

HOUSING DISCRIMINATION LAW PROJECT  
OF



# **RENTAL DISCRIMINATION AUDIT REPORT**

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**HOUSING DISCRIMINATION IN VERMONT RENTAL MARKETS**

**MARCH 2012**

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## **Executive Summary**

Between 2009 and 2011, the Housing Discrimination Law Project of Vermont Legal Aid conducted ninety-five paired rental visit tests, 300 paired linguistic telephone tests, and eighteen accessibility audits (measuring compliance with design and construction accessibility standards required under the Federal Fair Housing Act). Audit results indicate that housing providers generally disfavor African American renters, renters of foreign origin, renters with children, and renters with disabilities.

Testing results demonstrate preferential treatment toward white testers of U.S. origin without an apparent disability. The combined results of the rental visit and linguistic telephone audits reflect preferential treatment toward the white control testers in 38% of the race-based tests, 40% of the national origin tests, and 36% of the familial status tests. In 27% of rental visit audits conducted on the basis of disability, housing providers indicated preferential treatment toward the tester without an apparent disability, and in eighty-three percent of the eighteen accessibility tests conducted on newly - constructed multi-family housing units, testers found significant or minor noncompliance with FHA design and construction accessibility requirements.

## **Vermont Legal Aid's Testing Program**

Vermont Legal Aid is a non-profit law firm established in 1968 to provide free civil legal services to Vermonters who are low-income, elderly, and have disabilities. VLA serves the community by providing information, advice, advocacy, and representation in the areas of health care, housing, education, family law, benefits, individual rights, and consumer law. VLA serves all of Vermont through five regional offices in Burlington, Montpelier, Rutland, Springfield, and St. Johnsbury.

The Housing Discrimination Law Project (HDLP) is a non-profit fair housing project of Vermont Legal Aid. The HDLP educates landlords, tenants, and the community about fair housing law. It also investigates allegations of housing discrimination, counsels individuals and groups about their rights under fair housing laws and helps to enforce these laws. In addition, HDLP conducts audit or systemic testing to measure the incidence and prevalence of housing discrimination in Vermont rental markets. HDLP is funded by a grant from the U.S. Department of Housing and Urban Development (HUD).

From 2009 through 2011, the HDLP conducted fair housing testing audits measuring the instances and types of housing discrimination that renters encounter when seeking rental housing in Vermont. Through paired rental visit tests and paired linguistic telephone tests, the HDLP measured the differences in renters' preliminary experiences with rental providers throughout the state. The HDLP also conducted accessibility audits on newly constructed multi-family housing units measuring their compliance with design and construction accessibility standards required under the Federal Fair Housing Act. The following is a summary of the HDLP's findings illustrating that unlawful housing discrimination is, in fact, occurring in Vermont and that housing providers are demonstrating a general preference against African American renters, renters with children or disabilities, and renters of foreign origin.

## **Fair Housing Law**

Both Federal and State law prohibit certain types of housing discrimination. Under the Federal Fair Housing Act, it is unlawful for a housing provider to discriminate in the sale or rental of housing on the basis of race, color, religion, national origin, sex, disability or family status (i.e., presence of minor

children). The Vermont Fair Housing Act also prohibits discrimination on these bases and additionally prohibits discrimination in housing on the basis of marital status, age, gender identity, sexual orientation, and receipt of public assistance (including rental subsidies).

Forms of unlawful housing discrimination that housing providers are precluded from engaging in include lying about the availability of housing, steering home-seekers to specific neighborhoods or locations, blockbusting (inducing people to sell or rent based on people in protected classes moving into the neighborhood), refusing to rent or sell, applying different rules or conditions, refusing reasonable accommodations or reasonable modifications for people with disabilities, publishing discriminatory ads, or engaging in threats, intimidation, or harassment. It is unlawful for housing providers to engage in these actions because of one of the statutorily-prohibited bases listed above.

