Addendum to the 2014 Regional AI: Appendix

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Fair Housing Implementation Council

By

MOSAIC
COMMUNITY PLANNING

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Actual-to-Predicted and Segregation Index Data

The tables in this appendix contain details of the actual-to-predicted ratios and dissimilarity indices included in the body of this report.

Table A-1. Actual and Predicted Numbers of White, non-Latino Households by Jurisdiction, 2010-2014

Jurisdiction	Total households	White, non-Latino Households (actual)	White, non-Latino Households (predicted based on income)	Ratio (Actual / Predicted)
Counties				
Anoka*	123,446	110,765	102,079	1.09
Carver	33,813	31,732	28,446	1.12
Dakota*	155,220	134,219	128,884	1.04
Hennepin*	484,868	379,270	394,862	0.96
Ramsey*	206,156	155,775	165,161	0.94
Scott	46,214	41,237	38,965	1.06
Washington*	89,898	80,737	75,337	1.07
Entitlement Cities				
Bloomington	36,608	30,435	29,929	1.02
Coon Rapids	23,730	21,350	19,464	1.10
Eden Prairie	24,088	20,137	20,421	0.99
Minneapolis	166,824	116,733	131,778	0.89
Minnetonka	22,306	20,215	18,636	1.08
Plymouth	29,597	25,614	24,839	1.03
Saint Paul	112,407	75,544	88,399	0.85
Woodbury	23,659	19,650	20,184	0.97

*Denotes FHIC entitlement county.

Source: Metropolitan Council's analysis of U.S. Census Bureau, American Community Survey five-year estimates, 2010-2014

Table A-2. Actual and Predicted Numbers of Black Households by Jurisdiction, 2010-2014

Jurisdiction	Total households	Black Households (actual)	Black Households (predicted based on income)	Ratio (Actual / Predicted)
Counties				
Anoka*	123,446	4,212	8,551	0.49
Carver	33,813	309	2,028	0.15
Dakota*	155,220	6,686	10,436	0.64
Hennepin*	484,868	50,189	38,133	1.32
Ramsey*	206,156	20,620	18,021	1.14
Scott	46,214	897	2,719	0.33
Washington*	89,898	2,575	5,601	0.46
Entitlement Cities				
Bloomington	36,608	2,429	2,758	0.88
Coon Rapids	23,730	933	1,750	0.53
Eden Prairie	24,088	1,022	1,349	0.76
Minneapolis	166,824	26,224	16,076	1.63
Minnetonka	22,306	851	1,420	0.60
Plymouth	29,597	1,187	1,817	0.65
Saint Paul	112,407	16,199	11,024	1.47
Woodbury	23,659	1,180	1,235	0.96

*Denotes FHIC entitlement county.

Source: Metropolitan Council's analysis of U.S. Census Bureau, American Community Survey five-year estimates, 2010-2014

Table A-3. Actual and Predicted Numbers of Asian Households by Jurisdiction, 2010-2014

Jurisdiction	Total households	Asian Households (actual)	Asian Households (predicted based on income)	Ratio (Actual / Predicted)
Counties				
Anoka*	123,446	3,656	5,961	0.61
Carver	33,813	700	1,627	0.43
Dakota*	155,220	5,545	7,508	0.74
Hennepin*	484,868	23,969	23,608	1.02
Ramsey*	206,156	15,893	10,084	1.58
Scott	46,214	2,195	2,226	0.99
Washington*	89,898	3,394	4,337	0.78
Entitlement Cities				
Bloomington	36,608	1,571	1,770	0.89
Coon Rapids	23,730	575	1,146	0.50
Eden Prairie	24,088	2,049	1,169	1.75
Minneapolis	166,824	7,687	8,236	0.93
Minnetonka	22,306	641	1,076	0.60
Plymouth	29,597	1,834	1,422	1.29
Saint Paul	112,407	10,558	5,549	1.90
Woodbury	23,659	1,804	1,142	1.58

*Denotes FHIC entitlement county.

Source: Metropolitan Council's analysis of U.S. Census Bureau, American Community Survey five-year estimates, 2010-2014

Table A-4. Actual and Predicted Numbers of American Indian Households by Jurisdiction, 2010-2014

Jurisdiction	Total households	American Indian Households (actual)	American Indian Households (predicted based on income)	Ratio (Actual / Predicted)
Counties				
Anoka*	123,446	732	600	1.22
Carver	33,813	37	147	0.25
Dakota*	155,220	377	739	0.51
Hennepin*	484,868	3,036	2,614	1.16
Ramsey*	206,156	1,184	1,211	0.98
Scott	46,214	320	197	1.62
Washington*	89,898	225	403	0.56
Entitlement Cities				
Bloomington	36,608	188	190	0.99
Coon Rapids	23,730	94	121	0.78
Eden Prairie	24,088	58	102	0.57
Minneapolis	166,824	1,935	1,061	1.82
Minnetonka	22,306	66	102	0.65
Plymouth	29,597	74	132	0.56
Saint Paul	112,407	882	726	1.21
Woodbury	23,659	51	93	0.55

*Denotes FHIC entitlement county.

Source: Metropolitan Council's analysis of U.S. Census Bureau, American Community Survey five-year estimates, 2010-2014

Table A-5. Actual and Predicted Numbers of Other or Multiracial Households by Jurisdiction, 2010-2014

Jurisdiction	Total households	Other/Multiracial Households (actual)	Other/Multiracial Households (predicted based on income)	Ratio (Actual / Predicted)
Counties				
Anoka*	123,446	2,816	3,447	0.82
Carver	33,813	586	852	0.69
Dakota*	155,220	4,610	4,207	1.10
Hennepin*	484,868	16,053	14,245	1.13
Ramsey*	206,156	6,364	6,526	0.98
Scott	46,214	899	1,148	0.78
Washington*	89,898	1,404	2,307	0.61
Entitlement Cities				
Bloomington	36,608	1,004	1,086	0.92
Coon Rapids	23,730	528	691	0.76
Eden Prairie	24,088	453	565	0.80
Minneapolis	166,824	8,638	5,471	1.58
Minnetonka	22,306	340	585	0.58
Plymouth	29,597	368	757	0.49
Saint Paul	112,407	4,903	3,783	1.30
Woodbury	23,659	408	539	0.76

*Denotes FHIC entitlement county.

Source: Metropolitan Council's analysis of U.S. Census Bureau, American Community Survey five-year estimates, 2010-2014

Table A-6. Actual and Predicted Numbers of Latino Households by Jurisdiction, 2010-2014

Jurisdiction	Total households	Latino Households (actual)	Latino Households (predicted based on income)	Ratio (Actual / Predicted)
Counties				
Anoka*	123,446	2,778	4,613	0.60
Carver	33,813	716	1,145	0.63
Dakota*	155,220	6,834	5,621	1.22
Hennepin*	484,868	20,229	18,822	1.07
Ramsey*	206,156	9,628	8,608	1.12
Scott	46,214	1,145	1,539	0.74
Washington*	89,898	2,103	3,085	0.68
Entitlement Cities				
Bloomington	36,608	1,637	1,451	1.13
Coon Rapids	23,730	466	923	0.50
Eden Prairie	24,088	502	762	0.66
Minneapolis	166,824	9,966	7,053	1.41
Minnetonka	22,306	363	788	0.46
Plymouth	29,597	681	1,018	0.67
Saint Paul	112,407	7,160	4,927	1.45
Woodbury	23,659	680	731	0.93

*Denotes FHIC entitlement county.

Source: Metropolitan Council's analysis of U.S. Census Bureau, American Community Survey five-year estimates, 2010-2014

Table A-7. Dissimilarity Index by Race and Ethnicity for Anoka County, 2010-2014

	Black, non-Latino	Latino	Asian, non-Latino	American Indian, non-Latino	Other or multiple races, non-Latino	All people of color
White, non-Latino	0.468	0.419	0.355	0.542	0.256	0.301
Black, non-Latino		0.425	0.437	0.523	0.401	
Latino			0.430	0.543	0.408	
Asian, non-Latino				0.588	0.375	
American Indian, non-Latino					*0.531*	

Source: Metropolitan Council's analysis of U.S. Census Bureau, American Community Survey five-year estimates, 2010-2014.

Note: Cell entries show the value of the dissimilarity index calculated for the row group and the column group. For example, the values in the White, non-Latino row and the Black, non-Latino column show that the dissimilarity index for White, non-Latino residents and Black, non-Latino residents was 0.468. The dissimilarity index is symmetrical so the values for black, non-Latino residents and the white, non-Latino residents would be identical.

Table A-8. Dissimilarity Index by Race and Ethnicity for Dakota County, 2010-2014

	Black, non-Latino	Latino	Asian, non-Latino	American Indian, non-Latino	Other or multiple races, non-Latino	All people of color
White, non-Latino	0.433	0.379	0.320	0.643	0.270	0.273
Black, non-Latino		0.406	0.415	0.639	0.385	
Latino			0.406	0.651	0.395	
Asian, non-Latino				0.659	0.384	
American Indian, non-Latino					*0.662*	

Source: Metropolitan Council's analysis of U.S. Census Bureau, American Community Survey five-year estimates, 2010-2014.

Note: Cell entries show the value of the dissimilarity index calculated for the row group and the column group. For example, the values in the White, non-Latino row and the Black, non-Latino column show that the dissimilarity index for White, non-Latino residents and Black, non-Latino residents was 0.433. The dissimilarity index is symmetrical so the values for black, non-Latino residents and the white, non-Latino residents would be identical.

Table A-9. Dissimilarity Index by Race and Ethnicity for Hennepin County, 2010-2014

	Black, non-Latino	Latino	Asian, non-Latino	American Indian, non-Latino	Other or multiple races, non-Latino	All people of color
White, non-Latino	0.537	0.489	0.431	0.569	0.309	0.410
Black, non-Latino		0.422	0.434	0.595	0.385	
Latino			0.503	0.542	0.401	
Asian, non-Latino				0.651	0.405	
American Indian, non-Latino					*0.532*	

Source: Metropolitan Council's analysis of U.S. Census Bureau, American Community Survey five-year estimates, 2010-2014.

Note: Cell entries show the value of the dissimilarity index calculated for the row group and the column group. For example, the values in the White, non-Latino row and the Black, non-Latino column show that the dissimilarity index for White, non-Latino residents and Black, non-Latino residents was 0.537. The dissimilarity index is symmetrical so the values for black, non-Latino residents and the white, non-Latino residents would be identical.

Table A-10. Dissimilarity Index by Race and Ethnicity for Ramsey County, 2010-2014

	Black, non-Latino	Latino	Asian, non-Latino	American Indian, non-Latino	Other or multiple races, non-Latino	All people of color
White, non-Latino	0.502	0.429	0.502	0.584	0.371	0.432
Black, non-Latino		0.338	0.381	0.518	0.348	
Latino			0.336	0.487	0.311	
Asian, non-Latino				0.500	0.359	
American Indian, non-Latino					*0.515*	

Source: Metropolitan Council's analysis of U.S. Census Bureau, American Community Survey five-year estimates, 2010-2014.

Note: Cell entries show the value of the dissimilarity index calculated for the row group and the column group. For example, the values in the White, non-Latino row and the Black, non-Latino column show that the dissimilarity index for White, non-Latino residents and Black, non-Latino residents was 0.502. The dissimilarity index is symmetrical so the values for black, non-Latino residents and the white, non-Latino residents would be identical.

Table A-11. Dissimilarity Index by Race and Ethnicity for Washington County, 2010-2014

	Black, non-Latino	Latino	Asian, non-Latino	American Indian, non-Latino	Other or multiple races, non-Latino	All people of color
White, non-Latino	0.458	0.282	0.376	0.591	0.258	0.300
Black, non-Latino		0.399	0.315	0.574	0.325	
Latino			0.334	0.583	0.319	
Asian, non-Latino				0.715	0.327	
American Indian, non-Latino					*0.558*	

Source: Metropolitan Council's analysis of U.S. Census Bureau, American Community Survey five-year estimates, 2010-2014.

Note: Cell entries show the value of the dissimilarity index calculated for the row group and the column group. For example, the values in the White, non-Latino row and the Black, non-Latino column show that the dissimilarity index for White, non-Latino residents and Black, non-Latino residents was 0.458. The dissimilarity index is symmetrical so the values for black, non-Latino residents and the white, non-Latino residents would be identical.

Table A-12. Dissimilarity Index by Race and Ethnicity for the City of Bloomington, 2010-2014

	Black, non-Latino	Latino	Asian, non-Latino	American Indian, non-Latino	Other or multiple races, non-Latino	All people of color
White, non-Latino	0.378	0.351	0.206	0.489	0.195	0.255
Black, non-Latino		0.275	0.335	0.660	0.297	
Latino			0.281	0.549	0.323	
Asian, non-Latino				0.529	0.224	
American Indian, non-Latino					*0.530*	

Source: Metropolitan Council's analysis of U.S. Census Bureau, American Community Survey five-year estimates, 2010-2014.

Note: Cell entries show the value of the dissimilarity index calculated for the row group and the column group. For example, the values in the White, non-Latino row and the Black, non-Latino column show that the dissimilarity index for White, non-Latino residents and Black, non-Latino residents was 0.378. The dissimilarity index is symmetrical so the values for black, non-Latino residents and the white, non-Latino residents would be identical.

Table A-13. Dissimilarity Index by Race and Ethnicity for the City of Coon Rapids, 2010-2014

	Black, non-Latino	Latino	Asian, non-Latino	American Indian, non-Latino	Other or multiple races, non-Latino	All people of color
White, non-Latino	0.242	0.317	0.181	0.462	0.181	0.144
Black, non-Latino		0.372	0.172	0.494	0.301	
Latino			0.285	0.502	0.372	
Asian, non-Latino				0.525	0.232	
American Indian, non-Latino					*0.484*	

Source: Metropolitan Council's analysis of U.S. Census Bureau, American Community Survey five-year estimates, 2010-2014.

Note: Cell entries show the value of the dissimilarity index calculated for the row group and the column group. For example, the values in the White, non-Latino row and the Black, non-Latino column show that the dissimilarity index for White, non-Latino residents and Black, non-Latino residents was 0.242. The dissimilarity index is symmetrical so the values for black, non-Latino residents and the white, non-Latino residents would be identical.

Table A-14. Dissimilarity Index by Race and Ethnicity for the City of Eden Prairie, 2010-2014

	Black, non-Latino	Latino	Asian, non-Latino	American Indian, non-Latino	Other or multiple races, non-Latino	All people of color
White, non-Latino	0.387	0.285	0.373	0.554	0.224	0.225
Black, non-Latino		0.485	0.529	0.725	0.451	
Latino			0.303	0.702	0.320	
Asian, non-Latino				0.622	0.415	
American Indian, non-Latino					*0.554*	

Source: Metropolitan Council's analysis of U.S. Census Bureau, American Community Survey five-year estimates, 2010-2014.

Note: Cell entries show the value of the dissimilarity index calculated for the row group and the column group. For example, the values in the White, non-Latino row and the Black, non-Latino column show that the dissimilarity index for White, non-Latino residents and Black, non-Latino residents was 0.387. The dissimilarity index is symmetrical so the values for black, non-Latino residents and the white, non-Latino residents would be identical.

Table A-15. Dissimilarity Index by Race and Ethnicity for the City of Minneapolis, 2010-2014

	Black, non-Latino	Latino	Asian, non-Latino	American Indian, non-Latino	Other or multiple races, non-Latino	All people of color
White, non-Latino	0.549	0.492	0.516	0.523	0.302	0.439
Black, non-Latino		0.453	0.413	0.552	0.376	
Latino			0.591	0.485	0.420	
Asian, non-Latino				0.603	0.413	
American Indian, non-Latino					*0.487*	

Source: Metropolitan Council's analysis of U.S. Census Bureau, American Community Survey five-year estimates, 2010-2014.

Note: Cell entries show the value of the dissimilarity index calculated for the row group and the column group. For example, the values in the White, non-Latino row and the Black, non-Latino column show that the dissimilarity index for White, non-Latino residents and Black, non-Latino residents was 0.549. The dissimilarity index is symmetrical so the values for black, non-Latino residents and the white, non-Latino residents would be identical.

Table A-16. Dissimilarity Index by Race and Ethnicity for the City of Minnetonka, 2010-2014

	Black, non-Latino	Latino	Asian, non-Latino	American Indian, non-Latino	Other or multiple races, non-Latino	All people of color
White, non-Latino	0.613	0.279	0.224	0.673	0.300	0.294
Black, non-Latino		0.490	0.540	0.775	0.498	
Latino			0.336	0.769	0.369	
Asian, non-Latino				0.748	0.331	
American Indian, non-Latino					*0.618*	

Source: Metropolitan Council's analysis of U.S. Census Bureau, American Community Survey five-year estimates, 2010-2014.

Note: Cell entries show the value of the dissimilarity index calculated for the row group and the column group. For example, the values in the White, non-Latino row and the Black, non-Latino column show that the dissimilarity index for White, non-Latino residents and Black, non-Latino residents was 0.613. The dissimilarity index is symmetrical so the values for black, non-Latino residents and the white, non-Latino residents would be identical.

Table A-17. Dissimilarity Index by Race and Ethnicity for the City of Plymouth, 2010-2014

	Black, non-Latino	Latino	Asian, non-Latino	American Indian, non-Latino	Other or multiple races, non-Latino	All people of color
White, non-Latino	0.222	0.286	0.303	0.596	0.229	0.179
Black, non-Latino		0.286	0.356	0.556	0.265	
Latino			0.335	0.663	0.319	
Asian, non-Latino				0.664	0.335	
American Indian, non-Latino					*0.591*	

Source: Metropolitan Council's analysis of U.S. Census Bureau, American Community Survey five-year estimates, 2010-2014.

Note: Cell entries show the value of the dissimilarity index calculated for the row group and the column group. For example, the values in the White, non-Latino row and the Black, non-Latino column show that the dissimilarity index for White, non-Latino residents and Black, non-Latino residents was 0.222. The dissimilarity index is symmetrical so the values for black, non-Latino residents and the white, non-Latino residents would be identical.

Table A-18. Dissimilarity Index by Race and Ethnicity for the City of Saint Paul, 2010-2014

	Black, non-Latino	Latino	Asian, non-Latino	American Indian, non-Latino	Other or multiple races, non-Latino	All people of color
White, non-Latino	0.471	0.431	0.571	0.607	0.380	0.463
Black, non-Latino		0.341	0.374	0.500	0.344	
Latino			0.350	0.472	0.294	
Asian, non-Latino				0.454	0.347	
American Indian, non-Latino					*0.480*	

Source: Metropolitan Council's analysis of U.S. Census Bureau, American Community Survey five-year estimates, 2010-2014.

Note: Cell entries show the value of the dissimilarity index calculated for the row group and the column group. For example, the values in the White, non-Latino row and the Black, non-Latino column show that the dissimilarity index for White, non-Latino residents and Black, non-Latino residents was 0.471. The dissimilarity index is symmetrical so the values for black, non-Latino residents and the white, non-Latino residents would be identical.

Table A-19. Dissimilarity Index by Race and Ethnicity for the City of Woodbury, 2010-2014

	Black, non-Latino	Latino	Asian, non-Latino	American Indian, non-Latino	Other or multiple races, non-Latino	All people of color
White, non-Latino	0.208	0.174	0.135	0.513	0.141	0.097
Black, non-Latino		0.253	0.185	0.506	0.166	
Latino			0.241	0.451	0.201	
Asian, non-Latino				0.601	0.224	
American Indian, non-Latino					*0.448*	

Source: Metropolitan Council's analysis of U.S. Census Bureau, American Community Survey five-year estimates, 2010-2014.

Note: Cell entries show the value of the dissimilarity index calculated for the row group and the column group. For example, the values in the White, non-Latino row and the Black, non-Latino column show that the dissimilarity index for White, non-Latino residents and Black, non-Latino residents was 0.208. The dissimilarity index is symmetrical so the values for black, non-Latino residents and the white, non-Latino residents would be identical.

Table A-20. Exposure Index by Race and Ethnicity for Anoka County, 2010-2014

	White, non-Latino	Black, non-Latino	Latino	Asian, non-Latino	American Indian, non-Latino	Other or multiple races, non-Latino	All people of color
White, non-Latino		0.041	0.035	0.037	0.005	0.025	0.144
Black, non-Latino	0.736		0.058	0.046	0.009	0.031	
Latino	0.772	0.072		0.046	0.007	0.028	
Asian, non-Latino	0.796	0.055	0.044		0.006	0.028	
American Indian, non-Latino	0.798	0.071	0.044	0.042		0.028	
Other or multiple races, non-Latino	0.819	0.056	0.041	0.042	0.006		
All people of color	*0.776*						

Source: Metropolitan Council's analysis of U.S. Census Bureau, American Community Survey five-year estimates, 2010-2014.

Note: Cell entries show the value of the index measuring the exposure of the row group to the column group. For example, the values in the White, non-Latino row and the Black, non-Latino column shows that the proportion of Black, non-Latino people in the census tract of the average White, non-Latino person was 0.061. The values in the Black, non-Latino row and the White, non-Latino column show that the proportion of White, non-Latino people in the census tract of the average Black, non-Latino person was 0.736.

Table A-21. Exposure Index by Race and Ethnicity for Dakota County, 2010-2014

	White, non-Latino	Black, non-Latino	Latino	Asian, non-Latino	American Indian, non-Latino	Other or multiple races, non-Latino	All people of color
White, non-Latino		0.045	0.058	0.043	0.002	0.027	0.175
Black, non-Latino	0.735		0.079	0.049	0.003	0.032	
Latino	0.747	0.062		0.045	0.003	0.029	
Asian, non-Latino	0.778	0.055	0.064		0.003	0.028	
American Indian, non-Latino	0.778	0.066	0.071	0.048		0.027	
Other or multiple races, non-Latino	0.788	0.058	0.067	0.045	0.002		
All people of color	*0.758*						

Source: Metropolitan Council's analysis of U.S. Census Bureau, American Community Survey five-year estimates, 2010-2014.

Note: Cell entries show the value of the index measuring the exposure of the row group to the column group. For example, the values in the White, non-Latino row and the Black, non-Latino column shows that the proportion of Black, non-Latino people in the census tract of the average White, non-Latino person was 0.045. The values in the Black, non-Latino row and the White, non-Latino column show that the proportion of White, non-Latino people in the census tract of the average Black, non-Latino person was 0.735.

Table A-22. Exposure Index by Race and Ethnicity for Hennepin County, 2010-2014

	White, non-Latino	Black, non-Latino	Latino	Asian, non-Latino	American Indian, non-Latino	Other or multiple races, non-Latino	All people of color
White, non-Latino		0.083	0.053	0.056	0.005	0.032	0.229
Black, non-Latino	0.497		0.098	0.086	0.009	0.044	
Latino	0.556	0.170		0.063	0.011	0.039	
Asian, non-Latino	0.608	0.156	0.066		0.005	0.037	
American Indian, non-Latino	0.568	0.174	0.123	0.058		0.044	
Other or multiple races, non-Latino	0.653	0.146	0.076	0.068	0.008		
All people of color	*0.556*						

Source: Metropolitan Council's analysis of U.S. Census Bureau, American Community Survey five-year estimates, 2010-2014.

Note: Cell entries show the value of the index measuring the exposure of the row group to the column group. For example, the values in the White, non-Latino row and the Black, non-Latino column shows that the proportion of Black, non-Latino people in the census tract of the average White, non-Latino person was 0.083. The values in the Black, non-Latino row and the White, non-Latino column show that the proportion of White, non-Latino people in the census tract of the average Black, non-Latino person was 0.497.

Table A-23. Exposure Index by Race and Ethnicity for Ramsey County, 2010-2014

	White, non-Latino	Black, non-Latino	Latino	Asian, non-Latino	American Indian, non-Latino	Other or multiple races, non-Latino	All people of color
White, non-Latino		0.079	0.058	0.094	0.004	0.029	0.264
Black, non-Latino	0.477		0.094	0.168	0.007	0.041	
Latino	0.525	0.140		0.165	0.007	0.039	
Asian, non-Latino	0.480	0.143	0.094		0.007	0.041	
American Indian, non-Latino	0.518	0.146	0.100	0.179		0.041	
Other or multiple races, non-Latino	0.570	0.132	0.085	0.157	0.006		
All people of color	*0.498*						

Source: Metropolitan Council's analysis of U.S. Census Bureau, American Community Survey five-year estimates, 2010-2014.

Note: Cell entries show the value of the index measuring the exposure of the row group to the column group. For example, the values in the White, non-Latino row and the Black, non-Latino column shows that the proportion of Black, non-Latino people in the census tract of the average White, non-Latino person was 0.079. The values in the Black, non-Latino row and the White, non-Latino column show that the proportion of White, non-Latino people in the census tract of the average Black, non-Latino person was 0.477.

Table A-24. Exposure Index by Race and Ethnicity for Washington County, 2010-2014

	White, non-Latino	Black, non-Latino	Latino	Asian, non-Latino	American Indian, non-Latino	Other or multiple races, non-Latino	All people of color
White, non-Latino		0.032	0.035	0.048	0.003	0.024	0.142
Black, non-Latino	0.750		0.045	0.070	0.012	0.033	
Latino	0.816	0.045		0.058	0.004	0.025	
Asian, non-Latino	0.798	0.050	0.041		0.002	0.028	
American Indian, non-Latino	0.714	0.134	0.047	0.040		0.030	
Other or multiple races, non-Latino	0.821	0.048	0.037	0.058	0.004		
All people of color	*0.793*						

Source: Metropolitan Council's analysis of U.S. Census Bureau, American Community Survey five-year estimates, 2010-2014.

Note: Cell entries show the value of the index measuring the exposure of the row group to the column group. For example, the values in the White, non-Latino row and the Black, non-Latino column shows that the proportion of Black, non-Latino people in the census tract of the average White, non-Latino person was 0.032. The values in the Black, non-Latino row and the White, non-Latino column show that the proportion of White, non-Latino people in the census tract of the average Black, non-Latino person was 0.750.

Table A-25. Exposure Index by Race and Ethnicity for the City of Bloomington, 2010-2014

	White, non-Latino	Black, non-Latino	Latino	Asian, non-Latino	American Indian, non-Latino	Other or multiple races, non-Latino	All people of color
White, non-Latino		0.065	0.065	0.061	0.003	0.031	0.225
Black, non-Latino	0.682		0.095	0.064	0.002	0.035	
Latino	0.683	0.096		0.072	0.003	0.031	
Asian, non-Latino	0.732	0.074	0.083		0.003	0.033	
American Indian, non-Latino	0.782	0.045	0.072	0.063		0.032	
Other or multiple races, non-Latino	0.743	0.081	0.070	0.065	0.003		
All people of color	*0.704*						

Source: Metropolitan Council's analysis of U.S. Census Bureau, American Community Survey five-year estimates, 2010-2014.

Note: Cell entries show the value of the index measuring the exposure of the row group to the column group. For example, the values in the White, non-Latino row and the Black, non-Latino column shows that the proportion of Black, non-Latino people in the census tract of the average White, non-Latino person was 0.065. The values in the Black, non-Latino row and the White, non-Latino column show that the proportion of White, non-Latino people in the census tract of the average Black, non-Latino person was 0.682.

Table A-26. Exposure Index by Race and Ethnicity for the City of Coon Rapids, 2010-2014

	White, non-Latino	Black, non-Latino	Latino	Asian, non-Latino	American Indian, non-Latino	Other or multiple races, non-Latino	All people of color
White, non-Latino		0.050	0.036	0.031	0.007	0.031	0.154
Black, non-Latino	0.824		0.037	0.035	0.008	0.030	
Latino	0.824	0.051		0.034	0.008	0.029	
Asian, non-Latino	0.830	0.057	0.040		0.007	0.031	
American Indian, non-Latino	0.828	0.055	0.040	0.028		0.032	
Other or multiple races, non-Latino	0.839	0.049	0.034	0.031	0.007		
All people of color	*0.828*						

Source: Metropolitan Council's analysis of U.S. Census Bureau, American Community Survey five-year estimates, 2010-2014.

Note: Cell entries show the value of the index measuring the exposure of the row group to the column group. For example, the values in the White, non-Latino row and the Black, non-Latino column shows that the proportion of Black, non-Latino people in the census tract of the average White, non-Latino person was 0.050. The values in the Black, non-Latino row and the White, non-Latino column show that the proportion of White, non-Latino people in the census tract of the average Black, non-Latino person was 0.824.

Table A-27. Exposure Index by Race and Ethnicity for the City of Eden Prairie, 2010-2014

	White, non-Latino	Black, non-Latino	Latino	Asian, non-Latino	American Indian, non-Latino	Other or multiple races, non-Latino	All people of color
White, non-Latino		0.052	0.030	0.090	0.003	0.028	0.202
Black, non-Latino	0.744		0.025	0.092	0.001	0.022	
Latino	0.728	0.042		0.152	0.002	0.030	
Asian, non-Latino	0.667	0.048	0.046		0.002	0.028	
American Indian, non-Latino	0.812	0.028	0.025	0.099		0.030	
Other or multiple races, non-Latino	0.781	0.042	0.033	0.103	0.003		
All people of color	*0.711*						

Source: Metropolitan Council's analysis of U.S. Census Bureau, American Community Survey five-year estimates, 2010-2014.

Note: Cell entries show the value of the index measuring the exposure of the row group to the column group. For example, the values in the White, non-Latino row and the Black, non-Latino column shows that the proportion of Black, non-Latino people in the census tract of the average White, non-Latino person was 0.052. The values in the Black, non-Latino row and the White, non-Latino column show that the proportion of White, non-Latino people in the census tract of the average Black, non-Latino person was 0.744.

Table A-28. Exposure Index by Race and Ethnicity for the City of Minneapolis, 2010-2014

	White, non-Latino	Black, non-Latino	Latino	Asian, non-Latino	American Indian, non-Latino	Other or multiple races, non-Latino	All people of color
White, non-Latino		0.117	0.077	0.046	0.010	0.043	0.292
Black, non-Latino	0.405		0.117	0.082	0.015	0.051	
Latino	0.477	0.210		0.046	0.019	0.045	
Asian, non-Latino	0.482	0.246	0.077		0.011	0.051	
American Indian, non-Latino	0.481	0.216	0.153	0.053		0.051	
Other or multiple races, non-Latino	0.568	0.197	0.097	0.065	0.013		
All people of color	*0.456*						

Source: Metropolitan Council's analysis of U.S. Census Bureau, American Community Survey five-year estimates, 2010-2014.

Note: Cell entries show the value of the index measuring the exposure of the row group to the column group. For example, the values in the White, non-Latino row and the Black, non-Latino column shows that the proportion of Black, non-Latino people in the census tract of the average White, non-Latino person was 0.117. The values in the Black, non-Latino row and the White, non-Latino column show that the proportion of White, non-Latino people in the census tract of the average Black, non-Latino person was 0.405.

Table A-29. Exposure Index by Race and Ethnicity for the City of Minnetonka, 2010-2014

	White, non-Latino	Black, non-Latino	Latino	Asian, non-Latino	American Indian, non-Latino	Other or multiple races, non-Latino	All people of color
White, non-Latino		0.036	0.024	0.035	0.002	0.027	0.124
Black, non-Latino	0.733		0.030	0.041	0.002	0.039	
Latino	0.848	0.053		0.036	0.001	0.028	
Asian, non-Latino	0.853	0.049	0.024		0.001	0.027	
American Indian, non-Latino	0.872	0.048	0.015	0.027		0.032	
Other or multiple races, non-Latino	0.840	0.060	0.024	0.035	0.002		
All people of color	*0.811*						

Source: Metropolitan Council's analysis of U.S. Census Bureau, American Community Survey five-year estimates, 2010-2014.

Note: Cell entries show the value of the index measuring the exposure of the row group to the column group. For example, the values in the White, non-Latino row and the Black, non-Latino column shows that the proportion of Black, non-Latino people in the census tract of the average White, non-Latino person was 0.036. The values in the Black, non-Latino row and the White, non-Latino column show that the proportion of White, non-Latino people in the census tract of the average Black, non-Latino person was 0.733.

Table A-30. Exposure Index by Race and Ethnicity for the City of Plymouth, 2010-2014

	White, non-Latino	Black, non-Latino	Latino	Asian, non-Latino	American Indian, non-Latino	Other or multiple races, non-Latino	All people of color
White, non-Latino		0.047	0.035	0.075	0.004	0.025	0.187
Black, non-Latino	0.783		0.044	0.078	0.005	0.027	
Latino	0.764	0.059		0.085	0.004	0.030	
Asian, non-Latino	0.775	0.048	0.040		0.003	0.025	
American Indian, non-Latino	0.808	0.059	0.035	0.062		0.024	
Other or multiple races, non-Latino	0.790	0.052	0.042	0.077	0.004		
All people of color	*0.778*						

Source: Metropolitan Council's analysis of U.S. Census Bureau, American Community Survey five-year estimates, 2010-2014.

Note: Cell entries show the value of the index measuring the exposure of the row group to the column group. For example, the values in the White, non-Latino row and the Black, non-Latino column shows that the proportion of Black, non-Latino people in the census tract of the average White, non-Latino person was 0.047. The values in the Black, non-Latino row and the White, non-Latino column show that the proportion of White, non-Latino people in the census tract of the average Black, non-Latino person was 0.783.

Table A-31. Exposure Index by Race and Ethnicity for the City of Saint Paul, 2010-2014

	White, non-Latino	Black, non-Latino	Latino	Asian, non-Latino	American Indian, non-Latino	Other or multiple races, non-Latino	All people of color
White, non-Latino		0.112	0.078	0.107	0.005	0.035	0.337
Black, non-Latino	0.408		0.106	0.189	0.008	0.043	
Latino	0.446	0.167		0.190	0.009	0.043	
Asian, non-Latino	0.369	0.180	0.114		0.009	0.048	
American Indian, non-Latino	0.416	0.180	0.119	0.217		0.048	
Other or multiple races, non-Latino	0.478	0.163	0.104	0.191	0.008		
All people of color	*0.408*						

Source: Metropolitan Council's analysis of U.S. Census Bureau, American Community Survey five-year estimates, 2010-2014.

Note: Cell entries show the value of the index measuring the exposure of the row group to the column group. For example, the values in the White, non-Latino row and the Black, non-Latino column shows that the proportion of Black, non-Latino people in the census tract of the average White, non-Latino person was 0.112. The values in the Black, non-Latino row and the White, non-Latino column show that the proportion of White, non-Latino people in the census tract of the average Black, non-Latino person was 0.408.

Table A-32. Exposure Index by Race and Ethnicity for the City of Woodbury, 2010-2014

	White, non-Latino	Black, non-Latino	Latino	Asian, non-Latino	American Indian, non-Latino	Other or multiple races, non-Latino	All people of color
White, non-Latino		0.054	0.046	0.088	0.002	0.032	0.222
Black, non-Latino	0.758		0.048	0.089	0.003	0.036	
Latino	0.768	0.057		0.085	0.003	0.033	
Asian, non-Latino	0.771	0.055	0.044		0.002	0.030	
American Indian, non-Latino	0.751	0.072	0.061	0.066		0.043	
Other or multiple races, non-Latino	0.768	0.061	0.047	0.083	0.003		
All people of color	*0.767*						

Source: Metropolitan Council's analysis of U.S. Census Bureau, American Community Survey five-year estimates, 2010-2014.

Note: Cell entries show the value of the index measuring the exposure of the row group to the column group. For example, the values in the White, non-Latino row and the Black, non-Latino column shows that the proportion of Black, non-Latino people in the census tract of the average White, non-Latino person was 0.054. The values in the Black, non-Latino row and the White, non-Latino column show that the proportion of White, non-Latino people in the census tract of the average Black, non-Latino person was 0.758.

Updated Fair Housing Complaint Data

The 2014 Regional AI contained data on housing discrimination complaints filed by residents regarding housing located in the study area. The statistics reported in the 2014 AI were for the years 2010 to 2013. For this Addendum, the research team contacted organizations in the region with responsibility for receiving and processing such complaints to request data bringing the statistics current through 2016.

HUD Fair Housing Complaint Data - 2014							
Violation County	Violation City	Case Number - HUD	Filing Date - HUD	Bases	Issues	Completion Disposition	Total Filed
Anoka	Andover	05-14-1064-8	6/17/2014	Disability	Discrimination in the terms/conditions for making loans	Administrative Closure	1
		Total					**1**
	Coon Rapids	05-14-0946-8	5/22/2014	Disability	Discriminatory acts under Section 818 (coercion, Etc.); Failure to make reasonable accommodation	Conciliation/ Settlement	1
		Total					**1**
	Total						**2**
Carver	Chanhassen	05-14-0406-8	1/22/2014	Race	Discrimination in terms/conditions/privileges relating to rental; Discriminatory acts under Section 818 (coercion, Etc.)	Administrative Closure	1
		Total					**1**
	Total						**1**
Dakota	Eagan	05-14-1446-8	8/20/2014	Race	Discriminatory terms, conditions, privileges, or services and facilities	Withdrawn after Resolution	1
		Total					**1**
	Hastings	05-15-0253-8	12/1/2014	Disability	Discriminatory refusal to rent; Discriminatory terms, conditions, privileges, or services and facilities; Failure to make reasonable accommodation	No Cause	1
		Total					**1**
	Lakeville	05-14-0934-8	5/19/2014	Disability	Discriminatory terms, conditions, privileges, or services and facilities	No Cause	1
		Total					**1**

	South St. Paul	05-14-1316-8	7/28/2014	Race	Discriminatory terms, conditions, privileges, or services and facilities; Otherwise deny or make housing unavailable; Discriminatory acts under Section 818 (coercion, Etc.)	Conciliation/ Settlement	1
		Total					**1**
	West St.Paul	05-14-1477-8	9/2/2014	Disability	Discriminatory terms, conditions, privileges, or services and facilities	Conciliation/ Settlement	1
		Total					**1**
	Total						**5**
Hennepin	Bloomington	05-15-0028-8	10/14/2014	National Origin	Discriminatory terms, conditions, privileges, or services and facilities	Conciliation/ Settlement	1
		05-15-0174-8	11/14/2014	Disability	Discriminatory refusal to rent; Discriminatory terms, conditions, privileges, or services and facilities	Withdrawn after Resolution	1
		Total					**2**
	Brooklyn Park	05-14-0582-8	3/4/2014	Disability	Discrimination in terms/conditions/privileges relating to rental; Otherwise deny or make housing unavailable; Discriminatory acts under Section 818 (coercion, Etc.); Failure to make reasonable accommodation	Charged or FHAP Caused	1
		05-14-0623-8	3/10/2014	Sex	Discrimination in terms/conditions/privileges relating to rental; Discriminatory acts under Section 818 (coercion, Etc.)	No Cause	1
		Total					**2**

	Champlin	05-14-0855-8	5/2/2014	Race	Discriminatory refusal to rent and negotiate for rental; Discriminatory advertising, statements and notices; Otherwise deny or make housing unavailable; Discriminatory acts under Section 818 (coercion, Etc.)	Charged or FHAP Caused	1
		Total					**1**
	Eden Prairie	05-14-0462-8	2/3/2014	Race	Discriminatory refusal to rent; Discriminatory terms, conditions, privileges, or services and facilities; Discriminatory acts under Section 818 (coercion, Etc.)	No Cause	1
		Total					**1**
	Minneapolis	05-14-0352-8	1/30/2014	Race, Familial Status	Discrimination in the terms/conditions for making loans	No Cause	1
		05-14-0418-8	1/31/2014	Sex	Discrimination in terms/conditions/privileges relating to rental; Discriminatory acts under Section 818 (coercion, Etc.)	No Cause	1
		05-14-0601-8	3/5/2014	Familial Status	Discriminatory advertising, statements and notices; Discriminatory terms, conditions, privileges, or services and facilities	Charged or FHAP Caused	1
		05-14-1153-8	7/9/2014	Sex, Disability, Retaliation	Discriminatory advertising, statements and notices; Discriminatory terms, conditions, privileges, or services and facilities; Otherwise deny or make housing unavailable; Discriminatory acts under Section 818 (coercion, Etc.); Failure to make reasonable accommodation	No Cause	1

		05-15-0323-8	12/12/2014	Race, Sex, Familial Status	Discriminatory advertising, statements and notices; Discriminatory terms, conditions, privileges, or services and facilities; Otherwise deny or make housing unavailable; Discriminatory acts under Section 818 (coercion, Etc.)	No Cause	1
		Total					**5**
	Minnetonka	05-14-0978-8	5/29/2014	Disability	Failure to make reasonable accommodation	Conciliation/ Settlement	1
		05-14-1471-8	8/22/2014	Familial Status, Retaliation	Discriminatory acts under Section 818 (coercion, Etc.)	No Cause	1
		Total					**2**
	Plymouth	05-15-0199-8	11/17/2014	Race	Discriminatory refusal to rent; Discrimination in terms/conditions/privileges relating to rental	No Cause	1
		Total					**1**
	Richfield	05-14-0590-8	3/4/2014	Disability	Discrimination in terms/conditions/privileges relating to rental	No Cause	1
		05-15-0247-8	11/26/2014	Retaliation	Discrimination in terms/conditions/privileges relating to rental; Discriminatory acts under Section 818 (coercion, Etc.); Failure to make reasonable accommodation	No Cause	1
		Total					**2**
	Robbinsdale	05-14-1393-8	8/19/2014		Failure to make reasonable accommodation	Conciliation/ Settlement	1
		Total					**1**

	Rogers	05-14-0975-8	5/28/2014	Race	Discrimination in terms/conditions/privileges relating to rental	Withdrawn after Resolution	1
		Total					**1**
	St. Anthony	05-14-1388-8	8/19/2014	Familial Status	Discriminatory refusal to rent and negotiate for rental; Discrimination in terms/conditions/privileges relating to rental	No Cause	1
		Total					**1**
	Wayzata	05-14-1547-8	9/16/2014	Disability	Discriminatory terms, conditions, privileges, or services and facilities; Failure to make reasonable accommodation	Administrative Closure	1
		Total					**1**
	Total						**20**
Ramsey	New Brighton	05-15-0005-8	10/1/2014	Disability	Discriminatory acts under Section 818 (coercion, Etc.); Failure to make reasonable accommodation	Charged or FHAP Caused	1
		Total					**1**
	Roseville	05-15-0275-8	12/4/2014	Race	Discriminatory refusal to rent; Discrimination in terms/conditions/privileges relating to rental	No Cause	1
		Total					**1**
	Saint Paul	05-14-0459-8	2/3/2014	National Origin	Discriminatory terms, conditions, privileges, or services and facilities; Otherwise deny or make housing unavailable; Discriminatory acts under Section 818 (coercion, Etc.)	No Cause	1
		05-14-0467-8	2/3/2014	Race	Discriminatory refusal to sell; Discrimination in services and facilities relating to sale	No Cause	1

		05-14-0570-8	2/24/2014	Disability	Discriminatory terms, conditions, privileges, or services and facilities; Otherwise deny or make housing unavailable; Failure to make reasonable accommodation	Administrative Closure	1
		05-14-0616-8	3/5/2014	Sex	Discrimination in terms/conditions/privileges relating to rental	No Cause	1
		05-14-0684-8	3/20/2014	Sex, Disability, Familial Status, Retaliation	Discrimination in terms/conditions/privileges relating to rental	Conciliation/ Settlement	1
		05-14-0755-8	3/28/2014	National Origin	Discriminatory acts under Section 818 (coercion, Etc.)	No Cause	1
		05-14-0832-8	4/22/2014	Disability, Retaliation	Discriminatory refusal to negotiate for rental; Discriminatory acts under Section 818 (coercion, Etc.)	Administrative Closure	1
		05-14-1085-8	6/4/2014	Race, Familial Status, Retaliation	Discriminatory refusal to negotiate for rental; Restriction of choices relative to a rental	No Cause	1
		05-14-1186-8	6/25/2014	Race, Color, Sex, Familial Status	Discrimination in terms/conditions/privileges relating to rental	No Cause	1
		05-14-1211-8	6/30/2014	Race	Discrimination in terms/conditions/privileges relating to rental	Charged or FHAP Caused	1
		05-14-1380-8	8/1/2014	Race, Religion, Familial Status	Discrimination in terms/conditions/privileges relating to rental; Restriction of choices relative to a rental; Discriminatory acts under Section 818 (coercion, Etc.)	No Cause	1

		05-14-1462-8	8/22/2014	Race, Sex, Disability, Retaliation	Discriminatory refusal to negotiate for rental; Discrimination in terms/conditions/privileges relating to rental; Discriminatory acts under Section 818 (coercion, Etc.)	No Cause	1
		05-14-1508-8	9/5/2014	Race, Retaliation	Discrimination in terms/conditions/privileges relating to rental	No Cause	1
		05-15-0140-8	10/28/2014	Race, Color, National Origin	Discriminatory refusal to negotiate for rental; Discriminatory acts under Section 818 (coercion, Etc.)	No Cause	1
		05-15-0188-8	11/13/2014	Sex, Disability, Retaliation	Discriminatory terms, conditions, privileges, or services and facilities; Discrimination in terms/conditions/privileges relating to rental	Administrative Closure	1
		05-15-0534-8	12/23/2014	Race, Retaliation	Discriminatory terms, conditions, privileges, or services and facilities	Conciliation/ Settlement	1
		Total					**16**
	St. Paul	05-14-0735-8	4/2/2014	Familial Status	Discriminatory refusal to rent; Discriminatory terms, conditions, privileges, or services and facilities; Steering	Conciliation/ Settlement	1
		05-14-0889-8	5/9/2014	Disability	Failure to make reasonable accommodation	No Cause	1
		05-14-0899-8	5/12/2014	Race	Discriminatory refusal to rent and negotiate for rental; Discriminatory terms, conditions, privileges, or services and facilities	No Cause	1
		Total					**3**

	St.Paul	05-14-1328-8	7/30/2014	Race, Familial Status	Discriminatory refusal to rent; Discriminatory terms, conditions, privileges, or services and facilities; Otherwise deny or make housing unavailable	Administrative Closure	1
		Total					**1**
	Total						**22**
Scott	Savage	05-14-1389-8	8/19/2014	Disability	Discriminatory terms, conditions, privileges, or services and facilities	No Cause	1
		Total					**1**
	Shakopee	05-14-0544-8	2/24/2014	Race	Discriminatory refusal to rent; Discriminatory terms, conditions, privileges, or services and facilities	Administrative Closure	1
		Total					**1**
	Total						**2**
Washington	Cottage Grove	05-14-0712-8	3/31/2014	Disability, Retaliation	Otherwise deny or make housing unavailable; Discriminatory acts under Section 818 (coercion, Etc.); Failure to make reasonable accommodation	No Cause	1
		Total					**1**
	Forest Lake	05-14-0895-8	5/12/2014	Disability	Discriminatory terms, conditions, privileges, or services and facilities	No Cause	1
		Total					**1**
	Oakdale	05-14-0691-8	3/27/2014	Disability	Discriminatory terms, conditions, privileges, or services and facilities; Otherwise deny or make housing unavailable; Discriminatory acts under Section 818 (coercion, Etc.); Failure to make reasonable accommodation	Conciliation/ Settlement	1

		05-14-0694-8	3/25/2014	Disability	Discriminatory terms, conditions, privileges, or services and facilities; Otherwise deny or make housing unavailable; Discriminatory acts under Section 818 (coercion, Etc.); Failure to make reasonable accommodation	Conciliation/ Settlement	1
		Total					**2**
	Woodbury	05-14-1601-8	9/25/2014	Disability	Failure to make reasonable accommodation	No Cause	1
		Total					**1**
	Total						**5**
Total							**57**

HUD Fair Housing Complaint Data - 2015							
Violation County	**Violation City**	**Case Number - HUD**	**Filing Date - HUD**	**Bases**	**Issues**	**Completion Disposition**	**Total Filed**
Anoka	Anoka	05-15-1394-8	9/24/2015	Disability	Discriminatory terms, conditions, privileges, or services and facilities	Withdrawn after Resolution	1
		Total					**1**
	Blaine	05-16-0057-8	10/20/2015	Race	Discrimination in terms/conditions/privileges relating to rental	Administrative Closure	1
		Total					**1**
	Columbia Heights	05-15-0529-8	2/9/2015	Race, Retaliation	Discriminatory terms, conditions, privileges, or services and facilities; Discriminatory acts under Section 818 (coercion, Etc.)	Administrative Closure	1
		Total					**1**
	Fridley	05-15-0508-8	2/3/2015	Race, Sex	Discriminatory terms, conditions, privileges, or services and facilities	Administrative Closure	1
		Total					**1**
	Total						**4**
Carver	Chaska	05-15-1283-8	8/14/2015	Disability	Discriminatory terms, conditions, privileges, or services and facilities; Discriminatory acts under Section 818 (coercion, Etc.)	No Cause	1
		Total					**1**
	Total						**1**
Dakota	Burnsville	05-15-0703-8	4/1/2015	Disability	Discriminatory refusal to rent; Discriminatory terms, conditions, privileges, or services and facilities	No Cause	1
		Total					**1**

	Inver Grove Heights	05-15-0569-8	2/19/2015	Race	Discriminatory terms, conditions, privileges, or services and facilities	Conciliation/ Settlement	1
		Total					**1**
	Lakeville	05-15-0640-8	3/12/2015	Disability, Retaliation	Discriminatory terms, conditions, privileges, or services and facilities; Discriminatory acts under Section 818 (coercion, Etc.); Failure to make reasonable accommodation	Conciliation/ Settlement	1
		05-15-0812-8	4/30/2015	Disability	Failure to make reasonable accommodation	No Cause	1
		Total					**2**
	West St. Paul	05-16-4076-8	12/1/2015	Disability	Discriminatory advertising, statements and notices; Discriminatory terms, conditions, privileges, or services and facilities; Discriminatory acts under Section 818 (coercion, Etc.); Failure to make reasonable accommodation	Open	1
		Total					**1**
	Total						**5**
Hennepin	Bloomington	05-15-0477-8	1/27/2015	Disability	Discriminatory terms, conditions, privileges, or services and facilities; Failure to make reasonable accommodation	No Cause	1
		Total					**1**
	Brooklyn Center	05-15-0447-8	1/23/2015	Race, Color	Discriminatory terms, conditions, privileges, or services and facilities	Conciliation/ Settlement	1
		Total					**1**

	Hopkins	05-15-1023-8	6/23/2015	Sex, Familial Status	Discriminatory refusal to rent; Discriminatory advertising, statements and notices; Discrimination in terms/conditions/privileges relating to rental	Conciliation/ Settlement	1
		Total					**1**
	Minneapolis	05-15-0579-8	2/20/2015	Disability	Discriminatory terms, conditions, privileges, or services and facilities; Failure to make reasonable accommodation	No Cause	1
		05-15-0774-8	4/21/2015	National Origin, Disability	Discriminatory advertising, statements and notices; Discriminatory terms, conditions, privileges, or services and facilities	Withdrawn after Resolution	1
		05-15-0820-8	5/4/2015	Disability	Discriminatory terms, conditions, privileges, or services and facilities; Failure to make reasonable accommodation	No Cause	1
		05-15-0873-8	5/12/2015	Sex, Disability, Retaliation	Discriminatory refusal to rent; Discriminatory advertising, statements and notices; Discriminatory terms, conditions, privileges, or services and facilities; Discriminatory acts under Section 818 (coercion, Etc.); Failure to make reasonable accommodation	Conciliation/ Settlement	1
		05-15-1129-8	7/10/2015	Disability, Familial Status	Discriminatory advertising, statements and notices; Discriminatory terms, conditions, privileges, or services and facilities; Failure to make reasonable accommodation	Conciliation/ Settlement	1

		05-15-1296-8	8/27/2015	Race	Discrimination in the terms/conditions for making loans	No Cause	1
		05-15-1355-8	9/14/2015	Disability	Discriminatory terms, conditions, privileges, or services and facilities; Discriminatory acts under Section 818 (coercion, Etc.); Failure to make reasonable accommodation	Administrative Closure	1
		05-16-4043-8	12/2/2015	Sex, Disability	Discriminatory terms, conditions, privileges, or services and facilities; Discriminatory acts under Section 818 (coercion, Etc.)	Administrative Closure	1
		05-16-4104-8	12/22/2015	Familial Status	Discrimination in terms/conditions/privileges relating to rental	Conciliation/ Settlement	1
		Total					**9**
	Minnetonka	05-15-0631-8	3/9/2015	Race, Sex, Familial Status	Discriminatory refusal to rent; Discriminatory advertising, statements and notices; Discriminatory terms, conditions, privileges, or services and facilities; Steering	No Cause	1
		05-15-1191-8	8/10/2015	Disability	Failure to permit reasonable modification	Administrative Closure	1
		Total					**2**
	New Hope	05-15-0462-8	1/26/2015	Familial Status	Discriminatory refusal to rent; Discriminatory terms, conditions, privileges, or services and facilities; Discriminatory acts under Section 818 (coercion, Etc.)	Withdrawn after Resolution	1
		Total					**1**
	Plymouth	05-15-0585-8	2/24/2015	Disability, Familial Status	Discrimination in terms/conditions/privileges relating to rental	Conciliation/ Settlement	1

		Total					**1**
	St. Anthony	05-15-1197-8	8/10/2015	Race	Discriminatory refusal to rent	Open	1
		Total					**1**
	Total						**17**
Ramsey	Mounds View	05-15-0424-8	1/20/2015	Disability	Discriminatory terms, conditions, privileges, or services and facilities; Failure to make reasonable accommodation	No Cause	1
		05-15-0634-8	3/9/2015	Disability	Discriminatory terms, conditions, privileges, or services and facilities; Failure to make reasonable accommodation	Administrative Closure	1
		Total					**2**
	Moundsview	05-15-0655-8	3/17/2015	Disability	Discriminatory acts under Section 818 (coercion, Etc.); Failure to make reasonable accommodation	Conciliation/ Settlement	1
		Total					**1**
	New Brighton	05-15-1029-8	6/25/2015	Disability	Discriminatory terms, conditions, privileges, or services and facilities; Failure to make reasonable accommodation	No Cause	1
		Total					**1**
	Saint Paul	05-15-0552-8	2/13/2015	Disability, Retaliation	Discriminatory terms, conditions, privileges, or services and facilities; Failure to make reasonable accommodation	No Cause	1
		05-15-0748-8	4/3/2015	Race, National Origin, Familial Status	Discriminatory refusal to negotiate for rental; Discrimination in terms/conditions/privileges relating to rental	No Cause	1

		05-15-0860-8	5/7/2015	Race	Discriminatory refusal to sell and negotiate for sale; Discriminatory advertising, statements and notices; Discrimination in terms/conditions/privileges relating to rental	No Cause	1
		05-15-0901-8	5/14/2015	Sex, Retaliation	Discriminatory refusal to rent and negotiate for rental; Discriminatory acts under Section 818 (coercion, Etc.)	No Cause	1
		05-15-1017-8	6/12/2015	Race	Restriction of choices relative to a rental	No Cause	1
		05-15-1215-8	7/29/2015	Disability, Retaliation	Failure to make reasonable accommodation	Open	1
		05-15-1323-8	9/1/2015	Race, National Origin	Discriminatory refusal to rent; Discriminatory refusal to negotiate for rental; Restriction of choices relative to a rental	No Cause	1
		05-15-1378-8	9/21/2015	Race, Retaliation	Discriminatory refusal to rent; Discriminatory advertising, statements and notices; Discrimination in terms/conditions/privileges relating to rental	Open	1
		05-15-1440-8	9/25/2015	Race, National Origin	Restriction of choices relative to a rental	No Cause	1
		05-15-1444-8	9/30/2015	Familial Status	Discrimination in services and facilities relating to rental	Administrative Closure	1
		Total					**10**
	Shoreview	05-15-0714-8	4/1/2015	National Origin	Discriminatory refusal to rent; Discrimination in terms/conditions/privileges relating to rental	No Cause	1
		Total					**1**

	St. Paul	05-15-0866-8	5/12/2015	Race	Discrimination in terms/conditions/privileges relating to rental	Open	1
		05-15-1271-8	8/20/2015	Color, National Origin, Religion	Discriminatory refusal to rent and negotiate for rental	No Cause	1
		05-16-4005-8	11/18/2015	Race	Discriminatory refusal to rent and negotiate for rental	Open	1
		Total					**3**
	Total						**18**
Washington	Woodbury	05-15-1284-8	8/25/2015	Familial Status	Discriminatory refusal to rent; Discriminatory advertising, statements and notices; Discriminatory terms, conditions, privileges, or services and facilities	Withdrawn after Resolution	1
		Total					**1**
	Total						**1**
Total							**46**

HUD Fair Housing Complaint Data - 2015							
Violation County	**Violation City**	**Case Number - HUD**	**Filing Date - HUD**	**Bases**	**Issues**	**Completion Disposition**	**Total Filed**
Anoka	anoka	05-16-4743-8	5/31/2016	Race	Discriminatory terms, conditions, privileges, or services and facilities	No Cause	1
		Total					**1**
	Anoka	05-16-4721-8	5/20/2016	Disability	Discriminatory terms, conditions, privileges, or services and facilities; Otherwise deny or make housing unavailable; Discriminatory acts under Section 818 (coercion, Etc.); Failure to make reasonable accommodation	No Cause	1
		05-17-5782-8	10/19/2016	Familial Status	Discriminatory refusal to rent and negotiate for rental; Discriminatory advertising, statements and notices; False denial or representation of availability - rental; Discrimination in terms/conditions/privileges relating to rental; Otherwise deny or make housing unavailable	Conciliation/ Settlement	1
		Total					**2**
	Blaine	05-16-4523-8	4/5/2016	Disability	Discriminatory terms, conditions, privileges, or services and facilities; Failure to make reasonable accommodation	Conciliation/ Settlement	1
		Total					**1**
	Coon Rapids	05-17-6491-8	12/16/2016	Disability	Discriminatory terms, conditions, privileges, or services and facilities	Conciliation/ Settlement	1

		Total					**1**
	Total						**5**
Dakota	Burnsville	05-16-4415-8	3/15/2016	Race, Disability	Discrimination in terms/conditions/privileges relating to rental	No Cause	1
		05-16-4781-8	4/1/2016	Race, National Origin	Discriminatory terms, conditions, privileges, or services and facilities	Withdrawn after Resolution	1
		05-17-5934-8	10/31/2016	Disability	Discriminatory refusal to rent and negotiate for rental; Discriminatory terms, conditions, privileges, or services and facilities; Failure to make reasonable accommodation	Open	1
		Total					**3**
	Farmington	05-16-4761-8	6/6/2016	Disability	Discriminatory terms, conditions, privileges, or services and facilities	Open	1
		05-16-4772-8	6/13/2016	Disability	Discriminatory terms, conditions, privileges, or services and facilities	Open	1
		Total					**2**
	Inver Grove Heights	05-16-4164-8	1/4/2016	Race, Disability, Retaliation	Discriminatory terms, conditions, privileges, or services and facilities; Discriminatory acts under Section 818 (coercion, Etc.)	No Cause	1
		Total					**1**
	West Saint Paul	05-16-4148-8	1/7/2016	Disability	Discriminatory terms, conditions, privileges, or services and facilities; Failure to make reasonable accommodation	Open	1
		Total					**1**
	Total						**7**
Hennepin	Brooklyn Center	05-16-4439-8	3/24/2016	Disability, Retaliation	Failure to make reasonable accommodation	Administrative Closure	1

		Total					**1**
	Brooklyn Park	05-16-4692-8	5/13/2016	Race	Discriminatory advertising, statements and notices; Discriminatory acts under Section 818 (coercion, Etc.)	Open	1
		05-16-4892-8	7/12/2016	Disability	Discriminatory terms, conditions, privileges, or services and facilities; Failure to make reasonable accommodation	Open	1
		Total					**2**
	Edina	05-16-4244-8	1/26/2016	Familial Status	Discriminatory refusal to rent	No Cause	1
		Total					**1**
	Hastings	05-17-6571-8	12/23/2016	Familial Status	Discriminatory refusal to rent	Open	1
		Total					**1**
	Hopkins	05-16-4996-8	4/29/2016	Disability	Discriminatory refusal to rent	Conciliation/ Settlement	1
		Total					**1**
	Minneapolis	05-16-4186-8	1/4/2016	Disability	Discriminatory terms, conditions, privileges, or services and facilities; Failure to make reasonable accommodation	Withdrawn after Resolution	1
		05-16-4262-8	1/25/2016	Disability	Discrimination in terms/conditions/privileges relating to rental; Otherwise deny or make housing unavailable; Discriminatory acts under Section 818 (coercion, Etc.)	Open	1
		05-16-4311-8	2/5/2016	Race, Disability	Discriminatory terms, conditions, privileges, or services and facilities; Otherwise deny or make housing unavailable; Discriminatory acts under Section 818 (coercion, Etc.); Failure to make reasonable accommodation	No Cause	1

		05-16-4360-8	2/22/2016	National Origin	Discriminatory terms, conditions, privileges, or services and facilities	Open	1
		05-16-4604-8	4/26/2016	Race, Familial Status	Discrimination in the terms/conditions for making loans	No Cause	1
		05-16-4742-8	5/31/2016	Disability	Discriminatory terms, conditions, privileges, or services and facilities; Failure to make reasonable accommodation	Open	1
		05-16-4780-8	6/15/2016	Familial Status	Discriminatory refusal to rent and negotiate for rental; Discriminatory terms, conditions, privileges, or services and facilities; Otherwise deny or make housing unavailable	Open	1
		05-16-4848-8	6/27/2016	Race, Retaliation	Discriminatory terms, conditions, privileges, or services and facilities; Discriminatory acts under Section 818 (coercion, Etc.)	Administrative Closure	1
		05-17-6032-8	11/7/2016	Disability	Discriminatory terms, conditions, privileges, or services and facilities	Open	1
		05-17-6511-8	12/20/2016	Disability	Failure to make reasonable accommodation	Open	1
		Total					**10**
	Minnetonka	05-16-5551-8	9/29/2016	Disability	Discriminatory terms, conditions, privileges, or services and facilities; Failure to make reasonable accommodation	Open	1
		Total					**1**

	New Hope	05-16-4897-8	7/14/2016	Disability	Discriminatory terms, conditions, privileges, or services and facilities; Otherwise deny or make housing unavailable; Discriminatory acts under Section 818 (coercion, Etc.)	Open	1
		Total					**1**
	Plymouth	05-16-4987-8	8/2/2016	Familial Status	Discriminatory refusal to negotiate for rental; Discriminatory terms, conditions, privileges, or services and facilities	No Cause	1
		Total					**1**
	Richfield	05-17-6572-8	12/27/2016	Disability	Discriminatory refusal to rent and negotiate for rental; Discrimination in terms/conditions/privileges relating to rental; Otherwise deny or make housing unavailable; Discriminatory acts under Section 818 (coercion, Etc.); Failure to make reasonable accommodation	Open	1
		Total					**1**
	Saint Paul	05-16-4992-8	8/3/2016	Disability	Discriminatory terms, conditions, privileges, or services and facilities; Discriminatory acts under Section 818 (coercion, Etc.); Failure to make reasonable accommodation	Open	1
		Total					**1**
	St. Anthony	05-17-6051-8	11/7/2016	National Origin	Discrimination in terms/conditions/privileges relating to sale; Otherwise deny or make housing unavailable	Open	1
		05-17-6052-8	11/7/2016	National Origin	Otherwise deny or make housing unavailable	Open	1

		05-17-6053-8	11/7/2016	National Origin	Otherwise deny or make housing unavailable	Open	1
		05-17-6054-8	11/7/2016	National Origin	Otherwise deny or make housing unavailable	Open	1
		05-17-6111-8	11/15/2016	National Origin	Otherwise deny or make housing unavailable	Open	1
		05-17-6112-8	11/15/2016	National Origin	Otherwise deny or make housing unavailable	Open	1
		Total					**6**
	St. Louis Park	05-16-5151-8	8/29/2016	Disability	Discriminatory terms, conditions, privileges, or services and facilities; Refusing to provide municipal services or property	Open	1
		Total					**1**
	St. Lousi Park	05-16-4411-8	3/10/2016	Race, Familial Status	Discriminatory refusal to rent	Open	1
		Total					**1**
	St. Paul	05-16-5062-8	8/22/2016	Race, Religion	Discriminatory refusal to rent and negotiate for rental; Discriminatory terms, conditions, privileges, or services and facilities	Open	1
		Total					**1**
	Total						**30**
Ramsey	New Brighton	05-16-4522-8	4/11/2016	Disability	Discriminatory advertising, statements and notices; Discriminatory terms, conditions, privileges, or services and facilities; Failure to make reasonable accommodation	Conciliation/ Settlement	1
		Total					**1**

	Saint Paul	05-16-4307-8	1/8/2016	Disability, Retaliation	Restriction of choices relative to a rental; Discriminatory acts under Section 818 (coercion, Etc.); Failure to make reasonable accommodation	No Cause	1
		05-16-4433-8	3/21/2016	Familial Status	Discriminatory terms, conditions, privileges, or services and facilities; Discriminatory acts under Section 818 (coercion, Etc.)	Open	1
		05-16-5020-8	8/12/2016	Race, Color	Discriminatory terms, conditions, privileges, or services and facilities	Conciliation/ Settlement	1
		05-16-5410-8	8/17/2016	Religion	Discriminatory refusal to rent and negotiate for rental; Restriction of choices relative to a rental	Open	1
		05-17-6393-8	12/1/2016	Disability	Discriminatory refusal to rent and negotiate for rental; Other discriminatory acts; Restriction of choices relative to a rental	Open	1
		05-17-6394-8	12/2/2016	Disability, Retaliation	Discriminatory refusal to rent and negotiate for rental; Discrimination in terms and conditions of membership; Discriminatory terms, conditions, privileges, or services and facilities; Discrimination in terms/conditions/privileges relating to rental; Other discriminatory acts; Failure to permit reasonable modification; Failure to make reasonable accommodation	Open	1

		05-17-7114-8	12/16/2016	Race, Disability, Retaliation	Discriminatory refusal to rent and negotiate for rental; Discrimination in terms/conditions/privileges relating to rental; Failure to make reasonable accommodation	Open	1
		Total					**7**
	Vadnais Heights	05-16-4291-8	2/2/2016	Familial Status	Discriminatory refusal to rent; Discrimination in terms/conditions/privileges relating to rental	Open	1
		Total					**1**
	Total						**9**
Scott	Shakopee	05-16-5640-8	7/29/2016	Race	Discrimination in terms/conditions/privileges relating to rental; Discrimination in services and facilities relating to rental	No Cause	1
		Total					**1**
	Total						**1**
Washington	Forest Lake	05-16-4238-8	1/5/2016	Disability	Discriminatory terms, conditions, privileges, or services and facilities; Otherwise deny or make housing unavailable; Discriminatory acts under Section 818 (coercion, Etc.); Failure to make reasonable accommodation	Conciliation/ Settlement	1
		Total					**1**
	Total						**1**
Total							**53**

Minnesota Department of Human Rights - Fair Housing Complaint Data: 2014-2016						
Filed Date	Basis	Allegation	Status	Closure Date	City	County
1/17/2014	Religion	Qualifications for Tenancy	Closed after No Probable Cause	11/21/2014	Minneapolis	Hennepin
3/21/2014	Disability	Eviction	Withdrawn after Probable Cause	1/28/2015	New Hope	Hennepin
3/21/2014	Disability	Reasonably Accommodate, refusal to	Withdrawn after Probable Cause	1/28/2015	New Hope	Hennepin
3/31/2014	National Origin	Rent, refusal to	Dismissed	10/2/2014	Champlin	Hennepin
3/31/2014	National Origin	Rent, refusal to	Dismissed	10/2/2014	Champlin	Hennepin
4/8/2014	Sex	Harassment	Closed after No Probable Cause	10/30/2014	Minneapolis	Hennepin
4/16/2014	Disability	Eviction	Withdrawn Satisfactorily Adjusted	10/31/2014	Coon Rapids	Anoka
4/16/2014	Disability	Reasonably Accommodate, refusal to	Withdrawn Satisfactorily Adjusted	10/31/2014	Coon Rapids	Anoka
4/17/2014	Disability	Opposing Forbidden Practices	Withdrawn Private Right of Action	9/30/2014	Roseville	Ramsey
4/17/2014	Disability	Reasonably Accommodate, refusal to	Withdrawn Private Right of Action	9/30/2014	Roseville	Ramsey
4/17/2014	Disability	Opposing Forbidden Practices	Withdrawn Private Right of Action	9/30/2014	Roseville	Ramsey
4/17/2014	Disability	Reasonable Accommodation	Withdrawn Private Right of Action	9/30/2014	Roseville	Ramsey
4/22/2014	Color	Differential Treatment	Dismissed	9/3/2014	Bloomington	Hennepin
4/22/2014	Creed	Differential Treatment	Dismissed	9/3/2014	Bloomington	Hennepin
4/22/2014	National Origin	Differential Treatment	Dismissed	9/3/2014	Bloomington	Hennepin
4/22/2014	Race	Differential Treatment	Dismissed	9/3/2014	Bloomington	Hennepin
4/22/2014	Religion	Differential Treatment	Dismissed	9/3/2014	Bloomington	Hennepin
4/22/2014	Color	Differential Treatment	Dismissed	9/3/2014	Bloomington	Hennepin
4/22/2014	Creed	Differential Treatment	Dismissed	9/3/2014	Bloomington	Hennepin
4/22/2014	National Origin	Differential Treatment	Dismissed	9/3/2014	Bloomington	Hennepin
4/22/2014	Race	Differential Treatment	Dismissed	9/3/2014	Bloomington	Hennepin

4/22/2014	Religion	Differential Treatment	Dismissed	9/3/2014	Bloomington	Hennepin
5/20/2014	Color	Rent, refusal to	Closed after No Probable Cause	1/22/2015	Vadnais Heights	Ramsey
5/20/2014	Race	Rent, refusal to	Closed after No Probable Cause	1/22/2015	Vadnais Heights	Ramsey
6/10/2014	Disability	Eviction	Closed after No Probable Cause	2/25/2015	South Saint Paul	Dakota
6/10/2014	Disability	Harassment	Closed after No Probable Cause	2/25/2015	South Saint Paul	Dakota
6/10/2014	Disability	Reasonably Accommodate, refusal to	Closed after No Probable Cause	2/25/2015	South Saint Paul	Dakota
8/7/2014	Disability	Reasonably Accommodate, refusal to	Settlement after Probable Cause	6/11/2015	Anoka	Anoka
8/12/2014	Disability	Reasonably Accommodate, refusal to	Closed after No Probable Cause	1/27/2015	Saint Louis Park	Hennepin
9/19/2014	Public Assistance Status	Rent, refusal to	Closed after No Probable Cause	1/12/2015	Minneapolis	Hennepin
9/22/2014	National Origin	Differential Treatment	Closed after No Probable Cause	5/15/2015	Fridley	Anoka
10/7/2014	Disability	Lease, refusal to	Closed after No Probable Cause	3/26/2015	Coon Rapids	Anoka
10/7/2014	Disability	Reasonably Accommodate, refusal to	Closed after No Probable Cause	3/26/2015	Coon Rapids	Anoka
10/7/2014	Public Assistance Status	Lease, refusal to	Closed after No Probable Cause	3/26/2015	Coon Rapids	Anoka
10/24/2014	Disability	Differential Treatment	Closed after No Probable Cause	4/28/2015	Minneapolis	Hennepin
10/24/2014	Disability	Eviction	Closed after No Probable Cause	4/28/2015	Minneapolis	Hennepin
10/24/2014	Disability	Reasonably Accommodate, refusal to	Closed after No Probable Cause	4/28/2015	Minneapolis	Hennepin
10/24/2014	Disability	Service Animal, prohibition	Closed after No Probable Cause	4/28/2015	Minneapolis	Hennepin
11/7/2014	National Origin	Sell, refusal to	Closed after No Probable Cause	8/27/2015	Shakopee	Scott

11/7/2014	Race	Sell, refusal to	Closed after No Probable Cause	8/27/2015	Shakopee	Scott
11/10/2014	Race	Differential Treatment	Closed after No Probable Cause	12/31/2015	West Saint Paul	Dakota
11/10/2014	Race	Eviction	Closed after No Probable Cause	12/31/2015	West Saint Paul	Dakota
11/10/2014	Race	Racial Harassment	Closed after No Probable Cause	12/31/2015	West Saint Paul	Dakota
11/17/2014	National Origin	Differential Treatment	Closed after No Probable Cause	6/24/2015	West Saint Paul	Dakota
11/17/2014	National Origin	Eviction	Closed after No Probable Cause	6/24/2015	West Saint Paul	Dakota
12/23/2014	Public Assistance Status	Lease, refusal to	Closed after No Probable Cause	5/26/2015	South Saint Paul	Dakota
1/30/2015	Public Assistance Status	Rent, refusal to	Mediated Settlement	9/24/2015	Fridley	Anoka
2/6/2015	Sex	Eviction	Closed after No Probable Cause	12/31/2015	Woodbury	Washington
2/6/2015	Sex	Opposing Forbidden Practices	Closed after No Probable Cause	12/31/2015	Woodbury	Washington
2/6/2015	Sex	Sexual Harassment	Closed after No Probable Cause	12/31/2015	Woodbury	Washington
2/24/2015	Marital Status	Rent, refusal to	Closed after No Probable Cause	3/17/2016	Saint Paul	Ramsey
2/24/2015	National Origin	Rent, refusal to	Closed after No Probable Cause	3/17/2016	Saint Paul	Ramsey
2/24/2015	Religion	Rent, refusal to	Closed after No Probable Cause	3/17/2016	Saint Paul	Ramsey
2/24/2015	National Origin	Rent, refusal to	Withdrawn REASON UNKNOWN	11/19/2015	Saint Paul	Ramsey
2/24/2015	Religion	Rent, refusal to	Withdrawn REASON UNKNOWN	11/19/2015	Saint Paul	Ramsey
3/12/2015	Disability	Rent, refusal to	Closed after No Probable Cause	3/1/2016	Burnsville	Dakota
3/12/2015	Race	Rent, refusal to	Closed after No Probable Cause	3/1/2016	Burnsville	Dakota
4/22/2015	Public Assistance Status	Lease, refusal to	Withdrawn Satisfactorily Adjusted after Probable Cause	8/29/2016	Burnsville	Dakota

4/22/2015	Public Assistance Status	Rent, refusal to	Withdrawn Satisfactorily Adjusted after Probable Cause	8/29/2016	Burnsville	Dakota
4/29/2015	Race	Differential Treatment	Withdrawn Satisfactorily Adjusted	5/27/2016	Brooklyn Center	Hennepin
5/1/2015	Race	Differential Treatment	Closed after No Probable Cause	3/1/2016	Saint Paul	Ramsey
6/10/2015	Familial Status	Rent, refusal to	Closed after No Probable Cause	4/19/2016	Saint Paul	Ramsey
6/15/2015	Disability	Reasonably Accommodate, refusal to	Closed after No Probable Cause	9/25/2015	Minneapolis	Hennepin
8/3/2015	Sex	Opposing Forbidden Practices	Closed after No Probable Cause	2/18/2017	New Hope	Hennepin
8/3/2015	Sex	Sexual Harassment	Closed after No Probable Cause	2/18/2017	New Hope	Hennepin
8/18/2015	Disability	Reasonably Accommodate, refusal to	No Probable Cause APPEALED		West Saint Paul	Dakota
9/14/2015	Disability	Eviction	Closed after No Probable Cause	12/23/2016	New Hope	Hennepin
9/14/2015	National Origin	Eviction	Closed after No Probable Cause	12/23/2016	New Hope	Hennepin
9/14/2015	National Origin	Harassment	Closed after No Probable Cause	12/23/2016	New Hope	Hennepin
9/14/2015	Public Assistance Status	Differential Treatment	Closed after No Probable Cause	12/23/2016	New Hope	Hennepin
9/14/2015	Religion	Differential Treatment	Closed after No Probable Cause	12/23/2016	New Hope	Hennepin
9/14/2015	Religion	Eviction	Closed after No Probable Cause	12/23/2016	New Hope	Hennepin
9/18/2015	Disability	Eviction	Withdrawn REASON UNKNOWN	5/16/2016	Minneapolis	Hennepin
9/18/2015	Sexual Orientation	Eviction	Withdrawn REASON UNKNOWN	5/16/2016	Minneapolis	Hennepin
9/21/2015	Disability	Reasonably Accommodate, refusal to	Closed after No Probable Cause	12/28/2015	Inver Grove Heights	Dakota
9/21/2015	Disability	Reasonably Accommodate, refusal to	Closed after No Probable Cause	12/28/2015	Inver Grove Heights	Dakota
10/5/2015	Race	Rent, refusal to	Closed after No Probable Cause	4/27/2016	Robbinsdale	Hennepin
10/5/2015	Race	Steering	Closed after No Probable Cause	4/27/2016	Robbinsdale	Hennepin

10/7/2015	Familial Status	Rent, refusal to	Probable Cause APPEALED		Minneapolis	Hennepin
10/7/2015	Race	Rent, refusal to	Probable Cause APPEALED		Minneapolis	Hennepin
10/28/2015	Disability	Reasonably Accommodate, refusal to	Closed after No Probable Cause	2/18/2017	West Saint Paul	Dakota
10/28/2015	Disability	Service Animal, prohibition	Closed after No Probable Cause	2/18/2017	West Saint Paul	Dakota
11/9/2015	Disability	Rent, refusal to	Closed after No Probable Cause	7/25/2016	Columbia Heights	Anoka
11/10/2015	Disability	Rent, refusal to	Settlement after Probable Cause	8/26/2016	South Saint Paul	Dakota
11/17/2015	Race	Eviction	Closed after No Probable Cause	5/23/2016	Brooklyn Center	Hennepin
11/18/2015	Familial Status	Differential Treatment	Closed after No Probable Cause	7/29/2016	Maple Grove	Hennepin
12/7/2015	Disability	Differential Treatment	Closed after No Probable Cause	5/26/2016	Minneapolis	Hennepin
12/7/2015	Disability	Eviction	Closed after No Probable Cause	5/26/2016	Minneapolis	Hennepin
12/7/2015	Disability	Reasonably Accommodate, refusal to	Closed after No Probable Cause	5/26/2016	Minneapolis	Hennepin
12/7/2015	Public Assistance Status	Differential Treatment	Closed after No Probable Cause	5/26/2016	Minneapolis	Hennepin
12/9/2015	Disability	Eviction	Closed after No Probable Cause	2/18/2017	Maple Grove	Hennepin
12/9/2015	Disability	Harassment	Closed after No Probable Cause	2/18/2017	Maple Grove	Hennepin
12/9/2015	Disability	Prohibited Medical Inquiry/Exam	Closed after No Probable Cause	2/18/2017	Maple Grove	Hennepin
12/29/2015	Disability	Eviction	Closed after No Probable Cause	7/18/2016	Richfield	Hennepin
12/31/2015	Familial Status	Differential Treatment	Closed after No Probable Cause	7/29/2016	Maple Grove	Hennepin
12/31/2015	Familial Status	Eviction	Closed after No Probable Cause	7/29/2016	Maple Grove	Hennepin
1/25/2016	Sex	Sexual Harassment	Closed after No Probable Cause	2/24/2017	Vadnais Heights	Ramsey
1/29/2016	Disability	Reasonably Accommodate, refusal to	Withdrawn Satisfactorily Adjusted	4/14/2016	Inver Grove Heights	Dakota

2/1/2016	Familial Status	Differential Treatment	Open		Brooklyn Park	Hennepin
2/1/2016	Race	Differential Treatment	Open		Brooklyn Park	Hennepin
2/2/2016	Disability	Service Animal, prohibition	Open		Brooklyn Park	Hennepin
2/18/2016	Disability	Eviction	Closed after No Probable Cause	6/22/2016	Hastings	Dakota
2/18/2016	Disability	Reasonably Accommodate, refusal to	Closed after No Probable Cause	6/22/2016	Hastings	Dakota
2/29/2016	Race	Racial Harassment	Open		Minneapolis	Hennepin
3/1/2016	Familial Status	Sell, refusal to	Closed after No Probable Cause	11/17/2016	Fridley	Anoka
3/1/2016	Race	Sell, refusal to	Closed after No Probable Cause	11/17/2016	Fridley	Anoka
3/2/2016	Disability	Rent, refusal to	Open		Minneapolis	Hennepin
3/2/2016	Public Assistance Status	Rent, refusal to	Open		Minneapolis	Hennepin
3/2/2016	Race	Rent, refusal to	Open		Minneapolis	Hennepin
3/24/2016	Disability	Reasonably Accommodate, refusal to	Mediated Settlement	8/30/2016	Richfield	Hennepin
3/24/2016	Sexual Orientation	Harassment	Mediated Settlement	8/30/2016	Richfield	Hennepin
3/25/2016	Sex	Harassment	Open		Brooklyn Center	Hennepin
3/25/2016	Sex	Sexual Harassment	Open		Brooklyn Center	Hennepin
3/25/2016	Familial Status	Differential Treatment	Open		Oakdale	Washington
3/25/2016	Familial Status	Other	Open		Oakdale	Washington
4/6/2016	National Origin	Differential Treatment	Open		Maplewood	Ramsey
4/6/2016	National Origin	Other	Open		Maplewood	Ramsey
4/6/2016	National Origin	Steering	Open		Maplewood	Ramsey
4/6/2016	National Origin	Unequal Terms and Conditions	Open		Maplewood	Ramsey

4/6/2016	Public Assistance Status	Differential Treatment	Open		Maplewood	Ramsey
4/6/2016	Public Assistance Status	Steering	Open		Maplewood	Ramsey
4/6/2016	Public Assistance Status	Unequal Terms and Conditions	Open		Maplewood	Ramsey
4/6/2016	Religion	Differential Treatment	Open		Maplewood	Ramsey
4/6/2016	Religion	Steering	Open		Maplewood	Ramsey
4/6/2016	Religion	Unequal Terms and Conditions	Open		Maplewood	Ramsey
4/6/2016	National Origin	Steering	Open		Maplewood	Ramsey
4/6/2016	National Origin	Unequal Terms and Conditions	Open		Maplewood	Ramsey
4/6/2016	Public Assistance Status	Other	Open		Maplewood	Ramsey
4/6/2016	Public Assistance Status	Steering	Open		Maplewood	Ramsey
4/6/2016	Public Assistance Status	Unequal Terms and Conditions	Open		Maplewood	Ramsey
4/6/2016	Religion	Differential Treatment	Open		Maplewood	Ramsey
4/6/2016	Religion	Other	Open		Maplewood	Ramsey
4/6/2016	Religion	Steering	Open		Maplewood	Ramsey
4/8/2016	Disability	Differential Treatment	Open		Minneapolis	Hennepin
4/8/2016	Disability	Eviction	Open		Minneapolis	Hennepin
4/8/2016	Sexual Orientation	Differential Treatment	Open		Minneapolis	Hennepin

4/8/2016	Sexual Orientation	Eviction	Open		Minneapolis	Hennepin
4/14/2016	Disability	Eviction	Open		Lino Lakes	Anoka
4/14/2016	Disability	Harassment	Open		Lino Lakes	Anoka
4/14/2016	Familial Status	Eviction	Open		Lino Lakes	Anoka
4/14/2016	Familial Status	Harassment	Open		Lino Lakes	Anoka
4/15/2016	Familial Status	Constructive Discharge	Open		Saint Paul	Ramsey
4/15/2016	Familial Status	Terms and Conditions of Employment, improper	Open		Saint Paul	Ramsey
4/18/2016	Disability	Reasonably Accommodate, refusal to	Closed after No Probable Cause	2/26/2017	Richfield	Hennepin
4/18/2016	Sexual Orientation	Harassment	Closed after No Probable Cause	2/26/2017	Richfield	Hennepin
5/2/2016	Disability	Reasonably Accommodate, refusal to	Open		Lakeville	Dakota
5/19/2016	Public Assistance Status	Rent, refusal to	Open		Saint Louis Park	Hennepin
5/19/2016	Disability	Eviction	Open		Richfield	Hennepin
5/31/2016	Race	Qualifications for Tenancy	Open		Coon Rapids	Anoka
5/31/2016	Race	Rent, refusal to	Open		Coon Rapids	Anoka
6/24/2016	Disability	Reasonably Accommodate, refusal to	Open		Rogers	Hennepin
7/7/2016	Marital Status	Differential Treatment	Open		Minneapolis	Hennepin
7/12/2016	Disability	Rent, refusal to	Open		Minneapolis	Hennepin
7/13/2016	Race	Rent, refusal to	Open		Plymouth	Hennepin
7/13/2016	Race	Steering	Open		Plymouth	Hennepin
7/13/2016	Race	Rent, refusal to	Open		Plymouth	Hennepin
7/13/2016	Race	Steering	Open		Plymouth	Hennepin

7/21/2016	Public Assistance Status	Lease, refusal to	Open		Minneapolis	Hennepin
7/21/2016	Public Assistance Status	Aiding/Abetting	Open		Minneapolis	Hennepin
7/21/2016	Public Assistance Status	Lease, refusal to	Open		Minneapolis	Hennepin
7/21/2016	Public Assistance Status	Aiding/Abetting	Open		Minneapolis	Hennepin
8/1/2016	Familial Status	Harassment	Open		West Saint Paul	Dakota
8/1/2016	National Origin	Harassment	Open		West Saint Paul	Dakota
8/1/2016	Race	Harassment	Open		West Saint Paul	Dakota
8/16/2016	Sex	Differential Treatment	Open		Falcon Heights	Ramsey
8/16/2016	Sex	Differential Treatment	Open		Falcon Heights	Ramsey
9/2/2016	Disability	Eviction	Open		Little Canada	Ramsey
9/2/2016	Disability	Reasonably Accommodate, refusal to	Open		Little Canada	Ramsey
9/2/2016	Disability	Eviction	Open		Little Canada	Ramsey
9/2/2016	Disability	Reasonably Accommodate, refusal to	Open		Little Canada	Ramsey
9/15/2016	Race	Differential Treatment	Open		Saint Paul	Ramsey
9/15/2016	Race	Opposing Forbidden Practices	Open		Saint Paul	Ramsey
9/21/2016	Religion	Eviction	Open		Saint Paul	Ramsey

9/21/2016	Religion	Opposing Forbidden Practices	Open		Saint Paul	Ramsey
9/29/2016	National Origin	Rent, refusal to	Open		Saint Paul	Ramsey
9/29/2016	Race	Rent, refusal to	Open		Saint Paul	Ramsey
10/14/2016	Race	Differential Treatment	Open		Maplewood	Ramsey
10/24/2016	Race	Differential Treatment	Open		Minneapolis	Hennepin
11/3/2016	Disability	Differential Treatment	Open		Saint Paul	Ramsey
11/3/2016	Disability	Harassment	Open		Saint Paul	Ramsey
11/3/2016	Disability	Unequal Terms and Conditions	Open		Saint Paul	Ramsey
11/3/2016	Race	Differential Treatment	Open		Saint Paul	Ramsey
1/20/2017	Disability	Eviction	Open		Burnsville	Dakota
1/20/2017	Disability	Reasonably Accommodate, refusal to	Open		Burnsville	Dakota
2/14/2017	Disability	Reasonably Accommodate, refusal to	Open		Minneapolis	Hennepin

Table A-33. Minneapolis Office of Civil Rights Fair Housing Complaint Data

Minneapolis Office of Civil Rights Fair Housing Complaint Data 2014-2016	
Basis	
Age	1
Ancestry	1
Disability	6
Gender	1
Gender Identity	1
Familial Status	2
National Origin	5
Race	4
Reprisal	1
Religion	1
Outcome	
Cases Opened	15
Cases Closed	7
No Cause	6
Settled	1
Currently Open	8

Table A-34. Saint Paul Human Rights Division
Fair Housing Complaint Data

Saint Paul Human Rights Division Fair Housing Complaint Data			
Basis	2014	2015	2016
Age	0	0	1
Color	0	0	2
Disability	5	2	3
Familial Status	0	4	0
Marital Status	0	0	1
National Origin	3	1	6
Public Assistance Status	0	1	3
Race	6	5	6
Reprisal	4	5	8
Sex	1	3	4
Total Complaints Closed	11	11	11
Total Opened	17	12	9
Outcome			
Cause	0	1	0
No Cause	8	5	10
Pre-Determination Settlement Agreement	1	1	0
Withdrawn		1	0
Administrative Closure	2	2	1
Lack of Jurisdiction		1	0
Settlement Dollars	$673	$16,250	$0

Table A-35. Mid-Minnesota Legal Aid & Southern Minnesota Regional Legal Services Fair Housing Complaint Data

Combined Fair Housing Complaint Data Mid-Minnesota Legal Aid & Southern Minnesota Regional Legal Services			
	2014	2015	2016
Total Number of New Complaints	668	609	614
BASIS			
Race	78	48	45
Religion	2	1	20
National Origin	82	56	43
Sex	76	70	62
Disability	386	407	422
Family Status	29	19	15
Other	25	8	17
Closed Complaints	675	693	665
Housing Retained Obtained	238	204	188
Reasonable Accommodation Made	115	150	135
Reasonable Modification Permitted	11	5	2
Monetary Award	$88,530	$246,403	$117,399
Fair Housing Training		6	7
Other		1	2

Zoning Reviews

Apple Valley Zoning Review

Average Total Risk Score: **1.83**

Key to Risk Scores:
1 = low risk – the provision poses little risk for discrimination or limitation of fair housing choice, or is an affirmative action that intentionally promotes and/or protects affordable housing and fair housing choice.
2 = medium risk – the provision is neither among the most permissive nor most restrictive; while it could complicate fair housing choice, its effect is not likely to be widespread.
3 = high risk – the provision causes or has potential to result in systematic and widespread housing discrimination or the limitation of fair housing choice, or is an issue where the jurisdiction could take affirmative action to further affordable housing or fair housing choice but has not.

Source Documents:
Title XV, Chapter 155 of the Code of Ordinances, ***Zoning***, available at:
http://library.amlegal.com/nxt/gateway.dll/Minnesota/applevalley/cityofapplevalleyminnesotacodeofordinanc?f=templates$fn=default.htm$3.0$vid=amlegal:applevalley_mn

Comprehensive Guide Plan 2030, available at:
http://www.ci.apple-valley.mn.us/index.aspx?NID=191

Issue	Conclusion	Risk Score	Comments
1a. Does the jurisdiction's definition of "family" have the effect of preventing unrelated individuals from sharing the same residence? Is the definition unreasonably restrictive?	The City's definition of family is neither the most restrictive nor the most permissive. It limits the number of unrelated persons who may reside together to up to five. *Family:* "An individual, or two or more persons related by blood, marriage or adoption, living together as a single housekeeping unit; or a group of not more than five persons not	1	*See* Sec. 155.003 definitions. While the Supreme Court has recognized a local government's right to limit the number of unrelated individuals who may live together as constitutionally permissible, the restriction must be reasonable and not exclude a household which in every sense but a biological one is a single family. An

1b. Does the definition of "family" discriminate against or treat differently unrelated individuals with disabilities (or members of any other protected class)?	so related maintaining a common household and using common cooking and kitchen facilities." The City's family definition does not treat persons with disabilities differently *because of* their disability. State licensed residential care facilities for persons with disabilities are regulated separately. Licensed "community-based family care homes" and licensed homes for persons with physical or mental handicaps are expressly permitted uses in the R and M Unlicensed facilities are a conditional use.		unreasonably, or arbitrarily, restrictive definition could violate state Due Process and/or the federal FHA as it may have a disproportionate impact on people with disabilities, minorities, and families with children.
2. Do the jurisdiction's zoning and land use rules constitute exclusionary zoning that precludes development of affordable or low-income housing by imposing unreasonable residential design regulations (such as high minimum lot sizes, wide street frontages, large setbacks, low FARs, large minimum building square footage, and/or low maximum building heights)?	The zoning code and map provide for four primarily single-family districts, (R-1, R-2, R-3, and R-5) at low densities. Two family dwellings also are permitted in R-5. Single family detached dwellings also are permitted in the three M1 districts. Minimum lot sizes for single family detached dwellings range from 40,000 sq. ft. in the R-1 district, 18,000 sq. ft.	3	*See* Appendix A; Sec. 155.050 et seq.; 155.065 et seq. Approval under the Residential Cluster District standards or Planned Development regulations may allow for more flexibility in terms of lot area, density, lot dimensions, yards, setbacks, location of parking areas and public street frontage than allowed by the underlying

	in R-2, and 11,000 sq. ft. in R-3 and the M1 districts, and 15,000 sq. ft. in R-5. Two-family units must maintain a minimum lot size of 7,500 sq. ft. per unit in R-5, with minimum lot widths of 150 ft., 100 ft. and 80 ft., and maximum height of 35 ft. The jurisdiction's minimum lot and design standards limit single family density to low density and may impact the feasibility of developing affordable single family detached and attached housing.		zoning, but the stated intent and criteria considered is not to necessarily provide for more affordable housing in the jurisdiction. (*See* Sec.155.038; 155.260; Appendix F.)
3a. Does the jurisdiction allow for a mixture of housing types? Does the zoning ordinance fail to provide residential districts where multi-family housing is permitted as of right? 3b. Do multi-family districts restrict development only to low-density housing types?	The zoning code contemplates single family, two-family, townhomes, and multifamily units. Townhomes up to 6 units, with a 2-story max height, and up to 3 u/a density (or 5 u/a with approved bonus) are permitted by right in the M1 and M2 districts. Townhomes up to 12 units, with a 2-story max height, and up to 4 u/a density (or 6 u/a with approved bonus) are permitted by right in the M3 districts, and up to 6 u/a (or 8 with approved bonus) in the M4 districts. Three-	1	*See* Sec. 155.076, .078; 155.80; Appendix A, Article A29. The zoning map was not separately analyzed to determine whether enough areas of the jurisdiction are zoned to meet demand for multifamily housing. Other considerations besides density limits, like housing prices and rents, market conditions, existing land-use patterns, the provision of public services and infrastructure, design and architectural requirements, impact fees, and other

	story townhomes up to 8 u/a (or 10 u/a with approved bonus) are permitted in M5 districts, and up to 10 u/a (or 12 u/a with approved bonus) are permitted in M6 districts. Multifamily housing is permitted by right in the M4, M5, M6, M7, and M8 districts, as well as the Planned Development, Designation No. 679 mixed-use districts. In M4 the maximum height is 2 stories and density is limited to 6 u/a (or 8 with approved bonus). In M5 through M7 the maximum height is 3 stories, up to 5 stories in M8, and density allowances range from up to 8 u/a (or 10 with approved bonus) in M5 to 20 u/a (or 24 with approved bonus) in M8. In the M-8 district, when located adjacent to or within the central business district, increased density may be approved by CUP up to 32 u/a for 4-story buildings and up to 40 u/a for 5-story buildings. Other density bonuses may be approved for proposed developments which offer common open		planning goals also have an impact on the quantity of multifamily and affordable housing. Multifamily zoning would include public housing. People with disabilities, minorities, African-Americans and Latinos, and low-income households disproportionately rely on multifamily housing.

	space, private open space, sound suppression materials, basements, oversized garages, and/or private amenities. There also is potential for more density or flexibility of design with Planned Development approval.		

4a. Are unreasonable restrictions placed on the construction, rental, or occupancy of alternative types of affordable or low-income housing (for example, accessory dwellings or mobile/manufactured homes)? 4b. Are there any regulations requiring that rental units or accessory dwellings only be occupied by blood relatives of the owner?	Accessory unit dwellings attached to the primary residence are a conditional use in the R-1 district on a minimum 40,000 sq. ft. lot. No more than 3 AUD's may exist within a half mile radius. These restrictions limit the potential for this alternative type of low-impact affordable housing. Under the Minnesota Planning Act, a manufactured home park is by law a conditional use in any zoning district that allows the construction or placement of a building used or intended to be used by two or more families. Under the zoning code, manufactured home parks are a conditional use in the M-7 district only.	2	*See* Sec. 155.382 (accessory unit dwelling); 151.01 et seq. (manufactured homes and home parks); 155.052; 155.078(E). Minn. Stat. Ch. 327 et seq.; 462.357; Minnesota Rules 4630.0200 - 4630.1700 and 4630.2210 - 4630.4700.
5. Do the jurisdiction's design and construction guidelines create unreasonable or arbitrary barriers to affordable housing, i.e. required building or façade materials, landscape requirements, parking, architectural requirements? 5b. Are the jurisdiction's preservation or environmental protection guidelines arbitrary, antiquated, or unreasonable so	The code's design and construction requirements for residential uses are not overly onerous. However, a process could be implemented for applying for a reduction in off-street parking requirements that may unnecessarily	1	*See* Sec. 155.379 (parking).

as to limit development of affordable housing?	increase development costs, and thus impact the feasibility of developing affordable or low-income housing. For example, off-street parking regulations for multifamily units require 1.5 parking spaces plus 1 enclosed garage space. Townhomes must include 2 enclosed garage spaces plus 0.5 spaces per unit must be distributed throughout the development for guest parking. Single family and two-family dwellings must include 2 spaces per dwelling unit in addition to any enclosed garage space.		
6. Does the zoning ordinance include an inclusionary zoning provision or provide any incentives for the development of affordable housing or housing for protected classes? 6b. If so, do the regulations also include mechanisms for maintaining that affordability long term, i.e. deed restrictions, monitoring, etc.? 6c. If so, are the development incentives available in high-opportunity neighborhoods, mixed-income, integrated zoning districts (or limited to low-income, low-opportunity, or historically segregated areas)?	No, the zoning ordinance does not expressly provide density bonuses or other development incentives for the development of affordable or low-income housing or housing for protected classes.	3	

Blaine Zoning Review

Average Total Risk Score: **2.33**

Key to Risk Scores:
1 = low risk – the provision poses little risk for discrimination or limitation of fair housing choice, or is an affirmative action that intentionally promotes and/or protects affordable housing and fair housing choice.
2 = medium risk – the provision is neither among the most permissive nor most restrictive; while it could complicate fair housing choice, its effect is not likely to be widespread.
3 = high risk – the provision causes or has potential to result in systematic and widespread housing discrimination or the limitation of fair housing choice, or is an issue where the jurisdiction could take affirmative action to further affordable housing or fair housing choice but has not.

Source Documents:
Part III of the Code of Ordinances, ***Zoning Ordinance***, available at:
https://www.municode.com/library/mn/blaine/codes/code_of_ordinances?nodeId=PTIIIBLZOOR

Comprehensive Plan Update 2009, available at:
http://www.ci.blaine.mn.us/_docs/_Planning/2030/2030ComprehensivePlan.pdf

Issue	Conclusion	Risk Score	Comments
1a. Does the jurisdiction's definition of "family" have the effect of preventing unrelated individuals from sharing the same residence? Is the definition unreasonably restrictive?	The City's definition of family is neither the most restrictive nor the most permissive. It limits the number of unrelated persons who may reside together to up to four. *"Family.* An individual or a group of two (2) or more persons each related by blood, marriage, adoption, or foster care arrangement living together as a single housekeeping unit, or a group of not more than four (4) persons	2	*See* Sec. 25-02 definitions. While the Supreme Court has recognized a local government's right to limit the number of unrelated individuals who may live together as constitutionally permissible, the restriction must be reasonable and not exclude a household which in every sense but a biological one is a single family. An unreasonably, or arbitrarily, restrictive definition could violate

1b. Does the definition of "family" discriminate against or treat differently unrelated individuals with disabilities (or members of any other protected class)?	not so related, maintaining a common household, and using common cooking and kitchen facilities, exclusive of usual servants. The City's family definition does not treat persons with disabilities differently *because of* their disability. Group living for persons with disabilities, such as personal care homes, is not separately regulated by the code of ordinances.		state Due Process and/or the federal FHA as it may have a disproportionate impact on people with disabilities, minorities, and families with children.
2. Do the jurisdiction's zoning and land use rules constitute exclusionary zoning that precludes development of affordable or low-income housing by imposing unreasonable residential design regulations (such as high minimum lot sizes, wide street frontages, large setbacks, low FARs, large minimum building square footage, and/or low maximum building heights)?	The zoning code and map provide for six single family detached zoning districts in addition to the 4+ acre farm and agricultural districts. Minimum lot sizes for single family dwellings range from 10,000 sq. ft. in R-1 to 2 ½ acre estate lots in R-E. Townhomes, quads, and multifamily are permitted by right in 3 districts at densities ranging from 5 u/a to 20 u/a. The maximum building height in all districts is 2.5 stories, or higher only with conditional use permit approval in the R-3B and R-3C districts. There are no	3	*See* Chapter 29 et seq.; Sec. 29.80 (DF district)

	zoning districts where single family, townhomes, and quads are all permitted by right. A "Development Flex" district in an underlying residential district is intended to provide for greater flexibility in housing types and styles (but no mobile homes) at a more affordable price range than is possible under the strict application of existing zoning. Conditional use permit approval is required. These districts may include complementary commercial uses, cluster developments, and flexibility in setbacks, height restrictions, and architectural styles. Despite the opportunity for more flexible design and densities with DF rezoning or CUP approval, the residential design regulations have the potential to impact the feasibility of developing affordable single-family detached and attached housing.		
3a. Does the jurisdiction allow for a mixture of housing types? Does the zoning ordinance fail to provide residential districts where multi-family housing is permitted as of right?	The zoning code contemplates single family, two-family, townhomes, quads, and multifamily units.	2	See Sec. 29.50 et seq. (R-3A); 29.60 et seq. (R-3B); 29.70 et seq. (R-3C); 29.80 et seq. (DF).

3b. Do multi-family districts restrict development only to low-density housing types?	Multifamily housing is permitted by right in the R-3B and R-3C districts, along with townhomes and quads, at densities of 10 u/a and 20 u/a, respectively. These are medium to high density levels compared to other jurisdictions in the region. The code lacks some flexibility in that it does not include base zoning districts that are mixed-use residential/ commercial districts and mixed-income developments with more affordable housing having closer access to transportation, commercial, and job opportunities. However, the code does provide for the possibility of greater density and housing choice via rezoning to a Development Flex district and approval through the conditional use permit process.		The zoning map was not separately analyzed to determine whether enough areas of the jurisdiction are zoned to meet demand for multifamily housing. Other considerations like housing prices and rents, market conditions, existing land-use patterns, the provision of public services and infrastructure, and other planning goals also have an impact on the quantity of multifamily and affordable housing. Multifamily zoning would include public housing. People with disabilities, minorities, African-Americans and Latinos, and low-income households disproportionately rely on multifamily housing.

4a. Are unreasonable restrictions placed on the construction, rental, or occupancy of alternative types of affordable or low-income housing (for example, accessory dwellings or mobile/manufactured homes)? 4b. Are there any regulations requiring that rental units or accessory dwellings only be occupied by blood relatives of the owner? N/A	The zoning code does not explicitly provide for accessory dwelling units in any residential district. Under the Minnesota Planning Act, a manufactured home park is by law a conditional use in any zoning district that allows the construction or placement of a building used or intended to be used by two or more families. Manufactured home parks are permitted with a minimum of 20 acres and 4,500 sq. ft. per lot.	2	*See* Sec. 46-91 (manufactured home park design regulations); Sec. 29.90 et seq. Minn. Stat. Ch. 327 et seq.; 462.357; Minnesota Rules 4630.0200 - 4630.1700 and 4630.2210 - 4630.4700. Accessory dwelling units are a low-impact form of affordable housing, and this use could be expanded to the single-family districts.
5. Do the jurisdiction's design and construction guidelines create unreasonable or arbitrary barriers to affordable housing, i.e. required building or façade materials, landscape requirements, parking, architectural requirements? 5b. Are the jurisdiction's preservation or environmental protection guidelines arbitrary, antiquated, or unreasonable so as to limit development of affordable housing?	The code's design and construction requirements for residential uses may unreasonably affect construction costs and impact the feasibility of developing affordable and low-income housing. For example, off-street parking regulations require enclosed garage parking in the residential districts (excluding the mobile home district) of 1 to 2 spaces per unit, or .5 spaces per unit for multifamily, plus an additional 2 off-street spaces per residential	2	*See* Sec. 29.25; 29.35; 29.3005; 29.3015; 29.45; 29.405; 29.55; 29.55, .56; 29.75, .76.

	unit. Multiple districts also impose the added costs of premium exterior building materials, uniform mailboxes and lighting, and sod and landscape requirements. While these design standards have aesthetic and quality of life value, they also add additional layers of cost not required by minimum building safety codes and impact the affordability of housing throughout the City.		
6. Does the zoning ordinance include an inclusionary zoning provision or provide any incentives for the development of affordable housing or housing for protected classes? 6b. If so, do the regulations also include mechanisms for maintaining that affordability long term, i.e. deed restrictions, monitoring, etc.? 6c. If so, are the development incentives available in high-opportunity neighborhoods, mixed-income, integrated zoning districts (or limited to low-income, low-opportunity, or historically segregated areas)	No, the zoning ordinance does not expressly provide density bonuses or other development incentives for the development of affordable or low-income housing or housing for protected classes.	3	

Bloomington Zoning Review

Average Total Risk Score: **1.50**

Key to Risk Scores:
1 = low risk – the provision poses little risk for discrimination or limitation of fair housing choice, or is an affirmative action that intentionally promotes and/or protects affordable housing and fair housing choice.
2 = medium risk – the provision is neither among the most permissive nor most restrictive; while it could complicate fair housing choice, its effect is not likely to be widespread.
3 = high risk – the provision causes or has potential to result in systematic and widespread housing discrimination or the limitation of fair housing choice, or is an issue where the jurisdiction could take affirmative action to further affordable housing or fair housing choice but has not.

Source Documents:
Chapter 19, of the City Code, ***Zoning***, available at:
http://library.amlegal.com/nxt/gateway.dll/Minnesota/bloomington_mn/bloomingtonminnesotacodeofordinances?f=templates$fn=default.htm$3.0$vid=amlegal:bloomington_mn

Comprehensive Plan 2008, available at:
https://www.bloomingtonmn.gov/sites/default/files/comp_plan_2008.pdf

Issue	Conclusion	Risk Score	Comments
1a. Does the jurisdiction's definition of "family" have the effect of preventing unrelated individuals from sharing the same residence? Is the definition unreasonably restrictive?	The City's definition of family is neither the most restrictive nor the most permissive. It limits the number of unrelated persons who may reside together to up to four, including a functional household and boarders. *Family:* "One or more persons related by blood, marriage or adoption, including foster children, or a group of not more than four persons (excluding personal care attendants, in accordance with	2	*See* Sec. 19.03 definitions. While the Supreme Court has recognized a local government's right to limit the number of unrelated individuals who may live together as constitutionally permissible, the restriction must be reasonable and not exclude a household which in every sense but a biological one is a single family. An unreasonably, or arbitrarily, restrictive definition could violate

1b. Does the definition of "family" discriminate against or treat differently unrelated individuals with disabilities (or members of any other protected class)?	Minnesota Rules Rule 9505.0335), occupying a dwelling unit. This definition of family includes a functional household as defined in § 14.568 of the city code, as well as those persons renting rooms." The City's family definition does not treat persons with disabilities differently *because of* their disability. Housing for persons with disabilities is regulated separately as "accessibility housing." A state licensed residential care facility for 6 or fewer persons is a permitted use in all residential districts.		state Due Process and/or the federal FHA as it may have a disproportionate impact on people with disabilities, minorities, and families with children.
2. Do the jurisdiction's zoning and land use rules constitute exclusionary zoning that precludes development of affordable or low-income housing by imposing unreasonable residential design regulations (such as high minimum lot sizes, wide street frontages, large setbacks, low FARs, large minimum building square footage, and/or low maximum building heights)?	The zoning code and map provide for four primarily single-family districts, (R-1, R-1A, R-2, and R-4) at low densities. Minimum lot sizes range from 65,000 in R-1A, 40,000 in R-4, 33,000 in RS-1, and 11,000 in R-1, with a minimum floor area of 1,040 sq. ft. Two-family dwellings are permitted in R-1 and R-4, with a minimum floor area of 960 sq. ft. The jurisdiction's minimum lot and	2	*See* 21.203 et seq.; Table 21.209; 21.302.04; 21.302.07 et seq. Approval under Planned Development regulations may allow for more flexibility in terms of lot area, density, lot dimensions, yards, setbacks, location of parking areas and public street frontage than allowed by the underlying zoning, but the stated intent and criteria

	design standards limit single family density to low density and may impact the feasibility of developing affordable attached and detached single-family housing.		considered of the PD overlay is not to necessarily provide for more affordable housing in the jurisdiction. (*See* Sec. 19.38.01 et seq.)
3a. Does the jurisdiction allow for a mixture of housing types? Does the zoning ordinance fail to provide residential districts where multi-family housing is permitted as of right? 3b. Do multi-family districts restrict development only to low-density housing types?	The zoning code contemplates single family, two-family, townhomes, and multifamily units. Multifamily housing is permitted by right in the R-4, RM-12, RM-24, RM-50, and RM-100 residential districts. To encourage more density, the code actually provides for minimum densities in these districts as well as maximums. Maximum densities range from 12 u/a to 100 u/a in the residential districts. Multifamily and townhouses / rowhouses also are permitted accessory uses in the mixed-use HXR, RO-24, RO-50, B-4, C-2, C-3, C-4, and C-5 districts, and conditional use in some other commercial districts. The code also designates a high density, high intensity use district with convenient access to transit services, the H-	1	*See* Sec. 21.203.05 et seq.; 21.203(b); Table 21.209(c) and (d); 21.301.01 et seq.; See *See* Sec. 21.302.08; 21.302.09; 21.205.05 The multiple-family residence requirements of § 21.302.09 do not apply within the HX-R Zoning District. The zoning map was not separately analyzed to determine whether enough areas of the jurisdiction are zoned to meet demand for multifamily housing. Other considerations besides density limits, like housing prices and rents, market conditions, existing land-use patterns, the provision of public services and infrastructure, design and architectural requirements, impact fees, and other planning goals also have an impact on whether the supply of

	XR district, which is meant to optimize use of the area of the city that lies within one-half mile of high frequency mass transit service; reduce overall costs and impacts of parking by making shared parking feasible; and provide floor area ratio bonuses to encourage affordable housing among other goals. The C-5 district also is designed for high density, high intensity mixed-use developments, and incentivizes residential development by providing bonuses in floor area, height, and reduced required parking.		multifamily housing is affordable housing. Multifamily zoning would include public housing. People with disabilities, minorities, African-Americans and Latinos, and low-income households disproportionately rely on multifamily housing.

4a. Are unreasonable restrictions placed on the construction, rental, or occupancy of alternative types of affordable or low-income housing (for example, accessory dwellings or mobile/manufactured homes)? 4b. Are there any regulations requiring that rental units or accessory dwellings only be occupied by blood relatives of the owner? No.	Accessory dwelling units are a permitted accessory use in the R-1 and RS-1 districts. The accessory unit must be attached to or within a single-family residence, not detached. Occupancy is limited to two persons. Under the Minnesota Planning Act, a manufactured home park is by law a conditional use in any zoning district that allows the construction or placement of a building used or intended to be used by two or more families. Under the zoning code, manufactured home parks are a conditional use in the R-1, R-3, R-4, R-12, R-24, R-50, and R-100 residential districts. They also are a conditional use in the B-4, C-2, C-3, C-4, C-5 districts.	1	*See* Sec. 21.302.03; Table 21.209(c) and (d); Sec. 21.302.10; Chapter 14, Art. IV. Minn. Stat. Ch. 327; 462.357; Minnesota Rules 4630.0200 - 4630.1700 and 4630.2210 - 4630.4700.
5. Do the jurisdiction's design and construction guidelines create unreasonable or arbitrary barriers to affordable housing, i.e. required building or façade materials, landscape requirements, parking, architectural requirements? 5b. Are the jurisdiction's preservation or environmental protection guidelines arbitrary, antiquated, or unreasonable so	The code's design and construction requirements for residential uses include design, landscape, lighting, screening, parking, etc. standards, which compared to other jurisdictions in the region may be more costly and onerous.	2	*See* Sec. 21.301.06 (parking), .07, .10; 19.52 (landscaping); 21.302.04, .07, .08, .09.

as to limit development of affordable housing?	One significant hindrance to affordable construction, may be off-street parking regulations. Single-family and two-family dwellings require 4 off-street parking spaces per dwelling, 2 of which must be in a garage (for construction after 6/1/15). For townhomes, the minimum off-street parking ranges from 2.2 /u for a one-bedroom to 3.4 /u for a three-bedroom. At least one space per unit must be in an enclosed garage. For multifamily dwellings, minimum spaces range from 1.8 /u for a one-bedroom to 3 /u for a four-bedroom, with at least one space per unit in an enclosed garage. Additional guest parking spaces are required if the townhome or multifamily development includes a common party room area as an amenity. Importantly, the code does provide a process for requesting reduced or flexible parking minimums for housing other than single or two-family, where the		

	applicant can demonstrate that parking demand will likely be less than required by the ordinance or where shared parking for multiple use developments may be feasible.		
6. Does the zoning ordinance include an inclusionary zoning provision or provide any incentives for the development of affordable housing or housing for protected classes? 6b. If so, do the regulations also include mechanisms for maintaining that affordability long term, i.e. deed restrictions, monitoring, etc.? 6c. If so, are the development incentives available in high-opportunity neighborhoods, mixed-income, integrated zoning districts (or limited to low-income, low-opportunity, or historically segregated areas)?	Yes, in the HRX (high intensity mixed use) district, developments which include affordable housing as defined by the Metropolitan Council are eligible for bonus floor area ratios. Importantly, the ordinance includes requirements that the affordable rental or owner-occupied units remain affordable into the future. The site development agreement must include provisions ensuring that rental units receiving the bonus will continue to remain affordable for 30 years and that and that mechanisms are in place to ensure that the owned units receiving the bonus will continue to remain affordable when resold in the future.	1	*See* Sec. 19.29(g)(4)(D). To promote integration and equal opportunity, and to avoid segregating housing which meets affordability guidelines for low-income households into only low-income, historically segregated, or low-opportunity areas (and facing a potential disparate impact challenge), it is important that development incentives for affordable housing be made available across the jurisdiction or region and include mixed-income, integrated, and high-opportunity neighborhoods.

Brooklyn Center Zoning Review

Average Total Risk Score: **1.67**

Key to Risk Scores:
1 = low risk – the provision poses little risk for discrimination or limitation of fair housing choice, or is an affirmative action that intentionally promotes and/or protects affordable housing and fair housing choice.
2 = medium risk – the provision is neither among the most permissive nor most restrictive; while it could complicate fair housing choice, its effect is not likely to be widespread.
3 = high risk – the provision causes or has potential to result in systematic and widespread housing discrimination or the limitation of fair housing choice, or is an issue where the jurisdiction could take affirmative action to further affordable housing or fair housing choice but has not.

Source Documents:
Chapter 35 of the City Code, ***Zoning Ordinance***, available at: http://bc-img.ci.brooklyn-center.mn.us/WebLink8/DocView.aspx?id=569721&dbid=0

Comprehensive Plan 2030, available at:
http://mn-brooklyncenter.civicplus.com/DocumentCenter/Home/View/81

Issue	Conclusion	Risk Score	Comments
1a. Does the jurisdiction's definition of "family" have the effect of preventing unrelated individuals from sharing the same residence? Is the definition unreasonably restrictive? 1b. Does the definition of "family" discriminate against or treat differently unrelated individuals with disabilities (or members of any other protected class)?	The City's definition of family limits the number of unrelated persons who may reside together to up to five persons. The City's family definition does not treat persons with disabilities differently *because of* their disability. Residential facilities licensed by the state, serving six or fewer persons in a single family detached dwelling are a permitted accessory use in the R1 residential districts,	1	*See* Sec. 35-900 (definitions). While the Supreme Court has recognized a local government's right to limit the number of unrelated individuals who may live together as constitutionally permissible, the restriction must be reasonable and not exclude a household which in every sense but a biological one is a single family. An unreasonably, or arbitrarily, restrictive definition could violate

	and a permitted accessory use for up to 16 residents in R2, R3, R4, R5, R6, and R7 districts.		state Due Process and/or the federal FHA as it may have a disproportionate impact on people with disabilities, minorities, and families with children.
2. Do the jurisdiction's zoning and land use rules constitute exclusionary zoning that precludes development of affordable or low-income housing by imposing unreasonable residential design regulations (such as high minimum lot sizes, wide street frontages, large setbacks, low FARs, large minimum building square footage, and/or low maximum building heights)?	The zoning code and map provide for two primarily single-family districts (R1 and R2). The minimum lot size in R1 is 9,500 sq. ft. In the R2 district, the minimum lot size for a single-family dwelling is 7,600 sq. ft., and for a two-family dwelling is 6,200 sq. ft. Compared to neighboring jurisdictions, Brooklyn Center's minimum lot and design standards would not be a barrier to greater density and affordability of single family and two-family housing.	1	*See* Sec. 35-310 (R1); 35-311 (R2); 35-400 (Table of Minimum District Standards). Approval under the Planned Unit Development regulations may allow for more flexibility in terms of lot area, lot dimensions, yards, setbacks, location of parking areas etc. than allowed by the underlying zoning but overall density may not exceed the underlying permitted standards. Moreover, the stated intent and criteria considered for the overlay is not to necessarily provide for more affordable housing in the jurisdiction. (*See* Sec. 35-355 et seq.)
3a. Does the jurisdiction allow for a mixture of housing types? Does the zoning ordinance fail to provide residential districts where multi-family housing is permitted as of right?	The zoning code contemplates single family, two-family, townhome, garden apartments, and multifamily units. In R3, townhome and garden apartments are	2	*See* Sec. 35-312 (R3); 35-313 (R4); 35-314 (R5); 35-315 (R6); 35-316 (R7); 35-355 (PUD); 35-400 (Table of Minimum District Standards).

	permitted with a minimum lot size of 5,400 sq. ft. / unit. In the R3 district, Planned Residential Development may be approved under the special use permit process for a development of a minimum of 5 acres. At least 25% of the dwelling units must be townhome/garden apartments or attached condos. In the R4 and R5 districts, townhomes, garden apartments, and multifamily units up to 2 and 3 stories, are permitted with a min. lot size of 3,600 sq. ft. / unit in R4 and 2,700 sq. ft. / unit in R5. In R6, multifamily buildings up to 5 stories are permitted and low-rise buildings up to 3 stories as long as the low-rise buildings are part of a planned integral development with the higher rise structures and comprise no more than 65% of the total dwelling units. In the R7 district, multifamily dwellings 6 stories and more are permitted, and low-rise dwellings as part of a planned integral development, as long as the low-rise		Efficiency apartment units often may be a source of alternative affordable housing for 1 and 2-person households, and multifamily units with 3 or more bedrooms often provide an alternative source of affordable housing for larger families with children compared to the cost of single family dwellings. The code, however, limits the number of efficiency units and units over two-bedroom which may comprise a multifamily development, rather than letting the market and regional needs decide. The zoning map was not separately analyzed to determine whether enough areas of the jurisdiction are zoned to meet demand for multifamily housing. Other considerations besides density limits have an impact on whether the supply of multifamily housing is affordable housing, like housing prices and rents, market conditions, existing land-use patterns, the provision of public services and

3b. Do multi-family districts restrict development only to low-density housing types?	buildings comprise no more than 65% of the total dwelling units. The minimum land area required per unit may be reduced by 250 sq. ft. per efficiency unit in a multiple family dwelling; but no more than 10% of the units in such a dwelling may be efficiency units. The required total minimum land area must be increased 250 sq. ft. for each bedroom in excess of two in any one multiple family dwelling unit, and no more than 10% of the units may have more than two bedrooms. These are generally considered medium to high density allowances, depending on the jurisdiction and demand.		infrastructure, design and architectural requirements, impact fees, and other planning goals. Multifamily zoning would include public housing. People with disabilities, minorities, African-Americans and Latinos, and low-income households disproportionately rely on multifamily housing.

4a. Are unreasonable restrictions placed on the construction, rental, or occupancy of alternative types of affordable or low-income housing (for example, accessory dwellings or mobile/manufactured homes)? 4b. Are there any regulations requiring that rental units or accessory dwellings only be occupied by blood relatives of the owner? N/A	Accessory dwelling units are not a permitted use in any zoning district. The city does not separately regulate the siting of manufactured homes except as provided by the Minnesota Planning Act and floodplain regulations. Under the MPA a manufactured home park is by law a conditional use in any zoning district that allows the construction or placement of a building used or intended to be used by two or more families.	2	*See* Sec. 35-530. Minn. Stat. Ch. 327 et seq.; 462.357; Minnesota Rules 4630.0200 - 4630.1700 and 4630.2210 - 4630.4700. Accessory dwelling units are a low-impact form of affordable housing, and this use could be expanded to the single-family districts.
5. Do the jurisdiction's design and construction guidelines create unreasonable or arbitrary barriers to affordable housing, i.e. required building or façade materials, landscape requirements, parking, architectural requirements? 5b. Are the jurisdiction's preservation or environmental protection guidelines arbitrary, antiquated, or unreasonable so as to limit development of affordable housing?	The code's design and construction requirements for residential uses are not overly onerous compared to other jurisdictions in the region.	1	*See e.g.*, Sec. 35-704 (parking). The required total minimum land area may be reduced 500 sq. ft. for each required parking stall in or under a multiple residence or otherwise completely underground. The minimum land area for multifamily uses may be reduced where the developer provides public open space. Also, density credits may be given for dedication of public open space.
6. Does the zoning ordinance include an inclusionary zoning provision or provide	No, the zoning ordinance does not	3	

any incentives for the development of affordable housing or housing for protected classes? 6b. If so, do the regulations also include mechanisms for maintaining that affordability long term, i.e. deed restrictions, monitoring, etc.? 6c. If so, are the development incentives available in high-opportunity neighborhoods, mixed-income, integrated zoning districts (or limited to low-income, low-opportunity, or historically segregated areas)?	expressly provide density bonuses or other objective development incentives for the development of affordable or low-income housing or housing for protected classes.		

Brooklyn Park Zoning Review

Average Total Risk Score: **2.33**

Key to Risk Scores:
1 = low risk – the provision poses little risk for discrimination or limitation of fair housing choice, or is an affirmative action that intentionally promotes and/or protects affordable housing and fair housing choice.
2 = medium risk – the provision is neither among the most permissive nor most restrictive; while it could complicate fair housing choice, its effect is not likely to be widespread
3 = high risk – the provision causes or has potential to result in systematic and widespread housing discrimination or the limitation of fair housing choice, or is an issue where the jurisdiction could take affirmative action to further affordable housing or fair housing choice but has not.

Source Documents:
Title XV, Chapter 152 of the City Code, ***Brooklyn Park Zoning Code***, available at:
http://library.amlegal.com/nxt/gateway.dll/Minnesota/brooklyn/brooklynparkmncodeofordinances?f=templates$fn=default.htm$3.0$vid=amlegal:brooklynpark_mn

2030 Comprehensive Plan, available at:
http://citysearch.brooklynpark.org/website/comdev/Planning/CompletedCompPlan12-31-08.pdf

Issue	Conclusion	Risk Score	Comments
1a. Does the jurisdiction's definition of "family" have the effect of preventing unrelated individuals from sharing the same residence? Is the definition unreasonably restrictive?	The City's definition of family is neither the most restrictive nor the most permissive. It limits the number of unrelated persons who may reside together to up to four persons. *Family*: "An individual or two or more persons each related by blood, marriage, or adoptions, including foster children, living together as a single housekeeping unit; or no more than four unrelated persons	2	*See* Sec. 152.008 (definitions). While the Supreme Court has recognized a local government's right to limit the number of unrelated individuals who may live together as constitutionally permissible, the restriction must be reasonable and not exclude a household which in every sense but a biological one is a single family. An unreasonably, or

1b. Does the definition of "family" discriminate against or treat differently unrelated individuals with disabilities (or members of any other protected class)?	maintaining a common household and using and maintaining common cooking and kitchen facilities as distinguished from a group occupying a boarding or rooming house, or licensed day care facility." The City's family definition does not treat persons with disabilities differently *because of* their disability. Residential facilities licensed by the state, serving six or fewer persons in a single family detached dwelling are a permitted use in all but the R-5, R-6, and R-7 multifamily districts (where single family dwellings are not permitted). Residential facilities of 7-15 persons are a conditional use in the R-5, R-6, and R-7 districts.		arbitrarily, restrictive definition could violate state Due Process and/or the federal FHA as it may have a disproportionate impact on people with disabilities, minorities, and families with children.
2. Do the jurisdiction's zoning and land use rules constitute exclusionary zoning that precludes development of affordable or low-income housing by imposing unreasonable residential design regulations (such as high minimum lot sizes, wide street frontages, large setbacks, low FARs, large minimum building square footage, and/or low maximum building heights)?	The zoning code and map provide for nine primarily single-family districts (R1, R-2, R-2A, R-2B, R-3, R-3A, R-4, R-4A, and R-4B). Minimum lot sizes range from 20 acres in R-1; 13,500 sq. ft. in R-2; 12,825 sq. ft. in R-2A; 11,474 sq. ft. in R-2B; 10,800 sq. ft. in R-	2	*See* Sec. 152.200 (residential performance standards); 152.220 (lot area and dimensional requirements); 152.242 (table of permitted uses); 152.243 (detached single family dwelling regs).

	3; 9,750 in R-3A; 8,500 sq. ft. in R-4; 10,890 sq. ft. (w/o basement) in R-4A; and 5,000 sq. ft. in R-4B. Minimum floor areas range from 1,400 to 2,000 sq. ft. in R-2A; 1,040 sq. ft. in R-1 to a minimum 960 sq. ft. in R-3, R-3A, and the R-4 districts. Two-family and previously constructed townhomes also are permitted in the R-4 district. Compared to neighboring jurisdictions, besides the R-4B district, Brooklyn Park's minimum lot and design standards could be a barrier to greater density and affordability of detached single family and two-family housing.		Approval under the Planned Unit Development regulations may allow for more flexibility in terms of lot area, lot dimensions, yards, setbacks, location of parking areas etc. than allowed by the underlying zoning but overall density may not exceed the underlying permitted standards. Moreover, the stated intent and criteria considered for the overlay is not to necessarily provide for more affordable housing in the jurisdiction. (*See* Sec. 152.470 et seq.)
3a. Does the jurisdiction allow for a mixture of housing types? Does the zoning ordinance fail to provide residential districts where multi-family housing is permitted as of right?	The zoning code contemplates single family, two-family, townhome, and multifamily units. Multifamily is permitted by right in the R-5, R-6, and R-7 districts. Minimum lot size per unit, and accordingly density, is based upon the number of bedrooms per unit. For example, one-bedroom units require 2,400 sq. ft. /unit minimum lot	2	*See* Sec. 152.200 (residential performance standards); 152.242; 152.462 (Town Center district) The zoning map was not separately analyzed to determine whether enough areas of the jurisdiction are zoned to meet demand for multifamily housing. Other considerations besides density limits have an impact on

3b. Do multi-family districts restrict development only to low-density housing types?	sizes in R-6 and 3,400 sq. ft. / unit in R-5 and R-7, and increase up to 6,800 sq. ft. / unit for a 3-bedroom unit in R-7. Multifamily and cluster housing is a conditional use in the B-2 and B-3 business districts, up to 25 units per acre in B-3. Attached and detached residential uses and mixed-uses are a conditional use in the Town Center districts. The minimum lot sizes per unit for the jurisdiction are generally considered medium density allowances, depending on the jurisdiction and demand. Higher density may be approved in the Town Center districts but other design, façade, and architectural standards and review may also increase costs.		whether the supply of multifamily housing is affordable housing, like housing prices and rents, market conditions, existing land-use patterns, the provision of public services and infrastructure, design and architectural requirements, impact fees, and other planning goals. Multifamily zoning would include public housing. People with disabilities, minorities, African-Americans and Latinos, and low-income households disproportionately rely on multifamily housing.

