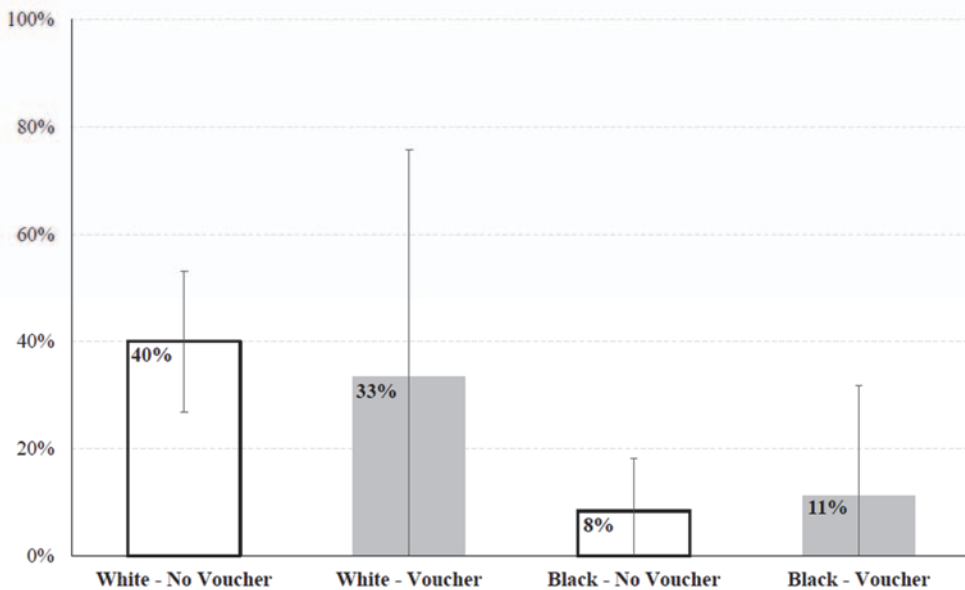


Not only did housing providers show more units to white and market-rate testers, they were also more likely to incentivize these testers to submit a rental application. The results provide evidence of discrimination in several different forms. First, housing providers sometimes offered financial or non-financial incentives to testers during on-site conversations. For example, a housing provider may have mentioned that they were offering the tester a discount on the monthly rent or an amenity such as free parking.

As shown in Figure 9, race was an important determinant of whether housing providers mentioned financial or non-financial incentives to testers. Housing providers were significantly more likely to mention incentives to WMR testers than BMR testers and WV testers than BV testers.

Figure 9:

Percentage of Testers Offered a Financial or Non-Financial Incentive



Housing providers also sometimes encouraged testers to apply for the unit by sharing certain positive attributes of the unit or the neighborhood. For example, the provider may comment on the size of the unit or its proximity to public transportation. Figure 10 shows that the percentage of on-site conversations that included positive comments from the housing provider on the unit or neighborhood varied by tester group. Housing providers made a positive comment to 58% of WMR testers compared to only 17% of WV testers. Providers made positive comments to only 33% of BMR testers and 11% of BV testers. Figure 11 demonstrates that these differences were statistically significant along both race and voucher status dimensions.

Figure 10:
 Percentage of Testers to Whom Housing Provider Made a Positive Comment About the Unit or Neighborhood

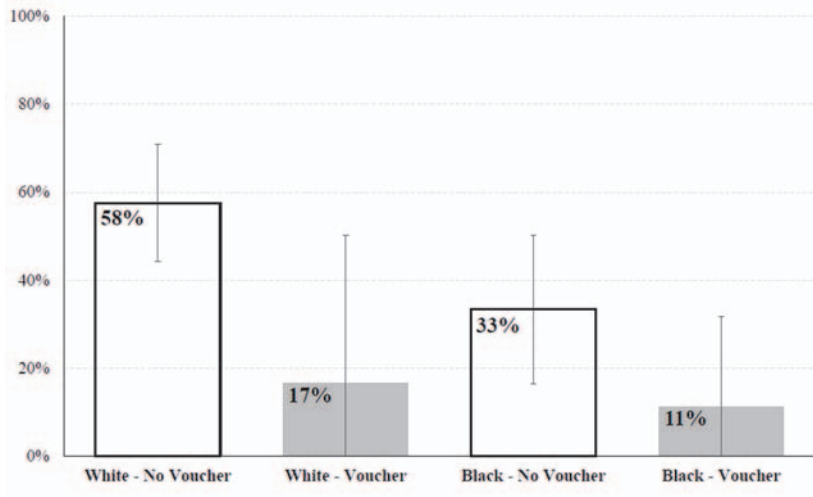
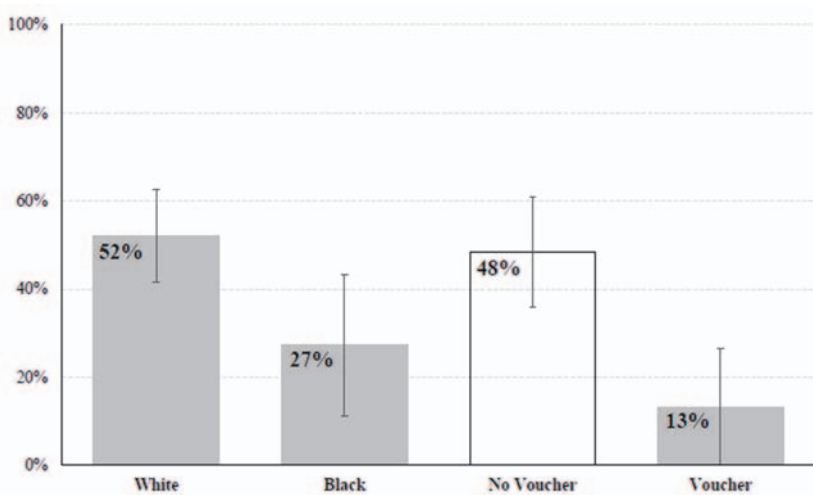