### **Testing Methodology**

Fair housing testing is a technique used to neutrally and objectively measure whether individuals who are trying to obtain or maintain housing have been unlawfully discriminated against. It is a well-accepted and effective means of measuring the scope of housing discrimination in a given market. Due to the often subtle nature of discrimination, testing is frequently a necessary tool for accurately assessing the extent and nature of housing discrimination. The legitimacy of testing has been upheld by the U.S. Supreme Court, and federal agencies such as the United States Departments of Housing and Urban Development and of Justice approve of, sponsor, and conduct such testing.

Fair housing tests are simulated housing transactions where two or more testers with similar characteristics portray prospective renters or homebuyers to determine whether or not discrimination is occurring during the home-seeking process. The HDLP's rental audits examined housing providers' treatment of prospective renters during the preliminary stages of a rental search prior to the actual application process. In other words the audits examined the initial contact between housing provider and prospective renter and/or tester's experiences during site visits; however, the audits did not examine housing providers' treatment of renters through the application process.

In each test, testers were paired based on similarly perceived or matching characteristics such as gender, age, education, social class, overall appearance (e.g., clothing), household size, and income. Other than a slight difference in income favoring the "protected" or "subject" tester, the only measurable difference between the testers was their representativeness of a specific prohibited basis. "Protected testers" were individuals representative of the prohibited basis being tested (e.g., a person of color, a person with children), and the "control testers" were individuals not representative of any prohibited basis. For example, in a test based on physical disability, the protected tester is a person with a physical disability and the control tester is a person with no apparent disabilities. In all other ways, the two testers are similar. Testers posed as renters seeking housing, and each was assigned employment and income characteristics that comfortably qualified him/her for the rental unit being tested.

Each paired test was designed to measure only one prohibited basis. For example, a single paired test would not be designed to test for both race *and* familial status; rather, it would be structured to test for one or the other prohibited basis. In some cases, multiple tests were conducted of the same unit.

The size and price-range of the test units varied greatly: small studio apartments to multi-bedroom units; lower-income housing to high-end rentals. Housing providers included property managers, real

estate agencies, landlords who owned/operated several rental complexes as well as those who owned or maintained only a few rental units; therefore, the HDLP's testing results cover the full spectrum of rental housing available in the Vermont market during 2009-2011.

Before conducting any tests, each tester completed a tester training course which emphasizes fair and impartial fact-finding and accurate, detailed, and objective reporting, testing practices and reporting procedures.

After completing his or her test, each tester submitted written reports and provided oral accounts of each test conducted to the Testing Coordinator. Trained staff from the HDLP then analyzed the information to determine if a difference in treatment occurred between the protected and control testers. If unequal treatment was found, HDLP staff then evaluated the cause and basis of the testers' differing experiences and whether or not the inequalities substantiated an allegation of unlawful housing discrimination.

### Test Result Findings

The test results were separated into three categories of finding: 1) discrimination; 2) control tester favored; and 3) no apparent discrimination.

"Discrimination" A finding of "discrimination" was made when there were demonstrable, significant differences in how the housing provider treated the protected tester in comparison to how the control tester was treated, unambiguously demonstrating that the housing provider was actively trying to deter or dissuade the protected tester from renting the test unit or trying to steer the protected tester into more "suitable" housing. Behavior in this category includes: the housing provider responded immediately to the control tester and never responded to the protected tester despite multiple attempts by the protected tester or the housing provider stressed the negative attributes of the apartment to the protected tester but stressed its positive attributes to the control tester.

"Control tester favored" A finding of "control tester favored" was made where results suggested unlawful discrimination in that differences in the testers' experiences indicated favoritism to the control tester, yet reasons for the differing treatment were not definitive. Examples include tests in which both testers made contact with the housing provider and scheduled rental visits, but the protected tester had to be more proactive or aggressive in order to receive a response from the housing provider or schedule a site visit (e.g., protected tester had to place two or more calls before receiving a response, but the housing provider responded immediately to the control tester).

"No apparent discrimination" A finding of "no apparent discrimination" was made where results indicated that the housing provider treated testers equally, or, if there were differences in treatment, they were inconsequential or not clearly connected to unlawful housing discrimination.

## Linguistic Telephone Audits

The HDLP conducted four, universal linguistic telephone audits measuring housing providers' treatment of white renters of U.S. origin as compared to African American renters and renters of African origin, and renters without children as compared to renters with children. Three hundred paired telephone tests were conducted on these bases.