4a. Are unreasonable restrictions placed on the construction, rental, or occupancy of alternative types of affordable or low-income housing (for example, accessory dwellings or mobile/manufactured homes)? 4b. Are there any regulations requiring that rental units or accessory dwellings only be occupied by blood relatives of the owner? N/A	Accessory dwelling units are not a permitted use in any zoning district. Mobile home parks are a conditional use in R-5 only, except as provided by the Minnesota Planning Act and floodplain regulations. Under the MPA a manufactured home park is by law a conditional use in any zoning district that allows the construction or placement of a building used or intended to be used by two or more families.	2	*See* Table 152.242.01; Sec. 152.244(A) (manufactured home parks). Minn. Stat. Ch. 327 et seq.; 462.357; Minnesota Rules 4630.0200 - 4630.1700 and 4630.2210 - 4630.4700. Accessory dwelling units are a low-impact form of affordable housing, and this use could be expanded to the single-family districts.
5. Do the jurisdiction's design and construction guidelines create unreasonable or arbitrary barriers to affordable housing, i.e. required building or façade materials, landscape requirements, parking, architectural requirements? 5b. Are the jurisdiction's preservation or environmental protection guidelines arbitrary, antiquated, or unreasonable so as to limit development of affordable housing?	The code's design and construction requirements for residential uses are more onerous compared to other jurisdictions in the region. For example, all dwellings built after July 31, 1982, must include a basement. Also, every residential unit requires garage parking. Single family and two-family units require a minimum of 480 sq. ft. garage space; dwellings in the R-2A/R-2B districts must provide a minimum of 576 sq. ft. of garage space; each townhouse must be	3	*See*, Sec. 152.142, .143 (parking and garages); 152.200 (residential performance standards); 152.243 (additional regulations); 152.290 et seq. (architectural standards and minimum design standards for R-4 through R-7 districts).

	constructed with a minimum 480 sq. ft. garage; and a minimum of half of the required spaces for multifamily housing must be in an enclosed garage or underground parking. Townhomes must have a minimum sq. footage of storage; declaration of covenants must be approved by the City Attorney; and comply with architectural standards, greenspace, and amenity standards. Among other site design and amenity requirements, multifamily units must meet relatively high minimum square footage requirements based on the number of bedrooms. For example, a one bedroom unit must be at least 850 sq. ft. and there is no provision for efficiency units. While all these site and design criteria may have aesthetic and quality of life value, these things also increase development costs and accordingly impact the ability to keep housing costs affordable.		
6. Does the zoning ordinance include an inclusionary zoning provision or provide any incentives for the development of	No, the zoning ordinance does not expressly provide	3	The implementation plan in the 2030 Comprehensive Plan

affordable housing or housing for protected classes? 6b. If so, do the regulations also include mechanisms for maintaining that affordability long term, i.e. deed restrictions, monitoring, etc.? 6c. If so, are the development incentives available in high-opportunity neighborhoods, mixed-income, integrated zoning districts (or limited to low-income, low-opportunity, or historically segregated areas)?	density bonuses or other objective development incentives for the development of affordable or low-income housing or housing for protected classes.		proposes adoption of a density bonus policy for affordable housing, but the city has not yet adopted or implemented the proposed action item.

Burnsville Zoning Review

Average Total Risk Score: **2.33**

Key to Risk Scores:
1 = low risk – the provision poses little risk for discrimination or limitation of fair housing choice, or is an affirmative action that intentionally promotes and/or protects affordable housing and fair housing choice.
2 = medium risk – the provision is neither among the most permissive nor most restrictive; while it could complicate fair housing choice, its effect is not likely to be widespread.
3 = high risk – the provision causes or has potential to result in systematic and widespread housing discrimination or the limitation of fair housing choice, or is an issue where the jurisdiction could take affirmative action to further affordable housing or fair housing choice but has not.

Source Documents:
Title 10 of the Code of Ordinances, ***Burnsville Zoning Title***, available at: http://www.sterlingcodifiers.com/codebook/index.php?book_id=468

2030 Comprehensive Plan, available at: http://www.burnsville.org/index.aspx?NID=1804

Issue	Conclusion	Risk Score	Comments
1a. Does the jurisdiction's definition of "family" have the effect of preventing unrelated individuals from sharing the same residence? Is the definition unreasonably restrictive?	The City's definition of family is neither the most restrictive nor the most permissive. It limits the number of unrelated persons who may reside together to up to four. *Family: "*An individual or two (2) or more persons related by blood, marriage, guardianship or adoption living together as a single housekeeping unit; or a group of not more than four (4) persons not so related, maintaining a common household and using	2	*See* Sec. 10-4-2 definitions. While the Supreme Court has recognized a local government's right to limit the number of unrelated individuals who may live together as constitutionally permissible, the restriction must be reasonable and not exclude a household which in every sense but a biological one is a single family. An unreasonably, or arbitrarily, restrictive definition could violate state Due Process and/or the federal FHA

1b. Does the definition of "family" discriminate against or treat differently unrelated individuals with disabilities (or members of any other protected class)?	common cooking and kitchen facilities; or a residential program (group home) for six (6) or fewer persons as defined and licensed by the state of Minnesota department of human services." The definition of family is more permissive in terms of its treatment of unrelated person with disabilities residing together in a licensed group home.		as it may have a disproportionate impact on people with disabilities, minorities, and families with children.
2. Do the jurisdiction's zoning and land use rules constitute exclusionary zoning that precludes development of affordable or low-income housing by imposing unreasonable residential design regulations (such as high minimum lot sizes, wide street frontages, large setbacks, low FARs, large minimum building square footage, and/or low maximum building heights)?	The zoning code and map provide for two single-family districts, (R-1 and R-1A) and one single-family plus 2-family district (R-2). Single family and 2-family dwellings also are permitted in the multifamily R-3A and R-3B districts. Minimum lot sizes for single family detached dwellings range from 1-2 acres in the R-1A district, 15,000 sq. ft. in R-2, and 10,000 sq. ft. in R-1, with minimum lot widths of 200 ft., 100 ft. and 80 ft. respectively, and maximum height of 35 ft. Although single-family is permitted in the multifamily districts, density is limited by large lot	3	*See* Sec. 10-7-49 (density); 10-12-1 et seq.; 10-13-1 et seq.; 10-14-1 et seq. Rezoning approval for a Planned Development may provide for a variety of housing types and greater densities consistent with the Comprehensive Plan than allowed by the underlying zoning, but the stated intent and criteria considered is not to necessarily provide for more affordable housing in the jurisdiction. (Sec. 10-27-1 et seq.)

	requirements-- 20,000 sq. ft. in R-3A and 18,000 sq. ft. in R-3B. Where two-family units are permitted in the R-2 districts, density is still limited due to minimum lot sizes of 7,500 sq. ft. per zero lot line unit. The code also imposes minimum livable floor area requirements. Dwellings must be 1,100 sq. ft. above grade in the R-1 and R-1A districts and 1,500 sq. ft. in R-2. The jurisdiction's minimum lot and design standards for single family dwellings limit density to low and moderate density and may impact the feasibility of developing single family detached and attached affordable housing.		
3a. Does the jurisdiction allow for a mixture of housing types? Does the zoning ordinance fail to provide residential districts where multi-family housing is permitted as of right? 3b. Do multi-family districts restrict development only to low-density housing types?	The zoning code contemplates single family, two-family, townhomes, and multifamily units. Multifamily housing is permitted by right in the R-3A and R-3B districts, as well as the mixed use HOC districts. The purpose of the HOC heart of the city district is to provide an area for compact, mixed use,	2	*See* Sec. 10-7-49 (density); 10-15-1 et seq.; 10-16-1 et seq.; 10-17-1 et seq.; 10-22B-1 et seq.; 10-22C-1 et seq.; 10-27-1 et seq. The zoning map was not separately analyzed to determine whether enough areas of the jurisdiction are zoned to meet demand for multifamily housing. Other considerations

	pedestrian-friendly development at higher densities. Densities are permitted at 4 - 8.7 units per acre in R-3A, 9 - 14.52 units per acre in R-3B, and 21.78 - 56.92 in the HOC districts, which may accommodate high densities and the potential for more affordable housing units. However, this potential is limited by a 35 feet height maximum without a CUP in the R-3A and R-3B districts. Also, in the R-3A and R-3B districts, all developments which contain two or more structures and/or a structure containing ten or more dwelling units must be by conditional use permit. Townhouses are limited to eight units. Multifamily dwellings and mixed use/residential and commercial use buildings are a conditional use in the MIX districts. The purpose of the MIX mixed use district is to promote planned developments where residential uses can be combined into neighborhoods with		besides density limits, like housing prices and rents, market conditions, existing land-use patterns, the provision of public services and infrastructure, design and architectural requirements, impact fees, and other planning goals also have an impact on the quantity of multifamily and affordable housing. Multifamily zoning would include public housing. People with disabilities, minorities, African-Americans and Latinos, and low-income households disproportionately rely on multifamily housing. There also is potential for more density or flexibility of design with Planned Unit Development approval, through the departure from the strict application of required setbacks, yard areas, lot sizes, minimum house sizes, minimum requirements, and other performance standards associated with traditional zoning.

	retail, office, entertainment, and recreational facilities in close proximity to transit. Densities may be approved for between 15-21.78 units per acre, with a minimum of 2,000 sq. ft. of lot area /u for MF dwellings or 5,000 sq. ft. for townhome units (*A density bonus may be available for developments with underground parking, green building standards, recreation facilities, or close access to public transit.) These standards generally permit development of medium to high densities relative to other jurisdictions, however the requirement for a conditional use permit for increased height or multiple structures to reach the maximum permitted densities does add to development costs and may impede the potential for developing affordable housing.		

4a. Are unreasonable restrictions placed on the construction, rental, or occupancy of alternative types of affordable or low-income housing (for example, accessory dwellings or mobile/manufactured homes)? 4b. Are there any regulations requiring that rental units or accessory dwellings only be occupied by blood relatives of the owner? N/A	The code prohibits accessory buildings from being occupied as a dwelling unit. Under the Minnesota Planning Act, a manufactured home park is by law a conditional use in any zoning district that allows the construction or placement of a building used or intended to be used by two or more families. Manufactured homes are a permitted by right use in R-3D districts. Manufactured home parks are a conditional use in R-3D districts.	2	*See* Sec. 10-7-4(H); 10-18-1 et seq. Minn. Stat. Ch. 327 et seq.; 462.357; Minnesota Rules 4630.0200 - 4630.1700 and 4630.2210 - 4630.4700.
5. Do the jurisdiction's design and construction guidelines create unreasonable or arbitrary barriers to affordable housing, i.e. required building or façade materials, landscape requirements, parking, architectural requirements? 5b. Are the jurisdiction's preservation or environmental protection guidelines arbitrary, antiquated, or unreasonable so as to limit development of affordable housing?	The code's design and construction requirements for residential uses are not overly onerous, except for regulatory requirements related to off-street parking that may unnecessarily increase development costs, and thus impact the feasibility of developing affordable or low-income housing. For example, off-street parking regulations for apartments require 1.5 parking spaces for	2	*See* Sec. 10-7-26(H) (parking).

	each efficiency and 1 bdr unit and 2.25 parking spaces for units with 2 or more bedrooms. A minimum of 1 of the required parking spaces per unit must be in an enclosed garage. Townhomes must include 2 enclosed garage spaces and 2 driveway spaces per unit. An additional 0.5 spaces per townhouse or apartment unit must be distributed throughout the development for guest parking. Single family and two-family dwellings must include 2 enclosed garage spaces per dwelling unit with a minimum of 220 square feet per space required.		
6. Does the zoning ordinance include an inclusionary zoning provision or provide any incentives for the development of affordable housing or housing for protected classes? 6b. If so, do the regulations also include mechanisms for maintaining that affordability long term, i.e. deed restrictions, monitoring, etc.? 6c. If so, are the development incentives available in high-opportunity neighborhoods, mixed-income, integrated zoning districts (or limited to low-income, low-opportunity, or historically segregated areas)?	No, the zoning ordinance does not expressly provide density bonuses or other development incentives for the development of affordable or low-income housing or housing for protected classes.	3	

Coon Rapids Zoning Review

Average Total Risk Score: **1.83**

Key to Risk Scores:
1 = low risk – the provision poses little risk for discrimination or limitation of fair housing choice, or is an affirmative action that intentionally promotes and/or protects affordable housing and fair housing choice.
2 = medium risk – the provision is neither among the most permissive nor most restrictive; while it could complicate fair housing choice, its effect is not likely to be widespread.
3 = high risk – the provision causes or has potential to result in systematic and widespread housing discrimination or the limitation of fair housing choice, or is an issue where the jurisdiction could take affirmative action to further affordable housing or fair housing choice but has not.

Source Documents:
Title 11 of the Code of Ordinances, ***Land Development Regulations***, available at:

Comprehensive Plan, available at: http://mn-coonrapids.civicplus.com/436/Comprehensive-Plan

Issue	Conclusion	Risk Score	Comments
1a. Does the jurisdiction's definition of "family" have the effect of preventing unrelated individuals from sharing the same residence? Is the definition unreasonably restrictive? 1b. Does the definition of "family" discriminate against or treat differently unrelated individuals with disabilities (or members of any other protected class)?	The City's current definition is one of the more permissive in the region by permitting up to 6 unrelated persons to live together as a single housekeeping unit. The LDR's definition of family does not make exception for or treat differently persons with disabilities *because of* their disability.	1	*See* Sec. 11-201 definitions. While the Supreme Court has recognized a local government's right to limit the number of unrelated individuals who may live together as constitutionally permissible, the restriction must be reasonable and not exclude a household which in every sense but a biological one is a single family. An unreasonably, or arbitrarily, restrictive definition could violate state Due Process and/or the federal FHA

			as it may have a disproportionate impact on people with disabilities, minorities, and families with children. *See* *Oxford House v. Town of Babylon*, 819 F. Supp. 1179 (E.D.N.Y. 1993); *City of White Plains v. Ferraioli*, 34 N.Y.2d 300, 357 N.Y.S.2d 449 (1974); *McMinn v. Town of Oyster Bay*, 66 N.Y.2d 544, 498 N.Y.S.2d 128 (1985).
2. Do the jurisdiction's zoning and land use rules constitute exclusionary zoning that precludes development of affordable or low-income housing by imposing unreasonable residential design regulations (such as high minimum lot sizes, wide street frontages, large setbacks, low FARs, large minimum building square footage, and/or low maximum building heights)?	The zoning code and map provide for five primarily residential districts: LDR-1 (low-density single family), LDR-2 (low-density single & 2 family), MDR (moderate density), HDR ("high" density multifamily), and MH (manufactured homes). Minimum lot sizes and other development standards restrict single-family detached units to low density and therefore affect the feasibility of affordable housing. Minimum lot sizes for single-family detached are 15,000 sq. ft. / unit in LDR-1 and 10,800 sq. ft. /unit in LDR-2. Two-family units also are permitted in the LDR-2 district at	2	*See* Sec. 11-600 et seq.

	minimum lot sizes of 14,850 sq. ft. and 7,425 sq. ft. for 2F zero lot line units. Mixed-use Planned Unit Developments (PUD) may be approved (except in the LDR-1 district) to provide more flexibility in lot design standards. The code also provides for mixed-use Port districts with higher densities and a mixture of residential types, though the design and architectural requirements add additional layers of cost that impact the feasibility of developing affordable housing.		
3a. Does the jurisdiction allow for a mixture of housing types? Does the zoning ordinance fail to provide residential districts where multi-family housing is permitted as of right? 3b. Do multi-family districts restrict development only to low-density housing types?	The land development code contemplates single family, two-family (approved prior to Jan. 1, 2005), multifamily, and town homes within the primarily residential districts. The mixed-use PUD and Port districts may include a range of these housing types. Multifamily dwellings are permitted by right in the MDR and HDR districts. Maximum densities depend upon	2	*See* Sec. 11-604; 11-605. The zoning map was not separately analyzed to determine whether enough areas of the jurisdiction are zoned MDR and HDR to meet demand for multifamily housing. Other considerations like housing prices and rents, market conditions, existing land-use patterns, the provision of public services and infrastructure, and

	factors such as required open space, number of bedrooms of the units, and height of the buildings. Densities range from a maximum of 7 u/a in the MDR to possibly up to approx. 24 u/a for development of efficiency units, but potential density is lower for 2 and 3+ bedroom developments. These density levels are typically considered low to medium densities for multifamily depending on the jurisdiction. The Port Districts allow for densities up to 30 u/a. Minimum lot areas range from 2,000 sq. ft. per unit for townhomes and 6,000 sq. ft. for other buildings. Minimum livable floor area is 700 sq. ft. for 1 br townhouse and 500 sq. ft. for an efficiency multifamily dwelling unit. A residential planned unit development may provide up to a 25% increase in the number of units per acre if the planned unit development provides substantially more site amenities than are found in a		other planning goals also have an impact on the quantity of multifamily and affordable housing. The Metropolitan Council has estimated that 88% of Coon Rapids housing is affordable to those making 80% or less of the area median family income (AMI). The neighboring community of Blaine had 70%. Other neighboring communities include Fridley at 92% and Anoka at 91%, while Andover was 44%. Source: Met Council's Existing Housing Assessments. Multifamily zoning would include public housing. People with disabilities, minorities, African-Americans and Latinos, and low-income households disproportionately rely on multifamily housing.

	conventional residential development. Additionally, even though multifamily is permitted by right in these zoning districts, design, parking, and landscape requirements and review and approval procedures add to the cost, and accordingly impact the affordability of these units.		
4a. Are unreasonable restrictions placed on the construction, rental, or occupancy of alternative types of affordable or low-income housing (for example, accessory dwellings or mobile/manufactured homes)? 4b. Are there any regulations requiring that rental units or accessory dwellings only be occupied by blood relatives of the owner?	Accessory dwellings above garages are permitted in the Riverdale Station Transit District. Mobile homes are permitted in the MH residential district (but no other types of dwellings are permitted in those zones).	1	*See* Sec. 11-606; 11-904.6; 11-1101.9. Minn. Stat. Ch. 327 et seq.; 462.357; Minnesota Rules 4630.0200 - 4630.1700 and 4630.2210 - 4630.4700. Accessory dwelling units are a low-impact form of affordable housing, and this use could be expanded to the other single-family districts.
5. Do the jurisdiction's design and construction guidelines create unreasonable or arbitrary barriers to affordable housing, i.e. required building or façade materials, landscape requirements, parking, architectural requirements?	The residential and mixed-use districts have varying degrees of design and construction guidelines above the mandated minimum building safety requirements. Buildings must be designed with certain quality level exterior	2	*See* Sec. 11-306 (Standards for the Granting of Dimensional, Design Standard, or Use Flexibility); 11-600 et seq.; 11-1200 et seq.

	materials, varied setbacks, roof lines and architectural/focal features and details, minimum common open spaces, private open spaces, and children's play areas for certain size developments. The minimum off-street parking space requirements range from 2.25 per multifamily units and 3 spaces per townhouse or SF dwelling. While these design standards have aesthetic and quality of life value, they also add additional layers of cost not required by minimum building safety codes and impact the affordability of housing throughout Coon Rapids.		
6. Does the zoning ordinance include an inclusionary zoning provision or provide any incentives for the development of affordable housing or housing for protected classes? 6b. If so, do the regulations also include mechanisms for maintaining that affordability long term, i.e. deed restrictions,	No, the zoning ordinance does not expressly provide density bonuses or other development incentives for the development of affordable or low-income housing or housing for protected classes.	3	

Crystal Zoning Review

Average Total Risk Score: **2.0**

Key to Risk Scores:
1 = low risk – the provision poses little risk for discrimination or limitation of fair housing choice, or is an affirmative action that intentionally promotes and/or protects affordable housing and fair housing choice.
2 = medium risk – the provision is neither among the most permissive nor most restrictive; while it could complicate fair housing choice, its effect is not likely to be widespread.
3 = high risk – the provision causes or has potential to result in systematic and widespread housing discrimination or the limitation of fair housing choice, or is an issue where the jurisdiction could take affirmative action to further affordable housing or fair housing choice but has not.

Source Documents:
Appendix 1, Section 515 of the City Code, ***Zoning Ordinance***, available at:
http://www.crystalmn.gov/2015_New_City_Code/Zone_Code.pdf

Comprehensive Plan Update through 2030, available at:
http://www.crystalmn.gov/docs/plan_and_zoning/complete_packet.pdf

Issue	Conclusion	Risk Score	Comments
1a. Does the jurisdiction's definition of "family" have the effect of preventing unrelated individuals from sharing the same residence? Is the definition unreasonably restrictive?	The City's definition limits the number of unrelated persons who may reside together to up to 3 persons. *Family*: "One or more persons each related to the other by blood, marriage, adoption or foster care, or a group of not more than three persons not so related, maintaining a common household and using common cooking facilities."	3	*See* Sec. 515.09 (definitions). While the Supreme Court has recognized a local government's right to limit the number of unrelated individuals who may live together as constitutionally permissible, the restriction must be reasonable and not exclude a household which in every sense but a biological one is a single family. An unreasonably, or

1b. Does the definition of "family" discriminate against or treat differently unrelated individuals with disabilities (or members of any other protected class)?	The City's family definition does not treat persons with disabilities differently *because of* their disability. State licensed residential facilities serving 6 or fewer residents are permitted by right in the R-1,		arbitrarily, restrictive definition could violate state Due Process and/or the federal FHA as it may have a disproportionate impact on people with disabilities, minorities, and families with children.
2. Do the jurisdiction's zoning and land use rules constitute exclusionary zoning that precludes development of affordable or low-income housing by imposing unreasonable residential design regulations (such as high minimum lot sizes, wide street frontages, large setbacks, low FARs, large minimum building square footage, and/or low maximum building heights)?	The zoning code and map provide for three residential districts (R-1, R-2, and R-3). One family detached and two-family dwellings are permitted by right in the R-1 district with a minimum lot size of 7,500 sq. ft. per unit (maximum density 5 u/a). One family detached and attached units, two-family units, and small multifamily units are permitted by right in the R-2 district, with a minimum lot size of 10,000 sq. ft. per parcel (4,000 sq. ft. per unit) and minimum density of 5 u/a to a maximum density of 12 u/a. One-family attached (and multifamily) dwellings also are permitted in the R-3 district, with a minimum lot size of 20,000 sq. ft. Compared to neighboring jurisdictions, Crystal City's minimum lot and	1	*See* Sec. 515.33 et seq. (R-1); 515.37 et seq. (R-2); 515.41 et seq. (R-3). Approval under the Planned Development regulations may allow for more flexibility in terms of lot area, density, lot dimensions, yards, setbacks, location of parking areas and public street frontage than allowed by the underlying zoning. One of the stated purposes of the PD designation is the "[p]rovision of housing affordable to all income groups." Within the PD district all permitted uses and accessory uses are allowed. However, with some exceptions, the PD district requires a minimum area of 2 acres (*See* Sec. 515.57 et seq.)

	design standards would not be a barrier to greater density and affordability of detached and attached single family dwellings and two-family housing.		
3a. Does the jurisdiction allow for a mixture of housing types? Does the zoning ordinance fail to provide residential districts where multi-family housing is permitted as of right? 3b. Do multi-family districts restrict development only to low-density housing types?	The zoning code contemplates detached and attached single family, two-family, and multifamily units. Multifamily up to eight units per building is permitted by right in the R-2 and without that unit restriction in the R-3 district. The zoning code imposes minimum and maximum densities in these districts-- 5 u/a to max. 12 u/a in the R-2 district, 12 u/a to max. 22 u/a in the R-3 district. Under the guidelines of the Comprehensive Plan, areas designated for high density residential should have not less than 10 u/a and up to a maximum of 22 u/a. These standards generally permit development of medium to high densities relative to other jurisdictions.	1	*See* Sec. 515.37 et seq. (R-2); 515.41 et seq. (R-3). The zoning map was not separately analyzed to determine whether enough areas of the jurisdiction are zoned to meet demand for multifamily housing. Other considerations besides density limits have an impact on whether the supply of multifamily housing is affordable housing, like housing prices and rents, market conditions, existing land-use patterns, the provision of public services and infrastructure, design and architectural requirements, impact fees, and other planning goals. Multifamily zoning would include public housing. People with disabilities, minorities, African-Americans and Latinos, and low-income households

			disproportionately rely on multifamily housing.
4a. Are unreasonable restrictions placed on the construction, rental, or occupancy of alternative types of affordable or low-income housing (for example, accessory dwellings or mobile/manufactured homes)? 4b. Are there any regulations requiring that rental units or accessory dwellings only be occupied by blood relatives of the owner? N/A	Accessory dwelling units are not a permitted use in any zoning district. Manufactured /mobile home parks are not separately regulated by the zoning code but are subject to the subdivision code, Minnesota Planning Act, and floodplain regulations. Under the MPA a manufactured home park is by law a conditional use in any zoning district that allows the construction or placement of a building used or intended to be used by two or more families.	2	*See* Sec. 515.13, Subd.8 ("No basement, garage, tent or accessory building shall at anytime be used as an independent residence or dwelling unit, temporarily or permanently.") Minn. Stat. Ch. 327 et seq.; 462.357; Minnesota Rules 4630.0200 - 4630.1700 and 4630.2210 - 4630.4700. Accessory dwelling units are a low-impact form of affordable housing, and this use could be expanded to the single-family districts.
5. Do the jurisdiction's design and construction guidelines create unreasonable or arbitrary barriers to affordable housing, i.e. required building or façade materials, landscape requirements, parking, architectural requirements? 5b. Are the jurisdiction's preservation or environmental protection guidelines arbitrary, antiquated, or unreasonable so as to limit development of affordable housing?	The code's architectural and construction requirements for residential uses are not overly onerous compared to other jurisdictions in the region. However, other design and performance standards may limit the potential for developing affordable housing. For example, the minimum floor area for dwelling units may be arbitrarily high	2	*See*, Sec. 515.13 (general performance standards); 515.17 (off-street parking); Sec. 515.33 et seq. (R-1); 515.37 et seq. (R-2); 515.41 et seq. (R-3).

	compared to safety/building code standards and the requirements of other jurisdictions in the region. Multifamily efficiency units must provide a minimum 600 sq. ft. floor area; 1B units have a minimum 720 sq. ft. floor area; 2B units a minimum 840 sq. ft. floor area; 3B units a minimum 960 sq. ft. floor area; plus 100 sq. ft. for each additional bedroom above 3. Also, the maximum height allowances, even for multifamily buildings, are limited to 2.5 stories/40 ft. in the R-2 district and 3 stories/50 ft. in the R-3 district. Other than a Planned Development rezoning of a parcel at least 2 acres, there also is a lack of mixed-used district designations within the city.		
6. Does the zoning ordinance include an inclusionary zoning provision or provide any incentives for the development of affordable housing or housing for protected classes? 6b. If so, do the regulations also include mechanisms for maintaining that affordability long term, i.e. deed restrictions, monitoring, etc.? 6c. If so, are the development incentives available in high-opportunity	No, the zoning ordinance does not expressly provide density bonuses or other objective development incentives for the development of affordable or low-income housing or housing for protected classes.	3	

neighborhoods, mixed-income, integrated zoning districts (or limited to low-income, low-opportunity, or historically segregated areas)?			

Eagan Zoning Review

Average Total Risk Score: **2.0**

Key to Risk Scores:
1 = low risk – the provision poses little risk for discrimination or limitation of fair housing choice, or is an affirmative action that intentionally promotes and/or protects affordable housing and fair housing choice.
2 = medium risk – the provision is neither among the most permissive nor most restrictive; while it could complicate fair housing choice, its effect is not likely to be widespread
3 = high risk – the provision causes or has potential to result in systematic and widespread housing discrimination or the limitation of fair housing choice, or is an issue where the jurisdiction could take affirmative action to further affordable housing or fair housing choice but has not.

Source Documents:
Chapter 11 of the Code of Ordinances, ***Land Use Regulations (Zoning)***, available at: https://www.municode.com/library/mn/eagan/codes/code_of_ordinances?nodeId=CICO_CH11LAUSREZO

Comprehensive Plan 2030, available at: http://www.cityofeagan.com/planning-zoning/comprehensive-plan-2030

Issue	Conclusion	Risk Score	Comments
1a. Does the jurisdiction's definition of "family" have the effect of preventing unrelated individuals from sharing the same residence? Is the definition unreasonably restrictive?	The City's definition of family limits the number of unrelated persons who may reside together to up to five. *"Family* means an individual or two or more persons all of whom are related to one another by blood, marriage, or adoption living together as a single housekeeping unit; or a group of not more than five persons all of whom are not so related to each other, but	1	*See* Sec. 11.30 definitions. While the Supreme Court has recognized a local government's right to limit the number of unrelated individuals who may live together as constitutionally permissible, the restriction must be reasonable and not exclude a household which in every sense but a biological one is a single family. An unreasonably, or arbitrarily, restrictive definition could violate

1b. Does the definition of "family" discriminate against or treat differently unrelated individuals with disabilities (or members of any other protected class)?	maintain a common household and common cooking and kitchen facilities. For the purposes of this definition, housekeeping unit means all persons residing within a dwelling unit whose relationship includes a substantial amount of social interaction, including the sharing of housekeeping responsibilities or expenses and the taking of meals together. The City's family definition does not treat persons with disabilities differently *because of* their disability. Group living for persons with disabilities is separately regulated by the code under the use category "special residential facility."		state Due Process and/or the federal FHA as it may have a disproportionate impact on people with disabilities, minorities, and families with children.
2. Do the jurisdiction's zoning and land use rules constitute exclusionary zoning that precludes development of affordable or low-income housing by imposing unreasonable residential design regulations (such as high minimum lot sizes, wide street frontages, large setbacks, low FARs, large minimum building square footage, and/or low maximum building heights)?	The zoning code and map provide for three single family zoning districts in addition to the agricultural district. Minimum lot sizes for single family dwellings range from 16,000 sq. ft. in the Estate district, 12,000 sq. ft. in the R-1 district, and 8,000 sq.	3	*See* Sec. 11.60 et seq. Rezoning approval for a Planned Development may provide for a variety of housing types and greater densities consistent with the Comprehensive Plan than allowed by the underlying zoning, but

	ft. in R-1S, with minimum lot widths of 100 ft., 85 ft. and 65 ft. in the E, R-1, and R-1S districts respectively, and maximum height of 35 ft. Where two-family and townhome units are permitted in the R-2 and R-3 districts, density is still limited due to minimum lot sizes of 7,500 sq. ft. per twin home or 6,000 sq. ft. per townhome unit. R-1S is designed to permit cluster-type development for infill developments. However, the lot and design standards limit density to low and moderate density and may impact the feasibility of developing single family detached and attached affordable housing.		the stated intent and criteria considered is not to necessarily provide for more affordable housing in the jurisdiction (Sec. 11.60(18)).
3a. Does the jurisdiction allow for a mixture of housing types? Does the zoning ordinance fail to provide residential districts where multi-family housing is permitted as of right? 3b. Do multi-family districts restrict development only to low-density housing types?	The zoning code contemplates single family, two-family, townhomes, and multifamily units of at least 4 units per building. Multifamily housing is permitted by right in the R-4 district only, with minimum lot sizes/density of 5,000 sq. ft. per unit for 4-6 unit buildings and 2,700 sq. ft. per unit	2	*See* Sec. 11.70 et seq. (performance standards). The zoning map was not separately analyzed to determine whether enough areas of the jurisdiction are zoned to meet demand for multifamily housing. Other considerations like housing prices and rents, market conditions, existing

	for buildings with greater than 6 units. These are low to moderate density levels for multifamily housing compared to other jurisdictions in the region. The Comprehensive Plan contemplates a higher density range of 12-30 u/a in a high-density Planned Residential Development. However, the code lacks flexibility in that it does not include permitted by right mixed-use residential/ commercial districts and mixed-income developments with more affordable housing having closer access to transportation, commercial, and job opportunities. Mixed-use residential developments are a conditional use in the Cedar Grove District, which may allow for much higher density if approved, but because of the regulatory process and design/landscape requirements, development costs will also be increased which impacts the feasibility of developing affordable housing.		land-use patterns, the provision of public services and infrastructure, and other planning goals also have an impact on the quantity of multifamily and affordable housing. Multifamily zoning would include public housing. People with disabilities, minorities, African-Americans and Latinos, and low-income households disproportionately rely on multifamily housing.

4a. Are unreasonable restrictions placed on the construction, rental, or occupancy of alternative types of affordable or low-income housing (for example, accessory dwellings or mobile/manufactured homes)? 4b. Are there any regulations requiring that rental units or accessory dwellings only be occupied by blood relatives of the owner?	Attached accessory dwelling units are permitted by right in the "E" Estate District and R-1 District, but must be in compliance with specified performance standards. Under the Minnesota Planning Act, a manufactured home park is by law a conditional use in any zoning district that allows the construction or placement of a building used or intended to be used by two or more families. Manufactured home parks are specifically permitted as a conditional use in the R-1S district.	1	*See* Sec. 11.60(4)(D), (5)(D); 11.70(32); 11.60(6)(C). Minn. Stat. Ch. 327 et seq.; 462.357; Minnesota Rules 4630.0200 - 4630.1700 and 4630.2210 - 4630.4700.
5. Do the jurisdiction's design and construction guidelines create unreasonable or arbitrary barriers to affordable housing, i.e. required building or façade materials, landscape requirements, parking, architectural requirements? 5b. Are the jurisdiction's preservation or environmental protection guidelines arbitrary, antiquated, or unreasonable so as to limit development of affordable housing?	The code's design and construction requirements for residential uses may unreasonably affect construction costs and impact the feasibility of developing affordable and low-income housing. For example, off-street parking regulations for townhomes and multifamily require at least one enclosed or underground garage space per unit and at	2	*See* Sec. 11.70 et seq.

	least one outdoor parking space per unit. Single family and two-family dwellings must provide at least two enclosed parking spaces for each dwelling unit. The City's performance standards require that residential buildings in the R-2, R-3, and R-4 districts include the supervision of an architect for design and construction, and must meet certain building design criteria related to materials, design, storage spaces per unit, enclosed parking, required recreation areas, etc. While these design standards have aesthetic and quality of life value, they also add additional layers of cost not required by minimum building safety codes, and impact the affordability of housing throughout the City.		
6. Does the zoning ordinance include an inclusionary zoning provision or provide any incentives for the development of affordable housing or housing for protected classes? 6b. If so, do the regulations also include mechanisms for maintaining that affordability long term, i.e. deed restrictions, monitoring, etc.?	No, the zoning ordinance does not expressly provide density bonuses or other development incentives for the development of affordable or low-income housing or housing for protected classes.	3	

6c. If so, are the development incentives available in high-opportunity neighborhoods, mixed-income, integrated zoning districts (or limited to low-income, low-opportunity, or historically segregated areas)			

Eden Prairie Zoning Review

Average Total Risk Score: **1.83**

Key to Risk Scores:
1 = low risk – the provision poses little risk for discrimination or limitation of fair housing choice, or is an affirmative action that intentionally promotes and/or protects affordable housing and fair housing choice.
2 = medium risk – the provision is neither among the most permissive nor most restrictive; while it could complicate fair housing choice, its effect is not likely to be widespread.
3 = high risk – the provision causes or has potential to result in systematic and widespread housing discrimination or the limitation of fair housing choice, or is an issue where the jurisdiction could take affirmative action to further affordable housing or fair housing choice but has not.

Source Documents:
Chapter 11, of the City Code, ***Land Use Regulations (Zoning)***, available at: http://www.edenprairie.org/home/showdocument?id=77

Comprehensive Guide Plan, available at: http://www.edenprairie.org/city-government/departments/community-development/planning/comprehensive-guide-plan

Issue	Conclusion	Risk Score	Comments
1a. Does the jurisdiction's definition of "family" have the effect of preventing unrelated individuals from sharing the same residence? Is the definition unreasonably restrictive?	The City's definition of family limits the number of unrelated persons who may reside together to up to five. *Family:* "One or more persons related by blood, marriage or adoption, including foster children, or a group of not more than five persons (excluding servants) some or all of whom are not related by blood, marriage, or adoption, living together and	1	*See* Sec. 11.02.23. While the Supreme Court has recognized a local government's right to limit the number of unrelated individuals who may live together as constitutionally permissible, the restriction must be reasonable and not exclude a household which in every sense but a biological one is a single family. An unreasonably, or arbitrarily, restrictive definition could violate

1b. Does the definition of "family" discriminate against or treat differently unrelated individuals with disabilities (or members of any other protected class)?	maintaining a common household but not including sororities, fraternities, or other similar organizations." The City's family definition does not treat persons with disabilities differently *because of* their disability nor separately regulate housing for persons with disabilities.		state Due Process and/or the federal FHA as it may have a disproportionate impact on people with disabilities, minorities, and families with children.
2. Do the jurisdiction's zoning and land use rules constitute exclusionary zoning that precludes development of affordable or low-income housing by imposing unreasonable residential design regulations (such as high minimum lot sizes, wide street frontages, large setbacks, low FARs, large minimum building square footage, and/or low maximum building heights)?	The zoning code and map provide for four primarily single-family districts, (R1-44, R1-22, R1-13.5, and R1-9.5) at low densities. Minimum lot sizes range from 44,000 sq. ft. in R1-44, 22,000 sq. ft. in R1-22, 13,500 sq. ft. in R1-13.5 (max density 2.5 u/a), and 9,500 sq. ft. in R1-9.5 (max density 3.5 u/a), with minimum lot dimensions relatively large as well. Attached single-family dwellings such as duplexes, townhomes, quadplexes, etc. are not permitted in these districts. The jurisdiction's minimum lot and design standards limit single family detached density to low density and may impact the	3	*See* 11.03 et seq.; Table 1 Sec. 11.03; 11.10; 11.11. Approval under Planned Development regulations may allow for more flexibility in terms of lot area, density, lot dimensions, yards, setbacks, location of parking areas and public street frontage than allowed by the underlying zoning, but the stated intent and criteria considered of the PD overlay is not to necessarily provide for more affordable housing in the jurisdiction. (*See* Sec. 11.40 et seq.)

	feasibility of developing affordable single-family detached and attached housing.		
3a. Does the jurisdiction allow for a mixture of housing types? Does the zoning ordinance fail to provide residential districts where multi-family housing is permitted as of right? 3b. Do multi-family districts restrict development only to low-density housing types?	The zoning code contemplates single family, attached, and multifamily units. Attached and multifamily housing is permitted by right in the RM-6.5 and RM-2.5 residential districts, at densities of 6.7 u/a and 17.4 u/a, respectively. Height is limited to 45 feet max. The zoning ordinance also provides for four mixed-use residential sub-districts in the Town Center and Transit Oriented Development districts. In the TC-MU sub-district, midrise (up to 6 stories) mixed-use buildings with a maximum FAR of 2.5 are permitted. In the TC-R sub-district, mid-rise and high-rise multifamily buildings may be developed with densities ranging from minimum densities of 40 u/a for mid-rise residential and 60 u/a for high-rise residential, with minimum heights of 4 stories. The Town Center Design Guidelines related to land use mix, site	1	*See* Sec. 11.03.02 (district standards); Table 1 Sec. 11.03; 11.15; 11.25.2;11.27; 11.40 (PUD); 11.26 (TOD). The zoning map was not separately analyzed to determine whether enough areas of the jurisdiction are zoned to meet demand for multifamily housing. Other considerations besides density limits have an impact on whether the supply of multifamily housing is affordable housing, like housing prices and rents, market conditions, existing land-use patterns, the provision of public services and infrastructure, design and architectural requirements, impact fees, and other planning goals. Multifamily zoning would include public housing. People with disabilities, minorities, African-Americans and Latinos, and low-income households

	planning, building bulk and dimensions, architecture, building materials, transportation access, parking, landscaping, signage and lighting must be followed. The new Transit Oriented Development district (adopted Aug. 2016), allows for high density development generally within a 10-minute walkshed (the area within a 10-minute walking distance, or roughly a half-mile) of an existing or planned commuter bus or light rail transit station consistent with the Comprehensive Guide Plan. This mixed-use zoning district allows for a mix of moderate to high-density housing, including stacked and attached housing types at minimum densities of 40 u/a in mixed-use buildings in the TOD-MU sub-district and 25 u/a in the multifamily TOD-R sub-district. Multifamily housing may also be provided in commercial buildings in the N-Com and C-Com districts within a PUD overlay according to site design approvals.		disproportionately rely on multifamily housing.

	These standards generally permit development of medium to high densities relative to other jurisdictions.		
4a. Are unreasonable restrictions placed on the construction, rental, or occupancy of alternative types of affordable or low-income housing (for example, accessory dwellings or mobile/manufactured homes)? 4b. Are there any regulations requiring that rental units or accessory dwellings only be occupied by blood relatives of the owner? N/A	Accessory dwelling units are not a permitted use in any zoning district. The city does not separately regulate the siting of manufactured homes except as provided by the Minnesota Planning Act and floodplain regulations. Under the MPA a manufactured home park is by law a conditional use in any zoning district that allows the construction or placement of a building used or intended to be used by two or more families.	2	Minn. Stat. Ch. 327; 462.357; Minnesota Rules 4630.0200 - 4630.1700 and 4630.2210 - 4630.4700.
5. Do the jurisdiction's design and construction guidelines create unreasonable or arbitrary barriers to affordable housing, i.e. required building or façade materials, landscape requirements, parking, architectural requirements? 5b. Are the jurisdiction's preservation or environmental protection guidelines arbitrary, antiquated, or unreasonable so as to limit development of affordable housing?	The code's design and construction requirements for residential uses are not overly onerous compared to other jurisdictions in the region. One hindrance, or area for improvement, may be off-street parking regulations in the high density, mixed-use zoning districts, which requires one enclosed parking space per	1	*See* Sec. 11.03.3(H).

	bedroom (rather than per unit), but could be reduced by setting a maximum number more in line with average or actual usages.		
6. Does the zoning ordinance include an inclusionary zoning provision or provide any incentives for the development of affordable housing or housing for protected classes? 6b. If so, do the regulations also include mechanisms for maintaining that affordability long term, i.e. deed restrictions, monitoring, etc.? 6c. If so, are the development incentives available in high-opportunity neighborhoods, mixed-income, integrated zoning districts (or limited to low-income, low-opportunity, or historically segregated areas)?	No, the zoning ordinance does not expressly provide density bonuses or other development incentives for the development of affordable or low-income housing or housing for protected classes.	3	

Edina Zoning Review

Average Total Risk Score: **1.3**

Key to Risk Scores:
1 = low risk – the provision poses little risk for discrimination or limitation of fair housing choice, or is an affirmative action that intentionally promotes and/or protects affordable housing and fair housing choice.
2 = medium risk – the provision is neither among the most permissive nor most restrictive; while it could complicate fair housing choice, its effect is not likely to be widespread.
3 = high risk – the provision causes or has potential to result in systematic and widespread housing discrimination or the limitation of fair housing choice, or is an issue where the jurisdiction could take affirmative action to further affordable housing or fair housing choice but has not.

Source Documents:
Chapter 36 of the Code of Ordinances, ***Zoning Ordinance***, available at:
https://www.municode.com/library/mn/edina/codes/code_of_ordinances?nodeId=SPBLADERE_CH36ZO_ARTIINGE

Edina Comprehensive Plan, 2008 Update, available at:
http://edinamn.gov/index.php?section=comprehensive_plan

Issue	Conclusion	Risk Score	Comments
1a. Does the jurisdiction's definition of "family" have the effect of preventing unrelated individuals from sharing the same residence? Is the definition unreasonably restrictive? 1b. Does the definition of "family" discriminate against or treat differently unrelated individuals with disabilities (or members of any other protected class)?	Neither the zoning code nor the City Code of Ordinances defines family (or household size etc.) nor limits who may reside together based on whether the residents are related or not.	1	
2. Do the jurisdiction's zoning and land use rules constitute exclusionary zoning that precludes development of affordable or low-income housing by imposing unreasonable residential design regulations (such as high minimum lot sizes, wide street frontages, large setbacks, low FARs, large minimum building square	The zoning code and map provides for one primarily single-family district (R-1), one doubled-dwelling (duplex) district (R-2), and the planned residential districts (PRD), which also	1	*See* Sec. 36-433 et seq. (R-1); 36-462 et seq. (R-2); 36-521 et seq. (PRD). Rezoning under a Planned Unit Developments designation may allow

footage, and/or low maximum building heights)?	allow for single family and double dwelling units in addition to a mixture of other residential types. Minimum lot sizes range from 9,000 sq. ft. in R-1 to 15,000 sq. ft. per building (average 7,500 sq. ft. / unit) in R-2. In the PRD subdistricts, minimum lot sizes range from a baseline of 10,500 sq. ft. per unit in PRD-1 down to 2,900 sq. ft. / unit in PRD-4 (with an additional potential deduction of 1,500 sq. ft. where the lot/building meet certain criteria related to parking, construction quality, spacing, etc.). Compared to neighboring jurisdictions, the city's minimum lot and design standards overall should not be a barrier to greater density and affordability of single family and attached housing within the jurisdiction.		for greater density and more flexibility in terms of lot area, lot dimensions, yards, setbacks, location of parking areas etc. than allowed by the underlying zoning.
3a. Does the jurisdiction allow for a mixture of housing types? Does the zoning ordinance fail to provide residential districts where multi-family housing is permitted as of right?	The zoning code contemplates single family, double-family, townhomes, and multifamily / multi-residential units. Multi-residential is permitted by right in	1	*See* Sec. 36-521 et seq. (PRD and PSR); 36-548 et seq. (MDD). One of the stated goals of the zoning ordinance is to encourage developments which

3b. Do multi-family districts restrict development only to low-density housing types?	the Planned Residence Districts (PRD) and the Mixed Development Districts (MDD). In the PRD-3 sub-district, which permits all residential types, the base density is 4,400 sq. ft. / unit. However, an allowance of up to 1,500 sq. ft. / unit may be deducted where the lots/buildings meet certain criteria related to parking, construction quality, spacing, etc. In PRD-4, the base minimum lot size is 2,900 sq. ft. / unit but an additional 1,500 sq. ft. / unit may be subtracted for units meeting some of the design criteria. In the MDD sub-districts, multifamily units of at least 10 units per building are permitted, with a base minimum lot size per unit ranging from 4,400 sq. ft. per unit to 3,300 sq. ft. per unit, with allowances permitted which would lower the minimum lot size to a potential 3,400 sq. ft. / unit down to 1,800 sq. ft. / unit. These standards generally permit development of medium to medium-		"provide housing for persons of low and moderate income" and to provide incentives to encourage affordable and life cycle housing. The zoning map was not separately analyzed to determine whether enough areas of the jurisdiction are zoned to meet demand for multifamily housing. Other considerations besides density limits have an impact on whether the supply of multifamily housing is affordable housing, like housing prices and rents, market conditions, existing land-use patterns, the provision of public services and infrastructure, design and architectural requirements, impact fees, and other planning goals. Multifamily zoning would include public housing. People with disabilities, minorities, African-Americans and Latinos, and low-income households disproportionately rely on multifamily housing.

	high densities relative to other jurisdictions.		
4a. Are unreasonable restrictions placed on the construction, rental, or occupancy of alternative types of affordable or low-income housing (for example, accessory dwellings or mobile/manufactured homes)? 4b. Are there any regulations requiring that rental units or accessory dwellings only be occupied by blood relatives of the owner? N/A	Accessory dwelling units are not a permitted use in any zoning district. The zoning code does not expressly permit mobile/ manufactured homes or home parks nor expressly regulate them except regarding floodplains. Under the MPA a manufactured home park is by law a conditional use in any zoning district that allows the construction or placement of a building used or intended to be used by two or more families.	2	Minn. Stat. Ch. 327 et seq.; 462.357; Minnesota Rules 4630.0200 - 4630.1700 and 4630.2210 - 4630.4700. Accessory dwelling units are a low-impact form of affordable housing, and this use could be expanded to the single-family districts.
5. Do the jurisdiction's design and construction guidelines create unreasonable or arbitrary barriers to affordable housing, i.e. required building or façade materials, landscape requirements, parking, architectural requirements? 5b. Are the jurisdiction's preservation or environmental protection guidelines arbitrary, antiquated, or unreasonable so as to limit development of affordable housing?	Some of the code's design and construction requirements for residential uses likely increase development costs in a way which could impact affordability compared to other jurisdictions in the region. For example, in the multifamily PRD and PSR sub-districts, minimum common open space or "usable lot areas" must be provided ranging from 2,000 sq. ft. / unit in	2	*See* Sec. 36-1311 (parking); 36-526; 36-527; 36-554.

	the PRD-1 sub-district to just 100 sq. ft. in the PSR-4 sub-district. As for off-street parking, every single-family and double-dwelling unit must include two fully enclosed spaces per unit. Apartments in the PRD sub-districts must provide 2 spaces / unit, of which 1.25 must be fully enclosed. In the MDD and PCD sub-districts a certain number of enclosed garage spaces per unit also must be provided. Also, efficiency dwelling units (which are usually a more affordable option for one or two-person families) are permitted only in sub-districts PRD-3 PRD-4, PSR-3 and PSR-4, and not more than 10% of the dwelling units per building may be efficiency units in the PRD-3 and PRD-4 districts.		
6. Does the zoning ordinance include an inclusionary zoning provision or provide any incentives for the development of affordable housing or housing for protected classes? 6b. If so, do the regulations also include mechanisms for maintaining that affordability long term, i.e. deed restrictions, monitoring, etc.?	On November 1, 2015, the City adopted an Affordable Housing Policy, which applies to all new multi-family developments of 20 or more units that require a re-zoning or a Comprehensive Plan amendment. All new multi-family	1	*See* Sec. 36-618(18)(d). Policy available at https://edinamn.gov

6c. If so, are the development incentives available in high-opportunity neighborhoods, mixed-income, integrated zoning districts (or limited to low-income, low-opportunity, or historically segregated areas)?	developments requiring a rezoning must be re-zoned to PUD. New rental developments will provide a minimum of 10% of all rentable area at 50% affordable rental rates or 20% of all rentable area at 60% affordable rental rates as defined by the policy. New for sale developments will provide a minimum of 10% of all livable area at affordable sales prices as defined by the policy. The policy may be waived or adjusted on a case-by-case basis. Importantly, to protect the long-term affordability of these units, the City requires that new rental housing remain affordable for a minimum of 15 year via a land use restrictive covenant. The zoning ordinance also provides for a small density bonus in the PCD-3 sub-district (mixed-use, Planned Commercial District). In the PCD-3 subdistrict, the maximum floor area ratio may be increased		

	by 0.25, by including the floor areas of dwelling units classified as affordable housing units pursuant to an agreement with the housing and redevelopment authority of the city.		

Hopkins Zoning Review

Average Total Risk Score: 1.67

Key to Risk Scores:
1 = low risk – the provision poses little risk for discrimination or limitation of fair housing choice, or is an affirmative action that intentionally promotes and/or protects affordable housing and fair housing choice.
2 = medium risk – the provision is neither among the most permissive nor most restrictive; while it could complicate fair housing choice, its effect is not likely to be widespread.
3 = high risk – the provision causes or has potential to result in systematic and widespread housing discrimination or the limitation of fair housing choice, or is an issue where the jurisdiction could take affirmative action to further affordable housing or fair housing choice but has not.

Source Documents:
Sections 517 to 570 of the City Code, ***Zoning Code***, available at:
http://www.hopkinsmn.com/weblink8/Browse.aspx?login=1&startid=3083&cc=1&dbid=0

City of Hopkins Comprehensive Plan 2009, available at:
http://www.hopkinsmn.com/development/plan/pdf/comp-plan-2009.pdf

Issue	Conclusion	Risk Score	Comments
1a. Does the jurisdiction's definition of "family" have the effect of preventing unrelated individuals from sharing the same residence? Is the definition unreasonably restrictive?	The City's definition of family is neither the most restrictive nor the most permissive. It limits the number of unrelated persons who may reside together to up to 4 persons. *Family*: "an individual or two (2) or more persons each related to the other by blood, marriage, adoption, or foster care, or a group of not more than four (4) persons not so related maintaining a common household and using common	2	*See* 515.07 and .177 (definitions). While the Supreme Court has recognized a local government's right to limit the number of unrelated individuals who may live together as constitutionally permissible, the restriction must be reasonable and not exclude a household which in every sense but a biological one is a single family. An unreasonably, or arbitrarily, restrictive definition could violate

1b. Does the definition of "family" discriminate against or treat differently unrelated individuals with disabilities (or members of any other protected class)?	cooking and sanitary facilities" The City's family definition does not treat persons with disabilities differently *because of* their disability. Group housing is regulated separately under the definitions of group dwellings and residential facility. Licensed residential facilities up to 6 persons are permitted in all residential districts.		state Due Process and/or the federal FHA as it may have a disproportionate impact on people with disabilities, minorities, and families with children.
2. Do the jurisdiction's zoning and land use rules constitute exclusionary zoning that precludes development of affordable or low-income housing by imposing unreasonable residential design regulations (such as high minimum lot sizes, wide street frontages, large setbacks, low FARs, large minimum building square footage, and/or low maximum building heights)?	The zoning code and map provide for five primarily single-family districts. Minimum lot sizes range from 6,000 sq. ft. in R-1A, 8,000 sq. ft. in R-1B, 12,000 sq. ft. in R-1C, 20,000 sq. ft. in R-1D, and 40,000 sq. ft. in R-1E. Minimum floor areas for single family dwellings range from 700 sq. ft. in R-1A to 1,200 sq. ft. in R-1E. Two-family and zero lot line twin homes also are permitted in the R-1A district. 2-4 family units and townhomes are permitted in the R-2 and R-3 districts, with minimum lot sizes of 3,500 sq. ft. / unit and 2,600 sq. ft. /unit,	1	*See* Sec. 530.04; 530.05 (standards in R districts) Approval under the Planned Unit Development regulations may allow for more flexibility in terms of lot area, lot dimensions, yards, setbacks, location of parking areas etc. than allowed by the underlying zoning but overall density may not exceed the underlying permitted standards. Moreover, the stated intent and criteria considered for the overlay is not to necessarily provide for more affordable housing in the

	respectively. While the larger lot size districts may limit the development of affordable housing, compared to neighboring jurisdictions, the city's minimum lot and design standards overall should not be a barrier to greater density and affordability of single family and two-family housing somewhere within the jurisdiction.		jurisdiction. (*See* Sec. 565.01 et seq.)
3a. Does the jurisdiction allow for a mixture of housing types? Does the zoning ordinance fail to provide residential districts where multi-family housing is permitted as of right? 3b. Do multi-family districts restrict development only to low-density housing types?	The zoning code contemplates single family, two-family, townhome, and multifamily units. Multifamily is permitted by right in the R-3, R-4, R-5, and R-6 districts with minimum lot sizes of 2,600; 1,600; 1,000; and 2,600 sq. ft. per unit, respectively. Minimum livable floor areas are: 520 sq. ft per efficiency unit; 600 sq. ft. per one-bedroom unit; 720 sq. ft. per two-bedroom unit; and 700 sq. ft. per three-bedroom unit plus 120 sq. ft. for each additional bedroom. These standards generally permit development of medium to high densities, however the	1	*See* Sec. 530.05 (residential standards); 543.01 et seq. (mixed use). The zoning map was not separately analyzed to determine whether enough areas of the jurisdiction are zoned to meet demand for multifamily housing. Other considerations besides density limits have an impact on whether the supply of multifamily housing is affordable housing, like housing prices and rents, market conditions, existing land-use patterns, the provision of public services and infrastructure, design and architectural requirements, impact

	relatively low maximum height limitations may limit that density potential. Buildings are limited to 35 feet in R-3, 45 feet in R-4, and 4 stories in R-5 and R-6. Multifamily also is permitted by right in the UN, DT, and CTC mixed-use districts. Townhomes are permitted in the UN and CTC districts. Residential buildings may be up to 4 stories and mixed-use buildings with residential above the ground floor may be up to 6 stories. The maximum FARs range from 3 to 5, which generally permits high density development.		fees, and other planning goals. Multifamily zoning would include public housing. People with disabilities, minorities, African-Americans and Latinos, and low-income households disproportionately rely on multifamily housing.

4a. Are unreasonable restrictions placed on the construction, rental, or occupancy of alternative types of affordable or low-income housing (for example, accessory dwellings or mobile/manufactured homes)? 4b. Are there any regulations requiring that rental units or accessory dwellings only be occupied by blood relatives of the owner? N/A	Accessory dwelling units are not a permitted use in any zoning district. Manufactured single family dwellings are permitted by right in the R-1 and R-2 districts, and permitted by right in all other R districts as long as they are on a permanent foundation and still subject to the general building codes, subdivision code, Minnesota Planning Act, and floodplain regulations. Manufactured home parks are a conditional use in the R-4 district. Under the MPA a manufactured home park is by law a conditional use in any zoning district that allows the construction or placement of a building used or intended to be used by two or more families.	2	*See* Section 530.03; 531.01 et seq. (manufactured homes). Minn. Stat. Ch. 327 et seq.; 462.357; Minnesota Rules 4630.0200 - 4630.1700 and 4630.2210 - 4630.4700. Accessory dwelling units are a low-impact form of affordable housing, and this use could be expanded to the single-family districts.
5. Do the jurisdiction's design and construction guidelines create unreasonable or arbitrary barriers to affordable housing, i.e. required building or façade materials, landscape requirements, parking, architectural requirements? 5b. Are the jurisdiction's preservation or environmental protection guidelines arbitrary, antiquated, or unreasonable so	The code's design and construction requirements for residential uses are not overly onerous compared to other jurisdictions in the region.	1	

as to limit development of affordable housing?			
6. Does the zoning ordinance include an inclusionary zoning provision or provide any incentives for the development of affordable housing or housing for protected classes? 6b. If so, do the regulations also include mechanisms for maintaining that affordability long term, i.e. deed restrictions, monitoring, etc.? 6c. If so, are the development incentives available in high-opportunity neighborhoods, mixed-income, integrated zoning districts (or limited to low-income, low-opportunity, or historically segregated areas)?	No, the zoning ordinance does not expressly provide density bonuses or other objective development incentives for the development of affordable or low-income housing or housing for protected classes.	3	

Lakeville Zoning Review

Average Total Risk Score: **2.17**

Key to Risk Scores:
1 = low risk – the provision poses little risk for discrimination or limitation of fair housing choice, or is an affirmative action that intentionally promotes and/or protects affordable housing and fair housing choice.
2 = medium risk – the provision is neither among the most permissive nor most restrictive; while it could complicate fair housing choice, its effect is not likely to be widespread.
3 = high risk – the provision causes or has potential to result in systematic and widespread housing discrimination or the limitation of fair housing choice, or is an issue where the jurisdiction could take affirmative action to further affordable housing or fair housing choice but has not.

Source Documents:
Title 11 of the Code of Ordinances, ***Lakeville Zoning Ordinance,*** available at:
http://www.sterlingcodifiers.com/codebook/index.php?book_id=418

2008 Comprehensive Plan, available at:
http://www.ci.lakeville.mn.us/DocumentCenter/View/575

Issue	Conclusion	Risk Score	Comments
1a. Does the jurisdiction's definition of "family" have the effect of preventing unrelated individuals from sharing the same residence? Is the definition unreasonably restrictive?	The City's definition of family is neither the most restrictive nor the most permissive. It limits the number of unrelated persons who may reside together to up to four. *Family:* "An individual or group that maintains a common household and use of common cooking and kitchen facilities and common entrances to a single dwelling unit, where the group consists of: A. Two (2) or more persons each	2	*See* Sec. 11-2-3 definitions. While the Supreme Court has recognized a local government's right to limit the number of unrelated individuals who may live together as constitutionally permissible, the restriction must be reasonable and not exclude a household which in every sense but a biological one is a single family. An unreasonably, or arbitrarily, restrictive

	related to the other by blood, marriage, domestic partnership, adoption, legal guardianship, foster children, and/or cultural or educational exchange program participants hosted by the principal family; or B. Not more than four (4) unrelated persons."		definition could violate state Due Process and/or the federal FHA as it may have a disproportionate impact on people with disabilities, minorities, and families with children.
1b. Does the definition of "family" discriminate against or treat differently unrelated individuals with disabilities (or members of any other protected class)?	The City's family definition does not treat persons with disabilities differently *because of* their disability. State licensed residential care facilities for persons with disabilities are regulated separately.		Residential facilities for persons with disabilities housing 6 or fewer unrelated persons, are permitted by right in the RS-1, RS-2, RS-3, RS-4, RS-CBD, RS-MH, RST-1, and RST-2 districts. Those serving 16 or fewer are permitted by right in the RM-1, RM-2, RH-1, and RH-2 districts.
2. Do the jurisdiction's zoning and land use rules constitute exclusionary zoning that precludes development of affordable or low-income housing by imposing unreasonable residential design regulations (such as high minimum lot sizes, wide street frontages, large setbacks, low FARs, large minimum building square footage, and/or low maximum building heights)?	The zoning code and map provide for five zoning districts that are exclusively single-family detached districts (in terms of housing type) (R-1, R-2, R-2, R-4, and RSCBD). Minimum lot sizes range from 20,000 sq. ft. to 8,400 sq. ft. The minimum lot size for single family dwellings, which are unsewered and rely on septic systems, (existing after 1977)	2	*See* Sec. 11-17-13; 11-17-15; 11-17-19; 11-50-1 et seq.; 11-51-1 et seq.; 11-52-1 et seq.; 11-53-1 et seq.; 11-54-1 et seq.; 11-55-1 et seq.; 11-56-1 et seq. Rezoning approval for a Planned Unit Development may provide for a variety of housing types and greater densities consistent with the Comprehensive Plan

	must be ten acres. Two-family units are permitted by right in the RST-1 district. Two-family and detached townhomes are permitted in RST-2. Detached townhomes, attached up to 6 units, and 2-family units are permitted in RM-1 and RM-2. Even for two-family and townhome units, density is limited due to minimum lot sizes of 7,500 sq. ft. per unit in the RST districts and 5,000 sq. ft. per unit in the RM and RH districts. The code also imposes minimum livable floor area requirements. One and two-bedroom single family dwellings must have a minimum floor area of 960 sq. ft. above grade; three or more bedroom dwellings must have a minimum floor area of 1,100 sq. ft. above grade. Two-family dwellings require 650 square feet for the first floor above grade, plus 100 additional square feet for each bedroom; townhomes require 600 square feet for the first floor above grade, plus 100 additional square feet for each bedroom. The jurisdiction's minimum		than allowed by the underlying zoning, but the stated intent and criteria considered is not to necessarily provide for more affordable housing in the jurisdiction. (Sec. 11-96-1 et seq.)

	lot and design standards limit density to low and moderate density and may impact the feasibility of developing single-family detached and attached affordable housing.		
3a. Does the jurisdiction allow for a mixture of housing types? Does the zoning ordinance fail to provide residential districts where multi-family housing is permitted as of right? 3b. Do multi-family districts restrict development only to low-density housing types?	The zoning code contemplates single family, two-family, townhomes, and multifamily units. Multifamily housing is permitted by right in the RH-1 and RH-2 districts, and a conditional use in the O-R district. Multifamily developments require a minimum 20,000 sq. ft. lot and density is permitted at 2,500 sq. ft. per unit, which is generally a medium density depending on the jurisdiction. However, this potential density is limited by a 35 feet height maximum in the RH-1 district and 45 feet maximum in RH-2. The minimum floor areas for multifamily units are 500 sq. ft. for efficiency units, 700 sq. ft. for 1-bdr, 800 sq. ft. for 2-bdr, and an additional 80 sq. ft. for each additional bedroom above 2.	3	*See* Sec. 10-7-49 (density); 10-15-1 et seq.; 10-16-1 et seq.; 10-17-1 et seq.; 10-22B-1 et seq.; 10-22C-1 et seq.; 10-27-1 et seq. The zoning map was not separately analyzed to determine whether enough areas of the jurisdiction are zoned to meet demand for multifamily housing. Other considerations besides density limits, like housing prices and rents, market conditions, existing land-use patterns, the provision of public services and infrastructure, design and architectural requirements, impact fees, and other planning goals also have an impact on the quantity of multifamily and affordable housing. Multifamily zoning would include public housing. People with disabilities, minorities,

	Efficiency units are typically a lower-cost alternative for 1 and 2 person households. However, rather than letting the market decide the bedroom composition of multifamily developments, the code limits the number of efficiency apartments in multiple-family dwellings, except for senior housing, to not exceed one unit or 10% of the total number of dwelling units in the building, whichever is greater.		African-Americans and Latinos, and low-income households disproportionately rely on multifamily housing.

4a. Are unreasonable restrictions placed on the construction, rental, or occupancy of alternative types of affordable or low-income housing (for example, accessory dwellings or mobile/manufactured homes)? 4b. Are there any regulations requiring that rental units or accessory dwellings only be occupied by blood relatives of the owner?	The code prohibits accessory buildings from being occupied as a separate dwelling unit. However, in the residential districts, "separate living quarters that include kitchen facilities for housing multiple generations as an accessory use within a single-family dwelling" may be administratively approved. The living space cannot be subdivided into a separate dwelling unit. The accessory unit is limited to related family, which intentionally or not serves to maintain the racial makeup of a neighborhood. Under the Minnesota Planning Act, a manufactured home park is by law a conditional use in any zoning district that allows the construction or placement of a building used or intended to be used by two or more families. Manufactured home parks are a permitted by right use in the RSMH district. Manufactured home parks are a conditional	3	*See* Sec. 11-16-3. *See e.g.*, Sec. 11-50-11(F). Minn. Stat. Ch. 327 et seq.; 462.357; Minnesota Rules 4630.0200 - 4630.1700 and 4630.2210 - 4630.4700.

	use in the RST-1, RST-2, RM-1, RM-2, RH-1, and RH-2 districts.		
5. Do the jurisdiction's design and construction guidelines create unreasonable or arbitrary barriers to affordable housing, i.e. required building or façade materials, landscape requirements, parking, architectural requirements? 5b. Are the jurisdiction's preservation or environmental protection guidelines arbitrary, antiquated, or unreasonable so as to limit development of affordable housing?	The zoning code does impose design, architectural, landscape and lighting, and off-street parking standards on residential uses. While these standards have aesthetic and quality of life value, some may also add additional layers of cost not necessitated by minimum building safety codes and thus impact the affordability of housing throughout the City. For example, for lots of record established after January 1, 1994, all site plans for single-family homes must provide for the location of a three (3) stall garage. Off-street parking regulations for multifamily and townhome developments require 2.5 spaces per unit (plus additional guest parking may be required for developments over 8 units). Single-family and two-family units require two spaces per unit. Dwelling units in the RS-2, RM-1, and RM-2 districts require	2	*See* Sec. 11-17-9; 11-17-24; 11-19-13; 11-57-19(G); 11-58-21(D); 11-59-21(C).

	an attached garage for off-street parking that's at least 440 sq. ft. in size.		
6. Does the zoning ordinance include an inclusionary zoning provision or provide any incentives for the development of affordable housing or housing for protected classes? 6b. If so, do the regulations also include mechanisms for maintaining that affordability long term, i.e. deed restrictions, monitoring, etc.? 6c. If so, are the development incentives available in high-opportunity neighborhoods, mixed-income, integrated zoning districts (or limited to low-income, low-opportunity, or historically segregated areas)?	The zoning ordinance does not expressly provide density bonuses for the development of affordable or low-income housing or housing for protected classes. However, it does ease or exempt certain design criteria by administrative permit in the RST-2, RM-1, RM-2, RH-1, and RH-2 district for housing that meets the Metropolitan Council's livable communities' criteria for affordability. Importantly the ordinance requires that guarantees be in place to ensure owner-occupied housing will meet the requirement for initial sales and renter-occupied units will meet the requirement for the initial 10-year rental period.	1	*See* Sec. 11-57-23; 11-58-27; 11-59-27; 11-61-25; 11-62-25. Exemptions may be granted related to design criteria such as exterior building materials, decks and porches, overhangs, garages, landscaping, and open/recreational space, but doesn't go so far as to provide density bonuses, lower administrative fees, or other incentive tools.

Maple Grove Zoning Review

Average Total Risk Score: **1.5**

Key to Risk Scores:
1 = low risk – the provision poses little risk for discrimination or limitation of fair housing choice, or is an affirmative action that intentionally promotes and/or protects affordable housing and fair housing choice.
2 = medium risk – the provision is neither among the most permissive nor most restrictive; while it could complicate fair housing choice, its effect is not likely to be widespread.
3 = high risk – the provision causes or has potential to result in systematic and widespread housing discrimination or the limitation of fair housing choice, or is an issue where the jurisdiction could take affirmative action to further affordable housing or fair housing choice but has not.

Source Documents:
Chapter 36 of the Code of Ordinances, ***Maple Grove Zoning Ordinance***, available at: https://www.municode.com/library/mn/maple_grove/codes/code_of_ordinances?nodeId=COOR_CH36ZO_ARTIINGE_S36-1GEPR

City of Maple Grove 2008 Comprehensive Plan, available at: http://www.maplegrovemn.gov/files/5113/2278/3382/Comprehensive_Land_Use_Plan_Book_10-5-2009.pdf

Issue	Conclusion	Risk Score	Comments
1a. Does the jurisdiction's definition of "family" have the effect of preventing unrelated individuals from sharing the same residence? Is the definition unreasonably restrictive?	The City defines family under its definition of "household," and is neither the most restrictive nor the most permissive. Where all persons residing in the dwelling are unrelated, it limits the number of unrelated persons to 4 persons. However, the definition also explicitly permits up to two adult individuals, whether related or unrelated, and the parents and children of each, better	1	*See* 36-3 (definitions). While the Supreme Court has recognized a local government's right to limit the number of unrelated individuals who may live together as constitutionally permissible, the restriction must be reasonable and not exclude a household which in every sense but a biological one is a single family. An unreasonably, or arbitrarily, restrictive

1b. Does the definition of "family" discriminate against or treat differently unrelated individuals with disabilities (or members of any other protected class)?	encompassing a more modern understanding of a family unit. *Household*: "a. An individual; or b. A group of not more than four individuals, none of whom are related by blood, marriage, adoption or foster care, but all of whom are maintaining a common residence; or c. Up to two adult individuals, whether related or unrelated, and the parents and children of each, if any, residing in the same dwelling unit and maintaining a common residence; or d. The combination of subsections a and c of this subsection, all maintaining a common residence; and e. The temporary guests of any of such persons staying on the premises for no more than 30 days in any 12-month period." The City's family definition does not treat persons with disabilities differently *because of* their disability. Group housing is regulated separately under the definition and use category of a		definition could violate state Due Process and/or the federal FHA as it may have a disproportionate impact on people with disabilities, minorities, and families with children.

	"residential facility." In the R-A district, residential facilities are permitted by right for the mentally retarded or physically handicapped of six or fewer persons per facility, provided that any such facility shall not be located within 300 feet of an existing similar facility unless by CUP approval. Residential facilities of 6 or fewer residents are permitted by right in the R-1, R-2, and R-3 residential districts.		
2. Do the jurisdiction's zoning and land use rules constitute exclusionary zoning that precludes development of affordable or low-income housing by imposing unreasonable residential design regulations (such as high minimum lot sizes, wide street frontages, large setbacks, low FARs, large minimum building square footage, and/or low maximum building heights)?	In addition to the agricultural district which requires a minimum lot size of 20 acres, the zoning code and map provide for three primarily single-family districts. Minimum lot sizes range from 20,000 sq. ft. in R-1 and 10,000 sq. ft. in R-2 and R-3 for single family detached homes. Two-family dwellings also are a permitted use in the R-3 district with a minimum lot size of 7,000 sq. ft. Attached single family dwellings (townhomes) are a conditional use in the R-3 district, with minimum lot sizes of 5,000 sq. ft. / unit. Compared to	2	*See* Sec. 36-8 (area and building size requirements); 36-231 (R-A); 36-261 (R-1); 36-291 (R-2); 36-321 (R-2b); 36-351 (R-3). Approval under the Planned Unit Development regulations may allow for greater density and more flexibility in terms of lot area, lot dimensions, yards, setbacks, location of parking areas etc. than allowed by the underlying zoning. A residential PUD may allow all uses permitted in the R-1 through R-5 zoning districts and must be developed pursuant to a conditional use

	neighboring jurisdictions, the city's minimum lot and design standards overall may be a barrier to greater density and affordability of single family detached and attached housing within the jurisdiction.		permit within residentially zoned property unless mixed uses are a part of the PUD. Part of the stated purposes of the PUD designation is to meet the growing demands for rental and owner-occupied housing at various economic levels and to lower housing costs. (*See* Sec. 36-61 et seq.)
3a. Does the jurisdiction allow for a mixture of housing types? Does the zoning ordinance fail to provide residential districts where multi-family housing is permitted as of right? 3b. Do multi-family districts restrict development only to low-density housing types?	The zoning code contemplates single family, two-family, attached, and multifamily units. Attached single family units are a conditional use in the R-4 and R-5 districts with minimum lot sizes of 5,000 sq. ft. / unit. Multifamily is permitted by right in the R-4 (up to 12 units / building) and R-5 districts, with minimum lot sizes of 2,500 sq. ft. Density potential is further limited by the maximum height allowance, which is 3 stories / 35 feet. Additional height may be approved in the R-5 district with a conditional permit approval. These standards generally permit development of low to medium	2	*See* Sec. Sec. 36-8 (area and building size requirements); 36-381 et seq. (R-4); 36-411 et seq. (R-5). The zoning map was not separately analyzed to determine whether enough areas of the jurisdiction are zoned to meet demand for multifamily housing. Other considerations besides density limits have an impact on whether the supply of multifamily housing is affordable housing, like housing prices and rents, market conditions, existing land-use patterns, the provision of public services and infrastructure, design and architectural requirements, impact fees, and other planning goals.

	densities relative to other jurisdictions. Mixed-use residential projects may be approved in the Freeway Frontage district under a conditional use permit and following the application procedures and applicable general requirements of the PUD district.		Multifamily zoning would include public housing. People with disabilities, minorities, African-Americans and Latinos, and low-income households disproportionately rely on multifamily housing.
4a. Are unreasonable restrictions placed on the construction, rental, or occupancy of alternative types of affordable or low-income housing (for example, accessory dwellings or mobile/manufactured homes)? 4b. Are there any regulations requiring that rental units or accessory dwellings only be occupied by blood relatives of the owner? N/A	Accessory dwelling units are not a permitted use in any zoning district (except for farm workers in the R-A district). Mobile/manufactured homes are permitted wherever single family detached dwellings are permitted. Mobile home courts are a conditional use in the R-4 district. Under the MPA a manufactured home park is by law a conditional use in any zoning district that allows the construction or placement of a building used or intended to be used by two or more families.	2	*See* Section 36-802; (manufactured homes); 8-361 (mobile homes and mobile home courts). Minn. Stat. Ch. 327 et seq.; 462.357; Minnesota Rules 4630.0200 - 4630.1700 and 4630.2210 - 4630.4700. Accessory dwelling units are a low-impact form of affordable housing, and this use could be expanded to the single-family districts.
5. Do the jurisdiction's design and construction guidelines create unreasonable or arbitrary barriers to affordable housing, i.e. required building or façade materials, landscape requirements, parking, architectural requirements?	The code's design and construction requirements for residential uses are not overly onerous compared to other jurisdictions in the	1	*See* Sec. 36-806; 36-868 (parking). Developers can apply for a reduction in required parking when demonstrated to the

5b. Are the jurisdiction's preservation or environmental protection guidelines arbitrary, antiquated, or unreasonable so as to limit development of affordable housing?	region. However, one area for improvement to help lower development costs (and thereby impact housing affordability) is the off-street parking and garage requirements. Every single-family dwelling must include a two-car enclosed parking garage. Multiple-family dwellings require at least two free spaces per unit, regardless of the size of the individual units, and at least one of the spaces must be in an enclosed garage located under or within the multiple dwelling.		satisfaction of the city council that up to 10% of the number of parking spaces required by the code would not be needed for the particular use in question.
6. Does the zoning ordinance include an inclusionary zoning provision or provide any incentives for the development of affordable housing or housing for protected classes? 6b. If so, do the regulations also include mechanisms for maintaining that affordability long term, i.e. deed restrictions, monitoring, etc.? 6c. If so, are the development incentives available in high-opportunity neighborhoods, mixed-income, integrated zoning districts (or limited to low-income, low-opportunity, or historically segregated areas)?	Yes, in a Planned Unit Development (PUD), the zoning ordinance provides for density bonuses for the development of affordable housing. For example, in areas designated on the land use plan as mixed low/medium density residential, a 25% density bonus may be approved if 30-50% of all dwelling units in the PUD are affordable to households with incomes at or below 80% percent of the AMI and 20-50% are affordable to	1	*See* Sec. 36-62(h). To strengthen the longer-term impact of affordable housing incentives, the City should consider that any incentive program includes strategies for maintaining designated affordable housing units as affordable for a certain time period (e.g. 15 to 30 years) by requiring the lots to carry deed restrictions to maintain the affordable housing criteria and establishing monitoring procedures

	households with incomes at or below 50% of the AMI. Density for the PUD as a whole, may be 12.5% greater than would otherwise be permitted if at least 20% of all dwelling units are for renters. For mixed medium-density residential areas, density may be increased by 6 2/3%.		to ensure that the units remain affordable.

Minneapolis Zoning Review

Average Total Risk Score: **1.83**

Key to Risk Scores:
1 = low risk – the provision poses little risk for discrimination or limitation of fair housing choice, or is an affirmative action that intentionally promotes and/or protects affordable housing and fair housing choice.
2 = medium risk – the provision is neither among the most permissive nor most restrictive; while it could complicate fair housing choice, its effect is not likely to be widespread
3 = high risk – the provision causes or has potential to result in systematic and widespread housing discrimination or the limitation of fair housing choice, or is an issue where the jurisdiction could take affirmative action to further affordable housing or fair housing choice but has not.

Source Documents:
Title 20 of the Code of Ordinances, ***Zoning Code***, available at:
https://www.municode.com/library/mn/minneapolis/codes/code_of_ordinances?nodeId=MICOOR_TIT20ZOCO_CH520INPR

Minneapolis Plan for Sustainable Growth, available at:
http://www.minneapolismn.gov/cped/planning/cped_comp_plan_update_draft_plan

Issue	Conclusion	Risk Score	Comments
1a. Does the jurisdiction's definition of "family" have the effect of preventing unrelated individuals from sharing the same residence? Is the definition unreasonably restrictive?	The City's definition of family only includes persons related by blood, marriage, domestic partnership, and adoption/foster care and excludes unrelated persons even if they reside together as a functionally equivalent household. However, occupancy is regulated by both the Zoning Code and the Housing Maintenance Code. Taken together, up to three unrelated persons may reside together in the lower	3	*See* Sec. 520.160 definitions; Sec. 546.50; Sec. 536.20; 244.820; Ordinance No. 16-01068 (Dec. 9, 2016). While the Supreme Court has recognized a local government's right to limit the number of unrelated individuals who may live together as constitutionally permissible, the restriction must be reasonable and not exclude a household which in every sense but a biological one is a single family. An

1b. Does the definition of "family" discriminate against or treat differently unrelated individuals with disabilities (or members of any other protected class)?	density districts (mostly single family), and up to five unrelated persons may reside together in some of the higher density districts. This is somewhat arbitrary as many of the lower density areas support large homes which could safely accommodate more than 3 residents. On Dec. 9, 2016, the City Council approved an ordinance which seeks to ameliorate some of the disconnect between the zoning code and housing maintenance code's occupancy limits and allow more flexibility. The "intentional communities" ordinance offers a path to legalizing previously illegal groups of unrelated persons, but critics argue that it also places onerous and arbitrary burdens both on the residents and the City. This use category still creates barriers to group living for persons without the time, resources, or sophistication to organize themselves and meet the regulatory requirements of an		unreasonably, or arbitrarily, restrictive definition could violate state Due Process and/or the federal FHA as it may have a disproportionate impact on people with disabilities, minorities, and families with children. *See Oxford House v. Town of Babylon*, 819 F. Supp. 1179 (E.D.N.Y. 1993); *City of White Plains v. Ferraioli*, 34 N.Y.2d 300, 357 N.Y.S.2d 449 (1974); *McMinn v. Town of Oyster Bay*, 66 N.Y.2d 544, 498 N.Y.S.2d 128 (1985). Based on the Housing Maintenance Code's regulations, there are residential structures in the City that could safely accommodate more occupants than the Zoning Code allows, but are unable to be fully utilized due to an ordinance that evaluates the relatedness of the individuals.

	"intentional community." The code's family definition states that it "shall not be applied so as to prevent the city from making reasonable accommodation" for persons with disabilities protected by the FHA.		
2. Do the jurisdiction's zoning and land use rules constitute exclusionary zoning that precludes development of affordable or low-income housing by imposing unreasonable residential design regulations (such as high minimum lot sizes, wide street frontages, large setbacks, low FARs, large minimum building square footage, and/or low maximum building heights)?	The zoning code/map provides for eight primarily residential districts. Minimum lot sizes for single family detached and two-family dwellings range from 6,000 sq. ft. with 50-foot wide dimensions to minimum 5,000 sq. ft. and 40 ft. wide minimum dimensions. Residential uses also are permitted in the mixed-use office residential districts, commercial residential districts, and downtown business districts. Minimum floor areas are small at 300 sq. ft. for accessory dwellings, 350 sq. ft. for efficiency units, and 500 sq. ft. for all other units. Compared to neighboring jurisdictions, the city's minimum lot and design standards	1	*See* Sec. 546 et seq.; 547 et seq.; 548 et seq.; 549 et seq. Cluster developments and planned unit developments offer an avenue, with conditional use permit approval, for some greater flexibility in minimum lot sizes and density.

	should allow for greater density and affordability of single family detached and attached housing.		
3a. Does the jurisdiction allow for a mixture of housing types? Does the zoning ordinance fail to provide residential districts where multi-family housing is permitted as of right? 3b. Do multi-family districts restrict development only to low-density housing types?	The zoning code contemplates single family, two-family, accessory dwellings, and multifamily units. Multifamily is permitted by right in the R-3, R-4, R-5, and R-6 residential districts, and also in the mixed-use office residential, commercial residential, and downtown districts. Multifamily housing in mixed-use PUD and cluster developments may be approved following the conditional use permit approval process. In the R-4, R-5, R-6, office residential, and commercial residential districts, maximum floor area ratios (FAR) range from 1.5 to 3.5, which is generally considered medium to high density depending on the jurisdiction and demand. In the downtown districts, residential FARs range from 8 to no maximum, and maximum permitted heights reach 10 stories. FAR	1	*See* Sec. 11-604; 11-605. In most zoning districts where multi-family uses are allowed, residential density is regulated based on floor area ratio (FAR), rather than u/a, which may allow for increased design flexibility and increased density. Besides maximum FARs, other factors also limit density and units per lot, including off-street parking requirements, open space requirements, number of bedrooms, maximum heights, minimum dwelling unit sizes, required setbacks, and maximum building coverage. The zoning map was not separately analyzed to determine whether enough areas of the jurisdiction are zoned to meet demand for multifamily housing. Other considerations like housing prices and rents, market conditions, existing

	premiums may be approved, allowing for more density, where the development provides certain amenities such as outdoor open space, skyways, access to transit, etc. However, because of height limitations, maximum FARs may not be attainable without conditional use permit approval for increasing maximum height. Conditional use permit approval for increased height allowances and increased FARs adds to development costs and thus impacts the affordability of the housing.		land-use patterns, the provision of public services and infrastructure, and other planning goals also have an impact on the quantity of multifamily and affordable housing. Multifamily zoning would include public housing. People with disabilities, minorities, African-Americans and Latinos, and low-income households disproportionately rely on multifamily housing.

4a. Are unreasonable restrictions placed on the construction, rental, or occupancy of alternative types of affordable or low-income housing (for example, accessory dwellings or mobile/manufactured homes)? 4b. Are there any regulations requiring that rental units or accessory dwellings only be occupied by blood relatives of the owner? No.	The Minneapolis City Council passed a zoning code text amendment on December 5, 2014, which allows accessory dwelling units (interior, detached, attached) citywide on lots with single or two-family homes. The owner of the property must occupy one of the dwellings. Under the Minnesota Planning Act, a manufactured home park is by law a conditional use in any zoning district that allows the construction or placement of a building used or intended to be used by two or more families. There are few specific regulations related to mobile, manufactured, or modular homes in the City's zoning ordinance, rather the city defers to state law. The ordinance does contemplate cluster developments of manufactured homes in the R-2 district.	1	*See* Sec. 537.110. Minn. Stat. Ch. 327 et seq.; 462.357; Minnesota Rules 4630.0200 - 4630.1700 and 4630.2210 - 4630.4700.
5. Do the jurisdiction's design and construction guidelines create unreasonable or arbitrary barriers to affordable housing, i.e. required building or façade materials, landscape	The city has reduced off-street parking requirements near transit stops, but otherwise has more	3	*See* Sec. 530.280; 535.90; 530.30. Site plan review for single-family detached,

requirements, parking, architectural requirements?	layers of development costs than other jurisdictions. New single- and two-family dwellings and multiple-family dwellings having 3-4 units must obtain a minimum of 17 points from Table 530-2 of the Zoning Code related to building materials, height, trees, windows, parking, and basement space. Multifamily developments of 5 units or more that include at least one unit of 3 or more bedrooms, must also provide an outdoor children's play area. While all these site and design criteria may have aesthetic and quality of life value, these things also increase development costs and accordingly impact the ability to keep housing costs affordable. Compared to other jurisdictions in the region, these design criteria also are more onerous.		two-family, and small multifamily developments may be done administratively if certain conditions are met.
6. Does the zoning ordinance include an inclusionary zoning provision or provide any incentives for the development of affordable housing or housing for protected classes?	Yes, the City has implemented inclusionary zoning provisions in the (R) residential districts, (OR) office residential, (C) commercial, and Downtown districts.	2	*See* Sec. 546.130(b); 547.130(b); 548.130(b); 549.110(b). A criticism among planners is that although the City offers

	The maximum floor area ratio of new cluster developments and new multiple-family dwellings of five units or more may be increased by 20% if at least 20% of the dwelling units meet the definition of affordable housing. In the R3 and R4 Districts, where residential density is specifically limited by a minimum lot area per dwelling unit requirement, the maximum number of dwelling units may be increased by 20% if at least 20% of the dwelling units meet the definition of affordable housing. Generally, any housing project with at least 10 units receiving tax increment financing or other municipal funds must provide 20% of the units affordable at or below 50% AMI.		a density bonus in exchange for affordable units, it is underutilized because developers can also obtain the bonus for structured parking – something they nearly always would be doing anyway. The regulations fall short of spelling out desired objectives such as income levels or expected term of affordability, and are not required to include any enforceable agreements assuring compliance with affordability commitments.
6b. If so, do the regulations also include mechanisms for maintaining that affordability long term, i.e. deed restrictions, monitoring, etc.?	No. The City should consider that any incentive program include strategies for maintaining designated affordable housing units as affordable for a certain time period (e.g. 15 to 30 years) by requiring the lots to carry deed		

	restrictions to maintain the affordable housing criteria and establishing monitoring procedures to ensure that the units remain affordable.		

Minnetonka Zoning Review

Average Total Risk Score: **2.17**

Key to Risk Scores:
1 = low risk – the provision poses little risk for discrimination or limitation of fair housing choice, or is an affirmative action that intentionally promotes and/or protects affordable housing and fair housing choice.
2 = medium risk – the provision is neither among the most permissive nor most restrictive; while it could complicate fair housing choice, its effect is not likely to be widespread.
3 = high risk – the provision causes or has potential to result in systematic and widespread housing discrimination or the limitation of fair housing choice, or is an issue where the jurisdiction could take affirmative action to further affordable housing or fair housing choice but has not.

Source Documents:
Chapter 3 of the City Code, ***Minnetonka Zoning Ordinance***, available at:
http://library.amlegal.com/nxt/gateway.dll/Minnesota/minneton/cityofminnetonkahomerulecharter?f=templates$fn=default.htm$3.0$vid=amlegal:minnetonka_mn

2030 Minnetonka Comprehensive Guide Plan, available at:
https://eminnetonka.com/planning/comprehensive-guide-plan

Issue	Conclusion	Risk Score	Comments
1a. Does the jurisdiction's definition of "family" have the effect of preventing unrelated individuals from sharing the same residence? Is the definition unreasonably restrictive?	The City's definition of family does not limit the number of unrelated persons who may reside together as a single housekeeping unit, except residents of a licensed residential care facility or community based residential facility for persons with disabilities. (Maximum occupancy per unit will still be regulated by the adopted building and safety codes.) *Family:* "Any number of individuals living	2	*See* Sec. 300.02(43); 300.10(2)(d), (4)(g) (R-1); 300.11(2)(d) (R-2); 300.12(2)(d), (4)(g) (R-3); 300.13(2)(d), (4)(E) (R-4); 300.16(3)(g) (conditional use permit standards); 300.37(3)(c) (R-1A). One positive regarding the City's treatment of housing for persons with disabilities, is that the City has adopted a "reasonable accommodation" ordinance which provides an administrative process

1b. Does the definition of "family" discriminate against or treat differently unrelated individuals with disabilities (or members of any other protected class)?	together on the premises as a single housekeeping unit as distinguished from a group occupying a boarding or lodging house, licensed residential care facility, licensed day care facility or community based residential facility." The City's family definition excludes residential housing for persons with disabilities and treats them differently. Under the residential district regulations, group housing for persons with disabilities (i.e. a "community based residential facility" and a "licensed residential care facility") is limited in the number of residents while other single family housing is not. In most districts, those facilities with six or fewer residents are permitted by right, greater than six residents may require conditional use permit approval.		for requesting a reasonable accommodation in the city's land use rules and policies. (See Sec. 215.020) It is a violation of the Fair Housing Act to treat housing for persons with disabilities differently than other similarly situated housing based on the disability status of the residents. *See* Joint Statement of the Department of Justice and the Department of Housing and Urban Development: *Group Homes, Local Land Use, and The Fair Housing Act*, available at www.justice.org/crt/
2. Do the jurisdiction's zoning and land use rules constitute exclusionary zoning that precludes development of affordable or low-income housing by imposing unreasonable residential design	The zoning code and map provide for two primarily single-family districts (R-1 and R-1A) at low densities.	3	*See* Sec. 300.10 et seq. (R-1); 300.11 et seq. (R-2); 300.37 et seq. (R-1A); 400.030(6) (lot standards).

regulations (such as high minimum lot sizes, wide street frontages, large setbacks, low FARs, large minimum building square footage, and/or low maximum building heights)?	Low-density two-family dwellings are permitted in the R-2 district. The minimum lot size in R-1 is 22,000 sq. ft. with a maximum density of 4 u/a. The minimum lot size in R-1A is 15,000 sq. ft., with a maximum density of 3u/a. The minimum lot size in R-2 is 12,000 sq. ft., with a maximum density of 3 u/a. The jurisdiction's minimum lot and design standards limit single family density to low-density and may impact the feasibility of developing affordable single family detached and attached housing.		Under the purpose section of the R-1 district regulations, the City may consider whether the proposed development contains affordable housing that is consistent with the city's affordable housing goals as a factor in increasing or decreasing the allowed density. (Sec. 300.10). However, there is no objective process or criteria provided for requesting and receiving the density bonus; accordingly, this goal's feasibility and application is ambiguous. Approval under the Planned Unit Development regulations may allow for more flexibility in terms of lot area, density, lot dimensions, yards, setbacks, location of parking areas and public street frontage than allowed by the underlying zoning. One of the stated goals and criteria considered for the PUD overlay is whether it provides affordable housing. If a PUD includes provision of affordable housing, a specific housing type,

			or target housing price, details associated with the housing - including number of units, unit size, and price - must be documented in a legally-binding agreement approved by the city and recorded against the properties within the PUD. (*See* Sec. 300.22 et seq.)
3a. Does the jurisdiction allow for a mixture of housing types? Does the zoning ordinance fail to provide residential districts where multi-family housing is permitted as of right? 3b. Do multi-family districts restrict development only to low-density housing types?	The zoning code contemplates single family, two-family, attached, and multifamily units. Attached units up to four-family dwellings are permitted in R-3 at densities up to 12 u/a. Attached and multifamily units are permitted by right in R-4 and R-5 districts, with a minimum 4 u/a and up to a maximum of 12 u/a. in R-4 and with a minimum 12 u/a and up to a maximum FAR of 1.0 in R-5. These are generally considered medium density allowances, depending on the jurisdiction and demand. Height is limited by the maximum FAR and proximity to low-density residential districts. Residential dwelling units within an	2	*See* Sec. 300.12 et seq. (R-3); 300.13 et seq. (R-4); 300.14 et seq. (r-5); 300.17(4); 300.18(4); 300.19(4); 300.31 et seq. (Planned I-394). Under the purpose section of the R-3, R-4, and R-5 district regulations, the City may consider whether the proposed development contains affordable housing that is consistent with the city's affordable housing goals as a factor in increasing or decreasing the allowed density. However, there is no objective process or criteria provided for requesting and receiving the density bonus; accordingly, this goal's feasibility and application is ambiguous.

	existing building or constructed as part of a mixed-use development are a conditional use in the B-1, B-2, and B-3 business districts, with maximum FAR of 1.0, 0.8, and 1.5, respectively. A goal of the Planned I-394 district is to provide for "alternative housing types in a range of affordability" including "mid-density" residential at 4 to 12 u/a and "high-density" residential exceeding 12 u/a with a maximum FAR of 0.75.		The zoning map was not separately analyzed to determine whether enough areas of the jurisdiction are zoned to meet demand for multifamily housing. Other considerations besides density limits have an impact on whether the supply of multifamily housing is affordable housing, like housing prices and rents, market conditions, existing land-use patterns, the provision of public services and infrastructure, design and architectural requirements, impact fees, and other planning goals. Multifamily zoning would include public housing. People with disabilities, minorities, African-Americans and Latinos, and low-income households disproportionately rely on multifamily housing.

4a. Are unreasonable restrictions placed on the construction, rental, or occupancy of alternative types of affordable or low-income housing (for example, accessory dwellings or mobile/manufactured homes)? 4b. Are there any regulations requiring that rental units or accessory dwellings only be occupied by blood relatives of the owner? N/A	Accessory apartments are a conditional use in the R-1, R-1A, and R-2 districts. Manufactured homes are permitted by right in the R-1, R-2, R-3, and R-1A districts. The city does not separately regulate the siting of manufactured homes parks except as provided by the Minnesota Planning Act and floodplain regulations. Under the MPA a manufactured home park is by law a conditional use in any zoning district that allows the construction or placement of a building used or intended to be used by two or more families.	1	*See* Sec. 300.10(4)(d); 300.11(4)(a); 300.16(3)(d); 300.37(5). Minn. Stat. Ch. 327 et seq.; 462.357; Minnesota Rules 4630.0200 - 4630.1700 and 4630.2210 - 4630.4700.
5. Do the jurisdiction's design and construction guidelines create unreasonable or arbitrary barriers to affordable housing, i.e. required building or façade materials, landscape requirements, parking, architectural requirements? 5b. Are the jurisdiction's preservation or environmental protection guidelines arbitrary, antiquated, or unreasonable so as to limit development of affordable housing?	The code's design and construction requirements for residential uses lacks some certainty in terms of lot and design standards. The performance standards enumerated, even for permitted by right uses, are subject to evaluation and conditions by the planning commission and/or city council during site and building plan review. For example, in the R-	2	*See also*, Sec. 400.040 (land dedication or fee in lieu required even for SF developments).

	2, R-3, R-4 and R-5 districts, the allowed density for a piece of property will be determined by the city at the time of the development application. The applicant has the burden of establishing the appropriateness of the density, height, etc. This creates uncertainty and may unnecessarily increase development costs which can impact the feasibility of developing affordable housing.		
6. Does the zoning ordinance include an inclusionary zoning provision or provide any incentives for the development of affordable housing or housing for protected classes? 6b. If so, do the regulations also include mechanisms for maintaining that affordability long term, i.e. deed restrictions, monitoring, etc.? 6c. If so, are the development incentives available in high-opportunity neighborhoods, mixed-income, integrated zoning districts (or limited to low-income, low-opportunity, or historically segregated areas)?	No, the zoning ordinance does not expressly provide density bonuses or other objective development incentives for the development of affordable or low-income housing or housing for protected classes.	3	The Code does allow the city discretion to reduce or waive fees for construction that meets the city's affordable housing goals, but lacks objective, predictable standards which are important for development planning. (*See* Sec. 500.010).

New Hope Zoning Review

Average Total Risk Score: **1.67**

Key to Risk Scores:
1 = low risk – the provision poses little risk for discrimination or limitation of fair housing choice, or is an affirmative action that intentionally promotes and/or protects affordable housing and fair housing choice.
2 = medium risk – the provision is neither among the most permissive nor most restrictive; while it could complicate fair housing choice, its effect is not likely to be widespread.
3 = high risk – the provision causes or has potential to result in systematic and widespread housing discrimination or the limitation of fair housing choice, or is an issue where the jurisdiction could take affirmative action to further affordable housing or fair housing choice but has not.

Source Documents:
Chapter 4 of the Code of Ordinances, ***New Hope Zoning Code,*** available at:
https://www.municode.com/library/mn/new_hope/codes/code_of_ordinances?nodeId=SUHITA_CH4ZO

2030 New Hope Comprehensive Plan, available at:
http://www.ci.new-hope.mn.us/eservices/documentcenter/pdf/com_dev/comp_plan-0909.pdf

Issue	Conclusion	Risk Score	Comments
1a. Does the jurisdiction's definition of "family" have the effect of preventing unrelated individuals from sharing the same residence? Is the definition unreasonably restrictive?	The City's definition of family is neither the most restrictive nor the most permissive, and limits the number of unrelated individuals who may reside together to 4. *Family*: "means one or more persons each related to the other by blood, marriage, domestic partnership, adoption, or foster care, or a group of not more than four persons not so related maintaining a common household and using	2	*See* 4-2 (definitions). While the Supreme Court has recognized a local government's right to limit the number of unrelated individuals who may live together as constitutionally permissible, the restriction must be reasonable and not exclude a household which in every sense but a biological one is a single family. An unreasonably, or arbitrarily, restrictive definition could violate

1b. Does the definition of "family" discriminate against or treat differently unrelated individuals with disabilities (or members of any other protected class)?	common cooking and kitchen facilities, exclusive of servants." The City's family definition does not treat persons with disabilities differently *because of* their disability. "Group homes" are regulated separately and permitted by right in the R-1 and R-2 single family districts. A residential group care facility serving 7-16 persons is a conditional use in the R-3, R-4, R-O, R-B, and CC districts.		state Due Process and/or the federal FHA as it may have a disproportionate impact on people with disabilities, minorities, and families with children.
2. Do the jurisdiction's zoning and land use rules constitute exclusionary zoning that precludes development of affordable or low-income housing by imposing unreasonable residential design regulations (such as high minimum lot sizes, wide street frontages, large setbacks, low FARs, large minimum building square footage, and/or low maximum building heights)?	The zoning code and map provide for two primarily single-family districts. Minimum lot sizes range from 9,500 sq. ft. in R-1 and 8,400 sq. ft. in R-2 for single family detached homes. Two-family / twin-home dwellings also are a permitted use in the R-2 district with a minimum lot size of 6,000 sq. ft. per unit. Two-family and townhome units are permitted in the R-3 district with a minimum lot size of 5,000 sq. ft. / unit. The minimum floor area for single-family, twin, and townhomes is 1,000 sq. ft. Compared	1	*See* Sec. Sec. Sec. 4-3(b); 4-3(c) (lot and yard requirements); 4-5 et seq. (R-1); 4-6 et seq. (R-2); 4-7 et seq. (R-3). Conditional use permit approval under the Planned Unit Development regulations may allow for greater density and more flexibility in terms of lot area, lot dimensions, yards, setbacks, location of parking areas, etc. than allowed by the underlying zoning in residential and mixed-use districts. The number of dwelling units allowed within

	to neighboring jurisdictions, the city's minimum lot and design standards overall should not be a barrier to greater density and affordability of single family and attached housing within the jurisdiction.		the respective base zoning district may be increased up to 20% based upon a finding by the city council that such an increase is consistent with the goals of the comprehensive plan and achieves the PUD stated objectives (*See* Sec. 4-5(e)(3); 4-6(e)(6); 4-7(e)(2); 4-8(e)(2); 4-10(e)(2); 4-11(e)(4); 4-34 et seq.)
3a. Does the jurisdiction allow for a mixture of housing types? Does the zoning ordinance fail to provide residential districts where multi-family housing is permitted as of right? 3b. Do multi-family districts restrict development only to low-density housing types?	The zoning code contemplates single family, two-family, townhomes, and multifamily units. Multifamily housing up to 12 units and 3 stories is permitted in the R-3 district with a minimum lot size of 3,000 sq. ft. / unit. In the R-4, R-O (residential office) and R-B (residential business) districts, multifamily housing is permitted up to 6 stories and minimum lot areas of 2,200 sq. ft. /unit in R-4 and 2,000 sq. ft. / unit in R-O and R-B districts. The base minimum parcel size is lower compared to many jurisdictions in the region at 15,000 sq. ft. In the R-4, R-O, and R-B districts (except for senior housing), apartments	1	*See* Sec. 4-3(b); 4-3(c) (lot and yard requirements); 4-7 et seq. (R-3); 4-8 et seq. R-4); 4-9 et seq. (R-5); 4-10 et seq. (R-O); 4-11 et seq. (R-B); 4-17 et seq. (CC). The zoning map was not separately analyzed to determine whether enough areas of the jurisdiction are zoned to meet demand for multifamily housing. Other considerations besides density limits have an impact on whether the supply of multifamily housing is affordable housing, like housing prices and rents, market conditions, existing land-use patterns, the provision of public services and infrastructure, design and architectural

	containing 10 units or more may pursue a reduction up to 20% of the required lot area per unit where the development meets certain criteria related to exterior materials, underground parking, recreation space, and proximity to public transit. Mixed-use residential buildings are a conditional use in the R-O district. Mixed-use residential developments are permitted, through the site plan or PUD process, in the City Center (CC) district with the purpose of increasing opportunities for residents to live in close proximity to jobs, nonresidential development and transit connections. Live-work units and multifamily housing of 10-50 units per acre are conditional uses in the CC district. The maximum density in the CC district is 50 u/a, which is a high density. Density may be increased by 25-50% if a certain number of specific amenities related to parking, access to transit, building placement, recreation		requirements, impact fees, and other planning goals. Multifamily zoning would include public housing. People with disabilities, minorities, African-Americans and Latinos, and low-income households disproportionately rely on multifamily housing. The minimum floor area for multifamily units is 500 sq. ft. / efficiency unit; 600 sq. ft. per one-bedroom; 750 sq. ft. per two-bedroom; and an additional 100 sq. ft. per additional bedroom. Housing classified as senior or disability housing has smaller minimum floor area requirements. (*See* Sec. 4-3(b)(2)(c))

	space, etc. are provided. These standards generally permit development of medium to high densities relative to other jurisdictions.		
4a. Are unreasonable restrictions placed on the construction, rental, or occupancy of alternative types of affordable or low-income housing (for example, accessory dwellings or mobile/manufactured homes)? 4b. Are there any regulations requiring that rental units or accessory dwellings only be occupied by blood relatives of the owner? N/A	Accessory dwelling units are not a permitted use in any zoning district. The zoning code does not expressly permit mobile/ manufactured homes or home parks nor expressly regulate them except regarding floodplains. Under the MPA a manufactured home park is by law a conditional use in any zoning district that allows the construction or placement of a building used or intended to be used by two or more families.	2	*See* Section 4-3(b); Minn. Stat. Ch. 327 et seq.; 462.357; Minnesota Rules 4630.0200 - 4630.1700 and 4630.2210 - 4630.4700. Accessory dwelling units are a low-impact form of affordable housing, and this use could be expanded to the single-family districts.
5. Do the jurisdiction's design and construction guidelines create unreasonable or arbitrary barriers to affordable housing, i.e. required building or façade materials, landscape requirements, parking, architectural requirements? 5b. Are the jurisdiction's preservation or environmental protection guidelines arbitrary, antiquated, or unreasonable so as to limit development of affordable housing?	The code's design and construction requirements for residential uses may contribute to some barriers to affordable housing compared to other jurisdictions in the region. For example, new construction single and two-family units must include two-vehicle garage space. Also,	2	See Sec. 4-3(b); 4-3(b)(6); 4-3(d) (performance standards); 4-3(d)(10) (parking). Developers can apply for a reduction in required parking when demonstrated to the satisfaction of the city council that up to 10% of the number of parking spaces

	rather than letting market demand decide, the city limits the number of efficiency apartments and apartments containing 3 or more bedrooms in multiple dwelling developments to no more than 5% for efficiency units and not more than 40% for 3+ bedroom units of the total number of apartments. Efficiency units are often a more affordable option for 1 and 2-person families. Three + bedroom multifamily units are often a more affordable option for families with children than single-family dwellings, and the limitation may have a disparate impact on this protected group. The city also has adopted architectural design guidelines for some residential uses, incorporated into the Comprehensive Plan, which may increase development costs and impact affordability. While all these site and design criteria may have aesthetic and quality of life value, these standards also increase development costs and accordingly		required by the code would not be needed for the particular use in question.

	impact the ability to keep housing costs affordable.		
6. Does the zoning ordinance include an inclusionary zoning provision or provide any incentives for the development of affordable housing or housing for protected classes? 6b. If so, do the regulations also include mechanisms for maintaining that affordability long term, i.e. deed restrictions, monitoring, etc.? 6c. If so, are the development incentives available in high-opportunity neighborhoods, mixed-income, integrated zoning districts (or limited to low-income, low-opportunity, or historically segregated areas)?	The zoning ordinance does not expressly provide density bonuses or other objective development incentives for the development of affordable or low-income housing. However, it does provide a dedicated zoning district for senior housing and housing for persons with physical disabilities (R-5), and imposes lower minimum lot sizes per unit, lower minimum floor areas, reduced parking requirements, and other reduced performance standards for such housing.	2	*See e.g.*, 4-9 et seq. (R-5). The "2030 Comprehensive Plan" provides that the city may offer up to a 20% increase in density through a Conditional Use Permit or Planned Unit Development, though this bonus is not specifically tied to the provision of affordable housing.

Plymouth Zoning Review

Average Total Risk Score: **1.67**

Key to Risk Scores:
1 = low risk – the provision poses little risk for discrimination or limitation of fair housing choice, or is an affirmative action that intentionally promotes and/or protects affordable housing and fair housing choice.
2 = medium risk – the provision is neither among the most permissive nor most restrictive; while it could complicate fair housing choice, its effect is not likely to be widespread.
3 = high risk – the provision causes or has potential to result in systematic and widespread housing discrimination or the limitation of fair housing choice, or is an issue where the jurisdiction could take affirmative action to further affordable housing or fair housing choice but has not.

Source Documents:
Appendix 1, Section 21 of the City Code, ***Plymouth Zoning Ordinance***, available at: http://www.plymouthmn.gov/home/showdocument?id=754

2030 Comprehensive Plan, available at: http://www.plymouthmn.gov/departments/community-development/planning/comprehensive-plan

Issue	Conclusion	Risk Score	Comments
1a. Does the jurisdiction's definition of "family" have the effect of preventing unrelated individuals from sharing the same residence? Is the definition unreasonably restrictive?	The City's definition of family is quite permissive as it includes not only biological and legal relationships but also "functional families," which can include a group of unrelated people up to 6 persons plus their children. *Family:* "An individual or two (2) or more persons related by blood, marriage, adoption, or a functional family living together in a dwelling unit and	1	*See* Sec. 21005.02 (definitions).

1b. Does the definition of "family" discriminate against or treat differently unrelated individuals with disabilities (or members of any other protected class)?	sharing common cooking facilities." *Functional Family*: "A group of no more than six (6) people plus their offspring, having a relationship which is functionally equivalent to a family. The relationship must be of a permanent and distinct character with a demonstrable and recognizable bond characteristic of a cohesive unit… ." The City's family definition does not treat persons with disabilities differently *because of* their disability. Residential facilities licensed by the state, serving six or fewer persons in a single family detached dwelling are a permitted use in the residential districts.		
2. Do the jurisdiction's zoning and land use rules constitute exclusionary zoning that precludes development of affordable or low-income housing by imposing unreasonable residential design regulations (such as high minimum lot sizes, wide street frontages, large setbacks, low FARs, large minimum building square footage, and/or low maximum building heights)?	The zoning code and map provide for five primarily single-family detached housing districts (RSF-R, RSF-1, RSF-2, RSF-3, and RSF-4) at varying densities. Low-density two-family dwellings also are permitted in the RSF-4 district. Minimum lot sizes for	1	*See* Sec. 21115; 21352.13 (RSF-R); 21355.13 (RSF-1); 21360.13 (RSF-2); 21365.13 (RSF-3); 21370.13 (RSF-4); 21375 (RMF-1); 21475.09(4) (CC). Approval under the Planned Unit Development

	single family detached range from 1 acre in RSF-R, 18,500 sq. ft. in RSF-1, 12,500 sq. ft. in RSF-2, and 7,000 sq. ft. in RSF-3 and RSF-4. Two-family units require a minimum 6,000 sq. ft. per unit in RSF-4. Single family dwellings are a conditional use in the RMF-1 & 2 districts, with minimum lot sizes of 6,000 sq. ft. and 5,000 sq. ft. Compared to neighboring jurisdictions, Plymouth's minimum lot and design standards would not be a barrier to greater density and affordability of single family and two-family housing somewhere within the jurisdiction.		regulations may allow for more flexibility in terms of lot area, density, lot dimensions, yards, setbacks, location of parking areas and public street frontage than allowed by the underlying zoning. However, the stated intent and criteria considered for the overlay is not to necessarily provide for more affordable housing in the jurisdiction. (*See* Sec. 21655 et seq.)
3a. Does the jurisdiction allow for a mixture of housing types? Does the zoning ordinance fail to provide residential districts where multi-family housing is permitted as of right?	The zoning code contemplates single family, two-family, townhome, manor home, and multifamily units. In the multifamily housing districts, townhome and manor home structures, up to 8 units, are permitted at densities of 5,000 sq. ft. / unit in RMF-1 and 4,500 sq. ft. /unit in RMF-2. In RMF-3, multifamily up to 12 units / building and	2	*See* Sec. 21115.07; 21375.13 (RMF-1); 21380.13 (RMF-2); 21385.13 (RMF-3); 21390.13 (RMF-4); 21395.13 (RMF-5). Efficiency apartment units often may be a source of alternative affordable housing for 1 and 2-person households. The code, however, limits the number of efficiency units which may comprise a multifamily

3b. Do multi-family districts restrict development only to low-density housing types?	townhomes / manor homes up to 12 units / structure are permitted with a min. lot size of 3,000 sq. ft. / unit and a goal density of 10 u/a. In the RMF-4 district, townhomes / manor homes up to 14 units / structure and multifamily is permitted by right with a min. 2,178 sq. ft. / unit and a goal density of greater than 10 units per acre (u/a). Multifamily also is permitted by right in the RMF-5 district, with a min. lot size of 2 acres and a goal of greater than 10 u/a. In the CC-OT & R mixed-use districts, multifamily, townhomes, and attached housing is a conditional use with a goal 20 u/a. Height is limited to 35 ft. in the RMF-1, 2, and 3 districts; 45 ft. in the RMF-4 and CC districts, and 100 ft. in the RMF-5 district. These are generally considered medium density allowances, depending on the jurisdiction and demand.		development, rather than letting the market and regional needs decide. "Except for elderly (senior citizen) housing, the number of efficiency apartments in a multiple family dwelling shall not exceed 10 percent of the total number of apartments. In the case of elderly (senior citizen) housing, efficiency apartments shall not exceed 30 percent of the total number of apartments." (See Sec. 21115.05). The zoning map was not separately analyzed to determine whether enough areas of the jurisdiction are zoned to meet demand for multifamily housing. Other considerations besides density limits have an impact on whether the supply of multifamily housing is affordable housing, like housing prices and rents, market conditions, existing land-use patterns, the provision of public services and infrastructure, design and architectural requirements, impact fees, and other planning goals.

			Multifamily zoning would include public housing. People with disabilities, minorities, African-Americans and Latinos, and low-income households disproportionately rely on multifamily housing.

4a. Are unreasonable restrictions placed on the construction, rental, or occupancy of alternative types of affordable or low-income housing (for example, accessory dwellings or mobile/manufactured homes)? 4b. Are there any regulations requiring that rental units or accessory dwellings only be occupied by blood relatives of the owner?	Accessory dwelling units may be allowed within residential subdivisions that have received preliminary plat approval on or after June 1, 2001 and that include ten (10) or more single-family lots, subject to the approval of an administrative permit. An accessory dwelling unit, subject to administrative permit approval, shall be located above an attached or detached garage that is accessory to a single-family detached home located in the RSF-R, RSF-1, RSF-2, or PUD zoning districts. An additional two off-street parking spaces must be provided for the ADU. Manufactured home parks are conditional uses in the RSF-4, RMF-1, RMF-2, RMF-3, and RMF-4 zoning districts subject to the approval of a conditional use permit. The minimum site area for a home park is 20 acres, and each home lot must be a minimum of 7,800 sq. ft. (65 ft. X 120 ft.). Under the MPA (see Minn. Stat. 462.356, subd. 1b), a	1	*See* Sec. 21190.04 (accessory dwelling units); 21190.03 (manufactured home parks). Minn. Stat. Ch. 327 et seq.; 462.357; Minnesota Rules 4630.0200 - 4630.1700 and 4630.2210 - 4630.4700. Accessory dwelling units are a low-impact form of affordable housing, and this use could be expanded to the other single-family districts. Off-street parking requirements also could be reduced in areas near transit or commercial corridors.

	manufactured home park is by law a conditional use in any zoning district that allows the construction or placement of a building used or intended to be used by two or more families.		
5. Do the jurisdiction's design and construction guidelines create unreasonable or arbitrary barriers to affordable housing, i.e. required building or façade materials, landscape requirements, parking, architectural requirements? 5b. Are the jurisdiction's preservation or environmental protection guidelines arbitrary, antiquated, or unreasonable so as to limit development of affordable housing?	The code's design and construction requirements for residential uses are not overly onerous compared to other jurisdictions in the region. One hindrance, or area for improvement, may be off-street parking regulations. Townhome and manor home units constructed after 7/13/2010 must contain an enclosed, two-vehicle garage with a 400 sq. ft. minimum floor area; must contain two types of façade finishes and paint colors and other design features, and must provide at least 2.5 off-street parking spaces /unit. Structures containing 3 or more dwelling units must provide underground or under principal building parking space. Each apartment unit must provide 2 off-street	2	*See*, Sec. 21115.07; 21135.07, subdivision 5(f), .08(6), .11 (parking); Importantly, developers may request a reduction in off-street parking requirements during site plan review with evidence that demand is less than regulations require.

	parking spaces (regardless of dwelling size), at least one of which is enclosed. For townhomes, manor homes, and single family, driveways may qualify as required off-street parking if certain conditions are met. While all these site and design criteria may have aesthetic and quality of life value, in some cases they may also increase development costs and accordingly impact the ability to keep housing costs affordable.		
6. Does the zoning ordinance include an inclusionary zoning provision or provide any incentives for the development of affordable housing or housing for protected classes? 6b. If so, do the regulations also include mechanisms for maintaining that affordability long term, i.e. deed restrictions, monitoring, etc.? 6c. If so, are the development incentives available in high-opportunity neighborhoods, mixed-income, integrated zoning districts (or limited to low-income, low-opportunity, or historically segregated areas)?	No, the zoning ordinance does not expressly provide density bonuses or other objective development incentives for the development of affordable or low-income housing or housing for protected classes.	3	

Richfield Zoning Review

Average Total Risk Score: **1.67**

Key to Risk Scores:
1 = low risk – the provision poses little risk for discrimination or limitation of fair housing choice, or is an affirmative action that intentionally promotes and/or protects affordable housing and fair housing choice.
2 = medium risk – the provision is neither among the most permissive nor most restrictive; while it could complicate fair housing choice, its effect is not likely to be widespread.
3 = high risk – the provision causes or has potential to result in systematic and widespread housing discrimination or the limitation of fair housing choice, or is an issue where the jurisdiction could take affirmative action to further affordable housing or fair housing choice but has not.

Source Documents:
Appendix B to the Code of Ordinances, ***Zoning Code,*** available at:
https://www.municode.com/library/mn/richfield/codes/code_of_ordinances?nodeId=APXBRIZOCO&searchText=

Richfield Comprehensive Plan (2008-2018), available at:
http://www.cityofrichfield.org/departments/community-development/planning-and-zoning-division/comprehensive-plan

Issue	Conclusion	Risk Score	Comments
1a. Does the jurisdiction's definition of "family" have the effect of preventing unrelated individuals from sharing the same residence? Is the definition unreasonably restrictive?	The City's definition of family is one of the more restrictive in the region, limiting the number of unrelated adults (18 years and older) who may reside together to 3. Two related or unrelated adults plus any children related to either of them is included as part of the definition of family.	2	*See* 507.07(49) (definitions). While the Supreme Court has recognized a local government's right to limit the number of unrelated individuals who may live together as constitutionally permissible, the restriction must be reasonable and not exclude a household which in every sense but a biological one is a single family. An unreasonably, or
1b. Does the definition of "family" discriminate against or treat differently unrelated individuals with disabilities (or members of any other protected class)?	The definition explicitly provides that it shall not be applied so as to		

	"prevent the city from making reasonable accommodation where the city determines it necessary under applicable federal fair housing laws." Otherwise, the City's family definition does not treat persons with disabilities differently *because of* their disability. Housing for persons with disabilities may be included under the separate definitions/ use categories described as licensed "residential care facility," or "housing with services establishment." Residential care facilities and housing with services establishment for six or fewer residents are expressly permitted in the R, R-1, MR-1, MR-2, MR-3 residential districts. State-licensed residential care facility serving 7 to 16 persons are a conditional permit use in the MR-2 and M-3 districts.		arbitrarily, restrictive definition could violate state Due Process and/or the federal FHA as it may have a disproportionate impact on people with disabilities, minorities, and families with children.
2. Do the jurisdiction's zoning and land use rules constitute exclusionary zoning that precludes development of affordable or low-income housing by imposing unreasonable residential design	The zoning code and map provide for three primarily single-family districts (R, R-1, and MR-1). Minimum lot	1	*See* Sec. 512.05; 514.01 et seq. (R); 518.01 et seq. (R-1); 522.01 et seq. (MR-1).

regulations (such as high minimum lot sizes, wide street frontages, large setbacks, low FARs, large minimum building square footage, and/or low maximum building heights)?	sizes range from 6,700 sq. ft. in the R district, 10,000 sq. ft. in R-1, and 6,700 sq. ft. in MR-1. Two-family dwellings are a permitted use in the MR-1 district and a conditional use in the R district. Cluster housing is a conditional use in the R and MR-1 districts, with minimum lot sizes ranging from 2,900 to 4,000 sq. ft. per unit when the density of the development does not exceed the density recommended in the comprehensive plan. The minimum floor area for dwellings in these districts is 960 sq. ft. in R and MR-1 and 1,100 sq. ft. in R-1. Compared to neighboring jurisdictions, the city's minimum lot and design standards overall should not be a barrier to greater density and affordability of single family and two-family/duplex housing within the jurisdiction.		Rezoning approval of a Planned Unit Development may allow for greater density and more flexibility in terms of lot area, lot dimensions, yards, setbacks, location of parking areas etc. than allowed by the underlying zoning in residential and mixed-use districts. However, the stated purpose is not aimed at affordable housing necessarily. Planned district regulations follow the applicable underlying base (or guiding) district. (*See* Sec. 542.01 et seq.)
3a. Does the jurisdiction allow for a mixture of housing types? Does the zoning ordinance fail to provide residential districts where multi-family housing is permitted as of right?	The zoning code contemplates single family, cluster housing, two-family, multifamily, elderly units, and live-work	1	*See* Sec. 512.05; 512.09; 525.01 et seq. (MR-2); 527.01 et seq. (MR-3); 537.01 et seq. (MU).

3b. Do multi-family districts restrict development only to low-density housing types?	units. Multifamily up to 8 units per parcel is permitted by right in the MR-2 district; and multifamily between 9-25 units is a conditional permit use. Height is limited to 35 feet. Multifamily also is permitted by right in the three mixed-use sub-districts (MU-R, MU-C, MU-N). In the MU-R, multifamily is limited to 25% of the total building floor area of a site, but there is no maximum height. In the MU-C district, residential uses cannot exceed 75% of the total building floor area of the site and the maximum height is 12 stories. In the MU-R district, multifamily is limited to 8 stories but no other restriction regarding percentages of residential versus other uses on the site. There are no other specifications regarding minimum site size, density caps, or minimum square footage per unit. The Land Use Plan guides the high density residential and high density residential/office categories for at least 24 units per acre, while the mixed-use		The zoning map was not separately analyzed to determine whether enough areas of the jurisdiction are zoned to meet demand for multifamily housing. Other considerations besides density limits have an impact on whether the supply of multifamily housing is affordable housing, like housing prices and rents, market conditions, existing land-use patterns, the provision of public services and infrastructure, design and architectural requirements, impact fees, and other planning goals. Multifamily zoning would include public housing. People with disabilities, minorities, African-Americans and Latinos, and low-income households disproportionately rely on multifamily housing.

	category is guided for at least 50 units per acre. These standards generally permit development of medium to high densities relative to other jurisdictions.		

4a. Are unreasonable restrictions placed on the construction, rental, or occupancy of alternative types of affordable or low-income housing (for example, accessory dwellings or mobile/manufactured homes)? 4b. Are there any regulations requiring that rental units or accessory dwellings only be occupied by blood relatives of the owner?	Internal, external, and detached accessory dwelling units are a permitted accessory use in the R and R-1 districts following certain conditions. Also, one roomer/ boarder is permitted to reside in the primary dwelling as long as the roomer plus the family does not exceed a total of 5 persons. The zoning code expressly excludes manufactured homes from the R-1 and MR-1 districts, but does not otherwise expressly regulate the siting of manufactured home lots or parks (except regarding floodplains). Under the MPA a manufactured home park is by law a conditional use in any zoning district that allows the construction or placement of a building used or intended to be used by two or more families.	1	*See* Section 514.05(7), (8); 518.05(7), (8). Minn. Stat. Ch. 327 et seq.; 462.357; Minnesota Rules 4630.0200 - 4630.1700 and 4630.2210 - 4630.4700.
5. Do the jurisdiction's design and construction guidelines create unreasonable or arbitrary barriers to affordable housing, i.e. required building or façade materials, landscape requirements, parking, architectural requirements?	The code's design and construction requirements for residential uses are not overly onerous in a way that would negatively impact affordability compared to other jurisdictions	2	*See e.g.*, Sec. 525-17.

5b. Are the jurisdiction's preservation or environmental protection guidelines arbitrary, antiquated, or unreasonable so as to limit development of affordable housing?	in the region, except off-street parking regulations could impact development costs and affordability in some areas by requiring 2 garage spaces per single family dwelling and 2 off-street parking spaces per two-family and cluster housing unit, one of which must be enclosed in a garage. Multifamily also requires two garage spaces per unit (but a reduction may be given by the Council after consideration of factors related to the present or future availability of transit services, shared parking, pedestrian orientation, senior housing, and occupancy characteristics) in the MR-2 and MR-3 districts, and 1.5 spaces in the MU districts. The code also limits the percentage of efficiency units (which generally provide a lower-cost housing option for one and two person families) that may be developed in the MR-2 district by requiring that no more than 20% of the dwelling units in any one		

	building be efficiency dwelling units.		
6. Does the zoning ordinance include an inclusionary zoning provision or provide any incentives for the development of affordable housing or housing for protected classes? 6b. If so, do the regulations also include mechanisms for maintaining that affordability long term, i.e. deed restrictions, monitoring, etc.? 6c. If so, are the development incentives available in high-opportunity neighborhoods, mixed-income, integrated zoning districts (or limited to low-income, low-opportunity, or historically segregated areas)?	The zoning ordinance does not expressly provide density bonuses or other objective development incentives for the development of affordable or low-income housing.	3	

Saint Paul Zoning Review

Average Total Risk Score: **1.67**

Key to Risk Scores:
1 = low risk – the provision poses little risk for discrimination or limitation of fair housing choice, or is an affirmative action that intentionally promotes and/or protects affordable housing and fair housing choice.
2 = medium risk – the provision is neither among the most permissive nor most restrictive; while it could complicate fair housing choice, its effect is not likely to be widespread.
3 = high risk – the provision causes or has potential to result in systematic and widespread housing discrimination or the limitation of fair housing choice, or is an issue where the jurisdiction could take affirmative action to further affordable housing or fair housing choice but has not.

