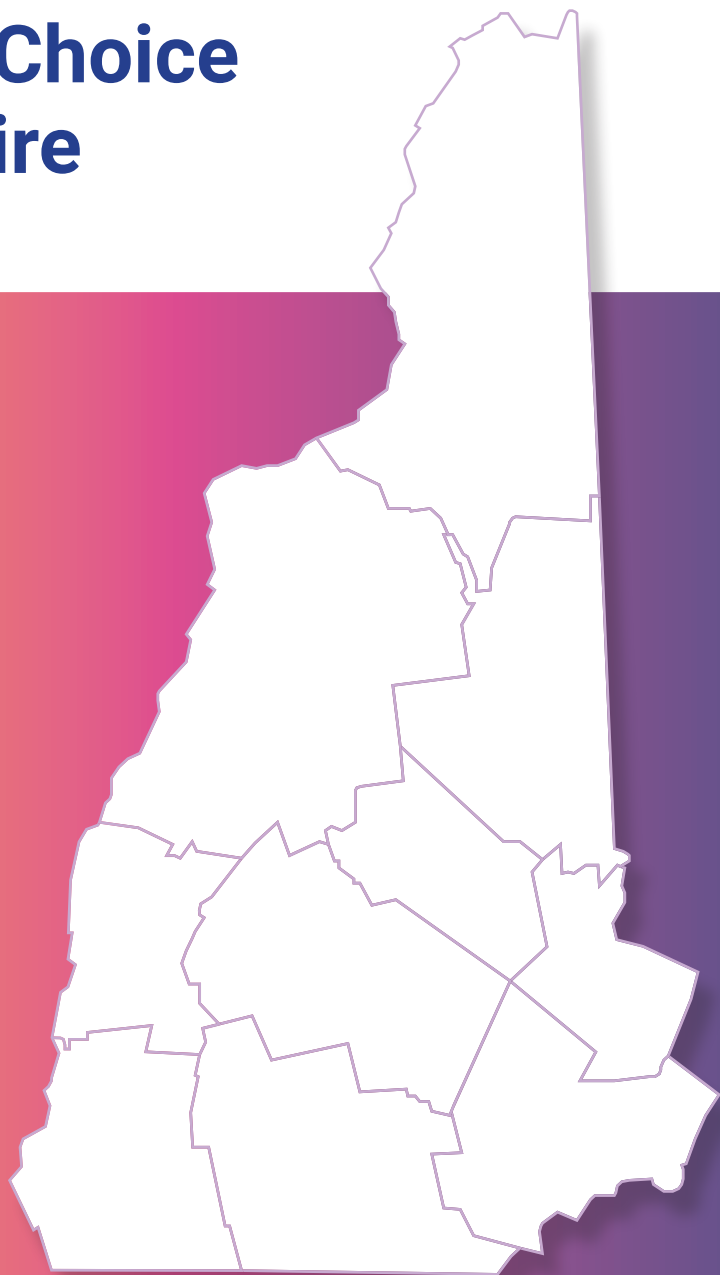


# Analysis of Impediments to Fair Housing Choice in New Hampshire

**2020**  
UPDATE



May 2021

*Prepared for New Hampshire Housing Finance Authority and  
New Hampshire Community Development Finance Authority  
by New Hampshire Legal Assistance*

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## Scope of Investigation

In preparing the 2020 AI Report, the following activities were undertaken:

1. Thirty-year review of affirmatively furthering fair housing in the state
2. Demographic analyses;
3. Evaluation of areas of high poverty and racial/ethnic concentrations;
4. A focus group and a set of one-on-one interviews with community members;
5. A survey of the state's Public Housing Authorities (PHAs);
6. Analysis of the housing barriers facing residents with serious mental illness;
7. Research into legal developments at the federal and state level;
8. Compilation of fair housing resources;
9. Review of hate crime data;
10. Compilation of housing discrimination complaint data;
11. Summaries of impediments faced by particular protected class groups;
12. Identification of additional impediments
13. Review of the progress made on addressing impediments identified in the prior AI;
14. Analysis of the impact of the COVID-19 pandemic on protected class members;
15. Study of the racial justice movement in New Hampshire; and
16. Preparation of supplemental materials in the report appendix.



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# PART I: OVERVIEW OF 2020 UPDATE

## A. INTRODUCTION

The Fair Housing Act (FHA)<sup>1</sup> was passed by Congress in 1968 in the weeks following the assassination of Dr. Martin Luther King, Jr., and sought to address pervasive housing discrimination. The FHA originally prohibited housing discrimination on the basis of race, color, national origin, and religion. In 1974, the FHA was amended to prohibit discrimination on the basis of sex. Disability and familial status protections were added in 1988. New Hampshire enacted its own housing discrimination law, the Law Against Discrimination,<sup>2</sup> in 1965. State protected classes include the seven classes protected at the federal level, as well as age, marital status, sexual orientation, and the most recently added class of gender identity.

These laws protect class members' equal access to and use of housing. Despite the several decades that have passed since these laws were enacted, housing discrimination has not been eradicated. Over the years, forms of discrimination have become more subtle, and there are continued barriers to access and opportunity for many members of our society. Patterns of segregation persist in the country and in the state of New Hampshire. States and particularly the federal government continue to devote resources and funds to root out and eliminate discrimination.

At the federal level, the U.S. Department of Housing and Urban Development (HUD) is the primary agency charged with implementation and enforcement of the FHA. The FHA mandates that HUD "administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies" of the FHA.<sup>3</sup> This requirement is known as the obligation to affirmatively further fair housing (AFFH). Recipients of federal housing and community development funds are required to conduct an assessment of fair housing issues within their jurisdictions and take actions to overcome historic patterns of segregation and discrimination to achieve integrated communities.

The obligation to conduct assessments of fair housing issues has taken multiple forms, including conducting an Analysis of Impediments to Fair Housing Choice (AI) and a newer Assessment of Fair Housing (AFH) approach, which is based on an AFFH rule finalized by HUD in 2015. The AFFH rule staggered implementation of the rule's AFH requirement for different jurisdictions over several years. Most recently, in 2020, HUD terminated the 2015 AFFH rule and issued a new rule, called Preserving Community and Neighborhood Choice.<sup>4</sup> With a new incoming federal administration, it is likely that AFFH regulations will again be changed.

Identification and analysis of barriers to equal access to housing and to community assets is crucial to a state's ability to overcome discrimination and segregation. Like with the 2015 AI, this update includes analysis of racially/ethnically concentrated areas of poverty and of structural impediments to fair housing in the state. As ever, New Hampshire must be prepared to meet the challenges to equal access and opportunity for all. This 2020 Update to the Analysis of Impediments to Fair Housing Choice (2020 AI) provides residents, government officials, policy

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<sup>1</sup> 42 U.S.C. § 3601 *et seq.*

<sup>2</sup> N.H. R.S.A. § 354-A.

<sup>3</sup> 42 U.S.C. § 3608(e)(5).

<sup>4</sup> Preserving Community and Housing Choice, 85 Fed. Reg. 47899 (Aug. 7, 2020).

leaders, and advocates with a roadmap for addressing the housing discrimination and other barriers to opportunity that still exist in the state.

## B. EXECUTIVE SUMMARY

The publication of the 2020 Update to the Analysis of Fair Housing in New Hampshire (2020 AI) marks the fifth Analysis conducted since 1996 when the Office of State Planning issued the original Analysis of Impediments (AI).<sup>5</sup> By 2004, New Hampshire Housing Finance Authority (NHHFA) had taken responsibility for evaluating barriers to housing opportunity and published an update to the AI.<sup>6</sup> In 2010, New Hampshire Community Development Finance Authority (CDFA) also began supporting publication of the AI.<sup>7</sup> The most recent update was published in 2015.<sup>8</sup> New Hampshire Legal Assistance (NHLA), under contract with NHHFA and CDFA, has produced all four of the updates.

### Scope of Investigation

In preparing the 2020 AI, the following activities were undertaken:

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10. Compilation of housing discrimination complaint data;
11. Summaries of impediments faced by particular protected class groups;
12. Identification of additional impediments;
13. Review of the progress made on addressing impediments identified in the prior AI;

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<sup>5</sup> *Comprehensive Fair Housing Plan*, Office of State Planning (Mar. 1996) [hereinafter *1996 AI*].

<sup>6</sup> *Analysis of Impediments to Fair Housing in New Hampshire 2004 Update*, New Hampshire Housing Finance Authority (2004).

<sup>7</sup> *Analysis of Impediments to Fair Housing Choice in New Hampshire 2010 Update*, New Hampshire Housing Finance Authority and New Hampshire Community Development Finance Authority (2010).

<sup>8</sup> *2015 Analysis of Impediments to Fair Housing Choice*, New Hampshire Housing Finance Authority and New Hampshire Community Development Finance Authority (2015), [https://www.nhhfa.org/wp-content/uploads/2019/06/Analysis\\_Impediments\\_FHC.pdf](https://www.nhhfa.org/wp-content/uploads/2019/06/Analysis_Impediments_FHC.pdf) [hereinafter *2015 AI*].



14. Analysis of the impact of the COVID-19 pandemic on protected class members;
15. Study of the racial justice movement in New Hampshire; and
16. Preparation of supplemental materials in the report appendix.

This update includes an expansive look back at the past thirty years of fair housing analysis and enforcement in the state. It describes the analysis of areas in the state where higher concentrations of members of racial and/or ethnic minority groups and higher levels of poverty intersect. It examines those areas through the lens of access to opportunity and community assets. It shares the results from one focus group with Brazilian community members and a set of interviews with members of the state's Muslim communities, as well as a survey of New Hampshire's Public Housing Authorities (PHAs). It also includes a section on the progress made since the *Amanda D.* case was brought against the state on behalf of persons with serious mental illness to challenge the state's institutionalization practices and ensure these individuals have a realistic opportunity of residing in their communities.

This update continues to survey new legal developments at the federal and state level, discusses challenges facing protected class members, reviews fair housing discrimination complaint data, identifies existing fair housing impediments, and analyzes the progress made to address the impediments identified in the 2015 AI. Finally, it includes two additional sections: one about the effects of the COVID-19 pandemic on protected class groups and low-income people, and one on the quest for racial justice in New Hampshire.

## **Findings**

Significant impediments continue to impact housing choice for protected class members in the Granite State, although important progress has been made. In Part II, review of the past thirty years of fair housing analysis and enforcement provides context for and acknowledgement of the fact that many impediments are engrained within our societal structures, such as income inequality and persistent disparities based on race and ethnicity. It also recognizes that advocacy, legislative efforts, and collaboration among various stakeholders have addressed some of the barriers. For example, additional housing legal protections have been added for survivors of domestic violence and gender identity has been added to the state's Law Against Discrimination.

Part II also includes assessment of concentrations of poverty and members of racial and/or ethnic minority groups at the census tract level. Unfortunately, this analysis reveals that a census tract in Manchester now qualifies as a HUD-defined racially or ethnically concentrated area of poverty (R/ECAP). Additionally, in each census tract analyzed, poverty rates were higher than the statewide rate and household incomes were lower. Beyond income and public benefit enrollment, access to community assets was also substantially limited when compared to statewide figures. On the whole, individuals living in these areas within the state face barriers to quality education, greater exposure to environmental hazards, and limited chance of future economic mobility.

Part II concludes with discussions and input from community members and from the state's Public Housing Authorities (PHAs). The section on Targeted Community Input includes reports from a focus group with Brazilians in Nashua and from interviews with Muslims across the state. People from both groups described knowing of or personally encountering incidents of disparate treatment based on their nationality, race, or religion. Most individuals did not report wrongs committed against them or seek assistance in enforcing their rights. The PHAs reported

on challenges to implementing fair housing policies and practices as well as the multitude of changes on their operations brought about by the COVID-19 pandemic, including creation of some innovative programs to assist struggling tenants.

Part III focuses on housing discrimination and other barriers facing individuals with serious mental illness and discusses the state's duty to ensure these individuals are integrated within the community and receive adequate and appropriate community-based supports. The comprehensive class settlement agreement that was the result of a suit against the state on behalf of plaintiffs with serious mental illness represents a truly significant advancement of their civil rights. Unfortunately, the state is not yet fully meeting its obligations under the agreement (*see* pp. 89–90 for further information on this topic).

Part IV discusses the various developments in both federal and state housing discrimination law as well as developments that affect protected class members directly or indirectly. There were a range of federal regulatory changes during this period, most regrettably negative, including termination of the AFFH rule, harmful changes to the FHA disparate impact rule, and anti-immigrant legislation including the “mixed-status” rule and the public charge rule. At the state level, the most significant developments were the addition of gender identity as a protected class to the state's discrimination laws, enhancements to the state's lead poisoning prevention laws, and litigation challenging the state's implementation of Medicaid work requirements.

Part V reviews federal and state fair housing resources and fair housing complaint data from HUD, the HRC, and NHLA. This data reveals that NHLA handles far more fair housing complaints than any other entity in the state and that disability remains the protected class with the most reported cases of discrimination. The section includes an analysis of hate crimes and bias incidents in New Hampshire and discusses examples of discrimination in our state. Part V discusses the various protected class groups and particular challenges facing them and concludes with identification of still existing impediments and a report on the actions and progress that have occurred since the last AI update.

Part VI provides an overview of the impact of the global COVID-19 pandemic on the state, with a particular focus on the acute effects on members of certain protected class groups. The section also reports on feedback from advocates in various legal and social service positions about the impacts they have seen in their client communities.

Part VII examines the racial justice movement in New Hampshire brought about by the killing of George Floyd in Minneapolis, MN, and reviews the impact of that incident on the people of New Hampshire. It includes a compilation of remarks from Black community leaders.

Finally, the 2020 AI closes with Part VIII's recommendations designed to address the obstacles to achieving equity in our state.

## C. ACKNOWLEDGEMENTS

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## **PART II: 2020 OPPORTUNITY ANALYSIS**

### **A. AFFIRMATIVELY FURTHERING FAIR HOUSING: THIRTY YEARS OF FAIR HOUSING WORK AND ANALYSIS IN NEW HAMPSHIRE (1990–2020)**

#### **1. Introduction**

New Hampshire's first AI was published in 1996. Updates followed in 2004, 2010, and 2015. This publication represents the fifth edition of the AI. NHLA has prepared the last four AIs, including this one. We now have thirty years of information and analysis which we can use to track progress made and report on the work yet to be done. Preparation of the AIs has allowed us to better understand that many impediments are deeply rooted within our societal structures and to acknowledge that many challenges stubbornly remain. The AIs serve as a tool for state agency planning and as a resource for communities throughout the state.

All of the AIs have attempted to make a comprehensive review of the various factors that create obstacles to fair housing opportunity. With each addition, the analysis has become broader and deeper with the realization that most of the impediments are structural. Data on discrimination complaints is a key component of every report and is crucial to understanding the nature and incidence of housing discrimination in New Hampshire. Every AI has included input from stakeholders ranging from members of protected class groups and tenants to housing and social service providers. Formats have included focus groups, surveys, and interviews. A review of fair housing resources and materials has also been a consistent component of the AI reports.

Recognizing that housing discrimination occurs within the context of societal mores and structures, AI research expanded to review trends and data beyond complaint numbers. Beginning with the 2004 edition, the AI reports have included reports on notable legal developments and in-depth review of protected class discrimination features and trends. Since 2004, each report has focused on the economic disadvantages disproportionately and systematically experienced by protected class group members. Starting with the 2010 AI, inclusion of New Hampshire hate crime information has added a new dimension to the reports. The 2015 and 2020 AIs include comprehensive opportunity analyses of poor neighborhoods with higher concentrations of individuals in racial and ethnic minority groups that once again verified that communities of color still face very real disadvantages.<sup>9</sup>

The centerpiece of each AI is the identification of the impediments and progress reports addressing them. The list of impediments has grown over the years. Some identified impediments like "land use controls" appear in every AI from the 2004 edition on, as does "housing for older persons," "mortgage lending," and "economic factors." Although many of the impediments involve conditions beyond the direct purview or control of the entities responsible for producing the AI, efforts have been invested and progress has been achieved.

Advocacy, legislative efforts, and collaborative work have addressed some of the barriers. For instance, the 2004 AI listed "regulation of Manufactured Housing Parks" (MHPs) as

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<sup>9</sup> We recognize that different people may describe their racial and/or ethnic identities in different ways. Throughout this report, we have made every effort to use terms that we understand, from research and consultation, are accepted within the various communities we describe and consistent with the data sources we used.

an impediment largely based on familial status discrimination. At the time, most of the MHPs were privately owned. Now the majority of MHPs have been converted to resident-owned cooperatives. This was largely accomplished through the efforts of the New Hampshire Community Loan Fund as well as NHHFA. In addition to receipt of financing assistance, co-op boards received technical assistance and management training. The result is that the number of MHP evictions and fair housing concerns has declined over the years.

The 2015 AI called for additional housing law protections for domestic violence survivors. Most of those concerns have been addressed through a combination of state and federal law.<sup>10</sup> The 2015 AI also identified the lack of protected class status for transgender persons as an impediment. In 2018, the New Hampshire Legislature amended the Law Against Discrimination to include gender identity as a protected class.<sup>11</sup> These accomplishments are discussed further on pp. 25, 111, and 134.

## **2. Development and Expansion of Housing Discrimination Law**

The express purpose of the FHA is to eradicate racial discrimination and segregation in the housing sector and to promote integration and housing opportunity for all, especially for those groups who have been historically denied. The FHA initially prohibited discrimination based on four protected classes: race, color, national origin, and religion. Sex was added in 1974, and disability and familial status were added in 1988. Although the FHA has not been expanded to include sexual orientation or gender identity as protected classes, there has been success in some jurisdictions in bringing such claims as sex discrimination cases. HUD also instituted the Equal Access Rule which prohibits discrimination in HUD-subsidized housing based on marital status, sexual orientation, and gender identity.<sup>12</sup>

The New Hampshire Legislature enacted its own Law Against Discrimination in 1965 which covered housing, employment, and public accommodations. Significantly, the Law Against Discrimination created the New Hampshire Commission for Human Rights (HRC) to enforce the new civil rights laws. Over the years, the state has added more protected classes than the federal law covers. Currently, state-protected classes include race, color, religion, national origin, sex, familial status, disability, age, marital status, sexual orientation, and gender identity. The statute also prohibits discrimination based on AIDS/HIV.<sup>13</sup> In 2019, the Legislature gave the HRC oversight of public education discrimination.<sup>14</sup>

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<sup>10</sup> The Violence Against Women Act 2013 reauthorization (implemented by HUD regulations in late 2016) strengthened protections in federally subsidized housing for domestic violence survivors and victims of stalking, sexual assault, and dating violence requiring notice to all tenants and applicants of VAWA protections and the ability to request to transfer. In 2010, the New Hampshire Legislature amended its eviction statute to prohibit eviction of survivors of domestic violence, sexual assault, or stalking because of that status (*see* N.H. R.S.A. § 540:2, VII).

<sup>11</sup> N.H. R.S.A. § 354-A:1 *et seq.*

<sup>12</sup> 24 C.F.R. § 5.105.

<sup>13</sup> N.H. R.S.A. § 354-A:10.

<sup>14</sup> N.H. R.S.A. § 354-A:27–28.

### **3. Affirmatively Furthering Fair Housing Through Analysis and Enforcement**

#### **a. Analysis**

Since the passage of the FHA, the U.S. Department of Justice (DOJ) and HUD have held primary authority to enforce its provisions. For the first two decades after the enactment of the FHA, HUD was the major architect of fair housing policy and planning. In 1988, Congress passed the Fair Housing Amendments Act (FHAA) which not only expanded the number of federally protected classes, but also strengthened the remedies available to those injured by discrimination. It triggered further efforts to engage states and local communities in advancing fair housing principles and enforcing the provisions of the FHA.<sup>15</sup> The FHAA and subsequent HUD policy developments have had a profound effect on the advancement of fair housing principles throughout the United States, including in New Hampshire.

In the early 1990s, HUD initiated a new policy of “devolution” to shift many of the responsibilities of fair housing planning to state and municipal grantees: “The goal of devolution of responsibility in the area of fair housing means that communities will have the authority and the responsibility to decide the nature and extent of impediments to fair housing and decide what they believe can and should be done to address these impediments.”<sup>16</sup> As a consequence of its devolution policy, HUD began requiring jurisdictions that directly receive federal community development funds to prepare a formal analysis of impediments to fair housing (AI). AIs have been a key tool for jurisdictions to meet their obligations to affirmatively further fair housing and to assess barriers to housing opportunity more accurately.<sup>17</sup>

#### **b. Enforcement**

In 1995, HUD initiated the Fair Housing Initiatives Program which allowed qualified non-profit organizations to engage in education and outreach efforts as well as to conduct intake and investigation of fair housing claims.<sup>18</sup> In 1996, NHLA applied for and received its first HUD enforcement grant and formed the Fair Housing Project (FHP). Receipt of these funds has had a huge impact on increasing housing opportunity in New Hampshire. The FHP has continued to receive HUD enforcement funding and has investigated and litigated the vast majority of housing discrimination cases in New Hampshire (*see table on p. 16*).

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<sup>15</sup> Fair Housing Amendments Act (FHAA) P.L. 100-430.

<sup>16</sup> *Fair Housing Planning Guide, Vol. 1*, U.S. Dep’t of Hous. & Urban Dev., at i (1996), <https://www.hud.gov/sites/documents/FHPG.PDF>.

<sup>17</sup> In 2015, HUD issued a new regulation on Affirmatively Furthering Fair Housing (the AFFH Rule), 24 C.F.R. Parts 5, 91, 92, *et seq.* (2015). The AFFH Rule required jurisdictions to conduct Assessments of Fair Housing (AFH) using data tools that measure the well-being of communities and identify patterns of segregation and integration and areas of concentrations of poverty. In 2018, HUD suspended implementation of the AFH (*see HUD Indefinitely Suspends AFFH Rule, Suspends Assessment Tool*, NLIHC (May 21, 2018), <https://nlihc.org/resource/hud-indefinitely-suspends-affh-rule-withdraws-assessment-tool>). In January 2020, HUD issued proposed rules that would significantly scale back the current AFFH Rule (*see Affirmatively Furthering Fair Housing*, 85 Fed. Reg. 2041 (Jan. 14, 2020)). Then, in July 2020, HUD issued its final rule, which repealed the 2015 AFFH regulations (*see Preserving Community and Housing Choice, supra note 4; Secretary Carson Terminates 2015 AFFH Rule*, Press Release, U.S. Dep’t of Hous. & Urban Dev. (July 23, 2020), [https://www.hud.gov/press/press\\_releases\\_media\\_advisories/hud\\_no\\_20\\_109](https://www.hud.gov/press/press_releases_media_advisories/hud_no_20_109)).

<sup>18</sup> *See* 24 C.F.R. Part 125.

The FHP's enforcement work has significantly contributed to the development of a vibrant housing discrimination litigation bar, comprised of members of both non-profit and private law firms. It has provided training and expertise on housing discrimination topics throughout the state reaching tenants, home buyers, lawyers, service providers, landlords, property managers, and many others. The FHP's work is particularly important in light of the fact that the state Human Rights Commission has not been eligible to receive HUD enforcement funds and handles only a small number of state-based housing discrimination complaints in any given year, as evidenced by the below chart. (For further information, *see* pp. 138–40 for discussion on New Hampshire's lack of substantial equivalency.)



<b>Total Number of Housing Discrimination Complaints Filed with Organization by Year</b>			
<b>Year</b>	<b>HUD</b>	<b>HRC*</b>	<b>NHLA</b>
1994	29	0	***
1995	38	6	***
1996	21	4	13
1997	26	6**	14
1998	7	6**	113
1999	22	6**	108
2000	19	6**	84
2001	16	6**	104
2002	14	6**	72
2003	18	6**	71
2004	26	8	161
2005	84	5	88
2006	63	2	29
2007	26	24	27
2008	34	4	41
2009	31	4	125
2010	33	6	90
2011	25	4	128
2012	37	12	166
2013	19	5	76
2014	13	8	168
2015	12	16	136
2016	22	11	175
2017	31	7	153
2018	30	19	177
2019	43	7	166
<b>Total</b>	<b>739</b>	<b>152</b>	<b>2,485</b>
<p>*HRC data for 1994–2014 is reported by state fiscal year and for 2015–2019 by calendar year.</p> <p>**HRC reported data in their biennial reports in two-year blocks between July 1, 1999 and June 30, 2003 using the state fiscal year. We averaged out the numbers for that time span.</p> <p>***NHLA first received HUD funding in 1995 and did not process any complaints until 1996.</p>			

Fair housing litigation in New Hampshire began to flourish in the 1990s and has continued to play an important role in the enforcement of fair housing laws and the promotion of equal access to housing opportunity. Over the years, discrimination complaints have been litigated in state and federal courts and in administrative proceedings before HUD's Office of Fair Housing and Equal Opportunity and the New Hampshire Human Rights Commission. Legal actions range from defending against discriminatory evictions and bringing actions for failure to grant reasonable accommodations or modifications to challenging discriminatory municipal ordinances, housing actions, and policies.

Complaints have been brought against local governments, private and subsidized landlords, condominium associations, nursing homes, assisted living facilities, and other entities. Individuals from every protected class group have reported discriminatory housing practices. Cases involving disability discrimination have consistently comprised the majority of cases. Until the 2015 to 2019 reporting period, familial status was consistently the second most reported basis of discrimination (for this period, race and national origin discrimination cases are second and third, respectively). (*See Fair Housing Complaint Data*, pp. 122–25.)

Several New Hampshire cases have had impacts beyond the borders of the state. *Roe v. Sugar River Mills* clarified housing providers' obligations to consider accommodations of a tenant's disability even when the provider asserts that the tenant poses a threat to health and safety.<sup>19</sup> *Trovato v. City of Manchester* established that municipalities are obligated to grant accommodation requests even when in conflict with local ordinances if the request is reasonable and necessary.<sup>20</sup> *White Cliffs at Dover v. Bulman* articulated the limits of reasonableness in a disability accommodation request case.<sup>21</sup>

Many other New Hampshire cases have received attention beyond the state's borders. *Rodriguez v. Nashua Housing Authority* is believed to be the first HUD complaint in the country to allege national origin discrimination based on the Housing Authority's failure to provide adequate language access.<sup>22</sup> In *Secretary v. City of Berlin*, HUD initiated a sex discrimination complaint based on the City's nuisance ordinance, asserting that its specific mandates had an unlawful and disparate impact on women.<sup>23</sup> *Merrill v. Manchester Housing and Redevelopment Authority*, filed on behalf of a Deaf tenant, resulted in a settlement for significant damages based on the Housing Authority's repeated failure to provide appropriate language access and other

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<sup>19</sup> *Roe v. Sugar River Mills*, 820 F. Supp. 636 (D.N.H. 1993). “[The Fair Housing] Act requires defendants to demonstrate that no ‘reasonable accommodation’ will eliminate or acceptably minimize the risk he poses to other residents at Sugar River Mills, before they may lawfully evict him.” *Id.* at 640.

<sup>20</sup> *Trovato v. City of Manchester*, 992 F. Supp. 493 (D.N.H. 1997). New Hampshire homeowners brought a lawsuit against the City when their request for a zoning variance to accommodate their disabilities was denied. The City's zoning board of adjustment did not believe that it had the power to grant the variance under state law. The federal court ruled that the variance must be granted as an accommodation under the FHA.

<sup>21</sup> *White Cliffs at Dover v. Bulman*, 151 N.H. 251 (2004).

<sup>22</sup> *Rodriguez v. Nashua Housing Authority*, HUD Complaint No. 01-06-0526-8 (2006). The case was settled with monetary and other relief for the complainants and requirements that the Housing Authority create a meaningful Language Access Plan and receive monitoring on its progress.

<sup>23</sup> *Secretary v. City of Berlin*, HUD Complaint No. 01-15-0017-8. The City was required to amend its ordinance and have its key staff undergo fair housing training (The Conciliation Agreement is available at <https://www.hud.gov/sites/documents/TOWNBERLIN.PDF>). NHLA initiated this case after filing complaints on behalf of a female domestic violence survivor who was denied housing opportunities by two separate housing providers who cited the city ordinance as the partial basis for their refusal to rent to her.

services and benefits.<sup>24</sup> In *United States v. MSM Brothers, Inc.*, the U.S. Department of Justice filed a familial status discrimination complaint in federal court on behalf of a mother who was denied a housing opportunity because the private landlord limited the number of apartments available to families with young children.<sup>25</sup>

These are just a few examples of the hundreds of housing discrimination complaints filed on behalf of people in New Hampshire who have experienced discrimination since the 1990s. This body of work has not only benefited the individual victims of discrimination but many others as well, as housing providers realize the full scope of their obligations to provide equal and nondiscriminatory access to housing opportunities.

## 4. New Hampshire Population Features and Access to Opportunity

### a. Income Inequality and Access to Housing Opportunity

As the 2015 AI pointed out, New Hampshire is an opportunity state with “a low poverty rate, good schools, low unemployment, comparatively affordable housing, low crime rate, and high environmental health.”<sup>26</sup> It ranks fourth in the U.S. in the Social Progress Index, an evaluation tool that measures quality of life in the U.S. and internationally.<sup>27</sup> New Hampshire is the fifth smallest state in the nation by land area and ranks as the tenth least populated state with an estimated population of 1,359,711. Since 1990, the state has increased in population size by a quarter million people with periods of growth spurts interspersed with periods of slow increases, as shown in the table, below.<sup>28</sup> The state experienced a modest 3% increase between 2010 and 2018 as births barely exceeded deaths.<sup>29</sup>

New Hampshire Population 1990–2019	
1990	1.112 M
1995	1.146 M
2000	1.216 M
2005	1.301 M
2010	1.324 M
2015	1.356 M
2019	1.36 M

<sup>24</sup> *Merrill v. Manchester Housing and Redevelopment Authority*, HUD Complaint No. 01-15-0322-8 (Title VIII); 01-15-0322-4 (Section 504); and 01-15-0322-D (ADA).

<sup>25</sup> *United States v. MSM Brothers, Inc.*, Case No. 1:17-cv-00321 (D.N.H. 2017). The case settled favorably for the complainant.

<sup>26</sup> 2015 AI, *supra* note 8, 7–8 (citations omitted).

<sup>27</sup> Michael E. Porter, *How All 50 States Rank in the Social Progress Index*, Boston Globe (Jan. 28, 2020), <https://www.bostonglobe.com/2020/01/28/opinion/how-all-50-states-rank-social-progress-index/>.

<sup>28</sup> U.S. Census data (July 2019), <https://www.census.gov/quickfacts/NH>; *see also* World Population Review, <http://worldpopulationreview.com/states/> and Google Public Data (derived from U.S. Census), [https://www.google.com/publicdata/explore?ds=kf7tgg1uo9ude\\_&met\\_y=population&idim=state:33](https://www.google.com/publicdata/explore?ds=kf7tgg1uo9ude_&met_y=population&idim=state:33).

<sup>29</sup> Kenneth M. Johnson, *New Hampshire Demographic Trends in an Era of Economic Turbulence*, Regional Issue Brief #59, Carsey Research, University of New Hampshire 1 (Fall 2019), <https://scholars.unh.edu/cgi/viewcontent.cgi?article=1381&context=carsey>.

Despite New Hampshire's assets and high standard of living, income inequality is a tenacious and growing problem in the state as it is across the nation.<sup>30</sup> From the period of 1979 to 2007, "the wealthiest 1 percent in New Hampshire captured 35.5 percent of the state's income growth," and the concentration of wealth continued when "from 2009 to 2011—the heart of the recession—that same group held an 83.3 percent share of the income."<sup>31</sup> This trend does not seem to have abated:

In the decade since the Great Recession, New Hampshire's economy has improved by many measures, yet uneven wage growth, decreases in access to economic opportunity, and increasing expenses have left many Granite Staters behind. New Hampshire's median wage in 2018 was \$20.95 per hour or about \$43,000 per year when working full time. Half of workers in New Hampshire earn less than this amount. Incomes for workers earning below median wages have not kept pace with inflation, while housing costs have outpaced inflation in recent years. At the same time, individuals earning more than the median have historically seen their inflation-adjusted wages increase.<sup>32</sup>

Income inequality is compounded by income-based housing segregation resulting in "vast inequalities in neighborhoods' social, economic, educational, and political resources."<sup>33</sup> Communities are often structured in ways that create neighborhoods in which there is little income diversity.<sup>34</sup> Children brought up in lower-income neighborhoods generally do not have equal access to the benefits that children living in more affluent communities experience. These disparities tend to have lifelong consequences.<sup>35</sup> Income-based segregation perpetuates generational poverty and disadvantage.<sup>36</sup>

Land use controls, such as local zoning ordinances, are a key factor in the creation or suppression of economically diverse communities. Municipalities' use of high acreage minimum lot size, low density requirements, and other overly restrictive zoning ordinances to control growth act to limit affordable housing development, intentionally or not. Affordable housing

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<sup>30</sup> Bob Sanders, *NH's income inequality fastest-growing in U.S.*, NH Business Review (July 23, 2015), <https://www.nhbr.com/nhs-income-inequality-fastest-growing-in-u-s/> ("[Income] [i]nequality has been growing around the nation since the 1970s, and that growth rate has continued, climbing 2.6% nationwide from 2007 to 2013. But New Hampshire's growth has grown more than 5% (5.07%, to be exact).").

<sup>31</sup> *Id.*

<sup>32</sup> *New Hampshire's Workforce, Wages, and Economic Opportunity*, Issue Brief, New Hampshire Fiscal Policy Institute (NHFPI) (Aug. 30, 2019) (citations omitted), <http://nhfpi.org/research/state-economy/new-hampshires-workforce-wages-and-economic-opportunity.html>.

<sup>33</sup> Ann Owens, *Building Inequality: Housing Segregation and Income Segregation*, 6 Sociological Science 497, 498 (Aug. 7, 2019), [https://www.sociologicalscience.com/download/vol-6/august/SocSci\\_v6\\_497to525.pdf](https://www.sociologicalscience.com/download/vol-6/august/SocSci_v6_497to525.pdf).

<sup>34</sup> *See id.*

<sup>35</sup> *See, e.g.*, Robert Collinson and Jens Ludwig, *Neighborhoods and opportunity in America*, Brookings (Sept. 19, 2019), <https://www.brookings.edu/research/neighborhoods-matter-for-opportunity-time-for-more-place-conscious-policy/>.

<sup>36</sup> *See infra* pp. 64–66 for an analysis of the limited upward mobility and lack of intergenerational income growth in certain New Hampshire neighborhoods.

developments that do make it through the arduous and costly local planning and approval processes are often constructed in the least desirable locations of the town.<sup>37</sup>

New Hampshire has struggled with overly restrictive local land use controls for decades. In 1991, in *Britton v. Chester*, the New Hampshire Supreme Court made it clear that every municipality in the state must provide its “fair share” of affordable housing for low and moderate income families by allowing a reasonable and realistic opportunity for its development.<sup>38</sup>

In 2008, the Legislature codified the principles of *Britton v. Town of Chester* by enacting the Workforce Housing Law (WHL).<sup>39</sup> The WHL requires that workforce housing be allowed in a majority of land areas where residential use is allowed while still permitting restrictions on multi-family construction. Although many municipalities embraced the WHL, others have remained resistant or have largely limited affordable housing construction to projects for older adults.

During New Hampshire’s 2020 legislative season, housing justice advocates worked with legislators to introduce amendments to the WHL that would further advance the development of affordable housing in New Hampshire communities. The amendments would have required training for planning and zoning board members. Preference for construction of housing for older persons would have been tempered by requiring that any incentives for such housing be available for all types of housing, including workforce housing.<sup>40</sup> A companion bill would have added incentives for the development of affordable housing.<sup>41</sup> Ultimately, neither bill passed in a legislative season abbreviated by the coronavirus pandemic, but similar legislation is expected to be introduced during the next session.

#### **b. Persistent Disparities Based on Race and Ethnicity**

New Hampshire remains one of the least diverse states in the country.<sup>42</sup> When the first AI was published in 1996, the state was 98% White.<sup>43</sup> By 2019, White residents represented 90% of the state’s population.<sup>44</sup> The increase of minority populations has accounted for two-thirds of the state’s tiny population gain.<sup>45</sup> Of the New England states, New Hampshire, Vermont, and Maine remain the least diverse and have considerably less diversity than Massachusetts, Rhode Island, and Connecticut.<sup>46</sup>

Every AI has noted the obvious lack of diversity, but over the years, our analysis of the significance of this fact has become more focused. Data reveals that in spite of small populations, housing discrimination complaints based on race and national origin are not

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<sup>37</sup> See, e.g., Michael Kitch, *Planning, zoning rules faulted for housing woes*, NH Business Review (Sept. 15, 2017), <https://www.nhbr.com/planning-zoning-rules-faulted-for-housing-woes/>.

<sup>38</sup> *Britton v. Chester*, 134 N.H. 434 (1991).

<sup>39</sup> N.H. R.S.A. § 674:58–61 (eff. Jan. 1, 2010).

<sup>40</sup> See New Hampshire General Court, H.B. 1629, [http://gencourt.state.nh.us/bill\\_status/billText.aspx?sy=2020&id=1723&txtFormat=pdf&v=current](http://gencourt.state.nh.us/bill_status/billText.aspx?sy=2020&id=1723&txtFormat=pdf&v=current); see also Christopher Swiniarski, *Impacts of Proposed Amendments to Workforce Housing Law – HB 1629 and HB 1632*, New Hampshire Bar News (May 20, 2020).

<sup>41</sup> New Hampshire General Court, H.B. 1632, [http://gencourt.state.nh.us/bill\\_status/billText.aspx?sy=2020&id=1527&txtFormat=pdf&v=current](http://gencourt.state.nh.us/bill_status/billText.aspx?sy=2020&id=1527&txtFormat=pdf&v=current).

<sup>42</sup> Johnson, *supra* note 29, at 9.

<sup>43</sup> 1996 AI, *supra* note 5, at 5.

<sup>44</sup> U.S. Census data, *supra* note 28; see also Johnson, *supra* note 29, at 9.

<sup>45</sup> Johnson, *supra* note 29, at 9.

<sup>46</sup> See App. A-01, a chart showing racial/ethnic diversity of the New England states from 1990 through 2019.

uncommon (*see* tables on pp. 123–25). Starting with the 2004 AI, we have included information about state and federally protected class groups to provide further insight into factors and challenges facing particular constituencies.

New Hampshire’s perceived advantages are less accessible to some racial and ethnic groups. The 2015 AI included an analysis of access to opportunity following HUD guidance that was ultimately codified as the AFFH Rule. The purpose of the analysis was to evaluate access to opportunity in racially/ethnically-concentrated areas of poverty as defined by HUD.<sup>47</sup> Although no census tract in the state met HUD’s concentration definitions at the time, there were high-poverty neighborhoods in the state with significant numbers of non-White residents. The analysis confirmed that people living in those tracts did not fare as well as the rest of the state on a variety of opportunity indicators including affordable housing choice, school proficiency, employment opportunities, and overall access to community assets.<sup>48</sup>

The opportunity analysis included in the 2020 AI echoes the findings of the 2015 assessment: people of color concentrated in the poorest neighborhoods still face the same obstacles outlined in the 2015 AI. By every measure, those neighborhoods faced conditions and access to opportunity far below the state average. In addition, one census tract in Manchester now meets HUD’s definitions of racially/ethnically-concentrated areas of poverty (*see* Section II.B, pp. 29–69).

Immigrants and refugees may not feel safe in their communities especially given concerns about anti-immigrant bias in policing. Immigrants, including those lawfully present or who are U.S. citizens, have felt increasingly insecure as federal policies have resulted in increased ICE raids and detentions,<sup>49</sup> implementation of Customs and Border Protection highway checkpoints in northern New Hampshire,<sup>50</sup> initiation of policies that have perpetrated harm upon families through separation,<sup>51</sup> attempts to terminate some temporary status programs,<sup>52</sup> and unconstitutional seizures of immigrants by state and local police.<sup>53</sup> Immigrant families in federally subsidized housing are facing separation from family members who may no longer be allowed to remain in a household if they lack eligible immigration status (*see* discussion on pp. 98–99).<sup>54</sup>

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<sup>47</sup> HUD defines racial/ethnic concentrations as 50% or more of the population in a census tract being non-White and poverty concentration as 40% or more of the population in a census tract living below the poverty level. *Racially or Ethnically Concentrated Areas of Poverty (R/ECAPs)*, HUD Office of Policy Development and Research, [https://hudgis-hud.opendata.arcgis.com/datasets/56de4edea8264fe5a344da9811ef5d6e\\_0](https://hudgis-hud.opendata.arcgis.com/datasets/56de4edea8264fe5a344da9811ef5d6e_0).

<sup>48</sup> 2015 AI, *supra* note 8, at 13–30.

<sup>49</sup> *See, e.g.*, Vanessa Romo, *U.S. Cities Prepare for Increased ICE Raids*, New Hampshire Public Radio (NHPR) (July 13, 2019), <https://www.nhpr.org/post/us-cities-prepare-planned-ice-raids-sunday#stream/0>.

<sup>50</sup> *See, e.g.*, Alyssa Dandrea, *Immigration checkpoint on I-93 nets no arrests but draws concern*, Concord Monitor (June 11, 2019), <https://www.concordmonitor.com/Border-patrol-checkpoint-immigration-Woodstock-NH-26181887>.

<sup>51</sup> *See, e.g.*, Michael Garcia Bochenek, *U.S.: Separation Harming Children, Families*, Human Rights Watch (July 11, 2019), <https://www.hrw.org/news/2019/07/11/us-family-separation-harming-children-families>.

<sup>52</sup> *See, e.g.*, *TPS Termination Will Disrupt Communities Across America and Upend the Lives of Thousands of U.S. Citizen Children*, American Immigration Council (Sept. 14, 2020), <https://www.americanimmigrationcouncil.org/news/tps-termination-will-disrupt-communities-across-america-and-upend-lives-thousands-us-citizen>.

<sup>53</sup> The ACLU-NH has successfully settled constitutional claims against several police departments that detained persons suspected of violating civil immigration laws. *See infra* note 55.

<sup>54</sup> On May 10, 2019, HUD published proposed rules that would change long-standing regulations that permit immigrants ineligible for federal housing benefits to remain in the household without receipt of any subsidy benefit.



The American Civil Liberties Union-New Hampshire (ACLU-NH) and immigrant rights advocacy groups have initiated actions to address unlawful and unjust actions. The ACLU-NH has sued several police departments for unlawful detention of immigrants and initiated many other legal actions to vindicate immigrants' rights.<sup>55</sup> The advocacy groups have engaged in several strategies to support immigrants living in New Hampshire, including federal and state legislative advocacy, a visitation program for detained immigrants, a bond fund, demonstrations, and prayer vigils.

There are racial disparities in police interactions with members of the community including those involving civilian fatalities.<sup>56</sup> Recent police killings of unarmed Black Americans have caused massive protests around the country including in New Hampshire. Although New Hampshire law enforcement officers are generally well-trained and professional, some may carry implicit or explicit racial biases that negatively affect their interactions.<sup>57</sup> In 2020, the ACLU published a national study of racial disparities involving marijuana arrests.<sup>58</sup> Its analysis found that, in New Hampshire, African Americans were four times more likely to be arrested for marijuana possession than White people.<sup>59</sup>

Race and national origin discrimination cases can be difficult to prove. Fortunately, NHLA's fair housing testing program can often root out otherwise hidden discriminatory practices. Cases based on race have involved subjecting African American tenants to more strenuous background checks than White tenants; a property manager's failure to stop racial harassment of an African American tenant; a landlord who charged a higher rent to a Native American family and provided them with used appliances when the White tenants received brand new ones; and a landlord who subjected an Asian family to disparate treatment and made ethnic slurs. There have been several cases of national origin discrimination involving federally subsidized housing providers who failed to provide adequate language access to applicants or tenants, putting them at risk of losing a housing opportunity or eviction or program termination. Audit telephone testing in the early 2000s revealed disparate treatment based on national origin (Latino ethnicity).

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See Housing and Community Development Act of 1980: Verification of Eligible Status, 84 Fed. Reg. 20589 (May 19, 2019). HUD has not yet attempted to implement the rules, but litigation is expected to ensue when it does so.

<sup>55</sup> *Godoy-Ramirez v. Town of Merrimack*, 1:19-cv-01236 (D.N.H. 2019); *Perea v. Town of Northwood*, 1:18-cv-01066 (D.N.H. 2018); *Awadeh v. Town of Exeter*, 1:18-cv-00852 (D.N.H. 2018). The ACLU-NH and the New Hampshire Immigrant Rights Network also worked with the New Hampshire State Police on their civil detentions of immigrants, resulting in cessation of the practice and implementation of a new Fair and Impartial Policing policy.

<sup>56</sup> "By one estimate, Black men are 2.5 times more likely than white men to be killed by police during their lifetime. And in another study, Black people who were fatally shot by police seemed to be twice as likely as white people to be unarmed." Lynne Peeples, *What the data say about police brutality and racial bias – and which reforms might work*, *Nature* (June 19, 2020) (citations omitted), <https://www.nature.com/articles/d41586-020-01846-z>.

<sup>57</sup> "New analysis of state and county-wide data shows black and Hispanic people are arrested and incarcerated at higher rates in New Hampshire than whites are, and at more disproportionate rates than blacks and Hispanics nationwide." Emily Corwin, *Data Shows that Racial Disparities Increase at Each Step of N.H.'s Criminal Justice System*, *NHPR* (Aug. 10, 2016), <https://www.nhpr.org/post/data-shows-racial-disparities-increase-each-step-nhs-criminal-justice-system#stream/0>.

<sup>58</sup> *New ACLU Report: Despite Marijuana Legalization Black People Still Four Times More Likely to Get Arrested*, ACLU (Apr. 20, 2020), <https://www.aclu.org/press-releases/new-aclu-report-despite-marijuana-legalization-black-people-still-almost-four-times>.

<sup>59</sup> *Extreme Racial Disparities Exist in Marijuana Arrests*, ACLU, <https://graphics.aclu.org/marijuana-arrest-report/NH>; see also Mark Hayward, *Report: NH blacks 4 times as likely to be busted for weed than whites*, *Union Leader* (Apr. 20, 2020), [https://www.unionleader.com/news/crime/report-nh-blacks-4-times-as-likely-to-be-busted-for-weed-than-whites/article\\_fc377965-6e5e-5012-8e91-f351218d2a36.html](https://www.unionleader.com/news/crime/report-nh-blacks-4-times-as-likely-to-be-busted-for-weed-than-whites/article_fc377965-6e5e-5012-8e91-f351218d2a36.html).

**c. Municipal Preferences for Housing for Older Persons and its Nexus to Suppression of Housing Opportunities for Families with Children**

The FHA carved out an exception to familial status discrimination by allowing the development of housing for older persons. In the 1990s, most of the housing opportunities specifically designated for older persons were found in manufactured housing parks and federally subsidized housing developments. Traditional nursing homes served the needs of those who required medical assistance in their daily lives. As people began to live longer and remain healthier, new housing concepts for older people emerged.<sup>60</sup> For New Hampshire, this dovetailed with the fact that its population has been skewing older for most of this period.

The number of older residents living in New Hampshire is expected to double over the next twenty years.<sup>61</sup> People sixty-five and older now comprise 18.1% of the state's population, up from 11.2% in 1990.<sup>62</sup> Older residents continue to "occupy a growing proportion of the state's housing units, filling one in three units by 2025."<sup>63</sup> To accommodate this population, there has been a "building boom in 55+ communities, assisted living facilities, and other retirement communities."<sup>64</sup>

Contributing to this boom are land use laws in many of the state's municipalities that favor development of housing for older persons as opposed to affordable single-family homes or multi-family developments. Density requirements play a big role. At least eighty municipalities in the southern and coastal areas of the state have regulations that limit residential development in certain areas of their communities to housing for older persons.<sup>65</sup> Even within the subsidized housing world, much of the housing is disproportionately designated for seniors (*see, for example*, Public Housing Authority Survey, p. 83).

Municipal preferences for senior housing are rooted in the notion that allowing more housing for families causes rising property taxes due to New Hampshire's education funding system, which relies heavily on local property taxation. Some experts believe this fear has been seriously overblown and has had dire consequences: "We have wrongly blamed children and the costs to educate them as the reason for our tax bills and we have essentially frozen out the younger generation from being able to live here."<sup>66</sup>

The state is now facing a quandary stemming from the lack of affordable, family-based housing opportunities. The percentage of people of child-bearing age has continued to decrease, causing a decline in the state's birth rate.<sup>67</sup> Consequently, school enrollment has declined, a trend

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<sup>60</sup> The average life expectancy in the U.S. in 1990 was 75.19. In 2020, it is 78.93. *U.S. Life Expectancy 1950–2021*, MacroTrends, <https://www.macrotrends.net/countries/USA/united-states/life-expectancy>.

<sup>61</sup> Johnson, *supra* note 29, at 7.

<sup>62</sup> U.S. Census data, *supra* note 28; Frank B. Hobbs, *65+ in the United States*, U.S. Census Bureau 5-3 (1996), <https://www.census.gov/prod/1/pop/p23-190/p23-190.pdf>.

<sup>63</sup> Dennis Delay and Russ Thibeault, *Senior Housing Perspectives: Housing Needs in New Hampshire, Part 2*, New Hampshire Center for Public Policy Studies (March 2014), [https://www.nhhfa.org/wp-content/uploads/2019/06/Senior\\_Housing.pdf](https://www.nhhfa.org/wp-content/uploads/2019/06/Senior_Housing.pdf).

<sup>64</sup> Rachel Collins, *The Senior Housing Boom*, Business NH (Feb. 6, 2017), <https://www.businessnhmagazine.com/article/the-senior-housing-boom>.

<sup>65</sup> Noah Hodgetts, *The State of Local Land Use Regulations in New Hampshire*, Town & City Magazine, New Hampshire Municipal Association (Sept./Oct. 2019), <https://www.nhmunicipal.org/town-city-article/state-local-land-use-regulations-new-hampshire>.

<sup>66</sup> New Hampshire Demographer Peter Francese, quoted in *A Retirement State of Mind*, Business NH (Jan. 20, 2012).

<sup>67</sup> Johnson, *supra* note 29, at 3. "[B]irths in New Hampshire now only minimally exceed deaths." *Id.*



that began about twenty years ago.<sup>68</sup> The implications for the state and its economic and social well-being are dire and underpin renewed efforts to advance the objectives of the Workforce Housing Law (see discussion above).

In 2019, Governor Sununu created a task force to address what he termed a “housing shortage crisis.”<sup>69</sup> The task force identified local regulatory restrictions and lack of investment incentives as two primary barriers to affordable housing development (see discussion of the task force and resulting legislation in Land Use Controls, pp. 134–36).

Although familial status discrimination has typically been the second most frequently reported category of housing discrimination cases reported in New Hampshire, with issues ranging from discriminatory advertising to steering and other forms of disparate treatment, these cases have been surpassed by race and national origin discrimination cases during the 2015 to 2019 reporting period (see Fair Housing Complaint Data, pp. 122–25).

#### **d. Fair Housing Law Advances the Rights of New Hampshire Residents with Disabilities in New Hampshire**

Civil rights protections for persons with disabilities were expanded significantly with the passage of amendments to the FHA (1988) which added disability as a protected class status and with the Americans with Disability Act (1990). The laws are comprehensive and together ensure that persons with disabilities have equal access to housing, employment, education, and public accommodations.

Although persons with disabilities comprise only 12.6% of New Hampshire’s residents, fair housing complaints based on disability are more common than any other kind of complaint, both here in New Hampshire and nationally.<sup>70</sup> This trend began in the late 1990s and continues to this day.<sup>71</sup> Most of the disability cases in the housing law arena involve persons with mental health-related disabilities and this publication includes a special section on fair housing developments on this issue (see Part III, pp. 88–92).

Federal, state, and local laws set out architectural accessibility requirements for new construction and substantial rehabilitation of buildings and impose affirmative accessibility obligations. Similarly, federally subsidized housing providers have duties under Section 504 of the Rehabilitation Act of 1973 to provide “equal access” to housing and housing services to those with disabilities.<sup>72</sup> Federally subsidized housing providers must also bear the reasonable costs of accommodations and modifications. Cases brought on behalf of individuals with physical disabilities are often based on requests for accommodations or modifications specific to the person’s unique needs.

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<sup>68</sup> Russ Thibeault, *Where have all the children gone?*, NH Business Review (Sept. 26, 2019), <https://www.nhbr.com/where-have-all-the-children-gone-2/>.

<sup>69</sup> Governor Chris Sununu, *State and Local Officials, and Young Legislators Release Plan to Address New Hampshire’s Housing Shortage*, Press Release, Governor Christopher T. Sununu (October 30, 2019), <https://www.governor.nh.gov/news-and-media/governor-chris-sununu-state-and-local-officials-and-young-legislators-release-plan>.

<sup>70</sup> See *infra* pp. 122–25 for disability complaints filed by New Hampshire residents for the past five years; see also *Facts and Figures – The 2019 Report on Disability in New Hampshire*, Institute on Disability/UCED, University of New Hampshire (May 2019), [https://iod.unh.edu/facts-and-figures/assets/iod/FactsAndFigures\\_2019.pdf](https://iod.unh.edu/facts-and-figures/assets/iod/FactsAndFigures_2019.pdf), and *Fair Housing by the Numbers*, National Low Income Housing Coalition (NLIHC) (Oct. 23, 2018), <https://nlihc.org/resource/fair-housing-numbers>.

<sup>71</sup> See tables in pp. 122–25 and App. A-02–A-17 for charts from earlier AIs documenting complaint data.

<sup>72</sup> 29 U.S.C. § 701(c)(2).

Examples of New Hampshire housing discrimination cases litigated on the basis of physical disability include disputes over installation of ramps; provision of designated parking spaces; installation of fire alarm equipment appropriate for hard-of-hearing or Deaf persons; restoration of an accessible entrance/exit for a wheelchair user; discriminatory nursing home and assisted living discharges; use of ASL interpreters and other appropriate communication strategies with Deaf or hard-of-hearing tenants and applicants; and allowing a nursing home resident use of a motorized wheelchair.

#### **e. LGBTQ Housing Rights in New Hampshire**

Promotion of rights for those in LGBTQ<sup>73</sup> communities began in the 1990s with an initial focus on sexual orientation. The Legislature added sexual orientation to its “hate crime” law in 1991.<sup>74</sup> In 1998 the Law Against Discrimination was amended to include sexual orientation as a protected class in the arenas of housing, employment, and public accommodation.<sup>75</sup> The New Hampshire Legislature granted the right to marry to same-sex couples in 2009. It was the second state, after Vermont, to enact it by legislative action.<sup>76</sup> In 2014, the New Hampshire Senate mounted an attempt to amend the constitution to prohibit discrimination based on sexual orientation that ultimately failed.<sup>77</sup>

Implementation of civil rights protections based on gender identity took a longer path. In 2016, Governor Hassan issued an executive order banning gender identity and gender expression discrimination in public employment, access to state programs and services, and in state contracts.<sup>78</sup> In 2018, after a decade-long attempt, the New Hampshire Law Against Discrimination was amended to add gender identity as a protected class.<sup>79</sup> Although the New Hampshire Division of Motor Vehicles had permitted people to change their gender on their licenses and state-issued IDs for over a decade, the initial choices were male or female and the change request required professional certification of gender reassignment surgery. Finally, in 2019, the New Hampshire Legislature passed a bill designating a non-binary gender choice as well as male and female and no longer requires proof of surgery to change gender designation on DMV documents.<sup>80</sup>

In 2019, children’s civil rights were recognized in the context of public education when the Legislature amended the Law Against Discrimination to include discrimination prohibitions based on several protected classes including sexual orientation and gender identity.<sup>81</sup> Moreover, the state’s anti-bullying law also includes protections based on sexual orientation and gender identity among other classes.<sup>82</sup>

There have been a small number of housing discrimination complaints based on sexual orientation and, thus far, only one based on gender identity (*see* Fair Housing Complaint Data,

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<sup>73</sup> Stands for Lesbian, Gay, Bisexual, Transgender, Queer or Questioning.

<sup>74</sup> N.H. R.S.A. § 651:6, I(f).

<sup>75</sup> N.H. R.S.A. § 354-A:1 *et seq.*

<sup>76</sup> N.H. R.S.A. § 457:1-a.

<sup>77</sup> *See, e.g.,* Norma Love, *NH Measure Would Bar Discrimination Against Gays*, Boston Globe (Apr. 2, 2014), <https://www.boston.com/news/local-news/2014/04/02/nh-measure-would-bar-discrimination-against-gays>.

<sup>78</sup> Exec. Order No. 2016-04, An Order Prohibiting Discrimination on the Basis of Gender Identity or Gender Expression (June 30, 2016), <https://das.nh.gov/hr/documents/Executive%20Order%202016-04.pdf>.

<sup>79</sup> N.H. R.S.A. § 354-A:1 *et seq.*

<sup>80</sup> N.H. R.S.A. § 260:21, III.

<sup>81</sup> N.H. R.S.A. § 354-A:27–28.

<sup>82</sup> N.H. R.S.A. § 193-F:2.

pp. 122–25). Several years ago, GLAD (Gay and Lesbian Advocates and Defenders) filed a case against the Town of Gilsum. The case involved a group home for persons with HIV and hepatitis C operated by a non-profit known as ASMR. ASMR initiated fair housing and other legal claims against the Town after it took steps to keep the program from operating. ASMR introduced evidence that the Town treated ASMR differently than other non-profit and religious institutions in similar situations. The cases were settled in ASMR’s favor.<sup>83</sup>

#### **f. New Hampshire Women Continue to Experience Disparities in Their Lives**

Women constitute 50.4% of the state’s population but still lag behind men in several important ways.<sup>84</sup> The gender wage gap has persisted over decades. In 2018, New Hampshire women earned seventy-nine cents to their male counterparts’ dollar.<sup>85</sup> The statewide percentage of men in poverty was 8% and for women it was 9%, but disparities increased significantly based on race and ethnicity. Sixteen percent of both Latina women and Black women live in poverty as do 22% of women who identified as multiracial or of a race/ethnicity other than White.<sup>86</sup>

Nearly a third of New Hampshire households with children headed by single women (30.6%) live below the poverty line.<sup>87</sup> These facts have significant implications for affordable housing policy in the state, as they do nationally, where women-headed households comprise 75% of households living in public housing and project-based Section 8 housing and 83% of Section 8 Housing Choice Voucher holders.<sup>88</sup>

Women are disproportionately more likely to be victims of domestic violence and sexual assault than men. Much of this violence, by its very nature, occurs in the home. A recent survey by the New Hampshire Coalition Against Domestic and Sexual Violence found that 22.7% of the women surveyed reported being victimized by sexual assault in their lifetimes and 33.4% had experienced domestic violence.<sup>89</sup> The Centers for Disease Control and Prevention has reported that homicide is a leading cause of death in younger women and that a significant percentage of those homicides involved intimate partner violence.<sup>90</sup> Domestic violence has also been a leading cause of homelessness for women and their children.<sup>91</sup>

The federal Violence Against Women Act (VAWA) passed in 1994 has created strong protections for survivors of sexual and domestic violence in federally subsidized housing.<sup>92</sup> The

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<sup>83</sup> *ASMR v. Town of Gilsum*, Cheshire County Superior Court (complaints filed 2008 and 2011).

<sup>84</sup> U.S. Census data, *supra* note 28.

<sup>85</sup> *The Status of Women in New Hampshire*, New Hampshire Women’s Foundation 11 (2018), <https://nhwomensfoundation.org/wp-content/uploads/2018/10/Final-SoW-2018-PDF-for-Website.pdf>.

<sup>86</sup> *Id.* at 10.

<sup>87</sup> *Know the Facts*, New Hampshire Women’s Foundation, <https://nhwomensfoundation.org/get-involved/know-the-facts/>.

<sup>88</sup> Gail Quets, *A Gender Lens on Affordable Housing*, re:gender (Jan. 2016), [https://www.icrw.org/wp-content/uploads/2016/11/gender\\_lens\\_on\\_affordable\\_housing\\_by\\_regender\\_final-1.pdf](https://www.icrw.org/wp-content/uploads/2016/11/gender_lens_on_affordable_housing_by_regender_final-1.pdf).

<sup>89</sup> *Violence Against Women in New Hampshire*, New Hampshire Coalition Against Domestic and Sexual Violence (Sept. 2019), [https://www.unh.edu/research/sites/default/files/media/2019/09/violence\\_against\\_women\\_report.pdf](https://www.unh.edu/research/sites/default/files/media/2019/09/violence_against_women_report.pdf).

<sup>90</sup> Emiko Petrosky *et al.*, *Racial and Ethnic Differences in the Homicides of Adult Women and the Role of Intimate Partner Violence – United States 2003–2014*, Morbidity and Mortality Weekly Report, Centers for Disease Control and Prevention (July 21, 2017), <https://www.cdc.gov/mmwr/volumes/66/wr/pdfs/mm6628a1.pdf>.

<sup>91</sup> *The Intimate Relationship Between Domestic Violence and Homelessness*, Institute for Children, Poverty, and Homelessness (Oct. 27, 2018), <https://www.icphusa.org/commentary/the-intimate-relationship-between-domestic-violence-and-homelessness-2/>.

<sup>92</sup> 42 U.S.C. §§ 14043e–14043e-11. VAWA housing protections currently cover domestic violence, sexual assault, stalking, and dating violence.

statute has been reauthorized several times and has continued to expand and strengthen its housing provisions. In New Hampshire and throughout the country, VAWA protections have provided tools to allow survivors to access housing and prevent housing subsidy terminations and evictions.

In 2016, HUD issued its final rule updating its regulations on harassment in housing.<sup>93</sup> Although the rule covers all of the protected classes, it has been frequently used as a tool to quash sexual harassment in housing. In 2018, U.S. DOJ launched an initiative to combat sexual harassment in housing, as well.<sup>94</sup>

As noted above, New Hampshire's eviction law was also amended to extend further protections to domestic violence survivors by prohibiting evictions solely based on the tenant's status as a domestic violence victim and giving the court the ability to evict only the perpetrator of the violence.<sup>95</sup>

Most of the sex discrimination cases in New Hampshire have involved discrimination against female sexual assault survivors or sexual harassment of female tenants. A 2014 case that received significant attention concerned a female domestic survivor who was denied two separate housing opportunities because of her abusive ex-husband's conduct against her.<sup>96</sup> Other cases include a woman and her child who were terminated from a homeless shelter once its staff discovered she was a victim of domestic abuse (even though her abuser was incarcerated) and a case involving a woman who had been sexually harassed by her landlord. All of the cases were settled favorably for the complainants.

#### **g. Religious Discrimination in Housing Remains Largely Hidden in New Hampshire**

Approximately 59% of New Hampshire residents are Christians, 2% are Jewish, with Muslims, Buddhists, and Hindus each making up less than 1% of the population.<sup>97</sup> In 2018, there were estimated to be 10,120 Jewish people living in the state.<sup>98</sup> It is difficult or impossible to find reliable population estimates for practitioners of Islam, Buddhism, or Hinduism.<sup>99</sup> A 2015 news article claimed that in 2000, there were 3,782 Muslims in the state and that number had decreased to 1,616 by 2010.<sup>100</sup> No additional population information on the other religious groups cited above was available.

There have only been a handful of housing discrimination complaints based on religion over the last thirty years. This does not mean that bias based on religion is non-existent in the

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<sup>93</sup> Quid Pro Quo and Hostile Environment Harassment and Liability for Discriminatory Housing Practices Under the Fair Housing Act, 81 Fed. Reg. 63054 (Sept. 14, 2016).

<sup>94</sup> *Sexual Harassment in Housing Initiative*, U.S. Dep't of Justice, <https://www.justice.gov/crt/sexual-harassment-housing-initiative>.

<sup>95</sup> N.H. R.S.A. § 540:2, VII; *see also infra* pp. 141–42.

<sup>96</sup> *See* Mary Curtis, *HUD Settles Case Alleging Housing Discrimination Against Domestic Violence Victim*, Washington Post (July 22, 2014), <https://www.washingtonpost.com/blogs/she-the-people/wp/2014/07/22/hud-settles-case-alleging-housing-discrimination-against-domestic-violence-victim/>.

<sup>97</sup> *Religious Landscape Study*, Pew Research Center (Nov. 2015), <https://www.pewforum.org/religious-landscape-study/state/new-hampshire/>.

<sup>98</sup> *Jewish Population in the United States by State (1899–Present)*, Jewish Virtual Library (2018), <https://www.jewishvirtuallibrary.org/jewish-population-in-the-united-states-by-state>.

<sup>99</sup> The *Religious Landscape Study*, *supra* note 97, indicates that Muslim, Buddhist, and Hindu populations were less than 1% of New Hampshire residents in 2014.

<sup>100</sup> Rik Stevens, *A mosque grows slowly amid opposition in New Hampshire*, Fosters.com (Nov. 8, 2015), <https://www.fosters.com/article/20151108/NEWS/151109466>.

state. Documented incidents of religious bigotry over the last few years include: anti-Semitic graffiti defacement in a Manchester neighborhood; an assault of a Muslim woman when a man forcibly yanked on her headscarf while she was with friends in a Manchester restaurant; and mistreatment of a couple perceived to be Muslim by a Jackson innkeeper during a dispute.<sup>101</sup>

The FBI data used in the section on hate crimes includes religion-based bias incidents (see pp. 126–29). Although the number of hate incidents in New Hampshire remains small (and likely underreported), incidents of bias based on religion have consistently comprised 19–20% of the reported incidents. The data reported in 2020 AI indicates that of the fifteen religious hate incidents reported for the years 2014 through 2018, nine involved anti-Jewish activity and three involved anti-Muslim activity. The Anti-Defamation League reports that anti-Semitic incidents reached all-time national highs in 2019: “The American Jewish community experienced the highest level of antisemitic incidents last year since tracking began in 1979, with more than 2,100 acts of assault, vandalism, and harassment reported across the United States. . . .”<sup>102</sup>

Interviews with members of New Hampshire’s diverse Muslim community (see pp. 73–80) reveal that bias against Muslims manifests itself in many ways and often very openly. The interviewees spoke about experiences of anti-Muslim bias in housing searches, employment, and community life. Many felt bias against Muslims had increased and was more dangerous since the 2016 election and that certain government leaders were responsible for spreading stereotypes, untruths, and inaccuracies about Muslim culture and Islam.

## 5. Moving Forward in the Most Challenging of Times

The year 2020 brought the lethal coronavirus pandemic into the United States and into New Hampshire. Although its effects will not be fully known for some time, it is already apparent that the virus has disproportionately affected communities of color even in New Hampshire (see Section VI.A on p. 151 for the pandemic’s effects on protected class members).

The virus has been the deadliest among older people. The largest proportion of fatalities in New Hampshire has been connected to outbreaks in nursing homes and assisted living facilities. The consequent economic fallout from the virus was immediate; its full impact was initially dampened by huge federal aid packages and emergency measures implemented by governors throughout the nation. It is still too soon to know the full impact of the virus in the United States from both the public health and economic standpoints.

In May 2020, the killing of George Floyd, an unarmed Black man, at the hands of Minneapolis police prompted national outrage and demand for racial justice and change, and ignited expansion of the Black Lives Matter movement. Residents in New Hampshire participated in Black Lives Matter activism, and protests and counter-protests occurred in cities and towns throughout the state. It remains to be seen whether the protests will lead to a sustained civil rights movement prompting police reform and further deconstruction of structural barriers to full equality for all Americans.

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<sup>101</sup> Mark Hayward, *Third swastika found in North End neighborhood*, Union Leader (Oct. 31, 2018), [https://www.unionleader.com/news/crime/third-swastika-found-in-north-end-neighborhood/article\\_1ff9cae4-5ea6-5722-9f74-9024b3d08b95.html](https://www.unionleader.com/news/crime/third-swastika-found-in-north-end-neighborhood/article_1ff9cae4-5ea6-5722-9f74-9024b3d08b95.html); *Police seek man who pulled on woman’s hijab at restaurant*, AP News (July 3, 2020), <https://apnews.com/a461d5ed3665499abc45a94fa823ba1c>; *Jackson Inn Worker Fined in Conflict with Couple Perceived as Muslim*, NHPR (July 26, 2019), <https://www.nhpr.org/post/jackson-inn-worker-fined-conflict-couple-perceived-muslim#stream/0>.

<sup>102</sup> *Antisemitic Incidents Reach All-Time High in 2019*, Press Release, Anti-Defamation League (May 12, 2020), <https://www.adl.org/news/press-releases/antisemitic-incidents-hit-all-time-high-in-2019>.



The events of 2020 will undoubtedly affect housing equity and opportunity in New Hampshire and beyond. Sustained progress will require grassroots advocacy and the commitment of governmental, institutional, business, and community leaders to address the systemic racism that many are recognizing for the first time.

## **B. ASSESSMENT OF CONCENTRATIONS OF POVERTY AND RACIAL/ETHNIC POPULATIONS IN NEW HAMPSHIRE**

### **1. Introduction**

Equal access to suitable housing helps ensure all individuals and families can obtain key resources necessary for them to thrive. As racial and ethnic minority groups have historically not enjoyed equal access to housing opportunity, assessment of demographic patterns illuminate some of the obstacles these groups face. Analysis of concentrations of poverty and of racial/ethnic groups helps identify structural and environmental barriers to opportunity at the neighborhood level.

On July 16, 2015, the U.S. Department of Housing and Urban Development (HUD) published a final rule on affirmatively furthering fair housing in the Federal Register. The federal Fair Housing Act, in conjunction with other statutes, directs participants in HUD programs to take significant actions to overcome historic patterns of segregation, achieve truly balanced and integrated living patterns, promote fair housing choice, and foster communities that are free from discrimination. The rule commits to provide local and regional data on racially or ethnically concentrated areas of poverty, access to opportunity provided by key community assets, public housing location data, and other information related to living patterns and classes protected by the Fair Housing Act.<sup>103</sup>

On March 5, 2019, HUD's Office of Policy Development and Research published an updated document titled *Affirmative Furthering Fair Housing Data and Mapping Tool (AFFH-T) Data Documentation*. This document outlined the data, methods, and sources used in the data and mapping tool that HUD provides. The document notes that users should employ HUD-provided data as well as local data and local knowledge to conduct their assessments of fair housing.<sup>104</sup> The analyses in this section draw upon the descriptions and recommendations in HUD's March 5, 2019, *Data Documentation*.

The HUD assessment tool provided substantial amounts of data, as well as indices HUD intends users to employ in assessing fair housing. These data and indices were employed in this section's analyses, which also include updated data from the U.S. Census Bureau's American Community Survey (ACS) and local and national administrative data sources. The HUD AFFH-T data were, in some instances, based on ACS data from 2009 to 2013, and other data sets incorporated were also from previous releases. Where feasible, the newest updated data were collected, although some of the modeling and data parsing conducted by HUD were not recreated with the newer data. HUD AFFH-T data also did not provide information on the degree

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<sup>103</sup> Affirmatively Furthering Fair Housing, 80 Fed. Reg. 42272 (July 16, 2015).

<sup>104</sup> *Affirmatively Furthering Fair Housing Data and Mapping Tool (AFFH-T) Data Documentation, Data Version AFFHT0004a*, U.S. Dep't of Hous. & Urban Dev. Office of Policy Dev. & Research (Mar. 5, 2019), [https://files.hudexchange.info/resources/documents/AFFH-T-Data-Documentation-\(AFFHT0004a\)-March-2018.pdf](https://files.hudexchange.info/resources/documents/AFFH-T-Data-Documentation-(AFFHT0004a)-March-2018.pdf).

of data uncertainty for each metric, which for certain survey-based metrics at the local level, particularly when considering very small population sizes, can be very significant and make conclusive comparisons between geographies difficult. Data employed outside of the AFFH-T data include:

- Brandeis University, Child Opportunity Index 2.0, 2020;
- HUD Low-Income Housing Tax Credit (LIHTC) data, 1998–2017, drawn from a separate HUD database;
- Federal Reserve Bank of Boston, Home Mortgage Disclosure Act (HMDA) Data for New England and New Hampshire, 2016;
- New Hampshire Department of Education, State Assessments, 2018–2019;
- New Hampshire Department of Education, English Language Learners, 2018–2019;
- New Hampshire Department of Education, Free and Reduced-Price School Lunch Eligibility, 2019–2020;
- New Hampshire Department of Health and Human Services, Social Vulnerability Index;
- New Hampshire Department of Health and Human Services, Supplemental Nutrition Assistance Program Enrollment and Medicaid Enrollment, September 2019;
- U.S. Census Bureau, Harvard University, and Brown University, The Opportunity Atlas, data updates through 2016 ACS data;
- U.S. Census Bureau, ACS data, particularly for the 2014–2018 time period;
- U.S. Census Bureau, 2010 Census;
- U.S. Environmental Protection Agency, National Air Toxics Assessment, 2014.

## **2. General Limitations**

Much of the data analyzed and presented in this section are based on Census Tracts. Two major limitations must be considered throughout to understand these data and analyses.

1. HUD’s analytical frameworks encourage a focus on Census Tracts with high concentrations of both poverty and populations that identify as something other than non-Latino White (referred to as the non-White population in the remainder of this section). New Hampshire has the lowest official poverty rate of any state in the country, which was 7.6% for individuals according to data collected in 2018. The state also has the fourth-highest percentage of the population of any state identifying as non-Latino White, with only 10% of the population identifying as belonging to other racial and/or ethnic groups.<sup>105</sup> These demographic characteristics limit the ability to apply analyses encouraged by HUD to even the poorest or the most diverse Census Tracts in New Hampshire.
2. Census Tracts are small geographies that average about 4,000 inhabitants, with a range from 1,200 to 8,000 people. These Tracts are a close approximation to neighborhoods in cities, and the boundaries are determined based on both population

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<sup>105</sup> One-Year Data 2018, ACS, U.S. Census Bureau; Estimates for July 1, 2018, Population Estimates Program, U.S. Census Bureau.

changes and local involvement in delineating statistical areas.<sup>106</sup> Many of the data presented at the Census Tract level are drawn from the American Community Survey and other resources that rely on surveys collecting data samples from the population. This methodology results in substantial statistical uncertainty for some estimates. Some indices or aggregate measures were also produced based on modeled data, using other known relationships or multiple other data sets to interpolate. As many of these data sets include considerable statistical uncertainty, comparing data indicators for Census Tracts to each other is less valuable than comparing them to statewide or regional figures. For many of the Census Tract estimates, the data indicators are statistically indistinguishable from one another. Where calculated, margins of error are presented to aid with the interpretations in data tables and graphs.

### 3. Census Tracts Selected for Analysis

The *Data Documentation* provided by HUD recommended using a specific, threshold-based framework for identifying Racially or Ethnically Concentrated Areas of Poverty by Census Tract. HUD indicated that a Census Tract with a non-White population of 50% or more and a poverty rate of 40% or higher, or a poverty rate at least three times the average Census Tract poverty rate in the metropolitan or micropolitan area, would qualify as a Racially and/or Ethnically Concentrated Area of Poverty (R/ECAP).

Based on AFFH-T estimates of current R/ECAPs, only one Census Tract in New Hampshire (Census Tract 15 in central Manchester) meets the criteria for consideration. To expand analysis beyond that Census Tract, the more recent ACS data were used to find the Census Tracts with the highest combinations of the proportion of the population in poverty and the proportion identifying as something other than non-Latino White.

Fifteen Census Tracts were identified for analysis using the U.S. Census Bureau's American Community Survey Five-Year Data for 2014–2018, which is more recent than the data supporting the AFFH-T.<sup>107</sup> To identify these 15 Census Tracts for analysis, all the Census Tracts in New Hampshire with point estimate<sup>108</sup> household poverty rates at least twice the overall statewide household poverty rate (8.0% for 2014–2018), including three Census Tracts with populations too small to estimate a poverty rate, were identified; three of these Census Tracts had point estimate poverty rates above 40%. These 36 Census Tracts were then compared to the 36 Census Tracts with the lowest estimated percentages of householders who identified as non-Latino White. Overlap existed between these two lists for 15 Census Tracts. One of these tracts is likely influenced heavily by the student population at the University of New Hampshire in Durham and was removed from subsequent analysis.<sup>109</sup> The remaining 14 Census Tracts will be referred to as the New Hampshire Analysis Tracts (NHATs).

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<sup>106</sup> *Census Tracts*, U.S. Census Bureau, Geographic Products Branch, <https://www2.census.gov/geo/pdfs/education/CensusTracts.pdf>.

<sup>107</sup> The data used by AFFH-T for assessment of Census Tracts for R/ECAPs is based on the 2009–2013 ACS and longitudinal modeling from the 1990, 2000, and 2010 Census counts.

<sup>108</sup> Point estimates with their margins of error are shown in text. Point estimates are approximate values based on the sample collected and are bracketed by margins of error defined by certain confidence intervals.