HDLP used standard, accepted linguistic profiling testing methodology. Voice samples of each tester were recorded and played to focus groups and volunteer participants to assess the general public's perceptions of the testers' linguistic characteristics in terms of their race/color and nation of origin. Testers who were commonly perceived as being of their respective race/color or of foreign origin were then selected to participate in the linguistic telephone audits. Below are the averaged rates of linguistic recognition among the testers used.

Race/Ethnicity of Testers	Rate of Linguistic Recognition	
African American Male	78%	
White Male	92%	
African American Female	89%	
White Female	98%	
*African	African: 29.5%	Foreign: 87.5%
<i>*Survey participants tended not to recognize the African testers as being of African origin; however, a large percentage did identify the voice as foreign-born.</i>		

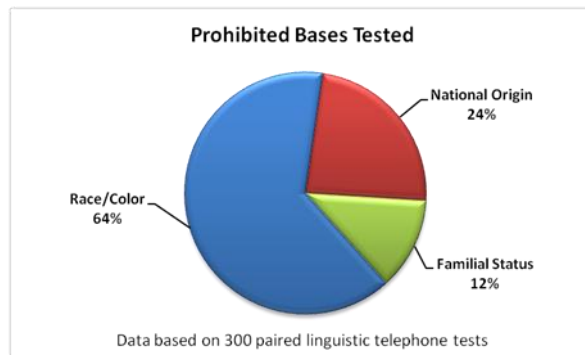
For each series of telephone audits, the paired testers called every residential rental unit advertised on the respective testing date. Each tester placed one phone call per rental advertisement. The scope of testing was limited to rental advertisements posted on popular web-based regional advertising forums such as Craigslist, Burlingtonfreepress.com, Seven Days online, and Burlingtonrent.com. The majority of rental ads tested were for units located in Chittenden County; however, rental units located throughout the state were advertised on these forums and therefore were tested as well.

In the vast majority of paired phone tests, testers left voicemail messages for the housing providers expressing interest in the rental units and requesting return calls; however, on some occasions the testers engaged in actual phone conversations with the housing providers. Where both testers left voicemail messages, the HDLP measured the housing providers' response rates to each tester (i.e., whether or not the housing provider responded to both testers, the date and time of the return calls, and the number of follow-up messages left by the housing provider). When both testers engaged in actual phone conversations with the housing providers, the HDLP measured the housing providers' overall treatment of both testers (e.g., questions asked of the testers, information provided to the testers, whether testers were invited to see the unit or were denied a viewing, whether any directly discriminatory remarks were made by the housing provider). In a minority of paired tests, one tester left a voicemail message while the other actually had a phone conversation with the housing provider. These situations were largely deemed inconclusive except when the housing providers engaged in openly discriminatory behavior (e.g., discriminatory statements).

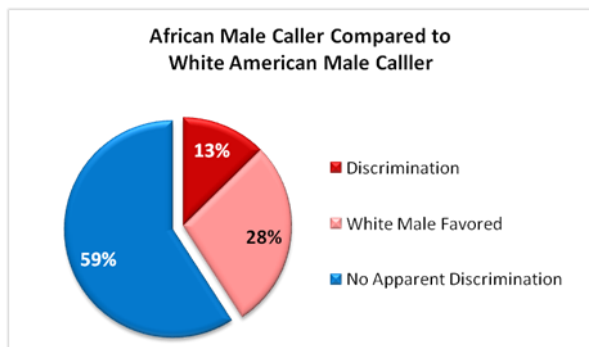
Generally speaking, the linguistic telephone tests produced much higher rates of apparent discrimination than did the rental visit audits. This may in part be because many of the rental visit testers are not necessarily linguistically identifiable with their respective races or ethnicities; therefore, discriminatory behavior frequently may not arise until the testers meet face-to-face with the housing

providers, and in this context, the discriminatory actions can be more subtle and therefore more difficult to clearly attribute to the prohibited basis being tested.

