

Voucher Holders Need Not Apply:

An Audit Report on the Refusal of Housing Choice Vouchers by Landlords in the Austin MSA

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I. Austin Tenants' Council Mission and History

Operating under the philosophy that everyone has a right to safe, decent, fair, and affordable housing, the Austin Tenants' Council fulfills thousands of requests each year for help with housing problems. ATC programs focus on housing discrimination; tenant-landlord education and information; and housing repair and rehabilitation.

The Austin Tenants' Council protects tenants' rights and educates the community on fair housing. Our vision is to make Texas communities open to all without discrimination and free of landlord-tenant disputes.

Established in 1992 and funded by the U.S. Department of Housing and Urban Development, the ATC Fair Housing Program works for the reversal of discriminatory housing practices and trends in Texas. ATC provides intake and counseling to discrimination complainants, followed when appropriate by mediation, investigation, and referrals to HUD, the Texas Workforce Commission Civil Rights Division, or the City of Austin Equal Employment and Fair Housing Office and advocates for those individuals during the administrative investigative process. ATC assists in investigation activities and the enforcement of fair housing laws through fair housing testing and client advocacy.

II. Overview of Housing Choice Voucher Program in the Austin MSA

The Housing and Community Development Act of 1974 established Section 8 rental housing assistance programs to address the high proportion of income spent by low-income families on housing. The Quality Housing and Work Responsibility Act of 1998 merged the Section 8 voucher and certificate programs under the Housing Choice Voucher Program (HCVP). The Housing Choice Voucher Program is the federal government's largest housing subsidy program, assisting more than 2.08 million families across the country to secure safe and affordable housing.¹

Designed to de-concentrate poverty and promote racial integration, the HCVP operates in the private rental market. Participants are not limited to subsidized housing projects but may choose any housing where the owner agrees to rent under the program, provided that the rent does not exceed established payment standards based on HUD Fair Market Rents. A voucher holder pays 30% to 40% of the adjusted gross household income to the landlord, and the local public housing authority pays the difference between the tenant's portion and the HUD Fair Market Rent. (Annually, HUD estimates the Fair Market Rents for metropolitan areas and nonmetropolitan county areas. FMRs are established for various unit sizes based on a survey of recent moves to units in standard condition.) Eligible families must have incomes that do not exceed 50% of the Area Median Income (50% of the AMI in the Austin MSA is \$37,950 for a

¹ Center on Budget and Policy Priorities, February 13, 2012, "HUD Rental Assistance in Rural and Urban Areas Fact Sheet," available at <http://www.cbpp.org/files/RentalAssistance-RuralFactsheetandMethodology.pdf>.

four-person household).²

In the Austin-Round Rock-San Marcos metropolitan statistical area (which includes Bastrop, Caldwell, Hays, Travis, and Williamson counties), 6,434 households receive tenant-based vouchers under the HCVP.³ Fifty-five percent (55%) of voucher holders in the Austin MSA are African American; 27% are Hispanic; 55% are families with children; and 44% have a person with a disability in the household.⁴

III. Overview of Source of Income Discrimination

The right to adequate housing is a universally recognized human right. The Universal Declaration of Human Rights, considered the inspiration to all subsequent human rights laws, enshrines a specific right for everyone to adequate housing: “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including ... housing....”⁵ Of course, this human right also includes the right to be free from discrimination. The Convention on the Elimination of All Forms of Racial Discrimination, signed and ratified by the United States, seeks to guarantee the right to everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, including the right to housing.⁶

Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), as amended, prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status, and disability.⁷

The FHA prohibits discrimination that is intentional (“disparate treatment”) and/or that has a disproportionately negative effect on a protected class (“disparate impact”). A refusal to rent to a voucher holder may be a pretext for discrimination based on race, color, national origin, religion, sex, familial status, or disability. Or, because families with children and people of color are disproportionately represented among HCVP participants, the refusal to accept a voucher may have a disparate impact by limiting housing choice and increasing segregation of members of a protected class.

While federal law sets the minimum protections, states and localities can expand the number of protected classes. In Austin, for instance, a city ordinance adds protections based on student

² U.S. Department of Housing and Urban Development, “FY 2012 Income Limits Documentation System,” available at http://www.huduser.org/portal/datasets/il/il12/index_il2012.html.

