Research Protocol for State Fair Housing Protections

Prepared by the Policy Surveillance Program Staff

August 2019
State Fair Housing Protections

I. Date of Protocol: August 2019

II. Scope: Compile state laws and regulations pertaining to fair housing protections that prohibit discrimination in real estate-related transactions. This longitudinal dataset includes coding questions to capture which classes are protected from housing discrimination, what actions are prohibited under the laws, when exemptions apply, and what penalties are authorized for violations.

III. Primary Data Collection

   a. Project Dates: May 31, 2017—August 1, 2019
   b. Dates Covered in the Dataset: August 1, 2017—August 1, 2019. This dataset started out as cross-sectional, analyzing state fair housing protections as they were in effect at one point in time, August 1, 2017. The dataset was then updated to be longitudinal, covering changes in the law from August 1, 2017 through August 1, 2019.
   c. Data Collection Methods: The research team consisted of two legal researchers (“Researcher #1” and “Researcher #2” or “Researchers”) and one supervisor (“Supervisor”). The Researchers first drafted a background memorandum in June 2017. Then each researcher was assigned five initial states and submitted a five-state policy memorandum. WestlawNext and LexisNexis were used to identify states with legislation prohibiting discrimination in housing transactions. Secondary sources and a subject matter expert assisted with defining the scope of the laws and regulations to be included in the dataset.
   d. Databases Used: Research was conducted using WestlawNext, LexisNexis and state-specific legislature websites.
      - Full text versions of the laws collected were pulled from each respective state legislature websites.
      - The laws collected for Pennsylvania were pulled from http://codes.findlaw.com/pa/ because the laws were not available through the state legislature website.
e. **Search Terms:** “Fair housing”; “housing discrimin!”; “real estate transactions”; (“fair housing” & “housing” & “discrimin!”)

- Searches performed on Google provided additional secondary and primary literature.
- Key word searches were supplemented by examination of the table of contents of each relevant section of the state law identified for statutes or regulations related to fair housing protections. Researchers also collected effective dates for the most recent versions of relevant statutes and regulations.
- Once all the relevant statutes and regulations were identified for a jurisdiction, a Master Sheet was created for each jurisdiction. A Master Sheet summarizes all the relevant statutes and/or regulations, and the effective date for that version of the law.
- 43 states and Washington D.C. were redundantly researched to confirm that all relevant laws were being collected by the Researchers.

f. **Initial Returns and Additional Inclusion or Exclusion Criteria**

i. The following variables were included in the state fair housing dataset:

- State laws prohibiting discrimination in real estate-related transactions were included.
- Laws prohibiting discrimination in matters of financial assistance were included where they were specifically in connection to real estate-related transactions.

ii. The following variables were excluded from the state fair housing dataset:

- Prohibitions against coercing, aiding, inciting, or abetting in the doing of an act prohibited by the fair housing law were excluded.
- Remedies available to individuals who are discriminated against in violation of state fair housing laws were excluded.
- Protections for individuals with HIV/AIDS that were not explicitly included in the state fair housing provision were excluded.
- Penalties established by the federal Fair Housing Act were excluded.
- Real estate discrimination laws that applied only to public housing were excluded (e.g. MS).
II. Coding

a. Development of Coding Scheme: The Team worked in collaboration to determine the focus of the research and the key questions to be coded. The Researchers also conducted background research on state fair housing laws and extensively reviewed secondary sources on the topic. The Researchers conceptualized coding questions, then circulated them for review by the Supervisor. A subject matter expert provided additional feedback regarding the scope and content of the coding questions. When the questions were finalized, the Team entered the questions into the MonQcle, a web-based software-coding platform.

i. Dataset Terminology:
   - “Fair housing law” is legislation that prohibits discrimination in real estate-related transaction.
   - “Housing” includes the terms “housing accommodation” and “dwelling.”
   - “Protected classes” refer to the characteristics of individuals participating in housing-related transactions that are protected from discrimination by law.
   - “Housing vouchers” refer to federal or state housing choice voucher programs which provide rental assistance to low-income families. A housing subsidy is paid to the landlord directly by the government agency on behalf of the participating family.

b. Coding Methods: Below are specific rules used when coding the questions and responses in the state fair housing protections dataset.