Of the 300 linguistic tests, 64% compared housing provider response rates between white callers and African American callers. Another 24% compared white American callers and callers of African origin. The remaining 12% studied response rates between white female callers with children and white female callers without children. Overall, 39% of the paired tests demonstrated either apparent discrimination against the protected tester or otherwise showed some level of preferential treatment toward the control tester. A “Discrimination” finding represents tests in which the housing provider made directly discriminatory remarks; never responded to the protected tester but did respond to the control tester; or offered a site visit to the control tester but did not offer a site visit to the protected tester. A “control tester favored” finding represents situations in which the housing provider treated the control tester better, for example, responded to both testers but also placed follow-up call(s) to the control tester but not to the protected tester; the housing provider asked more probing questions of the protected tester (e.g., employment status, household composition) that were not asked of the control tester.



### National Origin



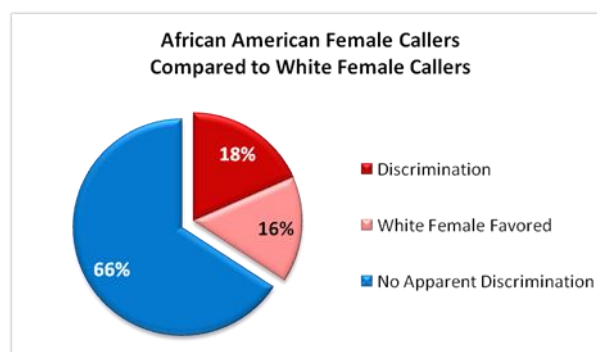
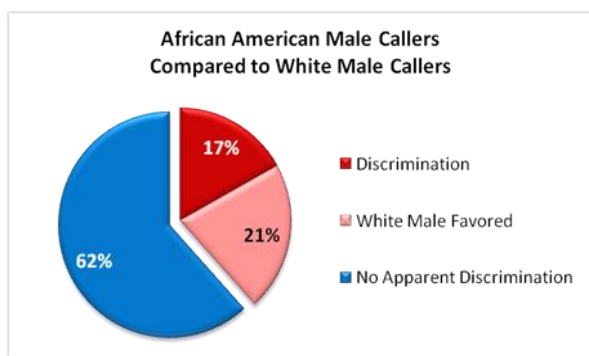
Male testers of African origin were paired with white male testers of U.S. origin. Forty-one percent of the tests indicated discrimination against the African tester or preferential treatment of the white American tester.

As previously noted, many participants in the linguistic recognition survey did not identify the protected testers' accents as being of African origin; however, 88% of those surveyed did recognize the

presence of a foreign accent. Testing results were consistent with testers of Asian, Eastern-European, and Middle Eastern origin who were voice tested as well. Survey participants were generally unable to pinpoint the origin of the testers' accents but did recognize them as being of foreign origin. The failure of listeners to identify the national origin of the testers may reflect the rural, predominantly white population of Vermont where many Vermonters do not have much exposure to the various linguistic characteristics or accents of other countries.

### Race/Color

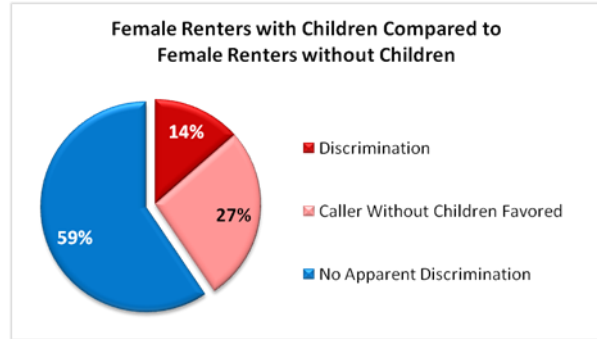
Male and female African American testers were paired respectively with white male and female testers. Combined results for both male and female paired tests indicated that 37% of housing providers engaged in discrimination against the African American testers or provided favorable treatment to the white testers. African American male testers encountered more instances of unfavorable treatment (38%) than did African American female testers (34%).





## Familial Status

In the familial status tests conducted, the protected testers portrayed heterosexual married persons seeking housing for their family, which included one to two young children. The control testers portrayed heterosexual married persons without children. Both testers were white and similar in apparent age, social class, and other factors. Forty-one percent of the paired tests illustrated either apparent discrimination against the tester with children or favorable treatment to the caller without children.