Figure 11:
 Percentage of Testers to Whom Housing Provider Made a Positive Comment About the Unit or Neighborhood, By Race and Voucher Status



Interactions between housing providers and testers at the end of the site visit or immediately following the site visit also exhibit discrimination, particularly based on voucher status. As shown in Figure 12 and Figure 13, housing providers in the study were both more likely to offer an application to market-rate testers and more likely to follow up after the site visit with market-rate testers compared to voucher holding testers ($p < 0.001$ and $p = 0.012$, respectively). These results indicate that even when individuals with vouchers are able to visit the apartment

unit, they are less likely to be offered an application and to be encouraged to continue seeking the unit.

Figure 12:
Percentage of Testers Offered Application by Housing Provider,
By Voucher Status

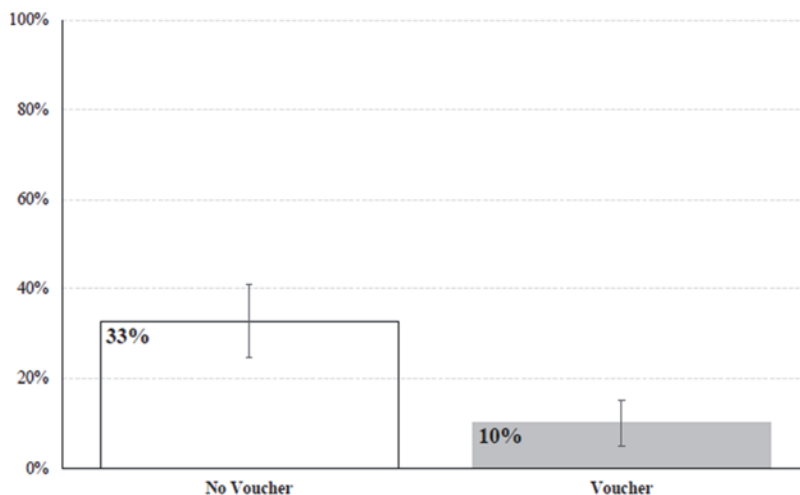
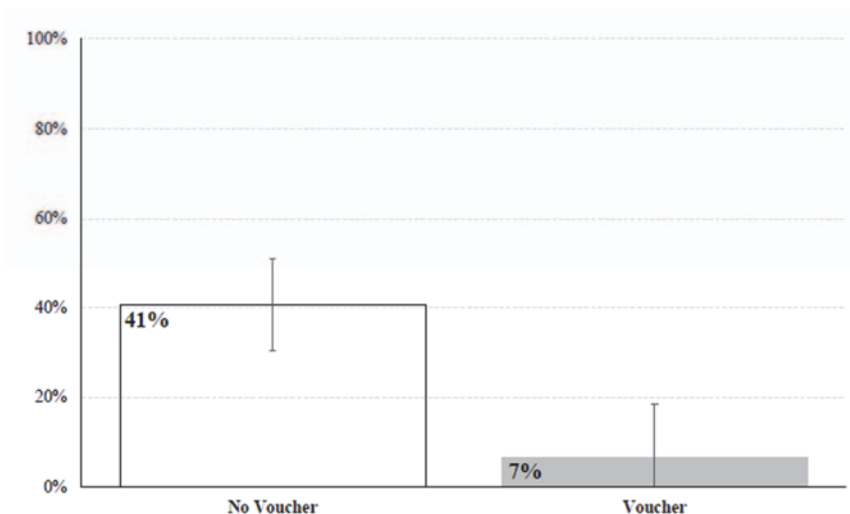