³ U.S. Department of Housing and Urban Development, “Resident Characteristics Report,” available at http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/systems/pic/50058/rcr.

⁴ Resident Characteristics Report.

⁵ Universal Declaration of Human Rights, art. 25(1), G.A. Res. 217A (III), U.N. Doc. A/810 (1948).

⁶ International Convention on the Elimination of All Forms of Racial Discrimination (CERD), art. 5, Dec. 21, 1965, S. Exec. Doc. C, 95-2 (1978); S. Treaty Doc. 95-18; 660 U.N.T.S. 195, 212, ratified by the U.S. Nov. 20, 1994.

⁷ 42 U.S.C. § 3604, available at <http://www.justice.gov/crt/housing/title8.php>.

status, marital status, sexual orientation, gender identity, and age.⁸

In an effort to address the affordable housing shortage, 12 states, District of Columbia, and several municipalities have made source of income a protected class.⁹ This protection is generally defined to include any lawful source of income including government assistance (such as HCVP subsidies), alimony, child support, or other compensation or benefit. Texas does not have a law prohibiting source of income discrimination.

Owners of Low Income Housing Tax Credit housing and certain types of federally assisted housing are prohibited from refusing to lease to a voucher recipient because that person holds a voucher.¹⁰

Success of the HCVP relies in large part on the voluntary participation of landlords. Landlords who participate in the HCVP enjoy rent security in terms of the portion that is paid by the public housing authority. Accepting program participants also helps keep vacancies low while providing landlords with good residents to fill their empty units. However, as this survey shows, many private landlords (91%, or 544 of 600, in the Austin MSA) refuse to lease to voucher holders. Protections based on source of income are invaluable in maximizing voucher holders' ability to secure safe and decent housing in the neighborhood of their choice.

IV. Executive Summary

The Austin Tenants' Council conducted this survey to measure the number of private landlords in the Austin MSA that accept Housing Choice Voucher Program subsidies to determine where in the MSA this rental housing is located. Such an audit is especially important as the area experiences record low apartment vacancy rates, a shortage of affordable housing, and persistently segregated residential neighborhoods.

While discrimination based on source of income is not illegal in Texas, understanding the rate at which voucher holders encounter source of income discrimination is essential to evaluating the effectiveness of the HCVP. Examining where the housing is located helps answer whether the HCVP is meeting its goal of increasing housing choice for low-income renters in areas of high opportunity with access to high-performing schools, sustainable employment, stable housing, safe neighborhoods, and health care.

Landlords' refusal to accept HCVP subsidies drastically reduces the effectiveness of the program. Only 6% of all units surveyed (8,590 of 139,919) were available for HCVP recipients at

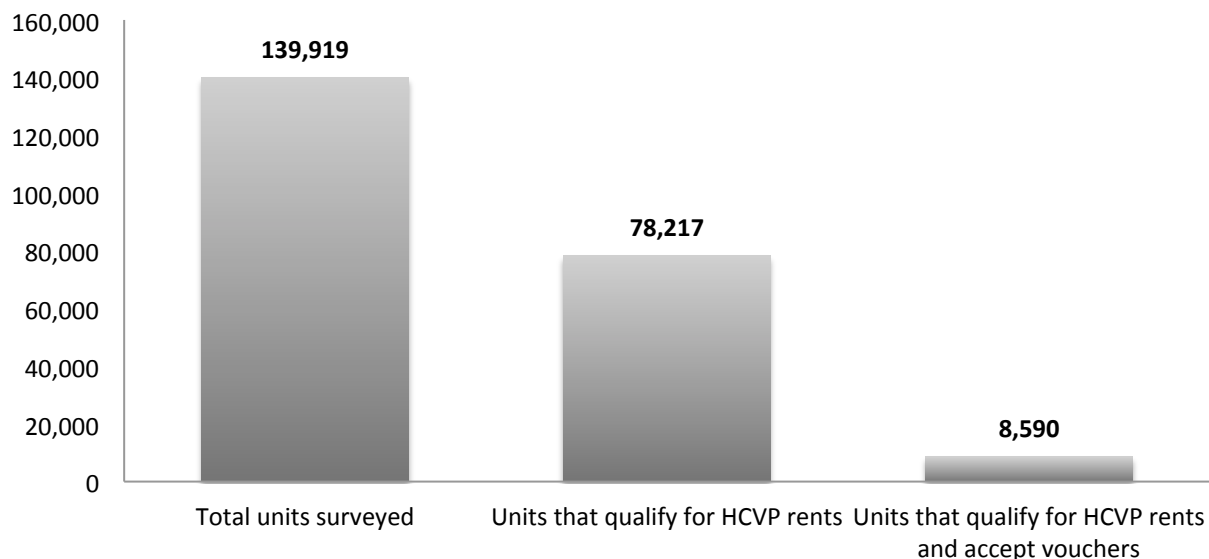
⁸ Austin City Code, Title 5. Civil Rights. Chapter 5-1. Housing Discrimination, available at [http://www.amlegal.com/austin_nxt/gateway.dll/Texas/austin/title5civilrights/chapter5-1housingdiscrimination?f=templates\\$fn=default.htm\\$3.0&vid=amlegal:austin_tx](http://www.amlegal.com/austin_nxt/gateway.dll/Texas/austin/title5civilrights/chapter5-1housingdiscrimination?f=templates$fn=default.htm$3.0&vid=amlegal:austin_tx).