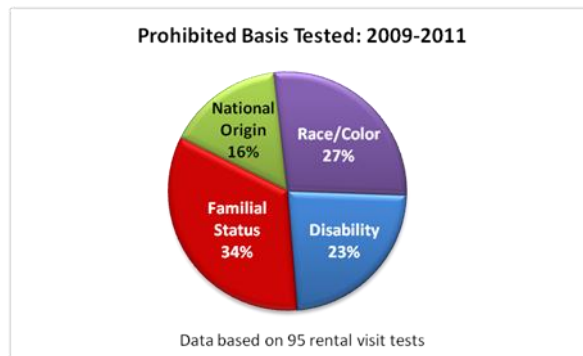


In conclusion, a significant portion of the linguistic telephone audit tests demonstrate that housing providers in Vermont provided preferential treatment to renters who were white and of U.S. origin. Testing evidence showed that many housing providers in Vermont are either less receptive to or are discriminatory against renters who are African American, people with children, and individuals of foreign origin. This conclusion is supported by the outcomes of the HDLP's rental visit audits, which are summarized below and which demonstrate similar differential treatment of renters with disabilities.

## Rental Visit Audits

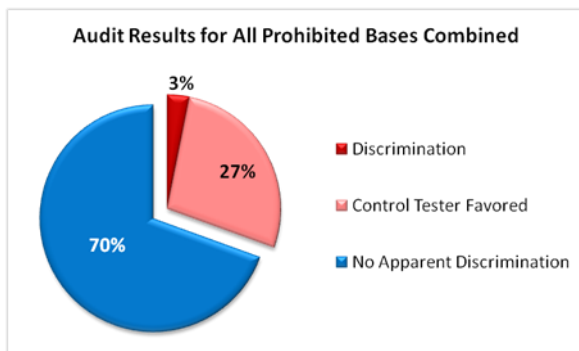
Ninety-five rental visit audits were conducted between 2009 and 2011. Ninety of those were conducted in Chittenden County. The remaining five audits were conducted in Franklin, Windham, and Washington counties and involved phone contact with the housing provider rather than in-person visits to the rental units. Test units were chosen from a variety of advertising forums including Craigslist, printed classifieds, newspaper websites (e.g., Burlingtonfreepress.com, Seven Days online), various real estate websites, and other web resources such as Burlingtonrent.com and Gridguide.com. Units were selected either at random or because there was some suspicion of discrimination from the language of the ad or from previous testing results associated with the housing provider.

The prohibited bases tested were race/color, national origin, disability, and familial status. The following chart illustrates the percentage of tests conducted in each category relative to the total number of rental visit audits conducted.



### All Prohibited Bases Tested: Rental Visit Audits

Of the ninety-five tests conducted, 30% of the housing providers demonstrated apparent discrimination against the protected tester or generally displayed preferential treatment toward the control tester.



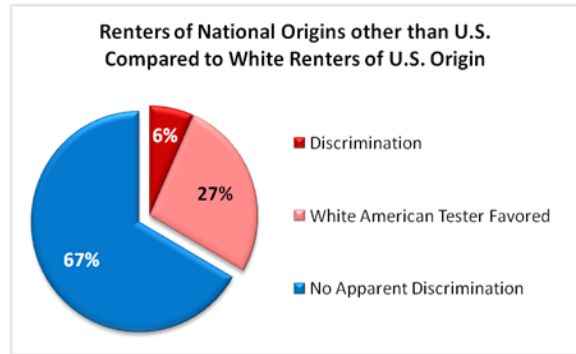
The remaining 70% illustrated no apparent discrimination or were otherwise inconclusive. None of the tests indicated any level of preferential treatment towards the protected testers.

The results for each prohibited basis were generally comparable to the overall test outcomes shown above; however, there were some differences for particular prohibited bases in the rates of apparent discrimination as well as those indicating favorable treatment to the control testers.