Figure 13:
Percentage of Testers that Housing Provider Followed Up with After Visit,
By Voucher Status



E. Measurement of Discrimination by HDTP

HDTP compared the treatment of the voucher group (Black and white testers assigned a housing voucher) and the market-rate group (Black and white testers who were not assigned a housing voucher) along a number of variables to determine whether there was any evidence of differential treatment in each of the 50 tests. HDTP uses this same process for enforcement testing.¹¹¹ The HDTP categorized each individual test as one of the following: (1) showing evidence of discrimination (because of adverse differential treatment); (2) inconclusive; or (3) showing no evidence of discrimination. Differential treatment included whether the housing provider stopped communicating with the tester while continuing to work with testers who were not in the protected class, as well as other factors relating to levels of service such as the number of apartments shown and whether the tester was offered an application, shown amenities, or received follow-up messages from the housing provider about the property.

Three HDTP staff members independently reviewed each test report and resolved any differences of opinion through discussion. In the few instances in which all three HDTP staff members did not agree on a particular determination, an additional staff member reviewed the test evidence, and the team used the majority result. Based on these categorizations, the HDTP found discrimination in the form of disparate treatment based on source of income in 86% of the tests and race-based discrimination in 71% of the tests. In a substantial number of tests, WMR was able to view the apartment, but BMR was not able to visit the unit. In addition, WMR testers often received better treatment than BMR testers with respect to the number of apartments shown or offered, financial incentives, and follow up, among other variables.

Testers with a voucher, both Black and white, were unable to view the apartment most of the time. By comparison, WMR testers were able to view 80% of these same apartments. Most commonly, housing providers stopped all communication with testers after they disclosed their voucher status, regardless of race, and no matter how many times or in what form the tester tried to communicate with the housing provider. In other words, they were “ghosted.” Around 10% of the time, housing providers explicitly told the tester that the landlord did not accept vouchers. About 20% of the time housing providers told voucher holders that the landlord accepted vouchers; however, over 80% of the housing providers within that 20% subset ultimately discriminated against the voucher holder.

V. TESTER ANECDOTES

Although some forms of discrimination uncovered in this study were overt, particularly against testers with vouchers, discrimination often took the form of more subtle differences in customer service. For example, housing providers told WMR testers that more units were available, showed them more units, offered more incentives to rent, and made more positive comments to them about units

111. Enforcement testing refers to discrimination tests that are done in contemplation of litigation. HDTP has completed approximately 692 enforcement and research tests between 2012 and the time of this study.

than they did to BMR testers. Housing providers also followed up more often with and offered more assistance searching for units to WMR testers than to BMR testers. Notably, and insidiously, these differences are not apparent to an individual prospective tenant and can only be revealed through comparison and analysis of data points generated by the experiences of those seeking housing.

A. Biased Ghosting

In many cases, discriminatory treatment was blatant, and testers were aware of it. In one test, for instance, BV introduced himself as “Kareem” in a voicemail message to the housing provider. Having not heard back, the tester called and spoke to the housing provider three days later. At first the housing provider seemed “eager and excited” on the phone and confirmed that the unit was still available. The tester told the housing provider that his name was “Kareem” and that he had called before. The tester felt that the conversation abruptly changed course. The housing provider asked “Kareem” to confirm his phone number and the tester felt rushed off the phone. The tester then introduced his voucher and asked if he could see the unit. The housing provider told the tester he would call the following day to set up a time to view the unit. The housing provider did not call the tester back and did not respond to subsequent voicemails. The BMR tester for this rental listing left three voicemails introducing himself as “Tremayne,” but was not able to speak with the housing provider. The WMR tester (“Brad”) was able to make an appointment to tour the unit. Although the housing provider did not attend the appointment, he called WMR back offering to reschedule. The WV tester was told, after introducing his voucher, that the housing provider would call him back. The WV tester was not able to reach the housing provider again.

What these testers experienced was not unusual. Differences in attitude can make a significant impact on customer service. In a different test, both the white and Black voucher holders observed a shift in the housing provider’s demeanor after mentioning the voucher. The housing provider offered WV two potential appointment times before the tester introduced her voucher in the conversation. After she mentioned her voucher, WV noted that the housing provider “was quiet for a moment and his whole enthusiastic attitude changed and he started [talking] fast to rush” her off the call. The housing provider told WV to text him to confirm the appointment. WV texted twice and called once over a three-day period (the housing provider’s voicemail box was full, so she was unable to leave a message). WV called again the next day and the housing provider said he would check to see if the unit was still available and instructed WV to text him again. WV again followed the housing provider’s instructions and texted him once more but never received a response. Similarly, BV contacted the same housing provider and was offered an appointment. However, after introducing the fact that she had a voucher “the tone changed” and the housing provider asked her to text him and ended the call. The tester did not text the housing provider and had no further contact. BMR and WMR were both able to obtain appointments over the phone, were able to confirm the appointments by text, and both toured the unit.