<sup>109</sup> The AFFH-T offers a poverty rate that excludes college students. That estimate shows the poverty rate dropping to 7.4% in Durham-802.03, 5.1% in Dover-815, and 12.5% in Portsmouth-1071. However, the poverty rates used in the AFFH-T's own analysis of Census Tracts were higher, and while the poverty rates were likely calculated by



ACS estimates at the Census Tract level include considerable uncertainty. The point estimates are subject to errors stemming from both sample collection and modeling assumptions. The use of point estimates, as well as the use of households as the basic unit of analysis, excludes Census Tracts that might have been incorporated if margins of error stemming from statistical uncertainties, or individuals rather than households, were incorporated into the Census Tract selection analysis.

Racial or ethnic concentrations were calculated using heads of households, rather than the overall population, as were the poverty rates; using individual poverty rates would have produced a somewhat different subset of Census Tracts, but applying individual-based rates to the criteria offered by HUD would have still limited the analysis to one Census Tract (Census Tract 14 in central Manchester).<sup>110</sup> Three Census Tracts had individual poverty rates over 40%, including two largely populated by students at the University of New Hampshire and Census Tract 14 in Central Manchester, which matched those three Census Tracts with household-level poverty rates above 40% identified previously. All other Census Tracts had estimated poverty rates for both households and individuals at about 30% or below. Non-White populations were estimated to be below 50% for all Census Tracts when measured by head of household, and for all but two Census Tracts (Census Tract 14 in central Manchester and Census Tract 108 in Nashua) on an individual basis. Again, these estimates are bracketed by wide margins of error, suggesting considerable data uncertainty.

The NHATs include descriptions assigned based on municipalities and reviews of maps to characterize locations within their home cities. All NHATs except Census Tract 329 in Concord are in HUD entitlement communities, as identified by the AFFH-T data.

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parsing through ACS microdata, the methodology was not described. If ACS data were used, they appear likely to have been 2009–2013 data. This analysis employs overall household poverty rates from 2014–2018.

<sup>110</sup> This methodology matches the methods in the *2015 AI*, *supra* note 8, at 14–18.

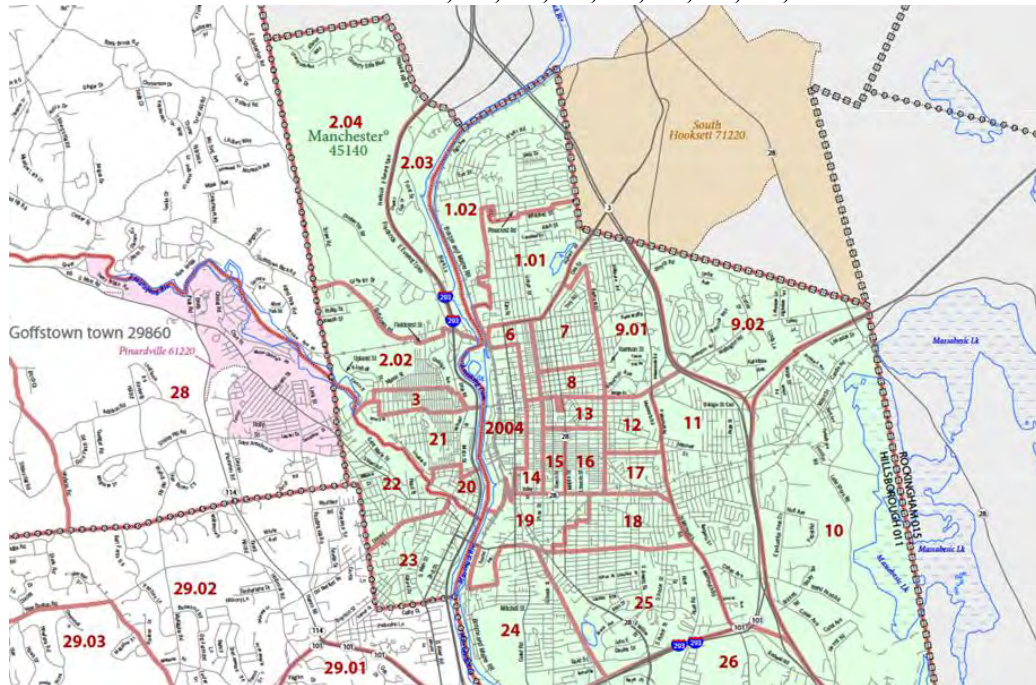
**Table 1: Racially and/or Ethnically Concentrated Areas of Poverty  
Selected Census Tracts – New Hampshire Analysis Tracts (NHATs)**

<b>Identifier Number (ID)*</b>	<b>Census Descriptor</b>	<b>Municipality</b>	<b>Short Descriptor</b>	<b>Geographic Notes</b>
1	Census Tract 14, Hillsborough County, New Hampshire	Manchester	Manchester-14	Central City
2	Census Tract 15, Hillsborough County, New Hampshire	Manchester	Manchester-15	Central City
3	Census Tract 108, Hillsborough County, New Hampshire	Nashua	Nashua-108	Downtown to Everett Turnpike
4	Census Tract 16, Hillsborough County, New Hampshire	Manchester	Manchester-16	Central City
5	Census Tract 19, Hillsborough County, New Hampshire	Manchester	Manchester-19	Southern East Side
6	Census Tract 20, Hillsborough County, New Hampshire	Manchester	Manchester-20	West – Southwest
7	Census Tract 105, Hillsborough County, New Hampshire	Nashua	Nashua-105	Downtown
8	Census Tract 13, Hillsborough County, New Hampshire	Manchester	Manchester-13	Central City
9	Census Tract 329, Merrimack County, New Hampshire	Concord	Concord-329	Heights – Loudon Road to I-393
10	Census Tract 2004, Hillsborough County, New Hampshire	Manchester	Manchester-2004	Central Elm Street and Eastern River Bank
11	Census Tract 1071, Rockingham County, New Hampshire	Portsmouth	Portsmouth-1071	Northern City – Newington Border
12	Census Tract 815, Strafford County, New Hampshire	Dover	Dover-815	Downtown North
13	Census Tract 24, Hillsborough County, New Hampshire	Manchester	Manchester-24	South – East River Shore
14	Census Tract 3, Hillsborough County, New Hampshire	Manchester	Manchester-3	West Side – Kelley Street
<i>Notes: *Ordered by Census Tracts with the highest percentage of non-White householders to the lowest percentage. NHAT selections are the result of New Hampshire Fiscal Policy Institute analysis of U.S. Census Bureau, American Community Survey data, 2014–2018, using households as unit of measurement and examining all New Hampshire Census Tracts with more than twice the statewide household poverty rate.</i>				

Excerpts from maps produced by the U.S. Census Bureau and included below show where in each city the NHATs are located. Of the NHATs, nine were in Manchester, two were in Nashua, and one each were in Concord, Dover, and Portsmouth.

### **Manchester**

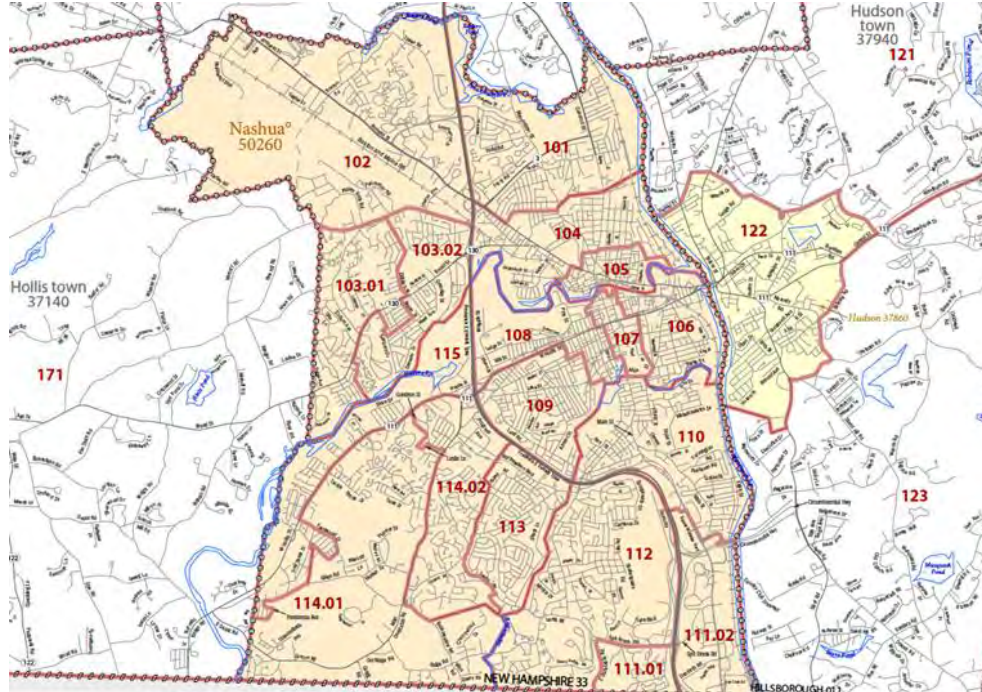
*NHATs Shown Include 3, 13, 14, 15, 16, 19, 20, 24, and 2004*



*Source: U.S. Census Bureau Tract Reference Maps*

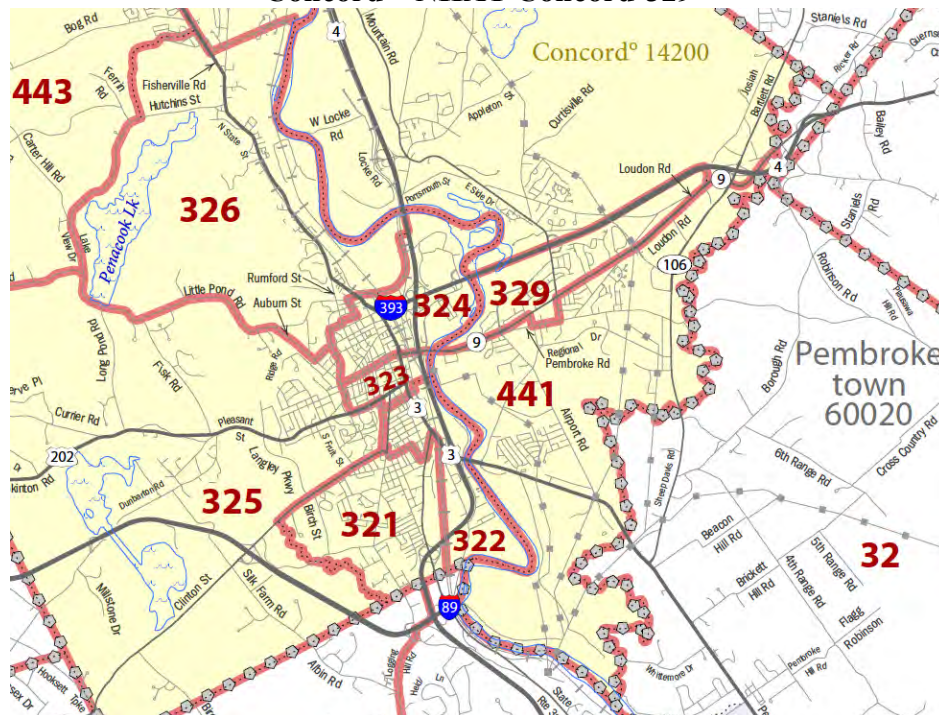
## Nashua

NHATs Shown Include 105 and 108



Source: U.S. Census Bureau Tract Reference Maps

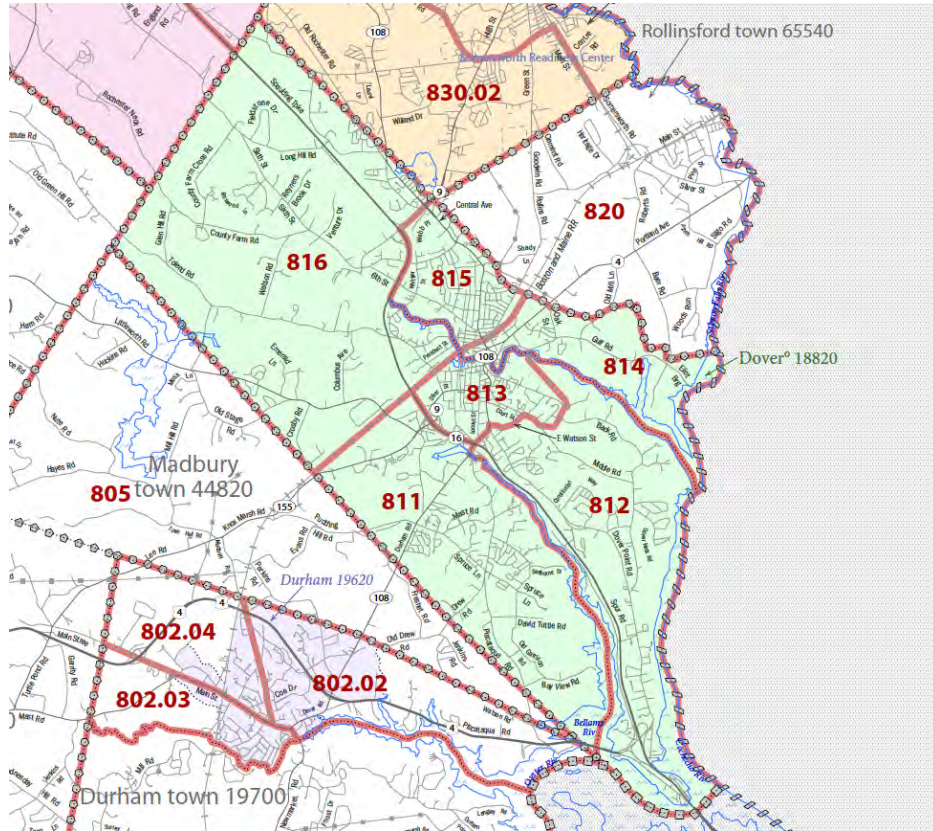
## Concord – NHAT Concord-329



Source: U.S. Census Bureau Tract Reference Maps

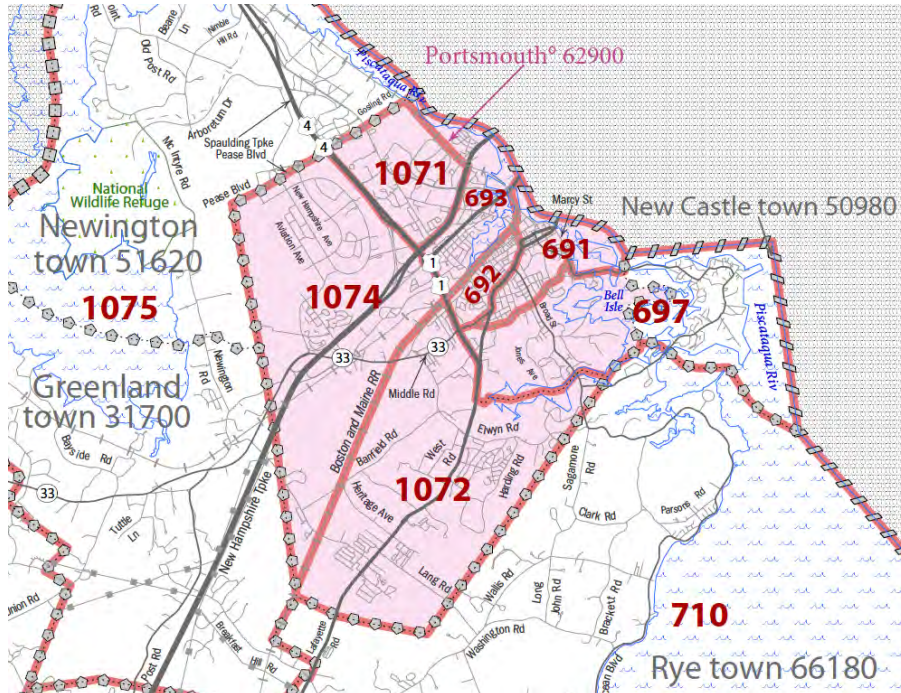


### Dover – NHAT Dover-815



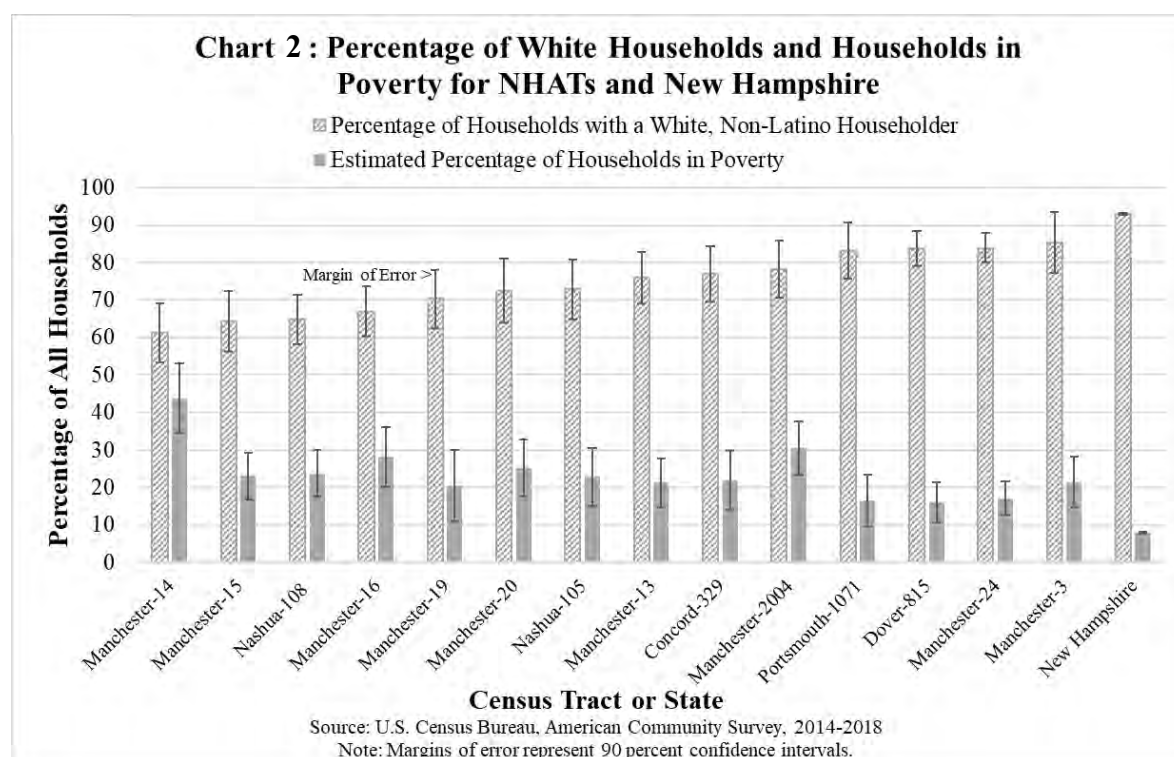
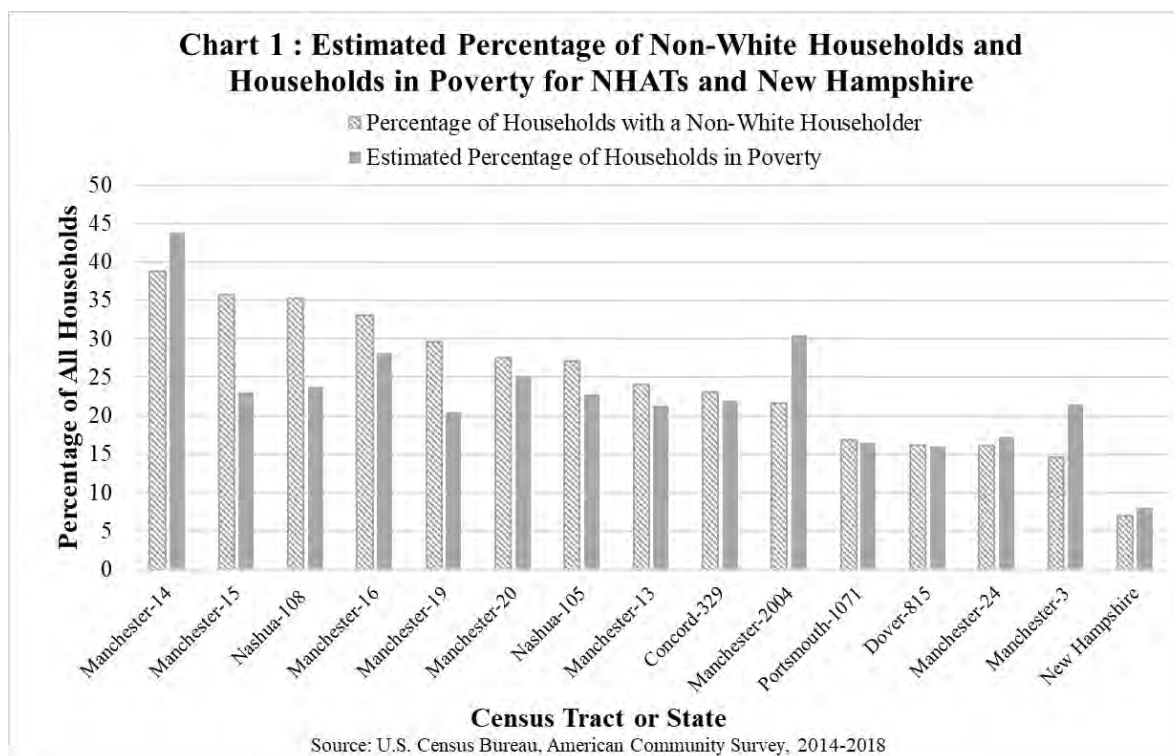
Source: U.S. Census Bureau Tract Reference Maps

### Portsmouth – NHAT Portsmouth-1071



Source: U.S. Census Bureau Tract Reference Maps

Estimated household poverty rates and percentages of non-White householders are shown below graphically for each NHAT. Margins of error are calculated for NHATs based on the percentage of White householders and are compared to statewide levels in each chart.



In every NHAT, all Census Tract-level poverty rates were higher than the statewide household poverty rate. All but one Census Tract had a percentage of White householders that was lower than the rate for householders statewide, while Census Tract Manchester-3 (based around Kelley Street) has a point estimate that was lower but was not statistically distinguishable due to the margin of error resulting from the survey data.<sup>111</sup> The table below presents the point estimates for poverty and non-White householders in the NHATs.

<b>Table 2: Estimated Percentage of Non-White Households and Poverty Rates in NHATs</b>			
<b>ID</b>	<b>Short Descriptor</b>	<b>Estimated Percentage of Households with a Non-White Householder</b>	<b>Estimated Percentage of Households in Poverty</b>
1	Manchester-14	38.8	43.8
2	Manchester-15	35.7	23.1
3	Nashua-108	35.2	23.8
4	Manchester-16	33.1	28.2
5	Manchester-19	29.7	20.5
6	Manchester-20	27.5	25.2
7	Nashua-105	27.2	22.8
8	Manchester-13	24.0	21.3
9	Concord-329	23.1	21.9
10	Manchester-2004	21.7	30.5
11	Portsmouth-1071	16.9	16.5
12	Dover-815	16.2	16.0
13	Manchester-24	16.1	17.2
14	Manchester-3	14.6	21.5
<b>Statewide</b>	<b>New Hampshire</b>	<b>7.0</b>	<b>8.0</b>
<i>Source: U.S. Census Bureau, American Community Survey, 2014–2018</i>			

<sup>111</sup> Statistical confidence testing for in-text comparisons, including statements of difference or statistical indistinguishability, were completed at the 95% confidence level. Margins of error shown on graphs, and bounds of margin of error discussed in text, are presented at the 90% confidence level unless otherwise noted.

The highest percentage of householders who identify as Black or African American alone by Census Tract is 14.1% (+/- 7.0%), in Manchester-14. Manchester-16 is estimated at 9.4% (+/- 7.1%). The third-highest concentration is estimated at 8.7% (+/- 4.7%), in Nashua Census Tract 106, which is not one of the NHATs. For the nation as a whole, in the 2014–2018 household-level ACS data, about 12.3% of householders identify as Black or African American. Two Census Tracts in southern Nashua, 111.02 and 111.01, have the highest estimated concentrations of Asian householders, at 19.7% (+/- 5.4%) and 14.8% (+/- 4.5%) of households, respectively. As for those identifying as Latino of any race, including White, Black, or Asian, the highest concentration of householders was in Nashua-108, at 30.8% (+/- 6.5%). Manchester-15 was the next highest concentration, at 22.4% (+/- 7.1%), and both NHAT and non-NHAT Census Tracts in Manchester and Nashua comprised the rest with estimated concentrations above 15%. Again, these estimated concentrations are subject to considerable statistical uncertainty, and must be interpreted with consideration to instances of wide margins of error.

More precision is available from each decennial Census count. The ACS provides updated estimates, and the last completed full count is from the 2010 Census.

**Table 3: NHAT Populations and Households**  
*Estimates from the 2014–2018 ACS and 2010 Population Counts*

ID	Short Descriptor	Total Number of Estimated Households	Household Count Margin of Error	Total Estimated Population	Estimated Population Margin of Error	Population 2010 Census Count
1	Manchester-14	921	77	2,219	236	2,257
2	Manchester-15	929	75	2,905	314	2,987
3	Nashua-108	2,962	202	7,679	586	7,583
4	Manchester-16	1,409	127	4,785	597	4,010
5	Manchester-19	1,185	73	3,415	416	3,390
6	Manchester-20	856	85	2,163	311	2,208
7	Nashua-105	1,764	141	4,030	347	3,903
8	Manchester-13	1,359	103	2,979	287	3,151
9	Concord-329	2,162	131	4,696	406	4,254
10	Manchester-2004	1,698	123	2,927	363	2,867
11	Portsmouth-1071	1,098	70	2,570	231	2,465
12	Dover-815	2,702	166	5,874	394	5,721
13	Manchester-24	2,867	128	6,929	471	7,118
14	Manchester-3	1,286	86	2,941	311	2,881
<b>Statewide</b>	<b>New Hampshire</b>	<b>528,078</b>	<b>2,194</b>	<b>1,343,622</b>	<b>*</b>	<b>1,316,470</b>

*\*Note: Margin of error not reported by the U.S. Census Bureau for the statewide population estimate.  
Source: U.S. Census Bureau, American Community Survey, 2014–2018; 2010 Census Count accessed via AFFH-T*



#### 4. Additional Racial/Ethnic Concentration Analyses

Data from the U.S. Census Bureau identifies both individuals and households based on race, and separately based on ethnicity, with the ethnicity distinction made based on whether or not an individual identifies as Latino.<sup>112</sup> The data published directly by the U.S. Census Bureau's Decennial Census count and the annual ACS include people identifying as Latino in each racial group. In New Hampshire, the largest number of individuals who identify their ethnicity as Latino also identify their race as White; others who identify their ethnicity as Latino identify their race as a different race, including Black or African American.

The AFFH-T employs a different model and applies it to Census data, which categorizes individuals into five different racial/ethnic groups: White, Black, Native American, Asian or Pacific Islander, or Latino. Individuals that are multiracial are incorporated into the racial group categories.<sup>113</sup> Using the 2010 Census counts and modeling based on the 1990 and 2000 Census counts, the breakdown by race in each Census Tract for the year 2010 is in the table below.

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<sup>112</sup> *Race and Ethnicity*, U.S. Census Bureau (Jan. 2017), <https://www.census.gov/mso/www/training/pdf/race-ethnicity-onepager.pdf>.

<sup>113</sup> This model is the Brown University Longitudinal Tract Database (LTDB). This database was designed to incorporate past historical racial and ethnic data into updated 2010 Census Tract boundaries. The May 2017 update to *Codebook: Longitudinal Tract Data Base* from Brown University, [https://s4.ad.brown.edu/projects/diversity/Researcher/LTDB\\_Codebook.pdf](https://s4.ad.brown.edu/projects/diversity/Researcher/LTDB_Codebook.pdf), identifies individuals in groups other than those identifying as White alone and not Latino with their other identities; for example, individuals identifying as “Black Alone” and “Black In Combination With Other Races” and not identifying as Latino were categorized as non-Latino Black in the database.

<b>Table 4: NHAT Percentage of Populations by Race/Ethnicity, 2010</b> <i>2010 Census-Based Counts from Brown Longitudinal Tract Database, Retrieved from AFFH-T</i>						
<b>ID</b>	<b>Short Descriptor</b>	<b>Percent White</b>	<b>Percent Latino</b>	<b>Percent Asian or Pacific Islander</b>	<b>Percent Black or African American</b>	<b>Percent Native American</b>
1	Manchester-14	65.1	21.4	5.2	6.8	1.0
2	Manchester-15	51.8	28.4	4.9	12.1	1.6
3	Nashua-108	60.3	30.8	1.8	5.6	0.9
4	Manchester-16	63.5	20.5	6.6	8.1	1.0
5	Manchester-19	62.5	22.3	4.1	9.6	1.0
6	Manchester-20	70.5	12.3	9.4	6.3	1.2
7	Nashua-105	68.7	22.8	1.8	4.9	1.3
8	Manchester-13	73.2	11.9	6.1	7.7	0.9
9	Concord-329	79.0	2.4	12.2	5.4	0.6
10	Manchester-2004	77.9	10.6	4.0	6.6	0.5
12	Portsmouth-1071	84.1	4.7	3.6	6.4	0.9
13	Dover-815	85.4	2.4	9.2	2.5	0.6
14	Manchester-24	80.2	8.8	3.5	6.6	0.6
15	Manchester-3	83.4	6.9	2.8	5.3	1.1
<b>Statewide</b>	<b>New Hampshire</b>	<b>92.3</b>	<b>2.8</b>	<b>2.6</b>	<b>1.5</b>	<b>0.7</b>
<i>Source: HUD AFFH-T Tract Data, 2010 Brown University Longitudinal Tract Database</i>						

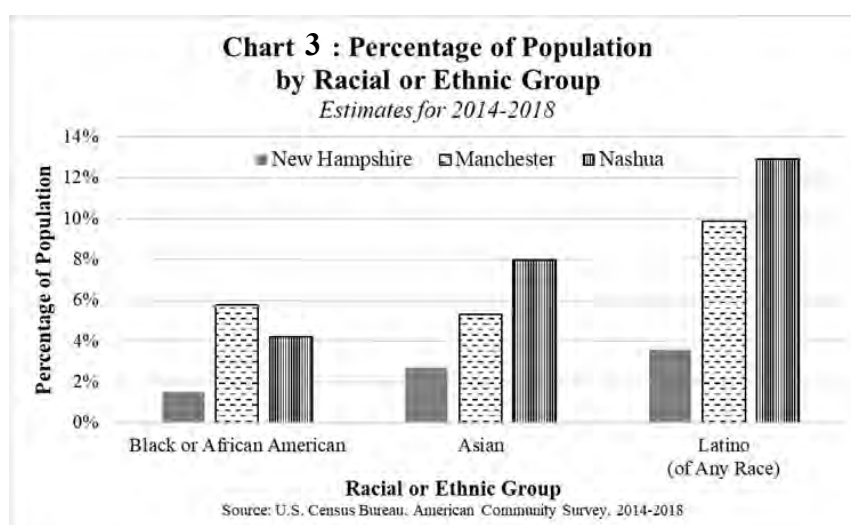
The AFFH-T also employs a Dissimilarity Index, which HUD's *Data Documentation* identifies as a commonly used measure of community-level segregation. The Affirmatively Furthering Fair Housing rule requires participants to describe levels of segregation in the jurisdiction and region using HUD-provided data, based on race and ethnicity, and provides the Dissimilarity Index to address this requirement. The Dissimilarity Index measures the degree to which two groups are evenly distributed across a geographic area.<sup>114</sup> The AFFH-T supplies the Dissimilarity Index for all HUD entitlement communities in New Hampshire, which includes all communities with NHATs except for Concord. In the Dissimilarity Index, less than 40% is considered Low Segregation, while 40% to 55% is Moderate Segregation, and 55% and over is

<sup>114</sup> *AFFH Rule Guidebook, Version 1*, U.S. Dep't of Hous. & Urban Dev. 60–61 (Dec. 31, 2015), <https://files.hudexchange.info/resources/documents/AFFH-Rule-Guidebook.pdf>.

High Segregation. Using the AFFH-T data that categorizes residents into five distinct groups, shown below, all New Hampshire HUD entitlement communities had rates identified as Low Segregation in the 2010-based trend data. When multiracial individuals are excluded from the analysis (not shown in tables) and fixed 2010 figures are used, Nashua has an index value slightly under 41 when measuring dissimilarity between where Latino and non-Latino White individuals live, and both Nashua and Portsmouth had Dissimilarity Index values of between 42 and 43 when comparing where Asian or Pacific Islander and White individuals live.

<b>Table 5: Dissimilarity Index</b> <i>Measures Degree to Which Two Groups Are Evenly Distributed Across an Area</i> <i>Based on 2010 Census, for Entitlement Communities</i> <i>Based on Brown University Longitudinal Tract Database, Retrieved from AFFH-T</i>				
<b>Jurisdiction Name</b>	<b>Non-White/ White</b>	<b>Black/White</b>	<b>Latino/White</b>	<b>Asian or Pacific Islander/White</b>
Dover	11.42	7.99	11.04	16.73
Manchester	24.07	27.2	32.93	19.05
Nashua	23.48	26.9	36.71	36.03
Portsmouth	24.68	24.03	25.22	26.52
Rochester	8.49	16.97	12.46	9.56
Remainder of New Hampshire	20.11	25.73	19.16	31.84
<i>Note: &lt;40 is considered Low Segregation, 40-55 is Moderate Segregation, and &gt;55 is High Segregation. Multiracial individuals incorporated into displayed categories.</i> <i>Source: HUD AFFH-T Tract Data, 2010 Brown University Longitudinal Tract Database</i>				

Even when excluding multiracial individuals, New Hampshire has a moderate degree of segregation in two of its cities, Manchester and Nashua, with a low degree in all other Dissimilarity Index calculations. With non-Latino Whites comprising approximately 90% of the state's population in 2018,<sup>115</sup> the White versus non-White segregation patterns interpreted through the Dissimilarity Index show low levels of segregation in the state's HUD-entitlement communities and in the rest of the state. Local expertise suggests that the small numbers of non-White residents and limited housing opportunities affect the



<sup>115</sup> Non-Latino White Population Estimate for July 1, 2018, Population Estimates Program, U.S. Census Bureau.

low levels of racial/ethnic concentrations of poverty in small geographies in New Hampshire when compared to the rest of the nation.

While segregation at the local level may be relatively limited in New Hampshire, the disparity in the percentage of the population identifying as a non-White individual between the state as a whole and the two largest cities in the state evidences higher overall concentrations of racial and ethnic groups in these urban centers. All but three of the fourteen Census Tracts included in the NHATs are in Manchester and Nashua, and all the NHATs are in cities.

## **5. Additional Indicators of Income and Poverty**

Estimated poverty rates also varied by geography and race in New Hampshire. The overall poverty rate for individuals in New Hampshire averaged across 2014 to 2018 was estimated to be 7.9% (+/- 0.3%).<sup>116</sup> In the combined NHATs, approximately 24% of individuals were estimated to be in poverty. The poverty rates in the cities surrounding these areas vary considerably, with Manchester's overall poverty rate estimated to be 14.8% (+/- 1.2%) during this time period, while Portsmouth had an estimated poverty rate of 6.1% (+/- 1.2%), and Nashua, Concord, and Dover had estimated individual poverty rates of about 10%.

Children are more likely to live in poverty-level income situations than adults in New Hampshire. Poverty rates for children (under age 18 years) in Manchester and Nashua during 2014–2018 were estimated to be 21.9% (+/- 3.0%) and 13.8% (+/- 3.2%), respectively, while the statewide rate for children was 10.2% (+/- 0.7%).<sup>117</sup>

Poverty rates also change based on household composition of households with children. For householders who are single females with related children under 5 years old, the statewide poverty rate was 35.4% (+/- 4.6%), several times higher than the 4.9% (+/- 0.3%) estimated for all families in New Hampshire. With a poverty rate of 8.6% (+/- 0.3%), female individuals were slightly more likely to be in poverty statewide than the overall population.

The AFFH-T provides several different poverty measures. The poverty rate used by HUD to calculate the R/ECAPs in the federal-level analyses of Census Tracts does not match the ACS 2014–2018 household level poverty data used to identify the NHATs, as the HUD-employed data are based on the ACS 2009–2013, the 2010 Census, and the Brown University Longitudinal Tract Database.<sup>118</sup> This analysis uses the ACS 2014–2018, household-level data, as it is based on more recent survey estimates. The index calculated in the AFFH-T for poverty is a percentile indicator, ranked nationally, with a higher number indicating a lower level of exposure to poverty. Individual NHATs range from the second percentile to the 80<sup>th</sup> percentile.

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<sup>116</sup> Five-Year Estimates 2014–2018, ACS, U.S. Census Bureau. Note that these analyses are of poverty rates among individuals, not among households, which was the basis for analysis in the selection of the NHATs.

<sup>117</sup> The 2014–2018 ACS poverty rate for New Hampshire individuals aged 18 to 64 years old was 7.8% (+/- 0.3%) and 5.4% (+/- 0.3%) for individuals aged 65 years and older.

<sup>118</sup> *AFFH-T Data Documentation*, *supra* note 104, at 4.

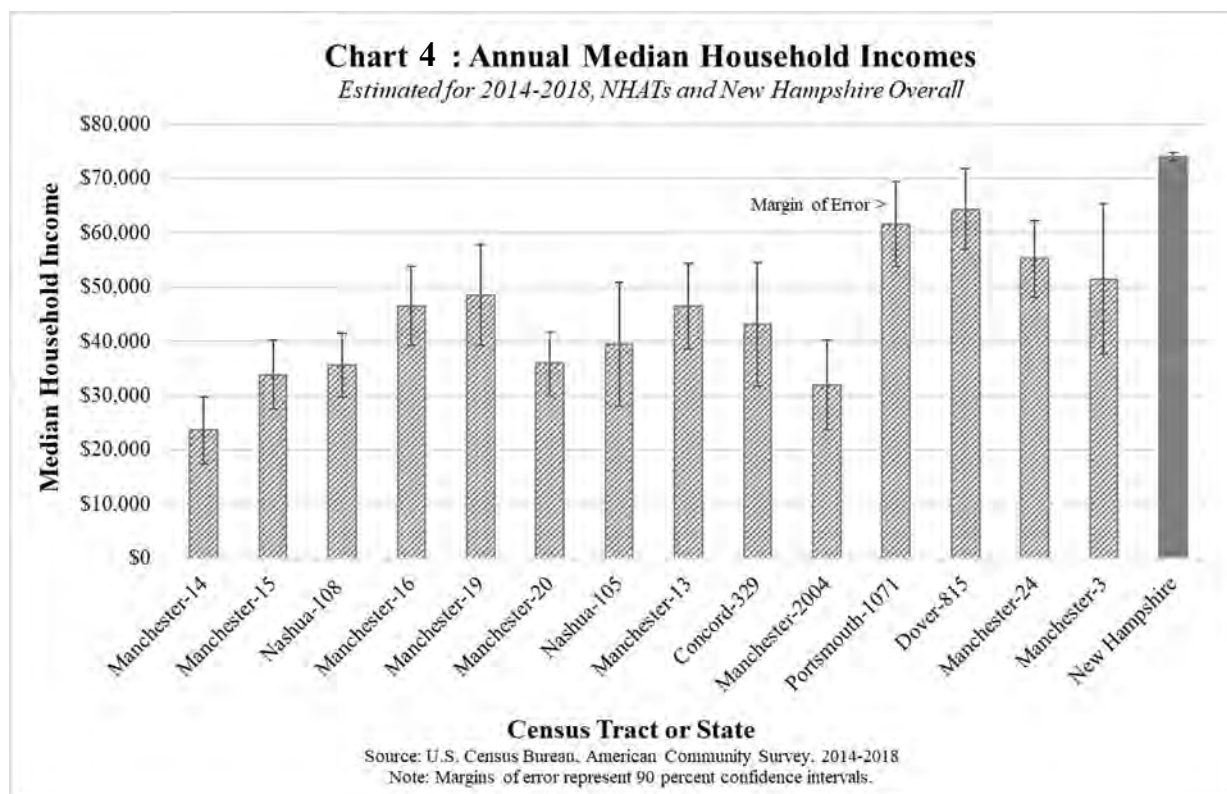
<b>Table 6 : Alternative Poverty Measures</b> <i>HUD AFFH-T Calculated Poverty Metrics for NHATs</i>		
<b>Short Descriptor</b>	<b>Poverty Rate Used in AFFH-T for Racially and Ethnically Concentrated Areas of Poverty Analysis</b>	<b>Poverty Index (Higher Value = Lower Exposure to Poverty, Ranked Nationally)</b>
Manchester-14	34.5	9
Manchester-15	48.5	2
Nashua-108	34.4	9
Manchester-16	27.3	15
Manchester-19	22.3	25
Manchester-20	35.3	10
Nashua-105	33.9	9
Manchester-13	25.8	18
Concord-329	22.7	29
Manchester-2004	22.7	25
Portsmouth-1071	12.8	46
Dover-815	9.4	80
Manchester-24	10.6	54
Manchester-3	22.5	21
<i>Source: HUD AFFH-T Tract Data, February 2018</i>		

The income-based poverty thresholds are specific dollar amounts defined by the federal government and adjusted every year for inflation.<sup>119</sup> However, the thresholds do not adjust for regional variations in the cost of living, and the poverty rates do not necessarily provide a full representation of the proportion of all individuals struggling financially to provide for themselves and their families.<sup>120</sup> Other measures may be used to understand the incomes of individuals in communities.

Median household income estimates provide insight into the income levels of a community to supplement the information provided by poverty figures. Median household incomes vary considerably between NHATs, but all are lower than the statewide estimate for 2014–2018. Median household incomes in Dover-815 and Portsmouth-1071 are the nearest to the statewide average, perhaps reflecting more income inequality in those Census Tracts or smaller areas of concentrated poverty in those communities with lower overall populations than Manchester, Nashua, and Concord, the state’s three largest cities. Manchester-14 has an estimated median household income of \$23,614 (+/- \$6,130), with point estimates in four other NHATs well below \$40,000 per year. Those estimates are considerably less than the statewide estimate of \$74,057 (+/- \$714), suggesting very different economic conditions for residents of those NHATs relative to the state population as a whole.

<sup>119</sup> *Poverty Thresholds*, U.S. Census Bureau (accessed Jan. 22, 2020), <https://www.census.gov/data/tables/time-series/demo/income-poverty/historical-poverty-thresholds.html>. Poverty thresholds are used for understanding demographics in Census data, whereas poverty guidelines are used for determining an individual’s program eligibility. See *2020 Poverty Guidelines*, U.S. Dep’t of Health & Hum. Servs., Office of the Assistant Sec’y for Planning & Evaluation (updated Jan. 21, 2020), <https://aspe.hhs.gov/2020-poverty-guidelines>.

<sup>120</sup> *The Supplemental Poverty Measure: 2018*, U.S. Census Bureau (Oct. 2019), <https://www.census.gov/library/publications/2019/demo/p60-268.html>.



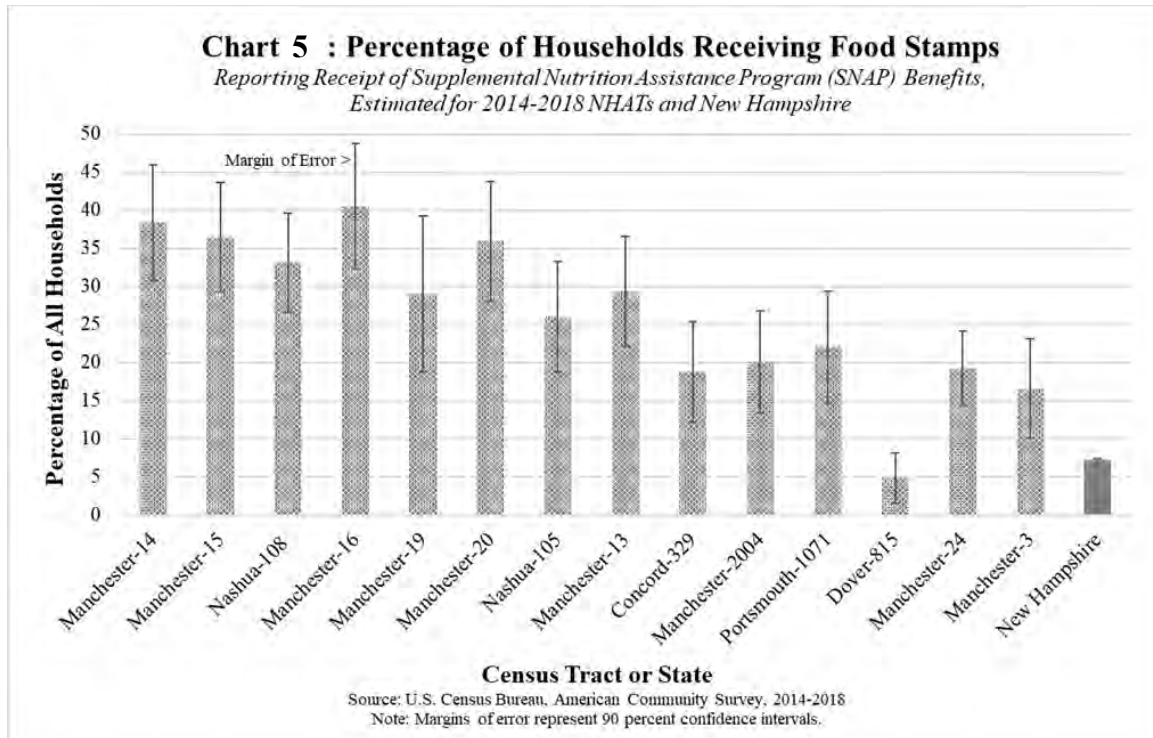
Enrollment in New Hampshire’s Food Stamp Program, often identified by the federal name Supplemental Nutrition Assistance Program (SNAP), can be dependent on household size, income, and assets, but it is primarily an income-based entitlement program.<sup>121</sup> U.S. Census Bureau survey figures suggest wide variation among NHATs in SNAP enrollment, ranging from estimates of nearly two out of every five households in certain Manchester NHATs to an estimate of one in twenty households in Dover-815. While certain implementation and referral practices may change from one municipality to another, these figures indicate elevated SNAP enrollment relative to statewide enrollment levels in all but one of the NHATs and suggest lower levels of income in these communities.

Administrative data from the New Hampshire Department of Health and Human Services does not provide SNAP enrollment figures at the Census Tract level, but a municipal-level analysis shows that SNAP enrollment is elevated in three of the five municipalities that include NHATs. Based on September 2019 enrollment and July 2018 population estimates, SNAP enrollment statewide was 5.4% of the population, but was 12.0% in Manchester, 7.6% in Nashua, 8.0% in Concord, 5.1% in Dover, and 4.4% in Portsmouth.<sup>122</sup> New Hampshire’s Medicaid program includes enrollees for a variety of reasons, but the target populations are those with limited incomes and assets, particularly children from low-income households and adults

<sup>121</sup> *Food Stamp Manual*, N.H. Dep’t of Health & Hum. Servs. (Oct. 2019), <https://www.dhhs.nh.gov/fsm.htm/newfsm.htm>.

<sup>122</sup> September 2019 Food Stamp Program Enrollment by Municipality, N.H. Dep’t of Health & Hum. Servs. (additional analysis conducted to sort non-municipality place enrollees into municipalities); Estimates for July 1, 2018, Population Estimates Program, U.S. Census Bureau.

requiring long-term supports and services.<sup>123</sup> About 13.0% of New Hampshire's population was enrolled in Medicaid in September 2019; however, Manchester's enrollment was 23.5% of the population, Nashua's was 15.4%, and Concord's was 17.1%. Dover and Portsmouth had 11.5% and 9.8% enrollment rates, respectively.<sup>124</sup>

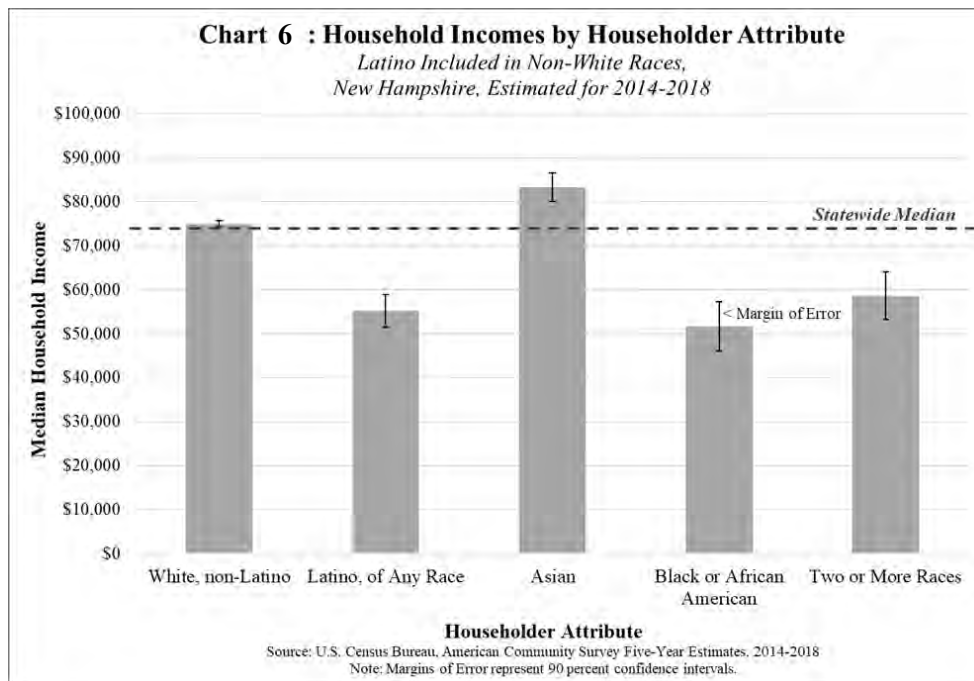


<sup>123</sup> *NH Medicaid Program*, N.H. Dep't of Health & Hum. Servs. (accessed Mar. 1, 2020), <https://www.dhhs.nh.gov/ombp/medicaid/>.

<sup>124</sup> *New Hampshire Medicaid Enrollment Demographic Trends and Geography*, N.H. Dep't of Health & Hum. Servs. (Sept. 2019), <https://www.dhhs.nh.gov/ombp/medicaid/enrollment-data.htm>; Estimates for July 1, 2018, Population Estimates Program, U.S. Census Bureau.

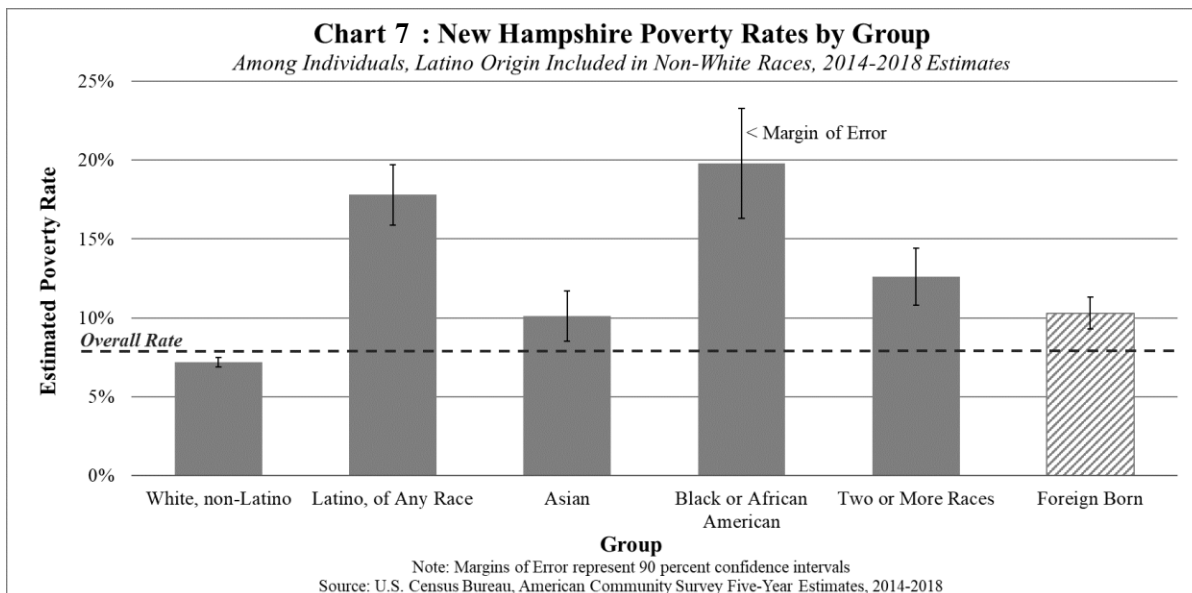


Using statewide data, poverty rates and median household incomes by racial and ethnic group show disparities between individuals and groups, particularly certain non-White groups. Median incomes were lower during the 2014–2018 period in households where the householder identified as Latino (of any race), identified as Black or African American, or identified as being of two or more races. Asian householders were in households with higher median incomes than the statewide median, while non-Latino Whites had median household incomes statistically indistinguishable from the statewide median.





Poverty rates for individuals by racial or ethnic group also show that non-White residents are more likely to be in poverty. The poverty rates among individuals who identify as Black or African American, Asian, two or more races, or those of any race who identify as Latino, were higher than the overall statewide poverty rate during the 2014–2018 period, while the rate for non-Latino Whites was lower than the statewide rate. Individuals who were born outside of the United States and living in New Hampshire, regardless of race, were also more likely to be in poverty than the population as a whole.



All these indicators suggest that poverty is higher in the NHATs, incomes are generally lower, and racial/ethnic concentrations are higher than in the state as a whole (*see* App. A-18–A-34 for maps of household poverty rate, racial and ethnic diversity, and median household income by Census Tract).

## 6. Community Asset Indicators

### a. Educational Opportunities and Language Barriers

The Affirmatively Furthering Fair Housing rule requires an assessment of educational opportunities.<sup>125</sup> The AFFH-T provides a Weighted School Proficiency Index to address this question, which ranks school access by Census Tract in percentiles based on a formula that employs 4<sup>th</sup> grade reading and math scores on state tests. The schools used in the analysis are selected based on a national database of school district borders, where known, and an

<sup>125</sup> *AFFH Rule Guidebook*, *supra* note 114, at 70.

approximation based on the closest schools within a certain mileage radius where catchment borders are unknown.<sup>126</sup>

The AFFH-T weighted school proficiency index shows considerable variation in access to schools with higher levels of 4<sup>th</sup> grade state-test scores. The schools are ranked by percentile from 0 to 100. The higher the score, the higher the school system ranks in a neighborhood based on the measures in the index. Local schools that are identified by HUD as serving Census Tracts are averaged. Several Manchester tracts likely draw on the same or similar combinations of schools, and this index identifies those test scores as among the lowest in the state, suggesting more limited educational opportunities for elementary students in those NHATs. All NHAT school index scores are in the bottom third except for Portsmouth-1071, which appears to be proximate to some of the highest-performing schools in the state.

Data from the New Hampshire Department of Education provides additional insight into the opportunities elementary students may have in schools within and adjacent to NHATs. Schools face differing challenges and opportunities in educating and supporting their students, and the resources a student has at home may impact the extent to which support is needed at school. Students may also face additional barriers to learning if they are not fluent in English. Individual school data showing the percentage of English Language Learners and eligibility for free or reduced-price meals permits greater understanding of the challenges facing students and schools in the NHAT and adjacent areas.

The table below shows the percentage of students who are English Language Learners and the percentage of students eligible for free and reduced-price meals by elementary school. Local public district elementary schools were selected as the school associated with an analysis if (1) they were within the borders of the Census Tract, or (2) they were the closest school to the plurality of the area of the Census Tract.<sup>127</sup> For district-level percentages of less than 10% or greater than 90%, the New Hampshire Department of Education suppresses the exact percentage to protect individual identity.

**Table 7 : NHAT School Proficiency Index**  
*HUD Calculations Based on 4th Grade Test Scores*

Short Descriptor	Weighted School Proficiency Index (Percentile Rank at State Level)
Manchester-14	0.5
Manchester-15	0.4
Nashua-108	0.9
Manchester-16	0.9
Manchester-19	1.3
Manchester-20	6.4
Nashua-105	10.2
Manchester-13	2.0
Concord-329	23.0
Manchester-2004	13.6
Portsmouth-1071	97.0
Dover-815	30.3
Manchester-24	16.1
Manchester-3	7.3
<i>Source: HUD AFFH-T Tract Data</i>	

<sup>126</sup> AFFH-T Data Documentation, *supra* note 104.

<sup>127</sup> This process was completed manually with available maps.

<b>Table 8 : Elementary School Enrollment Characteristics</b> <i>Percentage of Students by School</i>			
<b>Short Descriptor</b>	<b>Nearby Elementary School</b>	<b>English Language Learners (2018-2019)</b>	<b>Free and Reduced Price Meal Student Enrollment (2019-2020)</b>
Manchester-14	Beech Street School	34%	87%
Manchester-15	Beech Street School	34%	87%
Nashua-108	Ledge Street School	37%	75%
Manchester-16	Henry Wilson Elementary School	36%	77%
Manchester-19	Bakersville School	28%	78%
Manchester-20	Gossler Park School	14%	73%
Nashua-105	Mt. Pleasant School	18%	74%
Manchester-13	McDonough School	16%	65%
Concord-329	Broken Ground School	21%	44%
Manchester-2004	Beech Street School	34%	87%
Portsmouth-1071	New Franklin School	N/A	25%
Dover-815	Horne Street School	<10%	27%
Manchester-24	Bakersville School	28%	78%
Manchester-3	Northwest Elementary School	18%	56%
<b>New Hampshire</b>	<b>N/A</b>	<b>&lt;10%</b>	<b>25%</b>
<i>Source: New Hampshire Department of Education, School and District Report Card and Free/Reduced School Lunch Eligibility</i>			

Elementary schools in or near NHATs vary widely in the extent to which students attending are not fully proficient in English or come from households with low incomes. While all local NHAT schools matched or exceeded the statewide percentage of students eligible for free or reduced-price meals, the range varied from lows of 25% and 27% in the Portsmouth and Dover NHATs to 87% at the Beech Street School in Manchester, which was the closest geographically to three NHATs. In ten of the fourteen NHATs, the closest elementary school had 65% or more of students eligible for free or reduced-price meals. Two elementary schools in Manchester and one in Nashua near to NHATs have more than a third of students identified as English Language Learners.

The State of New Hampshire requires all students in grades 3–8 and in grade 11 take the New Hampshire State Assessments in English Language Arts and Mathematics.<sup>128</sup> Scores varied considerably, primarily because of the elementary school closest to Portsmouth-1071, but all other schools had lower percentages of students scoring proficient than the statewide averages.

<sup>128</sup> *iReport: Student Achievement – Overview*, N.H. Dep’t of Educ., <https://ireport.education.nh.gov/state/NH/student-achievement>.

**Table 9 : New Hampshire State Assessments by School**  
*Fourth Grade, Percentage Scoring Proficient, 2018-2019*

Short Descriptor	Nearby Elementary School	English Language Arts	Mathematics
Manchester-14	Beech Street School	<10%	<10%
Manchester-15	Beech Street School	<10%	<10%
Nashua-108	Ledge Street School	32%	25%
Manchester-16	Henry Wilson Elementary School	16%	<10%
Manchester-19	Bakersville School	21%	22%
Manchester-20	Gossler Park School	21%	18%
Nashua-105	Mt. Pleasant School	39%	23%
Manchester-13	McDonough School	38%	29%
Concord-329	Broken Ground School	54%	40%
Manchester-2004	Beech Street School	<10%	<10%
Portsmouth-1071	New Franklin School	85%	86%
Dover-815	Horne Street School	49%	45%
Manchester-24	Bakersville School	21%	22%
Manchester-3	Northwest Elementary School	36%	33%
<b>New Hampshire</b>	<b>N/A</b>	<b>56%</b>	<b>48%</b>

*Source: New Hampshire Department of Education, School and District Report Card*

In the community beyond the school systems, limited English language proficiency may also make accessing housing and other services difficult to accomplish. The AFFH-T offers analysis of 2010 Decennial Census count data, the most recent data with a detailed population count at the local level, which permits assessment of both the percentage of residents with limited English proficiency and the number of different languages spoken by those individuals with limited English proficiency. This second metric, although likely not comprehensive due to a finite number of categories offered by the U.S. Census Bureau and HUD, provides some insight into the complexity associated with communicating across up to ten different languages within a Census

**Table 10: Limited English Proficiency**  
*By Census Tract, 2010 Census Counts*

Short Descriptor	Percentage with Limited English Proficiency (2010)	Number of Different Languages Identified Associated with Limited English Proficient Individuals
Manchester-14	16.4	10
Manchester-15	21.8	7
Nashua-108	12.7	5
Manchester-16	22.0	10
Manchester-19	18.3	6
Manchester-20	9.2	5
Nashua-105	10.9	1
Manchester-13	7.3	5
Concord-329	5.8	6
Manchester-2004	10.4	5
Portsmouth-1071	2.1	2
Dover-815	4.5	4
Manchester-24	6.3	8
Manchester-3	7.4	4
<b>New Hampshire</b>	<b>2.3</b>	<b>N/A</b>

*Source: HUD AFFH-T Tract and State Data*

Tract.<sup>129</sup> ACS estimates from 2014–2018 are too uncertain to provide substantial insight into each NHAT, but five NHATs had point estimates with more than 10% of households identified as limited English speaking households: Manchester-15 (23.4%, +/- 7.5%), Nashua-108 (13.4%, +/- 4.8%), Concord-329 (12.8%, +/- 7.8%), Manchester-20 (12.6%, +/- 6.2%), and Manchester-14 (11.2%, +/- 5.4%).

## **b. Availability of Affordable and Adequate Housing**

There is a limited supply of housing in both the rental and ownership markets in New Hampshire, and prices have been increasing for both homebuyers and renters.<sup>130</sup> These two markets are related, as potential homebuyers may continue to rent if they cannot find an affordable home. Data suggest renters are typically lower-income than homeowners, with median household income for a renter-occupied unit in New Hampshire at approximately \$41,000, while owner-occupied units had estimated median household incomes of about \$92,000, based on 2018 data.<sup>131</sup> Housing in the NHATs is likely substantially impacted by the rental market.

HUD identifies families who pay more than 30% of their income for housing as cost-burdened.<sup>132</sup> While subject to considerable statistical uncertainty, ACS 2014–2018 data permit estimations of the percentage of renter households owing more than 30% of their incomes in rent and utilities. For NHATs as a whole, approximately 52% of renter households were estimated to be paying more than 30% of their income in rent and utilities during 2014–2018, compared to approximately 47% for all renters statewide.

The AFFH-T also employs older data to estimate the aggregate percentage of households with

**Table 11: Cost-Burdened Renter Households by NHAT**

*2014-2018 Estimates, Include Significant Statistical Uncertainty*

Short Descriptor	Estimated Percentage of Renter Households Owning More Than 30 Percent of Income in Rent and Utilities
Manchester-14	55
Manchester-15	61
Nashua-108	62
Manchester-16	48
Manchester-19	45
Manchester-20	59
Nashua-105	58
Manchester-13	40
Concord-329	50
Manchester-2004	49
Portsmouth-1071	42
Dover-815	43
Manchester-24	52
Manchester-3	57
<b>New Hampshire</b>	<b>47</b>
<i>Source: U.S. Census Bureau, American Community Survey, 2014-2018</i>	

<sup>129</sup> The languages tracked by the U.S. Census Bureau and identified in the AFFH-T HUD data include 38 languages and language classifications, and another category for unspecified languages. The languages and language classifications identified include Spanish, French, French Creole, Italian, Portuguese, German, Yiddish, West Germanic, Scandinavian, Greek, Russian, Polish, Serbo-Croatian, Slavic, Persian, Gujarati, Hindi, Urdu, Indic, Indo, Japanese, Korean, Cambodian, Hmong, Thai, Laotian, Vietnamese, Asian, Tagalog, Pacific, Navajo, North American, Hungarian, Arabic, Hebrew, and African languages.

<sup>130</sup> *Housing Market Report*, NHHFA (Nov. 2019), <https://www.nhhfa.org/wp-content/uploads/2019/11/NHHFA-HMR-November2019.pdf>.

<sup>131</sup> One-Year Data 2018, ACS, U.S. Census Bureau.

<sup>132</sup> *Affordable Housing*, U.S. Dep't of Hous. & Urban Dev., Office of Cmty. Planning & Dev. (accessed Mar. 2, 2020), [https://www.hud.gov/program\\_offices/comm\\_planning/affordablehousing/](https://www.hud.gov/program_offices/comm_planning/affordablehousing/).

“housing problems.” According to HUD, a household with a housing problem has at least one of these four issues: (1) lack of complete kitchen facilities, (2) lack of complete plumbing facilities, (3) has more than one person per room, or (4) is cost-burdened, with monthly housing costs (including utilities) exceeding 30% of monthly income. Severe housing problems are defined as the same set of issues with the exception of the cost-burdened component, with severe housing issues only triggered if housing costs are more than 50% of monthly income. Cost burdens comprise most of the identified housing problems, based on analysis of available AFFH-T and ACS data. These percentages were calculated from HUD’s Comprehensive Housing Affordability Strategy data from 2009 to 2013, which are produced from custom tabulations of the American Community Survey.

<b>Table 12: Percentage of Households with an Identified Housing Problem</b> <i>Housing Problems: Lacking Complete Kitchen Facilities, Lacking Complete Plumbing, More than One Person per Room, or Costing More Than 30 Percent of Resident Income</i> <i>Severe Housing Problems: Any Non-Cost Problem, or Cost of More Than 50 Percent of Resident Income</i>		
<b>Short Descriptor</b>	<b>Percent of Households with One or More Housing Problems</b>	<b>Percent of Households with One or More Severe Housing Problems</b>
Manchester-14	57	34
Manchester-15	68	48
Nashua-108	56	34
Manchester-16	54	39
Manchester-19	55	32
Manchester-20	48	33
Nashua-105	58	33
Manchester-13	58	33
Concord-329	49	16
Manchester-2004	48	28
Durham-802.03	55	41
Portsmouth-1071	45	21
Dover-815	46	16
Manchester-24	42	14
Manchester-3	60	29
New Hampshire Statewide - White Population	36	16
New Hampshire Statewide - Black Population	45	23
New Hampshire Statewide - Latino Population	50	24
New Hampshire Statewide - Asian or Pacific Islander Population	46	25
<i>Source: HUD AFFH-T Tract Data, February 2018</i>		

Housing problems, including high costs and incomplete facilities, may have disproportionate impacts on certain groups in New Hampshire. The AFFH-T provides estimates of housing problems by race statewide. An estimated 36% of White households have housing problems statewide, while about 45% of Black households reported at least one housing problem. About 50% of Latino households reported at least one qualifying housing problem, as did about 46% of Asian or Pacific Islander households.

Housing units may also have problems associated with age, including exposure to lead paint, which can be particularly detrimental to young children. Homes built before 1978, when the federal government banned the use of lead-containing paint for consumer use, may contain lead-based paint.<sup>133</sup> Other detrimental impacts of living in an older building may include higher utility costs, such as for heating and cooling. In all but one NHAT, Portsmouth-1071, a higher percentage of housing units were built before 1980 than housing units statewide. In four Manchester NHATs, more than nine in ten housing units were built before 1980, which may disproportionately increase the risk of lead exposure in these areas.

<b>Table 13 : Older Housing Units</b> <i>NHAT and Statewide, Based on 2014-2018 Data</i>	
<b>Short Descriptor</b>	<b>Estimated Percentage of Housing Units Built Before 1980</b>
Manchester-14	91
Manchester-15	96
Nashua-108	80
Manchester-16	89
Manchester-19	76
Manchester-20	69
Nashua-105	89
Manchester-13	97
Concord-329	39
Manchester-2004	77
Portsmouth-1071	53
Dover-815	63
Manchester-24	76
Manchester-3	93
<b>New Hampshire</b>	<b>54</b>
<i>Source: U.S. Census Bureau, American Community Survey, 2014-2018</i>	

<sup>133</sup> *Protect Your Family from Exposures to Lead*, U.S. Env'tl. Prot. Agency (accessed Mar. 2, 2020), <https://www.epa.gov/lead/protect-your-family-exposures-lead>.



Publicly-subsidized housing can increase the concentration of more low-income housing units into one area, such as in large apartment complexes; this concentration could potentially impact the information on a Census Tract level. The AFFH-T offers summary information on the assisted housing programs operating by Census Tract. These data are incorporated into the table below for the NHATs.

**Table 14 : Assisted Housing Programs**

Short Descriptor	Total Number of Units	Total Percentage Occupied by Non-White Individuals	Public Housing Units	Public Housing - Percentage Occupied by Non-White Individuals	Housing Choice Vouchers Units	Housing Choice Vouchers - Percentage Held by Non-White Individuals	Project-Based Section 8 Units	Other Multifamily Units
Manchester-14	376	21%	299	18%	76	35%	1	**
Manchester-15	182	34%	6	*	120	34%	30	26
Nashua-108	661	29%	90	65%	383	32%	107	82
Manchester-16	163	23%	23	23%	140	23%	**	**
Manchester-19	136	41%	44	60%	82	34%	10	**
Manchester-20	272	20%	167	9%	96	40%	9	**
Nashua-105	214	32%	11	36%	160	38%	43	**
Manchester-13	158	22%	21	15%	137	23%	**	**
Concord-329	379	37%	**	**	73	18%	306	**
Manchester-2004	317	18%	**	**	154	20%	163	**
Portsmouth-1071	239	15%	122	18%	94	14%	23	**
Dover-815	103	4%	**	**	103	4%	**	**
Manchester-24	471	29%	208	48%	143	18%	119	**
Manchester-3	223	17%	102	17%	121	16%	**	**
Notes: *Data not available. **No units in category listed. Source: HUD AFFH-T Tract Data, accessed January 2020.								



These assisted housing programs do not include the Low-Income Housing Tax Credit (LIHTC) properties in the NHAT. This program provides resources to state and local governments to issue tax credits for the creation of rental housing targeted at lower-income households.<sup>134</sup> The development of these properties may also concentrate the housing used by people with low incomes. The table below shows the LIHTC projects, and the number of units, in HUD's LIHTC database that opened from 1998 to 2017.<sup>135</sup>

<b>Table 15: Low-Income Housing Tax Credit Projects</b> <i>Placed in Service 1998-2017 in NHATs</i>				
<b>Census Tract Descriptor</b>	<b>Number of Projects</b>	<b>Project Name</b>	<b>Total Units</b>	<b>Total Low-Income Units</b>
Manchester-14	2	Renaissance IV, Lowell Street	40	40
Manchester-15	3	Renaissance III, Renaissance IV, Cedar House	64	64
Nashua-108	3	Millette Manor, Gatewood Manor, Salmon Brook Senior Housing	151	151
Manchester-16	0			
Manchester-19	1	Renaissance VIII (Silver Mills)	57	57
Manchester-20	0			
Nashua-105	2	Xavier House, Cotton Mill	143	89
Manchester-13	0			
Concord-329	0			
Manchester-2004	0			
Portsmouth-1071	1	Betty's Dream	24	24
Dover-815	1	Woodbury Mills	42	42
Manchester-24	1	Beech Hill	320	288
Manchester-3	1	Brown School	34	34
<i>Source: U.S. Department of Housing and Urban Development, Low-Income Housing Tax Credit Database.</i>				

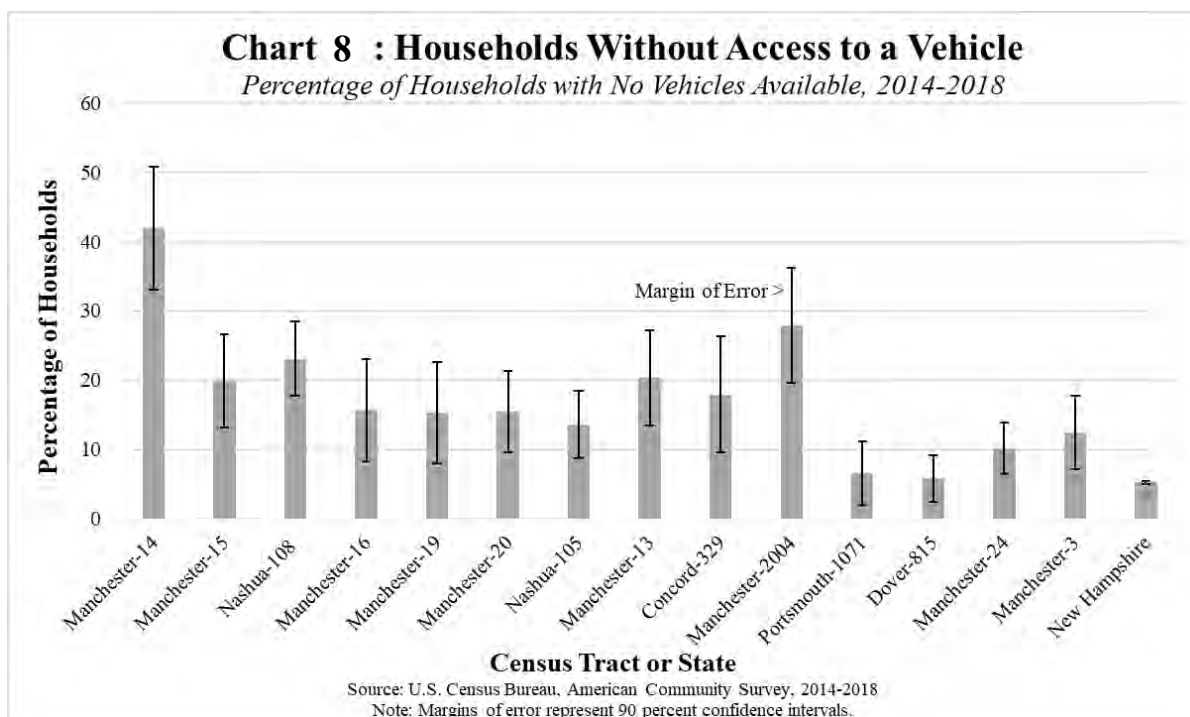
### c. Access to Transportation

Throughout much of New Hampshire, a vehicle is the only viable means of long-distance transportation, in part due to limited public transportation options. The NHATs are all in New Hampshire's cities and are more densely populated than much of the state's land area. However, access to a motor vehicle is still a relevant consideration in New Hampshire's urban centers. The graph below shows the NHAT and statewide percentages of occupied housing units where residents reported having no vehicle available. These ACS data reveal that, during 2014 through 2018, all NHATs except for Dover-815 and Portsmouth-1071 had statistically significantly higher rates of households reporting having no vehicles available. Dover and Portsmouth are the

<sup>134</sup> *Low-Income Housing Tax Credits*, U.S. Dep't of Hous. & Urban Dev., Office of Policy Dev. & Research (May 24, 2019), <https://www.huduser.gov/portal/datasets/lihtc.html>.

<sup>135</sup> The HUD database did not clearly indicate whether all these projects were still active.

two smaller cities of the five communities with NHATs. Data for Manchester-14, which is just east of Elm Street in central Manchester, showed between 33.1% and 50.9% of households without a vehicle available.



Both low household resources and relatively high population densities are likely factors in those NHATs with lower levels of vehicle access. Higher population densities likely enable certain individuals to access employment and many needed services without owning a car, although the array of options is much more limited in New Hampshire when driving one's own vehicle is not an option. The availability of public transportation may also influence where individuals live or where they can afford to live. The AFFH-T offers a Low Transportation Cost Index and notes that calculated costs in the index may be low due to higher density of homes, services, and jobs in and around an examined Census Tract. These index values are based on the Location Affordability Index data from 2008–2012 and show that, when ranked in percentiles relative to other areas of the nation, transportation costs in the NHATs are relatively low. Notably, the incomes used to calculate these relative transportation costs use the U.S. Census Bureau's Core-Based Statistical Areas, which indicates Manchester and Nashua are calculated separately from Dover and Portsmouth, with Concord calculated separately from the other four cities.<sup>136</sup> Relative to the state as a whole, the Low Cost Transportation Index shows that NHAT transportation costs appear lower, likely due to the density of population and services compared to the statewide figures. By racial group, the Index suggests transportation costs may be higher for the White population relative to other racial or ethnic groups. This trend likely reflects greater access to public transportation in higher population density areas in New Hampshire, such as Manchester and Nashua, where non-White residents make up a greater share of the population than the statewide figures.

<sup>136</sup> AFFH-T Data Documentation, *supra* note 104.