⁹ Poverty & Race Research Action Council, "Keeping the Promise: Preserving and Enhancing Housing Mobility in the Section 8 Housing Choice Voucher Program," available at <http://www.prrac.org/pdf/AppendixB-Feb2010.pdf>.

¹⁰ 26 U.S.C. § 42(h)(6)(B)(iv), available at <http://www.law.cornell.edu/uscode/text/26/42>.

rents within the eligibility limits of the program and without landlord-imposed minimum income requirements that disqualify voucher holders.

Only 6% of Units Surveyed Are Open to Voucher Holders



Of the landlords surveyed, 49 properties (8,399 units) in Travis County; five properties (1,150 units) in Williamson County; and one property (64 units) in Hays County accept the HCVP subsidy and have rents within the VPS. Bastrop County has one property accepting vouchers but this property accepts only two vouchers. Caldwell County does not have any properties accepting vouchers.

The units available for HCVP recipients are concentrated in north Austin near Rundberg Lane; in northeast Austin near Cameron Road; and in southeast Austin near East Riverside Drive (see Appendix C). These units are located in low-opportunity areas (as defined by the Kirwan Institute for the Study of Race and Ethnicity)¹¹ and lack high-performing schools, sustainable employment, and low-crime neighborhoods. The largest concentration of high-opportunity communities are found in the portions of Austin west of Interstate 35 and most of the suburban communities adjacent to Austin west of Interstate 35.¹²

These disparities in access to opportunities undermine the overall health of our community. Central Texas cannot be successful if all residents cannot find safe, decent, and affordable housing throughout the Austin MSA. We hope that the results and recommendations presented here will stimulate a cooperative effort by all segments of our community to eliminate

¹¹ powell, john a., Jason Reece, and Samir Gambhir, March 2007, "The Geography of Opportunity: Austin Region," Kirwan Institute for the Study of Race and Ethnicity, available at <http://kirwaninstitute.osu.edu/publications/AustinOpportunityMappingMarch2007.pdf>.

¹² Kirwan Institute for the Study of Race and Ethnicity.

discrimination based on source of income and, in so doing, ensure fair housing choice for all.

V. Demand for Affordable Rental Units

Approximately 34% of households in the Austin MSA have incomes at or below 50% of the area median income (\$37,950 for a family of four), the qualifying level for the HCVP.¹³ About 3 out of 100 of those households that qualify actually receive a housing subsidy (6,434 households).¹⁴

In addition to those households that receive HCVP, there are also a number of households on waiting lists for assistance. HCVP waiting lists in the Austin MSA as of September 2012 are:

Housing Authority	# of Households on Waiting List	Waiting List Status
Bastrop Housing Authority	7	Closed since October 2006
Georgetown Housing Authority	500	Closed since May 2011
Housing Authority of the City of Austin	900	Closed since July 2006
Housing Authority of the City of Elgin	14	Closed since 2008
Housing Authority of Travis County	210	Closed since August 2005
Round Rock Housing Authority	122	Closed since 2009
San Marcos Housing Authority	300	Closed since May 2012
Smithville Housing Authority	68	Closed since April 2012
Taylor Housing Authority	129	Closed since October 2012
TOTAL	2,250	

A housing authority may stop accepting new applications if it determines that its waiting list has enough applicants to use available funding. Because of the high demand for affordable housing and limited funding for vouchers, HCVP waiting lists in the Austin MSA have been closed most of the time for the past several years.