Source Documents:
Title 20 of the Code of Ordinances, ***Zoning Code***, available at: https://www.municode.com/library/mn/st._paul/codes/code_of_ordinances?nodeId=PTIILECO_TITVIIIZOCO

Comprehensive Plan, available at: https://www.stpaul.gov/departments/planning-economic-development/planning/citywide-plans

Issue	Conclusion	Risk Score	Comments
1a. Does the jurisdiction's definition of "family" have the effect of preventing unrelated individuals from sharing the same residence? Is the definition unreasonably restrictive?	The City's definition of family is neither the most restrictive nor the most permissive. It limits the number of unrelated adults and their minor children who may reside together to up to four. There is no stated limit on the number of legal children. *"Family.* One (1) or two (2) persons or parents, with their direct lineal descendants and adopted or legally	2	*See* Sec. 60-207 definitions. While the Supreme Court has recognized a local government's right to limit the number of unrelated individuals who may live together as constitutionally permissible, the restriction must be reasonable and not exclude a household which in every sense but a biological one is a single family. An unreasonably, or

1b. Does the definition of "family" discriminate against or treat differently unrelated individuals with disabilities (or members of any other protected class)?	cared for children (and including the domestic employees thereof) together with not more than two (2) persons not so related, living together in the whole or part of a dwelling comprising a single housekeeping unit. Every additional group of four (4) or fewer persons living in such housekeeping unit shall be considered a separate family for the purpose of this code." The City's family definition does not treat persons with disabilities differently *because of* their disability. Group living is separately regulated (See Sec. 65.161), and the ordinance includes a statement on the FHA's "reasonable accommodation" requirement for persons with disabilities: "[T]these regulations shall not be applied so as to prevent the city from making reasonable accommodation."		arbitrarily, restrictive definition could violate state Due Process and/or the federal FHA as it may have a disproportionate impact on people with disabilities, minorities, and families with children. *See Oxford House v. Town of Babylon*, 819 F. Supp. 1179 (E.D.N.Y. 1993); *City of White Plains v. Ferraioli*, 34 N.Y.2d 300, 357 N.Y.S.2d 449 (1974); *McMinn v. Town of Oyster Bay*, 66 N.Y.2d 544, 498 N.Y.S.2d 128 (1985). *See* Sec. 60-110 (Reasonable Accommodation statement).
2. Do the jurisdiction's zoning and land use rules constitute exclusionary zoning that precludes development of affordable or low-income housing by imposing	The zoning code and map divide the primarily residential districts into 10	1	*See* Sec. 66.230; 66.300; 66.330; 66.331.

unreasonable residential design regulations (such as high minimum lot sizes, wide street frontages, large setbacks, low FARs, large minimum building square footage, and/or low maximum building heights)?	districts of varying densities and housing types. For example, the smallest minimum lot size for single family detached dwellings is 5,000 sq. ft.; 3,000 sq. ft. for two-family units; 2,500 sq. ft. for 3-4 family units; and 800 sq. ft. per unit for multifamily. In most districts the maximum height is 3 stories, but in the RM3 district there is no max. In addition, traditional neighborhood districts are intended to foster the development and growth of compact, pedestrian-oriented urban villages and allow densities of up to 12 u/a for SF; up to 20 u/a for 2F and Townhomes; and FARs of up to 3 for multifamily housing, except there is no maximum FAR in T4. Compared to other jurisdictions in the region, the City's minimum lot and performance standards overall should not be a barrier to greater density and affordability of single family and attached housing within the jurisdiction.		Cluster developments and planned unit developments offer an avenue, with conditional use permit approval, for some greater flexibility in minimum lot sizes and density.

3a. Does the jurisdiction allow for a mixture of housing types? Does the zoning ordinance fail to provide residential districts where multi-family housing is permitted as of right? 3b. Do multi-family districts restrict development only to low-density housing types?	The zoning code contemplates single family, two-family, three-family, four-family, townhomes, and multifamily units. Three- and four-family units and townhomes are permitted by right in the RT2 and RM districts; Multifamily is permitted by right in the RM1, RM2, and RM3 residential districts and in the Traditional Neighborhood districts and B3 and B4 business districts. Density for multifamily in the RM districts ranges from 2,000 sq. ft. per unit to 800 sq. ft./u. Multifamily housing in mixed-use PUD and cluster developments also may be approved following the conditional use permit approval process. In the TN districts, maximum floor area ratios (FAR) range from 0.3 to 3 and maximum height is 35 feet, which allows for low to medium density depending on the jurisdiction. However, in the T4 district there is no maximum FAR and in the B3 and B4 districts, maximum FARs is 8 (with	1	*See* Sec. 65.100 et seq.; 65-143 (mixed residential and commercial uses); 66.221; 65.130 (cluster development). Besides min. sq. ft. per unit and maximum FARs, other factors also limit density and units per lot, including off-street parking requirements, open space requirements, number of bedrooms, maximum heights, minimum dwelling unit sizes, required setbacks, and maximum building coverage. The zoning map was not separately analyzed to determine whether enough areas of the jurisdiction are zoned to meet demand for multifamily housing. Other considerations like housing prices and rents, market conditions, existing land-use patterns, the provision of public services and infrastructure, and other planning goals also have an impact on the quantity of multifamily and affordable housing.

	additional bonuses available) and no maximum height standards. These standards generally permit development of medium to high densities relative to other jurisdictions.		Multifamily zoning would include public housing. People with disabilities, minorities, African-Americans and Latinos, and low-income households disproportionately rely on multifamily housing.

4a. Are unreasonable restrictions placed on the construction, rental, or occupancy of alternative types of affordable or low-income housing (for example, accessory dwellings or mobile/manufactured homes)? 4b. Are there any regulations requiring that rental units or accessory dwellings only be occupied by blood relatives of the owner? No.	Regulations regarding accessory dwellings are neither the most permissive nor most restrictive. Accessory dwelling units may be allowed on 5,000+ sq. ft. lots within 1/2 mile of University Ave between Emerald St and Lexington Pkwy. Total occupancy of the primary dwelling and accessory dwelling cannot exceed the definition of family for a single housekeeping unit. In other districts, accessory dwelling units above a carriage house are a conditional use requiring 2/3 of the neighbors within 100 ft. to consent, additional off-street parking is provided, and a site plan and building plan are approved. The code contemplates conversion of SF dwellings over 9,000 sq. ft. into smaller units with conditional use approval where 2/3 of the neighbors within 100 ft. consent. Under the Minnesota Planning Act, a manufactured home park is by law a conditional use in any zoning district that allows the construction or	1	*See* Sec. 65-121; 65-132; 65-913. Minn. Stat. Ch. 327 et seq.; 462.357; Minnesota Rules 4630.0200 - 4630.1700 and 4630.2210 - 4630.4700.

	placement of a building used or intended to be used by two or more families. There are few specific regulations related to mobile, manufactured, or modular homes in the City's zoning ordinance, rather the city defers to state law.		
5. Do the jurisdiction's design and construction guidelines create unreasonable or arbitrary barriers to affordable housing, i.e. required building or façade materials, landscape requirements, parking, architectural requirements? 5b. Are the jurisdiction's preservation or environmental protection guidelines arbitrary, antiquated, or unreasonable so as to limit development of affordable housing?	The code's design and construction requirements for residential uses are not overly onerous in most aspects in a way that would negatively impact affordability compared to other jurisdictions in the region. However, the Traditional Neighborhood mixed-use districts do have stricter design and construction quality guidelines than other districts. So although more density may be achieved, construction costs also may be higher, which affects affordability. Off-street parking requirements range from 1.5 to 2 spaces per residential unit depending, but the code also includes provisions for reducing required minimums in certain locations or where there is shared parking or bike parking. The B-	2	*See* Sec. 63.110 (Building Design Standards); 63.201; 63.207; 66.343; 63-701.

	4 and B-5 districts and housing built within a quarter mile of University Ave along the Green Line do not have minimum off-street parking requirements.		
6. Does the zoning ordinance include an inclusionary zoning provision or provide any incentives for the development of affordable housing or housing for protected classes? 6b. If so, do the regulations also include mechanisms for maintaining that affordability long term, i.e. deed restrictions, monitoring, etc.? 6c. If so, are the development incentives available in high-opportunity neighborhoods, mixed-income, integrated zoning districts (or limited to low-income, low-opportunity, or historically segregated areas)	No, the zoning ordinance does not expressly provide density bonuses or other development incentives (outside of projects that receive city funding) for the development of affordable or low-income housing or housing for protected classes. The City's current 2030 Comprehensive Plan identifies and encourages implementation of a density bonus incentive policy, but a specific ordinance or policy has not yet been adopted.	3	Although the City does not have in place inclusionary zoning incentives, it has adopted a policy to try to protect the affordable rental housing units that already exist where city-assisted projects may potentially cause a loss in the affordable rental housing supply. *See* Sec. 93.01 et seq. ("Replacement Housing Policy").

St. Louis Park Zoning Review

Average Total Risk Score: **1.50**

Key to Risk Scores:
1 = low risk – the provision poses little risk for discrimination or limitation of fair housing choice, or is an affirmative action that intentionally promotes and/or protects affordable housing and fair housing choice.
2 = medium risk – the provision is neither among the most permissive nor most restrictive; while it could complicate fair housing choice, its effect is not likely to be widespread.
3 = high risk – the provision causes or has potential to result in systematic and widespread housing discrimination or the limitation of fair housing choice, or is an issue where the jurisdiction could take affirmative action to further affordable housing or fair housing choice but has not.

Source Documents:
Chapter 36 of the City Code, ***Zoning Code,*** available at: https://www.stlouispark.org/zoning-code/st-louis-park-zoning-code.html#Zoning_Ordinance

Comprehensive Plan 20130
https://www.stlouispark.org/comprehensive-plan/comprehensive-plan.html

Issue	Conclusion	Risk Score	Comments
1a. Does the jurisdiction's definition of "family" have the effect of preventing unrelated individuals from sharing the same residence? Is the definition unreasonably restrictive?	The City's definition of family is neither the most restrictive nor the most permissive, and limits the number of unrelated individuals who may reside together to 4. *Family*: "…up to four people not so related, living together as a single housekeeping unit. … Any group of people living together as a single housekeeping unit, if no more than two adult members function as the heads	2	*See* 36-4 (definitions). While the Supreme Court has recognized a local government's right to limit the number of unrelated individuals who may live together as constitutionally permissible, the restriction must be reasonable and not exclude a household which in every sense but a biological one is a single family. An unreasonably, or arbitrarily, restrictive definition could violate

	of the household group and the remaining members are dependent upon them for care and direction due to age, physical disability, a mental incompetency or for other reasons."		state Due Process and/or the federal FHA as it may have a disproportionate impact on people with disabilities, minorities, and families with children.
1b. Does the definition of "family" discriminate against or treat differently unrelated individuals with disabilities (or members of any other protected class)?	Persons with disabilities living under the care of the head of household as a single housekeeping unit are included in the definition of family. Otherwise, the City's family definition does not treat persons with disabilities differently *because of* their disability. Housing for persons with disabilities is separately regulated as a "state-licensed residential facility" or "group home." A state-licensed residential facility housing 6 or fewer residents is a permitted use in the R-1, R-2, and R-3 districts, and, in the R-4 and R-C for up to 16 persons. A non-licensed group home may be permitted with conditions in the R-1, R-2, R-3, R-4, and R-C districts.		
2. Do the jurisdiction's zoning and land use rules constitute exclusionary zoning that precludes development of affordable or	The zoning code and map provide for two primarily single-family	1	*See* Sec. 36-163 et seq. (R-1); 36-164 (R-2);

low-income housing by imposing unreasonable residential design regulations (such as high minimum lot sizes, wide street frontages, large setbacks, low FARs, large minimum building square footage, and/or low maximum building heights)?	districts. Minimum lot sizes range from 9,000 sq. ft. in R-1 and 7,200 sq. ft. in R-2 for single family detached homes. Single family also is permitted in the R-3 and R-4 districts, with minimum lot sizes of 7,500 sq. ft. and 8,000 sq. ft., as well as two-family dwellings with minimum lot sizes of 8,000 sq. ft. / unit. In R-4, any parcels which are subdivided for the purpose of creating condominium ownership are permitted provided that the overall density created within all condominium parcels and the common lot do not exceed the maximum density permitted within the zoning district. Compared to other jurisdictions in the region, the city's minimum lot and design standards overall should not be a barrier to greater density and affordability of single family and two-family/duplex housing within the jurisdiction.		36-165 (R-3); 36-166 (R-4). City council zoning approval of a Planned Unit Development may allow for greater density and more flexibility in terms of lot area, lot dimensions, yards, setbacks, location of parking areas etc. than allowed by the underlying zoning in residential and mixed-use districts. A PUD cannot be approved on property guided by the Comprehensive Plan for low density residential development. However, one of the stated goals of the PUD designation is to "encourage an increase in the supply of low-income and moderate-income housing." (*See* Sec. 36-32 et seq.)
3a. Does the jurisdiction allow for a mixture of housing types? Does the zoning ordinance fail to provide residential	The zoning code contemplates single family, cluster housing, two-family,	1	*See* Sec. 36-162; 36-166 et seq. (R-4); 36-167 et seq. (R-C); 36-193 et seq. (C-1); 36-194 et

districts where multi-family housing is permitted as of right? 3b. Do multi-family districts restrict development only to low-density housing types?	multifamily, elderly units, and live-work units. Multifamily units existing prior to Dec. 31, 1992 are a conditional use in the R-3 district, with a maximum density of 11 u/a. Multifamily is a conditional permit use in the R-4 district (maximum density 30 u/a and maximum height of 3 stories). Multifamily is permitted with conditions in the R-C district, with a minimum lot area of15,000 sq. ft.; max density of 50 u/a or FAR of 1.2, and maximum height of 6 stories. Multifamily housing is a conditional use in the C-1 commercial district with a maximum density of 30 u/a. It is permitted in the C-2 district above the ground floor as a part of a commercial district, with a maximum density of 8 u/a. And in the C-2 district, multifamily is a conditional use, with a maximum density of 50 u/a, maximum FAR of 2.0, and maximum height of 3 stories. In C-2, residential uses may comprise a		seq. (C-2); 36-268 et seq. (PUD). The zoning map was not separately analyzed to determine whether enough areas of the jurisdiction are zoned to meet demand for multifamily housing. Other considerations besides density limits have an impact on whether the supply of multifamily housing is affordable housing, like housing prices and rents, market conditions, existing land-use patterns, the provision of public services and infrastructure, design and architectural requirements, impact fees, and other planning goals. Multifamily zoning would include public housing. People with disabilities, minorities, African-Americans and Latinos, and low-income households disproportionately rely on multifamily housing.

	maximum of 30% of the ground floor area of the total development and 100% of the floor area. Multifamily housing also may be developed as a conditional use in the M-X mixed use district at a maximum density of 50 u/a, with a potential 50% bonus where the development meets certain criteria related to parking, placement, etc. Multifamily also may be approved as part of a Planned Unit Development (above the ground floor in a PUD-1 zone A development, PUD-1 zone B, and PUD-3). Under the Comprehensive Plan, high density residential zones should allow for a net residential density range of 20 to 75 units per acre; however zoning will allow only up to 50 units per acre except by utilizing the PUD process. Under a PUD, 75 units per acre may be developed if within 1,000 feet of a park. While these standards generally permit development of high densities relative to other jurisdictions, the conditional use		

	process required for much of it may increase development costs and impact the potential affordability.		
4a. Are unreasonable restrictions placed on the construction, rental, or occupancy of alternative types of affordable or low-income housing (for example, accessory dwellings or mobile/manufactured homes)? 4b. Are there any regulations requiring that rental units or accessory dwellings only be occupied by blood relatives of the owner? N/A	Accessory dwelling units are not a permitted use in any zoning district. The zoning code does not expressly permit mobile/ manufactured homes or home parks nor expressly regulate them except regarding floodplains. Under the MPA a manufactured home park is by law a conditional use in any zoning district that allows the construction or placement of a building used or intended to be used by two or more families.	2	*See* Section 36-162(c)(6). Minn. Stat. Ch. 327 et seq.; 462.357; Minnesota Rules 4630.0200 - 4630.1700 and 4630.2210 - 4630.4700. Accessory dwelling units are a low-impact form of affordable housing, and this use could be expanded to the single-family districts. The code does allow for up to two roomers/boarders in residential zoning districts if the roomers live in the common household with the family and use common cooking and kitchen facilities.
5. Do the jurisdiction's design and construction guidelines create unreasonable or arbitrary barriers to affordable housing, i.e. required building or façade materials, landscape requirements, parking, architectural requirements? 5b. Are the jurisdiction's preservation or environmental protection guidelines arbitrary, antiquated, or unreasonable so as to limit development of affordable housing?	Overall, the code's design and construction requirements for residential uses are not overly onerous in a way that would negatively impact affordability compared to other jurisdictions in the region. However, one major development cost that	2	*See e.g.*, Sec. 36-36 (reimbursement); 36-115 (open space requirements). The city could consider waiving or capping the reimbursement amount for housing which qualifies as affordable.

	the city can control and which, on a case by case basis, may impact the feasibility of developing affordable housing is the zoning code's discretion to require development applicants to reimburse the city for the cost of review, analysis, and evaluation of development proposals, conditional use permits, comprehensive plan amendments, zoning amendments, and enforcement of the ordinance, including attorney fees when necessary for the city attorney to review a proposal.		
6. Does the zoning ordinance include an inclusionary zoning provision or provide any incentives for the development of affordable housing or housing for protected classes? 6b. If so, do the regulations also include mechanisms for maintaining that affordability long term, i.e. deed restrictions, monitoring, etc.? 6c. If so, are the development incentives available in high-opportunity neighborhoods, mixed-income, integrated zoning districts (or limited to low-income, low-opportunity, or historically segregated areas)?	The zoning ordinance does not expressly provide density bonuses or other objective development incentives for the development of affordable or low-income housing. However, the City has adopted a type of inclusionary housing policy which requires that any city-assisted, i.e. financial aid from the city, rental project of 10 units or more to make 8-10% of its units affordable to families	1	*See* Inclusionary Housing Policy, l*ocated at* metrocitiesmn.org The zoning code does provide for "elderly housing" in the R-4, R-C, and C-2 districts as a conditional use, and imposes lower minimum lot sizes per unit and reduced parking requirements for such housing, which allows for development at higher densities.

	making less than $51,960 a year. For-sale developments must include at least 10% of units that are affordable to families making $65,800 or less.		

Woodbury Zoning Review

Average Total Risk Score: **1.83**

Key to Risk Scores:
1 = low risk – the provision poses little risk for discrimination or limitation of fair housing choice, or is an affirmative action that intentionally promotes and/or protects affordable housing and fair housing choice.
2 = medium risk – the provision is neither among the most permissive nor most restrictive; while it could complicate fair housing choice, its effect is not likely to be widespread.
3 = high risk – the provision causes or has potential to result in systematic and widespread housing discrimination or the limitation of fair housing choice, or is an issue where the jurisdiction could take affirmative action to further affordable housing or fair housing choice but has not.

Source Documents:
Chapter 24 of the Code of Ordinances, ***Woodbury Zoning Ordinance,*** available at:
https://www.municode.com/library/mn/woodbury/codes/code_of_ordinances

2030 Comprehensive Plan, available at:
https://www.woodburymn.gov/departments/planning/comprehensive_plan.php

Issue	Conclusion	Risk Score	Comments
1a. Does the jurisdiction's definition of "family" have the effect of preventing unrelated individuals from sharing the same residence? Is the definition unreasonably restrictive?	The City's definition of family is neither the most permissive nor the most restrictive in the region, limiting the number of unrelated persons who may reside together to 4. However, under the definition, two related or unrelated adults and any number of children related to either of them plus one additional individual all sharing a common residence is included as part of the definition of family, which allows more than other	1	*See* 24-4 (definitions). While the Supreme Court has recognized a local government's right to limit the number of unrelated individuals who may live together as constitutionally permissible, the restriction must be reasonable and not exclude a household which in every sense but a biological one is a single family. An unreasonably, or arbitrarily, restrictive definition could violate

1b. Does the definition of "family" discriminate against or treat differently unrelated individuals with disabilities (or members of any other protected class)?	jurisdictions which simply limit the number of unrelated residents to 4. The City's family definition does not treat persons with disabilities differently *because of* their disability. Housing for persons with disabilities, licensed by the state, may be included under the separate definition/ use category described as a "residential care facility." Residential care facilities for six or fewer residents are expressly permitted in the R-1, R-2, and R-4 districts. Facilities serving 7-16 persons are a conditional permit use in the R-1, R-2, and R-4 districts.		state Due Process and/or the federal FHA as it may have a disproportionate impact on people with disabilities, minorities, and families with children.
2. Do the jurisdiction's zoning and land use rules constitute exclusionary zoning that precludes development of affordable or low-income housing by imposing unreasonable residential design regulations (such as high minimum lot sizes, wide street frontages, large setbacks, low FARs, large minimum building square footage, and/or low maximum building heights)?	The zoning code and map provide for three primarily single-family zoning districts (R-1, R-2, and R-4). The R-1 district is a low-density agricultural district with minimum lot sizes of 20 acres. (A minor subdivision may be approved on 3-5 acres of the original 20-acre plot). The R-2 district is a low-density estate district	2	*See* Sec. 24-132 (R-1); 24-133 (R-2), 24-134 (R-4); 24-147 (MX). Rezoning approval of a Planned Unit Development may allow for greater density and more flexibility in terms of lot area, lot dimensions, yards, setbacks, location of parking areas etc. than allowed by the underlying

	with minimum lot sizes for single family detached dwellings of 3 acres. Planned Uniform Developments (PUD) and cluster homes as part of a PUD may be approved by conditional use permit permitting more flexibility in site design. In the R-4 urban residential district, a platted single family detached home may be permitted on a 10,000 sq. ft. minimum lot size (with a 4,000 sq. ft. minimum buildable area). Single family attached dwellings may be approved by conditional use permit with a minimum lot size of 6,000 sq. ft. / unit for a duplex and 4,500 sq. ft. / unit for a townhome or quadplex. A small density bonus of 2-3 u/a may be granted in the R-4 district for an approved PUD that allots affordable housing units. However, compared to neighboring jurisdictions, the city's minimum lot and design standards could be a barrier to greater density and affordability of single family detached and		zoning in residential and mixed-use districts. One of the stated purposes is to facilitate development of affordable housing. The maximum number of dwelling units allowed should not exceed the base density except that density bonuses may be given if the project meets objectives in the Comprehensive Plan, including but not limited to provision of affordable housing. (*See* Sec. 24.201 et seq.)

	attached (duplex, townhome, quad) housing within the jurisdiction.		
3a. Does the jurisdiction allow for a mixture of housing types? Does the zoning ordinance fail to provide residential districts where multi-family housing is permitted as of right? 3b. Do multi-family districts restrict development only to low-density housing types?	The zoning code contemplates single family detached; cluster housing; single family attached duplex, townhome, and quad homes; and multifamily units. All apartments and other multiple-family dwellings require a conditional use permit subject to the zoning review procedures and standards. With a CUP approval, multifamily housing may be developed in the R-4, MX (mixed-use), and CC (City Center) districts. Minimum lot sizes per unit are based on the number of bedrooms: 2,300 sq. ft. / efficiency unit; 2,925 sq. ft. /1 bedroom unit; 3,600 sq. ft. / 2 br unit; 4,275 sq. ft. / 3 br unit. Maximum height allowances are 3 stories in R-4, 6 stories in MX, and 75 ft. in the CC district. These standards result in a base zoning of 2-3.5 u/a in low density mixed-use residential areas; 4.5-8 u/a in medium density residential areas; 8-10	2	*See* Sec. 24-134 et seq. (R-4); 24-146 et seq. (CC); 24-147 et seq. (MX); 24-201 et seq. (PUD); 24-309. The zoning map was not separately analyzed to determine whether enough areas of the jurisdiction are zoned to meet demand for multifamily housing. Other considerations besides density limits have an impact on whether the supply of multifamily housing is affordable housing, like housing prices and rents, market conditions, existing land-use patterns, the provision of public services and infrastructure, design and architectural requirements, impact fees, and other planning goals. Multifamily zoning would include public housing. People with disabilities, minorities, African-Americans and Latinos, and low-income households disproportionately rely on multifamily housing.

	u/a in the Urban Village; and 10-15 u/a in the high density mixed-use areas. Additional density up to 3 u/a above the base density in the comprehensive plan may be allowed using a density bonus at the city's sole discretion through an approved planned unit development where the development meets criteria related to underground parking, minimum unit square footage, additional open space, landscaping, and affordable housing. These standards generally permit development of low to medium densities relative to other jurisdictions and because they also require the CUP approval process which increases development costs, may impede the potential for developing affordable housing within the City.		

4a. Are unreasonable restrictions placed on the construction, rental, or occupancy of alternative types of affordable or low-income housing (for example, accessory dwellings or mobile/manufactured homes)? 4b. Are there any regulations requiring that rental units or accessory dwellings only be occupied by blood relatives of the owner? N/A	Accessory dwelling units are prohibited in the jurisdiction Permanent manufactured homes may be permitted in an established manufactured home park approved by special use permit with a minimum lot size of 6,000 sq. ft. (100 ft. deep X 60 ft. wide) per unit. Under the MPA a manufactured home park is by law a conditional use in any zoning district that allows the construction or placement of a building used or intended to be used by two or more families.	2	*See* Sec. 24-233; 12-1 et seq. (Manufactured home). Minn. Stat. Ch. 327 et seq.; 462.357; Minnesota Rules 4630.0200 - 4630.1700 and 4630.2210 - 4630.4700. Accessory dwelling units are a low-impact form of affordable housing, and this use could be expanded to the single-family districts.
5. Do the jurisdiction's design and construction guidelines create unreasonable or arbitrary barriers to affordable housing, i.e. required building or façade materials, landscape requirements, parking, architectural requirements? 5b. Are the jurisdiction's preservation or environmental protection guidelines arbitrary, antiquated, or unreasonable so as to limit development of affordable housing?	The code's design and construction requirements for residential uses are not overly onerous in most aspects in a way that would negatively impact affordability compared to other jurisdictions in the region. However, one area that does increase development costs, and therefore affordability, is the jurisdiction's off-street parking requirements. Single family and duplex housing must provide 3 off-street	2	*See e.g.*, Sec. 24-242 (required parking).

	spaces per unit. Other single family attached dwellings must include 3 spaces / unit plus 1 additional guest parking space per 5 units. Multifamily dwellings must include 2.5 spaces per unit, which may be reduced to 2 / unit if one of the spaces is in an underground garage. Elderly housing must provide 2 spaces per unit. There are no provisions for shared parking or reduced parking based on actual need per unit, feasibility of shared parking, access to public parking and public transportation, etc.		
6. Does the zoning ordinance include an inclusionary zoning provision or provide any incentives for the development of affordable housing or housing for protected classes? 6b. If so, do the regulations also include mechanisms for maintaining that affordability long term, i.e. deed restrictions, monitoring, etc.? 6c. If so, are the development incentives available in high-opportunity neighborhoods, mixed-income, integrated zoning districts (or limited to low-income, low-opportunity, or historically segregated areas)?	The zoning ordinance in conjunction with the Comprehensive Plan may provide a small density bonus incentive for the development of affordable housing as part of a Planned Unit Development rezoning. Table 4-2 of the Comprehensive Plan shows the eligible density bonus for urban residential land use categories, which at most may allow an additional 3 u/a in the "High Density Residential and Mixed	2	*See* Sec. 24-205 (PUD). Land Use and Housing chapters of the Comprehensive Plan; Table 4-2 of the Comprehensive Plan.

	Use" area for a maximum allowable density of 18 u/a. The zoning code, however, lacks specificity as to objective criteria which triggers a density bonus and lacks a means of ensuring that affordable units remain affordable (for example, by deed restrictions).		

Public Comments Received

The following comments were received by the FHIC during the public comment period on the draft Addendum to the 2014 Regional AI.

Public Meeting Comments
Minneapolis Urban League Glover-Suddeth Center
March 15, 2017

- The difference in homeownership rates between core cities and the suburbs is the result of redlining or other historical patterns.
- With regard to fair housing information and fair access to information about the community, accessibility for people with disabilities is important: sign language interpreters, Braille, using bigger print.
- Planning should involve all the people – including children, especially for playground design.
- Nice sidewalks with benches are important community resources for people with disabilities or others who would like to rest as they walk.
- Reality is that racism and discrimination do play a role in housing and the challenge is to have a plan with the teeth to get something done to address this. For example, if zoning variances are tired to affordability, there needs to be teeth to them to reach households at 30% AMI versus 60% or 80% AMI. Need meaningful plan of action and not platitudes.
- There needs to be a longstanding commitment to maintaining affordability to prevent flipping; should be a stipulation to commit to affordable housing that stays in place for 30 years, even if property is sold.
- Community land trust model is good at achieving longer-term affordability (ex: San Francisco requires 55-year affordability period).
- Funding is a big issue, but there are things individual communities can and should do to increase funding for affordable housing without new tools. They can all use a HRA levy, their general fund, and property tax levy to fund affordable housing.
- Community college construction programs may be a good partner for building affordable housing.
- It would be helpful to list out all the Minnesota Challenge recommendations.
- Green housing/energy efficiency would help with affordability:
    - Incentivizing alternate energy sources
    - Retrofitting homes to keep utility and energy costs down helps with longer term affordability
    - Urban gardening
    - Rainwater recapture
- Zoning for large lots outside the MUSA shouldn't be penalized.

Public Meeting Comments
Saint Paul Rondo Library Community Room
March 16, 2017

- What the City [of Saint Paul] sees as things being done "FOR us," the community sees as things being done "TO us." The City sometimes serves the community by putting low-income housing in, but they don't enrich the community. The community has seen resources come in, but they don't stay here. The City's policies that bring money in and then enrich certain individuals but not the community itself are impediments. The audit provides a lot of data about low-income persons but not data saying how much money was spent and how much was retained in our community.

  Title VI says the community needs to have access to economic opportunities, but the City and Met Council haven't been in compliance with Section 3 requirements for the HUD program. There's nothing in this audit that says Met Council is in violation of Title VI, but a 2013 audit shows that Met Council is in non-compliance.

  The community wants self-sufficiency, which means that it needs access to the economic opportunities that are being generated. There's nothing in this audit about the Quid Pro Quo with Saint Paul [and HUD], the congressional hearing, and an examination of what Saint Paul did to get away from its violations. Saint Paul was considered one of the one of the egregious violators of the Fair Housing Act in 2011 by HUD and DOJ. HUD wrote up a memo and was ready to come in, but then the City got out from under prosecution for these violations, and no one from HUD or DOJ ever came back to look at the disparate impact on the community.

  The Mayor recognized and apologized for the impact on the community but the Human Rights Commission and the Human Rights director downtown never filed a complaint on the community's behalf. If that is intentional, it's a discriminatory act and a violation of civil rights.

  The community has a complaint before HUD and DOJ, but because of the Quid Pro Quo, it's not listed here. The City of Saint Paul was found to be a violator of the Fair Housing Act, but six months later, was granted by HUD to be a fair housing investigator. Going from being a violator to an investigator is a slap in the face to the people of the city. How can the community trust the City when they gave unfair information to HUD.

  There's a lot of things that need to be in this audit. It seems as a way of the City saying to HUD that we need more money. But they have never historically provided the economic opportunities that they should have. They violated certain rules and when we file complaints over it, they get out from under it and continue to get more money. Someone else gets richer, while we remain poor, and that's what I see we need to follow through in this AI.

- We saw this happen with the HUD programs, where folks are working together and some contractors are being babysat and given contracts at the exclusion of others. They are conspiratorial and give certain contractors money. I've seen this from personal experience, but people just stay blind to it.

- Preserving existing affordable housing is an important focus for affordable housing, and he represents owners of existing affordable units – typically, single-family, duplex, triplex, four-plex homes with a large number of bedrooms in older areas of town – often mom & pop owners, predominantly white but also Black and Asian. The largest percentage of occupants are families, minority families, with children, which meets the Fair Housing Act definition of protected class. They're now going into their 13th year of federal lawsuits, including the *Magner v. Gallagher* case which was referenced in the 2014 AI. It's the most significant case challenging the City of Saint Paul and its codes and policies. That case wasn't dismissed by the Supreme Court, but the appeal was withdrawn by the City of Saint Paul. The landlords are still before the federal district court in Minnesota awaiting trial. The status of these cases should be identified and update in the Addendum.

  The significant cases related to state and local building codes, particularly cases from 2008 and the 2012 case against the City of Saint Paul for its egress window policy. Those two state cases restricted the city's ability to have higher code standards, housing and maintenance code standards, and nuisance standards for older homes. That affects the preservation of existing homes and leads to fair housing violations through disparate impact. Any policy by a private company, private individual or public sector agency/government that has a disproportionate impact is illegal. The MICAH complaint from November 2014 and March 2015 said that cities were illegally steering housing tax credits to the inner city and that there was the overconcentration of poverty and also minority concentration, and it needed to be disbursed.

  Many HUD complaints have been filed over the past 12 years. For example, the Missionary Baptist Church members have been unable to find affordable housing in the existing community but HUD refused to accept. The City of Minneapolis has a policy that makes it harder and more expensive to rent single-family homes, which disproportionately affects Black people. You have come in just like the last contractor in 2009 from the west coast, and are not privy to what is happening in the community unless someone tells you. There is a gap between well-defined problems historically, like I-94 and the break-up of the Black community, and what I'm talking about in the last 15 or 20 years. Is *Raven Financial v. Saint Paul* still going to be investigated too so that it can be conciliated? Those things from the community need to be in this Addendum, because they're not in the 2014 AI. If you don't have the information, it's hard for the community to really understand what's going on. We're all for building new housing, but existing

housing is the most important thing, and it's being targeted and that's what these complaints and lawsuits are about.

- City of Saint Paul is finally admitting that they are changing their codes to reflect state codes. We need more of that and Minneapolis should as well.

- It's important to say that there are a number of complaints that have been filed that have not been investigated – civil rights complaints – that are sitting on the table and we can't seem to get anyone from HUD to investigate. HUD is a prime perpetrator.

- Fair lending and homeownership was touched on in the addendum, but hardly touched on in terms of recommendations. I have 19 additional recommendations (provided in writing). Along with the Section 3 comments, one of the ways that homeownership becomes affordable is if people have jobs and businesses that would support them and their families. I would make that recommendation 20: that Section 3 rules be enforced to ensure that business and jobs go to people in these communities.

Public Meeting Comments
Dakota County Community Development Agency
March 16, 2017

- Myron Orfield, Professor, University of MN – The addendum is too vague and doesn't address how to fix any of the issues in affordable housing. It ignores knowledge from local sources. The addendum is too vague and he has several issues to address with MOSAIC. Big developers aren't complying with the Civil Rights Act of 1964.
- Skip Neinhaus, City of Burnsville – Regarding recommendation 15, how can we make these changes when we are already at capacity as far as development? Jeremey stated that perhaps all the recommendations won't apply to Burnsville.
- Maggie stated that this is regarding standard housing, not PUD, to clarify.
- Jill Hutmacher, City of Eagan – Also has concerns, will submit comments.
- Dave Olson, City of Lakeville – Will be responding after city planners meeting next week.
- Lisa Alfson, Dakota County CDA – clarified that 75% of the CDBG funds goes to the cities, and the CDA helps them allocate the funds.
- John Hinzman, city of Hastings – New development is heavily emphasized by the Met Council, not so much emphasis on existing housing.
- Myron and Will Stancil, U of M, stated that the addendum doesn't take into account existing housing. Will also stated that gentrification needs to be more defined in the document: what it means, and where it exists.
- Will further stated that he had 4 main points:
    - Use the data, not anecdotes.
    - Be specific on where gentrification is happening.
    - Gentrification and displacement are not the same thing.
    - Use empirical data to describe the scale of the problem.
- Myron expressed concerns that some of the bigger developers – Dominium in particular – were violating civil rights by not following HUD regulations, and this should be addressed. He further stated that HUD rules require MOSAIC to address each claim in the addendum.
- Will stated that it would be helpful if the document broke down each communities' feedback by what neighborhood and cultural group has concerns.
- Tim Bennetti, city of Mendota Heights – Does Dakota County have any ideas that could help?
- Dave stated that more federal funds would help in the implementation of the report's recommendations.
- Jill stated that tax credit rules have hindered attempts to create more mixed-income neighborhoods.
- Myron stated that having high density housing creates pockets of poverty; therefore, scattered site housing is a much better option. Rules in financing should change to get more tax credits.

AIFC Comments on Draft of RAI Addendum

Community Engagement:

1. More attention should be given to the issue of transportation in housing choice. All our respondents made a connection between having a vehicle and having freedom to choose where you live. The general consensus was that if you don't own your vehicle (along with license, registration, and insurance) then you are dependent on public transportation and have to live in the central urban area.

Equity Assessment:

No comments.

Recommendations:

1. Recommendations are all good ideas. These recommendations specifically resonate for our population base: 3, 4, 6, 8, 12, 17, 22, 25, 26, 31, 35, 36, 40, 44
2. One issue that I heard a lot about was the level of difficulty in finding housing specifically due to histories of criminal activity and unlawful detainers, no matter how long ago or where those offenses occurred, or even if they were found to be valid. I don't see any recommendations that address this strongly enough!
3. Recommendations should be more specific as to not just who is responsible, but how accountability will be ensured.
4. It is important to specifically name ways that HUD has not worked effectively to counter systemic racism and oppression toward communities of color. For example, when American Indian people were moved to the cities as part of a federal relocation program, there arose a need for culturally-specific affordable housing that was unable to be met because of fair housing laws. Inflexibility around policies and unreasonable requirements for housing assistance programs are a means of keeping oppressed populations down and preventing opportunity for success by promoting dependence on the government. Our people have always had to answer to the government just to survive, and it's time to start listening to their demand that "housing is a human right". No one should have to "qualify" for survival in this country.

From: FREDRICK <fmrrsbs@msn.com>
Sent: Monday, April 3, 2017 4:47 PM
To: Alyssa.Wetzel-Moore@ci.stpaul.mn.us
Cc: John Shoemaker; Munir, Rafiq A; nasi
Subject: Re: AI Addendum Comments - Please Acknowledge Receipt

The Access Group

501 North Dale Street, St. Paul, MN 55103

April 3, 2017

Comment to the Fair Housing Implementation Council (FHIC) proposed Addendum to the 2014 Analysis of Impediments to Fair Housing Choice.

The following presentation/comments being submitted to the FHIC is designed to highlight the failure of the AI and its Addendum to properly inform the community and all other interested parties of the impediments to fair housing choice in the metropolitan area.

HUD defines "impediments to fair housing choice" as any actions, omissions, or decisions taken **because of race, color**, religion, sex, disability, familial status, or national origin which **restrict** housing choices or the availability of housing choices or, any actions, omissions or decisions which **have the effect of restricting** housing choices, or the availability of housing choices on the **basis of race, color**, religion, sex, disability, familial status, or national origin.

As presented, HUD's definition of impediments includes actions, omissions and decisions that have a disparate impact and/or result in disparate treatment upon protected class citizens. As such, the Analysis of Impediment and the subsequent Addendum should record and examine all known actions and reports that the community have generated for the purpose of studying or highlighting the impact of policies, actions and decisions that have caused disparate conditions or attempted to resolve the disparate conditions facing the Black Community of the metropolitan area, and state as a whole.

The comments presented in this document are based on publically disclosed accounts of actions, omissions and/or decisions that, by all accounts, have drastically

affected the efforts of the Black community, specifically members of the protected class, to overcome the disparate conditions they face. The disparate conditions have been well documented but the efforts of this community to over-come these conditions through litigation, administrative complaints, political outreach and so forth have been unaddressed in the previous Analysis of Impediments or the present drafted Addendum.

By example - Within the State Human Right laws, provisions such as M.S. 363A.06.8 grant the Human Rights Commissioner authority to take reactive and proactive actions designed to remedy the effects of such unfair discriminatory practices. Accordingly, the efforts of the State Human Rights Commissioner and/or the local Human Rights Directors to remedy the effects of known unfair discriminatory practices against members of certain protected classes have gone unaddressed and have not been reviewed as an impediment to fair housing choice by the AI or the Addendum. This AI Addendum must clearly inform the community and all interested parties of the plight, cause and proposed remedies implemented by all parties.

As of January 30, 2017, less than two weeks before the release of the independent audit, the Governor of the State of Minnesota rehearsed the State of the Union speech before the State Legislature. Despite the evident findings of civil rights violations in the draft version of the audit and the ready to be released version of the audit, the Governor's speech made no mention of the disparate conditions and findings of lack of inclusion or access to economic opportunities suffered by the State's Black communities. The Speech made no reference to the 2015 findings echoed by the Wall Street Journal, heralding the State of Minnesota as the 2nd worst state for Black citizens to live and proper. Neither did the report echo or build upon the previous years finding that the Twin Cities maintained the highest disparity of unemployment between White and Black citizens of any municipality.

We call upon the FHIC to include all evidence of disparity related to fair housing choice, including evidence of **fair housing impediments in areas such** as sales and rental of housing, lending, **employment,** education, social services, transportation, law enforcement, and land use laws.

State Audit of the Administrative application of
On February 13, 2017, the audit, released by the independent auditors, revealed that the State of Minnesota and many of its local units of government are in violation of Title VI of the Civil Rights Laws of 1964 and in noncompliance with

Section 3 of the HUD Act of 1968. Evidence submitted to the independent state auditors revealed that the Metropolitan Council is in noncompliance with the Section 3 and potentially liable for filing false certification material to receiving federal financial assistance. (See the Audit of HUD's oversight of Section 3 of the Housing and Urban Development Act of 1968 for public housing authorities for Recovery Act funds in 2011, Audit Report Number 2013-KC-0002, and the list of 1,650 identified housing authorities – provided with this document)

Intentional Discrimination – Construction of I-94

In the summer of 2015, the Honorable Christopher Coleman - Mayor of the City of St. Paul, acknowledged the discriminatory actions of the federal, state and local government to intentionally divert the building of the Interstate 94 freeway through the heart of the Rondo Community in the 1950. Mayor Coleman publicly apologized for the intentional actions of the City of St. Paul and State of Minnesota to divert the construction of the Interstate 94 freeway through the heart of the then thriving Black community. As stated by Mayor Coleman, in the 1950's this act destroyed over 300 Black-owned business and 600 Black-owned homes. The Black community was splintered.

In the 50's, during an era of systemic racial discrimination, business and home ownership were great achievement for Blacks, and should have served as a catalyst for other Black businesses, Black-owned developments. The financial base of this Black Community was totally destroyed and the disparate impact of this decision is still reverberating through the Black community of St. Paul today.

The July 15, 2015 declaration and apology by Mayor Chris Coleman should have served as impetus for federal, state and local governments to investigate the civil rights violations against the protected-class Black community of St. Paul. It should have become the lens through which the government viewed and shaped policies designed to redress the disparate conditions facing the Black "protected class" people of Minnesota.

Mayor Coleman stated that as a result of this intentional discriminatory act, the Rondo Community remains a diaspora within the City of St. Paul to this day. The economic impact of this act is clearly reflected by the fact that St. Paul and Minneapolis has the highest disparity in unemployment between Whites and Blacks nationally. The consequence of such unfair discriminatory practices is also found in the findings that "*Minnesota is the 2nd worst State for Blacks*" to live and prosper.

Three years prior to Mayor Chris Coleman's magnanimous apology regarding the discriminatory policy and practice of the federal, state and local government of the 1950's, Mayor Coleman and certain elements of the federal, state and local government implemented unfair discriminatory practices that were contrary to the public laws of the State. The unfair discriminatory policies and practices implemented by the government in the *2012 Quid Pro Quo with St. Paul* released the City of St. Paul from prosecution of what the Department of Justice referred to as "egregious" violations for denying economic opportunities to "protected class" Blacks and other low-income persons and for violating the Fair Housing Act. The *Quid Pro Quo with St. Paul* traded away the business and employment opportunities that Black "*protected class*" citizens of St. Paul rightfully sought. The deal traded away the jobs, economic benefits and legal civil rights protection provided to "*protected class citizens*" by the U. S. Congress as a remedy for the poverty, police brutality and rioting afflicting our communities.

The AI and the Addendum have failed to review the Human Rights Commissioner's response and/or actions according to the duty of his/her office to investigate unfair discriminatory practices, as publically acknowledged perspectively by Mayor Coleman and the United States Congress.

The Quid Pro Quo with St. Paul

The AI must include a review of the public records regarding the Quid Pro Quo with St. Paul ("quid pro quo") wherein HUD and DOJ leveraged the False Claims ("qui tam") cases *Newell v. City of St. Paul* and *Ellis et al. v. City of Minneapolis, et al*. as blandishment to persuade the City of St. Paul to withdraw the *Magner v. Gallagher Case* from the U.S. Supreme Court docket. Many of the details of the *quid pro quo* are a matter of public record, namely the Congressional Oversight Committee on Government Reform Joint Staff Report dated April 15, 2013 entitled "DOJ's Quid Pro Quo with St. Paul: How Assistant Attorney General Thomas Perez Manipulated Justice and Ignored the Rule of Law.

The Joint Staff Report highlighted clear evidence of the unfair discriminatory nature of decisions, policies and practices of the City of St. Paul, the Department of Justice and the Department of Housing and Urban Development to leverage the efforts of the low-income community, particularly members of a certain protected class, to gain access to economic opportunities directed by Congress. These actions, omissions and decisions have had the effect of restricting housing choices, and/or the availability of housing choices on the **basis of race, color**, religion, sex, disability, familial status, or national origin.

The Joint Staff Report provides evidence of how the Mayor and City Administration worked in contradiction to the interest of the Black and low-income community. According to evidence revealed in the Joint Report, DOJ determined – among other practices - that the City -

- Based on the 2011 MNUSAO Intervention Memo *U.S. ex rel. Newell v. City of St. Paul Case No 09-SC-001177* - HUD and DOJ Intervention Memo determination of false certifying by the City of St. Paul.
- The City of St. Paul misrepresented the 2007 Hall Audit before HUD in contradiction to the interest of the Black Community – according to the following quote by a HUD staffer reported in the Joint Staff Report - *"the City's 'position paper' setting forth reasons why the City thinks the Govt should decline to intervene. Among other things, the City references the Hall audit's review of its VOP, but says nothing other than: 'overall, the results were largely positive.'* ***This is just not true****".*
- HUD's subsequent actions to use the aforementioned City's position paper as validation for declining to prosecute the City for "egregious violations" of the fair housing act (false certifications) and Section 3 noncompliance are policies, practices and decisions that have had a disparate impact on the Black community of St. Paul.
- HUD's violation of the terms of the 2010 Section 3 VCA between HUD and the City of St. Paul - which states that the VCA cannot *release the City of St. Paul from the claims, damages, penalties, issues, assessments, disputes or demands arising under the False Claims Act, 31 U.S.C. sections 3729 to 3733* - was evidenced in HUD's 2011 declination recommendation for qui tam case *Newell v. City of St. Paul* by using the VCA as leverage to release and/or offset the qui tam case.
- According to minutes/notes taken during a meeting between the City of St. Paul Administrators and HUD staff, found on page 76 and rehearsed by others on page 87 of the Report's Congressional Documents, the City of St. Paul proposed to withdraw the Magner v. Gallagher case from the U.S. Supreme Court if "*all matters with HUD can be withdrawn*". This request for amnesty from the number of egregious violations against the protected class citizens of St. Paul in violation of their civil rights is a clear violation of the trust of the Black community of fair practices, and undiscriminating policies. Based on the future actions of HUD and the City of St. Paul, this condition was granted – a clear discriminatory practice.

Subsequent to the finding of the Joint Staff Report, HUD actions in connection with the Quid Pro Quo, including but not limited to:

- Partnered with the City of St. Paul in 2012 by granting St. Paul authority to investigate fair housing violations in spite of *Newell v. City of St. Paul*, *Magner v. Gallagher* and *Ellis et al. v. City of Minneapolis, St. Paul et al*, on-going fair housing litigations against the City evidencing the City's high risk factor for violating the civil rights of its protected class citizens. This is contrary to HUD policy for eligible and authorized FHIP/FHAP agencies.

HUD declining to investigate numerous civil rights complaints against the City of St. Paul including but not limited to:

Based on the August 19, 2010 memorandum from Thomas E. Perez, Assistant Attorney General to Federal Funding Agency Civil Rights Directors, the filing of false certifications by a fund recipient is potential evidence of Title VI violations.

- DOJ and HUD determined, based on the 2011 MNUSAO Intervention Memo *U.S. ex rel. Newell v. City of St. Paul Case No 09-SC-001177* , that the City of St. Paul had filed false certifications in order to receive Section 3 covered funds. DOJ and HUD leveraged the qui tam case to induce the City of St. Paul to withdraw the appeal of the Magner v. Gallagher Case from before the U.S. Supreme Court. DOJ and HUD did not investigate the City of St. Paul for Title VI and other applicable civil right laws.
- The HUD Office of Inspector General 2013 Audit Report, Audit No. 2013-KC-0002 found that the State of Minnesota Metropolitan Council were in noncompliance and had potentially filed false certifications to receive Section 3 covered funds. Despite a petition for enforcement submitted to HUD by the Access Group, the Minnesota-Iowa Baptist Conference and two other national organizations, DOJ and HUD refused to investigate further violations of Title VI and other applicable civil right laws. HUD refused to require the Metropolitan Council to return the loss economic opportunities to the low-income community, particularly members of the protected class.
- HUD's acknowledgement of filing Raven Financial, LLC's vs. St. Paul, et al., (a) housing discrimination complaint under Title VIII, federal funding complaint under Title VI. Complaint delivered to HUD in November 2013, and yet to date, HUD has declined/failed to investigate the civil rights violations.

- HUD's acknowledgement of filing Bee and Lamena Vue's vs. St. Paul, et al., (a) housing discrimination complaint under Title VIII, federal funding complaint under Title VI. Complaint delivered to HUD in September 2014, and yet to date, HUD has declined/failed to investigate the civil rights violations.

The Interstate 94 construction and the Quid Pro Quo with St. Paul, have served to deny the Black "protected class" community of St. Paul of great economic opportunities and great development. As a result of unfair discriminatory practices such as these, the resulting disparate conditions facing the Black "protected class" are – inequity in policing practices, an unemployment rate unparalleled in comparison to Whites within the Twin Cities and living status that is the 2nd worst in the nation.

The following is a short list of issues that have been raised before HUD regarding the disparate conditions facing the Black Community of the Twin Cities, along with noted documentation supporting the allegations.

- HUD and DOJ were made apprised of the disparity suffered by the low-income community of St. Paul, particularly members of a certain protected class (See 2009 Letter from Aztec Jacobs; attached document entitled "Disparity in St. Paul")
- The noncompliance of the State of Minnesota with a federal program, a clear violation of Title VI of the Civil Rights Act of 1964 and risk of further civil rights violations. (see Audit of HUD's oversight of Section 3 of the Housing and Urban Development Act of 1968 for public housing authorities for Recovery Act funds in 2011, Audit Report Number 2013-KC-0002 –Your Freedom of Information Act Request 13-IGF-OIG-00109-PHAs that did not submit a report-2; Title VI of the Civil Rights Act, 42 U.S.C. Part 2000(d))
- The 2009 Limited Compliance Review determined the noncompliance of the City of St. Paul with a federal program, a clear violation of Title VI of the Civil Rights Act of 1964 and risk of further civil rights violations. (see Section 3 Determination Letter-St. Paul; Title VI of the Civil Rights Act, 42 U.S.C. Part 2000(d); *HUD* Compliance Review Guidelines)
- The State of Minnesota's receipt of federal financial assistance by submitting false assurance which is potential evidence of other civil rights violations. (see Audit of HUD's oversight of Section 3 of the Housing and Urban Development Act of 1968 for public housing authorities for Recovery

Act funds in 2011, Audit Report Number 2013-KC-0002 –Your Freedom of Information Act Request 13-IGF-OIG-00109-PHAs that did not submit a report-2; Title VI of the Civil Rights Act, 42 U.S.C. Part 2000(d*)*); August 19, 2010 Memorandum from Thomas Perez, Assistant Attorney General to Federal Funding Agency Civil Rights Directors;

- The City of St. Paul's receipt of federal financial assistance by submitting false assurance which is potential evidence of other civil rights violations. (See Congressional Oversight Committee on Government Reform Joint Staff Report dated April 15, 2013 entitled "DOJ's Quid Pro Quo with St. Paul: How Assistant Attorney General Thomas Perez Manipulated Justice and Ignored the Rule of Law…Congressional Document - Department of Justice Intervention Memo *U.S. ex rel. Newell v. City of St. Paul Case No 09-SC-001177* ; August 19, 2010 Memorandum from Thomas Perez, Assistant Attorney General to Federal Funding Agency Civil Rights Directors – Title VI Memo attached)
- The failure of the federal government to investigate civil rights violations (see DOJ letter Dated June 2015; attached document entitled " Connecting Title VI, Section 109 and Section 3 to Staci Gilliam", dated 9-15-15)
- The failure of the federal government to enforce federal statutes and regulations, e.g. Title VI of the Civil Rights Act, 42 U.S.C. Part 2000(d*);* 24 CFR Part 570. (see HUD OIG (Fredrick Newell and related Newell entities/ St. Paul, Minnesota/Section 3 Complaints/2013 HUG OIG Complaint – 2013-E-HQ-02983; HUD Response to Fredrick Newell OIG Complaint, dated March 7, 2014; HUD OIG Complaint Response Letter from Assistant Deputy Secretary Sara Pratt dated October 8, 2014; The Access Group Section 3 Petition Response dated May 1, 2014)
- The Department of Justice and HUD used the 2010 Voluntary Compliance Agreement (VCA) between HUD and the City of St. Paul to release the City of St. Paul from the *claims, damages, penalties, issues, assessments, disputes or demands arising under the False Claims Act, 31 U.S.C. sections 3729 to 3733* as presented in the qui tam case *Newell v. City of St. Paul* in violation of the terms of the VCA. (See Congressional Oversight Committee on Government Reform Joint Staff Report dated April 15, 2013 entitled "DOJ's Quid Pro Quo with St. Paul: How Assistant Attorney General Thomas Perez Manipulated Justice and Ignored the Rule of Law…Congressional Document; 2010 Section 3 VCA between HUD and City of St. Paul;
- The federal government's dismissal of a petition submitted to the funding agency by member of the Black Community and low-income community requesting enforcement of the federal statute and promulgated regulations in

accordance Title VI of the Civil Rights Act of 1964. (see the May 1, 2014 Section 3 Petition to HUD; HUD Response to the Section 3 Petition – dated June 16-2014; The Access Group Section 3 Petition Response – dated 9-5-14)

- Violations of Simple Justice against the Black and low-income communities of St. Paul through the 2012 Quid Pro Quo (see Title VI Legal Manual, Chapter XII-Private Right of Action and Individual Relief through Agency Action; Comments for the Disparate Impact Regulations namely**, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT 24 CFR Part 100 [Docket No. FR–5508–P–01] RIN 2529–AA96 Implementation of the Fair Housing Act's Discriminatory Effects Standard Comments on Disparate Impact Regulations Submitted by Fredrick Newell January 15, 2013**)

Violation of the Disparate Impact Regulations against the Black and low-income communities of St. Paul by the federal government through the 2012 Quid Pro Quo. (see Comments for the Disparate Impact Regulations namely**, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT 24 CFR Part 100 [Docket No. FR–5508–P–01] RIN 2529–AA96 Implementation of the Fair Housing Act's Discriminatory Effects Standard Comments on Disparate Impact Regulations Submitted by Fredrick Newell January 15, 2013**: Disparate Impact Regulations

The Access Group look forward to providing other supportive documentation to the AI for the purpose of ensuring that the Addendum fully inform all parties of the impediments to fair housing choices facing the Black protected class citizens of the metropolitan area.

Respectively,

Fredrick Newell

TAG

Melissa Mailloux

From: Jeremy Gray
Sent: Tuesday, April 04, 2017 8:38 PM
To: Melissa Mailloux
Subject: Fwd: AI Addendum Comments - Please Acknowledge Receipt - Attachments #4

Sent from my iPhone

Begin forwarded message:

From: FREDRICK <fmrrsbs@msn.com>
Date: April 3, 2017 at 10:01:49 PM PDT
To: Jeremy Gray <jeremy@mosaiccommunityplanning.com>
Cc: "Alyssa.Wetzel-Moore@ci.stpaul.mn.us" <Alyssa.Wetzel-Moore@ci.stpaul.mn.us>, John Shoemaker <john@shoemakerlaw.com>
Subject: Re: AI Addendum Comments - Please Acknowledge Receipt - Attachments #4

Jeremy/Alyssa,

As a final comment for the AI Addendum, I would like to encourage the FHIC to further research the City of St. Paul's

background regarding it's compliance or lack thereof with the federal Section 3 program.

While the Minnesota United States Attorney Office (MNUSAO) determined that the City represented "an egregious example of Section 3 false claims and noncompliance", the Black community have struggled for the past thirty-three years to get the City to provide economic opportunities to our community through the Section 3 Program.

I encourage you to interview Mr. James Milsap, a Black-protected class Section 3 advocate who is well in his eighties, was one of the first individuals to file a Section 3 complaint against the City of St. Paul. Mr. Milsap's complaint in 1984 resulted in a Section 3 Voluntary Compliance Agreement between HUD and the City of St. Paul. Mr. Milsap filed several other Section 3 related legal actions against the City up to 1994. Mr. Milsap is still actively pursuing Section 3 opportunities and is a party to a number of Section 3 complaints that HUD has declined to investigate as a condition of the Quid Pro Quo with St. Paul.

Coincidentally, despite Mr. Milsap's Section 3 activities regarding the City concluding in 1994, according to the 2009 Section 3 Determination Letter against the City of St. Paul, approximately fifteen years later, the City of St. Paul had dismantled its Section 3 Program and therefore City employees were unaware of the program requirements.

As an additional fact, City of St. Paul MBDR Director Edward McDonald wrote a memo to his Superiors which chided the City for its failure to comply with Section 3 in 2003. Neither the efforts of Mr. Milsap, the memo of Mr. McDonald or the my efforts which included a Section 3 lawsuit in 2005 persuaded the City to provide economic opportunities to low-income persons, particularly members of a certain protected class.

Finally, despite all of these Section 3 activities which also included a Section 3 Imposed Resolution on the St. Paul Public Housing Authority persuaded the Met Council to comply with Section 3 as evidenced by the 2013 HUD OIG Audit.

Respectfullly

Fredrick

From: FREDRICK <fmrrsbs@msn.com>
Sent: Monday, April 3, 2017 10:53 PM
To: Jeremy Gray
Cc: Alyssa.Wetzel-Moore@ci.stpaul.mn.us; John Shoemaker
Subject: Re: AI Addendum Comments - Please Acknowledge Receipt - Attachments #4

Jeremy,

The following attachments are referenced in the Access Group's AI Addendum Comments and submitted as supplement to the "Comments".

1) August 10, 2010 Title VI Memo by Thomas Perez

2) Section 3 Determination Letter

3) Connecting Title VI, Section 109 and Section 3

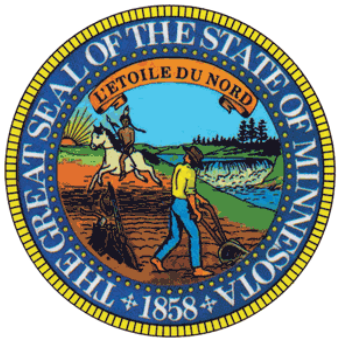
Melissa Mailloux

From: Melissa Mailloux
Sent: Wednesday, April 05, 2017 1:13 PM
To: melissa@mosaiccommunityplanning.com
Subject: FW: AI Addendum Comments - Please Acknowledge Receipt

From: Jeremy Gray [mailto:jeremy@mosaiccommunityplanning.com]
Sent: Tuesday, April 04, 2017 8:31 PM
To: Melissa Mailloux <melissa@mosaiccommunityplanning.com>
Subject: Fwd: AI Addendum Comments - Please Acknowledge Receipt

Begin forwarded message:

> **From:** FREDRICK <fmrrsbs@msn.com>
> **Date:** April 3, 2017 at 6:22:18 PM PDT
> **To:** Jeremy Gray <jeremy@mosaiccommunityplanning.com>
> **Cc:** "Alyssa.Wetzel-Moore@ci.stpaul.mn.us" <Alyssa.Wetzel-Moore@ci.stpaul.mn.us>, John Shoemaker <john@shoemakerlaw.com>
> **Subject: Re: AI Addendum Comments - Please Acknowledge Receipt**
>
> Jeremy,
>
> The following attachments are referenced in the Access Group's AI Addendum Comments and submitted as supplement to the "Comments".
>
> 1) The Minnesota Final Audit Report
> 2) The Audit of HUD's oversight of Section 3 of the Housing and Urban Development Act of 1968 for public housing authorities for Recovery Act funds in 2011, Audit Report Number 2013-KC-0002
> 3) The list of 1,650 identified housing authorities that are in noncompliance and potentially liable for false certifications - MN Metropolitan Council HRA
>
> Please look forward to several other e-mails containing attachments.
>
> Any questions, contact me via e-mail or call me @ 651) 403-2266.
>
> Fredrick
>
> ---
>
> **From:** Jeremy Gray <jeremy@mosaiccommunityplanning.com>
> **Sent:** Monday, April 3, 2017 5:24 PM
> **To:** FREDRICK



Report of the Administrative Compliance Audit of Certain Provisions in the State of Minnesota Human Rights Act, Statewide Affirmative Action Program, and Procurement Act

Michael Fondungallah, Fondungallah & Kigham LLC
James H. Hall, Jr., Hall, Burce & Olson S. C
Pamela Kigham, Fondungallah & Kigham LLC
Nancy Clift, Clift Research
Jennifer Burrs, Fondungallah & Kigham LLC

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I. INTRODUCTION

In the first ever audit of its equal opportunity laws the State of Minnesota is reviewing some sections of Minn. Stat. 16C; (The Procurement Act); Minn. Stat. 43A (The Affirmative Action Act); and Minn. Stat. 363A (Human Rights Act). The State is embarking on this review to identify actions it can take, to maximize inclusive participation in the areas of equal economic opportunity for protected groups, and to eliminate problems, barriers and impediments to inclusion.

The motivation for this audit came as a result of a 2013 Wall Street Journal 24/7 Report which identifies Minnesota as the second worst place in America for Black people. The report indicates a typical black household in Minnesota earned less than half the median income of white households in 2013. As a requirement of its duties under Minn. Stat 3.9225, the Council on Black Minnesotans and its executive director at the time, conducted an analysis of the state's equal opportunity laws and found years-long lack of enforcement of the state's contracting, affirmative action and human rights laws.

The Council's analysis revealed that there have not been a net increase in the base funding of the Minnesota Department of Human Rights in nearly two decades; some state departments did not have conforming affirmative action plans; and the Minnesota Department of Administration has not used its authority to correct disparities in contracting when detected. In 2015, the Council attempted to rectify the situation through legislative action but failed.

The Minnesota chapter of the National Association for the Advancement of Colored People (NAACP) became involved and brought the matter to the attention of Senate Majority leader, Tom Bakk, Speaker of the House of Representatives, Kurt Daudt, and Governor Mark Dayton calling on them to agree to financing an independent audit of the administrative

application of Minn. Stat. 16C, 43A, and 363A. "We believe this decade long negligence has stymied the freedoms of Minnesotans of African heritage," stated WC Jordan, president of the state chapter of the NAACP in a June 12, 2015 press release.

As a result of these engagements and discussions, on Thursday April, 26, 2016, Governor Mark Dayton ordered an independent audit of various sections of the state's equal opportunity statutes with the ultimate goal of boasting diversity in its workforce and its contracting. "I look forward to finding where those deficiencies are so we can make those improvements and have them in place so when I leave office in two and a half years, these changes are institutionalized in state government", Governor Dayton said at a State Capitol news conference surrounded by state NAACP leaders.

The State of Minnesota has some of the most forward looking equal opportunity laws in the country. However, there are problems with the application and implementation of these laws. These problems have led to loss of jobs, business opportunities and violations of the rights of protected class people in the state. This audit reviews these statutes and the rules promulgated pursuant to them; it analyses documents presented by state authorities on what they have done to apply these laws; and provides recommendations and best practices for how to maximize inclusive participation in opportunities for protected groups.

II. EXECUTIVE SUMMARY

This audit of the State of Minnesota's equal opportunity laws assesses the administrative application of certain provisions of the State's Procurement Act (Minn. Stat. § 16C), Human Rights Act (Minn. Stat. § 363/363A) and Statewide Affirmative Action Program (Minn. Stat. § 43A). The period covered for determining compliance is the past five years, along with an

analysis of the State's appropriation to the Minnesota Department of Human Rights over the past 20 years. This report focuses on the State's efforts to comply with the specific provisions identified in the Request for Proposal and contains the results of our analysis as well as findings and recommendations for improvement.

The audit confirms that the State is engaged in considerable activities to meet the objectives of each of the three statutes. This report explores the effectiveness of those efforts. In the area of procurement, some of the State's efforts include the implementation of the small business program, and targeted group purchasing which is aimed at businesses that are majority owned by women, persons with a substantial physical disability or specific minorities. The State's efforts also include the creation of the Office of Equity and Procurement in 2015 and the Governor's Diversity and Inclusion council in 2016, both of which have undertaken a plethora of activities designed to promote diversity and inclusion. For instance, the State recently implemented changes that provide more prompt pay for subcontractors, allow for the award of specific contracts to targeted group businesses and set forth a new methodology for calculating contracting goals.

Notwithstanding these efforts, deficiencies in proactive measures to promote inclusion in procurement were identified. The goal-setting requirement of 25% of the dollar value of total state procurement of goods and services to small businesses does not allow accountability for the significant specific disparities impacting specific groups that have been identified in the two disparity studies that the State has conducted. Moreover, the State's diverse spend numbers reflect that women business owners comprise by far the largest component of targeted group spend. The numbers remain generally low and are particularly negligible for African Americans, Hispanics, Indigenous Americans and persons with physical disabilities. Our recommendations

include the implementation of a moderate narrowly-tailored race-conscious program of limited duration based upon the statistically significant underutilization of specific groups found in the disparity studies. There are a number of additional recommendations intended to increase the share of the $2.2 billion of annual State contracting and procurement dollars that go to underrepresented groups.

In the area of Human Rights, our review revealed that a primary impediment for the Department of Human Rights in its efforts to function effectively has been under-funding of the Department. In 1998, the Department received a general fund appropriation of $3,763,000. In the 2016 fiscal year the appropriation was $3,723,000. This has impacted the Department's capacity in many ways, including a reduction in staff from 70 in 1990 to 37 at present. The result is increased caseloads per worker handling complaints and an increase in the amount of time it takes the Department to investigate cases. The lack of adequate funding and reduced staff also impede the Department's ability to monitor compliance by contractors and carry out many of its proactive duties.

The latest U.S. census data indicate that 87 percent of recent population growth in the State has come from minority groups. This not only supports more funding for the Department of Human Rights, but also attests to the critical importance of this audit in terms of the State's outlook concerning its future economy and human needs. A key recommendation is that the State should increase the appropriation amount to the Department of Human Rights to match the increase in expenditures and address the need for additional resources to enable the Department to effectively implement Minn. Stat. § 363A. In addition, there is a recommendation to create and staff regional offices in West, South, North and East Minnesota consistent with the patterns

of population growth in the State and particularly among non-English speaking and protected group residents.

While our review confirms that all of the agencies in the Executive Branch have in place affirmative action programs that comply with Minn. Stat. § 43A, the data does not provide numbers for protected-group individuals, namely Blacks, Hispanic, Asian or Pacific Islanders, and American Indians or Alaskan Natives. These groups are lumped in a category of "racial/ethnic minorities," a label which is not a category in the statutes or rules. By using this label, the State has no information to track the progress of Blacks, Hispanics, Asian or Pacific Islanders, and American Indians or Alaskan Natives. This falls short of the State's policy of implementing and maintaining an affirmative action program designed to eliminate underutilization of qualified protected group members within the state civil service. There is a recommendation to correct this deficiency by each agency revising its affirmative action plan to include the specific protected groups instead of "racial/ethnic minorities." The audit also found a lack of procedures that are required to be used in recruiting and selecting persons for unclassified appointments. The statute requires that such procedures take into account the Agency's affirmative action goals in selecting candidates. There is a recommendation to address this and to provide more oversight authority for the commissioner in this area and a recommendation for improvements with respect to filling positions with protected-group individuals, including persons with disabilities.

There are additional recommendations aimed at expanding the State's recruitment and outreach programs with respect to various populations, including youth, interns and students, veterans and persons with disabilities. There are recommendations that the State's Director of Diversity report directly to the Commissioner of Administration and Governor, rather than to the

Assistant Commissioner of Enterprise Human Resources, and that the State clarify its affirmative action plan.

The audit team conducted interviews with 60 individuals. Respondents were recruited through referrals from working group members, community organizations that serve targeted populations, state employees who work in related capacities and through press releases to targeted media. The interview participants relate their experiences with the State relating to procurement, human rights and affirmative action, and offer suggestions in each area.

In addition to making findings and recommendations in each of the three areas, the audit suggests some best practices that have been implemented in other jurisdictions to help improve outcomes and stimulate improvements.

III. THE AUDIT TEAM

This audit was conducted by Michael A. Fondungallah, an attorney with Fondungallah and Kigham, LLC, Pamela D. Kigham, an attorney with Fondungallah and Kigham, LLC, James Hall, an attorney Hall, Bruce & Olsen, S.C, Jennifer Burrs, a legal assistant with Fondungallah and Kigham, LLC and Nancy Clift of Clift Research.

Michael Fondungallah manages a three-attorney law firm and has experience in Immigration law, Employment Law, Personal Injury, international transactions and general civil litigation. He is currently a contract administrative hearing officer, hearing and deciding housing, animal control, licensing, construction, zoning, environmental, health and safety violation cases and other violations of city codes and ordinances. Mr. Fondungallah has represented clients in state and federal courts in Minnesota in a wide variety of areas including employment discrimination, discrimination in housing, auto accidents, fair housing act violations, equal pay act violations, disability discrimination, and civil rights violations. He is a member of the board

of directors of the Ramsey County Bar Association; the Work Force Innovation Board of Ramsey County; the Minnesota Black Chamber of Commerce; and a founding member of the Multi-Ethnic Coalition, ALANA (African, Latino, African American and Native American).

Pamela Kigham is a partner with Fondungallah and Kigham, LLC. She has experience in Family Law, Immigration Law, and Personal Injury and has provided assistance to her partner in Employment Discrimination Cases. Ms. Kigham provides free legal services with the Volunteer Lawyers Network in the area of family law. She sometimes provides free translation with the Volunteer Lawyers Network from French to English. She is a panel attorney with the Judicare Program in Anoka County. Ms. Kigham also does some Guardian ad litem work with the First Judicial District in Minnesota.

James Hall is a partner at Hall, Burce & Olson S. C. in Milwaukee, Wisconsin. He practices in the areas of Business Planning and Counseling, Employment, General Litigation and Civil Rights. Mr. Hall has been involved in matters relating to these areas for over 25 years. He has represented and advised many clients in obtaining certification to compete for and receive contracts with various units of City, County and State government. He represented the interests of a coalition of community organizations, including minority groups, in connection with the response of the City of Milwaukee to the 1989 Supreme Court decision in City of Richmond v. J. A. Croson Co. and that city's efforts to craft a new ordinance. He has successfully challenged Milwaukee County's participation ordinance in litigation in Milwaukee County Circuit Court on behalf of a minority contractor.

He is the current board of director for the NAACP in Milwaukee, ACLU in Wisconsin and Tanzanian Economic Development Initiative, the Haggerty Art Museum, the Milwaukee Museum of Fine Art and the Milwaukee Public Schools Foundation. James Hall has some

auditing experience. In 1994 he was retained by the United States Department of Housing and Urban Development to review and analyze the disparate impact standard as it pertains to insurance practices under the Fair Housing Act and to report the results of that review and analysis to the Office of Fair Housing and Equal Opportunity of the Department of Housing and Urban Development.

Nancy Clift is the owner of Clift Research. Her research firm provided assistance with conducting outreach and interviews. Nancy Clift has been conducting qualitative research since 1990. Nancy earned her MBA in marketing at Indiana University and her MA in Educational/Counseling Psychology at the University of Minnesota. She completed the coursework toward a doctorate in Clinical Psychology at Indiana, as well as the coursework in another PhD program in Counseling Psychology. Nancy began her marketing research career with General Mills, Inc. In her early years, her specialty was statistical analysis, but she preferred qualitative research and eventually started her own business in this area.

Jennifer Burrs is a recent law school graduate of Mitchell Hamline School of Law. She worked part time as a legal assistant with Fondungallah and Kigham, LLC while attending law school. She provided assistance with this audit.

IV. HISTORICAL BACKGROUND, ENVIRONMENT AND CONTEXT

The State of Minnesota has expressed a commitment to diversity and inclusion and has undertaken various efforts, initiatives and programs to promote and expand opportunities to under-represented individuals and groups. The State conducted its first disparity study in 1989, and has conducted subsequent studies approximately every ten years thereafter to determine if disparities exist in State's procurement and if contracting methods and processes are affected by race and gender. The findings of the studies have been used to provide guidance in formulating

policies intended to address the opportunity gap faced by women, protected class people and persons with disabilities.

Specifically, the 1999 disparity study by Mason Tillman and the 2009 study by MGT of America, found statistically significant disparities, showing underutilization of businesses owned and operated by African Americans, Hispanic Americans, Asian Americans, Native Americans and Caucasian females in certain areas, and a 1990 study also found an underutilization of businesses owned and operated by disabled persons. The State has operated programs aimed to improve contracting opportunities for protected groups including a program focusing on small businesses, businesses owned by members of targeted groups and businesses located in economically disadvantaged areas that went into effect in 1990.

The program was expanded to include veteran-owned businesses in 2009. The legislature enacted Minn. Stat. §16C, providing that the Commissioner of Administration could certify certain businesses as "targeted group businesses" for contracting purposes. The Commissioner may use set-asides and percentage preferences, and may set goals, among other things, to increase contracting with targeted group businesses. After each disparity study, the State has enacted and amended legislation and refreshed the designations of groups that are included as targeted group businesses consistent with the study findings.

In 2015, Governor Dayton established the Diversity and Inclusion Council to improve the recruiting and retention of state employees from diverse backgrounds, improve the contracting process for businesses owned by Minnesotans from diverse backgrounds, and promote civic engagement for all in the State of Minnesota. The Department of Administration (Admin), created the Office of Equity in Procurement which has undertaken a range of actions and initiatives, including a 2017 Joint Disparity Study with several partner agencies.

The legislature also enacted the Human Rights Act, Minn. Stat. §363A, to implement a program to promote human rights throughout the State, to research and study discriminatory practices based upon race, color, creed, religion, national origin, sex, age, disability, marital status, status with regard to public assistance, familial status, sexual orientation, or other factors. The Commissioner of Human Rights is to, among other things, develop data, receive reports, implement training, receive and resolve complaints, and collaborate with other Human Rights offices around the State.

In addition, the legislature enacted Minn. Stat. § 43A which provides for a statewide affirmative action program. It empowers the Commissioner of Minnesota Management and Budget to, among other things, set statewide affirmative action goals, establish a recruiting program, receive reports, require State departments and agencies to develop affirmative action plans, and take disciplinary action for non-compliance.

Consistent with its commitment to diversity and inclusion and with the goal to ensure compliance and create broader opportunities for under-represented groups, the State, along with the Minnesota chapters of the National Association for the Advancement of Colored People (NAACP), issued a Request for Proposal (RFP) in April of 2016 for an independent third party audit of Minnesota Statutes §§ 16B and C, §363 and §43A. The goal of the audit is to identify actions for the State "to maximize inclusive participation in the areas of equal economic opportunity for protected class people and to eliminate problems, barriers and impediments to inclusion." The third party auditor, working in partnership with a stakeholder workgroup, is to provide a report to the Governor on the findings of the audit and its recommendations that includes, but is not limited to, the following:

- If the laws are being administered as required;

- Ways the administrative application of the laws can be improved to expand protected class groups' participation in State contracting, employment and eradicating marketplace disparities;
- Additional steps that can be taken to address oversight, coordination, and administration of the laws; and
- Identification of what skills training is required for staff charged with administering the laws.

V. THE REQUEST FOR PROPOSAL

The Request for Proposal drafted by the State of Minnesota directed the auditors to do the following:

Procurement Act

- An audit of the administrative application of Minn. Stat. §16B.875 as it relates to Department of Human Services, Economic Development and the Department of Transportation, and their efforts as it relates to protected class groups and targeted business groups' utilization.
- An audit of the administrative application of Minn. Stat. §16C.05 subd. 5 as it relates to protected class groups and targeted business groups' utilization in Saint Paul, Minneapolis, Rochester, Duluth, Saint Cloud and Mankato.
- An audit of the administrative application of Minn. Stat. §16C.06 subds. 1, 2, 6 as it relates to protected class groups and targeted business groups' utilization.
- An audit of the administrative application of Minn. Stat. §16C.16 subds. 1-13 as it relates to protected class groups and targeted business groups' utilization.

- An audit of the administrative application of Minn. Stat. § l6C.16 subd. 5 as it relates to protected class groups and targeted business groups' utilization to correct disparities.
- An audit of the administrative application of Minn. Stat. §16C.16 subd. 1 for compliance and recommendations.
- An audit of the administrative application of Minn. Stat. §16C.18 as it relates to protected class groups and targeted business groups' reports requested by the Commissioner of Administration and a summary of findings.
- An audit of the administrative application of Minn. Stat, §16C.32 as it relates to protect class groups and targeted business groups' utilization.
- An audit of the administrative application of Minn. Stat. §16C.35 as it relates to protect class groups and targeted business groups' utilization.

Human Rights Act

- An analysis of state appropriation over a 20 year period to the Minnesota Department of Human Rights and appropriations impact Minn. Stat. §363/363A (Human Rights Act) administrative and enforcement abilities.
- An audit of the administrative application of Minn. Stat. §363A.06 subd. 1(2) to determine if it could support offices in Greater Minnesota.
- An audit of the administrative application of Minn. Stat. §363A.06 subd. 1(4) to determine if it could support additional staffing.
- An audit of the administrative application of Minn. Stat. §363A.06 subd. 1(8) to determine compliance and makerecommendations.

Statewide Affirmative Action Program

- An audit of the administrative application of Minn. Stat. §43A.04 subd. 3 (4) as it relates to compliance with documenting each protected class group's utilization.
- An audit of the administrative application of Minn. Stat. §43A.04 subd. 4 as it relates to procedural changes on each protected class group's availability by job category and under-utilization, and report findings.
- An audit of the administrative application of Minn. Stat. §43A.09 as it relates to research to address utilization of targeted business groups and protected class groups in employment and to assist with outreach and report findings.
- An audit of the administrative application of Minn. Stat. §43A.04 subd. 7 as it relates to each protected class group's utilization and report findings.
- An audit of the administrative application of Minn. Stat. §43A.15 subds. 1-15 as it relates to each protected class group's utilization and report findings.
- An audit of the administrative application of Minn. Stat. §43A.19 for compliance and recommendations.
- An audit of the administrative application of Minn. Stat. §43A.l91 for compliance and recommendations.

The auditors were also required to meet and confer with the Governor's Stakeholder Workgroup throughout the auditing process, write and publish an accessible report that include, but are not limited to, the following:

- If the laws are being administered as required;

- Ways the administrative application of these laws can be improved to expand protected class groups participation in state contracting, employment and eradicating marketplace disparities;
- Additional steps that can be taken to address oversight, coordination, and administration of these laws; and
- Identification of what skills training is required for staff charged with administering the abovementioned laws.

VI. METHODOLOGY AND APPROACH

This audit is to provide independent, objective assurance of administrative compliance with Minn. Stat. §§16B and C, 363 and 43A. A compliance audit provides key information to stakeholders and the public to maintain accountability; to help improve program performance and operations; to facilitate decision making; and to stimulate improvements. The scope of the audit encompasses the examination of the adequacy and effectiveness of the State's implementation of the pertinent statutory provisions and the quality of performance in carrying out assigned responsibilities. The audit evaluates the consistency and efficiency of the State's practices compared to the applicable policies to determine the effectiveness of policy implementation.

Generally Accepted Government Auditing Standards (commonly referred to as "Yellow Book" standards) as promulgated by the U.S. Government Accountability Office (GAO) are applicable to the process and procedures employed in connection with the audit. Those standards include criteria pertaining to the auditor's independence, internal controls, field work, testing for compliance, findings and reporting.

The audit examined the processes and controls for procurement transactions processed by the Department of Administration. The audit also assessed Admin's implementation of the statewide Affirmative Action Program and the Department of Human Rights' enforcement of the Human Rights Act.

The audit methodology included the audit team initially reviewing the applicable sections of the law to develop an understanding of the statutory requirements. At the outset of our investigation, we also reviewed various studies and reports that contained related background information. We sent a set of document requests to the State relating to each of the three statutes seeking documents to be reviewed during our investigation. We met with the Governor's staff and the stakeholder working group to discuss our process and approach to the audit and to receive input from them.

After meeting with the stakeholder working group, we widely distributed and published notice of our interest in interviewing individuals regarding the audit and developed a survey tool to gather information. We interviewed representatives of under-represented groups, members of the stakeholder workgroup, State employees and others. The interviews were conducted in-person or by telephone, with each person offered an in-person interview. During the interviews, we focused on each of the three areas and documented anecdotal information reflecting the interviewees' experiences in the areas of procurement, human rights and the affirmative action program.

The audit team systematically reviewed the documents that we received pursuant to our initial document request and made a second request to the State for select items. The next phase of our work involved analyzing the data to determine whether the processes and procedures employed by the State departments and agencies comply with the statutory provisions. The audit

includes a narrative discussion in each area and identifies areas of compliance and areas where compliance was revealed to be lacking.

A preliminary draft of the report was provided on November 16th and we received comments, feedback and input from the stakeholder group on November 18th, which was taken into consideration by the audit team.

The Audit recommends processes and actions that may be taken, consistent with the statutes, to eliminate existing barriers, promote greater inclusion for protected groups and expand equal opportunity in the areas of contracting, employment and human rights in the State of Minnesota. The audit recommendations include best practices from other states and jurisdictions.

VII. AUDIT OF IMPLEMENTATION OF SPECIFIC STATUTORY PROVISIONS

A. AUDIT REGARDING CERTAIN PROVISIONS OF MINN. STAT. §363/363A (HUMAN RIGHTS ACT)

1. An analysis of state appropriation over a 20 year period to the Minnesota Department of Human Rights and appropriations impact §363/363A (Human Rights Act) administrative and enforcement abilities.

The Department of Human Rights was established by the legislature to administer and enforce the Minnesota Human Rights Act. The department's primary purpose is to investigate and resolve charges of discrimination, to ensure equal opportunity is provided by contractors and to use education and outreach to eliminate discrimination and disparate outcomes. The department responds to individuals who have filed claims alleging violations of their human rights in the areas as enumerated by Minn. Stat. Chapter 363A. It also ensures that businesses seeking state contracts are in compliance with equal opportunity and affirmative action plan

requirements. The department issues equal pay certificates to contractors to ensure that they provide equal pay to their female workers. The department further issues certificates of compliance to those businesses that have an affirmative action plan approved by the commissioner of Human Rights. Municipalities that received state money for any reason are encouraged to prepare and implement an affirmative action plan for the employment of minority persons, women, and the qualified disabled and submit the plan to the commissioner. Minn. Stat. §363A.36 (1) (a).

ANALYSIS

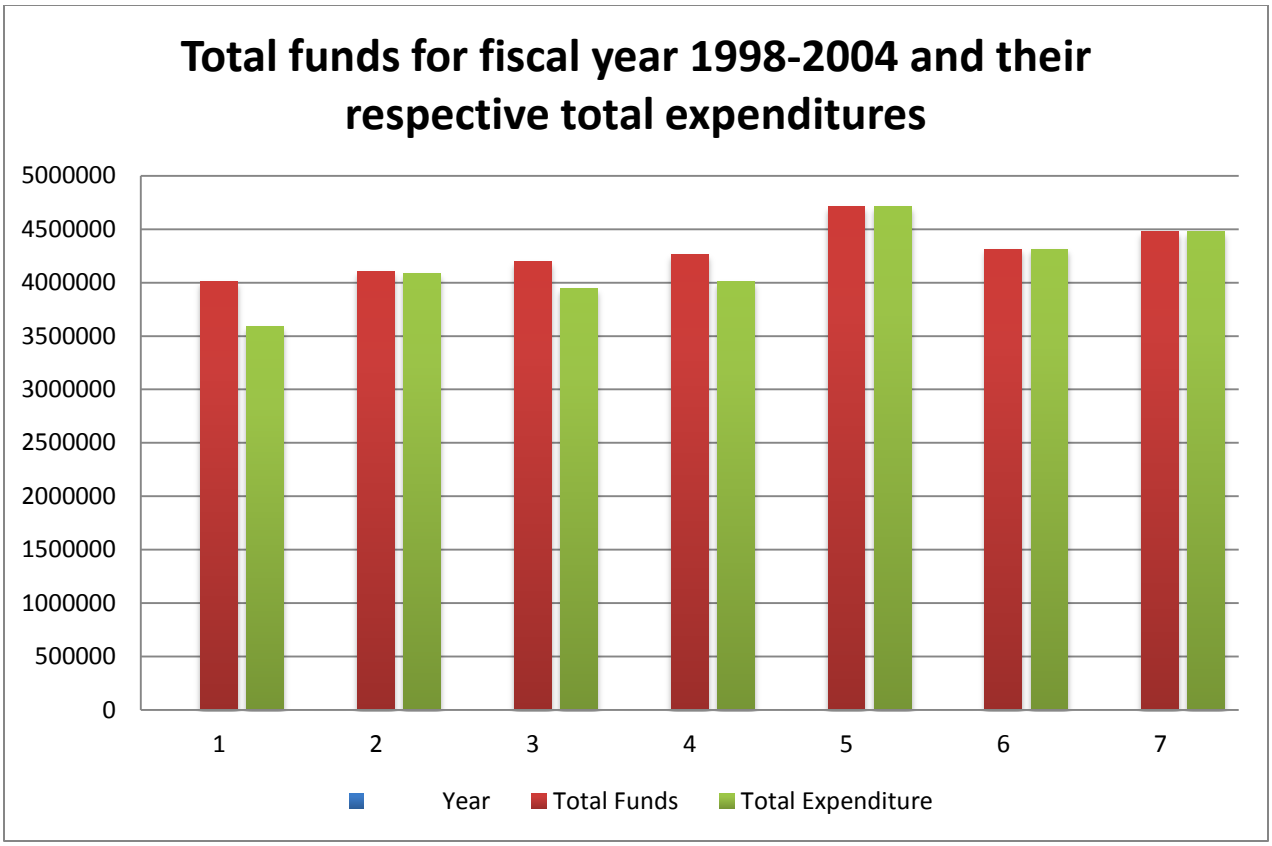
The audit team requested Biennium Budget for MDHR for the past 20 years, House Research budget analysis and reports on MDHR for the past 5 years, Legislative Auditors MDHR reports for the past 5 years, MDHR, Department of Administration and Department of Management and Budget Staffing Reports on the Department of Human Rights for the last 5 years, MDHR Commissioner's report to the legislature and governor on activities and budget proposals and budget expenditures for the last 5 years, and MDHR Commissioner's policy and budget recommendations to the governor and the legislature for the past 5 years.

The department provided budget proposals and expenditure of the department. The file contained appropriations for the fiscal years 2012-2017 Governor's Budget, FY 16-17 Biennial Budget Change, Office of the Legislative Auditor's (OLA) audit for the fiscal year 2011-2013. The department did not provide appropriation information for 1997-2001. It provided a spread sheet of expenditures. The audit team was able to locate OLA financial audits reports for the periods of July 1997-2004 and the Department of Human Rights Budget Overview for the years 2008-2013. The department also produced expenditure from 1968-2015, for its Saint Paul office

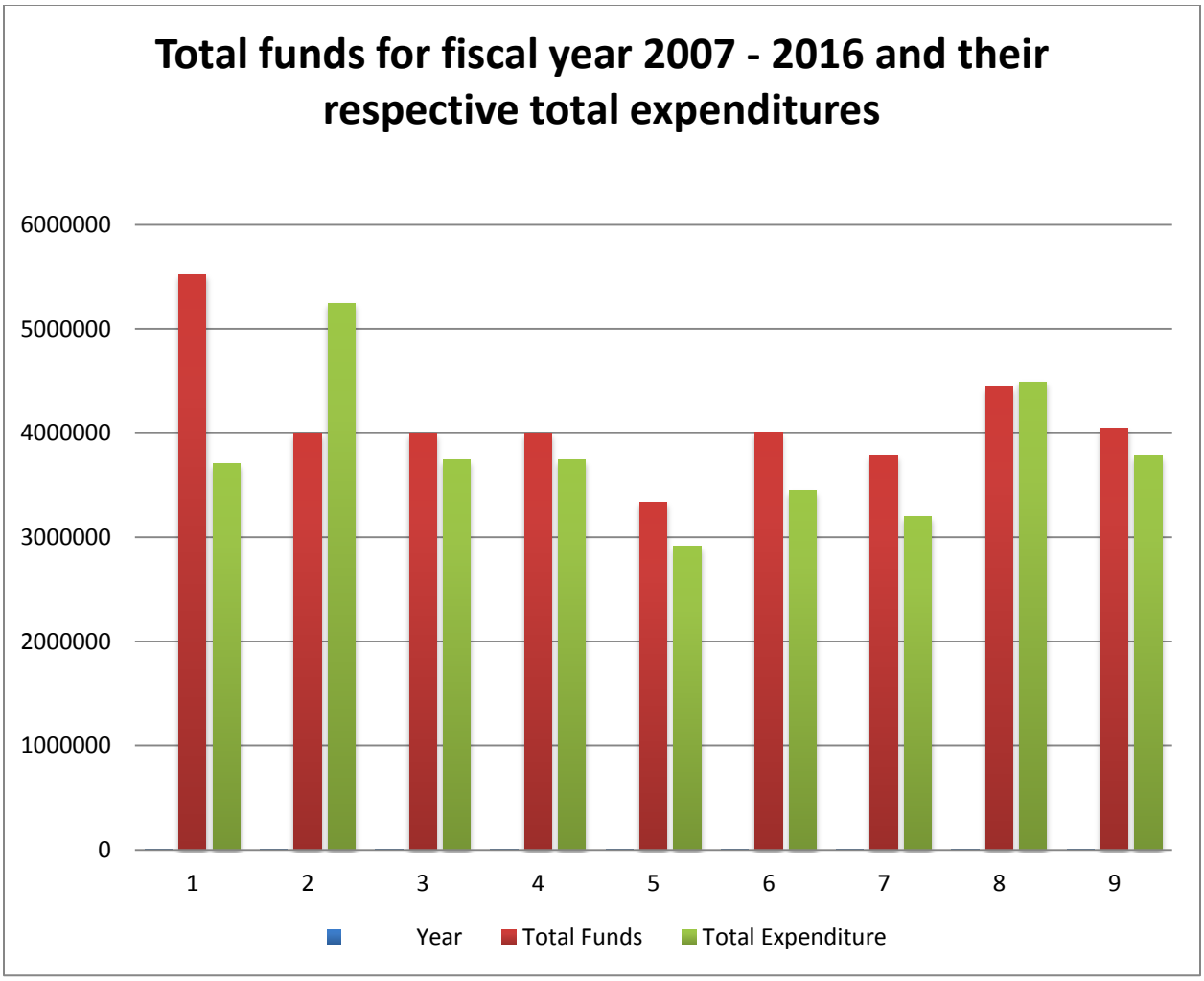
and payroll and lease information from 2012-2016 for its Saint Cloud office. They also produced management financial reports and Appropriation Summary from 2011-2016.

i. Appropriations

A review of the documents provided to the audit team, revealed the department's primary source of funding is from the general fund appropriations. The department also receives private grant funds and earns revenue from the Federal Equal Employment Opportunity Commission for investigating case. In 1998, the department received general fund appropriations of $3,763,000. In 1999, the amount was increased to $3,890,000. The general funds stayed within this range until 2002 when it increased to $4,208,836. In the fiscal year of 2004, the department experienced a decrease in the general fund appropriation to $3,843,582. The amount was increased to $4,986,000 in 2008 due to a one-time appropriation for a new database system. In 2009 the amount of general fund appropriation dropped to $3,584,000. This amount remained within the mid to lower $3million range until 2014 when it rose again to $4,021,000. In the current fiscal year of 2016, it decreased to $3,723,000. The graph below summarizes the department’s financial activity for the fiscal years 1997-2004.



This graph summarizes the department's financial activities for the fiscal years 2007-2016. A close review of the graph below indicates the department spent most of what it received.



Within the fiscal years 2010-2016 the department received 4375 new charges and closed 4249 cases but had 4531 cases pending. The increase in charges and pending cases was not matched by an increase in the general fund appropriation the department received in those years. Instead the general fund appropriation dropped from $4,906,000 in 2008 to 3,171,000 in 2012 and stayed in the lower $3 million range through 2015.

It should be noted that the department's budget is biennium meaning it is issued every two years. Sometimes money that is not spent in the first year of the biennium may be carried over to the next year but money not spent in the second year is returned to the general fund.

Therefore when there is an increase in the amount in the second year it means money not spent during the first year of the biennium was transferred to the next year. In 2002, a balance of $113,161 was forwarded from the previous year. In 2003, $578,518 was forwarded from the fiscal 2002; in 2004 a balance of $115,024 was forwarded from the fiscal year 2003. In 2012 the department had a balance of $338,000. This money was forwarded into the 2013 fiscal year. The general fund appropriation for 2013 increased by $338,000 and was not used for that year. In addition there were other special receipts coming into the department.

Given this drop in the fund's appropriations, the department had to reduce its staff by more than half because payroll is the department's largest administrative expenditure category as shown below. The department also has to meet yearly payroll adjustment to keep up with labor agreements. The reduction of employees resulted in the decreased in the department's capacity to receive charges, investigate and issue decisions within one year as required by Minn. Stat. 363A. It also impacted the department's ability to monitor compliance by contractors and carry out many of its proactive duties outlined in Minn. Stat. 363A.06. The table below shows how a huge part of the department's expenditure is payroll.

ii. Expenditures

Year	**Payroll**	**Administrative & Other**	**Total Expenditure**
1998	$2,666,183	$922,412	$3,588,596
1999	$3,028,353	$938,789	$4,087,111
2000	$3,116,486	$833.204	$3,949,691

2001	$3,207,841	$800.795	$4,008,636
2002	$3,248,000	$1,452,861	$4,710,861
2003	$3,319.642	$993,230	$$4,312,812
2004	$2,949,500	$1,530,823	$4,480,323
2008	$3,076,000	$630,000	$3,706,000
2009	$3,254,000	$1,994,000	$5,248,000
2010	$3,128,000	$616,000	$3,744,000
2011	$3,119,000	$627,000	$3,746,000
2012	$2,276,000	$640,000	$2,916,000
2013	$2,345,000	$1,102,000	$3,448,000
2014	$2,524,000	$673,000	$3,197,000
2015	$3,055,000	$1,439,000	$4,494,000
2016	$3,039,000	$742,000	$3,781,000

Due to lack of increase in the net amount of general appropriation fund, the department has lost its capacity to function effectively. The department has reduced the size of its staff by more than half the capacity it had in the 90s. In 1990, the department had its highest employment level of 70 staff. In 1996, the department conveyed to the Office of Legislative Auditor that with 56 full time staff, it did not have adequate resources to audit contractors. Yet the number of staff continued to drop to 46 in 2004 and 44 in 2009. In 2010, the department had 42 staff and 40 in 2011. During this period, the department experienced a 10% decrease in its budget due to government shut down. As the years went by, the number of employees decreased. Currently the

department has about 37 employees, one of its employees have given notice to quit. The department is currently interviewing for 4 positions.

As the number of employees dropped, the average case load per worker increased to 76 in 2011 and stayed in the 70's until 2014 when it dropped to 34. In 2011-2012, the department had only five staff working at its compliance unit. The five person staff was responsible for reviewing affirmative action plans, issuing workforce certification and auditing good faith efforts of contractors. The current case load per worker has increased to 53 in 2016. This account for the increased in the amount of time it took the department to investigate a case.

During the audit, members of the public were interviewed and majority stated that the Human Rights process often takes a long time, and the charging party is not given information about the result of their complaint, leading to dissatisfaction with the process. The chart below shows the department's investigative history from the years 2010-2016.

Year	CF	D	CC	PC	AC	ATC	CO1	IM	ADR
2010	380	416	429	559	37	423			
2011	856	21	542	701	76	514	51	170	149
2012	869	22	710	842	76	357	228	429	144
2013	700	40	790	732	73	387	143	790	75
2014	564	50	891	436	34	327	31	400	20
2015	620	24	619	472	39	254	18	400	39
2016	386	7	268	588	53	247	38		29

1). CF Charges Filed 2). D-Dismissals 3). CC-Cases Closed 4). PC-Pending cases 5). AC Average case load 6). ATC- Average time to close 7). CO1-Cases over 1 yr 8). IM-Investigative memos 9. ADR

The latest U.S. Census estimates created by the Minnesota State Demographic Center, indicates Minnesota's population is near the 5.5 million mark, with the number of "minorities" growing four times as fast as whites. The census figures from July 2014 showed the state's population has increased by nearly 3 percent since the 2010 census. Minorities now account for more than 1 million of the state's residents, at almost 20 percent of the total population, with Hennepin and Ramsey counties among the most diverse. While 4.4 million of Minnesota's 5.2 million residents are white, 87 percent of population growth last year came from people who are African-American, Asian, American Indian or Hispanic.

With the growth in the protected class and immigrant population also comes the need for more money to run the department. More charges will be filed, more business owned by protected groups will be formed, more certificates of compliance will be filed and more contractors will have to be monitored for compliance. The growth in the protected group population supports the need of an increase in the general fund appropriation, so that the department can effectively administer and enforce Minn. Stat §363A.

iii. **Outreach and Education Programs**

One of the department's primary responsibilities is to use education and outreach to eliminate discrimination and disparate outcomes. The department has conducted lots of outreach and educational programs during the last five years with the majority of them occurring in the 2011-2012 fiscal years. The commissioner has participated in over 500 events and has spoken at about 450 during the last five years. The programs include Human Rights Symposium, Diversity and Inclusion summit, photo identification/ same sex constitutional amendment ballot initiatives,

ban the box, Human Rights Commissions and Colleges/schools/Social Justice Advocacy Groups/Community Organization.

The Commissioner and the department staff have served as keynote speakers and panelists on a wide range of issues such as employment discrimination, best practices in human resources, school bullying, election reforms and creating a more inclusive society for individuals in the protected group. However, recently the department has slowed down in its outreach and educational programs effort due to lack of resources. Most of the outreach and educational programs/symposiums were conducted within the Twin Cities and some outer cities such as Albert Lee, Bemidji, Morehead, Duluth, Orono, Red Wing, Rochester, Saint Cloud and Worthington.

One of the comments from the interviews done by the audit team is that there is lack of outreach/public education/cross-cultural work in different communities. There are no clear materials, radio and TV programs in heavily policed communities that get a lot of complaints. The department does not have staffs that are specialized in racial discrimination. People want to talk to someone who looks like them. Minnesotans wants clarity, more outreach, and a more timely response. Although the department has organized some outreach and education forums, comments from interview indicates they are usually made up of small groups of individuals.

The department in it legislative reports has requested for more money to conduct outreach and educational programs. The department revealed during an interview with their management that they are aware the public wants more outreach, education and seminars. Due to lack of resources the department is not able to do more than they have done.

iv. Trainings

The department's Enforcement and Compliance unit has participated in trainings from management on recent changes in law, such as pregnancy accommodation, disparate impact analysis in housing discrimination and retaliation claims. Senior management reviews memoranda to identify training issues. Staffs also receive external trainings such as attending seminars conducted by federal agencies and legal organizations such as Minnesota State Bar Association and EEOC. Enforcement officers participate in webinars provided by federal agencies. Management acknowledges there is a need for more training, given the changes in laws, increased population and diversity. With the lack of resources the department cannot support additional trainings.

FINDINGS

The amount of appropriation the department receives is not enough to effectively perform its duties to investigate and resolve charges of discrimination, ensure that businesses seeking state contracts are in compliance with equal opportunity and affirmative action plan, to conduct outreach and education programs on discrimination and provide the necessary trainings to its employees. Most grants that the department received were for specific trainings, education and outreach projects and not for operational functions of the department. The department does well in investigating cases from English speaking filers. The department faces difficulties with cases filed by non-English filers. The department needs resources to hire compliance officers to monitor compliance with affirmative action plans and workforce compliance. More resources are needed for education outreach and to resolve language and cultural barriers.

RECOMMENDATIONS

1. Increase the appropriation amount to match the increase in expenditures and need for increased resources to enable the department to have the resources necessary to implement §363A state wide.

2. Use more social media such as radio stations and TV for education and outreach programs. Employ culturally diverse staff with more language diversity and the cultural agility to be more effective in all communities.

3. Repeal the priority focus on the duties of the commissioner (§363A.06 POWERS AND DUTIES OF COMMISSIONER. Subdivision 1)

2. Research and analysis of the State of Minnesota's administrative application of Minn. Stat. §363A.06 subd. 1(2) to determine if it could support offices in Greater Minnesota.

The law grants the commissioner the power to formulate policies to effectuate the purposes of this chapter and to establish and maintain a principal office in St. Paul, and any other necessary branch offices at any location within the state. Minn. Stat. §363A.06 subd. 1(2).

ANALYSIS

The audit team requested MDHR and Department of Admin analysis and reports on the need for additional branch offices within the state (last 5 years); a list of all major Minnesota Cities with Human Rights offices and their budgets; staffing and function challenges; a list and duties of the Human Rights Advisory Committees throughout the State; MDHR Commissioner's written report on the activities over the last 5 years; and MDHR Commissioner's recommendations to the governor and the legislature.

The department in its response to request for documents directed the team to look into specific files to get reports to the legislator and recommendations to the governor. The folder contained a list of Minnesota human rights advisory commissions but the response stated that the department does not have jurisdiction over the various human rights advisory commissions or departments created by cities and counties in the state of Minnesota. In their response to the team's second request for documents, the department provided leases and payrolls to Saint Cloud Office. The department also provided its 2015-2017 Biennial budgets.

The documents reviewed indicate the department convenes the various advisory commissions to do education outreach. Management reports they would like to do more work together but are limited because of lack of resources. The department works more with the human rights department in Saint Paul and Minneapolis who have paid staff. The other cities have commissions who are volunteers but lack the necessary resources to work effectively with the department.

The commissioner has the power to assess whether there is a need for human rights offices in greater Minnesota areas on an annual basis. In 2010, due to increase in protected group population in Saint Cloud, housing discrimination issues faced and the high level of work share agreement with the City of Saint Cloud, a grant was awarded to facilitate the opening of a human rights office in Saint Cloud. This grant was issued with a termination date in 2015 and currently the grant has elapsed. There is no evidence that the Commissioner has conducted an analysis of the human rights office needs in greater Minnesota communities.

Documentation provided indicates the department's 2015-2017 budget proposal recommended $900,000 funding to staff a team of individuals responsible for coordinating education and enforcement activities to ensure that the Human Rights Act is being followed.

The team would work on issues in the area of systemic and institutional bias, discrimination, and community distrust. The funding would be used to hire an enforcement officer in St. Cloud, staff to travel throughout the state to address these issues, and additional staffing to maintain quality assurance in enforcement activities and appeals reviews. The $900,000 in funding for this proposal would come from the State's General Fund. The sum of $900,000 would be allocated for FY2017, and $800,000 would be allocated annually thereafter. The Legislature did not appropriate the full funding requested but awarded $150,000 and across the board 1.8% increase to in operating budget to all agencies.

The Saint Cloud office needs to continue to operate but lacks the resources. The department hired two (2) staff during the summer to work at the Saint Clouds office. Currently there are two (2) full time enforcement officers working there.

Given the increase in protected group members and immigrant population in the Greater Minnesota, especially Duluth, Faribault, Willmar, Williston, Rochester, Mankato and Olmstead County areas, the State should analyze the need for increased human rights enforcement service in those areas

Interviews were conducted with a number of individuals throughout the State of Minnesota. The information gathered indicates people lack knowledge of the discrimination enforcement system process. This is particularly true amongst the immigrants and residents from non-metro areas; in particular who do know that they can file complaints. There were also complaints of cultural norms that prevent some people from complaining and the fear of being bullied and harassed for doing so.

FINDINGS

According to the League of Minnesota Cities, the state of Minnesota has 87 counties

and 853 cities with a population of 5 million and 19 immigrant communities. The protected group now accounts for more than 1 million of the state's residents, at almost 20 percent of the total population. Despite this population growth and increase in diversity, the state of Minnesota has only three full functioning Department of Human Rights Office all within the cities of Saint Paul and Minneapolis, a temporal/small regional office in Saint Cloud. Saint Cloud office has only one staff.

Residents in the non-metro cities find it difficult to access the department and are unaware of its procedures. For the past five years the department's office in Saint Cloud was funded by a grant from the City of Saint Cloud. The city used Federal Community Development Block Grant funds to support the office in violation of federal block grant policies and was forced to end the practice and refund the block grant funds used. Representative Jim Knoblach of Saint Cloud was able to convince the state to appropriate $180,000 in 2015 to operate Saint Cloud office for two years. The Governor's 2016 budget proposed funding for a regional office in Saint Cloud. There are 66 commissions created by the local units of government in the State of Minnesota but these commissions have no operational resources and no enforcement authority.

RECOMMENDATIONS

1. Discrimination is an important area of concern and the Department of Human Rights was created by the Human Rights Act to eliminate discrimination. If the State is really committed to eliminating discrimination then the Legislature should fully fund the Saint Cloud office.

2. Create and staff regional offices in the West, South, North and East of Minnesota especially to aid non English speaking and protected group residents in non-metro areas who

need the assistance to prevent discrimination and need assistance with the filing of charges when discrimination occurs.

3. Create a relationship between the department, the statewide advisory commissions and other human rights offices in the twin cities. Award grants to the various statewide advisory commissions and other organizations to work with the department on human rights education and efforts to prevent discrimination.

3. Research and analysis of the State of Minnesota's administrative application of Minn. Stat. §363A.06 subd. 1(4) to determine if it could support additional staffing.

The law grants the commissioner the power to employ attorneys, clerks, and other employees and agents as the commissioner may deem necessary and prescribe their duties.

ANALYSIS

The team requested the Department of Administration and Human Resources staffing reports for the last 5 years and MDHR organizational chart for the last 5 years. The team received salary expense for the fiscal years 2012-2016 and the departments' organizational chart of August 2016, the department's Management financial report and salary/payroll for Saint Cloud office.

In 1990, the department had its highest employment level of 70 staff. The number of staff dropped to 65. In 2004, the department had 46 staff and 44 staff in 2009. In 2010, the department had 42 and 40 in 2011. As the years went by, the number of employees decreased. Currently the department has about 37 employees. As the number of employees dropped, the average case load per worker increased to 76 in 2011 and stayed in the 70's until 2014 when it dropped to 34. The current case load per worker has increased to 53 in 2016. In 2012, the department adjusted its workforce goals. It had only five (5) officers responsible for reviewing the affirmative action plans, issuing workforce certificates and auditing good faith efforts of contractors and

encouraging municipalities receiving state money for any reason to prepare and implement an affirmative action plan. This affected the department's ability to perform periodic on site reviews of construction projects. This account for the increase in time it toke the department to investigate and issue a decision on a case.

Although the Department has incurred cuts in its general fund appropriation over the years, it has reduced the average time it takes to close a case. In 2010 it took 430 days. The following year, the department experienced an increase in the number of days it took to investigate a case due to government shut down. The department has gradually reduced the average time to close a case to 247 days in 2016. Cases over a year have reduced from 169 days in 2012 to 38 days in 2016.

In the biennial year of 2014-2015, the department also took an additional task of monitoring equal pay compliances. The Legislature funded the start-up expense only. The department was also responsible for the Ban the Box for private employers, serving on School Safety Technical Assistance Council and serving on the Minnesota Emerging Entrepreneur Board, the marriage amendment, inclusion and diversity with no additional funding. In 2015, despite the Governor's proposal of an increase in the department's base funding of $900, 000, the Legislature provided only $150,000. In 2016 the Legislature provided $180, 000 specifically for the Saint Cloud office.

The organizational chart reviewed shows that the department currently has 33 filled positions. From the department 2016 financial report and an interview with staff on December 19, 2016, the department currently has 37 full time employees. One is moving out of state and has issued a two-week notice to quit. The number of staff at the Saint Clouds office has fluctuated between one and two full time employees. This office as previously noted was

funded by a five (5) year grant from the City of Saint Cloud. The City of Saint Cloud no longer funds the Human Rights office in Saint Cloud. The department previous used enforcement officers from its main office in Saint Paul to work in the Saint Cloud. Recently, the department has hired two (2) staff to work solely at its Saint Cloud office. About 9,857.75 hours of work was done in the Saint Cloud office for the fiscal years 2012-2016.

With growing diversity in the state, issues of alleged bias will continue to increase and this will lead to the need for an increase in the number of staff to meet the needs of the state to police human rights enforcement, monitor compliance by contractors and carry out many of its proactive duties outlined in Minn. Stat. §363A. The department's budget together with the additional responsibilities and with limited resources cannot be expected to perform its functions effectively as required by statute. The organizational chart indicates the positions for office support, enforcement officer in the twin cities and Saint Cloud, legal director and legal analyst are vacant.

FINDINGS

The department's inventory has expanded over the years and in addition to its expanded responsibilities for auditing equal pay compliance, the department it has acquired new responsibilities such as enforcing the Ban the Box for private employers, marriage amendment, equal pay, serving on School Safety Technical Assistance Council and Serving on Minnesota Emerging Entrepreneur Board. This increase in responsibility did not come with an increase in resources to perform the responsibility. Instead the Statewide budget has caused the department's staff to half the number it had in the 90's. The City of Saint Cloud’s grant to operate the Human Rights office in Saint Cloud has ended. That office needs about two or more full time staff to function. The department

does not have staff to engage in outreach and education programs.

RECOMMENDATIONS

The department should return it staff levels to at least the levels in the 90's and early 2000s. The additional staff will be assigned to regional offices and travel throughout the regions of the state to address discrimination and employ initiatives that prevent discrimination, maintain quality assurance in enforcement activities and conduct appeal reviews. Adding staff to the department's enforcement and compliance unit and administrative support will increase the department's capacity to complete investigations and move cases to final resolution. It will provide increased geographic accessibility to MDHR's services outside of the Twin Cities Area and make departmental resources more accessible to non-English speaking people.

4. Research and analysis of the State of Minnesota's administrative application of Minn. Stat. §363A.06 subd. 1(8) to determine compliance and make recommendations.

Pursuant to this statute, the Commissioner has the power to issue complaints, receive and investigate charges filed alleging unfair discriminatory practices, and make a determination whether or not probable cause exists for hearing to be conducted.

ANALYSIS

An administrative rule 5000.0300-5000.0900 was established to implement the provision of this section. The law gives the commissioner the power to issue a complaint when the commissioner has determined that probable cause for discrimination exists and after attempts to eliminate the unfair discriminatory practice by conciliation have been terminated, or when the commissioner has reason to believe that a person is engaging in an unfair discriminatory practice. Minn. Admin. *Rules. 5000.0900 Subp 1.* The commissioner may also bring a civil action seeking to redress unfair discrimination in the district court. *Minn. Stat. §363A. 33 Subd*

1.

We requested MDHR commissioner reports on complaint enforcement for the last 5 years, MDHR list of discrimination complaints for the last 5 years by complaint category, MDHR Commissioner's programs that aid in determining human rights compliance throughout the state (major population centers) with the provisions of this chapter for the last 5 years, MDHR Commissioner's research and studies of discriminatory practices based upon race, color, creed, religion, national origin, sex, age, disability, marital status, status with regard to public assistance, familial status, sexual orientation, or other factors over the last 5 years, MDHR Commissioner's development accurate data on the nature and extent of discrimination and other matters as they may affect housing, employment, public accommodations, schools, and other areas of public life over the last 5 years, MDHR Department of Labor Apprenticeship Training Reports for the last 5 years, MDHR Labor unions' affirmative action program reports for the last 5 years, MDHR State Departments affirmative action plans and reports for the last 5 years, MDHR general and subcontractors affirmative action plans (samples) and list of modifications over the last 5 years, MDHR report on the implementation of general contractors and subcontractor affirmative action plans for the last 5 years, MDHR Website review for accessible compliance reports for the last 5 years and MDHR State Technology and Facility Accessibility reports for the last 5 years.

We also requested a list and random sample (all contracting categories) of complaints made to MDHR by contracting companies for the last 5 years and the resolution of those complaints, MDHR Work Share Agreement with the Equal Employment Opportunity Commission and Reports for the last 5 years, MDHR Process Improvement Initiatives launched by the Department to decrease the number of cases older than one year and reduce the average

time to issue a determination and results reports over the last 5 years, MDHR activities and reports at the St. Cloud Office over the last 5 years, MDHR interagency agreements with other human rights offices in the state and reports related to the agreements, MDHR list of probable cause cases for the last 5 years and MDHR report on collaboration efforts with local Fair Employment Practices Agencies for the last 5 years.

The team received 2012 diversity report on affirmative action plans, a list of compliance certificates issued for the last five years, workforce certificate holder's list, a 2016 equal pay audit report, MDHR workforce audit 2016, symposium, projects over 10000 hours, MHDR complaint handling chart, enforcement case summary report, list of no probable and probable cause determinations for the last five years, MDHR legislative reports from 2011-2016, workshare agreements with EEOC, salary and lease agreement report for Saint Cloud office, MDHR Attorney General litigation report and MDHR complaint handling chart,

i. The Department's Investigations Process

When a charge is filed, the department determines if it falls under the Human Rights Act. If the charge is covered under the act it sends the charge to the respondent. At this point mediation is optional. The parties may choose to mediate and if successful close the case. If mediation is declined the department then interviews identified individuals with knowledge of the charges and reviews documents provided that are relevant. The department also reviews applicable laws and administrative rules and makes a determination.

If the department makes a determination of no probable cause the case is closed with an option to appeal. When the department issues a no probable cause determination it informs the charging party that he or she may file a legal action within 45 days. When the department makes a probable cause determination it tries to settle the dispute through conciliation. The majority of

the probable cause determinations are resolved through the conciliation process. When the department is unable to resolve the dispute through conciliation, the department refers this cases to the Attorney General's office to be litigated in compliance with M. S. §363A. 32. Although this section requires cases to be referred to the attorney General, the Commissioner can still file a charge directly with the district court. *Minn. Stat. §363A. 33 Subd 1*

ii. Strategies Implemented

In 2010 the department was using the "Docket and Dismiss" program where cases were administratively dismissed without investigation if determined to be without merit. The average time it took the department to investigate a discrimination charge was about 423 days. Under this program about 416 charges were dismissed in 2010. In 2011 the department instituted the "Rocket Docket" program to give expedite cases that could be resolved quickly. This program allowed the department to resolve non-complex cases with few issues and witnesses. The department eliminated the "Docket and Dismiss" program which resulted in an increase in the number of pending cases for the next three years. This was due to the fact that older cases were added to the department's inventory. The Department eliminated sending out questionnaires to individuals as part of the charge drafting process. The elimination of questionnaires resulted in the Department completing the drafting of more than 95 percent of its initial charges in less than a week. By 2014 the "Rocket Docket" program paid off and the number of pending cases dropped. Currently the average time to investigate a charge is 247 days.

The department also focused on eliminating older cases and by 2015 charges above one year dropped from about 228 to 18 in 2015 and 38 in 2016. From 2011 through 2016 the department issued about 2627 no probable cause determination, 268 probable cause determinations cases and settled about 198 cases in conciliation. The department currently has

about 14 active litigation matters with the Attorney General's office. Given that the Attorney General is overwhelmed with cases to litigate and other responsibilities, the department exerted effort to get respondents to settle in conciliation court. The department currently receives charges by phone and uses a sign language staff. The department has contracted with a language line for non-English speakers.

From interviewing attorneys who have had experience filing cases with the department, they complain that transfers of file from EEOC to the department create major delay. Attorneys' also complained that more experienced mediators are needed for mediation. They complain that coordination between the EEOC and MDHR is lacking.

FINDINGS

The department is following its procedure and this reflects in the outcomes. The department has reduced its case inventory. Cases over the years have dropped to its lowest since the department was created. The department has settled the majority of the cases in which probable cause was determined. The department forwarded the cases it could not resolve to the attorney general's office. Although the Attorney General is attorney for the commissioner, they are sometimes overwhelmed with cases.

The Attorney General has about 14 active litigation matters. Not all cases referred to the attorney general are taken by that office. The Attorney General has other cases and responsibilities. This has forced the department to aggressively pursue conciliation to settle or close cases for charging party to pursue litigation in court. The department acknowledges the need for legal representation.

RECOMMENDATIONS

1. Legislature should give the commissioner the power to hire its own attorneys as part of his staff to litigate probable cause cases.

2. Introduce a grading system for employers/companies for whom discrimination charges have been brought against just as Better Business Bureau does.

3. Improve coordination with EEOC so that file transfer from EEOC to MDHR will occur smoothly. Closing of the files should simultaneously between the two organizations to avoid confusion for clients.

5. INTERVIEWS - HUMAN RIGHTS ACT:

FINDINGS

Many people are not aware of the role of the Department of Human Rights. This was particularly so with immigrants and people in rural areas of the state. People do not know what to do or who to call if they have been discriminated upon. People, who know about the department, do not know how to access it.

There is a lack of faith in the agency. People who have been involved with the agency in the past tell their stories to others and they do not bother to file complaints with the agency assuming that nothing will be done.

There were complaints about how long the complaint process is taking and some indicated that they do not know what the decisions are in their cases or if any decisions have been made at all leading to dissatisfaction with the process and a possible belief that the respondent did not get punished because they were white or had a relationship with the investigators.

There are forces in some communities that pressure people to be silent in the face of discrimination. These include cultural norms that work against complaining or that avoid drawing attention to the group; and bullying/social shunning of people who complain about discrimination. It's hard to stay in a workplace or live in a small town if people won't talk to you because you stood up for your rights.

Human Rights Commissions in most cities in greater Minnesota have no funds or are under-funded and lack staff. Members of the commissions are volunteers and do not show up for meetings resulting in a lack of quorum to make any meaningful decisions.

There is a lack of enforcement of human rights laws, even when determinations have been made. Some said it is particularly hard in small towns where buy-in might be weaker. For example, building codes are not enforced in smaller communities. Disabled people cannot get into buildings with their wheelchairs. Building renovations or add-ons do not the code requirements for basic accessibility and nobody seems to be enforcing that. If you living in a small town and you raise these issues, you get ostracized. People are fearful of retaliation and losing friends.

We found that people were frustrated with the data privacy laws used to deny them information about their case. If you file a complaint, you should know the details of the investigation and what the outcome is.

The department should be able to tell people upfront if they have a case or not. People get high hope when the department accept their complaints and take long to investigate it. Their hopes are then dashed when they are informed that there is no probable cause. Everyone who files a complaint ought to feel that the department bent over backwards for them.

RECOMMENDATIONS

Recommendations proposed include the following: outreach/public education/cross-cultural work in different communities. The department should be at community events, have their table with materials and staff who can talk to people in the community about what the department does. There should be radio and TV programs in communities that get a lot of complaints. There needs to be more education of what human rights violations are and what people need to do if they feel their rights have been violated.

The department should hire people who look like the people who live in the communities. Most people want to talk to someone who looks like them. Somali person would want to speak to a Somali person.

The State should find ways to strengthen the Human Rights Department and the community's faith in its ability to help by increasing its staffing and resources. The Human Rights Department needs to have more transparency, open communication and a presence in the communities throughout the state.

Evaluate the state's system of Human Rights Commissions to make sure they are aligned with the department, in action, and effectiveness. Consider further empowering these groups to enact programs to prevent discrimination rather than only responding after the fact.
If possible, encourage people to report discrimination anonymously or privately so their community does not need to find out.

B. AUDIT REGARDING CERTAIN PROVISIONS OF M.S. § 43A (AFFIRMATIVE ACTION PROGRAM)

1. The administrative application of Minn. Stat. §43A.04 Subd. 3(4) as it relates to compliance with documenting each protected class group's utilization.

Under Minn. Stat. §43A.04 Subd. 3(4), the commissioner is required to adopt rules under the Administrative Procedure Act to implement the provisions of the chapter that directly affect the rights of or processes available to the general public. The rules have the force and effect of law and may include but are not limited to a statewide affirmative action program to include requirements for agency affirmative action plans, statewide policies and procedures, reporting requirements, accountability and responsibility of employees in the executive branch, and overall objectives of the program.

Pursuant to this section of the statute, the Commissioner adopted Rule 3900.0400. Subp.2 which defines affirmative action as "a management point of view that all barriers to employment opportunity that are not based on specific job requirements should be identified and removed and that initial employment and advancement opportunities for persons in protected groups shown to be underutilized in an agency's work force should be facilitated so that the imbalance is redressed." Affirmative Action Plan is defined in Subp. 3 as "a coherent set of management policies and procedures designed to find any barriers contributing to imbalance in an agency's work force and to foster the correction of any imbalances which exist."

The Rule also defines "Goal" in Subp. 10 as "a numerical objective designed to correct an identified deficiency in the utilization of protected group members." The Rule further defines "underutilization" in Subp. 21 as "the employment in a goal unit of fewer qualified protected group members than would reasonably be expected from their workforce participation in the labor market area." The term "Protected groups" is defined in Minn. Stat. §43A.02, Subd. 33 as

“females, persons with disabilities, and members of the following minorities: Black, Hispanic, Asian or Pacific Islander, and American Indian or Alaskan native.”

ANALYSIS

The Statewide Affirmative Action Program is found in Chapter 3905 of Minnesota Administrative Rules. All agencies in the executive branch of government are required to have an affirmative action plan administered by the head of the agency. The rules lay out a plan for agencies with more than 25 employees and another for those with less than 25 employees. There is a requirement that the affirmative action plans have a complaint procedure, goals and timetables. For the requirements of goals and timetables, each agency is required to determine underutilization of protected groups based on types of jobs within each agency and agency subdivision; number of employees in those jobs, by state class title, and by protected group; availability of protected group workers having the qualifications for those jobs; and geographic locations and applicable labor market areas for each type of job in each agency and agency subdivision. Agency heads are required to establish numerical goals and goals for each goal unit by protected group. There is a reporting requirement for agencies with more than 25 employees to submit a report on their affirmative action efforts every quarter and for agencies of fewer than 25 employees to do so semiannually. Each agency is also required to submit to the commissioner a report of the results of its affirmative action plan biennially.

FINDINGS

The documents submitted to us following our document request reveal that all the agencies in the executive branch have in place affirmative action programs that comply with the requirements of Minn. Stat. §43A.04 Subd. 3(4). In all agencies affirmative action plans that we reviewed, the job category availability, utilization, annual goals, and underutilization data shows

numbers for women and individuals with disabilities. There is no data for each of the protected groups of Black, Hispanic, Asians or Pacific Islanders, and American Indians or Alaskan Native as defined in the administrative rules. In all of the plans protected groups are lumped under a new category of "racial/ethnic minorities" which is not a category of people in the statutes or rules. By using the "racial/ethnic minorities" label, for Black, Hispanic, Asian or Pacific Islander, and American Indian or Alaskan Native, the State has no information to track the progress of Blacks, Hispanics, Asian or Pacific Islanders, and American Indians or Alaska Indian as is done for women and individuals with disabilities.

This falls short of the State's policy of implementing and maintaining an affirmative action program designed to eliminate underutilization of qualified protected group members within the state civil service through a series of specific, result-oriented procedures combined with good faith effort. We found this consistent in 2010-2012, 2012-2014, 2014-2016, and the 2016-2018 Affirmative Action Plans. Below is a sample report done by Minnesota Department of Human Services.

DHS

JOB CATEGORY AVAILABILITY/UTILIZATION/UNDERUTILIZATION ANALYSIS & ANNUAL GOALS

Worksheet for comparing incumbency to availability and setting goals to correct underutilization.

WOMEN

Job Categories	Total Employees in Job Group	Total Number of Women in Group	% of Women in the Group	Availability %	Availability Number	AAP 2014-2016 Number Underutilize	AAP 2012-2014 Underutilized	Improved, Not Improved, Same	Numerical Difference in the Two Plans
Officials/Administrators	264	155	58.71%	0.40	106	0	0	Same	0
Professionals	2712	1961	72.31%	0.56	1511	0	0	Same	0
Paraprof/Technicians	2350	1791	76.21%	0.57	1344	0	0	Same	0
Protective Services	732	239	32.65%	0.35	256	17	0	Not Improved	17
Office/Clerical	348	314	90.23%	0.63	221	0	0	Same	0
Skilled Craft	58	1	1.72%	0.06	4	3	4	Improved	-1
Service Maintenance	142	76	53.52%	0.44	63	0	0	Same	0
Totals	6606	4537	68.68%						

MINORITIES

Job Categories	Total Employees in Job Group	Total Number of Minorities in Group	% of Minorities in the Group	Availability %	Availability Number	AAP 2014-2016 Number Underutilize	AAP 2012-2014 Underutilized	Improved, Not Improved, Same	Numerical Difference in the Two Plans
Officials/Administrators	264	23	8.71%	0.11	29	6	10	Improved	-4
Professionals	2712	333	12.28%	0.13	339	6	126	Improved	-120
Paraprof/Technicians	2350	296	12.60%	0.13	294	0	77	Improved	-77
Protective Services	732	51	6.97%	0.12	89	38	53	Improved	-15
Office/Clerical	348	54	15.52%	0.12	43	0	1	Improved	-1
Skilled Craft	58	1	1.72%	0.12	7	6	5	Not Improved	1
Service Maintenance	142	10	7.04%	0.17	24	14	9	Not Improved	5
Totals	6606	768	11.63%						

INDIVIDUALS WITH DISABILITIES

Job Categories	Total Employees in Job Group	Total Number of Indiv./ with Disabilities	% of Indiv. w/ Disabilities in the	Availability %	Availability Number	AAP 2014-2016 Number Underutilize	AAP 2012-2014 Underutilized	Improved, Not Improved, Same	Numerical Difference in the Two Plans
Officials/Administrators	264	19	7.20%	7.00%	18	0	9	Improved	-9
Professionals	2712	167	6.16%	7.00%	190	23	157	Improved	-134
Paraprof/Technicians	2350	59	2.51%	7.00%	165	106	192	Improved	-86
Protective Services	732	14	1.91%	7.00%	51	37	74	Improved	-37
Office/Clerical	348	19	5.46%	7.00%	24	5	16	Improved	-11
Skilled Craft	58	3	5.17%	7.00%	4	1	5	Improved	-4
Service Maintenance	142	3	2.11%	7.00%	10	7	12	Improved	-5
Totals	6606	284	4.30%						

Source: American Fact Finder, operated by the U.S. Census Bureau. Labor Statistics for women and minorities compiled from the American Community Survey (2006-2010)., released in March of 2013. Statistics for individuals with disabilities are taken from OFCCP (Office of Federal Contract Compliance Programs) and are based upon data derived from the American Community Surveys (2006-2010).