<b>Table 16: Transportation Costs and Public Transit Use</b> <i>Indices Calculated for the AFFH-T,  NHAT Index Values and Statewide Values by Race or Ethnic Group</i>		
Short Descriptor	Low Transportation Cost Index (Higher Value = Lower Transportation Costs, Ranked Nationally)	Transit Trips Index (Higher Value = More Likely to Use Public Transit, Ranked Nationally)
Manchester-14	98	34
Manchester-15	98	38
Nashua-108	95	35
Manchester-16	97	39
Manchester-19	93	30
Manchester-20	97	36
Nashua-105	95	33
Manchester-13	97	38
Concord-329	86	15
Manchester-2004	97	29
Portsmouth-1071	91	76
Dover-815	83	86
Manchester-24	89	27
Manchester-3	96	37
New Hampshire Statewide - White Population	67	35
New Hampshire Statewide - Black Population	79	38
New Hampshire Statewide - Latino Population	80	37
New Hampshire Statewide - Asian or Pacific Islander Population	76	41
<i>Source: HUD AFFH-T Tract and State Data, February 2018</i>		

Another index offered by the AFFH-T to evaluate transportation at the Census Tract level is the Transit Trips Index, which also is based in part in Core-Based Statistical Areas. Higher values indicate residents are more likely to use public transit, and Census Tracts are ranked by percentile nationally.<sup>137</sup> These figures suggest public transit use is relatively low in some New Hampshire cities, although Dover-815 and Portsmouth-1071 are ranked relatively highly within the NHATs and compared to the nation. The Core-Based Statistical Area basis for certain components of the calculations may be impacting the scores disproportionately, as Portsmouth and Dover are included within the Boston-Cambridge-Newton Metropolitan Statistical Area, while the Manchester-Nashua Metropolitan Statistical Area includes Hillsborough County

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<sup>137</sup> *Id.*

alone.<sup>138</sup> Statewide figures analyzed by racial group suggest White residents may be less likely to use public transit than Black, Latino, or Asian residents.

#### **d. Environmental Health Hazards**

The AFFH-T supplies an Environmental Health Index to summarize potential exposure to harmful toxins at a neighborhood level. The index combines air quality carcinogenic, respiratory, and neurological hazards collected as part of the U.S. Environmental Protection Agency's National Air Toxics Assessment (NATA), which compiles an inventory of outdoor air toxics sources and estimates ambient concentrations of air toxics, converting those estimates into health risk calculations based on years of exposure. Indoor hazards are not included.<sup>139</sup> The AFFH-T data is from the 2011 NATA; for this analysis, updated data from the cancer risk calculation of the 2014 NATA are also displayed for the NHATs.

<b>Table 17 : Environmental Health Metrics</b> <i>National Air Toxics Assessment, 2014</i> <i>AFFH-T Environmental Health Index, 2018 Update</i>		
Short Descriptor	National Air Toxics Assessment Cancer Risk (Higher Value = Greater Risk, Measures as Out of One Million)	Environmental Health Index
Manchester-14	28	16
Manchester-15	29	15
Nashua-108	30	31
Manchester-16	29	20
Manchester-19	29	22
Manchester-20	29	36
Nashua-105	30	24
Manchester-13	29	18
Concord-329	27	34
Manchester-2004	29	14
Portsmouth-1071	26	41
Dover-815	25	56
Manchester-24	29	44
Manchester-3	28	37
New Hampshire Statewide - White Population	N/A	76
New Hampshire Statewide - Black Population	N/A	57
New Hampshire Statewide - Latino Population	N/A	56
New Hampshire Statewide - Asian or Pacific Islander Population	N/A	64
Source: U.S. Environmental Protection Agency; HUD AFFH-T Tract and State Data, February 2018		

Although the 2014 NATA shows slight variation in the overall cancer risk across the NHATs, with apparent dips in risk for the Dover, Portsmouth, and Concord NHATs relative to Manchester and Nashua, directly comparing these estimates for small areas provides only limited

<sup>138</sup> *New Hampshire – Core Based Statistical Areas (CBSAs) and Counties*, U.S. Census Bureau (as of Feb. 2013), [https://www2.census.gov/geo/maps/metroarea/stcbsa\\_pg/Feb2013/cbsa2013\\_NH.pdf](https://www2.census.gov/geo/maps/metroarea/stcbsa_pg/Feb2013/cbsa2013_NH.pdf).

<sup>139</sup> *National Air Toxics Assessment, NATA Overview*, U.S. Env'tl. Prot. Agency (updated Aug. 27, 2018), <https://www.epa.gov/national-air-toxics-assessment/nata-overview>.

information, as these estimates are based on limited data and assumptions. For context, the estimated level of cancer risk, at approximately 28 to 30 in one million for the Nashua and Manchester NHATs, appears to be nearly twice as high as the estimated risk of 16 in one million in Pittsburg, New Hampshire (along the Canadian border), and may also be higher than the 19 per one million cancer risk estimated for Francestown, only three towns west of Manchester, and New Ipswich, four towns west of Nashua.<sup>140</sup>

The AFFH-T index values within NHATs suggest a substantial difference in national rankings for each NHAT. While Manchester-2004, which includes parts of Elm Street and the eastern bank of the Merrimack River, had an index value of 14, nearby Manchester-24 had an index value of 44, and Dover-815's index value was 56. That high value relative to all NHATs, however, was approximately equivalent to the index value for Black and Latino individuals statewide. Asian or Pacific Islander individuals had a higher estimated index value of 64, and for the White population statewide the index value was 76. These index figures suggest the NHATs have inferior environmental air quality to the state as a whole, which may reflect the urban nature of the NHATs relative to the rural environment dominant throughout much of the state's land area, and also that Whites may disproportionately have access to air with fewer toxins than non-Whites, based on where residents live.

Notably, environmental hazards are not bound by Census Tracts, and additional information would be needed to determine the statistical significance of any specific differences in air quality between Census Tracts.

#### **e. Labor Market Engagement and Job Opportunities**

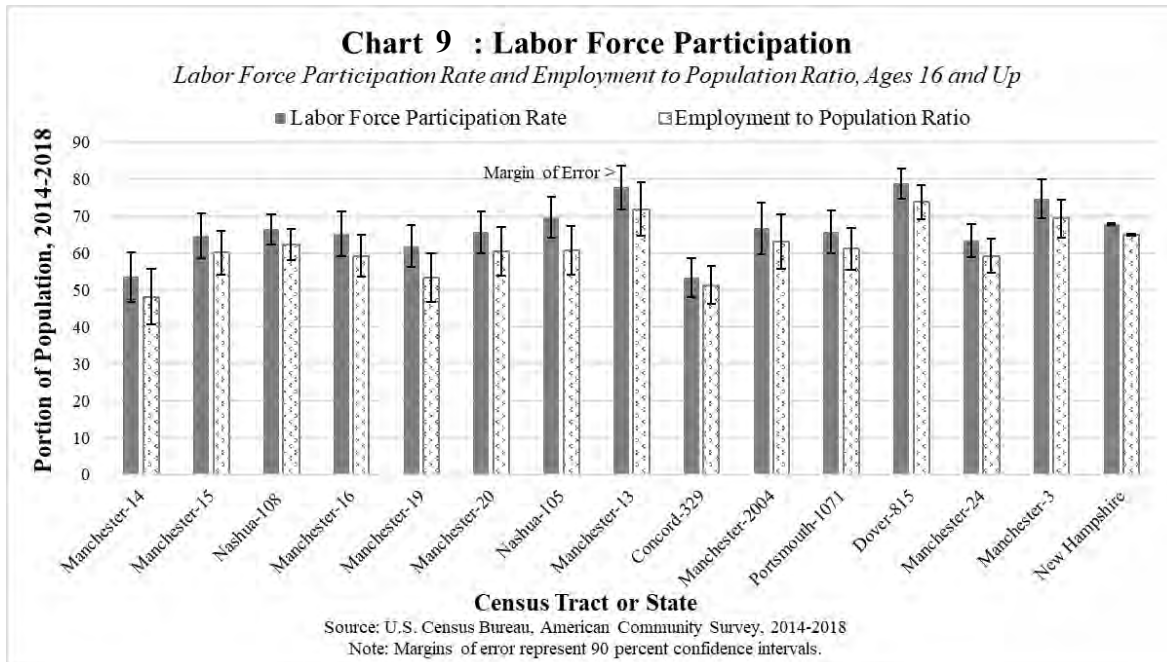
Measurements of access and proximity to employment and engagement with the labor force provide insight into the economic opportunity in a neighborhood. Alongside the monthly unemployment estimates collected through the Current Population Survey, which has a smaller sample size, the ACS asks respondents about labor force participation rates and unemployment as well.<sup>141</sup> ACS data averaged over five years permits limited analysis at the Census Tract level.

Labor force participation rates for those aged 16 years and older were lower than the overall statewide figure in Manchester-14 and Concord-329. However, the participation rate was higher in Manchester-13, Manchester-3, and Dover-815, suggesting that a mixture of factors may contribute to the labor force participation rates, and neighboring NHATs exhibited measurably different rates from the state in different directions. The employment-to-population ratio for individuals aged 16 and up showed a similar pattern, although the NHATs that were statistically distinguishable from the statewide figures were somewhat different; Manchester-14, Manchester-19, Manchester-24, and Concord-329 have lower employment-to-population ratios than the state, while Manchester-3 has a higher ratio.

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<sup>140</sup> 2014 National Air Toxics Assessment Map Application, U.S. Env'tl. Prot. Agency, <https://www.epa.gov/national-air-toxics-assessment/2014-nata-map>.

<sup>141</sup> *How the Census Bureau Measures Income and Poverty*, U.S. Census Bureau (Sept. 5, 2017), [https://www.census.gov/newsroom/blogs/random-samplings/2017/09/how\\_the\\_census\\_bureau.html](https://www.census.gov/newsroom/blogs/random-samplings/2017/09/how_the_census_bureau.html).



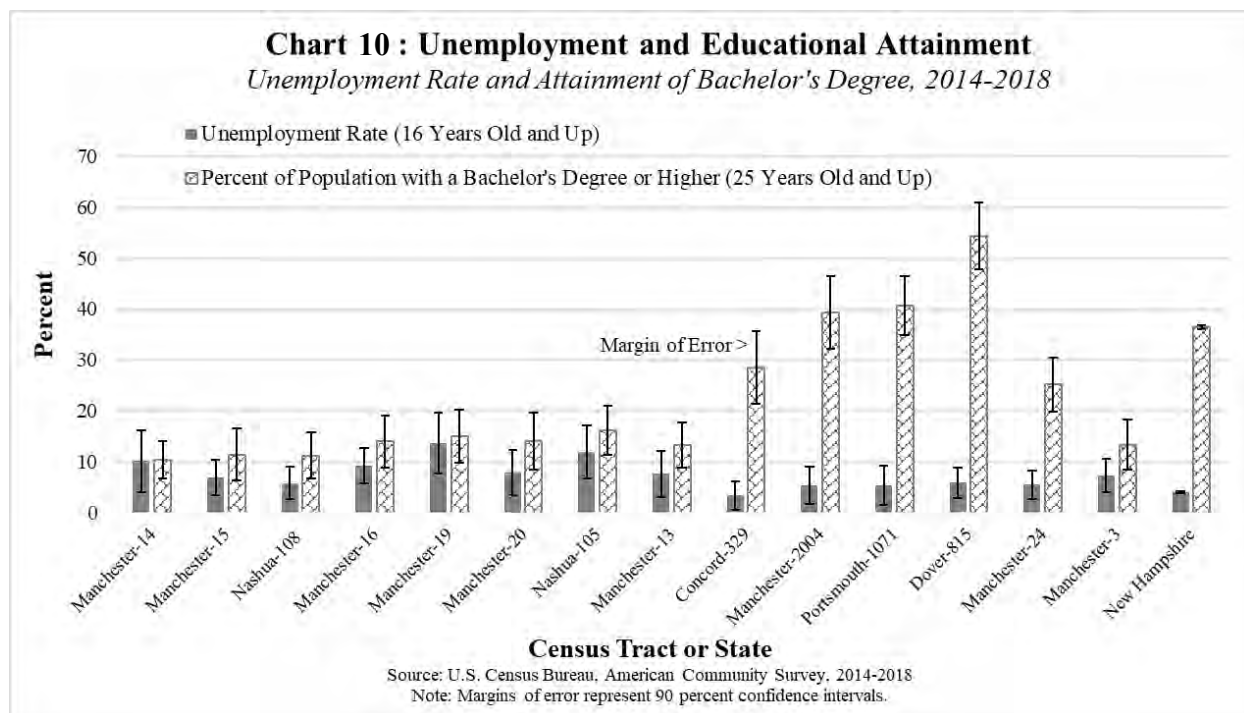
Success in the labor market can also be measured through the unemployment rate. Individuals counting as unemployed are participating in the labor force and seeking work, but they have not yet become employed.<sup>142</sup> The unemployment rates at the Census Tract level are very uncertain, even when five years of collected data are used to calculate them. However, the NHAT unemployment rates were statistically higher than the statewide rate for 2014–2018 in Manchester-16, Manchester-19, and Nashua-105.

Investment in educational attainment may enable more successful engagement in job opportunities. Higher levels of educational attainment correlate with higher incomes.<sup>143</sup> Educational attainment, as measured by the percentage of individuals aged 25 and older with a Bachelor's degree or a more advanced degree, varies considerably between NHATs. The estimated percentage of higher educational attainment of the population in Manchester-14 is 10.4% (+/- 3.7%), while the estimated percentage in Dover-815 is 54.4% (+/- 6.6%), surpassing the statewide percentage of 36.5% (+/- 0.4%). Portsmouth-1071, Manchester-2004, and Concord-329 are statistically indistinguishable from the statewide percentage, with all other NHATs having lower percentages. These disparities between NHATs suggest that some NHATs may have more income inequality, or variations within the resident population, than others, such as those in central Manchester or Nashua, where higher populations may lend themselves to more homogenous demographics throughout a full Census Tract. These differences may also suggest that Dover and Portsmouth have populations of college or graduate students that impact the income, poverty, and educational attainment figures.

<sup>142</sup> There are some differences between the ACS and the Current Population Survey. See *Local Area Unemployment Statistics, American Community Survey (ACS) Questions and Answers*, U.S. Bureau of Labor Statistics (updated Dec. 6, 2019), <https://www.bls.gov/lau/acsqa.htm>.

<sup>143</sup> Analysis of U.S. Census Bureau, ACS 2014–2018 data for New Hampshire.





The AFFH-T offers two indices that help provide insights into both job opportunities and labor market engagement. The HUD-calculated Labor Market Engagement Index combines the educational attainment of a Census Tract, as measured through the percentage of the population with a Bachelor's degree, with the unemployment rate and the labor force participation rate. Values are ranked nationally, with the AFFH-T *Data Documentation* describing higher scores as higher labor force participation and human capital.<sup>144</sup> The other index is the Jobs Proximity Index, which measures the neighborhood as a function of distance to all jobs within the Core-Based Statistical Area, with employment centers more heavily weighted. This index is ranked in percentiles at the Core-Based Statistical Area level, meaning Manchester and Nashua may not be ranked on the same percentile scale as Portsmouth and Dover or, separately, Concord. These rankings are useful for understanding the accessibility of jobs to individuals in the NHATs relative to those Census Tracts in the same area.<sup>145</sup>

<sup>144</sup> Human capital is described by *Encyclopedia Britannica* as the intangible resources available to communities or organizations, including the “knowledge, talents, skills, abilities, experience, intelligence, training, judgment, and wisdom” that individuals or groups hold (<https://www.britannica.com/topic/human-capital>). Writing in 2014, Claudia Goldin of Harvard University and the National Bureau of Economic Research identified human capital as the “stock of skills the labor force possesses” that often have positive externalities; human capital includes both health and education/training ([https://scholar.harvard.edu/files/goldin/files/human\\_capital\\_handbook\\_of\\_cliometrics\\_0.pdf](https://scholar.harvard.edu/files/goldin/files/human_capital_handbook_of_cliometrics_0.pdf)).

<sup>145</sup> AFFH-T *Data Documentation*, *supra* note 104.

<b>Table 18 : Labor and Job Market Indices</b> <i>AFFH-T Employment-Related Indices</i>		
Short Descriptor	Labor Market Engagement Index (Higher Value = Higher Participation and Human Capital, Ranked Nationally)	Jobs Proximity Index (Higher Value = Better Access to Employment, Ranked and Grouped Relative to Core-Based Statistical Area)
Manchester-14	6	71
Manchester-15	8	36
Manchester-16	33	36
Manchester-19	24	88
Manchester-20	12	41
Manchester-13	32	36
Manchester-2004	61	97
Manchester-24	49	22
Manchester-3	26	52
Nashua-105	13	59
Nashua-108	21	36
Portsmouth-1071	74	98
Dover-815	91	98
Concord-329	32	64
New Hampshire Statewide - White Population	71	64
New Hampshire Statewide - Black Population	62	60
New Hampshire Statewide - Hispanic Population	59	61
New Hampshire Statewide - Asian or Pacific Islander Population	73	64
<i>Note: Core-Based Statistical Areas include Metropolitan and Micropolitan Statistical Areas defined by the U.S. Census Bureau. Dover and Portsmouth are included in the Boston-Cambridge-Newton Metropolitan Statistical Area, while Manchester and Nashua are within a separate Metropolitan Statistical Area that includes Hillsborough County alone. Concord is in a Micropolitan Statistical Area that includes Merrimack County. The Jobs Proximity Index compares Census Tracts within Core-Based Statistical Areas, which are separated in this table by thicker lines between the rows. The Labor Market Engagement Index is ranked nationally and not limited to Core-Based Statistical Areas.</i> <i>Source: HUD AFFH-T Tract and State Data, February 2018</i>		

The AFFH-T labor and job market indices reveal a wide range within the NHAT on both metrics. Engagement with the labor market, relative to a national ranking, appears to be quite low in certain Manchester and Nashua NHATs, particularly Manchester-14, Manchester-15, Manchester-20, and Nashua-105, which are all at the 13<sup>th</sup> percentile or lower nationally. Nearby Manchester-2004, which includes Elm Street, rises to a percentile of 61, while Portsmouth-1071 and Dover-815 rank very highly, likely due in part to the elevated levels of educational attainment. Notably, the statewide percentile broken out by race is more favorable for all races except for three NHATs, which are higher than the statewide Latino index value of 59. That value shows a gap relative to the statewide White index value of 71 and the statewide Asian or Pacific Islander index value of 73.

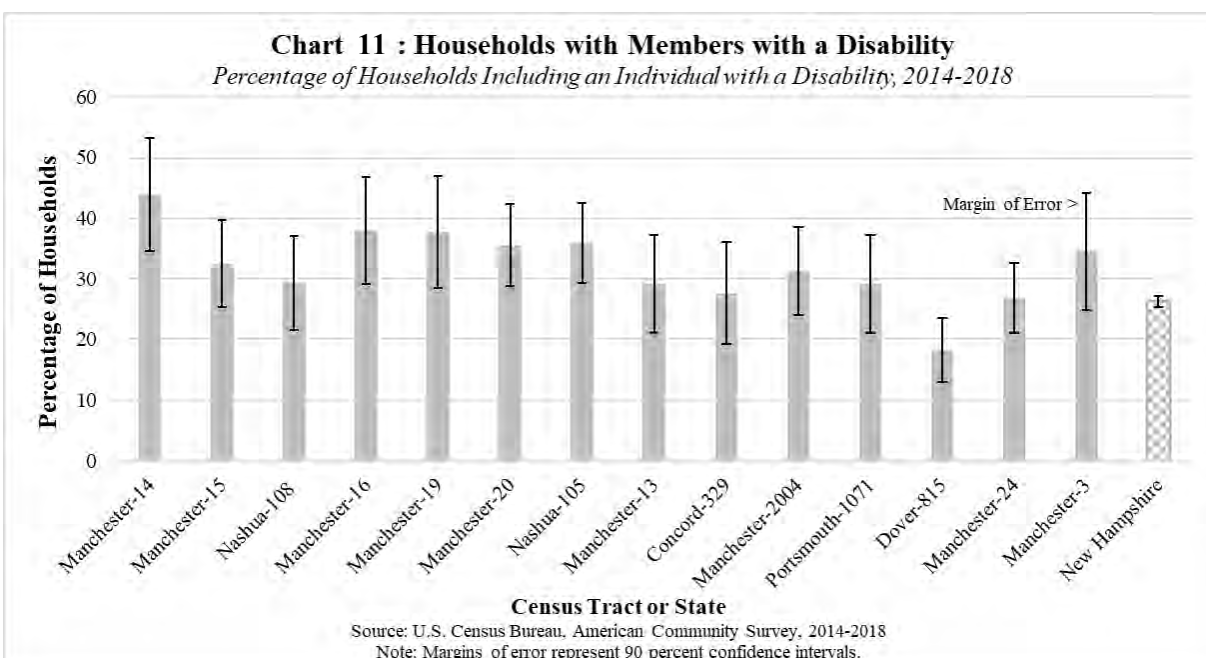
The Jobs Proximity Index is based on the Core-Based Statistical Area, meaning the percentile rankings for Portsmouth-1071 and Dover-815 may only be comparable to each other. The Index also reveals how sensitive the formula is to small changes in geography. Jobs proximity in Manchester-15 and Manchester-16 has a score of 36, but shifting west to the next Census Tract, Manchester-14, boosts jobs proximity to 71, and one more west to Manchester-2004 increases jobs proximity to the 97<sup>th</sup> percentile. These changes suggest that job opportunities



can be highly localized and may have implications for the cost and accessibility of housing near to these job opportunities.

#### f. Households with Disabilities

Labor market engagement may be limited by disability. The ACS identifies individuals with a disability through its questionnaire. The percentage of households that includes someone with a Census Bureau-identified disability varies considerably by NHAT.



Many NHATs appear to have household disability rates near to the statewide percentage. Others, such as Manchester-14, appear to be elevated, which may help to explain lower rates of labor force participation and may be related to specific congregate housing options, such as for older adults, in those NHATs. With many NHATs potentially having one-third, or more, of all households include an individual with a disability, opportunities to access suitable housing and employment may be further limited.

#### g. Other Indices

Several groups of researchers have sought to measure economic conditions and opportunity at the Census Tract level. In this analysis, five sets of other indices are applied to the NHATs. These indices are not necessarily definitive, quintessential, or meant to replace or supplant other analyses; they are included to supplement and enrich existing analyses included in this framework. In summary, the sources for these indices are outlined below.

1. The Opportunity Atlas seeks to track the economic mobility of children into their adult lives based on the neighborhood in which they grew up. This collaboration between the U.S. Census Bureau, Harvard University, and Brown University uses anonymous tax records and available U.S. Census Bureau data to track 20 million Americans from

childhood through to their 30s, comparing incomes later in life to the original neighborhoods, by Census Tract, where the children were raised. Two metrics are incorporated from the Opportunity Atlas: the estimated median household income in 2014–2015 for individuals born between 1978 and 1983 with parents whose incomes were at the 25<sup>th</sup> percentile (low income); and the estimated 2014–2015 household incomes in the top 20% relative to individuals born in the same year, with a birth year range of 1978 to 1983, who grew up in the Census Tract with parents at the 25<sup>th</sup> income percentile. One measure identifies how the median child with low-income parents fared in terms of household income, while the second measure indicates how many children moved from the 25<sup>th</sup> percentile of income in childhood to the 80<sup>th</sup> percentile or above in their mid-30s.<sup>146</sup>

2. Curated by researchers at Brandeis University, the Child Opportunity Index uses 29 indicators in three areas (education, health and environment, and social and economic) to develop a composite measure of the neighborhood features that help children develop in a healthy way. The indicators are weighted, and the neighborhoods are scaled from 1 to 100, with 100 providing the highest level of opportunity. While the data are also used to calculate Child Opportunity Levels and Child Opportunity Gaps, only the Child Opportunity Scores derived from the Child Opportunity Index are included here. Both the state-level percentiles and the national-level percentiles are shown, permitting intrastate and interstate comparisons.<sup>147</sup>
3. The New Hampshire Department of Health and Human Services has compiled a Social Vulnerability Index, based on ACS 2011–2015 survey data, that focuses on the indicators that are extreme (the 20% of the distribution with the greatest need compared to the 20% of Census Tracts with the least need by that metric) relative to other Census Tracts in New Hampshire. This index uses demographic information on children, older adults, single parents, limited English proficiency, race, income, employment, poverty, health insurance, housing, transportation, and other metrics to identify the tracts that are most in need. For each metric on which a Census Tract is identified as in the greatest need, its Social Vulnerability Index score climbs.<sup>148</sup>

The values of these indices calculated for the NHATs are included below.

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<sup>146</sup> *The Opportunity Atlas*, U.S. Census Bureau (accessed 2019 and 2020), <https://www.opportunityatlas.org/>.

<sup>147</sup> *What is child opportunity?*, Brandeis University and diversitydatakids.org (Dec. 17, 2019), <http://www.diversitydatakids.org/research-library/research-brief/what-child-opportunity>.

<sup>148</sup> *Social Vulnerability Index: An Emergency Response Tool*, N.H. Dep't of Health & Hum. Servs.: Div. of Pub. Health Servs., <https://www.nh.gov/epht/highlights/documents/social-vulnerability-index.pdf>; Social Vulnerability Index Introduction Video Tour, <https://www.dhhs.nh.gov/media/av/dphs-tour-edited.htm>; Social Vulnerability Overview, <https://nhvieww.maps.arcgis.com/apps/MapSeries/index.html?appid=5ea495d44e1645978b365c7cd831c611>; New Hampshire Environmental Public Health Tracking (WISDOM), [https://wisdom.dhhs.nh.gov/wisdom/#StartPage\\_69A411AED88A4247BC1AF177B6B0B06E](https://wisdom.dhhs.nh.gov/wisdom/#StartPage_69A411AED88A4247BC1AF177B6B0B06E).

**Table 19 : Other Published Indices of Mobility and Well-Being***Census Tract-Level Analyses of NHATs*

NHAT Short Descriptor	Estimated 2014-2015 Household Income for Individuals Born 1978-1983, Grew Up In Census Tracts With Parents at 25 Income Percentile	Estimated 2014-2015 Household Incomes in Top 20 Percent for Individuals Born in 1978-1983, Who Grew Up In Census Tracts With Parents at 25 Income Percentile (Higher = More Upward Mobility)	Child Opportunity Index - National Percentile Scoring (Higher = More Opportunity)	Child Opportunity Index - State Percentile Scoring (Higher = More Opportunity)	Social Vulnerability Index (Higher = More Vulnerability)
Manchester-14	\$26,000	7.1%	7	1	11
Manchester-15	\$27,000	7.5%	6	1	11
Nashua-108	\$28,000	9.4%	8	2	12
Manchester-16	\$26,000	6.8%	11	3	9
Manchester-19	\$32,000	7.3%	6	1	10
Manchester-20	\$25,000	7.5%	11	2	11
Nashua-105	\$29,000	7.0%	11	3	9
Manchester-13	\$32,000	9.0%	16	4	10
Concord-329	\$28,000	8.1%	27	6	5
Manchester-2004	\$31,000	7.5%	7	1	9
Portsmouth-1071	\$32,000	9.3%	54	22	1
Dover-815	\$36,000	16.0%	68	44	1
Manchester-24	\$35,000	24.0%	32	8	4
Manchester-3	\$31,000	17.0%	31	8	2

Sources: The Opportunity Atlas (U.S. Census Bureau, Harvard University, Brown University); The Child Opportunity Index (Brandeis University); New Hampshire Department of Health and Human Services

The Opportunity Atlas analyses suggest limited upward mobility in the Census Tracts where incomes were approximately \$27,000 or less, as those income levels suggest essentially no intergenerational income growth. Dover-815 and Manchester-24 appear to have higher levels of intergenerational income mobility relative to median incomes. A higher percentage of children growing up in Manchester-24, Manchester-3, and Dover-815 appeared to reach the top 20% of the income bracket by their mid-30s than the other NHATs. The Child Opportunity Index suggests that the NHATs, except for Portsmouth-1071 and Dover-815, are in the bottom half of Census Tracts for child opportunity nationally by the metrics used, and all but those two Tracts are in the bottom 10% within New Hampshire. The high Social Vulnerability Index scores for the majority of the Manchester and Nashua NHATs suggest that these Tracts are among those with the highest amount of adverse community circumstances relative to all Tracts in the state.

#### **h. Overall Assessment of Exposure to Community Assets**

Residents of the NHATs have varying degrees of access to community assets. All NHATs had household poverty rates higher than the state as a whole during the 2014–2018 time period and included higher percentages of racial or ethnic minority populations than the state. All had lower median household incomes than the statewide median. Most were closest to elementary schools in which students underperformed statewide averages on standardized tests, and half were closest to elementary schools with more than three times the statewide free and reduced-price school meal eligibility rate among students. All but one had a higher percentage of households receiving SNAP benefits, and all but two had a higher percentage of housing units constructed before 1980 than the state as a whole, increasing the risk of exposure to lead paint

and other environmental hazards. Although the NHATs include considerably varied situations, including some positive metrics, the NHATs' data appear to suggest that households in areas of high racial/ethnic concentrations combined with concentrations of poverty have fewer resources and overall have less access to community assets, with minor but notable exceptions such as transportation costs, than the state as a whole.

## 7. Home Mortgage Disclosure Act Analysis

Summary statistics of home mortgage applications can provide insights into the composition of the population seeking a loan to purchase a home. Summary statistics can also provide insights into the populations whose applications are denied. The Federal Reserve Bank of Boston publishes data made available due to the Home Mortgage Disclosure Act. The summary statistics for the number of applicants for loans in New Hampshire by racial or ethnic identity and year are included in a table below.

<b>Table 20 : All Home Mortgage Loan Applications by Race or Ethnicity</b> <i>New Hampshire</i>											
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
<b>White</b>	59,682	50,581	42,335	56,983	49,041	42,259	54,621	47,156	29,771	37,968	44,127
<b>Black</b>	654	506	282	314	237	227	286	286	210	316	390
<b>Asian</b>	813	681	677	1,168	1,154	954	1,378	972	583	750	1,004
<b>Latino</b>	1,390	1,158	756	818	676	598	818	767	639	913	1,181
<b>Total</b>	80,626	65,979	51,427	68,470	59,889	51,070	65,971	56,605	35,889	45,279	53,609
<i>Note: Columns do not sum due to missing or otherwise unpublished data.</i>											
<i>Source: Federal Reserve Bank of Boston, Home Mortgage Disclosure Act (HMDA) Data for New England, October 29, 2018.</i>											

Although the number of non-White applicants is relatively low, informative patterns appear in the home mortgage loan denial rates. With the exception of 2010, denial rates appear to be consistently higher in New Hampshire for Black or African American applicants than for White applicants and appear to be consistently higher for those identifying as Latino as well.

<b>Table 21 : Home Mortgage Loan Denial Rates by Race or Ethnicity</b> <i>New Hampshire</i>											
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
<b>White</b>	21%	25%	26%	20%	19%	18%	15%	17%	18%	17%	17%
<b>Black</b>	35%	39%	39%	25%	19%	26%	27%	22%	27%	23%	26%
<b>Asian</b>	18%	21%	20%	17%	17%	16%	14%	17%	19%	13%	15%
<b>Latino</b>	27%	36%	32%	29%	24%	21%	18%	22%	22%	19%	21%
<b>Overall</b>	23%	26%	27%	21%	19%	19%	16%	18%	19%	17%	18%
<i>Note: Columns do not sum due to missing or otherwise unpublished data.</i>											
<i>Source: Federal Reserve Bank of Boston, Home Mortgage Disclosure Act (HMDA) Data for New England, October 29, 2018.</i>											

This analysis does not control for other factors, such as income. However, in the 2015 AI, the authors found that in 2013 Latino home mortgage loan applicants were more likely than non-Latino applicants to be denied a mortgage, controlling for income, geography, and type of mortgage sought.<sup>149</sup>

<sup>149</sup> 2015 AI, *supra* note 8.

## 8. Conclusions

The data analyses conducted on the NHATs and for relevant local and statewide figures permit several conclusions.

First, New Hampshire has relatively limited incidence of racial and ethnic concentrations of poverty based on HUD's definitions, with only one Census Tract that qualifies as a R/ECAP. The subset of Census Tracts selected for analysis and designation as NHATs reveals lower levels of resources at the personal and family level in these neighborhoods. Poverty rates were higher than the statewide rate in each NHAT, and median household incomes were lower than the statewide figure in each NHAT as well. SNAP enrollment rates based on survey data were higher in every NHAT but one, and administrative data indicated higher rates of SNAP enrollment in Manchester, Nashua, and Concord than in the state as a whole.

Second, indicators also suggest more limited community assets beyond income levels at the personal and household levels. Local educational institutions for children in most of the NHATs appeared to face challenges in meeting the needs of their students. Some local elementary schools have more than two-thirds of their pupils eligible for free and reduced-price school meals, indicating limited access to resources at home. Certain schools local to NHATs also identified up to a third of students as English language learners; data from the 2010 Census indicated that half of the NHATs had more than one in ten residents with limited English proficiency, suggesting language barriers may hinder access to opportunity both inside and outside of schools. Educational attainment in the broader communities suggested a more limited ability to build human capital, with ten of the 14 NHATs showing lower levels of the population ages 25 and older with at least a Bachelor's degree relative to the state overall. Environmental metrics pointed to more adverse conditions than the statewide figures, and the higher percentage of older housing stock in the NHATs posed a higher risk of child exposure to lead paint and other potential hazards associated with older housing units.

Third, while the need for car-based transportation varies, access to transportation appears limited. The urban setting of the NHATs generally indicates more access to employment opportunities locally and lower transportation costs. However, all but two of the NHATs indicated a lower likelihood to use public transportation than the median Census Tract nationally, despite the population density, and all but two NHATs had a higher percentage of households without access to a vehicle than New Hampshire as a whole.

Fourth, challenges may be higher generally for those who identify as a race other than White or who are in households with children. Black or African American individuals or those identifying as Latino in New Hampshire face higher poverty rates, lower median household incomes, and more adverse environmental conditions than those who identify as White and non-Latino. Members of racial and ethnic minority groups may also be more likely to have their home mortgage loan applications denied.<sup>150</sup> Children are more likely to live in poverty than individuals overall statewide, and the poverty rate among children is twice the statewide rate in Manchester, a more racially diverse city than the state as a whole.

New Hampshire can take steps to reduce the detrimental impact that patterns of income, race, and housing opportunities have in our communities. These patterns have limited the ability of residents in states with higher levels of racial segregation and concentrations of poverty to thrive. As the number of Granite Staters from diverse racial or ethnic backgrounds increases,

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<sup>150</sup> This correlation cannot be determined to be a causal relationship without controlling for other factors, such as income and assets.

strategies to help ensure widespread economic and housing opportunities will become more important to limiting concentrations of poverty and discriminatory practices in the future. Access to affordable housing both within areas with lower incomes and across the state is key for all New Hampshire residents to have equitable opportunities for employment, education, health, and well-being.

## C. TARGETED COMMUNITY INPUT

Our original plan was to conduct two focus groups: one of Brazilian immigrants and the other of New Hampshire residents of Muslim heritage. We were able to complete the Brazilian focus group in November 2019 but the plans to conduct a spring forum with Muslim residents was derailed by the onset of COVID-19. In lieu of a focus group, we conducted telephonic interviews with five people of Muslim heritage as described more fully below.

### 1. Focus Group with Brazilian Immigrants

#### a. Overview

The NHLA team conducted a focus group comprised of Brazilians who reside or have resided in New Hampshire. We selected this ethnic group due to its growing numbers in the southern part of the state, particularly in the Nashua area, over the last two decades. Brazilians, who speak Portuguese as their native language, are typically grouped in with other Latinos and remain somewhat invisible to many community institutions. We were unable to fully determine the New Hampshire population estimates for this group. We did locate data indicating an estimate of 3,518 Portuguese speakers in the state and believe that the majority of this demographic are Brazilians.<sup>151</sup> Another indicator of the growing population is that there were a sufficient number of Brazilians residing in the state during the 2018 Brazilian presidential election for the Brazilian Consulate to establish a polling place in Nashua for the first time. (It is mandatory for Brazilian citizens to vote in their presidential elections, no matter where they reside.)<sup>152</sup>

NHLA partnered with community advocates to recruit participants and provide interpretation. The advocates coordinated with the pastor of a Nashua church serving the Brazilian community, and the focus group was held after the church service. In addition to questions about housing discrimination, members of the group were also asked questions about their reasons for coming to New Hampshire and about their quality of life within their respective communities. The facilitators also distributed Fair Housing Project pamphlets in Portuguese and left more with the church pastor.

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<sup>151</sup> The Migration Policy Institute's 2018 data indicates that there are 3,518 Portuguese speakers in the state: <https://www.migrationpolicy.org/data/state-profiles/state/language/NH>.

<sup>152</sup> Daniella Allee, *Brazilian Voters in New Hampshire Can Cast a Ballot for a New President In-State*, NHPR (Oct. 26, 2018), <https://www.nhpr.org/post/brazilian-voters-new-hampshire-can-cast-ballot-new-president-state#stream/0>.

**Location of Meeting:** CAVE Church, Nashua, NH  
**Date and Time:** November 3, 2019, 11:30 am–1:30 pm  
**Sponsored by:** New Hampshire Legal Assistance  
**Organizers/Facilitators:** Lindsay Lincoln (NHLA), Christine Wellington (Consultant), Barbara Costa (Community Advocate), Bruno Soares (Community Advocate)

The meeting was held at a Brazilian Church named CAVE Church in Nashua. The meeting took place after the religious service ended. Sixteen adults participated: eleven women and five men. Two adults were in their twenties, one in their thirties, five in their forties, six in their fifties, and two in their sixties. Only eight participants stayed for the whole time.

All the participants but one lived in New Hampshire. Eight participants lived in Nashua, four lived in Hudson, two in Manchester, one in Hollis, and one former New Hampshire resident was living in Lowell, Massachusetts. Fourteen of the participants were tenants including the participant from Massachusetts. Two of the participants were homeowners. None of the participants rented from a housing authority or lived in a property where rent was based on income guidelines. Eight of the participants had children under 18 living with them. The meeting was conducted in Portuguese. All participants were comfortable speaking Portuguese, and five participants were not fluent in English.

**b. Questions and Responses**

**i. How long have you lived in New Hampshire?**

Two people said twenty years, three people said twenty-two years, one person said eighteen years, three people said fourteen years, one person said six years, one person said five years, three people said two years, and two people said three months.

**ii. Why did you move to New Hampshire?**

Five people came to join family members already living in the state, six people came because they had a friend living here, two people came because they had a calling to open a church here, one came to seek medical treatment here and stayed, one was transferred to work to New Hampshire, and one left for Massachusetts.

**iii. Do you believe that Brazilians face discrimination in housing in New Hampshire? Yes or No.**

All sixteen participants said yes.

**iv. Have you personally believed or suspected that you were treated differently because of your ethnicity or for any other reason? If yes, explain.**

Three participants shared personal stories.

One participant recounted that she tried to rent an apartment and completed the application but when landlord found out that she had an 18-year-old daughter, the landlord told her that her daughter could not live in the apartment.



Another participant stated that her landlord gave her a verbal 30-day notice telling her to move out because of her children. The participant stated that she had never received any complaints about her children from neighbors.

The last participant stated that he and his wife were living in a house and were discussing amongst themselves whether they wanted to renew their lease. They had not communicated this to the landlord. At the time of the lease renewal, the landlord told them that renewal was not an option. The participant's wife was pregnant at the time, but he didn't know whether that was a factor in the landlord's decision. The landlord did not return their security deposit and charged them \$300.00 extra for cleaning the place. His wife cleans houses for living and the place was immaculate when they left.

- v. Do you believe that during a search for an apartment or a house, you were directed to certain buildings, neighborhoods or sections of a city and not shown or made aware of other housing opportunities? If yes, explain.**

No participants were aware of this situation.

- vi. Within the context of housing, has anyone ever made statements to you or asked questions about your race, nationality, ethnicity, immigration status, skin color/tone or accent? Explain.**

No participants were aware of this situation.

- vii. For renters: Because of discriminatory practices, do you suspect or believe that you have been charged more for rent, security deposits or other fees than other tenants? Explain.**

No participants were aware of this situation.

- viii. For homeowners: Because of discriminatory practices, do you suspect or believe that you were charged higher interest rates, had a more difficult time getting a mortgage, insurance, appraisals or were charged a higher price? Explain.**

One homeowner had already left. The other said no.

- ix. Have you ever unfairly been denied an opportunity to rent a particular apartment or buy a particular home due to discriminatory practices? Explain.**

Three participants raised their hands.

Other participants responded with questions:

- ❖ One participant asked if landlords could request three months' rent as a security deposit? Is there a rule?

- ❖ Another participant said that if they don't pay all the amount of security deposit the landlords ask for, the landlords won't rent to them.

The facilitators then briefly explained New Hampshire security deposit law.

A participant provided stories about two families who were undocumented:

- ❖ First family: A landlord refused to rent to them because the family members were undocumented. The family had to move to a more expensive place.
- ❖ Second family: One of the family members made some improvements to their unit without asking permission to the landlord. The landlord said they didn't ask for permission and made them restore the unit back to the original state. The family members were undocumented and were afraid, so they complied.

Another participant said that a landlord asked her for her Social Security number, and she refused to provide it. The landlord then asked her for a passport number. This participant wanted to know if that was permissible and the facilitators responded to her question.

A participant said he rented a house and has made renovations to the whole house. He asked if the landlord says he wanted the house returned to its original condition, does he have any protections? The facilitators briefly answered the question.

One participant rented a condo and the landlord itemized things the tenants were required to pay for such as insurance and condo association fees. The participant wanted to know if they were required to pay items like light bulbs or whether condo fees should cover those items. The facilitators briefly responded to the participant's questions.

**x. For those in subsidized housing,**

- ❖ **Have you been able to communicate with someone who speaks Portuguese?**
- ❖ **Have you been offered free interpreter or translation services?**
- ❖ **Receive important documents in Portuguese?**
- ❖ **Within the context of housing, has anyone ever made discriminatory statements to you because your ability to speak English was limited?**
- ❖ **Other housing related situations where language is a barrier?**

No participants lived in subsidized housing or have vouchers.

**xi. When you think of the type of community you wish to live in, are the following things important to you?**

Eight participants gave the following answers.

- ❖ **Living near schools:** Six participants believed this was important.
- ❖ **Living near schools that rank high in educational success:** Six participants believed this was important.
- ❖ **Living near where you work:** Six participants believed this was important.

- ❖ **Having access to public transportation:** Five participants believed this was important.
- ❖ **Living in a neighborhood with a low crime rate:** All eight participants believed this was important.
- ❖ **Living in an area close to amenities like parks, stores, hospitals, etc.:** All eight participants believed this was important.
- ❖ **Living in a neighborhood with people of your same ethnicity, income group, age, etc.:** None of the participants believed this was important.

**xii. Are you currently living in a neighborhood that you wish to be in?**

All eight remaining participants reported to be happy with the neighborhood they lived in.

**xiii. Do you know where to go/call if you believe that you have been the victim of housing discrimination?**

None of the remaining eight participants knew of any of the fair housing resources available to them.

**xiv. Would you like more information about housing discrimination?**

All eight remaining participants said they were interested in learning more about their fair housing rights and tenant rights.

## **2. Interviews with Members of New Hampshire's Muslim Communities**

### **a. Overview**

When initial plans to conduct a spring focus group with members of New Hampshire's Muslim communities were thwarted by the advent of the coronavirus pandemic, we decided to reach out to five New Hampshire residents of Muslim heritage from diverse backgrounds and countries for telephonic interviews conducted by Consultant Christine Wellington.

We specifically sought participants who held formal and/or informal leadership positions within their communities. We were interested not only in their own personal opinions and observations but also in the knowledge they held of others' experiences. Each of the participants has been a resource for other immigrants in New Hampshire, often beyond their own ethnic and/or religious group. In their own individual ways, they have helped other immigrants negotiate life in New Hampshire and access housing, safety, immigration benefits, and other services. They have listened to their experiences and offered advice and assistance.

The participants consisted of three women and two men. Four of the interviews were conducted in March 2020 and the fifth was conducted in September 2020. Three participants come from three different African countries; one person is from the Middle East; and one person is from a European country. The majority of the group came to the United States as refugees. All are educated, several with advanced degrees. Some have lived in New Hampshire for their entire time in the United States, one came to New Hampshire for an advanced degree, and another recently moved out of state after retiring. The duration of their residencies in New Hampshire

range from eight years to over twenty years. Two of the participants have names that most people would identify as Muslim. The others' names are not common names in this state. At least one person wore a headscarf for several years which likely caused others to identify them as Muslim. This person described wearing a hijab while living in New Hampshire as a "negative experience."

Over the years of New Hampshire residency, members of this group have had a variety of work experiences in both non-profit and for-profit work as well as in state and local government positions. They work or have worked as advocates; educators, interpreters/translators; managers; and many other occupations. At some time during their careers, most engaged in social services work serving immigrants from their own communities and beyond. One person founded an advocacy organization to help other immigrants, and most have served on boards of non-profit organizations. A majority of the participants received post-secondary and/or advanced degrees during their time in the state. Several have been involved with their religious communities including engaging in work to establish mosques.

Sadly, every single one of the participants has personally experienced religious and/or racial bias or knew others within the Muslim communities that had. Most of them identified the last several years as the most challenging and attributed the increase in anti-Muslim and racial rancor to specific national policies and leaders.

#### **b. Questions and Responses**

We conducted individual interviews asking each participant the same set of questions with an opportunity to make additional comments. We have taken pains to limit information that would identify the person and so also use the pronouns "they," "them," and "their." We also do not identify the specific countries the participants come from.

##### **i. What have been your experiences accessing housing and living in New Hampshire?**

A majority of the participants were resettled in New Hampshire as members of refugee families. Two participants reported personally experiencing no difficulties accessing housing in New Hampshire but the remaining three did. Two reported their first housing experiences as challenging with substandard housing conditions, unresponsive landlords, and unsafe neighborhoods. Their access to better housing was compromised initially by lack of credit and lack of work histories and insufficient information from resettlement workers and other service providers.

Two participants experienced what they believed was housing discrimination and others said that they would likely not know if they had been victims of discrimination. It took one person over six months to find an apartment, and they found the experience "heartbreaking." Landlords often asked "weird questions." On several occasions, when the participant arrived to see the apartment it was suddenly unavailable. People would ask about the participant's name and some would emphasize that there was an income requirement in order to qualify for the apartment even though the participant could have easily been able to afford rent.

At one apartment viewing, the participant who was dressed in business attire, was almost completely ignored as the landlord focused her attention on a White couple also looking at the apartment. When the participant asked for an application, the landlord said that she would mail one but never asked for the participant's address. This participant eventually used a broker to buy

a condo. The experience was completely different because of this, and the participant was very satisfied with that experience.

Another participant reported that when they and their spouse were seeking to purchase a condo, they made an offer above the selling price. The seller did not accept the offer and according to the participant's broker, accepted a lower offer from another family. When this same participant and spouse recently bought a house and attended the closing, the closing agent asked for their passports even though they were both U.S. citizens.

**ii. Do you or have you ever felt isolated because of your religion, race, or ethnicity?**

All but one person reported that they had personally experienced isolation because of race, religion, or ethnicity. They were surprised to learn that equal employment laws require employers to consider accommodation of religious practices. The one participant who didn't experience isolation was allowed by their employer to have Fridays off to accommodate worship at the mosque.

The others reported several instances of isolation and animus. One reported that things got bad after 9/11 and more people, including co-workers, felt free to make anti-Muslim remarks. The participant served on several police training panels about Islam with other Muslim members of the community. The participant reported that many of the officers were openly hostile and said very negative things about Islam and Muslims including that "the Koran dictates that Muslims kill all Americans." During this time and up until even now, many members of this participant's ethnic group hide the fact that they are Muslims in order to avoid problems. Even recently at a leadership training program on inclusion and diversity for state and local government workers, the participant heard an employee who conducts safety inspections "jokingly" say "What does it matter if we lose a few more [immigrants] because of inspection delays?"

Several participants provided examples of discriminatory treatment. One participant talked about the daily differences they are subjected to such as being required to go through the security line in a government building although they have clearance and others in the same position are waved through or when strangers challenge them about parking in a space reserved for government employees as if someone of the participant's ethnicity and religion could not hold such a position. The same participant was also followed as they shopped in a popular retail store as if they were more likely to steal. After that incident, the participant never shopped in that store again.

Another example was when a participant who is Black was with a White co-worker in the noncitizens line at the DMV. The co-worker was of European heritage. The DMV employee told the European immigrant that they needed to get in another line and the co-worker asked why. The DMV employee suggested that the White co-worker was in the wrong line apparently assuming this because the co-worker was White. The same participant spoke of times when their supervisor had to verify that they were actually an employee of the governmental office during phone calls they were making as part of their work. The participant shared that although the majority of their co-workers were great people, there were some who were openly biased and used code words as racial slurs. This participant felt that being known as holding racial and/or ethnic biases is not an obstacle to career advancement in their workplace.

Even with workplace and community recognition of their leadership skills, some participants still feel isolated. One participant noted that although they have had many

opportunities to serve on boards and advisory committees, they have often felt alone or that their voice was not heard. They opined that many well-meaning organizations invite one or two members of ethnic minority groups to participate but not a sufficient number that their presence and voices can effect change.

Another participant moved to New Hampshire to attend school. The participant expected that people in New Hampshire would be more welcoming than the region from which they came but that was not the case. They found the whole experience quite isolating. The participant was the only Black person in their academic year, and one of only four Black people in their program during their academic career. There were four or five people of Asian heritage and the other students were all White.

The participant lived in the municipality where their school was located but was unhappy there. One of the Black students was called the N-word twice: once in the downtown area and once in the school parking lot. Another Black student who was walking to the school was stopped by the police when someone called to report him walking through their neighborhood.

Several participants observed that Muslims who were also of African heritage were at risk of suffering racial discrimination, as well.

**iii. As a leader, what have you heard are obstacles and of the experiences of others?**

The participants shared their opinions of obstacles and experiences shared with them by Muslims and other immigrants.

Obstacles

- ❖ Limited English proficiency
- ❖ Lack of education
- ❖ Programs not meeting their Title VI language access obligations
- ❖ Failure of programs to provide culturally competent communications to specific immigrant communities
- ❖ Lack of credit history
- ❖ Lack of familiarity with American systems, customs, and procedures
- ❖ Housing discrimination
- ❖ Difficulty accessing “high quality” housing
- ❖ Lack of awareness of legal protections
- ❖ Difficulty accessing to health care
- ❖ Increasing health care costs
- ❖ Lack of understanding about the “Public Charge” rule causing many to forgo benefits unnecessarily
- ❖ Being disadvantaged due to cultural differences and racial, ethnic, and religious stereotypes
- ❖ Disparate disciplinary treatment of children of color in public schools
- ❖ Being treated poorly when wearing a hijab
- ❖ Professional licenses are not transferrable and certification procedures are costly and time-consuming
- ❖ Educational credentials are often not fully transferrable
- ❖ Halal foods are not available in most supermarkets

## Experiences Reported to Participants

- ❖ Muslims being victimized by verbal slurs
- ❖ Muslims do not feel “welcomed” by many in New Hampshire and the U.S.
- ❖ Applicants being denied housing opportunities even when qualified
- ❖ Applicants being denied housing opportunities because of children in their families
- ❖ Roadblocks to purchase land to build mosques and complicated municipal codes
- ❖ Many Muslims use realtors to “avoid problems”
- ❖ Lack of respect for and/or ignorance of Muslims’ dietary restrictions
- ❖ Problems with the DMV due to the employees’ lack of knowledge of immigration documents

### **iv. Is it better or worse over the past five years?**

Participant 1: The participant stated that people openly make biased statements at work and that members of the public are more willing to speak their true feelings because they do not believe there will be negative consequences. As one example, in the summer of 2018, this participant was running in their suburban community in the early morning following their regular route. They were running over a bridge when a White man in a green truck pulled up and said, “just jump!” Then the White man said, “Hey N-word, didn’t I just tell you to jump?” The participant reported the incident to the police, but the participant was too shaken up to get a plate number. Now they do not run as early, and they take different routes.

Participant 2: The participant felt that it depends on people individually. Under the law it does not matter if one is African American or from Africa. The laws keep White people from discriminating in most cases. The participant felt that White people hid their true feelings until President Trump started attacking Muslims and that this gave permission to other Americans to act with bias towards Muslims.

Participant 3: This participant’s religious community has moved forward with the development of a mosque. The congregation has purchased a building and planning is progressing. The participant has achieved educational success in New Hampshire, earning both an Associate’s and Bachelor’s degree with honors and is now pursuing an advanced degree. They are involved in a leadership program in their workplace. They have incorporated recommendations for making New Hampshire more welcoming to Muslims in their educational and professional work. They serve as a resource for their fellow Muslims, both men and women.

Participant 4: This participant discussed that when the so-called “Muslim Ban”<sup>153</sup> went into effect, everyone’s fears were raised. They noted that anti-Muslim bias has increased over the last five years and that people are very reluctant to access services for fear of running afoul of the “Public Charge” rules even when they are not applicable to them. People are afraid of immigration enforcement (ICE), particularly those who are immigrants but not refugees, who have more protection against deportation. People are trying to avoid attention and controversy, and many do not disclose that they are Muslim.

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<sup>153</sup> This is referring to Executive Order 13769, “Protecting the Nation from Foreign Terrorist Entry into the United States,” labeled as a Muslim Ban by its detractors, and a travel ban by its supporters.



This participant also stated that language access is still bad and LEP individuals have to rely on friends and family for communications. Health care costs have gone up for many people as many employers have reduced the share they contribute as deductibles have also gone up. People must sometimes choose rent over medications or medical care.

The participant felt there is a lot of misinformation within the community especially with older and LEP immigrants. One challenge is that many members of the participant's ethnic community and other refugees listen to news reports in their native languages about what is going on in the U.S. There is no array of reporting choices—there is one source with the slants that a particular foreign news agency puts into reporting events so often people's views are formed by questionable information. Many people of the participant's ethnic community keep saying, "in November, things will be different (after the election)," and they do not seem to realize that President Trump could be reelected. People in the participant's ethnic group also know how far political discord can go. The participant's parents experienced and witnessed how politics brought war to their country. They know that things can get worse.

Participant 5: The participant felt things have gotten worse since the 2016 elections. They said that they have started to see hate crime cases in their caseload and that they had not seen anything like that prior to that time. They now have two such cases.

#### **v. Comments, Recommendations, Hopes**

Participant 1: This participant stated that if people are honest and they talk to each other, positive change can happen. The younger generations are the nation's hope as they are more willing to embrace difference and have friendships and romances with others different than them.

Participant 2: This participant's wish for Muslims, and everyone else for that matter, is to feel free and comfortable practicing their religion and observing their traditions without the fear of being stereotyped. Their recommendations are that small efforts or simple steps can be taken to make a better community for everyone.

They stated that education is key because there is a lot of misinformation and stereotypes when it comes to Muslims. They believe it is largely due to lack of education on the subject matter. They suggest planning events, such as panel discussions with a diverse panel including Muslims, with community organizations such as the local fire department, police department, hospital, etc. They believe it is important to break the stereotypes and give people the opportunity to see that not every Muslim woman chooses to cover their hair with a hijab and not every Muslim man has a beard.

Additionally, this participant noted that as the holiday season approaches, it is an opportunity to address the very false idea that Muslims get offended by Christmas or if somebody says Merry Christmas. They think in general that just bringing awareness to all the similarities and values we share would go a long way in bringing people together as a community.

Participant 3: They are passionate about diversity, inclusion, and access to opportunity. They would like to develop a program for non-Muslims to learn about Islam. Once the mosque is open, this participant would like to invite state police and local police to meet the community.

Participant 4: This participant stated that housing providers and social service programs must diversify their staff at all levels including management and their boards. Their hope is that making real change will eliminate institutional racism and bias.

They feel very strongly about justice and want solidarity with other groups and opportunities across the spectrum. The participant feels that they have more in common with the LGBTQ community than with “mainstream” White Americans because of the participant’s own and their community’s experience with bias. Institutions must be more flexible about job interviews with immigrants who might be great candidates but because of cultural mores do not feel comfortable bragging about their skills and strengths.

The participant also feels that institutions must find ways to truly have diverse members of the community at the table. Members of diverse groups need to have a real voice in what happens in their lives and communities—they need real, meaningful communication.

Participant 5: This participant recommended increasing the “welcoming” aspect of interactions. They were recently a speaker at a community event. Many in the audience asked what they could do. The participant noted that New Hampshire is a state with many privileged White people who want to be “part of the fight,” and believes they must incorporate “intentionality” into their interactions and their way of living. As an example of intentionality, this participant thought about a White friend who specifically looked for a childcare program with diversity in order to have their children in an integrated setting.

### **3. Conclusions and Observations**

Most of the participants have spent several years or more in residency in New Hampshire and many described enjoying the communities they lived in. But most also described knowing of or personally encountering incidents of disparate treatment based on their nationality, color, race, or religion.

People in both groups described situations in which they felt mistreated, sometimes quite seriously, or subject to unfair and often unlawful practices in housing transactions and beyond. All of the Brazilian participants responded that they believe that Brazilians face housing discrimination in New Hampshire. They described situations in which landlords denied housing opportunities for families with children, failed to renew leases, charged exorbitant security deposit amounts, and wrongfully retained security deposits or charged additional fees. People in the Brazilian group were unfamiliar with landlord obligations and tenant protections or where to go for help. Language was another barrier for several and contributed both to vulnerability to unlawful housing practices and lack of knowledge of resources.

People in the Muslim interviews had reached points in their lives in which they were fluent in English and knowledgeable about the law and legal protections available in New Hampshire for a variety of subjects including housing, employment, and language access. Yet the majority of interviewees described experiencing pervasive bias in their lives and the lives of other Muslims living in New Hampshire. The harms ranged from housing discrimination and workplace and community incidents to criminal conduct perpetrated against them. Several interviewees described the use of real estate agents to avoid mistreatment. Another shared that people in that person’s ethnic group often hid the fact that they were Muslim to avoid harm. Most interviewees, whether applicable to them personally or not, felt that Muslims from Africa faced racial discrimination as well as religious bias. Most interview participants also felt that

animus toward Muslims and people's willingness to express their biases increased since the 2016 election.

Most participants did not seek assistance or report the wrongs committed against them or of which they were aware. The only exception was the person who notified the police after being victimized by threatening behavior and racial epithets (*see* Participant 1's remarks on p. 77). There are many reasons why one chooses not to pursue wrongs committed against them. Sometimes they are unaware of how to pursue redress. It is difficult to dwell on the wounds caused by mistreatment and moving on is a coping strategy. In addition, many times it may be impossible to use the energy needed when one is coping with work, school, family, or other pressing conditions of daily life. Other explanations are embarrassment, fear of retaliation, or not being taken seriously or believed.<sup>154</sup>

Based on the reported experiences of the participants in these two groups, it is clear that outreach and education efforts to provide information about available rights, protections, and programs are still much needed but cannot be the only initiatives. New Hampshire must also take action to eliminate insidious bias from all aspects of community life in the state.

## **D. NEW HAMPSHIRE PUBLIC HOUSING AUTHORITY SURVEY**

HUD-administered housing is a vital resource for safe and affordable housing throughout the United States. There are approximately five million households receiving housing assistance through "tenant-based vouchers, project-based subsidies, and the provision of public housing."<sup>155</sup> New Hampshire has seventeen HUD-funded and regulated housing authorities operating housing programs that range from traditional public housing, Housing Choice Voucher programs, and housing subsidized via various federal housing programs, to tax credit properties.

We conducted a survey of the state's Public Housing Authorities (PHAs) to learn more about their experiences and challenges managing and carrying out fair housing policies and principles. We initially met with members of the New Hampshire Housing Authorities Corporation in the autumn of 2019 to explain our interest in conducting a survey. Their response was positive, and in February 2020, we began conducting the survey by mailing out the ten-question survey instrument and following up with phone contacts and interviews beginning in early March 2020.

Then COVID-19 struck, and President Trump and Governor Sununu issued emergency orders on March 13, 2020. We had already interviewed most of the PHAs by then but decided to suspend any further interviews until the pandemic was under control and the remaining PHAs would again have the time to speak with us. When it became clear that the pandemic was not abating and was affecting almost every aspect of life in our state and the country, we added a question about the pandemic's impact on PHA operations. We completed the surveys in mid-

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<sup>154</sup> See, e.g., Catherine Devine *et al.*, *Millions Are Victims of Hate Crimes Though Many Never Report Them*, The Center for Public Integrity (Aug. 16, 2018), <https://publicintegrity.org/politics/millions-are-victims-of-hate-crimes-though-many-never-report-them/>.

<sup>155</sup> *A Snapshot of HUD-Assisted Households*, PD&R Edge (2018), <https://www.huduser.gov/portal/pdredge/pdr-edge-featd-article-061118.html>.

December 2020 with fifteen of the seventeen PHAs' participation.<sup>156</sup> The executive directors of almost every PHA personally participated in the survey process and their responses are compiled below.

## **1. What are the biggest fair housing challenges for your PHA?**

- Reasonable accommodations and modifications: Working to make sure that staff are trained and follow established protocols for processing accommodation requests is a priority. Balancing the costs of accommodations and the reasonableness of the request also requires knowledge and unbiased analysis. Obtaining information from health care providers can be challenging.
- Managing and analyzing requests for emotional support animals is often difficult.
- Staff training: making sure all staff are trained on fair housing law and principles. Finding training that is affordable and local may also be tough.
- Bias and stereotyping of people seeking affordable housing opportunities: this challenge was most often communicated within the context of voucher holders seeking to place their voucher within the private market.
- Increasing accessibility features in their housing units.
- Outreach to populations least likely to apply for housing, especially in a very tight market.
- Other challenges: hoarding cases, tenants' threats to file complaints if their request is not granted, requests for live-in aides, and unauthorized occupants.
- One PHA respondent was unaware of any challenges within their operation.

## **2. What are the challenges of incorporating AFFH obligations into your planning, policies, staff development?**

Several respondents pointed out that as required, they have incorporated AFFH principles into their administrative plans and have certified that they are in compliance.

- A significant challenge for many is the uncertain state of AFFH obligations given the Trump administration's intent to scale back the AFFH rule promulgated during the Obama era and the ensuing litigation. One respondent anticipated more clarity and enforcement under the incoming administration.
- Funding to carry out AFFH principles was a common complaint and included several themes:
  - Difficulty in developing new properties due to community resistance;
  - Costs of increasing accessibility in existing buildings;
  - Introducing visitability concepts; and
  - Costs of research and staff development to carry out AFFH principles especially for small PHAs.

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<sup>156</sup> The following PHAs participated: Berlin-Northumberland-Lancaster Housing Authority, Claremont Housing Authority, Concord Housing + Redevelopment, Dover Housing Authority, Exeter Housing Authority, Keene Housing, Laconia Housing, Lebanon Housing Authority, Manchester Housing and Redevelopment Authority, Nashua Housing and Redevelopment Authority, New Hampshire Housing Finance Authority, Portsmouth Housing, Rochester Housing Authority, Salem Housing Authority, and Somersworth Housing Authority. Derry Housing and Redevelopment Authority and Newmarket Housing Authority did not participate.

- Creating an effective affirmative marketing plan with AFFH principles.

### **3. What other community or governmental institutions do you collaborate with across the scope of your work?**

Every PHA utilizes and connects with many community resources and most connections are made for the benefit of their tenants and program participants.

- |   |   |
|---|---|
| • Local social service programs                           | • Local police department   |
| • City or Town Welfare Department                         | • Municipal health department   |
| • Local Programs providing homeless services              | • Programs serving children (Boy Scouts, Girl Scouts, Boys & Girls Clubs, YMCA) |
| • Community Action Programs                               | • School department   |
| • Community Mental Health Centers                         | • Veterans' programs  |
| • Domestic Violence programs                              | • Nursing facilities  |
| • ServiceLink   | • Programs serving immigrants   |
| • Local government  | • Interpreter services  |
| • New Hampshire Housing Finance Authority                 | • Fire department   |
| • NH Department of Health and Human Services              | • Community child care program  |
| • Bureau of Elderly and Adult Services                    | • NH Legal Assistance   |
| • Other subsidized housing providers                      | • NH Division of Child and Youth Services                                       |
| • Community Health Centers                                | • Senior Citizen Council  |
| • National, regional, and state professional associations | • NH Community Development Finance Authority                                    |
|   | • Housing Action NH   |

Several PHAs have established unique partnerships. For example, one PHA partners with a private school to grant a scholarship for a child tenant. In another case, the local YMCA provides memberships to PHA residents living in a senior housing building. Another PHA provides space for the local Community Caregivers program. Some PHAs operate specialized voucher programs for certain high-risk populations, and at least one PHA is working with a social service organization to provide vouchers for young adults aging out of the state child welfare system.

### **4. Do you consider disparate impact in your planning or policy development?**

Most PHA respondents spoke about admission criteria and criminal histories as their focus in considering disparate impact on protected class members and groups. Several said that they were in the process of reassessing their admissions criteria or their administrative plans through the lens of disparate impact. A few respondents felt that it was difficult to evaluate disparate impact when there have very low vacancy rates and are not developing any new properties.

One respondent pointed to their PHA's evaluation of potential integration/segregation impacts in policy development and cited the example of obtaining permission from HUD to convert some of their properties to senior only due to conflicts arising out of blending older residents with younger ones. Another respondent was excited about the prospect of redeveloping a family development sited in a location where it is a bit isolated and then envisioning ways to increase livability with the incorporation of resources such as transportation, grocery store, on-site daycare, and more.

## **5. Do you use preferences? Why/why not?**

Only one participating PHA reported that they do not use preferences. All of the other PHAs used some preferences although several thought that preferences were overly restrictive. Most of the PHAs utilized preferences for local applicants residing or working within the municipality, county, or local area or having relatives within the area. Many reported preferences for persons displaced by flood, fire, other natural disasters, or government action. Several had preferences for veterans. Others used preferences for very low-income families; senior citizens; people with disabilities; survivors of VAWA crimes (domestic violence, sexual assault, dating violence, and stalking); working families; persons participating in the Choices for Independence program; applicants who had participated in a local program for tenants; and homeless persons. One respondent was in the planning stages of developing housing for VAWA survivors and another property for persons with intellectual or developmental disabilities.

## **6. What is your ratio of senior/disabled housing to family housing?**

In retrospect, this question was not framed as clearly as it could have been and did not specifically ask for ratios for the Housing Choice Voucher programs (HCV). A majority of PHAs operate "bricks and mortar" housing programs as well as HCV programs. Two PHAs manage HCV programs but do not own or manage public housing or subsidized properties, and one PHA operates only housing for older persons and persons with disabilities.<sup>157</sup> Of the two PHAs that operate HCV programs only, one provided the information and the other PHA did not participate.

The majority of PHAs allocated a substantially higher ratio of housing units for older persons and persons with disabilities than for families. Two PHAs had slightly larger allocations of family units.

### Percentage of housing dedicated for older persons and persons with disabilities:

- 100% - 3 PHAs
- 72 – 79% - 4 PHAs
- 60 – 63% - 3 PHAs
- 52 – 54% - 2 PHAs
- 46 – 48% - 2 PHAs

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<sup>157</sup> In analyzing this question, we also included limited information for the two PHAs that did not participate: Derry Housing and Redevelopment Authority and Newmarket Housing Authority.



For the two PHAs that provided information on ratios within their HCV programs, the data indicated that 71% and 77% of program vouchers were being utilized by older persons and persons with disabilities.

**7. What protected class groups, if any, are designated in your affirmative marketing efforts?**

A majority of respondents pointed out that with low vacancy rates and long waiting lists, there is not much ability to engage in marketing activities. Some respondents did state that in spite of that, they do some marketing to protected class members. The marketing is connected to specialized housing or voucher programs for which only certain populations are eligible. Several people mentioned sending information to local social service and state agencies including domestic violence programs, the Bureau of Elderly and Adult Services (BEAS), the Department of Health and Human Services (DHHS), and community mental health centers. Others articulated that they follow the affirmative marketing plans set out in their administrative plans. A few respondents mentioned marketing plans focused on particular racial and ethnic groups such as Latinos, African Americans, and Native Americans. One respondent talked about using marketing materials in both English and Spanish.

**8. Do you have a civil rights compliance officer/designee?**

Most PHAs did not have a specific person assigned to this role but indicated that, in most cases, the Executive Director would assume this role. Three stated that they have designated someone for that role, and two others indicated that they would use their Section 504 compliance officer for that role. One PHA stated that it has designated a staff member to maintain a reasonable accommodation file.

**9. What language access challenges, if any, does your PHA face?**

All of the PHAs are familiar with their obligations and have policies and protocols in place even though many have few encounters with persons who have limited English proficiency (LEP) and do not view language access as a particular challenge for their PHA. Spanish and American Sign Language (ASL) were the languages most frequently cited by the respondents. Several PHAs had staff members who were bilingual or sufficiently proficient for basic preliminary communications. Tools employed to communicate with LEP individuals included the use of certified ASL interpreters and professional language services such as Language Line and Language Bank, “I Speak” materials, and HUD documents that have been translated into several languages. Other tools used include online translation resources and software applications. One PHA has installed a “One-call” system that has the capacity to make announcements in other languages. Another PHA codes LEP files to make sure that the staff knows to arrange for interpretation and translation services for communications with that household.

## **10. What are the challenges of operating housing for younger persons with disabilities living together with older persons? Have you developed any innovative strategies?**

All of the respondents acknowledged the challenges of mixing these two populations and they have tried many strategies to address conflicts. The most frequent conflicts seem to be rooted in “lifestyle” differences in which the younger residents may be perceived as louder, staying up later, and having more visitors. Conflicts also arise out of fears involving substance use and mental illness.

Several PHAs have created HUD-approved “seniors only” buildings and others are in the process of applying for such permission. Other respondents have imposed “quiet hours” or hired police officers or established law enforcement substations in the building to create a presence. PHAs employ resident service coordinators (RSCs) as a way of bringing the tenants together, and this seems to be the most successful method.<sup>158</sup>

Several respondents spoke about RSCs’ work to create activities that encourage people to get to know each other and participate in programs such as garden club, movie nights, and bingo. These activities promote positive interactions and reduce conflicts. RSCs have been used to mediate conflicts between residents as well. Another PHA used the REAP program (a statewide program for seniors provided by local community mental health centers) to discuss issues like bullying and crime reporting. Still another initiated “listening tours” so that residents could hear about and discuss issues of concern within their building.

## **11. Describe the impact of the COVID-19 pandemic on your PHA’s operations.**

The pandemic presented enormous challenges for PHAs. All respondents reported that the COVID-19 pandemic fundamentally altered their entire operations and required as one executive director put it, a “hard pivot.” Another described changing their entire business model. Many reported that, as of December 2020, they had none or very few known COVID-19 cases among their tenants or staff. The larger PHAs were not as fortunate but were working with their municipal health departments and other agencies to stem contagion.

Although describing the circumstances as daunting, it was clear from the responses that the people representing the PHAs—the executive directors, staff, and commissioners—effectively worked together to maintain operations and meet the needs of tenants, applicants, and program participants.

Almost every respondent described the CARES Act funds they received as crucial. Several PHAs invested other funds into COVID-19 responses. HUD’s implementation of a waiver program allowed for more flexibility in carrying out operations including inspections and certifications. One respondent credited HUD’s staff at the regional office in Boston and the Washington, D.C., headquarters as very responsive and helpful.

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<sup>158</sup> “The Service Coordinator Program provides funding for the employment of Service Coordinators in insured and assisted Multifamily Housing designed for the elderly and persons with disabilities. A Service Coordinator is a social service staff person hired or contracted by the Owner or management company. The Service Coordinator plays a critical role to support HUD assisted housing as a platform for financial security, physical security, social connections, and the delivery of long-term community based supportive services.” HUD Service Coordinator Program at [https://www.hud.gov/program\\_offices/housing/mfh/scp/scphome](https://www.hud.gov/program_offices/housing/mfh/scp/scphome).

PHAs used these tools to manage four general categories: health and safety; communications; constituent support; and operations. As part of the process, they implemented new practices, policies, and protocols.

Health and Safety: PHAs purchased masks and other personal protective equipment; special cleaning supplies and devices; and materials such as plexiglass partitions to advance social distancing. They closed their offices at the onset with most implementing limited re-openings and staggered hours for staff and the flexibility to increase or decrease office hours with the ebb and flow of the pandemic's infection rates. In most cases, routine business was conducted by phone, email, Zoom, video, or by mail while still making provisions for safe, socially distant meetings when necessary. Many PHAs implemented mandatory masking in common areas even before state or local orders.

Cleaning and disinfecting protocols were instituted. New work order systems were developed and many PHAs initially limited maintenance calls to emergencies. Procedures for entering apartments to conduct maintenance were established including policies for use of protective gear.

Communications: Many PHAs installed or used "All-call" systems to communicate important messages to tenants. Others installed intercoms at their office entrances for visitors to communicate with staff working in the office. One PHA also purchased an awning outside their office door to provide some cover for visitors during inclement weather. At least one PHA installed TV monitors in common areas to communicate messages to tenants.

Tenant Support: All respondents described concerns for their tenants, particularly for older residents, tenants with mental health and other disabilities, and for families with children engaged in remote learning programs. Several respondents spoke of their concern for the well-being of tenants who were already isolated, with one executive director saying it was like "loneliness on steroids." In-home community services declined creating further isolation. PHA staff coordinated activities for older residents and those with disabilities. Examples include:

- Regular "well-being" calls to older residents by staff and/or volunteers
- Purchase and deliveries of food and necessities when no other alternatives
- Hiring of a "concierge" for brief contacts, shopping, problem-solving
- Partnering with local agencies for recreational activities such as outdoor bingo and exercise class
- Delivery of a holiday meal to tenants
- Providing transportation when the local downtown trolley ceased operations due to the pandemic
- Purchase and delivery of food when an assisted living program's meals program closed because of the pandemic

Families with school-aged children faced difficulties. One PHA operated a summer camp for children in their closed senior center. Many parents struggled with the challenges of helping their children learn at home without the resources they required. Quite a few PHAs invested in improvement of internet infrastructure to facilitate families' abilities to access their schools' remote learning programs. Some PHAs provided additional Chromebooks to families in which children were sharing school-provided ones or as replacements for defective machines. Several

also worked with their school departments and other community agencies to create learning centers for children complete with computers and adults to assist with lessons.

Operations: The PHAs used HUD waivers to modify or temporarily suspend certain required activities such as certifications and inspections. They invested in technology that allowed staff to work remotely. Several PHAs upgraded their records systems, digitizing files to allow for secure access to files via computer. Others upgraded phone systems and purchased laptops and software to facilitate remote work. By December 2020, most PHAs reported that they had adapted their practices to the reality of the pandemic and were proceeding with their routine work. Many were still incorporating flexibility into their operations such as conducting inspections via video or temporarily waiving minor housing quality standards to allow a family to lease up or providing longer periods for a voucher holder to find an apartment. Some PHAs reported slightly higher vacancy rates and delays in turning over apartments due to reduction of the sizes of maintenance teams.

Overall, the respondents were proud and appreciative of the extraordinary work of their staff and the support of their commissioners and seemed confident that their PHA could continue to operate effectively for the duration of the pandemic.

## PART III: HOUSING DISCRIMINATION FOCUS – HOUSING JUSTICE FOR PERSONS WITH SERIOUS MENTAL ILLNESS

People with mental illness (MI) continue to face significant obstacles accessing and maintaining housing within their communities both in New Hampshire and throughout the country. This is especially true for those living with significant MI who are at heightened risk of hospitalization, long-term institutionalization, and segregation.

The move to integrate persons with MI into communities began well before the 1988 amendments to the FHA which added disability as a protected class. The 1963 Community Mental Health Act mandated the creation of community-based mental health centers and promoted deinstitutionalization of those with MI.<sup>159</sup> The aspirational intentions of the Act were compromised early on by many factors including lack of comprehensive planning and insufficient funding.<sup>160</sup> Housing policies initiated during the Reagan era further exacerbated conditions and were directly responsible for the rise of homelessness, a crisis that has not abated and that has disproportionately affected people with MI.<sup>161</sup>

The consequences of the lack of adequate and appropriate community-based services and funding have led not only to chronic homelessness but also to overcriminalization of persons displaying the symptoms of their MI. Jails and prisons have ended up “serving as the country’s largest psychiatric care providers.”<sup>162</sup> Nationally, 37% of those incarcerated in state and federal prisons and 41% of those in “locally-run” jails have been diagnosed with a mental illness.<sup>163</sup>

In 1999, the U.S. Supreme Court issued a landmark decision in *Olmstead v. L.C.*, 527 U.S. 581 (1999), hailed as the most important civil rights case for persons with disabilities in our nation’s history. It reaffirmed that persons with disabilities are entitled to receive supports and services in their own communities rather than be confined to institutions.<sup>164</sup> The *Olmstead* decision applies to all people with disabilities and has certainly improved many lives. Unfortunately, the mandates of *Olmstead* have often been compromised by lack of state legislative commitment and consequent inadequate funding.

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<sup>159</sup> Community Mental Health Act of 1963, Pub. L. 88-164 (Oct. 31, 1963).

<sup>160</sup> Heidi Shulteis, *Lack of Housing and Mental Health Disabilities Exacerbate One Another*, Ctr. for Am. Progress (Nov. 20, 2018), <https://www.americanprogress.org/issues/poverty/news/2018/11/20/461294/lack-housing-mental-health-disabilities-exacerbate-one-another/>.