Housing is considered affordable to households with incomes at or below 50% of the AMI if the unit rents for no more than \$949 per month.¹⁵ This figure is close to the HUD Fair Market Rent for a two-bedroom unit (\$989).¹⁶ So, all of the households earning less than \$37,950 (218,928 households in the Austin MSA¹⁷)—whether they receive a HCVP subsidy or not—are competing for the limited number of units renting for less than \$989.

¹³ U.S. Census Bureau, “Household Income in the Past 12 Months (In 2010 Inflation-Adjusted Dollars),” 2010 American Community Survey, available at <http://www.census.gov/acs/www/>.

¹⁴ Resident Characteristics Report.

¹⁵ U.S. Department of Housing and Urban Development: “The generally accepted definition of affordability is for a household to pay no more than 30 percent of its annual income on housing,” available at http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/affordablehousing.

¹⁶ U.S. Department of Housing and Urban Development, “Final FY 2012 Fair Market Rent Documentation System,” available at <http://www.huduser.org/portal/datasets/fmr/fmrs/docsys.html&data=fmr12>.

¹⁷ 2010 American Community Survey.

In addition, households earning more than 50% of AMI often occupy or are looking for these same lower cost units. All of this puts a strain on the private housing market to meet the needs of lower income families. This is especially difficult for households with HCVP subsidies because landlords can choose not to rent to them for no other reason than they do not want to participate in the program.

The housing market is complicated further in the Austin MSA because the vacancy rate for rental units is 2.2% (June 2012, Capitol Market Research).¹⁸ In practical terms, this means there are almost no available units, especially in the lower cost range.

VI. Audit Methodology

ATC conducted the audit by telephone in June 2012. ATC used a list generated by Austin Investor Interests, LLC, of conventional (market-rate) apartment properties with 50 or more units located in the Austin-Round Rock-San Marcos metropolitan statistical area.

ATC restricted the survey to complexes containing two-bedroom apartments with at least 50 units. It excluded public housing developments; complexes receiving federal subsidies such as project-based Section 8, Section 236, and Section 202; and properties receiving Low-Income Housing Tax Credits (LIHTC). Except for LIHTC developments, these other developments (public housing and project-based Section 8, Section 236, and Section 202 complexes) receive rental subsidies and a voucher holder would not attempt to lease a unit there.

ATC called the rental offices of 600 apartment complexes, containing 139,919 units, in the MSA's five counties (Bastrop, Caldwell, Hays, Travis, and Williamson). According to the Census Bureau, the counties covered by this survey contain a total of 270,011 rental units.¹⁹ ATC sampled 52% of the MSA's total rental units.

The breakdown by county is as follows: 9% (504 units surveyed out of 5,924) in Bastrop County; 6% (232 out of 3,740) in Caldwell County; 26% (4,926 out of 19,073) in Hays County; 56% (109,183 out of 194,452) in Travis County; and 54% (25,074 out of 46,822) in Williamson County.²⁰

ATC called the rental office as potential consumers and spoke to the first person that answered the phone. The survey questions were straightforward:

- What is the rent for a two-bedroom apartment?
- Do you have any minimum monthly income requirements at your complex, such as

¹⁸ Novak, Shonda, July 14, 2012, "Austin apartment market on record-setting hot streak," Austin-American Statesman, available at <http://www.statesman.com/news/business/real-estate/austin-apartment-market-on-record-setting-hot-streak/nRp9c/>.

¹⁹ U.S. Census Bureau, "Household Population and Household Type by Tenure: 2010," 2010 Census, available at <http://2010.census.gov/2010census/>.

²⁰ 2010 Census.

“income must be at least three times the rent”?

- Do you accept Section 8 vouchers?
- If there is a minimum income requirement, how does a Section 8 subsidy apply? Is the tenant’s income compared to the market rent or to the portion of the rent the tenant pays as a voucher holder?

The Voucher Payment Standard (VPS) is the highest rent a voucher would cover. The VPS is determined locally by the housing authority that issues vouchers in its jurisdiction. Housing authorities can set the VPS anywhere between 90% and 110% of the FMR. In high cost areas, a housing authority can request permission from HUD to set its VPS up to 120% of the FMR.