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RECOMMENDATIONS

Each agency Affirmative Action Plan should review and provide numbers for each of the protected group- Black, Hispanic, Asian or Pacific Islander, and American Indian or Alaskan native. This will help the State know whether it is addressing disparities in each of these groups and be able to design targeted programs or solutions to deal with their underutilization.

There should be a revision of all Affirmative Action Plans to include the protected groups of Black, Hispanic, and Native American instead of "racial/ethnic minorities" to adequately account for these groups individually. An example of best practice in reporting can be found in the City of Saint Paul utilization report. The City tracks and reports quarterly on its workforce utilization by race, sex and disability. Below is a table of the City of Saint Paul Workforce utilization.

TOTAL UTILIZATION REPORT

CITY OF SAINT PAUL
Christopher B. Coleman, Mayor

DEPARTMENT OF HUMAN RESOURCES
Angela Nalezny, Director

Citywide Total
10/4/2016

FULL TIME EMPLOYEES

				WHITE		PERSONS OF COLOR															
						BLACK		HISP.		ASIAN		N. AMER		P. ISLANDER		TWO OR MORE		DISAB.					
Job Category	Total	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	%F	%PoC	%DIS	%WM
Administration	87	54	33	48	28	4	3	1	0	1	1	0	0	0	0	0	1	0	1	37.93	12.64	1.15	55.17
Administrative Support	352	66	286	45	206	9	20	0	14	7	28	1	2	0	1	4	15	4	10	81.25	28.69	3.98	12.78
Professional	408	189	219	151	185	17	7	3	3	14	19	0	0	0	0	4	5	7	1	53.68	17.65	1.96	37.01
Protective Service - Nonsworn	61	53	8	18	3	12	2	7	0	14	2	1	1	0	0	1	0	1	0	13.11	65.57	1.64	29.51
Protective Service - Sworn	1001	889	112	680	96	53	1	52	2	52	4	16	5	1	0	35	4	25	1	11.19	22.48	2.60	67.93
Service Maintenance	402	339	63	265	56	26	5	17	0	6	1	4	0	0	0	21	1	16	0	15.67	20.15	3.98	65.92
Skilled Craft	145	143	2	125	2	6	0	5	0	1	0	4	0	0	0	2	0	6	0	1.38	12.41	4.14	86.21
Technical	299	214	85	173	63	12	7	6	1	14	11	0	1	0	0	9	2	12	2	28.43	21.07	4.68	57.86
Totals	2755	1947	808	1505	639	139	45	91	20	109	66	26	9	1	1	76	28	71	15	29.33	22.18	3.12	54.63

OTHER THAN FULL TIME EMPLOYEES

				WHITE		PERSONS OF COLOR															
						BLACK		HISP.		ASIAN		N. AMER		P.ISLANDER		TWO OR MORE		DISAB.					
Job Category	Total	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	%F	%PoC	%DIS	%WM
Administration	8	5	3	4	3	0	0	0	0	1	0	0	0	0	0	0	0	0	0	37.50	12.50	0.00	50.00
Administrative Support	95	30	65	13	28	7	11	1	6	7	19	0	0	0	0	1	1	5	3	68.42	55.79	8.42	13.68
Professional	8	2	6	1	4	1	0	0	0	0	2	0	0	0	0	0	0	0	0	75.00	37.50	0.00	12.50
Service Maintenance	67	46	21	14	11	16	5	3	0	10	3	1	1	0	0	2	1	0	0	31.34	62.69	0.00	20.90
Technical	3	2	1	2	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	33.33	0.00	0.00	66.67
Totals	181	85	96	34	47	24	16	4	6	18	24	1	1	0	0	3	2	5	3	53.04	54.70	4.42	18.78

An Equal Opportunity Employer

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2. The administrative application of Minn. Stat. §43A.04 subd. 4 as it relates to procedural changes on each protected class group's availability by job category and under-utilization.

Minn. Stat. § 43A.04, Subd.4 requires the Commissioner to develop administrative procedures and make them available to agencies, employees and other appropriate representatives for at least 15 days prior to implementation in: maintenance and administration

of a plan of classification for all positions in the classified service and for comparisons of unclassified positions with positions in the classified service; 2) procedures for administration of collective bargaining agreements and plans established pursuant to section 43A.18 concerning total compensation and the terms and conditions of employment for employees; 3) procedures for effecting all personnel actions internal to the state service such as processes and requirements for agencies to publicize job openings and consider applicants who are referred or nominate themselves, conduct of selection procedures limited to employees, noncompetitive and qualifying appointments of employees and leaves of absence; 4) maintenance and administration of employee performance appraisal, training and other programs; and 5) procedures for pilots of the reengineered employee selection process.

The commissioner will provide public notice of any pilot directly affecting the rights of and processes available to the general public and make the administrative procedures available for comment to the general public, agencies, employees, and appropriate exclusive representatives certified pursuant to sections 179A.01 to179A.25 for at least 30 days prior to implementation.

ANALYSIS

Rules promulgated pursuant to this statute, authorize appointing authorities to make appointments to unclassified positions without public notice and appointment to an unclassified position any person they consider qualified. This rule gives appointing authorities a lot of discretion on who to hire for unclassified appointments.

There is no mandate for appointing authorities to consider their affirmative action goals when making these appointments. For appointments to positions for which compensation is established by statute, the appointing authority is required to submit the person's resume to the

commissioner. The rule does not indicate what the commissioner must do with the resume and whether the commissioner has authority to overrule the selection decision of the appointing authority. This leaves the appointing authority with a lot of discretion in the appointment of unclassified positions. *See* Rule 3900.9100.

In routine service appointments, the commissioner through public notice designates the routine service classes and describes the procedures to be used in recruiting and selecting persons for these appointments. This action by the commissioner controls and guides how appointing authorities make routine service appointments. *See* Rule 3900.8700.

The administrative rules state that appointments in the classified service must be filled from the applicant pool with some exceptions under chapters 3900 and 3905 of the statutes. An appointing authority may select an applicant from the applicant pool after comparing the knowledge, skills, and abilities of the applicant with the specific needs of the position and agency. The rule defines specific needs to include meeting the agency's affirmative action goals.

The appointing authority is required to submit to the Commissioner appropriate appointment forms which must include the effective date of the appointment. There is no directive on what the commissioner does with the forms and whether the commissioner has review authority to make sure the appointing authority has taken into consideration the specific needs of the agency, especially the agency's affirmative action goals.

FINDINGS

No information was provided or found on whether the state made any procedural changes to M.S. 43A.04 subd. 4 to affect protected class groups' availability by job category and under-utilization.

RECOMMENDATIONS

Appointing authorities should be required to give notice of openings in unclassified positions and be required to consider the agency's affirmative action goals in selecting candidates for these positions.

The commissioner should have more oversight on this process beyond the requirement that the appointing official send in the resume of the appointee. The commissioner should be given approval authority to verify that affirmative action goals were taken into consideration before these appointments are made.

3. The administrative application of Minn. Stat. §43A.09 as it relates to research to address utilization of targeted business groups and protected class groups in employment and to assist with outreach and report findings.

Minn. Stat. §43A.09 requires the commissioner in cooperation with appointing authorities of all state agencies to maintain an active recruiting program publicly conducted and designed to attract sufficient numbers of well-qualified people to meet the needs of the civil service, and to enhance the image and public esteem of state service employment. The statute also require that special emphasis be given to recruitment of veterans and protected group members to assist state agencies in meeting affirmative action goals to achieve a balanced work force.

ANALYSIS

Youth Recruiting

To implement this section of the statute, the state through Minnesota Management and Budget has partnered with Right Track (Saint Paul) and STEP-UP (Minneapolis) to develop a pipeline of diverse talent to meet its future workforce needs.

Right Track has four programs- YJ01, which subsidizes jobs in parks, libraries, nonprofits, recreation, gardening, the arts, and more; YJ02, which provides employer-paid internships and professional skills training; YJPro**,** which connects youth and young adults with advanced internships and training opportunities through strategic partner organizations that build skills for specific careers; and Genesys Works, where young professionals work an average of 20 hours per week at one of nearly 50 corporate clients, including companies like 3M, Cargill, Xcel Energy, UnitedHealth, Medtronic, Target and Best Buy in IT-internships.

Step-Up Achieve provides work-readiness training, great on-the-job experience, and connections with adult professionals who can support youths in achieving their career and college goals. The organizations helps youths in Minneapolis gain greater confidence and learn how to succeed in a professional environment. Step-Up was created in 2004 to serve Minneapolis youth and young adults who faced barriers to employment, including youth from lower economic backgrounds, youth of color, and youth with disabilities. Since the program was launched, it has provided over 18,000 internships. STEP-UP interns explore diverse career interests, gain valuable on-the-job skills, make strong professional connections, and prepare for meaningful careers.

FINDINGS

Our review of these partnerships reveals Right Track and Step-Up are important partners in the State's recruitment efforts and provides a pipeline for cultivating youth's interest in public sector careers and jobs. However, in the case of Right Track, the state only works with the YJ02 program and does not work with the YJ01, YJPro and the Genesys Works programs. There is a lot of potential in the YJPro and Genesys Works Programs that the state needs to explore if it wants to compete with corporations for the best talents. We did not see similar partnerships with

organizations in greater Minnesota. Cities like Duluth, Austin, Rochester, and Mankato, do have youths and young protected group people who could benefit from a similar partnership between the state and a youth organization.

RECOMMENDATIONS

Expand youth recruitment and employment programs to include YJ01, YJPro and the Genesys Works programs. These youth programs should be expanded beyond Minneapolis and Saint Paul to greater Minnesota to attract talents from these localities.

Interns and Student Workers

The state also indicates that it will provide internships and student work positions to secondary or post-secondary students so that they can get on-the-job experience and an introduction to state government. This program requires that state agencies post internships and student work opportunities on the State of Minnesota Career website, to allow students to easily locate job opportunities by going to the "search for jobs" section of the website.

The state also has the Star of the North Fellowship Program open to applicants who have or will soon attain advanced degrees, and who demonstrate an interest in a career in public service. Each year the program provides 18 fellowship opportunities across 8 agencies for 12 months salaried positions focused on Policy analysis and development; technology investment management; business process improvement; statistical and data analysis; development of data analytics tools; public procurement; plain language principles; financial analysis; new budgeting approaches; best practice research; and technology change and business implications.

During the time that these students work for the agencies, they participate in monthly fellow meetings, informational interviews with senior state executives and managers, networking opportunities, and training events. This is an essential pipeline for getting students interested in

state employment opportunities and should be expanded to include more state agencies. The state directs agencies to use college resources such as the MNSCU directory and GoldPass-University of Minnesota to post job openings; network with college career services; and join groups like the Minnesota Association of College and Employers (MN ACE).

In the summer of 2016, the State participated in the Urban Scholars program hosting 16 full-time interns focusing on leadership and professional development during their 12 week paid internship. Urban Scholars is a program that seeks to close the employment gap. It is managed and branded through the Equity Division - Minneapolis Department of Civil Rights. To accomplish its goal, Urban Scholars provides undergraduate and graduate students from diverse racial and ethnic backgrounds an employment experience to afford them opportunity to gain skills to begin careers in the public and/or private sectors. The State of Minnesota was able to provide 2 out of 16 interns full-time permanent employment after their 2016 experience. Additionally 7 of the 16 from 2016 interns have indicated to return to the State for the 2017 summer program. The State of Minnesota is committed to 32 Urban Scholars for2017.

FINDINGS

These programs however do not make it mandatory for all state agencies to post their internships and student work openings on the State of Minnesota Career website. There are other state agencies that post these openings on their agency sites. This makes it difficult for students looking for internships and work opportunities as they have to go through the 206 other state websites to find internships and student work opportunities.

RECOMMENDATIONS

The State should centralize the posting of these positions on State of Minnesota Career website and require all agencies to post the positions on the site.

Persons with Disabilities

For recruitment of persons with disabilities, the state uses the help of Vocational Rehabilitation Services, an organization which provides training, finds qualified candidates and providing the state access to pre-screened applicants. The state also works with the State Services for the Blind, which provides services to individuals who are blind, visually impaired or Deaf/Blind, to match workforce needs with qualified graduates from its program. Talent Acquisition Portal (TAP), an online system, provides a job posting portal for a talent pool of vocational rehabilitation candidates looking for employment.

The state further taps into national resources for recruitment of people with disabilities including the Autistic Self Advocacy Network (ASAN), Career Opportunities for Students with Disabilities (COSD), Disabled person, Disability.gov, Employer Assistance and Resource Network (EARN), National Federation for the Blind (NFB), National Telecommuting Institute, Inc. (NTI), Office of Disability Employment Policy ODEP Employment First Program, Office of Disability Employment Policy ODEP Add Us In Initiative, Ticket for Work Employment Networks and Work Force Recruitment Program.

Starting in 2012, the State has increased its recruitment efforts for persons with disabilities. It participated on the Employer Task Force headed by the Commission on Deaf, Deaf/Blind and Hard of Hearing to strategize on how to improve recruiting and hiring of persons with disabilities. The State has also presented in many disability forums promoting the work of the state and the opportunities and careers available with the state.

FINDING

There is little to nothing we saw from our review that the state is doing to recruit people with mental disabilities to state employment.

RECOMMENDATIONS

The state should create programs specifically targeted to assisting people with mental disability get employment opportunities with the state.

Veterans

Applicants are encouraged to indicate their veteran status on the State of Minnesota Careers website when they submit an application. The state directs agencies to post job openings on Minnesotaworks.net and label them veteran friendly. Department of Employment and Economic Development (DEED) through its Veterans Employment Services matched veterans seeking employment and businesses interested in hiring them. Other resources for veterans included Beyond the Yellow Ribbon and the American Job Center website.

To assess Minnesota's efforts as an employer of veterans, the 2009 Legislature directed Commissioner of MMB to annually collect veteran employment data from each cabinet-level state agency. Executive Order 10-13 also instructs state agencies to report their veteran focused recruitment and retention activities which demonstrates their support and commitment to being a veteran friendly employer. The 2009 law requires state agencies to interview the top five Recently Separated Veterans (RSV) who apply for and meet the minimum qualifications of a vacant position. Eligible veterans may not be terminated from employment, except as permitted by statute. Employers must notify the veteran of their proposed termination and inform the veteran of their right to contest the termination in a formal hearing.

State agencies have conducted veteran focused recruitment and retention activities; provided integration education and guidance; built partnerships with veteran organizations and advocates; provided support to deployed military employees; and retained job classifications whose sole purpose is supporting veterans and in some cases must be filled by veterans.

Various organizations provide assistance to veterans seeking employment. DEED Veteran Workforce Programs/Veteran Employment Services provide individualized assistance with resumes, interviewing skills, networking techniques, referrals to other veteran services, and assistance connecting with employers. The Minnesota Department of Veterans Affairs, DEED and MNSCU have veteran focused positions to support veterans as they reintegrate back into civilian life and the workforce. State agencies conduct veteran focused recruitment activities including "Hire Vets First" Veteran Career Fairs, Camp Ripley Biennial Open House, The Military.com Career Fair, and Veteran Networking Job Club.

FINDINGS

The State has done and is doing a lot in assisting and recruiting veterans. This may be so because veterans have a state department dedicated to them and the resources necessary to assist them in training, recruitment and retention.

RECOMMENDATIONS

We will echo Governor Dayton's call in 2013 that more needs to be done in recruitment and retention efforts for veterans. More programs and resources need to be dedicated to assisting veterans with mental and post-traumatic stress syndrome.

Protected Group Members:

From 2011 to 2013, the resources the state used for recruitment of protected group members included the Minnesota Community Advisors on Recruitment and Retention Solutions group (MNCARRS), a group comprising 50 community organizations and state agencies; and Workforce Community Email List comprising over 500 diversity contacts and the Minnesota Diversity Councils. MMB compiles all agency job announcements and sends one email to the workforce community email list at the end of each business day.

Apart from the advance notice of job openings and the daily emails sent to these organizations by MMB, we were not provided with any documents showing a program designed to place special emphasis on the recruitment of protected group members as mandated by the statute during those years. If sending emails of job postings each day to a few organizations was what the state did to place special emphasis on protected group member recruiting, the state failed to comply with the second part of the statute.

However, starting in 2013, the State has been taking steps to place special emphasis on the recruitment of protected group members. In 2013 EODI met with individuals from the African American community to learn about their experiences in applying for state jobs. MMB/EODI sent a recruiter from Department of Human Services to represent the state at the Historically Black College Fair in Atlanta. In 2014, the State created a statewide recruiter position and participated in workgroups to redesign the applicant tracking system to ensure inclusive language on applications and that legal requirements were met. In 2015 MMB hired a Statewide Executive Recruiter to focus on hiring individuals of color into executive level positions. In April 2016, Governor Dayton created the Office of Diversity and Inclusion and appointed its first director to oversee efforts to ensure that the state's workforce reflects the rich diversity of Minnesota by increasing economic opportunity for people of color, people with disabilities, and others underrepresented in the workforce. In October 2016, the state participated in the People of Color Career Fair, a networking event aimed at showcasing talented minority professionals for employment.

FINDINGS

There was no special emphasis given to the recruitment of protected group people, disabled and women until recently. In fact there was nothing we saw designed to recruit women in the documents we received.

RECOMMENDATIONS

The state should make the fair for people of color an annual event and institute a fair for people with disabilities and women. Conduct protected group focused recruitment and retention activities for each of the listed protected groups. Mandate Minnesota Management & Budget to annually collect employment data for each of the listed protected groups from each cabinet-level state agency. Institute protected group recruitment initiatives on each MNSCU campus and make information and assistance for recruitment available. Create dedicated web page on each agency's website for posting of positions for which there is underutilization and openings.

MMB should provide protected group recruitment, educational outreach, consultation and training on behalf of all state agencies to promote the state as a diversity employer. Create protected group specific recruitment posters that target protected group communities for employment. These posters can be put in protected group neighborhoods and recreation centers. State should organize seminars on protected group employment for human resources managers, hiring managers, supervisors to share experiences in recruitment and retention.

Except for the state careers website, publication of vacancies is left to the discretion of the various agencies. The state should mandate publication in protected communities and with community/civic organizations of each protected group to publicize recruit and present candidates for underutilized vacancies.

Monitoring the Hiring Process

We looked at the Monitoring the Hiring Process Forms which were submitted by MMB pursuant to our document request. The Monitoring the Hiring Process Form is to be completed by hiring agencies for vacancies where there is underutilization for a protected group in an EEO job category. The form requires the agency to identify the underutilized protected group for the vacancy; check the box on the recruitment that was conducted; indicate who was involved in the recruitment and the cost; indicate the total number of people in the applicant pool; the number of qualified protected group members in the applicant pool; check the box if the appointment was affirmative or non-affirmative; and check the box selecting a reason if the appointment was justified (if the appointee is not a member of a protected group for which there is an underutilization).

The form also requires the agency to check the box indicating whether the pre-appointment/employment review process was followed as stipulated in the agency affirmative action plan and to explain if the process was not followed. Finally the form requires the signature of the human resource staff involved in the hiring and that of the affirmative action officer.

FINDINGS

In an overwhelming majority of the more 1,750 forms we reviewed, recruitment was done for the positions by posting the job openings on the MMB website and the agency website. There were very few job openings that were posted or advertised through community/civic organizations; community newspapers; workforce centers; professional organizations and community newspapers. We also noted in an overwhelming majority of the forms that the hiring officer justified the non-appointment of a protected group member by checking the box "No members of disparate groups were in the Applicant pool." In nearly all of the forms, the hiring

officer checked the yes box indicating that the pre-appointment/employment review process was followed as stipulated in the agency affirmative action plan.

We found 6 forms that were problematic. Five of the forms were from the Department of Public Safety (DPS). In four forms, DPS was hiring for state patrol officer in Marshall, Eveleth, and Rochester in May of 2014. It identified that there was underutilization of protected groups (women, minorities and people with disabilities) for the positions. There were 38 applicants in the pool. Of this number 3 were females and 5 were minorities. A protected group member was not hired for any of the positions and the justification given for each one of them was indicated as "No members of disparate groups were in the Applicant pool." In December of 2015, there was an opening for a forensic scientist at the Bureau of Criminal Apprehension (BCA).

DPS identified that there was underutilization of protected groups (women, minorities and people with disabilities) for the position. The opening was posted on internet job boards, the Minnesota Department of Management and Budget website and DPS website. There was only one applicant in the pool and the applicant was a female. The applicant was not offered the position and the justification given was indicated as "No members of disparate groups were in the Applicant pool."

In January of 2016, there was an opening at the Minnesota Office of Higher Education for an attorney. The Office identified that there was underutilization of protected groups (minorities and people with disabilities) for the position. The opening was posted on the MMB website and the Office's website. There were 39 applicants in the pool. Of this number 5 were minorities and 3 females. A protected group member was not hired for the position and one of the justifications given was indicated as "No members of disparate groups were in the Applicant pool."

There is no oversight of the hiring process especially for vacancies where there is underutilization of protected groups.

RECOMMENDATIONS

It is recommended that there be more advertising of job opportunities on other websites apart from the MMB and the hiring agency's websites. Recruiting for vacancies where there is underutilization for a protected group should be conducted in places and websites frequented by members of that protected group. Community newspapers, community centers, community/civic organizations, professional organizations, diversity-focused magazines/journals, workforce centers, and disability/minority councils are resources that should be used if the State wants to have a pool of diverse qualified candidates. Some agencies listed a barrier to recruitment as lack of financial resources. Financial resources should be available for active and targeted recruitment to bridge the gap in underutilization of protected groups.

Except for the state careers website, publication of vacancies is left to the discretion of the various agencies. The state should mandate publication in protected communities and with community/civic organizations of each protected group to publicize recruit and present candidates for underutilized vacancies. MMB should establish a working relationship with the State Workforce Development Board and the county workforce investment boards.

Mandate approval from Minnesota Management and Budget for justified hires where there is an underutilization for a protected group in an EEO job category.

Municipalities

Though not a part of the audit, Minn. Stat. 363A.36 Subd. 1 (a) caught our attention during the writing of this report. This section of the statute encourages municipalities that receive money from the state for any reason to prepare and implement an affirmative action plan for the

employment of minority persons, women, and qualified disabled and submit the plan to the commissioner of human rights. We did not request documents from the Department of Human Rights on its implementation of this section of the statute and do not have findings on whether municipalities that receive money from the state have been submitting affirmative action plans to the commissioner. We want to however recommend that the state amend this section of the statute to mandate municipalities that receive money from the state for any reason to prepare and implement an affirmative action plan for the employment of minority persons, women, and qualified disabled and submit the plan to the commissioner of human rights. We believe mandating rather than encouraging municipalities to prepare and submit affirmative action plans to the commissioner of human rights will go a long way in making the state even more inclusive.

4. The administrative application of Minn. Stat. §43A.04 subd. 7 as it relates to each protected class group's utilization and report findings.

This section of the statute mandates the commissioner to issue a written report every six months period (June 30 and December 31) to the Legislative Coordinating Commission listing the number of appointments made under each of the categories in section 43A.15; the number made to the classified service other than under section 43A.15; and the number made under section 43A.08, subdivision 2a. The categories in section 43A.15 are:

a. emergency appointments
b. temporary appointments
c. provisional appointments
d. noncompetitive appointments
e. appointments through transfer or demotion
f. appointments for unclassified incumbents of newly classified positions

g. routine service appointments

h. work training appointments

i. revenue seasonal employees

j. on-the-job demonstration process and appointments

k. reinstatement

The appointments made under Minn. Stat. §43A.08, subdivision 2a are for temporary unclassified positions.

ANALYSIS

Pursuant to our document requests, Minnesota Management & Budget provided us with copies of semi- annual appointment reports for 2011 to 2015 that were sent to the Joint Committee on Employee Relations. A review of these documents indicates the State complied with the mandates of the statute. The State did not only provide the number of appointments made under each of the categories as required by the statute, the State also provided a snapshot of the overall hiring activity for the last three years and analysis on the hiring numbers and what resulted in an increase or a decrease during the reporting period.

FINDINGS

There is nothing in the statute that requires the commissioner to report on protected group utilization to the Legislative Coordinating Commission. Reporting on the utilization of protected groups in number of appointments made under these categories is useful information that can inform the legislature or the state of the State's affirmative action initiatives.

RECOMMENDATIONS

Amend Minn. Stat. §43A.04 subd. 7 to require reporting on the number of each of the listed protected groups appointments made under each of the categories in section 43A.15 and section 43A.08, subdivision 2a.

5. The administrative application of Minn. Stat. § 43A.15 subds. 1-15 as it relates to each protected class group's utilization and report findings.

This section of the statute lists the various types of appointments that can be made by appointing officials. Appointing authorities can make emergency appointments of up to forty five days. The commissioner may authorize an appointing authority to make a temporary appointment of up to six months, grant extensions of temporary appointments, search the employment database for qualified applicants or authorize the appointment of any person deemed qualified by the appointing authority.

The commissioner may authorize an appointing authority to make a provisional appointment for a maximum of 12 months if no applicant is suitable or available for appointment. At the request of an appointing authority, the commissioner may authorize the probationary appointment of a provisional appointee who has performed satisfactorily for at least 60 days and has completed the licensure or certification requirement.

The commissioner may also authorize an appointing authority to promote an incumbent with permanent or probationary status to a reallocated classified position; the transfer or demotion of an employee in the classified service within an agency or between agencies; the probationary appointment of an incumbent who has passed a qualifying selection process and who has served at least one year in an unclassified position which has been placed in the classified service by proper authority; the administration of a qualifying selection process if a

class is of a routine, service nature involving unskilled tasks, the performance of which cannot be directly related to qualifications beyond a minimum competency level; the probationary appointment of persons who successfully complete on-the-job state training programs which have been approved by the commissioner; and the administration of a qualifying selection process for the filling of seasonal positions in the Department of Revenue used in the processing of returns and providing information during the tax season.

The commissioner is further mandated to establish qualifying procedures for applicants whose disabilities are of such a severe nature that the applicants are unable to demonstrate their abilities in the selection process, providing up to 700 hours on-the-job trial work experience for which the disabled person has the option of being paid or unpaid. These qualifying procedures allow the applicants to demonstrate their job competence through the on-the-job trial work experience selection procedure. The commissioner may authorize the probationary appointment of an applicant based on the request of the appointing authority that documents that the applicant has successfully demonstrated qualifications for the position through completion of an on-the-job trial work experience. The implementation of this subdivision may not be deemed a violation of chapter 43A or 363A.

An appointing authority may directly reinstate a person who is a former permanent or probationary employee of the job class, within four years of separation from the class.

The administrative rules state that applicants with disabilities may request that an assessment procedure be altered to accommodate their disabilities on the written or electronic application form. Once this request for accommodation is made, the appointing official shall review the request and decide whether to make the requested accommodations or to deny the request for accommodations. If the request is denied, the applicant has the choice of appealing

the decision to the commissioner, participating in the assessment procedure offered to other applicants or, if the commissioner determines that the applicant meets the eligibility criteria in Minnesota Statutes, section 43A.15, subdivision 14, participating in an on-the-job demonstration process. See Rule 3900.5100.

The on-the-job demonstration process shall consist of an on-the-job trial work experience of up to 700 hours. An applicant admitted for an on-the-job demonstration process must be given a list of agencies having positions in the class and written authorization by the commissioner to seek a vacant position in the class. The applicant, with the help of a placement and referral specialist in a rehabilitation program recognized by the state, may contact the agencies to develop a suitable placement.

An on-the-job demonstration process may be successfully completed at any time during the 700 hours of work experience if the appointing authority notifies the commissioner that the applicant can satisfactorily perform the essential duties of the position and is eligible for probationary appointment according to Minnesota Statutes, section 43A.15, subdivision 14. An on-the-job demonstration process may be terminated at any point during the 700 hours of work experience, except for the first 30 scheduled work days from the date of the start of the process, if the appointing authority notifies the commissioner that the applicant cannot satisfactorily perform the essential duties of the position.

An applicant terminated from an on-the-job demonstration process shall be authorized to seek placement in other positions in the class if the commissioner decides that the applicant's inability to perform was limited to duties essential to the specific position in which the applicant was placed but which are not essential for other positions in the class. See Rule 3900.5200.

The appointing authority shall notify an applicant with a disability and, upon request, provide a written statement of the reasons for the decision to provide or deny a request for assessment accommodations except when the accommodation is unnecessary due to the selection process format. The commissioner shall notify an applicant with a disability and, upon request, provide a written statement of the reasons for the decision to admit or deny admission to an on-the-job demonstration process. See Rule 3900.5300.

ANALYSIS

We received information on the 700-Hour Program following our document request. The 700 Hour Program (On-the-Job Demonstration Selection and Appointment) is a program designed for qualified individuals with disabilities. The program provides an opportunity to assess the ability of qualified individuals to perform the job, with or without accommodations, by observing the individual during an on-the-job work experience. The program may be used as a selection alternative for any job class and must be used when hiring for the Supported Employment Worker class, a job class specifically established for individuals with severe disabilities. Under Minn. Stat. §43A.421, the legislature authorized the State to establish 50 full-time supported employment positions, each of which can be shared by up to three persons with disabilities, with assistance from their job coaches.

The state also provides The State of Minnesota's QDE 700-Hour program to ensure that qualified individuals with disabilities have a fair and equal access to employment in state service. All state agencies have an obligation to make this alternative examination process known to all applicants and to consider all applicants who request the program. If suitable placement can be made for a specific vacancy, based on job requirements, a qualified applicant may be appointed

to fill the vacancy and work up to 700 hours on-the-job. This trial work experience is then used to assess the individual's skills and abilities to perform the essential duties of the position.

The QDE 700-Hour program is also available for people who are prelingually deaf in successful placement within state government. The 700- Hour On-the-Job Demonstration was changed to Connect 700 and in July 2016, the State issued a Program Guide to expand its efforts to reduce barriers and increase hiring of qualified job seekers with disabilities. The Guide provides instructions to help state agencies implement each phase of Connect 700.

To be eligible for Connect 700, individuals complete an application for eligibility through the Equal Opportunity, Diversity and Inclusion (EODI) Team at Minnesota Management and Budget (MMB) and receive a Proof of Eligibility notice that can be used to apply for state positions for up to four years. The State Director for EODI in MMB is now charged with the responsibility of actively working with public and private agencies, educational institutions, and organizations to encourage eligible individuals with disabilities to apply for state employment and to inform them about Connect 700.

FINDINGS

Though these programs are being brandished as key mechanisms for removing barriers to employment for people with disabilities and achieving diversity, only 23 current state employees entered state service through these programs. None of the current employees who entered state service through these programs remain in supported programs-each has since been promoted or transferred into other positions. The State's own data indicate that over the past ten years, the percentage of employees with disabilities in state government has decreased from 10% to 4%. Following these findings, Governor Mark Dayton on August 4, 2014 signed Executive Order 14-14, providing for increased state employment for people with disabilities. Through this executive

order, the State seeks to remove barriers to employment for people with disabilities and has established a 7% hiring goal by August 2018.

The semi-annual appointment reports from July 1, 2011 to August 1, 2016 show there has been no appointment through the on-the-job demonstration process for qualified disabled individuals in the past five years.

RECOMMENDATIONS

If the State intends to achieve the 7% hiring goal by August 2018 set by Governor Dayton, the Enterprise Human Capital Division of Minnesota Management and Budget needs to be fully staffed. The current director for EODI was hired February 3, 2016 and an Affirmative Action Officer was just hired in October while we were doing this audit.

A lot of outreach is needed in the various agencies and training of agency hiring managers if the Connect 700 Program is going to achieve its target. The Program Guide is a good start but hiring managers may need training on the processes outlined in the guide for achieving the hiring and retention of people with disabilities.

Greater cooperation is needed between EODI and the various programs and services that support people with disabilities. The State Accommodation Fund, Minnesota Star Program, Vocational Rehabilitation Services, Minnesota Council on Disability, Deaf and Hard of Hearing Services, State Services for the Blind and the Minnesota Governor's Council on Developmental Disabilities are all programs and services that can help the State achieve its goal of hiring and retention of people with disabilities.

Minn. Stat. §43A.191 subd. 2(d) requires agencies in their affirmative action plans to identify positions in the agency that can be used for supported employment of persons with

disabilities. The EODI team should be responsible for extracting this information from the agencies and affirmatively using these identified positions for the Connect 700 Program.

Minn. Stat. §43A.191 subd. 2(d) also requires an agency that hires more than one supported worker in the identified positions must receive recognition for each supported worker toward meeting the agency's affirmative action goals and objectives. EODI should be made in-charge of this recognition program. A well-publicized yearly diversity award event will not only recognize managers and agencies meeting their affirmative action goals but will also highlight the State as a leader in employing people with disabilities.

6. The administrative application of Minn. Stat. §43A.19 for compliance and recommendations.

Minn. Stat. §43A.19 requires the commissioner to adopt and periodically revise, if necessary, a statewide affirmative action program to ensure accessibility to all qualified persons, and to eliminate the underutilization of qualified members of protected groups. The statute also requires the statewide affirmative action program to consist of objectives, goals and policies, analysis of separation patterns and annual objectives.

Pursuant to this section of the statute, the Commissioner adopted Rule 3905.0100. The Rule states "It is the policy of the state of Minnesota to implement and maintain an affirmative action program designed to eliminate underutilization of qualified protected group members within the state civil service through a series of specific, result-oriented procedures combined with good faith effort. A good faith effort minimally includes consideration of affirmative action goals on all staffing and personnel decisions".

ANALYSIS

To analyze Minn. Stat. §43A.19 for compliance, we sent document requests to Minnesota Management and Budget for documentation indicating the statewide affirmative action program and the periodic revisions that have been done to it within the last 5 years. In response to that document request, Minnesota Management and Budget directed us to various statutes: 43A.19 (Affirmative Action); 43A.191 (Agency Affirmative Action Program); 43A.07 (Classified Service); 43A.071 (Service Worker); 43A.08 (Unclassified Service); 43A.10 (Selection Process); 43A.111(Noncompetitive Appointment of Certain disabled veterans); 43A.11 (Veteran's Preference); 43A.121(Ranking of Applicant Pool); 43A.14 (Appointments) and 43A.15(Noncompetitive and qualifying appointments).

From the documents provided by the State, it appears the State's affirmative action program is its collection of affirmative action rules under Chapter 3905 , affirmative action plan template for various agencies which is discussed in detail under M.S 43A.191, planning guides and various worksheets for analysis**.**

Minn. Stat. §43A.19, Subd.1 (d) requires the Commissioner to designate a State Director of Diversity and Equal Employment Opportunity who may be responsible for preparing, revising, implementing and administering the State's Affirmative Action Program. We requested that the State indicate the current State Director of Diversity and Equal Employment Opportunity as required by Minn. Stat. §43A.19, Subd.3 (d). The State provided a document which listed the current Director thus the State is compliant under the Statute. From the document provided, it appears for the last 5 years the position of Director of Diversity and Equal Employment Opportunity has been filled and not left vacant.

FINDINGS

It appears that the Director of diversity and equal employment opportunity only reports back to the Assistant Commissioner of Enterprise Human Resources. According to Rule 3905.0300, the agency head is accountable for affirmative action compliance to the Governor and to the Commissioner.

RECOMMENDATIONS

It is recommended that the Director should also report back to the Commissioner and Governor, to provide for more accountability and compliance. The State should also clarify what its affirmative action program is in more detail rather than referring to various rules and its sample plan.

7. The administrative application of Minn. Stat. §43A.191 for compliance and recommendations.

In other to analyze Minn. Stat. §43A.191 for compliance, we dived into the various subdivisions of the statute. Minn. Stat. §43A.191, Subd.1 (a) requires an agency with 1000 or more employees to have at least one full time affirmative action officer. Minn. Stat. §43A.191, Subd.1 (b) requires that agencies with fewer than 1,000 employees assign affirmative action officers or designees. The language from the statute requires agencies to have either an affirmative action officer or designee.

Minn. Stat. § 43A.191, Subd.2 requires heads of agencies to prepare and implement an affirmative action plan. This section requires affirmative action plans to include provisions of reasonable accommodation in hiring and promoting qualified disabled persons. It requires an agency affirmative action plan be prepared with the assistance of an affirmative action officer.

The subdivision also requires that an agency affirmative action plan identify any positions that can be used for supported employment for persons with severe disabilities and recognition for agencies that hire more than one supported worker.

ANALYSIS

Based on the requirements on Minn. Stat. §43A.191, subdivision 1, we requested and received documents from Minnesota Management and Budget, which showed that there has not been an affirmative action officer (4) since March 9, 2012 in the Equal Opportunity, Diversity & Inclusion Unit.

The documents received showed that in the Minnesota Management & Budget Enterprise Human Capital Division, there were other important vacancies apart from that of the affirmative action officer. There were vacancies for employee management division director in HR systems Projects, state program coordinator, and employment management director in human resource management section. These positions should not have vacancies because they are necessary for effective recruitment and smooth running of affirmative action programs.

Pursuant to Minn. Stat. § 43A.191, Subd.2, Rule 3905.0400 was created, which requires the heads of each agency with 25 or more employees to submit to the commissioner an affirmative action plan for the agency. We requested and received various agencies affirmative action plans from 2010-2018**.** The statute does not require cities, school districts and local entities to have affirmative action plans. Thus, there were no affirmative action plans provided by Minnesota Management and Budget from cities, counties or school districts.

Minn. Stat. §43A.191, subdivision 2(d) requires that an agency affirmative action plan identify any positions that can be used for supported employment for persons with severe

disabilities. From looking at various agencies affirmative action plans, they have this language: "*The agency supports the employment of individuals with disabilities and will review vacant positions to determine if job tasks can be performed by a supported employment worker. We will work with community organizations that provide employment services to individuals with disabilities to recruit for these positions."* This language in various agencies' affirmative action plans does not identify any positions that can be used for supported employment for persons with severe disabilities.

Minn. Stat. §43A.191, subdivision 3(a) requires the commissioner to annually audit the record of each agency to determine the rate of compliance with affirmative action requirements. The Commissioner is also required by March of each odd-number year to submit a report on affirmative action progress to the Governor and to the Finance Committee of the State and others. Based on that requirement of the statute, we requested copies of the annual audit reports conducted by the Commissioner within the last 5 years. We received a 2011 audit report of randomly selected agencies. The only documents received were from a 2011 audit; either there were more audit reports that were not turned in as requested or there were no audits done after 2011. This random selection of agencies is a violation of the statute as the statute requires an annual audit of each agency by the commissioner.

Minn. Stat. § 43A.191, subdivision 3(a) also requires an audit of each agency, not randomly selected agencies. The Commissioner does not comply with the statute by randomly selecting certain agencies for its annual audit of affirmative action as shown in the 2011 audit report. In the 2011 audit report received from Minnesota Management and Budget, of the five MNSCU schools randomly selected, four responded that they had not informed their employees

of their internal compliant policy and procedure pertaining to harassment and discrimination. This is a violation of the statute.

FINDINGS

There needs to be more oversight from the Commissioner in making sure those agencies create and implement their affirmative action plans. It also appears that agencies are not doing more to create or list supported employment for people with severe disabilities.

There is no program to recognize an agency that has made significant and measurable progress in implementing an affirmative action plan as required by statute.

The agency affirmative action biennial report required by Minn. Stat. 43A.191 subd.3(b) report on the affirmative action progress of each agency and the state as a whole. Apart from a compilation of agency complaints reported, hiring data, places where job announcements were posted, and ADA annual report summaries, there is nothing that reports on the progress of each agency.

As of June 2016, there were five vacancies in the top management of Enterprise Human Capital Division of Minnesota Management & Budget including one affirmative action officer. This is the division directly responsible for affirmative action.

RECOMMENDATIONS

Every agency with over 1000 or more employees should have an affirmative action officer. That position should not be left vacant.

Each agency affirmative action plan must identify supported employment for persons with severe disabilities. A good example of how to identify positions in an agency for supported employment for persons with severe disabilities as required by Minn. Stat. §43A.191, subdivision 2(d) can be found in Minnesota Lottery's 2014-2016 affirmative action plan which states :

> *"The Lottery currently contracts with the following organizations employing persons with disabilities to provide services: Accessibility - provides general maintenance and cleaning to the Roseville location. Midwest Special Services - performs mailing assembly services for our Point-of-Purchase kits and for retailer mailings."*

The commissioner should audit each agency annually for compliance with affirmative action requirements as required by Minn. Stat. §43A.191, subdivision 3(a). There should not be random selection of agencies for compliance; rather all agencies should be audited. Agencies like the Metropolitan Airport Commission are not required to submit reports to the MMB. It should be required that all agencies submit annual reports to MMB.

Minn. Stat. §43A.191 should be amended to require cities, counties, local entities and school districts to prepare and implement affirmation action plans. These various entities should be required to have affirmative action plans because they have hiring powers which effects their diverse populations. These counties and school districts do not have affirmative action ordinances or programs, yet they receive hundreds of millions of dollars of state aid.

For example, the Mayo Clinic in the city of Rochester unveiled in 2012 the Destination Medical Center, the clinic's effort, to stay competitive with other world-class medical centers**.** *See* Star Tribune Article Dated 6/8/2016. According to the Star Tribune, "*the 20-year plan blends billions of dollars in Mayo and private-sector investment with $585 million in* taxpayer support *to expand Mayo's campus and remake downtown Rochester into a destination in its own*

right." As discussed in the article, tax payer money is being used for this project yet the city of Rochester is not required to create or implement an affirmative action plan. This project should provide of a lot of jobs in the City. Thus if there is no affirmative action plan in place, protected groups might not get the benefits of these jobs.

Some in the community recommended state should institute an award and acknowledgement program to showcase companies and agencies that have embrace inclusion and ensure retention of women, disabled and protected group people.

The state should rethink the report to account for each agency's progress in affirmative action recruitment and retention, complaint resolution, diversity initiatives, ADA and reasonable accommodation. Grade agencies on their compliance with affirmative action plan. Institute a cabinet level statutory reporting requirement for protected group people, disabled and women similar to veterans as stated in Art. 3, Sec. 22 of Chapter.

Some community members recommended that the vacant positions in the Human Capital Division should be filled with qualified members of the protected group.

8. INTERVIEWS - AFFIRMATIVE ACTION

FINDINGS

The job application process is complex and can be challenging even for people with a lot of education and English as a first language. The online application process is not accessible to people who cannot see. Some communities struggle more than others. For example, Somali people come from an oral tradition and a different alphabet, so using a written process and a complex structure is culturally challenging. A participant with physical disabilities, who also is

an advocate for the disabled, described the process of applying for a state job using a screen reader.

A new website, which the State has spent millions of dollars to make to aid in this type of application process, in not accessible. Currently, if an applicant applies through a screen reader, the system can reformat documents—changing the appearance, sentence structure, etc. The applicant won't even be considered if the documents are formatted correctly.

There were several other factors mentioned as barriers for the disabled to be considered for State employment—arranging a personal care assistant, transportation, etc.

While it seems many efforts are being made to increase the number of applications by targeted groups, and some of these have been successful, it still appears that people are screened out by job descriptions that contain unnecessary requirements. Several people mentioned a need for resumes that are written with "code words" or key words that will survive initial screening.

The State's minimum qualifications prevent certain individuals with experience and knowledge to apply for certain positions. Three Native American tribes are located near Bemidji. There are also MN DNR positions available in the area but they must have a Bachelor's degree. Many of the Native Americans have knowledge and could be extraordinary in fisheries but can't apply for the positions because they don't have a degree.

Subjective measures such as "interview score" are often used as justification for hiring a majority race candidate over someone in a targeted group. It is natural for people to gravitate towards those who are similar to themselves. Some people indicated the desire or even the act of changing their name so their resume did not reveal their ethnicity. One applicant reported that she was thinking of changing her last name to her father's middle name because it is a Christian name. She thought it would help her get interviews.

People also expressed difficulty with retention following hiring. After a protected group person is hired the person then finds out that there many challenges integrating into the workplace. There is lack of knowledge and often a mistrust of government in some protected group communities.

RECOMMENDATIONS:

Simplify the application process, and offer outreach to communities that are targeted. More training and follow through on refining job descriptions and hiring criteria to include only criteria that are necessary for the job.

The State should consider ways to recognize hiring managers who meet their affirmative action hiring goals. Suggestions for such incentives were vacation days or extra pay. For positions that the state has determined that there is underutilization, it should structure the hiring process in favor of diverse applicants.

The State should train hiring managers and all its employees in cultural competency and empathy immersion. Hiring managers and state employees should be committed to diversity, inclusion and be welcoming to people of different cultures. The state should have a presence at community events, educating about work opportunities as well as helping people navigate the application system. The State should build lasting relationships in these communities.

The State should amend its affirmative action laws to require cities and local government entities to have affirmative action plans.

The SEEDS program at the Minnesota Department of Transportation for students that are minority or economically disadvantaged, needs to be replicated across all State Departments. It is responsible for 70% of the diversity in MNDOT. The program grooms people for specific jobs and helps dispel preconceived notions.

C. AUDIT REGARDING CERTAIN PROVISIONS OF Minn. Stat. §16B AND 16C (PROCUREMENT ACT)

Minnesota's procurement practices have been deemed to be among the best in the nation. In a 2016 in-depth survey of state purchasing processes conducted by the Governing Institute, the state ranked No. 3 overall among the states. This ranking is based upon a range of factors, such as utilization of technology and having the support of top-level officials, including governor, who view the procurement office as a place to advance the state's goals rather than an enforcer that simply ensures the state is buying by the rules. There are a number of small business programs, initiatives and efforts designed to increase inclusion in contracting for protected groups in Minnesota, all with different audiences and eligibility qualifications. These include, but are not limited to, the Disadvantaged Business Enterprise Program (DBE), a Federal Program which is administered by various agencies in each state pursuant to 49 CFR 26 - Federal Code of Regulations, administered in Minnesota by Minnesota Unified Certification Program (MNUCP); Section 3, a program administered by the U.S. Department of Housing and Urban Development (HUD), that provides a race-neutral preference on certain types of projects for low and very-low income persons or businesses in certain geographic areas served by the project; the CERT Program, a small business program used by the City of St. Paul; the Target Market Program, a new program operated by the City of Minneapolis that provides a priority for eligible small businesses for city contracts up to $100,000; and the Metropolitan Council Underutilization Business Program (MCUB), a program implemented by the Metropolitan Council.

To focus on the State's efforts in this area, the RFP for this audit requires an evaluation of the administrative application of certain sections of Minn. Stat. §§16B and 16C, known as the

State's Procurement Act. The State administers several programs designed to promote equity and to improve opportunities for protected groups to participate in contracting and procurement. The Targeted Group/Economically Disadvantaged (TG/ED) Small Business and Veteran Small Business Programs went into effect in 1990 and 2009, respectively. Certified TG/ED vendors can be utilized to satisfy subcontractor goals established for construction or consulting contracts. Businesses certified under these programs are also eligible to receive up to a six percent preference that is applied as part of the state's procurement process.

The audit team requested and received from the Department of Administration (the "Department" or "Admin") documents pertaining to how the State has implemented certain sections of Minn. Stat. §§ 16B and C as identified in the audit. We analyzed the data and will discuss what the examination revealed, identify the extent to which compliance was accomplished and make recommendations for improvements.

1. **Minn. Stat. §16B.875**

Minn. Stat. §16B.875 requires the commissioner of administration (hereafter "the commissioner") to regularly review the duties and responsibilities of the various state departments, agencies and boards which have an operational effect upon the safety of the public, and recommend to the governor and the legislature such organizational and statutory policies as will best serve the purpose of Laws 1969, chapter 1129. While this provision is referenced in the RFP, it does not appear to relate to promoting inclusion or participation for protected groups in any specific way. Therefore, the audit team did not devote significant time or attention to this section and makes no findings or recommendations in this area.

2. **Minn. Stat. §16C.05 subd. 5**

Minn. Stat. §16C.05 subd. 5 requires that an "audit clause" is included in all state contracts, provides that all state contracts may be audited and establishes which parties are responsible for the costs of such audits. This is important in order for the State to protect the public interest by having the opportunity to audit contracts for compliance or in specific situations if a situation arises that requires such. This provision (an "audit clause") is contained in the contracts that were randomly sampled during the audit, and in the sample Professional and Technical Services Contract that we reviewed. We do not believe that further review of this provision will prove pertinent to the goal of the audit. Accordingly, we make no findings or recommendations with respect to this provision.

3. **Minn. Stat. § 16C.06 Subds. 1, 2 and 6**

Minn. Stat. § 16C.06 pertains to procurement requirements. Subdivision 1 provides that public notice of solicitations is required for all purchases of goods and general services, professional and technical service contracts, and construction estimated to be more than $25,000, or $100,000 in the case of the Department of Transportation. It provides additional guidance for the manner and methods by which the commission may provide notice, including:

- Solicitations exceeding $50,000 are advertised in eProcurement system (SWIFT), in State Register and/or on state website
- Professional services contracts over $25,000 are advertised on State's website
- Good and services over $10,000 are processed in state system and publicly advertised.

Subdivision 2 prescribes the solicitation process to be used in contracting. Generally, it requires a formal solicitation to acquire all goods, service contracts, and utilities estimated at or more than $50,000, or in the case of a Department of Transportation solicitation, at more than $100,000. The commissioner is authorized to use an informal process when the contract amount is less than $50,000 or $100,000 in the case of the Department of Transportation.

The Department's Authority for Local Purchase Manual and State Contracting booklet provide detailed guidance with respect to purchasing policies and procedures, including checklists for denoting when a formal RFP is required and when public notice is required. As indicated above, a certification form and public notice are required for all contracts in excess of $25,000.00. For contracts valued between $0 and $5,000, solicitation is recommended, but not required. For those valued between $5,000 and $25,000 Quick Call for proposals is sent to at least three vendors; at least one must be TG/ED/VO. For contracts valued in excess of $25,000, public solicitation and the RFP are to be posted on the MMD website ($25,000 - $50,000) and in the *State Register* ($50,000 and over) or in *SWIFT*.

Subdivision 6 authorizes the commissioner to use different methods to make contract awards, including requests for bids, requests for proposals, reverse auctions or other methods. The commissioner may use tools determined to be in the best interest of the state, including contract consolidation, product standardization, and mandatory-use enterprise contracts. Awards based on competitive proposals must include an evaluation of price and other considerations; solicitation documents must state relative importance of price and other factors; and awards based on low bid must be to the lowest responsive and responsible bidder.

It is not clear that the commissioner has utilized the complete array of tools available to make awards, or considered whether some of the methods that have not been used would be beneficial to protected groups.

The Authority for Local Purchase Manual and Appendix dated September 2007 was produced. It contains purchasing procedures, as well as guidelines for granting preferences, consistent with the statutory requirements. The 2000 Policy and Procedures for State Contracting were also produced. This document was updated on July 1, 2016. Minnesota Rules Chapter 1230 also contains applicable procedures relating to bids and solicitations.

Admin has done outreach and held training sessions to provide information about procurement opportunities, the Small Business Procurement Program and the Statewide Integrated Financial Tools System ("SWIFT"). The Office of Equity in Procurement has been involved in these activities.

4. **Minn. Stats. § 16C.16**

Minn. Stats. § 16C.16 contains provisions authorizing the commissioner to designate procurements for small business. Subdivision one directs the commissioner to ensure for each fiscal year that small businesses receive at least 25% of the value of anticipated total state procurement of goods and services, including printing and construction. It allows the commissioner to divide the procurements into contract award units of economically feasible production runs in order to facilitate offers or bids from small business. It further directs the commissioner to solicit and encourage State small businesses to submit responses or bids when the commissioner is entering into master contracts, and provides that the commissioner may

negotiate contract terms to allow agencies the option of purchasing from small businesses, particularly those geographically proximate to the entity making the purchase.

It provides that the commissioner shall attempt to vary the included procurements so a variety of goods and services produced by different small businesses are obtained each year and to designate small business procurements in a way to encourage proportional distribution among geographical regions. The commissioner may designate a portion of small business procurement for award to bidders from a specified congressional district or other geographical region specified by the commissioner.

Our document review revealed that the state's tracking system does not accommodate routine measurement of whether the 25% is being achieved. The records pertaining to business spend indicate that a significant number of contractors were not "large" businesses, during each of the past five years. Through a method of extrapolation, it can be determined that the spend with "small" businesses exceeded 25%, both with regard to total spend and for spend excluding highway for each of the past five years.

This method indicates that total spend with small businesses was 82% in 2012, 75% in 2013, 66% in 2014, 64% in 2015 and 34% in 2016. Total spend excluding highway was 59% is 2012, 58% in 2013, 60% in 2014, 59% in 2015 and 61% in 2016. As stated, this method of determining small business spend is imperfect at best, and the inability to accurately track dollars presents a significant impediment to measuring the effectiveness of the Small Business program.

For example during the five year period from 2011 to present, the State has expended $455,220,874.43 in construction costs, with no tracking for small businesses. Moreover, the data, including anecdotal evidence provided during an interview of a State purchasing employee,

reveals that the 25% purchasing goal is not representative of people of color. The interviewee points out that this emphasis with regard to specified targeted efforts is absent. The interviewee suggests that the governor and commissioner should establish a broader and cleaner defined policy that emphasizes specific levels of participation for each ethnic group by percentage.

FINDING

The State has identified the need to collect quality data in order to demonstrate accountability and measure progress. Admin's tracking data does not appear to clearly reflect the percent of total state procurement received by "small businesses" for purposes of measuring compliance with the 25% requirement of Minn. Stat. 16C.16, subd 1, but rather the state certifies and tracks targeted group businesses. In addition to not providing with clarity information to line up with Minn. Stat. §16C.16, subd1, it would be useful to track activity with targeted group businesses that results from sub-contracts, or with businesses that are not certified (which is not presently tracked) in order to have a more complete measure of participation.

RECOMMENDATION

Admin should implement tracking of procurement spending to line up with the requirement of 16C.16 subd 1, and further, should consider extending tracking to allow measuring activity with targeted group businesses that results from sub-contracts or with businesses that are not certified.

The state has started to award some projects as set-asides for TG; businesses, for example the RECS remodeling project to Reiling Construction Co., Inc. and the State award to Phone Jacks Unlimited, Inc. (d/b/a Alaerea Contractors). However, there does not appear to be

evidence that the commissioner has designated a portion of small business awards to bidders from a specified congressional district or other geographical region.

FINDING

There is no evidence that the commissioner has, pursuant to 16C.16 subd. 1(c), used the authority to designate a portion of small business procurement for award to bidders from a specified congressional district or other geographical region.

RECOMMENDATION

Admin should consider whether designation of a portion of small business procurement for award to bidders from a specified congressional district or other geographical region would enhance opportunities for under-represented groups. This recommendation is also discussed in the MGT America study.

There is evidence of some inclusion of TG/ED/VO business owners on Master Contracts that the State has awarded. This would include the ASAP-IT contract and the SITE contract, though the number of African American contractors is negligible. Real Estate and Construction Services (RECS) currently has four master Contracts in place. There is an Asbestos and Other Hazardous Materials Remediation Design Services Contract with 5 vendors, none are TG; an Industrial Hygiene contract with 9 vendors, one of which is TG; a Construction Testing and Inspection Contract with 15 vendors, 1 of which is TG and a Construction Auditing Services contract with 7 vendors, none of which is TG. We were unable to determine from the documents reviewed whether, or the extent to which, targeted group venders were available with respect to the aforementioned master contracts.

FINDING

It does not appear that the commissioner has very often (if at all) used authority under 16C.16 subd 1(a) to divide procurements into smaller units to facilitate bids from small businesses.

RECOMMENDATION

Admin should consider whether the prospect of dividing procurements into smaller units will facilitate more bidding opportunities for under-represented groups.

Subdivision two defines "small business" for purposes of section 16C.16 to 16C.21 as the term is defined in the Code of Federal Regulations, Title 49, section 26.65, provided the business has its principal place of business in Minnesota.

Subdivision three directs each state agency for each fiscal year to designate for awarding to small businesses at least 25 percent of the value of anticipated procurements of that agency for professional or technical services. This set-aside is in addition to the required set-aside of 25 percent of state procurement of goods and services for small businesses.

Subdivision four relates to targeted group purchasing. It requires the commissioner to establish a program for purchasing goods and services from targeted group businesses as designated under the section. The commissioner is to attempt to ensure that purchases from targeted group members reflect a fair and equitable representation of all the state's purchasing.

The data reflecting diverse spend show that spending with businesses owned by protected groups has been quite low. For instance, a report showing TG/ED/VO spend with certified companies by certification type indicates that during 2016 women received the largest amount of

contract dollars by far with $37,167,355, followed by Asians with $10,616,293; Hispanics had received $2,016,749 and Blacks only $882,429. The figure for Disability owned businesses was $1,477,272 and for Veterans was $3,266,856. The largest group of certified businesses was women with 647, followed by Blacks with 162 and Asians with 108. The following chart shows the total State diverse spend for 2015 and 2016 and the number of certified businesses by category.

Category	FY16 Spend	% of Total Spend	# of Certified Businesses (as of 8/1)
Asian	$10,616,293	0.50%	108
Black	$882,429	0.04%	162
Hispanic	$2,016,749	0.10%	58
Indigenous	$356,689	0.02%	43
Woman	$37,167,355	1.76%	647
Disabled	$1,477,272	0.07%	26
Economically Disadvantaged	$6,405,015	0.30%	85
Veteran	$3,226,856	0.15%	96
Total TG/ED/VO	$62,148,658	2.95%	1225
Total State Spend	$2,109,462,225		
Category	**FY15 Spend**	**% of Total Spend**	**# of Certified Businesses (as of 12/31/15)**
Asian	$11,060,842	0.58%	103
Black	$119,672	0.01%	153
Hispanic	$1,144,744	0.06%	56
Indigenous	$73,147	0.00%	45
Woman	$35,492,457	1.85%	634
Disabled	$847,734	0.04%	25
Economically Disadvantaged	$14,860,998	0.77%	90
Veteran	$1,824,015	0.09%	78
Total TG/ED/VO	$65,423,609	3.41%	1184
Total State Spend	$1,920,869,371		

Under subdivision 5, the commissioner shall periodically designate businesses that are majority owned and operated by women, persons with a substantial physical disability, or

specific minorities as targeted group businesses within purchasing categories as determined by the commissioner. The commissioner may target a group within a purchasing category if it is determined that there is a substantial disparity between the percentage of purchasing from businesses owned by group members and the representation of businesses owned by group members among all businesses in the state in the purchasing category. An individual business may be included as a targeted group business if the commissioner determines inclusion is necessary to remedy discrimination against the owner based on race, gender or disability in attempting to operate a business that would provide goods or services to public agencies.

For purposes of the statute, "targeted group businesses" means certified businesses designated by the commissioner of administration that are at least 51 percent owned and operated by women, persons with substantial physical disabilities, or specific minorities and provide goods, products or services within purchasing categories designated by the commissioner. Racial minority means an individual in one of the following categories:

(1) Black American

(2) Hispanic American

(3) Asian Pacific American

(4) Subcontinent Asian American

(5) Indigenous American

16C.16 to 16C.21, and the Minnesota Rules adopted pursuant thereto, govern procurement procedures relating to the programs for small businesses and targeted group or economically disadvantaged area small businesses. These programs are administered by the Office of Equity and Procurement.

Criteria for certification of eligibility to qualify for the programs authorized by Minn. Stat. 16C.16 include establishing which designation - small business, socially disadvantaged small business or economically disadvantaged area small business - is being applied for. The rules define the applicable terms and set forth requirements for certification.

The 1998 Mason Tillman disparity study found that discrimination and exclusion prevented minority groups from obtaining their legal fair share. In 2009, MGT of America conducted comprehensive availability and disparity studies to analyze state funding, contracting and procurement data of the Department of Administration and Transportation and procurement data of each of the Metro Agencies. It identifies disparities in each unit and showed that from 2002 through 2009, African Americans and other ethnic vendors continued to experience discrimination, harassment, intimidation and hostility on public and private construction jobs, exclusion and loss of millions of dollars. There were recommendations on how to address the situation. Approaches were implemented and a number of efforts have been undertaken to promote inclusion, including those provided in Minn. Stats. §16C. In January of 2015, the Governor signed Executive Order 15-02, subsequently amended by Executive Order 16-01, which, among other things, created the Governor's Diversity and Inclusion Council to promote diversity and inclusion, recommend best practices and develop a long range plan.

The Council set short-term and long-term goals and identified a number of milestones to be met by December 31, 2017. In addition, E.O. 16-01 required the Council to, among other things; develop diversity and inclusion indicators that will be used to assess all cabinet-level agencies, to be integrated into the annual performance evaluation for all state level employees. These tools were to be developed by 2016. In 2015, the Office of Equity and Procurement was created which has undertaken many efforts and initiatives, including outreach and training.

Recently, it has implemented changes to provide more prompt pay for subcontractors, award specific contracts to targeted group businesses, and introduce a new methodology for calculating subcontracting goals.

The 2016 Omnibus Supplemental Budget Bill included provisions to align all preference programs, allow direct selection of targeted businesses for contracts under $25,000 ("Equity Select") and authorize the commissioner to set contracting goals. It included $1,000,000 to develop an e-procurement system to facilitate targeted group business utilization and data reporting. Prompt payment provisions have been implemented for Targeted Group, Economically Disadvantaged, Veteran-Owned and businesses owned by persons with substantial physical disabilities to be paid within 15 days, rather than the standard 30 days. Legislation was passed to require all capital improvement projects over $100,000 to be subject to the small business requirements. An updated disparity study is underway.

There was FY16-17 Budget item that provided funding of $764,000 in FY 2016 and $469,000 thereafter to provide direct support to small businesses aimed at reducing economic disparities. It is to enhance certification efforts, provide technical support and increase procurement opportunities and participation for veterans, women and minorities in publicly-funded projects.

The Diversity and Inclusion Council Report to the Governor dated January 2016 stated milestones for 2016 and 2017. The report admits that the current status of metrics reflects very poorly regarding African American and indigenous-owned businesses. Notwithstanding all of the race-neutral efforts that have been undertaken, significant disparities still persist. For

instance in 2013, MNDOT contracting for only $891.00 with African American contractors (.00023% of $400 Million).

FINDING

Information collected by the Governor's Diversity and Inclusion Council indicates that significant barriers to contracting continue to exist for businesses owned by under-represented groups in the areas of employment practices, civic engagement practices and contracting practices. With regard to contracting practices, the barriers include information/communication shortfalls, issues regarding the cultural and competitive landscape and process barriers.

RECOMMENDATION

The Governor's Diversity and Inclusion Council and Admin's Office of Equity in Procurement should continue and expand outreach and training efforts. This includes training for state department and agency staff regarding implementation of various aspects of the program such as applying preferences and opportunities for direct selection of targeted group businesses and non-competitive procurements. It also includes training for vendors regarding bidding and purchasing procedures, policies and practices, legislative priorities and outreach efforts contained in the Governor's Diversity and Inclusion Council's January 2016 report. Consideration should be given to developing a process whereby governmental units provide more feedback to unsuccessful bidders. The MGT of America study also included a suggestion to provide more feedback to unsuccessful bidders.

FINDING

The two disparity studies conducted by the State in 1999 and 2009 found that statistically significant disparities exist in the utilization of businesses owned and operated by specified

minority groups and women in certain categories of purchasing and the 1990 study also found a statistically significant disparity in the utilization by state agencies of businesses owned by disabled persons in all categories. The State's Small Business program, Minn. Stat. §16C.16, sets goals for purchasing from small businesses and establishes a program for purchasing from targeted group ("TG") businesses, businesses located in economically disadvantaged areas ("ED"), and veteran-owned businesses ("VO"). Although small businesses owned by women, minority groups and persons with disabilities have been designated as targeted group businesses for particular industries, the small business program goals (25% of all state procurement and 25% of professional and technical procurements) do not address the statistical disparities pertaining to underrepresented groups as established in the disparity studies. Notwithstanding the State's implementation of these initiatives, meaningful inclusion is still lacking. For instance, the direct spend with Certified African American TG/ED/VO businesses in FY 2015 was only $135,960 or 0.008% of total spending. The direct spend number for the Certified African American TG/ED/VO businesses in FY 2016 as of August of 2016 was $882,429.

RECOMMENDATION

Admin should implement a moderate narrowly-tailored race-conscious program of limited duration to remedy the statistical disparities that have been identified in the disparity studies. The Supreme Court decision in City of Richmond v. J.A. Croson Company, 488 U.S. 469 (1989) and subsequent cases provide support for establishing such a program. Utilizing such a program, annual targets should be set by ethnicity and industry based on the findings of statistically significant underutilization in the disparity studies. Goals for businesses owned by women and persons with disabilities should be included. The goals should be based on current availability of those groups experiencing statistically significant underutilization. Consideration

should be given to the question whether the definition for disability should be expanded beyond "small businesses owned by persons with a physical disability" as set forth in the June 6, 2011 Findings of Fact by the Commissioner, to include mental and other disabilities. The measures should be implemented for a limited duration such as ten years and reviewed to determine if the disparities have been eliminated. Otherwise, the failure to achieve inclusion and utilization to remedy the disparities is likely to continue.

Subdivision six allows the commissioner to award up to a six percent preference in the amount bid for specified goods and services to targeted group businesses. The commissioner may designate a purchase for award only to small businesses if the commissioner determines that at least three small businesses or small targeted group businesses are likely to bid. The commissioner may set goals requiring the prime contractor to subcontract a portion of the contract to small businesses or small targeted group businesses. The commissioner is also required to establish a procedure for granting waivers when qualified small businesses or small targeted group businesses are not available and establish financial incentives and penalties for contractors who exceed or fail to meet goals.

TG contracting goals have been set on a number of projects from 2012 onward and many of the goals have been achieved. These have included projects with DNR, MNDOT, RECS, Military Affairs and SDSB. However, we reviewed a number of documents relating to "good faith efforts" where contractors sought waivers from the small business or small targeted-group business participation goals for various projects during 2012 through 2016. In some instances, the waivers were granted, while in other instances the requests were denied and penalties were assessed. There is an established procedure for requesting a waiver and criteria to be used in making the determination. Contractors who fail to meet the project goal for certified target

group subcontractor use without an approved waiver may be penalized up to six percent of the total project value, not to exceed $60,000. We do not find that the implementation of this provision was flawed, but do recommend that attention is focused on use of this provision to ensure that there is consistency in implementation and that contractors do not simply take the penalty. There are instances where contractors appealed penalty assessments and sometimes received reductions. Consistency is important here.

There have also been a number of protests by small businesses relating to the award of contracts, interpretation of provisions and application of terms and conditions, including preferences. We reviewed four such protests that were made during 2016. The matters protested included errors in calculating and scoring, inconsistency of evaluation with advertised criteria, incorrect applications of preference points and veteran preference points. Some protests were found to be valid and resulted in either cancelling the solicitation altogether or rebidding.

FINDING

There are quite a few requests by contractors for waivers of targeted group business subcontracting goals established under Minn. Stat. 16C.16, subd. 6(c). While the requirements are set forth in document 00-7339, it is important to ensure that the provision is being implemented in a consistent and uniform manner.

RECOMMENDATION

It is recommended that Admin take steps to implement stricter enforcement of "good faith efforts" with respect to the granting of waivers from small business or small targeted group business participation goals to ensure consistency and to maximize outcomes. Admin should consider defining the steps that constitute a legitimate good faith effort and provide a template

for vendors. In addition, the commissioner may consider the use of incentives as allowed under the provision, as well as penalties. Examples of incentives might include having information compiled by industry showing which contractors have met and have not met goals, or having goals posted at project sites along with information regarding the extent to which they are being met.

FINDING

The provision allowing the commissioner to designate a purchase for award only to small businesses or small Targeted Group businesses, veteran-owned businesses or small businesses located in an economically disadvantaged area provides a unique opportunity to promote inclusion. In 2016, new set-aside rules were enacted that allow contracting opportunities to go directly to targeted group businesses for purchases under $25,000..

RECOMMENDATION

The Commissioner should look for opportunities to increase the designation of purchases and awards under the Equity Select program, including opportunities to exercise set-asides to businesses located in an economically disadvantaged area.

FINDING

The Department of Administration sets small business goals on certain projects, including on construction projects over $500,000. Most businesses, including those in all categories of certified small businesses, are located in the wider metro area and, historically, contract goals have not fully taken into account all categories of TG/ED/VO businesses that will work in larger geographic areas in the state. A new method of construction goal setting has been developed for implementation in 2016-2017.

RECOMMENDATION

The Department of Administration should use the newly devised construction goal setting method in order to maximize inclusion of all eligible certified small businesses that have capacity to perform work in various geographic areas of the State.

Except where mandated by the federal government as a condition of receiving federal funds, subdivision 6a directs the commissioner to award up to a six percent preference, but no less than the percentage awarded to any other group under the section, on state procurement to certified small businesses that are majority-owned and operated by veterans. The commissioner may award a contract directly to a veteran-owned small business without going through a competitive bid process up to $25,000. As under the previous section, the commissioner may designate a contract for goods or services for award only to a veteran-owned small business if it is determined that at least three veteran-owned small businesses are likely to respond. The commissioner may also set goals that require the prime contractor to subcontract a portion of the contract to a veteran-owned business. The commissioner is to establish a procedure for granting waivers and establish financial incentives for prime contractors who exceed the goals and penalties for those how fail to meet goals.

For the veteran-owned preference, the vendor must be certified by the Office of State Procurement as a veteran-owned small business. The Directory of Certified Targeted Group, Economically disadvantaged and Veteran-Owned Vendors on the Office of State Procurement's website must identify the vendor is classified as veteran-owned. The 6% preference applies to purchases of goods, general services and construction.

Subdivision seven allows the commissioner to award up to a 6 percent preference on state procurement to small businesses located in an economically disadvantaged area. As with the other subdivisions regarding preferences, the commissioner may award a contract for goods, services or construction directly to a small business located in an economically disadvantaged area without going through a competitive bid process for up to $25,000. As with the other subdivisions, the commissioner may designate a contract only for award to economically disadvantaged areas if determined that at least three will bid, may set goals, establish procedures for waiver of subcontractor regulations, as well as incentives and penalties. The provision sets forth a procedure for certifying that a business is located in an economically disadvantage area. The commissioner may designate certain areas designated as targeted neighborhoods or boarder city enterprise zones as economically disadvantaged if the commissioner determines that it will further the purpose of this section.

A report showing agency spends with veteran owned businesses for the entire five-year period is also negligible. Between July 1, 2011 and June 30, 2016, there were 26 spends with a few departments. All, except the Nursing Home Administrations Board, were under 1%. The Office of State Procurement has designated a number of counties as "economically disadvantaged" either through the Labor Surplus Area Designation, 70% of statewide median income, or both. There is a list and a map containing such designations, and the preferences that apply. However, the commissioner has not designated any areas as targeted neighborhoods or border-city enterprise zones.

FINDING

It does not appear that the Commissioner has utilized the provision to award contracts directly to small businesses located in an economically disadvantaged area or has designated targeted neighborhoods or boarder-city enterprise zones.

RECOMMENDATION

The commissioner should implement the provision allowing awards of contracts for goods, services or construction up to $25,000 directly to small businesses located in an economically disadvantaged area without going through a competitive solicitation, and should consider whether it will further the purposes of Minn. Stat. § 16C to designate economically disadvantaged areas.

The 2016 legislature enacted several revisions to M.S § 16C.16 pertaining to preferences that affect solicitation awarded on or after July 1, 2016. If specified requirements are met, the statutes authorize a 6% preference for Targeted Group, Economically Disadvantaged and veteran-owned; an environmental preference of up to 10%, if stated in the solicitation; a 6% preference for Department of Employment and Economic Development (DEED) Certified Providers and Human Services (DHS) Day Services Licensed Providers (DEED/DHS Providers) for certain services; and a reciprocal preference with percentage rates that very by states.

Under subdivision s 7a, when designating purchases directly to a business in accordance with section 16C.16, the commissioner may also designate a purchase of goods or services directly to any combination of small businesses, small targeted group businesses, veteran-owned businesses or businesses located in economically disadvantaged areas if it is determined that at least three businesses in two or more of the disadvantaged business categories are likely to

respond. The commissioner may set goals that require the prime contractor to subcontract a portion of the contract to any combination of a small business, small targeted group business, veteran-owned small business, or small business located in an economically disadvantaged area. However, the provision allowing awards to a combination of different categories of businesses does not appear to have been used. This would allow more innovation and might be consistent with some of the recommendations from interviewees regarding creating cooperative purchasing arrangements to build capabilities and thinking creatively.

FINDING

Some participants have observed that the limits to program participation prohibit small businesses from growing and increasing capacity.

RECOMMENDATION

Admin proposed legislation during the 2016 session that would allow businesses to stay in the program longer in order to develop capacity, but the legislation was not enacted. The Commissioner should review and consider whether to again propose legislation which would revise the limits to benefit some participating businesses and allow them to develop greater capacities by remaining in the program longer. The Commissioner should also consider utilizing the authority to designate purchases for a combination of small businesses, small targeted group businesses, veteran-owned businesses, or small businesses located in an economically disadvantaged areas, as a method to increase opportunities to contract and build capacities through a combination of unbundling contracts and exercising set-aside authority.

Subdivision eight provides that surety bonds guaranteed by the federal Small Business Administration and second party bonds are acceptable security for a construction award under 16C.16. Subdivision nine was repealed.

Subdivision ten states that at least 75 percent of the subcontracts awarded to small businesses or small targeted group businesses under subdivision 6, paragraph (c), must be performed by the business to which the subcontract is awarded or by another small business or small targeted group business. The intent of this provision is to ensure that when small businesses and small targeted group businesses are awarded subcontracts, they (or another small or targeted group business), actually perform the work.

The records indicate, according to I-134 reports, that there have not been instances of contracts that were awarded to TG subcontractors being performed by non-TG contractors.

Subdivision eleven provides that the rules pertaining to procurement matters apply equally to procurements designated for small businesses or small targeted group businesses.

Subdivision twelve provides that section 16C does not apply to construction contracts or contracts for professional or technical services under 16C.08 that are both financed in whole or in part with federal funds and are subject to federal disadvantaged business enterprise (DBE) regulations. There is no evidence from documents reviewed that the section has been applied in such contract situations.

Subdivision thirteen applies to contracts for state-funded capital improvement projects in excess of $100,000 that are issued by organizations that are not subject to the provisions of section 16C, including municipalities. It requires organizations administering such contracts to promote the use of targeted group businesses and take steps to remove barriers to equitable

participation of such businesses. Organizations (municipalities) are to cooperate with the commissioner's efforts to monitor and measure compliance.

This section is relatively new, enacted in 2015. There are potential opportunities for promoting inclusion when other entities, namely municipalities, undertake capital improvement projects utilizing state funds. It does not appear that this provision has been used to achieve that end. Currently, there is a project in Rochester, the Designation Medical Center (DMC) that involves more than $100,000 of state funds. The project goals are 4% for minorities and 6% for women. The DMC Project in Rochester presents an opportunity for Minn. Stat. 16C.16 subd. 13 to be used to promote inclusion of targeted group businesses in contracting opportunities.

RECOMMENDATION

The Commissioner's office should request to review the goals that have been set for participation of businesses owned by protected group members in the DMC project currently underway in Rochester and should encourage that steps be taken to promote maximum use of Targeted Group businesses and to remove barriers to equitable participation of such businesses on the project. The commissioner should use this section whenever the opportunity arises.

5. **Minn. Stat. § 16C. 18**

Minn. Stat. § 16C. 18 require the Commissioner of Transportation, the Metropolitan Airport Commission and the Metropolitan Sports Facilities Commission to report to the Commissioner of Administration all information that the commissioner requests to make reports required pursuant to Minnesota Statute 16C.

The Administration made no requests for reports under this provision during the period covered by the audit.

6. **Section 16C. 32**

Section 16C. 32 authorize the Commissioner to utilize design-build contracts or construction manager at risk methods of contracting, as well as to select a contractor by job order. With respect to every design-build or construction manager at risk contract, the commissioner is required to make a written determination, including specific findings, indicating whether use of that method of procurement serves the public interest.

Documents reflect that the Commissioner has entered into 10 Construction Manager at risk contracts and 3 Design Build contracts during the five-year period, as illustrated by the chart below. Three of the Construction Manager at Risk contracts had targeted Group goals; a $45,000 contract with a 10% goal; a $6,500 contract with a 5% goal; and a $187,000 contract with a 3% goal. As for the Design Build contracts, a $4,330,106 contract for Legislative Broadcast Media had a 2% Targeted Group goal; a $2,250,000 contract for a New Legislative Office Building had a 4% Targeted Group goal; and a $18,759,600 contract for New Lots F and L Parking Ramps had a 4% targeted Group goal. The only project that reflected whether the goal was achieved is the New Lots F and L Parking Ramps that showed that it achieved 8%, exceeding the 4% goals.

Contract Type	Contract Amount	TGB Goal	TGB Actual	Note
Construction Manager at Risk	$45,000	10%	N/A	
Construction Manager at Risk	$6,500	5%	N/A	
Construction Manager at Risk	$187,000	3%	N/A	
Construction Manager at Risk	N/A	N/A	N/A	
Construction Manager at Risk	N/A	N/A	N/A	
Construction Manager at Risk	N/A	N/A	N/A	
Construction Manager at Risk	N/A	N/A	N/A	
Construction Manager at Risk	N/A	N/A	N/A	
Construction Manager at Risk	N/A	N/A	N/A	
Construction Manager at Risk	N/A	N/A	N/A	
Design Build	$4,330,106	2%	N/A	Legislative Broadcast Media
Design Build	$2,250,000	4%	N/A	Legislative Office Building
Design Build	$18,759,600	4%	8%	New Lots F & L Parking Ramps

7. **Minnesota Statute 16C.35**

Minnesota Statute 16C.35 allows the Commissioner to utilize job order contracting for projects that do not exceed the cost of $250,000.00. In such event, the Commissioner must issue a request for qualifications that includes criteria that do not unduly restrict competition, nor impose conditions beyond reasonable requirements to ensure maximum participation of all contractors. The request for qualifications must be publicized in a manner that ensures access for any potential responder and to the extent possible, notice must be given to all targeted group businesses designated under section 16C. 16. The commissioner is required to review responses to requests for qualifications, establish a list of qualified contractors, enter into master contracts with all qualified contractors and establish a procedure to allow firms to submit qualifications annually to allow placement on the list. The commissioner is required to request bids for construction services for any project using job order contracting from qualified contractors as follows:

For construction projects up to $50,000 - two bids;

For construction projects greater than $50,000, but less than $100,000 - three bids;
For construction projects greater than $100,000,but less than $250,000 - four bids.

The statute directs the commissioner to select the contractor who submits the lowest bid and to develop a system to ensure a reasonable opportunity for all qualified contractors to bid on construction services on a periodic basis. The state does not participate in job order contracting.

FINDING

From the documents reviewed, it appears that the State has not engaged in job-order contracting during the period covered by the audit.

RECOMMENDATION

The Commissioner should consider whether the use of job order contracting in certain instances involving projects with construction costs that do not exceed $250,000 might promote the purpose of the statute to increase participation in contracting for businesses owned by protected group members. If so, the Commissioner should establish a list of all qualified contractors and procedures to provide notice to Targeted Group businesses and to allow firms to be placed on the list of qualified contractors.

8. **Other Reports**

- **Federal Section 3**

Other reports were reviewed by the audit team, including reports pertaining to Federal Section 3. The purpose of Section 3 is to ensure that employment and other opportunities generated by Federal financial assistance for housing and community development programs are, to the greatest extent feasible, directed toward low-income and very low-income persons, particularly those who are recipients of government assistance for housing. In furtherance of this

goals, HUD's implementing regulations at 24C.F.F. Part 135 require recipients of Federal financial assistance, including housing authorities, to (1) provide training, employment, and contracting opportunities to "Section3 residents" and "Section 3 business concerns;" and (2) ensure that their contractors provide training, employment and contracting opportunities to "Section 3 residents" and "Section 3 business concerns."

Housing authorities' obligations to comply with Section 3 requirements apply notwithstanding the amount received from HUD. The requirements apply to all contractors and subcontractors performing work in connection with projects and activities funded by public and Indian housing assistance covered by Section 3, regardless of the amount of the contract or subcontract.

Regarding Federal Section 3, the State reports to US Housing and Urban Development regarding three funds: HOME Investment Partnerships, Housing Opportunities for Persons with Aids ("HOPWA") and the Neighborhood Stabilization Program (NSP 1 and 3). For years 2011 through 2015, the following was reported:

2011 Construction contracts HOME	
- Amount of all contracts awarded	$8,223,499
Total dollar amount of construction contracts	$8,048,487
Total dollar amount of construction contracts awarded to Section 3 businesses	$1,133,178
Percentage of total dollars to Section 3 businesses	14.10%
Total number of Section 3 businesses receiving contracts	2
Non-Construction Contracts	
Total dollar amount of all non-construction contracts	$175,012
Total dollar amount of non-construction contracts awarded to Section 3 businesses	0

Percentage of the total dollar amount awarded to Section 3 businesses	0.0%
Total number of Section 3 businesses receiving non-construction contracts	0

The responses to each of the questions about the efforts made to direct employment and other economic development opportunities generated by HUD financial assistance for housing and community development programs toward low and very low income persons indicated that such efforts were not made.

2011 HOPWA

Total amount of HUD grant was $139,821, but no contracts were awarded

2012 HOME

Amount of all contracts awarded	$13,513,851

Construction Contracts

Total dollar amount of all construction contracts awarded	$13,447,181
Total dollar amount awarded to Section 3 businesses	$4,103,360
Percentage of the total dollar amount awarded to Sec. 3	30.50%
Total number of Sec. 3 businesses receiving construction contracts	173

Non-Construction Contracts

Total dollar amount of non-construction contracts awarded	$66,670
Total dollar amount of non-construction contracts awarded to Sec. 3 businesses	$6,590
Percentage of the total dollar amount that was awarded to Section 3 businesses	9.90%
Total number of Section 3 businesses receiving non-construction contracts	8

A report submitted January 24, 2013 reflected 42.80% construction Section 3 percentage ($6,170,457) with -0- Section 3 businesses receiving contracts (which raises a question how this was achieved), and 34.40% non-construction Section 3 dollar amount ($64,057) with 13 businesses. The responses regarding compliance were affirmative.

Reports submitted October 23, 2015 indicated the following:

Contracting details

Construction amount	$3,254,163
Construction Section 3	1,992,795
Construction Section 3 percentage	61.2%
Number of businesses	46
Non-construction amount	$57,599.35
Non-construction Section 3	16,335
Non-construction Section 3 percentage	28.4%
Number of businesses	3

The report indicated affirmative responses regarding efforts were taken to achieve compliance.

A second report for 2015 reflected 81.3% construction Section 3 percentage ($1,435,293.04) with 26 businesses, and 13.1% non-construction with 8 businesses, and affirmative responses regrading efforts.

A third report for 2015 reflected 49.1% construction Section 3 percentage ($474,411.73) with 178 businesses, and -0- non-construction participation out of $2,275,570 non-construction total, and affirmative responses regarding efforts.

A fourth report submitted November 25, 2015 reflected 11.1% Section 3 construction amount ($2,557,623) with 11 businesses, and -0- non-construction participation out of a total of $392,371.36, along with mixed responses concerning compliance efforts. Another report submitted November 25, 2015 reflects 8.7% construction Section 3 percentage ($238,739) with 3

businesses and 100% non-construction Section 3 percentage ($148,400) with 1 business. The responses regarding compliance were mixed.

We reviewed two reports that were submitted for 2016 (both were for fiscal year 10/1/14 through 9/30/15).

The January 4, 2016 report reflected Section 3 construction amount of 39.4% ($1,020,551) and 11 businesses, and non-construction amount of 1.8% ($3,100) and 1 business. The responses regarding compliance efforts were mixed.

The January 19, 2016 report reflected Section 3 construction amount of 3.7% ($770,597) with 1 business and non-construction Section 3 indicating -0- participation out of $1,242,924. Responses regarding compliance efforts were mixed.

MNDOT FHWA and FTA Programs

Minnesota Department of Transportation (MNDOT) administers a federally-based disadvantaged Business Enterprise (DBE) Program as well as a Targeted Group Program. These programs are operated by MNDOT's Office of Civil rights. The DBE Program utilizes participation goals in the performance of federally-funded projects, under federal rules and limitations. The audit team reviewed reports regarding MNDOT Federal Highway Administration (FHWA) and Federal Transportation Administration (FTA) for 2011 through 2015. Federal regulations require establishing statewide goals for DBE participation every three years for both FHWA and FTA expenditures.

The objective of the DBE program is to increase participation of women and minority-owned businesses in the award and performance of USDOT contracts. In order to be awarded

federal funded contracts, bidders must commit to or make a good-faith effort to meet contract-specific DBE subcontracting goals. MNDOT is required to establish goals as a recipient of funds. The FHWA statewide DBE goal in FFY 2011 and FFY 2012 was 8.7 percent. The achievement rate was 7.6 percent in FFY 2011 and 6.6 percent in FFY 2012. The FTA statewide DBE goal in FFY 2011 and 2012 was 5.75 percent. The achievement rate was 0.0 percent in FFY 2011 and 4.5 percent in 2012. A DBE goal of 11.4 percent was established for 2013-2015 on FHWA funded projects.

MNDOT reports reflect that with regard to FTA expenditures for the years 2012 to 2014 that 100 percent of prime contract dollars were awarded to non-DBE prime contractors while 1.8 percent of contract dollars were awarded to DBE sub-contractors.

MNDOT's statewide DBE goal for overall participation on federally funded transportation projects was 9.3 percent for FFY 2013 and 9.8 percent for FFY 2014, compared to a statewide goal of 10.3 percent for both years. This reflects an increase from 6.6 percent in 2012. A new three-year agency-wide goal was established for 2016-2018 of 7.13 percent.

MNDOT's FHWA DBE utilization for the years 2012 to 2014 shows that 99.7 percent of prime contract dollars were awarded to non-DBE prime contractors (equivalent to $2.34 billion dollars) while 0.3 percent of prime contract dollars were awarded to DBE prime contractors (7.22 million dollars). Of the 618 million dollars subcontracted by prime contractors, 32.0 percent went to DBE subcontractors and 68.0 percent to non-DBE subcontractors. In total, DBE prime contractors and sub-contractors received 8.75 percent of total contract dollars awarded from 2011 to 2014. Of the contract dollars awarded to eight DBE prime contractors during the period, 100 percent were awarded to white females. Among DBE subcontracts, 87.2 percent

were awarded to white females, 4.8 percent to Asian Pacific Americans, 3.4 percent to Blacks, 3.0 percent to Hispanics, 1.4 percent to Native Americans and 0.1 percent to Asian Indians. The chart below illustrates the breakdown DBE prime contract and sub-contract dollars that were awarded during the period.

DBE Prime Contracts	Percent Awarded
White Women	100
African American/Black	0
Asian Indian	0
Asian Pacific	0
Hispanic	0
Native American	0
DBE Subcontracts	**Percent Awarded**
White Women	87.2
African American/Black	3.4
Asian Indian	0.1
Asian Pacific	4.8
Hispanic	3.0
Native American	1.4

10. Additional Findings and Recommendations

FINDING

Local government entities, particularly school districts, are not involved in significantly promoting opportunities for improving the participation of protected group contractors in purchasing and procurement. The State provides significant amounts of funding to these units of local government.

RECOMMENDATION

The State should consider additional use of leveraging of its aid to cities, counties and school districts to incentivize their inclusion efforts.

FINDING

Local governments often utilize state contracts for their procurement needs. The dollar amount of annual procurement by municipalities, counties and school districts is quite substantial. Often, there is not significant diversity among vendors and suppliers on the state contracts that are being used by the local governments. The State has historically instructed purchasing agents to use Targeted Group Businesses whenever possible. However, in 2016, Master Contracts were revised to include specific reminder language that a TG/ED/VO vendor should be strongly considered for Master Contract purchases. In addition, the Office of State Procurement began reorganizing vendors on Master Contracts so that TG/ED/VO vendors would appear at the top of the list with identification as one of the TG/ED/VO vendors that should be considered first in the selection process. There is tremendous potential to increase participation of protected group contractors if there is more inclusion in the state contracts that are subsequently used by local governments.

RECOMMENDATION

The State should strive to increase diversity and inclusion among the vendors and suppliers for state contracts that are used by local governments for their own purchasing and procurement so that participation of protected group second tier suppliers and vendors is replicated in purchasing by local governments. The State should continue the effort that was enhanced in 2016, instructing purchasing agents to actively seek opportunities to use TG/ED/VO businesses when making Master Contract purchases.

11. Recommended Procurement Best Practices

1. Capacity building. Different aspects of capacity building might include small business development; bonding, insurance and finance; certification and doing-business

assistance; and vendor outreach and networking. Multnamah County (Oregon) requires prime contractors to state in their proposal how they will build the capacity of sub-contractors. On large projects the prime is required to mentor at least two minority, women or small business enterprises. Virginia launched a mobile app that, among other things, allows small businesses to connect via the app to bid on a project together.

2. Redefining Master Contracts - the Metropolitan Council (METC) has worked to redefine master contracts to have smaller scopes, allowing several MWBE/DBE firms to win master contracts. The State follows this approach as well. It should be continued and expanded to increase opportunities for TG/ED/VO vendors to win Master Contracts.
3. Proactive Promotion of Teaming; The METC has worked with MWBE and DBE firms to form a team, with one being lead on a large project. The team successfully won a large design contract.
4. Comprehensiveness - Successful inclusive procurement programs are characterized by a comprehensive approach that includes multiple strategies, continual improvement through program analysis, and feedback from multiple users. The City of Seattle provides an example. To accomplish this, in addition to a centrally led Race and Justice Initiative, it has established a Social Equity Office in the Administrative Services Department which operates on the concepts of accountability, visibility, and cultural change. The program is accountable to the public and to advocates - they schedule meetings with the advocates to discuss and critique what is happening with the program. Staff members attend meetings of the business chambers and associations. The Social Equity Office also creates visibility and accountability with the Mayor's office. The Social Equity Office reports MWBE outcomes to the Mayor and City Council and the

results are placed in department director's performance reviews. There is accountability down the chain with staff in the departments as well. Admin's Office of Equity and Procurement embodies much of this concept. Perhaps, making the results and outcomes a component of department directors' performance reviews would result in greater accountability.

5. Culture Change - a culture change strategy looks to change attitudes and awareness which will lead to changes in habit and behavior. The primary focus is cultural change in government, which will extend out to relationships, like prime contractors, instead of solely relying on efforts like mandating prime contractors to have sub-contracting goals.

Examples

- New York City comptroller created accountability by giving each city agency a grade for its procurement inclusion efforts and results along with a narrative explanation.
- Seattle's examples include coaching city engineers, building trust with business associations with the presence of the Director at some of their meetings, and creating accountability with the community, the Mayor and City Council.
- The METC, through years of coaching and training, has changed the culture so that technical project managers now come to inclusion staff with ideas how there can be more inclusion on a contracts.

6. Innovation - California is unique in using civic engagement methods already popular in cities to identify and connect with new potential vendors. In 2015, it launched its GreenGov Challenge, a competition that asked participants to create apps, visualizations and other tools to help improve government sustainability practices.

7. Goal-setting -

(a) With respect to considering a race and gender-conscious approach as recommended herein, a best practice is to consider establishing a large scope with a relatively small threshold. In Minneapolis's case, sub-contracting goals apply to professional and technical services over $100,000 and to commodities and services over $50,000. In the case of the metropolitan council, there are required sub-contracting goals on projects over $50,000.

(b) Set separate MBE and WBE goals for each contract. Separate goals encourage private contractors and vendors to find multiple sub-contractors to fill the goals. New York City takes this concept even further, with specific aspirational sub-goals for each race/ethnicity by gender for each type of city spending.

- Set an aggressive overall goal.

- Update disparity studies.

8. Coordination - In 2016, Pennsylvania Governor Tom Wolf signed an Executive Order to designate to a single state agency, the Department of General Services, the responsibility of developing and managing programs to ensure that discrimination by reason of race, gender, creed, color, sexual orientation, or gender identity or expression does not exist with respect to the award, selection, or performance of any contracts or grants issued by state agencies; and to establish a Contract Compliance Program to ensure that state contracts and grants are nondiscriminatory in three aspects;

(a) Nondiscrimination in the award of such contracts and grants.

(b) Nondiscrimination by those who are awarded state contracts and grants in the hiring ad treatment of their employees.

(c) Nondiscrimination by those who are awarded state contracts and grants in their award of subcontracts and supply contracts for performance under state contracts.

Recognizing the importance of coordination, the Executive Order directs the agencies under the Governor's jurisdiction to work cooperatively and to encourage independent agencies, state-affiliated entities, and state-related agencies to adopt, refine, and implement similar practices and procedures to support greater diversity, inclusion, and fairness in employment opportunities within their workforce.

Best Practices derived from:

- Local and Regional Government Alliance on Race and Equity (GARE) Report, December 2015
- Government Technology (GT), State Procurement Management: How Do States Rank? February 19, 2016
- Pennsylvania Executive Order No. 2016-05

12. **INTERVIEWS- PROCUREMENT ACT**

FINDINGS

- Contractors feel stuck between a rock and a hard place – they are asked/told to hire DBEs but sometimes that drives their costs up and they are out of the range of lowest bid, so they lose the work. This is a disincentive, conflict of overall objectives.
- Women-owned businesses are not incentivized to hire DBE's as subs. Further, once a primary hires a women-owned business they have often met their target for hiring a DBE.
- Often, it seems that the state is unaware of the needs of the construction industry and how day to day business functions, what might work or not work to help diversify the industry. For example, more than a couple of participants mentioned that these smaller

newer businesses are primarily made up of people who do the actual trade they are in -- mostly construction workers (although there were other types of businesses mentioned). They do not have extra staff to comb through state websites looking for opportunities to bid on contracts, and the bidding process itself can be cumbersome and time-consuming.

- There is a shortage of knowledgeable construction workers –workers trained in the trades are aging and there is a concern in the industry that there will be a real shortage in the not-too-distant future. Further, it was often described that smaller newer minority owned businesses tend to be in certain areas, less capital intensive as these are easier to break into as a startup. Sometimes there is competition over a particular DBE who is needed, because they are the "only one" who does a particular part of a job. Bidding companies all want that DBE and so the price goes up, and then that DBE is tied up for the next project. So majority owned businesses are hired.
- Contractors typically like to hire businesses they are familiar with, whose work they know and trust. Some said they wish the state would take on some of the risk in case when they hire a less experienced subcontractor and things fall through, that they themselves don't have to lose the money. (Contractors are the second most failed type of business, according to one of the participants. It is not uncommon for newer small contractors to go out of business, even in the middle of a project.)
- Larger companies are more able to absorb costs which continue to put them at an advantage. Further, they are more likely to have the capital needed to buy construction materials for a project without worrying about the delayed payment to reimburse them. Costs such as asphalt, rental of large equipment, pipes for water and gas lines, plumbing

and sewer, and of course payroll are often prohibitive for a small company if they have to wait months to get paid.

Programs in the community that train people in targeted groups for work should be informed of needs – some areas are being over-trained where there is a saturation of labor, while other areas are still needed.

- The state procurement process can be cumbersome, can be time consuming and that they may not receive feedback with regard to their performance. So in the case of equity select, we're working on it like a streamlined contract document. Get rid of state jargon and try to simplify the process. I think if I were to make a recommendation, we need to keep doing that and apply it to more of our processes and more of our documents.
- The State is currently on: set-asides, prompter pay, new methodology for calculating subcontracting goals, Equity Select and other programs.

One of biggest sticking points is how to make procurement rules work with state equity efforts -- how do we open up for minority and women owned businesses without putting our buyers in the position of breaking these laws and facing a gross misdemeanor, prison time.

- Equity Select has been an opportunity not only to go directly to a targeting group – but also to have dialogue to negotiate those under $25,000 purchases. It has been an opportunity for both the state and government purchasers not only to go directly to the vendor, but interact more and ensuring all vendors receive the same information. It is saving time in the purchasing and facilitating these dollars in diversity inclusion.
- The State has recognized that the 30 days standard payment terms for state vendors can be a barrier for the small business. So the State has worked it into their system so that

these vendors can be paid quickly in about 15 days.

RECOMMENDATIONS:

- Incentivize businesses to hire DBE 2nd, 3rd, 4th tier, perhaps by changing the scoring system for selecting the winning bid. Include points/weight for hiring targeted subcontractors.
- Consider women separately from other targeted groups, have different goals for the two and perhaps for various groups depending on the state's overall objectives.
- Get employees who do purchasing for the state experience in the field, with the express purpose of understanding how things work in the construction industry, insight into obstacles and challenges they might face, and identify ways to grow opportunities for people in targeted groups. Build empathy.
- Identify real market needs in the near future and start to develop relationships with unions to train skills, to move people in targeted groups through apprenticeship programs so that there is a strong base of skilled labor in the areas that are needed.
- The State should support newer small businesses owned by people in targeted groups in some new ways- The State consider taking on some of the risk for these businesses – help with bonding perhaps – or help with cash flow so they can pay creditors while waiting to be paid. The State should consider taking on risk of primary contractors when they hire sub-contractors that are less experienced DBEs.
- The State should offer support training in areas of running a business – cash flow management, how to calculate a bid (without under-bidding), how to manage a business – so these DBEs can build up experience and stay in business longer, grow their businesses. The State should consider ways to encourage smaller businesses to group together to gain

larger pieces of state contracts, such as a group of architectural firms did to support the primary architect on the Stadium project.

- The System should have the right incentives that are aligned with the people doing the work. Decentralize compliance so each group is paying attention, if it becomes more of their normal work rather than having Big Brother coming down on them.
- Make a stronger effort to communicate available contracts to the minority councils. RFPs should make people feel included and invited.
- The State has to improve e-procurement system to make it more robust so that can it can do a better job of checking spending, sub-contracting dollars, size of businesses, etc.
- The State should make sure it is allowing enough time for solicitations so if people are struggling with the online system will have enough time to meet deadlines.
- Measure state's second tier spend – if state partners with majority white owned business, measure what they are spending with minority owned businesses. Figure out a way to measure the diversity of businesses the State does business with. The State doesn't ask the majority of businesses what the diversity of their workforce is.
- Increase what the State does as far as the set-aside rules. The State can require only minority owned companies to participate in certain bids.
- The State needs to invest (DEED doing a good job) in building up minority owned businesses. Contractors don't have the experience or capacity to do so. The State should consider grants or forgivable loans, build leadership acumen, invest in infrastructure.
- The State should look for unique spots or spaces where the businesses that are minority owned there might be more of them.

- Help contractors with the balance between low bid and meeting hiring goals – sometimes there is a conflict between the two goals. Consider giving weight to each.
- Speed up processes, or amend to a multi-year contract so it does not get hung up as often. Contract procedures take a really long time, 4-6 weeks so we can't start our programming even though staff is ready and we have signed the contract. Sometimes it is too late.
- Continue to increase the number of targeted group businesses in pre-qualified program. It is hard to prequalify if don't have experience already, Catch-22.

Appendices

Summary Report – Qualitative Research/Interviews
Clift Research & Consultation

BACKGROUND:

- As part of the NAACP/Governor's Working Group Audit of Equity Laws in Minnesota, Clift Research has conducted many interviews with the goal of identifying recommendations regarding three areas of equity law in the State of Minnesota, and how to improve processes and systems to better support these laws. The three areas are:
    - Procurement
    - Affirmative Action
    - Human Rights
- Clift Research has conducted qualitative research, mostly by phone but some face-to-face.
- This document comprises notes taken during the interviews. Specifically, the notes in this current document are things people said regarding "Affirmative Action."

METHOD:
Respondents were recruited through referrals from working group members, community organizations that serve targeted populations, state employees who serve in related capacities, and through press releases to targeted media.

Participants were asked for their experiences and recommendations related to the three areas of law, and things that get in the way of these laws working as they are supposed to.

How to Use These Qualitative Data
One of the biggest challenges overall is the subjectivity of humans. Even reading these informal interview notes, the readers' pre-existing point-of-view and beliefs can get in the way of understanding. This is the same thing that happens when interviewing people about discrimination.

To this point, it is obvious when listening to different parties that there are varying perceptions out there of the purpose of these laws. Depending on a person's belief about the purpose, their view of how well a law is functioning and what to do to fix it is affected. For example, a person put in the position of keeping track of a quota, or tracking numbers for compliance, sounds like she thinks the purpose is to reach certain numbers. And a contractor in a position of hiring people of color - when he feels he's having trouble doing so - made a comment that showed he thinks the purpose is simply to have people working with people who are different from them. He had no sense of a higher reason for the law. On the other hand, a contractor who sees the upcoming shortage of trained skilled people in the construction industry sees the need as urgent to train more and more people to get them to a level of expertise in skilled trades, and he sees targeted groups as a rich resource.

Also, participants had varying awareness of programs in place. Sometimes their recommendations might be programs that are in existence, but the reader should consider that these are either a: not being communicated about effectively or b: these are not working as intended.

Affirmative Action Interview Notes

Respondent #3:
Experience: He had a good experience when seeking employment with the state. In regards to the online applications, he thought it could have been an easier process. He thought the whole employment process was fair and was based on skill. In regards to the disabled population that he works with, he thinks the state has done a good job integrating services, training, and fair wages in a rapidly changing environment.

Recommendations: Respondent has no recommendations regarding MN employment process, except that the online application could be more streamlined and easier to upload. Regarding the disabled population, he is an advocate for the 700 hour program and thinks the state should take a close look at funding the right services and being careful where dollars are going, just like any business.

Respondent #4:
Experience: Respondent worked for the Dept. of MN Housing and Finance. He always felt that it was hard to feel part of the team in his department. He didn't feel valued as an individual, found it hard to work in the environment, and didn't think he could speak out. He was afraid to complain to his supervisor because he was a minority. He knew others felt the same as he did but didn't know if anyone filed complaints. He never filed a complaint but was aware of the process of how to do so.

Recommendations: He'd like an increase in education and information on race and inequities--from hiring processes to overall environment and culture. Policies and procedures should be re-phrased and engineered to attract qualified work force individuals and make individuals want to stay there. Include people from different groups in the hiring process and make it more appealing to attract candidates that want to be successful. Work with leadership to set employment policies.

Respondent #11:
Experience: Respondent applied for health care policy job, id 4872. One September 15 she received an e-mail that stated: *I encourage you to apply for other jobs that match your qualifications.* She sent an e-mail and replied. Her reply from that email: *You did meet minimum qualifications. We had a very competitive pool, manager decided to hire who they wanted.* She wonders why she even got an interview. If she were not educated, she would think she did not qualify.

Also, she applied for a human rights recruitment job. Told they have new procedures and she asked about them. She received another e-mail saying the job was taken down, now you have to apply for it, and it's only for state employees. She sees a flawed and exclusive process that excludes minorities for employment with the state.

"How can Louis Porter tell me I have no constitutional rights – I am a state employee." They sent her to English class. She requested meeting with governor's staff twice and she was still waiting to get a call back. She had to leave a state job to work for non-profit to experience peace in her job. Chair of LCC, senator, and exec director told her she is not a professional. She has been verbally abused and no one has done anything about it. It was a nightmare for her.

Recommendations: There needs to be accountability and transparency. Statute 43A.15 allows people to get a waiver not to hire anybody in the qualifying pool. It needs to be removed so you hire from qualified pool, instead of bringing in a friend. African Americans born in MN are most under-employed but most educated in the state. When she started with the state they did not have an Affirmative Action plan, so she started working with Rochester to create targeted group plan. Commissioner of HR said plan should say 4% of all contracts should go to a minority. She asked them "who is minority"? So, if you consider AFRICAN AMERICANS, Hispanic, women, Asian – the numbers don't work. 43A.15 needs to be removed. "Let's fight it out, see who wins."
She is from Liberia, received all her education here, and is working on PhD. Louis Porter hired a Hispanic to teach her how to speak English. They prevented her from doing her work. 80% of her work was to connect legislature and our community. Legislature created a council in 1980 to work with African born MN. They told her it is not our responsibility on behalf of the state to take care of people who have English as a second language. Greg Hillinger (LCC), Kate/Kit Rios (labor relations) – their plan was to close the Rochester office – because Louis Porter thinks all the black people live in the TC.

She was very frustrated and had no support. Human Resources supported Louis Porter, HRC filed a complaint. She had contact with Kevin Lindsay once time in March 2015. They hired someone from Public safety to investigate. A decision was set in May 2016 but they never communicated the findings to her- whether her claim was right or wrong. Louis Porter called her and she was prevented from participating in the legislative process. They did not let her union representative in the meeting. She was given a letter of reprimand for unprofessional behavior because she asked why she could not talk to legislature. They found her insubordinate and she ended up in the ER with very high blood pressure. She feels she shouldn't have to deal with this working for the state if we say we want to be more inclusive.

Respondent #13:
Experience: The respondent has a statewide perspective of budgeted funds to develop programs to get more people with disabilities jobs in state. Also, deals with private sector businesses and 503compliance. One obstacle is multiple hoops candidates have to jump through. MN is prescriptive re-minimum qualifications. A systemic issue regarding minimum qualifications is driven by matrix of compensation
Three tribes are located in Bemidji. Two kinds of positions that pay well: casinos and state employment. For DNR employment a person must have a BA/BS in x field. Many of the Native Americans have knowledge and could be extraordinary in fisheries but don't have a Bachelor's degree.
Often entry level jobs will have 400 candidates. Hiring managers get a list of minimum qualifications but sort by preferred qualifications, often excluding people with disadvantages.

Erroneously want most qualified candidate, but that does not mean they're best fit or will stay in the job, etc.
Connect 700 hour, individuals with disabilities, to register with MMB, if they meet minimum qualifications, they will be interviewed first. From a candidate's perspective, downside is that person doesn't get sick time - after 700 hours, categorized same. 43B – supported worker program- janitorial, food service, etc. Workforce Investment Opportunity Act – federal funding stream that many agencies use for workforce development. We want integrated minimum wage positions for people in sheltered workshops but don't have structure to actually implement it.

Recommendations: They need to have resources from a human capital perspective to help implement development. EOC staff at MMB is too understaffed to do this.
Retention – we lose 67% employees in their first 5 years of employment. Once an employee hits 5 years retention rate soars. People of color disproportionately leave their jobs. Why? Because of the way they are treated, no upwardly mobility track, and a culture of bullying. This is pervasive in some agencies more than others.
Also look at MNCARS – developed out of MNDOT, housed at MMB or DEED – focused on equity and getting people into state government. MNDOT had huge need for snow plow drivers. They wanted a strategic effort and trained community partners in how to have candidates apply for positions. They had 1500 applicants, interviewed 474, and hired 92. Unfortunately, many individuals of color or disabilities did not get selected. MNDOT put up $500,000 and will have a set-aside program. These candidates will come in as temporary employees, and partners will choose candidates. Out of 12 temporary employees, 11 made it to 9 month period and all 11 are still MNDOT employees. They are using the 11 entry points to groom diverse and are changing the culture.
The state accounting system, called SWIFT, is not swift. It has some very specific nuances to it. In state government people steal people from each other and move from agency to agency. Must have SWIFT knowledge. So people move around, switch agencies rather than leave.
Public perception is: if you've applied for 20 state jobs, never got an interview, they're not trying again. People need to be taught how to apply for a job at the state. For example, you must include months and years of experience on your resume.
The other opportunity is that we put so many labels on people as far as equity within state government. People are people. People tend to look at things very "siloed." GLBT, women, people of color, vets, and disabled. People can fit in more than one category.
Part-time positions are very controversial. Unions want them to have benefits and the state won't do that. 97% of state jobs are full time and much of the 3% are retired part-time. There are very, very limited part-time options. A lot of people need that part-time option.
Pride for Project in Living is bringing in people of diversity. We will put participation in this class as part of minimum requirements.
SEEDS program of MNDOT is growing your own talent, college students in particular disciplines that have high needs. This model needs to be replicated. It is responsible for 70% of the diversity in MNDOT. It involves grooming people for a specific job and dispels preconceived notions of people.

Respondent #14:
Experiences: Respondent worked for state institution that struggled with AFFIRMATIVE ACTION. People of diversity don't last very long working for the state of MN. This speaks to concerns about culture.
It starts with leadership – how leaders are recruited, vetted. I think the biggest commitment is the leader's deeper commitment to diversity, affirmative action. Gov. Dayton has demonstrated a heartfelt commitment to humanity.
How do we create a more mindful government that is even greater service to the people it serves? His modeling of commitment to diversity is wonderful – appointments of Commissioners, Asst. Commissioners, etc.
When we look at candidates for judicial appointment, we often look at judicial temperament.
New area of concern in MN is to be intentional about leadership temperament in recruiting and retaining. Parts of MN government are in great need.

Recommendations: Get at a ***culture*** of inclusion. Issues that go with culture have to do with what's implied, inferred, and unconscious. One issue is that institution of this culture statewide is difficult to ameliorate.
For leaders who are appointed, selected, whether by a board or governor or other, we want to make certain that MN recruits for knowledge, skills, and abilities but also ***for assuring that state is thinking about leadership temperament.***
Leadership temperament is: Mindfulness, high social/emotional intelligence, intellectual curiosity for all people, sense of equality, interpersonal communication skills and listening, a commitment to values consistent with a civil society, and a life that demonstrates a commitment to these things.
For MN government, in particular, to be high performing, the state government is a regulatory arm to assure. Why is affirmative action important? – We have to evolve our leadership to understand that a commitment to Affirmative Action is a way to increase the power of productivity of *all* people. It speaks to the power and importance. Our journey (all people) is one and the same because our human nature is one and the same.
I'm deeply committed: the most important value across all organized societies is to advance the ability of people to care for one another.

Respondent #17:
Experience: State needs to take a hard look at how we recruit and solicit talent for the state. The average person in hard to reach populations does not know how to go about getting a job with the state. People in these populations don't get considered and are artificially excluded because of this. What is the process? How to get notified of state jobs when it matches my skills and abilities?
Euro Americans are more likely to know someone – neighbor, friend, etc. who works for the state and have access to available resources, like computer internet service. There must be a better way to better balance, more electronic automation of the system, direct concentrated recruitment effort into these hard to reach populations. Balance is heavily weighted to the other side.

Constantly talking to small bus owners, women, minority, and veterans. Some are frustrated with the state, MNDOT because of past experience, lack of opportunities, and have focused efforts elsewhere.

Respondent #21:
Experience: Tried to get mainstream employment and couldn't, so moved into entrepreneurship. She has many degrees from different countries but couldn't find work here. Somalis are struggling to find work because of language barrier, Arabic script. They come here and cannot write yet, assumption is: if you don't know how to write, you don't have education. Putting things in writing eliminates people. African culture is oral, not reading. Traditionally they don't seek information where there are written materials (including online).
People give up rather than being embarrassed
Have heard things but people are scared, afraid if they say something they will be that person, they will be tracked. If someone got discriminated against, they'd rather not talk, don't want to be the one that is telling. They don't want the attention.
If the position does not necessarily require a Somali speaker, hard to go in and be in the pool, even if qualified or overqualified for the position.
Once someone went in for an interview, had a sense that the interviewer was trying to weed her out, she was asked a simple math problem, something like 7x5 – usually could easily get at – interpreted that she was being weeded out.
Some have been asked outrageous questions that have nothing to do with the position. When asked why, told they are trying to figure out the type of thinker you are.
Another said she was thinking of changing her last name to her father's middle name because it's a Christian name, to get interviews.
Not able to use translation as an experience. Some drop it off the resume – may be a negative rather than a plus. How to take some experience – work experience, leadership – if someone can lead people they can lead, or 14 years of work in a certain area.
Recommendations: Go into community, say "this is what I do, this is how I can help you"
Need to reeducate, re-tell. Have key people from within the communities and have key people from the state understand how the communities works, for example, have people coming to talk during gatherings. Host a table, educate about how to do this if this is what you are interested in. Interact with community in ***their*** way. Show them it is possible. Some of the opportunities seem very grand, too big to try for.
Able to report anonymously, more likely to report if anonymously.
Provide more staff training, especially for interviewers, HR staff. A general conversation that I steer people toward is to really show people the broader picture, let people think outside the box.

Respondent #27:
Experience: Contract compliance -one thing is a lack of understanding from contractors/employers, not that savvy about their legal obligations. We are pretty progressive, explicit AFFIRMATIVE ACTION model, etc. Some might be willful ignorance and some maybe not.

Lack of awareness of legal requirements causes them to not actively recruit from disenfranchised communities – combination of AFFIRMATIVE ACTION/legal landscape. And a lot of our contractors work a lot with unions; can be an excuse for them to not actively recruit, problematic in construction.
Gender: We don't have HR in our department; we contract with M&B but don't have our own point person, very little ability for mobility, lately there's been positions created at the director level, intentional effort for bringing in men (male). People think men on purpose.
If we had human resources right here, ability to make a complaint or discuss concerns, but instead now have to make a union grievance. We would be held more accountable to the processes – promotions, inter-office issues, etc. It would boost morale, etc. WE are not compliant with that which we enforce. If a contractor were doing what our department does they'd be sanctioned.
1 – We don't have an Affirmative Action person. We mainly use HR to post positions.
2 – Commissioner and Assistant Commissioner are final authority without checks and balances. We are in a silo. Nobody is holding it accountable – we have an affirmative action plan that all state agencies have, but I don't think any of the real analysis, compensation, room for growth, etc. We chalk it up to: it's government, it's a budget. I am incensed.
The amount of time people spend looking for other work and the inefficiency, it's disheartening.
Your department has discretion, union has limits on kinds of concerns you can express. People get disgruntled, just get the paycheck, and move on.
A lot of disenfranchised have distrust. And it's overwhelming.
I think the state has to be a role model first, we have great initiatives diversity, inclusion, we talk about a diverse workforce here but even in our department here, we don't have our best human resources practices here.
Unions are a big obstacle with hiring, retention.
Lack of ability to progress makes people move on quickly.
Bureaucracy might make people move on to private sector.
Resources – some agencies small, ours is small and we outsource HR.
We need to invest in people
We do great outreach to businesses and other government entities, need more outreach to go into the community not just the NAACP and organizations they represent – clinics, Saturday times when people can come to file complaint, more accessibility, intentional. Organizations are as self-serving as are we. Want to make sure we reach the disenfranchised people, not just to the organization. Would individuals know as they are applying what to do?

Respondent #29:
Experience: Lack of employment opportunities for people of color, a lot of changes keep being made for employment opportunities; have had interviews in many departments but never the job. One time I applied for the job, urgent call to come for the interview, went through the interview, then never received any information. I called again, they said oh, we are still making decisions. Then they said they were looking for someone with more recent experience. Should have addressed that point without calling based on my resume.
My background is in purchasing, not a common area, was in a job for 12 years, and have also worked in retail for the past 25 years and my non-profit experience. Also bring with me supportive documents from letters of recommendation, community and civic organizations, high

profile Minnesotans, the state just doesn't reach out to people of color. Typical (white) purchasing agent if not connected to the community, won't speak with minority contractors etc. My background is working with minority businesses, small businesses, having a person of color in a job like this would help the overall effort.
Have asked if there is a person of color who is a buyer for the state. Has been like this with the state in general.
This is a huge office, when I scan the room, I did not see a person of color, and so what are my chances of being a person of color in this environment. I did a great job with the interview, but I knew I would not be the candidate. Especially when you know you are qualified for the job, have had experiences, had personal references, civic involvement.
I've tried to pursue this career for over 20 years, every time a position comes up, never works out. How can I have recent experience now, and you are being trained anyway. I doubt anyone can say they have been on agency boards since we were 20 years old. That has been my mission – have received city, state, federal funds.
Individual who is interviewing me in the group, with what I have to offer, it is not me, and it is the individual. No one will admit it.
People don't understand, this is what people of color go through. I have letters of recommendation from the former mayor that I worked for, from an author of a book who is a customer service expert, and a local college president.
I get stronger and stronger as an individual, I know things happen the way they do, they can't take away my knowledge and ability that I am capable and qualified to do what I do.
Have not tried to file a complaint, many instances I should have filed a complaint, did not want to put things in an embarrassing situation, I do know a lot of national leaders, civil rights leaders, did not want to embarrass. It could have gotten national attention doing so because of my access to anchors and stations etc. to get that kind of press, done my own press release.
I would never get a job with the state if I did that, and it is the career I would like to be in, hoping it would never come to that.
I was reading an article they could not find people of color to fill boards, commissions. I've been here 28 years, involved civically, have not been approached. Elected officials don't do enough to get to know their community and get to know them. They should get to know the civic minded people – who support the agenda of the state. They don't do it in their campaigning.
See pictures of certain boards, commissions, don't see people of color.
I've worked on political campaigns since high school but not in MN – here, when I volunteered, they asked me to set up chairs. My background is in setting up entertainment and fundraisers, high-schoolers are for setting up chairs. Not an adult with years of experience.
Confused about how they say can't find people of color but then I am told I don't have recent enough experience.
They wonder why people want to leave. Maybe I should leave and look for something outside the state. Should I open myself to the other states that I could work for and learn from?
I don't care how much training you give someone, how much ongoing and how many memos you send to people, the ***process needs to be at the top to*** hire more people of color, that will attract more people of color and they will want to hire more people of color. When a young person does not see someone doing that job of color, they will not think they can do that job.

Have not met a minority person yet who says they do business with the state or city. Some of them don't know they could do those types of businesses, what are the chances the state will send people to recruit at an Urban League event? It is connecting with those groups.
Efforts are not there; especially if the person is in, let's say Lino Lakes, what are the chances they will search for suppliers in the city.
Leaders need to get to know people in the community so they know their strengths, resources.

Respondent #33:
Experience: Would be helpful for employers to have more outreach, I know where to go for help but I don't know that other employers do. Paying attention to the hot topics – animal service animals/emotional support, mental health, religious accommodation is important. I feel like organizations want to do the right thing but don't know what the right thing is. Practical hands-on, policies should look like, here's what you cannot and can say in interviews, and here are the accommodations you can make.
How to reach those that don't have public funding but the agencies still have oversight over?
Important for the department to hire people who know the law and understand the issues and can speak – hard to recruit attorneys to those sorts of positions because of salaries so investigators tend to be pretty green. Have to elevate these agencies.
I applied for jobs with the state and I am highly educated (attorney). It was very hard, not friendly, very coded, scanned resumes for certain keywords, etc. It was cumbersome.
We have to comply but not cumbersome for us, it's worked into our grants and contracts.
I know there have been complaints –
Sometimes you get a different answer from different compliance officer within the same org, good to have all on same page: Experience at the local level, had a contractor – required EEO/Affirmative Action on letterhead, one compliance officer said you have to have that, another said you do not have to have it.

Respondent #37:
Experience: Goal to increase diversity of workforce to 20%, work with equity and procurement admin department, work with human rights department to help with engagement of underrepresented communities, disabled and veterans.
Observed there is a willingness from all agencies to better engage in action strategies to increase diversity, enthusiasm, each agency had to submit reports this summer, most did, work with Affirmative Action directors in MMB to put together.
Eagerness to align Affirmative Action plans with the mandate of the governor to increase the workforce to 20%.
Plan to look at the market, number of eligible employees. Right now the action plan and the market do not align.
Some look at it as compliance – hitting number. My role is inclusion, ***you can hit the numbers but lose people because they don't feel included, valued.***
Diversity plan – how do we make sure all those things are included?
Each agency's Affirmative Action person needs dotted line or straight to deputy commissioner of any agency, often buried connected to someone lower.

Recommendations: More work needs to be done connecting individuals. Participate more fully with minority chamber organization, trainings, and sit-downs.

Workforce diversity, ***starting a career pathway program***, bringing someone in the governor's office to look for people we have trouble finding. Find people, recruit and mini-training, maybe internships, *then* place them into those jobs. Create a career pathway up through ranks to exec level leadership.
We are looking at our goal of 20% diversity next 2 years, analyzing data, best practices etc. to see if it's feasible. To get there in 2 years from 11%, over half of new hires would have to be people of color.
Spend extra time talking to HR and Affirmative Action folks on how they can better align to goals of diversity. Sift out best practice – this is working for MNDOT or DHS.
We should be looking around the country for best practices, with colleagues, look for gap areas.

Respondent #38:
Experience: I initiate cases myself, promote hiring. State also can be more instructive in terms of local governments, counties and school districts being inclusive in terms of their own supply chains. Require state contractors to file Affirmative Action plans, but local governments who receive state funds are not required to do this. All counties don't -- but St Paul does (but St Paul schools don't, Ramsey County does not).
Affirmative Action is predicated on availability.

Respondent #39:
Experience: We definitely share information about these areas if they run into a problem, we are an Equal Opportunity Agency. Received DEED funding to work with our teenagers. We share information – we teach them and train them and etc. We stand by them and support them.
We are tracking Affirmative Action and take it very seriously. We are kind of a leader for the state, and we are the fiscal agent for the grant. Communication strategies make sure people understand their rights and their processes.
We are pretty vested, have a diverse connection to a large pool of applicants because of who we are and what we do.
Recommendations: If there was a way for the state to help augment, support that and on the state level too – My concern is when people are applying for positions and their name is listed, is there some kind of bias in certain companies. It did come up with a statewide Workforce meeting.
We don't have as many options for our teens to connect with that look like them in our workforce.
We need to continue to have the conversation and listening to those who are most affected. Come through the community, not necessarily through higher ups to change.

Respondent #42:
Experience: We are recipient of funding from the state, periodically handle discrimination issues. Individual felt he wanted to come in and be part of one of the programs, did not meet the eligibility, thought it was an issue related to race rather than programmatic guidelines.

Organizations urged to hire a more diverse workforce, but individuals are not always successful when they get there (after being hired). An individual from different culture goes off by himself. Sometimes the individual leaves because they don't feel comfortable.
There is a need to train and make adjustments in business to make it work for everybody
Most people don't file or make a complaint, they simply leave.
Regulations have to be respectful of the fact that not every part of the state is the same.
Example: one challenge we have is that African American and Native American have greater disparity – we are given the message. For example, we were trying to put signage on our building, to make us more visible. We sent photos to the state so they could see, she wanted to add more people of color, but that is not reflective of our community. (Duluth)
When we paint things with a broad brush, have to be sensitive to what is happening locally. To have that flexibility of understanding that.
People at all levels have to be open to it. Individual workers are more respectful of the differences. State could influence that by looking at it more holistically. If people don't last more than 3 weeks, no good.
We need training for awareness and cultural competency. Duluth has been part of a racial equity cohort. Conversations around the water cooler, saying a certain thing might be offensive.
Police department made a change to hiring, get top 7 based on scores and then can pull up a certain number of additional candidates of color, then evaluate. Also evaluate job descriptions to eliminate unintentional barriers. (Does that job really need a driver's license, e.g.)

Respondent #44:
Experience: At MNDOT we have one of the better procedures I've seen. We're working to increase the diversity of our applicant pools.
Have taken two audits of what the pools look like. Have done an excellent job of recruiting for diversity. 32% diverse applicant pool – female, disabled, people of color. Lately even higher % from sample
Great deal of diversity in applicant pool but not making it into the hire. When we went – 2 years ago – statute is a floor, not a ceiling. Let's look at every single one, so new spin. There was pushback but I agreed with it. Managerial level was all in.
When management found out that they had such a great opportunity at the applicant pool level and it is not translating – vast majority of workforce in 8 districts, districts manager (district engineers) (but also division director in St Paul is looking over their shoulders as well every time they do not appoint affirmatively) are reviewing, additional scrutiny. Other state agencies always go to division director. With the latitude… too much emphasis on interview scores.
Defend selves with interview score. Additional assessments: mechanical ability, for example.
Can't force managers and supervisors to work with me, but where they want to, additional assessments (less subjective) For example, snow plow drivers – asked weed-whip screen. Have them answer and do some things. Gas to oil ratio, what equipment you'd need, etc.
Can do in clerical arena, give additional stuff that clericals do – how would they do at assessing qualifications for a certain job, etc.
We have had a written math and reading test in place since the 1940's. Passing point is set very low for math.
Recommendations: Add behavioral / less subjective measures to the screening process. Get around interviewer bias.

Look at applicant pool – many are saying they don't have the applicant pool, which is a valid complaint. This is my opinion, hope it does not sound racist but in private sector, more flexibility in compensation. Can't do that here, can't consider the market. In private sector, females and minorities came at a premium – can't match private sector or educational. We can't match and so we lose some of our candidate pool. 3% range movement. If we bring them in and ignore internal equity, then we get sued. Law or relaxation of rules, change in compensation model.
People come to us when tired of over the road trucking, want work-life balance – benefits are good and good working environment, but younger people not interested in benefits yet. Need strong backs.
Good working environment – Native American applicants several applied, said they heard it is a good working environment. Respectful, family work-life balance, understand family emergency needs, even in truck stations is a good environment. Culture better than often this kind of job.
Alex Tiddle, was assistant director of office of Civil Rights in MNDOT. On the stadium, met and exceeded Affirmative Action numbers, took a $20k pay cut to come here. Now he's doing consulting.
Tenured person who hired everyone in NE part of the state said "if you force things it never works." We incentivize, division will pay half of the first year's salary while they are being trained, if they hire affirmatively.
MnDot has statutory language that allows people to be students for 5 years instead of 4, would be helpful to be paid for 5 years. Can put them on part-time, put in union. Can only be a temporary employee for 12 rolling months for 24 month period. This allows them to establish relationships while they are young, and they are more easily accepted. And we are able to retain them as well.
Our graduate engineer program, we allow them the first 18 months to rotate around to get experiences in more than one area – competes with private sector where they don't get that opportunity.

Respondent #46:
Experience: Has observed people try to get jobs with the state and not gotten jobs. We purchase mostly training and support services for our customers.
There was a time period over a few years when we'd been helping a number of people receive truck driver training. This appealed to them. Somali people coming to ask for truck driver training. Thought we'd pay for it. It was a concern because people were not even eligible for our program but the word was out that we would pay for their training. Schools were sending people there. Schools were telling people you'd pay for it, third base when we were just at bat, determine eligibility. Sometimes they were eligible, some others were not eligible, and we'd look for other programs they might be eligible for. We always try to help people. (around 5 years ago) not as prevalent in last 3 years or so.
Went to the schools, found out some did not know there was an eligibility requirement; some said they had not phrased it quite like that.
I don't get the direct information re Affirmative Action but sit in on interviews. Manager receives resumes from Human Resources department. When talk about targeted groups we often think of ethnic groups, but veterans receive a preference, we have interviewed and hired a number of veterans.