<sup>161</sup> See, e.g., Marian Moser Jones, *Creating a Science of Homelessness During the Reagan Era*, 93 Milbank Q. 139 (Mar. 5, 2015), <https://onlinelibrary.wiley.com/doi/abs/10.1111/1468-0009.12108>.

<sup>162</sup> *Id.*; see also Daniel Yohanna, *Deinstitutionalization of People with Mental Illness: Causes and Consequences*, 15 AMA J. of Ethics 886 (Oct. 2013), <https://journalofethics.ama-assn.org/sites/journalofethics.ama-assn.org/files/2018-05/mhst1-1310.pdf>.

<sup>163</sup> *Mental Health*, Key Statistics, Prison Policy Initiative (accessed Oct. 21, 2020), [https://www.prisonpolicy.org/research/mental\\_health](https://www.prisonpolicy.org/research/mental_health).

<sup>164</sup> “The Supreme Court held that people with disabilities have a qualified right to receive state funded supports and services in the community rather than institutions when the following three part test is met: 1. the person’s treatment professionals determine that community supports are appropriate; 2. the person does not object to living in the community; and 3. the provision of services in the community would be a reasonable accommodation when balanced with other similarly situated individuals with disabilities.” *Olmstead v. LC: History & Current Status*, OlmsteadRights, <https://www.olmsteadrights.org/about-olmstead/>.

New Hampshire's experience in ensuring the civil rights of persons with MI mirrors that of the nation. After the passage of Community Mental Health Act, New Hampshire made progress toward the community-based model of service provision and, for a period of time in the 1980s, became a national leader in providing community-based services.<sup>165</sup> Sadly, by the time of the Great Recession in 2008, legislative support for adequate funding had waned and only worsened as the economy fell into crisis.<sup>166</sup> The state, once again, failed to meet its commitment of adequate community care and services.

In 2012, the New Hampshire Disability Rights Center and the U.S. Department of Justice sued the state of New Hampshire on behalf of plaintiffs with serious mental illness. The legal action centered on the state's institutionalization practices and asserted that these practices were unjustified and unlawful discrimination against persons with mental illness pursuant to the *Olmstead* decision.<sup>167</sup> The parties reached a settlement in 2014 which requires the state to provide a full array of mechanisms to ensure that people with serious MI have a realistic opportunity of residing in their communities and not in institutions.

The comprehensive class settlement agreement, known as the Community Mental Health Agreement (CMHA), is perhaps the most important legal advancement of the civil rights of persons with MI in New Hampshire's history.<sup>168</sup> The CMHA set out obligations with benchmarks designed to timely create and maintain sufficient resources throughout the state to allow persons with serious MI to successfully integrate into their communities. It requires:

1. Creation of a Crisis Service System including around-the-clock mobile crisis teams and community crisis apartments;
2. Development of Assertive Community Treatment Teams composed of multi-disciplinary team members and 24-hour availability;
3. Implementation of a coordinated Supportive Housing programs utilizing the State's Bridge Subsidy program and acquisition of HUD-funded subsidies to support permanent housing in scattered sites and community residences;
4. Provision of Supported Employment services;
5. Institution of Family and Peer Support programs;
6. Establishment of Data Collection and Quality Assurance programs; and
7. Appointment of an Expert Reviewer.<sup>169</sup>

As the state initiated the requirements of the CMHA, funding of mental health services increased significantly, going from \$97 million in FY 2013 (the year prior to the effective date of

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<sup>165</sup> The changes were prompted by the results of a lawsuit brought on behalf of persons with intellectual disabilities institutionalized at a state school in Laconia (*Garrity v. Gallen*, 522 F. Supp. 171 (D.N.H. 1981)) and the issuance of the Nardi-Wheelock Report in 1982 which set out the roadmap for this new model.

<sup>166</sup> For brief overviews, see, e.g., Rick Jurgens, *As Mental Health Care Evolved, State Resources Fell Behind*, Valley News (July 20, 2015), <https://www.vnews.com/As-Mental-Health-Care-Evolved-State-Resources-Fell-Behind-1697021>; *New Hampshire's Crumbling Mental Health System*, Treatment Advocacy Center (Mar. 9, 2017), <https://www.treatmentadvocacycenter.org/fixing-the-system/features-and-news/3788>; Sara Plourde & Jack Rodolico, *From 'Religious Excitement' to Class Action Suits: A History of NH's Mental Health & Disability Care*, NHPR (Aug. 13, 2015), <https://www.nhpr.org/post/religious-excitement-class-action-suits-history-nhs-mental-health-disability-care#stream/0>.

<sup>167</sup> *Amanda D. v. Hassan*; *United States v. New Hampshire*, Docket No. 1:12-CV-00053-SM (D.N.H. Feb. 9, 2012). Note that the case is now referred to as *Amanda D. v. Sununu*.

<sup>168</sup> The Disability Rights Center maintains key documents in this case at <https://drcnh.org/issue-areas/mental-health/mental-health-agreement/>.

<sup>169</sup> *Amanda D.* Class Action Settlement Agreement (Feb. 12, 2014) known as the Community Mental Health Agreement (CMHA) and available on the Disability Rights Center's website (see link, *supra* note 168).

the CMHA) to almost \$164 million in FY19.<sup>170</sup> In 2015, as part of its obligation to create housing opportunities, the state partnered with NHHFA and “applied for and was awarded funds to develop a total of 241 units of supported housing under the HUD Section 811 Program (191 Program Rental Assistance [PRA] and 50 Mainstream).”<sup>171</sup> The 811 program is designed to serve extremely low-income, non-elderly persons with severe mental illness in scattered-site locations to ensure integration into the community.

The Court-appointed Expert Reviewer (ER) has monitored the state’s progress pursuant to the CMHA and has produced reports every six months since December 2014.<sup>172</sup> In the last August 2020 report, the ER has noted that even with the additional investment into community mental health programs, the state still is struggling to fully and substantially meet the terms of the CMHA.<sup>173</sup> The ER acknowledges that implementation is daunting given the magnitude of the endeavor and that the state deserves credit for its accomplishments<sup>174</sup> but also notes several specific and significant areas of non-compliance:

1. Failure of the state to fully and timely implement Assertive Community Treatment, a “core element of the CMHA”. The ER notes that staffing and caseload capacity fall below the required level.<sup>175</sup>
2. The Supported Employment program has not achieved statewide compliance with the terms of the CMHA including ensuring sufficient program accessibility to persons who would benefit from the program.<sup>176</sup>
3. The state has not met CMHA requirements of providing 450 units of supported housing through the Bridge and 811 programs. The ER reports that the number of persons using the Bridge subsidy program has been below target numbers and that too many people remain on waiting lists beyond acceptable time periods. The 811 program has not developed the target number of units within the required timeframe the CMHA.<sup>177</sup> In addition, the ER was concerned that in some cases, the state may be exceeding the number of subsidized units allowed in any given building complex.<sup>178</sup>

Although the CMHA initially contemplated that the ER’s oversight would end after six years, the parties have agreed to extend his oversight “until the agreement is fulfilled or the parties with court approval otherwise reach an endpoint on the monitoring.”<sup>179</sup>

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<sup>170</sup> *New Hampshire 10-Year Mental Health Plan*, N.H. Dep’t of Health & Hum. Servs. (Jan. 2019), <https://www.dhhs.nh.gov/dcbcs/bbh/documents/10-year-mh-plan.pdf>.

<sup>171</sup> *New Hampshire Community Mental Health Agreement Expert Reviewer Report Number Twelve* 24 (Aug. 18, 2020), [https://drcnh.org/wp-content/uploads/2020/08/Twelfth-Expert-Reviewer-Report\\_8.18.20.pdf](https://drcnh.org/wp-content/uploads/2020/08/Twelfth-Expert-Reviewer-Report_8.18.20.pdf).

<sup>172</sup> See *supra* note 168 for link to reports.

<sup>173</sup> *New Hampshire Community Mental Health Agreement Expert Reviewer Report Number Twelve*, *supra* note 171.

<sup>174</sup> *Id.* at 2.

<sup>175</sup> *Id.* at 7–17.

<sup>176</sup> *Id.* at 17–20.

<sup>177</sup> *Id.* at 20–23.

<sup>178</sup> “The CMHA stipulates that “. . . all new supported housing . . . will be scattered-site supported housing, with no more than two units or 10 percent of the units in a multi-unit building with 10 or more units, whichever is greater, and no more than two units in any building with fewer than 10 units known by the State to be occupied by individuals in the Target population.” *Id.* at 22.

<sup>179</sup> Email correspondence with Litigation Director Pamela Phelan, Disability Rights Center (Nov. 6, 2020).



Persons with MI often face housing discrimination. Nationally, disability discrimination consistently comprises the largest number of discrimination complaints.<sup>180</sup> Disability discrimination can take many forms and includes outright denial of access to housing, subjecting a person with MI to disparate treatment, harassment by other tenants, eviction based on discriminatory terms or conditions, or failure to provide a requested accommodation which would allow the person to use and enjoy their residence.

In 2017, HUD published a study of rental housing discrimination based on mental disability. Focus groups convened for the HUD Study identified the following barriers:

1. Negative and stigmatizing reactions and attitudes by housing providers and their agents;
2. Improper requests to disclose personal and disability-related information;
3. A lack of understanding about what types of reasonable accommodations may be needed by individuals with MD [mental disabilities];
4. The denial of proper requests for reasonable accommodations; and
5. Steering toward specific housing, buildings, or units based on an individual's disability.<sup>181</sup>

The testing component of the HUD Study confirmed the existence of pervasive discriminatory conduct by housing providers toward persons perceived to have MDs: “The testing conducted in this study documented significant levels of adverse differential treatment toward individuals with MI and I/DD [intellectual/developmental disabilities] when compared with individuals who did not have MD.”<sup>182</sup> Specifically, the testing results established that the testers perceived to have MD were less likely to receive a response to their inquiry, be told an advertised unit was available, be invited to contact the housing provider, and be invited to inspect the available unit, and were more likely to be encouraged to look at a different unit than the one advertised—a possible indicator of steering. Testers also experienced “adverse treatment” when they made requests for accommodations for their disabilities.<sup>183</sup>

The findings and observations of the HUD Study are consistent with NHLA’s fair housing investigation and enforcement experiences. The majority of housing discrimination complaints NHLA investigates are based on disability, with those with MI comprising the largest share (*see* tables on pp. 123–25 illustrating the number of complaints investigated in New Hampshire). A significant proportion of those cases involve people at risk of eviction. While NHLA has an excellent track record of obtaining accommodations and preventing eviction on behalf of its clients, the persons with the most likelihood of long-term success in maintaining their housing are those with strong support systems including access to and utilization of the community mental health systems.

The supportive housing models advanced by the CMHA can help reduce the tendency of many housing providers to respond with an eviction notice when issues and/or conflicts arise for a tenant with MI. Both tenants with MI and people in their support systems must be aware of all of the tools available to mitigate problems and prevent evictions. To that end, NHLA has invested in statewide fair housing training as an essential aspect of fair housing work.

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<sup>180</sup> *Rental Housing Discrimination on the Basis of Mental Disabilities: Results of Pilot Testing*, U.S. Dep’t of Hous. & Urban Dev. Office of Policy Dev. & Research 2 (Aug. 2017), <https://www.huduser.gov/portal/sites/default/files/pdf/MentalDisabilities-FinalPaper.pdf>.

<sup>181</sup> *Id.* at vi.

<sup>182</sup> *Id.* at vii.

<sup>183</sup> *Id.*

Overly restrictive access criteria in both private and publicly subsidized housing create additional barriers with many persons with MI finding it difficult to pass criminal background checks, rigid credit checks, and obtain positive landlord references. This is particularly true if they have been homeless and/or incarcerated. HUD has issued guidance to housing providers encouraging them to evaluate the disproportionate impact rigid criminal history evaluations may have on certain protected class groups.<sup>184</sup> Although the guidance largely concentrates on the potential effects on persons of color, an argument can be made that because persons with MI have also been overrepresented in the criminal justice system, they too suffer disproportionately.

Until our society fully overcomes bias against persons with MI, adherence to *Olmstead* principles and enforcement of the FHA<sup>185</sup> are vital tools for advancement of the rights of those with MI to live and prosper within our communities.

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<sup>184</sup> *Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions*, U.S. Dep't of Hous. & Urban Dev. (Apr. 4, 2016), [https://www.hud.gov/sites/documents/HUD\\_OGCGUIDAPPFHASTANDCR.PDF](https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF) [hereinafter *OGC Guidance on Use of Criminal Records*].

<sup>185</sup> There are other vital legal protections for persons with disabilities which also secure their civil rights, including the Americans with Disabilities Act, the Rehabilitation Act of 1973, the New Hampshire Law Against Discrimination, and protections found in the New Hampshire Constitution.

## PART IV: LEGAL UPDATE

Part IV highlights legal developments from 2015 through 2020, both on the federal level and in New Hampshire.<sup>186</sup> Although most of the developments cited directly involve housing discrimination law, we also have included some developments that affect protected class members directly and indirectly. Unfortunately, many of the strides made in advancing fair housing and anti-discrimination protections have been eroded over the past few years. The duration of the impacts of these damaging rollbacks and new regulations is not yet known, but with the change in federal administration, it is expected that new policies will revert to regulations that are more protective of protected class members.

### A. FEDERAL LAW DEVELOPMENTS

#### 1. Regulatory Changes

##### a. Suspension of the Affirmatively Furthering Fair Housing (AFFH) Rule in 2018 and Repeal of 2015 AFFH Rule in 2020

On January 5, 2018, HUD published a notice in the *Federal Register* suspending most jurisdictions' obligation under the Affirmatively Furthering Fair Housing (AFFH) rule to submit an Assessment of Fair Housing (AFH) until after October 31, 2020.<sup>187</sup> The National Fair Housing Alliance (NFHA) and other non-profit organizations filed suit against HUD on May 8, 2018, alleging violations of the Administrative Procedure Act (APA), including that HUD failed to provide public notice and comment, that HUD acted in an arbitrary and capricious manner, and that HUD abdicated its duty under the Fair Housing Act to ensure that recipients of HUD funds affirmatively further fair housing.<sup>188</sup> On May 23, 2018, HUD issued three notices in the *Federal Register* indefinitely suspending the 2015 AFFH rule, withdrawing the AFFH Assessment Tool that local governments were required to use to complete their AFHs, and reminding jurisdictions that they must continue to comply with their duty to affirmatively further fair housing by conducting analyses of impediments (AI) to fair housing.<sup>189</sup> HUD justified its decision to withdraw the Assessment Tool by stating that it had "become aware of significant deficiencies in the Tool impeding completion of meaningful assessments by program participants," making the tool "inadequate to accomplish its purpose of guiding program participants to produce meaningful AFHs."<sup>190</sup>

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<sup>186</sup> This section does not include COVID-19 related legislation.

<sup>187</sup> Affirmatively Furthering Fair Housing: Extension of Deadline for Submission of Assessment of Fair Housing for Consolidated Plan Participants, 83 Fed. Reg. 683 (Jan. 5, 2018).

<sup>188</sup> Complaint, *Nat'l Fair Housing Alliance v. Carson*, No. 1:18-cv-01076 (D.D.C. May 8, 2018).

<sup>189</sup> Affirmatively Furthering Fair Housing: Withdrawal of Notice Extending the Deadline for Submission of Assessment of Fair Housing for Consolidated Plan Participants, 83 Fed. Reg. 23928 (May 23, 2018); Affirmatively Furthering Fair Housing: Withdrawal of the Assessment Tool for Local Governments, 83 Fed. Reg. 23922 (May 23, 2018); Affirmatively Furthering Fair Housing (AFFH): Responsibility To Conduct Analysis of Impediments, 83 Fed. Reg. 23927 (May 23, 2018).

<sup>190</sup> Affirmatively Furthering Fair Housing: Withdrawal of the Assessment Tool for Local Governments, *supra* note 189.

In response to HUD's withdrawal of the AFFH Assessment Tool, NFHA and the other plaintiffs in the lawsuit challenging the suspension of the AFFH rule filed an amended complaint and a renewed motion for a preliminary injunction.<sup>191</sup> New York State filed a motion to intervene as a plaintiff, and several states and cities filed an amicus brief supporting the plaintiffs.<sup>192</sup> Ultimately, the court dismissed the lawsuit ruling that the plaintiffs lacked standing because they had not established a cognizable injury, that HUD was not required to comply with the APA's notice-and-comment rulemaking procedures when withdrawing the AFFH Assessment Tool, and that HUD's withdrawal of the tool was not arbitrary or capricious.<sup>193</sup>

On January 14, 2020, HUD issued a new proposed AFFH rule that made significant changes to the 2015 regulation.<sup>194</sup> The proposed rule dramatically changed the definition of "affirmatively furthering fair housing," which had required funded recipients to take "meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics" and "that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws."<sup>195</sup> The proposed rule defined AFFH as "advancing fair housing choice within the program participant's control or influence."<sup>196</sup> The proposed rule represented a rejection of efforts to address long-standing discrimination and segregation in this country and championed "affordable" housing without full consideration of barriers to protected class members. In its announcement of the proposed rule, HUD stated that the 2015 AFFH rule "proved ineffective, highly prescriptive, and effectively discourages the production of affordable housing."<sup>197</sup>

Then, in July 2020, HUD issued its final rule, entitled Preserving Community and Housing Choice, which repealed the 2015 AFFH regulations and merely defined AFFH to mean "any action rationally related to promoting any attribute or attributes of fair housing," with fair housing defined as "housing that, among other attributes, is affordable, safe, decent, free of unlawful discrimination, and accessible as required under civil rights laws."<sup>198</sup> The rule did not go through the Administrative Procedure Act (APA) review and comment process. Despite HUD's contentions that the 2015 AFFH rule was "unworkable and ultimately a waste of

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<sup>191</sup> First Amended Complaint, *Nat'l Fair Hous. Alliance v. Carson*, No. 1:18-cv-01076-BAH (D.D.C. May 29, 2018).

<sup>192</sup> Memorandum of Law in Support of Plaintiffs' Renewed Motion for a Preliminary Injunction and for Summary Judgment; and Brief of the States of Maryland, California, Massachusetts, Virginia, and Washington; the District of Columbia; and the Cities of Austin, Texas; New Orleans, Louisiana; Oakland, California; Portland, Oregon; Seattle, Washington; and Toledo, Ohio as *Amici Curiae* in Support of Plaintiffs' Renewed Motion for Preliminary Injunction and for Summary Judgment, *Nat'l Fair Hous. Alliance v. Carson*, No. 1:18-cv-01076-BAH (D.D.C. June 5, 2018).

<sup>193</sup> *Nat'l Fair Hous. Alliance v. Carson*, 330 F. Supp. 3d 14, 44–50, 54, 58 (D.D.C. 2018).

<sup>194</sup> Affirmatively Furthering Fair Housing, 85 Fed. Reg. 2041 (Jan. 14, 2020).

<sup>195</sup> Affirmatively Furthering Fair Housing, *supra* note 103, at 42353.

<sup>196</sup> Affirmatively Furthering Fair Housing, *supra* note 194, at 2045.

<sup>197</sup> HUD Issues Improved Fair Housing Rule, Press Release, U.S. Dep't of Hous. & Urban Dev. (Jan. 7, 2020), [https://www.hud.gov/press/press\\_releases\\_media\\_advisories/HUD\\_No\\_20\\_002](https://www.hud.gov/press/press_releases_media_advisories/HUD_No_20_002).

<sup>198</sup> Preserving Community and Housing Choice, *supra* note 4; *Secretary Carson Terminates 2015 AFFH Rule*, *supra* note 17.

time,”<sup>199</sup> opposition to the gutting of the AFFH rule among civil rights leaders and fair housing advocates is strong.<sup>200</sup>

## **b. HUD’s Proposed Disparate Impact Rule**

In 2019, HUD issued a proposed rule revising that standards for proving disparate impact or discriminatory effect liability under the FHA.<sup>201</sup> Although HUD claimed<sup>202</sup> that the proposed rule amends HUD’s interpretation of the disparate impact standard to better align with the Supreme Court’s ruling in the 2015 *Inclusive Communities* case,<sup>203</sup> the rule instead serves to gut the standard altogether. The proposed rule would increase plaintiffs’ burden of proof and make it easier for defendants to rebut plaintiffs’ claims. Currently, a plaintiff “has the burden of proving that a challenged practice caused or predictably will cause a discriminatory effect.”<sup>204</sup> The burden then shifts to the defendant to prove that the practice “is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests” of the defendant.<sup>205</sup> If the defendant satisfies its burden, the plaintiff may prevail by “proving that the substantial, legitimate, nondiscriminatory interests supporting the challenged practice could be served by another practice that has a less discriminatory effect.”<sup>206</sup>

Under the proposed regulation, however, a plaintiff must plead facts supporting allegations

- (1) That the challenged policy or practice is arbitrary, artificial, and unnecessary to achieve a valid interest or legitimate objective such as a practical business, profit, policy consideration, or requirement of law;
- (2) That there is a robust causal link between the challenged policy or practice and a disparate impact on members of a protected class that shows the specific practice is the direct cause of the discriminatory effect;
- (3) That the alleged disparity

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<sup>199</sup> *Secretary Carson Terminates 2015 AFFH Rule*, *supra* note 17; see also *HUD Issues Improved Fair Housing Rule*, *supra* note 197.

<sup>200</sup> E.g., *Trump Administration Eliminates Affirmatively Furthering Fair Housing Rule*, NLIHC and Other Advocates Condemn Action, Rhetoric, NLIHC (July 27, 2020), <https://nlihc.org/resource/trump-administration-eliminates-affirmatively-furthering-fair-housing-rule-nlihc-and-other>; *Civil Rights Groups Strongly Oppose HUD’s New “Fair Housing” Rule and Call on the Agency to Reinstate the 2015 AFFH Regulation*, NFHA (Sept. 8, 2020), <https://nationalfairhousing.org/2020/09/08/civil-rights-groups-strongly-oppose-huds-new-fair-housing-rule-and-call-on-the-agency-to-reinstate-the-2015-affh-regulation/>; *Statement from NLIHC President & CEO Diane Yentel on Release of HUD’s Proposal to Gut the Affirmatively Furthering Fair Housing (AFFH) Rule*, NLIHC (Jan. 7, 2020), <https://nlihc.org/news/statement-nlihc-president-ceo-diane-yentel-release-huds-proposal-gut-affirmatively-furthering>; *Affirmatively Furthering Fair Housing*, Poverty & Race Research Action Council (PRRAC) (Jan. 7, 2020), <https://prrac.org/affirmatively-furthering-fair-housing/#b>; *Civil Rights Leaders Respond to Trump Administration’s Latest Attack on Fair Housing*, Legacy of Martin Luther King, Jr., National Housing Law Project (NHLP) (Jan. 16, 2020), <https://www.nhlp.org/our-initiatives/civil-rights-leaders-respond-to-trump-administrations-latest-attack-on-fair-housing-legacy-of-martin-luther-king-jr/>.

<sup>201</sup> HUD’s Implementation of the Fair Housing Act’s Disparate Impact Standard, 84 Fed. Reg. 42854 (Aug. 19, 2019).

<sup>202</sup> *Id.* at 42854.

<sup>203</sup> *Texas Dep’t of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc.*, 135 S. Ct. 2507 (2015).

<sup>204</sup> 24 C.F.R. § 100.500(c)(1).

<sup>205</sup> *Id.* § 100.500(c)(2).

<sup>206</sup> *Id.* § 100.500(c)(3).

caused by the policy or practice has an adverse effect on members of a protected class; (4) That the alleged disparity caused by the policy or practice is significant; and (5) That there is a direct link between the disparate impact and the complaining party's alleged injury.<sup>207</sup>

The defendant may rebut the plaintiff's claim that the policy is arbitrary, artificial, and unnecessary by producing evidence that the challenged policy or practice "advances a valid interest (or interests)."<sup>208</sup> The plaintiff would then be required to prove "that a less discriminatory policy or practice exists that would serve the defendant's identified interest in an equally effective manner without imposing materially greater costs on, or creating other material burdens for, the defendant."<sup>209</sup> The proposed rule also sets forth other defenses available to a defendant. This rule undermines the purpose of the FHA and would severely limit its protections. The pleading standard for plaintiffs is impossibly high and the defenses available to defendants are unjustifiably extensive.

HUD issued its final disparate impact rule in September 2020.<sup>210</sup> The final version disregards the majority of opposing comments and, like the proposed rule, severely limits disparate impact theory.<sup>211</sup> That same month, the Massachusetts Fair Housing Center and Housing Works, Inc., filed suit challenging the final disparate impact rule, and, in October 2020, a federal judge granted a preliminary injunction against the new rule only one day before it was to take effect.<sup>212</sup>

### **c. LGBTQ Rights**

In 2016, HUD issued a final rule clarifying that the 2012 Equal Access Rule, which guaranteed its programs were "open to all eligible individuals and families regardless of sexual orientation, gender identity, or marital status,"<sup>213</sup> applies to emergency shelters. The 2016 rule provides that transgender and gender non-conforming individuals should be accommodated in temporary, emergency shelters in accordance with their gender identity.<sup>214</sup>

In 2020, HUD changed course, however, and issued a proposed rule on July 24 that would allow federally funded shelters whose facilities are segregated by sex to establish a policy

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<sup>207</sup> HUD's Implementation of the Fair Housing Act's Disparate Impact Standard, *supra* note 201, at 42862.

<sup>208</sup> *Id.* at 42863.

<sup>209</sup> *Id.*

<sup>210</sup> HUD's Implementation of the Fair Housing Act's Disparate Impact Standard, 85 Fed. Reg. 60288 (Sept. 24, 2020) (*see pp.* 60289–90 for changes made at the final stage).

<sup>211</sup> *See, e.g., Preliminary Analysis of HUD's Final Disparate Impact Rule*, NLIHC (Sept. 14, 2020), <https://nlihc.org/resource/preliminary-analysis-huds-final-disparate-impact-rule>.

<sup>212</sup> *Massachusetts Fair Hous. Ctr. v. United States Dep't of Hous. & Urban Dev.*, No. CV 20-11765-MGM, 2020 WL 6390143 (D. Mass. Oct. 25, 2020). The court held that the fair housing organizations had standing to challenge the rule, the challenge was ripe, the organizations were substantially likely to succeed on the merits of their Administrative Procedure Act (APA) claim, they would suffer irreparable harm without an injunction, and the balance of harms and public interest favored an injunction. *Id.* at \*5–8. As of December 31, 2020, the case remains pending before the court. *See also Open Communities Alliance v. United States Dep't of Hous. & Urban Dev.*, No. 3-20-cv-01587 (D. Conn. Oct. 22, 2020).

<sup>213</sup> Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity, 77 Fed. Reg. 5662, 5662 (Feb. 3, 2012).

<sup>214</sup> Equal Access in Accordance with an Individual's Gender Identity in Community Planning and Development Programs, 81 Fed. Reg. 64763 (Sept. 21, 2016).



by which the shelter considers an individual's biological sex for the purposes of determining admission to and accommodation within the shelter.<sup>215</sup> This proposed rule was issued despite testimony by HUD Secretary Ben Carson in front of the House Committee on Financial Services that he was not anticipating changing the Equal Access Rule<sup>216</sup> and despite a request by members of the Committee in June 2020 to reconsider the proposed rule in light of the U.S. Supreme Court's ruling in *Bostock* (discussed below).<sup>217</sup>

#### **d. Quid Pro Quo and Hostile Environment Harassment**

On September 14, 2016, HUD published a final rule amending its regulations to protect those who experience harassment in housing.<sup>218</sup> Although harassment based on protected class status is prohibited under the FHA, the standards for assessing such claims had not been articulated in regulations until publication of this rule. The rule defines “quid pro quo” harassment and “hostile environment” harassment, clarifies standards for direct liability, and describes how HUD will evaluate complaints.

In October 2017, the U.S. Department of Justice's Civil Rights Division announced the Sexual Harassment in Housing Initiative. The Initiative's goals are to “increase awareness about sexual harassment in housing and that it is against the law” and “to increase awareness that DOJ investigates and files lawsuits about sexual harassment in housing.”<sup>219</sup> The Initiative's website includes information about what the DOJ can do to assist victims of sexual harassment, resources for victims, and victim testimonials.

#### **e. Protections for Domestic Violence Survivors**

In 1994, Congress enacted the Violence Against Women Act (VAWA), a comprehensive initiative targeting violence against women and others victimized by family and sexual violence. VAWA's protections have expanded since its original passage, most recently when Congress again reauthorized VAWA in 2013. HUD issued a final rule in 2016 amending its regulations to fully implement the 2013 statutory changes<sup>220</sup> and issued guidance to housing authorities and owners on VAWA's requirements in 2017.<sup>221</sup> Importantly, VAWA does not contain a sunset

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<sup>215</sup> See Making Admission or Placement Determinations Based on Sex in Facilities Under Community Planning and Development Housing Programs, 85 Fed. Reg. 44811 (July 24, 2020); *HUD Updates Equal Access Rule, Returns Decision Making to Local Shelter Providers*, Press Release, U.S. Dep't of Hous. & Urban Dev. (July 1, 2020), [https://www.hud.gov/press/press\\_releases\\_media\\_advisories/HUD\\_No\\_20\\_099](https://www.hud.gov/press/press_releases_media_advisories/HUD_No_20_099).

<sup>216</sup> See, e.g., *Statement: Advocacy Groups Condemn Carson for Misleading Congress Over Equal Access Rule*, NFHA (May 23, 2019), <https://nationalfairhousing.org/2019/05/23/equal-access-rule/>. The summary of the forthcoming proposed rule was released a day after this testimony. See Revised Requirements Under Community Planning and Development Housing Programs, FR-6152, RIN 2506-AC53 (May 22, 2019), <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201904&RIN=2506-AC53>.

<sup>217</sup> Letter from Jennifer Wexton and Maxine Waters to HUD Secretary Ben Carson (June 29, 2020), [https://financialservices.house.gov/uploadedfiles/6.29.20\\_ltr\\_to\\_hud\\_ea\\_scd\\_wexton\\_waters.pdf](https://financialservices.house.gov/uploadedfiles/6.29.20_ltr_to_hud_ea_scd_wexton_waters.pdf).

<sup>218</sup> Quid Pro Quo and Hostile Environment Harassment and Liability for Discriminatory Housing Practices Under the Fair Housing Act, *supra* note 93.

<sup>219</sup> Sexual Harassment in Housing Initiative – About Us, U.S. Dep't of Justice (Nov. 7, 2018), <https://www.justice.gov/crt/sexual-harassment-housing-initiative-about-us>.

<sup>220</sup> Violence Against Women Reauthorization Act of 2013: Implementation in HUD Housing Programs, 81 Fed. Reg. 80724 (Nov. 16, 2016).

<sup>221</sup> *Violence Against Women Reauthorization Act of 2013 Guidance*, Notice PIH-2017-08, U.S. Dep't of Hous. & Urban Dev. (May 19, 2017), <https://www.hud.gov/sites/documents/PIH-2017-08VAWRA2013.PDF>.



provision and does not expire, even if it is not reauthorized for appropriations.<sup>222</sup> The Department of Justice has made clear that VAWA “remains the law of the land.”<sup>223</sup>

In 2016, HUD issued guidance on the application of the FHA to local nuisance and crime-free housing ordinances when enforced against victims of crime, including domestic violence survivors, who use emergency services.<sup>224</sup> It did so to ensure that the “growing number” of these ordinances “do not lead to discrimination in violation” of the FHA.<sup>225</sup> The guidance addressed both discriminatory effects (or disparate impact) and disparate treatment methods of proof.

#### **f. Immigrants’ Rights and Protections for People with Limited English Proficiency**

The FHA protects individuals against discrimination based on national origin, and this includes protections for those who have limited English proficiency (LEP). HUD issued guidance in 2016 on how the discriminatory effects (or disparate impact) and disparate treatment methods of proof apply in FHA cases involving LEP persons, noting that lack of English proficiency is often used as a proxy for national origin discrimination.<sup>226</sup>

Also in 2016, the Department of the Treasury issued a final rule providing for the enforcement of Title VI of the Civil Rights Act of 1964, as amended, in any program or activity that receives federal financial assistance from that department.<sup>227</sup> Title VI prohibits discrimination based on race, color, or national origin in federally-funded programs, which includes ensuring that LEP individuals have meaningful access to those programs. Even though each federal agency subject to Title VI is required to promulgate implementing regulations, this rule is the first such action by the Department of the Treasury. The rule does not include the Low-Income Housing Tax Credit (LIHTC) program, but the Treasury reiterated that LIHTC properties must comply with fair housing requirements.<sup>228</sup>

With the 2017 change in administration of the federal government came significant negative policy changes in the area of immigrants’ rights. In 2019, HUD issued a proposed “mixed status” rule<sup>229</sup> which would “effectively evict tens of thousands of immigrant families

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<sup>222</sup> Laura L. Rogers, Acting Director, *The Violence Against Women Act – An Ongoing Fixture in the Nation’s Response to Domestic Violence, Dating Violence, Sexual Assault, and Stalking*, U.S. Dep’t of Justice Office on Violence Against Women (Feb. 19, 2020), <https://www.justice.gov/ovw/blog/violence-against-women-act-ongoing-fixture-nation-s-response-domestic-violence-dating>.

<sup>223</sup> *Id.*

<sup>224</sup> *Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Enforcement of Local Nuisance and Crime-Free Housing Ordinances Against Victims of Domestic Violence, Other Crime Victims, and Others Who Require Police or Emergency Services*, U.S. Dep’t of Hous. & Urban Dev. (Sept. 13, 2016), <https://www.hud.gov/sites/documents/FINALNUISANCEORDGDNCE.PDF> [hereinafter *OGC Guidance on Local Nuisance and Crime-Free Housing Ordinances*].

<sup>225</sup> *Id.*

<sup>226</sup> *Office of General Counsel Guidance on Fair Housing Act Protections for Persons with Limited English Proficiency*, U.S. Dep’t of Hous. & Urban Dev. (Sept. 15, 2016), <https://archives.hud.gov/news/2016/pr16-135-lepmemo091516.pdf>; *HUD Issues New Guidance on Fair Housing Protections for People with Limited English Proficiency*, Press Release, U.S. Dep’t of Hous. & Urban Dev. (Sept. 15, 2016), <https://archives.hud.gov/news/2016/pr16-135.cfm>.

<sup>227</sup> Regulation Regarding Nondiscrimination on the Basis of Race, Color, or National Origin in Programs or Activities Receiving Federal Financial Assistance from the Department of the Treasury, 81 Fed. Reg. 89852 (Dec. 13, 2016).

<sup>228</sup> *Id.*

<sup>229</sup> Housing and Community Development Act of 1980: Verification of Eligible Status, *supra* note 54.

and jeopardize housing subsidies for millions of U.S. citizens.”<sup>230</sup> Currently, families of “mixed status,” where some members are eligible for federal subsidies and some are not, receive financial housing assistance on a prorated basis. At least one U.S. citizen or eligible immigrant must live in the household and noneligible members can choose to not contend eligibility. The proposed rule, however, will bar “mixed-status” families from public housing and other specified federally-assisted housing programs by prohibiting prorated assistance. Individuals who are not eligible may not be tenants in subsidized housing, even if other family members are eligible. The rule will require the verification of eligible immigration status for all family members under age 62 through the Department of Homeland Security’s Systematic Alien Verification for Entitlement Program (SAVE) and require that the leaseholder be a citizen or eligible noncitizen.<sup>231</sup> HUD’s own analysis of this rule reveals that over 25,000 households receiving assistance are “mixed status” and over 55,000 children within those households are eligible for assistance.<sup>232</sup>

Another change concerning immigrants’ rights came with the Department of Homeland Security’s (DHS) Public Charge rule.<sup>233</sup> The rule makes it easier for DHS to determine that certain immigrants are likely to be a “public charge” by expanding the benefits DHS considers in the determination to include such benefits as Medicaid, Supplemental Nutrition Assistance Program (SNAP), public housing, and Section 8 subsidies. This determination can result in immigrants being denied admission into the country or prevent them from receiving a permanent resident status. Several lawsuits were filed in 2019 to challenge the implementation of this rule,<sup>234</sup> resulting in various injunctions across the country that temporarily stopped the rule from taking effect. The U.S. Supreme Court issued two rulings in early 2020 staying the last remaining injunctions, allowing DHS to implement the new public charge rule nationwide.<sup>235</sup> Later, in August 2020, the Second Circuit limited a nationwide preliminary injunction that had been issued by a New York federal district court to place the rule on hold during the COVID-19 pandemic to the states of New York, Connecticut, and Vermont.<sup>236</sup> In November 2020, an Illinois federal district court vacated the rule nationwide for violating the Administrative Procedure Act (APA),<sup>237</sup> but the Seventh Circuit stayed that decision pending its appeal.<sup>238</sup> The controversial Public Charge rule is still actively being litigated, and has been in effect for New Hampshire since February 24, 2020.

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<sup>230</sup> Mollie Cueva-Dabkoski & Linda Morris, *The Trump Administration’s Proposed “Mixed Status” Housing Rule Is Another Form of Family Separation*, ACLU (July 10, 2019), <https://www.aclu.org/blog/immigrants-rights/trump-administrations-proposed-mixed-status-housing-rule-another-form-family>.

<sup>231</sup> Housing and Community Development Act of 1980: Verification of Eligible Status, *supra* note 54, at 20589.

<sup>232</sup> Regulatory Impact Analysis, Amendments to Further Implement Provisions of the Housing and Community Development Act of 1980, HUD, FR-6124-P-01, 6–7 (April 15, 2019).

<sup>233</sup> See *Inadmissibility on Public Charge Grounds*, 84 Fed. Reg. 41292 (August 14, 2019).

<sup>234</sup> E.g., *San Francisco & Santa Clara v. United States Citizenship & Immigr. Servs.*, No. 4:19-cv-04717-PJH (N.D. Cal. Aug. 13, 2019); *California v. United States Dep’t of Homeland Sec.*, No. 3:19-cv-04975-JSC (N.D. Cal. Aug. 16, 2019); *New York v. United States Dep’t of Homeland Sec.*, No. 1:19-cv-07777 (S.D.N.Y. Aug. 20, 2019).

<sup>235</sup> See *United States Dep’t of Homeland Sec. v. New York*, 140 S. Ct. 599 (2020); *Wolf v. Cook Cty., Illinois*, 140 S. Ct. 681 (2020).

<sup>236</sup> *New York v. United States Dep’t of Homeland Sec.*, 969 F.3d 42, 88 (2d Cir. 2020).

<sup>237</sup> *Cook Cty., Illinois v. Wolf*, No. 19 C 6334, 2020 WL 6393005, at \*7 (N.D. Ill. Nov. 2, 2020).

<sup>238</sup> *Cook Cty., Illinois v. Wolf*, No. 20-3150 (7th Cir. 2020).

**g. HUD’s Guidance on Assistance Animals**

In 2020, HUD issued a notice explaining obligations of housing providers under the FHA with respect to assistance animals.<sup>239</sup> This guidance replaces HUD’s prior 2013 guidance on this issue. The notice provides a set of best practices for housing providers when assessing requests for reasonable accommodations to keep service animals and emotional support animals in housing. It details the information a housing provider may need to know from a health care provider about an individual’s need for the assistance animal and the type and amount of documentation a housing provider may request. The guidance reaffirms that housing providers “may not require a health care professional to use a specific form . . . , to provide notarized statements, to make statements under penalty of perjury, or to provide an individual’s diagnosis or other detailed information about a person’s physical or mental impairments.”<sup>240</sup>

**h. FHA’s Design and Construction Requirements**

The FHA requires that multifamily housing built after March 1991 contain accessible features for persons with disabilities. In 2020, HUD proposed a rule that would amend the FHA design and construction regulations by recognizing additional sets of standards and model building codes as safe harbors under the Act.<sup>241</sup> The proposed additions include: the 2009 edition of International Code Council (ICC) Accessible and Usable Building and Facilities standard (ICC A117.1-2009); and the 2009, 2012, 2015, and 2018 editions of the International Building Code (IBC).<sup>242</sup> New Hampshire currently utilizes the 2015 Code.

**i. White House Council on Eliminating Barriers to Affordable Housing**

In June 2019, President Trump issued an executive order establishing the White House Council on Eliminating Regulatory Barriers to Affordable Housing and named HUD Secretary Ben Carson as its chairperson. The council is intended to “address, reduce, and remove the multitude of overly burdensome regulatory barriers that artificially raise the cost of housing development and help to cause the lack of housing supply.”<sup>243</sup> Housing advocates have questioned the true purpose of the council, stating that it “will likely work to remove important federal regulations that protect fair wages, fair housing, the environment, and more, and not the restrictive local zoning over which the federal government has very little control.”<sup>244</sup> It is not clear whether the Biden Administration will continue the Council.

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<sup>239</sup> *Assessing a Person’s Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act*, FHEO-2020-01, U.S. Dep’t of Hous. & Urban Dev. (Jan. 28, 2020), <https://www.hud.gov/sites/dfiles/PA/documents/HUDAsstAnimalNC1-28-2020.pdf>.

<sup>240</sup> *Id.*

<sup>241</sup> Fair Housing Act Design and Construction Requirements; Adoption of Additional Safe Harbors, 85 Fed. Reg. 2354 (Jan. 15, 2020).

<sup>242</sup> *Id.* at 2354.

<sup>243</sup> Exec. Order No. 13878, 84 Fed. Reg. 30853, 30854 (June 28, 2019).

<sup>244</sup> *Statement from NLIHC President and CEO Diane Yentel on the White House Establishing a Council to Eliminate Regulatory Barriers to Affordable Housing*, NLIHC (June 25, 2019), <https://nlihc.org/news/statement-nlihc-president-and-ceo-diane-yentel-white-house-establishing-council-eliminate>.

## 2. Case Law Developments Outside the Region

### a. Bank of America v. City of Miami

In 2014, The City of Miami filed suit against Bank of America and Wells Fargo alleging that the banks discriminated on the basis of race and national origin by intentionally issuing riskier mortgages to Black and Latino borrowers as compared with similarly-situated White borrowers.<sup>245</sup> Miami contended that this discriminatory conduct “(1) adversely impacted the racial composition of the City, . . . (2) impaired the City’s goals to assure racial integration and desegregation, . . . (3) frustrate[d] the City’s longstanding and active interest in promoting fair housing and securing the benefits of an integrated community, . . . and (4) disproportionately cause[d] foreclosures and vacancies in minority communities in Miami,” which harmed Miami by decreasing property values and thus diminishing property tax revenue and increasing the demand for municipal services.<sup>246</sup> In 2017, the U.S. Supreme Court ruled that the injuries Miami alleged “fall within the zone of interests” protected by the FHA.<sup>247</sup> However, it held that a plaintiff “must do more” than establish that its injuries foreseeably flowed from the alleged violation to establish proximate cause under the FHA.<sup>248</sup> The Court remanded the case for the lower courts to “define . . . the contours of proximate cause under the FHA” and apply it to the City’s claims.<sup>249</sup>

### b. County of Westchester v. HUD

In 2013, Westchester County, New York, brought an action under the Administrative Procedure Act (APA) to challenge HUD’s decision to withhold funds originally awarded to the county. This case was but one of a series involving the county’s analysis of impediments to fair housing with its jurisdiction and certification that it was affirmatively furthering fair housing. In 2015, the Second Circuit affirmed the district court’s order of summary judgment in favor of HUD.<sup>250</sup> The court ruled that HUD’s decision to withdraw the funds based on its determination that the county was not complying with its AFFH obligations was not arbitrary or capricious and, thus, did not violate federal law.

### c. United States v. JPMorgan Chase Bank

The United States Attorney’s Office filed a complaint in 2017 alleging that JPMorgan Chase Bank engaged in a pattern or practice of discrimination on the basis of race or ethnicity, violating the FHA and the Equal Credit Opportunity Act.<sup>251</sup> The complaint alleged that from “at least 2006 through late 2009” the bank’s Black and Latino borrowers had paid higher rates and fees on wholesale home mortgage loans than similarly-situated White borrowers. The court

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<sup>245</sup> *Bank of Am. Corp. v. City of Miami, Fla.*, 137 S. Ct. 1296, 1300–01 (2017).

<sup>246</sup> *Id.* at 1301 (internal quotations omitted).

<sup>247</sup> *Id.*

<sup>248</sup> *Id.*

<sup>249</sup> *Id.* at 1306.

<sup>250</sup> *Cty. of Westchester v. United States Dep’t of Hous. & Urban Dev.*, 802 F.3d 413 (2d Cir. 2015).

<sup>251</sup> Complaint, *United States v. JPMorgan Chase Bank*, No. 1:17-cv-00347 (S.D.N.Y. Jan. 18, 2017).

entered a consent order which included creation of a settlement fund of approximately \$53 million and a \$55,000 civil penalty.<sup>252</sup>

**d. National Fair Housing Alliance v. Facebook and HUD v. Facebook**

In 2019, the National Fair Housing Alliance and several other plaintiffs settled claims against Facebook for violations of the FHA and other civil rights laws. The plaintiffs alleged that Facebook's paid advertising platform allowed advertisers "to target housing, employment, and credit ads to Facebook users based on race, color, gender, age, national origin, family status, and disability."<sup>253</sup> The settlement includes extensive changes to Facebook's advertising platform, the commitment that Facebook will provide education materials to advertisers and engage in fair housing training, and the provision of a \$500,000 advertising credit for placement of fair housing ads.<sup>254</sup> The week after announcement of this settlement, HUD announced it was charging Facebook with violating the FHA by "encouraging, enabling, and causing housing discrimination through the company's advertising platform."<sup>255</sup> This charge followed HUD's investigation of a Secretary-initiated complaint.<sup>256</sup>

**e. HUD and City of Los Angeles Compliance Agreement**

In 2019, HUD reached an historic agreement with the City of Los Angeles to provide accessible housing for individuals with disabilities.<sup>257</sup> This agreement resolves HUD's findings after multiple on-site reviews that the City had failed to comply with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act (ADA) throughout the City's affordable housing program.<sup>258</sup> The agreement includes the development of 10,000 units of new affordable housing over the next ten years, including 1,500 accessible units, and the retrofitting of 3,100 affordable units to be accessible for individuals with disabilities.<sup>259</sup> This settlement comes three years after settlement in *Independent Living Center of Southern California v. City of Los Angeles*, which also involved allegations of the City's failure to satisfy the accessibility requirements of federal law in its provision of affordable housing.<sup>260</sup>

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<sup>252</sup> Consent Order, *United States v. JPMorgan Chase Bank*, No. 1:17-cv-00347-AJN (S.D.N.Y. Jan. 20, 2017).

<sup>253</sup> *Civil Rights Advocates Settle Lawsuit with Facebook: Transforms Facebook's Platform Impacting Millions of Users*, NFHA, <https://nationalfairhousing.org/facebook-settlement/> (accessed June 8, 2020).

<sup>254</sup> *Id.*

<sup>255</sup> *HUD Charges Facebook with Housing Discrimination Over Company's Targeted Advertising Practices*, Press Release, U.S. Dep't of Hous. & Urban Dev. (Mar. 28, 2019), [https://www.hud.gov/press/press\\_releases\\_media\\_advisories/HUD\\_No\\_19\\_035](https://www.hud.gov/press/press_releases_media_advisories/HUD_No_19_035).

<sup>256</sup> *HUD Files Housing Discrimination Complaint Against Facebook*, Press Release, U.S. Dep't of Hous. & Urban Dev. (Aug. 17, 2018), <https://archives.hud.gov/news/2018/pr18-085.cfm>.

<sup>257</sup> *HUD and Los Angeles Reach Historic Settlement Resolving Disability Discrimination and Lack of Accessible Housing*, Press Release, U.S. Dep't of Hous. & Urban Dev. (Aug. 2, 2019), [https://www.hud.gov/press/press\\_releases\\_media\\_advisories/HUD\\_No\\_19\\_116](https://www.hud.gov/press/press_releases_media_advisories/HUD_No_19_116).

<sup>258</sup> Voluntary Compliance Agreement Between the U.S. Department of Housing and Urban Development and the City of Los Angeles, California 4 (Aug. 2, 2019), <https://www.hud.gov/sites/dfiles/Main/documents/HUD-City-of-Los-Angeles-VCA.pdf>.

<sup>259</sup> *Id.* at 13–14.

<sup>260</sup> Case Profiles, *Independent Living Center of Southern California v. City of Los Angeles*, Relman Colfax, <https://www.relmanlaw.com/cases-ilcsc-v-los-angeles>.

## **f. Landlord Liability for Tenant-on-Tenant Harassment**

### **i. Francis v. Kings Park Manor**

This case considers the issue of a landlord's liability for tenant-on-tenant racial harassment.<sup>261</sup> In 2019, a panel of the Second Circuit ruled that a landlord may be liable under the FHA where the landlord refuses "to take any action to address what it knew to be a racially hostile housing environment created by one tenant targeting another, even though the landlord had acted against other tenants to redress prior, non-race related issues."<sup>262</sup> The harassing neighbor's discriminatory conduct was "so severe that it resulted in police warnings and [his] arrest and eventual conviction."<sup>263</sup> The court also joined other circuits in holding that the FHA applies to post-acquisition conduct.<sup>264</sup> The Second Circuit voted in February 2020 to rehear the appeal *en banc*.<sup>265</sup>

### **ii. Wetzel v. Glen St. Andrew Living Community**

In 2018, the Seventh Circuit held that the FHA not only creates liability for a landlord who "intentionally discriminates against a tenant based on a protected characteristic," but it also "creates liability against a landlord that has actual notice of tenant-on-tenant harassment based on a protected status, yet chooses not to take any reasonable steps within its control to stop that harassment."<sup>266</sup> The plaintiff in this case suffered severe and pervasive harassment by other residents "because she is openly lesbian."<sup>267</sup> The court cited, but did not rely on, a 2016 rule published by HUD interpreting third-party liability under the FHA.<sup>268</sup> The rule provides that liability extends to "[f]ailing to take prompt action to correct and end a discriminatory housing practice by a third-party, where the person knew or should have known of the discriminatory conduct and had the power to correct it."<sup>269</sup>

## **g. Fair Housing Rights Center in Southeastern Pennsylvania v. Morgan Properties**

This 2018 case is the first federal decision holding that a landlord's policy of refusing to consider reasonable accommodation requests from tenants with disabilities to change the due date of their rent to correspond with receipt of their disability benefits can violate the FHA.<sup>270</sup> The case settled with Morgan Properties agreeing to provide reasonable accommodations for existing tenants and for qualified applicants who demonstrate the need to adjust the due date of

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<sup>261</sup> *Francis v. Kings Park Manor, Inc.*, 944 F.3d 370, 379 (2d Cir. 2019), *reh'g en banc granted*, 949 F.3d 67 (2d Cir. 2020).

<sup>262</sup> *Id.* at 373.

<sup>263</sup> *Id.* at 379.

<sup>264</sup> *Id.* at 375–78. "Post-acquisition conduct" refers to discrimination occurring after a person buys or rents housing (i.e., after the rental or sales transaction itself).

<sup>265</sup> As of December 31, 2020, the case is still pending. See Case Profiles, *Francis v. Kings Park Manor*, Relman Colfax, <https://www.relmanlaw.com/cases-francis>, for case updates.

<sup>266</sup> *Wetzel v. Glen St. Andrew Living Cmty., LLC*, 901 F.3d 856, 859 (7th Cir. 2018), *cert. dismissed sub nom. Glen St. Andrew Living Com. v. Wetzel*, 139 S. Ct. 1249 (2019).

<sup>267</sup> *Id.*

<sup>268</sup> *Id.* at 866.

<sup>269</sup> 24 C.F.R. § 100.7(a)(1)(iii).

<sup>270</sup> See *Fair Hous. Rights Ctr. in Se. Pennsylvania v. Morgan Properties Mgmt. Co., LLC*, No. CV 16-4677, 2018 WL 4489653 (E.D. Pa. Sept. 19, 2018).



their rent to align with the date they receive their SSDI check.<sup>271</sup> Morgan Properties also agreed to a monetary payment of \$480,000.<sup>272</sup>

#### **h. Masterpiece Cake Shop v. Colorado Civil Rights Commission**

This case involved a same-sex couple for whom a bakery owner refused to create a wedding cake because of his religious opposition to same-sex marriage.<sup>273</sup> Despite the important constitutional questions presented, namely whether a business owner has a constitutional right to discriminate based on his religious beliefs, the case was decided on narrower grounds.<sup>274</sup> The U.S. Supreme Court held that the Colorado Civil Rights Commission evidenced a hostility toward the baker's sincere religious beliefs, thus violating the Free Exercise Clause, and the Court set aside the Commission's ruling in favor of the couple on this basis.<sup>275</sup>

#### **i. Bostock v. Clayton County, Georgia**

In 2020, the U.S. Supreme Court considered the question of whether Title VII's protection against sex discrimination prohibits an employer from firing an employee based on that employee's sexual orientation or gender identity.<sup>276</sup> The Court held that it does, stating, "[a]n employer who fires an individual for being homosexual or transgender fires that person for traits or actions it would not have questioned in members of a different sex. Sex plays a necessary and undisguisable role in the decision, exactly what Title VII forbids."<sup>277</sup> The Court noted that, "when an employer treats one employee worse because of that individual's sex," it does not matter that other factors "might also be at work, or even play a more important role in the employer's decision."<sup>278</sup> The fact that sex is a but-for cause of the decision is sufficient for liability to attach to the employer.<sup>279</sup>

### **3. Federal Case Law Developments in the First Circuit Court of Appeals and in New Hampshire**

#### **a. Batista v. Cooperativa De Vivienda Jardines De San Ignacio**

In this case, a tenant with disabilities who had a Section 8 voucher was informed that she was over-housed in her three-bedroom unit and would need to transfer her voucher to a smaller unit or pay market rent.<sup>280</sup> The tenant brought suit against the private landlord, not the housing authority, alleging that she needed the additional bedrooms due to her disabilities. The court

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<sup>271</sup> Case Profiles, *Fair Housing Rights Center in Southeastern Pennsylvania v. Morgan Properties Management Company, LLC*, Relman Colfax, <https://www.relmanlaw.com/cases-Morgan-Properties>.

<sup>272</sup> *Id.*

<sup>273</sup> *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 138 S. Ct. 1719, 1723 (2018).

<sup>274</sup> *See id.*

<sup>275</sup> *Id.* at 1723–24.

<sup>276</sup> *Bostock v. Clayton Cty., Georgia*, 140 S. Ct. 1731 (2020).

<sup>277</sup> *Id.* at 1737.

<sup>278</sup> *Id.* at 1742.

<sup>279</sup> *Id.* at 1739–40.

<sup>280</sup> *Batista v. Cooperativa De Vivienda Jardines De San Ignacio*, 776 F.3d 38, 40 (1st Cir. 2015).



ruled in 2015 that her requested accommodation was not reasonable where the Puerto Rico housing authority, not the landlord, was the party administering the voucher program.<sup>281</sup>

**b. Castillo Condominium Association v. HUD**

In 2016, the court in this case articulated—for the first time in the First Circuit—the standard of review a reviewing court must use where the HUD Secretary rejects the factual findings of an Administrative Law Judge (ALJ).<sup>282</sup> In such a case, the court must “first make certain that the Secretary has adequately articulated his reasons for overturning the ALJ’s findings” and then must “ask whether those articulated reasons derive adequate support from the administrative record.”<sup>283</sup> The case involved a charge of discrimination issued by HUD against a condominium association for violating the reasonable accommodation provisions of the FHA by forcing a resident to vacate his unit because he was keeping a dog on the premises, despite documentation from the resident that the dog was an assistance animal.<sup>284</sup> After an evidentiary hearing, the ALJ issued a decision that the association had not violated the FHA.<sup>285</sup> After appeal to the Secretary, the Secretary set aside the ALJ’s recommended decision and remanded the case for a determination of damages.<sup>286</sup> The ALJ’s second decision awarded the resident \$3,000 in emotional distress damages and assessed a \$2,000 civil penalty against the association; the Secretary again set aside the ALJ’s decision, awarding \$20,000 in emotional distress damages and assessing a \$16,000 penalty.<sup>287</sup> The court held in favor of the Secretary.<sup>288</sup>

**c. Summers v. City of Fitchburg**

In 2019, the First Circuit affirmed an order of summary judgment for a defendant city in a reasonable accommodation case in which the plaintiffs, operators of four sober homes, challenged the city’s refusal to exempt them from a law requiring such facilities to have sprinkler systems.<sup>289</sup> The court held that the request was not reasonable because “such an exemption would thwart the very salutary purpose” of the law in fire prevention and public safety.<sup>290</sup> The court did not address the plaintiffs’ claim that the law discriminates against individuals with disabilities because it exempts certain structures, such as buildings housing six or more family members and fraternity houses; the court viewed this argument as “an attempt to challenge the district court’s dismissal of the plaintiffs’ disparate treatment and disparate impact claims” but found that such claims had been waived.<sup>291</sup>

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<sup>281</sup> *Id.* at 40, 42–43.

<sup>282</sup> *Castillo Condo. Ass’n v. United States Dep’t of Hous. & Urban Dev.*, 821 F.3d 92, 95–97 (1st Cir. 2016).

<sup>283</sup> *Id.* at 97.

<sup>284</sup> *Id.* at 95.

<sup>285</sup> *Id.*

<sup>286</sup> *Id.* at 96.

<sup>287</sup> *Id.*

<sup>288</sup> *Id.* at 99.

<sup>289</sup> *Summers v. City of Fitchburg*, 940 F.3d 133, 136 (1st Cir. 2019).

<sup>290</sup> *Id.* at 140.

<sup>291</sup> *Id.* at 142.

**d. United States v. Avatar Properties**

In 2015, the district court in this case held that the FHA does apply to post-acquisition conduct,<sup>292</sup> noting that the First Circuit had not yet explicitly ruled on this issue.<sup>293</sup> The case involved a Londonderry resident with disabilities who was denied a reasonable accommodation to be assigned an accessible parking space closer to his home.<sup>294</sup> Ultimately, the court entered a consent decree requiring the condominium association and management company to pay the resident \$25,000, adopt a reasonable accommodation policy, and obtain fair housing training.<sup>295</sup>

**e. United States v. Talgar General Partnership**

In 2015, the district court entered a consent order in this case, originally filed in 2012 following a HUD reasonable cause determination.<sup>296</sup> The case involved a Newmarket manufactured housing park's response to a reasonable accommodation request for an assistance animal.<sup>297</sup> The park was alleged to have "repeatedly and consistently" refused to grant the accommodation, despite having been provided medical documentation of the need for the animal.<sup>298</sup> The consent order included \$10,000 in damages to the complainants as well as injunctive relief.<sup>299</sup>

**f. Dalomba v. Simonsen**

This 2015 civil rights case was brought against managers of a Derry RV park and involved allegations of extensive racial harassment.<sup>300</sup> The plaintiff sought relief under 42 U.S.C. § 1981, which prohibits racial discrimination in the making and enforcing of contracts. In considering the statute of limitations defense in the defendants' motion to dismiss, the district court held that all events could be considered when evaluating the hostile environment claim, but that only events falling within the limitations period could serve as a basis for the retaliation claim.<sup>301</sup> In determining whether the defendants possessed discriminatory intent, all conduct could be considered.<sup>302</sup> The court noted that much of the harassment alleged was inflicted by other park residents and that to resolve the motion it need not address the question of "whether a landlord . . . may be held liable on a harassment theory for failing to prevent harassment by other tenants."<sup>303</sup> The case ultimately settled in 2016.

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<sup>292</sup> "Post-acquisition conduct" refers to discrimination occurring after a person buys or rents housing (i.e., after the rental or sales transaction itself).

<sup>293</sup> *United States v. Avatar Properties, Inc.*, No. 14-cv-502-LM, 2015 WL 2130540, at \*2–3 (D.N.H. May 7, 2015).

<sup>294</sup> *Id.* at \*1–2.

<sup>295</sup> Consent Decree, *United States v. Avatar Properties, Inc.*, No. 14-cv-502-LM (D.N.H. May 6, 2016).

<sup>296</sup> See Consent Order, *United States v. Talgar Gen. P'ship*, No. 1:12-cv-00219-PB (D.N.H. June 25, 2015); Complaint, *United States v. Talgar Gen. P'ship*, No. 1:12-cv-00219 (D.N.H. June 11, 2012).

<sup>297</sup> Complaint, *Talgar Gen. P'ship*, No. 1:12-cv-00219, at 2–4.

<sup>298</sup> *Id.* at 3.

<sup>299</sup> Consent Order, *Talgar Gen. P'ship*, No. 1:12-cv-00219-PB, at 2–7.

<sup>300</sup> *Dalomba v. Simonsen*, No. 15-CV-272-PB, 2016 WL 1257891 (D.N.H. Mar. 30, 2016).

<sup>301</sup> *Id.* at \*7–8.

<sup>302</sup> *Id.* at \*8.

<sup>303</sup> *Id.* at \*8 n.12.

**g. Lath v. Oak Brook Condominium Owners' Association**

An owner of a condominium unit in Manchester asserted “several dozen federal and state claims,” including claims under the FHA, against multiple defendants, including the condominium association.<sup>304</sup> In assessing the sufficiency of these claims in response to various motions to dismiss, the district court, in 2017, noted that the First Circuit has yet to consider whether the FHA creates a “hostile housing environment” cause of action but cited that other courts have recognized such an action and assumed that the First Circuit would as well.<sup>305</sup> The court also set out the standard for bringing a retaliation claim under the FHA, noting that the First Circuit had yet to do so,<sup>306</sup> but this standard was amended in a subsequent case,<sup>307</sup> discussed below.

**h. Kris v. Dusseault Family Revocable Trust of 2017**

In this case, the district court addressed a former Manchester tenant’s FHA retaliation claim against her prior landlord arising out of eviction proceedings in state court.<sup>308</sup> The tenant alleged her landlord had retaliated against her because of complaints she made to the local housing authority and to HUD, including related to her request for a reasonable accommodation.<sup>309</sup> The court cited the test for establishing an FHA retaliation claim provided in *Lath*<sup>310</sup> and further clarified that a plaintiff is not required to prove discriminatory animus, or proof of intentional discrimination based on the plaintiff’s protected-class status, to establish such a claim.<sup>311</sup>

The court determined that the FHA’s anti-retaliation provision should be construed consistent with other anti-discrimination statutes’ anti-retaliation provisions, which “provide protection not because of who people are, but because of what they do.”<sup>312</sup> Therefore, to establish an FHA retaliation claim requires proof that “(1) [the] plaintiff engaged in protected activity; (2) [the] defendant subjected [the] plaintiff to an adverse action; and (3) there was a causal connection between the protected conduct and the adverse action.”<sup>313</sup> The court denied the defendants’ motion to dismiss.<sup>314</sup>

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<sup>304</sup> *Lath v. Oak Brook Condo. Owners’ Ass’n*, No. 16-CV-463-LM, 2017 WL 1051001, at \*1 (D.N.H. Mar. 20, 2017).

<sup>305</sup> *Id.* at \*4.

<sup>306</sup> *Id.* at \*6 (The court stated that a plaintiff must show: “(1) the plaintiff is a member of an FHA-protected class; (2) the plaintiff exercised a right protected by §§ 3603–06 of the FHA, or aided others in exercising such rights; (3) the defendants’ conduct was at least partially motivated by intentional discrimination; and (4) the defendants’ conduct constituted coercion, intimidation, threat, or interference on account of having exercised, aided, or encouraged others in exercising a right protected by the FHA.”).

<sup>307</sup> *Kris v. Dusseault Family Revocable Tr. of 2017*, No. 18-CV-566-LM, 2019 WL 4647211, at \*4–5 (D.N.H. Sept. 24, 2019).

<sup>308</sup> *Id.* at \*1, 3.

<sup>309</sup> *Id.* at \*5.

<sup>310</sup> *See Lath*, No. 16-CV-463-LM, 2017 WL 1051001, at \*6.

<sup>311</sup> *Kris*, No. 18-CV-566-LM, 2019 WL 4647211, at \*4.

<sup>312</sup> *Id.* at \*4–5 (internal quotations and citations omitted).

<sup>313</sup> *Id.* at \*5.

<sup>314</sup> *Id.* at \*7. As of December 31, 2020, the case is still pending.

**i. United States v. MSM Brothers, Inc. d/b/a White Cliffs at Dover**

In December 2017, the DOJ settled a case of familial status discrimination based on allegations that a Dover landlord denied a mother with a young child a housing opportunity due to its policy of limiting families with children under 10 to first-floor units. NHLA represented the plaintiff and also conducted testing supporting the allegation. The settlement agreement required the defendant to pay the complainant \$25,000, undergo fair housing training, draft a new non-discrimination policy, and provide annual reports to the Department of Justice.<sup>315</sup>

**j. Medicaid Work Requirements**

In November 2018, New Hampshire received approval from the U.S. Secretary of Health and Human Services to impose work requirements on most non-disabled Medicaid beneficiaries ages 19 to 64, who would be required to demonstrate that they had completed 100 hours of qualifying employment or other “community engagement” activities each month or risk losing their healthcare coverage if they did not qualify for an exemption. The waiver also would have eliminated retroactive coverage for most adults under age 65 without disabilities. NHLA worked with national partners, the National Health Law Program (NHELP) and the National Center for Law and Economic Justice (NCLEJ), to challenge this approval in federal court, arguing that it violated the Administrative Procedure Act (APA), resulting in the state’s waiver being vacated by the court in July 2019<sup>316</sup> and maintaining health coverage for approximately 17,000 low-income Granite Staters who were at risk of losing it.<sup>317</sup>

**B. NEW HAMPSHIRE LEGAL DEVELOPMENTS**

**1. New Hampshire Supreme Court and Selected NHLA Fair Housing Project Cases**

**a. Eldridge v. Rolling Green at Whip-Poor-Will Condominium Owners’ Association**

In 2011, a Hudson resident and condominium owner filed a housing discrimination complaint with the New Hampshire Human Rights Commission (HRC) against the condominium association, alleging that the association had discriminated against him based on his disabilities by failing to repair a walkway in front of his unit.<sup>318</sup> The HRC found probable cause of discrimination, and the association exercised its right to have the case heard in superior court.<sup>319</sup>

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<sup>315</sup> Settlement Agreement Between the United States of America and MSM Brothers, Inc. d/b/a White Cliffs at Dover and Kim Hughes, Resolving *United States v. MSM Brothers, Inc., et al.*, 17-cv-00321 (D.N.H.) (Dec. 12, 2017).

<sup>316</sup> *Philbrick v. Azar*, 397 F. Supp. 3d 11 (D.D.C. 2019), *aff’d*, No. 19-5293, 2020 WL 2621222 (D.C. Cir. May 20, 2020), *cert. granted sub nom. Azar v. Gresham*, No. 20-37, 2020 WL 7086046 (U.S. Dec. 4, 2020).

<sup>317</sup> *Federal Court Vacates New Hampshire Medicaid Work Requirements – Statement on the United States District Court’s Decision in Philbrick v. Azar*, NHLA (July 30, 2019), <https://www.nhla.org/blog/Federal-Court-Vacates-New-Hampshire-Medicaid-Work-Requirements-entry-62>; *Victory for Medicaid Recipients in New Hampshire*, NCLEJ (July 30, 2019), <https://nclej.org/news/victory-medicaid-nh>.

<sup>318</sup> *Eldridge v. Rolling Green at Whip-Poor-Will Condo. Owners’ Ass’n*, 168 N.H. 87, 88–89 (2015).

<sup>319</sup> *Id.*

The association’s motion for summary judgment was granted, and the owner appealed.<sup>320</sup> In 2015, the New Hampshire Supreme Court determined that the date of the alleged discrimination was the date of the letter denying the owner’s request for the repair of the walkway and that the owner’s claim was therefore barred because he had not filed his complaint with the HRC within the 180-day limitations period in R.S.A. § 354–A:21, III.<sup>321</sup> The owner had argued that there was a continuing violation because the unrepaired walkway impacted him “throughout the 180-day period leading up to the filing” of his complaint.<sup>322</sup> The court held that the continuing violations theory did not apply because the association’s letter refusing to make the repair “was a discrete act that occurred on a particular day.”<sup>323</sup>

**b. Hendrick v. New Hampshire Department of Health and Human Services**

In 2016, the New Hampshire Supreme Court held that the state can no longer consider a child’s federal Supplemental Security Income (SSI) disability assistance as income when determining the family’s eligibility for state Temporary Assistance for Needy Families (TANF).<sup>324</sup> NHLA represented a mother of six and a mother of three arguing that under federal law a child’s SSI must be used only for the benefit of the child with disabilities, not the entire family, and that DHHS’s policy of treating children’s SSI as income to the family assistance group violated the Social Security Act.<sup>325</sup> The Court held that the state administrative rule He-W 654.04(c) was preempted by federal law and invalid to the extent it required inclusion of children’s SSI as income to the TANF assistance group.<sup>326</sup>

**c. Horton v. Clemens**

In 2020, the New Hampshire Supreme Court reaffirmed that for eviction actions pursuant to R.S.A. chapter 540, strict compliance with the statute’s terms is required.<sup>327</sup> R.S.A. § 540:5, II mandates that “a valid demand for rent or eviction notice shall include the same information as is requested and provided” on the judicial branch form notice.<sup>328</sup> The Court considered the question of “whether an eviction notice that does *not* contain the same information as the judicial branch form is, nonetheless, legally sufficient because it contains the information required by R.S.A. § 540:3.”<sup>329</sup> NHLA argued in its *amicus* brief that strict compliance with the requirements of

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<sup>320</sup> *Id.* at 89–90.

<sup>321</sup> *Id.* at 92.

<sup>322</sup> *Id.*

<sup>323</sup> *Id.* at 93.

<sup>324</sup> *Hendrick v. New Hampshire Dep’t of Health & Hum. Servs.*, 169 N.H. 252, 264–65 (2016).

<sup>325</sup> *Id.* at 258, 260. The United States filed an *amicus* brief supporting NHLA’s position, illustrating the significance of the case.

<sup>326</sup> *Id.* at 258, 264–65; see Allie Morris, *Children’s disability assistance isn’t income, state Supreme Court says*, Concord Monitor (Aug. 2, 2016), <https://www.concordmonitor.com/Supreme-Court-Social-Security-DHHS-NH-3817275>.

<sup>327</sup> *Horton v. Clemens*, No. 2019-0476, 2020 WL 4590499 (N.H. Aug. 11, 2020).

<sup>328</sup> N.H. R.S.A. § 540:5, II.

<sup>329</sup> *Horton*, No. 2019-0476, 2020 WL 4590499, at \*3 (emphasis in original). The eviction notice did not include the following information: “NOTE: This notice is not a court order requiring you to vacate the rental property. However, if you remain on the premises after the expiration of this notice, your landlord may continue with New Hampshire’s lawful eviction process: That process would result in you being served by a sheriff with a summons called a Landlord and Tenant Writ. If served with a Landlord and Tenant Writ, you will have the right to dispute the

R.S.A. chapter 540 is required and that the proper remedy is dismissal. The Court agreed and affirmed the trial court's dismissal of the eviction proceeding.<sup>330</sup>

**d. Settlement with Manchester Housing Authority on Behalf of Deaf Resident**

In 2015, NHLA assisted a young Deaf man who had moved into housing operated by Manchester Housing and Redevelopment Authority (MHRA) (*see* press release in App. A-35–A-36). NHLA filed a HUD complaint on the man's behalf, citing MHRA's failure to provide certified American Sign Language interpreters or adaptive intercom systems, fire alarms, and smoke detectors and alleging violations of the FHA, the Americans with Disabilities Act (ADA), and Section 504 of the Rehabilitation Act. Through a HUD-executed conciliation agreement, MHRA agreed to provide the man with financial remuneration, establish a formal policy for filing and responding to all requests for reasonable accommodations, and provide retraining for all management and staff on services for Deaf and hard-of-hearing residents (MHRA staff had received training a few years earlier due to a previous and similar discrimination case).

**e. Conciliation Agreement in Race and Disability Discrimination Case**

NHLA represented a woman in a complaint filed with HUD alleging discrimination by a subsidized housing provider based on disability and race by not granting the tenant's request for additional time to train her assistance animal and failure to take action on her complaints of racial harassment by other tenants. The case settled in 2015, and the respondent agreed to pay \$5,000 and forgive any balance owed or alleged to be owed by the complainant with respect to her past tenancy. The respondent also agreed to participate in fair housing training and to create policies on discrimination and harassment between tenants, which would be provided to all residents of the subject property who must agree to abide by its terms.

**f. Brown v. Saari**

In 2017, an Administrative Law Judge (ALJ) issued an order holding that a Keene landlord had violated the FHA by discriminating on the basis of familial status against prospective tenants, who were a married couple and their minor children.<sup>331</sup> HUD brought the case after issuing a charge of discrimination against the respondent finding that he refused to negotiate the rental of a dwelling and stated he would not rent to complainants because they had children.<sup>332</sup> NHLA's Fair Housing Project conducted testing that supported the allegations of discrimination.<sup>333</sup> The ALJ ordered the respondent to pay the complainants \$12,320 in damages, consisting of out-of-pocket expenses and emotional distress of the two adults and their oldest child, as well as to pay the Secretary of HUD \$4,000 in civil penalties.<sup>334</sup> The ALJ also ordered the respondent to undergo fair housing training.<sup>335</sup>

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reason(s) for the eviction at a hearing before a judge. To do that, you will have to file a document called an Appearance with the court where the eviction case is filed, no later than the "return date" listed on the Writ."

<sup>330</sup> *Id.* at \*4–5.

<sup>331</sup> *United States Dep't of Hous. & Urban Dev. v. Allan R. Saari*, 16-AF-0152-FH-021, HUD Office of Hearings and Appeals (Oct. 6, 2017).

<sup>332</sup> *Id.* at 1.

<sup>333</sup> *Id.* at 1, 7–8, 12–13.

<sup>334</sup> *Id.* at 14–26.

<sup>335</sup> *Id.* at 26.

**g. Domestic Violence Discrimination Settlement with Friends Program**

In 2017, NHLA represented a woman who was terminated from an emergency family shelter in Concord after disclosing her history of domestic abuse.<sup>336</sup> At the time, the woman's abuser was incarcerated and did not pose an actual risk to the shelter. NHLA filed a HUD complaint on the woman's behalf, alleging that the shelter's policy had a disparate impact on domestic violence survivors, the majority of whom are women. In settlement, the shelter agreed to change its policies so that risk assessments of applicants and residents would not be focused solely on the person's history of domestic violence. The woman also received \$5,000 in damages.

**h. White v. Hanover Hill**

NHLA represented a National Guard veteran and life-long resident of Manchester in challenging discriminatory practices at Hanover Hill Healthcare Center (*see* press release in App. A-37–A-38). Hanover Hill denied his reasonable accommodation request to use a motorized wheelchair. NHLA filed a housing discrimination complaint with HUD, and in 2017 the parties entered a conciliation agreement settling the complaint. The resident was allowed to use his motorized wheelchair after an on-site evaluation supported that he could operate it safely. Hanover Hill agreed to undergo training, help sponsor a fair housing conference for skilled nursing facilities, provide information about entitlements to accommodations to residents and applicants, and pay attorneys' fees to NHLA.

**2. Statutory Developments**

**a. Legislation Relative to the Human Rights Commission (HRC) and the State's Law Against Discrimination**

**i. Gender Identity Added as a Protected Class**

In 2018, New Hampshire passed House Bill 1319, which amended the state's Law Against Discrimination to explicitly prohibit discrimination based on gender identity.<sup>337</sup> At the time, New Hampshire was the only state in New England that had not passed anti-discrimination protections for transgender people.<sup>338</sup> The bill garnered broad bipartisan support, and Governor Sununu signed the bill into law on June 8, 2018.<sup>339</sup> Governor Sununu also signed into law House

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<sup>336</sup> *See, e.g., Settlement leads to policy change at Friends Program Shelter*, Concord Monitor (June 16, 2017), <https://www.concordmonitor.com/Concord-homeless-shelter-to-revise-policies-regarding-domestic-abuse-survivors-10607901>.

<sup>337</sup> N.H. R.S.A. § 354-A; H.B. 1319 (2018).

<sup>338</sup> *E.g., MJ Okma, New Hampshire Lawmakers Vote to Explicitly Protect Transgender People from Discrimination*, GLAAD (May 2, 2018), <https://www.glaad.org/blog/new-hampshire-lawmakers-vote-explicitly-protect-transgender-people-discrimination>.

<sup>339</sup> *E.g., Victory! New Hampshire Governor Signs Legislation Protecting Transgender People from Discrimination*, ACLU-NH (June 8, 2018), <https://www.aclu-nh.org/en/news/victory-new-hampshire-governor-signs-legislation-protecting-transgender-people-discrimination>.