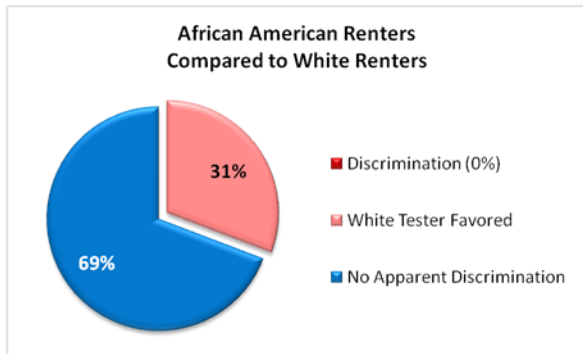
### National Origin

The national origin tests indicated higher rates of discrimination and differential treatment as compared to the cumulative results summarized above. Thirty-three percent of the results on this basis indicated either apparent discrimination against the tester of foreign origin or favorable treatment to the white tester of U.S. origin. Several national origins were tested; therefore, the results represent an overall comparison in treatment between the two groups of testers rather than specific outcomes for any particular national origin.

The national origin testers were individuals of African, Asian, Middle Eastern, or Eastern European origins. The linguistic identity and the data pool were not large enough to accurately report on each national origin subcategory.



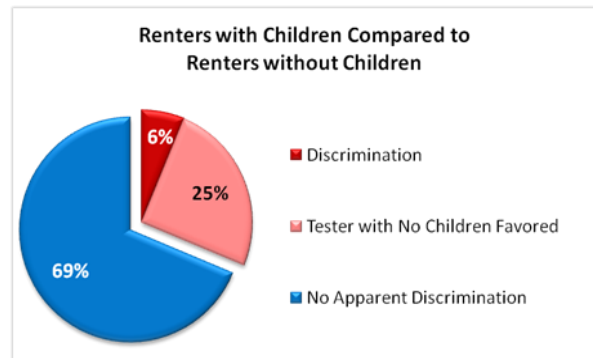
### Race and Color



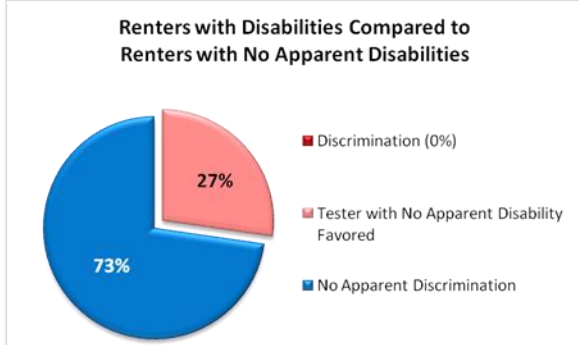
Rental visit audits on the basis of race and color compared housing providers' treatment of African American renters to the housing providers' treatment of white renters. In 31% of these tests, the testers' rental experiences indicated preferential treatment toward the white testers. Additional race/color tests were conducted with Hispanic and Asian testers; however, the number of tests was insufficient to support findings based on particular groups.

### Familial Status

Familial status (presence of minor children) testing also demonstrated higher rates of apparent discrimination and overall differential treatment. In this series of tests, protected testers portraying prospective renters with young children were paired against testers portraying renters who did not have any children. Thirty-one percent of the testing results indicated apparent discrimination against the tester with children or treatment favorable to the testers without children.



## Disability

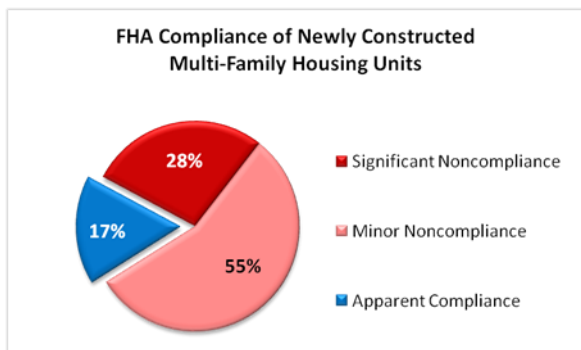


Tests were conducted both on the basis of physical disability and that of mental disability. The charted results represent the combined outcome of these two bases. Twenty-seven percent of the rental visit tests conducted on these bases indicated preferential treatment toward the tester without an apparent disability. In addition, eighteen accessibility audits were also conducted, and those results are reported next.