Look at work experience; look at skills involved depending on job itself. If doing case management. or resource room or teaching workshops. Look at skills involved in doing those duties. Experience candidate has, and how they describe their experience. What they are telling us where they are headed. I taught interviewing workshops to the general public. When employers are hiring, look for good match and really want to be doing that position rather than a stepping stone.
One of the gripes we have about state system is that it's extremely cumbersome to add staff – have to demonstrate that they have funding for a year, all kinds of hoops to just add a person. So many different layers of upper management having to sign off on it. Sometimes it takes a few months. In the meantime, and when you are hiring it is because you need someone, right now, not later. Very stressful for the staff, especially ones picking up extra load. Especially when trying to meet needs of clients.
Individuals are not sure how to navigate our state process because of language skills, computer competencies.
Recommendations: We have a business services staff person who works out of N Mpls, last year she had employer of the day event here, invited state agencies interviewing and collecting resumes on site, came to our workforce center here. Busting at the seams, many interested in applying with the state.
Had workshop for how to apply for a job with the state, also have resume building, how to look for a job.

Respondent #51:
Experience: So we have a number of placement staff that are doing job placement with job seekers. Our job seekers have multiple barriers. Most of them are low income communities of color and other – the barriers really that get in the way of employment – then low income, disability – undiagnosed mental health, new Americans, so language barriers, and also academic. I would say under skilled, either some with GED – high school diploma and/or have attempted college or that didn't work, or just long term unemployment. They are getting back into the workforce.
What I would say is that I think most of the time because a large number of individuals coming into our training and placement services are under employed or unemployed and trying to get back in – that more training and education is needed from an employer's perspective – and that just even searching for a job because a lot of it is online – a lot of it – the new hire training, the application and {too soft} training is all online. So a lot of times those academic skills do get in the way of having them successfully navigating some of those hiring practices and policies.
I think when you look at someone that is underemployed or has been unemployed for a long period of time, just navigating that system and when you look at this state, unless you have someone to help advocate and navigate with you – it can seem pretty overwhelming and a really big system. So I think we try our best to partner with the different HR departments. We're in partnership right now with the Department of Transportation. We did receive a Pathways to Prosperity grant about a year ago – and we're trying really hard to have that as one of the liable pathways. And knowing that not everyone's going to choose that. Some really do want to work within their neighborhood for smaller businesses or employers – especially if they have been out of work for a while.

I think some of it is just first of all, helping job seekers know what's out there in terms of employment with state government. How to access it – helping them advocate for themselves. Helping them understand the different requirements and then be able to address those barriers that are getting in the way of them being qualified instead of going through the steps with them. I think it does help to partner with the recruiters and the HR personnel within the state. I do see that that's still a cumbersome process, and something that doesn't go super-fast. I know they're open to looking at qualifications and whatnot. And just looking at how they can work with communities, organizations and job seekers to increase access. I guess I don't see overwhelming change that's fast enough to make that happen.

I think some of it is the qualifications, and I can't speak across all the different occupations and all the different departments. Like right now, that has been limited. I would say just the biggest part is making sure that we do have small employers in businesses that are coming in for job fairs that I really want to develop those relationships with organizations that are doing workforce development. And making you know, demystifying myths, educating the public about what those jobs entail and the career pathway and how to access those opportunities and so I guess that has been very helpful. I think job seekers don't know what is available and how to access those. And even realize that a lot of those positions and opportunities may be even within their communities, but there is a disconnect right now on I think what that means for a job seeker in terms of ease of access and just career pathway opportunities. Even when that does happen, I think it is difficult to compete with those jobs.

I can only speak for the trades that we're training in right now which is construction, automotive service, banking, and finance and accounting positions. What I would say is there are a number of individuals that come to us that don't have a driver's license or that have fines that they need to pay back. And so in addition just good driving record – so I know those are really difficult qualifications just to dismiss. They're also very hard barriers to overcome in a shorter period of time. (And are they necessary for those jobs?) Well, I think that's the conversation that needs to happen more with the recruiters and HR. You know, the managers of those departments.

Recommendations: Does the job really need or require a driver's license if people are being eliminated because they don't have one – then we're not able to reach these people that we want to reach. I really do think that it's overwhelming. That is really has been out of the workforce for a number of years or it's their first job – that can feel very overwhelming and a big step, and so I think that really is a lot of it is just there isn't a friendly face sometimes to government. Like the system is difficult and if people have some cognitive disabilities or even visual disabilities, certain kinds of disabilities might make that system itself get in the way of – financial. So the system of applying for jobs with the state can be a barrier itself.

I mean there are many different levels and categories – and it must make sense if you're a state employee on that career pathway and what that looks like. But to an outsider, I think that can be very confusing. Technical – level one, technician what that all means to a job seeker. Without someone helping them and walk it through – and then just even as a – as we have job developers within the organization – making sure they feel comfortable and understand that system. I think it's also just connecting more with organizations, but workforce development, personnel out there helping people find jobs, making sure that they understand as well the process and know how to navigate it.

Respondent #53:

Experience: The statute is broad. It's been around since 1973. I only have 6.2 staff. So I can't quite take on the world. We can take on half of the world, but not the whole world. And since I have come on board – early on when the council existed, we did everything. We worked on all issues. That was why we were created. There wasn't another council. Around those 43 years of our existence, of course, other entities within the state have come about that work on similar issues. Not similar, but more specifically the deaf commission, there's a blind agency, DB Council and so forth.

With that when I came on board 12 years ago, because we just keep – like government we get smaller and less money and less staff – and it's one of the things we worked on since the Americans with Disabilities Act was created in 1990. That is really one of our focuses because there is no agency in the state or private entity either for that matter that works on quasi enforcement on the ADA. We really are the watchdog for that.

I really have no enforcement authority, but we just pop up and make people feel like we do.

I'll be honest with you – my perspective just to throw this out there because it is NAACP – you know, with the state's big push for equity and diversity – I go to all these meetings… and what about people with disabilities because we cross all socio-economic boundaries. Seriously, they see me rolling in the room, and they're just like oh, my God, you should go. You know what I mean?

The #1 barrier right now for the state of Minnesota, for somebody who uses a screen reader, a brand new clear website is not accessible. You know, and they have known that for a year, and they say they're working on it. They're spending millions to Oracle to make this thing, and it's not freaking accessible. They held that big state career fair a week ago. I sent another letter saying – how do you expect the community – and anyone can use the screen reader if you've got dyslexia. If you're blind you have to use that. You can't access our state website to get your job in the pile with everybody else. That's like a freaking door. That's like a step for me. You know what I mean?

In the ADA that's a huge violation. Right now the Department of Justice, they're holding off and suing too many companies right now. They're going to wait to 2018 when they really {too soft} new President he's going to strip the Department of Justice. That will never happen. But businesses are out of compliance. The states are out of compliance, and the way it's written right now – companies are one heartbeat away from being there. Whoever, black, white, pink, purple – you know, uses the screen reader, you would sue based on that. So that's a huge barrier.

If you have an intellectual disability of any sort you know? I have a guy for the last two years who has been stalking me at work, and his issue is because he wants me to work on his behalf on he's got a reading disability. Yeah, so it's huge. That's my kind of stance on the whole thing because it does impact people of color.

I mean it's like you know, Edwin Huntson[?] he's the Deputy Commissioner over at MMB, he's new. I met with him and when I sent that letter again right before the big state career fair, I'm like how do you expect our people to even participate? What we did, it was a week before the event, because again, why would they tell me they're having holding a big career fair – again, lack of communication. I said our community is not even going to be able to participate. We quickly organized a come bring your resume, and we'll get it.

See, here's the thing. And this is for anyone. If you put your resume in the system, it shuffles it around to answer – the state. They do it by questions. You don't just submit your resume like you do a normal. That in itself, you can't even get your resume in there. And so you know, just

you and I just trying to do that, you have to go back in there and reformat what they put in because the system is not going to format it right. If you were to do your resume based on how it's going to upload, you would do something not in bullets but just like a colon I guess. Education: and then real discrete, bad sentence structure I guess putting it in there. That in itself is a problem. I have an accessible document specialist that {too soft} the guy makes a lousy $20 an hour, and he's really {too soft} the best {too soft} teacher I've got in my office. He's severely disabled. The VR told him {too soft} told him to go and become a movie ticket taker. That guy knows everything about software, and he's helping these big agencies in the state become accessible. $20 an hour. (Who told him to become a movie ticket taker?)Yeah, the vocational rehab. Yeah. So he went through and said here are all the issues you're going to run into when you try to put your resume – you can get your resume {too soft} screen-reader posted. But then he said everyone {too soft} we edit it because it's not going to be in the right category. He said that is the part that you cannot with your screen reader get in to do the edits. You will {too soft} nobody will look at your resume because it's not even formatted.

So they have left it like that for at least a year. And they tried to do a fix in Oracle, and it didn't work. So they had to go back to the original format of not being accessible. {too soft} money – so I have no idea if that's going to be {too soft} budget. I have no idea. But let me tell you what I do know. If this was strictly a race issue, they would have fixed it. (So race takes precedence – racial inequity is more of the concern.) We are so low yeah. We're constantly –

You know, and one of the other pieces of ADA that we have going they have been sued twice on that we got a huge it's called the Olmstead Act, and it's a Supreme Court ruling in 1999 – President Clinton signed that in to law. It was based on Title 2 of the ADA. Two women with disabilities wanted out of a nursing home. And here's how it relates to work. They were stuck there, and they didn't need to have 24 hour supervision. They sued based on the ADA. Got out, and they {too soft} guy that {too soft} Atlanta, Georgia I guess. And anyway – part of this Olmstead Act is about being able to choose where you want to live in the community of your choice.

But with that comes you have to also decide if you want to work or not. And not just be told you got to go to a {too soft} patient center – otherwise known as a sheltered workshop where they make $2 an hour to put widgets in a hole. And so states are now like Rhode Island and Oregon are being sued based on just the employment piece where states have just been automatically {too soft} learning disability put your right into that sheltered workshop and you get to work there for 30 years with no benefits, no – making $2 an hour or $.50 or whatever it is. Yeah, and so now Minnesota got sued twice. {too soft} in 2009 then based on it started with restraints and then now it's gone even further to the employment piece.

Again, my agency not invited to be {laughs} on disability. Well, I wasn't part of the original law suit. Two other agencies were – the DB Council and the Mental Health ombudsman. However, it is still ridiculous because I in 2006 started working on the Olmstead and {too soft} that year, but we did it anyway. And so the exact same players, 14 agencies {too soft} that were on mine in 2006. The good news is I probably do more damage being not on some of those anyway because I can come and testify and tell them how stupid they are and what they're doing wrong. Sometimes it works to my favor. If I was on there, if I would have to behave, and so {laughs} So you've got – you need to put them based on the Olmstead Act that the state needs to – and people of color are part of that. It's about work. It's not just about living in the community of your choice. It's being able to say I want to work. You want to work better, and the state's got

to figure that out, and they're having a hell of a time figuring that out. The state is in a lot of doo doo.
So what they're doing is they put together this person center planning, it's about the person. So people need to ask the person do you want to work, where do you want to live, that kind of a thing. That's a start. But here's the problem. They're still like state wide, and some of these small towns, there's nowhere for you to live other than group homes. If you need support, you know, personal care {too soft} shortages {too soft}. Let's say you find a job, well, if you don't have a personal care attendant to help you get dressed and whatever and you've got a severe enough disability you aren't going to be going anywhere anyway. You know what I mean? Multiple layered issues that exist out there. And then transportation is another huge factor of getting to jobs. Yeah, so it's a multilayered process.

Respondent #54:
Experience: So I have personally experienced a lot of focus and detail from the perspective of getting a diverse candidate pool for posted jobs. So I have been involved with people that are really going out of their way to make sure that the job gets advertised in culturally diverse areas, lists, email lists – and then we get this broad diverse candidate pool. That candidate pool gets moved forward in the hiring process. Our hiring process needs to be blown up and start over again.
Well, depending on the position, there's usually a panel interview – usually 4 or 5 people on the panel that interview. It runs the gamut. It could be one candidate at a time. It could be up to 4 or 5 candidates at a time depending on how many they have to go through the pool. So that's always – well, let me just cut to the chase. So at the end of the interview process, they put everybody's interview scores in a list and order that list – and say the person with the highest score is the person they want to hire. Well, the person with the highest score from the interview doesn't necessarily make them the most qualified candidate. And so there's this impression that only the top score in the interview that's what you use to determine who you're going to offer the job to.
And that fights with our affirmative action policy – it doesn't level the playing field. And so as agencies, I have sat in on inner agency workgroups, and we have looked at this process, and we have made recommendations. But the recommendations kind of go in this black hole and business continues as usual.
I can look back on my communications and see if we've got any draft recommendations. Yeah, there definitely was. And it was really a sophisticated inner agency work group. We had lots of executive agency, branch agencies at the table, trying to really look at this process. The other thing – so when we do manage to hire diversely – there was an example that I'm thinking of in one of our out state districts. So they were presented with the interview pool, and we're all protected class applicants that the minimum qual. So the person selected, they selected two people from that interview group to go into this job category. Even before the new employees started at their job, they were rumored to be the minority hires.
This got spread pretty quickly so that when they got there, their first day somebody told them, oh, you're the minority hires. And they then allegedly, I'll say allegedly conspired to fail them. To not support those who could not make it through the probationary period. And lo and behold, that happened. So one was a Native American, one was a woman, and a woman in a truck station in an outstate district, a small town, that was a challenge for some of the men there. And

during that interview, the investigation, to look at the claim, we found some pretty substantial reasons and valid reasons that they weren't given a chance. They were targeted. And it was a group target – although we could only find one person that really was the main person.
But even identifying that in the report that was forwarded to management, I was a part of that interview team and so I was a part of sharing the results at a senior leadership meeting. Well, at that meeting I was told – oh, you – we're going to do this, we're going to do that. We're going to clean this up. We're going to start at the top. We're going to do XYZ. I left thinking oh, finally something is going to be done. Well, that dragged on and dragged on. Then, eventually, nothing happened. They chose again, not to do anything.
Sit around trying to determine what they're going to do – the challenge comes back that it's just too big of a task to change a culture like that in a work location and they give up. I tell you thought I had heard myself some pretty strong convictions that this is what they were going to do. They were going to start from the top and reassign people, shake things up – they really wanted this to be fixed. This was a repeat of something I had heard – a similar thing that happened many years ago in the same place. Again, it just yeah, there's just a lack of oversight I think. Nobody knows this stuff is going on. The people that have filed the complaints, they get told yeah, it's being dealt with. It's being dealt with, but they get no other information – and we're told we can't give them any other information. And it just eventually goes away. I was just going to say until this change, and until there's some visual action that's done – and perceived by the rest of the employees in that location, the culture is not going to change. It's going to stay exactly the same.

#60
Employment also hard. African immigrants are not asking for handouts. They don't want. They want to work hard and earn it. Those businesses we work with are either unemployed or underemployed. Not planning to be in business, forced to be in business, have no choice. Hard time securing fund. Have not saved enough to run the business, don't have the credit to borrow from us.
When they start a business, when we help them, they are getting out of public service, creating jobs for themselves and their people. Likelihood they hire people from the community. Supporting themselves is the key. What I want to see is inclusivity. Don't choose one to give contract to particular group but inclusive. It is exponential growth, it is good for the economy. It makes sense to make the level field.

Human nature is getting in the way. The law is there, we know our governor created wants people of color in the workforce, so you see diversity.

There is experience that people who applied entry level job and not getting the job is questionable. You don't know who is hired – don't know what happened after that. People who applied and don't get the job.

One of the challenge I see – when you see job description most of the job description is for people already in the system. They require – look at some of the announcements – they require certain skills that you only get in the state system. What we know is people of color are not in

the system. If you cannot get in the system there is no way you can get that skill that is required in the state.
So Resumix filters out those who don't use those words that resumix desires to know.

I worked in the state a long time ago. There is software Semifore. Only know if you work in the state, can learn it in a week – but if hiring managers put it in the description to filter out/discriminate others who don't have that skill that is the human element.

I've seen a lot of Job descriptions that come from state jobs that require skills you can't get outside the system.
The education, if they require education that is fair, and it is a transferable skill, talent, habit of behavior and work ethics you can't teach. When someone already has the skill to succeed in a new job…remember also those who are skilled in the state, first they were not skilled and somebody took them without a skill. We are not born with it.

If we really want to create inclusive economy/employment, then everybody has to be on board with the goals of the state.

Something we need to acknowledge – I have extremely high respect for our governor who wants a truly inclusive economy in our state. He deserves appreciation by everyone. I've never seen like it before, I have a special respect for him. Everyone should do their part to create an inclusive economy.

Which department is most diverse? Should be known so different department leaders could focus on their leaders.
Also including low and high level leadership / management diversity.
Part of the work – focus on each department, what percent of people of color, benchmark where they want to head.

What we are trying to do is better our state – there is nothing else. Our governor wants better people. He is serving/working for people. Not anything except for people, we need to rally around people like that who want to make a change and intentionally support the effort.
Make the commissioners be accountable, make the department directors accountable for their work.

Let's say they interview people and they hire one person. Anyone can evaluate, random evaluation, to see if in the resume or how they are selecting. You can see the skill, transferable skills – if they interview someone with a BA and someone with a MA, if they hire the BA they have to be substantial. Dept. of Human Rights should evaluate

#61
Minnesota management and Budget (MMB) is the agency that reviews and approves affirmative action plans from all the other agencies based on their internal workforce and workforce goals. Law requires certain responsibilities under AA and Our job is to ensure that the agencies have that.

Human Rights Department collects AA plans from contractors looking to do business with the State of Minnesota, so they have a totally separate role and responsibility than we do. I think there's some confusion around that
AA in MMB is also housed within the Enterprise Human Resource Division, and they set the policy and guidance for all the Enterprise wide each agency for HR,
Agencies can ask to have delegated authority to run their own HR department, and run the rules essentially in place of MMB. MMB would have to have hundreds of staff to run the entire state agencies HR. So, transactions and things like that.

One comment in the Audit document is that all hiring process forms should be reviewed at MMB – that is virtually impossible. There are at least 4000 transactions a year. So, each time a job that has an underutilized candidate that has a justification should come through MMB that would be impossible to do. That's why agencies that are large enough have their own HR people, smaller agencies use SMART, (within MMB) functions as HR for smaller agencies, works out of MMB. Have different HR people from this perspective assigned to work with them to review their HR stuff.

This role for me – another

Another misnomer: MMB does not have 1000 employees so we are technically not required to have an AA officer as is required for agencies that have 1000+ employees, but we do have me, who is the essentially the AA officer, diversity and inclusion and ADA for this agency, but my job is to approve and review all the other AA plans, and help with guidance for the rest of the state.

Big thing everyone talks about is having more people. To be effective in any type of the program that ensures/regulates/monitors, needs to have the appropriate amount of people.
Before I came on, all 109 were being reviewed and approved by one person, that person was also responsible for AA training, and ADA training, all of the reports that are due to the state, the biennial report, the veterans report, the report on off-year aa goals, if they've been met.
I hired another person, she has been on board since Sep or Oct of last year, still finding that, even having someone dedicated to that, having enough people to do this work is becoming a stretch –
One thing is having resources– there's no money. I think they've requested money to help with technology needs, some agencies are spending 1000 hours to complete their AA plans by hand every 2 years. Because some of the number crunching and analysis has to take place by hand, that's a hard task to do.
Massiveness of the state is a challenge. Some agencies have some areas doing really well and at the same agency other areas that are not doing well. Agencies are so large, the consistency and how the approvals are done, it's really hard to keep on top of from an agency perspective.

We were not doing audits, but in the time space I've had, and hopefully by the middle of next month, we have been creating an audit program that audits what the law requires us to audit. That's being designed right now.

Before me the position was vacant for maybe a year, the person left to go to another agency…
We are working on some other processes, the AA process.
Monitoring the hiring process – we are kicking out a new form shortly. The process itself is being reworked too. Consistency in the hiring process has not been there, so we are putting some consistency in the hiring process, monitoring the hiring process, should roll out mid-February. (We sent over about 60,000 pieces of paper. They sampled about 1700 and only found a few errors.)

We have to be careful in singling out any specific racial group, the law says "protected group" – that includes various different groups of people, so singling out any group of people shouldn't happen. I think DHS is the agency that they will go through the applicant pool. there is a difference between an applicant pool, and interview pool, and candidate pool…

We have to make sure we don't get them mixed up. Recently separated veterans, the top 5 have to get an interview if they meet the minimum requirements of the job.
I think it's DHS or one of those agencies say: if we don't have any minority candidates in the interview pool but we they made it to applicant pool, then you'll have to interview them, give them the opportunity. I think that does help with that unconscious bias piece. I think it's tougher on the jobs where we have a lot of highly qualified applicants. The idea is to hire the best applicant for the job but the applicant pools need to be diverse also.

Also: I was rolling out some guidance on the interview panel needs to look like too. Internally here at MMB our boss has said, "You're not going to have on your interview panel yourself and one of your employees interviewing someone.

We need to make sure that 1) the interview panel is diverse, 2) make sure that your peer groups are part of that, not stacking the deck, having only people from your office interviewing people. Have people familiar with your line of work, and who have a better understanding of the interview process be part of that interview process trying to get a more neutral perspective and a different mind's perspective also.

We have to work better with the work force centers – DEED – in creating very focused training sessions around resume building and writing. And maybe they have that stuff, but the idea that we don't know is already enough to say there's not enough coordination. To say, "Hey, if you're going to put on a resume writing class, let's say for veterans who are just coming back, then we need to publicize that and promote that for you.
As well if we want you to put on a resume thing or mock interview thing for protected group people, then how do we go about doing that?" and what's the process for doing that? There's a ton of people who would line up to volunteer to help with that, too.
Deed may be doing it but the fact that we're not coordinated with each other to say "this is happening…" we need to be better about that too.

Training across the agencies, we are working on that. I don't think our HR people have not had enough training over the years, the agencies need training around that diversity piece and

inclusion piece, as well as the unconscious bias piece, we have to get a lot more training around that.

One thing we've tried to do, I think I see – I don't want to make an assumption -- might see some push-back from the Somali community – they seem to want to do their own, separate – we are trying to invite them more to be part of: we've got Latinos here, we've got African Americans here, we've got Asians here, all in one group all with the same challenges. The challenge with the Somali group is they continue to want be separate from everyone else. And to start trying to develop things for each and every group that's out there…and even within the Somali community there are different clans within the groups, I don't know how feasible that is.

When I worked with Somali groups in Minneapolis, some groups don't interact with other groups within their community, it made it hard to get information out.

It's trying to say in order for us all to fight…
Also, the education piece, we deal with it on a national level where certain groups feel they are not getting access to jobs. But if you don't have any post-secondary education, race and gender right now isn't going to matter that much. Once you get into that pool, there'll still be some racism and sexism that goes on, but you need to make it to that pool, otherwise that education piece is going to deny you access already. I think the number was 70% of the jobs in the state of MN require some post-secondary education. And if you don't have that and make a living wage, then the chances are probably not that high right now. And no one's saying that to people directly that they need to know. I do, but I don't think it's out there as much as they need to be.

#62
Role that I'm in is acting on some of the things I was talking about – I am in the driver's seat to make it happen now.

First thing: there are some great pockets of innovation and success in our individual agencies – e.g. DOT is doing some, consistently and for many years, are very advanced in their outreach to kids of color, people with disabilities, veterans, have continued to build on success.

Also DHS, Corrections interesting things with their recruitment.

Thing that has been missing: building more of a collaboration so we are sharing best practices, removing redundancies, wherever we are duplicating efforts, instead combining the efforts.

Agencies plus MNSCU is the largest employer in the state of MN. We are filling 3500-5000 jobs per year, greatest job creator in the state – opportunity and great responsibility.

Before we ask private sector to do better at diversity and inclusion, starts at home.

Replicate those pockets of great success, do them enterprise wide. Hone in on best practices, and replicate them.

Second, if we want to build true partnership with our targeted communities, because clearly there is a job for every one of those. Jobs range from snow plow drivers and cleaners to engineers and teachers, job for anyone with strong work effort and good attitude, so if we want to build strong partnerships, we need to stop doing what we have done for long time and expecting different results (send out job posting when it's ready to close, asking for help recruiting people of color for the job).
Need to start: say DHS or DOT – don't tell me what you have opened right now, tell me your cycles for the year. Are there patterns? Sure enough, every agency has some cyclical hiring. We need to share this with our community, so they know about jobs ahead of time, tell me what the jobs really require so we can get the right candidates, see success with the candidates.
Not hard, just requires an intent to want to be a good partner.

Number one, best practices across state agencies, already on that path by branding as one employer.

How do you build credible partnerships with our community partners – tell them about jobs in the near, short and long term. Then there is accountability. Give them access to training programs that train folks for the jobs we are hiring for.

Third: we as an enterprise, even though we hire such a great number of people, it is clearly the best kept secret, and it does not need to be. It is to our detriment to keep it secret. We have to do better getting out there. New immigrants are not thinking of a job with the state government when they get here.

Good stable jobs, pay very well.
Use our communication channels better. Mainstream channels might not reach these groups – we need to be intentional meeting our partners and our targets groups where they are, where they have a comfort level,
Radio, publications,
St Peter Claver church for example – has generated largest number of African American Eagle Scouts in the nation.
If wooing communities, got to do more than we've always done.

We've seen more diversity come through our doors in recent years – we look in all the wrong places. How often have we looked to our current diverse employees to recruit for us? That would be a shot in the arm for your diverse employees and a sign of intentionality on your part.

Four: have to get better about the way we hire – we are still stuck in the 70's, 80's 90's for how we recruit for these jobs. Job titles don't mean a thing to the next person. Transportation generalist, Transportation specialist – call it a snow plow driver…. Now I know what that means.

We are notorious for job classifications like "state program administrator:, "state program manager." When I looked it did not pique my interest at all, I did not see a career in that title. I know what is behind these, but there is nothing stopping us from saying "transportation

associate", but a working title of "snow plow driver" or "maintenance worker" or "laborer" while keeping the formal classifications. They can coexist, it doesn't have to be either-or.

It's about intentionality, we have to change.
We have so much to boast about and we are so bad at doing it.
If we talk about our ability to hire, any part of the state (there is snow and freeway all over, every nook and corner of the state).
How many employers can boast of that? –We've got variety, volume, geography. We have a lot to brag about as an employer but we are poor at telling our story. Tell it where the layperson can understand it, get rid of jargon. Our job postings are not user friendly, they don't tell people there is a career path. I am working on that, trying to get the word out: If you come in as a snow plow driver, you don't have to do that until you are 60 – there are career paths: you could go from snow plow driver to a construction inspector, to a materials tester, to a bridge designer, to a highway technician. The sky is the limit, all these parallel paths, both horizontal and vertical. A lot of them will allow you to progress with experience
on the job, some you might take a class or two, some might require a degree (MNDOT does a few tuition reimbursements every year.)

Well kept secrets, no reason *not* to brag about that stuff.
Not hard to do, that's why we have pockets of success, many people have figured it out there making it exciting, doing demos….

We have done a lot more work with people with disabilities that could have been in the report – we did some really creative stuff with the DOT and worked with vocation and rehabilitative services. ___ pathways, focusing on children with disabilities. It was a great success.

All of this work takes resources, so when we say "customizing our outreach" – and customizing where we focus our jobs – all of this takes money, resources, intentionality, etc. Age-old – you starve AA and HR recruitment sections, but then expect more from them.. Very disingenuous for state agencies and the legislature to really compromise the resources and then expect a lot more. Whether it's Dept. of Human Rights, or MMB or our individual agencies. If you want us to really be successful in this, put some money to it and then hold us accountable, we'll get it done. There's a recruiters network, there's an access group within MNDOT, and there's a Career Pathways group I am putting together.

If we were given the funding to get the 4 things I talked about, I know we would move that agenda. And I know I'd get a commitment across state agencies to move that agenda. And moving it with numbers.

We ask for these things but never resource it. Resource it and then clear accountability measures. Folks I work with are not afraid of saying "here is what we can accomplish in the two years ahead."

With a drop in the bucket of resources at MNDOT. SEEDS is miniscule but it accounted for 25% of all diversity came from MNDOT when I was leading it.

#59
Non-profit African immigrant solutions
Training, consulting, lending, financial literacy

Very limited state contracting in that area.
Work with immigrant folks – don't know if many of them contract with the state
Don't have that with the state
MNDOT does want
Some don't know it exists

Hard time accessing resources
All the resources exist through connections. The notion of discrimination is subjective – you can't prove it, you don't know. We know we are not even accessing resources. Have trouble accessing gov't money. Last year we tried with two organizations, 2016 we tried and did not make it last minute. Want equity money, when it shrinks it should shrink for everybody, not disappear. Not fair.
Because of the fundamental principle of equity.
I see there are not individual businesses. If we who support businesses have trouble getting contracts I'm not surprised African immigrant companies have trouble.
Even school districts – have a lot of transportation businesses try to get contracts with school districts, can't.
Health care immigrants.
Entry is very challenging. Hard for them to get a contract. Some wait 2-3 years, then get out of the business. Can't stay paying commercial insurance so get out of the business.
Health care/home care businesses have a hard time getting contracts with a provider.
Interpretive services – difficulty getting contract.
Most African immigrants first generation, lived here 20-30 years in this country. Don't find in tech industry yet.
Difficulty getting contracts, detrimental to their survival.
A few doing well. Work so hard.
If we assume they are supposed to outreach then their outreach is zero.
Have to be substantial. Dept. of Human Rights should evaluate to eliminate the human part.

Additional notes – respondent # not identified

There needs to be a formal way to close the loop on missed opportunities. So in hiring, missed opportunity needs to be a strong loop back to that.
So when protected class person not hired, fill out a missed opportunity form. Don't know if they are justified, has to be a review and analysis of the outcome.
When non-diverse panel, human nature to hire someone who looks like you.
Solution: every quarter, agency submits a summary to MMB – act of needing to report how many there were will in itself guarantee the lowering of that number.
If you measure it, you manage it.

Procurement Interview Notes

Respondent #2:
Experiences: Working on efforts to trying to get women and minorities into mgmt. & leadership in the industry. I have been in this job for about a year, starting to get the hang of things, gain perspective. I think I have seen that there is kind of a disconnect between the goals and strategies of these program and then the results. Office of Civil Rights is a compliance office, they are monitoring, just want people to meet the goals. Do the goals established get us to the results we want? What is the most meaningful way to get these folks into the place we want to be?
Construction industry has been chosen as a place to impose these goals. That is probably where states, governments spend most $ hiring people. Probably to some degree is that with these goals, the state has foisted this problem of bridging the disparity gap onto the construction industry when that is not what they are good at. They build, design, plan, fund, run a business, not build minority. Role of Office of Civil Rights should be to build competitive workforce – difference between what is out there and the reality in the field. It requires a lot of training. Business owner has a lot of financial hurdles to overcome.
I used to work at the legislature, worked on forming a collaborative. They thought they'd get people with less education into labor, but not true, and that is not necessarily where labor is needed in the construction industry. Industry interpretation is that the state is telling me how to run my business, who to hire, how to hire, how to recruit, and also want lowest price.
MN DOT has to take the lowest bidder, if they have not met the DBE goal, they have to show they made a good faith effort, just couldn't do it. Hearing for this, reading the cases, lot of contention about it. What does it meant that you tried really hard to hire somebody?
Suggestions not always appropriate, consistent – hearing boards are not all on the same page. Think about big companies that have recruitment staff, HR department etc. Small businesses don't have staff to do all that. There is a lack of real understanding of what the construction industry is really like, suggestions are not a fit. They haven't done that. Review panel is MN DOT staff, procurement office, counsel, etc.
They are sending a mixed message to hire these people even if they cost more money but also have the low bid. Publicly looks like construction industry is stiff-arming these goals, in reality there are structural barriers for making these goals.
People are in this for different things – some want to do this for different motivations than others – might not have social justice in their heart but motivated to care about it if it affects their bottom line.
They want MN DOT to tell them what to do exactly what they'll be evaluated on, and then let them go do it. Coupled with the inconsistency of how they are evaluated, they want to be told.

Want the state/MNDOT/human rights office figure out how to get more minorities in the business.
What they want of companies is beyond their scope – they are builders.
Example of a hearing – one thing MNDOT says to do is to de-bundle pockets of work to get DBE's involved. They'll have someone do the landscaping or in this case trucking. They found someone to do trucking.
But a big draw for minority businesses is trucking. But the company in-house business model is in trucking, so they did not sub it out, and MN DOT said they could have subbed it out, so they lost the contract even though it was the low bid.
There are also big concerns about -- disparity study and this audit, and how they will play into each other. How will capacity be measured – if they do cement work, sidewalks doesn't mean they can do a bridge.
Numbers = political pressure, have to be careful when defining the problem to be careful in that work. Also, focus on solutions that will give us the result we want, not just metrics that look good.
Recommendations: It would be better if we could find parts of the industry where lower barriers to entry. A few efforts afoot at latest collaborative meeting where we went over policy ideas.
For the state to assume the risk, hiring these new fledgling companies… for example, loan fund could be utilized to help DBE's fund rather than having gen contractors.
Is there a way for MNDOT to take the risk, working with new businesses? Contractors want to hire who they know can get the job done. This is about who is holding the risk. Need to expand workforce and get better at recruiting minority workforce, need more of that from the unions.
The balance is off; state should be doing a little more on the capacity side than they expect the industry to do.
If there were a pool of these businesses ready to go, they would be hired. There is not.
Put more responsibility on the state to help procure a workforce – training, working with labor unions, business development, setting up loan funds, help people get bonding, insurance, cash-flow. Give MN DOT more of the risk, have them take on focus of growing the capacity rather than imposing quotas.

Respondent #6:
Experience: Work at legislature working on issues with disability, etc. Company has had contracts with state of MN since 2003. They wrote 2 federal grants. Promised by Commissioner Lamb that would not have to worry about contract having to be supervised, supposed to be equal Organization was created by state of MN to take over technology. Plagiarized, took off cover sheet, put their name on it, and they supervised instead. Contract negotiation was always a disaster. Wanted right to anything we produced, so intellectual property rights became ours. Every 4 years, to do contract, always behind and we were blamed.
They'd start negotiating in May or June, contract due in June. Finally came to an agreement.
Got our appropriation, supposed to be part of our 4 year campaign for our low interest loans program. When money was available July 1 2015, did not get money until Feb. They took money off top, supposed to be a pass-through. Seems like a conflict/fraud, appears to be double-dipping.
Our customers' needs are not being met. Dept. of Employment is so slow to help people get equipment when they are paying part of the cost, 3-6 months. We can turn it around in two days.

STAR, since 2001, was supposed to go away. Governor's council on people with disabilities, sunset since we were created. We are supposed to be the designated agency. We are not, we strongly object to that.
MN's only money for assistive technology comes from federal government, STAR does not move through and it is supposed to be gone. I have all the paperwork. I was hired to take it over, to do this job, but I've never been able to do this job properly because we don't have the money. They get it and hang on to it.
Equipment they are buying is outdated, recently could not find the equipment. They went through 3 different directors and nobody knew where the equipment was.
We got $ from Christopher Reeve's foundation, bought equip that would last, like bicycles. They buy things that are outdated like iPads.
We have to spend our time raising money instead of helping people.
Federal govt. money is spent on salaries, admin costs, a little left. Agencies loan it out, get paid $60 to demonstrate and lend.
We are audited every year and are very transparent- have a gold rating on Guidestar. We have done a terrific job of managing with nothing. We work with other agencies, community organizations, etc. who basically support us.
Moved to agriculture, university, private sector, won't have anything to do with the state, but we are owed $950,000 so I need to see the governor. DEED is telling us to give it away.
Recommendations: Nothing but contract issues- Dept. of Admin is a joke. Administration in their contract management is a single entity and does not allow input from the public or vendors that they are working with. Agencies should be allowed to make contract negotiations.
Should be a process to sit down with someone and work it out, there is no process if you don't agree with the state. Agencies decide what they are going to do regardless of the intent of the legislature. Governor should write an executive order for STAR to go away and we will be the designated agency. Legislature has tried twice to shut them down, language was wrong-, and they did not get shut down. Trying to meet with Governor and have gotten the runaround since 2016. Commissioners tell me to go away and leave them alone and they'll spend the money the way they want. They are not being transparent and not allowing access to public officials.
She wants to meet with the governor.

Respondent #8:
Experiences: 2014 state did about $130,000 with AA certified firms out of 2.4 billion dollars
Governor issued executive order about a year and a half ago. Commissioner Massman and Lindsay have been working to try to remedy this situation, working hard, increased the staff. These have been put into place recently, results in long term still need to be measured. It's too early to tell.
Biggest fear, African Americans have been put into place at DEED, James Burroughs, created positions and administration – fear is that when the governor leaves, will those be institutionalized, or be part of the political bureaucracy that will leave with the governor?
Systems try to reach equilibrium. META, organization I work for, has had clients who have attempted to get state contracts, failed to do so. They have had better cooperation in helping to get minority contracts. Are doing some targeted, set-asides for minorities and giving those contracts to minorities.

Recommendations: Systems and people operate off of incentives. What are the institutional incentives they are putting in place to make the buyers motivated to make those decisions? Mandates only go so far. Think about organizing the system in a different way – right now many directors are coming out of administration, too much bureaucracy.
A lot of autonomy and no structures that for example create feedback loops that lead to the behavior that you want to see. Coming out of a central administration, a huge bureaucracy, for example does the buying happen in the same way that the compliance overlay is run? Each agency has their own group of buyers, systems for purchasing, so when those things don't align it's going to create problems.
When they say you should find cheapest, but don't align around getting women or people of color, there is not incentive for them to do that. System should have the right incentives that are aligned with the people doing the work. Adding other requirements to getting cheapest contract but not incentivizing
Decentralize compliance so each group is paying attention, if it becomes more of their normal work rather than having Big Brother coming down on them.
How do you define incentives so they are reinforced rather than something that central administration is "catching" so it's negative?
Want it to become inculcated so that it's integrated and when gov. leaves for example, it stays part of the culture. For example, get salary adjusted for doing the right thing, or more vacation time.
We need a robust technology system that can estimate how many minorities that can actually perform this contract are out there. Nothing says how much work they can do, qualifications. This puts the buyer in a bind, missing information that they need to determine if that person can do the job. Easiest thing is to go with who you've been going to.
For example- State of MN had a flood in a building. They would have gone to their normal list, need quick for an emergency. His office halted that and went with someone who can do that and is minority owned. They have a robust staff and are communicating regularly with the people who are buying this work.
Computer system with all the information – Meta is doing that. Minorities will be pre-vetted so can have that info available

I think if they are going to improve the minority participating in contracting, they need to go downstream and look at the ecosystem that develops minority businesses. There need to be resources to help. System is very small (20M) for minority business support organizations. Minority businesses are fasted growing segment in state of MN. 50% vs 3% non-minority. With demographic and age shifts, future is minority entrepreneurs. We have to look at whole ecosystem and grow it. Now state operates off of false competition, bids and proposals, doesn't look at how they create a stronger system as a whole, so we end up being competitive rather than collaborative in working to grow minority businesses.
If you were to have a system to accelerate the growth of minority businesses so there were more able to do these large contracts. Throughput of current system is not enough. It creates a dynamic where they are not thinking of the system as a whole. There is a vested interest in the current system but if they keep doing it like this it will be the same.

Respondent #8:
Experience: Main agency we work with is Resettlements in DHS. The new director came from a refugee resettlement agency and understood frustrations grantees had.
Pretty prescriptive, they assume the state agency has the solution and not the organization. We run into that a lot. But she understood, convened a working group for a few months and we went over their guidelines and were able to give input into how we'd change things for people. We achieved this by not only making the programs more helpful but building trust between the grantees and agency. We are able to voice our frustrations which improved the relationship. We are working on building connections between DEED, resettlements office, and agencies. We are pointing DHS to organizations for learning/input. Did not use a facilitator- but that might have been helpful.
Transparency is great. State is intermediary often between fed govt. and legislature and us. We get a lot of delays and we don't know how long the delays are going to be. One time our youth program funding was delayed for 3-4 month. We drained our reserves and were not sure if the program would continue. Uncertainty and holds on money can be really frustrating. We got funding eventually but could not use it all because it came so late in the year.
Contract procedures take a really long time, 4-6 weeks, so we can't start our programming even though staff is ready and we have signed the contract. We are getting ready to enroll, prepping recruitment but have to wait. Sometimes we just sit and wait until they give you the green light. It is confusing for our staff. Contract with the school districts and they wonder if are coming or not.
Recommendations: Invite in current grantees to understand what is working, etc. I don't know what's involved with the contract process but if it could be shortened in any way or move the timeline up so it's approved when the grant is supposed to start. One is able to amend to a 2-year so it took less processing. Multi-year contracts would be good. Applications are frustrating -you have to go to DHS website every week to check for new RFP's and they don't put them in order or remove ones that have expired. So I don't get to it as often as I need to, so I know there are probably grants I am missing. We need maybe a month to develop an RFP and if we need to partner with another agency that's not much time.
RFP process usually rushed, and for smaller organizations with no dedicated development director it's difficult to write the grants. Often take one look at the RFP and say I can't do that. They say they want to fund community based organizations, but with their scoring system, you have to meet financial requirements
DEED RFP sounded perfect, for Southeast Asians. We got ready to work with other organizations, wanted to be really innovative. Turned out they wanted 50% on training, just like Pathways to Prosperity grant and others.
Trend in employment services… training vocational training, majority of our population is not ready for that. It's for new arrivals. There is nothing in the middle, for people who have been here a little longer, we serve about 200 people in that middle ground a year without getting paid for it. Job retention is challenging. We would like to do soft skills training and spend time on case management on an individual level. Need training communication, how to manage conflict (Karen people avoid conflict) even knowing you need to call in sick.
I don't hear a whole lot from state agencies about what is happing as a result of their grants. I want to know what is happening. When you look at racial disparity – which contracts are working and which aren't. We don't know because they don't share that with us.

Respondent #10:
Experiences: Have had several clients that have tried to obtain state contracts, navigating that process of securing the process is difficult. Larger organizations get it, often told to work with larger suppliers to get contracts so they go to the larger contract holders and they are not willing to work with them.
Recent changes – state allows lower amount contracts, opened the doorway for some of these smaller suppliers to contract with the state. Usually the contracts are so large and so bundled it is hard. Navigating how to go about qualifying for a bid is a mystery for some small businesses. Understanding what the current conditions are with the contract and what the state is looking for – if you are a newer business that doesn't have a track record, hard to know how much to bid without setting one's self up for failure. Maybe they have no idea of expected cost. Might be able to find those numbers but have to be an expert bidder to get that. They will underbid, make themselves look like they don't know what they're doing.
A state contract is a great anchor opportunity for your business, sizeable project and able to say you have worked with the state. It adds to credibility.
We go through this competitive grant process – is there a way that organizations that receive this get some type of priority or connection to procurement? If we can connect folks to actual business opportunities, we'll see a higher success rate.
Recommendations: State wants to operate as efficient as possible, not work with a lot of small contracts, and this desire to grow minority businesses. The way they are set up, they need to have a track record, some solid business performance- both private and public. Hard to do that when you can't get in the door.
There should be some kind of mentoring organization to have large corporations to use smaller businesses. Is there a way to mentor, or aggregate smaller players to be a cooperative and come in to the state and build a track record?
No one is pushing larger contractors to diversify.
Women owned businesses have no motivation because they already meet the standard.
Increase spend tier 2. Use a different type of rating, not just lowest bid. Perhaps the tier one spending should be one percentage to shoot for, tier two a percentage as well. Large corporations do this; they can look to the private sector to how to do it.
Look at which segments are doing well? Are women owned already at 30% or 50%? Are they doing well and no longer qualify as a protected class?
Make the process of the RFP easier if they are only going to select the lowest bid on any RFP, setting the stage for large scale business to do that. Is there a way to make it equitable so smaller companies can make a living wage? If they look at "local business" or other factors, if they will increase state taxes paid, for example. If we can make an impact on the community where the business is located.

Respondent #16:
Experience: You are lucky to get selected to go through the process. We have contract to do the at-risk kids meal program, such a small contract but it has huge requirements, meal counts, menus certain ways, train certain ways, layer after layer regulations and laws. Those are the things really are huge barriers. If you get a grant/contract it is unbelievable how people put you into place, to inhibit flaws but won't help small agencies especially people of color levels. They

just give up and go back to their old way – work staff and resources to death to serve the community, close doors, and resources go to big agencies. Have to jump through so many hoops to serve. When government says it, they have double standard. They have to have transparency. Process itself has a double standard. Regulations are not fair for all the people because large agencies have the resources, small agencies/people of color don't have. There should be a level playing field. Could we be able to lift up regulations so small agencies are able to get that 100k contract? Integrate it for implementation by small and newer organizations.
That places a very harsh situation for the small contract – 5k grant has same regulations as 500k grant, which is not fair. Need larger community discussion. Law is not there to block people; law is there to support people. We have to know exactly how that money is spent. Government needs to take the responsibility for a community-wide discussion. What would be comfortable both from the regulator and the community perspective?
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Recommendations: When announcing possible contracts, it is very hard to get to "people of color communities". Sometimes announcements just circulate among existing pools of candidates. Not getting through to community or to minority councils. We seldom receive information from councils about contracts or RFPs unless it's a big one. DEED will sometimes make the effort. Need to find out how to better serve the community in sharing the announcements. I don't know how they are shared unless I go in to the website, unless I go into SWIFT. Minority contractors often don't even know they need to get a SWIFT number to get business with the state. Website is not sending out notices. You have to go back in each time to check.
Process – other criteria to be able to submit the bid disfavor people of color, people with less experience, give "best practices" – we understand why and how this is there but unfortunately it creates a barrier. What kind of best practices support people of color, mostly support Euro Americans--not for our culture. For example -Dept. of Correction/Justice, or Dept. of Pub Safety, RFP if you go through their requirements, you have to choose the best practices. Go to a link to find 10-15 best practices, go into each and can tell how it's done for Euro American and don't consider other cultures. It is how you think about how you integrate the diverse group into the practice. If department can say they welcome any cultural appropriate practices also. RFP should make people feel included and invited. Look at Best Practices from past 20 years, research based on European American practices.

Respondent #17:
Experience: When contracting and procurement opportunities with the state level of complexity, small businesses choose not to deal with all the red-tape and bureaucracy, focus efforts elsewhere.
Often these small businesses don't have the opportunity to work directly with the state, they are often subcontractors. There is a lack of willingness of prime contractors to deal with minority and women owned bus. Discrimination in marketplace – loans, purchase materials, redlining, manufacturers of products/materials that we use only have a set number of distributors that they'll work with. 99% don't include minority or women owned businesses.
State becomes complicit in excluding some of these businesses –we specify a certain product, there might be an equal product but the one requested is not available to minority/women-owned business.

Recommendations: Resources, technical assistance, training and financial resources available to women and minority owned small businesses needs to be expanded and improved. Need state short term cap loan program for these businesses. This is especially important in highway construction, very capital intensive. It is hard to get into as a new business.
MNDOT has professional and technical engineers working contracts, but also have potential barriers there too, prequalification program. Businesses have worked in other states, to get in MNDOT, have to get prequalified, can't prequalify if haven't done contract for MNDOT, or the state, etc. It's difficult to qualify-- difficult to break in.
The state and construction community need to make sure we have the right resources, technical assistance, training, etc. to be able to offer and assist business building capacity, become proficient, on the business end as well. Often, we know the trade but don't have financial training, etc. job-costing skills to put them in the right position.
We need to try and find creative ways to engage with minorities and women owned businesses that is not just the status quo. Recently at MNDOT we are exploring new ways to engage in contracts directly with women and minority owned small businesses. We have authority to deal directly with contracts informally, just need 2 bids and can go with whoever we choose from those. We've been identifying projects and scopes of work; we are seeing if there are pieces we can break off of larger contracts that we can use this process to work with minority and women owned businesses.
Prompt pay – prime contractors holding retainer from small businesses is often illegally. It's very hard for small businesses to meet their cash flow needs and sustain their business if they are not getting paid promptly. This is identified by small businesses as a major barrier for ability to work with the state.
More often the case, individuals get frustrated and don't want to put up with what they're experiencing and we don't hear about it, or they want the job and fear retaliation and being let go if they speak up. It is few and far between when you get someone to speak up.

Respondent #18:
Experience: Have implemented a lot of the suggestions that would be helpful – excited about contracting practices. Cash flow issue that small businesses face. Prompter pay process was implemented in July. Designated groups are paid within 15 days.
Set aside authority – have done 4 set asides ranging in value from 80-150 k, taking advantage of set asides.
Businesses are required to pay subcontractors within 10 days after they are paid. There is new methodology for calculating subcontracting goals. There needs to be greater opportunities in subcontracting – looking at both TC and outstate differently, assessing higher goals, can they be met by our contractors? It should increase work with targeted groups by 60%.
Tier Two spending increased. Implemented program in July called Equity Select – people in agencies that have procurement authority can hire targeted group businesses without competitive bid up to $25,000.
Quite a bit internally has been done – a lot about culture, how we are educating people within agencies who have authority. Implementing a dashboard that shares with leaders how much they've spent with diverse bus. We will see annual improvement. Really useful tool for them to think about how to assess and implement goals for spend.

Undertaken tremendous effort – diversity and inclusion training – it is a mandatory training for anyone who has purchasing authority. It's a half day training, all about diversity and inclusion, about the tools, equity select, prompter pay, all the tools, etc. Also, interactive activities that demonstrate for them the frustration you would feel as a small target business going against incumbent or majority business. We have tried intentionally to recruit strong candidates in procurement. The way we arrange our master contracts now, the first businesses that pop up are highlighted, designated targeted group businesses. It's a reminder that it is our expectation that you consider using targeted group businesses.

We have had a lot of media coverage – MPR discussed frustration with a couple of businesses. We met with a man who was interviewed. We are encouraging people to come back. We need a more robust e-procurement system, can do a better job of checking spend, subcontracting dollars, looking at large and small systematically. One struggle we have is the number of targeted group businesses that we have in our program. Outreach events have increased from 5 to 30. We're able to get out into the community and talk about benefits of certification. There is a kiosk in our office for those who are overwhelmed, to help them get certified.
There are a lot of opportunities at DEED to implement some of these. Have been working with Karen Francois closely and have been giving recommendations to DEED how business can be successful. We're working with management and budget on training, diversity on hiring panels, keep talking about retention and recruiting – we are competing with each other. How do we reach outside the state similar cultures and climates where we can find talent, court them and have them apply here? Give people opportunity to come here. This has to be an intentional path for recruiting diverse talent to make our goals and exceed without creating retention issues.
We have done a great job of outreach; newsletter goes out to our businesses letting them know about how to find curated opportunities. We're making it more user-friendly. People share the newsletter. It is a challenge to us to make sure people get past the hurdle of the paperwork, comfort with certification process.

Respondent #19:
Experience: Programs have been around forever. There are no perfect systems. All the programs have pros and cons. Have worked really hard over last 18 months to improve what has been a lack of participation. There has been a reverse lawsuit about inclusion against the state of MN. We're probably not seeing things until last 2 years regarding making goals. Now we have a funded equity office. We have done a lot of research gathering – I am voice on the committee given what people told me what was not working.

Now we have goals but not paying attention to setting goals on construction projects.
There was no point to be certified as a TGB because there were not state goals. Three to four years ago, MNDOT started a TGB program and we started advising people to get that certification. There are still issues, where say for the senate office building. The goals had been set so low that they only set a 4% goal on that project.
Other barriers doing one more certification, if certified as a DBE (federal), grandfathered in as TGB (state). Ramsey, Hennepin County or St Paul, need to be central certification, for Section 3 housing HUD. Those cause a large barrier for small businesses. People don't always have the

tools, corporate structure to be certified in the first place because of the amount of work to get certified.
Another barrier is not knowing where to find jobs. If you're a small business owner, you don't have staff to watch for look for opportunities and bid them on a daily basis. You need it to be pushed top-down to you instead of vice versa.
State of MN created a new website and e-mail system, not completely running well so I'm not seeing opportunities regularly yet.
Construction packages are big, not often broken down into smaller so the general contractor does procurement. When they do this, they are privy to do their good-faith efforts. Competing regulations – best/low price, bid is the marketplace. Minorities and women cannot, in general, be the low-price bidder. They don't have buying power, credit level, because they're too small.
Union can be a barrier to small business, because smaller businesses do not have the workload and the income/cash flow coming in to be able to compete, able to join the union on a good business standpoint, checks coming in, etc. You don't have enough work to compete for contracts who are union only.
Working capital and bonding issues are huge barriers for small business. It's a huge barrier for construction to be able to cover the cost while waiting for their payment. They need cash on hand to pay. Run into that from creditors, to pay for supplies. Have to have appropriate liability and bonding as a protection, be to put up money to be a bondable company. Sometimes on a large project the contractor writes the contract so the small business has to have the same bonding as they do.
Recommendations: State makes the packages smaller – bid on small packages directly. Don't require it be passed down to them from the top – not require the same level from everybody else. Enforcement is a really big part of it. Change low bid to best value type system.

Respondent #21:
Experiences: People would love to get more contracts, access to business – don't know where to find that. Putting things in writing eliminates people. African culture is oral, not reading. Traditionally we don't seek info where there are written materials. Lots of small business owners want to grow, establish themselves, don't know how to get themselves certified and are missing out on opportunities because they won't likely go online, etc. When they go to find out information about these, if they are overloaded with information, they don't want to look dumb, won't ask questions. Go to a DC to get help understanding contracts, etc. People give up rather than being embarrassed.
Recommendations: Go into community, say "this is what I do, this is how I can help you" Need to reeducate, re-tell. Have key people in the communities, have them understand how the communities work, have people coming to talk during gatherings. Host a table, educate about how to do this, if this is what you are interested in.
Interact with community in their way. Show them it is possible. Some of the opportunities seem very grand, too big to try for.

Respondent #22:
Experience: I have an asphalt recycling company that I just purchased in April. I've spent last seven months increasing my understanding of MNDOT. I'm an African American, going through certification process to be DBE. I understand the non-profit sector in its role in

supporting small business. I've been working with women on Vikings stadium, worked with compliance offices as access to participation. State may say 25% but not representative pool of people of color. Emphasis is absent specific targeted effort. Commissioner and Governor should establish a broader and cleaner defined policy that emphasizes specific levels of each small group – what percentage of small businesses should be people of color. For example, Vikings stadium created an innovative approach to help groups that usually work at tier 4 or 5 to work directly with the architect or associate architect.

No space is created for innovation. Statutes are written in such a way that people are afraid to innovate because of the pressure of legal action, compliance is about the law. State agency is responsible for implementation or dominant industry who wants to stay dominant.

Political and legal pressure is excruciating. If the policy is right, how are the programs being designed, and then who is the administrator? From there you are talking about the individual resp. for the implementation. Very few people who are innovative in that role. People are not creative / innovative thinkers in that role, they have a relationship with their tasks, and these are the steps I am supposed to follow. Not enough people in these positions who are creative implementers. I am one of those innovative types; I'd take action that would get us the outcome. I've been able to create ways for professional/technical side to participate at higher levels.

When you look at 16C – U of MN does not have to follow the same because it is part of a land grant, I think that is a problem. I believe all recipients of state funds should be held responsible for same rules of inclusion.

In construction, one area very important to pay attention: how small businesses participate in the design and build of state buildings – Board of Architectural Licensing. There is a specific group of people who decide who are the architects on state buildings, while small businesses are often capable, they are rarely selected because of this board – really needs to be looked at.

What falls into the oversight of the Dept. of Admin, should be lined up, the accountabilities are aligned. If Dept. of Admin. is body for rules of procurement, all those who receive state dollars should be accountable. Current policy allows it to happen differently.

Dept. of Admin has specific protocols for contracting-- each agency can design how they are going to operate within those rules. Accountability begins to fade.

An agency like University of MN or DOT can establish its own internal policy on a matter; can establish standards and qualifications that can be characterized as such because this is a unique agency we have to establish this standard of qualification. Example: MNDOT prequalification program. MNDOT has established a qualification mark for qual/prequal. Let's say there is a company, small business who has been deemed to have engineering background. Experience but does not meet MNDOT's prequalification to have 2 professional engineers on staff. Qualification is a default.

I do see Dept. of Admin. adopting review and examination of these and looking at it from a compliance and policy lens – are they operating from a high caution framework?

Gov. Dayton is doing right things pressing/communicating the right things. Now Dept. of Civil Rights office at MNDOT is run by people with law degrees, so they have a legal lens. So outside of the civil rights office, needs to be an office that focuses on innovation in procurement, work with civil rights office. Have money for support services programming and have failed to help small business grow, when the people lack the kind of experience necessary and don't think innovatively. When asked if they are hiring the wrong people, the same people have been in place for a long time. When you ask people to be innovative it's like putting people in a dark

room and looking for the light switch. Their relationship is with tasks, not thinking outside the box and creating the outcomes. There needs to be greater separation between compliance and outcome. Innovation -- At least push the envelope. There has got to be space for demonstration learning.

Don't tell me there is not enough capability, I know who can do what – ex: Vikings stadium. Besides main architect – remainder of stadium was designed by 18 small businesses. A shift in paradigm has been made. Now larger architectural firms know a collection of smaller firms can compete so they embrace or compete.
More complicated on construction side – how I approach, take a look at pool of businesses of color in highway construction. There are maybe 30-40 businesses of color in the horizontal construction arena that can actually do work on a MNDOT project as it is currently defined. This is mainly because firms are very small compared to the task that needs to be done. For example- my asphalt recycling company, I bid on 1-2 out of 100, I know how to find my bid items in the construction plan. I know what volume I can produce. It's different from someone who does guardrail work, can only do a small piece of the guard rail work, capacity and size and sophistication. With such a small pool of minority owned firms, such a small pool who have the capacity, it's hard for contractors to meet those goals. We can break projects out during the design phase to create more bite-size for small businesses. Monitoring can be more demanding. Have to look at engineering and construction phases. The design phase informs the contractor about what to do and how to do it. Trying to get people involved on the construction end, it is the architects and engineers who design the project and can break it up into bite sizes, potential greater ability for small businesses to participate. Example: There are 4 elements for project: earthwork, bridges and structures, concrete, finishing. When an engineer packages these all into a project, it bundles them all together, says to a contractor: here is what you bid on.
If we put earthwork out as a separate package, etc. then you have 4-5 packages that any one firm can bid on, separately or together. Because a lot of our procurement is low bid, what would stop a group of small businesses from bidding on just one part, rather than having them go through the minutiae of being a sub for someone.

Trying to figure out the work I perform and how it fits in to a MNDOT project can be very complicated. There are natural barriers for me as a business owner. Unless I'm really clued in on where to get the information I need to know who the right people are to talk to about, what I need in order to bid successfully, and some of these items are not in the papers. It boils down to relationships and also confidence that the person you talk to will be responsive. There is a stigma attached to DBE businesses. This often has to do with a perception/view that somehow – and this is real – people have their own personal views about whether a DBE or a TGB program exists.
Large contractors have the lay of the land and they know what is going on.

In my job, I managed the process for all procurement – 1200 million dollars of engineering services. In the community, understanding who the potential building suppliers are is important. I had them come to my offices. As I got to know them and started hearing themes from smaller firms about their challenges doing business with particular procurement staff. Businesses were trying to access contract administrators – not getting response. They are the front face for

project managers, the customers of the contract administrators, and the CA's interface with the consultant community. Very rarely was a consultant with a small engineering firm of color able to interact with managers. So, with several degrees separated from project manager, how are you supposed to understand the needs? You don't. Relationship needs to be built directly.
Let's just say the PM has a preference = probably to work with people they've worked with before. When new business and minority business come to table without a relationship they won't be able to get the work. Have PM's sit with these businesses- bring in 3-4 businesses you have not done business with – tell them your challenges, concerns. Give those 30-45 minutes to talk about their experience with similar projects so you can consider them in your set.
Things are improving, because people high up are saying we have to do things differently because we are failing. Also important – in my estimation, when I put in bids, and I have identified that a general contractor I put a bid into was the successful low bidder, when I follow up they hem and haw about whether they used my quote. I believe they are shopping my price around to someone they want to do business with. Contractors are given 5 days to submit who they are actually going to use. In the bidding for construction projects they have 5 days to disclose – they say whether they are going to meet the goal percentage and don't have to say how. They can show demonstration of good faith or meet goal. After review, changes happen that codifies whether they are going to use a small businesses numbers or not. If it's similar to that of the contractor or one of the contractor's friends, I'm not getting the work unless they squeeze me down to a price where I cannot survive. With specialty suppliers – lighting, fixtures, etc. – when plans are being put together, often times whoever is doing the architectural work will name a specific brand to be used, and often small businesses do not carry that product.
Language that should be used is "brand x and/or any other product that meets these specifications." It allows a company to work with another manufacturer as long as it meets with the specifications. Often exclusives in terms of ability of a company/manufacturer of a brand – work with larger company.

SBA defines in terms of dollar value and number of employees. Probably used too loosely without definition. I would argue a small business is maybe half million dollars or less. So, there is a continuum of businesses that have been around for 10 years to startups. Along this continuum, these businesses need different types of things. They all need access to the opportunities. It's difficult to navigate this system. Resources to market, compete, and to navigate the system is overwhelming – don't have the resources – time, persons to work on these tasks. It's daunting.

Association for Gen Contractors – for large businesses, resources and an association to allow them to access business with the state. It's not the same with the Association of Minority Contractors, Association Women Contractors.

All are challenged by the same thing – customer base/access to opportunity/sales/ Those parts of the bidding process – looking at the plans, put together product, and bid in 24 hours. This is not realistic for success to happen unless you have experience doing that, in 24 hours. It's important to balance the idea of capacity building with a disproportionate weight of a system. That is difficult because relationships are important, knowing who to talk to, confidence in them as

person to talk to, and that they are an innovative thinker that can help access a solution. We don't have people like that in our procurement system.

16C state statute: 25% small business participation is articulated in contracting/procurement. How does it define in the next tier participation of targeted group businesses – why not? Why not have goals for AA, Nat. Am., why not take affirmative action toward specific subsets such as African Americans. Unless it's spelled out, it will not happen because there still remains a bias toward the status quo.

I was in charge of the CR office of Transportation-- office responsible for general contracting. We were meeting goals of 8%, when I left we were barely meeting goals of 5%. We had to reconstitute from a previous lawsuit – Sherbrooke – but were still able to attain 8% because we enforced the requirements. But from 2003 to present, we've not done that because there was a lack of appreciation and value of the Federal Rules. I hold the institution accountable for not putting the right manager in place – commissioner did not – no accountability for the contractors or for leadership within the organization.

Current commissioner is outstanding, doing what's necessary. The current director of the CR office is doing good things. Do we blame the small business on the lack of capacity? - Analogy of someone who can't afford a house, do we blame them for being homeless or is it the fault of the cost of homes. We put the weight disproportionately on business that is not successful and not on the institution.

Office supplies – Pawlenty put in place so state govt. can streamline and become cost effective. It allowed for the state to purchase its goods from a single vendor to leverage better pricing for the state. In the state's interest, it was doing the right thing, but it forced businesses that ordinarily could supply offices to the state completely out of the marketplace. It had a disproportionate impact on small businesses and particularly minority owned businesses who were suppliers.

One other systems issue, when Dept. of Admin falls under 16C, in terms of state procurement, what I think is another fundamental challenge is that while Dep of Admin is responsible for that, the DOT can design its own programs that sometimes a counter or additional barriers for the programs. We can meet 16C and still create challenges. Example: MNDOT – engineering prequalification program. I was around when this prequalification process was put in place that it would limit access to businesses of color. There are 11 different work types that an engineering firm can perform. For small bus to prequalify to do certain types of work, they must have 2 engineers in the state. Hard for large firms to prequalify, imagine how hard it is for a smaller firm or minority owned firm. Why are 2 necessary to be prequalified?

Another example: Construction administration – have a firm who is a small business who can't get prequalified to get construction mgmt. / admin because rule is written so must have roadway AND bridge admin. Some businesses only do one. I had to advocate the splitting of those two. That is what small businesses deal with every day.

Enforcement of payments: There are rules that a contractor needs to pay you within 10 days, contractor gets paid 30 days, and subs get paid 10 days later. I've heard these horror stories and have experienced. I have a contractor that owes me 10k and he says he's not going to pay me the 10k. He used the product, he acknowledges using it, contract written in a way that he does not have to pay for extra material; he's calling it extra material. Even though the regulations compel him to pay me, nobody has my back. Civil rights office, they say file against their bond. Do you know how much time, money, legal, relationship equity I lose when I start pushing against the bond of the contractor? what is the consequence to the contractor? State will not step in to a dispute. Small business's hands are tied.

PLA – Project Labor Agreements: union issue
On a project, whether it's vertical or horizontal. Let's start vertical: Each project, they negotiate what they call a PLA with the Unions. Unions establish with these owners the percentage of one's own workforce that a business can use on a project. It wants to ensure that union people get those jobs. Union people are usually on the bench. I'm a small bus. owner, let's say, with 10 employees, not a union business. I'm asked to sign a union agreement only to use 25% of my own workforce on a project because that's the PLA. I can only use 25% of my workforce. How am I benefitting, growing my business, giving experience and expertise to my employees? It's a real problem/barrier.

Apprenticeship programs – if I'm a business with only 5 employees and have only 1 journeyperson, I want to get another person in the queue to become a journeyperson. There is a ratio of employees to do that, if it requires that I have 10 people and I only have 5, then I'm not allowed to bring on another journeyperson in training. It's problematic.

My business is a union shop so it requires the training done by unions.

If we don't look at these things I'm talking about, it doesn't matter what we do. WE can do all the capacity building in the world but if we don't move these barriers we won't make a difference.

Respondent #25:
Experience: I was certified 25 years or 30 years ago. Last year and a half, had to sell everything, to get bank paid off. Last year's project went to hell because of joint venture. Joint venture would not listen to me, and then used my suggestions. Had a steel erection company, then added electrical, had difficulty with.
Part of the issue with the deal is that the DOT did not support me at all. There were high goals on the job, I felt I had the DBE, you can't replace her and do the work yourself. Thought I had leverage. Two of the largest contractors – Ames and Lunda-- I was a subcontractor to them.
A prime contractor is trying to look for a contractor to do the work, to trust to do the work done. Most of them don't get the training and education that they need to understand what cash flow means. I just submitted a proposal for a small business resource center with the AWC. Had a company called Impact – had a contract with MNDOT, to provide services with DBE's, that were consultants that would help us with our banking, our bonding, our etc. It was free.

They are trying to do this with the resource center, and are not paying enough. It is always about understanding the money. You have to understand union in MN. Being union helps because you know exactly how much you have to pay, how much taxes, etc. But have to be able to get a bond with union to be able to pay benefits means you have to have a decent financial statement. Can't just come in expecting that you are going to get a contract, get paid, and make money without understanding how to make the money and how much it takes to make the money, and how much it takes to get paid. For example- in 45 days you'll get paid but in 20 days you have to pay union benefits.
People may know how to do the work but don't know about cash flow, buy materials before you get paid. Biggest downfall of DBE's getting into business is how much cash they have, what is their banking relationship.
Prime contractors end up having to pay benefits if subcontractor did not pay benefits. That's an added cost to the subcontractor. There is a risk hiring a DBE or new company because you don't know if they'll finish the job. Some require they get a bond. It's very difficult because it requires a personal guarantee.
This is a tough business to be in. #2 most failed business in US is construction. They want people to sign up to get in to the DOT but people have to have passion for it, risk taker, organized, qualities of successful CEO's / business people. It's help to be a visionary, able to delegate.
Easier if they can bid on projects that only need small tools – steel, landscaping, trucking. My goal as far as a resource center is to see if companies should even be certified with MN

DOT. And who is out there performing work, are there people doing commercial work who might be ready? If they want people to bid the work, highway heavy takes heavy equip and expensive equip. If people have the passion, it doesn't matter if they are minority or woman. People think because I'm a woman or minority, just going to get contracts.
I took $10k pay, MNDOT did not understand why my employees made more than I did, I reinvested $ into the business. Take it slow; don't take too big project at first. The other problem, men tend to not ask for help, think they know it all.
Impact – knew what I wanted in estimating program, they helped me and designed Excel sheet, with my input. They told me the male run companies don't ask for help.
MNDOT does trainings on Saturdays on different subjects. MNDOT should not run classes on how to make money/grow business

Respondent #26:
Experience: Majority owner of our business. We purchased bldg. 2 years ago, from a bank closing. I had done all our work. My husband's signature was ahead of mine – I almost got disqualified for that.
One area is capabilities – I love what the state has done when they break off small bits for mechanical and electrical contractors to bid. It helps being able to narrow our possibilities to have a shot of getting in. Small businesses can't do large projects but go to the larger contractors--a lot of things going on behind the scenes that are not the intention. Sometimes they have the mechanical/electrical contracts bid first and then prime contractor has to select one of those bids. But we need pieces of the big projects once we are in business.

For example, when skills are complicated, everything is decided. We might get hired to do something but larger contractor has already done the work – have you been in there participating, learning and adding to experience. Stadium – contracts for mechanical scope around $100million. Small businesses my size are lucky to do $10 million – most minority/women companies have a similar cap. But on this scope, state still requires the same percent of women/minority businesses. The work gets passed on, but still part of the larger contractor scope. We might be providing manpower, not having the same kind of big picture experience, just providing manpower. Sometimes when goals have been made, we are dismissed.
With large projects like this, historically I don't think commitments to the contractors have had to be made on the front end; so, there is room for manipulation after the project has started.

We've had instances where we bid a project – recently with the prison system – and then after we've been awarded the project we are subject to the state contract and also have to sign the general contractor's contract, adding another level of risk to us. That does not seem right.
Often we don't have a choice who we use because equipment is only "repped" through one company, don't have a free open market who we can go to. Now we are under retention but suppliers don't expect to be under retention-- state withholds 5% until project is complete. Try to get equip supplier to take on equal share – custom equipment going into a gov't project. Now since we are fighting them we risk them charging us more so we are more competitive.

Respondent #37:
Experience: Procurement is headed in the right direction. Last year's numbers were abysmal, now we have established equity in procurement department, can get walked through to find out about and walked through certification
Recommendations: Measure our second-tier spending – if we partner with majority white owned business, measure what they are spending with minority owned businesses. We did with stadium and capital, measure second tier spend. Also, need to figure out a way to measure the diversity or lack thereof of the majority of businesses we do business with. We don't ask major owned business how diverse their team is, their exec team is – ask it, what is the diversity of your workforce? Enhancing what they already have – "equity select", allows agencies to go to a targeted owned bus directly if under $25k. Also, to increase what we do as far as the set-aside rules. We can require only minority owned companies to participate in certain bid. Can set aside the whole bid process. It is not used as often as we can.
In the state, we need to invest (DEED doing a good job) in bldg. up the minority owned businesses. Don't have the experience or capacity – grants or forgivable loans, build leadership acumen, and invest in infrastructure.
Look for unique spots or spaces where the businesses that are minority owned there might be more of them – One of the things we should do is look at those spaces, do intensive investment. For example, we know there is a large number of minority owned catering businesses – we eat food at many events. Look at spend, make sure we spend, for example, 50% of our spending on minority owned – because there are more minorities. If another area where there are no minority or women owned businesses, can't reach the 20% goal.
Equity in procurement – program started a year ago.

Respondent #41:
Experience: There are a series of misconceptions, lost on regulators and policy makers, lost on markets and market principles, and participation in those markets. When you peel back the layers for more diverse contracting and workforce, the market is very capital intense work, you don't decide overnight that you are going to go into road construction and do curb and gutter work, you'd need ½ million dollars for equipment. Women and minorities are going to be at a disadvantage money wise. Prime contractor can't hire if can't do the work, don't have the equipment.
Regulation/admin side lacks understanding that contractor is putting together a team of subcontractors together to build an X – with that comes a variety of performance and other schedule obligations that the prime is looking to meet. Looking for subs that are reliable, will do good work, well-priced, (low bid work) and at end of day prime needs to be price competitive. When stack things up with women/minority owned business, how do we think 1-2 people business can price competitively against someone who's been doing this. Now as prime, I am forced between Terry who I've known for 20 years, know he can $, do the work, etc. and Kevin, who I don' know, don't know if he has a bond, might have to take a flier and hope against hope, relying on fact that agency certified him. Now Kevin is cost plus. Kevin does not get volume discounts yet, etc. I have to make that assessment that this person who is a risk to project, schedule, performance, priced above market, when I add it in to bid, have to cross my fingers that my price is the lowest price. Even more complicated when there are a multitude of prime contractors competing for this project, know they have to meet the goal and there is only one certified minority subcontractor – who gets to contract with him. He gets his choice and can price his product as he wants. Often price is no object. A prime contractor is beholden to price, have to have the lowest bid or won't get the work. End up in a system that sets itself up for failure. How do you get the experience, access, how to be successful if everyone in the system tells the prime contractor to avoid doing businesses with you because of skepticism that you can perform? History is littered with DBE's who go out of business and left their prime hanging. Stillwater Bridge, scope of the bridge project was more than twice the size of any project she'd done in her history. 2 years into the project, she was over her head. She closed her doors. Construction is high risk, low margin, capital intense. Put those together, why would you want to go into construction?
When you get these govt. regulations, force the market to do bus with people I've never done business with. And they have to price their part high, to make profit. Strong market forces work against the success of these programs. Why are we not asking, after they have been in this business for this long, why aren't they more successful? It's misguided to think white contractors want this program to fail.
For example, traffic control – every highway construction project has traffic control. There is a number of minority and women owned firms that have been in traffic control for years. Why? every project has a need for it.
If that firm is allowed to stay in the program, how is a new firm ever going to get into it? They know how to do just enough to remain eligible in the program.
Biggest thing for prime contractors is that they need to manage their risk, want the firm to be bonded, insured, can perform the work, is marginally cost competitive.
Program admins set goals on projects that prime contractors feel are arbitrary. Primes are close

to market, know who's out there, know what women/minority firms are out there and are certified. For women/minority firms to get opportunity, they have to get certified. If you're not certified, why use you because I'm not going to get credit for using you towards the goal. If you are a minority owned bus. And 3 people in your firm, chasing business, who's got time to do the certification, just for the opportunity to have someone call you and see if you are interested in working on a project. Then on the other side, you see people who just chase the paperwork. At one time, MNDOT, in their list of certified vendors, they had apparel vendors and shoeshine firms – why wending way through those vendors. Some don't know how to fill out the certification, insurance, tax questions, etc.
Those who enforce regulations sometimes fail to know difference between impartial administrator and an advocate. Hire persons who know the regulations inside and out, are members of diverse communities, come with tinge of advocacy, look at the job as an advocate for the program. In my mind, they are supposed to be impartial, sometimes those lines get blurred.
Biggest criticism – individuals know regulations but don't' know construction. Don't know the market, if you have 3 bids that are this close- gets lost that gov't has access to staff and opportunity for paperwork. Contractors don't have enough staffing to process paperwork, create copies, maintain files, etc. What is missing from admin? They don't understand what happens on bid-day.

Fridays MNDOT has bid letting. Maybe 28 projects that day, might have to put together, submit, and drive up. I have solicitations out for all the various inputs that go into this project. Now I also have DBE quotes, goal on project that 14% of work has to be performed by DBE's. A lot of those quotes do not come in until right before I have to turn in my bid at 9am. Trying to reach the DBE at last minute for latest number, etc. and the bureaucrat at MNDOT is making judgments on the backend – why didn't you try to get ahold of Alice – maybe you could have broken that number into parts and she could have bid part of it for you. She did not return my call, her quote was high, not amended, did not make goal.

Respondent #45:
Experience: Use online bidding. Allows the vendor to not hear about it too late – when mass release when RFB goes out, it all goes to all. Our SWMBE vendors are encouraged to bid. Paperwork is a lot. More paperwork you add, more issues you bring in to the fold.
There are varying levels of technology expertise, etc. We offer monthly training sessions for SWMBE vendors to use electronic portal, etc. We hold hands-on sessions.
Also, do annual procurement fair where we invite our vendors, 450-500 can come, talk about upcoming opportunities, etc., learn about projects before the bid process starts and everything is on lockdown. We invited the State of MN to our procurement fair – we buy a lot of items off of State contracts. We wanted vendors to know how to do business with State of MN, they were on hand to let vendors know and about capacity to compete, etc.
It's difficult to balance capacity, pricing, and SWMBE vendors. On a state contract, many times the price is very competitive, not all SWMBE vendors have the capacity to compete at that pricing. Adds a level to procurement that is tough to balance, trying to be stewards of taxpayer dollars – use low bid or SWMBE vendors? It adds a grey area.

The level of insurance we require, payment performance bonds/financial capacity, vendors are not recognizing that doing business with govt. is more difficult. Not all vendors are ready to do business with govt. Being a SWMBE vendor is not a golden ticket – being certified does not mean automatic in. We still have to compete for the work.
In a low bid scenario, it's pricing or inability to market selves to prime vendors or prime vendors having longstanding relationships with subcontractors. It's not easy doing business with government. Go after subcontractors they know what it's like to work with.
Gov't has goals, high levels of performance, payment and performance, prevailing wage, labor agreements, and fed funding adds more rules and paperwork too. It takes guts to try to break in to government wall.
We used to have master contracts that went on forever – started not renewing the contracts, bidding them out. The state needs to open dialog, get vendors exposure to departments, and get rid of longstanding contracts. State of MN does not have that barrier, have 5-year limit.
Government is good at putting a program in place without looking at the unintended consequences – fully vet the solution, including internal customers, vendor community, not just the squeaky wheel vendor community. Dig deeper than the ones that are just referred via organization, and reach out to prime contractors and find out what their needs are. Whatever happens can't be done in a vacuum.

Respondent #47:
Experience: Big picture in St Paul-- changes made 7 years ago to a model of having procurement answer to director of HR dept., so deputy director of HR and Procurement both report to same person. This forces very candid discussion of Procurement with HR. There are still struggles but structure helps to impact the change. We get a lot of diverse outcomes in contracting through development projects, private dollars with public subsidy. Get really good results on those projects because not as constrained as public projects. Always do negotiated bids on those kinds of projects, instead of hard bids. Get more opportunity on these projects.
During the last 18 months, our small business certification program has gone into the community once a month to hold certification workshops. Hold peoples' hands to go through certification process. A lot of the contractors are not wired to use the internet – because of language issues, etc. We bring a lot of resources to those workshops – bring buyer from procurement division, bring SBA, city inspection, volunteer attorneys, retired executives, regional program recognized by Ramsey and Hennepin Co. and also bring out people from those procurement offices as well. They are very well attended.
Percentage of minority certified contractors has skyrocketed. We've increased numbers and getting new businesses, 85% new, not just recertification. Quarterly report shows a pretty striking change – all projects versus ones that opened up recently. In the past- .5% minority, 1-2% women, sub contract 6% and 13%. If you look at just what has recently opened: 5% minority and >17% women, sub 12% and 24%.
We rewrote our minority vendor outreach ordinance; a big change is closing loopholes in good-faith efforts. We'd see repeat suspected offenders, their good-faith were always the same. We said if do same thing over and over, does not count, if don't make goals, you'll get fined. There has been push back from union contract/union subcontractors.
We no longer hear that we don't know where to find these contractors.

One of biggest sticking points is how to make procurement rules work with our equity efforts – internal struggle is how do we open up for minority and women owned businesses without putting our buyers in the position of breaking these laws and facing a gross misdemeanor, prison time. Law might have to do with low bid, conflicts/ not sharing inside info before the bid goes out. One big thing is they have so many different departments and vast geographically, hard to get everyone to buy in. State does not have any control over the schools even if they get state aid. One group was pushing the state to condition the receipt of local govt. aid on abiding by the state rules.

Respondent #52:
Experience: I'm on the central procurement side, so I have oversight over a lot of the procurement policies and procedures. We work with various state agencies. We have approximately 700 buyers out there that facilitate the procurements for the state of Minnesota.

So, we work closely with them to assure diversity inclusion of the state spending, making it more representative of the population. As we work within our trainings, we rolled out the diversity inclusion, and then we have the equity select which you've probably heard from others. So from our standpoint it may be a challenge because rolling that out and further educating folks of the opportunity because it's new. So, I think we've done a good job on paper, but also it's the outreach of putting specific scenarios in place and frankly, educating the vendor base too that it's available. Kind of both sides are able to talk about it. From rolling that out, it's obviously a process of 600 to 700 buyers, but we're now a couple months into it. We got a couple of the procurements under our belt, and we're starting to get some feedback from those end users and frankly the vendor base. One of the positive things that we have heard is that traditional government procurement at that level is generally done through our request for bid process, and that's typically where we'll put out a specification. Whoever receives, whoever gives us the lowest price that meets that specification, essentially wins the bid.
So, a challenge for our buyers is they find a product and maybe the spec ladder XYZ, they put it out there – they have to – the vendor has to meet the specifications. They give us a price. We don't have a lot of room for negotiation or of course, people can ask questions and we can formally change the solicitation. From the communication lines, though they're open, they can be labor intensive for both sides on the process. But that equity select has been an opportunity not only for folks to go directly to a targeting group or what have you – but also to have dialogue to negotiate those under $25,000 purchases. So, they come and say hey, ladder XYZ in the let's say the vendor says that's going to be $1,200. Well, if they would just respond with $1,200 and they weren't low bid under the previous scenario, we don't really have an opportunity to negotiate. But we have seen examples where they could now talk and say well, what if I don't have to require you to do inside delivery on that ladder? What would that do? They would say well, that would be huge because I just can't get it up the three sets of flights. So, I could take $300 off that price.
So that process though the amount is there, it really has been an opportunity for both the state and government purchasers not only to go directly to the vendor, but interact more because we are very conscious of ensuring – you know, part of our training is ensure all vendors receive the same information to keep it apples to apples. So, that was one of the huge pluses that we have seen and it's still working itself out is that the law, though it was probably – I can't say the total

intent, but something that just kind of blossomed out of it was more of this ability to discuss the procurements. Part of it was to be okay we can go direct, that's an option. It's going to save some time in the purchasing. It's going to help facilitate these dollars in diversity inclusion. But what it really did is just opening the lines of communications for us to talk about procurement to maybe hear more about the challenges from the vendor sides in some of our specifications or requirements. Sometimes we can make a really easy fix that saves them a lot of headache or allows them to give us a much more competitive price if that was the case. I mean in other situations, we are just going direct, but that was a big plus out of the equity select.
Yeah, so if you were selling, let's just say you happen to be a car dealership or what have you and I put out a bid for a Ford 2017 new vehicle, we might get 3 dealerships that send in their bid, and we have to kind of – I shouldn't say kind of. We do – we specify exactly where it has to be delivered. The base spec of the car, and that's the baseline for what vendors can meet.
Then, sometimes in that process because we may not be subject matter experts – we may use a baseline specification that's out there in the industry. Really, that could be prohibiting to the vendor. They may ask a question, and we may respond, and but we don't necessarily have that – we have the opportunity during the solicitation process, but once the bids are open, those agencies cannot negotiate it. They only can do requests for bids under our procurement law.
So, that whole negotiation which is not necessarily terms that as far was equity select. I would call it more a dialogue to see how both parties could reach an agreement at a fair price or what have you and open up that gate for that to be allowed. Otherwise, if we were to go after the fact and start talking with one vendor and we didn't get the other vendor the same information – obviously, the vendor base gets a little frustrated because they're going to say well, if I knew that, I would have done this or I could I have done this.
So, that's something that really seemed to be beneficial to both sides because then the vendor can kind of understand where the state's coming from, and then the state might be able to make some concessions that really help the vendor on the pricing category. It's just a little more dialogue on the procurement process that has been a benefit to both sides not just either the state or the vendor.
(Do you see other places where that could be applied that would improve the whole process for you all?)
I think it's maybe within the law – I think it's an education standpoint for us with the vendor base. As we're going out there, the vendors you know, letting them know that they can ask questions through the solicitation process and also letting our buyers know that throughout the agency to say hey, make sure you're allowing the question and answer period. Make sure you're allowing enough time for folks to submit questions.
So I think we can just expand it to there's a way for us to do it. It's rather labor intensive because it's very formal. You know you would have to send an email with your specific question – and then I'm going to answer it formally to all vendors. I think that's certain dollar amounts, you know? We're going to have to do that because that's just where we stand. Under $25,000 opened up that opportunity to move that program along.
(That's really great. What other areas do you see as being helpful to improving your ability to hire targeted groups or else barriers, things that are getting in the way?)

I think one of the things is the payment terms. I mean we heard that a lot where the standard payment terms for state vendors is 30 days after receipt on an invoice. And that can be a barrier

for the small business. So, they worked that into our system to change it where it would default the 15 days so those vendors would get paid quicker. That was an easy – I think relatively easy for us.
We had that contracting practices committee. Obviously, with small business they identified in that committee that the cash flow was a barrier for them. So, to help ensure the prompt payment in keeping these businesses running, we're looking to pay that within 15 days instead of our standard 30. We did understand that. If they're trying to move it along and we have a relatively large state order, and one of the barriers it that we're not going to pay you with – until a month later. So, if it takes 3 weeks to get us the goods, and then we're going to – we have 4 weeks to pay that small business had the cash flow for 2 months, and that is a significant barrier. The 15 days again, kind of cuts it in half and allows them to keep the cash flow and hopefully keep expanding once they deliver the goods or services.
(That makes sense, yes. Do they have the ability to bid before the project is done? Can they bill any part of it or do they have to wait until the project is complete?)
It depends on I'm on the goods and services side of the house if you will. We also have some odds and ends like grants and joint powers agreements, but typically on the goods and services, we're going to pay after we receive the goods or general service. It's not something we section off. That's statutorily where it'll say hey, the state is going to pay within 30 days when we receive an undisputed invoice. We're going to pay 15 days with an undisputed invoice.
But on the professional technical side, that's more the doctors, lawyers, IT consultants, generally services that are intellectual in nature, they do milestone payments meaning hey, you're going to be on site for 2 weeks, you're going to deliver us you know, maybe the project charter after 2 weeks, then we'll pay you for that piece. I think that's something we could look at, but typically on the vendor base too they're looking to shift everything together and everything kind of rides on one invoice. They're not necessarily big on separating invoices because that's more paper.
(That committee that you mentioned where you uncovered that cash flow was a problem, do they have other areas that they also identified?)
Yes, and I think the commissioner {too soft} chaired that initial contracting practices committee. A lot of the changes from procurement and I think other places facilitated from that committee which was – there is another – I don't have the numbers, but as far as the number of businesses that we had certification wise, I could probably punch it up here. But since like January 1st it was like 200+ or more businesses were certified due to outreach efforts. I don't know how much others have spoken on it, but you probably are familiar with the office of equity procurement. That's a new division that one full time employee – I should say 7 full time employees – that is additional bandwidth for the community outreach and to connect small business owners directly with the state. They have been successful in some of the outreach PTAC and some of those others where the number of events that we've attended has also been very aggressive.
Recommendations: We're doing a lot of the policy changes, but I think in the same breath, we have to still listen to the individual business owners. So, we still are a very large organization, and I guess from a recommendation standpoint and something I'm learning individually is we really have to dig in to each commodity and service. We have these overarching policies, but we have to understand that each of the commodity or services as it relates to the individual minority business or targeted group business – example would be we had a recent vendor that was not receiving business in the auto body sector. They had been on our list for a long time. We have

these new initiatives in place. But as we dug in deeper, we realized that particular procurement was rather unique in that it's also touching the claims side of it, the insurance side.
We really had multiple state requirements that were going in to it from not only a procurement standpoint but also from the risk management claim assessment. So, what we had to do is as we dug into that individual one, it was connecting the two state agencies to say hey, can you update your documents to include the link to our TGEDBO[x?] vendor listing? So, then when they send out a claim to a state agency to get multiple quotes, even though it's not something where equity select is going to work – just because the claim process is often going to involve or require I should say multiple bids, so it was just unique. It wasn't as easy as responding to that TGEDBO vendor in auto body and saying hey, great, we got this equity select program. They can just use you. That would have been my initial answer and say hey, we can try to put you in contact. As I thought deeper about that and talked to risk management before responding it's like well, no, we have some interesting nuances to this that we are – other requirements under the claims process to get multiple bids.
That was an opportunity for us to talk with risk management and get our documents to align. It's kind of like DOT and DNR making sure we're on the same page. We're operating kind of - we're one big state, but we all have our swim lanes and what we do well. That was the lesson learned is before we respond, we got to go kind of understand each one of these individually and what it means in state government, and is there small changes we can make just on the outreach or education wise within the state to hopefully add further opportunities to the vendor base. So, I really think we're looking at these systematic policy changes and we just those are going to be effectively. I think they already are effective. But also, taking the time on a commodity or a service specific instance to do the deep dive and figure out really why those dollars may not be filtering down into opportunities for the targeted groups.
(So looking specifically at different situations and really getting in there and understanding, I had a conversation with a contractor that I wanted to ask you about where they were talking about the bid process and that at the very last minute there's a deadline for getting that bid in electronically. They're waiting for all their cost estimates to come in, and they're trying to hire a subcontractor who is a targeted group, but they can't get their – can't get a hold of them for the revised cost estimate. So, at the last minute, they use someone that they have worked with before and that they're comfortable with which of course is not a targeted group. Then, they're criticized for that. And even though with using the targeted group it would have been more expensive – I'm sure you've heard all those things. As he was describing this process in detail and I was picturing them sitting around this room waiting to get those last numbers in, and I wonder if you guys – do you have a window on that – what it's like for them actually and do you work with them to figure out how to make that work?)
I think I would guess that the scenario that you're describing was a construction. And that is a little bit different world where some of them – and I would have to dig in deeper as to exactly why, but I have seen those interactions in our lobby and maybe directly outside of the bid opening. A lot of them are lining it up that day before the bid, and I think it has to do with schedules and what have you. We're usually 2-3 weeks where we're on the street meaning that the solicitation is out there and they have time to formulate their bid. So, we're not saying hey we need this and you need to flip it around in 24 hours. Generally anything over $10,000 in the state is going to have a 7-day solicitation opening. Many times, these construction projects are going to be 2 or 3 weeks.

That may be a follow up I can dig in to and what the logistics are behind that in the industry but often, those folks are on the telephone or they're lining that up the morning of. For lack of a better answer, it's probably pretty close to me when I have to take a test, right? You're trying to line it up and get your bid together that morning. I can't say that's the reason, but it's – the construction industry from my experience has kind of always operated in that fashion. To speak to that specific circumstance, I could say okay, yeah, I can see how we have you know, minority business requirements or preference requirements that are in the solicitation, and I understand on that day that TGEDBO or what have you may have fallen through. Maybe that's a lesson learned that you ought to try to have a backup in that sector that's also a TGEDBO. Or maybe that's just what happens. I think that's part of the process. We're taking steps to set you know, goals on particular construction projects or to allow points for diversity and inclusion type requirements or desired requirements.

That's just part of the business – sometimes that can happen. That's something we train on to be conscious of the time that all businesses need to respond to it and line things up. That's one benefit I think of the electronic system. We have what we call Swift. It's our ERP system that can handle procurement. So, that's a benefit – call it the old days – I don't know how long that would be now, 5 or 6 years ago we didn't necessarily have a system that could accept the online bid. So, we were taking a lot of paper. Well, that meant that if someone didn't want to make the drive and drop their bid off that they had to put it in the mail 2 days before, make sure FedEx or USPS did their thing, and then have to arrive on time for us to accept it which is still the case today. When it's in the electronic system, they can do it an hour before but they run some risks right? They need to be able to understand the system and post it – and that's why we stress to both the vendors and the agencies – make sure you're allowing enough time for the solicitations so if people are struggling with the online system, or just natural timing of life – that we're being conscious of that. And so, that is built into our training to our buyers to evaluate what – not only evaluate what you're buying but evaluate what your requirement is of the vendor.

If they're doing pest control and you're going to require a copy of their permit, try to put yourselves into their shoes and realize that they might not have their permit saved. They might have to go to DLI or Department or Commerce and pay $8 for another one. They might not be able to do that in 3 days. Be conscious of when you're asking and what you're requesting.

(In the last few minutes that we have here, are there any other recommendations that you have for the state?) It's kind of a hard one for me because we have done a lot in the case.

Part of my area is procurement from an enterprise perspective. So, for example, commissioner doubled the value the minority contract preference when he was relatively new to the position from $500,000 to a million. That's something that we made a global change in our documents be we facilitate those template documents for state agencies.

That would probably be the only general recommendation. That would probably be a recommendation for me that I know we already have to work on. But it's probably statewide – and we have taken some steps. We're going to be rolling it out for equity select, but you know, the feedback we get is that the procurement process you know, equity select I think has made it a lot easier, but that is only addressing the under $25,000 opportunities. The state procurement process can be cumbersome, can be time consuming and that they may not receive feedback with regard to their performance. So, in the case of equity select, we're working on it like a streamlined contract document. So, it's very upfront, terms and conditions, claim language, couple pages instead of our traditional document that's probably been updated throughout the

last couple decades that the state is looking for a lot of protections which is you know, common, whether you're Target or Oracle, everybody's looking to get the T's and C's on their side.
But so we might have had 70 terms, 7 forms, and various information in different places. What we did in equity select and we're going to roll out is that the two-page document – 17 terms – read it from the eyes of a new business – put it in claim language. Get rid of state jargon and try to simplify the process. I think if I were to make a recommendation, we need to keep doing that and apply it to more of our processes and more of our documents not only for small business but for all the vendors.

Respondent #55:
Experience: We really exclusively focus on entrepreneurship and if you have been – if you know Women Venture over the years, that wasn't always the case. We had a large career part of our mission before, so it would have been in the past. Now really our exclusive focus is on helping women start and grow profitable businesses.
I think the barriers are consistent. Let's remove language as a barrier which could be for any immigrant communities, a barrier. But for women and women of color as well, and a lot of it is the complexity. So, there is just a complexity in the application process. And that you have multiple entities that you really have to understand and have – be able to go into their portal and complete applications. And so, it's just a very rigorous process and not connected. It's disconnected across the state. If you want to work with a municipality or a county or a city or the state itself, it's all – it's just very – there's no one portal. I hear that really consistently. It really requires a size and sophistication if you don't want to basically spend all of your time, your business' time in that space.
What I heard really clearly from the women that were running construction companies is that they're really not interested in state contracts because it's a low bid, and the margins are so low and the time frame to get paid is lost. So, if you have to borrow money to do a low margin project and basically you're going to be net neutral by the time you pay the interest expense to have paid the people to do the work – so they're really not focused on that work. I find that really interesting. And yet they particularly the women of color that are running those businesses are getting contacted daily by companies that are trying to meet their quotas.
And so then there are probably the lists for those that have it. So, you know, those aren't ones that we were working with, but I imagine there's many out there that would go oh, my gosh – a huge contract, $200,000 you know, I have made it, and then they get into the delayed payments, the low margins, and those pieces.
So we were in this particular program working with – and actually training these women to really get you know, figure out what type of you know, targeted business do you want to do where you're going to make the most money? That's really the feedback that they gave. It was really interesting. And I was trying to kind of find out what could mitigate that. And certainly, quicker pay. If you're really low margin on a large piece of work, maybe you've got a 5% margin, it would be worth it if you didn't have to borrow money to do it.
One of the clients that we had, she said it could be up to 9 months before she would get paid. Well, they're typically subs, so they're subs sitting underneath a larger contractor that was able to get the work because of low bid. Because it takes a scale of a business to even get that low bid. That's another of course obstacle for those women and minority owned businesses to even have the scale to be able to win the bid. So typically, they are not getting the bid. They're

operating under someone else that got the bid. So they have a contract. They deliver the work. They bill the work. They get paid, then they pay their subs. That's really the trade.
You achieve a percentage of the work, and then you can bill. Then you have a delay for collection, and then you pay your subs. That is the typical process of construction. So, I was really surprised. This one client in particular, she was in the flooring business – she's really sophisticated in understanding this. I spent quite a bit of time trying to learn more about it because I was so surprised. She really has targeted herself instead of the corporate clients that are focused on minority and women spend because they're not going to always focus on low bid because they're going to focus on quality. It doesn't – just because you have a 10% savings that could cost you 50% in the end.
And corporations are – and I do think that low bid philosophy – and I talked to a woman that owns Plunket's for instance, she's second generation. She has a very successful business. And I said well, do you ever do work with the state, counties. She said absolutely not because what they hire is two men in a truck who don't know what they're doing who go in, low bid, and you know I can't compete with that, and I'm not interested.
So, I think that's really interesting. Is low bid – I mean when corporations don't focus on low bid, why would the state? Quality and you know, quality particularly she does rodent, pest control – is really important. But she said she can't compete with low bid, so she doesn't even try. She really understands her numbers. I was just really intrigued because she's getting approached for very sizeable projects. And she is turning them away consistently. She does not respond. She says she gets 30 requests a day.
So, our focus is really to recruit women who have businesses that the business itself has the ability to scale – what we say exponentially. What we mean by that is that they can just through activities – traditional economic development activities, they can double, triple their income and produce quality jobs. And so, we just work with them very intently over a 9 month period to understand their business model, their revenue streams, what actually makes money, what doesn't. Then how they drive their topline and control their bottom-line. We had some real success. We graduated to cohort, so I think total 20 tier women in the 18 months that we've worked with them – 64 jobs, $24 an hour on average. So really it's to be able to accelerate a business in my view is one of the best investments the state can make. To take a business from zero to even 100,000 is a huge investment of time. A lot of those businesses don't make it. But when you have an existing business that already has a proven model, and then you really can intentionally work with them to grow. It's just a better investment. It's not a popular thing to say out loud, but it's the truth. We built the model intentionally based on talking to people nationally that are focused in scaling out businesses, and then we really just aggregated what we thought there was the best of the best. But I have been just so surprised at how quickly that intentionality has translated to revenue and jobs. It's really fascinating. I wouldn't have predicted it to happen too quickly.
(Are there any other areas or any recommendations specifically that you would make for the state to help improve this for women and minority owned businesses?)
One of the areas that we are looking at and actually working with the --Kellogg Foundation – so we really examine the success of all of our programs, we have a very intensive business training program at 17 weeks and – we were seeing many women graduate from that program that were not converting to entrepreneurship but did all the work in star students. And really started to look at what was the obstacle, and it really is about the lack of not only capital, but just enough

wealth even to have – to forego income for a couple of months. Just to get a business started. So we've actually really started we have worked on creating a cooperative model, business ownership model for those women to opt in to.
I personally think that could be a really successful alternative for women. To me, it's a really particularly for low income women of color, it's that step – it's kind of not unlike a lot of the agencies that are working in workforce development where like in healthcare where you start as a nurse's aide, and then the more education then you're an LPN and you move to an RN. Over a period of maybe 10 years, kind of recognizing that it can take a long time to really work out of poverty and to go from 0 to a 4-year RN is not necessarily realistic. The same way it's not realistic to go from 0 to owning your own business for – and so we really see it as a pathway to entrepreneurship is to have a cooperatively owned business that is producing revenues kind of immediately. So, that's something we're working on. I don't know how that factors in to the work. But we really see it as kind of a blend between workforce development and academic development. So, you have ownership, but really you also are dramatically increasing wage at the same time. That's something that we're working on that I'm really excited about.
I mean I think it does really address a lot of the obstacles to business ownership that we see particularly for very low income women of color. They have all the metrics to be an entrepreneur, except for the wealth. And I'm talking you know, most of them have negative wealth positions which to me is that difference between what you own and what you owe. They just can't get to the other side of it without a different model.
(In your model, when you say cooperatively owned, who are the owners?)
The owners are the workers. We're really looking at models that are working primarily on the east coast. Service based businesses. Right now we're focused on childcare centers because we see also just a need gap. Of course, you would create a business based on the need gap. So really worker owners who are both working in the business and owning the business are then benefitting from the profits of the business. It's being done. It's working somewhere else. So that's what I always look to. I always look – really try not to recreate the wheel. Somebody solved this problem somewhere else. That's what we're trying to do. And it definitely is working in third world countries. We really think women are more inclined to have the ability to work in a cooperative space. Just by the nature of how they communicate and work.
In terms of women of color, the other thing that we're doing, but I think the state is already addressing in terms of to some extent, in terms of capital is again, it's that same group of women – {too soft} women that have actually found their way to business ownership and want to grow their business typically in a pretty small way. They need another employee. They need a piece of equipment. Maybe it's time for them to have a small storefront. And their ability to access capital is really difficult. What I'm seeing in economic development in those Twin Cities is as you know; there are a lot of us. But everybody is really trending in terms of the size of the loans. That space of people who are really willing to do the five to $10,000 loans and underwrite based on cash flow vs. assets is really very – it's much diminished. I know MCCD is doing that work. We're doing that work.
I think that's supporting that type of capital or almost – you know, I feel like this trending up is, and I'm going to show my feminist roots here is very male. You know, it's kind of every time we get in a room, it's all male ad agencies. There are no female economic development agencies except from Women Venture now, and it's just almost like the portfolio is their bravado. You know, oh, yeah, I did a 250 deal, what did you today? We're like what about your clients? Do

you ever think about them? Do you ever think about their needs? It's just it feels like there's so much testosterone in this work right now. And not really paying attention to the true needs of very low income clients that are not the $100,000 deals. They really need five or $10,000 to get to that next step and people aren't doing that work. It's hard, and it's expensive. It's higher risk. If you're doing $100,000 deal – it's already got less risk in it. I can't explain it exactly without a lot of time. But it's just you know, if people just need that small amount – to get to the next level, they're already probably fairly compromised financially. We have really seen it working for our clients. So really just doing those small deals – getting them to be able to hire – getting them to be able to buy that piece of equipment. Then their revenues are just doubling with a very small investment. I can see the national trends of how the smaller dollar lending is getting smaller and smaller. The true micro of 50 and less. And the more the macro is growing. I don't think that's going to address the needs of low income people of color.

Respondent #5:
Experiences: The recently increased outreach for employing women and other minorities has helped to employ more people in those classes in the construction industry. He did hear of one complaint, unsure if it was filed with the state, at the US Bank construction site where people of color were given more menial tasks of picking up garbage, etc. The supervisors of this group were "put on notice" but he didn't know if it went any farther than that.
Recommendations: Depts. of Labor and Industry, Admin and Commerce should continue to increase outreach to women and other minorities. Changes should be made to the bonding requirements, trust requirements to allow minorities and women to obtain trust funds and also make it easier to get paid. This type of employment should be marketed more as a career than just a job. Apprenticeships and mentoring types of relationships could also be beneficial in this industry.

Human Rights Interview Notes

Respondent #1:
Experience: Her experience relates to treatment of her own adopted son. Her mother's heart feels passionate, for treatment he's received, for treatment for being a large black man, with a Muslim name.
At one time Baxter police pulled him over because he had a large muffler, was dog searched, vehicle seized, car torn apart, and put in holding cell. He'd needed to catch a train to get to his job in the oil fields. They probably didn't realize he had family connections. When they realized, they released him, and the police wouldn't look at the mother, who is a diversity trainer.

The mother called HR commission, received a call back within 30 minutes, from Jessica who was helpful, wonderful. She felt like she was heard. She needed to talk with her son but he feels very vulnerable. He doesn't want to be THAT PERSON. She told him they can't' retaliate but he didn't want to follow through.
The mother understands but at the same time it was really hard because he never followed through.
HR commission was right on top of this, informative. They must be very busy but she felt like she was the only person that called them that day.
Even though her son didn't follow through, the HR commission did. In the future moving forward she'd feel comfortable contacting them if something did arise.
He's an adult, as a 31-year-old male. It's easier for her white sons to get jobs, to navigate in this system. He has not been raised as a victim, but he's victimized.
When she picked him up from jail, other adult children came home, 34 year old started to cry, said no different than if his sister had been raped.
Recommendations: I wish as a citizen, as a person that experienced the situation, -- I wish something like this could have been documented. For me as the white lady/mom, because I witnessed it, I would have had more of a voice.
I felt that it's best for Yusef to feel empowered to follow through himself.
He probably would have responded if they'd called him, but he already felt violated and disempowered.
I am a professional working in this world and navigating resources. Then when I became the mom and this was my child, I had to work at finding resources. Who do I call? For me to even access this information, I realize it probably would not be as easy or accessible to someone living in poverty. We can think we put it out there, it's really not. It's not as accessible to those in poverty. WE need to do a different job, get the message out beyond just the white middle class people. They know how to navigate, I'm a white middle class person, and I know I have a voice. I just know it. I don't know that we have really reached people of color or people who are living in poverty.
Experience: It's really hard to prove, but when my son puts "Yusef" down on a job or housing application, he never gets a call back or no housing availability. He's started putting Joseph, and he gets calls back.

If you have a Muslim name, it's really hard. He's trying to get into apartments. He tried to get into about 20 places; some have a $25 application fee. He did not get any calls back. He's thinking about changing his name to Joseph.
It's hard to prove but I see this in my work, working with women of color. I advocate, I see times people have been discriminated against, disenfranchised, historical trauma/indigenous and they don't trust establishment.
I have an incredible amount of fear. I am either doing a horrible job of advocating (I don't think so) it is time consuming (loss of work, have to talk, file) and fear of retaliation. They have had a sense of not feeling heard or having a voice their whole life, not really trusting the system.
I work with one person and it's been impossible to find housing for her. I know it's because she is an indigenous woman, with four kids and a single parent. Called back to come and look and talk to the landlord, and they rent to someone else. At the same time, we've place many white women in housing units. In central MN, it's most difficult to find decent housing.

Respondent #9:
Experiences: The local transit system has reached out for input on things like traffic signals, curb cuts, procurement of transit, wheelchair restraints for example – so they are asking for input. They held a press conference to encourage people in wheelchairs to use public transit.
Couple filed discrimination complaint against a new clinic, did not want to put a lift in for people who could not stand. The building was newly built. They went through the process and it worked out. They tried to mediate with clinic, went nowhere, then went to government and it got changed. They went through the Department of Justice.
Don't see much activity from HR commission in Moorhead, on Human Rights commission. It's been fairly dysfunctional; don't have enough people to have a quorum. City council has not appointed members – maybe outstate this is an issue?
Trying to draw up ordinance so it could be a smaller group so we can have a quorum more easily. They have not moved on it for months. Don't have enforcement authority.
There is lack of interest. A couple of council members don't think we need the HR commission. Need HR commission to educate – we have a (presidential) candidate who wants to ban Muslims. Many new Americans here are fearful, fire-bombing in Grand Forks of a café.
ND and MN – complaint process is easier in ND, you can file online HR complaint with Labor Dept., and they cover all protected classes. They start an investigation.
In MN, have to call and explain. I called and they told me don't bother you don't really have a case. In ND, they would have had to investigate

MN had to come up with an Olmsted plan; people with disabilities have to be served in least restrictive way. We're just starting to improve that. It affects ability of people with disabilities to live independently.
Gas station owner told me I could not come after 3:30 because he did not have enough staff. There were two people there. I was told I did not have a case, without investigation.
Recommendations: HR Commissions outstate need members for quorum, also need budget/resources. Hard to budget the money, get funds and staff to do it right. Local government aid has been cut so staff at city hall has been cut back.
Building code enforcement is important, especially in smaller communities. I grew up in a small town, now I could not stand to live there, can't get into buildings. People who renovate or add

on don't do basic accessibility; nobody seems to be enforcing that. Living in a small town, if you raise problems, people get ostracized. People are fearful of that retaliation, having no friends.

Respondent #14:
Experiences: Leaders/people of diversity don't last very long in the state of MN. Speaks to concerns about culture. It starts with leadership – how leaders are recruited, vetted and the impact leaders have. I think the biggest commitment is the leader's deeper commitment to diversity, affirmative action. Governor Dayton has demonstrated heartfelt commitment to humanity. How to create a more mindful government that is even greater service to the people it serves.
MN has an outstanding record for human rights. MN commitment to affinity groups is outstanding. MN has a highly responsive human rights dept. Serves MN quite well.
Recommendations: Get at a culture of inclusion. Issues that go with culture have to do with what's implied, inferred, and unconscious.
For leaders who are appointed, selected, whether by a board or governor or other, want to make certain that MN recruits for knowledge, skills, and abilities but also for assuring that state is thinking about leadership temperament.
Mindfulness, high social/emotional intelligence, intellectual curiosity for all people, sense of equality, interpersonal communication skills and listening commitment to values consistent with a civil society, and a life that says commitment to these things.
I'm deeply committed: the most important value across all societies is to advance the ability of people to care for one another.

Respondent #16:
Experience: People don't feel welcome, don't' feel they can file the complaint, then the bad stories circulate in the community, people say "what the hell". There are racism and systemic barriers.
Not a policy issue, it's how you build the people that work for the government have a different mindset so they are able to help the community.
One time renters filed complaints about landlord, got kicked out right away. Having cases publicized in one of the white papers, then he got targeted, he's the one who is starting this, he's not a welcome tenant. She's willing to stand out and lobby, as an activist, she has that baggage.

Respondent #21:
Experiences: Have heard things but people are scared, afraid if they say something they will be "that person" and that they will be tracked. If someone got discriminated against, they'd rather not talk, don't want to be the one that is telling. Don't want the attention.
Housing, started to work on anonymous recording, people experience things, don't want to be the one who complains. She has been working with some legal aid lawyer to report things anonymously, rather than telling her, find a lawyer who can file things without disclosing name, etc.
Recommendations: Go into community, say "this is what I do, this is how I can help you." Need to reeducate, re-tell. Have key people in the communities, have them understand how the communities work, have people coming to talk during gatherings. Host a table, educate about

how to do this, if this is what you are interested in. Interact with community in their way. Show them it is possible. If they are able to report anonymously, more likely to report anonymously.

Respondent #23:
Experience: Didn't always experience the things I've been experiencing lately, over time the longer I've been here, things began to come out of the woodwork, was having trouble with employment and rent, got into public housing. Ever since I've gotten in it's been a nightmare; I don't have family here. I'm on a limited income in public housing.
Have tried different agencies here, in Minneapolis and MN. Racial discrimination/black; also, discriminate against Muslims. Muslims are not very welcomed wherever we are or live, but tremendous difference among whites how they respond to immigrant Muslims versus US, treat them considerably different versus African American Muslims – we are lesser because of history of racial conflicts between black and white. Many whites seem to think African people from Africa are superior, more tolerable than people who are born and raised in this country. I have become very observant of interactions of whites with different populations of color.
See it in employment, in housing, these people are refugees or migrants, want to help them, give them the better housing, prefer to put them more around whites and white communities than indigenous blacks.
If you are speaking up for your rights, I've noticed a lot of these people in public housing environment tend to not even regard their own guidelines, not fair treatment. Seems like they want to punish you for even coming in to public housing. Maybe they feel you don't really need it, maybe they think it is cheap and you don't want to pay your rent elsewhere.
Even if you are on limited income and government assistance, can save money. A lot of public housing administrators are looking at us that way so they punish us that way for being here, not going to make it comfortable for them. Have residents they bribe and adopt them to abuse other residents. They want us to be silent, not complain. Keep the people chaotic, nasty, turned against one another. Keep us against each other so we can't join. Manage to keep you well under control. Cyber stalking, cyber monitoring, I've been targeted – able to monitor your phones, listen in on your phones, devices in apartments. They insist upon coming into your apartment when you are not there. The have others spy to tell them when you are not there. Could be planting drugs, listening devices, cameras, stealing money. Even if you are gone for the day, rummaging through things, stealing. Employees are often drug/alcohol addicts. People have had experiences of people rummaging, going through food, sleeping in their bed. Have heard it more than one time, from people going home to India, Somalia – monitor, can do what they want without any fear because they have the access of coming and going.
It's like a prison.
My car has been broken into, only time I realized I was being cyber monitored – could hear the people access the apartment overhead, the man and woman – I hear the same ones in my car. Look online they have the tiniest cameras, spyware for your computers, etc.

Contacted Dept. of Human Rights, they told me to contact HUD. When I did, they referred my case to regional HUD office in Chicago. They assigned an examiner, a lot of these people are all in it together, looking out for each other. She was saying in so many words that she cares about her job. The MPHA people work together. First went to my manager, then his supervisor, then the next person up.

They believe it's going on but they are trying to save their jobs. I know so and so that you are complaining about. I am not going to go against them because they are my colleagues. They are worried about going against their colleagues, coworkers.
That's all I've gotten since moving into public housing, carries over to these officials.
Complaint is not going anywhere. We are never going to get justice because they are all together looking out for themselves.
I notice that a lot of African Americans are in these leadership positions, but these so-called black leaders, they do not want to be. They lie and make it look like the whites are the only ones against the blacks. A lot of these black leaders/administrators don't want to see anybody have their rights acknowledged. A lot of the whites, who might not be aware of that, keep chaos among all of us. Not for democracy, justice, fairness. A lot of the blacks are even worse – they are looking for their own supremacy, they want the whites to bow down to them and want to oppress all people. A lot of these black leaders are some of the main perpetrators, don't want fairness for anyone. I don't think a lot of the whites have been looking at it like that. Blacks say they want to help, a lot of time they don't.
Black leaders don't want to give the money to the people, give it to themselves. Want black supremacy –when around black people, lie and say it's only the whites who are prejudice. A lot of the black leaders are obstacles in the way.
Black civic leaders, black leaders in government and administration who could make a difference don't really want that, it's a black against black mentality and a black against white mentality. Responsible for injustice and chaos, that's why things are not going better. I'm so sorry that they are also misleading – Muslims, wanting Muslims to join BLM. Muslims are not supposed to be part of that sort of thing, violence, causing confusion, etc. If they are sanctioning this kind of wickedness, they are misrepresenting Islam.
This is about evil – trying to erect a diabolical black power agenda, it's not right.
Recommendations: They need to change the laws to allow people to have more rights. I called the mayor's office or a representative's office and the aide would take the message, but I never hear back from the official. Sometimes may get a letter, not taking any action. Going in circles.

Respondent #24:
Experience: Working well - for filing discrimination complaints, there is no charge, so if filed in district court would have to pay, but they don't have to pay. Backside to that is that when community thinks of Civil Rights dept. they think of being represented, but their office is neutral when investigating. For example – discrimination is very difficult to prove. When we issue our findings, sometimes the public are disappointed in the outcomes; they think our office didn't help them in any way.

Mediation works well – most times people want their voices heard, so that can help. So if respondent listens to complaints, sometimes they want money, sometimes they want the respondent to go through training. Sometimes the respondents don't want to pay an attorney, so early mediation is helpful for both sides. They are told right away. This is at MNDOT.
If MNDOT is purchasing land to build a highway, someone might file a complaint because they don't have access to the bus system or sidewalks.

Downsides – a lot of people don't know we exist – we have buildings and offices throughout the state. Sometimes people don't know who to complain to, and sometimes staff does not know to refer people to our office.
Can file with our agency, can refer them to human rights – protected classes. It depends on what protected class they are under whether they file with us or the state Human Rights department. We have 60 days, and then have to file report to commissioner, and then they have 30 days to get it to complainant. When we send out the letters, if there was no evidence of discrimination, they have appeal rights.
Mpls mediation works well. A lot of times the complainants if they don't have an attorney, don't know how to represent their case, typically the respondent has an attorney.
Recommendations: Education – we don't have many staff so we don't have as much ability to educate people about their rights, and ability to file.

Respondent #28:
Experience: People with disabilities find work meaningful. They appreciate their jobs, make great employees, show up for work on time, respect their co-workers, and work to their capabilities. If given the right job, could be 100% productive.
I'm talking about development, physical, emotional disabilities – the whole spectrum.
Generalities don't work, the state tries to deal with them as a group rather than on an individual basis.
Discrimination is most likely when disabilities are visible.
When we have people go out to the employer, they don't want us to go out there with them because they don't want people to know they have disabilities.
Even funding sources don't think of people with disabilities in the same way as race, gender, etc.
Perceived barriers to people with disabilities:

- Discrimination/prejudice
- Expectations – expect low performance
- Might be necessary to accommodate – but there is a misconception around the cost of accommodations.

Employers miss benefit of hiring someone with disabilities. Positive effect on their business and human resource management. Outstate magnifies the barriers, less opportunities, northern MN has a higher population of people with disabilities than the rest of the state, fewer jobs. In iron range, taconite, timber and tourism.
Social model – when they leave MDI it's a graduation.
Recommendations: State could be more proactive in increasing the number of people with disabilities working for the state
We could do a better job of funding these kinds of entities.

Respondent #31:
Experience: I filled out the paperwork maybe 10 years ago. I don't recall the response; I don't know if I even got a response. I had lived in Detroit Lakes and I didn't have transportation at the time. I lived next to the STEP office; you go to if you are MFIP. They wanted me to go to Natawash because I'm Native, I did not have a car to get there and it was 45 minutes away.

I have thought of it but I've never followed through. I don't know who I would even do that with. I feel like, what's even going to happen?
I face discrimination every day, in stores, places like that. Instances where I've put in applications to move, rental applications, they are all good and ready to meet me, when I get there and they see me, "it's been rented." I feel like filing a complaint won't matter, they won't care, how far to push it. In the past when I've brought stuff up like that and talked to different people it has never made a difference.
I would not know where to file, asking people to find out. And did not know I could.
Another instance where I was looking for a job, most of time I don't get a call back, went to an interview, when I walked in the door, only time he looked at me, then never did again. Asked me two questions, then said he'd call me back but never interviewed me.
Recommendations: Put literature somewhere, like where it will be seen. Like the forms on the papers, people don't even read it unless it's pointed out to you. Not really anywhere people could find out that information unless I'm reading the form, filling out forms for county. Most everything is rushed, so it's not addressed. MFIP go to the county to turn in paperwork, paystubs, address and things like that, any changes. Most of the time when I'm turning in my stuff, I just talk to receptionist. They are not even informed themselves. They are not social workers; don't know what needs to be included. Have had problems and it stalls everything.
I need to know it and there needs to be someone there to enforce it. Who file complaint to? Where would you go? Can I even do that?

Respondent #33:
Experience: Minneapolis does not interview anyone, does not request evidence from respondent. Other agencies are more robust. Minneapolis' process is not very transparent, does not move along, dysfunctional.
Charge for 3 years, never asked for witnesses from our side, never asked to submit any evidence – charge rehiring.
I sent it over anyway. Asked colleague, how investigation proceeds without asking for evidence. Issue that has not been investigated won't reveal issue.
I like the fact that there is the option for mediation right away. If I have a charge and I see room for improvement, I can take the opportunity to mediate it. If somebody has mediated and tried to settle it, maybe it should not be made public.
Usually our charges get kicked down to the local office.
In community, there is not a whole lot of outreach. It does not seem like people understand where they can go, process, what is discrimination, what are my rights? Sometimes I get criminal-nature questions (law enforcement, bias crime) so it would be nice to have the dept. more visible – all the agencies (state dept. of HR and two locals)
Example: A Muslim African American woman, some of the things her supervisor was saying to her, but she had just started in July, received sub-standard training compared to her white counterparts, and then started to get disciplined for not performing at level of experienced colleagues. No one was offering assistance, support. They were asking about her religion, making inappropriate comments. I pointed her to the EEOC to file a charge, because that's been my best experience and the jurisdiction.
Recommendations: Would be helpful for employers to have more outreach, I know where to go for help but I don't know that other employers do. Paying attention to the hot topics is

important– animal service animals/emotional support, mental health, religious accommodation. I feel like organizations, housing and employers, want to do the right thing but don't know what the right thing is.
Practical hands-on, policies should look like this, here's what you cannot and can say in interviews, and here are the accommodations you can make.
How to reach those that don't have public funding but the agencies still have oversight over.
I was facilitating a table at voices for civil rights. My deep interest is how do you get the folks who don't get it? The department, agencies, and advocates in these groups – I believe white mainstream Minnesotans need to be leading it too. We hear the conversations, when cops are talked to by external folks, turned off, but if a cop came in they were interested.
Used to be white people did diversity training, and then it turned to people of color leading it. But the folks who still turn out have a different attitude when there is a person of color leading the training or discussion.
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Recommendations: Recognize that this is key and important, and equity is important – every department deals with equity issues – these departments could work with all other departments – MNDOT, DNR, etc. Usually these have civil rights depts. are low on totem pole for resources and what not.

Respondent #34:
Experience: We take local complaints of inequality, opportunities not being given equitably. We are assigned a couple of times a year. We have a big book with guidance on how to help people navigate the system. It's a little scary to me – it feels like a lot of power given to a volunteer to help navigate individuals who are very vulnerable, very much trusting you. I hope the vetted people on the commission are very good – from a high level look at the system a lot of things could be missed.
It's formalized on paper but nobody really sat down and talked through this booklet with me.
Someone with less experience could make some poor choices. I love that people can apply to be on the commission. Do they all use volunteers? Is there paid staff in other counties?
Recommendations: In Iowa number one thing that came to us was people getting fired because they were pregnant – could see a systemic issue. In MN seems like data will never be formalized this way, not going through the same portal.
Number one thing in Winona is housing – doubt we're unique; a lot of housing is "reserved" for college students, not necessarily HUD. A lot feel discriminated against for housing. It is a systemic issue here. I always ask myself the same question – is it the same for all of MN? If so, is there a way to collect data collectively and do a something statewide.
If I could find a group of collaborators who have been through that that would be helpful.
And because we were divided, civil rights arm (enforcement/lawyers) were litigating, we were more of an education arm, people felt safe, not potential repercussions, could come to us as mediators/educators so could be advocates, less hard for people to come to.
Civil Rights and Human Rights collaborated, not silos, but day to day could safely ask us questions.
In Winona, if someone has a complaint, they go through city or county and they reach us – or someone might know one of us personally. We open cases, and then we try to find solutions based on the statute or what they are telling us.

Winona county HR commission– about a dozen people, so many from the county and so many from the city. If we're not enough, it'd be skewed. Some have been on there a long time. It seems like there are enough people in Winona interested in these issues.
If people get the answers they are needing they are probably happy and if not, probably not.
It is a volunteer group assigned for Winona. System is daunting, did not know where to start.
Do we do it differently than other counties? Is there a best practice? Is there room to talk about it at a state-wide level?
We are in constant contact with DEED and DHS – do we have something of that caliber in Human Rights?

Respondent #35:
Experience: Surprising how many people are not aware that these things are going on.
The problem is city councils create human rights commissions, given a certain parameter in which to work, residents apply and are appointed or not appointed depending on how the council feels about them.
One of the big issues is you have specific problems that require some experience, at least life experience; some of the people don't have these experiences. Makes them less effective, coming with own life experiences, not a lot of minority participation on human rights commissions, people coming in with own life experiences that aren't necessarily beneficial in the real world.
City councils are coming to the conclusions that the commissions are not effective, calling them something else - diversity commissions, community engagement commissions. The way things are going, they won't be qualified for membership– we have to expand our bylaws.
Some cities mediate their own human rights complaints when it comes through to the city, but the main way those reports are filed is through the MN Dept. of HR, appointed by Governor. Investigators, authorized by statute, investigate HR complaints.
They only have a year to file from the time the incident occurs. Sometimes people don't realize events were human rights violations, and a couple of years later they are finding out it's too late. This might need to be changed for people to file a complaint.
We have taken some overflow in my other non-profit org to try and resolve the situation because they are not finding other support.
For example, someone was terminated from their job, did not look at it as an HR violation. Then a couple of years go by, something similar happens and then someone tells them it's a human rights violation. They realize the previous event was too but can't file any more. Want to hold them accountable. Sometimes even the respondent does not know that was a human rights violation. Some of its education. It's against the law.
There are people who don't know how to go about doing it. They don't have money for attorney so they don't file, but if you get in in that year period, no cost, state uses their resources to investigate and come to a conclusion. If you don't know that, the time can expire. State does a pretty good job of processing – during the time period.
Recommendations: I know they do educational things – but I think there needs to be some way to make a broader statement as far as what a human rights violation looks like and what someone can do when they find themselves in that situation. I know they have educational forums, etc. but that's just a certain group of people – 87 counties, how many people/cities? They are not showing up at the forums. It's a smaller educational group, so the state needs to figure out a way to broaden that message.

One of the ongoing frustrations, because of data privacy, state cannot report much to the complainant. Maybe that law should be looked at. If you brought the complaint, you should know what the outcome is, not sure what the rationale is behind that.
We get reports of how many and what kinds of complaints come from what cities. Very limited reporting of what they can do.

Respondent #38:
Experience: I initiate cases myself, promote hiring. Need input from respondents – employers and landlords – as involved and in many ways, the biggest beneficiary of the HR investigative process. 80-90% are not cause. Non-cause findings generated through a public entity, if individuals took them to court they'd have to go through an investigative process that they'd have to pay for.
A number of jurisdictional plusses to cities that have HR ordinances so people have the availability to file complaint with EEOC or State or City, very good options in place. Needs to be standardization/alignment of the investigative process among the organizations. Federal and State housing and employment are investigated by all three of these entities, have option. Personally, I'm biased but we have more resources to apply to those investigations. We think our investigative processes are pretty thorough, more familiar with our environment. We know the employers, know the landlords, and know the complainants. Most recently within the tenure of this commissioner there has been more alignment, standardization of expectations of investigative time, and more resources put into the state.
Alignment lends itself to better efficiencies--how cases are prosecuted, opportunity for choice for complainants. Gives opportunity for employers and housing providers to become more informed of their responsibilities, lends itself to clearer understanding that investigations are neutral.
There is room for outreach especially for new groups, as we get more diverse, particularly those with limited English speaking who are still in cultural transition. Groups where culturally the idea of governmental protections are alien to them. Using their language, effective education and tools, their people, elders, religious entities to communicate the government's protection of their rights.
If we continue with leadership of Commissioner Lindsay, exchange of expertise. Effort of HR protection needs to be continually resourced to meet the demands we have. City is ok, governor just made more resources available for outstate.

Respondent #40:
Experience: Open to new opportunities. Went to government office desk, they told me to go to the web site. I dropped 2 resumes through the career fair. I do have a lot of work I have done for 4 years working in Southern MN. I am a little disappointed – opportunities for Latinos are being passed over. From what I have seen in these past years, a lot of them go to African Americans – even Governor's office – few or no Latinos in cabinet.
Not sure if just being viewed as undocumented, agricultural? 250000-300000 Latinos in the state, and only 5% are undocumented that we can tell. A lot of Latinos work in the MNSCU system. CLUES has a good group working for Latinos. One of the first things, many are undocumented so our community tends to be silent and not participating, not rock the boat, don't want to be seen. Many don't speak up. Participate in churches, used to do community forums in churches, give out their hard-earned money.