Bill 587,<sup>340</sup> which bans conversion therapy for minors, “a dangerous and debunked practice that purports to change a person’s sexual orientation or gender identity.”<sup>341</sup>

## **ii. Protection from Discrimination in New Hampshire’s Schools**

In 2019, the state’s Law Against Discrimination was amended to add protections against discrimination in public schools.<sup>342</sup> The law protects public school students in New Hampshire from discrimination on the basis of age, sex, gender identity, sexual orientation, race, color, marital status, familial status, disability, religion, or national origin,<sup>343</sup> and it creates a cause of action for aggrieved persons and the attorney general against violating schools or school districts.<sup>344</sup> In addition to these changes, Senate Bill 263 requires each school district and chartered public school to develop a policy to prevent and respond to incidents of discrimination.<sup>345</sup>

### **b. Designation of Juneteenth as a New Hampshire Holiday**

In 2019, Governor Sununu signed into law Senate Bill 174, proclaiming the annual observance of Juneteenth as an official state holiday.<sup>346</sup> New Hampshire was one of the few remaining states left to do so.<sup>347</sup> The official designation of Juneteenth as a state holiday is a long-overdue recognition of the importance of the commemoration and celebration of the end of slavery in the United States.

### **c. Lead Poisoning Prevention**

New Hampshire passed Senate Bill 247 in 2018, which made several changes to the state’s lead poisoning prevention laws, including lowering the blood lead levels in children that would trigger parental and property owner notifications and DHHS investigations; establishing universal testing of blood lead levels for all 1- and 2-year-olds, with the option for parents to opt-out of testing; identifying whether lead is present in drinking water in rental housing where children are diagnosed with elevated blood lead levels, and in child care centers and schools, and addressing the problem where lead levels exceed EPA standards; establishing a loan guarantee program to assist landlords and homeowners in eliminating lead hazards; requiring insurance coverage of blood lead level testing; and requiring more complete, accurate information about lead be provided by a seller of real estate.<sup>348</sup> The bill has a phased implementation, and Governor Sununu signed it into law on February 8, 2018.<sup>349</sup>

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<sup>340</sup> N.H. R.S.A. § 332-L; H.B. 587 (2018).

<sup>341</sup> *Victory!*, *supra* note 339.

<sup>342</sup> N.H. R.S.A. § 354-A:27–28; S.B. 263 (2019).

<sup>343</sup> N.H. R.S.A. § 354-A:27.

<sup>344</sup> N.H. R.S.A. § 354-A:28.

<sup>345</sup> S.B. 263 (2019); N.H. R.S.A. § 193:39.

<sup>346</sup> N.H. R.S.A. § 4:13-aa; S.B. 174 (2019).

<sup>347</sup> *See, e.g., Gov. Sununu Signs Bill Declaring Juneteenth a State Holiday*, Seacoastonline (June 19, 2019), <https://www.seacoastonline.com/news/20190619/gov-sununu-signs-bill-declaring-juneteenth-state-holiday>.

<sup>348</sup> S.B. 247 (2018).

<sup>349</sup> *E.g., Sheila Vargas, Governor Sununu Signs SB 247 Into Law Adding Long Awaited Preventative Measures to Safeguard Granite State Children Against Lead Poisoning*, New Futures (Feb. 8, 2018), <https://new->

**d. Caregivers for Persons with Disabilities Not Tenants**

In 2018, the list of exclusions from the definition of “tenant” and “tenancy” contained in R.S.A. § 540:1-a, IV, was amended to include live-in caregivers hired to provide assistance for persons with disabilities.<sup>350</sup> In such cases, the person with disabilities can order the caregiver to vacate without legal process, provided a written agreement authorizes summary ejection, the caregiver is given 72 hours written notice to vacate, and the caregiver is paid any money due under the agreement prior to vacating the premises.<sup>351</sup>

**e. Accessory Dwelling Units**

New Hampshire’s Accessory Dwelling Units (ADU) statute became law in 2017.<sup>352</sup> The law is intended to expand the supply of housing in the state without further land development, encourage the efficient use of existing housing stock and infrastructure, and provide an affordable housing option in communities. The statute requires municipalities to allow at least one attached ADU in any zoning district in which single-family uses are permitted.<sup>353</sup> It defines an accessory dwelling unit as “a residential living unit that is within or attached to a single-family dwelling, and that provides independent living facilities for one or more persons, including provisions for sleeping, eating, cooking, and sanitation on the same parcel of land as the principal dwelling unit it accompanies.”<sup>354</sup> Municipalities are prohibited from limiting ADU occupancy based on a familial relationship with the property owner.

**f. Housing Appeals Board**

In 2019, New Hampshire passed Senate Bill 306 establishing a Housing Appeals Board, which has concurrent appellate jurisdiction with the superior court to hear appeals of municipal decisions regarding housing and housing development.<sup>355</sup> The board’s power includes the authority to determine, as part of an appeal of a local decision, whether a municipality’s land use ordinances and regulations provide a “reasonable and realistic opportunity” for development of workforce housing.<sup>356</sup> The statute is intended to provide a less costly and more expeditious way to manage disputes involving local land use law and housing development. The law went into effect on July 1, 2020, and the Board started accepting appeals in January 2021.

**g. Statewide Building Code for Accessible Design**

In 2019, Governor Sununu signed House Bill 562, which updated the definition of the state building code to include the 2015 editions of the International Building Code, the International Existing Building Code, the International Plumbing Code, the International

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[futures.org/SB247Signing](https://www.nhla.org/blog/Health-and-justice-advocates-respond-to-NH-House-passage-of-SB-247-entry-24); see also *Health and Justice Advocates Respond to NH House Passage of SB 247*, NHLA (Jan. 3, 2018), <https://www.nhla.org/blog/Health-and-justice-advocates-respond-to-NH-House-passage-of-SB-247-entry-24>.

<sup>350</sup> N.H. R.S.A. § 540:1-a, IV(h); H.B. 1589 (2018).

<sup>351</sup> N.H. R.S.A. § 540:1-a, IV(h)(1)–(3).

<sup>352</sup> N.H. R.S.A. § 674:71–73; S.B. 146 (2016).

<sup>353</sup> N.H. R.S.A. § 674:71–73.

<sup>354</sup> N.H. R.S.A. § 674:71.

<sup>355</sup> N.H. R.S.A. chapter 679; S.B. 306 (2019).

<sup>356</sup> N.H. R.S.A. § 679:5, III.

Mechanical Code, the International Energy Conservation Code, and the International Residential Code.<sup>357</sup>

#### **h. State Commission on Aging**

House Bill 621 was passed and signed into law in 2019.<sup>358</sup> It establishes a State Commission on Aging. Before the passage of this bill, the only state entity focused on aging was limited in scope to health and human services. The new Commission includes a permanent director and representatives from seven different state agencies along with regional representation.

#### **i. Protection from Arbitrary Rent Increases**

House Bill 684 was passed and signed into law in 2019.<sup>359</sup> It gives tenants in manufactured housing parks the right to petition for mediation of arbitrary or unreasonable rent increases with the costs of the mediator paid for by the park owner and requires park owners to provide notice to tenants of the opportunity for voluntary private mediation of the increase. These changes went into effect on July 1, 2019.

#### **j. Unsuccessful Legislation that Would Have Impacted Protected Class Members**

There were several legislative attempts, both positive and negative, that would have impacted protected class members. Relevant failed legislation is included below.

##### **i. Legislation Relative to the Human Rights Commission (HRC) and the State's Law Against Discrimination**

**Judicial Review of Proceedings and Expanding Jurisdiction.** House Bill 1257 was introduced in 2018 and would have required rehearings of decisions by the HRC to be held by the HRC instead of allowing parties to seek judicial review of the order.<sup>360</sup> House Bill 1504 also was introduced in 2018 and would have expanded the jurisdiction of the HRC to hear cases involving civil rights and civil liberty issues.<sup>361</sup> Both bills were deemed inexpedient to legislate.

**Complaint Procedures and Choice of Forum.** In 2020, Senate Bill 509 sought to modify the choice of forum provisions of the state's Law Against Discrimination by providing that only the complainant can remove a case from the HRC to superior court.<sup>362</sup> The bill was tabled and died in the Senate.

**Discrimination Against Persons with Pets.** In 2020, House Bill 1391 was introduced to amend the state's Law Against Discrimination to prohibit housing discrimination against someone because that person owns a pet.<sup>363</sup> The bill contained provisions for permitting dwelling

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<sup>357</sup> N.H. R.S.A. § 155-A:1; H.B. 562 (2019).

<sup>358</sup> N.H. R.S.A. chapter 19-P; H.B. 621.

<sup>359</sup> N.H. R.S.A. § 205-A:6, I and I-a; H.B. 684 (2019).

<sup>360</sup> H.B. 1257 (2018).

<sup>361</sup> H.B. 1504 (2018).

<sup>362</sup> S.B. 509 (2020).

<sup>363</sup> H.B. 1391 (2020).

owners to require pet deposits and vaccinations and to enforce reasonable rules related to quiet enjoyment of other tenants.<sup>364</sup> The bill was tabled and died in the House.

## **ii. Anti-Immigrant Legislation**

In the 2019 legislative session, New Hampshire considered several anti-immigration or anti-immigrant bills. House Bill 232, intended to create the “Anti-Sanctuary Act,” which would have required all state and local government entities “to comply with federal immigration detainer requests” and would have prohibited them from adopting policies that discourage the enforcement of federal immigration law.<sup>365</sup> House Bill 471 would have required drivers’ licenses and non-driver IDs to indicate whether the holder is a U.S. citizen.<sup>366</sup> Senate Bill 317 would have prohibited sanctuary jurisdictions in the state.<sup>367</sup> All bills were deemed inexpedient to legislate.

## **iii. Housing Opportunity Zones**

House Bill 1248 would have expanded the R.S.A. § 79-E Community Revitalization Tax Relief incentive by enabling communities to adopt “housing opportunity zones” where new housing development would get tax relief for up to ten years.<sup>368</sup> The bill also adjusted the definitions of low-income and moderate-income persons and added a very-low-income person definition to the Affordable Housing Fund statute.<sup>369</sup> The bill died in the abbreviated 2020 session.

## **iv. Sober Living Facilities / Recovery Housing**

In 2019, House Bill 311 was introduced which would have allowed municipalities to adopt ordinances regulating occupancy and safety of dwelling units operating as sober living facilities.<sup>370</sup> The bill defined “sober living facility” or “sober house” as “a dwelling unit occupied by more than 4 and less than [sic] 16 unrelated persons, all of whom are in recovery from chemical dependency and considered handicapped under 42 U.S.C. 3601, et seq., that provides a non-institutional residential setting in which residents voluntarily are subject to written rules and regulations regarding recovery from chemical dependency, including the prohibition of alcohol and illegal drug use and a required minimum of 10 hours of group therapy per month.”<sup>371</sup> The bill was deemed inexpedient to legislate.

In 2020, Senate Bill 633 was introduced which would require DHHS to adopt rules for the voluntary registration and certification of recovery housing in the state.<sup>372</sup> It defined “recovery housing” as “a residence that provides a safe, healthy, family-like substance-free living environment that support individuals in recovery from addiction and are centered on peer support and a connection to services that promote long-term recovery; provided that “recovery

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<sup>364</sup> *Id.*

<sup>365</sup> H.B. 232 (2019).

<sup>366</sup> H.B. 471 (2019).

<sup>367</sup> S.B. 317 (2019).

<sup>368</sup> H.B. 1248 (2020).

<sup>369</sup> *Id.*; see N.H. R.S.A. § 674:73.

<sup>370</sup> H.B. 311 (2019).

<sup>371</sup> *Id.*

<sup>372</sup> S.B. 633 (2020).

housing” shall not include a halfway house or any other facility requiring a license pursuant to RSA 151.”<sup>373</sup> The bill was laid on the table and died in the Senate.

#### **v. Fair Chance Hiring – Ban the Box**

In 2019, the legislature passed Senate Bill 100, but Governor Sununu vetoed the bill.<sup>374</sup> The bill would have prohibited an employer from asking about a prospective employee’s criminal history on an employment application, unless such screening is necessitated by state or federal law based on the particular position, or prior to the initial interview with the applicant.<sup>375</sup> The bill would not have prohibited employers from asking about an applicant’s criminal record during an interview, but would have banned automatic disqualification of applicants without the opportunity for them to explain their records.<sup>376</sup> Similar legislation was successfully enacted at the federal level in 2019.<sup>377</sup>

#### **vi. Notice of Rent Increases**

House Bill 1247 as amended by the House would have required landlords of certain residential properties to provide 60 days written notice of rent increases of greater than 5% and 90 days written notice for increases of greater than 8%. It would not have limited the amount of the rent increase. As amended by the Senate, the bill would have prohibited local welfare offices from requiring eviction notices before providing rental assistance, created an implied duty of good faith and fair dealing for mortgage lenders, amended the definition of tenant or tenancy in R.S.A. § 540 to provide protections for those in rooming and boarding houses who do not have another primary residence, and required landlords to offer tenants a repayment plan for rent accrued during the COVID-19 state of emergency prior to proceeding with eviction for nonpayment of rent.<sup>378</sup> Governor Sununu vetoed the bill in July 2020.<sup>379</sup>

#### **vii. Legislation Resulting from the Governor’s Affordable Housing Task Force**

In 2019, Governor Sununu created a task force to develop recommendations to address the state’s housing shortage (*see* discussion on p. 135). Two bills were introduced as a result of the task force’s work. House Bill 1629 sought to enhance training for members of municipal zoning and planning boards and charged the state Office of Strategic Initiatives with developing

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<sup>373</sup> *Id.*

<sup>374</sup> *E.g.*, Ethan DeWitt, *Only a single Sununu veto reversed by House and Senate to become law*, Concord Monitor (Sept. 19, 2019), <https://www.concordmonitor.com/New-Hampshire-Senate-takes-up-Gov-Chris-Sununu-veto-override-attempts-28625714>.

<sup>375</sup> S.B. 100 (2019).

<sup>376</sup> *E.g.*, Ethan DeWitt, *Bill preventing employers from asking about criminal records passes Senate*, Concord Monitor (March 28, 2019), <https://www.concordmonitor.com/New-Hampshire-Senate-Crossover-Day-bill-roundup-24451916>.

<sup>377</sup> *E.g.*, Kanya Bennett *et al.*, *A Fair Chance at Opportunity: The U.S. Government Bans the Box*, ACLU (Dec. 20, 2019), <https://www.aclu.org/news/smart-justice/a-fair-chance-at-opportunity-the-u-s-government-bans-the-box/>.

<sup>378</sup> H.B. 1247 (2020).

<sup>379</sup> *Governor’s Veto Message Regarding House Bill 1247* (July 10, 2020), <https://www.governor.nh.gov/sites/g/files/ehbem336/files/2020-07/hb1247-veto-message.pdf>.

and making the training materials available.<sup>380</sup> House Bill 1632 provided incentives for the development of workforce housing.<sup>381</sup> Both bills died in the shorter legislative session.

### **3. Executive Branch Developments**

#### **a. Creation of the Civil Rights Unit and Governor’s Council on Diversity and Inclusion**

In 2017, Governor Sununu announced the creation of the Civil Rights Unit within the Attorney General’s office and the establishment of the Governor’s Council on Diversity and Inclusion.<sup>382</sup> The Attorney General’s office published hate crime reporting protocols for law enforcement in 2019, intended to improve identification and response to hate crimes.<sup>383</sup>

#### **b. Creation of the Commission on Law Enforcement Accountability, Community, and Transparency**

In the wake of the death of George Floyd and the recognition that New Hampshire has an obligation and responsibility to analyze and improve relationships between law enforcement and communities of color, Governor Sununu issued an executive order establishing the Commission on Law Enforcement Accountability, Community, and Transparency in June 2020.<sup>384</sup> In response to the August 2020 final report of the commission,<sup>385</sup> Governor Sununu issued another executive order implementing many of the commission’s recommendations.<sup>386</sup>

#### **c. Creation of the Council on Housing Stability**

On November 18, 2020, Governor Sununu signed Executive Order 2020-22, establishing a Council on Housing Stability (the Council),<sup>387</sup> superseding a 2006 executive order creating the Interagency Council on Homelessness. Executive Order 2020-22 contains the following charge:

1. A Council on Housing Stability shall be established for the purposes of creating and implementing a plan to create housing stability for all citizens of the State of New Hampshire.

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<sup>380</sup> H.B. 1629 (2020).

<sup>381</sup> H.B. 1632 (2020).

<sup>382</sup> See, e.g., Britta Greene, *N.H. Creates Civil Rights Unit to Combat Discrimination*, NHPR (Dec. 14, 2017), <https://www.nhpr.org/post/nh-creates-civil-rights-unit-combat-discrimination#stream/0>.

<sup>383</sup> *Protocols for Identifying, Investigating, and Reporting Hate Crimes and Civil Rights Violations*, N.H. Dep’t of Justice Office of the Att’y Gen. (Dec. 9, 2019), <https://www.doj.nh.gov/civil-rights/documents/protocols.pdf>.

<sup>384</sup> See Exec. Order No. 2020-11, An order establishing the New Hampshire Commission on Law Enforcement Accountability, Community, and Transparency (June 16, 2020), <https://www.governor.nh.gov/sites/g/files/ehbemt336/files/documents/2020-11.pdf>.

<sup>385</sup> *Report and Recommendations*, New Hampshire Commission on Law Enforcement Accountability, Community, and Transparency (Aug. 31, 2020), <https://www.governor.nh.gov/sites/g/files/ehbemt336/files/2020-09/accountability-final-report.pdf>.

<sup>386</sup> Exec. Order No. 2020-19, An order regarding implementation of recommendations of the New Hampshire Commission on Law Enforcement Accountability, Community, and Transparency (Oct. 7, 2020), <https://www.governor.nh.gov/sites/g/files/ehbemt336/files/documents/2020-19.pdf>.

<sup>387</sup> Exec. Order No. 2020-22, An Order Establishing the Council on Housing Stability (Nov. 18, 2020), <https://www.governor.nh.gov/sites/g/files/ehbemt336/files/documents/2020-22.pdf>.

2. The Council shall develop and monitor a plan which makes recommendations to address and/or undertake the following:
  - a. Necessary measures to strengthen New Hampshire's housing market and to create housing stability for all citizens.
  - b. Conduct an affordable housing needs assessment in each county to determine the housing deficit.
  - c. The barriers to affordable housing and what can be done to remove such barriers.
  - d. The necessary system of care to support individuals and families to obtain and maintain stable housing.
  - e. Integrate and coordinate a housing stability governance structure across state government and connect to local communities by conducting ongoing needs assessment and strategic planning.
  - f. Enhance the interoperability of data systems within and across government agencies to inform and monitor program and service access, equity, and quality.
  - g. Have housing options available throughout citizens' lifespans, based on the needs and desire people have at different times of their life.
  - h. Develop a comprehensive update to the State's plan on homelessness.



# PART V: 2020 ANALYSIS OF FAIR HOUSING IMPEDIMENTS

## A. REVIEW OF FAIR HOUSING RESOURCES

### 1. Federal Resources

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

HUD is the federal agency charged with administration and enforcement of federal fair housing laws and policies, including the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and Titles II and III of the Americans with Disabilities Act. HUD's regional Office of Fair Housing and Equal Opportunity (FHEO) is located in Boston and serves New England states. HUD's website (<https://www.hud.gov>; <https://www.hud.gov/espanol>) provides access to an abundance of information on fair housing including brochures, policies and guidance memoranda, press releases, conciliation agreements, and other materials.

Persons who wish to file a complaint may file online in English or Spanish, by phone in any language, or by mail or email using the complaint form that is available in nine languages (Arabic, Cambodian, Chinese, English, Korean, Russian, Somali, Spanish, and Vietnamese). There is no cost for filing a complaint. The complaint must be filed within one year of the last date of the alleged discrimination.<sup>388</sup> Complaints are reviewed within the intake unit and, once assigned for investigation, are assigned to a team of civil rights specialists. One specialist will investigate the claim and the other will attempt to conciliate the case as required by federal statute.<sup>389</sup> Most of the investigation and conciliation efforts are done by telephone, electronic communications, and written correspondence. HUD's investigation of the complaint must be completed within 100 days after filing, unless impracticable.<sup>390</sup>

#### b. U.S. Department of Justice (DOJ), Civil Rights Division

The Housing and Civil Enforcement Section of the DOJ's Civil Rights Division is responsible for prosecuting civil violations of federal housing discrimination laws. It enforces the Fair Housing Act, the Equal Credit Opportunity Act, Title II of the Civil Rights Act of 1964, the Religious Land Use and Institutionalized Persons Act, and the Servicemembers Civil Relief Act. Its website (<https://www.justice.gov/crt/housing-and-civil-enforcement-section>; <https://www.justice.gov/crt-espanol/hce>) contains housing statements and guidance, case summaries and court documents sorted by protected class, and contact information for the Civil Rights Division. It also informs individuals that they may file a complaint with HUD within one year of the alleged discriminatory incident or file a lawsuit in federal or state court within two years of the incident.

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<sup>388</sup> 42 U.S.C. § 3610(a)(1)(A)(i).

<sup>389</sup> *Id.* § 3610(b)(1).

<sup>390</sup> *Id.* § 3610(a)(1)(B)(iv).

### **c. U.S. District Court, District of New Hampshire**

Private parties, including unrepresented persons, may file housing discrimination lawsuits in the federal District Court located in Concord. The court's website (<http://www.nhd.uscourts.gov/>) provides helpful information for pro se litigants, including an extensive civil litigation guide. It also lists organizations that provide free or low-cost legal assistance and includes information about requesting waiver of court fees for indigent persons. Although the website does not contain guidance on filing housing discrimination cases in particular, the search feature will return links to opinions in cases filed alleging discrimination under the Fair Housing Act.

## **2. State Resources**

### **a. New Hampshire Commission for Human Rights (HRC)**

The HRC is a state government department that is vested under R.S.A. § 354-A with the responsibility to “receive, investigate and pass upon complaints alleging violations of this chapter”<sup>391</sup> which covers discrimination in employment, housing, and public accommodations.<sup>392</sup> It processes relatively few complaints of housing or public accommodations discrimination, especially in comparison to the number of employment discrimination complaints it handles. This discrepancy may be partially attributed to the fact that the HRC has achieved “substantial equivalency” with the U.S. Equal Employment Opportunity Commission (EEOC) and receives funding to handle employment discrimination claims based on both state and federal law. The HRC has not yet received substantial equivalence certification from HUD and, therefore, does not receive funding from HUD to process housing discrimination complaints.

The HRC's website (<https://www.nh.gov/hrc/>) has helpful information about discrimination issues in general, but it does not highlight housing discrimination. It also includes details about the filing and processing of complaints, the voluntary mediation program, case determinations, and case data. All state-based housing discrimination complaints must be filed initially with the HRC.<sup>393</sup> Complaints may be removed to court with the HRC's permission,<sup>394</sup> which is readily granted. After a complaint is filed and screened through an intake procedure, the case is assigned to an investigator. The investigation must be completed within two years of filing.<sup>395</sup>

### **b. New Hampshire Office of the Attorney General**

The Office of the Attorney General has authority to bring civil enforcement actions under the New Hampshire Law Against Discrimination, R.S.A. chapter 354-A,<sup>396</sup> and the New Hampshire Civil Rights Act, RSA chapter 354-B.<sup>397</sup> In addition, the HRC may refer matters to the Office of the Attorney General for the office to seek injunctive relief in state or federal

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<sup>391</sup> N.H. R.S.A. § 354-A:5, VI.

<sup>392</sup> N.H. R.S.A. § 354-A:1.

<sup>393</sup> N.H. R.S.A. § 354-A:21, I(a).

<sup>394</sup> N.H. R.S.A. § 354-A:21-a, I.

<sup>395</sup> N.H. R.S.A. § 354-A:21, IV.

<sup>396</sup> N.H. R.S.A. § 354-A:21, I(a).

<sup>397</sup> N.H. R.S.A. § 354-B:2, I.

courts.<sup>398</sup> The New Hampshire Law Against Discrimination prohibits discrimination in employment,<sup>399</sup> housing,<sup>400</sup> places of public accommodation,<sup>401</sup> and public education<sup>402</sup> based on a person's actual or perceived<sup>403</sup> membership in a protected class. The New Hampshire Civil Rights Act prohibits actual or threatened violence designed to interfere with a person's lawful activities or constitutional rights when motivated by animus towards a protected class.<sup>404</sup>

In December 2017, the Office of the Attorney General established a Civil Rights Unit to investigate complaints of discrimination and civil rights violations, bring enforcement actions on behalf of the Attorney General, serve as a resource to law enforcement in the investigation and prosecution of hate-motivated acts, and serve as an educational resource for the public on matters related to anti-discrimination and civil rights. The Civil Rights Unit was created to exercise the Attorney General's enforcement authority under the New Hampshire Law Against Discrimination and the New Hampshire Civil Rights Act. The Office of the Attorney General created a website (<https://www.doj.nh.gov/civil-rights/index.htm>) through which members of the public can file complaints with the Civil Rights Unit electronically. Members of the public may also file complaints through the mail or over the phone by contacting the Office of the Attorney General. The Civil Rights Unit also receives complaints from, among other entities, law enforcement agencies, community advocacy organization, and legal assistance organizations.

### **c. State Courts**

Victims of housing discrimination may bring complaints based on state law in state court only after first filing the complaint with the HRC and requesting permission to remove the matter to court. Complaints based on the federal Fair Housing Act may be filed directly in state court. Filing fees and other costs associated with court litigation may be waived for low-income litigants. The New Hampshire Court website (<https://www.courts.state.nh.us/>) has extensive information for litigants, including a self-help center for those who are unrepresented that includes a link to the HRC website for those wishing to file a discrimination complaint.

### **d. State Non-Profit Legal Services**

#### **i. New Hampshire Legal Assistance (NHLA)**

NHLA is a non-profit statewide law firm serving low-income residents of New Hampshire. It has offices in Berlin, Claremont, Concord, Manchester, and Portsmouth. Housing law is a primary practice area for NHLA, and housing discrimination work is a key component. NHLA remains the only entity in New Hampshire that receives HUD funds to enforce the FHA. As a result, NHLA attorneys have developed an expertise in fair housing law. NHLA receives more housing discrimination complaints than either HUD or the HRC. NHLA staff investigate cases and litigate fair housing complaints with the HRC, HUD, and in federal and state court. NHLA operates the only fair housing testing program in the state and engages in outreach

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<sup>398</sup> N.H. R.S.A. § 354-A:5, XIV.

<sup>399</sup> N.H. R.S.A. § 354-A:6.

<sup>400</sup> N.H. R.S.A. § 354-A:8.

<sup>401</sup> N.H. R.S.A. § 354-A:16.

<sup>402</sup> N.H. R.S.A. § 354-A:27.

<sup>403</sup> *State v. Costella*, 166 N.H. 705, 713 (2014).

<sup>404</sup> N.H. R.S.A. § 354-B:1.

initiatives to educate housing professionals, protected class groups, social service providers, and others about state and federal housing discrimination laws. NHLA received an additional grant from HUD in 2020 to expand its education and outreach activities.

Complainants seeking legal assistance for housing discrimination issues are screened for income eligibility and may contact NHLA by phone or in person. They also may file an online application for services through NHLA's sister agency, the Legal Advice and Referral Center at <https://www.nhlegalaid.org/>. Legal services are free. NHLA's website (<https://www.nhla.org/>) offers information about its services, and NHLA has recently created a website devoted to fair housing (<https://fairhousing-nh.org/>), which is accessible to persons with disabilities and can be viewed in English, Spanish, French, Portuguese, Arabic, Swahili, and Kinyarwanda. NHLA also publishes fair housing pamphlets in these languages.

## **ii. Disability Rights Center – New Hampshire (DRC)**

The DRC is a statewide non-profit law firm located in Concord that provides free legal services to persons with disabilities, including legal advocacy and representation in housing discrimination cases. DRC maintains a comprehensive website (<https://drcnh.org/>) with details about the organization and its issue areas. The website contains access to helpful information on various aspects of housing discrimination against people with disabilities.

## **iii. American Civil Liberties Union of New Hampshire (ACLU-NH)**

The ACLU-NH is part of the nationwide network of affiliates “dedicated to preserving the individual rights and liberties guaranteed in the Bill of Rights and the Constitution.” It generally engages in impact work including fair housing advocacy and litigation. Its most recent fair housing work, both nationally and in New Hampshire, involved concerns about municipal “nuisance” ordinances that disproportionately affected domestic violence survivors and persons of color. ACLU-NH actively focuses on immigrants’ rights, prisoners’ rights and criminal justice reform, LGBTQ rights, and several other topics. Its services are free, and its website is located at <https://www.aclu-nh.org/>.

# **B. FAIR HOUSING COMPLAINT DATA 2015–2019**

This section analyzes housing discrimination complaint data collected by the HRC, HUD, and NHLA for the period of 2015 through 2019. As in the past, the review is of complaint data rather than dispositional data. Dispositional data can be misleading in that it does not necessarily reflect the merits of a case. Many cases are resolved through settlement agreements without a finding of fault. Complainants may drop out of the process for any number of reasons unrelated to the strength of a case. Other cases may be determined to lack sufficient probable cause to make a finding of discrimination. Even cases in which probable cause is found at the investigative stage may result in a court or administrative law adjudication that does not find discrimination.

The report shows the bases of discrimination for complaints filed at the three entities that enforce fair housing law in New Hampshire. The data is reported for each organization by calendar year. There is some duplication of numbers among the three organizations. Complainants may have filed complaints both at HUD and the HRC. NHLA often files

complaints it has investigated with either HUD or the HRC. NHLA manages far more cases than any other entity.

## 1. New Hampshire Housing Discrimination Complaints by Organization

Total Number of Discrimination Bases for Complaints Filed with Organization by Year			
Year	HUD	HRC	NHLA
2015	12	16	136
2016	22	11	175
2017	31	7	153
2018	30	19	177
2019	43	7	166
<b>Total</b>	<b>138</b>	<b>60</b>	<b>807</b>

## 2. Housing Discrimination Complaints Filed with NHLA

NHLA Complaints by Discrimination Type						
Year	2015	2016	2017	2018	2019	Totals
Race	5	41	23	13	16	98
Color	1	1	1	3	9	15
National Origin	7	15	9	12	18	61
Familial Status	13	20	11	5	4	53
Disability	103	87	97	129	113	529
Religion	0	0	2	0	0	2
Sex	3	4	10	9	1	27
Sexual Orientation	2	3	0	5	4	14
Marital Status	0	0	0	1	0	1
Age	2	4	0	0	1	7
Gender Identity	0	0	0	0	0	0
Retaliation	0	0	0	0	0	0
<b>Total</b>	<b>136</b>	<b>175</b>	<b>153</b>	<b>177</b>	<b>166</b>	<b>807</b>

### 3. Housing Discrimination Complaints Filed with HUD

HUD Complaints by Discrimination Type						
Year	2015	2016	2017	2018	2019	Totals
Race	1	1	0	0	5	7
Color	0	0	0	0	3	3
National Origin	0	1	0	2	4	7
Familial Status	1	2	2	1	1	7
Disability	8	14	24	20	22	88
Religion	0	0	1	1	0	2
Sex	0	2	2	1	2	7
Sexual Orientation	N/A	N/A	N/A	N/A	N/A	N/A
Marital Status	N/A	N/A	N/A	N/A	N/A	N/A
Age	N/A	N/A	N/A	N/A	N/A	N/A
Gender Identity	N/A	N/A	N/A	N/A	N/A	N/A
Retaliation	2	2	2	5	6	17
<b>Total</b>	<b>12</b>	<b>22</b>	<b>31</b>	<b>30</b>	<b>43</b>	<b>138</b>

### 4. Housing Discrimination Complaints Filed with HRC

HRC Complaints by Discrimination Type						
Year	2015	2016	2017	2018	2019	Totals
Race	1	1	0	3	0	5
Color	1	1	0	1	0	3
National Origin	0	0	1	2	0	3
Familial Status	1	0	1	0	3	5
Disability	6	2	2	5	0	15
Religion	0	0	1	0	0	1
Sex	2	0	1	5	1	9
Sexual Orientation	1	1	0	0	0	2
Marital Status	0	0	0	1	0	1
Age	2	2	0	0	0	4
Gender Identity	0	0	0	0	1	1
Retaliation	2	4	1	2	2	11
<b>Total</b>	<b>16</b>	<b>11</b>	<b>7</b>	<b>19</b>	<b>7</b>	<b>60</b>

## 5. Discussion

The HRC and HUD's Regional FHEO in Boston are the primary governmental agencies that investigate and enforce housing discrimination laws in New Hampshire. HUD also provides funding to state and local governments and non-profit organizations to promote and enforce the FHA. No governmental unit in New Hampshire is currently eligible for HUD funding because the New Hampshire Law Against Discrimination is not substantially equivalent to the FHA. Consequently, the HRC cannot accept complaints based on federal law (as it does with employment-based discrimination claims). The lack of funding and lack of ability to investigate federal and state claims simultaneously may be factors contributing to the very small number of housing discrimination complaints filed with the HRC.

HUD, by contrast, is well-recognized as a resource for filing discrimination complaints. Of the complaints filed with a governmental agency from 2015 through 2019, about 70% were filed with HUD and about 30% were filed with the HRC.

The below chart shows the total number of complaints that include discrimination based on the protected class listed for all complaints filed at the HRC, HUD, and NHLA. Disability complaints easily constitute the majority of cases.

<b>Total Number of Complaints by Discrimination Type for All Organizations, Ranked from Most Complaints Received to Least (2015–2019)</b>			
<b>Ranking</b>	<b>Discrimination Type</b>	<b>Number of Complaints</b>	<b>Percentage of Total</b>
1	Disability	632	62.89%
2	Race	110	10.95%
3	National Origin	71	7.06%
4	Familial Status	65	6.47%
5	Sex	43	4.28%
6	Retaliation	28	2.79%
7	Color	21	2.09%
8	Sexual Orientation	16	1.59%
9	Age	11	1.09%
10	Religion	5	0.50%
11	Marital Status	2	0.20%
12	Gender Identity	1	0.10%
<b>Total</b>		<b>1,005</b>	<b>100%</b>



## C. HATE CRIMES AND BIAS INCIDENTS IN NEW HAMPSHIRE

Crimes fueled by hate and incidents of bias have a direct impact on the quality of community life within New Hampshire. Obviously, those directly targeted suffer the most and deserve a robust response from law enforcement and other responsible governmental agencies as well as from community institutions and members of the public. Less obvious perhaps is the impact on how our state is perceived and experienced by members of protected class groups. Will they view New Hampshire as welcoming to them and a place where they will have full access to the opportunities our state offers? Do they feel safe in their neighborhoods, schools, and places of employment and recreation?

Evaluating the impact of bias in our state is not an easy task. Bias incidents are thought to be significantly underreported by victims. Even when a report is made to law enforcement or other governmental entity such as an educational institution, the bias aspect of the incident may not be identified or reported.<sup>405</sup> Over the past five years, New Hampshire has taken many steps forward, and a few backward, as it addresses issues of diversity, inclusion, and prejudice.

The FBI has been gathering hate crime statistics since 1992 as part of its annual Uniform Crime Report work collecting crime data from law enforcement entities throughout the United States. It defines a hate crime as “a criminal offense against a person or property motivated in whole or in part by an offender’s bias against a race, religion, disability, sexual orientation, ethnicity, gender, or gender identity.”<sup>406</sup> The number of hate crimes reported by New Hampshire law enforcement agencies remains low although there was a spike in 2016 that more than doubled previous and subsequent years for the reporting period of 2014–2018. As the below chart indicates, the majority of reported hate crimes are based on race/ethnicity, religion, and sexual orientation in that order. Additional information from the Anti-Defamation League (ADL), also contained in the chart, shows that the majority of crimes based on religious animus are against Muslims or Jews.<sup>407</sup>

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<sup>405</sup> Ronald L. Davis & Patrice O’Neill, *The Hate Crimes Reporting Gap: Low Numbers Keep Tensions High*, IACP Police Chief (May 2016), <https://www.policechiefmagazine.org/the-hate-crimes/?ref=0ca264135c970468c26b0e5118245b4d>.

<sup>406</sup> *Defining a Hate Crime*, Federal Bureau of Investigation, <https://www.fbi.gov/investigate/civil-rights/hate-crimes#Definition>.

<sup>407</sup> *ADL Hate Crime Map*, Anti-Defamation League, <https://www.adl.org/adl-hate-crime-map>.

FBI Uniform Crime Report Data for New Hampshire								
Year	Race/Ethnicity*	Religion	Sexual Orientation	Disability	Gender	Gender Identity	Totals	# Jurisdictions Reporting***
2018	7	2 (including 1 anti-Muslim crime)**	3	1	0	0	13	11
2017	8	4 (including 2 anti-Jewish crimes)	1	0	0	0	13	13
2016	15	6 (5 anti-Jewish crimes, 1 anti-Muslim crime)	5	0	0	0	28	18
2015	8	3 (2 anti-Jewish crimes, 1 anti-Muslim crime)	4	0	0	0	13	9
2014	9	1	4	0	0	0	14	11
<p>*The FBI combined Race and Ethnicity into one reporting category during this time period.</p> <p>**Data on anti-Jewish and anti-Muslim hate crimes are from the Anti-Defamation League pulled from Uniform Crime Reporting (UCR) data.</p> <p>***Jurisdictions include municipalities, counties, and the University of New Hampshire.</p>								

Both the ADL and the Southern Poverty Law Center (SPLC) track bias activities that may not amount to crimes. The ADL reports tracking sixty-eight hate incidents in New Hampshire between 2015 and 2019,<sup>408</sup> many involving hate group members distributing propaganda, anti-Semitic graffiti, and other similar incidents. The SPLC documents that there were ten hate groups in New Hampshire in 2018, four more than reported in the 2015 AI. They include anti-Muslim groups, racist skinhead, and neo-Nazi groups.<sup>409</sup>

There were several well-publicized incidents over the past few years that illustrate the challenges our state faces. The 2017 Charlottesville, Virginia “Unite the Right” rally hit closer to home when news surfaced that one of the criminally charged white supremacists was a Keene resident who became known as the “Crying Nazi.” The man, who was charged and convicted of

<sup>408</sup> ADL H.E.A.T. Map, Anti-Defamation League, <https://www.adl.org/education-and-resources/resource-knowledge-base/adl-heat-map>.

<sup>409</sup> Hate Groups in New Hampshire, Southern Poverty Law Center, <https://www.splcenter.org/states/new-hampshire>.

pepper-spraying the Virginia counter-protesters, was arrested again in Keene in January 2020 for making threats over the internet.<sup>410</sup>

An incident that occurred in Claremont in August 2017 received national attention and caused a community uproar. A young white teenager was initially suspected of a bias crime after he pushed an 8-year-old bi-racial child with a rope around his neck off a picnic table causing injury to the child. The shocking incident and public outcry precipitated an investigation by the state Attorney General's office.<sup>411</sup> The AG's office eventually determined that although the teen may have used racial slurs against the child in the past, none were used on the day of the incident. The teen was charged with several crimes but was not subject to any legal action based on racial animus.<sup>412</sup>

In April 2018, an innkeeper in Jackson assaulted a Moroccan-American couple during a dispute and made anti-Muslim and ethnic slurs against them. The Attorney General's Office prosecuted the innkeeper, charging that her actions were motivated by ethnic and religious bias. Although she avoided jail time, the innkeeper was fined a substantial amount of money, required to pay restitution to the victims, and was permanently enjoined from having any contact with the victims or engaging in any harassment of protected class members.<sup>413</sup>

In the summer of 2018, a leadership conference on increasing diversity within the state received national coverage. In response to an article in the New York Times, the Union Leader published an editorial critical of the event entitled "New Hampshire Is Too White? 'Diversify or Die' the New Motto?" warning that "[a]n event in Manchester last week aimed at deliberately 'diversifying' lily-white New Hampshire ought to be watched closely."<sup>414</sup> The then-director of communications for the New Hampshire Department of Education weighed in on his Facebook page: "we don't need or want New Hampshire to become any kind of cesspool."<sup>415</sup> Law enforcement got involved when conference attendees began receiving threats, many of those thought to originate from out of state.<sup>416</sup>

Incidents like these have provoked strong responses from government and members of the community. Communities have held rallies, listening sessions, and conferences to process the

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<sup>410</sup> Damien Fisher, *Keene's 'crying Nazi' arrested on federal threatening, extortion charges*, Union Leader (Jan. 23, 2020), [https://www.unionleader.com/news/crime/keene-s-crying-nazi-arrested-on-federal-threatening-extortion-charges/article\\_0f1294bf-4e7b-5dff-a27a-94a31edb10e0.html](https://www.unionleader.com/news/crime/keene-s-crying-nazi-arrested-on-federal-threatening-extortion-charges/article_0f1294bf-4e7b-5dff-a27a-94a31edb10e0.html).

<sup>411</sup> Jordan Cuddemi, *NH Attorney General's Office Forms Civil Rights Unit; AG Finishes Probe of Claremont Incident*, Valley News (Dec. 14, 2017), <https://www.vnews.com/Governor-Sununu-and-Attorney-General-Gordon-MacDonald-announcement-in-Concord-NH-14337429>.

<sup>412</sup> Jordan Cuddemi, *AG Says Evidence Didn't Support Hate Crime Charge in Claremont Near-Hanging*, Valley News (Aug. 7, 2019), <https://www.vnews.com/AG-Releases-Report-Into-Claremont-Near-Hanging-Incident-27556253>.

<sup>413</sup> *Innkeeper accused of assaulting couple fined \$10,000*, Union Leader (July 27, 2019), [https://www.unionleader.com/news/crime/innkeeper-accused-of-assaulting-couple-fined/article\\_ce6f7708-acc4-58e2-b81d-041553c94e34.html](https://www.unionleader.com/news/crime/innkeeper-accused-of-assaulting-couple-fined/article_ce6f7708-acc4-58e2-b81d-041553c94e34.html).

<sup>414</sup> Union Leader (July 29, 2018), [www.unionleader.com/editorials/nh-is-too-white-diversify-or-die-the-new-motto--20180729](http://www.unionleader.com/editorials/nh-is-too-white-diversify-or-die-the-new-motto--20180729). Note that the link to the editorial was not active when last checked on Jan. 9, 2021. See also Katharine Q. Seelye, *New Hampshire, 94% White, Asks How Do You Diversify a Whole State?*, New York Times (July 27, 2018), <https://www.nytimes.com/2018/07/27/us/new-hampshire-white-diversify.html>.

<sup>415</sup> Todd Feathers, *NH diversity forum attendees receiving threatening phone calls, email from white supremacists*, Union Leader (Aug. 3, 2018), [https://www.unionleader.com/news/social\\_issues/nh-diversity-forum-attendees-receiving-threatening-phone-calls-email-from-white-supremacists/article\\_ccde5e93-5d76-5fb2-bf6b-a7eda1e819c1.html](https://www.unionleader.com/news/social_issues/nh-diversity-forum-attendees-receiving-threatening-phone-calls-email-from-white-supremacists/article_ccde5e93-5d76-5fb2-bf6b-a7eda1e819c1.html).

<sup>416</sup> *Id.*

meaning of such troubling incidents and to form responses to counteract the harm.<sup>417</sup> Law enforcement agencies have increased training on hate incidents.<sup>418</sup> In December 2017, four months after the Claremont incident, Governor Sununu announced the creation of a Civil Rights Unit within the Attorney General's office and the establishment of the Governor's Council on Diversity and Inclusion.<sup>419</sup> In December 2019, the Attorney General's office published hate crime reporting protocols for law enforcement in order to improve identification and response to hate crimes.<sup>420</sup>

Hate crimes and bias incidents are the worst manifestations of bigotry. Building infrastructure capacity to support strong response to such activity is essential and the steps Governor Sununu and Attorney General MacDonald took over the last few years will make a difference if the efforts are sustained. The overarching goal, however, is to prevent such incidents from occurring. This requires much deeper effort and commitment on every level from neighbors, state and local leaders, members of community institutions, the business community, and more.

## D. PROTECTED CLASSES

Federal law prohibits housing discrimination on the basis of race, color, national origin, religion, sex, familial status, and disability.<sup>421</sup> New Hampshire's Law Against Discrimination includes all of the federally protected classes and adds four more—age, marital status, sexual orientation, and gender identity.<sup>422</sup>

The Fair Housing Act (FHA) was created to put an end to discriminatory practices involving any activities related to housing. The FHA was created with the belief that every person has the right to rent a home, purchase a home, or get a mortgage on a home without being afraid of discrimination due to their membership in a certain class.

Discriminatory practices in our society are still prevalent, although many have taken new, less visible forms that are more challenging to root out. Protected class members continue to be disadvantaged across virtually all measures and do not yet enjoy full and equal access to opportunity. This section discusses the eleven protected classes covered by federal and/or New Hampshire housing discrimination laws.

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<sup>417</sup> See, e.g., Shawne K. Wickham, *Presentation to look at 'The State of Hate in New Hampshire'*, Union Leader (Jan. 4, 2020), [https://www.unionleader.com/news/social\\_issues/presentation-to-look-at-the-state-of-hate-in-new/article\\_bbfe989b-46b0-519f-a685-2aebc06d89dc.html](https://www.unionleader.com/news/social_issues/presentation-to-look-at-the-state-of-hate-in-new/article_bbfe989b-46b0-519f-a685-2aebc06d89dc.html).

<sup>418</sup> See, e.g., Hannah Allam & Marisa Penaloza, *'We Need to Evolve': Police Get Help to Improve Hate Crime Tracking*, National Public Radio (NPR) (May 28, 2019), <https://www.npr.org/2019/05/28/726545423/we-need-to-evolve-police-get-help-to-improve-hate-crime-tracking>.

<sup>419</sup> Holly Ramer, *New Hampshire attorney general adds civil rights unit*, Union Leader (Dec. 14, 2017), <https://www.concordmonitor.com/New-Hampshire-attorney-general-adds-civil-rights-unit-14346836>.

<sup>420</sup> Michael Casey, *New Hampshire Releases Hate Crime Reporting Guidelines*, Associated Press (AP News) (Dec. 10, 2019), <https://apnews.com/4e29467478ec3aa4f89ef68af811f3b0>.

<sup>421</sup> 42 U.S.C. § 3604.

<sup>422</sup> N.H. R.S.A. § 354-A:8.

## 1. Race

Although civil rights laws prohibiting racial discrimination were initially enacted to protect African Americans, the laws' protections extended to persons of all races who have been harmed by discriminatory practices.

For the reporting period of 2015 through 2019, housing discrimination complaints based on race accounted for 12.1% (n = 98) of NHLA housing discrimination cases, 5.1% (n = 7) of HUD complaints, and 8.3% (n = 5) of HRC complaints.

New Hampshire remains far less racially diverse than many other states in the nation, but the non-White population is growing. A report from the Carsey School shows that from 2000 to 2018, the White population nationally dropped 8.7 percentage points (from 69.1% to 60.4%), whereas in New Hampshire, it declined 5.1 percentage points (from 95.1% to 90.0%).<sup>423</sup> Importantly, two-thirds of the small increase in the state's population over this same period was due to growth in the state's minority population, which more than doubled from 61,000 in 2000 to 136,000 in 2018.<sup>424</sup> Also, the report concludes that the minority population in New Hampshire is likely to continue to grow because 19.4% of the White population compared with 6.7% of the minority population is over age 65 and only 24% of White women compared to 32% of minority women "are of prime child-bearing age (20–30)."<sup>425</sup>

Although these diversification trends are encouraging, people of color in New Hampshire still are not on a level playing field with Whites in terms of access to opportunity, as discussed throughout this report, and disparities in access to opportunity begin early. A recent study found that in school systems in New England, minority students are more likely to encounter more low-income students than White peers.<sup>426</sup> Children of color also are disproportionately disciplined in New Hampshire schools.<sup>427</sup>

## 2. Color

This distinct protected class category is most often used in conjunction with allegations of racial or national origin discrimination. Several contemporary studies have documented discriminatory treatment of individuals based on the lightness or darkness of their skin both by members of the same racial/ethnic group and by members of different racial/ethnic groups.<sup>428</sup>

For the reporting period of 2015 through 2019, housing discrimination complaints based on color accounted for 1.9% (n = 15) of NHLA housing discrimination cases, 2.2% (n = 3) of HUD complaints, and 5.0% (n = 3) of HRC complaints.

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<sup>423</sup> Johnson, *supra* note 29, at 9.

<sup>424</sup> *Id.*

<sup>425</sup> *Id.* at 10.

<sup>426</sup> *Segregation emerging in NH schools: Separate remains extremely unequal, study warns*, Nashua Telegraph (Oct. 12, 2014), <https://www.nashuatelegraph.com/news/local-news/2014/10/12/segregation-emerging-in-nh-schools-separate-remains-extremely-unequal-study-warns/>.

<sup>427</sup> *Keeping Kids in School: The Urgent Need for Reform of School Discipline*, Juvenile Reform Project (Jan. 2019), [https://www.nhla.org/assets/customContent/FINAL\\_Keeping\\_Kids\\_in\\_School\\_-\\_The\\_Urgent\\_Need\\_to\\_Reform\\_School\\_Discipline\\_in\\_NH.pdf](https://www.nhla.org/assets/customContent/FINAL_Keeping_Kids_in_School_-_The_Urgent_Need_to_Reform_School_Discipline_in_NH.pdf).

<sup>428</sup> See, e.g., Joni Hersch, *Skin Color Discrimination and Immigrant Pay*, 58 Emory L.J. 358 (2009); *Shades of Difference: Why Skin Color Matters* (Evelyn Nakano Glenn ed., 2008).

### 3. National Origin

The U.S. Supreme Court has said that the term national origin refers “to the country where a person was born, or, more broadly, the country from which his or her ancestors came.”<sup>429</sup> National origin discrimination includes discrimination based on ethnicity, such as being of Latino or Arab heritage.<sup>430</sup>

A recent report highlights and details the history and patterns of immigration to Manchester, New Hampshire, and notes that immigrants’ countries of origin are changing, with a greater percentage of immigrants coming from Latin America, Asia, and Africa, largely due to resettlement of refugees since the 1980s.<sup>431</sup> It also notes the need for community supports for immigrant communities to ensure successful transitions to life in a new place.

During the period of 2015 to 2019, housing discrimination complaints based on national origin accounted for 7.6% (n = 61) of NHLA housing discrimination cases, 5.1% (n = 7) of HUD complaints, and 5.0% (n = 3) of HRC complaints.

### 4. Religion

Reports of housing discrimination based on religion are miniscule in New Hampshire. During this reporting period, housing discrimination complaints based on religion accounted for 0.2% (n = 2) of NHLA housing discrimination cases, 1.5% (n = 2) of HUD complaints, and 2.0% (n = 1) of HRC complaints. This does not mean that bias based on religion is nonexistent in New Hampshire. Reports of hate incidents and hate crimes are frequently based on the victim’s religion (or perceived religion). *See* discussion of hate crimes on pp. 126–29.

### 5. Sex

2020 marked the 100<sup>th</sup> anniversary of the passage of the 19<sup>th</sup> Amendment, which guaranteed and protected women’s constitutional right to vote. It reads, “The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.”<sup>432</sup> The passage of the 19<sup>th</sup> Amendment created the largest expansion of democracy in United States’ history.<sup>433</sup> Despite having equal voting rights for the past 100 years, women have been disadvantaged in all aspects of their lives due to their gender. It was in recognition of this fact that sex discrimination was added as a protected class in 1974.

Women make up half of New Hampshire’s population but still have not reached economic or social parity with their male counterparts. According to the recent Status of Women in New Hampshire report, 65% of New Hampshire women age 16 and over are in the labor force.<sup>434</sup> Yet women who work full-time, year-round still earn just seventy-nine cents for every

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<sup>429</sup> *Espinoza v. Farah Mfg. Co., Inc.*, 414 U.S. 86, 88 (1973).

<sup>430</sup> Robert G. Schwemm, *Housing Discrimination Law and Litigation*, 11A-3 (2009).

<sup>431</sup> Sally Ward, *Immigration to Manchester, New Hampshire*, Fed. Reserve Bank of Boston (Mar. 2, 2015), <https://www.bostonfed.org/publications/communities-and-banking/2015/spring/immigration-to-manchester-new-hampshire.aspx>.

<sup>432</sup> U.S. Const. amend. XIX.

<sup>433</sup> It is important to note that in the years after the passage of the 19<sup>th</sup> Amendment, many Black women remained disenfranchised. *See, e.g.,* Olivia B. Waxman, *It’s a Struggle They Will Wage Alone: How Black Women Won the Right to Vote*, Time (Aug. 14, 2020), <https://time.com/5876456/black-women-right-to-vote/>.

<sup>434</sup> *The Status of Women in New Hampshire*, *supra* note 85.

dollar earned by men and this gender wage gap extends over a woman's lifetime.<sup>435</sup> Women are disproportionately the victims of intimate partner and sexual violence, constitute a greater percentage of adults in poverty, and hold just 29% of seats in the New Hampshire Legislature.<sup>436</sup>

During this reporting period, complaints based on sex discrimination in housing constituted 3.4% (n = 27) of NHLA's fair housing cases, 5.1% (n = 7) of complaints HUD investigated, and 15.0% (n = 9) of the HRC's cases.

## **6. Disability**

About one out of every eight New Hampshire residents reports having a disability, which is roughly the same rate as in the nation.<sup>437</sup> For people with disabilities who are 25 or older in New Hampshire, 49.1% have at least some college education, versus 68.3% of the same population without disabilities.<sup>438</sup> The majority of people with disabilities are not employed.<sup>439</sup>

Disability discrimination comprises the largest number of cases in New Hampshire. Of NHLA's fair housing cases, 65.6% (n = 529) are based on disability, as are 63.8% (n = 88) of HUD's cases and 25.0% (n = 15) of HRC cases.

Persons with disabilities are entitled to accommodations and modifications that are related to their disabilities and which are necessary to allow them to fully use and enjoy their homes. HUD has issued several guidance statements that are very helpful for both housing professionals and persons with disabilities. Most of the complaints in New Hampshire are based on the need for accommodations or modifications. There is no violation of the law until a request is denied. The majority of these cases are resolved before any formal complaint is filed. Direct discrimination is less common but still frequent enough and often targets people with mental health disabilities (*see* Part III, pp. 88–92).

## **7. Familial Status**

In 1988, the FHA was amended to prohibit discrimination in housing based on familial status, which refers to the presence of children under 18 years in the home. Included in the class are families of many configurations including parents expecting the birth of a child, adoptive parents, foster parents, grandparents and other relatives caring for children, and parents awaiting custody of a child and may include residential facilities for children.

Low-income families are most at risk of familial status discrimination. It is often more overt and still sometimes slips into advertisements and conversations with housing providers. The cases often arise where families are denied a housing opportunity explicitly because they have children or “too many” children or are told the unit is no longer available. NHLA's testing program can be particularly effective with these types of cases. Tests may be conducted to further confirm or dispel the presence of discriminatory conduct on the part of the housing provider.

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<sup>435</sup> *Id.* at 11, 14.

<sup>436</sup> *Id.* at 8, 10, 16.

<sup>437</sup> *Facts and Figures – The 2019 Report on Disability in New Hampshire*, *supra* note 70, at 3.

<sup>438</sup> *Id.* at 4.

<sup>439</sup> *Id.* at 5.



Communities often fear a larger tax burden if too many families with children come to live in their towns.<sup>440</sup> Many municipalities invest a disproportionate share of their affordable housing opportunities on senior housing developments. Zoning restrictions often limit the development of multi-family housing. See further discussion of municipal preference for housing for older persons on p. 146.

During this reporting period, 6.6% (n = 53) of NHLA's fair housing cases were based on familial status discrimination, as were 5.1% (n = 7) of the HUD complaints and 8.3% (n = 5) of the HRC complaints.

## **8. Age**

New Hampshire law prohibits age and familial status discrimination in housing except in cases where the housing provider has met the federal and state standards required to provide housing for persons 55 and older or 62 and older.<sup>441</sup> In those cases, providers can prohibit families with children. The interplay between state and federal laws renders this area quite complex and easy to misconstrue. Many municipalities have ordinances governing housing for older persons in their communities. In earlier reporting periods, NHLA routinely handled complaints against 55+ communities that were not operating within the scope of the state and federal laws that would allow them to legally bar families with children from their developments. The incidence of these types of cases has decreased dramatically over the past decade.

A person of any age may bring an age discrimination complaint. Occasionally, NHLA has received complaints from younger persons who believe they have been turned down from a housing opportunity because of their young age and stereotypes about young people.

Age discrimination complaints have been rare and accounted for only 0.9% (n = 7) of NHLA's housing discrimination cases during this reporting period. A higher percentage of the HRC's cases were based on age discrimination at 6.7% (n = 4).

## **9. Marital Status**

Complaints of housing discrimination under New Hampshire law based upon marital status are uncommon but do occur occasionally. Marital status discrimination comprised 0.1% (n = 1) of NHLA's complaints and 1.7% (n = 1) of the HRC's cases.

## **10. Sexual Orientation**

New Hampshire added sexual orientation as a protected class in the late 1990s. Although the federal FHA does not explicitly include sexual orientation as a protected class, in 2020, the U.S. Supreme Court interpreted the sex discrimination provisions of Title VII of the Civil Rights Act (banning discrimination in employment) as encompassing discrimination based on sexual orientation or gender identity.<sup>442</sup> This is a significant ruling, likely to have an impact on the scope of future courts' interpretations of the FHA's sex discrimination provisions.

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<sup>440</sup> E.g., Peter Francese, *Age-Restricted Housing in New England*, New Hampshire Municipal Association (Oct. 2008), <https://www.nhmunicipal.org/town-city-article/age-restricted-housing-new-england>.

<sup>441</sup> 42 U.S.C. § 3607(b); N.H. R.S.A. § 354-A:15.

<sup>442</sup> *Bostock v. Clayton Cty., Georgia*, 140 S. Ct. 1731 (2020). See Legal Update, *supra* p. 104, for discussion of the case.

Few cases of sexual orientation discrimination have been reported during the 2015 to 2019 period. Of NHLA's fair housing cases, 1.7% (n = 14) were based on sexual orientation, and for the HRC, it was 3.3% (n = 2).

## 11. Gender Identity

In 2018, New Hampshire added gender identity as a protected class to its Law Against Discrimination.<sup>443</sup> It was the last state in New England to do so.<sup>444</sup> Gender identity discrimination complaints have been rare in New Hampshire. However, the 2015 U.S. Transgender Survey, which included 225 New Hampshire respondents, reported that 23% of them experienced some form of housing discrimination in that past year because of being transgender, that 28% have experienced homelessness at some point in their lives, and that 10% experienced homelessness in the past year because of being transgender.<sup>445</sup> The fact that complaints have been rare may reflect underutilization of this new protection. Consultation with leaders in the LGBTQ community is recommended to ensure there are no barriers to seeking protection. Of the fair housing complaints received by NHLA during this reporting period, none were based on gender identity, and the HRC only processed one such complaint.

Although the federal FHA does not include gender identity as a protected class, HUD has incorporated prohibitions against discrimination based on gender identity in HUD-funded housing programs. Rights for transgender people have, however, faced significant threats in more recent years from the federal administration. Although HUD issued a final rule in 2016 clarifying that the 2012 Equal Access Rule, which guaranteed its programs were “open to all eligible individuals and families regardless of sexual orientation, gender identity, or marital status,”<sup>446</sup> applies to emergency shelters, HUD issued a proposed rule in 2020 that would allow federally funded shelters whose facilities are segregated by sex to establish a policy by which the shelter considers an individual's biological sex for the purposes of determining admission to and accommodation within the shelter.<sup>447</sup>

## E. ADDITIONAL IMPEDIMENTS

### 1. Land Use Controls

As housing segregation based on income and income inequality continues to increase, overly restrictive land use controls remain a significant barrier to full housing opportunity in New Hampshire. This is so even in light of the obligation of every municipality in the state to provide its “fair share” of affordable housing. The result is that many cities and towns continue to offer limited affordable housing opportunities while concentrations of low-income neighborhoods proliferate in the larger cities and the poorest towns. These segregative conditions

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<sup>443</sup> N.H. R.S.A. § 354-A; H.B. 1319 (2018).

<sup>444</sup> *E.g.*, Okma, *supra* note 338.

<sup>445</sup> *New Hampshire State Report*, 2015 U.S. Transgender Survey (2015), <https://www.transequality.org/sites/default/files/docs/usts/USTSNHStateReport%281017%29.pdf>.

<sup>446</sup> Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity, *supra* note 213.

<sup>447</sup> Making Admission or Placement Determinations Based on Sex in Facilities Under Community Planning and Development Housing Programs, *supra* note 215.

have a disproportionate effect on housing choice for protected class members, as class membership often comes with profound economic disadvantage.

Governmental leaders, developers, housing and land use professionals, and affordable housing advocates continue to strive for creative ways to increase housing opportunities. Several initiatives came to fruition over the past five years.

The New Hampshire Accessory Dwelling Units Law went into effect in 2017. This statute permits property owners to use part of their existing dwelling to create a separate rental apartment as of right.<sup>448</sup>

In 2019, the Legislature passed R.S.A. § 679 which creates a state housing appeals board. The purpose of the statute is to provide a less costly and more expeditious way to manage disputes involving local land use law and housing development. The law went into effect on July 1, 2020.

In 2019, Governor Sununu, recognizing that New Hampshire's economic health is tied to a vibrant workforce, created an affordable housing task force drawn from a broad spectrum of experts and stakeholders throughout the state. The task force report was released in October 2019 and identified two primary barriers: local regulatory restrictions and lack of investment incentives.<sup>449</sup> The task force proposed to address these obstacles by "streamlining regulatory processes, enabling and incentivizing municipalities to adopt more housing friendly ordinances, and increasing financial incentives for private investment in affordable housing."<sup>450</sup>

As a consequence of the task force's work, two bills were introduced in the 2020 legislative season. H.B. 1629 sought to enhance training for members of municipal zoning and planning boards and charged the state Office of Strategic Initiatives with developing and making the training materials available. H.B. 1632 was designed to thwart the practice of many municipalities of favoring development of housing for older persons by providing incentives not available for developers of other types of housing. The proposed legislation would have required any development incentives to be available for any residential project, not exclusively for housing for older persons. Ultimately, neither bill passed in a legislative season abbreviated by the coronavirus pandemic, but similar legislation is expected to be introduced during the next session.

The legislature created a study commission in 2019 to review "barriers to increased density in land use development in New Hampshire."<sup>451</sup> The Commission released its final report in November 2020.<sup>452</sup> It made several findings including the need to educate municipal boards and members of the public on the value of increasing affordable housing opportunities, the imperative to dispel myths, and the recommendation to use regional planning commissions as the vehicle to work within their communities on these initiatives. The Commission made several

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<sup>448</sup> N.H. R.S.A. § 674:71–73. N.H. R.S.A. § 674:71 defines an accessory dwelling unit as "a residential living unit that is within or attached to a single-family dwelling, and that provides independent living facilities for one or more persons, including provisions for sleeping, eating, cooking, and sanitation on the same parcel of land as the principal dwelling."

<sup>449</sup> *Recommendations and Plan to Address New Hampshire's Housing Shortage Frequently Asked Questions (FAQs)*, Governor's Task Force on Affordable Housing 1 (Oct. 30, 2019), <https://www.governor.nh.gov/sites/g/files/ehbemt336/files/documents/recommendations-housing-shortage-faq.pdf>.

<sup>450</sup> *Id.*; see also *Recommendations and Plan to Address New Hampshire's Housing Shortage*, Governor's Task Force on Affordable Housing (Oct. 30, 2019), <https://www.governor.nh.gov/sites/g/files/ehbemt336/files/documents/recommendations-housing-shortage.pdf>.

<sup>451</sup> S.B. 43 (2019).

<sup>452</sup> Final Report, Commission to Study Barriers to Increased Density of Land Development in New Hampshire (Nov. 13, 2020), <http://gencourt.state.nh.us/statstudcomm/committees/1482/reports/final%20report.pdf>.

recommendations mostly aimed at the introduction of legislation to further affordable housing goals.<sup>453</sup>

## **2. Housing for Older Persons**

Both state and federal law permit provision of housing for older persons that legally excludes families with children.<sup>454</sup> The New Hampshire statute is more restrictive than the federal law for housing to be exempt from familial status discrimination. In many cases, these strictures are ill-understood or adhered to.

The development and provision of housing for older persons across all income levels in and of itself is a worthy endeavor. However, what has developed over the last several decades is a phenomenon that impacts housing opportunities for families with children, particularly those of low and moderate income. The truth is that many communities believe that the development of family housing and the increased presence of school-age children will increase their tax burden.

Municipalities have created barriers for development of family housing and incentives for senior housing projects. They often impose large lot sizes on single family developments increasing purchase costs beyond the means of many. There is pressure to limit multi-unit development and housing for older persons tends to receive more favorable treatment than proposed projects for families. The federally subsidized housing is not exempt from this trend and providers' inventories reflect a preference toward the provision of housing for older persons.<sup>455</sup>

## **3. Lead Poisoning**

Lead poisoning still is a serious risk for many of New Hampshire's children. Although the federal government banned the use of lead-containing paint in 1978, New Hampshire has some of the oldest housing stock in the nation, and, as discussed on p. 54, all but one of the NHATs had a higher—most, significantly higher—percentage of housing units constructed before 1980 than the state as a whole, which indicates that the problem is more severe for families living in areas with high concentrations of poverty and racial or ethnic minority groups. Legislation passed in 2018 which made several significant changes to the state's lead laws.<sup>456</sup> More progress is needed, however, to ensure the health of the state's children. Legislation was introduced in 2020 to help families whose children were lead poisoned due to conditions in their rented homes relocate more quickly. The bill provided a timeline for when families could expect assistance from their landlord, ensured families were aware of the assistance to which they are entitled and what options are available for relocation, and provided tenants with access to judicial process to enforce their rights if their landlord willfully fails to comply with the law.<sup>457</sup>

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<sup>453</sup> *Id.* at 6–9.

<sup>454</sup> See N.H. R.S.A. § 354-A:15 and 42 U.S.C. § 3607(b).

<sup>455</sup> Note that federally subsidized housing developers are subject to the same municipal processes as those in the private market. See also discussion on pp. 23–25, *supra*.

<sup>456</sup> See discussion on p. 112, *supra*.

<sup>457</sup> H.B. 1539 (2020).

The bill passed the House but died in the Senate. There is no safe level of lead in a child's blood, and New Hampshire children are poisoned by lead at a rate 2.5 times the national average.<sup>458</sup>

Federal grants are available through NHHFA to remove lead paint hazards in homes built before 1978. In 2020, the state of New Hampshire was awarded more than \$12.3 million in federal funds for this effort, and, of that sum, NHHFA was awarded more than \$2.4 million for the Lead Based Paint Hazard Reduction grant program and \$700,000 in Healthy Homes funding.<sup>459</sup> The state also has a Lead Paint Remediation Fund, which is available to assist residential property owners and child care facilities in addressing lead paint hazards.<sup>460</sup> Unfortunately, many property owners do not know these funds are available and they often go unused.<sup>461</sup>

#### 4. Mortgage Lending

Although mortgage loan originations increased for all racial and ethnic groups over the last five years, disparities in mortgage lending patterns based on race and ethnicity persist throughout New England including in New Hampshire. During this time period, Asian applicants fared similarly to White applicants (and sometimes even better than White applicants), while both Black and Latino applicants experienced less favorable circumstances.<sup>462</sup>

It is difficult to pin down reasons for the racial and ethnic disparities that exist in current mortgage lending scenarios, especially in a state like New Hampshire where analysis is compromised by the small numbers of individuals in racial and ethnic minority groups in the state. One recent study suggested that part of the reason for these differences is that Black and Latino borrowers tend to borrow at a higher rate from high-risk lenders with concomitant higher rates and costs.<sup>463</sup>

Homebuyer counseling and education programs are one of the most effective vehicles to increase prospective new homebuyers' access to the most favorable lending programs. In New Hampshire there are several entities that provide such programs including NHHFA, Neighborworks® Southern NH, CATCH Neighborhood Housing, and Laconia Area Community

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<sup>458</sup> *Health and Justice Advocates Praise Governor Sununu, House and Senate Leaders, for Support of SB 247*, NHLA (Jan. 2, 2018) (quoting Concord pediatrician Dr. William Storo and Rep. Frank Byron), <https://www.nhla.org/blog/Health-and-justice-advocates-praise-Governor-Sununu-House-and-Senate-leaders-for-support-of-SB-247-entry-23>.

<sup>459</sup> Paul Feely, *NH to receive \$12.3M to help protect families from lead-based paint*, Union Leader (Oct. 26, 2020), [https://www.unionleader.com/news/health/nh-to-receive-12-3m-to-help-protect-families-from-lead-based-paint/article\\_8b029381-2da6-5bb0-987d-0d62f9933ea0.html](https://www.unionleader.com/news/health/nh-to-receive-12-3m-to-help-protect-families-from-lead-based-paint/article_8b029381-2da6-5bb0-987d-0d62f9933ea0.html).

<sup>460</sup> For more information, see *Lead and Healthy Homes*, NHHFA, <https://www.nhhfa.org/rental-assistance/landlords-property-owners/lead-and-healthy-homes/>.

<sup>461</sup> Roberta Baker, *Financial aid for lead abatement often goes unused*, Laconia Daily Sun (Sept. 2, 2020), [https://www.laconiadailysun.com/news/local/financial-aid-for-lead-abatement-often-goes-unused/article\\_a6ec3e4a-e648-11ea-802c-5bf0e7cda82f.html](https://www.laconiadailysun.com/news/local/financial-aid-for-lead-abatement-often-goes-unused/article_a6ec3e4a-e648-11ea-802c-5bf0e7cda82f.html).

<sup>462</sup> See *supra* p. 67 for additional analysis of race/ethnicity and mortgage lending trends; see also Amy Higgins, *2016 Mortgage Lending Trends in New England*, Issue Brief 2018-4, Fed. Reserve Bank of Boston (Oct. 26, 2018), <https://www.bostonfed.org/publications/community-development-issue-briefs/2018/2016-mortgage-lending-trends-in-new-england.aspx>.

<sup>463</sup> Patrick Bayer *et al.*, *What Drives Racial and Ethnic Differences in High Cost Mortgages? The Role of High Risk Lenders*, Nat'l Bureau of Econ. Research (Feb. 2016), [https://www.nber.org/system/files/working\\_papers/w22004/w22004.pdf](https://www.nber.org/system/files/working_papers/w22004/w22004.pdf).

Land Trust. Continued monitoring of lending trends and practices and outreach to minority and lower-income home buyers should continue.

## **5. Economic Factors – Housing Affordability**

Housing affordability is a major barrier for many in New Hampshire and protected class members are often overrepresented in the low-income populations most at risk. The fair market rent for a two-bedroom apartment in the state is \$1,218 which would require an hourly wage of \$23.43 to pay for rent and utilities without paying more than 30% of one's income.<sup>464</sup> The state has adopted the federal minimum hourly wage of \$7.25 and the average renter's wage in the state is \$15.83 thus creating a significant affordability gap.<sup>465</sup> Lack of available housing exacerbates the problem. The 2020 rental vacancy rate in New Hampshire is 1.8%, much lower than the rest of the country (6.6%) or the Northeast region (5.5%).<sup>466</sup>

The fact of the matter is that lower and even moderate-income people very frequently cannot afford safe housing without financial assistance. People with the ability to work struggle and often fail to earn wages that allow them to afford a market-rate rent. Those relying on state TANF or APTD cash assistance or a federal SSI check receive a monthly amount far less than needed to cover household expenses and rent, yet it can take years to get to the top of the waiting list for subsidized housing or a Housing Choice voucher. Even with a voucher in hand, the lack of protection against discrimination based on source of income means that most landlords can turn down a prospective renter just because they have a voucher. Although most Public Housing Authorities that operate a voucher program provide extensions of time for the housing search, a significant number of vouchers are returned for failure to locate a rental unit (*see* note 472 and accompanying text).

These dire conditions contribute to the incidence of homelessness in the state, a condition that is on the rise. The latest data reports an increase in homelessness even before the impact of the coronavirus pandemic.<sup>467</sup> Families with children are among those “most impacted.”<sup>468</sup>

## **6. Lack of Substantial Equivalency and Investment in the Human Rights Commission**

HUD provides enforcement funds to states that have housing discrimination laws that are substantially equivalent to the FHA.<sup>469</sup> Thirty-six states and the District of Columbia are currently certified by HUD as having substantially equivalent laws.<sup>470</sup> In substantially equivalent

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<sup>464</sup> *Out of Reach*, NLIHC (2020), <https://reports.nlihc.org/sites/default/files/oor/files/reports/state/NH-2020-OOR.pdf>.

<sup>465</sup> *Id.*

<sup>466</sup> *2020 New Hampshire Residential Rental Cost Survey Report*, NHHFA (July 2020), <http://www.nhhfa.org/wp-content/uploads/2020/07/2020-Rental-Survey-Report.pdf>.

<sup>467</sup> *The State of Homelessness in New Hampshire Annual Report 2020*, NH Coalition to End Homelessness 5 (Dec. 17, 2020), <https://www.nhceh.org/research-advocacy/state-of-homelessness-in-new-hampshire>.

<sup>468</sup> *Id.*

<sup>469</sup> See 24 C.F.R. § 115.201: “Substantial equivalency certification is granted if the Department determines that a state or local agency enforces a law that is substantially equivalent to the Fair Housing Act with regard to substantive rights, procedures, remedies, and the availability of judicial review.”

<sup>470</sup> See Fair Housing Assistance Program Agencies (FHAP) at [https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/partners/FHAP/agencies](https://www.hud.gov/program_offices/fair_housing_equal_opp/partners/FHAP/agencies).

states, the responsible state agency can accept and investigate housing discrimination claims based on both federal and state law.

New Hampshire remains the only New England state without substantial equivalency. The New Hampshire Human Rights Commission (HRC) is therefore not eligible for HUD funds that support housing discrimination investigation and enforcement.

Lack of HUD enforcement funds seems to be a key factor in the HRC's low number of housing discrimination complaints (*see* table below). Both Maine and Vermont have similar racial and ethnic demographics to New Hampshire. Although Vermont's population remains well below a million inhabitants, the populations of Maine and New Hampshire are comparable. Both Maine's and Vermont's Human Rights Commissions investigate more housing discrimination cases than the HRC does.

This premise that receipt of federal funding increases enforcement activity is also borne out by a review of employment discrimination data for the three states. Both Maine and New Hampshire receive federal funds from the Equal Employment Opportunity Commission (EEOC). Vermont does not. Analysis of employment discrimination data reveals that Vermont processes far fewer employment discrimination cases than New Hampshire.



	New Hampshire Human Rights Commission	Vermont Human Rights Commission	Maine Human Rights Commission
<b>Substantial Equivalence</b>	No	Yes	Yes
<b>Budget for 2019</b>	\$679,497*	\$568,236**	\$1,414,802***
<b>Number of Staff Members and Commissioners</b>	9 Staff Members and 6 Commissioners	6 Staff Members and 5 Commissioners	13 Staff Members and 5 Commissioners
<b>State Population in 2019</b>	1.36 Million	623,989	1.34 Million
<b>COMPLAINTS RECEIVED FROM 2015 TO 2019</b>			
<b>Housing</b>	40	113	474
<b>Public Accommodations</b>	53	120	506
<b>Employment</b>	1,209	53	2,510
<p>*Includes grant from EEOC of \$118,900. <i>Sources for NH-HRC data:</i> NH-HRC Total Funds FY2019 ADJ ATH, Governor's Executive Budget Summary, FY2020–2021, <a href="https://das.nh.gov/budget/Budget2020-2021/Executive%20Summary%20Final.pdf">https://das.nh.gov/budget/Budget2020-2021/Executive%20Summary%20Final.pdf</a>; Letter from Executive Director Ahni Malachi to Gov. Christopher T. Sununu, <i>Requested Action</i> (Mar. 30, 2019), <a href="https://sos.nh.gov/media/jqxpwvhe/070-gc-agenda-041719.pdf">https://sos.nh.gov/media/jqxpwvhe/070-gc-agenda-041719.pdf</a>; State Fiscal Year Data FY2010–FY2018, New Hampshire Human Rights Commission, <a href="https://www.nh.gov/hrc/commission-data/documents/state-2010-2018.pdf">https://www.nh.gov/hrc/commission-data/documents/state-2010-2018.pdf</a>.</p> <p>**Includes grant from HUD of \$76,114. <i>Sources for VT-HRC data:</i> FY2020 Budget Request and FY2015–FY2019 Annual Reports, Vermont Human Rights Commission, <a href="https://hrc.vermont.gov/content/annual-reports-and-budgets">https://hrc.vermont.gov/content/annual-reports-and-budgets</a>. Complaint data does not include “informal” cases. <i>See, e.g.,</i> Annual Report FY2019, Vermont Human Rights Commission 10, <a href="https://hrc.vermont.gov/sites/hrc/files/FY19%20Annual%20Report.pdf">https://hrc.vermont.gov/sites/hrc/files/FY19%20Annual%20Report.pdf</a>.</p> <p>***Includes grants from HUD and EEOC totaling \$550,432. <i>Source for ME-HRC data:</i> 2019 Annual Report, Maine Human Rights Commission, <a href="https://www.maine.gov/mhrc/sites/maine.gov/mhrc/files/inline-files/MHRC%202019%20ANNUAL%20REPORT_0.pdf">https://www.maine.gov/mhrc/sites/maine.gov/mhrc/files/inline-files/MHRC%202019%20ANNUAL%20REPORT_0.pdf</a>.</p>			

The process of achieving substantial equivalency is time-consuming and would require amendments to the Law Against Discrimination and the support of the legislature and the Governor's Office. The fact that the New Hampshire Attorney General's Office has created a Civil Rights Unit is also a positive factor in HUD's substantial equivalency analysis. It has been difficult for this small agency and its unpaid commissioners to undertake this difficult process, but achieving substantial equivalency would greatly enhance access to justice for those harmed by housing discrimination. In the meantime, increasing legislative funding for the HRC should be considered. Maine's budget is significantly more than New Hampshire's. Even Vermont, with a population less than half of New Hampshire's, invests proportionately more in its Commission. Those investments are evidenced in the enforcement data and in the reporting of enforcement activities by the three states.<sup>471</sup>

<sup>471</sup> Find additional data on the three states on their websites: New Hampshire HRC at <https://www.nh.gov/hrc/>; Maine HRC at <https://www.maine.gov/mhrc/home>; and Vermont HRC at <https://hrc.vermont.gov/>.