Unfortunately, housing providers often expressly told testers that they were not welcome to rent the unit despite the illegality of such statements. A realtor told one WV tester “I mean, talking to you, you seem totally normal... I mean, a lot of

people with Section 8 aren't the greatest people... so sometimes people can be prejudicial about that." The same realtor refused to show BV the unit at the site because she arrived late to the appointment. WMR also arrived late to her appointment but was given a tour. BMR arrived early and received a tour and application.

B. Discrimination with a Smile

Generally, housing providers engaged in discriminatory practices in ways that were less immediately apparent. Sixteen of the 84 testers who introduced the fact that they had a voucher on the phone prior to the site visit were expressly told that their voucher was not a barrier to renting the unit. However, in 81% of those tests, evidence of discrimination was ultimately found, and in 56% of those cases, the housing provider ceased all communication with the testers in spite of significant efforts on each testers' part to make contact. For example, in one test, the housing provider told BV that he needed to check with the "head office to see if they take housing vouchers." The housing provider did not respond to the tester's further attempts to contact him. However, the same housing provider told WV that he owned the unit. This housing provider (the owner) gave WV the phone number of a broker and the broker gave WV a tour of the unit.

C. Differential Criteria

When analyzing the differences in customer service between testers, other trends appeared in the methodology of discrimination. Housing providers often use different screening questions to avoid showing apartments to voucher holders or testers of color. Black testers, both voucher and market-rate, were often asked more questions about their ability to pay and/or questions about their credit than their white counterparts. A BMR tester told one housing provider that his credit score was 650 and the housing provider responded saying a score of at least 720 was required. Another housing provider affiliated with the same apartment warned WMR to "avoid the question if [the tester's] credit score was not high enough" and went on to explain that the landlord "set the rent rates based on allowing the 'right type of people' to have easy access to" the area. Likewise, in a different test, both BMR and BV were asked about credit, but neither white tester was asked about credit scores. In another test, the housing provider did not ask either of the market-rate testers about credit but asked the WV about credit after she said she had a voucher. When WV stated her credit score was 680, the housing provider explained he could not show her the unit because "the landlord wants people with scores of 750." BV introduced her voucher and the housing provider told her that he would check if the unit was still available, but then never replied to her four subsequent voicemails. Similarly, after one BV tester told a housing provider that she had a voucher, he replied that he would call the landlord as the landlord requires credit scores over 700. BV told him her score was over 700, but he still said he would have to call her back and ultimately did not. WV was not able to reach that housing provider again after the initial conversation where she introduced her voucher. This housing provider did not ask about BMR's or WMR's credit scores and both were able to tour the unit.

Testers were also less likely to receive encouragement to move quickly in order to secure the apartment. For example, a housing provider told WMR that he was “not one to push a building’ but he always warns people that things move fast.” The housing provider gave the tester his business card and suggested she call or text over the weekend if she decided to apply. BMR reported that the same housing provider said that he “hasn’t really advertised the unit much so there is no current urgency” and suggested that waiting until the following week would be fine. Both testers spoke with the realtor on the same day. WMR toured the unit that day, and BMR toured it the day after WMR. The Black and white voucher testers were not able to tour the unit. Similarly, in a different test the housing provider told WMR that the apartment would be hers as soon as she wanted it and that she was “pretty much automatically accepted.” The same housing provider simply instructed BMR to submit the application if she was interested.

In another test, the housing provider told the WMR at the end of her tour that he wanted to show her an additional unit. He went on to explain that “they don’t advertise that apartment because then they would have to respond to everyone who inquires” and they were looking for “people with quiet lifestyles who work, not CEOs necessarily, but people with good jobs.” He concluded by inviting WMR to join “a select group” that would tour the unit the following day. The housing provider did not offer this unadvertised unit to the other three testers.

D. Outright Refusal

Many housing providers simply explained to voucher testers that they were less attractive applicants because of the delay or additional effort required to rent to a voucher holder. One property owner told both Black and white voucher holders that he did not want to keep the unit vacant during the inspection process required by the housing authority. BV was simply turned away for this reason. The housing provider gave WV a tour of the unit. However, he told her over the phone and in person that if a market-rate tenant were to apply, he would rent it to them “because the problem with the voucher is that you have to wait for inspections and everything and he didn’t want to be losing money.” Both market-rate testers were able to tour this unit. In another test, the housing provider told BV that the owners would likely give the unit to a market-rate tenant because “with the housing vouchers there is so much work that has to be done, it’s more complicated and there are all kinds of inspections.” BV was not able to tour the unit and neither was WV despite her affirmation that she could pay whatever move-in costs the voucher did not cover.