In determining the number of units renting at or below the VPS, ATC contacted the voucher issuing authorities in the Austin MSA: Bastrop Housing Authority; Georgetown Housing Authority; Housing Authority of the City of Austin; Housing Authority of the City of Elgin; Housing Authority of Travis County; Round Rock Housing Authority; San Marcos Housing Authority; Smithville Housing Authority; and Taylor Housing Authority.

All of the housing authorities, except for Travis County and San Marcos, set their VPS at 100% of the FMR (\$989 for a two-bedroom unit). The San Marcos Housing Authority sets its VPS at 94.5% of the FMR (\$935 for a two-bedroom unit). The Housing Authority of Travis County sets its VPS at 101.6% of the FMR (\$1,005 for a two-bedroom unit). In determining the number of units renting at or below the FMR in Travis County, ATC used an FMR of \$989 since the number of vouchers issued by the Housing Authority of Travis County (517 voucher) is small compared to the 5,151 vouchers issued by the Housing Authority of the City of Austin.²¹

ATC did not add utility expenditures to the quoted rents. The VPS is supposed to cover housing costs, which include household utilities except phone and cable, so the number of units reported as being within the VPS is actually overstated. For example, if the quoted rent was \$975, the utility allowance and utility costs for the unit were each \$30 and the VPS was \$989, the total housing cost of \$1,005 (rent of \$975 plus utilities at \$30) exceeds the VPS by \$16. In this case, the family would have to pay the extra \$16 out-of-pocket, raising their housing cost above 30% of their income. Technically, this unit should not be counted in our survey as qualifying or affordable. If utility expenditures had been added to the rents, the percentage of affordable units would have been even lower than stated.

There are a variety of minimum income requirements being used by owners and managers, most of which are expressed as a multiple of the rent. Where there were such requirements, we asked how it was being applied to HCVP applicants. If it was applied to the tenant’s portion of the rent, the multiple could be up to 3.3x the tenant’s portion of the rent without disqualifying the applicant, provided the rent was within the VPS. If the multiplier was 3x the unit’s market rent, virtually all HCVP recipients would be disqualified, even with rent that was within the VPS. We found 1,025 units where the requirement was 2.5x to 3x the unit’s market

²¹ Resident Characteristics Report.

rent, thus disqualifying voucher holders, despite the fact that the rents were within the VPS.

VII. Findings

A. More than half of all rental units in Austin MSA surveyed.

This survey covers the Austin MSA including Bastrop, Caldwell, Hays, Travis, and Williamson counties. The units sampled represent a majority (52%) of the rental housing in the MSA.

	Bastrop County	Caldwell County	Hays County	Travis County	Williamson County	Austin MSA
Total number of rental units in 2010 Census	5,924	3,740	19,073	194,452	46,822	270,011
Number of complexes surveyed	4	3	31	470	92	600
Number of units in survey	504	232	4,926	109,183	25,074	139,919
Surveyed units as % of total units	9%	6%	26%	56%	54%	52%

B. 78,217 units surveyed have rents within the HCVP Fair Market Rent limits.

Overall 29% (or 78,217 units) in the Austin MSA have rents within the HCVP Fair Market Rent limits. Nine percent of units in Bastrop County; 6% in Caldwell County; 15% in Hays County; 31% in Travis County; and 33% in Williamson County fall within the HCVP rent limits.

	Bastrop County	Caldwell County	Hays County	Travis County	Williamson County	Austin MSA
Total number of rental units in 2010 Census	5,924	3,740	19,073	194,452	46,822	270,011
Units with rents within VPS	504	232	2,776	59,420	15,285	78,217
% of units with rents within VPS	9%	6%	15%	31%	33%	29%

These units are located throughout the Austin MSA, including areas of high opportunity.

C. But only 8,590 of the units surveyed are actually available for possible rental by HCVP recipients.

The HCVP works only if a tenant can find a unit that: 1. Accepts the subsidy; 2. Has rents within the VPS; and 3. Has no minimum income requires that have the effect of excluding voucher recipients. Only units that satisfy all three of these conditions can be said to be available and affordable to voucher holders. (The units must also satisfy certain minimum housing quality standards. For purposes of the study, ATC assumed all units would meet the necessary housing quality standards.)