## 7. Source-of-Income Discrimination

New Hampshire landlords still can lawfully deny housing to a qualified renter because the renter receives public benefits or participates in the Housing Choice Voucher program. However, properties subsidized through the Low-Income Housing Tax Credit (LIHTC) program must accept Section 8 vouchers, as must any property that receives funding from NHHFA. NHHFA's data from 2018 through September 2019 reveals that, on average, voucher holders had only a 61% success rate in "leasing up," or successfully using their voucher to rent a unit, within 150 days of voucher issuance.<sup>472</sup> Those who did not lease up had their vouchers reclaimed.

New Hampshire has yet to join the many states and municipalities that have enacted protections against source-of-income discrimination, and no bill has been introduced to prohibit this form of discrimination in the past five years. The consequences of this lack of protection are more severe for many protected class members who make up a disproportionate number of low-income renters. Without source-of-income protections, housing choice for low-income families is limited and concentrations of poverty more likely. It also enables landlords to use source of income as a proxy for discrimination based on an otherwise qualified renter's protected class status.<sup>473</sup>

## 8. Domestic Violence Survivor Protections in Housing

Domestic violence remains a leading cause of homelessness among women, often through eviction and access denials for reasons directly related to the violence.<sup>474</sup> Implementing strategies to prevent this phenomenon has been a key policy priority for many years, particularly at the federal level. Although challenges still exist, significant progress has been made with the implementation of recent state and federal housing protections.

The Violence Against Women Act (VAWA) 2013 reauthorization and the subsequent 2016 HUD regulations implementing the VAWA housing protections have made a positive and noticeable impact within the federally subsidized housing industry.<sup>475</sup> The protections extend to all persons regardless of gender and cover victims of domestic violence, dating violence, sexual assault, and stalking. HUD requires that a Notice of Occupancy Rights under the Violence Against Women Act be provided to every applicant who is denied access to a housing program; to every family entering into a tenancy agreement; at recertification; and upon notice of eviction or program termination. The result is that an increasing number of housing provider staff are aware of their obligations with a corresponding increase in the number of applicants, tenants and program participants who are also aware of their housing rights under VAWA.

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<sup>472</sup> Of those vouchers successfully placed, 31.9% of voucher holders were leased up within 30 days, 31.5% in 30–60 days, 15.3% in 60–90 days, 10.1% in 90–120 days, and 11.1% in 120–150 days.

<sup>473</sup> E.g., Antonia K. Fasanelli & Philip Tegeler, *Your Money's No Good Here: Combatting Source of Income Discrimination in Housing*, Human Rights Magazine (Nov. 30, 2019), [https://www.americanbar.org/groups/crsj/publications/human\\_rights\\_magazine\\_home/economic-justice/your-money-s-no-good-here--combatting-source-of-income-discrimin/](https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/economic-justice/your-money-s-no-good-here--combatting-source-of-income-discrimin/).

<sup>474</sup> *The Intimate Relationship Between Domestic Violence and Homelessness*, *supra* note 91.

<sup>475</sup> Violence Against Women Reauthorization Act of 2013, Pub. L. 113-4, 127 Stat. 54; Violence Against Women Reauthorization Act of 2013: Implementation in HUD Housing Programs, *supra* note 220. Note that VAWA was first enacted in 1995 and Congress has continued to expand protections and coverage in subsequent reauthorizations of the Act.

In 2010, New Hampshire amended its eviction statute to prohibit eviction of survivors of domestic violence, sexual assault, or stalking because of that status. The amended statute also permits bifurcated evictions allowing the landlord to evict only the violent perpetrator from the household. These protections extend to all types of rental housing whether federally subsidized or private.<sup>476</sup> The statute currently requires that the victim obtain a restraining order as a necessary condition to assert its protections.<sup>477</sup> Obtaining a restraining order is not always safe for victims and some may choose not to pursue one. Expansion of the types of documentation permissible to establish that the tenant has been victimized would serve the goal of protecting additional victims of violence from unnecessary eviction. Other examples of reliable documentary evidence to establish sufficient proof might include police reports, bail orders, criminal records, medical records, and protective agency reports.

## 9. Rigid Admission Criteria for Federally Subsidized Housing Programs

Federally subsidized housing programs have the authority to develop their own admissions policies consistent with federal statutes and regulations. HUD issued a guidance document for PHAs and owners of federally assisted housing stating that arrest records alone cannot be the basis for adverse housing decisions and that due process is required for applicants.<sup>478</sup> In many cases, however, housing providers have discretion to decide whether to admit applicants with certain types of criminal history. Rigid application of credit, criminal history, and poor landlord reference policies can have disproportionate effects on protected class members, including racial and ethnic minority groups, domestic violence survivors,<sup>479</sup> and people with mental health disabilities.<sup>480</sup>

Pervasive racial disparities in the criminal justice system mean people of color are more likely to encounter barriers to safe and affordable housing when faced with rigid policies relating to criminal history. In New Hampshire, Black people are 2.8 times more likely, and Hispanic people 1.5 times more likely, to be arrested than White people.<sup>481</sup> When examining the likelihood of being jailed compared to Whites, the disparities increase even further, to 5.2 times more likely for Blacks and 2.5 times more likely for Latinos.<sup>482</sup>

In 2016, HUD issued guidance, which applies to both private and subsidized housing providers, on how the discriminatory effects and disparate treatment theories may apply in cases where a housing provider refuses to rent to an individual based on criminal history and providing that landlords should conduct an individualized review of an applicant's history.<sup>483</sup> Blanket bans on any person with any conviction record violate the FHA.<sup>484</sup> Housing providers also should

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<sup>476</sup> N.H. R.S.A. §§ 540:2, VII and 540:14, IV.

<sup>477</sup> *Id.*

<sup>478</sup> *Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions*, Notice H 2015-10, U.S. Dep't of Hous. & Urban Dev. (Nov. 2, 2015), <https://www.hud.gov/sites/documents/15-10HSGN.PDF>.

<sup>479</sup> See discussion in *Domestic Violence Survivor Protections in Housing*, *supra* p. 141, and discussion in "Crime-Free" Ordinances, *infra* p. 145.

<sup>480</sup> See discussion in Part III, *supra* pp. 88–92.

<sup>481</sup> Corwin, *supra* note 57.

<sup>482</sup> *Id.*

<sup>483</sup> *OGC Guidance on Use of Criminal Records*, *supra* note 184.

<sup>484</sup> *Id.*; see also Camila Domonoske, *Denying Housing Over Criminal Record May Be Discrimination, Feds Say*, NHPR (Apr. 4, 2016), <https://www.nhpr.org/post/denying-housing-over-criminal-record-may-be-discrimination-feds-say#stream/0>.

consider their policies in light of recent research finding that eleven of fifteen criminal offense categories examined had no significant effect on housing outcomes and that the effect of a prior criminal offense on housing outcomes declines over time, with offenses occurring more than five years prior having no significant effect on housing outcomes.<sup>485</sup> Finally, landlords should avoid using tenant screening companies that merely provide “accept or decline” decisions and prevent review of background checks on a case-by-case basis, as these companies’ practices can violate the FHA.<sup>486</sup>

## **10. Language Access Challenges – Disparate Treatment for LEP Individuals in Housing with Federal Subsidies**

As changing communities face increased challenges to inclusion, language access is as important as ever. While language access in subsidized housing has progressed overall, several barriers still exist for LEP individuals. These challenges include lack of consistency in the development of LEP plans, limitations on the provision of interpreters, costs of interpretation, inconsistent interpreter quality, limited languages interpreted, and a need for translation of written materials. Enforcement of the mandate to provide language access requires interpreters to be highly qualified to serve LEP individuals. There is a need to develop stronger policies for improving access for LEP individuals. In developing or revising their language access plans, housing authorities should look to best practices identified by leading experts on language access. NHHFA and CDFA require that their subgrantees maintain and provide copies of language access plans. NHHFA’s language access plan is available on its website and is used as a model by many housing providers.

## **11. Lack of Information About Fair Housing Law and Protections**

Outreach and training opportunities have increased in the last five years. However, the focus groups conducted for this AI update revealed that there are still many individuals especially in the immigrant communities that are unaware of their rights and protections under the Fair Housing Act.

## **12. Lack of Quantitative Data on the Prevalence of Discriminatory Housing Practices in the State**

The lack of quantitative data on the prevalence of housing discrimination in the state is a recurring impediment. There is no centralized, easily accessible location housing data about the number of complaints of discrimination and the protected class status on which the discriminatory act was based. The five-year updates to the AI remain the best and most cost

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<sup>485</sup> Cael Warren, *Success in Housing: How Much Does Criminal Background Matter?*, Key Findings, Wilder Research (Jan. 2019),

[https://www.wilder.org/sites/default/files/imports/AEON\\_HousingSuccess\\_CriminalBackground\\_Report\\_1-19.pdf](https://www.wilder.org/sites/default/files/imports/AEON_HousingSuccess_CriminalBackground_Report_1-19.pdf)

<sup>486</sup> See *Federal court holds tenant-screening services must comply with the Fair Housing Act*, NHLP (Mar. 28, 2019) (detailing landmark decision in *Connecticut Fair Hous. Ctr. v. Corelogic Rental Prop. Sols., LLC*, 369 F. Supp. 3d 362 (D. Conn. 2019)), <https://www.nhlp.org/our-initiatives/federal-court-holds-tenant-screening-services-must-comply-with-the-fair-housing-act/>.

effective way to assess fair housing data and resources and to identify priority action items. To ensure the public has ready access to all AIs, they should be maintained and accessible online.

### 13. Persistent Systemic Bias

This last year has shown a growing number of White Americans something people of color are all too aware of as they go about their daily lives: bias based on race and ethnicity is pervasive. It is often invisible to those in the racial majority and it is not limited to individuals and organizations who profess their intentional bigotry to the world. It is built into our social systems even in New Hampshire.

The evidence is present in the numbers. Although they comprise a very small minority in the state, people of color are consistently overrepresented in a variety of adverse circumstances. “Systemic and persistent inequities contribute to a lack of access to opportunity for Granite Staters identifying with racial and ethnic minority groups.”<sup>487</sup> People belonging to racial and ethnic minority groups face poverty at a higher rate than their White neighbors.<sup>488</sup> They are disproportionately incarcerated in our prisons and jails,<sup>489</sup> face school discipline at a higher rate,<sup>490</sup> and are more likely to experience homelessness.<sup>491</sup> These inequities are also present in the incidence of coronavirus infection in people of color.<sup>492</sup> The consequences of these inequities are pervasive and lifelong.

The killing of George Floyd prompted many across the nation and including in New Hampshire to engage in soul-searching on the existence of such deep-rooted bias. The momentum must not be lost, and real solutions must be sought. Addressing racial and ethnic bias in New Hampshire must be a priority. New voices must be heard, and new leadership must emerge. It will also entail the confrontation of uncomfortable truths among those in the racial majority, even for those of good will.

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<sup>487</sup> *Inequities Between New Hampshire Racial and Ethnic Groups Impact Opportunities to Thrive*, Issue Brief, NHPFI 3 (June 30, 2020), <https://nhfpi.org/assets/2020/09/Issue-Brief-Inequities-Between-New-Hampshire-Racial-and-Ethnic-Groups-Impact-Opportunities-to-Thrive.pdf>; see also Section II.B, *supra* pp. 29–69.

<sup>488</sup> *Id.*

<sup>489</sup> E.g., Corwin, *supra* note 57; Ashley Nellis, Ph.D., *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, Sentencing Project (June 14, 2016), <https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/>.

<sup>490</sup> *Keeping Kids in School*, *supra* note 427.

<sup>491</sup> *The State of Homelessness in New Hampshire*, *supra* note 467.

<sup>492</sup> *Initial Report and Recommendations*, Governor’s COVID-19 Equity Response Team (July 12, 2020), <https://www.governor.nh.gov/sites/g/files/ehbemt336/files/documents/equity-response-team.pdf> [hereinafter *Governor’s COVID-19 Equity Report*].

## **F. REPORT ON PROGRESS ON IMPEDIMENTS IDENTIFIED IN THE 2015 AI**

The 2015 AI identified ten impediments.<sup>493</sup> This section provides a progress report.

### **1. Land Use Controls and “Crime Free” Ordinances**

#### **a. Land Use Controls**

The New Hampshire Accessory Dwelling Units Law went into effect in 2017. This statute permits property owners to use part of their existing dwelling to create a separate rental apartment as of right.<sup>494</sup> In 2019, the Legislature passed R.S.A. § 679 which creates a state housing appeals board. The purpose of the statute is to provide a less costly and more expeditious way to manage disputes involving local land use law and housing development. The law went into effect on July 1, 2020.

NHHFA has engaged consultants to review the efficacy of the Workforce Housing Law. The final report is expected in early 2021. The analysis will include a review of communities that have adopted workforce housing ordinances and an assessment of their quality and utility. It will include case studies and recommendations to provide guidance to other communities.

With \$1 million of funds from HUD through the Sustainable Communities Initiative, NHHFA established the Community Planning Grant (CPG) Program to assist municipalities in adopting land use regulations based on principals of smart growth. Since the close-out of the CPG Program in 2014, NHHFA created an online platform for CPG grantees to report of the impacts of the work that was funded.

NHHFA also established the Municipal Technical Assistance Grant (MTAG) Program, modeled on the CPG Program, to provide grants to communities to develop “housing friendly” land use regulations. MTAG is administered by Plan NH, and NHHFA participates in an advisory committee to guide the program’s implementation.

#### **b. “Crime Free” Ordinances**

Progress has been made on this impediment both within the state and nationally. “Crime-free” municipal ordinances imposed fines and other consequences upon property owners whose tenants trigger “too many” police and/or other municipal responses to a particular property. In order to avoid fines and penalties, property owners move to evict these tenants and raised concerns about the disproportionate impact on protected class members. The ordinances triggered a strong national response resulting in several significant legal actions and the issuance of legal guidance from HUD.<sup>495</sup>

As noted in the 2015 AI, New Hampshire also experienced a rise in municipalities interested in such ordinances. The City of Berlin was required to modify its ordinance and

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<sup>493</sup> 2015 AI, *supra* note 8, at 69–73.

<sup>494</sup> See *supra* note 448.

<sup>495</sup> See, e.g., *Briggs v. Borough of Norristown*, F.H.-PA-007, 2:13-cv-02191-ER (E.D. Pa. 2014), in which the ACLU sued the municipality for sex discrimination against a domestic violence victim who was being evicted because of a crime-free ordinance and based on a life-threatening attack against her; see also *OGC Guidance on Local Nuisance and Crime-Free Housing Ordinances*, *supra* note 224.



receive fair housing training after HUD initiated a complaint against the City when its ordinance was cited as the reason two property owners (who were also subject to HUD discrimination complaints) denied a housing opportunity to a domestic violence survivor.<sup>496</sup> NHLA Fair Housing Project members worked with the attorneys from the national and New Hampshire affiliate of the ACLU to successfully discourage several other municipalities from enacting crime-free ordinances. It seems that impact of the widely-publicized Berlin case and the local advocacy discouraging enactment of such ordinances was effective and there are no current concerns involving New Hampshire municipalities to report during this time period.

## **2. Housing for Older Persons**

Municipalities continue to favor housing for older persons over development of family housing. Many cities and towns skew the process further by providing bonuses for elderly housing as a means of suppressing the development of family housing. In the private housing market, there is little understanding or oversight of the state and federal law requirements that must be met to legally exclude families with children.<sup>497</sup>

In the subsidized housing market, for both Public Housing Authorities and private providers, housing for older persons makes up a disproportionate amount of the inventory. There are PHAs in the state that only provide housing for the older population and have no family-based housing programs at all.

The proposed amendments to the Workforce Housing law would have removed municipalities' ability to provide incentives exclusively for senior housing projects. The bill did not pass but may be reintroduced during the present legislative season.

In fiscal year 2021, NHHFA will engage consultants to review the impact and prevalence of age-restricted housing in New Hampshire.

## **3. Mortgage Lending**

Disparities continue to surface based on race and ethnicity but the small numbers of borrowers of color make in-depth analysis quite difficult. NHHFA and several other organizations offer home ownership counseling and education. Several of the seminars include fair housing law as part of the curriculum. In September 2020, NHHFA and St. Anselm's College Center for Ethics in Business and Government sponsored a virtual seminar on historic segregation patterns fostered by U.S. government policy. Dr. Richard Rothstein, author of *The Color of Law: A Forgotten History of How Our Government Segregated America*, was the keynote speaker.

## **4. Economic Factors – Housing Affordability**

Access to affordable housing remains a challenge in New Hampshire and throughout the nation. The vacancy rate for all levels of rental housing remains low as does the inventory of homes for sale. NHHFA and CDFA continue to adhere to stated Consolidated Plan strategies in

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<sup>496</sup> *United States Dep't of Hous. & Urban Dev. v. City of Berlin, New Hampshire*, Complaint No. 01-15-0017-8, Conciliation Agreement available at <https://archives.hud.gov/news/2015/pr15-022-TownBerlin.pdf>.

<sup>497</sup> See N.H. R.S.A. § 354-A:15, IV(a) and 24 C.F.R. § 100.300 *et seq.*



their efforts to support affordable housing opportunities in the state. The following actions took place during this reporting period.

The New Hampshire Administrative Procedures Act was amended effective July 29, 2020, to exempt CDFA from the APA's rule-making requirements which allows it to promulgate its rules using its own procedures.<sup>498</sup> CDFA changed its action plan to a Block Grant model and increased funding for housing projects while also prioritizing downtown development. It split housing and public facilities into two categories, with 30% of funds going to housing, and it is now able to provide funding to community-based development organizations. CDFA created the Community Development Investment Program, a state tax credit for community development of all types but limited to municipalities and non-profit entities. It has also conducted listening sessions and surveys of stakeholders throughout the state.

NHHFA continues to conduct analysis of affordable opportunities and publishes reports on its findings. It structures its development plans to incentivize the creation of family housing. It convenes annual statewide conferences on affordable housing development, housing and the economy, and homeownership. It has also supported legislation that would amend the Workforce Housing law with the goal of further advancing the development of affordable housing in more communities. NHHFA and CDFA continue to oversee affirmative marketing plans for grantees. CDFA has enhanced the AFFH language in its contracts.

## **5. Lack of Substantial Equivalency**

Consultation with HUD and subsequent amendments to the Law Against Discrimination are required to achieve substantial equivalency. Although HRC leadership has identified this issue as a priority, no bills have been introduced in the past five years that would bring the Law Against Discrimination in parity with the FHA and it remains an impediment (*see* pp. 138–40 for further discussion).

## **6. Source-of-Income Discrimination**

Source-of-income protections still have not been enacted in New Hampshire. LIHTC properties and properties that receive funding from NHHFA must accept Section 8 vouchers. There have been no relevant bills introduced since H.B. 1409 in 2014, which NHHFA supported. Bills have been introduced at the federal level during this reporting period to add source of income as a protected class under the FHA,<sup>499</sup> but they were not enacted.

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<sup>498</sup> See N.H. R.S.A. §§ 162-L:4-a; 162-L:4-b; 162-L:15; 162-L:17; and 541-A:21, I.

<sup>499</sup> See, e.g., Ben Lane, *Prominent Senators Being Bipartisan Push to Expand Fair Housing Act*, HousingWire (Nov. 15, 2018), <https://www.housingwire.com/articles/47416-prominent-senators-begin-bipartisan-push-to-expand-fair-housing-act/>; Warren and Colleagues Reintroduce Historic Legislation to Confront America's Housing Crisis, Press Release, Sen. Elizabeth Warren (Mar. 13, 2019), <https://www.warren.senate.gov/newsroom/press-releases/warren-and-colleagues-reintroduce-historic-legislation-to-confront-americas-housing-crisis>.

## **7. Domestic Violence Survivor Protections in Housing**

Although challenges still exist, significant progress has been made with the implementation of state and federal housing protections. Enhanced VAWA protections and HUD's subsequent notice requirements have resulted in increased awareness in the subsidized housing arena. More housing provider staff are aware of their obligations and a corresponding increase in the number of applicants, tenants, and program participants who are also aware of their housing rights under VAWA.

In 2010, New Hampshire amended its eviction statute to prohibit eviction of survivors of domestic violence, sexual assault, or stalking because of that status as well as permitting the court to limit eviction to the violent perpetrator only.<sup>500</sup> It is not clear how often these provisions have been utilized over the last decade. The statute currently requires that the victim obtain a restraining order as a necessary condition to assert its protections.<sup>501</sup> It is not always safe for victims to seek restraining orders and some may choose not to pursue one. Expansion of the types of documentation permissible to establish that the tenant has been victimized would serve the goal of protecting additional victims of violence from unnecessary eviction. Examples of reliable documentary evidence to establish sufficient proof might include police reports, bail orders, criminal records, medical records, and protective agency reports.

## **8. Rigid Admission Criteria for Federally Subsidized Housing Programs**

Although this remains an impediment to fair housing, progress has been made over the past five years. HUD issued two relevant guidance documents (discussed on pp. 142–43) for housing providers considering use of an applicant's or tenant's criminal history in making housing decisions. Also, in recognition of their obligations under the FHA, PHAs and federally subsidized housing providers in New Hampshire, on the whole, have been more receptive to reasonable accommodation claims for persons with disabilities who have criminal records or poor landlord references related to their disabilities.

## **9. Lack of Housing Discrimination Protection for Transgender Persons**

This goal was achieved in 2018 when New Hampshire's Law Against Discrimination was amended to include gender identity as a protected class.<sup>502</sup>

## **10. Lack of Information About Fair Housing Law and Protections**

Fair housing outreach and education is a key component of fair housing work and reduction of impediments. NHLA has invested many hours in providing training throughout the state and in the last five years provided training to over 1,800 persons.

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<sup>500</sup> N.H. R.S.A. §§ 540:2, VII and 540:14, IV.

<sup>501</sup> *Id.*

<sup>502</sup> N.H. R.S.A. § 354-A:1 *et seq.*

<b>Year</b>	<b>People Trained by NHLA</b>	<b>NHLA Fair Housing Pamphlets Disseminated</b>
2015	450	909
2016	271	600
2017	412	1426
2018	468	1278
2019	218	255

We feel that fair housing literacy has increased greatly over the years since NHLA received its first HUD enforcement grant. We believe that this is so particularly among subsidized housing providers and larger property owners and among social service and health advocates working directly with protected class populations. NHLA has routinely partnered with NHHFA to provide one or two statewide fair housing conferences every year until the pandemic hit.

We recognize that many in the most vulnerable communities still have challenges gaining information about their fair housing rights and that targeted outreach is needed. To this end, NHLA applied for and received an education and outreach grant that will involve partnerships with community organizations to further literacy in this area. Implementation of the grant began in late 2020.

## PART VI: EFFECTS OF THE COVID-19 GLOBAL PANDEMIC ON PROTECTED CLASS GROUPS AND LOW-INCOME PEOPLE IN NEW HAMPSHIRE

Practitioners in Public Health and community members have long understood the truth – that a public health crisis will not create disparity, it will act upon the disparities and inequities already existing, and seize upon the moment to further widen the gap and amplify the divide.<sup>503</sup>

The first case of COVID-19 was reported to the Centers for Disease Control on January 22, 2020 in the state of Washington.<sup>504</sup> New Hampshire identified its first case just a month later, on March 2, 2020.<sup>505</sup> On March 13, 2020, following the federal government's suit, Governor Sununu declared a state of emergency. As of that date, there were 6 confirmed cases of COVID-19 in the state and 1,663 in the country.<sup>506</sup> By December 31, 2020, New Hampshire had tallied 44,028 cases and the U.S. count was 20.8 million cases. At year's end, 759 New Hampshire residents had died and the U.S. experienced 352,000 fatalities.<sup>507</sup> In less than a year New Hampshire has gone from relatively low COVID-19 transmission rates to an infection rate that prompted the state Department of Health and Human Services (DHHS) to declare that community transmission risk was substantial, the highest level of threat.<sup>508</sup> Nationally, sustained failure of the federal government to implement a swift and effective public health response has resulted in unnecessary loss of life.

By March 18, 2020, comprehensive federal emergency relief legislation (the CARES Act and Families First Coronavirus Response Act) was signed into law. The laws provided relief for businesses, both large and small; state and local governments; hospitals; and individuals. It supplemented unemployment insurance benefits and extended the eligibility duration. Federal regulations were relaxed to allow for more flexibility in the administration of programs and moratoriums were implemented to prevent a flood of evictions.<sup>509</sup> There have been additional

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<sup>503</sup> *Governor's COVID-19 Equity Report*, *supra* note 492, at 4.

<sup>504</sup> Michelle L. Holshue, MPH, *et al.*, *First Case of 2019 Novel Coronavirus in the United States*, Brief Report, *New Eng. J. of Med.* (Jan. 31, 2020), <https://www.nejm.org/doi/full/10.1056/NEJMoa2001191>.

<sup>505</sup> *Explore the Data: Tracking COVID-19 in New Hampshire*, NHPR (Jan. 3, 2021), <https://www.nhpr.org/post/explore-data-tracking-covid-19-new-hampshire#stream/0>.

<sup>506</sup> Exec. Order No. 2020-04, An order declaring a state of emergency due to Novel Coronavirus (COVID-19) (Mar. 13, 2020), <https://www.governor.nh.gov/sites/g/files/ehbemt336/files/documents/2020-04.pdf>.

<sup>507</sup> *Supra* note 505 for New Hampshire data and Google for U.S. data at [https://www.google.com/search?q=number+of+U.S.+coronavirus+cases+on+December+31%2C+2020&rlz=1C1CHBF\\_enUS775US775&oq=number+of+U.S.+coronavirus+cases+on+December+31%2C+2020&aqs=chrome..69j57j22591j0j7&sourceid=chrome&ie=UTF-8](https://www.google.com/search?q=number+of+U.S.+coronavirus+cases+on+December+31%2C+2020&rlz=1C1CHBF_enUS775US775&oq=number+of+U.S.+coronavirus+cases+on+December+31%2C+2020&aqs=chrome..69j57j22591j0j7&sourceid=chrome&ie=UTF-8); *see also* N.H. Dep't of Health & Hum. Servs. reports in App. A-40–A-48.

<sup>508</sup> Shawne K. Wickham, *Risk of COVID-19 spread now 'substantial' in NH*, *Union Leader* (Oct. 31, 2020), [https://www.unionleader.com/news/health/coronavirus/risk-of-covid-19-spread-now-substantial-in-nh/article\\_b3b53c6c-9f0a-506b-815a-0d30e3cc73e9.html](https://www.unionleader.com/news/health/coronavirus/risk-of-covid-19-spread-now-substantial-in-nh/article_b3b53c6c-9f0a-506b-815a-0d30e3cc73e9.html).

<sup>509</sup> *See, e.g., Federal Government Responses to the Coronavirus (COVID-19) Pandemic*, 2020, *Ballotpedia* (Dec. 31, 2020), [https://ballotpedia.org/Federal\\_government\\_responses\\_to\\_the\\_coronavirus\\_\(COVID-19\)\\_pandemic,\\_2020](https://ballotpedia.org/Federal_government_responses_to_the_coronavirus_(COVID-19)_pandemic,_2020).

funds allocated since the initial legislation and a multitude of executive orders issued and federal agency measures implemented to ease the impact of the pandemic on the American people.

In New Hampshire, the state, working with local governments and community agencies, used federal funds to provide assistance to its residents by implementing rental relief programs and easing access to unemployment and public benefits. Governor Sununu issued a range of executive and emergency orders in response to the multitude of challenges facing the state, including orders related to non-essential business closures, remote learning, utilities disconnections, eviction bans, public benefits access, and telehealth services, among others.<sup>510</sup> Municipalities, colleges, and universities made difficult decisions about how to provide education during the pandemic.

The effects of COVID-19 have been profound and pervasive and have affected every aspect of New Hampshire life. At year's end the incidence of the disease and the death continue to rise. The full impact on the state cannot yet be accurately measured. Although the state's residents were fortunate that the state government acted decisively to protect them, the damage was not averted. Businesses large and small have been harmed, some permanently. People lost jobs and some fell into poverty. While many people fortunate enough to remain employed were able to work from home, numerous others engaged in work that brought risks of contagion. Schools have closed, reopened, and closed again, and children's educations have been severely disrupted. Parents have sometimes had to leave their jobs to care for children.

Sadly and predictably, the most vulnerable persons in the state have faced more dire COVID-19-related consequences than others. This consequence is often inextricably tied to persistent poverty. Members of protected class groups also tend to experience across-the-board disadvantages disproportionate to their presence in the population. This fact has held true during this pandemic.

## A. PROTECTED CLASS GROUPS

### 1. Age

Older persons have suffered the most during the pandemic. Across all incomes, they are more at risk of significant consequences, including death, of COVID-19 infection. In New Hampshire, people 60 and over constitute 22.5% of the diagnosed cases and 96.8% of the deaths with the majority of the deaths occurring in people 80 years or older.<sup>511</sup> Older persons most in danger are those living in nursing and assisted living facilities. New Hampshire has the highest percentage rate in the nation for COVID-19 related deaths occurring in long-term care facilities.<sup>512</sup> By the end of 2020, 32 long-term care facilities were in the midst of outbreaks and 49 others had experienced outbreaks.<sup>513</sup> Most long-term care facilities, in taking measures to

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<sup>510</sup> See 2020 COVID-19 Emergency Orders, <https://www.governor.nh.gov/news-and-media/covid-19-emergency-orders-2020>, for all orders issued related to the pandemic.

<sup>511</sup> *Case Summary: New Hampshire Laboratory-Confirmed COVID-19 Cases*, N.H. Dep't of Health & Hum. Servs.: Div. of Pub. Health Servs. (Jan. 4, 2021), <https://www.nh.gov/covid19/documents/case-summary.pdf>.

<sup>512</sup> *COVID-19 and Nursing Homes: An American Tragedy*, AARP Bulletin, Vol. 61, No. 10, at 14 (Dec. 2020).

<sup>513</sup> Mark Hayward, *New Hampshire ranks No. 1 -- in COVID-19 nursing home deaths*, Union Leader (Dec. 27, 2020), [https://www.unionleader.com/news/health/coronavirus/new-hampshire-ranks-no-1---in-covid-19-nursing-home-deaths/article\\_e0c58f5e-f6c1-5e9e-bdaa-7b2ac059c753.htm](https://www.unionleader.com/news/health/coronavirus/new-hampshire-ranks-no-1---in-covid-19-nursing-home-deaths/article_e0c58f5e-f6c1-5e9e-bdaa-7b2ac059c753.htm). Note that the article defines outbreaks as

control infection, locked down their facilities and banned visitors, robbing their residents of the ability to see their families even for those in their final hours.<sup>514</sup>

## 2. Gender

While the rate of COVID-19 cases in New Hampshire remains one of the lowest in the country, women are predominantly on the frontlines of the virus shouldering the burden in the workplace and at home as caregivers to children and aging parents. At the same time, women are more likely than men to suffer negative health and economic consequences.<sup>515</sup>

In New Hampshire, women are contracting and dying of COVID-19 at a higher percentage than men and at rates higher than in most of the country. The state was 9<sup>th</sup> of the 10 states with the highest percentages of female COVID-19 cases and one of only seven states with a higher percentage of female deaths.<sup>516</sup> Given that the state has the second highest proportion of female nursing home residents,<sup>517</sup> and that most New Hampshire fatalities have occurred in long-term care facilities, it is not surprising that women account for a higher percentage of the deaths within those facilities.<sup>518</sup>

The pandemic economy has also had a larger and more negative impact on New Hampshire women. “Despite making up 46.2% of the state’s labor force, women accounted for 58.6% of those on unemployment this past April through June.”<sup>519</sup> Single mother headed households constitute approximately 20% of New Hampshire family households.<sup>520</sup> The loss of a job or of childcare can put a family into a tailspin. For women who were able to gain or retain jobs, many are working in frontline occupations with higher infection risks.<sup>521</sup> In all, women represent 67.6% of the state’s “essential workforce”<sup>522</sup> yet their pay rates are significantly lower to their male coworkers. A recent study indicated that New Hampshire women now make only 74 cents to a New Hampshire man’s dollar.<sup>523</sup> The healthcare industry, a most vital resource for fighting and mitigating the effects of the pandemic, evidences these same gender-based wage

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specifically referring to “situations where the virus is being transmitted between multiple clusters of three or more infected people.”

<sup>514</sup> For an in-depth analysis, see *COVID-19 and Nursing Homes: An American Tragedy*, *supra* note 512.

<sup>515</sup> 2020 *Special Issue: The Impacts of COVID-19 on New Hampshire Women*, New Hampshire Women’s Foundation Gender Matters Report (Dec. 2020) (citing a New York Times article: *Coronavirus in the U.S.: Latest Map and Count* (Dec. 4, 2020)), <https://nhwomensfoundation.org/research-item/gm2020-special-issue-the-impacts-of-covid-19-on-new-hampshire-women/> [hereinafter *Gender Matters*].

<sup>516</sup> *Id.* Women comprise 53.2% of all cases and 51.6% of all fatalities.

<sup>517</sup> Tom Blonski & Brendan Williams, *Our Turn: Now more than ever, long-term care facilities need support*, Concord Monitor (June 17, 2020), <https://www.concordmonitor.com/Long-term-care-34664726>.

<sup>518</sup> *Gender Matters*, *supra* note 515.

<sup>519</sup> Michael Cousineau, *Women feel brunt of pandemic job losses*, Union Leader (Sept. 6, 2020), [https://www.unionleader.com/news/business/whats\\_working/women-feel-the-brunt-of-pandemic-job-losses/article\\_47bae95a-f339-56cc-89e6-f6d523a788b0.html](https://www.unionleader.com/news/business/whats_working/women-feel-the-brunt-of-pandemic-job-losses/article_47bae95a-f339-56cc-89e6-f6d523a788b0.html). By September 2020, the latest data available, that number had dropped to 55.9%. See *Gender Matters*, *supra* note 515.

<sup>520</sup> 2019 *New Hampshire Kids Count Data Book*, New Futures 13, <https://new-futures.org/sites/default/files/blog/attachments/2019%20Kids%20Count%20Data%20Book.pdf>.

<sup>521</sup> 3,100 healthcare workers have been diagnosed with COVID-19, representing 6.6% of New Hampshire residents diagnosed. *Case Summary: New Hampshire Laboratory-Confirmed COVID-19 Cases*, *supra* note 511.

<sup>522</sup> *Gender Matters*, *supra* note 515.

<sup>523</sup> Courtenay Stevens, *A Look at the Gender Pay Gap in 2020*, Business.org (Feb. 24, 2020), <https://www.business.org/finance/benefits/gender-pay-gap/>.

disparities even though women make up 78.6% of its workforce.<sup>524</sup> Disruptions in education and loss of childcare resources have further compromised women's economic well-being in New Hampshire as they continue to shoulder much of the responsibilities for care of their children.

### 3. Families with Children

Loss of work and income and risk of disease and educational disruptions have caused significant hardship for families with children, especially those of modest means. Almost 30% of New Hampshire families are run by a single parent, a fact that further constricts a family's economic safety net.<sup>525</sup> For those who have the ability to navigate the system, rental assistance programs and eviction moratoriums have often been the only factors preventing immediate homelessness though the prospect still looms once these protections evaporate. Federal and state easing of unemployment insurance and public benefits eligibility criteria have helped many avert crises, as did the enhanced unemployment benefit amounts and the CARES Act grants to eligible families and individuals. Childcare resources, already scarce for people of moderate or lower income, have become scarcer and have compromised some families' abilities to remain in the workforce.<sup>526</sup>

The impact on children's education has been profound and most schools have struggled to create workable models. Remote learning has been compromised by technology issues. Parents of all incomes and educational levels struggle to adjust to the new educational realities.<sup>527</sup> Families with limited English proficiency (LEP) face significant obstacles that may profoundly interfere with their children's ability to navigate remote learning on their own.<sup>528</sup> Children who received free breakfast and lunch at school but who now are engaged in remote learning may be going hungry.<sup>529</sup>

### 4. Racial and Ethnic Minority Groups

People of color have experienced the pandemic differently than people of European descent. People of Asian heritage or descent have been targets of bias incidents even in New

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<sup>524</sup> *Id.* Wage disparities in New Hampshire's healthcare sector: women earn 71.4¢–79.1¢ of a man's dollar. *Id.*

<sup>525</sup> 2019 *New Hampshire Kids Count Data Book*, *supra* note 520.

<sup>526</sup> See, e.g., Jack Rooney, *How NH arrived at a child care crisis*, NH Business Review (Nov. 9, 2020), <https://www.nhbr.com/how-nh-arrived-at-a-childcare-crisis/>.

<sup>527</sup> See, e.g., Sarah Gibson, *Two Experts On What We've Learned So Far About COVID-19 In Schools*, NHPR (Nov. 25, 2020), <https://www.nhpr.org/post/two-experts-what-weve-learned-so-far-about-covid-19-schools#stream/0>; Emily Duggan, *Broadband proves to be an issue as schools across New Hampshire switch to remote learning*, NH Business Review (Aug. 10, 2020), <https://www.nhbr.com/broadband-proves-to-be-an-issue-as-schools-across-new-hampshire-switch-to-remote-learning/>.

<sup>528</sup> Leslie M. Babinski *et al.*, *English Language Learners Need More Support During Remote Learning*, Education Week (June 19, 2020), <https://www.edweek.org/technology/opinion-english-language-learners-need-more-support-during-remote-learning/2020/06>.

<sup>529</sup> Cory Turner, *'Children Are Going Hungry': Why Schools Are Struggling to Feed Students*, NPR (Sept. 8, 2020), <https://www.npr.org/2020/09/08/908442609/children-are-going-hungry-why-schools-are-struggling-to-feed-students>; see also Tony Schinella, *The Downside of Free Lunch: NH Schools Could Get Reduced Aid*, Patch (Nov. 27, 2020), <https://patch.com/new-hampshire/concord-nh/downside-free-lunch-nh-schools-could-get-reduced-aid>.



Hampshire.<sup>530</sup> Many have connected this phenomenon to the use of pejorative language by leaders at the national level.<sup>531</sup>

Latinos and persons of African descent or heritage have been infected with COVID-19 at higher rates than their presence in the New Hampshire population. According to public health data, Latinos represent 3.9% of the state's population but 11% of those infected with COVID-19. Those of African heritage represent 1.4% of the population and 2.5% of those infected. People of Asian heritage who make up 3% of the population have experienced infection acquisition at lower rates—2.2%. All three groups hospitalizations are at percentages higher than their representation in the population. (See App. A-40–A-48 for COVID-19 case summary data.)

In March 2020, the New Hampshire Public Health Association and the DHHS Office of Health Equity partnered to create the New Hampshire COVID-19 Equity Task Force for the purpose of “address[ing] issues of equity arising from the COVID-19 pandemic and response.”<sup>532</sup> In May 2020, Governor Sununu created the COVID-19 Equity Response Team, convened to “develop a recommended strategy and plan to address the disproportionate impacts of the COVID-19 pandemic and to oversee the implementation of the recommended plan.”<sup>533</sup> Several of the task force members joined the Response Team and both groups continue to meet and monitor how communities of color are faring during the pandemic.

The Response Team's report, issued in July 2020, identified several factors that they believed contributed to the disparities and all of them were rooted, in the final analysis, in longstanding ingrained, pervasive, and institutionalized bias against racial and ethnic minority groups. The Response Team made numerous recommendations, many of them far-reaching. They ranged from immediate steps such as increasing communications, testing, and health supports within minority communities to the consideration of compassionate release for at risk incarcerated persons to review of all COVID-19-related protocols and policies through the lens of equity.<sup>534</sup>

New Hampshire residents with limited English proficiency and immigrants, both documented and undocumented, faced particular challenges. Although entities receiving federal funds have duties to evaluate their obligations to provide communications in other languages, many still fall short. Lack of effective communications during a pandemic has serious and enhanced consequences for the health and well-being of LEP individuals. As pointed out above, beyond receipt of accurate information on COVID-19, mask mandates, and other restrictions, LEP parents of school-age children often face insurmountable obstacles to navigate COVID-19-based learning programs, placing their children at further educational disadvantage.<sup>535</sup>

Fear within immigrant communities has also played a role. Federal anti-immigrant policies implemented since 2016 have placed many within immigrant communities in fear of

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<sup>530</sup> Erin Donaghue, *2,120 hate incidents against Asian Americans reported during coronavirus pandemic*, CBS News (July 2, 2020), <https://www.cbsnews.com/news/anti-asian-american-hate-incidents-up-racism/>; Kimberly Houghton, *Despite racism during the pandemic, Chinese-Americans in NH remain positive while collecting money to donate masks*, Union Leader (Apr. 6, 2020), [https://www.unionleader.com/news/health/coronavirus/despite-racism-during-pandemic-chinese-americans-in-nh-remain-positive-while-collecting-money-to-donate/article\\_2186ccba-29f5-508d-8e89-a61df9d4ddf1.html](https://www.unionleader.com/news/health/coronavirus/despite-racism-during-pandemic-chinese-americans-in-nh-remain-positive-while-collecting-money-to-donate/article_2186ccba-29f5-508d-8e89-a61df9d4ddf1.html).

<sup>531</sup> See, e.g., John Bowden, *Use of 'China virus' led to spike in anti-Asian bias: study*, The Hill (Sept. 29, 2020), <https://thehill.com/homenews/news/518806-use-of-china-virus-led-to-spike-in-anti-asian-bias-study>.

<sup>532</sup> New Hampshire COVID-19 Equity Task Force, Press Release (March 2020). For further information about the Task Force, see [https://www.nhpha.org/index.php?option=com\\_dailyplanetblog&category=newsletter](https://www.nhpha.org/index.php?option=com_dailyplanetblog&category=newsletter).

<sup>533</sup> *Governor's COVID-19 Equity Report*, *supra* note 492, at 2.

<sup>534</sup> *Id.* at 23–26.

<sup>535</sup> See note 528 and accompanying text.

interactions with state and local officials due to the risk of negative consequence ranging from seizure and deportation to being deemed a “public charge” and denied immigration status or citizenship. Federal COVID-19 relief funds excluded several classes of immigrants and members of “mixed status families from receipt of certain benefits.”<sup>536</sup> Subsequent legislation, not enacted until December 2020, included benefits for the roughly 3.5 million people in mixed-status families who were originally excluded.<sup>537</sup>

## 5. People with Disabilities

People living with disabilities account for approximately 13% of the New Hampshire population.<sup>538</sup> Although this category covers a very broad spectrum of people, many within this group face higher risk of infection and death due to COVID-19. It is estimated that there are 192,000 adults under 65 years in New Hampshire with chronic health conditions.<sup>539</sup> Those who reside in dense living situations such as nursing facilities, group homes, or other congregate living spaces are particularly at risk.

Access to health care services has been compromised during the pandemic for many people. Health care and supportive services providers across the industry struggle to maintain workers. Medical offices and mental health programs have constricted services and have limited or suspended in-person appointments. People who receive in-home supportive services may be in dire circumstances as the availability of home health workers shrink. People who are Deaf, hard-of-hearing, non-verbal, or blind may not be able to negotiate telehealth appointments or other alternatives to in-person meetings.<sup>540</sup> People with mental illness and/or substance use disorders may be more susceptible to symptom exacerbation due to isolation and fear of infection and lack of access to treatment services.<sup>541</sup>

Children with educational disabilities are particularly at risk of losing ground during the pandemic. In those school districts where learning is remote or hybrid, parents are expected to take the place of specialized professionals—a daunting task with many pitfalls. Children may be receiving diminished supports and services although it is likely that the school departments are

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<sup>536</sup> See, e.g., *Frequently Asked Questions: Eligibility for Assistance Based on Immigration Status*, NHLP et al. (July 13, 2020), [https://nlihc.org/sites/default/files/FAQs\\_Eligibility-for-Assistance-Based-on-Immigration-Status.pdf](https://nlihc.org/sites/default/files/FAQs_Eligibility-for-Assistance-Based-on-Immigration-Status.pdf).

<sup>537</sup> See, e.g., Juan Gastelum, *National Immigration Law Center (NILC) Statement Regarding \$900 Billion COVID Relief Package*, NILC (Dec. 21, 2020), <https://www.nilc.org/2020/12/21/nilc-statement-regarding-900-billion-covid-relief-package/>; Camilo Montoya-Galvez, *Mixed-status immigrant families to receive stimulus checks under COVID relief package*, ABC News (Dec. 28, 2020), <https://www.cbsnews.com/news/stimulus-check-mixed-status-family-immigrant-eligible/>.

<sup>538</sup> *New and Expanded Challenges Facing Vulnerable People in New Hampshire*, Issue Brief, NHFPI 8 (Sept. 23, 2020), <https://nhfpi.org/resource/new-and-expanded-challenges-facing-vulnerable-populations-in-new-hampshire/>.

<sup>539</sup> *Id.* at 7–8.

<sup>540</sup> *Id.*; see also Michelle Diamant, *COVID-19 Disproportionately Impacting Those with Developmental Disabilities*, Disability Scoop (Sept. 8, 2020), <https://www.disabilityscoop.com/2020/09/08/covid-19-disproportionately-impacting-developmental-disabilities/28909/>; Michael McKee, MD, MPH, et al., *Overcoming Additional Barriers for Deaf and Hard of Hearing Patients During COVID-19*, JAMA Otolaryngology Head & Neck Surgery (July 16, 2020), <https://jamanetwork.com/journals/jamaotolaryngology/fullarticle/2768217>; Courtney Harold Van Houtven & Walter D. Dawson, *Medicare and Home Health: Taking Stock in the COVID-19 Era*, Issue Brief, Commonwealth Fund (Oct. 2020), [https://www.commonwealthfund.org/sites/default/files/2020-10/VanHoutven\\_Medicare\\_home\\_health\\_COVID\\_ib\\_v2.pdf](https://www.commonwealthfund.org/sites/default/files/2020-10/VanHoutven_Medicare_home_health_COVID_ib_v2.pdf).

<sup>541</sup> Nirmita Panchal et al., *The Implication of COVID-19 for Mental Health and Substance Use*, Issue Brief, Kaiser Family Foundation (Aug. 20, 2020), <https://www.kff.org/coronavirus-covid-19/issue-brief/the-implications-of-covid-19-for-mental-health-and-substance-use/>.

still obligated to provide them. Children whose parents cannot work remotely or do not have the ability to stand in for professional educators have been particularly harmed.<sup>542</sup>

The full impact of disparities experienced by members of protected class groups will not be completely realized until more data and information become available. Mitigation of the inequities suffered is dependent on a commitment of money and other resources to not only address the root causes but also to take steps to prevent continuing harm to those affected.

## **B. EFFECTS OF THE PANDEMIC ON LOW-INCOME PEOPLE: FEEDBACK FROM ADVOCATES**

The pandemic's effects are far-reaching, extending well beyond the daunting task of handling the public health aspects of the crisis. State and local governments and non-profit organizations have worked to serve the people of the state under extremely stressful circumstances managing ballooning service requests, administering emergency state and federal funds with complicated rules, dealing with inadequate technology, contending with insufficient staff to carry out the tasks, and all the while dealing with the mitigation of infection risk to their own staff members and members of the public.

We interviewed several advocates from non-profit law firms and social service organizations that serve low-income people about the barriers their clients encounter. It was clear from the conversations that the poorest in the state face significant obstacles that reach far beyond the ever-present risk of infection.

### **1. Physical Closures and Access to Benefits**

At the onset of the pandemic, everything physically closed down, including government offices and community agencies providing vital services. There was no ability to go into an office or a court and speak to an employee. Telephonic or electronic communications can be difficult or impossible for many, and the effects of the digital divide have become more starkly pronounced. Even if one has access to a phone or computer, many agencies have been overwhelmed and have struggled to respond to the heightened needs and to interpret new rules and guidelines accurately. Advocates report long telephonic wait times, sometimes up to one to two hours, to reach a human being at some agencies. For people who often only have "minutes" available on their phone plan, access may be insurmountable.

Widespread closures compromised access to benefits in innumerable ways. In the pre-pandemic world, many used the services of other agencies to submit crucial information and documents to other programs. Caseworkers may scan and email a copy of time-sensitive documents such as an eviction notice or notice of termination of benefits to a legal services attorney. Public housing authority staff may assist applicants in filling out complicated paperwork. Libraries provided access to computers and copy machines. Those resources have not been available.

As described above, many emergency programs were put into place to support people in crisis including access to rental funds, eviction prevention measures, enhanced unemployment

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<sup>542</sup> Angela Nelson, *How COVID-19 Has Affected Special Education Students*, TuftsNow (Sept. 29, 2020), <https://now.tufts.edu/articles/how-covid-19-has-affected-special-education-students>.

benefits, and relaxed eligibility requirements for unemployment and other benefit programs. To obtain these benefits, applicants were generally required to submit paperwork and often under deadlines. Timely submission of documents was complicated for those without access to technology and reliant on mail. In the midst of the pandemic, the American people learned that bureaucratic measures had been taken that slowed down the U.S. Postal Service.<sup>543</sup> For time-sensitive documents, the combination of impediments could amount to a loss or denial of a crucial benefit.

Although some agencies have relaxed deadlines, matters involving court cases generally do not have the same flexibility. One legal advocate described a situation in which a tenant was facing eviction and was required to file a document under a very short deadline. The tenant had no car and no access to a computer to download the form required for court submission. The advocate had to mail the document and worried about delays in its arrival to the tenant who then had to fill out the document and mail it to the court and opposing party and hope that it arrived before the deadline.

## **2. Navigating the Bureaucracy**

Legal advocates remark that it is very difficult for people to gain the help they need on their own, yet the pool of people once available to help them, formally and informally, are also less accessible. Many of the forms and applications required to access COVID-19 benefits are difficult for applicants successfully complete on their own. Advocates have complained that the rental relief programs run by the state's Community Action Programs are "bogged down in bureaucracy" with a burdensome application process that hinders access for many.

Advocates have seen an increase in "missing" documents that has forced clients to pay for additional copying and mailing costs and triggered further delays in obtaining a benefit. Even clients who have submitted documents electronically have found that the documents never "attached" to the agency file. Several people report clients having to submit documents more than once.

## **3. Access to Justice**

The majority of court hearings are being held telephonically. Advocates describe the hearings as challenging for all concerned but particularly so for *pro se* (unrepresented) parties who one advocate described as being at "extreme disadvantage." Risks of misunderstandings abound with people speaking over one another, connectivity problems and background noise, and the limitations presented by "voice only" evidentiary hearings. For LEP or Deaf individuals who need interpreters, telephonic hearings are even more problematic.

## **4. Domestic Violence**

At the beginning of the pandemic, courts and shelters were physically shut down. One advocate said that "the pandemic has been great for abusers." Victims of family violence were

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<sup>543</sup> Jacob Bogage, *Postal Service Memos Detail 'Difficult' Changes, Including Slower Mail Delivery*, Washington Post (July 14, 2020), <https://www.washingtonpost.com/business/2020/07/14/postal-service-trump-dejoy-delay-mail/>.

more at risk, at home with their abusers with no excuses to leave their home and no ability to seek help. Abusers have also used COVID-19 as leverage in custody and visitation disputes. There have been cases of the abusive parent withholding the children from the other parent until the pandemic abates.

The number of referrals for help initially decreased but has now been trending upward and advocates are also seeing an escalation in the severity of the violence. Some domestic violence programs are placing victims in hotels until their shelters can safely reopen. Many of the programs have experienced turnovers in their staff.

It can now take several weeks for victims to get an appointment with an attorney because of the number of attorneys available related to the number of new cases. Some victims have decided to resolve their cases through less favorable and safe agreements just to be able to move on. Court cases are also backlogged. Courts are still allowing some in-person hearings for domestic violence cases.

## **5. Children's Law**

Children with special education needs are falling through the cracks during the pandemic—especially those children whose parents are unable to advocate for them. One advocate spoke about a child who had not received any educational services since March. Poor families generally do not have the resources to effectively manage remote special education services from home. If they are working, they are less likely to have jobs where they can work remotely. The New Hampshire Disability Rights Center recently began a program specifically focused on advocacy for children with special education needs during the pandemic. The attorney assigned to the project will represent individual clients but will also look at systemic pandemic-related issues.

## **6. Housing**

With an overall vacancy rate of 1.8%, there are not many apartments available, and the vacancy rate declines even further for more affordable apartments.<sup>544</sup> This significantly impacts access to affordable housing. Homeless advocates and public housing administrators report that people who have finally received a Section 8 voucher are experiencing increased difficulties finding landlords who will accept their vouchers and that some will be unsuccessful in placing the voucher and will lose it.

The eviction moratoriums have been effective in keeping people housed but advocates worry about a flood of evictions when they finally end. Even during the pandemic, some landlords have tried strategies to remove tenants who owe them rent. Advocates have seen an increase in evictions based upon the alleged need to renovate apartments.

Landlord/tenant disputes have arisen about a number of pandemic-related topics. Many tenants are deathly afraid of disease contraction and have refused to let landlords enter their apartments even when they have legitimate reasons. Landlords, in some cases, have tried to limit visitors in their buildings for fear of disease spread. One advocate has seen more complaints stemming from children's noise as they are confined to their homes and engaging in remote learning.

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<sup>544</sup> 2020 New Hampshire Residential Rental Cost Survey Report, *supra* note 466.

## 7. Benefits

New Hampshire Employment Security (NHES) has faced enormous challenges during the pandemic and has been, at times, completely overwhelmed. The sheer volume of claims has been stunning. At the start of the pandemic, New Hampshire went from being a state with one of the lowest unemployment rates in the country to receiving a volume of claims many times greater than at the height of the Great Recession.<sup>545</sup> There have been problems with inadequate and confusing notices and significant delays.

Advocates have not been able to fully evaluate data from New Hampshire DHHS programs including the food stamp program known as SNAP. Enrollment numbers had been declining when trends in other states would have predicted an increase. Clients have also reported problems using the electronic application and account management program, NH Easy, which is the access point for all DHHS benefit programs including TANF and SNAP. Because conditions accompanying federal emergency funds received by the state for administration of the Medicaid program restricted the state's ability to terminate coverage or impose new eligibility restrictions, advocates anticipate that as federal policies end there could be an increase in benefit terminations.

Until recently, the Social Security Administration (SSA) suspended many activities such as redeterminations and processing overpayments to concentrate on processing applications of those in dire need. Advocates expect to see a rise in SSA cases as case processing normalizes.

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<sup>545</sup> See generally COVID-19 Affected Unemployment Rates, New Hampshire Employment Security, <https://www.nhes.nh.gov/covid-19-unemployment-rates.htm>.



## PART VII: THE QUEST FOR RACIAL JUSTICE IN NEW HAMPSHIRE

**Hundreds Gather in Keene to Protest the Death of George Floyd • Nearly 2,000 March Against Racism in Concord • Hundreds Gather for Peaceful Demonstration in Bristol • Several Hundred March in Manchester to Protest the Death of George Floyd • Vigil Held in Dover Over Killing of Man in Police Custody<sup>546</sup>**

### A. ON THE KILLING OF GEORGE FLOYD

“The killing of George Floyd was shocking. But to be surprised by it is a privilege African Americans do not have.”<sup>547</sup>

On May 25, 2020, a White Minneapolis police officer took the life of George Floyd, a Black man, in the course of effecting his arrest. The officer knelt upon Mr. Floyd’s neck for more than 8 minutes, preventing him from breathing as a gathering crowd pleaded with the officer to stop. A young woman filmed the excruciating episode on her cell phone capturing images that all the world would see.

The killing of George Floyd sparked an uprising against racial injustice and police brutality that manifested itself in protests in every state and echoed throughout the world.<sup>548</sup> His death triggered, even in the midst of a deadly pandemic, “civic unrest on a scale not seen since the assassination of Martin Luther King, Jr.”<sup>549</sup> The protests continued across the country throughout the summer and into the fall and have inspired many actions aimed at addressing injustices embedded in every aspect of American life.<sup>550</sup>

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<sup>546</sup> Headlines from various New Hampshire news sources: Tim Callery, *Hundreds gather in Keene to protest death of George Floyd*, WMUR (June 3, 2020), <https://www.wmur.com/article/hundreds-gather-in-keene-to-protest-death-of-george-floyd/32760578#>; Tony Schinella, *Nearly 2,000 March Against Racism In Concord: Watch*, Concord Patch (June 6, 2020), <https://patch.com/new-hampshire/concord-nh/nearly-2-000-march-against-racism-concord-watch>; Kristen Carosa, *Hundreds gather for peaceful demonstration in Bristol*, WMUR (June 3, 2020), <https://www.wmur.com/article/hundreds-gather-for-peaceful-demonstration-in-bristol/32760087>; Mike Cronin, *Several hundred march in Manchester to protest death of George Floyd*, WMUR (May 30, 2020), <https://www.wmur.com/article/thousands-march-in-manchester-to-protest-death-of-george-floyd/32719310>; Ray Brewer & Mike Cronin, *Vigil held in Dover over killing of man in police custody*, WMUR (June 1, 2020), <https://www.wmur.com/article/vigil-planned-in-dover-over-killing-of-man-in-police-custody/32731715>.

<sup>547</sup> Alex Altman, *Why the Killing of George Floyd Sparked an American Uprising*, Time (June 15, 2020), <https://time.com/5847967/george-floyd-protests-trump/>.

<sup>548</sup> Jessica Wang & Lindsay Huth, *Maps: How Protests Evolved in the Wake of George Floyd’s Killing*, Wall Street Journal (June 12, 2020), <https://www.wsj.com/articles/maps-how-protests-evolved-in-the-wake-of-george-floyds-killing-11591984846> (“[T]he demonstrations have reached more than 600 places in all 50 states and Washington, D.C., including large cities and small towns—some of which have few African-Americans.”); Savannah Smith *et al.*, *Map: George Floyd protests around the world*, NBC News (June 9, 2020), <https://www.nbcnews.com/news/world/map-george-floyd-protests-countries-worldwide-n1228391> (Protests have occurred in at least 40 countries, in all continents except Antarctica.).

<sup>549</sup> Altman, *supra* note 547.

<sup>550</sup> See e.g., Susan Lemaire, *How George Floyd’s Death Has Impacted American Life*, VOA News (June 26, 2020), <https://www.voanews.com/usa/race-america/how-george-floyds-death-has-impacted-american-life>.



People in New Hampshire also joined together to protest. Rallies and vigils were held across the state, in numerous communities, large and small.<sup>551</sup> On June 16, 2020, Governor Sununu issued an executive order establishing a Commission on Law Enforcement Accountability, Community, and Transparency which specifically referred to the killing of George Floyd as the impetus for its establishment and requiring the Commission to produce a report.<sup>552</sup> In this state, as across the country, the quest for achieving true equity is not only focused upon law enforcement but on all aspects of life and in all institutions that serve the people of this state.

There have been conversations and coalitions and initiatives have developed to effect real and enduring change. Many people have been leading tirelessly for decades on equity issues and new and younger leaders have joined in the work. Local Black Lives Matter activists played a major role in organizing protests and community conversations.<sup>553</sup> New Hampshire NAACP leaders and others spoke out and exhorted change.<sup>554</sup> Local communities and organizations of all types sponsored vigils and listening sessions.<sup>555</sup> The Commissioners of Keene Housing Authority issued a statement acknowledging the role of racism and discrimination in the housing sector of our country and affirming their commitment to equity (*see* App. A-39 for the resolution).

## B. VOICES OF COMMUNITY LEADERS

This section is rooted in one theme: the impact of the killing of George Floyd on the state of New Hampshire. Seven leaders from diverse constituencies within the African and African American communities contributed their thoughts, experiences, and recommendations moving forward. The conversations intentionally did not provide specific questions for participants to answer, but their comments are organized below based on issues that emerged from the discussions. Most sections begin with a compilation of comments from participants that reflects the language they used as closely as possible but is not necessarily verbatim, and then conclude with a summary of other participants' comments. All of the participants are people who have

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<sup>551</sup> Demonstrations occurred, for example, in Bristol, Concord, Conway, Dover, Dublin, Hampton, Hanover, Keene, Laconia, Manchester, Mont Vernon, Nashua, Peterborough, Portsmouth (information from various news sources including WMUR and the Union Leader). *See also* Wikipedia's entry on George Floyd protests in New Hampshire which contains a list of cities and towns with links to news posts:

[https://en.wikipedia.org/wiki/George\\_Floyd\\_protests\\_in\\_New\\_Hampshire](https://en.wikipedia.org/wiki/George_Floyd_protests_in_New_Hampshire).

<sup>552</sup> *See* Exec. Order No. 2020-11, *supra* note 384. The Commission's final report is available at <https://www.governor.nh.gov/sites/g/files/ehbemt336/files/2020-09/accountability-final-report.pdf>.

<sup>553</sup> Mike Cherry, *Young activists use BLM platform to make change*, WMUR (Nov. 20, 2020), <https://www.wmur.com/article/young-activists-use-blm-platform-to-make-change/34740206>.

<sup>554</sup> *See e.g.*, Kimberly Haas, *NH NAACP leader: Education key to breaking down barriers between races*, Union Leader (June 2, 2020), [https://www.unionleader.com/news/social\\_issues/nh-naACP-leader-education-key-to-breaking-down-barriers-between-races/article\\_fcd94771-d0db-5b99-94d0-ecb760b978c8.html](https://www.unionleader.com/news/social_issues/nh-naACP-leader-education-key-to-breaking-down-barriers-between-races/article_fcd94771-d0db-5b99-94d0-ecb760b978c8.html); *see also* The Exchange, *Amid National Turmoil Over George Floyd Death, a N.H. Perspective on Police-Minority Relations*, NHPR (May 31, 2020), <https://www.nhpr.org/post/amid-national-turmoil-over-george-floyd-death-nh-perspective-police-minority-relations#stream/0>.

<sup>555</sup> *Building Inclusion and Equity into the Way NH Listens Works*, Everyday Democracy, <https://www.everyday-democracy.org/building-inclusion-and-equity-way-nh-listens-works>; *see also* Jeff McMenemy, *Dover City Council passes resolution condemning racism*, Foster's Daily Democrat (June 24, 2020), <https://www.fosters.com/story/news/2020/06/25/dover-council-passes-resolution-condemning-racism/113751334/>.

contributed much to the state, not only through their work on racial justice issues but also through organizing and advocating on issues of public health, education, housing and homelessness, and immigrant rights.

## **1. Participant Comments on Impact on the State of New Hampshire**

The killing of George Floyd shook up the people of New Hampshire. His death followed a succession of deaths of unarmed Black people, and people demanded a response.

The killing of George Floyd gave him entrance into a “troubled membership” of fatalities of Black people whose deaths were directly linked to their race. The starkness of his death forced people to look in the mirror.

The aftermath of the George Floyd killing seems different. Maybe it was a turning point. Maybe there is more respect for Black people. His homicide happened during the pandemic and more people were home and had more time to absorb the horror of his death. His death sparked a new movement for racial justice. The underpinnings of the movement and the rage came from many contributing sources. There were lots of justice issues. We saw immigrant kids in cages and many people felt that we cannot take this anymore.

## **2. Participant Comments on Being Black in New Hampshire**

There are many distinct cultural and ethnic groups in New Hampshire claiming African heritage: African Americans; recent African immigrants, some who arrived as refugees and others on other visas; Latinos with African heritage; people from the Caribbean islands.

People of color spend a lot of energy and time fighting discrimination. Sometimes it is just too traumatic to pursue a bias claim because one has to keep reliving the experience. Does one keep on fighting or just give up?

There is so much work to be done in New Hampshire.

Being Black in New Hampshire reminds you every day that you are Black. It is easy to feel like you are the only person of color in many daily experiences and it can be very isolating.

In more diverse states, there is a greater weaving together of cultures but in New Hampshire, it is a cultural desert. It is hard to find other people of color and ethnic restaurants and activities.

In White culture, the focus is on the nuclear family. In African culture, it is more communal—families are very large and the ties much broader. It takes more energy and farther travel to connect with others of your community. It makes community-building more difficult.

There are daily micro-aggressions against Black people living in New Hampshire.

It is sad but not shocking that Black people experience life differently in New Hampshire.

It's hard to know where to start when talking about race. There are so many aspects and perspectives from the experiences of youth to people of different races and ethnicities. Racism is multi-faceted and pervasive.

One's experience with race often depends on where one lives in the state so there are state and local perspectives. It can even depend on the hyper-locality of what neighborhood in which one resides. It is also personal—some people simply want to blend in and not be bothered. Others want to work for change.

Poverty exacerbates structural racism.

This is a journey of 400 years and we will keep on moving.

In addition to the above participants' thoughts and experiences, one participant who is Black and an immigrant spoke of feelings of isolation and discomfort, of being seen as different and not belonging. They feel especially uncomfortable in small towns where there is very little diversity. They were happy to move to Manchester where they felt more welcome and more at home. This person has an established circle of friends, most of them are people of color, and they feel safe within that circle. This person said that every day in New Hampshire they have to live as a Black person and an immigrant with an accent with all the attendant consequences.

### **3. Participant Comments on White “Blindness” to Bias in New Hampshire**

Many White people, even those of good will, don't want to see the injustices that people of color suffer. Although many laws have changed that require equal treatment of all, many White people's mindsets have not changed.

People know the ways to continue to discriminate in spite of laws forbidding it.

Implicit bias allows White people to not see structural inequity and injustice. A lack of empathy on the part of some and enablers exacerbate the problem.

### **4. Participant Comments on Examples of Bias**

#### **a. Housing**

Lack of housing and homelessness are big deals. A lot of affordable housing is not really affordable or is in neighborhoods that are depressed. Housing is also unaffordable for young people trying to get out on their own.

Equity in housing requires hyper-local scrutiny. Are zoning laws inclusive or exclusive? Are community members invested in their government? Do community development initiatives incorporate equity principles into their priorities? Do lending institution policies still contain the vestiges of redlining? Does the real estate community view some areas as blighted?

One participant described coming to New Hampshire as a refugee and being resettled into substandard housing in a rundown neighborhood. When they complained, the refugee resettlement agency worker retorted that the apartment “was better than where you came from.” This participant stated that placing refugees in apartments with neglectful landlords and below par conditions is a fairly standard practice for resettlement agencies in New Hampshire and speaks to a mentality of undervaluing the people they are serving.<sup>556</sup>

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<sup>556</sup> See also pp. 74–75 in Interviews with Members of New Hampshire's Muslim Communities. Participants who came to New Hampshire as refugees reported the same experience of being placed in substandard housing.

Another participant also described encountering harrowing living conditions when their family first resettled in New Hampshire including the loss of heat in the apartment. A LARC advocate helped them get out of their lease, but when they moved, it was only to another slumlord where the family experienced more heating issues and other substandard conditions.

Another participant also spoke of their family's experience with housing discrimination when looking for an apartment. There were times when they found an apartment that they could afford but would never receive call-backs, and they felt it was because they were Black. They also encountered landlords who would say "we don't accept Section 8" assuming that because the family was Black, they would need the financial assistance of a subsidy.

A participant described the experiences of a Black immigrant seeking to purchase a house with his White fiancée. They were worried that if he was identified as Black and from Manchester, they would not be shown the same array of houses that a White couple would. They used the small-town address of the fiancée's parents to counter their fear of steering.

#### **b. Health and Healthcare**

More substance abuse resources are allocated to opioid addiction which is more prevalent within the White community and not on alcoholism which is more prevalent in the Black and Latino communities.

COVID-19 has had a greater impact on communities of color in all areas, especially for those who were already compromised. Parents are often front-line workers and cannot stay home and therefore have a high risk of exposure.

Lots of immigrants and people of color work as nursing assistants and housekeeping workers in healthcare facilities. The directors and supervisors are overwhelmingly White. There is often bias in scheduling and distribution of other work benefits such as overtime, time off, etc., in ways that benefit White workers over workers of color.

Health professionals may engage in disparate treatment intentionally or inadvertently. Generational poverty has health consequences. Many poor people live in neighborhoods with "food deserts."

Structural racism has created a higher incidence of poor health in communities of color. The COVID-19 virus presents greater risk of serious health outcomes and death to those with underlying health problems which explains the link between race/ethnicity and disproportionality of impact of the pandemic.

#### **c. Lack of Leadership Opportunities**

There is no diversity of leadership among policy makers and no embracing of diversity. There is a complaint among those in leadership that it is difficult to get members of communities of color to come to meetings and participate. Those in leadership need to understand the realities and reach out in more effective ways. People may not be able to leave jobs early to go to meetings and they may not be responsive to online surveys, but they can be found at houses of worship and other venues and they should have a voice.

Most spaces are reserved for White leaders. More opportunities should come for people of color.

#### **d. Education**

Differences in how children of color are disciplined in school is a serious problem. Some school boards do not take into consideration disparities or the needs of the diverse communities they serve.

Black children and other children of color have experienced teachers who are indifferent to their success or who have actually displayed biased attitudes in the classroom. Students of color are often made to feel as if they are not as intelligent as White students.

There are disproportionate negative educational outcomes for children of color during the COVID-19 pandemic.

During the pandemic, children whose parents are working are not getting the support they need. They must try to teach themselves in remote learning situations and their education is severely compromised. The teachers have no infrastructure to provide support. Kids of color and children from immigrant families are not doing well and it will be compounded going forward. Their ability to develop and build skills is hampered and the likelihood of going to college is diminished. These factors will affect the child and their family years down the line economically and in many other ways. It reinforces the bias of low expectations and continues the never-ending cycle of disadvantage.

School can be very isolating especially if you are the only child of color in the classroom or school.

There is no real school-community connection. For example, many high schools have a community service obligation for their students. Because of the lack of connections to the community, it becomes an exercise in “checking off the box” rather than a lesson on service and relationships.

#### **e. Organizing**

The participants are all engaged in organizations dedicated to realizing just change. Some are leaders in these initiatives. They include Black Lives Matter, Change for Concord, and the NAACP. Some are involved in efforts to confront the inequities manifested during the pandemic such as the Manchester Community Action Coalition which is a group of advocates formed to address the effects of COVID-19 on people of color in Manchester. Another pandemic-related project is Granite State Organizing Project’s Housing Jubilee Project—an initiative created to protect tenants from the fallout once the COVID-19 protections end. They are demanding that the New Hampshire government cancel rent debts. The initiative has local people at the table so real voices can be heard and to ensure that people are getting the protective benefits in a timely way. Some participants are working on strategies to have more diversity in elected bodies.

#### **f. Policing**

School resource officers should be removed from schools. They tend to criminalize the behavior of students of color. Schools should increase mental health professionals in schools rather than law enforcement.

Private schools are somehow able to operate without a police presence; public schools should be able to as well.

In general, many police officers view people of color through a lens of suspicion.

There are racial disparities in policing. Police departments often focus enforcement activities in neighborhoods with high concentrations of people of color and this has been increasing.

There are even unintended consequences of efforts to benefit people. An example is PAL (the Police Athletic Leagues). They are created for children to have fun and establish positive relationships with police officers. At the same time, they are situated in rundown facilities and there have been incidents where what should be a place of trust and fun has resulted in law enforcement activities. It also reinforces the trend of a constant police presence in the lives of people of color and in immigrant communities.

New Hampshire is not innocent. If you speak with any young minority adult about a police interaction, you'll hear a story that left a "bad taste in their mouth." We cannot stay quiet. It could happen here—things are not all that good.

One participant stated that they had never met or encountered an officer of color in their city. Another stated that they had never personally encountered an officer of color in any interactions with the police.

A participant observed that Black women are generally not at as much risk of negative interactions with the police as Black men. Black men are more likely to be followed, pulled over, questioned, and subjected to warrant and identity checks than Black women.

One participant referenced a May 20, 2020 motor vehicle stop of a Black man by New Hampshire State Police in which he was forcibly and roughly removed from his car after being told his motor vehicle plates were stolen, a statement which was apparently not true.<sup>557</sup>

The same participant spoke of another incident in which a White police officer approached their mother to query if she belonged in the neighborhood of a non-urban city, asking if she lived there. Another participant also mentioned this type of incident as an example of everyday bias by some police officers against Black people. This participant said that when younger, they were profiled by police who stopped the car they were in for no reason except the race of the occupants.

A participant noted that Governor Sununu did appoint a member of Black Lives Matter to his Commission on Law Enforcement Accountability.

One participant reported that they are very nervous in interactions with police and they are very aware that they are Black with the attendant risks.

#### **g. Other Examples of Bias**

One participant described the experience of effectively being denied food service in a small college town. They and a friend, also Black, were in a chain restaurant and sat for 20

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<sup>557</sup> For a video and a brief recounting of the incident, see Carlos Miller, *WATCH: NH Cops Break Man's Window, Drag him out of Car Claiming Car was Stolen*, PINAC News (May 22, 2020), <https://newsmaven.io/pinacnews/cops-gone-rogue/watch-nh-cops-break-man-s-window-drag-him-out-of-car-claiming-car-was-stolen-XQyqvKa530as13C0C8twyQ>.

minutes without ever being acknowledged or waited on as the waitperson provided service to White people who were seated after them.

## **5. Other Participant Observations and Recommendations**

Access to food is compromised for those who lost their jobs or quit to stay home with children.

New Hampshire must invest in programs, networks, and organizations that serve people of color. White people currently enjoy a higher level of access to programs and benefits.

A tutoring program must be implemented to compensate for lost learning during the pandemic.

Programs must be established that focus on the well-being of children of color.

White bias and privilege permeate New Hampshire infrastructures and the needs and contributions of communities of color are marginalized. Steps must be taken to audit all systems and implement equitable principles. Even well-intentioned programs may incorporate bias and inequity into their structures.

There is a chance for change if change is pursued.

There must be sustained attention to implicit bias, not just an annual training program.

There should be focus on local issues as well as housing, homelessness, mental health, and the incarceration system.

It is already difficult to get to know one's neighbors; more efforts must be made to connect and know each other.

More engagement with our elected officials is crucial.

It is our civic duty to show up for people who need help.

We must create a vision, a "beloved community" as Martin Luther King, Jr. described. To do that we must see "the truth of who we are" as human beings. What does "equal" look like? It can take time to truly envision an equal society.

Reparations must be considered to "repair the breach" of our history.

One participant believes that New Hampshire is experiencing a racial reckoning. This participant had left New Hampshire for a period of time and lived in a more diverse state. Upon their return, they were surprised that some things seemed much worse.



## PART VIII: CONCLUSIONS & RECOMMENDATIONS

### A. CONCLUSIONS

The reporting period of this AI (2015–2020) coincides with one of the most difficult periods in United States history. After an initial period of relative calm and civil rights advancements at both the state and federal level, our country entered a period of sustained conflict and experienced many setbacks in civil rights protections and policies at the federal level. The reporting period ended with significant political and social unrest in the midst of a global pandemic that has caused social and economic dislocation throughout the United States.

At the state level, we are fortunate that the residents of New Hampshire during the past five years have enjoyed level-headed governance and, for the most part, the implementation of laws and policies that advance and protect their interests. Residents have experienced less turmoil and hardship than those in many other states. The people of this state, however, have not been unscathed by the pandemic and hundreds of lives have been lost. We are now on the brink of distribution of vaccines that all hope will mitigate the lethality of the novel coronavirus.

The social and political unrest in the United States has also impacted New Hampshire. The renewed cry for an end to racial injustice and police brutality was amplified with the killing of George Floyd in Minneapolis, and it resonated throughout the country and touched the people of our state.

Nationally, the willful spread of misinformation by certain political leaders regarding the 2020 Presidential elections aimed at eroding trust in government has agitated and energized a portion of the population. New Hampshire was not immune to the unrest that has ensued.<sup>558</sup> The level of emotion and anger has been so high even in New Hampshire that Governor Sununu cancelled his inauguration ceremony for public safety reasons.<sup>559</sup>

These events—the pandemic, the killing of George Floyd, and political unrest—have reframed the importance of this report and our recommendations. The primary purpose of this report is to identify obstacles to fair housing, with a particular focus on racial and ethnic minority groups and the elimination of segregation. We have identified the impediments that have been addressed, the ones that still remain, and new ones to tackle. New Hampshire’s policymakers and leaders must make it a priority to understand and address the pandemic’s disparate impacts on protected class groups and to take more action to deal with both the short and long-term consequences. It is similarly crucial to develop pathways to build and restore confidence in the institutions of government both for those who have never enjoyed equal access of government benefits and protections and for those whose faith has been shaken by misinformation related both to the pandemic and to government institutions.