In another test, the voucher testers were turned away by a broker that was aware that the apartment would not pass a Section 8 inspection because it had only one means of egress. This violates the building code and is dangerous to the occupants in case of fire.¹¹² The broker told BV that there “may be a problem” because Section 8 would require two entrances to the apartment, but that he would ask a friend about it. When BV called back, he said he forgot to call his friend, but that he would, and then stopped communicating with the tester. The same housing provider told WV that he would check into the use of a voucher and call back, but

112. See 780 MASS. CODE REGS. R311.1 (2012).

he never did in spite of the tester's subsequent efforts to contact him. The housing provider made an appointment to show the apartment to WMR but cancelled the day before because the apartment had rented.

E. Steering

In another case, the broker attempted to steer the voucher testers, and denied them the opportunity to tour the advertised apartment. When BV told the broker she had a voucher, the broker said, “[w]ell, there might be other options that we can look into;” that “you must be getting subsidized, honey;” and that “[w]e’ll take a look at some other apartments.” The broker told WV, “I can give you a call back and we can see what else we can find in the area.” This broker stopped communicating with both voucher testers but showed the property to both market-rate testers.

Repeatedly, testers who on paper were qualified to rent and had similar incomes (either through receipt of public assistance or annual income) were treated differently and negatively based on their race and voucher status. Whether such discrimination was the result of explicit or implicit biases makes no difference to the illegality of such actions.

VI. RECOMMENDATIONS

This study found alarming levels of discrimination based on race and source of income in the Greater Boston rental housing market—none of which should be occurring because federal, state, and local laws prohibit this behavior. Policy makers should consider the data to develop policies to address the discrimination occurring in our community. Based on our findings and the experiences of testers, we provide suggestions below on possible policy initiatives to curb housing discrimination and to increase the ease of use related to vouchers. The COVID-19 crisis has highlighted the importance of removing barriers for people in protected classes to neighborhoods of opportunity as a matter of public safety and public health. Governmental action created the segregated society we live in and the government should act to undo the harm it caused and perpetuated. These recommendations are suggested as a starting point for further discussion as to possible policy solutions that limit housing discrimination and its attendant harms and are by no means meant to be exhaustive.

A. Increase penalties and training for real estate professionals and prohibit them from charging broker's fees.

This study demonstrates that real estate brokers play a major role in purveying housing discrimination on behalf of their clients. In the vast majority of the tests that HDTP conducted for this study, the testers interacted with a real estate professional.¹¹³ The study shows that many Boston area brokers are screening out

113. The broker is the agent of the landlord, and so, the landlord bears responsibility for their broker's discriminatory acts when done within the scope of employment. *See* *Zuch v. Hussey*, 394 F. Supp. 1028, 1051-52 (E.D. Mich. 1975).

qualified applicants based on their protected class status on behalf of their clients. This must change. Policy makers should increase the penalties for discrimination and make it easier to suspend a real estate professional's license for violating anti-discrimination laws.

The HDTP submitted multiple public records requests in an attempt to determine the number of real estate brokers and salespeople in Massachusetts who had their licenses suspended by the Board of Registration of Real Estate Brokers and Salespersons (BRREBS) because they engaged in housing discrimination dating back to January 1, 2017. In January of 2020, the Division of Professional Licensure responded with a list of 67 brokers whose licenses BRREBS had suspended. However, as to whether BRREBS suspended any of these brokers for discrimination, the Division replied that, "[w]e do not store and maintain our Data in a manner that will allow us to respond to your request." In February of 2020, the Massachusetts Commission Against Discrimination, the state agency tasked with enforcing anti-discrimination laws, responded to a request regarding whether they have referred brokers to BRREBS for suspension, by stating that they were not able to find "records of referring any cases to the Board for license revocation pursuant to MGL ch. 112, s. 87AAA." This study uncovered that brokers are engaging in high levels of discrimination--but the system designed to discipline them for this behavior is not working.

Policy makers should increase fair housing training for brokers and review it to ensure it is of sufficient quality. In Massachusetts, where 40 hours of pre-licensing training is required to obtain a Real Estate Broker's License, fair housing is one of the topics covered in that time.¹¹⁴ The level of discrimination this study uncovered demonstrates that either many of those in the industry are ignoring their training or the training is woefully inadequate. As the gatekeepers to the housing market in Massachusetts, licensed brokers must understand their responsibilities under fair housing laws. The fair housing training for pre-licensing should be reviewed and assessed with the goal of licensed brokers becoming proficient in their knowledge of fair housing laws. Additionally, states should consider requiring real estate professionals to inform clients of their rights as housing seekers. This requirement is being considered in New York state after the three-year *Newsday* investigation uncovered the ways that real estate professionals were discriminating against housing seekers based on race.¹¹⁵ New York's proposed rule would require real estate brokers or salespeople to provide their clients with a disclosure of fair housing rights that the client must sign. The broker or salesperson must retain this signed disclosure for three years.¹¹⁶ The rule would also require brokers to post a similar disclosure conspicuously in their offices and on their websites.¹¹⁷ In addition, fair housing training for brokers must be video recorded and maintained for at least a year so that it is subject to review.¹¹⁸

114. 16 MASS. GEN. LAWS ch. 112, § 87SS (2012).