Question 1: “Does the state prohibit discrimination in housing-related transactions?”
   - Coded “yes” when state law included protections related to discrimination in real estate transactions.
   - Coded “no” where the fair housing law was limited to public housing only
     - E.g. Mississippi

Question 2: “Which protected classes are regulated under the law?”
   - Coded for both “national origin” and “ancestry” when the law listed “country of ancestral origin” as a protected class.
   - Coded “age” when the law listed “elderliness” as a protected class.
   - Coded “domestic violence victims” when the law listed “victim of domestic abuse, sexual abuse, or stalking” or “victim of intrafamily violence” as a protected class.
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- When the definition of familial status included pregnancy, or the law stated that the protections afforded to familial status extend to pregnancy, both “familial status” and “pregnancy” were coded. A caution note was included.
- Coded “religion” when the law listed “creed” as a protected class.
- When the definition of disability included HIV/AIDS, both “disability” and “HIV” were coded. A caution note was included.
- Coded “marital status” when the law lists “spousal affiliation” as a protected class.
- Coded “familial status” when the law lists “intends to occupy dwelling with one or more minor children” or “families with children status” as a protected class.
- “Military status” was coded when the law includes any language related to being a member, or former member, of the armed forces.
- When sexual orientation or sex was defined to include gender identity, gender expression, or an identity not traditionally associated with one’s biological maleness or femaleness, “gender identity” was coded and the information was included in a caution note.
- “Source of income” was coded when the law lists “recipient of public assistance” or “status with regard to public assistance” as a protected class.
- “Ancestry” was coded when the law lists “lineal ancestors place of birth” or “national origin of an ancestor” as a protected class.
- When protections afforded to a protected class did not apply broadly, they were still coded and a caution note was included detailing where it applies.
- Protected classes were coded only when explicitly listed in state law.

**Question 2.1:** “Does the law exclude housing vouchers as a protected source of income?”

- Coded “yes, housing vouchers are excluded as a source of income” in the following instances:
  - When case law defined source of income as not including housing vouchers.
  - Source of income was defined as income awarded by a court.
  - Source of income was defined as income paid directly to a tenant.
- Coded “no, housing vouchers are included as a source of income” if the law generally included public assistance as a protected source of income, but did not specify as to the treatment of housing vouchers.

**Question 2.2:** “How is age defined under the law?”

- Coded as “not specified” when the state law defined age as “any number of years since birth” or did not define age.
- Coded “18 and over” when the law defines age as “over the age of majority or emancipated minors.”

**Question 3:** “Does the law extend protections to perceived members of a protected class?”

- Coded “yes” when the law used the terms “perceived,” “regarded as,” or “identified as”
belonging to a protected class.

**Question 3.1:** “Which protected classes include protections for perceived members?”
- When the law did not specify which protected classes included protections for perceived members, all of the protected classes under that state’s law were coded.

**Question 4:** “Does the law extend protections to individuals associated with members of protected classes?”
- Coded “yes” if discrimination against an individual associated with the member of a protected class engaging in a real-estate transaction is prohibited.
- Coded “yes” if the law included protections based on the protected class “of a person or a person residing with that person.”

**Question 4.1:** “Which protected classes include protections for individuals associated with members of that protected class?”
- When the law did not specify which protected classes included protections for associated members, all of the protected classes under that state’s law were coded.

**Question 5:** “What types of actions are regulated under the law?”
- “Refusal to allow prospective buyer/renter to inspect housing” was coded when the law stated it shall be unlawful to make false statements about availability for inspection.
- Prohibition against restricting services/facilities in connection with a sale or rental was coded as “Discrimination in terms/conditions of sale or rental of housing.”
- “Eliciting information about a protected class” was coded where the law prohibited making any record or inquiry in connection with the prospective purchase, rental, or lease of real property, including financial applications, which directly or indirectly expresses any limitation, specification, or discrimination based on a protected class.
- “Construction of multifamily dwellings that are inaccessible” was coded where the law requires dwellings with multiple units to be designed and constructed in order to meet accessibility standards, as defined in the law.
- “Discouraging others from buying/renting by representing that members of a protected class live in the neighborhood” was coded when the members of a protected class do not already live in a particular neighborhood, and an individual is attempting to stop them from entering.
- “Zoning or land use decisions” was coded only if the state fair housing legislation explicitly prohibited discrimination in zoning or land use decisions. Any law outside of the fair housing legislation, such as fair share requirements and laws which refer the matter to the state Attorney General, were not captured.
- When protections for the regulated action applied narrowly to a specified protected class, this question was coded and information regarding the specific protected class was
captured in a caution note.