So, educate through churches and schools – safe places in the communities. Guy Miguel Garate who works for Riverland in Austin – gathers people.
In Rochester, what I've seen has become toxic for communities of color. There was a SAFE program, Regina Tiebrook was heading this group to empower students of color, she moved earth and sky to support these 100 students in the school system, and then they eliminated the position. I went to them to please reconsider, they were eliminating best practices, she was helping these students, supporting to go to college, etc. They replaced with Equity Workers – they don't have the personal relationships with the students, connecting with teachers. Husband of assistant superintendent has been getting the work that Regina was getting. Asst. Superintendent said program being replaced with mental health services – does she think students of color need mental health services?
Northfield has Torch program, wraparound program, went from 30% to 100% graduation rate in 7 years. Did not rehire Latino principal for middle school – everyone loved him. Those two admin of color in school district are gone.
School board is all white, superintendent is Latino but I have not seen anything out of his office supporting students of color. Report shows that Latino and Black students get disciplined more than other.
In southern MN, we believe the Twin Cities gets a lot of the resources and we get left out. Happy to see that half of the 1.5 million dollars going to southern MN. We are the gateway to the changing population.
Director believes urban and rural Latinos have same needs – I beg to differ. They don't have access, transportation, education, interpreters, and driver's license, how to take kids to school when can't even drive. No mass transportation. I heard he was just 2 votes short of the driver's license bill.

Respondent #46:
*Experience: A*s we are providing services to clients, sometimes client is unhappy with decision we make regarding whether we can or cannot provide certain services. We give documentation to the clients about rights etc. We subcontract with the state of MN, when apply for program given Equal Opportunity of the Law, Tennyson warning (how use info), lists to contact if they feel they have been discriminated against.
1 – talk to case manager, 2 – talk to director some will go to the governor's office. When that happens, depending on what is going on, come to me and ask me to look into it. Get info and figure out solutions.

There is a difference between what they should be getting and their perception. They may see it as their right, and it is not.
There was a time period over a few years when we'd been helping a number of people receive truck driver training. We appealed to them. Somali people coming to ask for truck driver training. Thought we'd pay for it. It was a concern because people were not even eligible for our program but the word was out that we would pay for their training. Schools were sending people there. Schools were telling people you'd pay for it, third base when we were just at bat, determine eligibility. Sometimes they were eligible, some others were not eligible, and we'd look for other programs they might be eligible for. We always try to help people. (Around 5

years ago) not as prevalent in last 3 years or so went to the schools, found out some did not know there was an eligibility requirement, some said they had not phrased it quite like that.

Respondent #48:
Experience: St. Paul chapter receives 95 complaints every week to 10 days, either discrimination complaints or request for assist for legal redress. Refer a lot of people to city and states HR departments. Many people have interacted with HR dept. in past, reluctant to do it again, HR dept. has to have sign-off with attorney general's office before it proceeds to litigation.
People are frustrated that the dept. for years had a tremendously long backlog; dept. seemed to be gun shy about bringing cases forward about racial discrimination. More comfortable with religion, gender, age, sexual orientation, not perceived to be strong advocates about racial discrimination.
Not sure if it's because recent court cases in which person discriminated against has to prove they were discriminated against. The larger the institution, the more difficult to convince the department to wade into the water.
Not being funded. State legislature both approved the dept. opening up an office in St Cloud. St Cloud is located in 4 counties. Law enforcement in that area is notorious for making life difficult for people of color and immigrants. I used to teach at the prison there, you could not talk to someone from St. Cloud without hearing about challenges they were facing with the U.
Group of white students beat up a female of color, she was arrested. State HR dept. was supposed to put an office there, sparsely staffed and people in St. Cloud were frustrated. Staff person only there sporadically rather than when people needed the department. The office is far from downtown St. Paul and not convenient. Poor people in particular not very computer literate and don't have reliable internet access. Immigrant populations have difficulty interacting with computers, oral culture, and language difficulty, used to dealing with intimate issues on a face to face basis.
Department got budget and staff limitations, outreach limitations, don't see the department at festivals and events, hundreds of community vendors. Difficult to trust institutions you don't have a relationship with or don't see in your community on a regular basis. When we have encouraged people to contact the state dept. of HR, or local office, tend to ask what other options are available. People reluctant to turn to them, to pour their hearts out, etc.
Dept. of HR numbers of complaints and resolutions, NAACP is a civil rights organization, come to them from state agency to state agency – one paycheck to another, not necessary a comfortable advocate. Their funding is not great. People not interested in going to work there when a position does open because the knowledge, connections in the community are thin if at all. People want to support their intent but over the years they have had limited documentation of success on racial discrimination.
Sexism, other discrimination cases but not race – maybe because there is no basis in fact for the complaint, but a lot of people don't feel like the department explored every option/alternative or gave a lot of weight to the complainant vs the weight to the respondent. I don't know if it's because of the turnover, the staff, and the changes in the law that the person has to prove the other party discriminated against them. Sometimes it's easier to go after a minor complaint that can be easily remediated. AG's office has not been a strong advocate in the area of racial discrimination. Very frustrating to people who feel they have documentation, witnesses, etc.

We've also heard concerns that tend to be light or on the soft side when they suggest remediation. We are probably number 50 of 50 largest cities in number of people of color, highest percentage below the poverty line.

Don't feel they get fair treatment. Get same type of concerns about the St. Paul human rights department. Both do contract work when EEOC gets discrimination. We will compensate them for taking the case and looking into it. We refer them to pro bono lawyers, legal aid, etc. We have a number of lawyers on our board to give legal advice.
Complaints about how children are treated in school, traffic tickets, arrests, have little resources/$ and when want help, compounds the misery.
Recommendations: When you can't help somebody, tell them clearly and specifically as soon as possible. The longer it takes to say no or tell them there's no probable cause, they get hopes up and more frustrated. Tell them up front. They are vague. Come in and we'll take care of you if you are discriminated against. After months, wonder why they wasted time with them?
Up front do preliminary review and tell them would like to gather more info, meet with you asap, or tell them unless you have some specific documentation or witness, if it's your word against theirs, it is difficult for us. No one will find in your favor.
Even if budget is tight, outreach/public education/cross cultural work in different communities, have a table, clear materials, appear on radio and TV programs in heavily policed communities that get a lot of complaints. Have people in office who specialize in racial discrimination. Want to talk to someone who looks like them. Look at makeup of their staff. Somali person would want to speak to a Somali person. Need to strengthen their relationship with organizations who can and should refer people.
This is a hard row to hoe with Republican decision makers.
More clarity, more outreach, more timely response is needed.
Have people who specialize in employment, education, race discrimination, etc. Everyone who files a complaint ought to feel that the department bent over backwards for them.
Instead of just saying "no probable cause" give them info about other options.
We have lists of about 200 resources available free-of-charge in the community. Try to give them info. We deal with issues that deal with groups of people, not individuals unless patterns and practices.
You'd think we'd be partnering and working with them on a number of initiatives.
I was on a task force on civic engagement. People of color were not being invited to serve on boards and commissions. About 60 people, spent about half the time talking about what we could not do. I did not continue – too polite, courteous, seemed they had an outcome already planned. I did not think it would be the best use of my time.

Respondent #53: Disabled person who works for State disability agency
Experience: I only have 6.2 staff. So, I can't quite take on the world. We can take on half of the world, but not the whole world. And since I have come on board – early on when the council existed, we did everything. We worked on all issues. That was why we were created. There wasn't another council. Around those 43 years of our existence, of course, other entities within the state have come about that work on similar issues. Not similar, but more specifically the deaf commission, there's a blind agency, DB Council and so forth.

With that when I came on board 12 years ago, because we just keep – like government we get smaller and less money and less staff – and it's one of the things we worked on since the Americans with Disabilities Act was created in 1990. That is really one of our focuses because there is no agency in the state or private entity either for that matter that works on quasi enforcement on the ADA. I mean federal the only way to go is through {too soft} – we really are the watchdog for that.
Yeah, and so what I tell people – some people that I really have no enforcement authority, but we just pop up and make people feel like we do.
I'll be honest with you – my perspective just to throw this out there because it is NAACP – you know, with the state's big push for equity and diversity – I go to all these meetings, and I call it the YAP[?] {too soft} what about people with disabilities because we cross all socio-economic boundaries. It could be a person of color and a person with a disability and you never {too soft} never. Never, never, never, and I'm sick of it. Seriously, they see me rolling in the room, and they're just like oh, my God, you should go. You know what I mean?

The #1 barrier right now for the state of Minnesota, for somebody who uses a screen reader, a brand new clear website is not accessible. You know, and they have known that for a year, and they say they're working on it. They're spending millions to Oracle to make this thing, and it's not freaking accessible. They held that big state career fair a week ago. I sent another letter saying – how do you expect the community – and anyone can use the screen reader if you've got dyslexia. If you're blind you have to use that. You can't access our state website to get your job in the pile with everybody else. That's like a freaking door. That's like a step for me. You know what I mean?
In the ADA that's a huge violation. Right now, the Department of Justice, they're holding off and suing too many companies right now. They're going to wait to 2018 when they really {too soft} new President he's going to strip the Department of Justice. That will never happen. But businesses are out of compliance. The states are out of compliance, and {too soft} the way it's written right now – companies are one heartbeat away from being there. Whoever, black, white, pink, purple – you know, uses the screen reader, you would sue based on that. So that's a huge barrier.
If you have an intellectual disability of any sort you know? (That is a big deal, and it's also actually a cultural barrier for people who come from non-oral languages.) Oh, my God, yes. (Or non-written.) I have a guy for the last two years who has been stalking me at work, and his issue is because he wants me to work on his behalf on he's got a reading disability. Yeah, so it's huge. That's my kind of stance on the whole thing because it does impact people of color.
I mean it's like you know, Edwin H - he's the Deputy Commissioner over at MMB, he's new. I met with him {too soft} and when I sent that letter again right before the big state career fair, I'm like how do you expect our people to even participate? What we did, it was a week before the event, because again, why would they tell me they're having {too soft} holding a big career fair – again, lack of communication. I said our community is not even going to be able to participate. We quickly organized a come bring your resume, and we'll get it.
See, here's the thing. And this is for anyone. If you put your resume in the system, it shuffles it around to answer – the state. They do it by questions. You don't just submit your resume like you do a normal. Who thinks that's a good idea {too soft} that's a whole other issue.

That in itself, you can't even get your resume in there. And so, you know, just you and I just trying to do that, you have to go back in there and reformat what they put in because the system is not going to format it right. If you were to do your resume based on how it's going to upload, you would do something not in bullets but just like a colon I guess. Education: and then real discrete, bad sentence structure I guess putting it in there. That in itself is a problem. I have an accessible document specialist that {too soft} the guy makes a lousy $20 an hour, and he's really {too soft} the best {too soft} teacher I've got in my office. He's severely disabled. The VR told him {too soft} told him to go and become a movie ticket taker. That guy knows everything about software, and he's helping these big agencies in the state become accessible. $20 an hour. (Who told him to become a movie ticket taker?) Yeah, the vocational rehab. Yeah. So, he went through and said here are all the issues you're going to run into when you try to put your resume – you can get your resume {too soft} screen reader posted. But then he said everyone {too soft} we edit it because it's not going to be in the right category. He said that is the part that you cannot with your screen reader get in to do the edits. You will {too soft} nobody will look at your resume because it's not even formatted.

So, they have left it like that for at least a year. And they tried to do a fix in Oracle, and it didn't work. So, they had to go back to the original format of not being accessible. {too soft} money – so I have no idea if that's going to be {too soft} budget. I have no idea. But let me tell you what I do know. If this was strictly a race issue, they would have fixed it. (So race takes precedence – racial inequity is more of the concern.) We are so low yeah. We're constantly –

You know, and one of the other pieces of ADA that we have going they have been sued twice on that we got a huge it's called the Olmstead Act, and it's a Supreme Court ruling in 1999 – President Clinton signed that in to law. It was based on Title 2 of the ADA. Two women with disabilities wanted out of a nursing home. And here's how it relates to work. They were stuck there, and they didn't need to have 24-hour supervision. They sued based on the ADA. And anyway – part of this Olmstead Act is about being able to choose where you want to live in the community of your choice.

But with that comes you have to also decide if you want to work or not. And not just be told you got to go to a {too soft} patient center – otherwise known as a sheltered workshop where they make $2 an hour to put widgets in a hole. And so, states are now like Rhode Island and Oregon are being sued based on just the employment piece where states have just been automatically {too soft} learning disability put your right into that sheltered workshop and you get to work there for 30 years with no benefits, no – making $2 an hour or $.50 or whatever it is. Yeah, and so now Minnesota got sued twice. {too soft} in 2009 then based on it started with restraints and then now it's gone even further to the employment piece.

Well, I wasn't part of the original law suit. Two other agencies were – the DB Council and the Mental Health ombudsman. However, it is still ridiculous because I in 2006 started working on the Olmstead and I {too soft} that year, but we did it anyway. And so the exact same players, 14 agencies {too soft} that were on mine in 2006. (But you're not.) But I'm not. The good news is I probably do more damage being not on some of those anyway because I can come and testify and tell them how stupid they are and what they're doing wrong. Sometimes it works to my favor. If I was on there, if I would have to behave, and so {laughs}

So, you've got – you need to put them based on the Olmstead Act that the state needs to – and people of color are part of that. It's about work. It's not just about living in the community of your choice. It's being able to say I want to work. You want to work better, and the state's got

to figure that out, and they're having a hell of a time figuring that out. The state is in a lot of doo-doo.
So, what they're doing is they put together this person center planning, it's about the person. So, people need to ask the person do you want to work, where do you want to live, that kind of a thing. That's a start. But here's the problem. They're still like state wide, and some of these small towns, there's nowhere for you to live other than group homes. If you need support, you know, personal care {too soft} shortages {too soft}. Let's say you find a job, well, if you don't have a personal care attendant to help you get dressed and whatever and you've got a severe enough disability you not going to be going anywhere anyway. You know what I mean? Multiple layered issues that exist out there. And then transportation is another huge factor of getting to jobs. Yeah, so it's a multilayered process.
Part of Olmstead too it's not about putting more {too soft} it's the state needs to figure out what's in their given system. It's hard to do it with existing money. That's a hard one. You know what I mean? (I do.) And that's the thing. I'm not {too soft} advocate for money. I'm advocating for can you shake the bag upside down and we figure out what you're doing with the money? You know? They don't want to do that either.
(It sounds like there's a big awareness issue even. Like you just have to call it to people's attention over and over again like they miss it.) Right, constantly. And now because everyone has been kind of beaten to death over their head with Olmstead, it's become a 4-letter word. It's like – oh, okay with the legislature like oh, my God – so it's incredible. You know, it all impacts everybody. I think you know, {too soft} impact everywhere. From what I see – disadvantaged, when people use that category it's like – {too soft} accessible. And so, if you are a business {too soft} person with disability that owns a business, {too soft} documents are accessible. {too soft} contract that's even accessible. Now I know they're working on that, but it hasn't been really {too soft} the last couple of years {too soft} people. The state continues {too soft} don't have accessible bathrooms. We have had meetings {too soft} about that. {too soft} for God sakes {too soft} worst violator when they put their {too soft} system {too soft} buildings. Or the bathrooms in the basement. We don't have an elevator {too soft} (Really?) It's like I said the level {too soft} it's incredible.
Yeah, well yeah. We've got people call us all the time in my agency, and so we have to give them advice on where to go. Most ADA issues don't go in the direction of human rights departments. Most of them go oh, the attorney general's office refers them to me. I'm like I don't even have any {too soft} on my staff. {too soft} The Department of Justice is where we send people, and that's generally a 1-2-year wait. God knows after Tuesday I'll be glad {too soft} forever. (Isn't it a nightmare? I know. It's a nightmare.) Yeah, and {too soft} totally dismantle the ADA. There's big chunks of business there. I am sure the ADA will {too soft} yeah. It's going to be bad. And our own legislature turning Republican, holy shit. I'm going to be lucky to survive. Last time it was this way in 2009 they tried to get rid of all the small agencies.
So yeah, my job just became 100 times worse. Whatever. Yeah, but the bottom line is they got to figure out how to do this human rights thing. The human rights department, they're another one like me – under fire. I know Commissioner Lindsey really well, and we were talking on Wednesday night {too soft} crossfire? Oh, yeah. They'll try to get rid of us again. Here we go again. {too soft} crap we use for ammunition before. It's bad. Anyway, I just – we've got {too soft} get our hands tied and can't use them. It's not {too soft} file discrimination with the

human rights department. Kevin has done a great job the last couple years to get it moving quicker. But in the past it took forever. That depends {too soft} leadership in that big old office called the state capital.
(Why do you think a lot of the disability cases end up at the attorney general's office rather than going through the human rights department?)
Well, and they don't go anywhere in the A.G.'s office. The tell them to call elsewhere. I think lack of knowledge of where to go. I sometimes think the A.G.'s office could do you know, a little bit. We're all {too soft} we don't have enough money to do things. That's part of the problem. But yeah, the streamlining process {too soft} got to get better because it's {too soft} good things to get things moving. It's still not where it should be by any means.
(So the speed of how things go is one of the frustrations.)
{too soft} staff person, she's been around the government longer than I have. She's my operations person. We're working with Minute. That's another godforsaken {too soft} agency. They had a new commissioner and he's good, but how do you fix just a foul agency? (Which agency is it?) Minute computers and operating system. Oh, seriously. Just it's they're part of the problem too. Again, it's a layered thing. You know it just is one thing. You fix one thing and this over here doesn't work. It's horrendous. To give these people authority {too soft} implement the authority with. CYO {too soft} he hasn't been able to do anything because they don't give him any money to do anything with.

Respondent #54: Works in State agency for equity and diversity
Experience: So but I still kind of have my hand in a lot of the discrimination issues. We have an attorney now that does most of that work. But early on, I did part of that work myself, and what I experienced was we would get people that would come forward eventually to basically say, "this just ain't there anymore." And they get to a point where they kind of started that dialogue. We'd go down that road of investigation and start to investigate. It's pretty common that the investigation would bring forth some real issues. But our office can only do the investigation and the summary – and it goes up to senior management. And senior management then makes a determination of what's going to happen. I have seen far too many times where there's been just cause – people have complained. We have done the investigation. We have verified the just cause, and management chooses to do nothing. It's a very frustrating system. And then we don't – we lose some credibility with the employees because they feel like they've complained, and they have been discriminated against, and yet nothing has happened. Then, we're also very limited in what we can tell them. All we really can tell them is we've processed this, we have investigated, and we have made recommendations and moved it up the chain. We can't tell them anything more. People doing this work and want to see some changes so that this doesn't happen. Then the end result ends up being that nothing ever gets addressed at the source. So, it just continues.
Honestly, my – at this point, seeing many of these similar things happen – what I think is happening is people at the deputy level, the people that are responsible for large groups of employees – and these are prominent, mostly principle engineers or I mean they're people that have worked up the ranks – and they're high up on the level of supervisory – I think it's a protectionism. And so, when all of them get together to make these decisions – they get talked out of decision by the people who are managing all of that. And I think it's seen as a negative from the perspective that this is happening on their watch.

Where I don't really – you know, it really shouldn't be finger-pointing. It's just here's an issue. Let's deal with it. And get on top of it. But it's more taken – I really think it's more taken personally, and so to save face, they end up talking themselves out of doing anything major. I think for fear of it looks like it's a reflection on their management ability.

Recommendations: Well, you know, I almost think that the people that make the decision have to be a different – more diverse group of people. So maybe where this all ends up at senior leadership table that's a very specific group of people of deputy commissioners, commissioners, assistant commissioners. Maybe instead of the decision ending up there, I mean it should certainly go through them – but there needs to be other people on the team that listen to the problem, that listen to the investigatory results. And that can make a decision of what should happen. Maybe a broader team to review and have some control over what happens.

I think when you get more people involved, you know, sometimes that can be clunky. It can drag things on. But I think that takes the onus out of somebody having a finger pointed at them. We really have to get past that.

(That's great. So, I have some people who are less connected to it sounds like – and more diverse. When you say more diverse, do you mean more ethnically and etc. diverse? People with disabilities, etc.? Or do you mean people from more different parts of – different roles?)

You know, I actually think all of the above because I really do think nobody understands the kind of belittling or how targeted language affects somebody – than somebody who has had that done to them. So, I think from that level of diversity there needs to be a variety of individuals representing different cultures on that {too soft} so to speak.

But I also think there should be people with disabilities that should be people from – that aren't connected to those particular areas. So, that it's not a protected action or defense. So, from – I do think it needs to be pretty broad. And include them.

I always get told that we're limited in what we can tell the complainant. So, and I don't know if that's a statute limitation, if that's a rule limitation. Or where that limitation comes from – so if that's in the statute, I think that needs to be looked at. I always get told that we're limited by law what we can tell a complainant. I have never checked it out. I never looked at the statute myself, but that's what I'm always told. We're very limited in what we can say.

(I have heard that from other people as well, but I have always heard the recommendation from somebody pretty high up that people should be told more. I'm wondering the same thing now.)

Yeah, and it may very well just this missed statute piece that people believe exists and gets perpetuated – and quite frankly, that's not my main area, so I don't want to spend a lot of time looking to defend that or not. But that should be looked at in the statute. If there's something limiting there or even just how are the results of someone's complaint – how are they relayed back to the complainant?

And so, as agencies, I have sat in on inner agency workgroups, and we have looked at this process, and we have made recommendations. But the recommendations kind of go in this black hole and business continues as usual.

So, one was a Native American, one was a woman, and a woman in a truck station in an outstate district, a small town, that was a challenge for some of the men there. And during that interview, the investigation, to look at the claim, we found some pretty substantial reasons and valid reasons that they weren't given a chance. They were targeted. And it was a group target – although we could only find one person that really was the main person.

But even identifying that in the report that was forwarded to management, I was a part of that interview team and so I was a part of sharing the results at a senior leadership meeting. Well, at that meeting I was told – oh, you – we're going to do this, we're going to do that. We're going to clean this up. We're going to start at the top. We're going to do XYZ. I left thinking oh, finally something is going to be done. Well, that dragged on and dragged on. Then, eventually, nothing happened. They chose again, not to do anything.
Sit around trying to determine what they're going to do – the challenge comes back that it's just too big of a task to change a culture like that in a work location and they give up. I tell you thought I had heard myself some pretty strong convictions that this is what they were going to do. They were going to start from the top and reassign people, shake things up – they really wanted this to be fixed. This was a repeat of something I had heard – a similar thing that happened many years ago in the same place. Again, it just yeah, there's just a lack of oversight I think. Nobody knows this stuff is going on. The people that have filed the complaints, they get told yeah, it's being dealt with. It's being dealt with, but they get no other information – and we're told we can't give them any other information. And it just eventually goes away. I was just going to say until this changes, and until there's some visual action that's done – and perceived by the rest of the employees in that location, the culture is not going to change. It's going to stay exactly the same.
I do, and what I mostly sense and feel happens is you know, the complainants, they spill their guts, it's quite emotional. They may be experiencing – I mean all kinds of stuff. So, but they share it, we listen. And they think oh, somebody is finally listening to me. Something is finally going to be done and we tell them we're going to look into it. We're going to do XYZ. We do that, and then it ends. And we're stuck. We're left looking like what happened? I trusted you. I told you my story and you were going to do something and you didn't. Well, we tried, we did. But it's the system that there's a problem with.
So, we end up losing some credibility. You know, not being able to share. We have learned ways of saying trust me– it's working its way through the system. Hang in there. We're the cheerleaders, rah rah people saying – we did what we needed to do. We did an independent investigation and it's moving forward. It's just slow. But hang in there, have faith. And then we end up looking like idiots.

Respondent: Attorney response to Human Rights Survey:
In the past five years, have you filed a discrimination complaint with the MN Department of Human Rights in any of the following areas? Employment
Please state the basis of your complaint: I have filed dozens of employment complaints with the MDHR on behalf of clients in a variety of matters.
How long did it take for the MN Department of Human Rights to acknowledge receipt of your complaint? Typically, only a few days.
Did you get an answer from the other side? Yes.
Was your complaint investigated? Yes.
Was your complaint resolved by the MN Department of Human Rights? No.
How long did it take to resolve the complaint? N/a.
What aspects of the process worked well? Getting position statements from the Respondents.

What did not work as well? The investigators at the MDHR seem to be completely biased against charging parties. I have never once received a probable cause determination from the MDHR, even on cases that later succeeded on the merits in court. The investigators all explicitly hold the belief that unless the charging party has recordings or written evidence contradicting the employer's account of what happened, then there is no probable cause to believe discrimination happened. This leaves employees who are involved in a 'he said-she said' situation, but who did not record the conversations at issue, without a remedy at the MDHR. For example, in one case my client claimed that he had verbally requested an accommodation for his disability from his manager. His co-worker submitted an affidavit stating that immediately after having this conversation with his manager, my client told him about it. However, the investigator found that because the manager denied that my client had ever requested an accommodation, there was no probable cause. This same scenario repeats itself over and over. I would like the investigators to understand that their job is to weigh the credibility of the testimony of both sides and come to a conclusion about who is telling the truth, rather than just automatically credit the employer's version unless the charging party recorded the conversation. I've even had an investigator ask my client why she didn't record the conversations at issue with her boss and tell her that she should have done so if she wanted to prevail on her claim. I now actively avoid filing charges with the MDHR altogether if possible because it is simply a waste of time. Investigators also do not seem to have an understanding of the applicable laws – I have had investigators tell me that unless a request for accommodation was made in writing, it does not count; that because the Respondent also employed other persons in my client's protected class, discrimination could not have occurred; that because my client did not record her verbal complaints to her supervisor of discrimination, and there were no other witnesses, that my client could not "prove" it; and numerous other false and biased interpretations of the law. I cannot overstate how biased the MDHR is against charging parties, which completely goes against its entire mission as an organization. I of course understand that not every charge should receive a probable cause determination – however, similarly, not every charge should receive a no probable cause determination, which is what I have had occur to me every single time, even when I have had direct evidence of discrimination.

What do you recommend the State of MN do to make the process better? Provide training to the investigators about the applicable laws, and tell them that their job is to listen to both sides of the story, then make a credibility determination about who is telling the truth, not simply credit the employer's account unless the employee has recordings proving their account. The investigators are seriously biased against charging parties, which goes against the entire mission of the MDHR, and that needs to be changed.

Respondent: Attorney response from Human Rights Survey:
Employment suits. On behalf of clients, I have filed between 10 and 20 charges over the last 5 years. The charges have been filed for a variety of issues, including: disability, age, sex, race, national origin, sexual orientation, religion, and retaliation.
Around 10 days according to the dates of letters from the MDHR, but then for some reason, the letters – unlike other mail – often seem to take an additional 4-11 days to arrive after the date on the letter.

The term "resolved" is a bit ambiguous. Some of the charges were settled through the MDHR's process, some of the charges were withdrawn to initiate suit, some of the charges were issued no probably cause determinations, some were issued probable cause determinations.
Cases took 6, 8, 9, 12, and 18 months to resolve once the charge was filed. The investigations have seemed to be more thorough than the EEOC's investigations.
Any transfer of files from the EEOC to the MDHR has created major delays. The mediation process is improving, but better mediators are needed. Coordination between the EEOC and MDHR is lacking. A closing letter from one of the organizations may come 6-18 months after a closing letter form the other organization – even when the case has been fully resolved.
Recommendations: Improve coordination with the EEOC: file transfers from the EEOC to the MDHR must occur smoothly; there should be no gap or delay just because a file arrives at the MDHR via the EEOC (i.e., the charge was initially filed with the EEOC but transferred to the MDHR by the EEOC for jurisdictional reasons such as a filing that arrives after 300 days (fed deadline) but before 365 days (state deadline) and charges of sexual orientation discrimination which are not covered by federal law). Closing of files should occur simultaneously to avoid confusion for clients.

Respondent #50:
Is your inquiry going to cover any areas where the state sends funds? Local city grants, etc.?

(Say more about that. It just depends on if it's related to those three areas, yes. If that's part of the process that isn't working – I have heard people talking about it's hard to get money. It's hard to get paid. It takes too long for small businesses – there're all kinds of different ways that money comes into play.)

So you're looking for barriers. **(Barriers, yes.)** Okay. Is your query going to amount to an AI, Analysis of Impediments? **(I've never even heard that term before, so I guess in a sense, it's qualitative, right? So I'm listening for what are the barriers. I guess an analysis of impediments would be that.)** The state has a requirement just as all the cities do – to identify the impediments to procurement for instance – in any given community why is it that you aren't getting these opportunities? What is the impediments to social programs, to help – to whatever it is that the government is providing in the form of benefits to the community. What's preventing those benefits from getting to the community? So in a sense, it sounds like you're doing an AI.

(Yeah, it does sound like that. It's probably not going to be as thorough as an AI would be because I have been hired to conduct about 60 interviews. It'll be more than that. Whatever I can get in there, and they're supposed to be kind of divided between those three areas – so there probably will be impediments that I miss.)

Are you comparing your information to the state's AI? **(No, that's not part of the scope of what I'm doing. That's not to say that James and Michael aren't.)** I would think they would have to because if you're going to see what the impediments are, then one would think you'd also look at what the state has already identified as impediments because the state is required to go to the different communities – and to in a sense of the word, speak with the people in the same sense you are. As a matter of fact, we've done that – myself and a group out of here –

worked on one for the region. So an analysis of impediments allows the state to be able to submit their report to the federal government and even to the state itself to say these are the issues that we're finding in the state and how we're going to overcome those.

There is another group here the Frogtown Neighborhood Association – I recommended that they contact you. And whether you hear from them or they hear from you – hopefully, they can get into that same process. I represent them on the working group, but a lot of my work also has been from the Access Group. So the information that I sent you is from the Access Group. So their particular vantage points or issues I have asked the director to present to you herself.

(So should I reach out to them also?) Yes, as a matter of fact, I am going to see if she is here, upstairs. And if so, I may ask her to peek her head in. **(That would be great.)** But also the state should have been audited by HUD to determine if – HUD does a compliance review because the state gets funds that they have to administer. And as such, the state/HUD should have done/conducted a compliance review which would have included an AI, should have included an analysis of impediments.

(I have a question for you. I talked with somebody who was having some housing issues and living in government funded housing – and she said when she went to the human rights association, they sent her to HUD – and then they sent her to somebody in Chicago to represent her. Then, she didn't end up feeling like she got represented. Is that the correct process? Is that what should have happened?) She was sent to the HUD office in Chicago? **(Basically, she had somebody in Chicago calling her.)**

Basically, the local office in Minneapolis fields the complaints, but any complaint that has any merit is usually investigated from the regional level from Chicago. But - what you have presently – and this is what we're suffering here in the cities is a refusal by the federal government to investigate housing and civil rights complaints – and that's part of what we have provided you – and that's why - and it is necessary that this becomes part of the complaint process, this audit- is because there are a number of actions that have taken place on the federal level – and a deal that was cut that gave the city – what almost seemed like a blanket immunity.

Part of the housing issue, for instance – there are a number of property owners in this area here – who are part of the law suit. Their lawsuit started somewhere around– 2000 and 2003 – that law suit wind up in the federal courts – a law suit against the city, St. Paul. That law suit wound up in the federal courts, and went as far as the Supreme Court. I don't know if you heard or know anything about what they call the Quid Pro Quo of St. Paul? **(No.)**

Have you ever heard of the Magner v. Gallagher Case? **(No.)** The Magner v. Gallagher Case was a case where landlords and property owners were stating that the city was using code violations to basically take their properties – to move them out of business – to eliminate the low income housing for individuals of color – and based almost like gentrification in a way. So they were saying basically, you're using housing codes to shut us down. Now not speaking on the merit of that case, the case had made it to the Supreme Court – because the case had made it to the Supreme Court which means that it had got approval or it had gotten an affirmative verdict

out of the 8th Circuit which meant that HUD was supposed to investigate the civil rights allegations. Any time there's any affirmed violation in an area by a court or otherwise, then the federal government is supposed to investigate because they provide funds to the city. The federal government didn't investigate.

What the federal government did was the federal government shut down that case from going to the Supreme Court. What they did was the federal government cut a deal – HUD and DOJ cut a deal with the City of St. Paul that they would kill – use one case to kill that case. **(It seems like they're supposed to be protecting the people.)** Exactly. And this is one of the impediments here. When the government is an impediment – is considered a violation of Title VI, what the government calls "Simple Justice" – basically, the government cannot use your tax dollars to entrench the conditions that you're in – or to segregate you from others by violating your civil rights or any other rights.

So basically, that's what happened here. Now, how that worked is that the federal government, what they did was – they cut this deal, they basically took a case I had – but now I'm going to give you my case. We brought – we had been fighting for economic opportunities here in St. Paul. We brought HUD to the town in 2009. HUD found the city with in noncompliance in Section 3. And that would have meant – thousands - millions of dollars actually. The city had done $1.5 billion dollars over a 3 year period in development. Section 3 said that the low income community – a lot of it is the Black community as well – but the low income community was supposed to get at least 10% of that. So the community would have gotten at least $150-million dollars' worth of contracting and job opportunities. It did not happen. We brought HUD to town HUD confirmed it, held the city in noncompliance, HUD entered into a voluntary compliance agreement. But HUD violated the voluntary compliance agreement. I'll come to that in a second.

At the same time, we filed a false claim act law suit. According to federal laws, if the city or anyone who received federal funds files false certifications – that's a fair housing act violation and they can be brought up on qui tam or false claims. We brought the city up on false claims. The federal government started investigating it from 2009, and in 2011, they used that qui tam case – that false claim act case to persuade the city to take the Magner v. Gallagher Case out of the Supreme Court. So what HUD basically did – HUD and DOJ did was they went to the city and said – okay, and the congressional report says – who told who? Who decided that this deal was worth doing? And who suggested it? Now, they insist that the city had suggested it. But if the city suggested it, the city basically traded away the rights of one group to ensure that it wouldn't have to pay a penalty on another.

So what happens is, the HUD office sends my attorney to St. Paul out of, coming out of Washington. He comes to St. Paul, talks to different parties – and talks to the party who is the attorney for the city who is an outside group – talks to them and says would you trade – basically, you've got this case that you are dealing with for the city. The city has this other case that the federal government wants to go away. Will you basically cut a deal that if we don't support this case, you'll make that case go away. And that's what happened.

Congress investigated it. All of this was part of a congressional report. That's part of what I sent you **(I see.)** So they traded away the rights of this community. And when you trade away the rights of – you can't get justice if the justice department is a part of it and if HUD has basically violated your rights by taking all of your rights and trading it away for something that they felt in the government interest. At the same time, because there was false claims, the False Claim Act, the same individual who was Thomas Perez, Assistant Attorney General, had just sent out an email – a memo about a year before saying if there is a false claim by city or anybody else, you take that false claim, and you investigate and see if that city is violating the civil rights of the people in that city.

He took my false claim act law suit and refused to investigate civil rights violations. He had just said to his department – go investigate it. You get a false claim – go look at that city to see if they're violating civil rights. He did not look at the civil rights violations. And at the same time, he then traded away for this package deal that gave the city almost blanket immunity. In the congressional report, it shows the emails for the city. What the city was saying to them – you told us you was going to give us documented evidence to help us to fight the Newell Case if the Newell Case goes on after you decide not to intervene.

Talk about analysis of impediments. The impediment – the government was the impediment. It's all been proven. But this is just the start of it. This was in 2011, 2012, right in our period here for this audit. Secondly, after this, we requested the government to come in, investigate the civil rights violation. First we said you violated our rights by trading away all of our rights – and you did not investigate. HUD says basically they denied. We have a number of responses from them that shows that they refused to investigate, that they dismissed complaints, that they lied. I mean I have 5 statements from them that said they investigated certain reports/complaints that were filed in 2012. Then, last year – January, February of this year, I finally got someone who – Chicago office admit we didn't investigate the complaint that you sent us. But for 2 years the Washington office kept sending us back letters saying we have investigated that complaint, and thereby we will not respond to.

So everything that we were showing that the city was still in violation, they wouldn't investigate, and they were basically dismissing. Then, finally, when they admitted in 2016 that they did investigate the 2012 complaint, within a month they dismissed it and said it was not filed timely. But the issue even further is that the 2012 complaint was a supplement to an appeal – so it was an ongoing investigation, but they refused to investigate it because when they did that deal, they said the city was in compliance with Section 3 – 2 years into a 4 year agreement, voluntary compliance agreement. And then they use the voluntary compliance agreement to exonerate the city to say we won't investigate the city for false claims because the city basically is in compliance with Section 3. But the Section 3 voluntary compliance agreement says you cannot use this voluntary compliance agreement to offset the false claim. So they basically, it's the federal government who have basically cut a deal that basically protected the city.

And as I mentioned in the information I provided to the auditors, not only did that happen according to HUD's regulations, according to federal government, if the city had violated any program – section 3 being one of the programs, then not only were they supposed to investigate

the city for civil rights violations, the federal government was also supposed to identify the city as a risk for civil rights violations.

If they are considered a high risk for civil rights violations, HUD is supposed to monitor the city to make sure there's no ongoing violations. After HUD basically – DOJ issued a determination in 2011 that the city was an egregious violator, the Department of Justice stated that the city was an egregious violator of Section 3 – and basically of the false claim act – I mean not false claim, but violator of Section 3 – violator of the assurance of false claim – filing false certifications – and finally that move indicated a violation of the Fair Housing Act. So if they are in violation of the Fair Housing Act in November of 2011 – why in June of 2012 does HUD identify the city, partner with the city as an investigator of Fair Housing Act? **(It doesn't make any sense. Why do you think? Do you have a hypothesis about why they're doing this?)** Because the congressional report reveals – and HUD and DOJ acknowledge, we cut a deal with the city to keep this case from going to the Supreme Court. We felt that it was in the best interest of the government that. **(The federal government?)** Of the yes, the federal government – to basically cut this deal to prevent the disparate impact case from going forward in court.

So it's all acknowledged that we cut a deal with the City of St. Paul. We told the city we will not join Newell's case if you take this case out of the Supreme Court. But what they never acknowledged or address – and they said – okay, we know that Newell's case was going to bring back $200 million dollars to the government. What we had done, we had said to the government, we want you – anything that you get from this law suit, we want it to come back to the City of St. Paul to be used to build the capacity of the low income community. So instead of it going to the Federal Treasury, we want it to come back to here. The government said – I tell you what if you give them part of your recovery, we'll give our portion back. And this was the deal we cut, but the federal government cut a deal that basically brought the $25 billion dollars mortgage that Countrywide and all them, that's what they used to get the Countrywide settlement, but they did not include the people of this community in that deal. They took the money – they took all of our rights, the civil rights that we had on the table because they were supposed to be investigating civil rights violations. They took the economic rights that would have come through Section 3 because they basically leveraged the Section 3 VCA – basically gave the city a clean bill of health – while at the same time we had one contractor here who had filed a complaint in something like October, November of 2011 showing the city was in noncompliance. I had already told them that the city was in noncompliance.

I had a retaliation complaint against the public housing that HUD had just issued showing that public housing had retaliated against me and the HUD issued this finding – this ruling – yes, public housing retaliated against you. I had a retaliation complaint against the City of St. Paul because the City of St. Paul refused to put me on a contracting list for Section 3 vendors even though I'm the one who had pressed for it, and I pressed for a particular project that the city wasn't doing Section 3 on. I pressed them to do Section 3 on it because it was a requirement.

Finally, from 2005 up to 2010, I pressed them about this contract which was a service contract, which was the lead risk assessment. When I pressed them for this lead risk assessment contract and they were to lay it out as a Section 3 contract or at least comply on it, they refused. They

kept saying we don't have to and all this documentation I sent to HUD. Finally in 2012 that in 2011 the City of St. Paul issued that contract as a master contract, sent it out to all supposedly Section 3 businesses who would apply for that project. And at the same time, they never contacted me. So they sent out specifically to Section 3 businesses who does this service which is what I do – and said to them, would you like to bid on this contract?

When I find out in 2012, I contact the city and I say – why wasn't I notified? They said you are not on our Section 3 list. But I contacted the Section 3 office, and they said yes, you were on the list, and then they said somehow the city says – send me back email saying you weren't on the list that we was provided, so basically they retaliated by removing me from that process. And all of this I had in writing, in documentation. This is the 2012 complaint that HUD would not investigate because it revealed that their determination in 2012 that the city was in compliance was false.

So there is a big deal that was involved in basically covering up – giving the city immunity. And while that's the case, the state provides funds to the city based on the HUD grants, and so the state is also liable or culpable for any of the city's actions under Section 3 because the city has to respond back to the state and say we're in compliance according to the contracts that they have with the state. So the state has liability there. Well, while the state has liability we said to the state and this audit – not only did you have liability when it came to St. Paul, but you also are continuing to get HUD funds and according to a HUD 2013 audit of the Recovery Act funds, you did not comply with Section 3 according to that audit. So we provided them with their audit – not just any hearsay but the audit that I'm talking about happened because of the fact of the quid pro quo. Congress then investigated and said to HUD, let's see what else you're doing wrong in Section 3. So they investigated based on 2011 and said – what did you do with the 2011 funds based on public housing? And they came back with out of the 3,300 public housing agencies nationwide, half of them were in noncompliance, and the state was on their list.

So in a sense, the state then gets called in to – and that's why this audit was so important – to say the state is also in noncompliance which means that all of the economic opportunities that comes through the state that goes into all these cities should have been benefitting the low income persons and particularly members of the protected class.

(So who – this is going to sound like a really naive question – who is supposed to be responsible for all that? Who is in charge?) The Governor has the final responsibility because the Governor is the grantee if you will. The Governor according to the 403 of the statute and I have to go back and pull up whichever statute it was, but the Governor is on record as receiving funds for the state. He is considered the agency in the site of the federal government.

(And then what do you want the state to do? What do you think the state should do?) What should they do? We have tried, and I'm going to start with what we tried here in St. Paul – you heard me say we had 150 yeah, $1.5 billion dollars in contracting here at St. Paul for that 3 year period. Based on that $1.5 billion, we had set up – our proposal was – is that those opportunities be returned to this community in the form of future contracts and opportunities. That they basically say these opportunities will be returned to this community and allow the

capacity of these cities and these communities to be built up – by instead of bringing contractors in from outside of the cities on a program that require you to comply by hiring the local contractors who hire poor persons or low income persons – rededicate this program in its true intent. So what we wanted was the state to basically and the city to basically say okay, these have been denied opportunities–

There is a Long Beach Rainbow Harbor Project from – the most recent of it is 2012. It started back in '99, '98. But the agreement was what HUD had determined was that Long Beach had a $40 million dollar project that had Section 3 requirements. Based on that, $32 million was actual contracting opportunities and job opportunities that went hand in hand with it. HUD required or the agreement was that Long Beach would return out of the $32 million dollars that went for contracts, Long Beach would return $3.2 million, set them aside as contracts for low income contractors. Then, they identified a number of training and job opportunities. We set that as the precedent for what we wanted which was go back and look and see what you denied the community and provide those opportunities in the form of future grants, future projects, future opportunities. In other words, go back and rebuild that community by future projects. We are not asking you to go and pull money out of your budgets and give us a lump sum of money. We do need money for lending. We do need to build all the capacities necessary. But the government had that ability to do that anyway. Just focus on the community that you have caused that disparity or you deprived.

According to HUD's regulations – 24570, which is part of Section 109 states that if the city finds or if the state finds that in getting federal funds that they have actually caused a disparity of if there was a disparity that exists, they have a compelling interest in taking the future funds and addressing or ameliorating the conditions or past discriminations or if there was no discrimination, the disparate conditions all together. Just retarget the money. So that's what we was asking for. We were basically saying – government, you're saying that these communities, these people are suffering here. We have shown you the cause which is failure to comply with the federal program that would have provided these opportunities. We have shown you the effect which is disparity on employment, etc. Now go back and fix the conditions by changing your mandate, changing your policies to ensure that these areas are targeted. That's what we wanted from the federal government. That's what we wanted from HUD. That's what we wanted from the city. That's what we wanted from the state. But first, we had to prove to them in noncompliance because they denied and continue to deny – when we push this issue to go before this audit, we got a letter back saying we're not going to look at Section 3. Our question is how can you not look at Section 3?

Not only are you getting and in your next annual plan, your consolidated plan you have shown that you're getting $24 million dollars for this next grant round. And that $24 million, according to HUD, any time you take that $24 million which is matching grants, you only send out, you may send two million here or one million there – $500,000 there. But according to the thresholds, when you send that amount of money out, then whatever matching funds go with that, section 3 compliance must be applied to it. So even though the city was getting in those years $20 million because the city put it into the general fund and thereby was doing $1.5 billion over a 3 year period, all of the $1.5 billion because a requirement – Section 3 required

compliance program.

At the same time, what the federal government says is – is that the true program, Section 3 says that the 10% is a minimal if the city, if the state is found in noncompliance, they're supposed to go back and do compliance on 100%, not on 10%. So these communities are losing out because the federal government isn't complying – isn't enforcing, and the cities are not complying with. And we was asking the Governor – hey, if you're going to champion this issue, let me show you a bigger issue. This thing isn't just in Minnesota. Not just in St. Paul, not just in Minnesota. It's nationally. And I have been not only before Congress testifying to this – we have evidence up and down from every state there is that this is the problem. We're in a time where the nation is looking for equity, looking for economic opportunities and trying to determine why these disparities. Get behind this issue in Minnesota and push it forward. You pushed fair housing as a state and you laud that, but now fair housing trumped Section 3 in that quid pro quo.

Is that when they did quid pro quo, they were protecting the Fair Housing Act. They were protecting Mondale's Legacy because what they did was they said we don't want this case, this Gallagher v. Magner Case to be the test case before the Supreme Court because we could lose the Fair Housing Act. So they said let's protect it. And that's why they took away the rights of the people in St. Paul. How can you take all of our rights and just simply ignore or flush them down the toilet by simply refusing to investigate? We have asked them to investigate. We have sent them complaints requesting further investigation, and we have – we keep getting denials from the federal government.

(Why are they denying it? Do you know why?) Part of what the city had requested according to the emails as I mentioned, not only did it state that the federal government was going to send them material support which is against the law, material support to fight my case, which is a violation of my civil rights, but also the city had asked that all complaints against it be dropped. So every complaint that we filed since then has been either ignored – they did, the investigated the MICAH Case over in Minneapolis. But why they investigated the MICAH Case, we had provided evidence before the federal government that showed that the very persons who cut that quid pro quo deal also are the very persons who filed the MICAH Case.

My attorney out of Washington went over there. But while he went over there, we also showed the federal government where he came in and violated the Federal Seal – came in and discussed my case with the other attorneys which was conflict of interest. **(Is he still your attorney?)** No, he dropped out of being my attorney right after the deal was announced in 2012. And he never told me anything about it until at the congressional report – and then what was it? November of last year, we started requesting records saying why were you meeting with the attorneys for the city without your client knowing about it? Why were you discussing a case that was under a federal seal that states that – we kept trying to get the government to let us discuss with the stakeholders in the community because of the deal we were cutting. How were you discussing a case that was under federal seal with them?

(Who was he representing when he did that?) Exactly. But what we had – we have emails from the federal government where a certain young lady in HUD who was also the young lady

behind this case, and she have been found to – has done a number of cases where her and him worked together. Where she basically sent an email to Thomas Perez in the Department of Justice and said Michael, my attorney, is going to the City of St. Paul to talk to different ones about blandishments that they would take this case – remove this case from the Supreme Court. So her email basically is saying we're talking Mr. Newell's attorney – sending him in a sense because how do you and HUD know what my attorney is doing on this case that ends up using my case to remove? We presented all that to HUD, and you would be surprised I mean the way that the federal government has responded to everything we've done. It has been a fight against the federal government to get them to acknowledge what they have done and they have dismissed just about everything I said. Every time they dismiss it – I told you 2012, they kept saying no, no, we have investigated, investigated. Finally, I got a lower level person – I requested an investigation report.

I said okay, if you've investigated my complaint in 2012 or 2013 like you said, send me a report. Let me see what you found. And when I requested that, the individuals stalled this was November of last year. November, he would not respond back to me. December he would not respond. This is the regional director of Chicago. Finally, I sent it to another person in his office who had investigated my retaliation complaint. I said should there be an investigation report – I would like a copy of it. He sent back that same day and said we didn't investigate it.

So I sent the complaint to HUD and said HUD, I have evidence that top level officials from assistant secretaries have knowingly filed false statements because they have for the last 2 years said to me we investigated this complaint – and we also have evidence that they have not investigated my complaint further. They did not process my appeal. And they - just went down the list. At that time, the Secretary refused to acknowledge that. He has not responded to that one. The individual in Chicago who I had met with starting in 2013, and no 2014 I met with him and told him you didn't investigate it, he sent me back response after response yes, we did investigate. Finally, when I met him in person over here the last year – and told him – that's when I requested a report – when I go back in and request a report, he went for about a month and refused to respond after I get the response that they did investigate – about a month later, he sends me a letter back saying your complaint was not timely, and so we're not going to investigate it and closed it out.

So everything here is – has been a cover up action to prevent me from getting any further. And we said to them – okay, all the regulations show civil rights violations. If there is a finding of noncompliance, you're supposed to investigate civil rights. If there's this – civil rights. Every time we did it, the federal government have refused to respond to it.

So bottom line is, this community is - one of the impediments is the federal government, but we are also stating that it's the state government because the state has also provided funds. Part of what the state has not acknowledged is that according to our understanding the state put money in to the, what do you call it down there – that stadium. **(Oh.)** So if they put money into the stadium which we know they did, we are told that part of that money was also part of the Section 3 funds or the community block grant money. And so we want to make sure that if they're community block grant money – did HUD, did the state comply with Section 3 on that. There is

the also the department of – I mean DHS – they get money from the state for housing and then for assisting individuals. And we're told that part of that money comes from the community block grant money.

(I have a question for you – do you do this professionally all this fighting for this neighborhood or is this a volunteer project for you?) Volunteer. What happens is this. **(I do want to know, but before you go there – because you're passionate and you are persistent, and you must have time to do it or you're taking time out of something. What if you weren't here? What would be happening to this neighborhood?)**

Okay, in this office you have CSP right over there on this side. You should talk with them. They deal with housing and housing issues. I'm sure they will give you – and not only an earful, but they will help you study. You have Frogtown Neighborhood Association upstairs. They have their interests. We partner with them to help create jobs. So for the last two years they and I joined together on a what was it – Minnesota Department of Health job project – grant where we hired individuals from this community and took them through a training program and went about our disciplines which is lead.

We took them through a training program - taught them – took them out on projects, volunteered to go into people's houses – do some cleaning, give the individuals on the job training. So that's where we kind of partner with them and part of what was modeling for when we first started this Section 3 issue. But when we got into Section 3, I was officing in this building, my company was. I'm in construction, a contractor, [with] a number of services from demolition, lead, asbestos, I had all kinds of areas we did work in. And we would hire people from these neighborhoods. We would use HUD grants to hire them. We would look up. We would find out there's a HUD grant, we would send them to those classes and then we would hire them because that would get them off the street but also give them opportunities.

We had trained 50 people through HUD grants. We have partnered with all of these neighborhoods around here from Frogtown to Hamline – to Aurora-St. Anthony's, Selby. We went to all these neighborhood community groups and said to them – if you will nominate people, we will put them through a training course. We will hire them and we will do work in your areas. As you identify projects, we will have people from your community do that work in lead. When we got them trained, we got no work because the work was going through the city, and we are trying to get the city to cooperate and the city wasn't doing Section 3, so they did not follow up on the program that we had made with these communities, and so no work was coming out of it. That's when we filed a complaint against the city.

First, we tried for about 4 years, 5 years to get the city to comply. Kept saying to them – here's why you should. They wouldn't respond. We would send them to Washington, their response to Washington, and we connected the two of them back and forth for a number of years. We said to them, here's how the program work, they'd refused to do it, or they said no, we would send it there. We have sent back – and we just kept everybody in the loop. So that's how we got HUD in the town because we had built such a case that showed the city was in noncompliance, and tried to inform the city. And so DOJ and HUD both said Mr. Newell had basically provided –

removed every possible excuse they had. They are knowingly violating this program.

(Why are they?)

Because they were providing those opportunities to other contractors. When we in 2000 first came and went to the city, we worked a lot in Minneapolis from '95 until – and so until 2000 or so, we went to the city and said we want to sign up as a Section 3 business. And as a Section 3 business, we want the opportunity to get certified as Section 3 so we can take advantage of that 10% goal on these projects. And we can help you to fulfill Section 3. The city said to us – we're not taking on any new contractors which is a total violation of all their procurement laws. We were qualified us as a contractor for the city, registered with the state etc. We had the bond capacity and everything else. But the city said – we will not take on any new contractors. Basically, what they told me is what you can do – you can actually go to these other contractors and subcontract with them to do their lead cleaning.

Now, we're doing lead work in Minneapolis. We are one of the few lead companies around. We're one of the few Black lead companies around. You got an Affirmative Action program that you won't bring us in under – and you have Section 3 you won't bring us in under. And so you tell us that we have to go and be a subcontractor to clean up behind another contractor when we are licensed and have been licensed prior to this than just about any other contractor in the state to do this work. But they refuse to set us up or allow us to register as a contractor.

And then after that, from 2000 up to about 2009 or '10 – they basically had such a convoluted program over there that when we got registered at their VOP program they still – we was registered, and we kept saying to them – why aren't we even getting notices and so forth? And then we found out through email from someone in one of the city's offices – but you have to go to this particular office, and you have to get on their list. Because even though you're on the VOP list, they don't really use the VOP list. They have their preferred contractors list, and you have to get on that list.

So there was all kinds of barriers that the city had. They identified some of those barriers in the Hall Audit of 2007. But while they identified those barriers, the city keeps erecting them. Because what happens is, there are contractors with AGC and others – Assembly of General Contractors and others that basically get this work. They were not about to relinquish that work to new contractors because this is what they expected. And so federal programs were going uncompleted. Just like the email that what's his name or Ed McDonald sent to the city. You're not doing Chapter 84. You're not – the vendor outreach program, you're not doing 183, and you're not doing Section 3. Why? Because even though they had all this work taking place, we could never get in because the city had layer upon layer of bureaucracy and programs that were not responding back to the city as in meeting the goals of the city.

So it's always been a barrier for us to get in and to do work. We filed a Title VI complaint against the city in 2006. We filed a Section 3 complaint against the city in 2006. All of this evidence was supposed to bring HUD in to investigate Title VI violations. HUD never came. So this community has a real issue with trying to get enforcement against a city who now had

become a preferred city in the eyes of the federal government. They get more grants, they have been put on the preferred city list – and in other words, HUD has a program that if a city has the Choice neighborhoods – they have gotten more Choice grants lately – all better still, they have gotten Choice grants. They have gotten grants that we don't have access to. The city has been patted on the back as doing this great thing.

(How could that happen when they know that they made that compromise?)

Because they made the compromise. HUD basically says they did the right thing. But they aren't looking at what they did to us. We then, let me give you another one. In 2011 or 2013, I can go back and check – 2013, HUD finalized the disparate impact regulations rule which is regulations that state if the impact of any policy or decision by city – and we said that it should also apply to the federal government as well. If their policies has a disparate impact on any persons or group of persons, then they can be held liable based on disparate impact. We basically provided that information to the state, I mean to HUD in the regulation process that says you have caused a disparate impact upon the community here based on your quid pro quo and that whether it was intentional or not, you denied us our civil rights. You have also denied us the benefits of the Section 3 program because you have now exonerated the city and we laid out a list of things that basically says here's a disparate impact upon this community.

According to HUD regulations, any such report or complaint is supposed to require the federal government to come and investigate if that is true. What it is simply saying is if this community says that somebody is doing them wrong, you better go in and check before you spend more money. So we said to them – we provided that information to you that your disparate impact regulation and your actions to protect disparate impact is having a disparate impact upon the community in which you basically defrauded. And HUD basically sent back a letter that said we are aware of your concerns, and that's it.

(Do you feel like you're being dismissed?) Oh, yeah. As a matter of fact, HUD has basically said we will not respond to any more of your complaints. Now, I took that same complaint – now, Title VI – we said to them, Title VI you did not investigate our Title VI violation, and we request that you do investigate it. HUD sent back a letter that said you never asked us to investigate Title VI so we're not going to do it. I took the same thing I sent to HUD, sent it to the DOJ, and one DOJ office kept dismissing it, and I'm talking in a time where somebody from the Solicitor General's office basically told me "you've gone as far as you can go. You have complained against the Secretary – everybody else, and Congress has already investigated. It's been shown that this has happened, but since they are stonewalling you there's nothing we can do". So what I did was – I kept nibbling away at the issues because sure you may dismiss me as a person. You've already done what you've done against me. But the people in the community – their rights must be protected. So we asked them to come in and investigate and in this complaint in 2013 – I asked them to investigate everything from the violations in the quid pro quo to the failure to investigate the Title VI. HUD refused to investigate it. HUD says you didn't ask us to investigate. I took the same complaint, sent it to a DOJ office. The DOJ office said that we have thoroughly looked at your complaint, and see that HUD was the right office to investigate your complaint of Title VI violation. HUD says you didn't ask us to investigate Title

VI violation, but the same complaint DOJ says yes, you asked, but you asked HUD. And so we can't oversee HUD. HUD's determination so if you don't like what HUD decided, then you should go and get you an attorney to see what you can do about HUD.

But they acknowledged, DOJ acknowledged that the complaint requested Title VI investigation. HUD says the complaint did not request a Title VI investigation. So the bottom line is HUD has used this paper trail to basically close off everything, the administrative process. Once HUD says no, it's no. no. And soon we took it, we sent it to Congress, we have this information and a lot of different laps. What we're basically doing is not only trying to fight for the Section 3 program that it can nationally be done, but the city, the state is becoming an example that I don't think they want to become.

I keep saying to them – please comply. When they don't. **(It sounds like corruption.)** It is. Individuals at the HUD office have told me – they said well, we were told that Section 3 is going to have to take a backseat to disparate impact because the government wanted disparate impact to be finalize this had been a battle for decades with the Fair Housing Act. And they did not like the threat that would be posed by this case in St. Paul. So they took what they could to basically defeat the threat, but it was it was us that they defeated. **(Yeah, it was people.)** The rights of us and then we asked them to go back and investigate, they refused to even open that book back up. And so now everything they're doing keeps trying to shut down everything that we're doing – we took the issue with the audit of the state. The state audit basically says that I mean the auditor of the Section 3 program nationally said that the city was in violation. We got a petition signed by 2 national organizations and a regional organization, in Minnesota that asked the federal government to come in and investigate the Title VI violations. Not just here but nationwide. We said we have that problem here in St. Paul and Minnesota. Please investigate the Title VI violations, and please investigate the false claim allegations that this audit has revealed, and please take corrective actions.

And so the federal government was asked because Title VI says we can't sue the federal government unless we petition the federal government to enforce the regulations and they don't. We petition the federal government to go in and do what their regulations say – enforce your own laws. When they didn't do it, then we sent it to Congress and said – we have exhausted every administrative remedy we have. We have done everything we can to get the federal government to enforce a program that will alleviate some of the disparities in our country based on laws that Congress passed. So we are constantly feeding them with this information.

(It sounds very, very frustrating. So I just want to make sure that when I'm here today that I get to hear anything that you want from the state or any recommendations you have for the state because that's who's going to be looking at this particular report. What do you want them to do? What do you think would make a difference if they did it differently?)

The recommendations would have to go a lot further than any conversation today - because just – I'll give my example of what we did. When we set up the recommendations for that VCA, in this community we went to all of the agencies and community groups that we were partnering

with and said to them – give us program ideals, show us what we need for capacity building. We went to Washington and said to them – we want this precedent setting model out of Long Beach. They said we will do – we won't do lost opportunities but we will do capacity building. We came up with programs for capacity building, and that's what we would look at – something – a program that would take some of the very same proposals that we put for St. Paul and look at on a statewide level what it would do and what these communities need because the idea of it is to take that which has been denied those communities and return to those communities.

When I met with Commission Hardy yesterday, talk about our statement to her was is that these low income businesses, these Black owned businesses are being squeezed out of business – being starved to death because they do not have the resources necessary. Their capacity has dwindled down to such a level where we're losing even the experience of our community. That's a resource that we're losing. Our Black contractors are slowly being put out of business – so we won't even have anybody who can hire. So we need to build the capacity of our community to compete in the marketplace. And for that to happen, we need to look at on the level of the workers because we keep getting from the contractors, you don't have anybody trained to do the work. You don't have any contractors able to do the work. You have so many reasoning that they come out with. We're saying go back and mitigate those conditions or those concerns by bringing and building the capacity of those contractors and set aside work that they can do to help them to then qualify for even greater projects. So there is a lot of need. And the needs have to be assessed before we can say here's the solution.

(Well, the organization that you were working on training people in the area, did you think about trying to get state contracts with that group?)

We were going after – we at the time were certified in federal programs. We was part of the TGB program at that time, and none of those things brought any opportunities. I mean we were on the TGB list. I don't think we did DBE at the time, but we were definitely TGB. We were a HUB zone which is a federal designation. We were Section 3. We was VOP. So we had all these designations of being a part of these programs.

But the problem is within the programs, the programs may have good intent, but the program has to then target – as the federal law states, it has to show a compelling interest where they can now do race conscious programs. And so at the present, this audit should reveal a compelling interest by showing there is such a disparity that the government has not only a right but a compelling interest in addressing this issue. And so they must meet certain standards – Croson, Croson Decision and all of that that allows them to do a program that will then set aside work – or designate opportunities to a particular people.

At the same time, just as we're working with this office here, one of the offices here, but it's solar power. Other areas of new development interest when it comes to the new jobs coming in to the marketplace. We want to start looking at how we get people in to that. We need to begin to give them the training and the opportunities to get into it. But like I was telling Jamie – it needs to go from – and I'll compare it to this. One of your presidential candidates was talking about this new package, almost like a stimulus package basically is what she's talking about.

But it's an infrastructure package. Well, she's going and talking about redeveloping this infrastructure – fixing roads, bridges, etc.

Well, when all of that come out – we're not going to be able to compete because we don't have the capacity to compete. Our workers are not ready. We don't have any training in those areas. And so what they have done or what has happened is we have been denied opportunities for so long – that when those opportunities come, then we were shut out because we're not prepared to avail ourselves. But the preparation – in the first place, it was denial of opportunities in the past that has caused the disparity that prevents us being people who take advantage of any rule changes in the future.

So just like the old WPA program back in the day – they need to then set aside work for these communities. Set aside training, set aside job opportunities. In essence, target them with by meeting their needs and putting them in a position that allows them to get work done. So until the government goes back and looks at the impact of these past policies, the economic impact, then they will never identify what the needs are to get a greater or a better return on their dollar. You can't just throw a project at someone and say – get it done. And then used against them when they are not able to. You have got to build their capacity. Now that's only a drop in the bucket of what we are looking at. Even here when we try to get the city to do – that was our {too soft} program.

Right now we are using low power FM in this neighborhood to start using as an information network. Allowing people in this nothing to have programming that can then start targeting their needs. In the early stages, we just got the antenna up probably about a few months ago. But that's part of our discussion – how we can get programming in that can allow us to then target these communities with information on jobs, on contracting opportunities – and begin to then look at how we can turn this into an opportunity for the community to grow.

Section 3 has planning opportunities. You've got all these nonprofits who's been fighting for these communities all this time. But they don't get paid very much to do it. These programs – most of these nonprofits that have been in this building –we now have several. We didn't have any in this building at one time. While they are Section 3 businesses, they can qualify as a contractor with the city because Section 3 unbeknown to many had a planning component that says the city has planning dollars for all of these developments, for regional grants, for grant applications. Ask them which way and what it's going to develop, they should utilize these small business – I mean these CDCs in their planning process – and also use their planning dollars to supplement. They weren't doing it.

The cities, the state, we took part of that regional planning grant. We finally got them to pay us portions to do it because there's the planning grant that they applied for – the regional planning grant – they had two million or five million. Well, while they had the five million, all of it was going to go large businesses who was doing the studies and this and that. These community groups they would come to them and copy their information – go back and put it in their report. While at the same time – they weren't paying these groups. So these groups who are in the community doing the work, fighting for the people aren't getting paid, but they should. So

we've been saying to them these groups you need to certify the Section 3 business – and thereby use the planning grants and then start planning for your local community. Start planning opportunities. Look at what jobs are going to come in. You're going to build a new building? X number of jobs are going to come out of there. Fight for your community because Section 3 requires that the people in your community get their opportunities first.
(So again, this is back to the responsibility of the people to do the things. Anything else you want?)

The problem is the people – not only have not been educated on the whole thing, but the government have not been enforcing it. So even when we have pressed for economic opportunities one of the impediments is having enforcement or the law and regulations to be enforced by city, state, and federal government. The cities who have a requirement to do it – sign dollars – sign certified they're going to do it – so they are held accountable. That's why we filed a false claim law suit against them. They weren't doing it. The state the same thing. The state has a responsibility when they file or provide money to the city to make sure the cities do. The federal government is sending them money. Had a responsibility to make sure that they do. The federal government wasn't enforcing.

We got the federal government to deny the city $18 million dollars because the city basically was not following their laws. So the federal government said yes, it is in our book that we can suspend funds. They suspended $18 million until the city decided to come into agreement. But it was actually the federal government's intent, from what we have seen to set the city up into this great loss issue that they could do the quid pro quo.

So a lot of what they did they used federal laws to their own interest, but the people of the city suffered the consequences because it wasn't for the interest of the persons.

Since you're doing all this taping, that's why I have been going on and on. But as a whole I would say to you that anybody looking at the federal laws if you look at the federal laws and the failure to enforce the laws, that the state must comply with, that the cities must comply with, there in – the laws have enough enforcement tools to ensure that opportunities would reach these communities. But when those enforcement tools aren't properly utilized, and/or not – when the federal government doesn't enforce, when the cities, state don't comply – then they become the impediment. And that's what noncompliance comes back to the – the impediment becomes the agency itself. HUD had a problem where the CPD – Community Planning and Development department wasn't doing – wasn't compliant with Section 3 and wasn't enforcing Section 3. And while they weren't enforcing, the Section 3 office is complaining we are trying to enforce, but this whole department is not – OIG came out with a report that says CPD you need to do your job and stop hindering this department, FHEO. And so when the – the department becomes the impediment, what do you do? When the agency refused to enforce their own laws, what do you do? When you request an agency to enforce their own laws, and you petition them to enforce their own laws which we have done and they don't do it – then you go to the Department of Justice, Department of Justice says that you had a right to do – but now what if the Department of Justice says go and file a law suit. But simple justice says that we should not have to go to federal court to do that. That Department of Justice should do this.

We are now pushing the Department of Justice more, and that's what we're doing in this particular matter with this audit. We are simply saying if this audit is not thorough and comprehensive, then especially when we ask for these things, then we want that known. If the audit shows that this problem is – the Governor has requested it to do – show us what the disparities are. Then, the federal laws state there is a process to ameliorating these conditions. Fixing these disparities. And if we show it as a disparity, we show that there's a law that says how to fix it, and if it's not enforced, if there's a federal government doesn't come in – we're going to be pointing at that. If the federal government comes in and the state don't comply, then the federal government has ways of addressing it – removing funds, whatever. We want the laws to be enforced.

There's supposed to be a disparity study is what I gather. Someone was telling me that Fondungallah was the one who was doing it, but I don't know that to be the case. And one of my concerns was if he's using this because the disparity study also does an analysis of impediment. If he's using your words towards that, then that's actually against the contract –

(I doubt if he is. He has not ever expressed to me that I need to have a list of impediments or anything like that.) Well, if he's asking you to look at barriers, then that's what he's doing. The state is doing it because any information that's provided to the state, the state must not only record it, but the state must provide it to HUD and any agency – federal agency that they're sending or receiving funds from. That's one reason why we want your study to be thorough because this must go to federal agencies. They can't ignore this. Now if you don't put something in, then we say to the state – why isn't this information a part of?

Now while that becomes the case, the disparity study – as you're saying – looking at the disparities on the statewide level, I haven't seen the paperwork on that. But we do want to know what that is about to make sure that it is {talking together}. But we also want this one because this one is they look at the laws and the procurement – affirmative action and human rights. But those laws are not separate from the actions that go – the laws are designed to enforce which means procurement. Who is getting contracts? What's preventing them from getting contracts? The federal government, the state – and city entered into a contract to sell the rights of the people in this community. Why isn't that being looked at? Because we're talking about human rights here. If the rights of the citizens of St. Paul have been ignored, if they were traded away on a federal quid pro quo, then that has to be a part of the information that comes out in this audit.

(Is there a way that the state of Minnesota could support you in that case?)

The state – we asked the state to basically request the federal government to investigate the improprieties that we have identified. And we haven't gone so far as the personal so the state can fight my fight for me. They really should have because the law of the state says if there's any individual whose human rights or civil rights have been denied, then it's the responsibility of the state to fight for that individual for the rights of the individual or the persons. So we asked them to intervene. But also because it is a larger issue. You have a protected class of people who all of their rights have been denied, and you are now saying you are looking into what

denying them their rights – but you refuse to look at the clear evidence that Congress and HUD and DOJ had admitted to. But yet, at the same time, the people in this community have suffered under.

And so if there is a clear violation of the civil rights of persons, then the State and the Governor has that responsibility to not only champion the cause of those people but to ensure that their rights are protected. And so we ask that in our petition too. And in our information sent to the Governor and to this audit. But if they don't do it we have options. We may file a writ. We may do a number of things. But the issue of it is, we are asking that this audit be clear and transparent. Be comprehensive and include this information because we have provided it to it. And once it's in it, DOJ is supposed to act upon it. The state it will be in their best interest to act upon it instead of DOJ having to cause them to act upon it. So it can either turn into that same protectionism that the city got where all of these evident violations were there but DOJ refused to – HUD refused to and the city refused to. Will that same thing happened with the state is what we're looking at.

And while that's the case, we are not just sitting on our hands saying oh, well, if nobody do anything. If nothing else, we're going to build a case. And if we build a case, we're hoping that the state will do what it said. The Governor said that's what he wanted to do. He wanted to see what's causing this disparity. And if you see a cause don't just be a monitor. Do something about it.
(I think that's why they were saying they really want recommendations. In that meeting that was the most important thing from the interviews was recommendations.)

And we understand that auditors have the right to recommend – and so we put in our letter – some recommendations that the Governor do certain things and that the auditors put in their report – recommendations that these issues be addressed. We know that the auditors don't have the authority or at least the power to investigate things on the federal level. But we have shown them enough evidence that these things exist. I mean I have to get back with the auditors because I gave them information of – but I have not given them the documents, and they have not even asked for them.

Yes, but that's why I said to them – if you can't handle this – Governor if this audit is going to be too overwhelming for them, bring in the federal government now. The Ferguson case – Ferguson Missouri…. - we talked with the individuals at Ferguson, talked with HUD down there, talked with DOJ. Let's see – I want to make sure that we're talking DOJ at that time. But basically, with HUD, we said to them – in Ferguson we got rioting. We just had rioting through 2016, '15, and you go on back for a number of years, we had rioting in this state based on Jamar Clark, Castille and others. We said to them, we have the same conditions that's happening in Ferguson and others. The federal government has a compelling interest to come in and determine what's causing this. Section 3 was actually first incorporated or first enacted by Congress because of the riots of 1968. When the Black community rioted, they asked the Kerner Commission – go see why. The Watts Riots – you know, national, remember '67. And so the federal – the Kerner Commission comes back and says because lack of opportunities. The Black community doesn't have jobs, doesn't have opportunities to advance. Economic opportunities

have been denied to them. So lack of economic opportunities, racial discrimination and police brutality are the 3 main reasons why these people are rioting.

We said to Congress, we said to HUD, we said to the state – basically you got the same conditions once again. You got rioting in the streets. You got police brutality and we got racial disparity and racial discrimination. You got the same conditions that required that Section 3 be put in place to give these people opportunities, to make them a part of the community and a contributing part – not just – someone who you receive tax dollars on their behalf, but also contributors to the tax base. And while they are contributing to the tax base, they should also be able to benefit from. So Section 3 was enacted for the same conditions that we are under and we've been asking them…that's why we keep focusing on Section 3. Section 3 has a lot more solutions for the state's problems. If they would but look at it– I see different departments trying to do this, DEED, DOT. But while do they keep trying to nibble away at this, if they would just look at what Section 3 is providing, they can then do the opportunities.

Let me give you one more, and then I'll try to shut my mouth for a second. The money that's coming to HRA for instance – and I was telling Commissioner Hardy this yesterday. While they're looking at jobs, they're looking at police brutality – or they're looking at the factor that the disparity in police departments – very few people in their being Black – Blacks have lack of opportunities. The federal grants for housing authorities has over the years changed to allow them to use HUD funds to actually pay the police department to do policing on public housing properties. So most public housing authorities utilize that grant for that.

Minneapolis did theirs differently. They used to do it too. But they did that differently. I'm going to combine the two. First off, because they use those HUD grants, if the police department – hire to do policing on public housing properties, the police department is supposed to comply with Section 3. In 2013, thereabouts, that determination was made for New York. Basically, New York was getting $750 million dollars that was going to the police department to police the housing authorities. HUD finally after complaints and requests – HUD finally acknowledged that police department – you were supposed to comply with Section 3 – which means the police department should either hire low income persons from those communities and train them or hire contractors from those communities who will provide security.

Minneapolis used to provide – use the police department to provide that security. Now Minneapolis actually let out a contract to security companies instead of paying the police department. They put out a contract – an RFP and security companies come in, apply – submit their bids and thereby they do the security. This provides individuals in that department – more people to the police department who can then be hired because you train these individuals. They have to have certain training before they can do security.

So this is a way of creating jobs that will then create opportunities for them to then be a part of and to change the look in that community from a White police force in a Black community – to a Black community for people policing their own issues.

(Brilliant.)

There's so many ways that Section 3 can address these issues. But they're not being complied with and so HRA has that same issue. They're on the list of being a large contractor with HUD when it comes to Section 3 properties, Section 3 covered funds. But yet at the same time, you got metropolitan police running around – are you using the Section 3 dollars to pay them to do it? Who is doing the policing and who from the communities are getting the jobs? So that's what we need to do – is start addressing how do we get the people in the communities to stop being – stop using them as a resource for getting money and start allowing them to participate in the tax dollars that you are being allocated on their behalf?

Basically, like I told somebody – now I'm not going to get into the Fair Trade issue – we'll get into that another time. But the overall issue is this is how you create opportunity. This is how you change the disparities. This is how you help people because this money has been going back out to the suburbs, and these communities are nothing more than a place for people to come in – nothing but a plantation. Because you've got all these people who basically their worth to the city is to get more money to continue doing the same thing for them. We need a roof put on that house over there. That's a Section 3 property. Okay, contractor come and do it, but the people in the community don't get a chance to do it. If this is going to be a place where money is spent and generating money through services, then people in the community need to be the one who benefits. **(That's so smart.)** That's what we need.

(You talked quite a bit about procurement and affirmative action areas here, and you haven't gotten really specific about human rights. You just talked generally about human rights, but in your experience, I'm real curious like if people have human rights complaints and they – yourself and others, want to file them – what happens? What is that like? What could be improved?)

When it comes to the state, I've not done – human rights complaints directly to the state. Now as sub recipient of the state, I file complaints with the city or hmm, I was trying to think do I do anything in Minneapolis? Minneapolis we didn't file complaints. We just went to them directly and began to see that they were in noncompliance, and they voluntarily said we will come into compliance. So they gave us X number of years now. I know that they still have some problems. I'm talking in areas where I was working – Section 3 in opportunities. But they have taken a more proactive role than the City of St. Paul did in the areas or issues that I had.

I know that the - let's see how do I want to do it? I almost want to extend back to the US Commission on Civil Rights. That was back in 2011, 2012. 2012 I think when we gave testimony to that commission. I would go back and take a look at that report that came out. It falls in the purview of where you are now. There was a number of us and others who gave testimony there. There's a study out – a report that came out that will probably help you. Especially if this is going to be a true review of the human rights program, then those testimonies, like I said, falls within your timeline and is surely fodder for your study. We did give testimony there, and that was 2012. But I know there's a host of others who may help to fill some of your numbers. But it is true that… let me not go no further in that direction.

Like I said when it comes to actually working directly in the human rights or civil rights complaint process here – our – most of my actions have been on the federal level – and reasoning, the federal Section 3 program, the federal civil rights laws are incorporated into the state laws. So the same applied, and the state has the same duties. While they do I can – I won't in any way seek to try to respond to the state's response – other than the lack of response. As I said in our – in the submittal that all of those things that I allege, all those things not only allege but has been proven in the congressional report proved out – all of those things happens under the shadow – right here in the state. So the state's human rights department never intervened.

The Human Rights Act does give the commissioner the responsibility or at least as a duty of his to investigate evidence violations of human rights. And he is to be knowledgeable of the federal civil rights laws that are also incorporated into his state laws, human rights laws. And so once he saw those violations against this whole community in St. Paul.

(Who is the commissioner right now do you know?) I want to say Lindsey. I got a feeling it is. **(I'll look it up.)** Okay, but the bottom line is - I should almost be able to spit that off my tongue, but that's alright. Bottom line is that while all of this was happening and all of this was in the press, it was in the newspapers, it was in the – in Congress, all of this was quite evident that this was happening in the state. And there's no way you can be an attorney and not see the improprieties. You can't work with the state and not see something happening in a community. And not allow the knowledge that you have of the Human Right Act to kick in to say that's got to be a violation.

But it turned into a lot of what I call protectionism. Everybody turned their head. Everybody just basically it was like a democrat vs. republican issue. The republicans seemed to be the one who was championing for us to say well, do you see this happening? But the whole issue was based on the federal government wanted this. The republicans didn't want the democrat's nominee to become the secretary of labor – so they fought on their behalf. But who fought for the rights of the people? And so even when I went before Congress, my whole point to them, I had no problem against disparate impact. I'm Black. Been there, done that. Suffered too. But while that being the case, I had a real problem with what you did to this community in the name of disparate impact. You can't just turn around and deny us all of our opportunities. We had fought for so much – the HUD had promised so much – I would just, the VCA that we got – HUD turned around and when they leveraged that VCA they took everything that we had fought for and traded it and then took everything. We had went to the next stage of saying we're going to take this money and use it. HUD said you will be made whole through the qui tam case or the False Claim Act case, and they leveraged that. All of the congressional reports shows the conversations in HUD and other places as if they knew. They just said what are you going to do for the relator? His attorney has to be paid. We're looking at the issue that the attorney had gotten paid. Because in one sense the attorney basically trades away but in another we see where I got attorneys here – who I ask for my records? They basically said he said - I mean his records don't show that he represented me in the false claim act case. Over a 3 year period. And they didn't - the attorney out of Washington was not listed in their records.

So it's like okay all of my rights – but my rights wasn't just it. My rights and what I'm fighting

for have been traded away. And the federal government is basically turning their head. The state is turning their head. It turns into a political issue. And I keep pointing to you the civil rights violations. So to me, the state's Human Rights Act had to have been kicked in or being half applied. And we're asking them to apply it at this point. We're saying even if somehow you missed this – we just put it on your table. And civil rights do not have a time table on it. Any investigation of civil rights violations are supposed to be investigated upon knowledge of it. And so that being the case, like I said, this audit has the potential of being damning to the state – as well as a catalyst for getting some changes. That's why we keep saying to the Fondungallah Group – we don't want you to play with this thing. You don't turn around and ignore these issues. We're putting them out there. We're going to ask to see your records where you have indicated that you received this. If you received it, then the state must respond to it. The state must pass this information on to the federal government because the federal government says that they must receive all civil rights violations and that they must record them. And if upon any audit that must become part of federal record any time – they apply for funds, they must be taken into account. The risk factor of whether or not there's civil rights violations in the past and whether or not this group was considered a high risk for civil rights violations. So and the problem for me is that somehow we didn't know this, and it's been going on all the time. That's what bothers me.

It isn't the passion of wanting to do this, but it's like, people knew this. They knew…somebody decided, well if they don't know, we won't tell them. Which means, I can imagine how many more things we don't know about, that's going against us? It's a sad thing when, and I know, somebody else was protecting their interest. It is with in their interest, that their money continue to flow that way, but they don't see the greater good.

It's not just about me, I wasn't just fight for black, or for white. It's people who needed opportunity. We went to the unions and said to them – according to Section 3, and they say - oh, no we're Section 3 now. We just got through going through the same recession that you all did so we can qualify. But the benefits are, we're going to take care of the billing benefits. We're still not going to give you anything. But the issue becomes how do you then fight for something where individuals are doing – protecting their self-interests? We're at a point now where all of a sudden, the labor force is changing. Most of the white contractors and their families and members have gotten older. They have less on the labor force that was getting into construction. But there's no guarantee that the black community is going to even get into that because we have been stigmatized to say they are non-working. They are lazy. They won't do. And I know people who have gone out and fought years trying to get in on projects. Get maybe 3 months out of the year worth of work.

People sitting on the bench and wait until – last hired, first fired. And then at the same time – expected to stay in that industry, you can't even keep your skill level up. And soon we lose those resources. And so others will now be put in because nobody will ever admit that we did this to you so you'll be labeled as Blacks who basically won't work, don't have the skills, and so we're going – we're bringing in Somalis, we're bringing in Native Americans – we'll bring in anybody else, the Asians, anybody else – they're great workers. But the truth of the matter is you can't keep fighting something and at the same time nobody answering the call. And sooner

or later you give up. So it is. It's a big issue. And as such – the thing becomes how do you address this? And like I said this audit and things like this – I mean it's a great thing the Governor is doing it. But hope that he don't bow to the pressures that we hear coming from every other group out there that's trying to shut this thing down. And that Fondungallah and his group don't turn around and just hand something in real quick because everybody I keep talking to – I keep saying to them – you got to scrutinize this thing. You got to take a look and see – I heard people saying – they got to drop out on the board – on the working group.

They say, we put issues before the Governor's office and they won't even acknowledge them, things like that. So if that be the case, I say to them – you need to stay in there because this audit has the potential of being read by others and presenting at – making a presentation that we got to be able to use whether it is good or bad. If it's bad we point out how bad it is.

Yeah, the first day – when – before the Governor and we were there we had a houseful. We had NAACP from across the state. We had a whole houseful of people who said they were there to support and work on that. Ever since then I see the numbers dropping. That's a real problem. I have everything – most of the things that I provide to the working group, I mean to the auditors, I try and include the working group just so they can be aware of what's going on because I don't want someone taking stuff and hiding it. I haven't just made accusations that I could make. But I'm trying to work with the working group and work with the state – in a way to allow them to see what it is that we can get out of this and what we're looking for. If there's improprieties like somebody said yesterday – if there are improprieties, let them come out. Let it be. Let the state deal with it. But if the state don't want to deal with it, then we got a bigger problem. So, transparency is part of what I am asking others to do, but they're also staying engaged.

I'm hoping that they'll also go ahead and consider the request for congressional intervention in this thing just because the issues arise to that level anyway. And since they rise to that level – bring DOJ in, and then they can, because they can't investigate the HUD issues or the Department of Justice issues on the disparity that happened to our community based on the quid pro quo. They can't investigate that here other than the state's participation. But if they bring HUD back in or request HUD and DOJ to come in, then they can include that – consider the disparities

Profiles of Participants:

Working Group Members: N=9	Women: N=33 Men: N=26
State employees: N=16 City Employees: N=4 Human Rights commissioners: 3 Contractors or Contractor Reps: N=8 Social or Community Service: N=22 General Population: 8 including 2 of the HRC	African American: N=17 Somali and other African immigrants: N=4 Latino: N=4 Asian: N=3 Native American: N=3 White: N=27
Person with disability: N=2	Works with people with disabilities: N=6

OFFICE OF AUDIT
REGION 7
KANSAS CITY, KS

U.S. Department of Housing and Urban Development

Section 3 for Public Housing Authorities

2013-KC-0002

JUNE 26, 2013

U.S. DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT
OFFICE OF INSPECTOR GENERAL

Issue Date: June 26, 2013

Audit Report Number: 2013-KC-0002

TO: Sara Pratt, Deputy Assistant Secretary for Enforcement and Programs, ED

Lindsey Reames, Deputy Assistant Secretary for Field Operations, PQ

//**signed**//
FROM: Ronald J. Hosking, Regional Inspector General for Audit, 7AGA

SUBJECT: HUD Did Not Enforce the Reporting Requirements of Section 3 of the Housing and Urban Development Act of 1968 for Public Housing Authorities

Attached is the U.S. Department of Housing and Urban Development (HUD), Office of Inspector General's (OIG) final results of our review of HUD's oversight of Section 3 of the Housing and Urban Development Act of 1968 for public housing authorities.

HUD Handbook 2000.06, REV-4, sets specific timeframes for management decisions on recommended corrective actions. For each recommendation without a management decision, please respond and provide status reports in accordance with the HUD Handbook. Please furnish us copies of any correspondence or directives issued because of the audit.

The Inspector General Act, Title 5 United States Code, section 8L, requires that OIG post its publicly available reports on the OIG Web site. Accordingly, this report will be posted at http://www.hudoig.gov.

If you have any questions or comments about this report, please do not hesitate to call me at 913-551-5870.

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June 26, 2013

HUD Did Not Enforce the Reporting Requirements of Section 3 of the Housing and Urban Development Act of 1968 for Public Housing Authorities

Highlights

Audit Report 2013-KC-0002

What We Audited and Why

We reviewed the U.S. Department of Housing and Urban Development's (HUD) oversight of Section 3 of the Housing and Urban Development Act of 1968 due to concerns over HUD's ensuring economic opportunities for low- and very low-income persons. Our audit objective was to determine whether HUD enforced the requirements of the Section 3 program for Recovery Act Public Housing Capital Fund recipients.

What We Recommend

We recommend that HUD (1) implement the new HUD-60002 submission and tracking system, (2) design a method to follow up on missing and inaccurate information in HUD-60002 submissions, (3) publish final regulations, and (4) require housing authorities to support $26 million in payments. We also recommend that HUD (1) establish policies and procedures that implement a system of escalating administrative measures, including progressive remedies and sanctions, to be applied against housing authorities that do not submit a HUD-60002 and (2) establish a methodology to incorporate Section 3 compliance in risk assessments.

What We Found

HUD did not enforce the reporting requirements of the Section 3 program for Recovery Act Public Housing Capital Fund recipients. Specifically, HUD failed to collect Section 3 summary reports from all housing authorities by the required deadline and verify their accuracy. In addition, it did not sanction housing authorities that failed to submit the required reporting information. As a result, 1,650 nonsubmitting housing authorities may have falsely certified compliance. In addition, they did not provide HUD and the general public with adequate employment and contracting information.

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BACKGROUND AND OBJECTIVE

The U.S. Department of Housing and Urban Development's (HUD) Office of Fair Housing and Equal Opportunity (FHEO) administers Federal laws and establishes national policies to ensure that all Americans have equal access to the housing of their choice. In addition, it interprets policy, processes complaints, performs compliance reviews, and offers technical assistance to local housing authorities and community development agencies regarding Section 3 of the Housing and Urban Development Act of 1968.

Section 3 is HUD's policy for providing preference to low- and very low-income residents and the businesses that employ them. Section 3 residents live in the community where applicable HUD funds are spent. Section 3 businesses substantially employ these residents for new employment, training, and contracting opportunities created from the use of covered HUD funds. All public housing funds administered by the Office of Public and Indian Housing (PIH) are subject to Section 3 while certain programs administered by the Office of Community Planning and Development, Multifamily Housing and the Office of Healthy Homes and Lead Hazard control are subject to these requirements within certain limits.

Each recipient (and its contractors, subcontractors, or subrecipients) is required to comply with the requirements of Section 3 to the greatest extent feasible. These requirements include attempting to ensure that a minimum of 30 percent of all new jobs created go to Section 3 residents, 10 percent of all construction contracts are awarded to Section 3 businesses, and 3 percent of all non-construction contracts are awarded to Section 3 businesses. In addition, recipients are required to document their efforts to comply with these thresholds if they fail to meet them and annually submit a summary report to HUD on their Section 3 compliance.

On February 17, 2009, the President signed the American Recovery and Reinvestment Act, which included a $4 billion appropriation in Public Housing Capital Fund grants to public housing agencies. The first and most important goal of the Recovery Act was to preserve and create jobs and promote economic recovery. Since Recovery Act funding was specifically intended to create jobs and other economic opportunities for those most impacted by the recession, compliance with the requirements of Section 3 was critical. In addition, in fiscal years 2011 and 2012, HUD awarded $2.04 billion and $1.875 billion, respectively, in Public Housing Capital Fund grants. These grant funds are available for capital and management activities, including the development, financing, and modernization of public housing projects. These programs are administered by PIH.

FHEO enters into voluntary compliance agreements (VCA) when it concludes that recipients violate Section 3 requirements. These VCA's list all the actions that they must take to come into compliance. FHEO field offices conduct compliance or complaint reviews that lead to the implementation of VCA's.

Our audit objective was to determine if HUD enforced the requirements of the Section 3 program for Recovery Act Public Housing Capital Fund recipients.

RESULTS OF AUDIT

Finding 1: HUD Did Not Enforce the Reporting Requirements of the Section 3 Program

HUD did not enforce the reporting requirements of the Section 3 program for Recovery Act Public Housing Capital Fund recipients. FHEO lacked a collection system able to identify missing and inaccurate reports, and it did not have procedures to follow up on submissions and refer to PIH any noncompliant housing authorities. As a result, 1,650 of 3,102 public housing agencies failed to submit their Section 3 annual summary reports and potentially falsely certified compliance with Section 3. In addition, they did not provide HUD and the general public with adequate employment and contracting information.

Requirements Not Enforced

HUD did not enforce the reporting requirements of the Section 3 program for Recovery Act Public Housing Capital Fund recipients. In addition, it did not sanction housing authorities that failed to submit the required reporting information.

HUD-60002 Form Collection

FHEO failed to collect the required Section 3 Annual Summary Reports (form HUD-60002) from all housing authorities by the deadline. It did not fully track housing authorities that had not submitted their reports by the deadline. As of October 23, 2012, HUD had not collected HUD-60002 forms for 2011 from 1,650 of 3,102 (53 percent) housing authorities and had not followed-up with them.

Each housing authority is responsible for submitting form HUD-60002 in accordance with 24 CFR (Code of Federal Regulations) 135.90, which requires housing authorities to submit this form to HUD by January 10 of each year. The requirements of Section 3 apply to all housing authorities regardless of size or the number of units, except those that administer only Section 8 (see appendix C).

HUD-60002 Form Verification

FHEO did not verify the accuracy of the forms or follow up on clearly noncompliant information. For example,

- Thirty-six HUD-60002 submissions reported more Section 3 jobs created than the total number of jobs created.
- One housing authority reported 26 total new hires and no Section 3 new hires.
- Another reported 11 total new hires and no Section 3 new hires.

- Another reported that it awarded more than $170 million in total construction contracts and $257 million in non-construction contracts, none of which went to Section 3 business concerns. Since the goal for construction contracts is 10 percent and 3 percent for non-construction contracts, it should have awarded at least $24.71 million in contracts to Section 3 businesses.
- Another reported that it awarded more than $12.2 million in total construction contracts, none of which went to Section 3 business concerns. It should have awarded at least $1.22 million in construction contracts to Section 3 businesses.
- Two reported that they each awarded about $1.5 million in total nonconstruction contracts, none of which went to Section 3 business concerns. Each should have awarded at least $45,000 in non-construction contracts to Section 3 businesses.

In all these cases, the housing authorities did not provide on their summary reports any justifications for failing to meet minimum Section 3 thresholds. In total, four of the housing authorities awarded more than $442 million in contracts of which at least $26 million should have been awarded to Section 3 businesses.

Lack of Sanctions for Noncompliance

HUD did not sanction housing authorities that failed to submit the required reporting information. These housing authorities' HUD assessment scores, troubled status, or availability of funding was unaffected by their failure to submit their HUD-60002 reports. They continued to conduct business as usual in spite of their failure to comply with Section 3. PIH has not sanctioned any public housing authority for Section 3 noncompliance as this is not an area they normally enforce. Section 3 is typically viewed as the domain of FHEO.

Lack of Appropriate Reporting System and Procedures

FHEO lacked a collection system able to identify missing and inaccurate reports, and it did not have procedures to follow up on submissions and refer to PIH any noncompliant housing authorities.

HUD-60002 Collection System

FHEO lacked an electronic collection system able to identify missing and inaccurate HUD-60002 forms. The system used by FHEO during the audit period had several weaknesses:

- It allowed housing authorities to submit reports that did not indicate efforts to meet the minimum requirements.
- It allowed housing authorities to report logically impossible data such as Section 3 jobs created that were larger than total jobs created.

- It allowed data entry errors in the housing authority name, location, grant number, and grant amount fields.
- It did not allow housing authorities to view their previous HUD-60002 submissions.
- It did not produce immediate reports that let FHEO management know which housing authorities had not submitted their reports.
- It did not notify delinquent housing authorities that they had not submitted their reports.

To determine which housing authorities had submitted HUD-60002 forms, FHEO staff had to download the raw data from the system and then manually determine which ones had submitted and which ones had not yet submitted their reports. FHEO developed a new system, which will address many of the weaknesses in the current system. The system is expected to go live in June 2013. FHEO plans an additional future system enhancement, which will more completely address the weaknesses in the current system.

Lack of Procedures

FHEO had not established procedures to follow up on missing or inaccurate information in HUD-60002 submissions or to refer housing authorities to PIH when they fail to make the required submissions or corrections. After conducting on-site compliance reviews or complaint investigations, FHEO negotiates VCAs with housing authorities to resolve the findings. Outside this practice, FHEO lacks procedures for broader follow up and referral. PIH would have to administer monetary sanctions since it administers the capital fund program. In addition, the sanctions available to FHEO, based on interim regulations, only included debarments, suspensions, and limited denials of participation, which were not very effective against housing authorities. These interim regulations have been in place since 1994.

FHEO had developed new draft regulations to establish greater sanctions for noncompliance, including recapturing, ineligibility for, and withholding funding to strengthen the overall effectiveness of Section 3. However, FHEO has been unable to get departmental clearance for the proposed new regulations due to disagreements with HUD's Office of Community Planning and Development on the interpretation of the regulations.

False Certification and Inadequate Information

For 2011, 1,650 housing authorities could be falsely certifying compliance. In addition, they did not provide HUD and the general public with adequate employment and contracting information.

The housing authorities that did not submit their Section 3 annual reports potentially submitted false Certifications of Compliance (form HUD-50077) with

their annual plans. With this form, housing authorities certify that they will comply with all of the requirements of Section 3 as well as many other program requirements for the upcoming year. When housing authorities have not been complying with the Section 3 reporting requirement for prior report periods, they may not comply with the requirements going forward. Additionally, on the form, housing authorities certify that they are in compliance with all applicable Federal statutory and regulatory requirements. Housing authorities submit the form HUD-50077 with their annual plans in order to receive their annual funding. These certifications carry a warning that HUD will prosecute false claims and statements and convictions may result in criminal or civil penalties or both.

In addition, these housing authorities did not provide HUD and the general public with adequate information. HUD needed that information to determine whether Section 3 effectively generated opportunities for economically disadvantaged people and businesses. In addition, the housing authorities deprived the public of information that the Section 3 regulation entitled it to receive.

Conclusion

HUD did not enforce the reporting requirements of the Section 3 program for Recovery Act Public Housing Capital Fund recipients. It must remedy this situation to ensure that these housing authorities meet Section 3 requirements for their future capital funds. FHEO must have a better system and procedures for tracking, following up on, and referring Section 3 reporting deficiencies. In addition, PIH could develop more effective sanctions that impact housing authorities' scoring and funding. For example, if HUD stops accepting annual certifications from housing authorities that have not submitted their HUD-60002 reports, it will encourage them to submit their forms so they can receive their annual funding.

Recommendations

We recommend that the Deputy Assistant Secretary, Enforcement and Programs, Office of Fair Housing and Equal Opportunity,

1A. Implement the new HUD-60002 submission and tracking system that has been in development as well as the planned system enhancement.

1B. Establish procedures to follow up on missing and inaccurate information in HUD-60002 submissions.

1C. Establish procedures regarding when to refer to PIH any housing authorities that fail to make the required submissions or corrections.

1D. Resolve issues with the Office of Community Planning and Development and complete the process to publish final regulations for 24 CFR Part 135.

1E. Require the six housing authorities included in this finding that reported Section 3 noncompliance to provide justification or support that they met the goals. If they cannot show compliance, enter into a voluntary compliance agreement to bring their Section 3 programs into compliance, or refer them to PIH for repayment of the $26 million that should have been used for Section 3.

We recommend that the Deputy Assistant Secretary, Field Operations, Office of Public and Indian Housing,

1F. Establish policies and procedures that implement a system of escalating administrative measures, including progressive remedies and sanctions, to be applied against housing authorities that do not submit a HUD-60002 when noncompliance is reported to PIH by FHEO.

1G. Establish a methodology to incorporate Section 3 compliance (based on reporting compliance data from FHEO) in risk assessments for housing authorities that receive capital fund grants.

SCOPE AND METHODOLOGY

To accomplish our objective, we

- Reviewed relevant laws, regulations, and HUD guidance,
- Interviewed HUD staff, and
- Reviewed HUD-60002 submissions.

In addition, we reviewed Section 3 compliance review letters of finding issued, complaints processed, and voluntary compliance agreements executed by HUD in 2011 and 2012. We also observed a compliance review in January 2013.

We obtained from FHEO a download of 4,967 records of HUD-60002 submissions. We then sorted by construction contracts, non-construction contracts and jobs created to identify PHAs that had 1) the largest total dollar amount of construction contracts awarded and the lowest amount of Section 3 construction contracts; 2) the largest total dollar amount of non-construction contracts awarded and the lowest amount of Section 3 non-construction contracts; 3) the highest amount of total jobs created and the lowest number of Section 3 hires. We selected two PHAs from each category by sorting and taking the top two that did not list their efforts towards meeting the requirements. We only considered entities that received PIH funding. We then reviewed all the submissions from those PHAs.

Section 3 rules also apply to community planning development entities such as cities and municipalities. We did not review these entities because it was outside the scope of the audit.

We relied in part on data maintained by HUD's Section 3 Summary Report System. We determined that the computer-processed data were sufficiently reliable for our purpose.

We performed our audit between October 2012 and March 2013 at HUD's office in Washington, DC, as well as at the Orlando Housing Authority at 390 North Bumby Avenue, Orlando, FL. Our audit generally covered the period January 1, 2011, through October 31, 2012.

We conducted the audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

INTERNAL CONTROLS

Internal control is a process adopted by those charged with governance and management, designed to provide reasonable assurance about the achievement of the organization's mission, goals, and objectives with regard to

- Effectiveness and efficiency of operations,
- Reliability of financial reporting, and
- Compliance with applicable laws and regulations.

Internal controls comprise the plans, policies, methods, and procedures used to meet the organization's mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations as well as the systems for measuring, reporting, and monitoring program performance.

Relevant Internal Controls

We determined that the following internal controls were relevant to our audit objective:

- Controls to ensure that all public housing authorities submit form HUD-60002 for Recovery Act Public Housing Capital Fund activities to HUD by January 10 of every year.
- Controls to ensure that all public housing authorities properly and accurately report Section 3 Recovery Act Public Housing Capital Fund activities to HUD.

We assessed the relevant controls identified above.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, the reasonable opportunity to prevent, detect, or correct (1) impairments to effectiveness or efficiency of operations, (2) misstatements in financial or performance information, or (3) violations of laws and regulations on a timely basis.

Significant Deficiency

Based on our review, we believe that the following item is a significant deficiency:

- HUD lacked a collection system able to identify missing and inaccurate Section 3 reports and it did not have procedures to follow up on submissions and refer to PIH housing authorities that were not properly reporting.

APPENDIXES

Appendix A

SCHEDULE OF QUESTIONED COSTS

Recommendation number	Unsupported 1/
1E	$26,025,191

1/ Unsupported costs are those costs charged to a HUD-financed or HUD-insured program or activity when we cannot determine eligibility at the time of the audit. Unsupported costs require a decision by HUD program officials. This decision, in addition to obtaining supporting documentation, might involve a legal interpretation or clarification of departmental policies and procedures.

Appendix B

AUDITEE COMMENTS AND OIG'S EVALUATION

Ref to OIG Evaluation **Auditee Comments**

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-2000

ASSISTANT SECRETARY FOR
FAIR HOUSING AND EQUAL OPPORTUNITY

MEMORANDUM FOR: Ronald J. Hosking, Regional Inspector General for Audit, 7AGA

FROM: Bryan Greene, Acting Assistant Secretary for Fair Housing and Equal Opportunity, E

SUBJECT: Response to Discussion Draft Audit Report — Section 3 for Public Housing Authorities

This memorandum responds to your May 6, 2013, communication seeking comments from the Office of Fair Housing and Equal Opportunity (FHEO) on the Office of Inspector General's (OIG) Discussion Draft Audit Report concerning the review of FHEO's oversight of Section 3 of the Housing and Urban Development Act of 1968 (Section 3) for Recovery Act Public Housing Capital Fund recipients. FHEO appreciates the opportunity to provide comments.

The OIG's Discussion Draft Audit Report concludes that HUD:

1. Did not enforce the reporting requirements of the Section 3 program for Recovery Act Public Housing Capital Fund Recipients;
2. Lacked a collection system able to identify missing and inaccurate reports;
3. Did not have procedures to follow up on submissions and refer to PIH any noncompliant housing authorities; and
4. Failed to ensure that Public Housing Authorities did not make false certifications or provide HUD and the general public with inadequate employment and contracting information.

FHEO's comments on each of the OIG's findings are provided below.

ENFORCEMENT OF REPORTING REQUIREMENTS OF THE SECTION 3 PROGRAM FOR RECOVERY ACT PUBLIC HOUSING CAPITAL FUND RECIPIENTS:

In recent years FHEO has made significant progress with enforcing Section 3 reporting requirements for all covered recipients of HUD funding. Specifically, in 2006 only 4% of all recipients were complying with the Section 3 reporting requirements. By building strong collaborations with Headquarters and Field staff in the offices of Public and Indian Housing (PIH); Community Development and Planning (CPD); and, Field Policy and Management (FPM), FHEO successfully increased overall reporting rates to approximately 86% in 2010.

Ref to OIG Evaluation **Auditee Comments**

As noted in the OIG's Discussion Draft Audit Report, when the investigation commenced on October 12, 2012, only 53% of Recovery Act Public Housing Capital Fund recipients had submitted Section 3 reports to HUD. However, on November 15, 2012, FHEO issued a memo that had been pending release to PIH, CPD, and FPM requesting them to contact grantees regarding delinquent 2010 and 2011 Section 3 reports. As a result, more than 82% of all covered recipients submitted Section 3 annual reports to HUD for the 2011 reporting period, 72% of which are recipients of Recovery Act Capital Funds. Notwithstanding, the timely submission of reports continues to be one of the biggest challenges impacting Section 3 enforcement.

To satisfy OIG's concerns, FHEO will implement OIG's recommendation to establish procedures to refer to PIH any housing authorities that fail to make the required Section 3 annual report submissions or corrections.[1]

Also, the Deputy Secretary recently mandated that the Section 3 revised final rule be fast-tracked within the Department for expedited publication.[2]

LACK OF COLLECTION SYSTEM TO IDENTIFY MISSING AND INACCURATE REPORTS

In recent years FHEO devoted a significant amount of time to providing technical assistance and outreach to PHAs to enable them to submit their Section 3 reports to HUD. Now that reporting rates are increasing, FHEO recently began analyzing the data that is being submitted in Section 3 reports and making appropriate policy decisions.

One of FHEO's main conclusions is that the current Section 3 reporting system does not have the capacity to track missing reports or to prevent recipients from submitting inaccurate data. Unfortunately, the current Section 3 reporting system was built in the 1990's and operates on outdated software which caused FHEO staff to carry out manual tracking processes that were inefficient and ineffective. Further, the system lacks quality control features to prevent recipients or hackers from submitting erroneous and inaccurate information that compromises the overall integrity of all of the data collected.

In FY 2012, FHEO developed a new Section 3 reporting system that addresses these issues and significantly improves the management and oversight of covered recipients. The new Section 3 reporting system is automatically populated with data from existing HUD systems to reduce recipient burden and eliminate user errors. For instance, this system uploads real-time data from HUD's Line of Credit Control System (LOCCS) showing the actual dollar amount of HUD funds that covered recipients have drawn down during each fiscal year. The new Section 3 reporting system also prevents recipients from entering invalid outcome data and will enable FHEO to immediately identify noncompliant recipients so appropriate actions can be taken.

[1] See recommendation #1C in OIG Discussion Draft Report.
[2] See recommendation #1D in OIG Discussion Draft Report.

Ref to OIG Evaluation **Auditee Comments**

Comment 1

This new Section 3 reporting system is currently pending release upon approval by the Office of the Chief Information Officer (OCIO). FHEO believes that this system will implement the recommendation set forth in the OIG's Discussion Draft Audit Report.[3]

Anticipated Completion Dates:

- New Section 3 reporting system operational: June 21, 2013
- Training for PHAs and other covered grantees: July-September 2013
- Section 3 reports submitted by recipients of Recovery Act Capital Funds for the 2013 reporting period: January 10, 2014

FAILURE TO HAVE PROCEDURES TO FOLLOW UP ON SUBMISSIONS AND REFER TO PIH ANY NONCOMPLIANT HOUSING AUTHORITIES

Comment 2

While FHEO has not followed up with PHAs regarding their Section 3 reports or referred any Recovery Act Public Housing Capital Fund recipients to PIH to be penalized for their failure to comply with the Section 3 reporting requirements in recent years, our office shares the OIG's concern that the lack of penalties for failing to submit timely Section 3 reports gives PHAs the false impression that there are no consequences for noncompliance. Unfortunately, FHEO is often at a disadvantage for enforcing Section 3 requirements upon PHAs because our office does not provide funds to these entities and does not have the direct authority to impose penalties upon them.

In the coming weeks FHEO will be implementing OIG's recommendation to develop procedures to follow up on missing and inaccurate information submitted by PHAs on faint HUD-60002.[4] Since developing appropriate procedures will require management decisions, FHEO is unable to provide an anticipated completion date at this time.

Additionally, as previously mentioned, FHEO is currently implementing the Deputy Secretary's directive to take steps to expeditiously enter a revised Section 3 final regulation into departmental clearance. The revised Section 3 final regulation will also include any subsequent management decisions that are directly related to the findings of the OIG's Discussion Draft Audit Report.

FAILURE TO ENSURE THAT PUBLIC HOUSING AUTHORITIES DID NOT MAKE FALSE CERTIFICATIONS OR PROVIDE HUD AND THE GENERAL PUBLIC WITH INADEQUATE EMPLOYMENT AND CONTRACTING INFORMATION

Generally, FHEO agrees with the OIG's finding and supports any efforts that will ensure that PHAs do not make false certifications to HUD or that will ultimately improve our ability to provide adequate information about Section 3 covered employment and contracting opportunities.

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[3] See recommendation #1A in OIG Discussion Draft Report.
[4] See recommendation #1C in OIG Discussion Draft Report.

Ref to OIG Evaluation **Auditee Comments**

Comment 3

To satisfy OIG's concerns, FHEO will work with PIH to implement OIG's recommendation to require the six PHAs identified in the Discussion Draft Audit Report that reported Section 3 noncompliance to HUD to provide justification or evidence demonstrating that they met the minimum numerical goals[5]. If these PHAs are not able to show compliance, FHEO will take steps to enter into voluntary compliance agreements (VCAs) to address our concerns.

With respect to OIG's recommendation to refer to PIH any of the six noncompliant PHAs that do not enter into VCAs with HUD to resolve outstanding areas of noncompliance to PIH for appropriate action, FHEO will have to coordinate with appropriate persons in PIH to make management decisions. At this time, FHEO is waiting to receive contact information from the OIG to implement this recommendation. Therefore, FHEO is not able to provide an anticipated timeframe for carrying out this portion of OIG's recommendation. However, FHEO can provide the following anticipated actions and completion dates:

- Contact the six PHAs referenced in the OIG report to request either a justification for their failure to comply with the Section 3 requirements or evidence demonstrating their compliance: June 14, 2013
- PHA responses due to FHEO: June 28, 2013
- Assess responses and supporting materials received: July 1-26, 2013
- Notify PHAs about outstanding areas of noncompliance: August 16, 2013
- FHEO Field office staff will coordinate with PHAs to enter into VCAs to address areas of noncompliance: September 30, 2013

CONCLUSION:

FHEO should have monitored timely reporting requirements of the Section 3 program for Recovery Act Public Housing Capital Fund recipients. As indicated in our response, FHEO shares the concerns identified by the OIG and has been taking proactive steps to address them since FY 2010. Notwithstanding, FHEO believes that implementing the recommendations set forth in the OIG's Discussion Draft Audit Report will ultimately strengthen the overall effectiveness of Section 3.

FHEO will keep the OIG apprised of our progress as we work to implement your recommendations. If you have any questions or need any additional information, please contact Charles Montgomery, FHEO Audit Liaison Officer, at (202) 402-6916, or Staci Gilliam, Director, Economic Opportunity Division, at (202) 402-3468.

Ref to OIG Evaluation **Auditee Comments**

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-5000

OFFICE OF PUBLIC AND INDIAN HOUSING

MEMORANDUM FOR: Ronald J. Hosking, Regional Inspector General for Audit, 7AGA

FROM: Lindsey S. Reames, Acting Deputy Assistant Secretary for Field Operations, PQ

SUBJECT: Audit of Section 3 in the Public Housing Capital Fund

This memorandum is in response to the draft audit report provided by the Office of the Inspector General ("OIG") containing the findings of its audit of public housing agency ("PHA") compliance with Section 3 requirements in the administration of the Public Housing Capital Fund American Recovery and Reinvestment Act grants. The Office of Field Operations appreciates the opportunity to provide its opinion before the issuance of a final audit report and has prepared these comments in conjunction with the program office, the Office of Public Housing Investments, which administers the Capital Fund. Based on the facts, as relayed in the draft audit report and in discussions with OIG staff, PIH suggests the following changes be made before the issuance of the final audit report.

As discussed with OIG staff, PIH suggests alternative recommendations. PIH and OIG agreed that combining 1F and the former 1G resulted in a workable outcome that realized program oversight objectives within the purview of PIH's authority. Upon further analysis, PIH suggests that the former 1H (now 1G) also be incorporated into this recommendation. As discussed, the new 1F would require PIH commit to developing a set of policies and procedures that would involve an escalating series of actions designed to bring PHAs into compliance with the Section 3 reporting requirement. PIH suggests: "Establish policies and procedures that implement a system of escalating administrative measures to be applied against housing authorities that do not submit a HUD-60002 when noncompliance is reported to PIH by Fair Housing and Equal Opportunity."

Based on a comment made previously, OIG agreed that Section 3 compliance would be a useful factor in the risk assessment tool PIH is currently developing and refining. PIH is committed to developing its risk assessment tool with an aim to identifying potential management weaknesses before an incident of noncompliance. PIH hopes that the risk assessment Section 3 indicator would serve as an alert that will prevent the need for any programmatic remedies or sanctions, with the goal of providing technical assistance to avoid the failure to report. PIH suggests: "After the testing and implementation of FHEOs tool is completed and upon receipt of reporting compliance data from FHEO, establish a methodology to incorporate Section 3 compliance in risk assessments for PHAs that receive capital fund grants."

Ref to OIG Evaluation **Auditee Comments**

Comment 4

Comment 5

PIH requests additional changes to the audit report be made consistent with the new recommendations. Specifically, PIH requests that references to the Department's not penalizing PHAs for noncompliance be revised to reflect that PIH's role is to engage the PHAs in order to improve compliance. As discussed, it's not clear what penalties PIH could impose for a failure to submit the form. PIH suggests references to penalizing PHAs be changed to "take administrative measures." Consistent with that recommendation, PIH recommends that "administer monetary sanctions" on page six be amended to "provide technical assistance and encourage compliance through programmatic measures."

Comment 6

Finally, PIH suggests the paragraph on the top of page seven be revised to reflect the shared view of PIH and OIG that an historical failure to report on Section 3 is a good prospective risk indicator. PIH believes that the form HUD-50077 certification of future compliance may provide the appropriate prompt for PIH to engage historically noncompliant PHAs, but it is the risk assessment that will lead to PIH action. PIH suggests that references to potentially false certifications be omitted and the focus of the paragraph centered on the identification of PHAs at heightened risk of noncompliance. Accordingly, PIH also suggests the final sentence of the conclusion paragraph be struck.

PIH appreciates OIG's engaging it to design recommendations that will further the Department's objectives. PIH suggests the recommendations be revised as follows.

- 1F. Establish policies and procedures that implement a system of escalating administrative measures to be applied against housing authorities that do not submit a HUD-60002 when noncompliance is reported to PIH by Fair Housing and Equal Opportunity.

- 1G (old 1H). After testing and implementation of FHEOs tool is completed and upon receipt of reporting compliance data from FHEO, establish a methodology to incorporate Section 3 compliance in risk assessments for PHAs that receive capital fund grants.

Comment 7

Again, PIH believes the new language for 1F and 1G could feasibly be incorporated into one recommendation because the risk assessment and early intervention would be just one component of the larger strategy for enhancing compliance.

For further information, please contact Scott Shewcraft, Office of Public Housing Investments, at (202)402-6421 or scott.a.shewcraft@hud.gov.

OIG Evaluation of Auditee Comments

Comment 1 FHEO must ensure that it implements not just phase 1 of its new Section 3 reporting system but also phase 2 that will grant each user a unique ID and password as well as other system enhancements to address the issues identified in the audit report.

Comment 2 FHEO and PIH must fully implement all recommendations in this report to ensure PHAs do not have the false impression that there are no consequences for noncompliance.

Comment 3 We have now provided the contact information for the appropriate person in PIH to make management decisions.

Comment 4 We believe that sanctions for noncompliance are required to ensure adherence. We've changed the term from penalty to sanction in order to ensure consistency throughout the body of the report.

Comment 5 As discussed with PIH earlier, we believe that it can hold up funding PHAs by challenging their annual HUD-50077 submission if they have failed to submit their Section 3 form. Item 22 on HUD-50077 states that the PHA certifies that it is in compliance with all applicable Federal statutory and regulatory requirements. Failure to submit the HUD-60002 form is classified as non-compliance with Section 3 regulations. Therefore we conclude that there are penalties that can be imposed for failure to submit the HUD-60002 form.

Comment 6 We believe that references to potentially false certifications should not be omitted from the report because PHAs are certifying to current compliance with item 22 (comment 5) and future compliance with item 11 of HUD-50077.

Comment 7 We combined recommendations 1F and the former 1G into the current 1F. However, we believe that recommendations 1F and 1G need to be separate because we are recommending that PIH take two separate actions.

Appendix C

CRITERIA

24 CFR 135.3 – Applicability

(a) *Section 3 covered assistance*. Section 3 applies to the following HUD assistance (Section 3 covered assistance): (1) *Public and Indian housing assistance*. Section 3 applies to training, employment, contracting and other economic opportunities arising from the expenditure of the following public and Indian housing assistance:

(i) Development assistance provided pursuant to section 5 of the U.S. Housing Act of 1937 (1937 Act);

(ii) Operating assistance provided pursuant to section 9 of the 1937 Act; and

(iii) Modernization assistance provided pursuant to section 14 of the 1937Act.

(3) Thresholds—(i) No thresholds for Section 3 covered public and Indian housing assistance. The requirements of this part apply to Section 3 covered assistance provided to recipients, notwithstanding the amount of the assistance provided to the recipient. The requirements of this part apply to all contractors and subcontractors performing work in connection with projects and activities funded by public and Indian housing assistance covered by Section 3, regardless of the amount of the contract or subcontract.

24 CFR 135.30 - Numerical goals for meeting the greatest extent feasible requirement

(a) General.

(1) Recipients and covered contractors may demonstrate compliance with the "greatest extent feasible" requirement of Section 3 by meeting the numerical goals set forth in this section for providing training, employment, and contracting opportunities to Section 3 residents and Section 3 business concerns.

(2) The goals established in this section apply to the entire amount of Section 3 covered assistance awarded to a recipient in any Federal Fiscal Year (FY), commencing with the first FY following the effective date of this rule.

(3) For recipients that do not engage in training, or hiring, but award contracts to contractors that will engage in training, hiring, and subcontracting, recipients must ensure that, to the greatest extent feasible, contractors will provide training, employment, and contracting opportunities to Section 3 residents and Section 3 business concerns.

(4) The numerical goals established in this section represent minimum numerical targets.

(b) Training and employment. The numerical goals set forth in paragraph (b) of this section apply to new hires. The numerical goals reflect the aggregate hires. Efforts to employ Section 3 residents, to the greatest extent feasible, should be made at all job levels. (1) Numerical goals for Section 3 covered public and Indian housing programs. Recipients of Section 3 covered public and Indian housing assistance (as described in § 135.5) and their contractors and subcontractors may demonstrate compliance with this part by committing to employ Section 3 residents as:

(i) 10 percent of the aggregate number of new hires for the one year period beginning in FY 1995;

(ii) 20 percent of the aggregate number of new hires for the one period beginning in FY 1996;

(iii) 30 percent of the aggregate number of new hires for one year period beginning in FY 1997 and continuing thereafter.

(c) Contracts. Numerical goals set forth in paragraph (c) of this section apply to contracts awarded in connection with all Section 3 covered projects and Section 3 covered activities. Each recipient and contractor and subcontractor (unless the contract or subcontract awards do not meet the threshold specified in § 135.3(a)(3)) may demonstrate compliance with the requirements of this part by committing to award to Section 3 business concerns:

(1) At least 10 percent of the total dollar amount of all Section 3 covered contracts for building trades work for maintenance, repair, modernization or development of public or Indian housing, or for building trades work arising in connection with housing rehabilitation, housing construction and other public construction; and

(2) At least three (3) percent of the total dollar amount of all other Section 3 covered contracts.

(d) Safe harbor and compliance determinations. (1) In the absence of evidence to the contrary, a recipient that meets the minimum numerical goals set forth in this section will be considered to have complied with the Section 3 preference requirements. (2) In evaluating compliance under subpart D of this part, a recipient that has not met the numerical goals set forth in this section has the burden of demonstrating why it was not feasible to meet the numerical goals set forth in this section. Such justification may include impediments encountered despite actions taken. A recipient or contractor also can indicate other economic opportunities, such as those listed in § 135.40, which were provided in its efforts to comply with Section 3 and the requirements of this part.

24 CFR 135.32 – Responsibilities of the Recipient

Each recipient has the responsibility to comply with Section 3 in its own operations, and ensure compliance in the operations of its contractors and subcontractors. This responsibility includes but may not be necessarily limited to:

(a) Implementing procedures designed to notify Section 3 residents about training and employment opportunities generated by Section 3 covered assistance and Section 3 business concerns about contracting opportunities generated by Section 3 covered assistance;

(b) Notifying potential contractors for Section 3 covered projects of the requirements of this part, and incorporating the Section 3 clause set forth in § 135.38 in all solicitations and contracts.

(c) Facilitating the training and employment of Section 3 residents and the award of contracts to Section 3 business concerns by undertaking activities such as described in the Appendix to this part, as appropriate, to reach the goals set forth in § 135.30. Recipients, at their own discretion, may establish reasonable numerical goals for the training and employment of Section 3 residents and contract award to Section 3 business concerns that exceed those specified in § 135.30;

(d) Assisting and actively cooperating with the Assistant Secretary in obtaining the compliance of contractors and subcontractors with the requirements of this part, and refraining from entering into any contract with any contractor where the recipient has notice or knowledge that the contractor has been found in violation of the regulations in 24 CFR part 135.

(e) Documenting actions taken to comply with the requirements of this part, the results of actions taken and impediments, if any.

24 CFR 135.90 – Reporting

Each recipient which receives directly from HUD financial assistance that is subject to the requirements of this part shall submit to the Assistant Secretary an annual report in such form and with such information as the Assistant Secretary may request, for the purpose of determining the effectiveness of Section 3. Where the program providing the Section 3 covered assistance requires submission of an annual performance report, the section3 report will be submitted with that annual performance report. If the program providing the Section 3 covered assistance does not require an annual performance report, the Section 3 report is to be submitted by January 10 of each year or within 10 days of project completion, whichever is earlier. All reports submitted to HUD in accordance with the requirements of this part will be made available to the public.

HUD Section 3 Guidance for Recipients of Public and Indian Housing Assistance
Each submission of form HUD-60002 should indicate the following:

- The total dollar amount of HUD funding that was received by the housing authority during the specified reporting period.
- The total number of new employees that were hired by the housing authority or its contractors, subcontractors, and subrecipients.
- The number of new employees that were hired by the housing authority or its contractors, subcontractors, and subrecipients, that met the definition of a Section 3 resident.
- The total number of Section 3 residents that participated in training opportunities that were made available by the housing authority, its contractors, subrecipients, or other local community resource agencies.
- The total dollar amount of construction and/or non-construction contracts (or subcontracts) that were awarded with HUD funding received by the housing authority.
- The dollar amount of the housing authority's construction or non-construction contracts (or subcontracts) that were awarded to Section 3 business concerns.
- Detailed narrative descriptions of the specific actions that were taken by the housing authority, covered contractors, subcontractors, subrecipients, or others to comply with the requirements of Section 3 and/or meet the minimum numerical goals for employment and contracting opportunities.

FHEO considers housing authorities to be in compliance with Section 3 if they meet the minimum numerical goals listed at 24 CFR Part 135.30iii:

- 30 percent of the aggregate number of new hires are Section 3 residents;
- 10 percent of the total dollar amount of all covered construction contracts are awarded to Section 3 business concerns; and
- 3 percent of the total dollar amount of all covered non-construction contracts are awarded to Section 3 business concerns.