115. Joanne Braddock Lambert, John A Snyder & Amanda E. Miller, *New York Bill Would Require Real Estate Brokers, Salespeople be Trained on Preventing Housing Bias*, LEXOLOGY (Apr. 13, 2020) <https://www.lexology.com/library/detail.aspx?g=3ddfd10c-62cc-4d74-ac94-1fad0e6665fd>.

116. Enhanced Fair Housing Provisions addition of 175.28 to Title 19 of the NYCRR, 42 NY Reg. 2, at 12 (proposed Jan. 15, 2020) <https://www.dos.ny.gov/info/register/2020/011520.pdf>.

117. *Id.*

118. *Id.*

Real estate brokers should be prohibited from charging a broker's fee to a tenant. The legislature recently enacted such a prohibition in the state of New York.¹¹⁹ Other states should consider the same. In Greater Boston, real estate brokers have significant control over the real estate market. In this study, brokers were involved in almost all of the test properties. Requiring a broker's fee up front to be paid by the tenant could effectively screen out lower income renters, such as those with vouchers. There is a shortage of affordable rental housing in high-cost metro areas and low-income renters struggle to find housing.¹²⁰ Removing broker's fees would remove a barrier to access for low-income tenants and increase their available options.

B. Strengthen anti-discrimination laws and fair housing enforcement and education and increase resources for testing.

Source of income should be a protected class under the Fair Housing Act. More than 2.2 million low-income individuals and families participate in the federal HCV.¹²¹ Many of these individuals are people of color.¹²² They should be protected from discrimination for their participation in the program. It is a waste of our nation's resources to fund a program and then allow its frustration by letting people discriminate against the program's participants. On June 26, 2019, U.S. Senator Tim Kane of Virginia reintroduced the Fair Housing Improvement Act of 2019.¹²³ This Act would make it illegal under the FHA to discriminate based on a person's use of a housing voucher.¹²⁴ This study has identified the incredibly high level of discrimination that people using vouchers face. People should not have to contact ten housing providers in order to see one unit. The barriers that they face are real and often insurmountable. The Fair Housing Improvement Act should be passed so that housing providers can no longer legally discriminate against voucher holders, and if discrimination does occur, there must be legal recourse and meaningful penalties. Moreover, states and localities should enact source of income protections under their anti-discrimination laws until Congress acts as suggested above.

Renting out housing is a business. Landlords should understand their legal obligations as operators of a business and renters should understand their rights. A national media campaign should be undertaken to educate everyone about rights and responsibilities under the FHA, the level of race discrimination that is occurring throughout the nation, and protections related to voucher-based discrimination in jurisdictions where voucher holders are a protected class. Legal protections do not help people if they are unaware of their rights. Furthermore, awareness must be raised due to the high level of race-based discrimination in the

119. N.Y. RPL § 238-a(1)(a) (Consol. 2020); N.Y. Dept. of State, Guidance for Real Estate Professionals Concerning the Statewide Housing Security & Tenant Protection Act of 2019 and the Housing Stability and Tenant Protection Act of 2019, p. 4, FAQ 5.

120. America's Rental Housing 2020, *supra* note 82.

121. *See generally* CBPP Fact Sheet, *supra* note 79.

122. *Id.*

123. Fair Housing Improvement Act of 2019, H. R. 3516, 116th Cong. (2019).

124. *Id.*

market and the very subtle way in which housing providers perpetuate it. People should not mistakenly think that race discrimination in housing no longer occurs.

Additional resources should be devoted to fair housing testing to detect discrimination. After the *Newsday* report, referenced above, the New York State Association of Realtors advocated for immediate funding of testing to uncover bias among realtors.¹²⁵ While some of the discrimination uncovered in this study was overt, most discrimination is in the form of differential treatment that can only be revealed with testing. This study exposed a significant amount of race-based and voucher-based discrimination in the form of differential treatment. It took over a year to perform the testing and required sending 200 testers to 50 different properties. Testing is resource intensive by its nature. This study shows a significant amount of discrimination is going unchecked in Greater Boston. If it were more likely that any individual potential renter was a tester, it may give housing providers pause and impact the culture. This is particularly true for brokers who make their living in the market. Policy makers should increase funding available for testing and enforcement of fair housing laws.