**Question 6:** “What is exempt from fair housing protections?”

- For all answers, when the exemption applied narrowly to specified protected classes, the exemption was coded and information regarding the specific protected classes was captured in a caution note.
- “Selling/renting a limited number of housing units if the owner occupies one of the units” was coded when the sale or rental of units in a dwelling was exempt if the owner occupied one of the units. The limitation on the number of units was captured in a caution note.
- “Renting rooms in the owner’s residence” was coded when renting a room or rooms in a dwelling occupied by the owner or the owner’s family as their residence was exempt.
  - When there was a limitation imposed on the number of rooms available to rent in order to be exempt, this was captured in a caution note.
- When the law allowed for the sale or rental of rooms or units as exempt if the owner occupied one of the units, both “Renting rooms in the owner’s residence” and “Selling/renting a limited number of housing units if the owner occupies one of the units” were coded.
- The rental of rooms or space in the owner’s personal residence in which common living areas are shared was coded as both “housing with shared common areas” and “Renting rooms in the owner’s residence.”
- “Single-family housing sold or rented by an owner who owns a limited number of homes” was coded if the sale or rental of the owner’s residence was exempt. When the law imposed a limitation on the number of homes that an owner could have an interest in, this information was captured in a caution note.
- When religious organizations or private clubs were exempt for giving preference to their members or discriminating based on a protected class in housing transactions, “Housing operated by religious organizations or private clubs” was coded.
- “Single-sex housing” was coded when dormitories and other housing run by educational institutions could be restricted based on sex.
- “Single-sex housing” was coded when the availability of housing or residential facilities could be restricted to one sex, or where the owner could choose to rent to only one sex.

**Question 7:** “Which exemptions, if any, apply specifically to sexual orientation discrimination?”

- Coded when the law specified that an exemption applied to discrimination based on sexual orientation and did not apply broadly across all other protected classes.
  - Where other protected categories were specifically called out in addition to sexual orientation, this question was still coded.
- “Selling/renting a limited number of housing units if the owner occupies one of the units” was coded when the sale or rental of units in a dwelling was exempt if the owner occupied one of the units. The limitation on the number of units was captured in a caution note.
“Renting rooms in the owner’s residence” was coded when renting a room or rooms in a dwelling occupied by the owner or the owner’s family as their residence was exempt.
   o Where there was a limitation imposed on the number of rooms available to rent in order to be exempt, this was captured in a caution note.

Where the law allowed for the sale or rental of rooms or units as exempt if the owner occupied one of the units, both “Renting rooms in the owner’s residence” and “Selling/renting a limited number of housing units if the owner occupies one of the units” were coded.

“Housing operated by religious organizations or private clubs” was coded when religious organizations or private clubs were exempt for discriminating based on sexual orientation or where the definition of sexual orientation did not impose any duty on a religious organization.

“No exemptions apply specifically to sexual orientation” was coded when sexual orientation was a protected class but the exemptions listed applied broadly across protected categories.

Question 8: “Which exemptions, if any, apply specifically to gender identity discrimination?”

- Coded when the law specified that an exemption applied to discrimination based on gender identity and did not apply broadly across all other protected classes.
  o Where other protected categories were specifically called out in addition to gender identity, this question was still coded.
- When sexual orientation was defined to include gender identity, this question was coded
  o “Selling/renting a limited number of housing units if the owner occupies one of the units” was coded when the sale or rental of units in a dwelling was exempt if the owner occupied one of the units. The limitation on the number of units was captured in a caution note.
- “Renting rooms in the owner’s residence” was coded when renting a room or rooms in a dwelling occupied by the owner or the owner’s family as their residence was exempt.
  o Where there was a limitation imposed on the number of rooms available to rent in order to be exempt, this was captured in a caution note.
- When the law allowed for the sale or rental of rooms or units as exempt if the owner occupied one of the units, both “Renting rooms in the owner’s residence” and “Selling/renting a limited number of housing units if the owner occupies one of the units” were coded.
- “No exemptions apply specifically to gender identity” was coded when gender identity was a protected class but the exemptions listed applied broadly across protected categories.
- “Housing operated by religious organizations or private clubs” was coded when religious organizations or private clubs were exempt for discriminating based on gender identity or where the definition of gender identity did not impose any duty on a religious organization.
Question 9: “Does the law preempt local governments from extending protections to housing voucher recipients?”
- Coded when state law prohibited ordinances that would prohibit discrimination based on housing vouchers as source of income, or would have the effect of requiring landlord participation in housing voucher programs.