HA_CODE	FORMAL_RECIPIENT_AGENCY_NAME	CITY	STATE	TYPE	PHA_SIZE
AL101	Abbeville Housing Authority	Abbeville	Alabama	PHA	Very Small (1-49)
AL102	Altoona Housing Authority	Altoona	Alabama	PHA	Small (50-249)
AL127	HA Andalusia	Andalusia	Alabama	PHA	Small (50-249)
AL004	HA Anniston	Anniston	Alabama	PHA	Medium High (500-1250)
AL091	HA Arab	Arab	Alabama	PHA	Small (50-249)
AL144	HA Ashford	Ashford	Alabama	PHA	Small (50-249)
AL136	Housing Authority of the Town of Ashland	Ashland	Alabama	PHA	Small (50-249)
AL067	Housing Authority of the City of Athens, Al	Athens	Alabama	PHA	Small (50-249)
AL154	HA Atmore	Atmore	Alabama	PHA	Small (50-249)
AL050	HA Auburn	Auburn	Alabama	PHA	Medium High (500-1250)
AL164	HA Bay Minette	Bay Minette	Alabama	PHA	Small (50-249)
AL081	Bear Creek Housing Authority	Bear Creek	Alabama	PHA	Very Small (1-49)
AL078	Housing Authority of the Town of Berry	Berry	Alabama	PHA	Small (50-249)
AL125	HA Bessemer	Bessemer	Alabama	PHA	Large (1250-9999)
AL134	Housing Authority of the Town of Blountsville, Al	Blountsville	Alabama	PHA	Small (50-249)
AL189	Top of Alabama Regional Housing Authority	Boaz	Alabama	PHA	Low (250-499)
AL145	Housing Authority of the City of Brantley	Brantley	Alabama	PHA	Small (50-249)
AL151	Housing Authority of the City of Brent	Brent	Alabama	PHA	Small (50-249)
AL156	Housing Authority of the City of Brewton	Brewton	Alabama	PHA	Small (50-249)
AL147	Housing Authority of the City of Bridgeport	Bridgeport	Alabama	PHA	Small (50-249)
AL126	Brundidge Housing Authority	Brundidge	Alabama	PHA	Very Small (1-49)
AL085	Housing Authority of the Town of Calera	Calera	Alabama	PHA	Small (50-249)
AL064	Housing Authority of the City of Carbon Hill	Carbon Hill	Alabama	PHA	Small (50-249)
AL140	Housing Authority of the City of Centre, Al	Centre	Alabama	PHA	Small (50-249)
AL117	Washington County Housing Authority	Chatom	Alabama	PHA	Very Small (1-49)
AL166	Housing Authority of the City of Chickasaw	Chickasaw	Alabama	PHA	Low (250-499)
AL122	Childersburg Housing Authority	Childersburg	Alabama	PHA	Small (50-249)
AL202	Mobile County Housing Authority	Citronelle	Alabama	PHA	Small (50-249)
AL150	Housing Authority of the City of Clanton	Clanton	Alabama	PHA	Small (50-249)
AL083	Collinsville Housing Authority	Collinsville	Alabama	PHA	Small (50-249)
AL100	Housing Authority of the City of Columbia	Columbia	Alabama	PHA	Very Small (1-49)
AL072	HA Columbiana	Columbiana	Alabama	pHA	Small (50-249)
AL055	HA Cordova	Cordova	Alabama	PHA	Small (50-249)
AL104	Cottonwood Housing Authority	Cottonwood	Alabama	PHA	Small (50-249)
AL082	Crossville Housing Authority	Crossville	Alabama	PHA	Very Small (1-49)
AL052	HA Cullman	Cullman	Alabama	PHA	Medium High (500-1250)
AL178	Housing Authority of the City of Dadeville	Dadeville	Alabama	PHA	Small (50-249)
AL179	Housing Authority of the City of Daleville	Daleville	Alabama	PHA	Small (50-249)
AL048	Housing Authority of the City of Decatur	Decatur	Alabama	PHA	Large (1250-9999)
AL129	Walker County Housing Authority	Dora	Alabama	PHA	Low (250-499)
AL169	The Housing Authority of the City of Prichard	Eight Mile	Alabama	PHA	Large (1250-9999)
AL107	HA Elba	Elba	Alabama	PHA	Small (50-249)
AL115	Enterprise Housing Authority	Enterprise	Alabama	PHA	Low (250-499)
AL118	Eufaula Housing Authority	Eufaula	Alabama	PHA	Medium High (500-1250)
AL190	Housing Authority of Greene County, Al	Eutaw	Alabama	PHA	Small (50-249)
AL146	Housing Authority of the City of Eutaw	Eutaw	Alabama	PHA	Very Small (1-49)
AL181	Evergreen Housing Authority	Evergreen	Alabama	PHA	Low (250-499)
AL010	Fairfield Housing Authority	Fairfield	Alabama	PHA	Medium High (500-1250)
AL111	Housing Authority of the City of Florala	Florala	Alabama	PHA	Very Small (1-49)
AL165	HA Foley	Foley	Alabama	PHA	Low (250-499)
AL193	Housing Authority of the Town of Fort Deposit	Fort Deposit	Alabama	PHA	Very Small (1-49)
AL094	Housing Authority of the City of Georgiana	Georgiana	Alabama	PHA	Small (50-249)
AL132	Housing Authority of the City of Goodwater	Goodwater	Alabama	PHA	Very Small (1-49)
AL138	Gordo Housing Authority	Gordo	Alabama	PHA	Small (50-249)
AL157	Housing Authority of the City of Greensboro	Greensboro	Alabama	PHA	Small (50-249)
AL155	Housing Authority of the City of Greenville	Greenville	Alabama	PHA	Low (250-499)
AL071	Housing Authority of Guin, Alabama	Guin	Alabama	PHA	Small (50-249)
AL014	The Guntersville Housing Authority	Guntersville	Alabama	PHA	Medium High (500-1250)
AL076	Hackleburg Housing Authority	Hackleburg	Alabama	PHA	Small (50-249)
AL093	Housing Authority of the Town of Hanceville	Hanceville	Alabama	PHA	Small (50-249)
AL103	Housing Authority of the City of Hartford	Hartford	Alabama	PHA	Small (50-249)
AL087	Housing Authority of the City of Hartselle	Hartselle	Alabama	PHA	Small (50-249)
AL187	Regional HA of Lawrence, Cullman & Morgan Counties	Hartselle	Alabama	PHA	Small (50-249)
AL123	Housing Authority of the City of Headland, Al	Headland	Alabama	PHA	Small (50-249)
AL096	Housing Authority of the City of Heflin	Heflin	Alabama	PHA	Very Small (1-49)
AL133	Housing Authority of the Town of Hobson City	Hobson City	Alabama	PHA	Small (50-249)
AL139	HA Jacksonville	Jacksonville	Alabama	PHA	Low (250-499)

AL012	Housing Authority of the City of Jasper	Jasper	Alabama	PHA	Medium High (500-1250)
AL141	Housing Authority of the Town of Kennedy	Kennedy	Alabama	PHA	Very Small (1-49)
AL159	Housing Authority of the City of Lafayette	Lafayette	Alabama	PHA	Small (50-249)
AL069	HA Leeds	Leeds	Alabama	PHA	Low (250-499)
AL120	Housing Authority of the City of Linden	Linden	Alabama	PHA	Small (50-249)
AL114	Lineville Housing Authority	Lineville	Alabama	PHA	Small (50-249)
AL175	Housing Authority of the City of Livingston	Livingston	Alabama	PHA	Small (50-249)
AL182	Triana Housing Authority	Madison	Alabama	PHA	Very Small (1-49)
AL161	Housing Authority of the City of Marion, Al	Marion	Alabama	PHA	Small (50-249)
AL124	HA Midland City	Midland City	Alabama	PHA	Small (50-249)
AL173	HA Monroeville	Monroeville	Alabama	PHA	Small (50-249)
AL079	Housing Authority of the Town of Montevallo	Montevallo	Alabama	PHA	Small (50-249)
AL006	Housing Authority of the City of Montgomery	Montgomery	Alabama	PHA	Large (1250-9999)
AL080	Housing Authority of the City of Moulton, Al	Moulton	Alabama	PHA	Small (50-249)
AL149	Housing Authority of the Town of New Brockton	New Brockton	Alabama	PHA	Very Small (1-49)
AL142	Housing Authority of the City of Newton	Newton	Alabama	PHA	Very Small (1-49)
AL152	HA Northport	Northport	Alabama	PHA	Medium High (500-1250)
AL112	HA Opp	Opp	Alabama	PHA	Low (250-499)
AL153	Housing Authority of the Town of Parrish	Parrish	Alabama	PHA	Very Small (1-49)
AL106	Pell City Housing Authority	Pell City	Alabama	PHA	Small (50-249)
AL131	Housing Authority of the City of Prattville, Al	Prattville	Alabama	PHA	Small (50-249)
AL108	Ragland Housing Authority	Ragland	Alabama	PHA	Small (50-249)
AL168	Rainsville Housing Authority	Rainsville	Alabama	PHA	Small (50-249)
AL066	Housing Authority of Reform	Reform	Alabama	PHA	Small (50-249)
AL065	Housing Authority of the City of Roanoke, Al	Roanoke	Alabama	PHA	Small (50-249)
AL060	HA Russellville	Russellville	Alabama	PHA	Low (250-499)
AL008	Selma Housing Authority	Selma	Alabama	PHA	Large (1250-9999)
AL068	Sheffield Housing Authority	Sheffield	Alabama	PHA	Medium High (500-1250)
AL143	Housing Authority of the Town of Slocomb	Slocomb	Alabama	PHA	Very Small (1-49)
AL176	Sumiton Housing Authority	Sumiton	Alabama	PHA	Very Small (1-49)
AL105	Housing Authority of the City of Talladega, Al	Talladega	Alabama	PHA	Medium High (500-1250)
AL172	HA Tallassee	Tallassee	Alabama	PHA	Small (50-249)
AL013	Tarrant Housing Authority	Tarrant	Alabama	PHA	Small (50-249)
AL177	HA Troy	Troy	Alabama	PHA	Medium High (500-1250)
AL192	South Central Alabama Regional HA	Troy	Alabama	PHA	Medium High (500-1250)
AL077	HA Tuscaloosa	Tuscaloosa	Alabama	PHA	Large (1250-9999)
AL059	Housing Authority of the City of Tuscumbia	Tuscumbia	Alabama	PHA	Small (50-249)
AL160	Tuskegee Housing Authority	Tuskegee	Alabama	PHA	Medium High (500-1250)
AL070	City of Union Springs Housing Authority	Union Springs	Alabama	PHA	Small (50-249)
AL171	Uniontown Housing Authority	Uniontown	Alabama	PHA	Small (50-249)
AL199	Housing Authority of the City of Valley	Valley	Alabama	PHA	Very Small (1-49)
AL089	Vincent Housing Authority	Vincent	Alabama	PHA	Very Small (1-49)
AL058	Winfield Housing Authority	Winfield	Alabama	PHA	Small (50-249)
AL116	York Housing Authority	York	Alabama	PHA	Small (50-249)
AZ021	Eloy Housing Authority	Eloy	Arizona	PHA	Small (50-249)
AZ023	Nogales Housing Authority	Nogales	Arizona	PHA	Low (250-499)
AZ013	Yuma County Housing Department	Somerton	Arizona	PHA	Medium High (500-1250)
AZ004	Housing And Community Development Tucson	Tucson	Arizona	PHA	Large (1250-9999)
AZ041	Williams Housing Authority	Williams	Arizona	PHA	Small (50-249)
AZ008	Winslow Public Housing Authority	Winslow	Arizona	PHA	Small (50-249)
AR046	Housing Authority of the City of Amity	Amity	Arkansas	PHA	Very Small (1-49)
AR012	Arkadelphia Housing Authority	Arkadelphia	Arkansas	PHA	Low (250-499)
AR141	Housing Authority of the City of Atkins	Atkins	Arkansas	PHA	Very Small (1-49)
AR123	Housing Authority of the City of Augusta	Augusta	Arkansas	PHA	Small (50-249)
AR084	Housing Authority of the City of Bald Knob	Bald Knob	Arkansas	PHA	Very Small (1-49)
AR071	Housing Authority of the City of Batesville	Batesville	Arkansas	PHA	Very Small (1-49)
AR106	Housing Authority of the City of Beebe	Beebe	Arkansas	PHA	Very Small (1-49)
AR175	Housing Authority of the City of Benton	Benton	Arkansas	PHA	Medium High (500-1250)
AR059	Housing Authority of the City of Brinkley	Brinkley	Arkansas	PHA	Low (250-499)
AR016	Camden Housing Authority	Camden	Arkansas	PHA	Medium High (500-1250)
AR092	Housing Authority of the City of Caraway	Caraway	Arkansas	PHA	Small (50-249)
AR041	Lonoke County Housing Authority	Carlisle	Arkansas	PHA	Low (250-499)
AR081	Housing Authority of the City of Carthage	Carthage	Arkansas	PHA	Very Small (1-49)
AR052	Clarendon Housing Authority	Clarendon	Arkansas	PHA	Small (50-249)
AR102	Housing Authority of the City of Coal Hill	Coal Hill	Arkansas	PHA	Very Small (1-49)
AR172	Housing Authority of the City of Cotton Plant	Cotton Plant	Arkansas	PHA	Small (50-249)
AR115	Housing Authority of the City of Cushman	Cushman	Arkansas	PHA	No Units
AR055	Housing Authority of the City of Dardanelle	Dardanelle	Arkansas	PHA	Small (50-249)

AR022	Housing Authority of the County of Sevier	De Queen	Arkansas	PHA	Small (50-249)
AR048	Housing Authority of the City of Dewitt	De Witt	Arkansas	PHA	Small (50-249)
AR095	Housing Authority of the City of Decatur	Decatur	Arkansas	PHA	Very Small (1-49)
AR078	Housing Authority of the City of Dell	Dell	Arkansas	PHA	Very Small (1-49)
AR040	Housing Authority of the City of Des Arc	Des Arc	Arkansas	PHA	Very Small (1-49)
AR085	Housing Authority of the City of Dover	Dover	Arkansas	PHA	Very Small (1-49)
AR064	Housing Authority of the City of Earle	Earle	Arkansas	PHA	Small (50-249)
AR148	Housing Authority of the City of England	England	Arkansas	PHA	Small (50-249)
AR020	Little River County Housing Authority	Foreman	Arkansas	PHA	Small (50-249)
AR099	Housing Authority of the City of Forrest City	Forrest City	Arkansas	PHA	Low (250-499)
AR003	The Housing Authority of the City of Fort Smith	Fort Smith	Arkansas	PHA	Large (1250-9999)
AR058	Housing Authority of the County of Arkansas	Gillett	Arkansas	PHA	Very Small (1-49)
AR083	Housing Authority of the City of Gould	Gould	Arkansas	PHA	Very Small (1-49)
AR171	Housing Authority of the City of Greenwood	Greenwood	Arkansas	PHA	Very Small (1-49)
AR049	Housing Authority of the City of Gurdon	Gurdon	Arkansas	PHA	Very Small (1-49)
AR113	Housing Authority of the City of Heber Springs	Heber Springs	Arkansas	PHA	Small (50-249)
AR050	Housing Authority of the City of Helena	Helena	Arkansas	PHA	Low (250-499)
AR093	Housing Authority of the City of Hickory Ridge	Hickory Ridge	Arkansas	PHA	Very Small (1-49)
AR068	Hope Housing Authority	Hope	Arkansas	PHA	Low (250-499)
AR062	Housing Authority of the City of Emmet	Hope	Arkansas	PHA	No Units
AR047	Housing Authority of the City of Hoxie	Hoxie	Arkansas	PHA	Very Small (1-49)
AR061	Housing Authority of the City of Hughes	Hughes	Arkansas	PHA	Very Small (1-49)
AR057	Housing Authority of the City of Imboden	Imboden	Arkansas	PHA	Very Small (1-49)
AR170	Jacksonville Housing Authority	Jacksonville	Arkansas	PHA	Low (250-499)
AR090	Housing Authority of the City of Judsonia	Judsonia	Arkansas	PHA	Very Small (1-49)
AR146	Housing Authority of the City of Kensett	Kensett	Arkansas	PHA	Very Small (1-49)
AR088	Housing Authority of the City of Lake City	Lake City	Arkansas	PHA	Very Small (1-49)
AR075	Housing Authority of the City of Leachville	Leachville	Arkansas	PHA	Small (50-249)
AR079	Housing Authority of the City of Luxora	Luxora	Arkansas	PHA	Small (50-249)
AR018	Housing Authority of the City of Magnolia	Magnolia	Arkansas	PHA	Small (50-249)
AR094	Housing Authority of the City of Malvern	Malvern	Arkansas	PHA	Small (50-249)
AR086	Housing Authority of the City of Mammoth Spring	Mammoth Spring	Arkansas	PHA	Very Small (1-49)
AR080	Housing Authority of the City of Manila	Manila	Arkansas	PHA	Small (50-249)
AR023	Housing Authority of the County of Poinsett	Marked Tree	Arkansas	PHA	Low (250-499)
AR112	Housing Authority of the City of Marmaduke	Marmaduke	Arkansas	PHA	Small (50-249)
AR098	Housing Authority of the City of McRae	Mc Rae	Arkansas	PHA	Very Small (1-49)
AR118	Housing Authority of the City of McCrory	McCrory	Arkansas	PHA	Very Small (1-49)
AR103	Housing Authority of the City of Melbourne	Melbourne	Arkansas	PHA	Large (1250-9999)
AR117	Polk County Housing Authority	Mena	Arkansas	PHA	Low (250-499)
AR070	Housing Authority of the City of Monette	Monette	Arkansas	PHA	Very Small (1-49)
AR026	Housing Authority of the City of Morrilton	Morrilton	Arkansas	PHA	Small (50-249)
AR076	Housing Authority of the City of Mount Ida	Mount Ida	Arkansas	PHA	Very Small (1-49)
AR045	Pike County Housing Authority	Murfreesboro	Arkansas	PHA	Small (50-249)
AR025	Housing Authority of the County of Howard	Nashville	Arkansas	PHA	Small (50-249)
AR028	Housing Authority of the City of Newport	Newport	Arkansas	PHA	Low (250-499)
AR002	North Little Rock Housing Authority	North Little Rock	Arkansas	PHA	Large (1250-9999)
AR021	Housing Authority of the City of Osceola	Osceola	Arkansas	PHA	Low (250-499)
AR101	Housing Authority of the City of Ozark	Ozark	Arkansas	PHA	Very Small (1-49)
AR121	Paragould Housing Authority	Paragould	Arkansas	PHA	Medium High (500-1250)
AR032	Housing Authority of the City of Paris	Paris	Arkansas	PHA	Small (50-249)
AR017	Housing Authority of the City of Pine Bluff	Pine Bluff	Arkansas	PHA	Medium High (500-1250)
AR063	Housing Authority of the City of Pocahontas	Pocahontas	Arkansas	PHA	Small (50-249)
AR037	Housing Authority of the City of Prescott	Prescott	Arkansas	PHA	Small (50-249)
AR069	Housing Authority of the City of Rector	Rector	Arkansas	PHA	Small (50-249)
AR073	Housing Authority of the City of Sparkman	Sparkman	Arkansas	PHA	Very Small (1-49)
AR042	Star City Housing Authority	Star City	Arkansas	PHA	Small (50-249)
AR065	Housing Authority of the City of Stephens	Stephens	Arkansas	PHA	Small (50-249)
AR034	Trumann Housing Authority	Trumann	Arkansas	PHA	Medium High (500-1250)
AR029	Housing Authority of the City of Van Buren	Van Buren	Arkansas	PHA	Small (50-249)
AR044	Housing Authority of the City of Waldron	Waldron	Arkansas	PHA	Small (50-249)
AR082	Warren Housing Authority	Warren	Arkansas	PHA	Small (50-249)
AR060	Housing Authority of the City of West Helena	West Helena	Arkansas	PHA	Small (50-249)
AR054	Housing Authority of the City of Wilson	Wilson	Arkansas	PHA	Small (50-249)
AR039	Wynne Housing Authority	Wynne	Arkansas	PHA	Low (250-499)
AR122	Housing Authority of the City of Yellville	Yellville	Arkansas	PHA	Very Small (1-49)
CA062	City of Alameda Housing Authority	Alameda	California	PHA	Large (1250-9999)
CA120	Housing Authority of the City of Baldwin Park	Baldwin Park	California	PHA	Medium High (500-1250)
CA041	City of Benicia Hsg Auth	Benicia	California	PHA	Low (250-499)

CA058	City of Berkeley Housing Authority	Berkeley	California	PHA	Large (1250-9999)
CA039	Housing Authority of the City of Calexico	Calexico	California	PHA	Medium High (500-1250)
CA043	County of Butte Hsg Auth	Chico	California	PHA	Large (1250-9999)
CA142	Dublin Housing Authority	Dublin	California	PHA	Small (50-249)
CA025	City of Eureka Hsg Auth	Eureka	California	PHA	Small (50-249)
CA053	Kings County Housing Auth	Hanford	California	PHA	Medium High (500-1250)
CA139	Housing Authority of the City of Lomita	Lomita	California	PHA	Small (50-249)
CA069	The Housing Authority of the City of Madera	Madera	California	PHA	Medium High (500-1250)
CA011	County of Contra Costa Housing Authority	Martinez	California	PHA	Large (1250-9999)
CA026	County of Stanislaus Housing Auth	Modesto	California	PHA	Large (1250-9999)
CA022	Housing Authority of the City of Needles	Needles	California	PHA	Small (50-249)
CA050	Housing Authority of the City of Paso Robles	Paso Robles	California	PHA	Small (50-249)
CA032	Housing Authority of the City of Port Hueneme	Port Hueneme	California	PHA	Low (250-499)
CA070	County of Plumas Housing Authority	Quincy	California	PHA	Medium High (500-1250)
CA010	City of Richmond Housing Authority	Richmond	California	PHA	Large (1250-9999)
CA017	Housing Authority of the City of Riverbank	Riverbank	California	PHA	Small (50-249)
CA027	Housing Authority of the County of Riverside	Riverside	California	PHA	Large (1250-9999)
CA033	County of Monterey Hsg Auth	Salinas	California	PHA	Large (1250-9999)
CA064	Housing Authority of the City of San Luis Obispo	San Luis Obispo	California	PHA	Large (1250-9999)
CA049	Housing Authority of the City of Soledad	Soledad	California	PHA	No Units
CA015	City of South San Francisco Housing Authority	South San Francisco	California	PHA	Small (50-249)
CA046	City of Wasco Housing Authority	Wasco	California	PHA	Very Small (1-49)
CT001	Housing Authority of the City of Bridgeport	Bridgeport	Connecticut	PHA	Large (1250-9999)
CT023	Bristol Housing Authority	Bristol	Connecticut	PHA	Medium High (500-1250)
CT066	Housing Authority of the Town of Brooklyn	Brooklyn	Connecticut	PHA	Very Small (1-49)
CT020	Housing Authority of the City of Danbury	Danbury	Connecticut	PHA	Medium High (500-1250)
CT013	East Hartford Housing Authority	East Hartford	Connecticut	PHA	Medium High (500-1250)
CT019	Greenwich Housing Authority	Greenwich	Connecticut	PHA	Medium High (500-1250)
CT026	Manchester Housing Authority	Manchester	Connecticut	PHA	Medium High (500-1250)
CT011	Housing Authority of the City of Meriden	Meriden	Connecticut	PHA	Medium High (500-1250)
CT047	Naugatuck Housing Authority	Naugatuck	Connecticut	PHA	Low (250-499)
CT054	New Canaan Housing Authority	New Canaan	Connecticut	PHA	Very Small (1-49)
CT022	New London Housing Authority	New London	Connecticut	PHA	Low (250-499)
CT002	Housing Authority of the City of Norwalk	Norwalk	Connecticut	PHA	Large (1250-9999)
CT036	Portland Housing Authority	Portland	Connecticut	PHA	Small (50-249)
CT035	Housing Authority of the Town of Seymour	Seymour	Connecticut	PHA	Small (50-249)
CT007	Stamford Housing Authority	Stamford	Connecticut	PHA	Large (1250-9999)
CT028	Vernon Housing Authority	Vernon	Connecticut	PHA	Medium High (500-1250)
CT039	Housing Authority of the Town of West Hartford	West Hartford	Connecticut	PHA	Medium High (500-1250)
CT010	Willimantic Housing Authority	Willimantic	Connecticut	PHA	Medium High (500-1250)
CT056	Bloomfield Housing Authority	Windsor	Connecticut	PHA	Very Small (1-49)
CT032	Windsor Locks Housing Authority	Windsor Locks	Connecticut	PHA	Small (50-249)
CT025	Winchester Housing Authority	Winsted	Connecticut	PHA	Low (250-499)
DE002	Dover Housing Authority	Dover	Delaware	PHA	Medium High (500-1250)
DE003	Newark Housing Authority	Newark	Delaware	PHA	Low (250-499)
DE001	Wilmington Housing Authority	Wilmington	Delaware	PHA	Large (1250-9999)
FL036	Housing Authority of the City of Apalachicola	Apalachicola	Florida	PHA	
FL055	Arcadia Housing Authority	Arcadia	Florida	PHA	
FL026	Housing Authority of Bartow	Bartow	Florida	PHA	Small (50-249)
FL119	HA Boca Raton	Boca Raton	Florida	PHA	Medium High (500-1250)
FL023	Housing Authority of the City of Bradenton	Bradenton	Florida	PHA	Low (250-499)
FL105	Manatee County Housing Authority	Bradenton	Florida	PHA	Large (1250-9999)
FL051	Gilchrist County Housing Authority	Bronson	Florida	PHA	Very Small (1-49)
FL049	Levy County Housing Authority	Bronson	Florida	PHA	Low (250-499)
FL050	Suwannee County Housing Authority	Bronson	Florida	PHA	Very Small (1-49)
FL030	Housing Authority of the County of Flagler	Bunnell	Florida	PHA	Low (250-499)
FL038	Chipley Housing Authority	Chipley	Florida	PHA	Small (50-249)
FL116	Dania Beach Housing Authority	Dania Beach	Florida	PHA	Medium High (500-1250)
FL007	Housing Authority of City of Daytona Beach	Daytona Beach	Florida	PHA	Large (1250-9999)
FL039	Defuniak Springs Housing Authority	Defuniak Springs	Florida	PHA	Small (50-249)
FL072	Deland Housing Authority	Deland	Florida	PHA	Medium High (500-1250)
FL083	Delray Beach Housing Authority	Delray Beach	Florida	PHA	Medium High (500-1250)
FL040	Housing Authority of the City of Eustis	Eustis	Florida	PHA	Small (50-249)
FL037	Housing Authority of City of Fernandina Beach	Fernandina Beach	Florida	PHA	Small (50-249)
FL010	Housing Authority of the City of Fort Lauderdale	Fort Lauderdale	Florida	PHA	Large (1250-9999)
FL041	Housing Authority of the City of Fort Pierce	Fort Pierce	Florida	PHA	Large (1250-9999)
FL070	Alachua County Housing Authority	Gainesville	Florida	PHA	Medium High (500-1250)
FL015	Northwest Florida Regional Housing Authority	Graceville	Florida	PHA	Medium High (500-1250)

FL066	Hialeah Housing Authority	Hialeah	Florida	PHA	Large (1250-9999)
FL042	Union County Housing Authority	Lake Butler	Florida	PHA	Small (50-249)
FL125	Columbia County Housing Authority	Lake City	Florida	PHA	Small (50-249)
FL061	Dunedin Housing Authority	Largo	Florida	PHA	No Units
FL079	Broward County Housing Authority	Lauderdale Lakes	Florida	PHA	Large (1250-9999)
FL031	Housing Authority of the City of Marianna	Marianna	Florida	PHA	Small (50-249)
FL056	Melbourne Housing Authority	Melbourne	Florida	PHA	Small (50-249)
FL020	Housing Authority of Brevard County	Merritt Island	Florida	PHA	Large (1250-9999)
FL054	Housing Authority of the City of Mulberry	Mulberry	Florida	PHA	Very Small (1-49)
FL052	Niceville Housing Authority	Niceville	Florida	PHA	Small (50-249)
FL032	Ocala Housing Authority	Ocala	Florida	PHA	Large (1250-9999)
FL024	Ormond Beach Housing Authority	Ormond Beach	Florida	PHA	Small (50-249)
FL033	Seminole County Housing Authority	Oviedo	Florida	PHA	Low (250-499)
FL057	Palatka Housing Authority	Palatka	Florida	PHA	Medium High (500-1250)
FL035	Housing Authority of Springfield	Panama City	Florida	PHA	Low (250-499)
FL018	Panama City Housing Authority	Panama City	Florida	PHA	Medium High (500-1250)
FL006	Area Housing Commission	Pensacola	Florida	PHA	Medium High (500-1250)
FL034	Plant City Housing Authority	Plant City	Florida	PHA	Low (250-499)
FL076	Riviera Beach Housing Authority	Riviera Beach	Florida	PHA	Small (50-249)
FL008	Sarasota Housing Authority	Sarasota	Florida	PHA	Large (1250-9999)
FL073	Tallahassee Housing Authority	Tallahassee	Florida	PHA	Large (1250-9999)
FL064	Venice Housing Authority	Venice	Florida	PHA	Small (50-249)
FL080	Palm Beach County Housing Authority	West Palm Beach	Florida	PHA	Large (1250-9999)
FL009	West Palm Beach Housing Authority	West Palm Beach	Florida	PHA	Large (1250-9999)
FL139	Winter Haven Housing Authority	Winter Haven	Florida	PHA	Low (250-499)
FL082	Housing Authority of the City of Winter Park	Winter Park	Florida	PHA	Small (50-249)
GA186	Housing Authority of the City of Abbeville	Abbeville	Georgia	PHA	Very Small (1-49)
GA123	Housing Authority of the City of Acworth	Acworth	Georgia	PHA	Small (50-249)
GA178	Housing Authority of the City of Alamo	Alamo	Georgia	PHA	Very Small (1-49)
GA003	Housing Authority of the City of Athens	Athens	Georgia	PHA	Medium High (500-1250)
GA006	Housing Authority of the City of Atlanta Georgia	Atlanta	Georgia	PHA	Extra Large (10,000)
GA064	Housing Authority of the City of Bainbridge	Bainbridge	Georgia	PHA	Low (250-499)
GA134	Housing Authority of the City of Blackshear	Blackshear	Georgia	PHA	Small (50-249)
GA202	Housing Authority of the City of Blue Ridge	Blue Ridge	Georgia	PHA	Very Small (1-49)
GA207	Housing Authority of the City of Bowdon	Bowdon	Georgia	PHA	Small (50-249)
GA254	Housing Authority of the City of Bremen	Bremen	Georgia	PHA	Small (50-249)
GA124	Housing Authority of the City of Buchanan	Buchanan	Georgia	PHA	Very Small (1-49)
GA091	Housing Authority of the City of Buford	Buford	Georgia	PHA	Small (50-249)
GA243	Housing Authority of the City of Byron	Byron	Georgia	PHA	Very Small (1-49)
GA116	Housing Authority of the City of Carrollton	Carrollton	Georgia	PHA	Low (250-499)
GA281	Etowah Area Consolidated	Cartersville	Georgia	PHA	Low (250-499)
GA130	Housing Authority of the City of Cave Spring	Cave Spring	Georgia	PHA	Very Small (1-49)
GA025	Housing Authority of the City of Cedartown	Cedartown	Georgia	PHA	Low (250-499)
GA206	Housing Authority of the City of Chatsworth	Chatsworth	Georgia	PHA	Small (50-249)
GA166	Housing Authority of the City of Claxton	Claxton	Georgia	PHA	Small (50-249)
GA115	Housing Authority of the City of Clayton	Clayton	Georgia	PHA	Small (50-249)
GA077	Housing Authority of the City of Cochran	Cochran	Georgia	PHA	Small (50-249)
GA232	Housing Authority of the City of College Park	College Park	Georgia	PHA	Medium High (500-1250)
GA198	Housing Authority of the City of Colquitt	Colquitt	Georgia	PHA	Small (50-249)
GA103	Housing Authority of the City of Comer	Comer	Georgia	PHA	Very Small (1-49)
GA125	Housing Authority of the City of Commerce	Commerce	Georgia	PHA	Small (50-249)
GA063	Housing Authority of the City of Cordele	Cordele	Georgia	PHA	Low (250-499)
GA245	Housing Authority of the City of Covington	Covington	Georgia	PHA	Low (250-499)
GA192	Housing Authority of the City of Crawfordville	Crawfordville	Georgia	PHA	Very Small (1-49)
GA196	Housing Authority of the City of Cumming	Cumming	Georgia	PHA	Small (50-249)
GA111	Housing Authority of the City of Arlington	Cuthbert	Georgia	PHA	Very Small (1-49)
GA162	Housing Authority of the City of Edison	Cuthbert	Georgia	PHA	Small (50-249)
GA167	Housing Authority of the City of Fort Gaines	Cuthbert	Georgia	PHA	Very Small (1-49)
GA229	Housing Authority of the City of Shellman	Cuthbert	Georgia	PHA	Very Small (1-49)
GA174	Housing Authority of the City of Dahlonega	Dahlonega	Georgia	PHA	Very Small (1-49)
GA148	Housing Authority of the City of Dallas	Dallas	Georgia	PHA	Small (50-249)
GA126	Housing Authority of the City of Danielsville	Danielsville	Georgia	PHA	Very Small (1-49)
GA237	Housing Authority of the County of DeKalb, GA	Decatur	Georgia	PHA	Large (1250-9999)
GA106	Housing Authority of the County of Douglas	Douglasville	Georgia	PHA	Small (50-249)
GA072	Housing Authority of the City of Eatonton	Eatonton	Georgia	PHA	Small (50-249)
GA176	Housing Authority of the City of Ellijay	Ellijay	Georgia	PHA	Small (50-249)
GA180	Housing Authority of the City of Fairburn	Fairburn	Georgia	PHA	Very Small (1-49)
GA187	Housing Authority of the City of Palmetto	Fairburn	Georgia	PHA	Very Small (1-49)

GA070	Housing Authority of the City of Fitzgerald	Fitzgerald	Georgia	PHA	Small (50-249)
GA246	Housing Authority of the City of Fort Oglethorpe	Fort Oglethorpe	Georgia	PHA	Small (50-249)
GA059	Housing Authority of the City of Gainesville	Gainesville	Georgia	PHA	Low (250-499)
GA190	Housing Authority of the City of Gibson	Gibson	Georgia	PHA	Very Small (1-49)
GA139	Housing Authority of the City of Glennville	Glennville	Georgia	PHA	Small (50-249)
GA194	Housing Authority of the City of Glenwood	Glenwood	Georgia	PHA	Very Small (1-49)
GA218	Housing Authority of the City of Grantville	Grantville	Georgia	PHA	Very Small (1-49)
GA105	Housing Authority of the City of Greensboro	Greensboro	Georgia	PHA	Small (50-249)
GA224	Housing Authority of the City of Greenville	Greenville	Georgia	PHA	Small (50-249)
GA110	Housing Authority of the City of Hampton	Hampton	Georgia	PHA	Very Small (1-49)
GA169	Housing Authority of the City of Harlem	Harlem	Georgia	PHA	Very Small (1-49)
GA081	Housing Authority of the City of Hartwell	Hartwell	Georgia	PHA	Small (50-249)
GA089	Housing Authority of the City of Hawkinsville	Hawkinsville	Georgia	PHA	Small (50-249)
GA135	Housing Authority of the City of Hogansville	Hogansville	Georgia	PHA	Small (50-249)
GA172	Housing Authority of the City of Homerville	Homerville	Georgia	PHA	Small (50-249)
GA163	Housing Authority of the City of Jefferson	Jefferson	Georgia	PHA	Small (50-249)
GA066	Housing Authority of the City of Jesup	Jesup	Georgia	PHA	Small (50-249)
GA228	Housing Authority of the City of Jonesboro	Jonesboro	Georgia	PHA	Large (1250-9999)
GA155	Housing Authority of the City of Lumber City	Lumber City	Georgia	PHA	Very Small (1-49)
GA120	Housing Authority of the City of Lyons	Lyons	Georgia	PHA	Small (50-249)
GA108	Housing Authority of the City of Manchester	Manchester	Georgia	PHA	Small (50-249)
GA010	Housing Authority of the City of Marietta	Marietta	Georgia	PHA	Large (1250-9999)
GA241	Housing Authority of the City of McCaysville	Mc Caysville	Georgia	PHA	Small (50-249)
GA189	Housing Authority of the City of Metter	Metter	Georgia	PHA	Small (50-249)
GA210	Housing Authority of the City of Sparta	Milledgeville	Georgia	PHA	Very Small (1-49)
GA203	Housing Authority of the City of Monticello	Monticello	Georgia	PHA	Small (50-249)
GA238	Housing Authority of the City of Mount Vernon	Mount Vernon	Georgia	PHA	Very Small (1-49)
GA263	Housing Authority of the City of Nahunta	Nahunta	Georgia	PHA	Very Small (1-49)
GA209	Housing Authority of the City of Norcross	Norcross	Georgia	PHA	Very Small (1-49)
GA098	Housing Authority of the City of Pelham	Pelham	Georgia	PHA	Small (50-249)
GA252	Housing Authority of the City of Perry	Perry	Georgia	PHA	Small (50-249)
GA085	Housing Authority of the City of Quitman	Quitman	Georgia	PHA	Small (50-249)
GA216	Housing Authority of the City of Ringgold	Ringgold	Georgia	PHA	Very Small (1-49)
GA223	Housing Authority of the City of Roberta	Roberta	Georgia	PHA	Small (50-249)
GA175	Housing Authority of the City of Rochelle	Rochelle	Georgia	PHA	Very Small (1-49)
GA102	Housing Authority of the City of Rockmart	Rockmart	Georgia	PHA	No Units
GA002	Housing Authority of Savannah	Savannah	Georgia	PHA	Large (1250-9999)
GA282	Southeast Georgia Consolidated Housing Authority	St. Marys	Georgia	PHA	Small (50-249)
GA132	Housing Authority of the City of Statesboro	Statesboro	Georgia	PHA	Small (50-249)
GA104	Housing Authority of the City of Sylvester	Sylvester	Georgia	PHA	Low (250-499)
GA097	Housing Authority of the City of Tallapoosa	Tallapoosa	Georgia	PHA	Small (50-249)
GA247	Housing Authority of the City of Thomaston	Thomaston	Georgia	PHA	Low (250-499)
GA117	Housing Authority of the City of Boston	Thomasville	Georgia	PHA	Very Small (1-49)
GA128	Housing Authority of the City of Thomson	Thomson	Georgia	PHA	Small (50-249)
GA101	Housing Authority of the City of Tifton	Tifton	Georgia	PHA	Low (250-499)
GA122	Housing Aothority of the City of Clarkesville	Toccoa	Georgia	PHA	No Units
GA143	Housing Authority of the City of Cleveland	Toccoa	Georgia	PHA	No Units
GA082	Housing Authority of the City of Cornelia	Toccoa	Georgia	PHA	Small (50-249)
GA256	Housing Authority of the City of Homer	Toccoa	Georgia	PHA	No Units
GA075	Housing Authority of the City of Toccoa	Toccoa	Georgia	PHA	No Units
GA191	Housing Authority of the City of Union Point	Union Point	Georgia	PHA	Small (50-249)
GA100	Housing Authority of the City of Valdosta	Valdosta	Georgia	PHA	Medium High (500-1250)
GA145	Housing Authority of the City of Vidalia	Vidalia	Georgia	PHA	Small (50-249)
GA208	Housing Authority of the City of Vienna	Vienna	Georgia	PHA	Small (50-249)
GA107	Housing Authority of the City of Villa Rica	Villa Rica	Georgia	PHA	Small (50-249)
GA160	Housing Authority of the City of Warner Robins	Warner Robins	Georgia	PHA	Low (250-499)
GA268	Housing Authority of the County of Houston	Warner Robins	Georgia	PHA	Very Small (1-49)
GA127	Housing Authority of the City of Warrenton	Warrenton	Georgia	PHA	Small (50-249)
GA144	Housing Authority of the City of Washington	Washington	Georgia	PHA	Small (50-249)
GA028	Housing Authority of the City of Waycross	Waycross	Georgia	PHA	Medium High (500-1250)
GA230	Housing Authority of the City of Woodbury	Woodbury	Georgia	PHA	Very Small (1-49)
GA231	Housing Authoirty of the City of Woodland	Woodland	Georgia	PHA	No Units
GA173	Housing Authority of the City of Talbotton	Woodland	Georgia	PHA	No Units
GA283	Tri-City Housing Authority	Woodland	Georgia	PHA	Small (50-249)
GA181	Housing Authority of the City of Wrightsville	Wrightsville	Georgia	PHA	Small (50-249)
ID012	Housing Authority of the City of American Falls	American Falls	Idaho	PHA	Very Small (1-49)
ID010	Housing Authority of the City of Buhl	Buhl	Idaho	PHA	Very Small (1-49)
ID011	Housing Authority of the City Jerome	Jerome	Idaho	PHA	Small (50-249)

ID016	Southwestern Idaho Cooperative Housing Authority	Nampa	Idaho	PHA	Medium High (500-1250)
ID005	Housing Authority of the City of Pocatello	Pocatello	Idaho	PHA	Medium High (500-1250)
ID001	Twin Falls Housing Authority	Twin Falls	Idaho	PHA	Small (50-249)
IL131	Mercer County Housing Authority	Aledo	Illinois	PHA	Small (50-249)
IL071	Pike County Housing Authority	Barry	Illinois	PHA	Small (50-249)
IL007	Alexander County Housing Authority	Cairo	Illinois	PHA	Low (250-499)
IL047	Macoupin County Housing Authority	Carlinville	Illinois	PHA	Low (250-499)
IL057	Housing Authority of Marion County	Centralia	Illinois	PHA	Medium High (500-1250)
IL006	Housing Authority of Champaign County	Champaign	Illinois	PHA	Large (1250-9999)
IL052	Randolph County Housing Authority	Chester	Illinois	PHA	Low (250-499)
IL802	Habitat Property Management Corp	Chicago	Illinois	PHA	No Units
IL046	Housing Authority of Adams County	Clayton	Illinois	PHA	Small (50-249)
IL031	Dewitt County Housing Authority	Clinton	Illinois	PHA	Small (50-249)
IL068	White County Housing Authority	Crossville	Illinois	PHA	Small (50-249)
IL097	Hancock County Housing Authority	Dallas City	Illinois	PHA	Very Small (1-49)
IL011	The Housing Authority of the City of Danville, IL	Danville	Illinois	PHA	Medium High (500-1250)
IL062	Effingham County Housing Authority	Effingham	Illinois	PHA	Small (50-249)
IL066	Housing Authority of the County of Hardin	Elizabethtown	Illinois	PHA	Small (50-249)
IL082	Housing Authority of the County of Jodaviess	Galena	Illinois	PHA	Small (50-249)
IL085	Knox County Housing Authority	Galesburg	Illinois	PHA	Medium High (500-1250)
IL034	Housing Authority of the County of Ford	Gibson City	Illinois	PHA	Small (50-249)
IL058	Housing Authority of Pope County	Golconda	Illinois	PHA	Small (50-249)
IL056	Housing Authority of the County of Lake, Il.	Grayslake	Illinois	PHA	Large (1250-9999)
IL078	Housing Authority of the County of Bond	Greenville	Illinois	PHA	Small (50-249)
IL043	Housing Authority - County of Saline	Harrisburg	Illinois	PHA	Medium High (500-1250)
IL042	Mason County Housing Authority	Havana	Illinois	PHA	Small (50-249)
IL074	Housing Authority of the County of Jersey	Jerseyville	Illinois	PHA	Low (250-499)
IL108	Housing Authority of the County of Lawrence, Il.	Lawrenceville	Illinois	PHA	Small (50-249)
IL076	Housing Authority of the County of McDonough	Macomb	Illinois	PHA	Low (250-499)
IL126	Housing Authority of the City of Marion, Illinois	Marion	Illinois	PHA	Low (250-499)
IL118	Hamilton County Housing Authority	Mc Leansboro	Illinois	PHA	Small (50-249)
IL020	Moline Housing Authority	Moline	Illinois	PHA	Medium High (500-1250)
IL027	Grundy County Housing Authority	Morris	Illinois	PHA	Small (50-249)
IL045	Housing Authority of Pulaski County	Mounds	Illinois	PHA	Small (50-249)
IL093	Housing Authority of the County of Wabash, Il.	Mt Carmel	Illinois	PHA	Small (50-249)
IL053	Housing Authority of the County of Jackson, Il.	Murphysboro	Illinois	PHA	Large (1250-9999)
IL107	Housing Authority of the City of North Chicago, IL	North Chicago	Illinois	PHA	Medium High (500-1250)
IL096	Housing Authority of the County of Richland	Olney	Illinois	PHA	Small (50-249)
IL095	Ogle County Housing Authority	Oregon	Illinois	PHA	Low (250-499)
IL038	Housing Authority of Christian County, Illinois	Pana	Illinois	PHA	Low (250-499)
IL016	Quincy Housing Authority	Quincy	Illinois	PHA	Medium High (500-1250)
IL036	Housing Authority of the County of Vermilion, Ill.	Rossville	Illinois	PHA	Low (250-499)
IL081	Carroll County Housing Authority	Savanna	Illinois	PHA	Small (50-249)
IL087	Housing Authority of the County of Shelby, Il.	Shelbyville	Illinois	PHA	Small (50-249)
IL004	Springfield Housing Authority	Springfield	Illinois	PHA	Large (1250-9999)
IL026	Housing Authority of the City of Waukegan	Waukegan	Illinois	PHA	Medium High (500-1250)
IL061	Housing Authority of the County of Franklin	West Frankfort	Illinois	PHA	Medium High (500-1250)
IL073	Scott County Housing Authority	Winchester	Illinois	PHA	Small (50-249)
IN031	Housing Authority of the City of Bedford	Bedford	Indiana	PHA	Low (250-499)
IN032	Bloomfield Housing Authority	Bloomfield	Indiana	PHA	Small (50-249)
IN058	Columbus Housing Authority	Columbus	Indiana	PHA	Medium High (500-1250)
IN036	Housing Authority of the City of Kendallville	Kendallville	Indiana	PHA	Small (50-249)
IN055	Linton Housing Authority	Linton	Indiana	PHA	Low (250-499)
IN019	Housing Authority of the City of Michigan City	Michigan City	Indiana	PHA	Low (250-499)
IN004	Delaware County Housing Authority	Muncie	Indiana	PHA	Low (250-499)
IN089	Housing Authority of the City of Rome City	Rome City	Indiana	PHA	Small (50-249)
IN034	Sullivan Housing Authority	Sullivan	Indiana	PHA	Small (50-249)
IA003	Afton Housing Commission	Afton	Iowa	PHA	Very Small (1-49)
IA124	Area XV Multi-County Housing Agency	Agency	Iowa	PHA	Low (250-499)
IA114	Albia Housing Agency	Albia	Iowa	PHA	Small (50-249)
IA028	Low Rent Housing Agency of Bancroft	Bancroft	Iowa	PHA	Very Small (1-49)
IA015	Low Rent Housing Agency of Burlington	Burlington	Iowa	PHA	Low (250-499)
IA042	Centerville Municipal Housing Agency	Centerville	Iowa	PHA	Small (50-249)
IA016	Chariton Housing Authority	Chariton	Iowa	PHA	Small (50-249)
IA034	Clarinda Low Rent Housing Agency	Clarinda	Iowa	PHA	Small (50-249)
IA001	Corning Housing Commission	Corning	Iowa	PHA	Very Small (1-49)
IA023	Municipal Housing Agency of Council Bluffs	Council Bluffs	Iowa	PHA	Medium High (500-1250)
IA045	Davenport Housing Commission	Davenport	Iowa	PHA	Medium High (500-1250)

IA025	Essex Low Rent Housing Agency	Essex	Iowa	PHA	Very Small (1-49)
IA038	Evansdale Municipal Housing Authority	Evansdale	Iowa	PHA	Small (50-249)
IA010	Low Rent Housing Agency of Farragut	Farragut	Iowa	PHA	Very Small (1-49)
IA107	Fort Dodge Municipal Housing Agency	Fort Dodge	Iowa	PHA	Medium High (500-1250)
IA047	Fort Madison Housing Authority	Fort Madison	Iowa	PHA	Small (50-249)
IA131	Central Iowa Regional Housing Authority	Grimes	Iowa	PHA	Medium High (500-1250)
IA007	Low Rent Housing Agency of Hamburg	Hamburg	Iowa	PHA	Very Small (1-49)
IA022	City of Iowa City Housing Authority	Iowa City	Iowa	PHA	Large (1250-9999)
IA030	Keokuk Housing Authority	Keokuk	Iowa	PHA	Low (250-499)
IA027	Low Rent Housing Agency of Leon	Leon	Iowa	PHA	Very Small (1-49)
IA006	Lone Tree Housing Commission	Lone Tree	Iowa	PHA	Very Small (1-49)
IA009	Malvern Low Rent Housing Agency	Malvern	Iowa	PHA	Very Small (1-49)
IA021	Municipal Housing Agency of Manning	Manning	Iowa	PHA	Very Small (1-49)
IA127	North Iowa Regional Housing Authority	Mason City	Iowa	PHA	Medium High (500-1250)
IA029	Low Rent Housing Agency of Missouri Valley	Missouri Valley	Iowa	PHA	Small (50-249)
IA026	Low Rent Housing Agency of Mount Ayr	Mount Ayr	Iowa	PHA	Very Small (1-49)
IA014	Low Rent Housing Agency of Onawa	Onawa	Iowa	PHA	Small (50-249)
IA004	Ottumwa Housing Authority	Ottumwa	Iowa	PHA	Medium High (500-1250)
IA044	Red Oak	Red Oak	Iowa	PHA	Small (50-249)
IA046	Rock Rapids	Rock Rapids	Iowa	PHA	Very Small (1-49)
IA019	Shenandoah	Shenandoah	Iowa	PHA	Small (50-249)
IA008	Sidney	Sidney	Iowa	PHA	Very Small (1-49)
IA018	Sioux City	Sioux City	Iowa	PHA	Medium High (500-1250)
IA005	Stanton Housing Commission	Stanton	Iowa	PHA	Very Small (1-49)
IA012	Tabor Low Rent Housing Agency	Tabor	Iowa	PHA	Very Small (1-49)
IA079	Villisca Low Rent Housing Agency	Villisca	Iowa	PHA	Very Small (1-49)
IA050	Waterloo Housing Authority	Waterloo	Iowa	PHA	Medium High (500-1250)
IA013	Low Rent Housing Agency of Waverly	Waverly	Iowa	PHA	Very Small (1-49)
IA017	Low Rent Housing Agency of Winterset	Winterset	Iowa	PHA	Very Small (1-49)
KS050	Agra Housing Authority	Agra	Kansas	PHA	Very Small (1-49)
KS018	Anthony Housing Authority	Anthony	Kansas	PHA	Very Small (1-49)
KS017	Atchison Housing Authority	Atchison	Kansas	PHA	Small (50-249)
KS029	Augusta Housing Authority	Augusta	Kansas	PHA	Small (50-249)
KS095	Belleville Housing Authority	Belleville	Kansas	PHA	Very Small (1-49)
KS019	Beloit Housing Authority	Beloit	Kansas	PHA	Very Small (1-49)
KS003	Bird City Housing Authority	Bird City	Kansas	PHA	Very Small (1-49)
KS009	Bonner Springs Housing Authority	Bonner Springs	Kansas	PHA	Very Small (1-49)
KS078	Burrton Housing Authority	Burrton	Kansas	PHA	Very Small (1-49)
KS113	Cawker City Housing Authority	Cawker City	Kansas	PHA	Very Small (1-49)
KS062	Chanute Housing Authority	Chanute	Kansas	PHA	Small (50-249)
KS147	Chapman Housing Authority	Chapman	Kansas	PHA	Very Small (1-49)
KS155	Cherryvale Housing Authority	Cherryvale	Kansas	PHA	Very Small (1-49)
KS031	Clay Center Housing Authority	Clay Center	Kansas	PHA	Small (50-249)
KS143	Columbus Housing Authority	Columbus	Kansas	PHA	Very Small (1-49)
KS006	Dodge City Housing Authority	Dodge City	Kansas	PHA	Low (250-499)
KS086	Downs Housing Authority	Downs	Kansas	PHA	Very Small (1-49)
KS094	Florence Housing Authority	Florence	Kansas	PHA	Very Small (1-49)
KS040	Fort Scott Housing Authority	Fort Scott	Kansas	PHA	Small (50-249)
KS131	Frontenac Housing Authority	Frontenac	Kansas	PHA	Very Small (1-49)
KS045	Galena Housing Authority	Galena	Kansas	PHA	Very Small (1-49)
KS071	Garden City Housing Authority	Garden City	Kansas	PHA	Small (50-249)
KS051	Gaylord Housing Authority	Gaylord	Kansas	PHA	Very Small (1-49)
KS041	Great Bend Housing Authority	Great Bend	Kansas	PHA	Small (50-249)
KS083	Greenleaf Housing Authority	Greenleaf	Kansas	PHA	Very Small (1-49)
KS013	Hanover Housing Authority	Hanover	Kansas	PHA	Very Small (1-49)
KS100	Housing Authority of the City of Herington KS	Herington	Kansas	PHA	Very Small (1-49)
KS082	Hill City Housing Authority	Hill City	Kansas	PHA	Very Small (1-49)
KS008	Holton Housing Authority	Holton	Kansas	PHA	Small (50-249)
KS011	Horton Housing Authority	Horton	Kansas	PHA	Small (50-249)
KS079	Howard Housing Authority	Howard	Kansas	PHA	Very Small (1-49)
KS080	Housing Authority of the City of Hoxie	Hoxie	Kansas	PHA	Very Small (1-49)
KS061	Humboldt Housing Authority	Humboldt	Kansas	PHA	Small (50-249)
KS049	Iola Housing Authority	Iola	Kansas	PHA	Small (50-249)
KS047	Jetmore Housing Authority	Jetmore	Kansas	PHA	Very Small (1-49)
KS023	Kinsley Housing Authority	Kinsley	Kansas	PHA	Very Small (1-49)
KS053	Lawrence/Douglas County Housing Authority	Lawrence	Kansas	PHA	Medium High (500-1250)
KS068	Leavenworth Housing Authority	Leavenworth	Kansas	PHA	Low (250-499)
KS072	Liberal Housing Authority	Liberal	Kansas	PHA	Small (50-249)

KS121	Lincoln Housing Authority	Lincoln	Kansas	PHA	Very Small (1-49)
KS065	Lindsborg Housing Authority	Lindsborg	Kansas	PHA	Small (50-249)
KS014	Linn Housing Authority	Linn	Kansas	PHA	Very Small (1-49)
KS026	Luray Housing Authority	Luray	Kansas	PHA	Very Small (1-49)
KS025	Lyons Housing Authority	Lyons	Kansas	PHA	Small (50-249)
KS063	Manhattan Housing Authority	Manhattan	Kansas	PHA	Low (250-499)
KS141	Mankato Housing Authority	Mankato	Kansas	PHA	Very Small (1-49)
KS032	Marion Housing Authority	Marion	Kansas	PHA	Very Small (1-49)
KS057	Housing Authority of Medicine Lodge	Medicine Lodge	Kansas	PHA	Very Small (1-49)
KS033	Minneapolis Housing Authority	Minneapolis	Kansas	PHA	Small (50-249)
KS059	Moundridge Housing Authority	Moundridge	Kansas	PHA	Small (50-249)
KS069	Neodesha Housing Authority	Neodesha	Kansas	PHA	Small (50-249)
KS081	Nicodemus Housing Authority	Nicodemus	Kansas	PHA	Very Small (1-49)
KS015	North Newton Housing Authority	North Newton	Kansas	PHA	Small (50-249)
KS034	Norton Housing Authority	Norton	Kansas	PHA	Very Small (1-49)
KS012	Oberlin Housing Authority	Oberlin	Kansas	PHA	Very Small (1-49)
KS043	Olathe Housing Authority	Olathe	Kansas	PHA	Medium High (500-1250)
KS020	Osborne Housing Authority	Osborne	Kansas	PHA	Very Small (1-49)
KS039	Paola Housing Authority	Paola	Kansas	PHA	Small (50-249)
KS044	Parsons Housing Authority	Parsons	Kansas	PHA	Small (50-249)
KS052	Pleasanton Housing Authority	Pleasanton	Kansas	PHA	Very Small (1-49)
KS027	Russell Housing Authority	Russell	Kansas	PHA	Small (50-249)
KS054	Sabetha Housing Authority	Sabetha	Kansas	PHA	Very Small (1-49)
KS038	Salina Housing Authority	Salina	Kansas	PHA	Low (250-499)
KS066	Sedgwick Housing Authority	Sedgwick	Kansas	PHA	Very Small (1-49)
KS152	Solomon Housing Authority	Solomon	Kansas	PHA	Very Small (1-49)
KS016	South Hutchinson Housing Authority	South Hutchinson	Kansas	PHA	Small (50-249)
KS076	St. Francis Housing Authority	St Francis	Kansas	PHA	Very Small (1-49)
KS142	Stafford Housing Authority	Stafford	Kansas	PHA	Very Small (1-49)
KS002	Topeka Housing Authority	Topeka	Kansas	PHA	Large (1250-9999)
KS058	Ulysses Housing Authority	Ulysses	Kansas	PHA	Very Small (1-49)
KS056	Valley Falls Housing Authority	Valley Falls	Kansas	PHA	Very Small (1-49)
KS158	Victoria Housing Authority	Victoria	Kansas	PHA	Very Small (1-49)
KS042	Wamego Housing Authority	Wamego	Kansas	PHA	Very Small (1-49)
KS037	Wellington Housing Authority	Wellington	Kansas	PHA	Small (50-249)
KS132	Winfield Housing Authority	Winfield	Kansas	PHA	Small (50-249)
KY046	Housing Authority of Albany	Albany	Kentucky	PHA	Very Small (1-49)
KY091	Housing Authority of Benton	Benton	Kentucky	PHA	Small (50-249)
KY010	Housing Authority of Corbin	Corbin	Kentucky	PHA	Small (50-249)
KY059	Housing Authority of Falmouth	Falmouth	Kentucky	PHA	Very Small (1-49)
KY061	Housing Authority of Georgetown	Georgetown	Kentucky	PHA	Medium High (500-1250)
KY053	Housing Authority of Greensburg	Greensburg	Kentucky	PHA	Small (50-249)
KY170	Housing Authority of Todd County	Guthrie	Kentucky	PHA	Small (50-249)
KY052	Housing Authority of Lancaster	Lancaster	Kentucky	PHA	Small (50-249)
KY086	HA of Lawrence County	Louisa	Kentucky	PHA	Small (50-249)
KY032	Housing Authority of Morehead	Morehead	Kentucky	PHA	Small (50-249)
KY030	Housing Authority of Murray	Murray	Kentucky	PHA	Small (50-249)
KY106	Housing Authority of Owingsville	Owingsville	Kentucky	PHA	Small (50-249)
KY013	Housing Authority of Paris	Paris	Kentucky	PHA	Small (50-249)
KY177	Housing Authority of Salyersville/Magoffin Co.	Salyersville	Kentucky	PHA	Small (50-249)
KY056	Housing Authority of Springfield	Springfield	Kentucky	PHA	Small (50-249)
KY149	Housing Authority of Martin County	Warfield	Kentucky	PHA	Very Small (1-49)
LA034	Housing Authority of the City of Abbeville	Abbeville	Louisiana	PHA	Small (50-249)
LA023	Housing Authority of the City of Alexandria	Alexandria	Louisiana	PHA	Large (1250-9999)
LA045	Housing Authority of the Town of Arcadia	Arcadia	Louisiana	PHA	Small (50-249)
LA058	Housing Authority of the Town of Basile	Basile	Louisiana	PHA	Very Small (1-49)
LA003	Housing Authority of East Baton Rouge	Baton Rouge	Louisiana	PHA	Large (1250-9999)
LA056	Housing Authority of the Town of Berwick	Berwick	Louisiana	PHA	Small (50-249)
LA062	Housing Authority of the Town of Bunkie	Bunkie	Louisiana	PHA	Small (50-249)
LA122	Housing Authority of the Town of Colfax	Colfax	Louisiana	PHA	Small (50-249)
LA125	Housing Authority of the Parish of Caldwell	Columbia	Louisiana	PHA	Small (50-249)
LA071	Housing Authority of the Town of Cottonport	Cottonport	Louisiana	PHA	Small (50-249)
LA238	Housing Authority of City of Covington	Covington	Louisiana	PHA	Small (50-249)
LA029	Housing Authority of Crowley	Crowley	Louisiana	PHA	Medium High (500-1250)
LA101	Housing Authority of the City of Denham Springs	Denham Springs	Louisiana	PHA	Small (50-249)
LA106	Housing Authority of the City of Dequincy	Dequincy	Louisiana	PHA	Small (50-249)
LA086	Housing Authority of the City of Deridder	Deridder	Louisiana	PHA	Small (50-249)
LA130	Housing Authority of Duson	Duson	Louisiana	PHA	Very Small (1-49)

LA066	Housing Authority of the Town of Elton	Elton	Louisiana	PHA	Very Small (1-49)
LA047	Housing Authority of the Town of Erath	Erath	Louisiana	PHA	Small (50-249)
LA091	Southwest Acadia Consolidated Housing Authority	Estherwood	Louisiana	PHA	Small (50-249)
LA025	Housing Authority of the City of Eunice	Eunice	Louisiana	PHA	Small (50-249)
LA052	Housing Authority of Farmerville	Farmerville	Louisiana	PHA	Very Small (1-49)
LA261	Village of Fenton Housing Authority	Fenton	Louisiana	PHA	Very Small (1-49)
LA076	Housing Authority of Ferriday	Ferriday	Louisiana	PHA	Small (50-249)
LA120	Housing Authority of Grant Parish	Georgetown	Louisiana	PHA	Small (50-249)
LA098	Housing Authority of Gibsland	Gibsland	Louisiana	PHA	Very Small (1-49)
LA097	Housing Authority of the Town of Grambling	Grambling	Louisiana	PHA	Small (50-249)
LA073	Housing Authority of South Landry	Grand Coteau	Louisiana	PHA	Small (50-249)
LA035	Housing Authority of the Town of Gueydan	Gueydan	Louisiana	PHA	Very Small (1-49)
LA096	Housing Authority of the Town of Haynesville	Haynesville	Louisiana	PHA	Small (50-249)
LA127	Housing Authority of the Town of East Hodge	Hodge	Louisiana	PHA	Very Small (1-49)
LA089	Housing Authority of Homer	Homer	Louisiana	PHA	Small (50-249)
LA231	Housing Authority of the Town of Iowa	Iowa	Louisiana	PHA	Small (50-249)
LA142	Housing Authority of Jena	Jena	Louisiana	PHA	Small (50-249)
LA061	Housing Authority of the Town of Jonesboro	Jonesboro	Louisiana	PHA	Small (50-249)
LA012	Housing Authority of the City of Kenner	Kenner	Louisiana	PHA	Medium High (500-1250)
LA069	Housing Authority of the Town of Kinder	Kinder	Louisiana	PHA	Very Small (1-49)
LA095	Housing Authority of St. John the Baptist Parish	La Place	Louisiana	PHA	Low (250-499)
LA004	Housing Authority of Lake Charles	Lake Charles	Louisiana	PHA	Large (1250-9999)
LA262	East Carroll Parish Housing Authority	Lake Providence	Louisiana	PHA	Very Small (1-49)
LA102	Housing Authority of the Town of Lake Providence	Lake Providence	Louisiana	PHA	Small (50-249)
LA111	Housing Authority of the City of Leesville	Leesville	Louisiana	PHA	Small (50-249)
LA128	Housing Authority of Vernon Parish	Leesville	Louisiana	PHA	Small (50-249)
LA077	Housing Authority of the Town of Logansport	Logansport	Louisiana	PHA	Very Small (1-49)
LA031	Housing Authority of the Town of Mamou	Mamou	Louisiana	PHA	Small (50-249)
LA112	Housing Authority of the Town of Mansfield	Mansfield	Louisiana	PHA	Small (50-249)
LA037	Housing Authority of the City of Minden	Minden	Louisiana	PHA	Low (250-499)
LA113	Housing Authority of the Town of New Roads	New Roads	Louisiana	PHA	Small (50-249)
LA068	Housing Authority of the Town of Oberlin	Oberlin	Louisiana	PHA	Very Small (1-49)
LA055	Housing Authority of City of Opelousas	Opelousas	Louisiana	PHA	Medium High (500-1250)
LA070	Housing Authority of the Town of Patterson	Patterson	Louisiana	PHA	Small (50-249)
LA075	Housing Authority of the Town of Ponchatoula	Ponchatoula	Louisiana	PHA	Small (50-249)
LA040	Housing Auth. of the Town of St. Martinville	Saint Martinville	Louisiana	PHA	Small (50-249)
LA002	Housing Authority of Shreveport	Shreveport	Louisiana	PHA	Large (1250-9999)
LA072	Housing Authority of the Town of Simmesport	Simmesport	Louisiana	PHA	Small (50-249)
LA103	Housing Authority of City of Slidell	Slidell	Louisiana	PHA	Medium High (500-1250)
LA030	Housing Authority of Ville Platte	Ville Platte	Louisiana	PHA	Small (50-249)
LA046	Housing Authority of the Town of Vinton	Vinton	Louisiana	PHA	Small (50-249)
LA088	Housing Authority of Vivian	Vivian	Louisiana	PHA	Small (50-249)
LA067	Housing Authority of the Parish of St. Landry	Washington	Louisiana	PHA	Medium High (500-1250)
LA011	Housing Authority of Westwego	Westwego	Louisiana	PHA	Low (250-499)
LA093	Housing Authority of the Town of White Castle	White Castle	Louisiana	PHA	Small (50-249)
LA109	Housing Authority of the Town of Winnsboro	Winnsboro	Louisiana	PHA	Small (50-249)
LA100	Housing Authority of the Town of Youngsville	Youngsville	Louisiana	PHA	Very Small (1-49)
ME023	Bar Harbor Housing Authority	Bar Harbor	Maine	PHA	Small (50-249)
ME026	Tremont Housing Authority	Bass Harbor	Maine	PHA	Very Small (1-49)
ME006	Brunswick Housing Authority	Brunswick	Maine	PHA	Medium High (500-1250)
ME027	Ellsworth Housing Authority	Ellsworth	Maine	PHA	Low (250-499)
ME024	Mount Desert Housing Authority	Mount Desert	Maine	PHA	Very Small (1-49)
ME018	Old Town Housing Authority	Old Town	Maine	PHA	Low (250-499)
ME011	Sanford Housing Authority	Sanford	Maine	PHA	Medium High (500-1250)
ME022	Southwest Harbor Housing Authority	Southwest Harbor	Maine	PHA	Small (50-249)
ME001	Van Buren Housing Authority	Van Buren	Maine	PHA	Small (50-249)
MD001	Housing Authority of the City of Annapolis	Annapolis	Maryland	PHA	Large (1250-9999)
MD034	Queen Anne's County Housing Authority	Centreville	Maryland	PHA	Small (50-249)
MD017	College Park Housing Authority	College Park	Maryland	PHA	Small (50-249)
MD023	Howard County Housing Commission	Columbia	Maryland	PHA	Medium High (500-1250)
MD009	Housing Authority of Crisfield	Crisfield	Maryland	PHA	Low (250-499)
MD030	Housing Authority of Allegany County	Cumberland	Maryland	PHA	Small (50-249)
MD005	Housing Authority of the City of Cumberland	Cumberland	Maryland	PHA	Low (250-499)
MD019	Housing Authority of the Town of Easton	Easton	Maryland	PHA	Small (50-249)
MD016	Elkton Housing Authority	Elkton	Maryland	PHA	Small (50-249)
MD011	Glenarden Housing Authority	Glenarden	Maryland	PHA	Small (50-249)
MD028	Housing Authority of Washington County	Hagerstown	Maryland	PHA	Medium High (500-1250)
MD012	Havre De Grace Housing Authority	Havre De Grace	Maryland	PHA	Small (50-249)

MD015	Housing Authority of Prince Georges County	Largo	Maryland	PHA	Large (1250-9999)
MD022	Housing Authority of Calvert County	Prince Frederick	Maryland	PHA	Low (250-499)
MD007	Rockville Housing Enterprises	Rockville	Maryland	PHA	Medium High (500-1250)
MD013	St. Michaels Housing Authority	Saint Michaels	Maryland	PHA	Small (50-249)
MD014	Wicomico County Housing Authority	Salisbury	Maryland	PHA	Medium High (500-1250)
MA085	Amherst Housing Authority	Amherst	Massachusetts	PHA	Low (250-499)
MA159	Auburn Housing Authority	Auburn	Massachusetts	PHA	
MA044	Beverly Housing Authority	Beverly	Massachusetts	PHA	Low (250-499)
MA003	Cambridge Housing Authority	Cambridge	Massachusetts	PHA	Large (1250-9999)
MA008	Chicopee Housing Authority	Chicopee	Massachusetts	PHA	Medium High (500-1250)
MA021	Clinton Housing Authority	Clinton	Massachusetts	PHA	Small (50-249)
MA098	Concord Housing Authority	Concord	Massachusetts	PHA	Small (50-249)
MA118	Danvers Housing Authority	Danvers	Massachusetts	PHA	Small (50-249)
MA040	Dedham Housing Authority	Dedham	Massachusetts	PHA	Low (250-499)
MA043	Dracut Housing Authority	Dracut	Massachusetts	PHA	Small (50-249)
MA047	Falmouth Housing Authority	Falmouth	Massachusetts	PHA	Low (250-499)
MA037	Fitchburg Housing Authority	Fitchburg	Massachusetts	PHA	Low (250-499)
MA028	Framingham Housing Authority	Framingham	Massachusetts	PHA	Medium High (500-1250)
MA132	Groveland Housing Authority	Groveland	Massachusetts	PHA	Small (50-249)
MA155	Hanson Housing Authority	Hanson	Massachusetts	PHA	Very Small (1-49)
MA091	Hudson Housing Authority	Hudson	Massachusetts	PHA	Small (50-249)
MA010	Lawrence Housing Authority	Lawrence	Massachusetts	PHA	Large (1250-9999)
MA137	Maynard Housing Authority	Maynard	Massachusetts	PHA	Very Small (1-49)
MA015	Medford Housing Authority	Medford	Massachusetts	PHA	Large (1250-9999)
MA081	Methuen Housing Authority	Methuen	Massachusetts	PHA	Medium High (500-1250)
MA069	Milford Housing Authority	Milford	Massachusetts	PHA	Medium High (500-1250)
MA065	Needham Housing Authority	Needham	Massachusetts	PHA	Small (50-249)
MA032	Newburyport Housing Authority	Newburyport	Massachusetts	PHA	Small (50-249)
MA036	Newton Housing Authority	Newton Highlands	Massachusetts	PHA	Medium High (500-1250)
MA034	North Adams Housing Authority	North Adams	Massachusetts	PHA	Medium High (500-1250)
MA109	Norwood Housing Authority	Norwood	Massachusetts	PHA	Low (250-499)
MA111	Pembroke Housing Authority	Pembroke	Massachusetts	PHA	Small (50-249)
MA029	Pittsfield Housing Authority	Pittsfield	Massachusetts	PHA	Medium High (500-1250)
MA059	Plymouth Housing Authority	Plymouth	Massachusetts	PHA	Low (250-499)
MA110	Bourne Housing Authority	Pocasset	Massachusetts	PHA	Small (50-249)
MA020	Quincy Housing Authority	Quincy	Massachusetts	PHA	Large (1250-9999)
MA133	Rockland Housing Authority	Rockland	Massachusetts	PHA	Small (50-249)
MA055	Salem Housing Authority	Salem	Massachusetts	PHA	Medium High (500-1250)
MA099	Saugus Housing Authority	Saugus	Massachusetts	PHA	Low (250-499)
MA049	Scituate Housing Authority	Scituate	Massachusetts	PHA	Small (50-249)
MA041	Shrewsbury Housing Authority	Shrewsbury	Massachusetts	PHA	Low (250-499)
MA031	Somerville Housing Authority	Somerville	Massachusetts	PHA	Large (1250-9999)
MA117	Stoughton Housing Authority	Stoughton	Massachusetts	PHA	Small (50-249)
MA169	Swansea Housing Authority	Swansea	Massachusetts	PHA	Very Small (1-49)
MA139	Tewksbury Housing Authority	Tewksbury	Massachusetts	PHA	Small (50-249)
MA013	Waltham Housing Authority	Waltham	Massachusetts	PHA	Medium High (500-1250)
MA123	Webster Housing Authority	Webster	Massachusetts	PHA	Small (50-249)
MA045	Weymouth Housing Authority	Weymouth	Massachusetts	PHA	Low (250-499)
MA019	Woburn Housing Authority	Woburn	Massachusetts	PHA	Low (250-499)
MI014	Albion Housing Commission	Albion	Michigan	PHA	Small (50-249)
MI114	Algonac Housing Commission	Algonac	Michigan	PHA	Small (50-249)
MI053	Allen Park Housing Commission	Allen Park	Michigan	PHA	Small (50-249)
MI022	Alpena Housing Commission	Alpena	Michigan	PHA	Small (50-249)
MI064	Ann Arbor Housing Commission	Ann Arbor	Michigan	PHA	Large (1250-9999)
MI019	Baraga Housing Commission	Baraga	Michigan	PHA	Small (50-249)
MI194	Bath Charter Township Housing Commission	Bath	Michigan	PHA	Small (50-249)
MI024	Bay City Housing Commission	Bay City	Michigan	PHA	Medium High (500-1250)
MI010	Benton Harbor Housing Commission	Benton Harbor	Michigan	PHA	Medium High (500-1250)
MI032	Benton Township Housing Commission	Benton Harbor	Michigan	PHA	Low (250-499)
MI041	Big Rapids Housing Commission	Big Rapids	Michigan	PHA	Low (250-499)
MI084	Boyne City Housing Commission	Boyne City	Michigan	PHA	Small (50-249)
MI182	Charlevoix Housing Commission	Charlevoix	Michigan	PHA	Small (50-249)
MI030	Cheboygan Housing Commission	Cheboygan	Michigan	PHA	Small (50-249)
MI003	Dearborn Housing Commission	Dearborn	Michigan	PHA	Low (250-499)
MI007	Ecorse Housing Commission	Ecorse	Michigan	PHA	Small (50-249)
MI116	Elk Rapids Housing Commission	Elk Rapids	Michigan	PHA	Very Small (1-49)
MI047	Grayling Housing Commission	Grayling	Michigan	PHA	Small (50-249)
MI063	Hancock Housing Commission	Hancock	Michigan	PHA	Small (50-249)

MI105	Highland Park Housing Commission	Highland Park	Michigan	PHA	Small (50-249)
MI103	Hillsdale Housing Commission	Hillsdale	Michigan	PHA	Small (50-249)
MI107	Houghton Housing Commission	Houghton	Michigan	PHA	Small (50-249)
MI027	Inkster Housing Commission	Inkster	Michigan	PHA	Large (1250-9999)
MI091	Kingsford Housing Commission	Kingsford	Michigan	PHA	Small (50-249)
MI104	Lake Linden Housing Commission	Lake Linden	Michigan	PHA	Small (50-249)
MI058	Lansing Housing Commission	Lansing	Michigan	PHA	Large (1250-9999)
MI054	Laurium Housing Commission	Laurium	Michigan	PHA	Very Small (1-49)
MI098	Luna Pier Housing Commission	Luna Pier	Michigan	PHA	Small (50-249)
MI178	Schoolcraft County Housing Commission	Manistique	Michigan	PHA	Small (50-249)
MI161	Marysville Housing Commission	Marysville	Michigan	PHA	Small (50-249)
MI048	Melvindale Housing Commission	Melvindale	Michigan	PHA	Low (250-499)
MI011	Monroe Housing Commission	Monroe	Michigan	PHA	Low (250-499)
MI028	Mount Clemens Housing Commission	Mount Clemens	Michigan	PHA	Low (250-499)
MI031	Muskegon Heights Housing Commission	Muskegon Heights	Michigan	PHA	Low (250-499)
MI076	Niles Housing Commission	Niles	Michigan	PHA	Small (50-249)
MI042	Ontonagon Housing Commission	Ontonagon	Michigan	PHA	Small (50-249)
MI187	Rapid River Housing Commission	Rapid River	Michigan	PHA	Very Small (1-49)
MI020	Reed City Housing Commission	Reed City	Michigan	PHA	Small (50-249)
MI008	River Rouge Housing Commission	River Rouge	Michigan	PHA	Medium High (500-1250)
MI093	Rockford Housing Commission	Rockford	Michigan	PHA	Small (50-249)
MI072	Romulus Housing Commission	Romulus	Michigan	PHA	Small (50-249)
MI006	Saginaw Housing Commission	Saginaw	Michigan	PHA	Large (1250-9999)
MI052	Saint Clair Housing Commission	St Clair	Michigan	PHA	Small (50-249)
MI089	Taylor Housing Commission	Taylor	Michigan	PHA	Medium High (500-1250)
MI080	Traverse City Housing Commission	Traverse City	Michigan	PHA	Low (250-499)
MI026	Ypsilanti Housing Commission	Ypsilanti	Michigan	PHA	Low (250-499)
MN188	Cass County HRA	Backus	Minnesota	PHA	Small (50-249)
MN180	Todd County HRA	Browerville	Minnesota	PHA	Small (50-249)
MN067	Cambridge Economic Development Authority	Cambridge	Minnesota	PHA	Small (50-249)
MN069	HRA of Clarkfield, Minnesota	Clarkfield	Minnesota	PHA	Very Small (1-49)
MN105	HRA of Columbia Heights	Columbia Heights	Minnesota	PHA	Small (50-249)
MN082	HRA of Crosby, Minnesota	Crosby	Minnesota	PHA	Small (50-249)
MN178	Meeker County HRA	Dassel	Minnesota	PHA	Small (50-249)
MN107	HRA of Detroit Lakes, Minnesota	Detroit Lakes	Minnesota	PHA	Low (250-499)
MN206	Housing & Redevelopment Authority of Dodge Center	Dodge Center	Minnesota	PHA	Very Small (1-49)
MN169	Grant County HRA	Elbow Lake	Minnesota	PHA	Small (50-249)
MN053	HRA of Ely, Minnesota	Ely	Minnesota	PHA	Small (50-249)
MN157	Housing & Redevelopment Authority of Faribault	Faribault	Minnesota	PHA	Very Small (1-49)
MN044	HRA of Forest Lake, Minnesota	Forest Lake	Minnesota	PHA	Very Small (1-49)
MN057	HRA of Grand Rapids, Minnesota	Grand Rapids	Minnesota	PHA	Small (50-249)
MN086	HRA of Village of Greenbush, Minnesota	Greenbush	Minnesota	PHA	Very Small (1-49)
MN083	HRA of Henning, Minnesota	Henning	Minnesota	PHA	Very Small (1-49)
MN089	HRA of Jackson, Minnesota	Jackson	Minnesota	PHA	Small (50-249)
MN208	Housing & Redevelopment Authority of Janesville	Janesville	Minnesota	PHA	Very Small (1-49)
MN102	HRA of Lindstrom, Minnesota	Lindstrom	Minnesota	PHA	Very Small (1-49)
MN088	HRA of Long Prairie, Minnesota	Long Prairie	Minnesota	PHA	Very Small (1-49)
MN026	HRA of Montevideo, Minnesota	Montevideo	Minnesota	PHA	Small (50-249)
MN101	HRA of Mora, Minnesota	Mora	Minnesota	PHA	Small (50-249)
MN074	HRA of the City of Mound, Minnesota	Mound	Minnesota	PHA	Small (50-249)
MN097	HRA of New Richland, Minnesota	New Richland	Minnesota	PHA	Very Small (1-49)
MN128	New Ulm EDA	New Ulm	Minnesota	PHA	Small (50-249)
MN095	HRA of Pequot Lakes, Minnesota	Pequot Lakes	Minnesota	PHA	Very Small (1-49)
MN020	HRA of Perham, Minnesota	Perham	Minnesota	PHA	Very Small (1-49)
MN049	HRA of Pipestone, Minnesota	Pipestone	Minnesota	PHA	Small (50-249)
MN064	HRA of Princeton, Minnesota	Princeton	Minnesota	PHA	Very Small (1-49)
MN151	Olmsted County HRA	Rochester	Minnesota	PHA	Medium High (500-1250)
MN028	HRA of Sauk Centre, Minnesota	Sauk Centre	Minnesota	PHA	Very Small (1-49)
MN060	HRA of Sleepy Eye, Minnesota	Sleepy Eye	Minnesota	PHA	Very Small (1-49)
MN046	HRA of St. Peter, Minnesota	St Peter	Minnesota	PHA	Small (50-249)
MN031	HRA of St. James, Minnesota	St. James	Minnesota	PHA	Small (50-249)
MN163	Metropoliitan Council HRA	St. Paul	Minnesota	PHA	Large (1250-9999)
MN007	HRA of Virginia, Minnesota	Virginia	Minnesota	PHA	Medium High (500-1250)
MN025	HRA of Walker, Minnesota	Walker	Minnesota	PHA	Very Small (1-49)
MN051	HRA In And for the City of Willmar, Minnesota	Willmar	Minnesota	PHA	Small (50-249)
MN034	HRA of Worthington, Minnesota	Worthington	Minnesota	PHA	Low (250-499)
MS083	The Housing Authority of the City of Amory	Amory	Mississippi	PHA	Small (50-249)
MS101	Bay Waveland Housing Authority	Bay St. Louis	Mississippi	PHA	

MS072	The Housing Authority of the City of Corinth	Corinth	Mississippi	PHA	Low (250-499)
MS121	The Housing Authority of the City of Itta Bena	Itta Bena	Mississippi	PHA	Small (50-249)
MS103	The Housing Authority of the City of Jackson	Jackson	Mississippi	PHA	Medium High (500-1250)
MS096	The Housing Authority of the City of Pontotoc	Pontotoc	Mississippi	PHA	Small (50-249)
MS067	The Housing Authority of the City of Richton	Richton	Mississippi	PHA	Small (50-249)
MS089	The Housing Authority of the City of Shelby	Shelby	Mississippi	PHA	Very Small (1-49)
MO047	Anderson Housing Authority	Anderson	Missouri	PHA	Very Small (1-49)
MO071	Aurora Housing Authority	Aurora	Missouri	PHA	Small (50-249)
MO067	Bethany Housing Authority	Bethany	Missouri	PHA	Small (50-249)
MO075	Brookfield Housing Authority	Brookfield	Missouri	PHA	Small (50-249)
MO059	Brunswick Housing Authority	Brunswick	Missouri	PHA	Very Small (1-49)
MO209	Housing Authority of the City of Cabool	Cabool	Missouri	PHA	Small (50-249)
MO078	Housing Authority of the City of Cameron	Cameron	Missouri	PHA	Small (50-249)
MO027	Housing Authority of the City of Cardwell	Cardwell	Missouri	PHA	Very Small (1-49)
MO107	Carrollton Housing Authority	Carrollton	Missouri	PHA	Small (50-249)
MO036	Housing Authority of the City of Caruthersville	Caruthersville	Missouri	PHA	Low (250-499)
MO066	Housing Authority of the City of Chaffee	Chaffee	Missouri	PHA	Small (50-249)
MO065	Chillicothe Housing Authority	Chillicothe	Missouri	PHA	Small (50-249)
MO031	Clinton Housing Authority	Clinton	Missouri	PHA	Small (50-249)
MO034	Housing Authority of the City of Dexter	Dexter	Missouri	PHA	Small (50-249)
MO056	Housing Authority of the City of Fayette	Fayette	Missouri	PHA	Small (50-249)
MO221	Housing Authority of the City of Festus	Festus	Missouri	PHA	Small (50-249)
MO014	Housing Authority of the City of Fulton	Fulton	Missouri	PHA	Low (250-499)
MO039	Housing Authority of the City of Glasgow	Glasgow	Missouri	PHA	Very Small (1-49)
MO020	Housing Authority of the City of Hayti	Hayti	Missouri	PHA	Small (50-249)
MO223	Housing Authority of the City of Hayti Heights	Hayti Heights	Missouri	PHA	Small (50-249)
MO110	Higginsville Housing Authority	Higginsville	Missouri	PHA	Small (50-249)
MO029	Housing Authority of the City of Hornersville	Hornersville	Missouri	PHA	Very Small (1-49)
MO040	Housing Authority of the City of Houston	Houston	Missouri	PHA	Small (50-249)
MO017	Independence Housing Authority	Independence	Missouri	PHA	Large (1250-9999)
MO009	Housing Authority of the City of Jefferson	Jefferson City	Missouri	PHA	Medium High (500-1250)
MO188	Housing Authority of the City of Joplin, MO	Joplin	Missouri	PHA	Medium High (500-1250)
MO018	Housing Authority of the City of Kennett	Kennett	Missouri	PHA	Low (250-499)
MO145	Housing Authority of the City of Kirksville	Kirksville	Missouri	PHA	Low (250-499)
MO187	Housing Authority of the City of Kirkwood	Kirkwood	Missouri	PHA	Small (50-249)
MO048	Lanagan Housing Authority	Lanagan	Missouri	PHA	Very Small (1-49)
MO147	Housing Authority of the City of Lancaster	Lancaster	Missouri	PHA	Very Small (1-49)
MO073	Lawson Housing Authority	Lawson	Missouri	PHA	Very Small (1-49)
MO079	Lebanon Housing Authority	Lebanon	Missouri	PHA	Small (50-249)
MO030	Lee's Summit Housing Authority	Lees Summit	Missouri	PHA	Medium High (500-1250)
MO096	Lexington Housing Authority	Lexington	Missouri	PHA	Small (50-249)
MO111	Housing Authority of the City of Macon	Macon	Missouri	PHA	Small (50-249)
MO090	Housing Authority of the City of Mansfield	Mansfield	Missouri	PHA	Small (50-249)
MO046	Marceline Housing Authority	Marceline	Missouri	PHA	Small (50-249)
MO081	Marionville Housing Authority	Marionville	Missouri	PHA	Very Small (1-49)
MO016	Marshall Housing Authority	Marshall	Missouri	PHA	Low (250-499)
MO072	Maryville Housing Authority	Maryville	Missouri	PHA	Small (50-249)
MO146	Housing Authority of the City of Memphis	Memphis	Missouri	PHA	Very Small (1-49)
MO010	Housing Authority of the City of Mexico	Mexico	Missouri	PHA	Low (250-499)
MO092	Housing Authority of the City of Morehouse	Morehouse	Missouri	PHA	Very Small (1-49)
MO033	Mound City Housing Authority	Mound City	Missouri	PHA	Very Small (1-49)
MO060	Housing Authority of the City of Mountain Grove	Mountain Grove	Missouri	PHA	Low (250-499)
MO062	Neosho Housing Authority	Neosho	Missouri	PHA	Small (50-249)
MO133	Nevada Housing Authority	Nevada	Missouri	PHA	Low (250-499)
MO064	Housing Authority of the City of New Madrid	New Madrid	Missouri	PHA	Small (50-249)
MO189	Housing Authority of the City of Norwood	Norwood	Missouri	PHA	Very Small (1-49)
MO050	Pineville Housing Authority	Pineville	Missouri	PHA	Very Small (1-49)
MO043	Plattsburg Housing Authority	Plattsburg	Missouri	PHA	Very Small (1-49)
MO042	Housing Authority of the City of Portageville	Portageville	Missouri	PHA	Small (50-249)
MO021	Housing Authority of the City of Potosi	Potosi	Missouri	PHA	Small (50-249)
MO103	Princeton Housing Authority	Princeton	Missouri	PHA	Very Small (1-49)
MO077	Republic Housing Authority	Republic	Missouri	PHA	Small (50-249)
MO068	Richland Housing Authority	Richland	Missouri	PHA	Small (50-249)
MO070	Richmond Housing Authority	Richmond	Missouri	PHA	Small (50-249)
MO149	Housing Authority of the City of Rolla	Rolla	Missouri	PHA	Low (250-499)
MO006	Housing Authority of the City of St. Charles	Saint Charles	Missouri	PHA	Low (250-499)
MO005	Housing Authority of the City of Kinloch	Saint Louis	Missouri	PHA	No Units
MO191	Housing Authority of the City of Sainte Genevieve	Sainte Genevieve	Missouri	PHA	Very Small (1-49)

MO052	Housing Authority of the City of Salem	Salem	Missouri	PHA	Small (50-249)
MO074	Housing Authority of the City of Sedalia, MO	Sedalia	Missouri	PHA	Low (250-499)
MO069	Slater Housing Authority	Slater	Missouri	PHA	Very Small (1-49)
MO041	Smithville Housing Authority	Smithville	Missouri	PHA	Small (50-249)
MO058	Springfield Housing Authority	Springfield	Missouri	PHA	Large (1250-9999)
MO003	St. Joseph Housing Authority	St Joseph	Missouri	PHA	Medium High (500-1250)
MO022	Housing Authority of the City of Steele	Steele	Missouri	PHA	Small (50-249)
MO032	Tarkio Housing Authority	Tarkio	Missouri	PHA	Very Small (1-49)
MO098	Housing Authority of the City of Thayer	Thayer	Missouri	PHA	Very Small (1-49)
MO061	Webb City Housing Authority	Webb City	Missouri	PHA	Small (50-249)
MO138	Wellston Housing Authority	Wellston	Missouri	PHA	Small (50-249)
NE040	Albion Housing Authority	Albion	Nebraska	PHA	Very Small (1-49)
NE141	Alliance Housing Authority	Alliance	Nebraska	PHA	Small (50-249)
NE111	Ansley Housing Authority	Ansley	Nebraska	PHA	Very Small (1-49)
NE065	Auburn Housing Authority	Auburn	Nebraska	PHA	Very Small (1-49)
NE090	Aurora Housing Authority	Aurora	Nebraska	PHA	Very Small (1-49)
NE086	Bayard Housing Authority	Bayard	Nebraska	PHA	Very Small (1-49)
NE099	Beemer Housing Authority	Beemer	Nebraska	PHA	Very Small (1-49)
NE174	Bellevue Housing Authority	Bellevue	Nebraska	PHA	Low (250-499)
NE016	Benkelman Housing Authority	Benkelman	Nebraska	PHA	Very Small (1-49)
NE092	Blair Housing Authority	Blair	Nebraska	PHA	Small (50-249)
NE031	Blue Hill Housing Authority	Blue Hill	Nebraska	PHA	Very Small (1-49)
NE106	Bridgeport Housing Authority	Bridgeport	Nebraska	PHA	Very Small (1-49)
NE117	Broken Bow Housing Authority	Broken Bow	Nebraska	PHA	Small (50-249)
NE026	Burwell Housing Authority	Burwell	Nebraska	PHA	Small (50-249)
NE101	Cairo Housing Authority	Cairo	Nebraska	PHA	Very Small (1-49)
NE070	Cambridge Housing Authority	Cambridge	Nebraska	PHA	Very Small (1-49)
NE115	Chappell Housing Authority	Chappell	Nebraska	PHA	Very Small (1-49)
NE027	Clarkson Housing Authority	Clarkson	Nebraska	PHA	Very Small (1-49)
NE019	Clay Center Housing Authority	Clay Center	Nebraska	PHA	Very Small (1-49)
NE104	Columbus Housing Authority	Columbus	Nebraska	PHA	Small (50-249)
NE083	Cozad Housing Authority	Cozad	Nebraska	PHA	Small (50-249)
NE034	Creighton Housing Authority	Creighton	Nebraska	PHA	Very Small (1-49)
NE041	Crete Housing Authority	Crete	Nebraska	PHA	Small (50-249)
NE097	Curtis Housing Authority	Curtis	Nebraska	PHA	Very Small (1-49)
NE036	Deshler Housing Authority	Deshler	Nebraska	PHA	Very Small (1-49)
NE033	Edgar Housing Authority	Edgar	Nebraska	PHA	Very Small (1-49)
NE073	Emerson Housing Authority	Emerson	Nebraska	PHA	Very Small (1-49)
NE030	Fairbury Housing Authority	Fairbury	Nebraska	PHA	Small (50-249)
NE064	Fairmont Housing Authority	Fairmont	Nebraska	PHA	Very Small (1-49)
NE100	Fremont Housing Authority	Fremont	Nebraska	PHA	Low (250-499)
NE093	Genoa Housing Authority	Genoa	Nebraska	PHA	Very Small (1-49)
NE078	Scotts Bluff County Housing Authority	Gering	Nebraska	PHA	Medium High (500-1250)
NE110	Gibbon Housing Authority	Gibbon	Nebraska	PHA	Very Small (1-49)
NE107	Gordon Housing Authority	Gordon	Nebraska	PHA	Very Small (1-49)
NE120	Gothenburg Housing Authority	Gothenburg	Nebraska	PHA	Small (50-249)
NE003	Hall County Housing Authority	Grand Island	Nebraska	PHA	Medium High (500-1250)
NE020	Grant Housing Authority	Grant	Nebraska	PHA	Very Small (1-49)
NE042	Greeley Housing Authority	Greeley	Nebraska	PHA	Very Small (1-49)
NE011	Gresham Housing Authority	Gresham	Nebraska	PHA	Very Small (1-49)
NE068	Harvard Housing Authority	Harvard	Nebraska	PHA	Very Small (1-49)
NE046	Hay Springs Housing Authority	Hay Springs	Nebraska	PHA	Very Small (1-49)
NE102	Hemingford Housing Authority	Hemingford	Nebraska	PHA	Very Small (1-49)
NE049	Hooper Housing Authority	Hooper	Nebraska	PHA	Very Small (1-49)
NE014	Humboldt Housing Authority	Humboldt	Nebraska	PHA	Very Small (1-49)
NE010	Lexington Housing Authority	Lexington	Nebraska	PHA	Small (50-249)
NE043	Lynch Housing Authority	Lynch	Nebraska	PHA	Very Small (1-49)
NE088	Lyons Housing Authority	Lyons	Nebraska	PHA	Very Small (1-49)
NE123	McCook Housing Authority	McCook	Nebraska	PHA	Small (50-249)
NE051	Minden Housing Authority	Minden	Nebraska	PHA	Very Small (1-49)
NE082	Nelson Housing Authority	Nelson	Nebraska	PHA	Very Small (1-49)
NE131	North Loup Housing Authority	North Loup	Nebraska	PHA	Very Small (1-49)
NE125	North Platte Housing Authority	North Platte	Nebraska	PHA	Low (250-499)
NE103	Oakland Housing Authority	Oakland	Nebraska	PHA	Very Small (1-49)
NE153	Douglas County Housing Authority	Omaha	Nebraska	PHA	Medium High (500-1250)
NE005	Ord Housing Authority	Ord	Nebraska	PHA	Small (50-249)
NE076	Oshkosh Housing Authority	Oshkosh	Nebraska	PHA	Very Small (1-49)
NE069	Oxford Housing Authority	Oxford	Nebraska	PHA	Very Small (1-49)

NE028	Pawnee City Housing Authority	Pawnee City	Nebraska	PHA	Small (50-249)
NE006	Red Cloud Housing Authority	Red Cloud	Nebraska	PHA	Very Small (1-49)
NE053	Sargent Housing Authority	Sargent	Nebraska	PHA	Very Small (1-49)
NE023	Schuyler Housing Authority	Schuyler	Nebraska	PHA	Small (50-249)
NE057	Shelton Housing Authority	Shelton	Nebraska	PHA	Very Small (1-49)
NE059	St. Edward Housing Authority	St Edward	Nebraska	PHA	Very Small (1-49)
NE050	St. Paul Housing Authority	St Paul	Nebraska	PHA	Very Small (1-49)
NE017	Stromsburg Housing Authority	Stromsburg	Nebraska	PHA	Very Small (1-49)
NE096	Sutherland Housing Authority	Sutherland	Nebraska	PHA	Very Small (1-49)
NE015	Syracuse Housing Authority	Syracuse	Nebraska	PHA	Very Small (1-49)
NE098	Tecumseh Housing Authority	Tecumseh	Nebraska	PHA	Very Small (1-49)
NE072	Tekamah Housing Authority	Tekamah	Nebraska	PHA	Very Small (1-49)
NE032	Verdigre Housing Authority	Verdigre	Nebraska	PHA	Very Small (1-49)
NE109	Wayne Housing Authority	Wayne	Nebraska	PHA	Very Small (1-49)
NE085	Weeping Water Housing Authority	Weeping Water	Nebraska	PHA	Very Small (1-49)
NE047	Wilber Housing Authority	Wilber	Nebraska	PHA	Very Small (1-49)
NE091	Wood River Housing Authority	Wood River	Nebraska	PHA	Very Small (1-49)
NE018	Wymore Housing Authority	Wymore	Nebraska	PHA	Very Small (1-49)
NE094	York Housing Authority	York	Nebraska	PHA	Small (50-249)
NV013	County of Clark Housing Authority	Las Vegas	Nevada	PHA	No Units
NV002	Housing Authority of the City of Las Vegas	Las Vegas	Nevada	PHA	Very Small (1-49)
NV007	Housing Authority of the City of North Las Vegas	North Las Vegas	Nevada	PHA	Small (50-249)
NH005	Concord Housing Authority	Concord	New Hampshire	PHA	Low (250-499)
NH014	Exeter Housing Authority	Exeter	New Hampshire	PHA	Low (250-499)
NH010	Keene Housing Authority	Keene	New Hampshire	PHA	Medium High (500-1250)
NH006	Somersworth Housing Authority	Somersworth	New Hampshire	PHA	Low (250-499)
NH009	Lebanon Housing Authority	West Lebanon	New Hampshire	PHA	Low (250-499)
NJ007	Asbury Park Housing Authority	Asbury Park	New Jersey	PHA	Medium High (500-1250)
NJ014	Housing Authority And Urban Redevelopment Age	Atlantic City	New Jersey	PHA	Large (1250-9999)
NJ056	Berkeley Housing Authority	Bayville	New Jersey	PHA	Small (50-249)
NJ057	Belmar Housing Authority	Belmar	New Jersey	PHA	Small (50-249)
NJ049	Bridgeton Housing Authority	Bridgeton	New Jersey	PHA	Medium High (500-1250)
NJ010	Housing Authority of the City of Camden	Camden	New Jersey	PHA	Large (1250-9999)
NJ062	Cape May Housing Authority	Cape May	New Jersey	PHA	Small (50-249)
NJ047	Carteret Housing Authority	Carteret	New Jersey	PHA	Medium High (500-1250)
NJ073	Borough of Clementon Housing Authority	Clementon	New Jersey	PHA	Small (50-249)
NJ050	East Orange Housing Authority	East Orange	New Jersey	PHA	Medium High (500-1250)
NJ038	Florence Housing Authority	Florence	New Jersey	PHA	Small (50-249)
NJ071	Fort Lee Housing Authority	Fort Lee	New Jersey	PHA	Medium High (500-1250)
NJ015	Hoboken Housing Authority	Hoboken	New Jersey	PHA	Large (1250-9999)
NJ060	Keansburg Housing Authority	Keansburg	New Jersey	PHA	Low (250-499)
NJ105	Madison Housing Authority	Madison	New Jersey	PHA	Low (250-499)
NJ048	Neptune Housing Authority	Neptune	New Jersey	PHA	Medium High (500-1250)
NJ002	Newark Housing Authority	Newark	New Jersey	PHA	Extra Large (10,000)
NJ076	Newton Housing Authority	Newton	New Jersey	PHA	Small (50-249)
NJ025	Housing Authority of the City of Orange	Orange	New Jersey	PHA	Medium High (500-1250)
NJ035	South Amboy Housing Authority	South Amboy	New Jersey	PHA	Low (250-499)
NJ077	Weehawken Housing Authority	Weehawken	New Jersey	PHA	Low (250-499)
NJ030	West New York Housing Authority	West New York	New Jersey	PHA	Medium High (500-1250)
NJ064	Haddon Housing Authority	Westmont	New Jersey	PHA	Small (50-249)
NJ080	Wildwood Housing Authority	Wildwood	New Jersey	PHA	Small (50-249)
NM004	Housing Authority of the City of Alamogordo	Alamogordo	New Mexico	PHA	Small (50-249)
NM001	City of Albuquerque Housing Division	Albuquerque	New Mexico	PHA	Large (1250-9999)
NM021	Housing Authority of the City of Artesia	Artesia	New Mexico	PHA	Small (50-249)
NM024	Housing Authority of the Town of Bayard	Bayard	New Mexico	PHA	Small (50-249)
NM035	Town of Bernalillo Dept of Housing Services	Bernalillo	New Mexico	PHA	Small (50-249)
NM047	Housing Authority of the Village of Chama	Chama	New Mexico	PHA	Very Small (1-49)
NM048	Housing Authority of the Village of Cimarron	Cimarron	New Mexico	PHA	Very Small (1-49)
NM055	Housing Authority of the Town of Clayton	Clayton	New Mexico	PHA	Small (50-249)
NM071	Housing Authority of the Village of Cuba	Cuba	New Mexico	PHA	Very Small (1-49)
NM010	Housing Authority of the City of Espanola	Espanola	New Mexico	PHA	Small (50-249)
NM039	Housing Authority of the County of Rio Arriba	Espanola	New Mexico	PHA	Small (50-249)
NM027	Housing Authority of the City of Eunice	Eunice	New Mexico	PHA	Very Small (1-49)
NM025	Housing Authority of the Village of Fort Sumner	Fort Sumner	New Mexico	PHA	Very Small (1-49)
NM006	Housing Authority of the City of Gallup	Gallup	New Mexico	PHA	Low (250-499)
NM030	Housing Authority of the City of Grants	Grants	New Mexico	PHA	Small (50-249)
NM003	Housing Authority of the City of Las Cruces	Las Cruces	New Mexico	PHA	Medium High (500-1250)
NM062	Housing Authority of the County of Dona Ana	Las Cruces	New Mexico	PHA	Medium High (500-1250)

NM007	Housing Authority of the City of Las Vegas	Las Vegas	New Mexico	PHA	Low (250-499)
NM049	Housing Authority of the County of San Miguel	Las Vegas	New Mexico	PHA	No Units
NM034	Housing Authority of the City of Lordsburg	Lordsburg	New Mexico	PHA	Small (50-249)
NM023	Housing Authority of the City of Lovington	Lovington	New Mexico	PHA	Small (50-249)
NM026	Housing Authority of the Village of Maxwell	Maxwell	New Mexico	PHA	Very Small (1-49)
NM054	Housing Authority of the Village of Pecos	Pecos	New Mexico	PHA	Very Small (1-49)
NM008	Housing Authority of the City of Raton	Raton	New Mexico	PHA	Small (50-249)
NM063	Eastern Regional Housing Authority	Roswell	New Mexico	PHA	Large (1250-9999)
NM022	Housing Authority of the Town of Springer	Springer	New Mexico	PHA	Small (50-249)
NM075	Housing Authority of the City of Sunland Park	Sunland Park	New Mexico	PHA	Very Small (1-49)
NM020	Housing Authority of the City of Truth Or Conseque	Truth Or Consequences	New Mexico	PHA	Low (250-499)
NM033	Housing Authority of the City of Tucumcari	Tucumcari	New Mexico	PHA	Small (50-249)
NM045	Housing Authority of the Town of Vaughn	Vaughn	New Mexico	PHA	Very Small (1-49)
NM032	Housing Authority of the Village of Wagon Mound	Wagon Mound	New Mexico	PHA	Very Small (1-49)
NY009	Albany Housing Authority	Albany	New York	PHA	Large (1250-9999)
NY049	The City of Beacon Housing Authority	Beacon	New York	PHA	Medium High (500-1250)
NY097	Canton Housing Authority	Canton	New York	PHA	Small (50-249)
NY032	Catskill Housing Authority	Catskill	New York	PHA	Small (50-249)
NY023	Freeport Housing Authority	Freeport	New York	PHA	Medium High (500-1250)
NY044	Geneva Housing Authority	Geneva	New York	PHA	Medium High (500-1250)
NY069	Glen Cove Public Housing Authority	Glen Cove	New York	PHA	Low (250-499)
NY048	Gloversville Housing Authority	Gloversville	New York	PHA	Medium High (500-1250)
NY086	North Hempstead Housing Authority	Great Neck	New York	PHA	Low (250-499)
NY144	Village of Great Neck Housing Authority	Great Neck	New York	PHA	Small (50-249)
NY085	Village of Hempstead HA	Hempstead	New York	PHA	Medium High (500-1250)
NY501	Hoosick Housing Authority	Hoosick Falls	New York	PHA	Small (50-249)
NY061	Hudson Housing Authority	Hudson	New York	PHA	Low (250-499)
NY045	Kingston Housing Authority	Kingston	New York	PHA	Medium High (500-1250)
NY029	Lackawanna Municipal Housing Authority	Lackawanna	New York	PHA	Low (250-499)
NY050	Housing Authority of Long Beach	Long Beach	New York	PHA	Medium High (500-1250)
NY015	Mechanicville Housing Authority	Mechanicville	New York	PHA	Low (250-499)
NY071	Monticello Housing Authority	Monticello	New York	PHA	Medium High (500-1250)
NY038	Mount Kisco Housing Authority	Mount Kisco	New York	PHA	Small (50-249)
NY088	New Rochelle Housing Authority	New Rochelle	New York	PHA	Medium High (500-1250)
NY051	Housing Authority of Newburgh	Newburgh	New York	PHA	Medium High (500-1250)
NY077	Town of Islip Housing Authority	Oakdale	New York	PHA	Large (1250-9999)
NY082	Peekskill Housing Authority	Peekskill	New York	PHA	Low (250-499)
NY055	Town of Oyster Bay Housing Authority	Plainview	New York	PHA	Medium High (500-1250)
NY018	Plattsburgh Housing Authority	Plattsburgh	New York	PHA	Medium High (500-1250)
NY014	Port Chester Housing Authority	Port Chester	New York	PHA	Low (250-499)
NY099	Port Jervis Housing Authority	Port Jervis	New York	PHA	Small (50-249)
NY033	Rensselaer Housing Authority	Rensselaer	New York	PHA	Small (50-249)
NY100	Rockville Centre HA	Rockville Centre	New York	PHA	Small (50-249)
NY026	North Tarrytown Housing Authority	Sleepy Hollow	New York	PHA	Small (50-249)
NY056	Village of Spring Valley Housing Authority	Spring Valley	New York	PHA	Small (50-249)
NY084	Town of Ramapo Housing Authority	Suffern	New York	PHA	Medium High (500-1250)
NY013	Tarrytown Municipal Housing Authority	Tarrytown	New York	PHA	Small (50-249)
NY008	Tuckahoe Housing Authority	Tuckahoe	New York	PHA	Small (50-249)
NY081	Tupper Lake Housing Authority	Tupper Lake	New York	PHA	Small (50-249)
NY046	Town of Hempstead Housing Authority	Uniondale	New York	PHA	Large (1250-9999)
NY025	Watervliet Housing Authority	Watervliet	New York	PHA	Low (250-499)
NC085	Ahoskie Housing Authority	Ahoskie	North Carolina	PHA	Small (50-249)
NC008	Housing Authority of the City of Concord	Concord	North Carolina	PHA	Medium High (500-1250)
NC095	Forest City Housing Authority	Forest City	North Carolina	PHA	Small (50-249)
NC118	Roanoke-Chowan Regional Housing Authority	Gaston	North Carolina	PHA	Large (1250-9999)
NC031	Hertford Housing Authority	Hertford	North Carolina	PHA	Small (50-249)
NC074	Lenoir Housing Authority	Lenoir	North Carolina	PHA	Small (50-249)
NC039	Lexington Housing Authority	Lexington	North Carolina	PHA	Medium High (500-1250)
NC014	Housing Authority of the City of Lumberton	Lumberton	North Carolina	PHA	Large (1250-9999)
NC054	Madison Housing Authority	Madison	North Carolina	PHA	Small (50-249)
NC175	Madison County Housing Authority	Mars Hill	North Carolina	PHA	Small (50-249)
NC065	Monroe Housing Authority	Monroe	North Carolina	PHA	Medium High (500-1250)
NC049	Morganton Housing Authority	Morganton	North Carolina	PHA	Small (50-249)
NC105	Mount Olive Housing Authority	Mount Olive	North Carolina	PHA	Very Small (1-49)
NC073	Oxford Housing Authority	Oxford	North Carolina	PHA	Low (250-499)
NC078	Plymouth Housing Authority	Plymouth	North Carolina	PHA	Small (50-249)
NC169	Princeville Housing Authority	Princeville	North Carolina	PHA	Very Small (1-49)
NC063	The New Randleman Housing Authority	Randleman	North Carolina	PHA	Small (50-249)

NC117	Roanoke Rapids Housing Authority	Roanoke Rapids	North Carolina	PHA	Low (250-499)
NC025	Rockingham Housing Authority	Rockingham	North Carolina	PHA	Low (250-499)
NC033	Spruce Pine Housing Authority	Spruce Pine	North Carolina	PHA	Small (50-249)
NC071	Thomasville Housing Authority	Thomasville	North Carolina	PHA	Low (250-499)
NC055	Valdese Housing Authority	Valdese	North Carolina	PHA	Small (50-249)
NC037	Whiteville Housing Authority	Whiteville	North Carolina	PHA	Small (50-249)
OH007	Akron Metropolitan Housing Authority	Akron	Ohio	PHA	Large (1250-9999)
OH072	Logan County Metropolitan Housing Authority	Bellefontaine	Ohio	PHA	Low (250-499)
OH067	Harrison Metropolitan Housing Authority	Cadiz	Ohio	PHA	Low (250-499)
OH018	Stark Metropolitan Housing Authority	Canton	Ohio	PHA	Large (1250-9999)
OH024	Chillicothe Metropolitan Housing Authority	Chillicothe	Ohio	PHA	Medium High (500-1250)
OH026	Columbiana Metropolitan Housing Authority	East Liverpool	Ohio	PHA	Medium High (500-1250)
OH081	Brown Metropolitan Housing Authority	Georgetown	Ohio	PHA	Small (50-249)
OH019	Ironton Metropolitan Housing Authority	Ironton	Ohio	PHA	Low (250-499)
OH049	Warren Metropolitan Housing Authority	Lebanon	Ohio	PHA	Medium High (500-1250)
OH066	Morgan Metropolitan Housing Authority	Mc Connelsville	Ohio	PHA	Small (50-249)
OH073	Parma Public Housing Agency	Parma	Ohio	PHA	Medium High (500-1250)
OH061	Shelby Metropolitan Housing Authority	Sidney	Ohio	PHA	Low (250-499)
OH040	Jackson County Metropolitan Housing Authority	Wellston	Ohio	PHA	Low (250-499)
OH036	Wayne Metropolitan Housing Authority	Wooster	Ohio	PHA	Medium High (500-1250)
OH022	Greene Metropolitan Housing Authority	Xenia	Ohio	PHA	Large (1250-9999)
OH002	Youngstown Metropolitan Housing Authority	Youngstown	Ohio	PHA	Large (1250-9999)
OK119	Housing Authority of the City of Afton	Afton	Oklahoma	PHA	Very Small (1-49)
OK008	Housing Authority of the City of Anadarko	Anadarko	Oklahoma	PHA	Small (50-249)
OK025	Housing Authority of the Town of Antlers	Antlers	Oklahoma	PHA	Small (50-249)
OK075	Housing Authority of the City of Beggs	Beggs	Oklahoma	PHA	Small (50-249)
OK052	Housing Authority of the City of Boley	Boley	Oklahoma	PHA	Very Small (1-49)
OK033	Housing Authority of the City of Bristow	Bristow	Oklahoma	PHA	Small (50-249)
OK006	Housing Authority of the City of Broken Bow	Broken Bow	Oklahoma	PHA	Low (250-499)
OK026	Housing Authority of the Town of Cache	Cache	Oklahoma	PHA	Very Small (1-49)
OK035	Housing Authority of the Town of Cement	Cement	Oklahoma	PHA	Very Small (1-49)
OK097	Housing Authority of the Town of Cheyenne	Cheyenne	Oklahoma	PHA	Very Small (1-49)
OK069	Housing Authority of the Town of Clayton	Clayton	Oklahoma	PHA	Very Small (1-49)
OK020	Housing Authority of the City of Coalgate	Coalgate	Oklahoma	PHA	Small (50-249)
OK003	Housing Authority of the City of Comanche	Comanche	Oklahoma	PHA	Very Small (1-49)
OK063	Housing Authority of the City of Commerce	Commerce	Oklahoma	PHA	Very Small (1-49)
OK132	Housing Authority of the Town of Cushing	Cushing	Oklahoma	PHA	Very Small (1-49)
OK036	Housing Authority of the Town of Cyril	Cyril	Oklahoma	PHA	Very Small (1-49)
OK150	Housing Authority of the City of Del City	Del City	Oklahoma	PHA	Small (50-249)
OK015	Housing Authority of the City of Elk City	Elk City	Oklahoma	PHA	Small (50-249)
OK113	Housing Authority of the Town of Fort Cobb	Fort Cobb	Oklahoma	PHA	Very Small (1-49)
OK118	Housing Authority of the Town of Fort Gibson	Ft. Gibson	Oklahoma	PHA	Small (50-249)
OK057	Housing Authority of the City of Geary	Geary	Oklahoma	PHA	Very Small (1-49)
OK021	Housing Authority of the City of Grandfield	Grandfield	Oklahoma	PHA	Very Small (1-49)
OK092	Housing Authority of the Town of Granite	Granite	Oklahoma	PHA	Very Small (1-49)
OK055	Housing Authority of the City of Guthrie	Guthrie	Oklahoma	PHA	Small (50-249)
OK068	Housing Authority of the City of Haileyville	Haileyville	Oklahoma	PHA	Very Small (1-49)
OK072	Housing Authority of the City of Hartshorne	Hartshorne	Oklahoma	PHA	Very Small (1-49)
OK007	Housing Authority of the City of Heavener	Heavener	Oklahoma	PHA	Very Small (1-49)
OK142	Housing Authority of the City of Henryetta	Henryetta	Oklahoma	PHA	Small (50-249)
OK089	Housing Authority of the City of Hobart	Hobart	Oklahoma	PHA	Small (50-249)
OK137	Housing Authority of the Choctaw Electric Cooperat	Hugo	Oklahoma	PHA	Small (50-249)
OK044	Housing Authority of the City of Hugo	Hugo	Oklahoma	PHA	Low (250-499)
OK053	Housing Authority of the Town of Indiahoma	Indiahoma	Oklahoma	PHA	Very Small (1-49)
OK121	Housing Authority of the City of Keota	Keota	Oklahoma	PHA	Very Small (1-49)
OK076	Housing Authority of the City of Kingston	Kingston	Oklahoma	PHA	Very Small (1-49)
OK105	Housing Authority of the City of Konawa	Konawa	Oklahoma	PHA	Very Small (1-49)
OK078	Housing Authority of the City of Krebs	Krebs	Oklahoma	PHA	Very Small (1-49)
OK106	Housing Authority of the City of Langston	Langston	Oklahoma	PHA	Small (50-249)
OK005	Housing Authority of the City of Lawton	Lawton	Oklahoma	PHA	Low (250-499)
OK134	Housing Authority of the Caddo Electric Cooperativ	Lookeba	Oklahoma	PHA	Very Small (1-49)
OK030	Housing Authority of the City of Madill	Madill	Oklahoma	PHA	Very Small (1-49)
OK039	Housing Authority of the Town of Mangum	Mangum	Oklahoma	PHA	Small (50-249)
OK083	Housing Authority of the City of Maud	Maud	Oklahoma	PHA	Very Small (1-49)
OK136	Housing Authority of the Cookson Hills Electric Co	McCurtain	Oklahoma	PHA	Very Small (1-49)
OK027	Housing Authority of the City of Miami, OK	Miami	Oklahoma	PHA	Low (250-499)
OK108	Housing Authority of the Town of Mountain Park	Mountain Park	Oklahoma	PHA	Very Small (1-49)
OK099	Housing Authority of the City of Muskogee	Muskogee	Oklahoma	PHA	Medium High (500-1250)

OK022	Housing Authority of the City of Oilton	Oilton	Oklahoma	PHA	Very Small (1-49)
OK149	Housing Authority of the City of Pauls Valley	Pauls Valley	Oklahoma	PHA	Small (50-249)
OK123	Housing Authority of Osage County	Pawhuska	Oklahoma	PHA	Low (250-499)
OK060	Housing Authority of the City of Pawnee	Pawnee	Oklahoma	PHA	Very Small (1-49)
OK012	Housing Authority of the City of Picher	Picher	Oklahoma	PHA	Small (50-249)
OK041	Housing Authority of the Town of Ringling	Ringling	Oklahoma	PHA	Very Small (1-49)
OK042	Housing Authority of the Town of Roosevelt	Roosevelt	Oklahoma	PHA	Very Small (1-49)
OK085	Housing Authority of the Town of Ryan	Ryan	Oklahoma	PHA	Small (50-249)
OK040	Housing Authority of the City of Sayre	Sayre	Oklahoma	PHA	Very Small (1-49)
OK064	Housing Authority of the Town of Seiling	Seiling	Oklahoma	PHA	Very Small (1-49)
OK032	Housing Authority of the City of Seminole	Seminole	Oklahoma	PHA	Low (250-499)
OK018	Housing Authority of the City of Snyder	Snyder	Oklahoma	PHA	Small (50-249)
OK037	Housing Authority of the Town of Sterling	Sterling	Oklahoma	PHA	Very Small (1-49)
OK013	Housing Authority of the City of Stigler	Stigler	Oklahoma	PHA	Very Small (1-49)
OK146	Housing Authority of the City of Stillwater	Stillwater	Oklahoma	PHA	Medium High (500-1250)
OK067	Housing Authority of the City of Stilwell	Stilwell	Oklahoma	PHA	Small (50-249)
OK086	Housing Authority of the Town of Stratford	Stratford	Oklahoma	PHA	Small (50-249)
OK016	Housing Authority of the Town of Temple	Temple	Oklahoma	PHA	Very Small (1-49)
OK070	Housing Authority of the Town of Terral	Terral	Oklahoma	PHA	Very Small (1-49)
OK116	Housing Authority of the Town of Tipton	Tipton	Oklahoma	PHA	Very Small (1-49)
OK131	Housing Authority of the Kiamichi Electric Coop	Tuskahoma	Oklahoma	PHA	Small (50-249)
OK071	Housing Authority of the Town of Tuttle	Tuttle	Oklahoma	PHA	Very Small (1-49)
OK061	Housing Authority of the Town of Valliant	Valliant	Oklahoma	PHA	Very Small (1-49)
OK017	Housing Authority of the City of Walters	Walters	Oklahoma	PHA	Very Small (1-49)
OK023	Housing Authority of the City of Watonga	Watonga	Oklahoma	PHA	Very Small (1-49)
OK103	Housing Authority of the City of Waynoka	Waynoka	Oklahoma	PHA	Very Small (1-49)
OK028	Housing Authority of the Town of Weleetka	Weleetka	Oklahoma	PHA	Very Small (1-49)
OK096	Housing Authority of the City of Wewoka	Wewoka	Oklahoma	PHA	Small (50-249)
OK029	Housing Authority of the City of Wilburton	Wilburton	Oklahoma	PHA	Very Small (1-49)
OK087	Housing Authority of the Town of Wister	Wister	Oklahoma	PHA	Very Small (1-49)
OK065	Housing Authority of the City of Wynnewood	Wynnewood	Oklahoma	PHA	Very Small (1-49)
OK120	Housing Authority of the City of Yale	Yale	Oklahoma	PHA	Very Small (1-49)
OR008	Housing And Urban Renewal Agency of Polk County (a	Dallas	Oregon	PHA	Medium High (500-1250)
OR007	Housing Authority of the County of Umatilla	Hermiston	Oregon	PHA	Low (250-499)
OR022	Housing Authority of Washington County	Hillsboro	Oregon	PHA	Large (1250-9999)
OR032	Northeast Oregon Housing Authority	La Grande	Oregon	PHA	Medium High (500-1250)
OR016	Housing Authority of Yamhill County	McMinnville	Oregon	PHA	Large (1250-9999)
OR015	Housing Authority of Jackson County	Medford	Oregon	PHA	Large (1250-9999)
OR005	Housing Authority of Lincoln County	Newport	Oregon	PHA	Medium High (500-1250)
OR020	Coos-Curry Housing Authority	North Bend	Oregon	PHA	
OR009	North Bend Housing Authority	North Bend	Oregon	PHA	Small (50-249)
OR027	Housing Authority of Malheur County	Ontario	Oregon	PHA	Low (250-499)
OR001	Housing Authority of Clackamas County	Oregon City	Oregon	PHA	Large (1250-9999)
OR034	Central Oregon Regional Housing Authority	Redmond	Oregon	PHA	Medium High (500-1250)
OR003	Housing Authority of Douglas County	Roseburg	Oregon	PHA	Medium High (500-1250)
OR014	Marion County Housing Authority	Salem	Oregon	PHA	Medium High (500-1250)
PA031	Altoona Housing Authority	Altoona	Pennsylvania	PHA	Large (1250-9999)
PA085	Housing Authority of the County of Bedford	Bedford	Pennsylvania	PHA	Low (250-499)
PA083	Columbia County Housing Authority	Bloomsburg	Pennsylvania	PHA	Low (250-499)
PA064	Bradford County Housing Authority	Blossburg	Pennsylvania	PHA	Medium High (500-1250)
PA050	Tioga County Housing Authority	Blossburg	Pennsylvania	PHA	Medium High (500-1250)
PA066	Housing Authority of the City of Corry	Corry	Pennsylvania	PHA	Small (50-249)
PA087	Housing Authority of the County of Erie	Corry	Pennsylvania	PHA	Medium High (500-1250)
PA077	County of Potter Housing Authority	Coudersport	Pennsylvania	PHA	Low (250-499)
PA038	Lackawanna County Housing Authority	Dunmore	Pennsylvania	PHA	Large (1250-9999)
PA054	Housing Authority of the County of Elk	Johnsonburg	Pennsylvania	PHA	Low (250-499)
PA067	Carbon County Housing Authority	Lehighton	Pennsylvania	PHA	Medium High (500-1250)
PA082	Housing Authority of the County of Union	Lewisburg	Pennsylvania	PHA	Low (250-499)
PA073	The Wyoming Co Housing & Redevelopment Auth	Nicholson	Pennsylvania	PHA	Low (250-499)
PA006	Allegheny County Housing Authority	Pittsburgh	Pennsylvania	PHA	Large (1250-9999)
PA009	Reading Housing Authority	Reading	Pennsylvania	PHA	Large (1250-9999)
PA028	The Housing Authority of Monroe County	Stroudsburg	Pennsylvania	PHA	Medium High (500-1250)
PA074	Susquehanna Co Housing/Redevelopment Auth	Susquehanna	Pennsylvania	PHA	Low (250-499)
PA017	Washington County Housing Authority	Washington	Pennsylvania	PHA	Large (1250-9999)
PA062	Williamsport Housing Authority	Williamsport	Pennsylvania	PHA	No Units
PA023	Housing Authority County of Delaware	Woodlyn	Pennsylvania	PHA	Large (1250-9999)
RI016	Coventry Housing Authority	Coventry	Rhode Island	PHA	Low (250-499)
RI024	East Greenwich Housing Authority	East Greenwich	Rhode Island	PHA	Low (250-499)

RI007	East Providence Housing Authority	East Providence	Rhode Island	PHA	Medium High (500-1250)
RI014	Burrillville Housing Authority	Harrisville	Rhode Island	PHA	Small (50-249)
RI021	Jamestown Housing Authority	Jamestown	Rhode Island	PHA	Very Small (1-49)
RI009	Johnston Housing Authority	Johnston	Rhode Island	PHA	Low (250-499)
RI026	Narragansett Housing Authority	Narragansett	Rhode Island	PHA	Small (50-249)
RI005	The Housing Authority of the City of Newport	Newport	Rhode Island	PHA	Large (1250-9999)
RI017	North Providence Housing Authority	North Providence	Rhode Island	PHA	Low (250-499)
RI002	Housing Authority of the City of Pawtucket	Pawtucket	Rhode Island	PHA	Large (1250-9999)
RI012	South Kingstown Housing Authority	Peace Dale	Rhode Island	PHA	Small (50-249)
RI013	Portsmouth Housing Authority	Portsmouth	Rhode Island	PHA	Small (50-249)
RI020	Smithfield Housing Authority	Smithfield	Rhode Island	PHA	Small (50-249)
RI027	Tiverton Housing Authority	Tiverton	Rhode Island	PHA	Small (50-249)
RI028	Kent County Mental Health Center	Warwick	Rhode Island	PHA	Small (50-249)
RI015	West Warwick Housing Authority	West Warwick	Rhode Island	PHA	Low (250-499)
RI008	Westerly Housing Authority	Westerly	Rhode Island	PHA	Low (250-499)
RI003	Woonsocket Housing Authority	Woonsocket	Rhode Island	PHA	Large (1250-9999)
SC012	Housing Authority of Abbeville	Abbeville	South Carolina	PHA	Small (50-249)
SC007	Housing Authority of Aiken	Aiken	South Carolina	PHA	Medium High (500-1250)
SC037	Housing Authority of Anderson	Anderson	South Carolina	PHA	Medium High (500-1250)
SC024	SC Regional Housing Authority No 3	Barnwell	South Carolina	PHA	Large (1250-9999)
SC056	Charleston Co Hsg & Redevelopment Authority	Charleston	South Carolina	PHA	Large (1250-9999)
SC017	Housing Authority of Gaffney	Gaffney	South Carolina	PHA	Low (250-499)
SC016	Housing Authority of Greer	Greer	South Carolina	PHA	Low (250-499)
SC039	Housing Authority of Kingstree	Kingstree	South Carolina	PHA	Small (50-249)
SC018	Housing Authority of Lake City	Lake City	South Carolina	PHA	Medium High (500-1250)
SC032	Housing Authority of Lancaster	Lancaster	South Carolina	PHA	Low (250-499)
SC021	Housing Authority of Marion	Marion	South Carolina	PHA	Medium High (500-1250)
SC033	Housing Authority of Mullins	Mullins	South Carolina	PHA	Low (250-499)
SC060	Housing Authority of Atlantic Beach	North Myrtle Beach	South Carolina	PHA	Small (50-249)
SC003	Housing Authority of Spartanburg	Spartanburg	South Carolina	PHA	Large (1250-9999)
SC040	Housing Authority of Woodruff	Woodruff	South Carolina	PHA	Small (50-249)
TN054	Cleveland Housing Authority	Cleveland	Tennessee	PHA	Medium High (500-1250)
TN046	Columbia Housing Authority	Columbia	Tennessee	PHA	Low (250-499)
TN033	Cookeville Housing Authority	Cookeville	Tennessee	PHA	Medium High (500-1250)
TN074	Erin Housing Authority	Erin	Tennessee	PHA	Small (50-249)
TN081	Erwin Housing Authority	Erwin	Tennessee	PHA	Small (50-249)
TN026	Etowah Housing Authority	Etowah	Tennessee	PHA	Low (250-499)
TN035	Franklin Housing Authority	Franklin	Tennessee	PHA	Low (250-499)
TN058	Greeneville Housing Authority	Greeneville	Tennessee	PHA	Low (250-499)
TN055	Harriman Housing Authority	Harriman	Tennessee	PHA	Low (250-499)
TN071	Hartsville Housing Authority	Hartsville	Tennessee	PHA	Very Small (1-49)
TN059	Hohenwald Housing Authority	Hohenwald	Tennessee	PHA	Small (50-249)
TN034	Jellico Housing Authority	Jellico	Tennessee	PHA	Small (50-249)
TN111	Knox County Housing Authority	Knoxville	Tennessee	PHA	Medium High (500-1250)
TN090	Lafayette Housing Authority	Lafayette	Tennessee	PHA	Small (50-249)
TN012	Lafollette Housing Authority	Lafollette	Tennessee	PHA	Large (1250-9999)
TN017	Lebanon Housing Authority	Lebanon	Tennessee	PHA	Low (250-499)
TN061	Lenoir City Housing Authority	Lenoir City	Tennessee	PHA	Small (50-249)
TN032	Lewisburg Housing Authority	Lewisburg	Tennessee	PHA	Small (50-249)
TN040	Lexington Housing Authority	Lexington	Tennessee	PHA	Small (50-249)
TN065	Maryville Housing Authority	Maryville	Tennessee	PHA	Medium High (500-1250)
TN095	Shelby County Housing Authority	Memphis	Tennessee	PHA	Low (250-499)
TN045	Millington Housing Authority	Millington	Tennessee	PHA	Small (50-249)
TN092	Grundy Housing Authority	Monteagle	Tennessee	PHA	Small (50-249)
TN038	Morristown Housing Authority	Morristown	Tennessee	PHA	Medium High (500-1250)
TN047	Mt. Pleasant Housing Authority	Mount Pleasant	Tennessee	PHA	Small (50-249)
TN075	Newbern Housing Authority	Newbern	Tennessee	PHA	Small (50-249)
TN073	Portland Housing Authority	Portland	Tennessee	PHA	Small (50-249)
TN011	Pulaski Housing Authority	Pulaski	Tennessee	PHA	Low (250-499)
TN063	Sevierville Housing Authority	Sevierville	Tennessee	PHA	Small (50-249)
TN037	South Pittsburg Housing Authority	South Pittsburg	Tennessee	PHA	Small (50-249)
TN044	Sparta Housing Authority	Sparta	Tennessee	PHA	Small (50-249)
TN036	Springfield Housing Authority	Springfield	Tennessee	PHA	Low (250-499)
TN024	Tullahoma Housing Authority	Tullahoma	Tennessee	PHA	Low (250-499)
TN125	Franklin County Housing Authority	Winchester	Tennessee	PHA	Small (50-249)
TX241	Housing Authority of Alba	Alba	Texas	PHA	Very Small (1-49)
TX178	Alice Housing Authority	Alice	Texas	PHA	Low (250-499)
TX284	Housing Authority City of Alpine	Alpine	Texas	PHA	Small (50-249)