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<sup>558</sup> Annie Ropeik & Dan Barrick, *Trump’s N.H. Supporters Stand by President, Push for Overturn of Biden’s Victory*, NHPR (Nov. 14, 2020), <https://www.nhpr.org/post/trumps-nh-supporters-stand-president-push-overturn-bidens-victory#stream/0>.

<sup>559</sup> Kathy McCormack, *Governor cancels inaugural, citing mask protests at his home*, AP News (Dec. 30, 2020), <https://apnews.com/article/arrests-concord-coronavirus-pandemic-new-hampshire-74c5be34db1e55a287b4b1da4bf89958>.

## **B. RECOMMENDATIONS**

Despite progress, and by nearly every measure, people of color and members of every other protected class still do not fare as well in New Hampshire as others do. Neither do people living in poverty—a factor that is not itself a protected class but intersects with many protected classes. Much more attention, and many resources, must be devoted to these issues to eliminate societal inequities.

Housing and community development actions and policies constitute crucial components of a broader strategy to reduce inequities and they can provide the impetus for broader change. New Hampshire is fortunate that its institutions have embraced those goals and have worked to advance safe, affordable housing and vibrant and diverse communities throughout the state. This is a good place to start.

### **1. Create a Fair Housing and Equity Panel to Review Progress on Impediments**

This is envisioned as a group that would meet twice a year to review progress on addressing impediments and to report emerging issues. New Hampshire is fortunate to have many people engaged in equity work on behalf of many constituencies. Strategically selecting and training members of the panel would be imperative, and considerations should be made for effective recruitment methods and the possibility of compensation.

### **2. Increase Institutional Cultural Competency and Pass it On**

Housing and community development organizations, either collaboratively or otherwise, should invest in raising the cultural competency of staff at all levels, including evaluating how to incorporate these values into relationships with other agencies, contractors, and constituents. These should be efforts beyond implicit bias workshops, likely requiring consultation with experts in this field.

### **3. Equity Audits**

Regulations, policies, and practices should be reviewed for unintended impact on racial and ethnic minority groups and other protected class members. A key area of review should be of communication methods to ensure maximum accessibility. Consultation and/or staff training with professionals with expertise in these areas is recommended.

### **4. Focus on Incorporating Diversity at all Organizational Levels and Support the Creation of Leadership Opportunities**

Many organizations have made advances in increasing the diversity of their staff especially in first-line staff and supervisors. It is important to increase diversity in management and board positions as well. Some organizations, within the state and elsewhere, have created

equity leadership programs.<sup>560</sup> Creation and investment in an equity leadership program in housing policy and community development could benefit not only the participants but also housing authorities, federally funded housing programs, regional planning commissions, and state and local agencies.

## **5. Create a Five-Year Equity Education and Training Plan**

One of the few positive outcomes of the pandemic has been increased utilization of virtual meetings and trainings. This development generally has made learning more affordable and accessible, but, importantly, barriers exist for those who do not have access to smart devices, a stable internet connection, or sufficient minutes or data plans. Working with partners and stakeholders to develop and provide training on various equity issues designed for various constituencies (employees, tenants and program participants, housing providers, developers, housing professionals, etc.) has the potential to benefit an increased number of people and organizations. Creation of a multi-year plan for equity education allows for a more deliberate approach and the development of a bank of resources and materials. Any plan must incorporate strategies to reach constituencies with limited access to technology.

## **6. Create Strategies to Increase Beneficiary Trust and Confidence in Program Administration**

There is strong evidence that Americans have lost trust in and express more cynicism toward governmental and other institutions.<sup>561</sup> Lack of confidence does not take extreme forms in most people, and often people are merely unaware of the vital role a particular institution plays in their lives.<sup>562</sup> Often, communications with beneficiaries are bureaucratic in nature and opportunities for connecting more positively may be missed. Increasingly, people receive news and other information via nontraditional methods. Strategies to reach and engage beneficiaries through various pathways with the goal of increasing their knowledge and confidence in the institution should be explored.

## **7. Create New Working Groups and Coalitions**

In the interests of advancing equity principles and institutional trust and confidence, new initiatives and partners should be considered. There has been a rise in groups working on equity issues from *ad hoc* groups like the Immigrant Rights Network to established organizations like the NAACP chapters and the Governor's Council on Diversity and Inclusion. There may be opportunities for institutional partnerships that initially seem unlikely but that would advance

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<sup>560</sup> For example, Southern New Hampshire Area Health Education Center has developed the Equity Leaders Fellowship program which places fellows in a variety of settings. See <https://www.snhahec.org/ELF.cfm> for details about the program.

<sup>561</sup> See, e.g., Lee Rainie *et al.*, *Trust and Distrust in America*, Pew Research Center (July 22, 2019), <https://www.pewresearch.org/politics/2019/07/22/trust-and-distrust-in-america/>.

<sup>562</sup> One of the authors of this report, a former housing lawyer frequently serving clients with Housing Choice Vouchers, and her colleagues often encountered clients who had no idea what housing authority administered their program, only knowing that the voucher was from HUD.

work on particular impediments. Expanded involvement with new groups and partners could lead to investment in innovative ways to address inequities and other impediments.

## **8. Archive All Analysis of Impediments Documents**

Five AIs have been developed over the past quarter century and cover thirty years of analysis. The first three AIs are no longer publicly available and there are only a few hard copies of the first report in existence. Each AI contains important information about the state of housing opportunity in New Hampshire, and taken together, they document the progress that has been made and the barriers that still exist. They appear to be the only comprehensive records of housing equity and opportunity in New Hampshire and they should be preserved. It is recommended that copies of these documents be archived in the New Hampshire State Library.

## **9. Continue Work and Messaging on Land Use Controls and Affordable Housing**

A key factor in the reduction of income segregation and the promotion of diverse and healthy communities is the creation of affordable housing opportunities in all municipalities. Significant strides have been made toward these goals over the past several decades with legislative successes that resulted in the enactment of the Workforce Housing law and Accessory Dwelling Units law and the creation of a Housing Appeals Board to name a few. Coupled with housing policies that encourage the development of affordable housing units, New Hampshire is moving in the right direction in spite of enduring resistance by some. Legislative and policy efforts should continue along with tactical public messaging campaigns that outline the benefits that accrue to communities that embrace inclusive housing strategies.

## **10. Renew Efforts to Prohibit Source-of-Income Discrimination**

Lack of laws prohibiting source-of-income discrimination allows private housing providers to deny housing opportunities to otherwise qualified Section 8 voucher holders and applicants receiving public benefits and is a contributing factor to income-segregated communities. Eighteen states and Washington, D.C., have enacted laws that ban source-of-income discrimination.<sup>563</sup> Such laws increase accessibility to housing and further housing policy equity goals. In 2013, housing advocates supported a bill that would have amended the New Hampshire Law Against Discrimination to prohibit source-of-income discrimination. Their efforts were unsuccessful and no further attempts have been made to promote such legislation. It is time to convene stakeholders including lawmakers, advocates, members of the housing industry, housing policy leaders, and others to revisit this topic.

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<sup>563</sup> See *Expanding Choice: Practical Strategies for Building a Successful Housing Mobility Program*, App. B: State, Local, and Federal Laws Barring Source-of-Income Discrimination, PRRAC 2 (updated Mar. 2021), <https://prrac.org/pdf/AppendixB.pdf>.

## **11. Continue to Collaborate on and Enhance Fair Housing Training and Informational Programs**

It is essential that training and informational programs designed for the various constituencies covered by fair housing laws continue. Many protected class members are unaware of their rights under the law and many housing providers and others do not fully understand their obligations that the law requires of them. Plans should be made to resume the statewide fair housing conferences NHHFA sponsored annually with NHLA as the pandemic restrictions abate. Thought should also be given to including more fair housing information on the NHHFA and CDFA websites.

# **PART IX: APPENDIX**

New England Demographics 1990 - 2019						
	New Hampshire	Maine	Vermont	Massachusetts	Connecticut	Rhode Island
1990						
Total Population	1,109,252 (100%)	1,227,928 (100%)	562,758 (100%)	6,016,425 (100%)	3,287,116 (100%)	1,003,464 (100%)
White, Not Latino	1,079,484 (97%)	1,203,357 (98%)	552,184 (98%)	5,280,292 (88%)	2,754,184 (84%)	896,109 (89%)
Black	7,198 (0.6%)	5,138 (0.4%)	1,951 (0.3%)	300,130 (5%)	274,269 (8%)	38,861 (4%)
Asian	9,343 (0.8%)	6,683 (0.5%)	3,215 (0.5%)	143,392 (2%)	50,698 (2%)	18,325 (2%)
Latino	11,333 (1%)	6,829 (0.6%)	3,661 (0.7%)	287,549 (5%)	213,116 (6%)	45,752 (5%)
Native American	2,134 (0.2%)	5,998 (0.5%)	1,696 (0.3%)	12,241 (0.2%)	6,654 (0.2%)	4,071 (0.3%)
2000						
Total Population	1,235,786 (100%)	1,274,923 (100%)	608,827 (100%)	6,349,497 (100%)	3,405,565 (100%)	1,048,319 (100%)
White, Not Latino	1,175,252 (95.1%)	1,230,297 (96.5%)	585,431 (96.2%)	5,198,359 (81.9%)	2,638,845 (77%)	858,433 (81.9%)
Black	9,035 (0.7%)	6,760 (0.5%)	3,063 (0.5%)	343,454 (5.41%)	309,843 (9%)	46,908 (4.5%)
Asian	16,302 (1.3%)	9,493 (0.7%)	5,358 (0.9%)	240,613 (3.79%)	83,679 (2%)	24,232 (2.35%)
Latino	20,489 (1.7%)	9,360 (0.7%)	5,504 (0.9%)	428,729 (6.75%)	320,323 (9%)	90,820 (8.7%)
Native American	2,964 (0.2%)	7,098 (0.6%)	2,420 (0.4%)	15,015 (0.24%)	9,639 (0.3%)	5,121 (0.5%)
2010						
Total Population	1,316,470 (100%)	1,328,361 (100%)	625,741 (100%)	6,547,629 (100%)	3,574,097 (100%)	1,052,567 (100%)
White, Not Latino	1,215,050 (92.3%)	1,294,297 (94%)	590,223 (94.3%)	4,984,800 (76.1%)	2,546,262 (71.2%)	803,685 (76.4%)
Black	15,035 (1.14%)	15,707 (1%)	6,227 (1%)	434,398 (6.63%)	362,296 (10%)	60,189 (5.72%)
Asian	28,791 (2.19%)	13,913 (1%)	8,107 (1.3%)	351,991 (5.38%)	136,993 (4%)	31,011 (2.94%)
Latino	36,704 (2.79%)	16,935 (1%)	9,208 (1.47%)	627,654 (9.59%)	479,087 (13%)	130,665 (12.41%)
Native American	3,150 (0.24%)	8,568 (0.6%)	2,207 (0.35%)	18,850 (0.29%)	11,256 (0.3%)	6,058 (0.58%)
July 1, 2019						
Total Population	1,359,711 (100%)	1,344,212 (100%)	623,989 (100%)	6,892,503 (100%)	3,565,287 (100%)	1,059,361 (100%)
White, Not Latino	1,223,740 (90%)	1,251,461 (93.1%)	577,190 (92.5%)	4,921,247 (71.4%)	2,370,916 (66.5%)	762,740 (72%)
Black	23,115 (1.7%)	21,507 (1.6%)	8,736 (1.4%)	613,433 (8.9%)	427,834 (12%)	88,986 (8.4%)
Asian	40,791 (3%)	16,131 (1.2%)	12,480 (2%)	496,260 (7.2%)	178,264 (5%)	40,256 (3.8%)
Latino	53,029 (3.9%)	22,852 (1.7%)	12,480 (2%)	847,778 (12.3%)	588,272 (16.5%)	168,438 (15.9%)
Native American	4,079 (0.3%)	9,409 (0.7%)	2,496 (0.4%)	34,463 (0.5%)	21,392 (0.6%)	11,653 (1.1%)
Source: U.S. Census Data						



# **TITLE VIII COMPLAINT CASES FILED AT HUD BY BASIS AND ISSUE OF DISCRIMINATION 1991-1995**

<i><b>BASIS</b></i>	<i><b>Complaints Filled 1991 - 1995 *</b></i>	<i><b>% of Total</b></i>
Race/Color	27	23.9%
Sex	8	7.1%
National Origin	7	6.2%
Disability **	31	27.4%
Familial Status	<u>40</u>	35.4%
Total	113	

\* Complaints with more than one basis are counted under each basis.

\*\* Physical and Mental.

<i><b>ISSUE</b></i>	<i><b>Complaints Filled 1991 - 1995 *</b></i>	<i><b>% of Total</b></i>
Refusal to Sell	5	4.2%
Refusal to Rent	26	22.0%
Discriminatory Advertising	4	3.4%
False Representation	8	6.8%
Discriminatory Financing	2	1.7%
Discriminatory Terms & Conditions	44	37.3%
Otherwise Deny / Make Avail.	1	0.8%
Other Discriminatory Acts	3	2.5%
Acts Under Sec 818	24	20.3%
Zoning & Land Use	<u>1</u>	0.8%
Total	118	

\* Complaints with more than one basis are counted under each basis.

Source: HUD Boston Regional Office, Region I

Table 13.

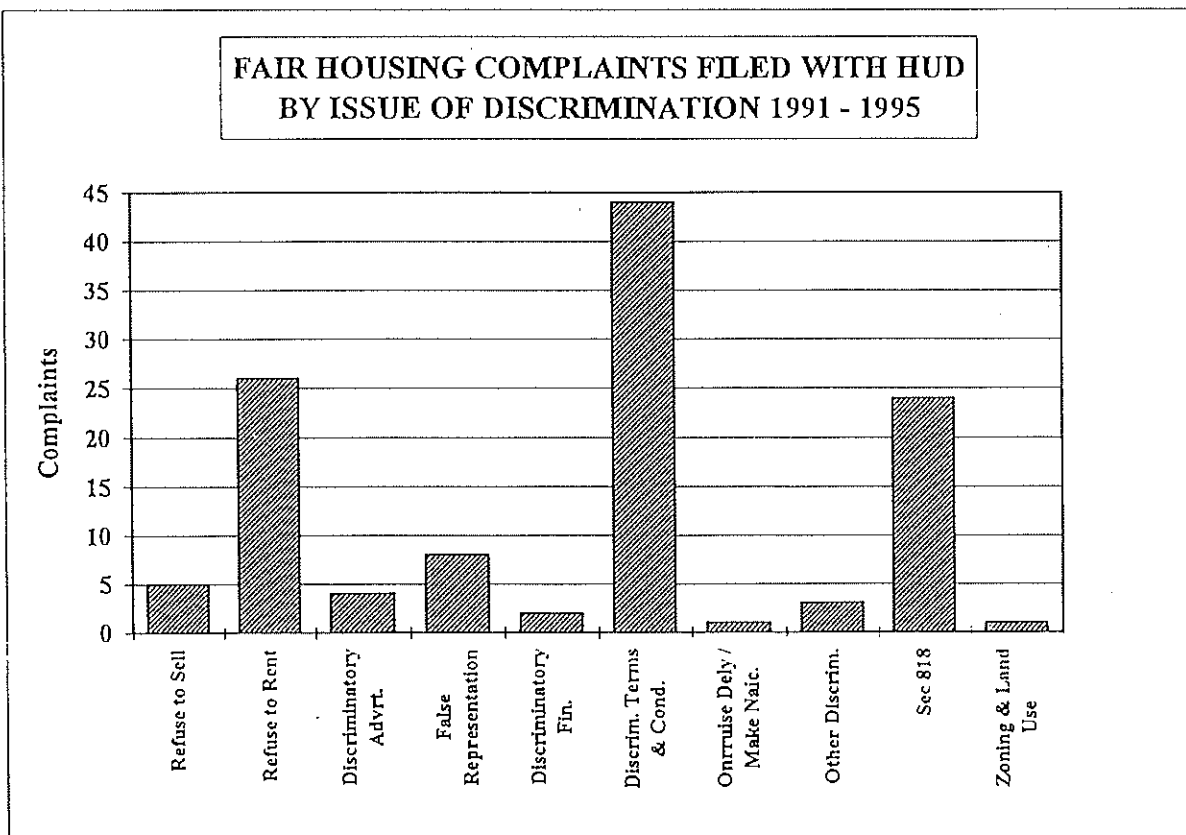
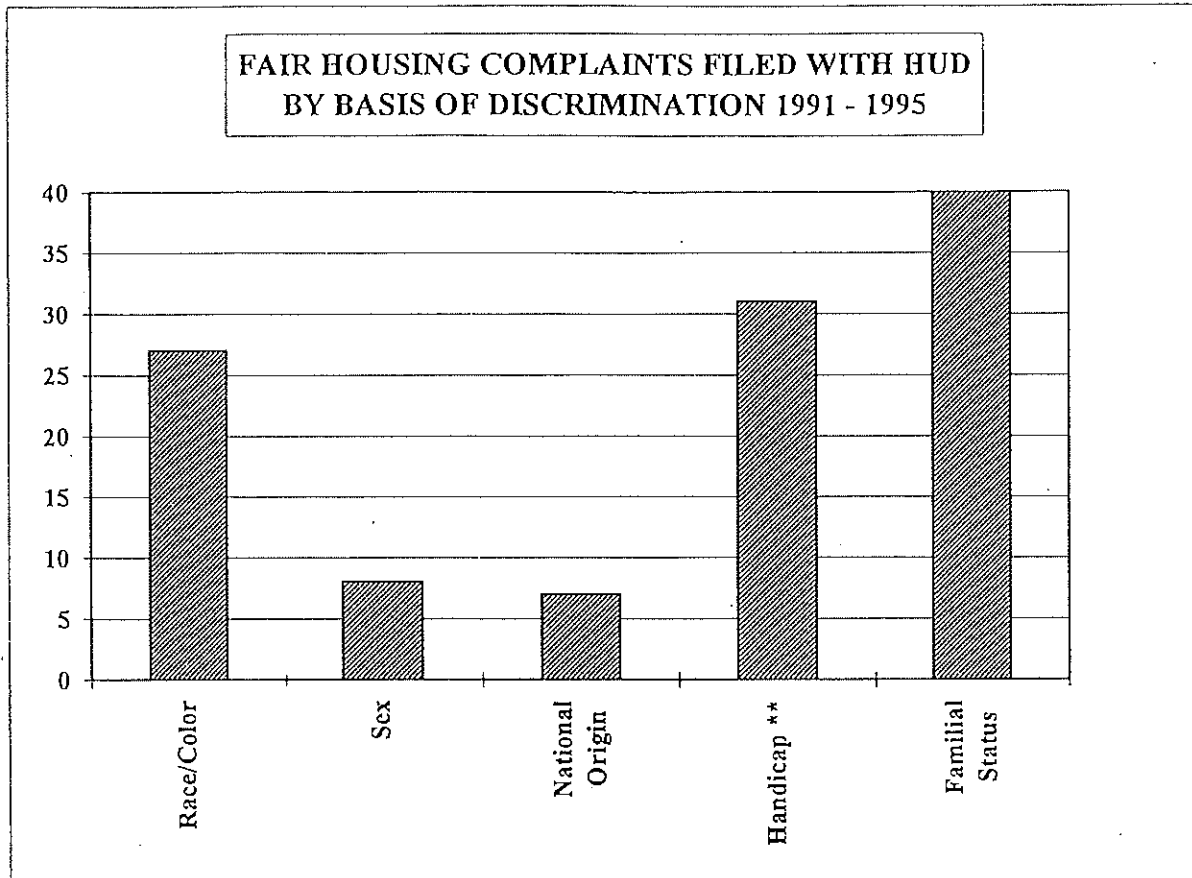


Table 14.

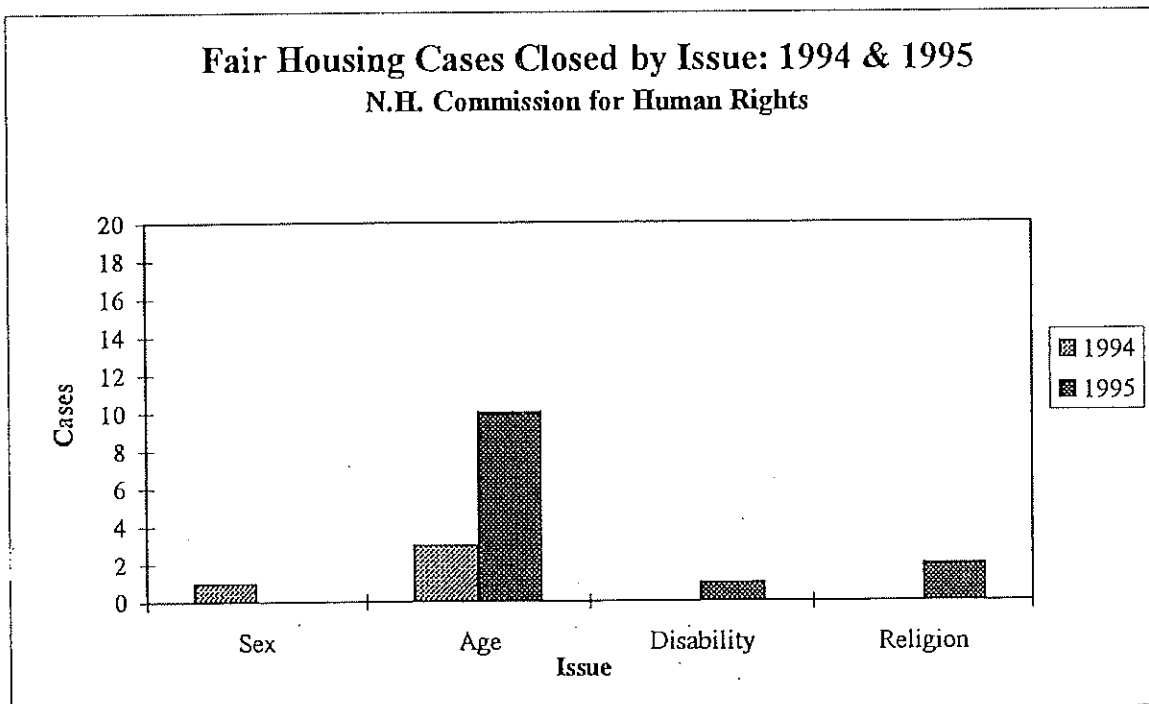
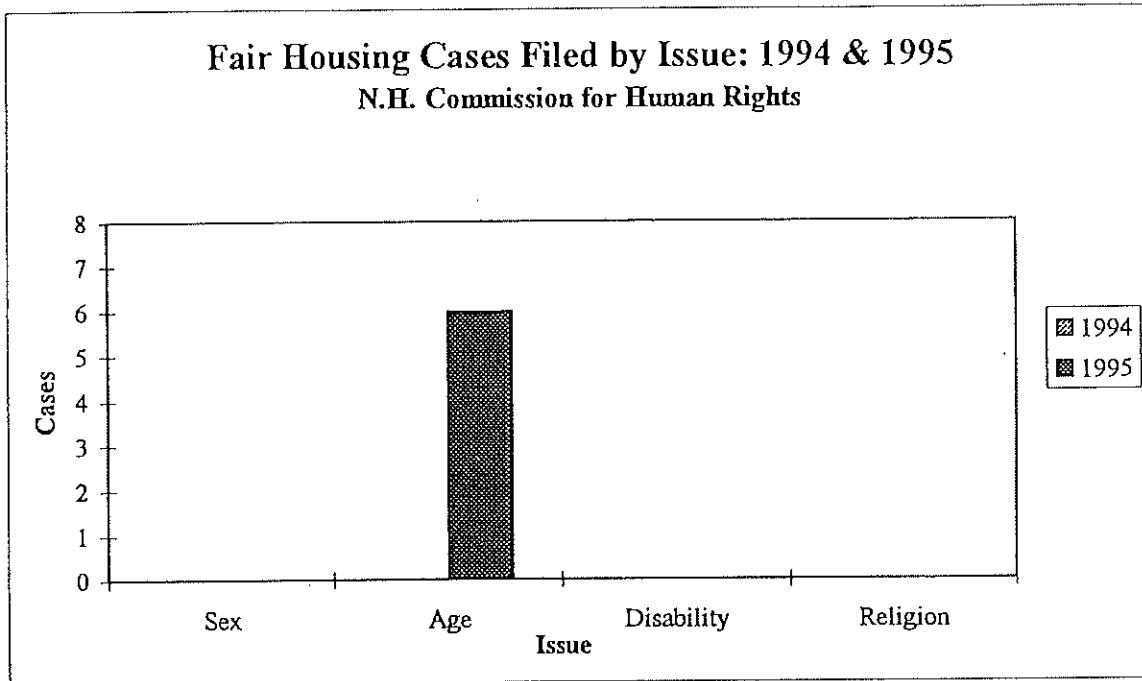
***Fair Housing Case Loads: 1994 & 1995***  
***New Hampshire Commission for Human Rights***

<i>Issues</i>	<i>New Cases Filed</i>		<i>Cases Closed</i>	
	1994	1995	1994	1995
Sex	0	0	1	0
Age	0	6	3	10
Familial Status	0	1	0	4
Other	0	4	1	5
National Origin	0	0	0	0
Race/Color	0	0	0	0
Marital Status	0	1	2	1
Disability	0	0	0	1
Physical	0	0	0	1
Mental	0	0	0	0
Religion	0	0	0	2
<b>Total</b>	<b>0</b>	<b>6</b>	<b>4</b>	<b>13</b>

Source: New Hampshire Commission for Human Rights Biennial Report  
Applied Economic Research, Inc. Laconia, NH

Table 15.

*Fair Housing Case Loads: 1994 & 1995*  
*New Hampshire Commission for Human Rights*



Source: New Hampshire Commission for Human Rights Biennial Report  
Applied Economic Research, Inc. Laconia, NH

## B. FAIR HOUSING COMPLAINT DATA

The three primary entities that investigate fair housing complaints in New Hampshire are: the HUD Office of FHEO; the HRC; and the FHP. Housing discrimination complaints may also be filed in state or federal court. Statistics were not available for housing discrimination complaints filed with the Federal District Court of New Hampshire or New Hampshire Superior Courts.

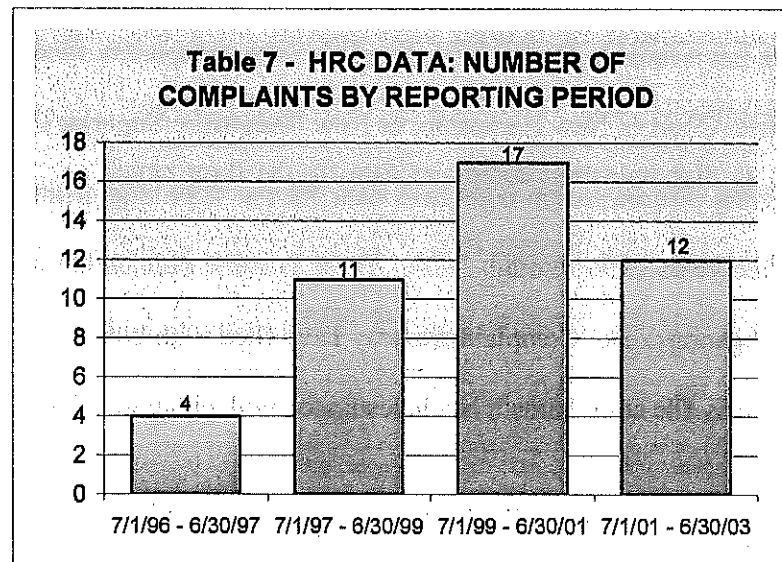
Housing discrimination complaint data for the three organizations was analyzed for the years 1996 through 2003. There is some duplication of numbers among the organizations. Complainants may have filed with both HUD and HRC. FHP staff may file complaints it has investigated with either agency.

Table 6 - TOTAL NUMBER OF HOUSING DISCRIMINATION COMPLAINTS FILED BY ORGANIZATION			
	Average Number of Complaints Filed Per Year	Reporting Period	Total Number of Complaints Filed During Reporting Period
FHP	12.4	1996 - 2003 (8 years)	178
HUD	10.8	1996 - 2003 (8 years)	140
HRC	2.2	1996 - 2003 (8 years)	44

The vast majority of fair housing complaints filed by New Hampshire residents are filed with the FHP. The HRC receives the lowest number of housing discrimination complaints.

Of the three organizations, the FHP is the only non-governmental enforcement program. Virtually all of the fair housing complaints filed with the FHP are by

low-income persons: the FHP is the only program with income eligibility guidelines. FHP legal staff investigate fair housing complaints and provide legal advocacy for complainants. Advocacy ranges from negotiating settlements to filing complaints with HUD, HRC, or in state or federal court.



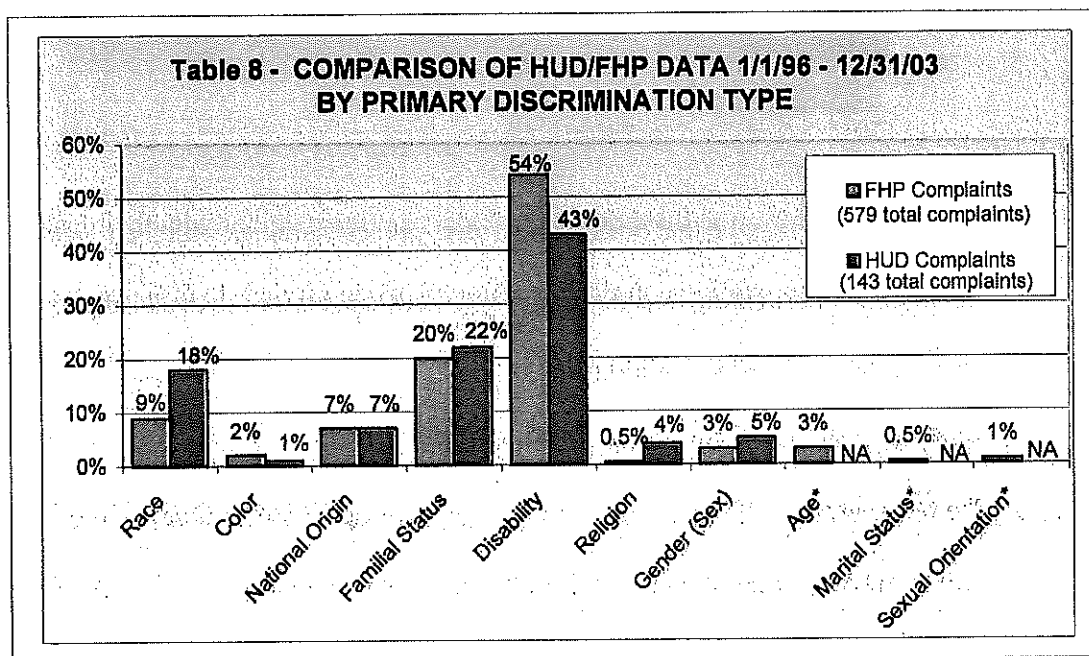
HUD and HRC staff investigate and mediate fair housing complaints. If either party chooses not to mediate, or mediation is unsuccessful, the agency determines whether there is sufficient evidence to issue a formal charge of discrimination.

The HRC Biennial Reports collect complaint data on a two-year fiscal calendar (July 1 – June 30). The Biennial Reports do not consistently include breakdowns of housing discrimination complaints by protected class type, and therefore only the gross number of complaints is indicated.

Because housing discrimination cases may be based on more than one category of discrimination (such as race and color), data for HUD and the FHP is based on the primary category of discrimination. An analysis of data for the entire eight-year

period (1/1/96 – 12/31/03) reveals that the majority of complaints filed with both the FHP and HUD are based upon disability. Familial status discrimination is the second highest complaint basis, with race and national origin being the third and fourth most frequent complaints bases respectively.

HUD only investigates housing discrimination cases based on the federally protected classes. The FHP also investigates the three additional categories protected under New Hampshire law: age, marital status, and sexual orientation. These three categories combined amount to only 4.5% of the number of housing discrimination complaints filed with the FHP (the category of sexual orientation was not added until 1998).



A review of FHP data by calendar year (1996 through 2003) indicates that disability and familial status discrimination consistently represent the most



frequently reported types of discrimination. New Hampshire demographics are most likely part of the reason for these statistics.

	1996	1997	1998	1999	2000	2001	2002	2003
<b>Race</b>	31%	21%	11%	13%	10%	8%	10%	4%
<b>Color</b>	0%	0%	2%	0%	0%	0%	0%	0%
<b>National Origin</b>	7%	7%	4%	14%	2%	6%	4%	7%
<b>Familial Status</b>	11%	20%	24%	18%	24%	21%	12%	15%
<b>Disability</b>	21%	20%	25%	40%	25%	27%	24%	28%
<b>Religion</b>	0%	0%	0%	0%	0%	1%	0%	1%
<b>Sexual Orientation</b>	0%	0%	0%	4%	2%	2%	4%	0%
<b>Age*</b>	0%	0%	4%	3%	1%	1%	1%	1%
<b>Marital Status**</b>	0%	0%	1%	1%	0%	0%	0%	0%
<b>Sexual Orientation**</b>	NA	NA	1%	1%	1%	1%	0%	2%
<b>Total Number of Complaints</b>	13	14	113	108	84	104	72	71

\* New Hampshire only  
\*\* New Hampshire only, not in effect until 1998

Another factor may be that housing providers are less familiar with their legal obligations in providing non-discriminatory housing services to disabled persons and families with minor children.

The low number of complaints filed with the FHP for 1996 and 1997 are due to the fact that the FHP was in the first few years of operation. These were the only two years where the number of HUD complaints exceeded the number of FHP complaints. From 1998 on, FHP complaints have far outnumbered HUD complaints.

**Table 10 - HUD DATA BY  
PRIMARY DISCRIMINATION TYPE**

	1996	1997	1998	1999	2000	2001	2002	2003
Race	43%	52%	57%	0%	11%	13%	21%	15%
Color	0%	0%	0%	0%	0%	0%	0%	14%
National Origin	0%	10%	0%	0%	11%	0%	0%	0%
Family Status	20%	4%	0%	50%	10%	10%	0%	44%
Disability	14%	50%	20%	40%	50%	50%	71%	20%
Religion	0%	10%	0%	0%	0%	0%	0%	0%
Gender/Sex	0%	4%	14%	0%	4%	13%	0%	8%
<b>Total Number of Complaints</b>	<b>21</b>	<b>26</b>	<b>7</b>	<b>22</b>	<b>19</b>	<b>16</b>	<b>14</b>	<b>18</b>

An analysis of HUD yearly data for the same period (1996 through 2003) indicates that disability complaints consistently comprise a significant proportion of New Hampshire-based housing discrimination complaints. There are no other discernible trends.

Claremont, Concord, Littleton, Manchester, Nashua, and Portsmouth). Once the intake process is complete, the caller is interviewed by a legal advocate for more detailed information which is then discussed by the housing law team. Legal services provided by NHLA are free. NHLA also operates a website ([www.nhla.org](http://www.nhla.org)) with general information about the organization and services offered. It publishes a pamphlet on fair housing law available in English, Spanish, Bosnian, and French.

#### **b. Disabilities Rights Center**

The Disabilities Rights Center (“DRC”) is a statewide non-profit law firm providing legal services to persons with disabilities, including legal advocacy and representation in housing discrimination cases. The organization does not currently maintain a separate count of the number of housing discrimination cases it has handled. DRC maintains a comprehensive website in English and Spanish ([www.drenh.org](http://www.drenh.org)) and helpful information on housing discrimination, including several pamphlets in Spanish and English. It offers its services free of charge. Complainants may access DRC via toll-free telephone or TTY.

### **B. FAIR HOUSING COMPLAINT DATA**

This section analyzes housing discrimination complaint data collected by HRC, HUD, and NHLA for the years 2004 through 2009. We specifically chose to review complaint data, rather than dispositional data for a number of reasons. First, complaint data represents the number of people who felt aggrieved by what they perceived to be discrimination in housing. Dispositional data does not necessarily speak to the merit of any particular case and therefore can be misleading. Many complaints are resolved through settlement arrangements without a finding of fault. Complainants may drop out of the process for many reasons including frustration, personal problems, or other priorities. Other cases may be determined to lack sufficient probable cause to make a finding of discrimination. Even then, results may vary greatly depending on the investigator’s level of experience, whether the complainant is represented by counsel, and other factors.

There is some duplication of numbers among the three organizations. Complainants may have filed complaints with both HUD and HRC. NHLA often files complaints they have investigated with HUD or HRC. In addition, complaints may be based on more than one form of discrimination. The data for HUD and NHLA is based on primary category of discrimination. NHLA and HUD reporting periods are by calendar year and HRC data is by fiscal year (October 1 – September 30). In addition, HRC data is inconsistent with HUD and NHLA data in that it combines the categories of race and color and reports familial status discrimination under the age category.

At the end of this section, we also include data on hate crime incidents reported by New Hampshire police departments to the FBI.

**TABLE 18**

<b>Total Number of Housing Discrimination Complaints Filed by Organization</b>			
<b>Year*</b>	<b>HUD</b>	<b>HRC</b>	<b>NHLA</b>
2004	26	8	161
2005	84	5	88
2006	63	2	29
2007	26	24	27
2008	34	4	41
2009	31	4	125
<b>Total</b>	<b>264</b>	<b>47</b>	<b>471</b>

\*(HUD and NHLA data is by calendar year,  
HRC numbers based on Oct.1 – Sept. 30 fiscal year)

HRC and HUD's Regional FHEO in Boston are the primary governmental entities that investigate and enforce fair housing laws in New Hampshire. HUD also provides competitive funding to state and local governments and non-profit organizations to promote and enforce fair housing laws. No governmental unit in New Hampshire is currently eligible for HUD funding because the state has not achieved substantial equivalence.<sup>88</sup> Lack of substantial equivalence is a likely factor in the small amount of housing discrimination complaints filed with the HRC. See Table 19 below for HRC complaint data.

**TABLE 19**

<b>HRC DATA BY PRIMARY DISCRIMINATION TYPE</b>							
<b>Year*</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>Totals</b>
Race/Color**	2 (25%)	2 (40%)	0	5 (21%)	0	0	<b>9 (19%)</b>
National Origin	0	0	0	2 (8%)	2 (50%)	1 (25%)	<b>5 (11%)</b>
Familial Status†	0	0	0	0	0	0	0
Disability	5 (63%)	3 (60%)	0	4 (17%)	1 (25%)	2 (50%)	<b>15 (32%)</b>
Religion	0	0	0	0	0	0	0
Gender	0	0	2 (100%)	2 (8%)	0	0	<b>4 (8%)</b>
Age	1 (12%)	0	0	5 (21%)	0	1 (25%)	<b>7 (15%)</b>
Sexual Orientation	0	0	0	2 (8%)	1 (25%)	0	<b>3 (6%)</b>
Marital Status	0	0	0	4 (17%)	0	0	<b>4 (8%)</b>
Retaliation/ Other	0	0	0	0	0	0	0
<b>Total Number of Complaints</b>	<b>8 (100%)</b>	<b>5 (100%)</b>	<b>2 (100%)</b>	<b>24 (100%)</b>	<b>4 (100%)</b>	<b>4 (100%)</b>	<b>47 (100%)</b>

\* HRC Reporting Year is From October 1 – September 30

\*\* HRC combines race and color into one category

† HRC reports familial status discrimination under the category of age

<sup>88</sup> "Substantial equivalence certification takes place when a State or local agency applies for certification and the U.S. Department of Housing and Urban Development (HUD) determines that the agency enforces a law that provides substantive rights, procedures, remedies and judicial review provisions that are substantially equivalent to the federal Fair Housing Act." U.S. Dept. of Hous. and Urban Dev., Substantial Equivalency Certification, available at <http://www.hud.gov/offices/fheo/partners/FHAP/equivalency.cfm>.

HUD, by contrast, seems to be a more well-known resource for those who believe that they have been victimized by discrimination in a housing situation. From 2004 through 2009, a total of 311 complaints were filed with a governmental agency (either HRC or HUD). Of those complaints, 85% (n = 264) were filed with HUD and only 15% with HRC (n = 47). *See* Table 20 below for HUD Complaint data.

**TABLE 20**

<b>HUD DATA BY PRIMARY DISCRIMINATION TYPE</b>							
<b>Year</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>Totals</b>
Race	4 (15%)	10 (12%)	9 (14%)	3 (11%)	3 (9%)	4 (13%)	<b>33 (13%)</b>
Color	0	0	0	0	1 (3%)	0	<b>1 (&lt;1%)</b>
National Origin	2 (2%)	4 (5%)	4 (7%)	0	3 (9%)	5 (16%)	<b>18 (7%)</b>
Familial Status	3 (12%)	48 (57%)	9 (14%)	7 (27%)	7 (20%)	9 (29%)	<b>83 (31%)</b>
Disability	15 (57%)	22 (26%)	36 (57%)	13 (50%)	18 (53%)	13 (42%)	<b>117 (44%)</b>
Religion	0	0	0	0	0	0	<b>0</b>
Gender	2 (8%)	0	0	0	1 (3%)	0	<b>3 (1%)</b>
Retaliation/ Other	0	0	5/0(8%/0%)	2/1(8%/4%)	0/1(0%/3%)	0	<b>7/2 (9%)</b>
<b>Total Number of Complaints</b>	<b>26(100%)</b>	<b>84(100%)</b>	<b>63 (100%)</b>	<b>26 (100%)</b>	<b>34 (100%)</b>	<b>31(100%)</b>	<b>264 (100%)</b>

For most of the past fifteen years, NHLA has received HUD Fair Housing Initiatives Program (“FHIP”) Private Enforcement Initiative (“PEI”) funds. This funding allows NHLA to devote resources to investigation of housing discrimination complaints and enforcement of fair housing laws via representation of complainants in housing discrimination cases. This has been a very successful venture evidenced by the fact that NHLA routinely handles more fair housing complaints than either HRC or HUD.

There are many benefits to this arrangement. Complainants receive free legal advice and representation in well-developed cases thereby increasing the likelihood of successful resolution of the matter. Discrimination complaints are screened and analyzed for merit prior to filing with an administrative agency or court and many complaints are resolved without the need for formal process, reducing the use of overburdened governmental resources. *See* Table 21 below for NHLA complaint data.

**TABLE 21**

<b>NHLA DATA BY PRIMARY DISCRIMINATION TYPE</b>							
<b>Year</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>Totals</b>
Race	6 (5%)	6 (7%)	0	2 (8%)	3 (7%)	6 (5%)	<b>23 (5%)</b>
Color	0	2 (2%)	0	0	0	0	<b>2 (&lt;1%)</b>
National Origin	0	5 (6%)	3 (10%)	4 (15%)	6 (15%)	7 (6%)	<b>25 (5%)</b>
Familial Status	106 (65%)	17 (19%)	5 (18%)	5 (19%)	4 (10%)	40 (32%)	<b>177 (38%)</b>
Disability	42 (26%)	52 (59%)	17 (59%)	14 (52%)	26 (63%)	65 (52%)	<b>216 (46%)</b>
Religion	1 (.5%)	0	0	0	0	0	<b>1 (&lt;1%)</b>
Gender	3 (2%)	3 (4%)	1 (3%)	0	0	5 (4%)	<b>12 (3%)</b>
Sexual Orientation	0	1 (1%)	0	1 (3%)	1 (2%)	1 (.5%)	<b>4 (1%)</b>
Marital Status	2 (1%)	0	0	0	0	0	<b>2 (&lt;1%)</b>
Age	1 (.5%)	2 (2%)	3 (10%)	1 (3%)	1 (2%)	1 (.5%)	<b>9 (2%)</b>
Retaliation/ Other	0	0	0	0	0	0	0
<b>Total Number of Complaints</b>	<b>163(100%)</b>	<b>88 (100%)</b>	<b>29 (100%)</b>	<b>27 (100%)</b>	<b>41 (100%)</b>	<b>125(100%)</b>	<b>471 (100%)</b>

A review of the average annual number of complaints indicates that there has been an increase in the annual average for all three organizations with HUD showing the most significant increase (from a reporting period average of 17.8 cases in the 2004 Update to 44 cases on average per year during this reporting period). *Compare* Table 22 to Table 23.

**TABLE 22**

<b>2004 Update: Annual Avg. # of Housing Discrimination Complaints Filed by Organization</b>			
	<b>Average Number of Complaints Filed Per Year</b>	<b>Reporting Period</b>	<b>Total Number of Complaints Filed During Reporting Period</b>
<b>FHP</b>	72.4	1/1/96 – 12/31/03 (8 years)	579
<b>HUD</b>	17.8	1/1/96 – 12/31/03 (8 years)	143
<b>HRC</b>	6.3	7/1/96 – 6/30/03 (7 years)	44

**TABLE 23**

<b>2009 Update: Average Annual Number of Complaints by Organization</b>			
<b>Agency</b>	<b>Average Number of Complaints Filed Per Year</b>	<b>Reporting Period</b>	<b>Total Number of Complaints Filed During the Reporting Period</b>
NHLA	79	1/1/2004 – 12/31/2009	471
HUD	44	1/1/2004 – 12/31/2009	264
HRC	8	10/1/2003 – 9/30/2009	47

For HUD and NHLA, complaints based on disability and familial status continue to comprise the largest percentages of all complaints filed during this reporting period. Disability complaints totaled 46% of all complaints received by NHLA and 44% of the complaints HUD received. Allegations of familial status discrimination made up 38% of NHLA's totals and 31% of HUD's. Complaints based on race and national origin comprise a higher percentage of HUD's statistics when compared to NHLA complaint data (19% and 11% respectively). However, NHLA actually received more national origin complaints (n = 25) than HUD did (n = 18) during this reporting period. In contrast, HUD took in 33 race-based complaints and NHLA, 23. (See Tables 20 and 21.)

NHLA's 2004 data and HUD's 2005 statistics show higher than average numbers in familial status complaint activity. Both number spikes are attributable to an investigation NHLA conducted beginning in 2004 on familial status discrimination in newspaper advertising throughout the state. As a result of its investigation, NHLA filed over forty discrimination complaints with HUD in early 2005 against newspapers and individual landlords.

Disability discrimination accounted for 32% of all complaints filed with the HRC during this reporting period and the combined categories of race and color as the second highest percentage of complaints at 19%. HRC is the only government agency that investigates state-based protections of age, sexual orientation and marital status. Age represented 15% (n = 7) of all complaints filed with HRC but since it includes familial status complaints, it is impossible to know how many complaints were actually based on age alone. Sexual orientation and marital status complaints accounted for 6% (n = 3) and 8% (n = 4) of all complaints. In comparison, from 2004 through 2009, NHLA received 9 complaints based on age, 4 based on sexual orientation and 2 based on marital status (See Tables 19 and 21).

Although not directly related to housing discrimination, we also reviewed hate crime information reported to the FBI by New Hampshire law enforcement. For the years 2004 – 2008 a total of 201 incidents were reported; an average of 40 cases per year. The information is organized by the five categories of "bias motivation:" race, religion, sexual orientation, ethnicity, disability. As can be seen in Table 24 below, race-based incidents count for almost half of all reported incidents, followed by sexual orientation and religion. Disability-based incidents count for the least amount of reports.



## 1. New Hampshire Housing Discrimination Complaints By Organization

Total Number of Housing Discrimination Complaints Filed with Organization by Year			
Year	HUD	HRC	NHLA
2010	33	6	90
2011	25	4	128
2012	37	12	166
2013	19	5	76
2014	13	8	168
<b>Total</b>	<b>127</b>	<b>35</b>	<b>628</b>

For all three organizations, for most years complaints based upon disability far outnumber complaints based on other protected class statuses. This is reflective of national data, as well.<sup>124</sup> For NHLA, familial status discrimination ranks second with race and then national origin following. Nationally, race-based complaints are the second highest number with familial status and national origin third and fourth, respectively.<sup>125</sup> The following charts show the complaint date for each organization for year and by primary discrimination type.

## 2. Housing Discrimination Complaints Filed with NHLA

NHLA Data By Primary Discrimination Type						
Year	2010	2011	2012	2013	2014	Totals
Race	8	8	41	2	18	77
Color	0	0	0	1	0	1
National Origin	7	16	8	3	3	37
Familial Status	15	13	15	7	29	79
Disability	57	85	92	55	115	404
Religion	0	0	1	1	1	3
Sex	1	4	5	7	1	18
Sexual Orientation	1	0	0	0	0	1
Marital Status	0	2	2	0	0	4
Age	1	0	2	0	1	4
Retaliation/Other	0	0	0	0	0	0
<b>Total Number of Complaints</b>	<b>90</b>	<b>128</b>	<b>166</b>	<b>76</b>	<b>168</b>	<b>628</b>

<sup>124</sup> *Annual Report on Fair Housing, FY 2012-2013*, U.S. Dep't. of Housing and Urban Dev. (2014), p. 19.

<sup>125</sup> *Id.*

### 3. Housing Discrimination Complaints Filed with HUD

HUD Data By Primary Discrimination Type						
Year	2010	2011	2012	2013	2014	Totals
Race	5	1	5	1	1	13
Color	0	0	0	0	0	0
National Origin	2	1	5	0	1	9
Familial Status	8	4	17	4	2	35
Disability	17	18	7	9	9	60
Religion	0	0	0	0	0	0
Sex	1	0	0	3	0	4
Sexual Orientation	NA	NA	NA	NA	NA	NA
Marital Status	NA	NA	NA	NA	NA	NA
Age	NA	NA	NA	NA	NA	NA
Retaliation/Other	0	1	3	2	0	6
<b>Total Number of Complaints</b>	<b>33</b>	<b>25</b>	<b>37</b>	<b>19</b>	<b>13</b>	<b>127</b>

### 4. Protected Class Bases in Housing Discrimination Complaints Filed with HRC\*

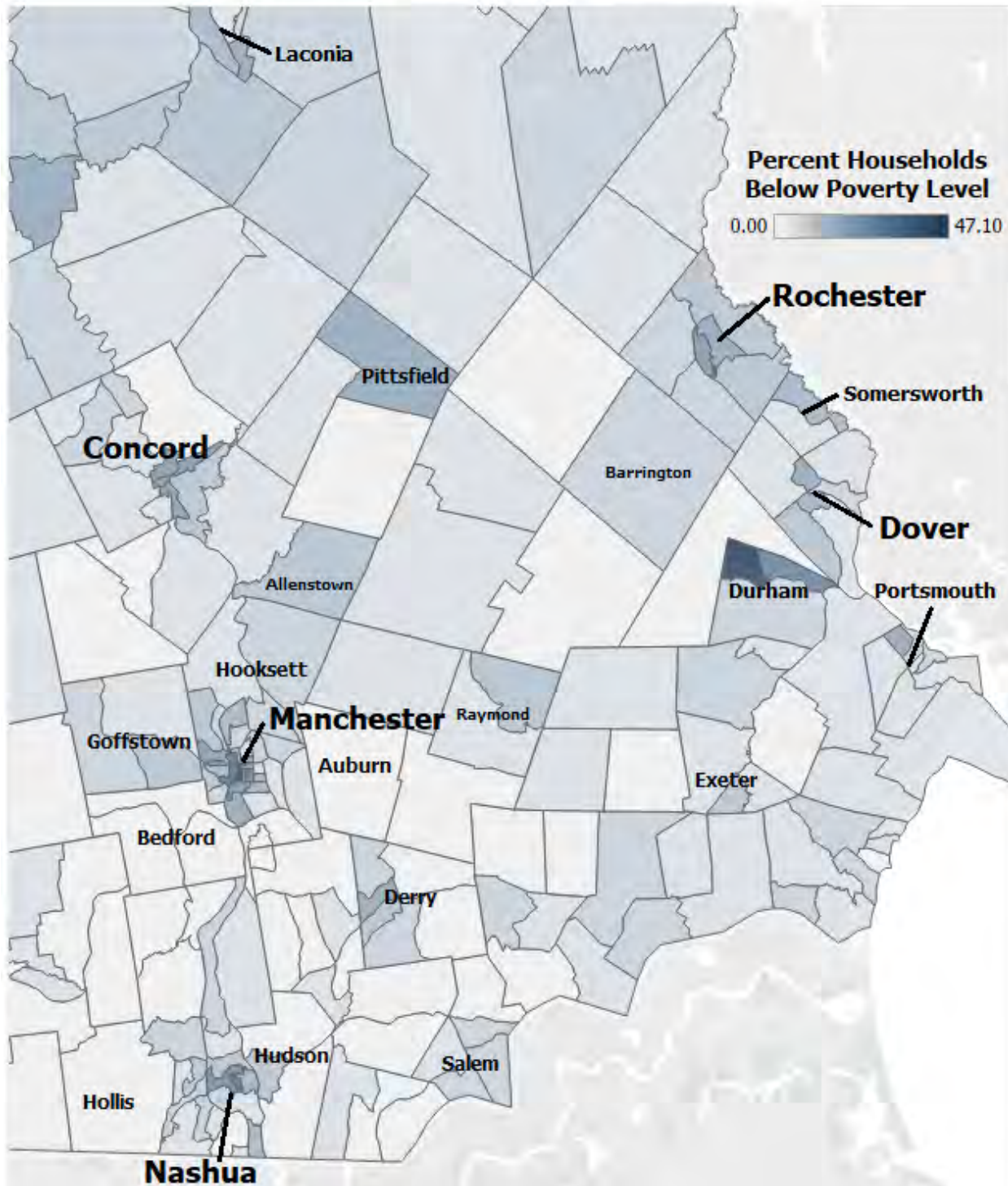
HRC Data By Primary Discrimination Type						
Year	2010	2011	2012	2013	2014	Totals
Race	1	0	0	0	0	1
Color	0	0	0	0	1	1
National Origin	1	0	1	0	1	3
Familial Status	3	0	2	0	0	5
Disability	1	2	6	5	5	19
Religion	0	0	1	0	0	1
Gender	1	0	1	0	0	2
Sexual Orientation	0	2	2	0	1	5
Marital Status	0	0	0	0	2	2
Age	0	0	1	0	1	2
Retaliation/Other	0	0	1	1	4	6
<b>Total Number of Bases</b>	<b>7</b>	<b>4</b>	<b>15</b>	<b>6</b>	<b>15</b>	<b>47</b>

\*Note that HRC data is compiled based on the federal fiscal year: October 1 – September 30. HRC reports all protected class bases filed by a complainant not just the primary basis. This practice results in a number larger than the number of complaints filed and reflected in the earlier chart.

## Household Poverty Rate by Census Tract

*Southeastern New Hampshire, 2014-2018 Estimates*

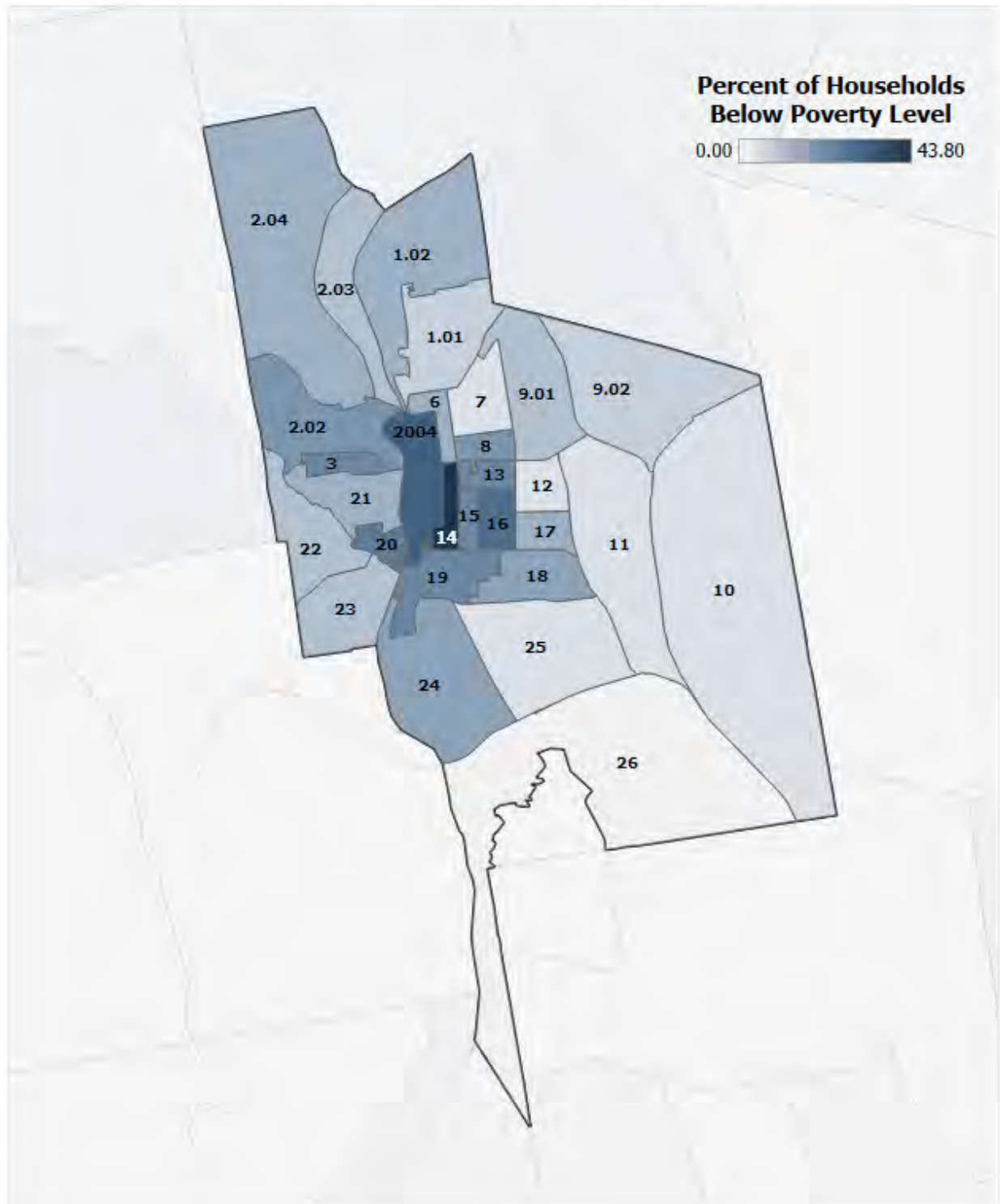
Source: U.S. Census Bureau, American Community Survey, 2014-2018



## Household Poverty Rate by Census Tract

*Manchester, New Hampshire, 2014-2018 Estimates*

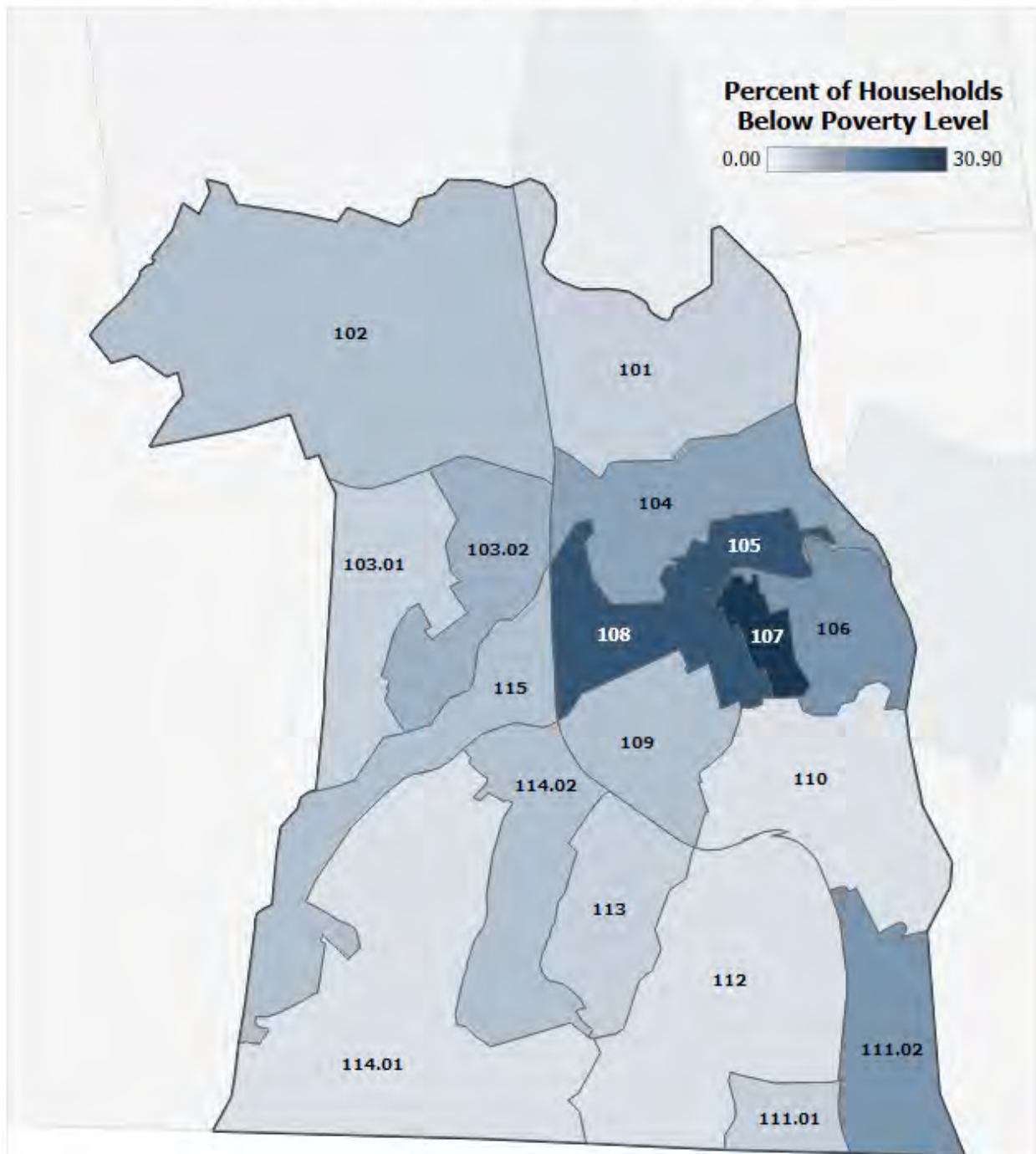
Source: U.S. Census Bureau, American Community Survey, 2014-2018



## Household Poverty Rate by Census Tract

*Nashua, New Hampshire, 2014-2018 Estimates*

Source: U.S. Census Bureau, American Community Survey, 2014-2018

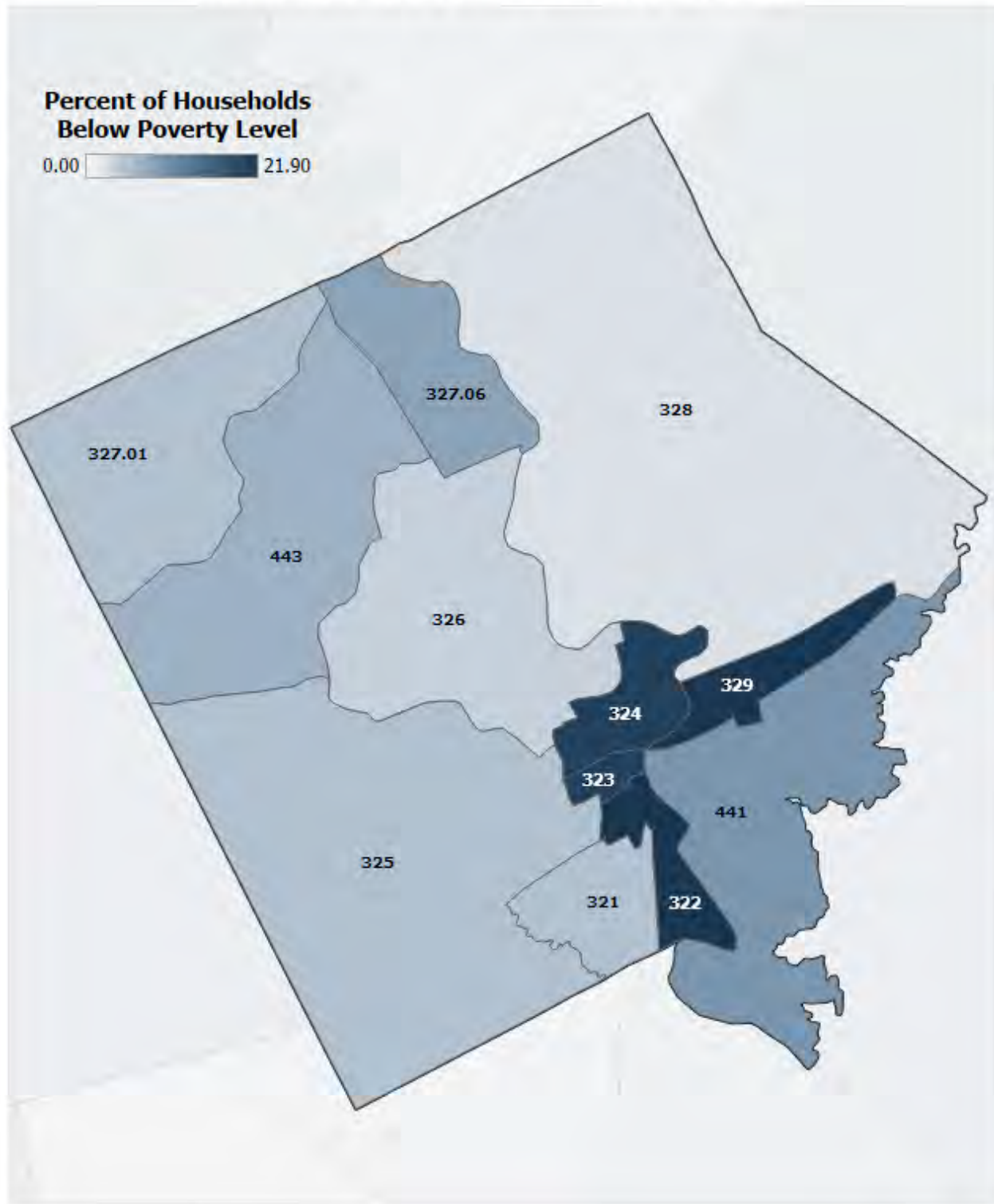




## Household Poverty Rate by Census Tract

*Concord, New Hampshire, 2014-2018 Estimates*

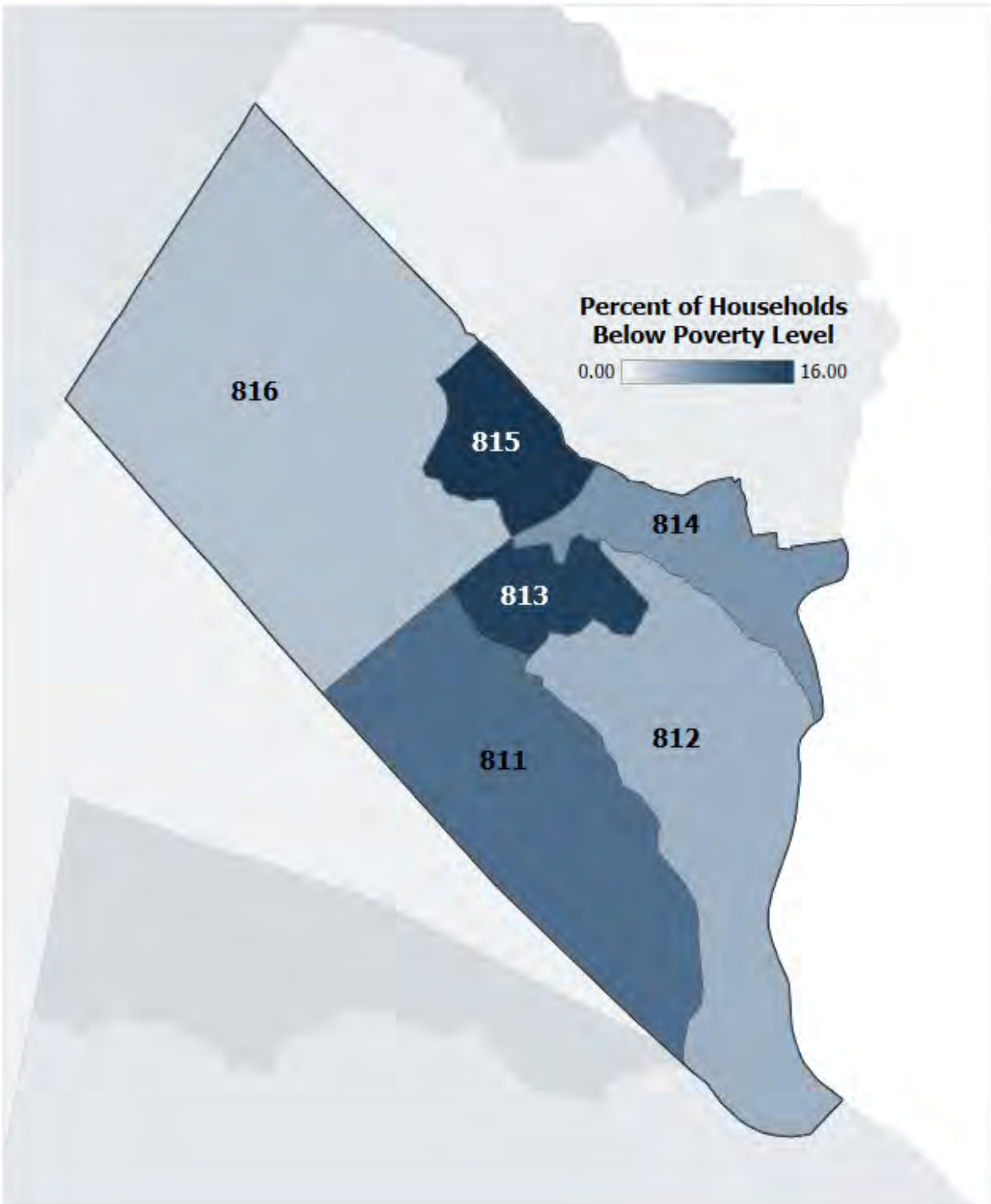
Source: U.S. Census Bureau, American Community Survey, 2014-2018



## Household Poverty Rate by Census Tract

*Dover, New Hampshire, 2014-2018 Estimates*

Source: U.S. Census Bureau, American Community Survey, 2014-2018

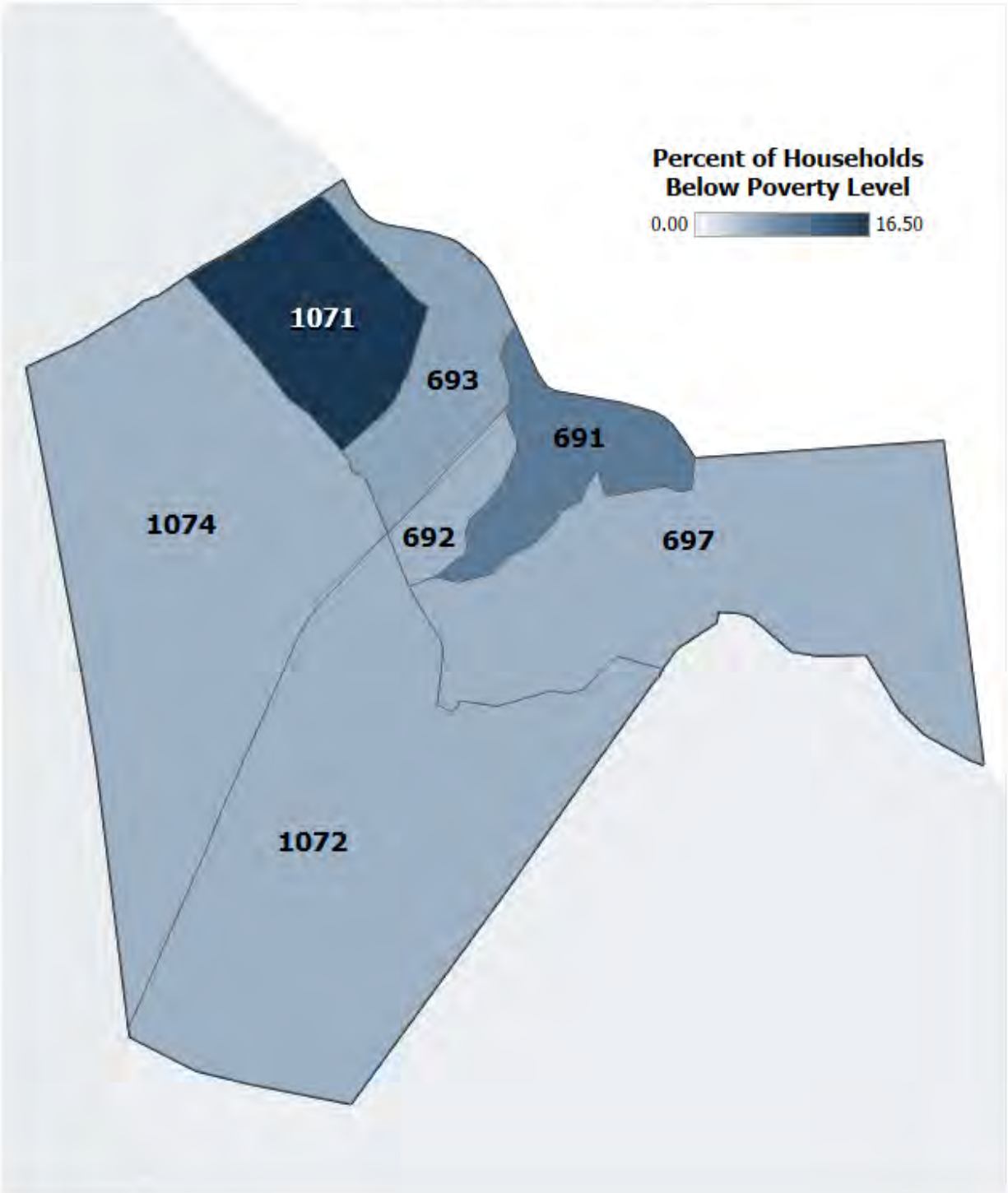


## Household Poverty Rate by Census Tract

*Portsmouth, New Hampshire, 2014-2018 Estimates*

Source: U.S. Census Bureau, American Community Survey, 2014-2018

Note: New Castle included in easternmost Portsmouth Census Tract.