Question 10: “Does the law impose a duty to affirmatively further fair housing?”
- Coded “yes” if the state fair housing law explicitly included a duty to affirmatively further fair housing.
- Coded “no” when states authorized, but did not require, an agency to affirmatively further fair housing. This information was captured in a caution note.

Question 11: “Are penalties authorized for violating the law?”
- Coded “yes” when the state fair housing law explicitly included or cross-referenced penalties. Penalties contained in separate chapters and not explicitly cross-referenced were out of scope.

Question 11.1: “What types of penalties are authorized?”
- “Fines” was coded when the state law explicitly stated that in order to vindicate the public interest, a court may assess a civil penalty.
- “Misdemeanor” was coded when the law stated that a person is guilty of a misdemeanor for violating any provision of the state fair housing law, interfering with an individual exercising their guaranteed rights, interfering with the commission, or willfully violating an order of the commission.
- “Prison” was coded only when imprisonment was explicitly listed as a penalty in the law.

Question 11.1.1: “Do fines increase based on the number of past violations?”
- Coded “yes” when the law explicitly authorized an increased fine for subsequent violations.

III. Quality Control

a. Quality Control – Background Research: The Researchers independently recorded the relevant citations of every jurisdiction with a fair housing law. The initial background research found that 50 jurisdictions had a state fair housing law as of August 1, 2016. Eight-eight percent of the states (44 of 50) were redundantly researched to confirm that all relevant laws were collected by the Researchers. The Supervisor reviewed the redundant research and the Team resolved each divergence prior to collecting the relevant laws.
b. Quality Control – Coding:

i. Original coding: Quality control consisted of the Supervisor exporting the data into Microsoft Excel each day the Researchers coded to examine the data for any missing entries, citations, and caution notes.

ii. Redundant coding: 100% of the jurisdictions that had a law were redundantly coded throughout the life of the project (50 of 51). The Supervisor assigned the first ten jurisdictions for redundant coding and the rate of divergence (differences between coded responses) was 6% on July 11, 2017. The Supervisor assigned the second batch of ten jurisdictions for redundant coding and the rate of divergence dropped to 3% on July 25, 2017. The Supervisor assigned the third batch of ten jurisdictions for redundant coding and the rate of divergence was 4% on August 1, 2017. The Supervisor assigned the fourth batch of ten jurisdictions for redundant coding and the rate of divergence was 2% on August 7, 2017. The Supervisor assigned the final eleven jurisdictions for redundant coding and the rate of divergence was 3% on August 15, 2017. The Team discussed all divergences throughout the process and re-coded as necessary.

c. Quality Control – Statistical Quality Control: In order to assess the overall error rate of the dataset, statistical quality control (SQC) was performed after all of the original and redundant coding was completed. After stratifying the dataset to include only records for which a state fair housing law existed (50 out of 51), 5508 coding instances could potentially be checked. Of those, a random sample of about 6.4%, 359 records, was drawn for SQC.

This SQC yielded a divergence rate of 5% on September 28, 2017. The divergences were discussed and resolved by the Team.

d. Quality Control – Final Check: Prior to publication, the Supervisor downloaded all coding data into Microsoft Excel to do a final review of coding answers, statutory and regulatory citations, and caution notes. All unnecessary caution notes were deleted, and all necessary caution notes were edited for publication.

IV. Quality Control – 2019 Update

a. Quality Control – Background Research: All 51 jurisdictions were researched to collect amendments to existing fair housing laws, new case law/AG opinions, or new
fair housing laws enacted since August 1, 2017. The Researchers consulted a combination of secondary sources to verify changes to the law.

b. **Quality Control – Original Coding:** Quality control consisted of the Supervisor exporting the data into a Microsoft Excel document as the Researchers completed coding to examine the data for any missing responses, citations, and caution notes.

c. **Quality Control – Redundant Coding:** Quality control consisted of the Supervisor exporting the data into a Microsoft Excel document once the Researchers completed redundant coding to calculate divergence rates. 100% of the records with substantive updates to the law were redundantly coded. The Supervisor assigned five iterations for redundant coding and the divergence rate was 3% on August 15, 2019. The Team discussed and resolved all divergences.

d. **Quality Control – Final Data Check:** Prior to publication, the Supervisor downloaded all coding data into Microsoft Excel to do a final review of coding answers, statutory and regulatory citations, and caution notes. All unnecessary caution notes were deleted, and all necessary caution notes were edited for publication.