Of the 139,919 units surveyed, 61,702 (44%) were eliminated from possible consideration because their rents exceed the area Fair Market Rent. Of the units that do qualify for HCVP rents (78,217), 9,615 (12%) accept the HCVP subsidy. Of these units, 1,025 (11%) have

minimum income requirements that have the effect of excluding HCVP recipients. Only 6% (8,590) of 139,919 units surveyed have rents that qualify for the HCVP; accept HCVP renters; and do not have minimum income requirements that have the effect of excluding HCVP recipients.

	Bastrop County	Caldwell County	Hays County	Travis County	Williamson County	Austin MSA
Units in survey	504	232	4,926	109,183	25,074	139,919
Units above Voucher Payment Standard	0	0	2,150	49,763	9,789	61,702
Units with rents within VPS yet refuse HCVP	502	232	2,712	51,021	14,135	68,602
Units with rents within VPS and accept HCVP	2	0	64	8,399	1,150	9,615
Units with minimum income requirements that exclude HCVP recipients	0	0	0	579	446	1,025
Units affordable and available to HCVP recipients without restrictions	2	0	64	7,820	704	8,590
% of units affordable and available to HCVP recipients without restrictions	0%	0%	1%	7%	3%	6%

D. Landlords' minimum income requirements bar voucher holders from 1,025 units.

A unit may have a rental rate within the HCVP limit and the landlord may be willing to accept vouchers, but the unit can still be unavailable to a voucher holder because of minimum income requirements that effectively disqualify HCVP recipients. In the Austin MSA, 1,025 units were excluded because of minimum income requirements (such as 2.5x or 3x the unit's market rent).

Minimum income requirements used by landlords vary. Most are expressed as a multiple of the rent. Where there were minimum income requirements, we asked how the requirement was applied to voucher holders. If the multiplier was 3x the unit's market rent (as opposed to the tenant's portion, which is 30% of their income under the HCVP regulations), virtually all HCVP recipients would be disqualified.

For example, if the rent is \$900 and the minimum income requirement is 3x the rent, an applicant would need to have a monthly income of \$2,700 (\$32,400 annually). To earn that much requires working full-time with an hourly wage of \$15.58. According to HUD, the average annual income for a HCVP recipient in the Austin MSA is \$13,088 (or \$6.29 per hour).²² The \$900 rent in this example is nearly the entire monthly income of the average HCVP recipient, so any minimum income requirement based on the market rent would disqualify a voucher holder.

E. Landlords' refusal to accept HCVP limits the effectiveness of voucher program.

Landlords' refusal to accept HCVP subsidies drastically reduces the effectiveness of the program. Only 6% of all units surveyed (8,590 of 139,919) were available for HCVP recipients at

²² Resident Characteristics Report.

rents within the eligibility limits of the program and without landlord-imposed minimum income requirements that disqualify voucher holders.

If landlords are free to decide whether to participate, the value of the Housing Choice Voucher Program to HCVP recipients is dependent on the landlord's choice. As this survey shows, most landlords choose to not participate, even when the voucher payment standard is high enough to cover the market rents.

Ninety-four percent (94%) of the surveyed units remain off limits to HCVP recipients despite the fact that 56% of the units surveyed had rents that met the HCVP limits. Of the 78,217 units surveyed that had rents below the VPS, only 8,590 would accept voucher holders without exclusionary minimum income requirements.

This refusal to participate in the HCVP by landlords severely limits the effectiveness of the program in providing freedom of choice to voucher holders. Whether this discrimination is against aspects of the voucher program, the voucher holders, or both, it illustrates how source of income discrimination affects HCVP recipients' ability to get housing.