## **Accessibility Audits on Newly Constructed Multi-Family Dwellings**

The Federal Fair Housing Act (FHA) establishes accessibility requirements for newly designed and constructed multi-family dwellings. Most multi-family units built for occupancy after March 31, 1991 must comply with these requirements. HDLP accessibility audits were limited to multi-family units constructed within two years of the date on which HDLP testers examined the units. The HDLP conducted eighteen accessibility audits between 2009 and 2011. Unlike the rental visit and linguistic telephone audits, accessibility audits only require one tester specially trained in FHA accessibility requirements to view the selected test property. While conducting their audits, accessibility testers examined the apartment complexes as a whole, as well as individual rental units, to measure overall compliance with FHA accessibility requirements.

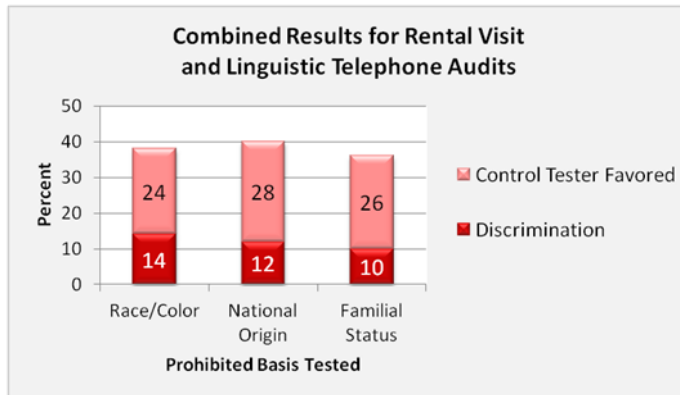
FHA requirements include: 1) accessible entrances on an accessible route (including accessible parking); 2) accessible public and common-use areas, such as lobbies and laundry rooms; 3) accessible and usable doors; 4) accessible route into and through the housing unit; 5) accessible light switches, outlets, and environmental controls; 6) reinforced walls in bathrooms; and 7) accessible and usable kitchens and bathrooms. These accessibility requirements are separate from those mandated under the Americans with Disabilities Act (ADA). HDLP testing only examined compliance with FHA standards.



As the chart to the left shows, in 83% of the eighteen accessibility tests conducted on newly-constructed multi-family housing units, significant or minor noncompliance with FHA design and construction accessibility requirements was found. Issues of noncompliance typically involved lack of requisite clear floor space in kitchens and bathrooms, inaccessible entry thresholds into buildings or individual units, noncompliant parking areas, and inaccessible positioning of interior controls (e.g., outlets and thermostats).

## Conclusion

In a small majority of both the rental visit and linguistic telephone audits conducted by the HDLP from 2009 through 2011, housing providers' treatment of the paired testers indicated no apparent discrimination; however, significant percentages demonstrated some preferential treatment toward the



white testers of U.S. origin. Combining the testing outcomes for the rental visit audits and the linguistic telephone audits, testing results reflected preferential treatment toward the control testers in 38% of the race-based tests, 40% of the national origin tests, and 36% of the familial status tests. These findings indicate that housing discrimination poses significant barriers to equal housing opportunity for renters who are African American, families with children, and individuals of foreign origin.

These testing results also show an evident preference of housing providers for people without apparent disabilities. The accessibility testing of new construction also shows a lack of compliance.

Very few housing providers made overtly discriminatory remarks to testers. The majority of paired tests indicating discrimination or preferential treatment toward the control tester involved subtle behaviors such as delayed response times to the protected tester or asking more probing questions of the protected tester as in comparison to the control tester. These differences in treatment would have been difficult to recognize absent this comparative analysis of testing results. In many situations, protected testers experiencing unfavorable treatment were not aware that they had been discriminated against. It was only by comparing treatment with the control that different treatment was evident.

Both the prevalence of differential treatment occurring in Vermont's rental market and the subtle ways in which housing discrimination manifests highlight the need for continued fair housing testing as well as additional educational efforts of housing providers throughout Vermont.