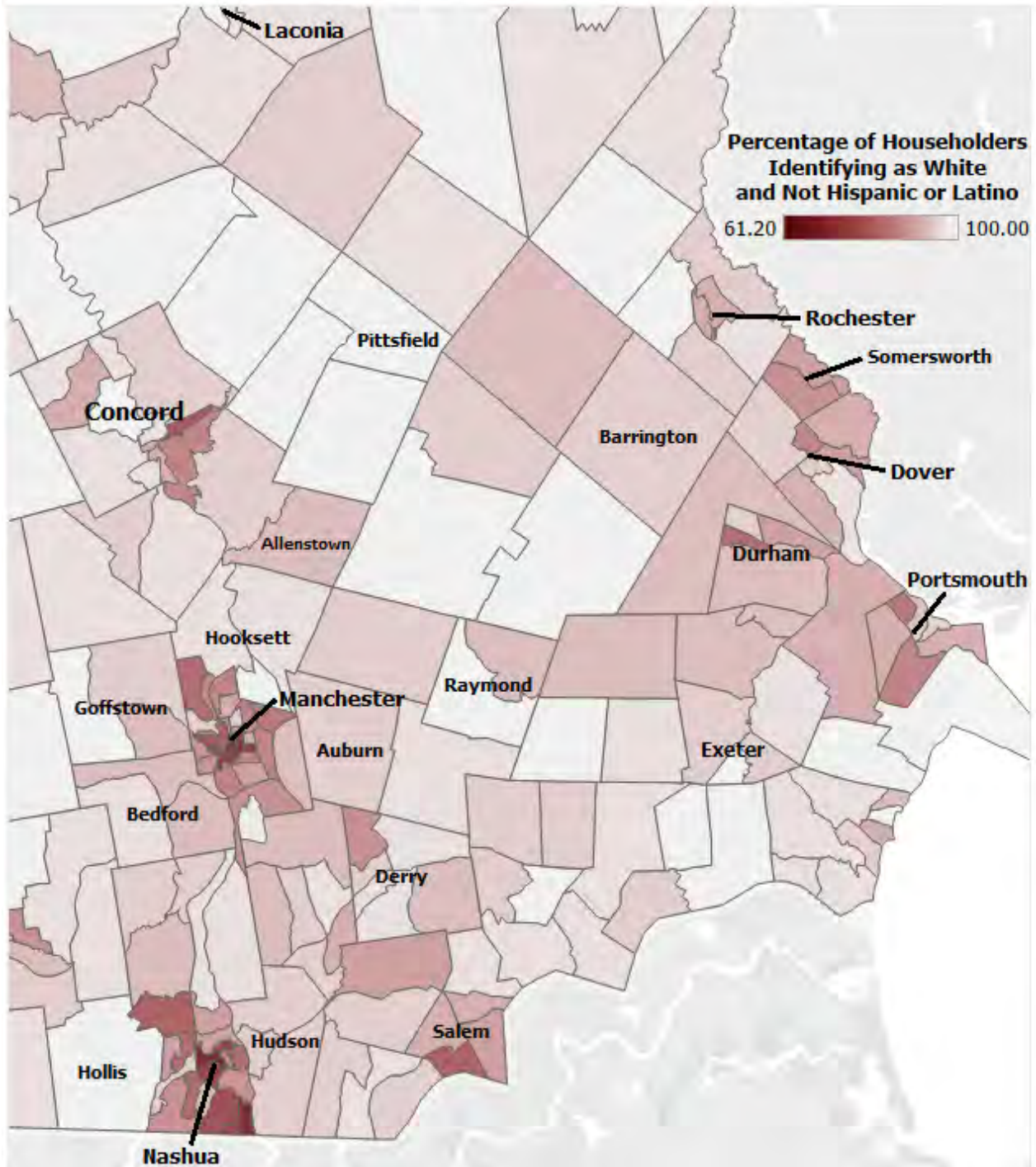




## Racial and Ethnic Diversity by Census Tract

*Southeastern New Hampshire, 2014-2018 Estimates*

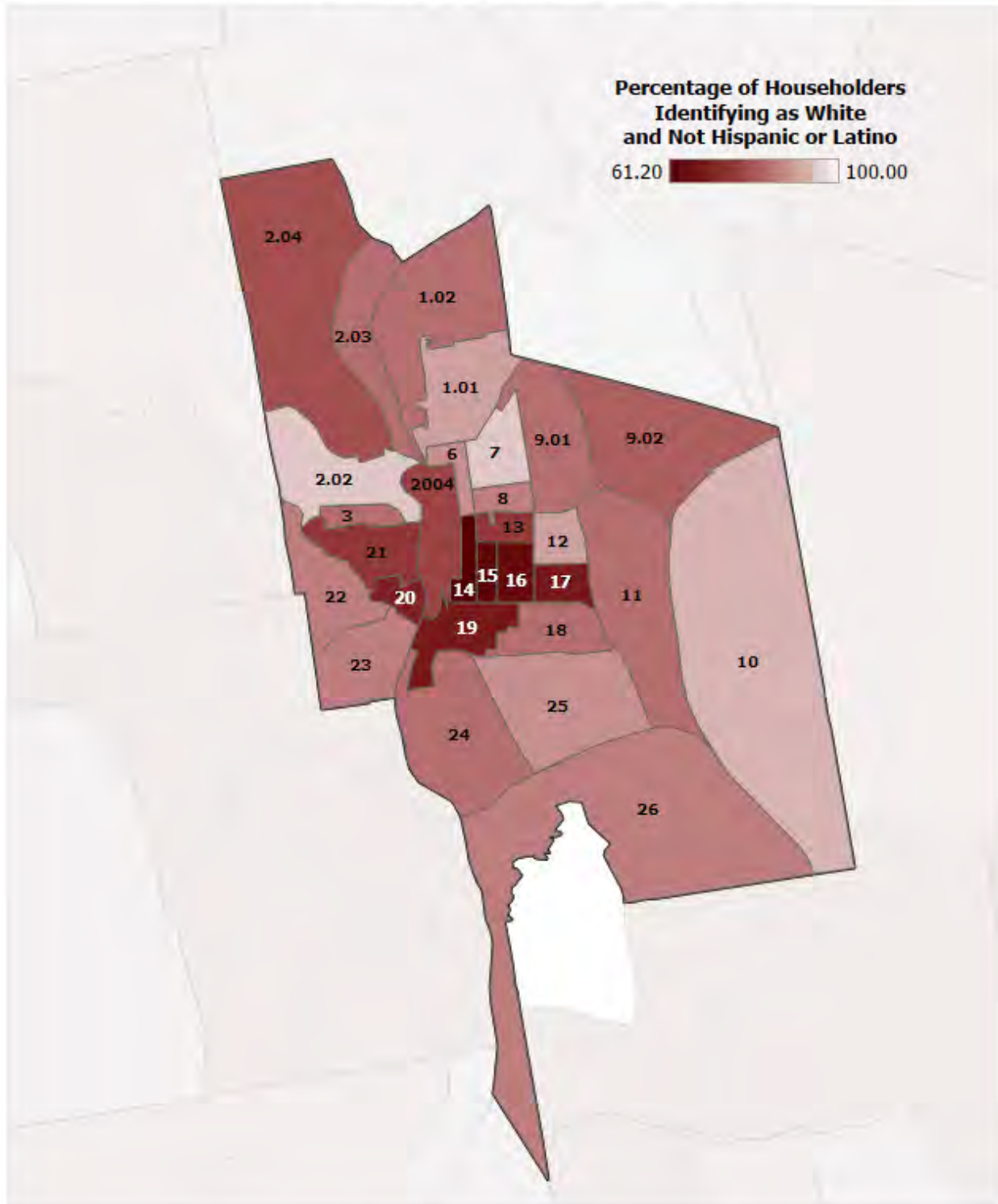
Source: U.S. Census Bureau, American Community Survey, 2014-2018



## Racial and Ethnic Diversity by Census Tract

*Manchester, New Hampshire, 2014-2018 Estimates*

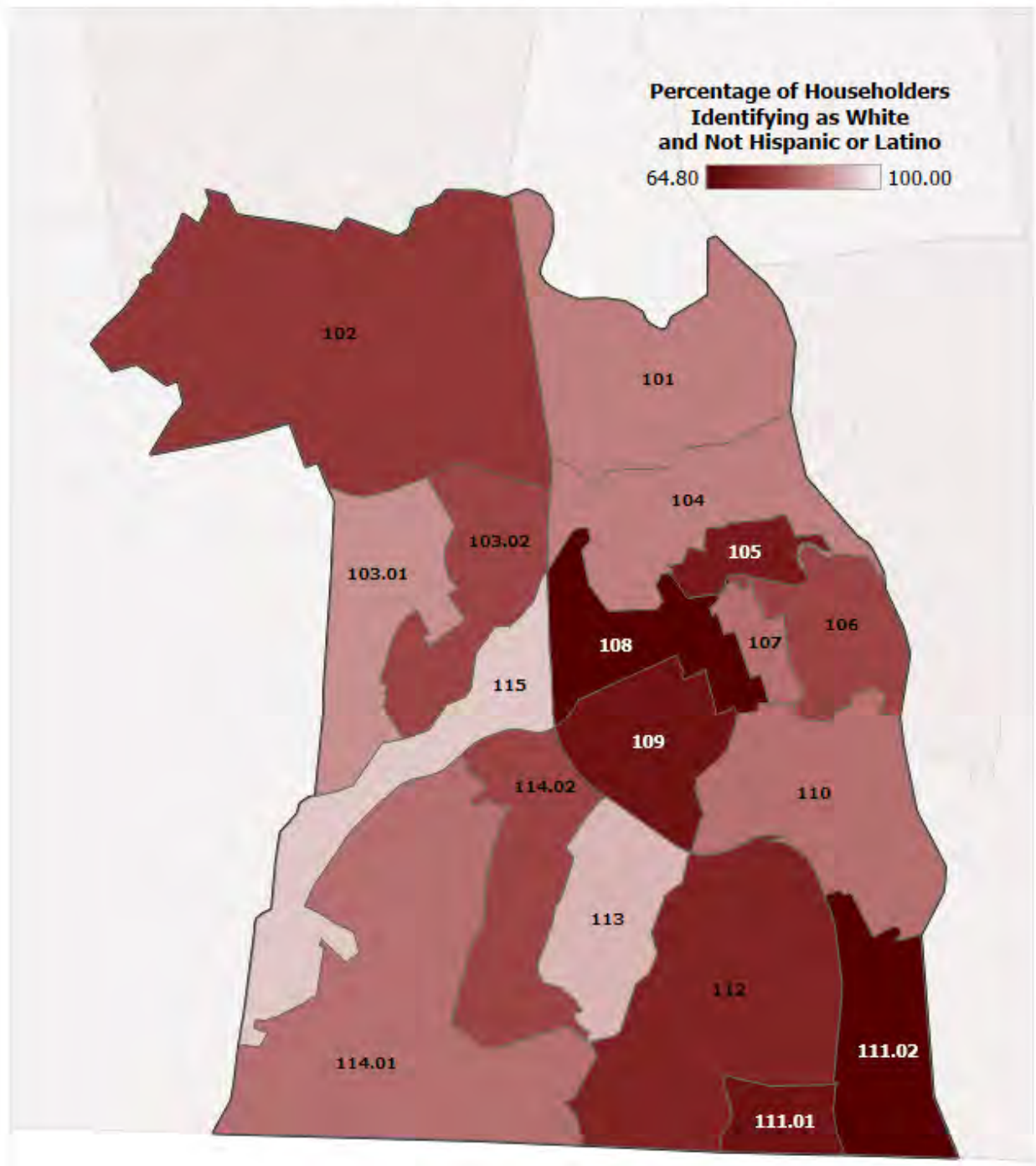
Source: U.S. Census Bureau, American Community Survey, 2014-2018



## Racial and Ethnic Diversity by Census Tract

*Nashua, New Hampshire, 2014-2018 Estimates*

Source: U.S. Census Bureau, American Community Survey, 2014-2018

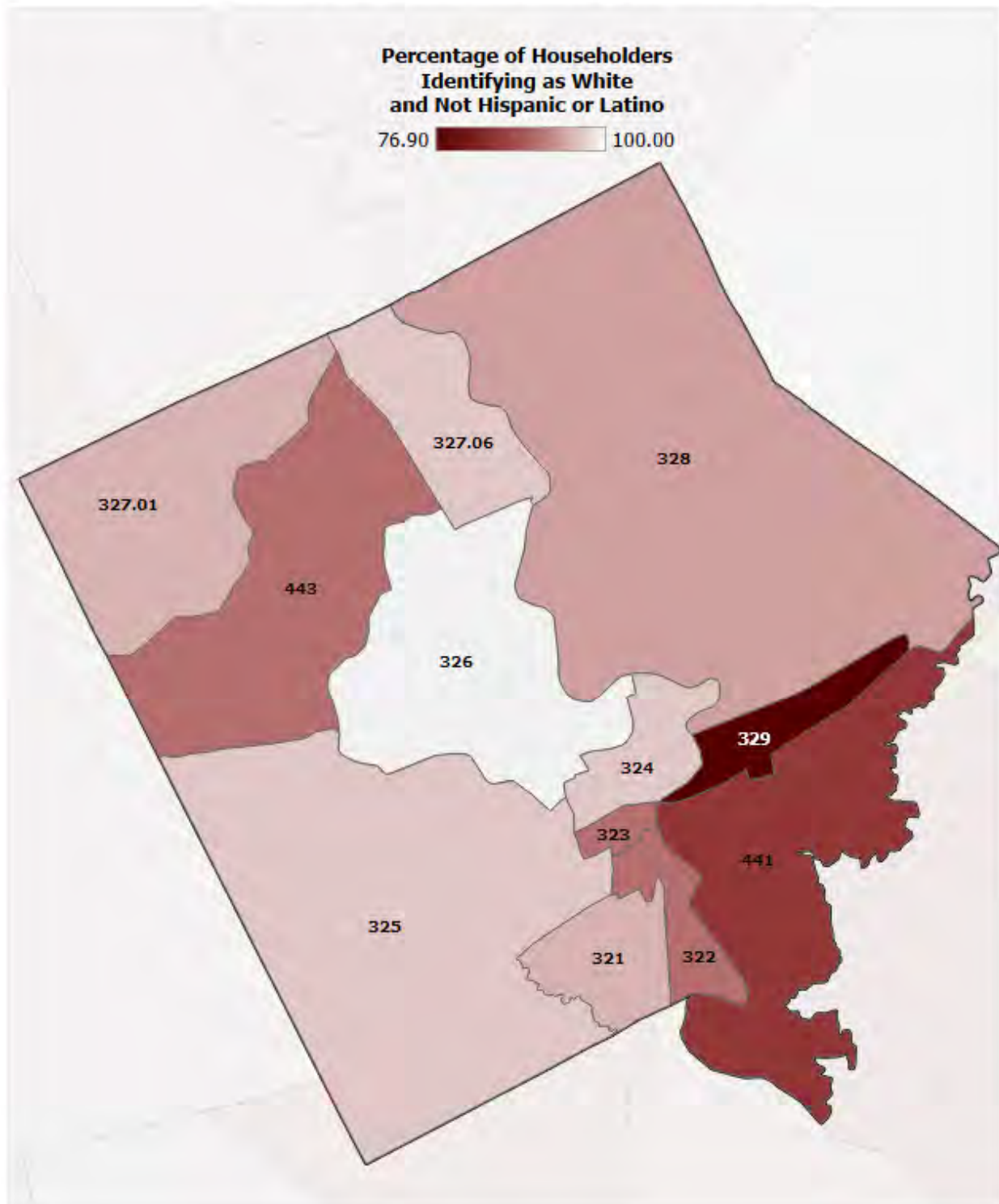




## Racial and Ethnic Diversity by Census Tract

*Concord, New Hampshire, 2014-2018 Estimates*

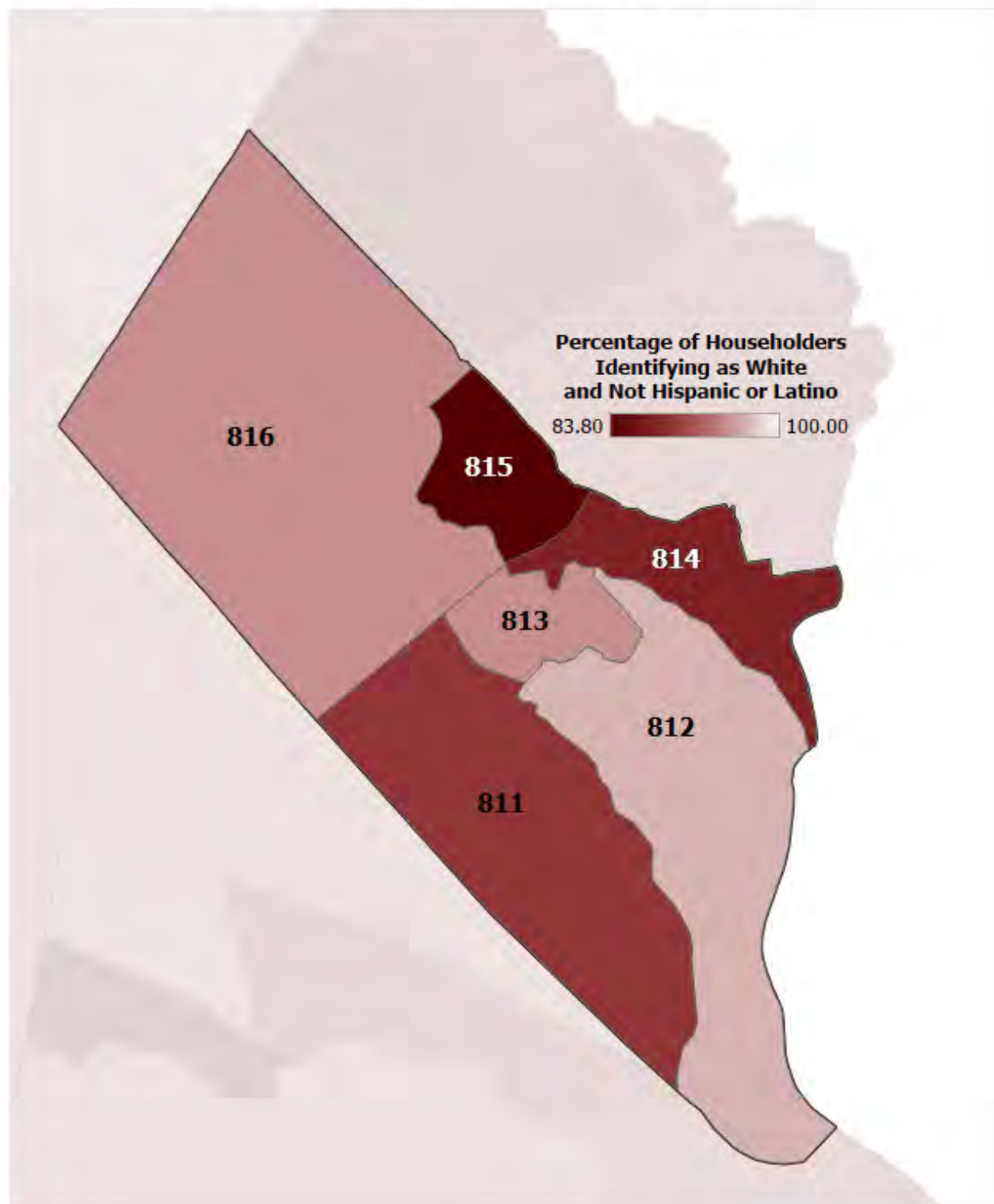
Source: U.S. Census Bureau, American Community Survey, 2014-2018



## Racial and Ethnic Diversity by Census Tract

*Dover, New Hampshire, 2014-2018 Estimates*

Source: U.S. Census Bureau, American Community Survey, 2014-2018

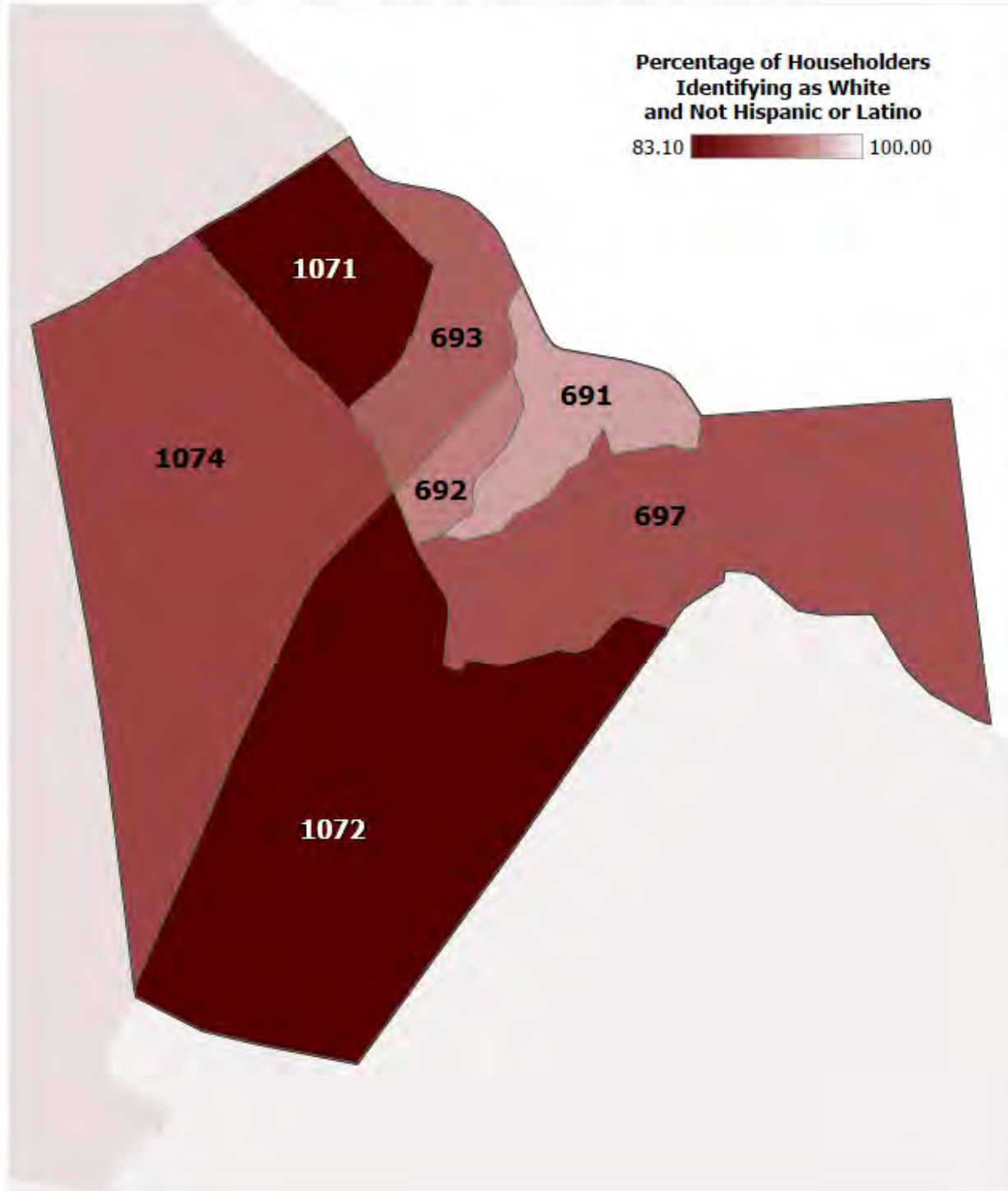


## Racial and Ethnic Diversity by Census Tract

*Portsmouth, New Hampshire, 2014-2018 Estimates*

Source: U.S. Census Bureau, American Community Survey, 2014-2018

Note: New Castle included in the easternmost Portsmouth Census Tract.

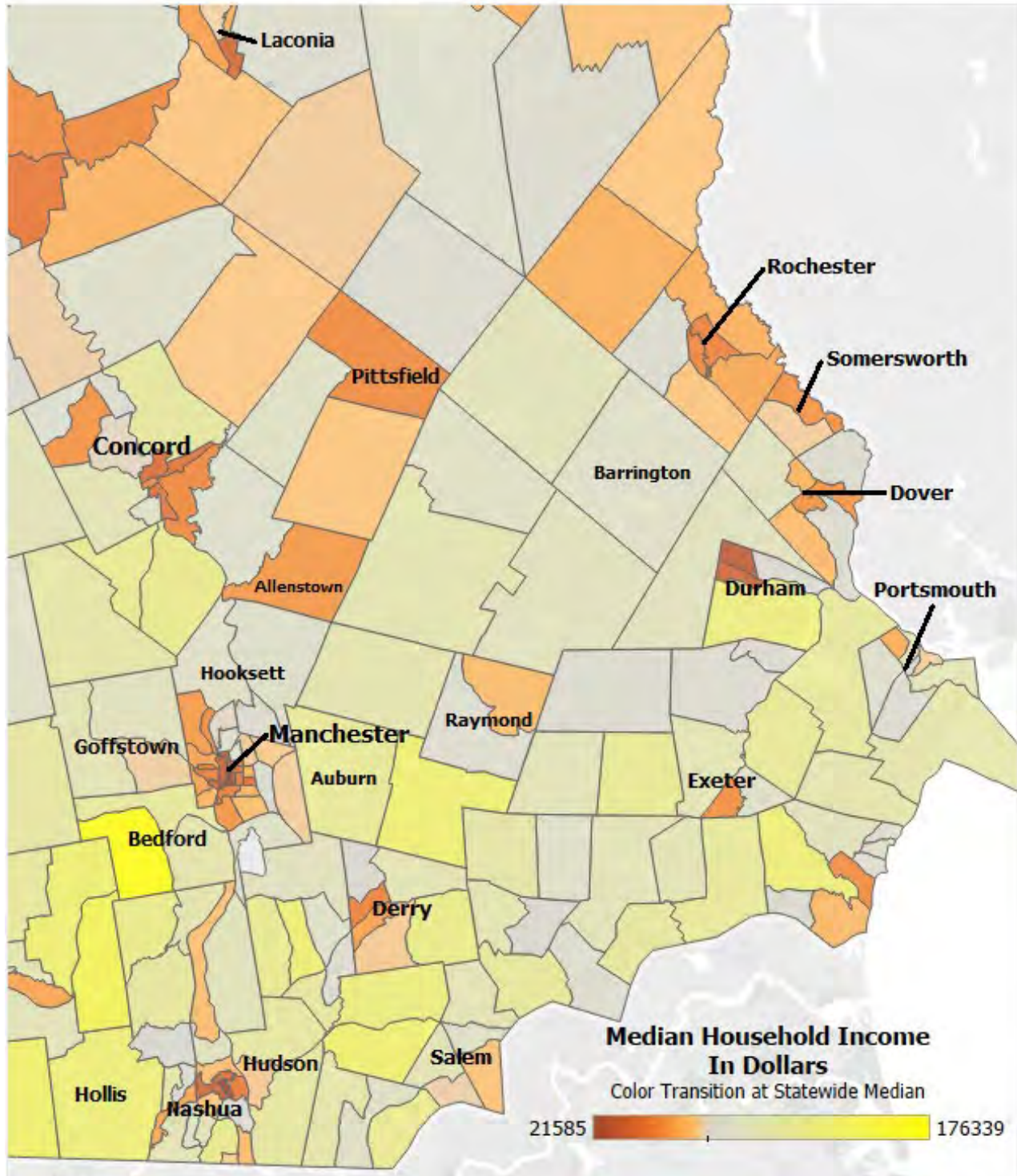




## Median Household Income by Census Tract

*Southeastern New Hampshire, 2014-2018 Estimates*

Source: U.S. Census Bureau, American Community Survey, 2014-2018

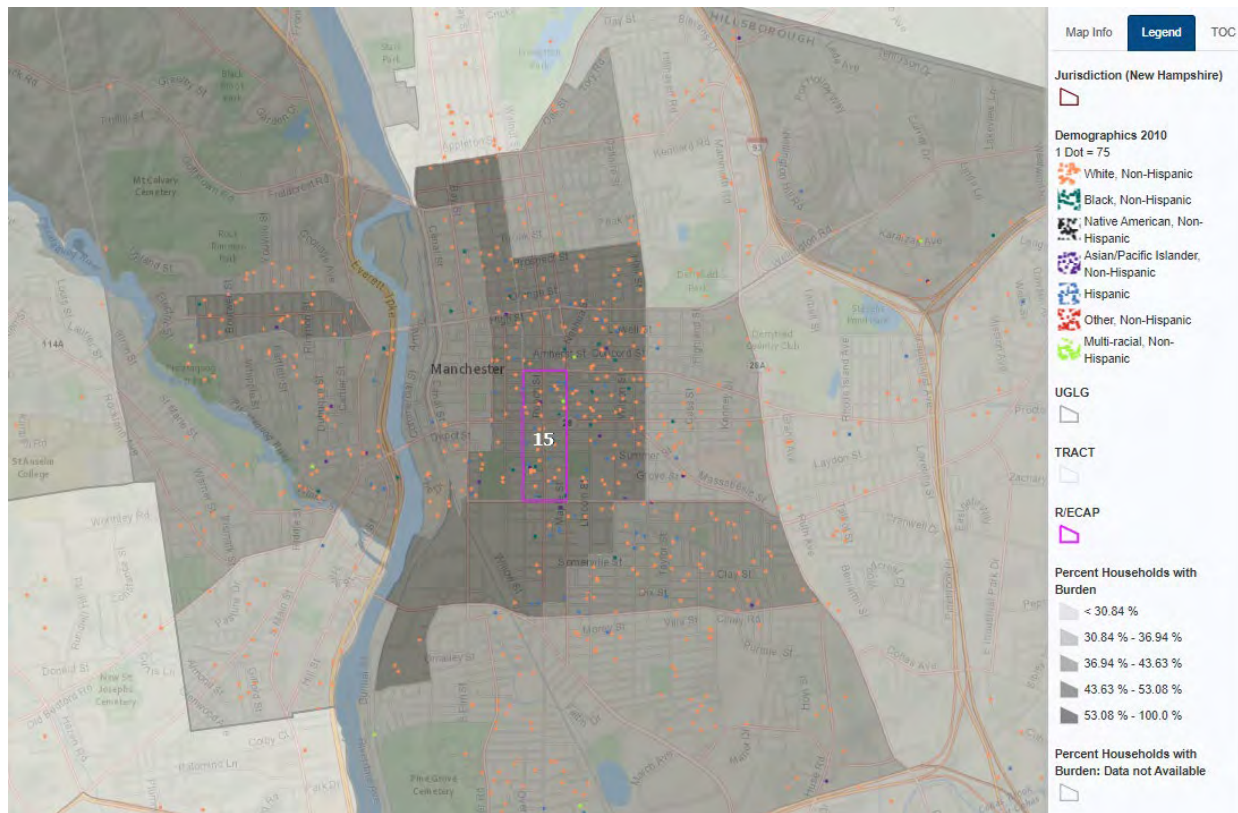




# Housing Cost Burden and Race or Ethnicity

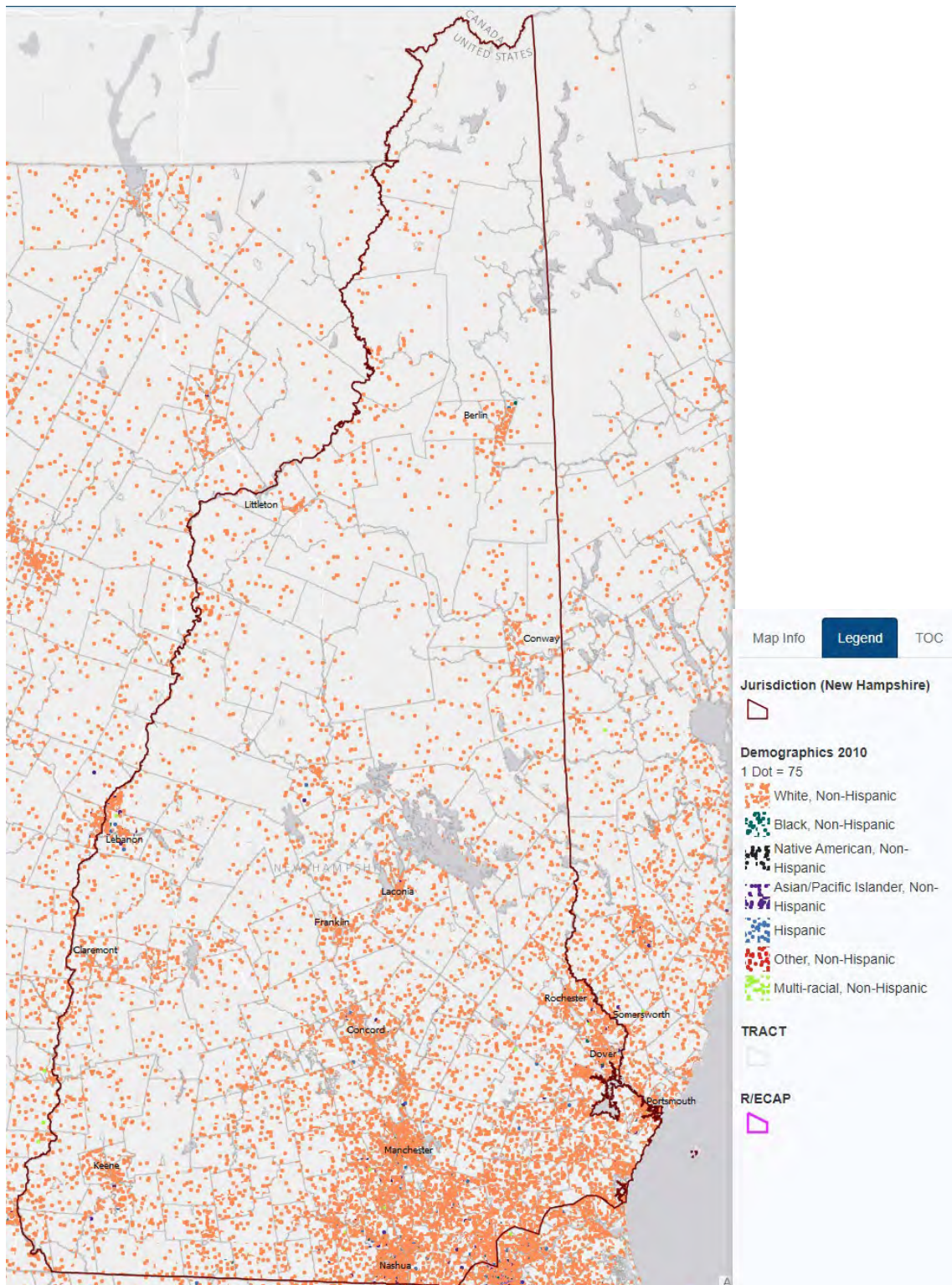
## AFFH-T Generated Map of Manchester,

### Racially or Ethnically Concentrated Area of Poverty, Census Tract 15, Highlighted



## Racial and Ethnic Diversity in New Hampshire

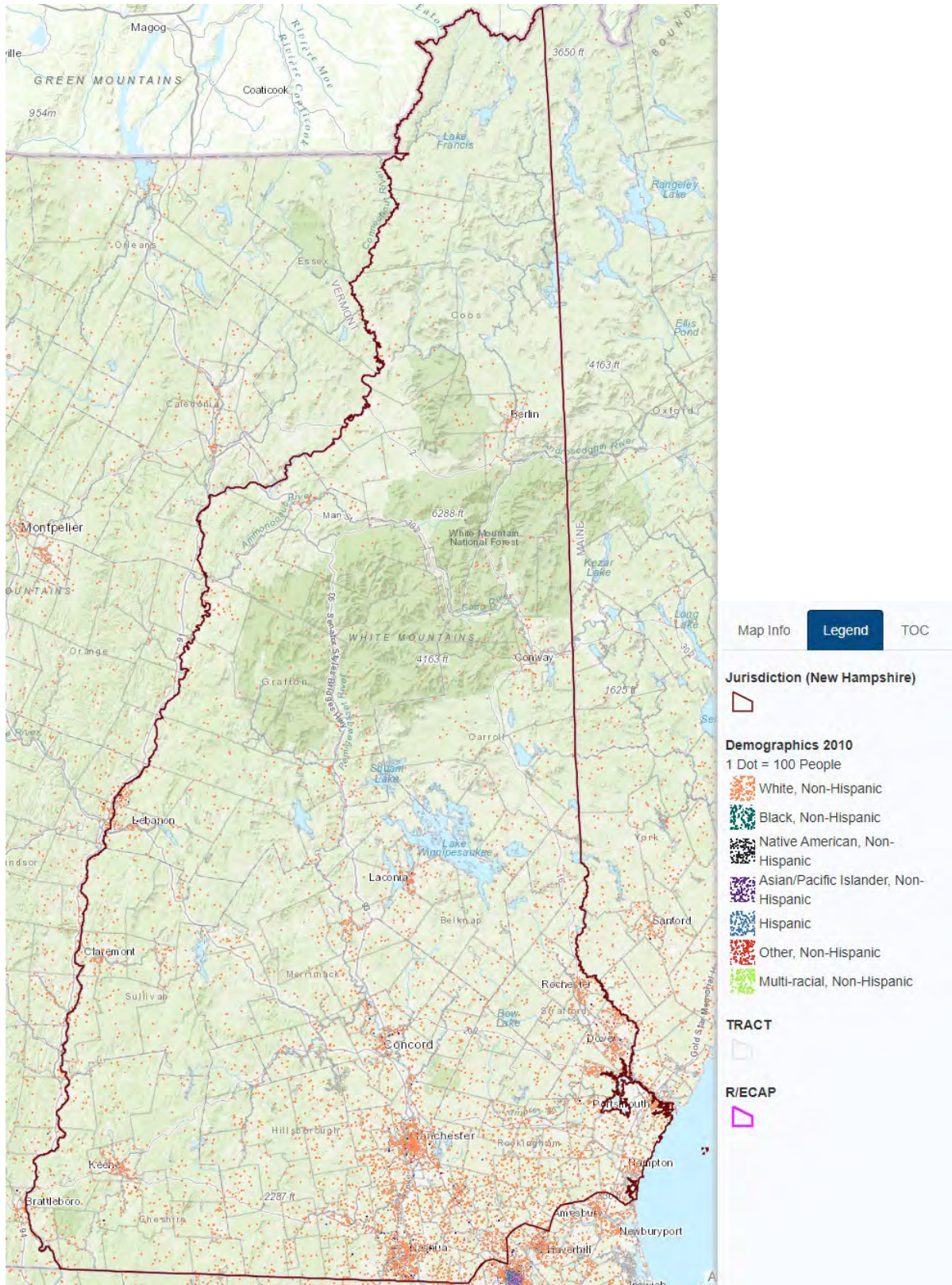
*AFFH-T Generated Dot Map of New Hampshire*





# Racial and Ethnic Diversity in New Hampshire

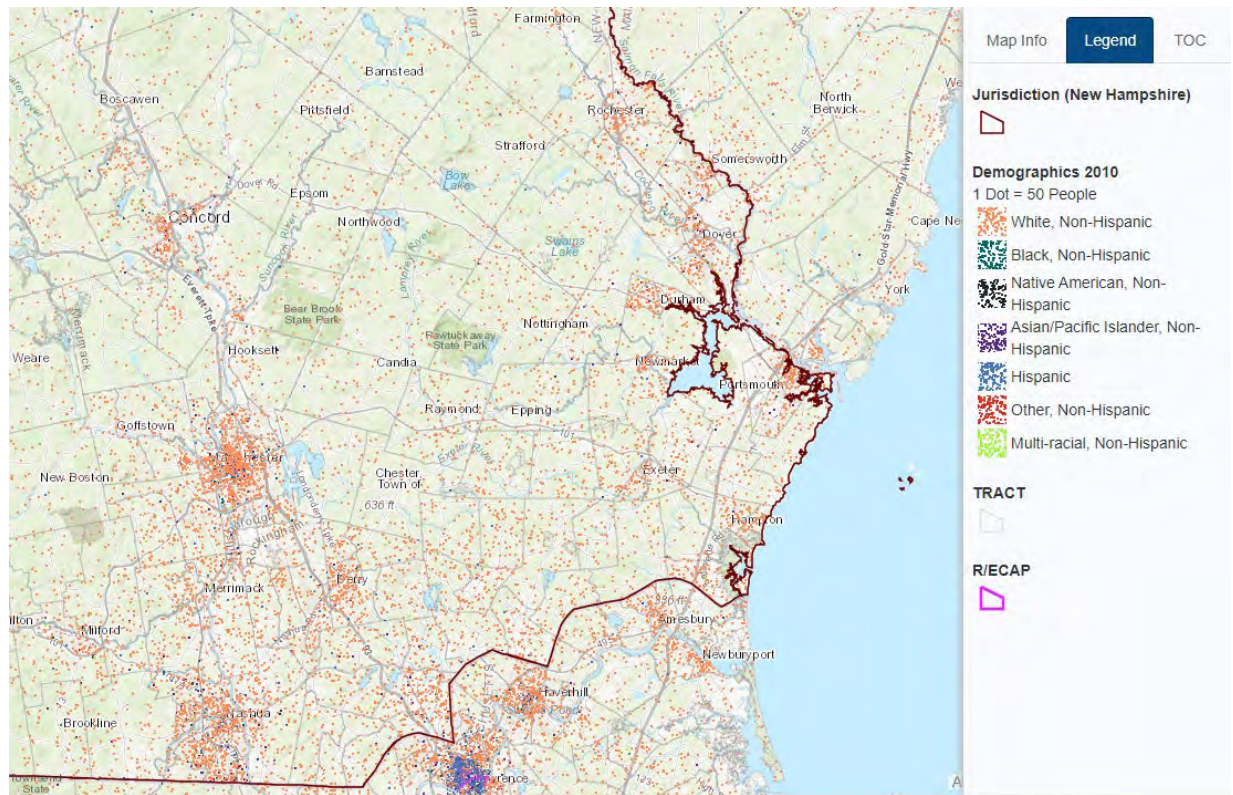
## AFFH-T Generated Dot Map of New Hampshire





## Racial and Ethnic Diversity in Southeastern New Hampshire

*AFFH-T Generated Dot Map of New Hampshire*





## **New Hampshire Legal Assistance settles housing discrimination claim against Manchester Housing and Redevelopment Authority**

For more information:

Sarah Palermo, NHLA communications manager  
603-369-6650 or [spalermo@nhla.org](mailto:spalermo@nhla.org)

MANCHESTER, N.H. – Dec. 10, 2015

The Fair Housing Project of New Hampshire Legal Assistance recently entered into a Conciliation Agreement with Manchester Housing and Redevelopment Authority on behalf of a Deaf resident who complained that his health, safety and well-being were profoundly damaged by discriminatory practices at MHRA. The discrimination included MHRA's failure to provide American Sign Language interpreters or adaptive intercom systems, fire alarms and smoke detectors.

NHLA's client, Matthew\*, is a young Deaf man who moved into housing operated by MHRA in May 2014. During his application process, he faced discriminatory practices which continued into his tenancy. Initially, he tried advocating for himself but sought help from NHLA in March 2015.

"Other Deaf people came to me and said the same thing had happened to them," Matthew said. "I decided I wasn't speaking for just myself but for others who live here, too. It was time for somebody to stand up for them, as well."

The agreement was conciliated by the U.S. Department of Housing and Urban Development Office of Fair Housing and Equal Opportunity. This is the second complaint alleging discrimination by MHRA staff against Deaf and hard-of-hearing residents that NHLA has filed in five years, said Fair Housing Project Director Christine Wellington.

"Every tenant is entitled to equal access to programs and services, to equal treatment and to use and enjoy his apartment fully," Wellington said. "Since he moved in, our client was repeatedly treated differently, treated as if he was 'less than' other tenants. I'm so proud of him for standing up for himself and others facing discrimination. I also appreciate MHRA's willingness to come to a fair resolution and address the concerns we raised on his behalf."

NHLA's complaint to HUD alleged that MHRA violated the Fair Housing Act, the Americans with Disabilities Act and section 504 of the Rehabilitation Act. The Fair Housing Project at NHLA is funded in part by HUD.

Prior to moving in, Matthew had asked that the apartment be modified for his needs and safety. The fire safety system, doorbell and intercom system in his apartment all lacked adequate accommodation for a person who cannot hear. Matthew also consistently requested an ASL

interpreter attend his meetings with MHRA staff, but staff only provided interpretation services once, forcing him to attempt to lip read and rely on written notes.

“It would lead to insomnia, to being physically sick with anxiety. My psychological and physical health deteriorated after a while,” he said.

Among other things, the agreement calls for financial remuneration and that MHRA establish a formal policy for filing and responding to all requests for reasonable accommodations, and provide training for all management and staff on services for Deaf and hard-of-hearing residents. MHRA is also required to provide certified ASL interpreters.

For Matthew, the agreement “means no more of this negotiating for every little request, no more begging and pleading for our rights,” he said. “And it wasn’t just for Deaf people. It was for senior citizens, anyone that has a disability that needs accommodations. I know that people were afraid, but somebody had to stand up, and I was willing to do it.”

\*This client’s name has been changed at his request.

### **About New Hampshire Legal Assistance (NHLA)**

New Hampshire Legal Assistance is a state-wide non-profit law firm providing civil legal services to low-income and elderly New Hampshire residents who cannot afford a lawyer. Typical clients are victims of domestic violence seeking safety from abuse, veterans and other people with disabilities trying to access their benefits, and people like Matthew who have faced discriminatory housing policies and practices. NHLA maintains offices in Berlin, Claremont, Concord, Manchester and Portsmouth.

The work of the Fair Housing Project at New Hampshire Legal Assistance is made possible by a grant from the Department of Housing and Urban Development’s Fair Housing Initiatives Program (FHIP). Fair Housing organizations and other non-profits that receive funding through the Fair Housing Initiatives Program (FHIP) assist people who believe they have been victims of housing discrimination.

### **About the United States Department of Housing and Urban Development (HUD)**

HUD’s mission is to create strong, sustainable, inclusive communities and quality affordable homes for all. HUD is working to strengthen the housing market to bolster the economy and protect consumers; meet the need for quality affordable rental homes; utilize housing as a platform for improving quality of life; build inclusive and sustainable communities free from discrimination, and transform the way HUD does business.

The mission of the Office of Fair Housing and Equal Opportunity (FHEO) is to eliminate housing discrimination, promote economic opportunity, and achieve diverse, inclusive communities by leading the nation in the enforcement, administration, development, and public understanding of federal fair housing policies and laws.

FHEO protects people from discrimination on the basis of race, color, religion, sex, national origin, disability, and familial status. Persons who believe they are victims of housing discrimination can file complaints with HUD by calling 800-827-5005 or online at HUD.gov



November 20, 2017

FOR IMMEDIATE RELEASE

For more information:

Niambi Mercado, NHLA Assisi Fellow

603-223-9750 x2840 or [nmercado@nhla.org](mailto:nmercado@nhla.org)

**New Hampshire Legal Assistance settlement protects the mobility and independence of residents at Manchester nursing home**

New Hampshire Legal Assistance recently entered into a Conciliation Agreement with Hanover Hill Healthcare Center Services on behalf of a wheelchair-bound resident who claimed his independence was taken away from him due to discriminatory practices at Hanover Hill. The discrimination included refusal to provide reasonable accommodations, by denying his request to use a motorized wheelchair.

Joseph White, age 88, a National Guard veteran and life-long resident of Manchester, used a manual wheelchair, but when he lost the ability to maneuver it himself, he had to wait for a busy staff person to push him around. Mr. White and his daughter Judith Ashworth requested he be allowed to use a motorized wheelchair.

At the time he was permitted to use the motorized wheelchair, Mr. White's wife of 62 years was dying in another wing of the facility. His grief, combined with the crowded hallways, led to a few minor collisions. Staff took away the motorized chair.

"I felt great, independent. But when they took away my motorized chair, it cut down my time I could go visit my wife. I had to call someone to push me and wait. It hurt," Mr. White said.

Staff denied his request to resume using the motorized chair, even after an independent expert evaluated him and deemed him capable. Working with Christine Wellington of NHLA's Fair Housing Project, Mr. White and Ms. Ashworth asserted that the denial of the wheelchair was a violation of Mr. White's rights. NHLA filed a complaint on behalf of Mr. White to the Department of Housing and Human Urban Development (HUD) claiming discriminatory terms and conditions in housing and failure to make a reasonable accommodation for his disability. On October 2, 2017, HUD's Office of Fair Housing and Equal Opportunity approved the conciliation agreement settling the complaint.

"I'm not a legal person" Ms. Ashworth said "We needed Chris, someone who believed in us, someone to fight for us. She was our voice when we weren't being heard."

"I am very pleased that we were able to obtain relief for Mr. White to greatly improve the quality of his life and also help others who are in similar situations," Wellington said. "It is important for



residents in nursing homes and their families to know that they still are protected by federal and state fair housing laws.”

Mr. White will be allowed to use his motorized wheel chair again after an on-site evaluation indicated that he is capable of safely operating the wheelchair. As part of the conciliation, Hanover Hill officials also agreed to undergo equal access and accommodations training as well as providing reasonable accommodations policies to residents, staff, and the public. Hanover Hill will also help sponsor a conference next spring for skilled nursing facilities; provide information about entitlements to accommodations to current residents and applicants and their families; and pay attorneys fees to NHLA. HUD has also assigned a staff member to oversee compliance with the Conciliation Agreement.

“The Fair Housing Act makes it clear that individuals with disabilities have a right to the reasonable accommodations they need to fully enjoy their home,” said Anna María Farías, HUD Assistant Secretary for Fair Housing and Equal Opportunity. “HUD will continue to work with our fair housing partners, like New Hampshire Legal Assistance, to ensure that owners and organizations that provide housing meet their obligations under the law.”

The agreement presents an opportunity to develop the change Mr. White and Ms. Ashworth truly want: an environment in which current and future residents can maintain their independence and live their remaining years with dignity.

For more information about the spring training please contact NHLA.

#### **About New Hampshire Legal Assistance (NHLA)**

New Hampshire Legal Assistance is a state-wide non-profit law firm providing civil legal services to low-income and elderly New Hampshire residents who cannot afford a lawyer. Typical clients are victims of domestic violence seeking safety from abuse, veterans and other people with disabilities trying to access their benefits, and people like Mr. White who have faced discriminatory policies and practices. NHLA maintains offices in Berlin, Claremont, Concord, Manchester and Portsmouth.

This work was supported by the Department of Housing and Urban Development under FHIP Grant No. FPEI161013. Any opinion, findings and conclusions or recommendations expressed in this material are those of the author(s) and do not reflect the views of the Department of Housing and Urban Development”.

-END-



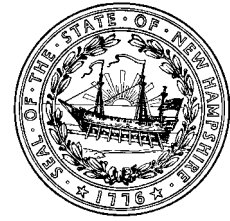
## KEENE HOUSING BOARD OF COMMISSIONERS STATEMENT ON RACISM & DISCRIMINATION

The following Resolution was adopted by the Keene Housing Board of Commissioners on June 18<sup>th</sup>:

The Keene Housing Board of Commissioners recognizes that the recent protests around the country have brought heightened awareness of the pains of racism and thrown a light on the systemic injustice that is a constant companion of black people and people of color. In a show of unprecedented solidarity, millions of people are taking to the streets across America--from Keene, New Hampshire to Minneapolis, Minnesota--in a call for systematic and nationwide action.

All of us have a role to play, and given the regrettable history of housing discrimination and segregation in our country, those of us in the housing sector have a special responsibility to work with our partners and peers to ensure any person, regardless of the color of their skin, has equal access to safe and affordable housing as well as equal opportunity to live in any neighborhood of their choosing. Recognizing that this national call for action further strengthens our mission, Keene Housing hereby affirms its commitment to addressing any and all manifestations of racial discrimination, bringing awareness to and condemning racial discrimination in all aspects of our society, but especially in housing, and advocating for an end to policies and practices that allow racial discrimination and segregationist policies to persist in our nation and in our world.

NH Department of Health and Human Services  
129 Pleasant Street - State Office Park South  
Concord, NH 03301



**PRESS RELEASE**  
**FOR IMMEDIATE RELEASE**  
**December 31, 2020**

**CONTACT**  
**State Joint Information Center**  
**603-223-6169**  
[jic@dos.nh.gov](mailto:jic@dos.nh.gov)

## **NH DHHS COVID-19 Update – December 31, 2020**

**Concord, NH** – The New Hampshire Department of Health and Human Services (DHHS) has issued the following update on the new coronavirus, COVID-19.

On Thursday, December 31, 2020, DHHS announced 848 new positive test results for COVID-19, for a daily PCR test positivity rate of 5.7%. Today's results include 479 people who tested positive by PCR test and 369 who tested positive by antigen test. There are now 5,919 current COVID-19 cases diagnosed in New Hampshire. Of the results reported today:

- **12/25:** 69 new cases today, for an updated total of **357** cases
- **12/26:** 39 new cases today, for an updated total of **534** cases
- **12/27:** 48 new cases today, for an updated total of **586** cases
- **12/28:** 1 new case today, for an updated total of **559** cases
- **12/29:** 486 new cases today, for an updated total of **813** cases
- **12/30:** **205** new cases

Test results for previous days are still being processed and the total number of new positives for those days are not yet complete. Updated case counts for prior days will be reflected on the [COVID-19 interactive dashboard](#).

Several cases are still under investigation. Additional information from ongoing investigations will be incorporated into future COVID-19 updates. Of those with complete information, there are one hundred and eighteen individuals under the age of 18 and the rest are adults with 53% being female and 47% being male. The new cases reside in Hillsborough County other than Manchester and Nashua (193), Rockingham (162), Merrimack (110), Strafford (101), Belknap (33), Coos (23), Carroll (22), Cheshire (10), Sullivan (10), and Grafton (9) counties, and in the cities of Nashua (68) and Manchester (60). The county of residence is being determined for forty-seven new cases.

Community-based transmission continues to occur in the State and has been identified in all counties. Of those with complete risk information, most of the cases are either associated with an outbreak setting or have had close contact with a person with a confirmed COVID-19 diagnosis.

DHHS has also announced eighteen additional deaths related to COVID-19. We offer our sympathies to the family and friends.

- 1 male resident of Belknap County, 60 years of age and older
- 1 male resident of Carroll County, 60 years of age and older
- 1 female resident of Cheshire County, 60 years of age and older
- 4 female residents of Hillsborough County, 60 years of age and older
- 1 female resident of Hillsborough County, younger than 60 years of age

- 4 male residents of Hillsborough County, 60 years of age and older
- 2 female residents of Merrimack County, 60 years of age and older
- 1 male resident of Merrimack County, younger than 60 years of age
- 1 female resident of Strafford County, 60 years of age and older
- 1 male resident of Strafford County, 60 years of age and older
- 1 male resident of Sullivan County, 60 years of age and older

There are currently 317 individuals hospitalized with COVID-19. In New Hampshire since the start of the pandemic, there have been a total of 44,028 cases of COVID-19 diagnosed with 902 (2%) of those having been hospitalized.

## Current Situation in New Hampshire

### New Hampshire 2019 Novel Coronavirus (COVID-19) Summary Report (updated December 31, 2020, 9:00 AM)

NH Persons with COVID-19	44,028
Recovered	37,350 (85%)
Deaths Attributed to COVID-19	759 (2%)
Total Current COVID-19 Cases	5,919
Persons Who Have Been Hospitalized for COVID-19	902 (2%)
Current Hospitalizations	317
Total Persons Tested at Selected Laboratories, Polymerase Chain Reaction (PCR) <sub>2</sub>	512,286
Total Persons Tested at Selected Laboratories, Antibody Laboratory Tests <sub>2</sub>	34,671
Persons with Specimens Submitted to NH PHL	63,237
Persons with Test Pending at NH PHL <sub>3</sub>	843

<sub>1</sub>Includes specimens positive at any laboratory and those confirmed by CDC confirmatory testing.

<sub>2</sub>Includes specimens tested at the NH Public Health Laboratories (PHL), LabCorp, Quest, Dartmouth-Hitchcock Medical Center, and those sent to CDC prior to NH PHL testing capacity.

<sub>3</sub>Includes specimens received and awaiting testing at NH PHL. Does not include tests pending at commercial laboratories.

## COVID-19 Vaccine Allocation Update

Among the 64,755 doses of vaccine allocated to New Hampshire, 47,645 doses have been distributed to vaccination sites across the state and 21,126 doses have been administered to date. New Hampshire expects to receive 17,175 additional doses next week, which will be allocated to the long-term care pharmacy partnership program, hospitals, Regional Public Health Networks, and the state-managed fixed sites.

### Vaccine Doses Allocated, Distributed, and Administered by Vaccination Site through Wednesday December 30, 2020

Vaccination Sites	Doses Available for Site to Order <sup>1</sup>	Doses Ordered and Delivered <sup>2</sup>	Doses Administered to Patients
Hospitals	23,120	18,935	13,366
Long-term care pharmacy partnership program*	24,375	14,625	5,065
State-managed fixed sites	14,360	14,260	2,253
Regional public health network mobile sites	1,420	500	153
Other	1,500	300	289
Total	64,775	48,620	21,126

<sup>1</sup> Doses available for site to order are the number of doses that have been made available to the site to order.

<sup>2</sup> Doses distributed are the number of doses that the site has ordered and received at their location. Orders are based on clinic schedules and average uptake of vaccine by participants.

\* The LTCF PPP is a federal program that sends pharmacies into LTCF to vaccinate residents and staff. In order for LTCF to access this program in New Hampshire, NH DHHS was required by the CDC to allocate a fixed number of doses to guarantee that pharmacies would have enough vaccine to complete vaccination administration within a four-week time frame. This program remains on schedule as originally anticipated and will be continually monitored to ensure completeness.

### Phase 1a Allocation Summary through Wednesday, December 30, 2020

Phase 1a Groups	Doses allocated to date	Estimated persons in group	% of needed amount allocated
Hospital health workers – High risk	19,270	20,694	93%
Hospital health workers – Moderate risk	0	5,417	0%
Ambulatory care health workers – High risk**	13,520	34,201	40%
Ambulatory care health workers – Moderate risk	0	3,963	0%
Long-term care facilities in PPP	24,375	33,150	74%
Long-term care facilities not in PPP	980	980	100%
First responders	5,010	12,890	39%
Public health workers***	520	520	100%
State reserve for outbreaks or emergency needs	1,100	1,100	100%
Total	64,775	112,915	57%

\*\* Includes outpatient healthcare providers, dentists, home health care, K-12 school nurses, funeral services, retail pharmacists, corrections medical personnel, and homeless quarantine/isolation shelter personnel, etc.

\*\*\* Includes public health response personnel with contact with cases, contacts, or conduct testing or vaccine administration.

## Number of Tests Conducted by Date of Report to NH DHHS

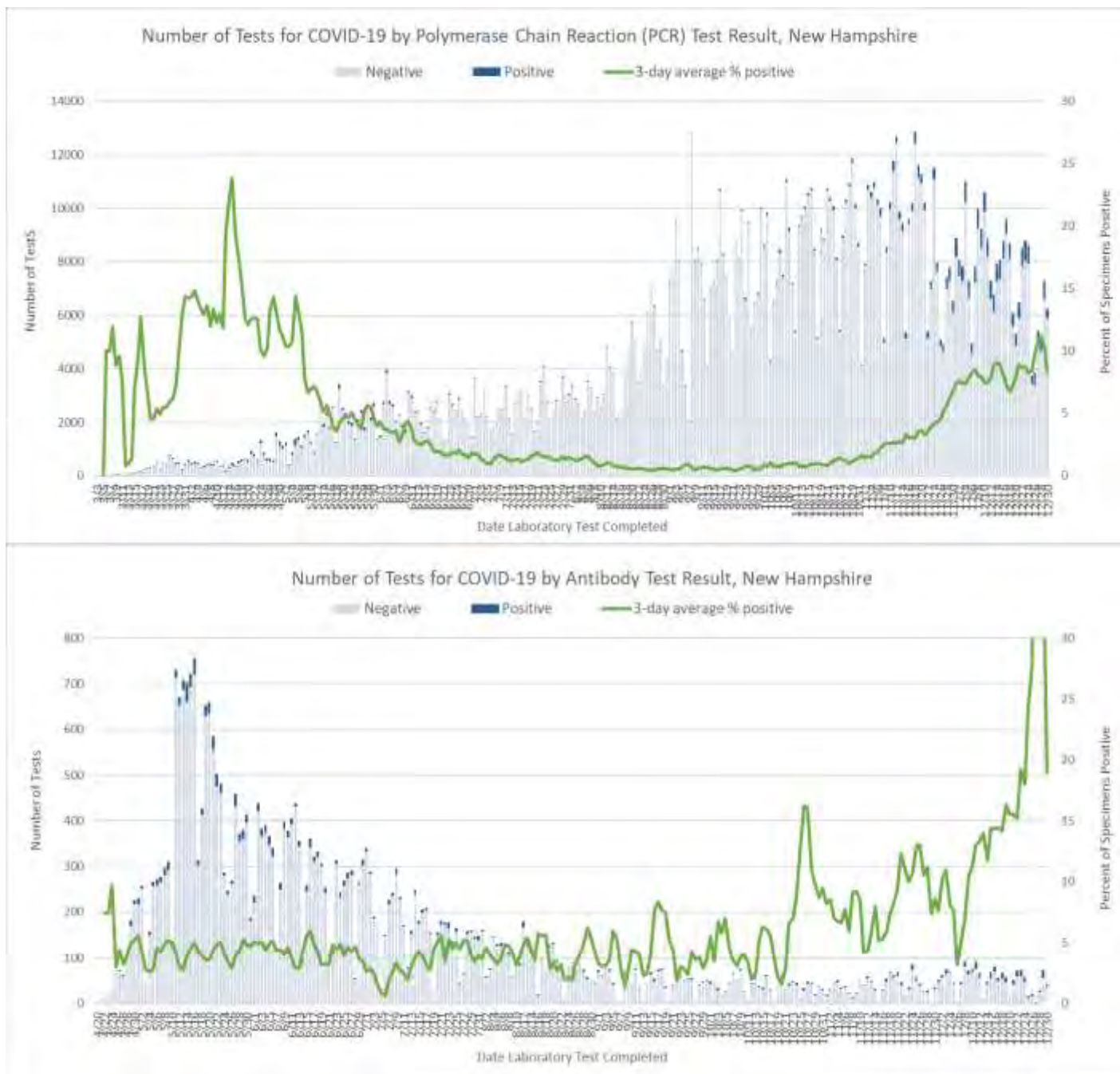
Polymerase Chain Reaction (PCR) Tests								
Testing Laboratory	12/24	12/25	12/26	12/27	12/28	12/29	12/30	Daily Average
NH Public Health Laboratories	1,585	0	708	529	413	575	746	651
LabCorp	1,652	370	607	2,341	996	1,551	543	1,151
Quest Diagnostics	1,425	1,412	776	1,011	431	576	488	874
Mako Medical	529	695	65	69	0	262	1,169	398
Dartmouth-Hitchcock Medical Center	823	586	115	322	295	859	4	429
Other NH Hospital Laboratory	428	194	432	352	440	621	467	419
Other Laboratory*	2,175	483	1,129	820	1,340	1,805	2,016	1,395
University of New Hampshire**	11	0	1	0	1,206	1,070	805	442
Total	8,628	3,740	3,833	5,444	5,121	7,319	6,238	5,760
Antibody Laboratory Tests								
Testing Laboratory	12/24	12/25	12/26	12/27	12/28	12/29	12/30	Daily Average
LabCorp	18	10	1	3	0	27	1	9
Quest Diagnostics	28	2	0	0	11	25	37	15
Dartmouth-Hitchcock Medical Center	3	0	5	0	6	12	0	4
Other Laboratory*	6	0	15	0	12	2	6	6
Total	55	12	21	3	29	66	44	33

\* Includes out-of-state public health laboratories, out-of-state hospital laboratories, and other commercial laboratories not already listed in the table.

Note: Patients who had both antibody and polymerase chain reaction (PCR) tests are accounted for in both tables.

\*\* Includes tests conducted at the UNH laboartory and their contracted lab Veritas.





[NH DHHS Daily Update on COVID-19 Archive](#)

For more information, please visit the DHHS COVID-19 webpage at <https://www.nh.gov/covid19>.

###



# NEW HAMPSHIRE LABORATORY-CONFIRMED COVID-19 CASES

Health Outcomes ?	Infections		Hospitalizations		Intensive Care Unit		Recovered and Off Isolation	Deaths
	Current	Cumulative	Current	Cumulative	Current	Cumulative		
Persons	6,200	47,328	319	916	n/a	303	40,347	781



Persons with COVID-19 ?	Infections		Hospitalizations		Deaths	
	Persons	% of Total	Persons	% of Total	Persons	% of Total
Healthcare Workers*	3,100	6.6%	67	7.3%	9	1.2%
Long-Term Care Settings**	4,701	9.9%	240	26.2%	615	78.7%

## Sex

Female	24,299	51.3%	393	42.9%	389	49.8%
Male	22,291	47.1%	523	57.1%	392	50.2%
Unknown	738	1.6%	0	0.0%	0	0.0%
Grand Total	47,328		916		781	

## Age Group (in Years)

0 - 9	2,021	4.3%	6	0.7%	0	0.0%
10 - 19	4,668	9.9%	5	0.5%	0	0.0%
20 - 29	8,864	18.7%	21	2.3%	1	0.1%
30 - 39	7,076	15.0%	43	4.7%	1	0.1%
40 - 49	6,420	13.6%	78	8.5%	8	1.0%
50 - 59	7,604	16.1%	121	13.2%	14	1.8%
60 - 69	5,145	10.9%	214	23.4%	62	7.9%
70 - 79	2,786	5.9%	204	22.3%	178	22.8%
80 +	2,680	5.7%	224	24.5%	516	66.1%
Unknown	64	0.1%	0	0.0%	1	0.1%
Grand Total	47,328		916		781	

## Test Type

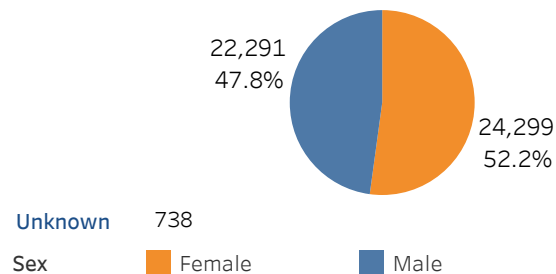
Antigen Positive	12,392	26.2%	45	4.9%	82	10.5%
PCR Positive	34,936	73.8%	871	95.1%	699	89.5%
Grand Total	47,328		916		781	

Race / Ethnicity ?	% of NH Population ****	Infections		Hospitalizations		Deaths	
		Persons	% of Total	Persons	% of Total	Persons	% of Total
White**	90.0%	22,634	79.0%	681	79.7%	624	94.3%
Hispanic or Latino*	3.9%	3,152	11.0%	87	10.2%	19	2.9%
Black or African American**	1.4%	725	2.5%	37	4.3%	10	1.5%
Other***	1.8%	1,489	5.2%	15	1.8%	3	0.5%
Asian**	3.0%	633	2.2%	34	4.0%	6	0.9%
Grand Total		28,633		854		662	

Race/Ethnicity is known for 60.5% of COVID-19 infections, 93.2% of hospitalizations, and 84.8% of deaths

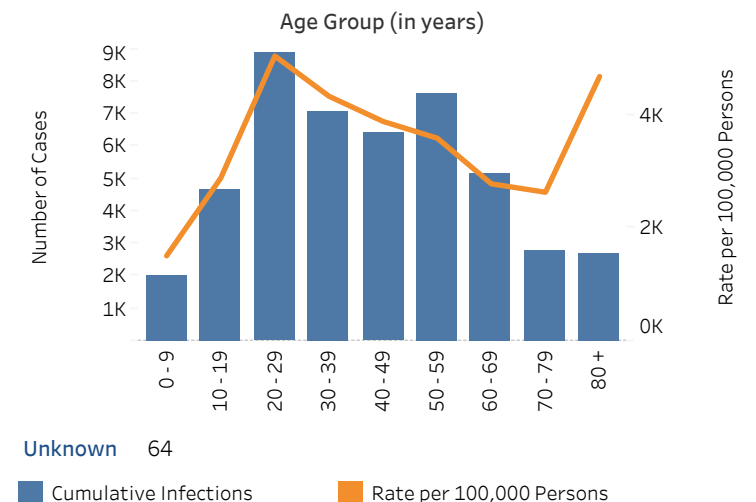
## COVID-19 CASES BY SEX

(n= 46590) ?



## COVID-19 CASES BY AGE GROUP

(n= 47264) ?



Data as of: 1/4/2021

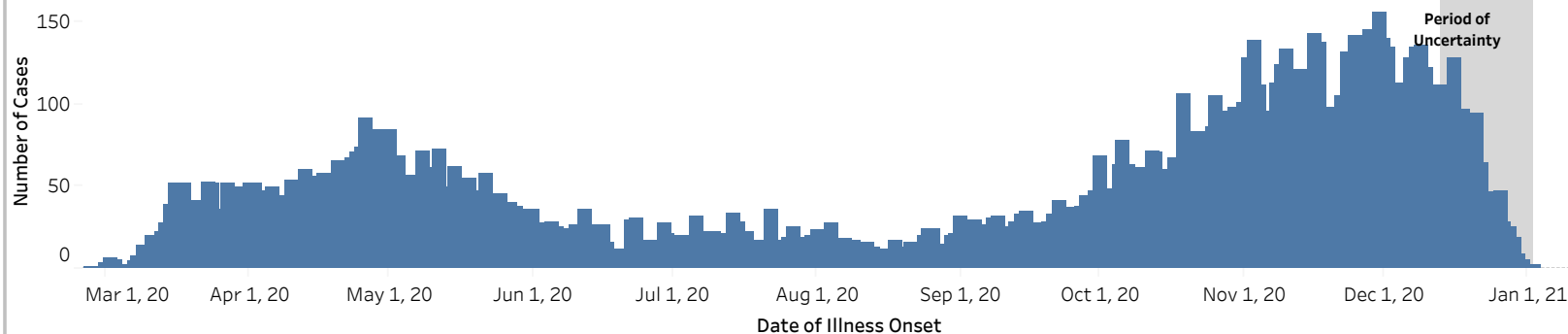
## NEW HAMPSHIRE LABORATORY-CONFIRMED COVID-19 CASES - RISK FACTORS AND EPIDEMIC CURVE

### EPIDEMIC CURVE: ONSET OF ILLNESS AMONG PERSONS WITH CONFIRMED COVID-19

(n= 14963)



The epidemic curve is a visual presentation of the progression of COVID-19 in NH that shows the number of people with confirmed illness on the specific date each person first started to experience symptoms. Because there is a delay between when symptoms develop and a confirmed case is reported to DHHS, the data on a given date will change over time.



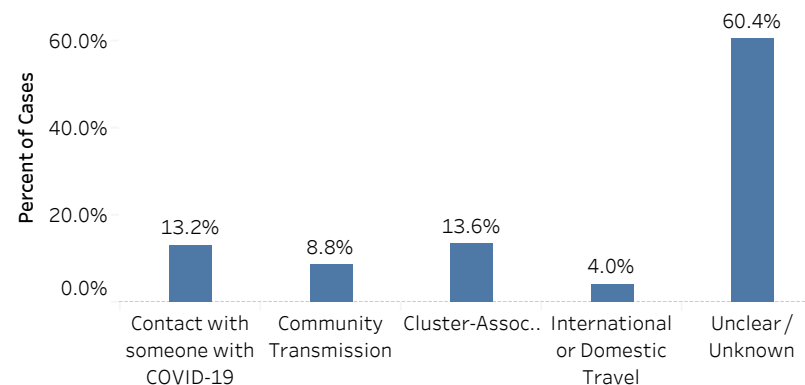
Onset Date Unclear / Unknown: 32,365

**Note:** Not all confirmed cases are included in this figure due to the person having an unclear onset date or no onset date because they did not experience any symptoms.

Risk Factors of Persons with COVID-19	Infections		Hospitalizations		Deaths	
	Persons	% of Total	Persons	% of Total	Persons	% of Total
Contact with someone with COVID-19	6,270	13.2%	171	18.7%	25	3.2%
Community Transmission	4,152	8.8%	279	30.5%	45	5.8%
Cluster-Associated*	6,459	13.6%	289	31.6%	613	78.5%
International or Domestic Travel	1,884	4.0%	112	12.2%	21	2.7%
Unclear / Unknown	28,563	60.4%	65	7.1%	77	9.9%
<b>Grand Total</b>	<b>47,328</b>		<b>916</b>		<b>781</b>	

### RISK FACTORS FOR CONFIRMED COVID-19 CASES

(n= 47328)



Data as of: 1/4/2021

# COVID-19 IN NEW HAMPSHIRE CUMULATIVE POSITIVE TEST RESULTS

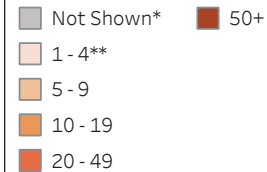
03/01/2020 - 1/4/2021  
(n= 47328)



Cases under investigation, town unknown

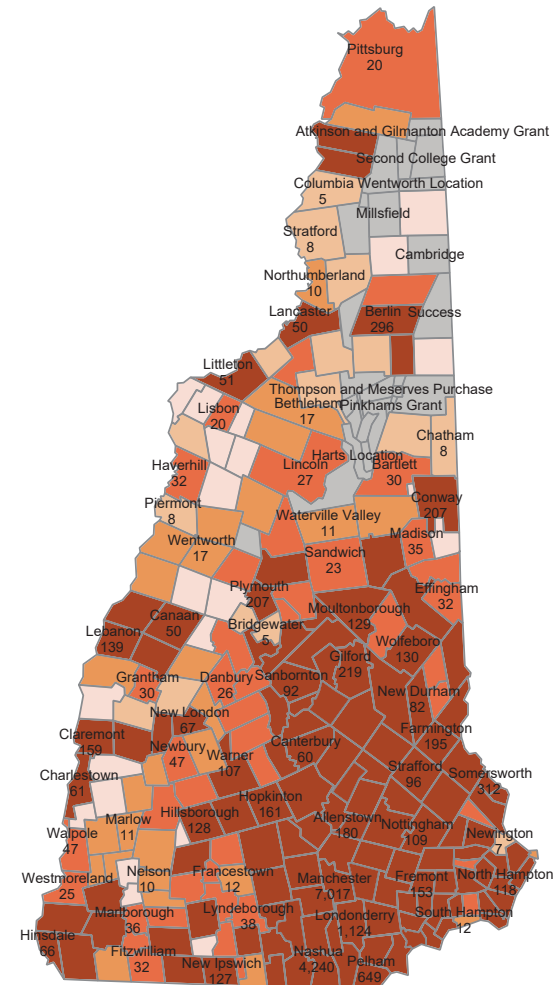
962

Positive Results



Geographic Distribution* of COVID-19		Infections		Hospitalizations		Deaths	
		Persons	% of T..	Persons	% of T..	Persons	% of To..
Belknap	Total	2,069	4.4%	27	2.9%	52	6.7%
Carroll	Total	955	2.0%	18	2.0%	4	0.5%
Cheshire	Total	1,392	2.9%	14	1.5%	7	0.9%
Coos	Total	723	1.5%	5	0.5%	15	1.9%
Grafton	Total	1,228	2.6%	12	1.3%	9	1.2%
Hillsborough	Manchester	7,017	14.8%	239	26.1%	170	21.8%
	Nashua	4,240	9.0%	112	12.2%	56	7.2%
	Outside Manchester and Nashua	7,697	16.3%	166	18.1%	219	28.0%
	Total	18,954	40.0%	517	56.4%	445	57.0%
Merrimack	Total	5,121	10.8%	74	8.1%	68	8.7%
Rockingham	Total	11,581	24.5%	212	23.1%	142	18.2%
Strafford	Total	3,834	8.1%	31	3.4%	32	4.1%
Sullivan	Total	509	1.1%	6	0.7%	6	0.8%
Unknown	Total	962	2.0%	0	0.0%	1	0.1%
Grand Total		47,328	100.0%	916	100.0%	781	100.0%

Data as of: 1/4/2021 © OpenStreetMap

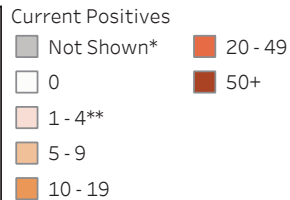


# COVID-19 IN NEW HAMPSHIRE CURRENT POSITIVE CASES

AS OF 1/4/2021  
(n= 6200)



Cases under investigation, town unknown 284

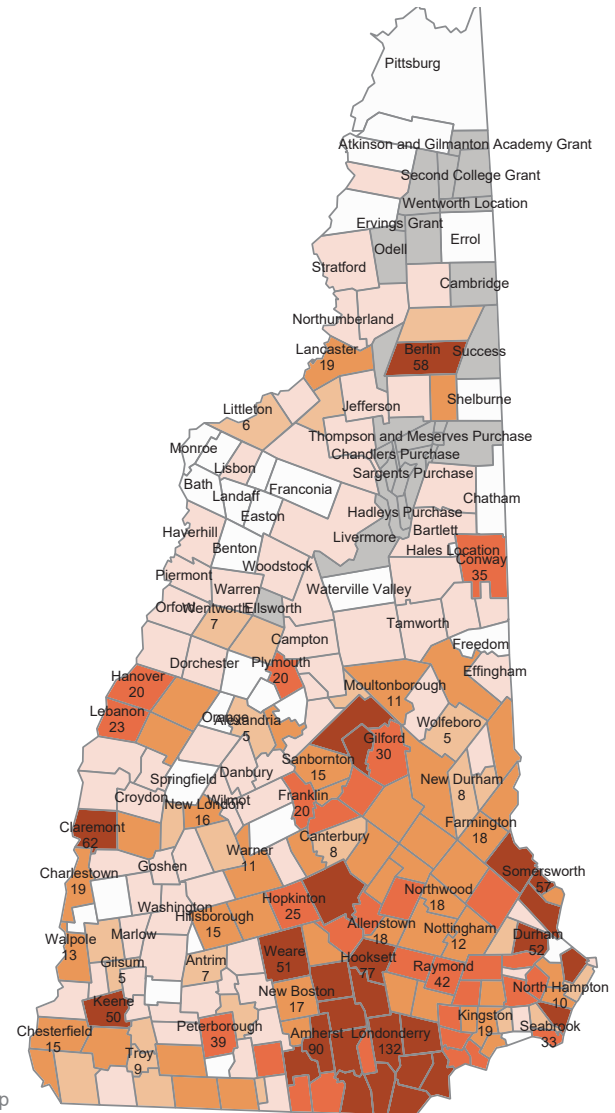


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Geographic Distribution* of Current Cases		Infections	
		Persons	% of Total
Belknap	Total	277	4.5%
Carroll	Total	106	1.7%
Cheshire	Total	197	3.2%
Coos	Total	131	2.1%
Grafton	Total	162	2.6%
Hillsborough	Manchester	674	10.9%
	Nashua	524	8.5%
	Outside Manchester and Nashua	1,160	18.7%
	Total	2,358	38.0%
Merrimack	Total	693	11.2%
Rockingham	Total	1,265	20.4%
Strafford	Total	610	9.8%
Sullivan	Total	117	1.9%
Unknown	Total	284	4.6%
Grand Total		6,200	100.0%

Data as of: 1/4/2021

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