VIII. Recommendations

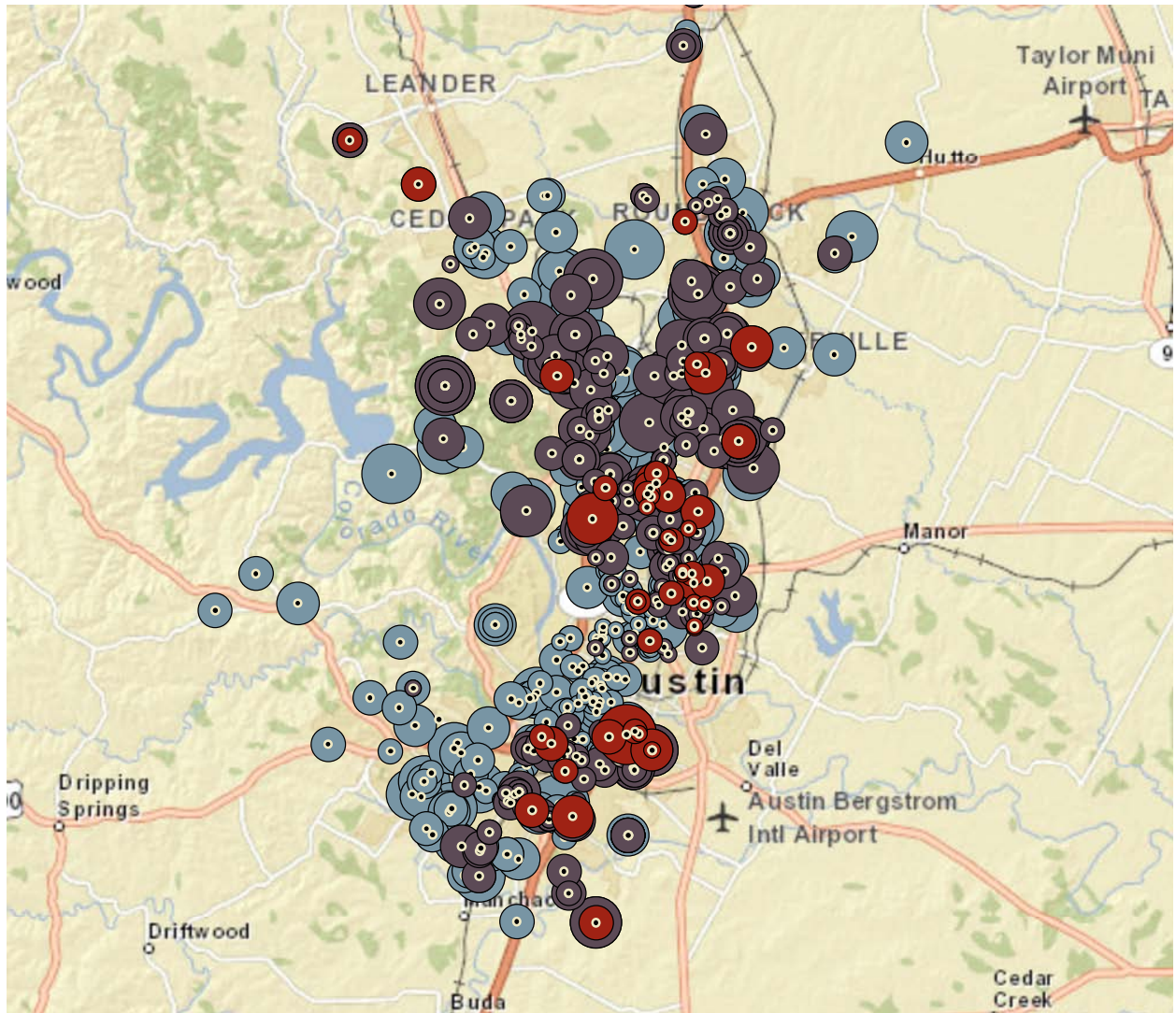
Success of the HCVP relies in large part on the voluntary participation of landlords. However, as this audit shows, many landlords decline to participate in the program. Ninety-one percent (91%) of private landlords in the Austin MSA deny housing to applicants because they are voucher holders. This figure indicates that significant portions of the private housing market remain unavailable to voucher holders in need of quality housing in high-opportunity areas.

To address the dearth of landlords willing to accept vouchers:

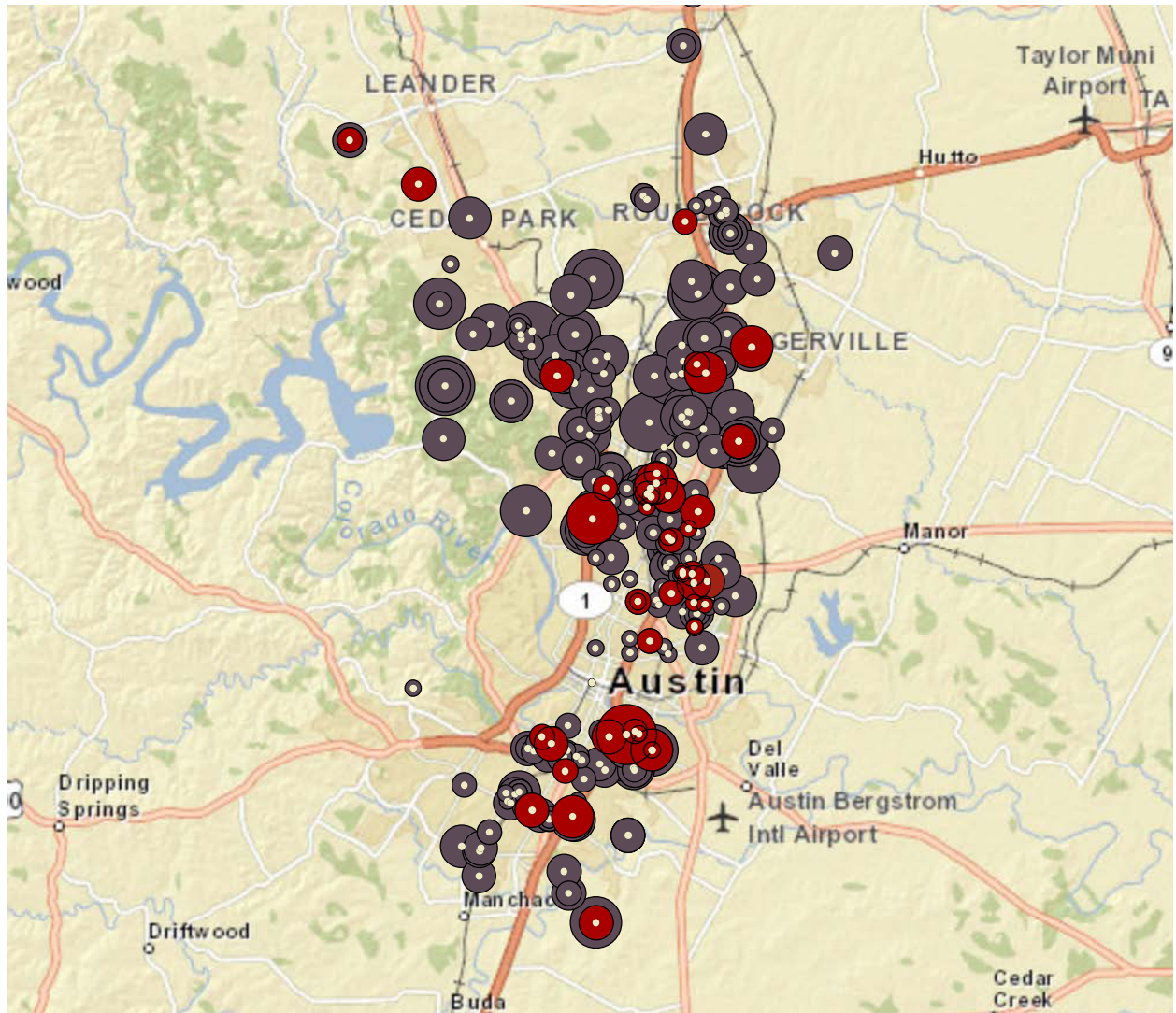
- A. The federal government, the State of Texas, and local municipalities should adopt legislation that prohibits source of income discrimination;
- B. Public housing authorities should implement services to recruit landlords to participate in the HCVP, targeting landlords who own properties in high-opportunity areas; and
- C. The Texas Apartment Association and Texas Association of Realtors should educate their membership on the advantages of the Housing Choice Voucher Program and encourage their members to agree to lease at least some percentage of their units to voucher holders.

Once voucher recipients truly have choice about their housing opportunities (due to the increased voluntary or mandatory participation of landlords), other steps, such as providing services to support voucher holders in finding housing in the private rental market or increasing the Voucher Payment Standard to more than 100% of the area Fair Market Rent, would continue to improve the effectiveness of the Housing Choice Voucher Program.

Appendix A: More than half of all rental units in Austin MSA surveyed.



Appendix B: 78,217 units surveyed have rents within the HCVP Fair Market Rent limits.



Appendix C: But only 8,590 of the units surveyed are actually available for possible rental by HCVP recipients.