C. Improve and streamline the system for using vouchers.

This study makes clear how difficult it is for people using vouchers to simply take the first step in the rental process—setting up tours of apartments. Though the priority should be to develop policies to prevent discrimination, it is also worth examining ways to improve the processes relating to vouchers to make these programs more effective and easier to navigate. Policy makers should expand the use of small-area fair market rents (SAFMRs) in order to expand the opportunity that voucher holders have to move to higher opportunity areas. SAFMRs set the subsidy amount allowed under the program based upon the average rents in smaller neighborhoods, rather than in a larger metropolitan area.¹²⁶ For example, a person in Boston trying to use a voucher in the high opportunity Beacon Hill neighborhood would receive a higher subsidy than one trying to use a voucher in a less economically advantaged neighborhood, rather than having all vouchers in Boston set at an average rate for the city. This would have the effect of allowing more voucher holders access to higher opportunity neighborhoods, where they are often priced out. This would lead to better outcomes for these families and, to the extent the families were people of color, would increase integration. Of course, as this study suggests, such policy changes will not be effective unless brokers and landlords stop illegally discriminating against renters based on race and voucher status.

125. Maura McDermott, *NY Should Fund Testing to Uncover Housing Bias*, *State Realtor Group Says*, *NEWSDAY* (Jan. 30, 2020, 7:08 PM), <https://www.newsday.com/business/realtors-bias-testing-housing-discrimination-1.41247829>.

126. Alicia Mazzara & Brian Knudsen, *Where Families with Children Use Housing Vouchers: A Comparative Look at the 50 Largest Metropolitan Areas*, *POVERTY & RACE RES. ACTION COUNCIL 4* (2019), <https://www.cbpp.org/sites/default/files/atoms/files/1-3-19hou.pdf>.

The HCV program and similar state programs allow a voucher holder 120 days to use the voucher to find suitable housing.¹²⁷ Under these programs, the public housing authority administering the voucher may grant extensions according to a policy in the appropriate administrative plan for the particular program. Neither federal regulations, state regulations, nor the state administrative plan specifically mentions encountering discrimination as one of the extenuating circumstances for which an extension may be granted. The relevant regulations and administrative plans should specify discrimination as a reason for allowing an extension.

The results of this study underscore how difficult it is to use a voucher in the Greater Boston area. About nine out of 10 times, qualified voucher holders who are interested in viewing a property are denied that opportunity just because they have a voucher. The most effective policy would be to combine the ability to request an extension with resources devoted to allowing voucher holders to pursue enforcement of their fair housing rights, because while granting an extension may give the voucher holder an opportunity to access housing, it does not address the discrimination that makes an extension necessary.

VII. CONCLUSION

For hundreds of years the United States of America has engaged in a cycle of enacting racist housing laws and then eventually prohibiting that behavior. The cycle has not led to an integrated, equal society. It is worth considering Ibram X. Kendi's words again, "[t]here is no such thing as a nonracist or race-neutral policy. Every policy in every institution in every community in every nation is producing or sustaining either racial inequity or equity between racial groups."¹²⁸ It is not enough to simply strike down or outlaw the racist laws that have led us to this point.

America should no longer ignore and perpetuate the structural inequities that have led to the systematic oppression of BIPOC. Our ability to become a cohesive society depends on addressing these historic ills. The COVID-19 crisis and protests against the routinized killing of Black people have again exposed these long festering wounds in particularly stark light. The discrimination revealed by this study provides valuable data proving the alarming prevalence of race and source of income housing discrimination in communities in which laws protect both groups of people. Policy makers should strive to be anti-racist and act to counter the discrimination that this study has revealed. This will not only benefit individuals but will give us a chance to begin to heal as a fractured society.

127. 24 C.F.R. §§ 982.303, 982.54(d)(2); 760 MASS. CODE REGS. § 53.07 (2020); MASS. DEP'T. OF HOUSING & CMTY. DEV., RENTAL VOUCHER PROGRAM ADMINISTRATIVE PLAN § 6.4.1 (2017), <https://www.mass.gov/doc/mrvp-administrative-plan-2017/download>.

128. KENDI, *supra* note 32, at 18.

VIII. APPENDIX¹²⁹**TEST REPORT FORM - TELEPHONE OR
EMAIL CONTACT ONLY**

*Tester: Notify test coordinator of **all** contact and forward materials received.*

Test #: (Please see assignment form for test #)

***PAGE 1 and 2 TO BE REMOVED BY TEST COORDINATOR AFTER
DEBRIEF**

TESTER'S INFORMATION:

NAME:
NAME USED FOR TEST (IF DIFFERENT):

ETHNICITY (select one):

HISPANIC OR LATINO NOT-HISPANIC OR LATINO

RACE (select one or more):

WHITE BLACK/AFRICAN AMERICAN
 NATIVE HAWAIIAN OR OTHER PACIFIC ISLANDER
 ASIAN AMERICAN INDIAN OR ALASKA NATIVE
 OTHER (SPECIFY):

TESTER'S ASSIGNED SEX AT BIRTH: MALE FEMALE

TESTER'S GENDER IDENTITY: MALE FEMALE

Phone number called:

Person(s) with whom you spoke or emailed:

Name:	Position if known:
1.	
2.	
3.	

***PAGE 1 TO BE REMOVED BY TEST COORDINATOR AFTER
DEBRIEF**

129. Editor's Note: Although the contents of the HDTP Study Test Form remain the same, the dimensions have been modified to fit within the Journal.

***PAGE 2 TO BE REMOVED BY TEST COORDINATOR AFTER DEBRIEF**

RENTAL UNIT(S) MENTIONED

1. LIST ALL APARTMENTS MENTIONED					
ADDRESS	CITY	APT. #	MONTHLY RENT	# OF BEDROOMS	UTILITIES/ AMENITIES INCLUDED
A.			\$		
B.			\$		
C.			\$		
D.			\$		
E.			\$		
F.			\$		
G.			\$		
H.			\$		

***PAGE 2 TO BE REMOVED BY TEST COORDINATOR AFTER DEBRIEF**

**Suffolk University Law School
Housing Discrimination Testing Program**

***PREVIOUS PAGES 1 and 2 TO BE REMOVED BY TEST
COORDINATOR AFTER DEBRIEF***

- 1) Were you able to interact with a housing provider to discuss housing options (either over email or phone)?
 Yes (*skip to Question 4*)
 No
- 2) If No, why not?
 Left message on voicemail, answering machine, or pager
 Left message with person who did not have information
 Told to call back later
 Wrong number
 Housing provider hung up
 No answer
 Telephone number no longer in service
 Other (*specify*):

**(NOTE: IF ANSWER TO QUESTION 1 WAS NO, PLEASE FILL OUT #2
AND SKIP TO #20)**

- 3) When you asked about the availability for the type of housing or the unit that you were assigned (e.g., one bedroom), what were you told?
 The housing is available when I need it
 The housing is NOT available when I need it
 The housing provider did not know whether the housing was available
 Something else (*specify*):
- 4) How many units were you told about fitting your initial request? __ Unit(s)
- 5) How many "other" units were you told about? __ Unit(s)
- 6) What were you told about any "other" housing or units?
 Other housing is available when I need it
 Other housing is NOT available when I need it
 The housing provider did not know whether other housing was available
 Something else (*specify*):
- 7) Did the housing provider tell you that an application form and/or reservation fee of some kind must be done before renting/purchasing a unit?
 Yes
 No
- 8) Did the housing provider ask if you would like an appointment to view a unit?
 Yes
 No

- 9) Did the housing provider invite you to come in and pick up an application or materials or offer to send it to you?
 Yes
 No
- 10) Did the housing provider tell you that a credit check was part of the application process?
 Yes
 No
- 11) Did the housing provider tell you that a co-signer would be needed as part of the application process?
 Yes
 No
- 12) Did the housing provider tell you that a criminal background check was part of the application process?
 Yes
 No
- 13) Did the housing provider request information about your income, source of income or occupation?
 Yes
 No

If yes, please record what the housing provider said?

- 14) Did the housing provider make any remarks about disability or persons with disabilities?
 Yes
 No

If yes, please record what the housing provider said:

- 15) Did the housing provider make any remarks about accessibility or units that were "handicapped" accessible?
 Yes
 No

If yes, please record what the housing provider said:

- 16) Did the housing provider make any remarks about race/ethnicity, religion, or families with children?
 Yes
 No

If yes, please record what the housing provider said:

- 17) Did the housing provider make any reference to the lead status of any units?
 Yes
 No

If yes, please record what the housing provider said:

18) Were you referred to the following during your call?

- Assisted living
- Nursing home
- Group home
- Low-income housing
- Other
- None

19) What arrangements were made regarding future contact between you and the housing provider [*check all that apply*]?

- The housing provider said that he/she would call you back
- The housing provider invited you to call him/her back
- The housing provider invited you to come in to inspect units/pick up application
- Future arrangements were not made
- Other (*specify*):

20) When was this report completed?

Date (month/day/year):

Narrative of Phone or Email correspondence:

*Please describe the people you interact with using the description you used on page 1, but DO NOT use names of the people you interact with or addresses of sites you visit. That information should only be included on page 1 and 2 of this form. If you interact with different people or see multiple units please be descriptive without using identifying information (i.e. "After visiting the 1 bedroom apartment (#1A on page 2, the agent took me to another 1 bedroom (#1B on page 2)).

NAME

DATE