TX272	Housing Authority of Alto	Alto	Texas	PHA	Small (50-249)
TX080	Housing Authority of Anson	Anson	Texas	PHA	Small (50-249)
TX313	Aransas Pass Housing Authority	Aransas Pass	Texas	PHA	Low (250-499)
TX094	Housing Authority of Archer City	Archer City	Texas	PHA	Very Small (1-49)
TX451	Asherton Housing Authority	Asherton	Texas	PHA	No Units
TX200	Housing Authority of Aspermont	Aspermont	Texas	PHA	Very Small (1-49)
TX531	Housing Authority of Atlanta	Atlanta	Texas	PHA	Small (50-249)
TX480	Travis County Housing Authority	Austin	Texas	PHA	Medium High (500-1250)
TX310	Housing Authority of Avery	Avery	Texas	PHA	Very Small (1-49)
TX101	Housing Authority of Avinger	Avinger	Texas	PHA	Very Small (1-49)
TX077	Housing Authority of Ballinger	Ballinger	Texas	PHA	Small (50-249)
TX316	Housing Authority of Balmorhea	Balmorhea	Texas	PHA	Very Small (1-49)
TX274	Housing Authority of Bartlett	Bartlett	Texas	PHA	Small (50-249)
TX259	Bastrop Housing Authority	Bastrop	Texas	PHA	Small (50-249)
TX035	Housing Authority of the City of Bay City	Bay City	Texas	PHA	Low (250-499)
TX012	Housing Authority of the City of Baytown	Baytown	Texas	PHA	Medium High (500-1250)
TX232	Housing Authority of Beckville	Beckville	Texas	PHA	Low (250-499)
TX152	Beeville Housing Authority	Beeville	Texas	PHA	Medium High (500-1250)
TX304	Housing Authority of the City of Bellville	Bellville	Texas	PHA	Very Small (1-49)
TX356	Housing Authority of Big Sandy	Big Sandy	Texas	PHA	Very Small (1-49)
TX238	Housing Authority of Blooming Grove	Blooming Grove	Texas	PHA	Very Small (1-49)
TX539	Housing Authority of Blossom	Blossom	Texas	PHA	Very Small (1-49)
TX138	Housing Authority of Bogata	Bogata	Texas	PHA	Very Small (1-49)
TX089	Housing Authority of Bells	Bonham	Texas	PHA	Very Small (1-49)
TX038	Housing Authority of Bonham	Bonham	Texas	PHA	Small (50-249)
TX088	Housing Authority of Ector	Bonham	Texas	PHA	Very Small (1-49)
TX139	Housing Authority of Gunter	Bonham	Texas	PHA	Very Small (1-49)
TX093	Housing Authority of Honey Grove	Bonham	Texas	PHA	Small (50-249)
TX108	Housing Authority of Howe	Bonham	Texas	PHA	Very Small (1-49)
TX092	Housing Authority of Ladonia	Bonham	Texas	PHA	Very Small (1-49)
TX091	Housing Authority of Pottsboro	Bonham	Texas	PHA	Very Small (1-49)
TX097	Housing Authority of Savoy	Bonham	Texas	PHA	Very Small (1-49)
TX115	Housing Authority of Tom Bean	Bonham	Texas	PHA	Very Small (1-49)
TX107	Housing Authority of Whitewright	Bonham	Texas	PHA	Very Small (1-49)
TX036	Housing Authority of Borger	Borger	Texas	PHA	Small (50-249)
TX239	Brackettville Housing Authority	Brackettville	Texas	PHA	Very Small (1-49)
TX039	Housing Authority of Breckenridge	Breckenridge	Texas	PHA	Small (50-249)
TX351	Housing Authority of the City of Bremond	Bremond	Texas	PHA	Very Small (1-49)
TX067	Housing Authority of Bridgeport	Bridgeport	Texas	PHA	Very Small (1-49)
TX278	Housing Authority of Bronte	Bronte	Texas	PHA	Very Small (1-49)
TX007	Housing Authority of the City of Brownsville	Brownsville	Texas	PHA	Large (1250-9999)
TX020	Housing Authority of the City of Bryan	Bryan	Texas	PHA	Low (250-499)
TX099	Housing Authority of Bryson	Bryson	Texas	PHA	Very Small (1-49)
TX111	Housing Authority of Burkburnett	Burkburnett	Texas	PHA	Small (50-249)
TX358	Burnet Housing Authority	Burnet	Texas	PHA	Small (50-249)
TX307	Housing Authority of Caddo Mills	Caddo Mills	Texas	PHA	Very Small (1-49)
TX118	Housing Authority of the City of Caldwell	Caldwell	Texas	PHA	Very Small (1-49)
TX150	Housing Authority of the City of Calvert	Calvert	Texas	PHA	Very Small (1-49)
TX134	Housing Authority of Cameron	Cameron	Texas	PHA	Low (250-499)
TX045	Housing Authority of Canyon	Canyon	Texas	PHA	Very Small (1-49)
TX300	Carrizo Springs Housing Authority	Carrizo Springs	Texas	PHA	Small (50-249)
TX126	Housing Authority of Celeste	Celeste	Texas	PHA	Very Small (1-49)
TX253	Housing Authority of the City of Centerville	Centerville	Texas	PHA	Small (50-249)
TX194	Housing Authority of Childress	Childress	Texas	PHA	Small (50-249)
TX042	Housing Authority of Cisco	Cisco	Texas	PHA	Small (50-249)
TX318	Housing Authority of Marfa	City	Texas	PHA	Small (50-249)
TX162	Housing Authority of Clarendon	Clarendon	Texas	PHA	Small (50-249)
TX207	Housing Authority of the City of Clarksville	Clarksville	Texas	PHA	Small (50-249)
TX339	Housing Authority of Clifton	Clifton	Texas	PHA	Very Small (1-49)
TX056	Housing Authority of Colorado City	Colorado City	Texas	PHA	Small (50-249)
TX169	Housing Authority of Comanche	Comanche	Texas	PHA	Small (50-249)
TX228	Housing Authority of Coolidge	Coolidge	Texas	PHA	Very Small (1-49)
TX353	Housing Authority of Copperas Cove	Copperas Cove	Texas	PHA	Small (50-249)
TX033	Housing Authority of Corsicana	Corsicana	Texas	PHA	Low (250-499)
TX335	Cotulla Housing Authority	Cotulla	Texas	PHA	Small (50-249)
TX222	Housing Authority of Crockett	Crockett	Texas	PHA	Low (250-499)
TX172	Housing Authority of Cross Plains	Cross Plains	Texas	PHA	Very Small (1-49)
TX308	Housing Authority of the City of Crowell	Crowell	Texas	PHA	Very Small (1-49)

TX105	Crystal City Housing Authority	Crystal City	Texas	PHA	Medium High (500-1250)
TX309	Cuero Housing Authority	Cuero	Texas	PHA	Small (50-249)
TX106	Housing Authority of Daingerfield	Daingerfield	Texas	PHA	Small (50-249)
TX249	Housing Authority of Dawson	Dawson	Texas	PHA	Very Small (1-49)
TX137	Housing Authority of De Kalb	De Kalb	Texas	PHA	Small (50-249)
TX155	Housing Authority of Decatur	Decatur	Texas	PHA	Very Small (1-49)
TX016	Del Rio Housing Authority	Del Rio	Texas	PHA	Medium High (500-1250)
TX026	Housing Authority of Denison	Denison	Texas	PHA	Small (50-249)
TX117	Housing Authority of Deport	Deport	Texas	PHA	Very Small (1-49)
TX250	Housing Authority of Detroit	Detroit	Texas	PHA	Very Small (1-49)
TX177	Donna Housing Authority	Donna	Texas	PHA	Low (250-499)
TX047	Housing Authority of Dublin	Dublin	Texas	PHA	Small (50-249)
TX019	Eagle Pass Housing Authority	Eagle Pass	Texas	PHA	Medium High (500-1250)
TX202	Edcouch Housing Authority	Edcouch	Texas	PHA	Small (50-249)
TX260	Housing Authority of Eden	Eden	Texas	PHA	Very Small (1-49)
TX242	Housing Authority of Edgewood	Edgewood	Texas	PHA	Small (50-249)
TX096	Edna Housing Authority	Edna	Texas	PHA	Small (50-249)
TX355	Housing Authority of the City of El Campo	El Campo	Texas	PHA	Small (50-249)
TX279	Housing Authority of Eldorado	Eldorado	Texas	PHA	Very Small (1-49)
TX066	Electra Housing Authority	Electra	Texas	PHA	Small (50-249)
TX377	Elgin Housing Authority	Elgin	Texas	PHA	Small (50-249)
TX224	Elsa Housing Authority	Elsa	Texas	PHA	Low (250-499)
TX201	Falfurrias Housing Authority	Falfurrias	Texas	PHA	Low (250-499)
TX323	Falls City Housing Authority	Falls City	Texas	PHA	Very Small (1-49)
TX221	Housing Authority of Farmersville	Farmersville	Texas	PHA	Very Small (1-49)
TX342	Housing Authority of Ferris	Ferris	Texas	PHA	Very Small (1-49)
TX189	Housing Authority of Floydada	Floydada	Texas	PHA	Small (50-249)
TX340	Housing Authority of the City of Franklin	Franklin	Texas	PHA	Very Small (1-49)
TX144	Housing Authority of the City of Frisco	Frisco	Texas	PHA	Very Small (1-49)
TX525	Housing Authority of Fruitvale	Fruitvale	Texas	PHA	Very Small (1-49)
TX233	Housing Authority of Garrison	Garrison	Texas	PHA	Very Small (1-49)
TX283	Housing Authority of Gatesville	Gatesville	Texas	PHA	Small (50-249)
TX071	Housing Authority of Gilmer	Gilmer	Texas	PHA	Small (50-249)
TX269	Housing Authority of Goldthwaite	Goldthwaite	Texas	PHA	Very Small (1-49)
TX081	Gonzales Housing Authority	Gonzales	Texas	PHA	Small (50-249)
TX214	Housing Authority of Granbury	Granbury	Texas	PHA	Small (50-249)
TX336	Housing Authority of Grand Saline	Grand Saline	Texas	PHA	Small (50-249)
TX267	Housing Authority of Grandfalls	Grandfalls	Texas	PHA	Very Small (1-49)
TX281	Granger Housing Authority	Granger	Texas	PHA	Very Small (1-49)
TX291	Housing Authority of Grapevine	Grapevine	Texas	PHA	Small (50-249)
TX302	Gregory Housing Authority	Gregory	Texas	PHA	Small (50-249)
TX219	Housing Authority of Groesbeck	Groesbeck	Texas	PHA	Small (50-249)
TX231	Housing Authority of the City of Groveton	Groveton	Texas	PHA	Very Small (1-49)
TX277	Housing Authority of Hale Center	Hale Center	Texas	PHA	Very Small (1-49)
TX153	Housing Authority of Haltom City	Haltom City	Texas	PHA	Small (50-249)
TX083	Housing Authority of Hamilton	Hamilton	Texas	PHA	Very Small (1-49)
TX195	Housing Authority of Hamlin	Hamlin	Texas	PHA	Very Small (1-49)
TX053	Housing Authority of Haskell	Haskell	Texas	PHA	Small (50-249)
TX063	Housing Authority of the City of Hearne	Hearne	Texas	PHA	Small (50-249)
TX227	Housing Authority of Hemphill	Hemphill	Texas	PHA	Very Small (1-49)
TX050	Housing Authority of Henderson	Henderson	Texas	PHA	Small (50-249)
TX082	Housing Authority of Henrietta	Henrietta	Texas	PHA	Very Small (1-49)
TX090	Housing Authority of Hico	Hico	Texas	PHA	Small (50-249)
TX405	Housing Authority of Hubbard	Hubbard	Texas	PHA	Very Small (1-49)
TX112	Hughes Springs HA	Hughes Springs	Texas	PHA	Very Small (1-49)
TX317	Ingleside Housing Authority	Ingleside	Texas	PHA	Small (50-249)
TX492	Housing Authority of Jasper	Jasper	Texas	PHA	Small (50-249)
TX044	Housing Authority of Jefferson	Jefferson	Texas	PHA	Small (50-249)
TX256	Johnson City Housing Authority	Johnson City	Texas	PHA	Very Small (1-49)
TX306	Housing Authority of Junction	Junction	Texas	PHA	Very Small (1-49)
TX280	Karnes City Housing Authority	Karnes City	Texas	PHA	Very Small (1-49)
TX147	Kenedy Housing Authority	Kenedy	Texas	PHA	Small (50-249)
TX305	Housing Authority of Kerens	Kerens	Texas	PHA	Small (50-249)
TX079	Housing Authority of the City of Killeen	Killeen	Texas	PHA	Small (50-249)
TX114	Kingsville Housing Authority	Kingsville	Texas	PHA	Medium High (500-1250)
TX282	Housing Authority of Kirbyville	Kirbyville	Texas	PHA	Small (50-249)
TX124	Housing Authority of the City of Knox City	Knox City	Texas	PHA	Very Small (1-49)
TX367	Kyle Housing Authority	Kyle	Texas	PHA	Very Small (1-49)

TX381	La Grange Housing Authority	La Grange	Texas	PHA	Small (50-249)
TX448	LaJoya Housing Authority	LaJoya	Texas	PHA	Small (50-249)
TX011	Laredo Housing Authority	Laredo	Texas	PHA	Large (1250-9999)
TX100	Housing Authority of City of Leonard	Leonard	Texas	PHA	Very Small (1-49)
TX171	Housing Authority of Levelland	Levelland	Texas	PHA	Small (50-249)
TX135	Housing Authority of Linden	Linden	Texas	PHA	Small (50-249)
TX328	Llano Housing Authority	Llano	Texas	PHA	Small (50-249)
TX211	Lockhart Housing Authority	Lockhart	Texas	PHA	Small (50-249)
TX552	Housing Authority of Lockney	Lockney	Texas	PHA	Very Small (1-49)
TX345	Housing Authority of Lometa	Lometa	Texas	PHA	Very Small (1-49)
TX258	Housing Authority of Loraine	Loraine	Texas	PHA	Very Small (1-49)
TX206	Los Fresnos Housing Authority	Los Fresnos	Texas	PHA	Small (50-249)
TX252	Housing Authority of Lott	Lott	Texas	PHA	Very Small (1-49)
TX018	Housing Authority of Lubbock	Lubbock	Texas	PHA	Large (1250-9999)
TX209	Housing Authority of Malakoff	Malakoff	Texas	PHA	Very Small (1-49)
TX263	Marble Falls Housing Authority	Marble Falls	Texas	PHA	Low (250-499)
TX246	Housing Authority of Marlin	Marlin	Texas	PHA	Small (50-249)
TX457	Housing Authority of Marshall	Marshall	Texas	PHA	Medium High (500-1250)
TX333	Housing Authority of Mart	Mart	Texas	PHA	Small (50-249)
TX261	Housing Authority of Mason	Mason	Texas	PHA	Small (50-249)
TX188	Housing Authority of Maud	Maud	Texas	PHA	Very Small (1-49)
TX027	Housing Authority of McKinney	Mc Kinney	Texas	PHA	Small (50-249)
TX028	McAllen Housing Authority	McAllen	Texas	PHA	Large (1250-9999)
TX102	Housing Authority of McGregor	McGregor	Texas	PHA	Small (50-249)
TX157	Housing Authority of McLean	McLean	Texas	PHA	Very Small (1-49)
TX286	Housing Authority of Memphis	Memphis	Texas	PHA	Small (50-249)
TX029	Mercedes Housing Authority	Mercedes	Texas	PHA	Medium High (500-1250)
TX276	Housing Authority of Meridian	Meridian	Texas	PHA	Very Small (1-49)
TX158	Housing Authority of Merkel	Merkel	Texas	PHA	Very Small (1-49)
TX354	Mexia Housing Authority	Mexia	Texas	PHA	Small (50-249)
TX379	Housing Authority of Midland	Midland	Texas	PHA	Small (50-249)
TX060	Housing Authority of the City of Mineola	Mineola	Texas	PHA	Small (50-249)
TX298	Housing Authority the City of Mineral Wells	Mineral Wells	Texas	PHA	Low (250-499)
TX046	Mission Housing Authority	Mission	Texas	PHA	Medium High (500-1250)
TX408	Housing Authority of the City of Monahans	Monahans	Texas	PHA	Small (50-249)
TX116	Housing Authority of City of Moody	Moody	Texas	PHA	Small (50-249)
TX244	Housing Authority of Mount Pleasant	Mount Pleasant	Texas	PHA	Small (50-249)
TX120	Housing Authority of the City of Munday	Munday	Texas	PHA	Small (50-249)
TX469	Housing Authority of City of Navasota	Navasota	Texas	PHA	Small (50-249)
TX343	New Braunfels Housing Authority	New Braunfels	Texas	PHA	Low (250-499)
TX216	Housing Authority of Newcastle	Newcastle	Texas	PHA	Very Small (1-49)
TX175	Nixon Housing Authority	Nixon	Texas	PHA	Very Small (1-49)
TX549	Housing Authority of O'Donnell	O'Donnell	Texas	PHA	Very Small (1-49)
TX271	Housing Authority of City of Oglesby	Oglesby	Texas	PHA	Very Small (1-49)
TX041	Housing Authority of Olney	Olney	Texas	PHA	Small (50-249)
TX196	Housing Authority of Olton	Olton	Texas	PHA	Very Small (1-49)
TX037	Housing Authority City of Orange	Orange	Texas	PHA	Medium High (500-1250)
TX068	Housing Authority of Overton	Overton	Texas	PHA	Small (50-249)
TX084	Housing Authority of Paducah	Paducah	Texas	PHA	Small (50-249)
TX378	Housing Authority of the City of Palacios	Palacios	Texas	PHA	Small (50-249)
TX048	Housing Authority of Paris	Paris	Texas	PHA	Medium High (500-1250)
TX332	Housing Authority of the City of Pearsall	Pearsall	Texas	PHA	Small (50-249)
TX320	Housing Authority of Pecos	Pecos	Texas	PHA	Small (50-249)
TX073	Pharr Housing Authority	Pharr	Texas	PHA	Medium High (500-1250)
TX187	Housing Authority of Pineland	Pineland	Texas	PHA	Small (50-249)
TX128	Housing Authority of Plano	Plano	Texas	PHA	Medium High (500-1250)
TX208	Pleasanton Housing Authority	Pleasanton	Texas	PHA	Small (50-249)
TX370	Housing Authority of Point	Point	Texas	PHA	Very Small (1-49)
TX173	Port Isabel Housing Authority	Port Isabel	Texas	PHA	Small (50-249)
TX395	Port Lavaca Housing Authority	Port Lavaca	Texas	PHA	Small (50-249)
TX248	Poth Housing Authority	Poth	Texas	PHA	No Units
TX133	Housing Authority of Princeton	Princeton	Texas	PHA	Very Small (1-49)
TX075	Housing Authority of Quanah	Quanah	Texas	PHA	Small (50-249)
TX546	Housing Authority of Ralls	Ralls	Texas	PHA	Small (50-249)
TX043	Housing Authority of Ranger	Ranger	Texas	PHA	Small (50-249)
TX293	Housing Authority of Rankin	Rankin	Texas	PHA	Very Small (1-49)
TX396	Starr County Housing Authority	Rio Grande City	Texas	PHA	Low (250-499)
TX270	Housing Authority of Robert Lee	Robert Lee	Texas	PHA	Very Small (1-49)

TX163	Robstown Housing Authority	Robstown	Texas	PHA	Low (250-499)
TX180	Housing Authority of Roby	Roby	Texas	PHA	Very Small (1-49)
TX380	Housing Authority of Rockdale	Rockdale	Texas	PHA	Small (50-249)
TX095	Housing Authority of Rockwall	Rockwall	Texas	PHA	Small (50-249)
TX265	Housing Authority of Rogers	Rogers	Texas	PHA	Very Small (1-49)
TX449	Roma Housing Authority	Roma	Texas	PHA	Small (50-249)
TX255	Housing Authority of Rosebud	Rosebud	Texas	PHA	Very Small (1-49)
TX182	Housing Authority of Rotan	Rotan	Texas	PHA	Small (50-249)
TX322	Round Rock Housing Authority	Round Rock	Texas	PHA	Small (50-249)
TX247	Housing Authority of Royse City	Royse City	Texas	PHA	Very Small (1-49)
TX165	Runge Housing Authority	Runge	Texas	PHA	Small (50-249)
TX452	Bexar County Housing Authority	San Antonio	Texas	PHA	Large (1250-9999)
TX025	San Benito Housing Authority	San Benito	Texas	PHA	Medium High (500-1250)
TX087	San Marcos Housing Authority	San Marcos	Texas	PHA	Medium High (500-1250)
TX334	Housing Authority of the City of San Saba	San Saba	Texas	PHA	Small (50-249)
TX204	Housing Authority of Santa Anna	Santa Anna	Texas	PHA	Small (50-249)
TX350	Schertz Housing Authority	Schertz	Texas	PHA	Small (50-249)
TX275	Housing Authority of Seagraves	Seagraves	Texas	PHA	Small (50-249)
TX303	Seguin Housing Authority	Seguin	Texas	PHA	Low (250-499)
TX052	Housing Authority of Seymour	Seymour	Texas	PHA	Small (50-249)
TX078	Housing Authority of Sherman	Sherman	Texas	PHA	Low (250-499)
TX174	Sinton Housing Authority	Sinton	Texas	PHA	Small (50-249)
TX103	Smiley Housing Authority	Smiley	Texas	PHA	Very Small (1-49)
TX266	Smithville Housing Authority	Smithville	Texas	PHA	Small (50-249)
TX156	Housing Authority of Spearman	Spearman	Texas	PHA	Very Small (1-49)
TX215	Housing Authority of Spur	Spur	Texas	PHA	Very Small (1-49)
TX190	Housing Authority of Stanton	Stanton	Texas	PHA	Small (50-249)
TX290	Housing Authority of Strawn	Strawn	Texas	PHA	Very Small (1-49)
TX061	Housing Authority of Sweetwater	Sweetwater	Texas	PHA	Small (50-249)
TX191	Taft Housing Authority	Taft	Texas	PHA	Small (50-249)
TX166	Tahoka Housing Authority	Tahoka	Texas	PHA	Small (50-249)
TX145	Housing Authority of Talco	Talco	Texas	PHA	Very Small (1-49)
TX341	Housing Authority of Tatum	Tatum	Texas	PHA	Small (50-249)
TX031	Taylor Housing Authority	Taylor	Texas	PHA	Low (250-499)
TX262	Housing Authority of Tenaha	Tenaha	Texas	PHA	Small (50-249)
TX014	Housing Authority of Texarkana	Texarkana	Texas	PHA	Medium High (500-1250)
TX032	Housing Authority of the City of Texas City	Texas City	Texas	PHA	Medium High (500-1250)
TX301	Housing Authority of Thorndale	Thorndale	Texas	PHA	Very Small (1-49)
TX176	Three Rivers Housing Authority	Three Rivers	Texas	PHA	Very Small (1-49)
TX325	Housing Authority of Throckmorton	Throckmorton	Texas	PHA	Very Small (1-49)
TX226	Housing Authority of Timpson	Timpson	Texas	PHA	Very Small (1-49)
TX199	Housing Authority of Tioga	Tioga	Texas	PHA	Very Small (1-49)
TX127	Housing Authority of Trenton	Trenton	Texas	PHA	Very Small (1-49)
TX237	Housing Authority of Trinidad	Trinidad	Texas	PHA	Small (50-249)
TX183	Housing Authority of Tulia	Tulia	Texas	PHA	Small (50-249)
TX421	Uvalde Housing Authority	Uvalde	Texas	PHA	Low (250-499)
TX344	Housing Authority of Van	Van	Texas	PHA	Very Small (1-49)
TX132	Housing Authority of Van Alstyne	Van Alstyne	Texas	PHA	Very Small (1-49)
TX543	Housing Authority of Van Horn	Van Horn	Texas	PHA	Very Small (1-49)
TX240	Housing Authority of Vernon	Vernon	Texas	PHA	Small (50-249)
TX085	Victoria Housing Authority	Victoria	Texas	PHA	Medium High (500-1250)
TX113	Housing Authority of Orange County	Vidor	Texas	PHA	Very Small (1-49)
TX109	Waelder Housing Authority	Waelder	Texas	PHA	Very Small (1-49)
TX550	Housing Authority of Bowie County	Wake Village	Texas	PHA	Very Small (1-49)
TX151	Housing Authority of Wellington	Wellington	Texas	PHA	Very Small (1-49)
TX311	Housing Authority of Whitesboro	Whitesboro	Texas	PHA	Small (50-249)
TX218	Housing Authority of Whitney	Whitney	Texas	PHA	Very Small (1-49)
TX217	Housing Authority of Wills Point	Wills Point	Texas	PHA	Small (50-249)
TX220	Housing Authority of Windom	Windom	Texas	PHA	Very Small (1-49)
TX160	Housing Authority of Wink	Wink	Texas	PHA	Very Small (1-49)
TX288	Housing Authority of Winnsboro	Winnsboro	Texas	PHA	Very Small (1-49)
TX329	Housing Authority of the City of Winters	Winters	Texas	PHA	Small (50-249)
TX104	Housing Authority of Wolfe City	Wolfe City	Texas	PHA	Very Small (1-49)
TX225	Housing Authority of the City of Woodville	Woodville	Texas	PHA	Small (50-249)
TX086	Housing Authority of Wortham	Wortham	Texas	PHA	Small (50-249)
TX312	Yorktown Housing Authority	Yorktown	Texas	PHA	Small (50-249)
VT009	Bennington Housing Authority	Bennington	Vermont	PHA	Low (250-499)
VT002	Brattleboro Housing Authority	Brattleboro	Vermont	PHA	Low (250-499)

VT008	Montpelier Housing Authority	Montpelier	Vermont	PHA	Small (50-249)
VT004	Springfield Housing Authority	Springfield	Vermont	PHA	Small (50-249)
VA004	Alexandria Redevelopment & Housing Authority	Alexandria	Virginia	PHA	Large (1250-9999)
VA010	Danville Redevelopment & Housing Authority	Danville	Virginia	PHA	Large (1250-9999)
VA014	Harrisonburg Redevelopment & Housing Authority	Harrisonburg	Virginia	PHA	Medium High (500-1250)
VA005	Hopewell Redevelopment & Housing Authority	Hopewell	Virginia	PHA	Medium High (500-1250)
VA003	Newport News Redevelopment & Housing Authority	Newport News	Virginia	PHA	Large (1250-9999)
VA023	Staunton Redevelopment & Housing Authority	Staunton	Virginia	PHA	Low (250-499)
VA022	Waynesboro Redevelopment & Housing Authority	Waynesboro	Virginia	PHA	Medium High (500-1250)
WA018	HA of Grays Harbor County	Aberdeen	Washington	PHA	Medium High (500-1250)
WA010	HA City of Anacortes	Anacortes	Washington	PHA	Small (50-249)
WA009	Housing Authority of Kittitas County	Ellensburg	Washington	PHA	Small (50-249)
WA019	HA City of Kalama	Kalama	Washington	PHA	Very Small (1-49)
WA020	HA City of Kelso	Kelso	Washington	PHA	Low (250-499)
WA012	HA City of Kennewick	Kennewick	Washington	PHA	Large (1250-9999)
WA004	HA County of Clallam	Port Angeles	Washington	PHA	Medium High (500-1250)
WA030	HA City of Sedro Woolley	Sedro Woolley	Washington	PHA	Small (50-249)
WV039	Housing Authority of Raleigh County	Beckley	West Virginia	PHA	Large (1250-9999)
WV019	Housing Authority of the City of McMechen	Benwood	West Virginia	PHA	No Units
WV036	Kanawha County Housing And Redevelopment Authority	Charleston	West Virginia	PHA	No Units
WV042	Housing Authority of Boone County	Danville	West Virginia	PHA	Medium High (500-1250)
WV024	Housing Authority of the City of Dunbar	Dunbar	West Virginia	PHA	Small (50-249)
WV045	Housing Authority of Randolph County	Elkins	West Virginia	PHA	Medium High (500-1250)
WV009	Housing Authority of the City of Fairmont	Fairmont	West Virginia	PHA	Medium High (500-1250)
WV002	Housing Authority of the City of Morgantown	Fairmont	West Virginia	PHA	Small (50-249)
WV004	Housing Authority of the City of Huntington	Huntington	West Virginia	PHA	Large (1250-9999)
WV005	Housing Authority of the City of Parkersburg	Parkersburg	West Virginia	PHA	Large (1250-9999)
WV017	Housing Authority of the City of Pt. Pleasant	Point Pleasant	West Virginia	PHA	Low (250-499)
WV035	Housing Authority of the County of Jackson	Ripley	West Virginia	PHA	Medium High (500-1250)
WV044	Housing Authority of the City of Romney	Romney	West Virginia	PHA	Small (50-249)
WV021	Housing Authority of the City of St. Albans	Saint Albans	West Virginia	PHA	Small (50-249)
WV022	Housing Authority of the City of South Charleston	South Charleston	West Virginia	PHA	Small (50-249)
WV026	Housing Authority of the City of Spencer	Spencer	West Virginia	PHA	Small (50-249)
WV016	Housing Authority of the City of Weirton	Weirton	West Virginia	PHA	Medium High (500-1250)
WV008	Housing Authority of the City of Williamson	Williamson	West Virginia	PHA	Small (50-249)
WI026	Abbotsford Housing Authority	Abbotsford	Wisconsin	PHA	Very Small (1-49)
WI055	Albany Housing Authority	Albany	Wisconsin	PHA	Very Small (1-49)
WI019	Amery Housing Authority	Amery	Wisconsin	PHA	Small (50-249)
WI085	Antigo Housing Authority	Antigo	Wisconsin	PHA	Small (50-249)
WI131	Ashland Housing Authority	Ashland	Wisconsin	PHA	Small (50-249)
WI090	Baraboo Community Development Authority	Baraboo	Wisconsin	PHA	Small (50-249)
WI204	Sauk County Housing Authority	Baraboo	Wisconsin	PHA	Low (250-499)
WI064	Beloit Housing Authority	Beloit	Wisconsin	PHA	Medium High (500-1250)
WI158	Boscobel Housing Authority	Boscobel	Wisconsin	PHA	Very Small (1-49)
WI021	Brillion Housing Authority	Brillion	Wisconsin	PHA	Very Small (1-49)
WI072	Clintonville Housing Authority	Clintonville	Wisconsin	PHA	Small (50-249)
WI052	Housing Authority of the City of Cumberland	Cumberland	Wisconsin	PHA	Very Small (1-49)
WI221	Lafayette County Housing Authority	Darlington	Wisconsin	PHA	Small (50-249)
WI249	Deforest Housing Authority	De Forest	Wisconsin	PHA	Very Small (1-49)
WI102	Depere Housing Authority	De Pere	Wisconsin	PHA	Small (50-249)
WI246	Fond Du Lac County Housing Authority	Fond Du Lac	Wisconsin	PHA	Low (250-499)
WI071	Grantsburg Housing Authority	Grantsburg	Wisconsin	PHA	Very Small (1-49)
WI032	Greenwood Housing Authority	Greenwood	Wisconsin	PHA	Very Small (1-49)
WI042	Hudson Housing Authority	Hudson	Wisconsin	PHA	Small (50-249)
WI040	Hurley Housing Authority	Hurley	Wisconsin	PHA	Small (50-249)
WI006	La Crosse Housing Authority	La Crosse	Wisconsin	PHA	Medium High (500-1250)
WI041	Lake Mills Housing Authority	Lake Mills	Wisconsin	PHA	Small (50-249)
WI003	Madison Community Development Authority	Madison	Wisconsin	PHA	Large (1250-9999)
WI024	Manitowoc Housing Authority	Manitowoc	Wisconsin	PHA	Small (50-249)
WI049	Marinette Housing Authority	Marinette	Wisconsin	PHA	Small (50-249)
WI069	Mauston Housing Authority	Mauston	Wisconsin	PHA	Small (50-249)
WI231	Ashland County Housing Authority	Mellen	Wisconsin	PHA	Small (50-249)
WI004	Menomonie Housing Authority	Menomonie	Wisconsin	PHA	Small (50-249)
WI017	Merrill Housing Authority	Merrill	Wisconsin	PHA	Small (50-249)
WI066	Mondovi Housing Authority	Mondovi	Wisconsin	PHA	Very Small (1-49)
WI113	Housing Authority of the City of Oshkosh	Oshkosh	Wisconsin	PHA	Low (250-499)
WI213	Housing Authority of Winnebago County	Oshkosh	Wisconsin	PHA	Low (250-499)
WI129	Peshtigo Housing Authority	Peshtigo	Wisconsin	PHA	Very Small (1-49)

WI018	Plymouth Housing Authority	Plymouth	Wisconsin	PHA	Small (50-249)
WI067	Prairie Du Chien Housing Authority	Prairie Du Chien	Wisconsin	PHA	Very Small (1-49)
WI075	Pulaski Housing Authority	Pulaski	Wisconsin	PHA	Very Small (1-49)
WI183	Racine County Housing Authority	Racine	Wisconsin	PHA	Large (1250-9999)
WI070	Rhinelander Housing Authority	Rhinelander	Wisconsin	PHA	Small (50-249)
WI093	Sauk City Housing Authority	Sauk City	Wisconsin	PHA	Very Small (1-49)
WI139	Shawano County Housing Authority	Shawano	Wisconsin	PHA	Small (50-249)
WI047	Sheboygan Housing Authority	Sheboygan	Wisconsin	PHA	Low (250-499)
WI061	Housing Authority of the City of Shell Lake	Shell Lake	Wisconsin	PHA	Very Small (1-49)
WI247	Slinger Housing Authority	Slinger	Wisconsin	PHA	Very Small (1-49)
WI008	South Milwaukee Community Development Auth.	South Milwaukee	Wisconsin	PHA	Small (50-249)
WI001	Housing Authority of the City of Superior	Superior	Wisconsin	PHA	Medium High (500-1250)
WI076	Watertown Housing Authority	Watertown	Wisconsin	PHA	Small (50-249)
WI142	Waukesha Housing Authority	Waukesha	Wisconsin	PHA	Medium High (500-1250)
WI063	Wausaukee Housing Authority	Wausaukee	Wisconsin	PHA	Small (50-249)
WI242	Burnett County Housing Authority	Webster	Wisconsin	PHA	Small (50-249)
WI083	West Bend Housing Authority	West Bend	Wisconsin	PHA	Low (250-499)
WI117	Westby Housing Authority	Westby	Wisconsin	PHA	Very Small (1-49)
WI068	Wisconsin Rapids Housing Authority	Wisconsin Rapids	Wisconsin	PHA	Low (250-499)

Melissa Mailloux

From: Jeremy Gray
Sent: Tuesday, April 04, 2017 9:37 PM
To: Melissa Mailloux
Subject: Fwd: AI Addendum Comments - Please Acknowledge Receipt - Attachments #2
Attachments: Untitled attachment 00383.pdf; Untitled attachment 00386.htm; Untitled attachment 00389.pdf; Untitled attachment 00392.htm

Sent from my iPhone

Begin forwarded message:

From: FREDRICK <fmrrsbs@msn.com>
Date: April 3, 2017 at 6:37:00 PM PDT
To: Jeremy Gray <jeremy@mosaiccommunityplanning.com>
Cc: "Alyssa.Wetzel-Moore@ci.stpaul.mn.us" <Alyssa.Wetzel-Moore@ci.stpaul.mn.us>, John Shoemaker <john@shoemakerlaw.com>
Subject: Re: AI Addendum Comments - Please Acknowledge Receipt - Attachments #2

Jeremy,

The following attachments are referenced in the Access Group's AI Addendum Comments and submitted as supplement to the "Comments".

1) Congressional Oversight Committee on Government Reform Joint Staff Report

2) Congressional Oversight Committee on Government Reform Joint Staff Report- Congressional Documents

Please look forward to several other e-mails containing attachments.

Any questions, contact me via e-mail or call me @ 651) 403-2266.

Fredrick

From: FREDRICK <fmrrsbs@msn.com>
Sent: Monday, April 3, 2017 8:22 PM
To: Jeremy Gray

House Committee on Oversight and Government Reform

Darrell Issa (CA-49), Chairman
Patrick McHenry (NC-10)

Senate Committee on the Judiciary

Charles E. Grassley (IA), Ranking Member

House Committee on the Judiciary

Bob Goodlatte (VA-6), Chairman

DOJ'S *QUID PRO QUO* WITH ST. PAUL:
HOW ASSISTANT ATTORNEY GENERAL THOMAS PEREZ MANIPULATED JUSTICE AND IGNORED THE RULE OF LAW

Joint Staff Report
United States Congress
113th Congress
April 15, 2013

Table of Contents

Executive Summary

In early February 2012, Assistant Attorney General Thomas E. Perez made a secret deal behind closed doors with St. Paul, Minnesota, Mayor Christopher Coleman and St. Paul's outside counsel, David Lillehaug. Perez agreed to commit the Department of Justice to declining intervention in a False Claims Act *qui tam* complaint filed by whistleblower Fredrick Newell against the City of St. Paul, as well as a second *qui tam* complaint pending against the City, in exchange for the City's commitment to withdraw its appeal in *Magner v. Gallagher* from the Supreme Court, an appeal involving the validity of disparate impact claims under the Fair Housing Act. Perez sought, facilitated, and consummated this deal because he feared that the Court would find disparate impact unsupported by the text of the Fair Housing Act. Calling disparate impact theory the "lynchpin" of civil rights enforcement, Perez simply could not allow the Court to rule. Perez sought leverage to stop the City from pressing its appeal. His search led him to David Lillehaug and then to Newell's lawsuit against the City.

Fredrick Newell, a minister and small-business owner in St. Paul, had spent almost a decade working to improve economic opportunities for low-income residents in his community. In 2009, Newell filed a whistleblower lawsuit alleging that the City of St. Paul had received tens of millions of dollars of community development funds, including stimulus funding, by improperly certifying its compliance with federal law. By November 2011, Newell had spent over two years discussing his case with career attorneys in the Department of Housing and Urban Development, the U.S. Attorney's Office in Minnesota, and the Civil Fraud Section within the Justice Department's Civil Division. These three entities, which had each invested a substantial amount of time and resources into Newell's case, regarded this as a strong case potentially worth as much as $200 million for taxpayers and recommended that the federal government join the suit. These career attorneys even went so far as to prepare a formal memorandum recommending intervention, calling St. Paul's actions a "particularly egregious example of false certifications."

All this work was for naught. In late November 2011, Lillehaug made Perez aware of Newell's pending case against the City and the possibility that the Justice Department may intervene. A trade was proposed: non-intervention in Newell's case for the withdrawal of *Magner*. Perez contacted HUD General Counsel Helen Kanovsky and asked her to reconsider HUD's support for intervention in Newell's case. Perez also spoke to then-Civil Division Assistant Attorney General Tony West and B. Todd Jones, the U.S. Attorney for the District of Minnesota, alerting them to his new interest in Newell's case. The withdrawal of HUD's support for Newell's case led to an erosion of support in the Civil Division, a process that was actively managed by Perez.

In January 2012, Perez began leading negotiations with Lillehaug, offering him a "roadmap" to a global settlement. Once negotiations appeared to break down, Perez boarded a plane and flew to Minnesota to meet face-to-face with Mayor Coleman. At that early February meeting, Perez pleaded for the fate of disparate impact and reiterated the Justice Department's willingness to strike a deal. His lobbying paid off when Lillehaug accepted the deal on Mayor

Coleman's behalf. The next week, the Civil Division declined to intervene in Newell's case and the City withdrew its *Magner* appeal. The *quid pro quo* had been accomplished.

Still, Perez and several of his colleagues at the Justice Department are unwilling to acknowledge that the *quid pro quo* occurred despite clear and convincing evidence to the contrary. The Administration maintains that although career attorneys in the Department of Justice recommended intervention in Newell's case – and, in fact, characterized the False Claims Act infractions reported by Newell as "particularly egregious" – the case was nonetheless quite weak and never should have been a serious candidate for intervention. The Administration maintains that the United States gave up nothing to secure the withdrawal of *Magner*. Left unexplained by the Administration is why the City of St. Paul would ever agree to withdraw a Supreme Court appeal it believed it would win if the City knew the Department would not intervene in Newell's case. Dozens of documents referring to the "deal," "settlement," and "exchange" between the City of St. Paul and DOJ show that the Administration's narrative is not believable.

There is much more to the story of how Assistant Attorney General Perez manipulated the rule of law and pushed the limits of justice to make this deal happen. In his fervor to protect disparate impact, Perez attempted to cover up the true reasons behind the Justice Department's decision to decline Fredrick Newell's case by asking career attorneys to obfuscate the presence of *Magner* as a factor in the declination decision and by refraining from a written agreement. In his zeal to get the City to agree, Perez offered to provide HUD's assistance to the City in moving to dismiss Newell's whistleblower complaint. The facts surrounding this *quid pro quo* show that Perez may have exceeded the scope of the ethics and professional responsibility opinions he received from the Department and thereby violated his duties of loyalty and confidentiality to the United States. Perez also misled senior Justice Department officials about the *quid pro quo* when he misinformed then-Associate Attorney General Thomas Perrelli about the reasons for *Magner*'s withdrawal.

The *quid pro quo* between the Department of Justice and the City of St. Paul, Minnesota, is largely the result of the machinations of one man: Assistant Attorney General Thomas Perez. Yet the consequences of his actions will negatively affect not only Fredrick Newell and the low-income residents of St. Paul who he championed. The effects of this *quid pro quo* will be felt by future whistleblowers who act courageously, and often at great personal risk, to fight fraud and identify waste on behalf of federal taxpayers. The effects of withdrawing *Magner* will be felt by the minority tenants in St. Paul who, due to the case's challenge to the City's housing code, continue to live with rampant rodent infestations and inadequate plumbing. The effects of sacrificing Newell's case will cost American taxpayers the opportunity to recover up to $200 million and allow St. Paul's misdeeds to go unpunished. Far more troubling, however, is the fundamental damage that this *quid pro quo* has done to the rule of law in the United States and to the reputation of the Department of Justice as a fair and impartial arbiter of justice.

Findings

- The Department of Justice entered into a *quid pro quo* arrangement with the City of St. Paul, Minnesota, in which the Department agreed to decline intervention in *United States ex rel. Newell v. City of St. Paul* and *United States ex rel. Ellis v. City of St. Paul et al.* in exchange for the City withdrawing *Magner v. Gallagher* from the Supreme Court.

- The *quid pro quo* was a direct result of Assistant Attorney General Perez's successful efforts to pressure the Department of Housing and Urban Development, the U.S. Attorney's Office in Minnesota, and the Civil Division within the Department of Justice to reconsider their support for *Newell* in the context of the proposal to withdraw *Magner*.

- The initial development of the *quid pro quo* by senior political appointees, and the subsequent 180 degree change of position, confused and frustrated the career Department of Justice attorneys responsible for enforcing the False Claims Act, who described the situation as "weirdness," "ridiculous," and a case of "cover your head ping pong."

- The reasons given by the Department of Housing and Urban Development for recommending declination in *Newell* are unsupported by documentary evidence and instead appear to be pretextual post-hoc rationalizations for a purely political decision.

- The "consensus" of the federal government to switch its recommendation and decline intervention in *Newell* was the direct result of Assistant Attorney General Perez manipulating the process and advising and overseeing the communications between the City of St. Paul, the Department of Housing and Urban Development, and the Civil Division within the Department of Justice.

- Assistant Attorney General Perez was personally and directly involved in negotiating the mechanics of the *quid pro quo* with David Lillehaug and he personally agreed to the *quid pro quo* on behalf of the United States during a closed-door meeting with the Mayor in St. Paul.

- Despite the Department of Justice's contention that the intervention recommendation in *Newell* was a "close call" and "marginal," contemporaneous documents show the Department believed that *Newell* alleged a "particularly egregious example of false certifications" and therefore the United States sacrificed strong allegations of false claims worth as much as $200 million to the Treasury.

- Assistant Attorney General Perez offered to arrange for the Department of Housing and Urban Development to provide material to the City of St. Paul to assist the City in its motion to dismiss the *Newell* whistleblower complaint. This offer was inappropriate and potentially violated Perez's duty of loyalty to his client, the United States.

- Assistant Attorney General Perez attempted to cover up the *quid pro quo* when he personally instructed career attorneys to omit a discussion of *Magner* in the declination memos that outlined the reasons for the Department's decision to decline intervention in *Newell* and *Ellis*, and focus instead only "on the merits."

- Assistant Attorney General Perez attempted to cover up the *quid pro quo* when he insisted that the final deal with the City settling two cases worth potentially millions of dollars to the Treasury not be reduced to writing, instead insisting that your "word was your bond."

- Assistant Attorney General Perez likely violated both the spirit and letter of the Federal Records Act and the regulations promulgated thereunder when he communicated with the City's lawyers about the *quid pro quo* on his personal email account.

- Assistant Attorney General Perez made multiple statements to the Committees that contradicted testimony from other witnesses and documentary evidence. Perez's inconsistent testimony on a range of subjects calls into question the reliability of his testimony and raises questions about his truthfulness during his transcribed interview.

- The ethics and professional responsibility opinions obtained by Assistant Attorney General Thomas Perez and his staff were narrowly focused on his personal and financial interests in a deal and his authority to speak on behalf of the Civil Division, and thus do not address the *quid pro quo* itself or Perez's particular actions in effectuating the *quid pro quo*.

- The Department of Justice violated the spirit and intent of the False Claims Act by privately acknowledging the *quid pro quo* was a settlement while not affording Fredrick Newell the opportunity to be heard, as the statute requires, on the fairness and adequacy of this settlement.

- The *quid pro quo* exposed serious management failures within the Department of Justice, with senior leadership – including Attorney General Holder and then-Associate Attorney General Perrelli – unaware that Assistant Attorney General Perez had entered into an agreement with the City of St. Paul.

- The Department of Justice, the Department of Housing and Urban Development, and the City of St. Paul failed to fully cooperate with the Committees' investigation, refusing for months to speak on the record about the *quid pro quo* and obstructing the Committees' inquiry.

- In declining to intervene in Fredrick Newell's whistleblower complaint as part of the *quid pro quo* with the City of St. Paul, the Department of Justice gave up the opportunity to recover as much as $200 million.

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"[T]he role of a lawyer at the Department of Justice, whether you are in the Civil Division or the Civil Rights Division, is to do justice, is to do what is in the best interests of the United States."

—Thomas Perez, Assistant Attorney General for the Civil Rights Division[1]

"The matters at hand are not just – the ethics of [the Department of Justice] leveraging the False Claims Act lawsuit to secure the disparate impact regulations, or the treatment of myself as a whistleblower, or the influence of the Supreme Court docket. . . . The way that HUD and Justice have used me to further their own agenda is appalling – and that's putting it mildly."

—Fredrick Newell, small-business owner and minister, St. Paul, Minnesota[2]

Introduction

When Assistant Attorney General Thomas Perez traveled to St. Paul, Minnesota, in early February 2012 to meet with St. Paul Mayor Christopher Coleman and other City officials in the Mayor's City Hall offices, he had one goal in mind. He wanted the City to withdraw a potential landmark case scheduled for argument before the United States Supreme Court only days later. The agreement struck between Assistant Attorney General Perez and Mayor Coleman at that closed-door meeting resulted not only in the withdrawal of the appeal, but also the fatal weakening of a whistleblower lawsuit potentially worth $200 million to the federal treasury. The story of this *quid pro quo* is a story of leverage and political opportunism. The effects of the *quid pro quo* are even more unfortunate. The *quid pro quo* not only reflects poorly on the senior leadership of the Department of Justice, but it will have real and lasting consequences for public policy and federal taxpayers.

In the early 2000s, the City of St. Paul began aggressively enforcing the health and safety provisions of its housing code, targeting rental properties. With increased inspections and stricter certifications, the City cited various infractions ranging from broken handrails and torn screens to a toilet in a kitchen and rats in a bathtub.[3] The owners of these properties sued the City, arguing that the aggressive code enforcement adversely impacted their mostly minority tenants. The lawsuit worked its way through the federal court system for years, eventually arriving at the Supreme Court. In November 2011, the Supreme Court agreed to hear the case, known as *Magner v. Gallagher*, to decide whether the Fair Housing Act allows for claims of disparate impact.

Meanwhile, Fredrick Newell, a small-business owner and minister in St. Paul, had been working for years to improve low-income jobs programs in his community. After pursuing

[1] Transcribed Interview of Thomas Edward Perez, U.S. Dep't of Justice, in Wash., D.C. at 208 (Mar. 22, 2013).
[2] Transcribed Interview of Fredrick Newell in Wash., D.C. at 16 (Mar. 28, 2013).
[3] *See* Fredrick Melo, *St. Paul Landlords Discuss their Fight over City Rental Housing Inspection Practices*, Pioneer Press, Oct. 15, 2012; Kevin Diaz, *St. Paul Yanks Housing Fight from High Court*, Star Tribune (Feb. 10, 2012).

various administrative avenues through the Department of Housing and Urban Development, Newell filed a federal whistleblower lawsuit against the City of St. Paul in May 2009. His suit, known as a *qui tam* action and brought under the False Claims Act,[4] was encouraged by HUD employees and supported by career officials in the Justice Department. If successful, Newell's lawsuit could have returned over $200 million of taxpayer funds to the federal Treasury. Although career officials viewed Mr. Newell's lawsuit as a "particularly egregious example" of false claims, Mr. Newell, as it turned out, would never receive a fair shot.

Documents and testimony given to the Committees show that after the Supreme Court agreed to hear *Magner* in November 2011, Assistant Attorney General Perez sought to find a way to prevent the Court from hearing the case and eviscerating disparate impact theory, which Perez had used to secure multimillion dollar settlements. His outreach put him in contact with a Minnesota lawyer named David Lillehaug, a former U.S. Attorney and outside counsel to the City of St. Paul. In discussions between Perez and Lillehaug, a proposal was raised to link the *Magner* and *Newell* cases, in which the City would withdraw *Magner* if the Department did not join Newell's suit. With *Newell* as leverage, Perez went to work to get *Magner* withdrawn. He asked HUD's General Counsel to reconsider HUD's support for *Newell* and raised the prospect of a deal with senior DOJ officials. Slowly, support for intervening in *Newell* eroded among the political DOJ leadership while career DOJ attorneys wondered among themselves what caused the sudden change of course.

Perez facilitated the slow bureaucratic march toward a *quid pro quo* with the City. In early January 2012, as progress on an agreement stalled, Perez began personally leading negotiations with Lillehaug. Once negotiations broke down in late January, and with *Magner* oral arguments looming, Perez made one last attempt to strike a deal. He flew to St. Paul on Friday, February 3, 2012, to lobby the Mayor directly. His persuasion proved successful; the City accepted the deal on the spot. Six days later, DOJ formally declined to join Newell's case. The following day, Friday, February 10, 2012, the City upheld its end of the bargain by withdrawing its *Magner* appeal. Perez's coup was complete.

This joint staff report is the product of a year-long investigation conducted by the House Committee on Oversight and Government Reform, the House Committee on the Judiciary, and the Senate Committee on the Judiciary. The Committees reviewed over 1,500 pages of documents produced by the Department of Justice, the Department of Housing and Urban Development, and the City of St. Paul.[5] The Committees conducted transcribed interviews with Assistant Attorney General Thomas Perez, Acting Associate Attorney General Tony West, former Associate Attorney General Thomas Perrelli, United States Attorney B. Todd Jones, HUD General Counsel Helen Kanovsky, HUD Deputy Assistant Secretary Sara Pratt, and Fredrick Newell. The Committees also interviewed David Lillehaug and St. Paul City Attorney Sara Grewing; Joyce Branda, a Deputy Assistant Attorney General in DOJ's Civil Division; Mark Kappelhoff, former Criminal Section Chief in DOJ's Civil Rights Division; Kevin Simpson, HUD's Principal Deputy General Counsel; and Bryan Green, HUD's Principal Deputy

[4] Under the False Claims Act, an individual may bring a *qui tam* action on behalf of the United States. 31 U.S.C. § 3730.

[5] The City of Saint Paul, however, continues to withhold twenty documents and one audio recording from the Committees.

Assistant Secretary for Fair Housing. Despite repeated requests, DOJ refused to allow the Committees to speak to the Assistant United States Attorney who handled the *Newell* case and HUD refused to allow the Committees to speak to Associate General Counsel Dane Narode and Regional Director Maurice McGough.

How the *Quid Pro Quo* Developed

The Fair Housing Act and Disparate Impact

The Fair Housing Act, found in Title VIII of the Civil Rights Act of 1968, prohibits discrimination in the sale or rental of housing units.[6] As passed by Congress, the Act made it unlawful to "refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin."[7] The Act charged the Secretary of Housing and Urban Development with administering the provisions of the law.[8]

Unlike other federal laws concerning employment discrimination and age discrimination, the plain text of the Fair Housing Act only includes language prohibiting disparate *treatment* – not disparate effects. By contrast, in the employment context, Title VII of the Civil Rights Act of 1964 prohibits an employer from "fail[ing] or refus[ing] to hire or . . . discharg[ing] any individual" on the basis of a protected status, as well as prohibiting action that would "otherwise adversely affect [a person's] status as an employee."[9] Although the Fair Housing Act has language prohibiting the disparate *treatment* of individuals in the housing context, it does not include any similar language prohibiting the disparate *effects* of housing practices.[10] Because the plain language of the Fair Housing Act lacks this disparate effects language, it is clear that Congress never intended the disparate *impact* standard to be cognizable under the Fair Housing Act.

Nonetheless, despite the clear statutory language, some courts and policymakers have read the disparate impact standard into the Fair Housing Act. The roots of disparate impact under the Fair Housing Act can be traced back to Title VII of the Civil Rights Act of 1964, which prohibited employment discrimination based on race, color, religion, sex, or national origin.[11] In a case called *Griggs v. Duke Power Co.*, the Supreme Court interpreted the broad statutory text of Title VII to prohibit "not only overt discrimination but also practices that are fair in form, but discriminatory in operation."[12] Congress subsequently codified this disparate impact standard in the context of employment discrimination, creating a separate prohibition in Title VII

[6] 42 U.S.C. § 3604.
[7] *Id.* § 3604(a).
[8] *Id.* § 3608.
[9] 42 U.S.C. § 2000e-2(a).
[10] 42 U.S.C. § 3604.
[11] Pub. L. 88-352 tit. VII, 78 Stat. 241, 253 (1964).
[12] Griggs v. Duke Power Co., 401 U.S. 424, 431 (1971).

for "a particular employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin."[13]

As the courts gained familiarity with the disparate impact standard for employment discrimination, they simultaneously began to interpret the text of the Fair Housing Act "to draw an inference of actual intent to discriminate from evidence of disproportionate impact."[14] Federal agencies likewise began interpreting the Fair Housing Act beyond the strictures of its plain language. In November 2011, HUD issued a proposed rule codifying the disparate impact standard for discrimination claims arising under the Fair Housing Act.[15] The rule proposed to prohibit discriminatory effects under the Fair Housing Act, "where a facially neutral housing practice actually or predictably results in a discriminatory effect on a group of persons."[16] HUD finalized the rule in February 2013.[17] The new Consumer Financial Protection Bureau has also adopted the disparate impact standard for enforcing lending discrimination.[18]

This broad and controversial interpretation of the Fair Housing Act has been roundly criticized. The American Bankers Association, the Consumer Bankers Association, the Financial Services Roundtable, and the Housing Policy Council argue that the Act does not permit disparate impact claims because the law's plain text prohibits only intentional discrimination.[19] Likewise, attorneys from Ballard Spahr note that the Supreme Court's precedents "with regard to disparate impact claims make it clear that such claims cannot be brought under the Fair Housing Act . . . ."[20] Attorneys with BuckleySandler LLP criticize the analogous treatment between Fair Housing Act claims and Title VII claims – due to the express differences in the statutory language – and concluded that disparate impact "claims were neither provided for in the [Fair Housing Act] nor anticipated by the lawmakers who enacted the Act."[21]

The Supreme Court has never directly considered whether the Fair Housing Act supports the disparate impact standard. Although the Court has heard two cases involving disparate impact claims under the Fair Housing Act, both cases were decided on other grounds and the issue was never settled by the Court.[22] By the fall of 2011, as a case involving this precise issue was making its way through the federal court system, the Court was poised to resolve the dispute.

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[13] 42 U.S.C. § 2000e-2(k)(1)(A)(i).
[14] Peter E. Mahoney, *The End(s) of Disparate Impact: Doctrinal Reconstruction, Fair Housing and Lending Law, and the Antidiscrimination Principle*, 47 Emory L.J. 409, 426 (1998).
[15] *See* Implementation of the Fair Housing Act's Discriminatory Effects Standard, 76 Fed. Reg. 70,921 (Nov. 16, 2011).
[16] *Id.* at 70,924.
[17] Implementation of the Fair Housing Act's Discriminatory Effects Standard, 78 Fed. Reg. 11,460 (Feb. 15, 2013).
[18] Consumer Financial Prot. Bureau, CFPB Bulletin 2012-04 (Apr. 18, 2012).
[19] *See* Brief of Amici Curiae American Bankers Association, Consumer Bankers Association, Financial Services Roundtable, and Housing Policy Council Suggesting Reversal, Magner et al. v. Gallagher et al., No. 10-1032 (filed Dec. 29, 2011).
[20] Ballard Spahr LLP, *Dismissal of Fair Housing Case Perpetuates Uncertainty on Disparate Impact Claims*, Feb. 15, 2012.
[21] Kirk D. Jensen & Jeffrey P. Naimon, *The Fair Housing Act, Disparate Impact Claims, and* Magner v. Gallagher*: An Opportunity to Return to the Primacy of the Statutory Text*, 129 Bank. L.J. 99 (Feb. 2012).
[22] *See* City of Cuyahoga Falls, Ohio v. Buckeye Cmty. Hope Found., 538 U.S. 188, 199-200 (2003); Town of Huntington, N.Y. v. Huntington Branch, N.A.A.C.P., 488 U.S. 15, 18 (1988).

Magner v. Gallagher

On November 7, 2011, the United States Supreme Court granted a petition for a writ of certiorari filed by the City of St. Paul, Minnesota, in the case *Magner v. Gallagher*. In agreeing to hear the case, the Court decided to answer a fairly straightforward question: "Are disparate impact claims cognizable under the Fair Housing Act?"[23]

Magner arose from the City's enhanced enforcement of its housing codes from 2002 to 2005, particularly with respect to rental properties. The City directed inspectors to enforce the "code to the max," conducting unannounced sweeps for code violations and asking residents to report so-called "problem properties."[24] These enhanced enforcement measures documented violations in many properties occupied by low-income residents, including violations for rodent infestations, inoperable smoke detectors, inadequate sanitation, and inadequate heat.[25] The owners of these low-income properties, which housed a disproportionate percentage of African Americans, faced increased maintenance costs, higher fees, and condemnations as a result.[26]

In 2004 and 2005, several of the affected property owners sued the City in federal district court, alleging that the City's aggressive enforcement of the housing code violated the Fair Housing Act.[27] The City asked the court to throw out the cases before trial, arguing in part that its code enforcement did not have a disparate impact on minorities and therefore did not violate the Act.[28] The court agreed and granted summary judgment in the City's favor in 2008.[29] Appealing to the Eighth Circuit Court of Appeals, the property owners renewed their argument that the City violated the Fair Housing Act "because [its] aggressive enforcement of the housing code had a disparate impact on racial minorities."[30] The Eighth Circuit agreed. In its 2010 opinion reversing the lower court, the Eighth Circuit stated:

> Viewed in the light most favorable to [the property owners], the evidence shows that the City's Housing Code enforcement temporarily, if not permanently, burdened [the property owners'] rental businesses, which indirectly burdened their tenants. Given the existing shortfall of affordable housing in the City, it is reasonable to infer that the overall amount of affordable housing decreased as a result. And taking into account the demographic evidence in the record, it is reasonable to infer racial minorities, particularly African-Americans, were disproportionately affected by these events.[31]

[23] Petition for Writ of Certiorari, Magner v. Gallagher, No. 10-1032 (U.S. filed Feb. 14, 2011).
[24] Gallagher v. Magner, 619 F.3d 823, 829 (8th Cir. 2010).
[25] *Id.* at 830.
[26] *Id.*
[27] Steinhauser et al. v. City of St. Paul et al., 595 F. Supp. 2d 987 (D. Minn. 2008).
[28] *Id.*
[29] *Id.*
[30] Gallagher v. Magner, 619 F.3d 823 (8th Cir. 2010).
[31] *Id.* at 835

With an adverse decision at the appellate level, the City faced a decision whether to litigate the disparate impact claim before the district court or to appeal the decision to the United States Supreme Court. On February 14, 2011, the City filed a petition for a writ of certiorari, asking the Court to take the case.[32] On November 7, 2011, the Court granted the petition to finally settle whether the Fair Housing Act supports claims of disparate impact.

United States ex rel. Newell v. City of Saint Paul

Fredrick Newell's history with Section 3 of the Housing and Urban Development Act dates back to 1997.[33] Section 3 requires recipients of HUD financial assistance to provide job training, employment, and contracting opportunities "to the greatest extent feasible" to low- and very-low-income residents, as distinct from minority residents.[34] In 2000, Newell began to pursue Section 3 opportunities in St. Paul, but quickly found that although the City had programs for minority business and women business enterprises, the City did not have a program to comply with Section 3 in particular. Newell even offered to start a Section 3 program in St. Paul, but the City refused.[35]

After a lawsuit Newell filed was dismissed because Section 3 does not allow for a private right of action, Newell initiated an administrative complaint with HUD.[36] This administrative complaint led to a formal finding by HUD that St. Paul was not in compliance with Section 3,[37] and eventually to a Voluntary Compliance Agreement that required St. Paul to improve its future compliance with Section 3.[38] The Voluntary Compliance Agreement, however, did not release the City from any liability under the False Claims Act.[39] According to Newell's attorney, the Justice Department reviewed the language of the Voluntary Compliance Agreement to ensure it did not disturb any False Claims Act liability.[40]

In May 2009, Fredrick Newell filed a whistleblower complaint under the *qui tam* provisions of the False Claims Act, alleging that the City of St. Paul had falsely certified that it was in compliance with Section 3 of the HUD Act from 2003 to 2009.[41] In particular, Newell alleged that the City had falsely certified on applications for HUD funds that it had complied with Section 3's requirements when in fact the City knew it had not complied.[42] He alleged that based on these knowingly false certifications, the City had improperly received more than $62

[32] Petition for Writ of Certiorari, Magner v. Gallagher, No. 10-1032 (U.S. filed Feb. 14, 2011).
[33] Transcribed Interview of Fredrick Newell in Wash., D.C. at 9-10 (Mar. 28, 2013).
[34] 12 U.S.C. § 1701u.
[35] Transcribed Interview of Fredrick Newell in Wash., D.C. at 27-28 (Mar. 28, 2013).
[36] Transcribed Interview of Fredrick Newell in Wash., D.C. at 9-10 (Mar. 28, 2013).
[37] *See* Letter from Barbara Knox, Dep't of Housing and Urban Development, to Chris Coleman, City of St. Paul (Aug. 25, 2009).
[38] Voluntary Compliance Agreement; Section 3 of the Housing and Community Development Act between U.S. Dep't of Housing and Urban Development and the City of Saint Paul, MN (Feb. 2010).
[39] *Id.*
[40] Transcribed Interview of Fredrick Newell in Wash., D.C. at 33 (Mar. 28, 2013).
[41] Complaint, United States *ex rel.* Newell v. City of Saint Paul, No. 0:09-cv-1177 (D. Minn. May 19, 2009).
[42] *Id.*

million in federal HUD funds.[43] As a whistleblower, Newell brought the case – *United States ex rel. Newell v. City of St. Paul* – on behalf of the United States.

Like all other alleged violations of the False Claims Act, Newell's complaint was evaluated by career attorneys in the Civil Fraud Section within DOJ's Civil Division as well as career Assistant United States Attorneys in Minnesota. These attorneys spent over two years conducting an exhaustive investigation of Newell's allegations. As a part of this investigation, the attorneys interviewed Newell and his attorney several times, gathered information from HUD, and spoke with the City about its actions. At the conclusion of this investigation, both the Civil Fraud Section and the U.S. Attorneys' Office in Minnesota strongly supported the case.

That these career DOJ officials enthusiastically supported Newell's lawsuit was obvious to Newell and to HUD. His initial relator[44] interview with federal officials in the summer of 2009 included an unusually large number of HUD and DOJ attendees.[45] During his transcribed interview, Newell told the Committees that "[t]here was a real interest . . . and the DOJ felt it was a good case."[46] His attorney stated: "I believe around . . . September-October of 2011, my information was that Justice was working on finalizing its intervention decision. And I don't mean what the decision was. I mean finalizing intervention, because they were going to intervene in the case."[47]

This understanding was confirmed by HUD General Counsel Helen Kanovsky, who told the Committees that career attorneys in DOJ's Civil Fraud Section and U.S. Attorney's Office in Minnesota felt so strongly about intervening in Newell's case that they requested a special meeting with her to convince her to lend HUD's support.[48]

On October 4, 2011, a line attorney in the Civil Fraud Section wrote to HUD General Counsel Dane Narode about the *Newell* case: "Our office is recommending intervention. Does HUD concur?"[49] Three days later, Narode replied, "HUD concurs with DOJ's recommendation."[50] The AUSA in Minnesota handling *Newell* forwarded HUD's concurrence to his supervisor with the comment, "[l]ooks like everyone is on board."[51] On October 26, 2011, the AUSA transmitted a memorandum to the two Civil Fraud Section line attorneys with the official recommendation from the U.S. Attorney's Office.[52] The memorandum recommended intervention. It stated:

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[43] Amended Complaint, United States *ex rel.* Newell v. City of Saint Paul, No. 0:09-cv-1177 (D. Minn. Mar. 12, 2012). The Civil Fraud Section of the Justice Department valued the fraud at $86 million. *See infra* note 336.
[44] A "relator" is the private party who initiates a *qui tam* lawsuit under the False Claims Act on behalf of the United States.
[45] Transcribed Interview of Fredrick Newell in Wash., D.C. at 192-93 (Mar. 28, 2013).
[46] *Id.* at 48.
[47] *Id.* at 55.
[48] Transcribed Interview of Helen Kanovsky, U.S. Dep't of Housing & Urban Development, in Wash., D.C. at 25-30 (Apr. 5, 2013).
[49] Email from Line Attorney 1 to HUD Line Employee (Oct. 4, 2011, 5:05 p.m.). [DOJ 67]
[50] Email from HUD Line Employee to Line Attorney 1 (Oct. 7, 2011, 11:27 a.m.). [DOJ 68]
[51] Email from Line Attorney 3 to Greg Brooker (Oct. 7, 2011, 11:28 a.m.). [DOJ 69]
[52] Email from Line Attorney 3 to Line Attorney 2 & Line Attorney 1 (Oct. 26, 2011, 3:39 p.m.). [DOJ 71]

> The City was repeatedly put on notice of its obligations to comply with Section 3. At best, its failure to take any steps towards compliance, while continually telling federal courts, HUD and others that it was in compliance with Section 3, represents a reckless disregard for the truth. Its certifications of Section 3 compliance to obtain HUD funds during the relevant time period were knowingly false.[53]

The memo also referenced the HUD administrative proceeding initiated by Fredrick Newell, noting that in the proceeding "HUD determined that the City was out of compliance with Section 3. **It did not appear to be a particularly close call.** The City initially contested that finding, but dropped its challenge in order to retain its eligibility to compete for and secure discretionary HUD funding."[54]

The Civil Fraud Section also prepared an official memorandum recommending intervention in Newell's case. This memo, dated November 22, 2011, found that "[t]he City was required to comply with the statute. Our investigation confirms that the City failed to do so."[55] The memorandum stated:

> To qualify for HUD grant funds, the City was required to certify each year that it was in compliance with Section 3. The City then made claims for payment, drawing down its federal grant funds. Distribution of funds by HUD to the City was based on the City's certifications. Each time the City asked HUD for money, it impliedly certified its compliance with Section 3. At best, the City's failure to take any steps towards compliance while continually telling federal courts, HUD and others that it was in compliance with Section 3 represents a reckless disregard for the truth. **We believe its certifications of Section 3 compliance to obtain HUD funds were actually more than reckless and that the City had actual knowledge that they were false.**[56]

Thus, as of November 22, 2011, HUD, the Civil Fraud Section, and the U.S. Attorney's Office in Minnesota all strongly supported intervention in Fredrick Newell's case, believing it was worthy of federal assistance. There was no documentation that it was a marginal case or a close call.

Executing the Quid Pro Quo

Shortly after the Supreme Court granted certiorari in *Magner* on November 7, 2011, Assistant Attorney General Perez became aware of the appeal.[57] On November 17, he emailed

[53] U.S. Attorney, District of Minnesota, Intervention Memo: *U.S. ex rel. Newell v. City of St. Paul, Minnesota* (Oct. 25, 2011). [DOJ 72-79]
[54] *Id.* (emphasis added).
[55] U.S. Dep't of Justice, Civil Division, Memorandum for Tony West, Assistant Attorney General, Civil Division, *U.S. ex rel. Newell v. City of St. Paul, Minnesota* (Nov. 22, 2011). [DOJ 80-91]
[56] *Id.* at 5 (emphasis added).
[57] Assistant Attorney General Perez testified that he did not become aware of the *Magner* case until after the Court agreed to hear the appeal; however, HUD Deputy Assistant Secretary Sara Pratt told the Committees that she and Perez likely had discussions about the case before the Court granted certiorari.

Thomas Fraser, a partner at the Minneapolis law firm Fredrickson & Bryon, P.A. and an old colleague. Fraser put Perez in touch with his law partner David Lillehaug, who was defending the City of St. Paul in the *Newell* False Claims Act litigation.

On the morning of November 23, 2011, Perez had a telephone conversation with Lillehaug and Fraser. During this conversation, Perez explained the importance of disparate impact theory, calling it the "lynchpin" of civil rights enforcement,[58] and his concerns about the *Magner* appeal. Their accounts of the conversation differed as to when and who first raised the prospect that the City would withdraw *Magner* if the Department declined to intervene in *Newell.* Lillehaug told the Committees that he told Perez that he should know that the City was potentially adverse to the United States in a separate False Claims Act case.[59] Lillehaug further told the Committees that at a subsequent meeting, approximately one week later on November 29, Perez told Lillehaug that he had looked into *Newell* and he had a "potential solution."[60] According to Perez, however, during the initial telephone call on November 23, Lillehaug actually linked the two cases and in fact suggested that if the United States would decline to intervene in *Newell*, the City would withdraw the *Magner* case.[61] Both parties agreed that Perez indicated he would look into the *Newell* case, and they would meet approximately one week later on November 29.

Following his conversation with Lillehaug and Fraser, Perez immediately reached out to HUD Deputy Assistant Secretary Sara Pratt, HUD General Counsel Helen Kanovsky, and then-Assistant Attorney General Tony West. During a telephone conversation with Kanovsky, Perez told her that he had discussions with the City about *Magner* and asked her to reconsider HUD's support for the *Newell* case.[62] On November 29, 2011 – only seven weeks after he signaled HUD's support for intervention and less than one week after Perez's initial telephone call with Lillehaug – HUD Associate General Counsel Dane Narode informed career Civil Fraud Section attorneys that HUD had reconsidered its position in *Newell*.[63] On December 1, Narode memorialized the change in an email to the line attorney.[64]

On December 13, 2011, several City officials – including Mayor Coleman and City Attorney Sara Grewing, as well as Lillehaug – traveled to Washington, D.C., for meetings with HUD and DOJ's Civil Division. In the morning, the City officials met with Sara Pratt, discussing ideas for expanding the City's Section 3 compliance programs. In the afternoon, the City met with officials from the Civil Fraud Section to discuss *Newell* and *Ellis* – which was a second False Claims Act *qui tam* case filed against the City – as well as *Magner*.

At the conclusion of the December 13, 2011, meeting, the Civil Division asked HUD to better explain the reasons for its changed recommendation. Eventually, late on December 20,

[58] Interview with David Lillehaug in Wash., D.C. (Oct. 16, 2012).
[59] *Id.*
[60] *Id.*
[61] Transcribed Interview of Thomas Edward Perez, U.S. Dep't of Justice, in Wash., D.C. at 47-48 (Mar. 22, 2013).
[62] Transcribed Interview with Helen Kanovsky, U.S. Dep't of Housing & Urban Development, in Wash., D.C. at 40-41 (Apr. 5, 2013).
[63] Email from Dane Narode to Line Attorney 1 (Nov. 29, 2011, 8:06 p.m.). [HUD 130]
[64] Email from HUD Line Employee to Line Attorney 1 (Dec. 1, 2011, 10:08 a.m.). [DOJ 161/156]

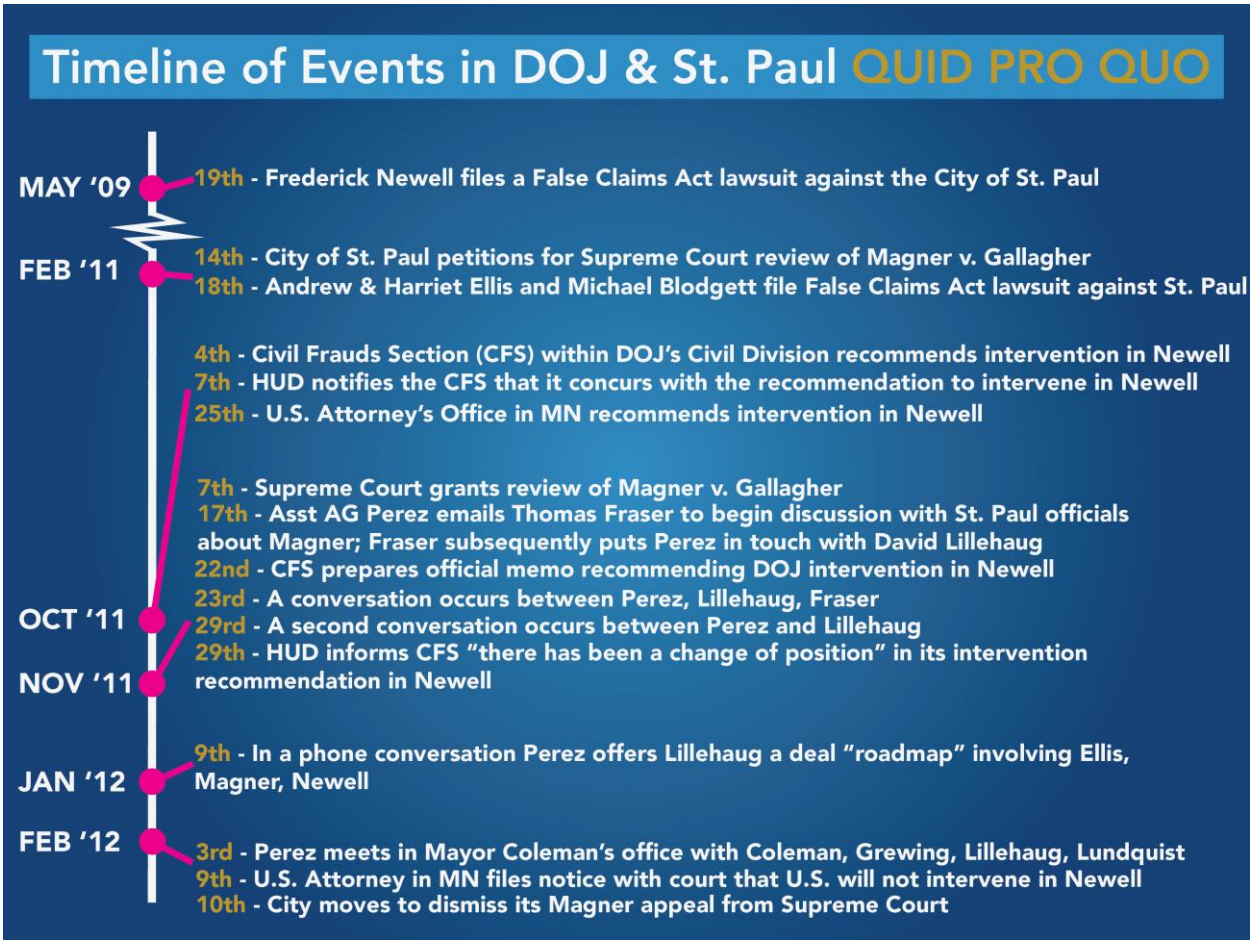
HUD sent its formal explanation to the Civil Fraud Section.[65] The memorandum referenced HUD's voluntary compliance agreement with the City, describing it as "a comprehensive document that broadly addresses St. Paul's Section 3 compliance, including the compliance problems at issue in the False Claims Act case."[66] This explanation did not satisfy the career attorneys in the Civil Fraud Section.

Throughout this period, Perez continued conversations with Lillehaug and the City. In mid-December, Perez had a telephone conversation with B. Todd Jones, the U.S. Attorney for the District of Minnesota, and began to speak regularly with Assistant U.S. Attorney Greg Brooker in Jones's office. In early January 2012, Perez had a meeting with Tony West and Deputy Assistant Attorney General Michael Hertz. According to the DOJ officials with whom the Committees spoke, the Civil Division reached a "consensus" around this same period that the Division would decline intervention in *Newell*.

In early January, Perez personally led the negotiations with Lillehaug about DOJ declining intervention in *Newell* in exchange for the City withdrawing *Magner*. According to Lillehaug, Perez presented a proposal on January 9, 2012, which Lillehaug described as a "roadmap" designed to get the City "to yes."[67] In this proposal, DOJ would decline to intervene in *Ellis,* the City would then withdraw *Magner,* and DOJ would subsequently decline to intervene in *Newell*. In mid-January, Lillehaug made a "counterproposal"[68] in which instead of merely declining to intervene in the *qui tam* cases, DOJ would intervene and settle *Newell* and *Ellis* in exchange for the City withdrawing *Magner*.

By late January, it appeared as if no deal would be reached between the federal government and the City of St. Paul. With the oral argument date in *Magner* quickly approaching, Perez flew to St. Paul to personally meet the Mayor and try once more for an agreement. At a meeting in City Hall on February 3, 2012, Perez lobbied the Mayor on the importance of disparate impact and told him DOJ could not go so far as intervening and settling the cases out from under the relator, but was still willing to decline *Newell* in exchange for the City withdrawing *Magner*. The City officials caucused privately for a short time and eventually returned to accept the deal. The next week, DOJ formally declined to intervene in *Newell* and the City formally withdrew its appeal in *Magner*. After DOJ declined to intervene, Newell's case was fatally weakened, as the declination allowed the City to move for dismissal on grounds that would have been unavailable if the Department had intervened in the case.

[65] *See* Email from HUD Line Employee to Joyce Branda (Dec. 20, 2011, 6:21 p.m.). [DOJ 408/369]
[66] Memorandum for Joyce R. Branda (Dec. 20, 2011). [DOJ 409-10/370-71]
[67] Assistant Attorney General Perez and Acting Associate Attorney General West testified that DOJ never made an offer to Lillehaug. Other testimony and documentary evidence, however, supports Lillehaug's characterization.
[68] In his transcribed interview, West initially characterized this offer as a "counterproposal" from the City, stating: "[T]here was this counterproposal from the City, which we rejected, of intervention and dismissal." Transcribed Interview of Derek Anthony West, U.S. Dep't of Justice, in Wash., D.C. at 90 (Mar. 18, 2013).



The *Quid Pro Quo* Explained

The story of the *quid pro quo* – how one man manipulated the levers of government to prevent the Supreme Court from hearing an important appeal – is itself incredible. The Administration's version of events is even more unbelievable. The post hoc explanations defy common sense and are contradicted by both the tenor and substance of numerous internal documents produced to the Committees.

The Administration maintains that although career attorneys in the Department of Justice recommended intervention in *Newell* – and, in fact, characterized the infractions as "particularly egregious" – the case was nonetheless quite weak and never should have been a serious candidate for intervention. Accepting this as true, Perez's intervention was merely fortuitous to ensuring that the career attorneys with expertise on the False Claims Act had one more shot to reevaluate the case. Because the decision was made to decline *Newell* and – as Tony West told the Committee – that decision was communicated to the City, the Administration maintains that the United States gave up nothing to secure the withdrawal of *Magner*. But the Administration offers no explanation as to why the City would ever agree to withdraw a Supreme Court appeal it believed it would win, if *already* it knew the Department intended to decline intervention in *Newell*. Dozens of documents refer to the "deal," "settlement," and "exchange" between the City and DOJ. These documents cast doubt on the Administration's narrative, as well.

After almost fourteen months of investigating, the Committees found that the Department of Justice agreed to a *quid pro quo* with the City of St. Paul, Minnesota, in which the Department agreed to decline intervention in *Newell* and *Ellis* in exchange for the City withdrawing its appeal in *Magner*. This *quid pro quo* was facilitated, overseen, and consummated by Assistant Attorney General Thomas Perez, who made it known to the City that his "top priority" was to have *Magner* withdrawn from the Supreme Court. To get the deal done, Perez exceeded the scope and authority of his office, manipulated the protocols designed to preserve the integrity of intervention decisions, worked behind the scenes – and at times behind the backs of his colleagues at the Department with whom decision-making authority rested – and took it upon himself to strike an agreement with the City. These are the findings of the Committees' investigation:

The Agreement Was a Quid Pro Quo Exchange

The Department of Justice and the Department of Housing and Urban Development have repeatedly insisted that the agreement with the City was not a "*quid pro quo*." In transcribed interviews, Assistant Attorney General Perez, Acting Associate Attorney General West, and U.S. Attorney Jones all contested the characterization that the agreement was a *quid pro quo* or an exchange between the parties.[69] In particular, Perez told the Committees: "I would disagree with the term '*quid pro quo*,' because when I think of a *quid pro quo*, I think of, like in a sports context, you trade person A for person B and it's a – it's a binary exchange."[70] In fact, that is precisely what transpired.

Although these officials disputed the existence of an exchange, they did not dispute the fact that discussions with the City concerned a proposal that the City withdraw *Magner* if the Department declined *Newell*. Perez testified: "[St. Paul's outside counsel David] Lillehaug raised the prospect that the city would withdraw its petition in the *Magner* case if the Department would decline to intervene in *Newell*."[71] Perez subsequently testified: "What I recall Mr. Lillehaug indicating in this initial telephone call was that if the Department would decline to intervene in the *Newell* matter, that the city would then withdraw the petition" in *Magner*.[72] This testimony shows the exchange between the City and the Department was conditional.

Contemporaneous documents confirm that an exchange took place. An email from a Civil Fraud Section line attorney to then-Civil Fraud Director Joyce Branda expressly characterized the agreement as an "exchange" while explaining the state of negotiations. The attorney wrote: "We are working toward declining both matters [*Newell* and *Ellis*]. It appears that AAG for Civil Rights (Tom Perez) is working with the city on a deal to withdraw its petition before the Supreme Court in the *Gallagher* case **in exchange** for the government's declination in both cases."[73]

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[69] *See* Transcribed Interview of Thomas Edward Perez, U.S. Dep't of Justice, in Wash., D.C. at 170-71 (Mar. 22, 2013); Transcribed Interview of Derek Anthony West, U.S. Dep't of Justice, in Wash., D.C. at 117 (Mar. 18, 2013); Transcribed Interview of Byron Todd Jones, U.S. Dep't of Justice, in Wash., D.C. at 140-41 (Mar. 8, 2013).
[70] Transcribed Interview of Thomas Edward Perez, U.S. Dep't of Justice, in Wash., D.C. at 170 (Mar. 22, 2013).
[71] Transcribed Interview of Thomas Edward Perez, U.S. Dep't of Justice, in Wash., D.C. at 10 (Mar. 22, 2013).
[72] Transcribed Interview of Thomas Edward Perez, U.S. Dep't of Justice, in Wash., D.C. at 47-48 (Mar. 22, 2013).
[73] Email from Line Attorney 1 to Joyce Branda (Jan. 9, 2012, 1:53 p.m.) (emphasis added). [DOJ 686/641]

In addition, a draft version of the *Newell* declination memo prepared by career attorneys in the Civil Fraud Section in early 2012 clearly stated that the Department entered into an exchange with the City:

> The City tells us that Mr. Perez reached out to them and asked them to withdrawal [*sic*] the *Gallagher* petition. The City responded that they would be willing to do so, only if the United States declined to intervene in this case, and in *U.S. ex rel. Ellis v. the City of St. Paul et al.* The Civil Rights Division believes that the [Fair Housing Act] policy interests at issue here are significant enough to justify such a deal."[74]

The final version signed by Tony West, Assistant Attorney General for the Civil Division, obfuscated the true nature of the exchange. The memo signed by West stated: "The City has indicated that it will dismiss the *Gallagher* petition, and declination here will facilitate the City's doing so."[75]

Former Associate Attorney General Thomas Perrelli told the Committees that he understood from speaking with Perez that the proposal included an exchange. Perrelli testified:

> [Perez] indicated to me that this case [*Magner*] was before the Supreme Court. He indicated the desire for the United States to not file a brief in the case, and expressed the view that this was not a good vehicle to decide the issue of disparate impact, and indicated that the city had proposed to him the possibility of dismissing – and I don't remember whether it was one or more *qui tam* cases – **in exchange** for them not pursuing their appeal to the Supreme Court.[76]

In addition, a chart of significant matters within the Civil Division prepared for the Deputy Attorney General James Cole in March 2012 characterized the agreement with the City as follows: "Government declined to intervene in Newell, and has agreed to decline to intervene in Ellis, **in exchange** for defendant[']s withdrawal of cert. petition in Gallagher case (a civil rights action)."[77]

Based on Perez's admission that negotiations centered on the City of St. Paul's withdrawal of *Magner* if the Department declined intervention in *Newell* and DOJ's own characterization of an exchange, it is apparent that the agreement reached between Perez and the City involved the exchange of *Newell* and *Ellis* for *Magner*. In this exchange, the City gave up its rights to litigate *Magner* before the Supreme Court – an appeal it publicly stated it believed it

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[74] U.S. Dep't of Justice, Civil Division, Memorandum for Tony West, Assistant Attorney General, Civil Division, *U.S. ex rel. Newell v. City of St. Paul, Minnesota* (Jan. 10, 2012) (draft declination memorandum). [DOJ 1089-99/979-89]

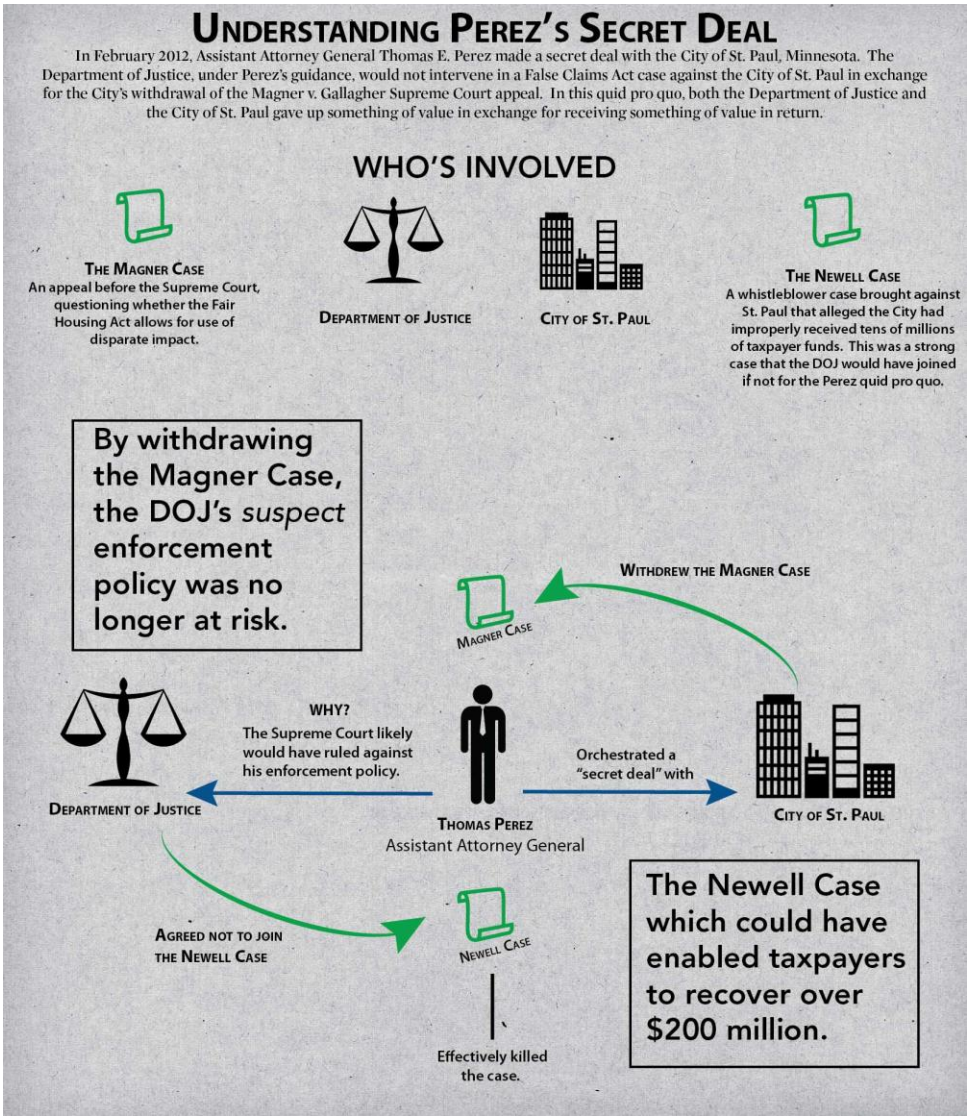
[75] U.S. Dep't of Justice, Civil Division, Memorandum for Tony West, Assistant Attorney General, Civil Division, *U.S. ex rel. Newell v. City of St. Paul, Minnesota* (Feb. 9, 2012). [DOJ 1318-29/1162-73]

[76] Transcribed Interview of Thomas John Perrelli in Wash., D.C. at 16 (Nov. 19, 2012) (emphasis added).

[77] Significant Affirmative Civil and Criminal Matters (Mar. 8, 2012) (emphasis added). [DOJ 1410-12/1248-50]

would win[78] – and DOJ gave up its right to intervene and prosecute the alleged fraud against HUD in *Newell* – a case that career attorneys strongly supported. In return, the City received certainty that DOJ would not litigate *Newell* and DOJ received assurance that the Supreme Court would not consider *Magner*. Therefore, under the common usage of the term, the agreement between DOJ and the City clearly amounted to a *quid pro quo* exchange.

Finding:	The Department of Justice entered into a *quid pro quo* arrangement with the City of St. Paul, Minnesota, in which the Department agreed to decline intervention in *United States ex rel. Newell v. City of St. Paul* and *United States ex rel. Ellis v. City of St. Paul et al.* in exchange for the City withdrawing *Magner v. Gallagher* from the Supreme Court.



[78] Press Release, City of Saint Paul Seeks to Dismiss United States Supreme Court Case Magner v. Gallagher (Feb. 10, 2012)

Assistant Attorney General Perez Facilitated the Initial Stages of the Quid Pro Quo

In the early stages of developing the *quid pro quo*, Assistant Attorney General Perez told the City's outside counsel, David Lillehaug, that withdrawing *Magner* was his "top priority."[79] But arriving at that point was no certainty. Already, three separate entities within the federal government had recommended intervention in *Newell*. For a deal to be made and for *Magner* to be withdrawn, Perez would have to aggressively court key officials in DOJ and HUD.

On November 13, 2011, Perez had an email exchange with HUD Deputy Assistant Secretary Sara Pratt about efforts by housing advocates to facilitate a settlement to prevent the Court from hearing the appeal.[80] After the Court granted certiorari in *Magner*, Perez contacted Minnesota lawyer Thomas Fraser to start a "conversation" with the Mayor and City Attorney about his "concerns about *Magner* and to see whether the City might reconsider its position."[81] When Fraser connected Perez with Lillehaug and Perez became aware of the *Newell* case pending against the City,[82] Perez had found his leverage.[83]

Perez and Lillehaug spoke on the telephone on the afternoon of November 23, 2011.[84] Perez and Lillehaug gave differing accounts of this initial conversation. Perez testified that Lillehaug linked the *Magner* case with the *Newell* case, and offered that the City would withdraw the *Magner* appeal if DOJ declined to intervene in *Newell*.[85] Lillehaug, however, told the Committees that he merely mentioned the *Newell* case because the City may be adverse to the United States, and Perez promised that he would look into the case.[86] Lillehaug told the Committees that it was Perez who first raised the possibility of a joint resolution of *Magner* and *Newell* in a November 29 meeting with Lillehaug and St. Paul City Attorney Sara Grewing.[87] Again, Perez's version of events strains credulity. It is difficult to believe that Lillehaug, during this initial telephone call, would immediately be in a position to make an offer of this nature on behalf of the City without discussing it first with his client.

Immediately after speaking with Lillehaug at 2:00 p.m., Perez went to work, somewhat frenetically. At 2:29 p.m. that day, Perez emailed HUD Deputy Assistant Secretary Pratt, asking to speak with her as soon as possible.[88] At 2:30 p.m., Perez emailed HUD General Counsel Helen Kanovsky, asking to speak about a "rather urgent matter."[89] At 2:33 p.m., Perez emailed Tony West, head of DOJ's Civil Division and thus ultimately responsible for False Claims Act cases like *Newell*. Perez wrote: "I was wondering if I could talk to you today if possible about a

[79] Interview of David Lillehaug in Wash., D.C. (Oct. 16, 2012).
[80] Email from Sara K. Pratt to Thomas E. Perez (Nov. 13, 2011, 2:59 p.m.). [DOJ 93]
[81] Transcribed Interview of Thomas Edward Perez, U.S. Dep't of Justice, in Wash., D.C. at 9 (Mar. 22, 2013).
[82] Email from Thomas Fraser to Thomas E. Perez (Nov. 22, 2011, 7:07 p.m.). [DOJ 95-96]
[83] Given that Perez called Fraser, who had no involvement with the *Magner* appeal, instead of directly contacting the St. Paul City Attorney's Office, it is likely that Perez contacted Fraser in search of leverage to use to get the *Magner* case withdrawn – and not to start a "conversation" with the City.
[84] Interview of David Lillehaug in Wash., D.C. (Oct. 16, 2012); Transcribed Interview of Thomas Edward Perez, U.S. Dep't of Justice, in Wash., D.C. at 127-28 (Mar. 22, 2013).
[85] Transcribed Interview of Thomas E. Perez, U.S. Dep't of Justice, in Wash., D.C. at 10 (Mar. 22, 2013).
[86] Interview of David Lillehaug in Wash., D.C. (Oct. 16, 2012).
[87] *Id.*
[88] Email from Thomas E. Perez to Sara K. Pratt (Nov. 23, 2011, 2:29 p.m.). [DOJ 103]
[89] Email from Thomas E. Perez to Helen Kanovsky (Nov. 23, 2011, 2:30 p.m.). [DOJ 165-66]

separate matter of some urgency."[90] All three officials – Pratt, Kanovsky, and West – would be vital for making the withdrawal of *Magner* a reality.

The next week, on November 28, Perez had a meeting with several of his senior advisers in the Civil Rights Division. During this meeting, Perez and his advisers discussed a search for leverage in *Magner* and the fact that St. Paul Mayor Coleman's political mentor is former Vice President Walter Mondale, a champion of the Fair Housing Act.[91] Civil Rights Division Appellate Section Chief Greg Friel's notes from the meeting reflect a discussion of the *Newell qui tam* case. Friel's notes stated that "HUD is will[ing] to leverage [the] case to help resolve [the] other case," presumably referring to *Magner*.[92] The last lines of the notes state the Civil Rights Division's "ideal resolution" would be the dismissal of *Magner* and the other case "goes away."[93]

Perez testified that he did not recall ever asking HUD to reconsider its initial intervention recommendation in *Newell*.[94] However, HUD General Counsel Helen Kanovsky's testimony to the Committees directly contradicted Perez's testimony. Kanovsky testified that after HUD recommended intervention in *Newell*, Perez called her to ask her to reconsider. Kanovsky stated:

> Q Did [Perez] ask you to go back to your original position, to reconsider?
>
> A He did. He did.
>
> Q He did? What did he say?
>
> A He said, well, if you don't feel strongly about it, how would you feel about withdrawing your approval and indicating that you didn't endorse the position? And I said, I would do that.[95]

HUD Principal Deputy General Counsel Kevin Simpson verified this account in an earlier non-transcribed briefing with the Committees.[96] Once HUD flipped, support for *Newell* eroded within the U.S. Attorney's Office and the Civil Division. In transcribed interviews, both Acting Associate Attorney General Tony West and U.S. Attorney B. Todd Jones cited HUD's change of heart as a strong factor in their decision to ultimately decline intervention in *Newell*.[97]

Although it is in dispute as to who first raised the idea of exchanging *Newell* for *Magner*, it is clear that the proposal got off the ground within the bureaucracies of HUD and DOJ as a

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[90] Email from Thomas E. Perez to Tony West (Nov. 23, 2011, 2:33 p.m.). [DOJ 104]
[91] Handwritten notes of conversation between Thomas Perez, Jocelyn Samuels, Vicki Schultz, and Eric Halperin (Nov. 28, 2011). [DOJ 111-13/106-08]
[92] *Id.*
[93] *Id.*
[94] Transcribed Interview of Thomas Edward Perez, U.S. Dep't of Justice, in Wash., D.C. at 131 (Mar. 22, 2013).
[95] Transcribed Interview of Helen Kanovsky, U.S. Dep't of Housing & Urban Development, in Wash., D.C. at 40-41 (Apr. 5, 2013).
[96] Briefing with Kevin Simpson and Bryan Greene in Wash., D.C. (Jan. 10, 2013).
[97] Transcribed Interview of Derek Anthony West, U.S. Dep't of Justice, in Wash., D.C. at 100 (Mar. 18, 2013); Transcribed Interview of Byron Todd Jones, U.S. Dep't of Justice, in Wash., D.C. at 39 (Mar. 8, 2013).

result of the machinations of Assistant Attorney General Perez. It was Perez who became aware of the existence of the *Newell* complaint against the City and it was Perez who asked Helen Kanovsky to reconsider HUD's initial recommendation for intervention.[98] Perez also initiated conversations with Tony West about the Civil Division's interests in *Newell*. It was Perez who spoke to HUD's General Counsel Helen Kanovsky about calling Tony West – without telling West that he was doing so.[99] The eventual agreement between the City and DOJ in February 2012 was only possible due to the early politicking done by Perez in late November 2011.

Finding: The *quid pro quo* was as a direct result of Assistant Attorney General Perez's successful efforts to pressure the Department of Housing and Urban Development, the U.S. Attorney's Office in Minnesota, and the Civil Division within the Department of Justice to reconsider their support for *Newell* in the context of the proposal to withdraw *Magner*.

The Initial Stages of the Quid Pro Quo Confused and Frustrated Career Attorneys

As Assistant Attorney General Perez facilitated the early stages of the *quid pro quo*, the high-level communications he initiated about the rather routine intervention decision in *Newell* led to confusion and frustration among career Civil Fraud Section attorneys. HUD's unexpected and unexplained change in its intervention recommendation in late November and the ripple effects it caused in the Civil Fraud Section and U.S. Attorney's Office in Minnesota created an atmosphere of uncertainty and disorder. From late November 2011 to early January 2012, the career attorneys in the Justice Department – including those with expertise and responsibility for enforcing the False Claims Act – were working at cross-purposes with some of the Department's senior political appointees.

In late November 2011, HUD Associate General Counsel Dane Narode informed the Civil Fraud Section that HUD had changed its recommendation. Career officials in DOJ's Civil Fraud Section and the U.S. Attorney's Office expressed surprise about the sudden shift within HUD. One attorney called it "weirdness,"[100] and Greg Brooker, the civil division chief in the U.S. Attorney's Office in Minnesota, wrote "HUD is so messed up."[101] A Civil Fraud line attorney reported to then-Civil Fraud Section Director Joyce Branda that Narode cryptically told her "if DOJ wants further information about what is driving HUD's decision, someone high level within DOJ might need to call [HUD General Counsel] Helen Kanovsky."[102] She also told Branda that Greg Friel, the Appellate Section chief in the Civil Rights Division, had "never heard of the *Newell* case, so he cannot imagine how the *Gallagher* case can be affecting the *Newell* case."[103] Branda passed this uncertainty along to Deputy Assistant Attorney General

[98] Here, again, Perez's testimony contradicts other testimony received by the Committees. Perez testified that he did not recall asking HUD to reconsider its intervention decision; however, Helen Kanovsky told the Committees that HUD only changed its position after being asked to do so by Perez.
[99] *See* Transcribed Interview of Derek Anthony West, U.S. Dep't of Justice, in Wash., D.C. at 149-50, 188-89 (Mar. 18, 2013).
[100] Email from Line Attorney 3 to Greg Brooker (Dec. 2, 2011, 12:02 p.m.). [DOJ 172/164]
[101] Email from Greg Brooker to Line Attorney 3 (Nov. 30, 2011, 10:48 a.m.). [DOJ 120/115]
[102] Email from Line Attorney 1 to Joyce Branda (Dec. 2, 2011, 11:59 a.m.). [DOJ 169/161]
[103] *Id.*

Michael Hertz in an email, where she stated: "I am not sure [h]ow [G]allagher impacts [N]ewell."[104]

HUD's change of heart, however, was no surprise to Assistant Attorney General Perez. On November 30, then-Assistant Attorney General Tony West emailed Perez about *Newell*. He stated: "HUD formally recommended intervention. Let's discuss."[105] Perez responded only minutes later. He wrote: "I am confident that position has changed. You will be hearing from Helen [Kanovsky] today."[106]

What Perez did not tell West was that he was simultaneously communicating with Kanovsky – a fact that West did not know at the time.[107] Later on November 30, after West and Kanovsky spoke, Perez emailed Kanovsky and asked: "How did things do with Tony?"[108] Kanovsky responded the next day. She wrote: "I hope ok. He was aware of our communication to his staff earlier and asked for it in writing. We sent [Line Attorney 1] the requested email this morning."[109]

As the month of December wore on, confusion mounted. At the conclusion of the December 13 meeting with City officials, DOJ's Hertz asked HUD's Dane Narode to provide a fuller explanation of HUD's changed recommendation in *Newell*.[110] When HUD had not offered an explanation by December 20, Civil Fraud reiterated Hertz's request.[111] A Civil Fraud line attorney explained the situation to then-Civil Fraud Section Director Branda in an e-mail: He stated:

> [T]he USAO is inquiring about the status of our position. It is not withdrawing its recommendation to intervene, HUD does not seem inclined to give us its position in writing short of the email it sent . . . . Mike Hertz told Dane at the conclusion of the meeting on December 13 that [HUD's given basis] was not a reason to decline a *qui tam* and asked Dane to follow-up with a formal position. In the meantime, Mike Hertz sent the authority memo back to our office. We are in a difficult position because we have an intervention deadline of January 13 and the USAO does not know what, if anything, it is being asked to do at this point.[112]

Branda told the Committees that when Hertz returned the initial intervention memo, she took that to mean that he had decided against intervention.[113] However, an email between two line attorneys in December 2011 indicates that Hertz returned the memo to allow the attorneys to

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[104] Email from Joyce Branda to Michael Hertz (Dec. 5, 2011, 7:05 a.m.). [DOJ 186/175]
[105] Email from Tony West to Thomas E. Perez (Nov. 30, 2011, 3:07 p.m.). [DOJ 124/119]
[106] Email from Thomas E. Perez to Tony West (Nov. 30, 2011, 3:14 p.m.). [DOJ 124/119]
[107] Transcribed Interview of Derek Anthony West, U.S. Dep't of Justice, in Wash., D.C. at 149-50, 188-89 (Mar. 18, 2013).
[108] Email from Thomas E. Perez to Helen R. Kanovsky (Nov. 30, 2011, 7:20 p.m.). [DOJ 165]
[109] Email from Helen R. Kanovsky to Thomas E. Perez (Dec. 1, 2011, 10:50 a.m.). [DOJ 165]
[110] *See* Email from Line Attorney 1 to HUD Line Employee (Dec. 20, 2011, 4:38 p.m.). [DOJ 387/349]
[111] *Id.*
[112] Email from Line Attorney 1 to Joyce Branda (Dec. 20, 2011, 4:44 p.m.). [DOJ 388/350]
[113] Briefing with Joyce Branda in Wash., D.C. (Dec. 5, 2012).

incorporate HUD's "new analysis and explanation for its changed position."[114] A contemporaneous email from Branda supports this understanding. Branda wrote: "I guess the other issue we need to flesh out better (hopefully with HUD) is the extent to which they had a reasonable belief that their compliance with other requirements for minorities and women satisfied Section 3, which I think troubled Mike . . . . The memo may need to address that more fully . . . ."[115]

As the career attorneys at DOJ attempted to get further information on HUD's position, their frustration mounted. One career attorney wrote: "This is ridiculous. I have no control over any of this. Why are higher level people making phone calls?"[116] Another career attorney wrote: "It feels a little like 'cover your head' ping pong. Do we need to suggest that the big people sit in a room and then tell us what to do? I kinda think Perez, West, Helen, and someone from the Solicitor's office need to make a decision."[117]

Kanovsky told the Committees that she was aware of this frustration among the career attorneys in the Civil Fraud Section. Kanovsky testified that the career attorneys were "upset that there was another part of the Justice Department that wanted to go a different direction, which was going to get in the way of them doing what they want to do."[118]

On December 23, 2011, a line attorney in the Civil Fraud Section wrote to another line attorney about HUD's change of heart and the silence from the U.S. Attorney's Office about its position. She wrote: "It seems as though everyone is waiting for someone else to blink."[119] The same day, the line attorney emailed Joyce Branda. The email stated:

> I thought our marching orders were to draft a declination memo and to concur with the USAO-Minn. USAO-Minn. called me today (Greg Brooker, [Line Attorney 3], [Line Attorney 4]). Tony West, Todd Jones, and Tom Perez have apparently had conversations about this. Everything I have is third hand. Tom Perez called Greg Brooker directly yesterday. We discussed this plan today and the USA blessed the idea of [Line Attorney 2] and [Line Attorney 3] reaching out to defendant. The clear implication is that this is what should happen, but certainly I have not heard this directly from Tony West or Perez.[120]

In another email to Branda minutes later, the same line attorney elaborated on her frustration with the process. The email stated:

> By the way, when the district called me this morning to discuss the case, I did not tell them I knew that their USA was planning to decline (as we

[114] Email from Line Attorney 1 to Line Attorney 2 (Dec. 17, 2011, 3:10 p.m.). [DOJ 381/346]
[115] Email from Joyce Branda to Line Attorney 1 (Dec. 20, 4:54 p.m.). [DOJ 390/352]
[116] Email from Line Attorney 1 to Line Attorney 2 (Dec. 20, 5:00 p.m.). [DOJ 397/359]
[117] Email from Line Attorney 2 to Line Attorney 1 (Dec. 20, 2011, 5:02 p.m.). [DOJ 400/362]
[118] Transcribed Interview of Helen Kanovsky, U.S. Dep't of Housing & Urban Development, in Wash., D.C. at 137 (Apr. 5, 2013).
[119] Email from Line Attorney 1 to Line Attorney 2 (Dec. 23, 2011, 9:35 a.m.). [DOJ 541/501]
[120] Email from Line Attorney 1 to Joyce Branda & Line Attorney 2 (Dec. 23, 2011, 3:47 p.m.). [DOJ 552/512]

> discussed I would not tell them). **It was a difficult conversation to be honest, me playing dumb and them clearly feeling me out to see [if] I had been told about the conversation with their USA.** Eventually they got around to telling me, but clearly they were hoping not to be the first office to say "we will decline." I did tell them that I felt confident that we would concur with their declination and that our offices would not be split on this question (of course I know that was our position). **This really seems extremely off and inefficient.** Why are hire-ups [*sic*] having numerous one on one conversations instead of us all having a conference call with Tony West, Perez, and the USA so we can get perfectly clear on what we are to do.[121]

Documents produced to the Committees show that this confusion continued throughout December 2011. In an early January 2012 meeting between Assistant Attorney General Perez, then-Assistant Attorney General West, and Deputy Assistant Attorney General Michael Hertz, West and Hertz agreed to allow Perez to lead negotiations with the City about *Magner* and the two False Claims Act matters.[122] At this point, the career trial attorneys in the Civil Fraud Section became merely a rubberstamp for Perez's eventual agreement.

Finding: The initial development of the *quid pro quo* by senior political appointees, and the subsequent 180 degree change of position, confused and frustrated the career Department of Justice attorneys responsible for enforcing the False Claims Act, who described the situation as "weirdness," "ridiculous," and a case of "cover your head ping pong."

HUD's Purported Reasons for Its Changed Recommendation in Newell *Are Unpersuasive and a Pretext for HUD's Desired Withdrawal of* Magner

The Department of Housing and Urban Development initially notified the Civil Fraud Section that it had changed its *Newell* recommendation in late November 2011. HUD did not fully explain its reasons until mid-December 2011 – and only then after DOJ attorneys asked HUD to do so. A careful examination of HUD's purported reasons for its changed recommendation reveals that those reasons are unsupported by the evidence and suggests a pretext for a politically motivated decision to prevent the Supreme Court from hearing *Magner*.

On November 29, 2011 – only seven weeks after he signaled HUD's support for intervention and only six days after Perez's first discussion with Lillehaug – HUD Associate General Counsel Dane Narode informed career Civil Fraud Section attorneys that HUD had reconsidered its intervention recommendation in *Newell*.[123] On December 1, Narode memorialized the change in an email. He stated:

[121] Email from Line Attorney 1 to Joyce Branda & Line Attorney 2 (Dec. 23, 2011, 4:11 p.m.) (emphases added). [DOJ 559/519]
[122] *See* Transcribed Interview of Derek Anthony West, U.S. Dep't of Justice, in Wash., D.C. at 79-84 (Mar. 18, 2013).
[123] Email from Dane Narode to Line Attorney 1 (Nov. 29, 2011, 8:06 p.m.). [HUD 130]

> This is to confirm our telephone conversation of Tuesday night in which I informed you that HUD has reconsidered its support for intervention by the government in the St. Paul *qui tam* matter. HUD has determined that intervention is not necessary because St. Paul's programmatic non-compliance has been corrected through a Voluntary Compliance Agreement with HUD.[124]

After DOJ asked for further explanation, a HUD attorney sent HUD's formal explanation in a memorandum to the Civil Fraud Section on December 20.[125] The memorandum referenced HUD's Voluntary Compliance Agreement with the City, describing it as "a comprehensive document that broadly addresses St. Paul's Section 3 compliance, including the compliance problems at issue in the False Claims Act case."[126] The memo stated:

> Given the City's success in ensuring that its low- and very low-income residents are receiving economic opportunities generated by federal housing and community development funding, as required by Section 3, and the financial and other investments that the City has made and is continuing to make from its own resources to accomplish this, HUD considers it imprudent to expend the limited resources of the federal government on this matter.[127]

This explanation initially did not satisfy the career attorneys in the Civil Fraud Section. One line attorney, in an email to her colleague, wrote: "Well that was a fast change of heart."[128] Joyce Branda, the then-Director of the Civil Fraud Section, was even more direct: "It doesn't address the question I have. Do they agree their belief was reasonable about section 3 compliance? Nothing about the merits."[129] When Deputy Assistant Attorney General Hertz forwarded the memo to then-Assistant Attorney General Tony West, he stated that the memo "[s]till principally focuses on the prospective relief."[130]

Unconvinced by HUD's explanation, the Civil Fraud Section asked Narode to address whether HUD believed that St. Paul had complied with Section 3 through its women- and minority-owned business enterprises (WBEs and MBEs).[131] This request sparked a mild panic within HUD. Melissa Silverman, a HUD Assistant General Counsel, wrote to Dane Narode about the City's Vendor Outreach Program (VOP) for WBEs and MBEs, explaining that there were significant problems with the City's VOP and "just because St. Paul had a VOP doesn't mean it met the goals of the VOP or Section 3."[132] Silverman also emailed HUD Deputy Assistant Secretary Sara Pratt to inform her about press reports and an independent audit that

[124] Email from HUD Line Employee to Line Attorney 1 (Dec. 1, 2011, 10:08 a.m.). [DOJ 161/156]
[125] *See* Email from HUD Line Employee to Joyce Branda (Dec. 20, 2011, 6:21 p.m.). [DOJ 408/369]
[126] Memorandum for Joyce R. Branda (Dec. 20, 2011). [DOJ 409-10/370-71]
[127] *Id.*
[128] Line Attorney 1 to Joyce Branda (Dec. 21, 2011, 7:13 a.m.). [DOJ 418/379]
[129] Email from Joyce Branda to Line Attorney 1 & Line Attorney 2 (Dec. 21, 2011, 7:51 a.m.). [DOJ 420/381]
[130] Email from Michael Hertz to Tony West (Dec. 21, 2011, 10:57 a.m.). [DOJ 440/401]
[131] Email from Melissa Silverman to Michelle Aronowitz (Dec. 22, 2011, 3:58 p.m.). [HUD 232]
[132] Email from Melissa Silverman to Dane Narode (Dec. 22, 2011, 12:01 p.m.). [HUD 222]

found problems with the City's WBE and MBE enforcement.[133] Pratt responded: "Yes, I'm treading carefully here."[134]

As HUD struggled to respond to the Civil Fraud Section, Sara Pratt reached out directly to the City to seek its assistance. On the same day that the Civil Fraud Section made its request, Pratt spoke with St. Paul's outside counsel, John Lundquist, a law partner of David Lillehaug.[135] Lundquist responded by sending three separate emails to Pratt with information about the City's programs.[136] These emails included information about the City's VOP and the independent audit, as well as a position paper that the City prepared for the Civil Division.[137] When Pratt forwarded this information to Silverman, Silverman noted her concerns about the information in an email to Narode. She stated:

> Sara's attachment is the City's 'position paper' setting forth reasons why the City thinks the Govt should decline to intervene. Among other things, the City references the Hall audit's review of its VOP, but says nothing other than: 'overall, the results were largely positive.' **This is just not true**. The Hall audit reports the small percentages of contracting dollars directed toward MBEs and WBEs . . . and describes a lack of responsibility, enforcement, etc.[138]

With this information calling into doubt the City's WBE and MBE programs, HUD had difficulty crafting an adequate response. Pratt and other attorneys traded draft language before HUD Deputy General Counsel Michelle Aronowitz suggested, "if we respond at all, why wouldn't we just reiterate that HUD does not want to proceed with the false claims for the reasons stated in our letter, the city is in compliance with HUD's section 3 VCA, and it is possible that compliance with MBE, etc, requirements could result in compliance with Section 3."[139]

This is the path HUD took. On December 22, Melissa Silverman wrote to the Civil Fraud Section line attorney. She stated:

> HUD's Office of Fair Housing and Equal Opportunity has determined that the City of St. Paul is not only in compliance with the VCA, but is also in compliance with its Section 3 obligations at this time. As described in our December 20, 2001 [*sic*] memo, HUD does not wish to proceed with the False Claims Act case. It is possible that notification to MBEs, WBEs, and SBEs could result in compliance with Section 3 requirements, in

[133] Email from Melissa Silverman to Sara K. Pratt (Dec. 22, 2011, 2:16 p.m.). [HUD 225]
[134] Email from Sara K. Pratt to Melissa Silverman (Dec. 22, 2011, 2:24 p.m.). [HUD 225]
[135] *See* Email from John Lundquist to Sara K. Pratt (Dec. 22, 2011, 1:45 p.m.). [SPA 144]
[136] Email from John Lundquist to Sara K. Pratt (Dec. 22, 2011, 2:37 p.m.); [SPA 145] Email from John Lundquist to Sara K. Pratt (Dec. 22, 2011, 3:16 p.m.); [SPA 146] Email from John Lundquist to Sara K. Pratt (Dec. 23, 2011, 2:05 p.m.). [SPA 150-51]
[137] *Id.*
[138] Email from Melissa Silverman to Dane Narode (Dec. 22, 2011, 2:57 p.m.) (emphasis added). [HU D231]
[139] Email from Michelle Aronowitz to Melissa Silverman, Sara Pratt, & Dane Narode (Dec. 22, 2011, 4:57 p.m.). [HUD 240-41]

> which case the existence or non-existence of Section 3 notification procedures would essentially be the basis for technical assistance, not a finding of a violation.[140]

HUD's rationale was so unconvincing that the Civil Fraud Section line attorney had to confirm with Narode that Silverman's email was in response to the Civil Fraud Section's question about St. Paul's compliance with Section 3 via its WBE and MBE programs.[141]

HUD's rationale supporting its declination recommendation is flawed in at least two respects. First, HUD's Voluntary Compliance Agreement (VCA) with the City was never intended to remedy the City's past violations of Section 3. At the time the VCA was consummated, HUD Regional Director Maurice McGough publicly stated: "The purpose of the VCA isn't to address past noncompliance, but to be a blueprint to ensure future compliance."[142]

Further, the plain language of the agreement acknowledges its non-application to the False Claims Act. The agreement states: "[t]his Voluntary Compliance Agreement does not release the City from any claims, damages, penalties, issues, assessments, disputes, or demands arising under the False Claims Act . . . ."[143] By its own terms, therefore, the VCA cannot address the City's "Section 3 compliance, including the compliance problems at issue in the False Claims Act case" as asserted by HUD.[144]

The preservation of False Claims Act liability in the language of the VCA matches what HUD told whistleblower Fredrick Newell at the time. Newell testified to the Committees that "when we met with [HUD Regional Director] Maury McGough in the first interview regarding the [administrative] complaint process, Maury had stated that the process would allow me to be part of the negotiation and that our companies would be made whole."[145] Instead, when HUD settled the administrative complaint without remedying Newell, McGough told him that he would be made whole through the False Claims Act process.[146] Fredrick Newell's attorney stated: "[T]oward the end of 2009, after Fredrick's input was solicited and then it became clear that he wasn't going to be at the table, then they said, 'Don't worry, we'll take care of you later.' . . . I was told, 'do not worry, Fredrick will be taken care of through the False Claims Act.'"[147]

Second, HUD never asserted whether it believed that St. Paul had actually complied with Section 3 through its WBE and MBE programs. The most HUD ever asserted was that "it is **possible**" that the City's WBE and MBE initiatives in its Vendor Outreach Program satisfied the strictures of Section 3.[148] Privately, however, HUD officials acknowledged that the City's WBE

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[140] Email from Melissa Silverman to Line Attorney 1 (Dec. 22, 2011, 6:01 p.m.). [DOJ 541/501]
[141] Email from Line Attorney 1 to Dane Narode (Dec. 23, 2011, 9:43 a.m.). [DOJ 542/502]
[142] Anna Pratt, *Faith Leaders Want St. Paul to Pay for Its Sins*, Minnesota Spokesman-Recorder, Feb. 17, 2010.
[143] Voluntary Compliance Agreement; Section 3 of the Housing and Community Development Act between U.S. Dep't of Housing and Urban Development and the City of Saint Paul, MN (Feb. 2010).
[144] Memorandum for Joyce R. Branda (Dec. 20, 2011). [DOJ 409-10/370-71]
[145] Transcribed Interview of Fredrick Newell in Wash., D.C. at 38 (Mar. 28, 2013).
[146] *Id.* at 39-41
[147] *Id.* at 43-44
[148] Email from Melissa Silverman to Line Attorney 1 (Dec. 22, 2011, 6:01 p.m.) (emphasis added). [DOJ 541/501]

and MBE initiatives were deficient. Newell explained the City's Vendor Outreach Program to the Committees during his transcribed interview. Newell testified:

> St. Paul created had [*sic*] a program called – that resulted in its final naming of the Vendor Outreach Program. That was solely and particularly set up to address minorities and minority contractors. That program is what St. Paul would often throw up when I would say to them that they're not doing Section 3. They would say, We're complying based on our Vendor Outreach Program. The truth of the matter is they wasn't even complying with the Vendor Outreach Program. But I explained to them that they could not meet the Section 3 goals based on the Vendor Outreach Program because the Vendor Outreach was a race based program, and Section 3 was an income based program.[149]

Tellingly, Sara Pratt – a senior HUD official in the Office of Fair Housing and Equal Opportunity, with responsibility for enforcing Section 3 – could not tell the Committee whether the City of St. Paul's WBE and MBE programs satisfied the requirements of Section 3.[150]

Seen in this context, HUD's changed recommendation appears motivated more by ideology than by merits. Early in the process, Assistant Attorney General Perez told his staff that "HUD is willing to leverage the case."[151] Perez testified that HUD recognized the "importance" of the disparate impact doctrine and that HUD's Pratt and Kanovsky "rather clearly expressed their belief" that it would be in the interests of HUD to use *Newell* to withdraw *Magner*.[152] In addition, shortly after the Court agreed to hear the *Magner* appeal, HUD promulgated a proposed regulation codifying the Department's use of disparate impact.[153] HUD did not want *Magner* decided before it could finalize its regulation, as its General Counsel Kanovsky admitted to the Committees. She stated: "[T]o have the Supreme Court grant cert on a legal theory which had been developed by the courts but hadn't yet been part of the regulations of the United States under the Administrative Procedure Act was very problematic to us. We . . . were in the process of meeting our responsibilities to promulgate the rule, and the timing of this was of grave concern."[154]

After carefully examining HUD's reasons for recommending declination in *Newell*, it is apparent that neither basis – the Voluntary Compliance Agreement or the Vendor Outreach Program for women business enterprises and minority business enterprises – justifies the declination. There is simply no documentation to refute the assertion that the only changed circumstance from October 7, 2011 – when HUD recommended intervention – to November 29,

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[149] Transcribed Interview of Fredrick Newell in Wash., D.C. at 24-25 (Mar. 28, 2013).
[150] Transcribed Interview of Sara Pratt, U.S. Dep't of Housing & Urban Development, in Wash., D.C. at 58-59 (Apr. 3, 2013).
[151] Handwritten notes of conversation between Thomas Perez, Jocelyn Samuels, Vicki Schultz, and Eric Halperin (Nov. 28, 2011). [DOJ 111-13/106-08]
[152] Transcribed Interview of Thomas Edward Perez, U.S. Dep't of Justice, in Wash., D.C. at 130-31 (Mar. 22, 2013).
[153] *See* Implementation of the Fair Housing Act's Discriminatory Effects Standard, 76 Fed. Reg. 70,921 (Nov. 16, 2011).
[154] Transcribed Interview of Helen Kanovsky, U.S. Dep't of Housing & Urban Development, in Wash., D.C. at 35 (Apr. 5, 2013).

2011 – when HUD changed its recommendation – was the Supreme Court's decision to hear the *Magner* appeal and the subsequent association between *Magner* and *Newell*.

Finding: The reasons given by the Department of Housing and Urban Development for recommending declination in *Newell* are unsupported by documentary evidence and instead appear to be pretextual post-hoc rationalizations for a purely political decision.

The "Consensus" that Emerged for Declining Intervention in Newell Directly Resulted from Assistant Attorney General Perez's Stewardship of the Quid Pro Quo

Acting Associate Attorney General West testified that the recommendation of the Civil Division for intervention in *Newell* shifted in January 2011 after a "consensus" began to emerge for declination. As West stated, "by early, mid-January, there was a consensus that had coalesced in the Civil Division that we were going to decline the *Newell* case."[155] Assistant Attorney General Perez similarly testified that a "consensus began to emerge . . . shortly before Christmas that it was in the interest of the United States" to decline intervention in *Newell*."[156] This consensus, however, only resulted from the careful stewardship of Perez in shaping the deal.

After laying the groundwork for the *quid pro quo*, Assistant Attorney General Perez remained closely involved in overseeing the development and execution of the deal. Perez openly advised senior officials at HUD how to communicate with the Civil Division career attorneys and what steps had to be taken to change the Civil Division's impression of *Newell*. He also counseled St. Paul's outside counsel, David Lillehaug, how to approach Civil Division officials about the cases. Throughout the entire process, documents and testimony suggest that Perez remained keenly aware of all the moving parts and what steps needed to occur to arrive at a consensus for declining *Newell*.

As discussions on a possible agreement progressed in early December 2011, Perez began to counsel senior HUD officials about how to effectively shift the opinion of the Civil Division. On December 8, Perez advised HUD Deputy Assistant Secretary Sara Pratt about which Civil Fraud personnel were handling the *Newell* case and who to approach. In an email to Pratt, Perez stated:

> The trial atty assigned to the matter is [Line Attorney 2]. He reports to [Line Attorney 1], who can be reached at 202-[redacted]. [Line Attorney 1] in turn reports to Joyce Branda, I am told, who can be reached at 202-[redacted]. My instinct would be to start with [Line Attorney 1], and see how it goes. I do not know any of these folks. Thx again for agreeing to conduct an independent review of this matter.[157]

[155] Transcribed Interview of Derek Anthony West, U.S. Dep't of Justice, in Wash., D.C. at 82-83 (Mar. 18, 2013).
[156] Transcribed Interview of Thomas Edward Perez, U.S. Dep't of Justice, in Wash., D.C. at 87-88 (Mar. 22, 2013).
[157] Email from Thomas E. Perez to Sara K. Pratt (Dec. 8, 2011, 9:27 a.m.). [DOJ 272-74]

Perez offered this information while acknowledging that he was not acquainted with these career attorneys and while he was aware that HUD had already been talking to the Civil Fraud Section. When asked by the Committees, Pratt testified that she did not recall receiving this email.[158]

The same day, Perez alerted HUD General Counsel Kanovsky about "a step that needs to occur in your office that has not occurred and has therefore prevented progress from occurring."[159] Perez testified that he was referring to "the communication to the Civil Division by HUD that they believe that the *Newell* matter is not a candidate for intervention."[160] Perez also told the Committees that at the time, although he was aware that HUD's recommendation had changed, he was unsure if HUD had already conveyed its new recommendation to the Civil Division.[161] His email to Kanovsky, therefore, seems to have been calculated to ensure that the Civil Division knew of HUD's new recommendation so that the *quid pro quo* could continue to progress. When interviewed by the Committees, Kanovsky could not recall this email.[162]

Perez likewise facilitated discussions between the City and HUD. In early December 2011, he asked HUD's Sara Pratt to meet the City's lawyer, David Lillehaug, in advance of a December 13 meeting between the Civil Division and City officials in Washington, D.C.[163] Lillehaug, along with St. Paul City Attorney Sara Grewing, subsequently spoke with Pratt on the morning of December 9, discussing ideas for how the City's Section 3 compliance program could be enhanced.[164] Pratt and Lillehaug agreed to meet on December 13 before the City's meeting with the Civil Division.[165] Lillehaug called Perez afterward and told him that the conversation with Pratt had been "helpful."[166] Pratt similarly reported to Perez that she had a "very excellent call" with Lillehaug and Grewing.[167] The effect of these discussions between the City and HUD was not lost on DOJ officials, as evidenced by notes of one phone call. Notes from the call stated: "HUD is now abandoning ship – may be lobbied by St. Paul."[168]

In advance of the City's meetings on December 13, Perez took an active role in moving the different offices. Perez also appears to have been coaching the City on how to approach its discussions with the Department of Justice. Perez advised Lillehaug "that he should be prepared to make a presentation to the Civil Division about why they think the case, the *Newell* case,

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[158] Transcribed Interview of Sara Pratt, U.S. Dep't of Housing & Urban Development, in Wash., D.C. at 74 (Apr. 3, 2013).
[159] Email from Thomas E. Perez to Helen R. Kanovsky (Dec. 8, 2011, 9:03 p.m.) [DOJ 275-76]
[160] Transcribed Interview of Thomas Edward Perez, U.S. Dep't of Justice, in Wash., D.C. at 139-40 (Mar. 22, 2013).
[161] *Id.* at 140
[162] Transcribed Interview of Helen Kanovsky, U.S. Dep't of Housing & Urban Development, in Wash., D.C. at 54-55 (Apr. 5, 2013).
[163] Interview of David Lillehaug (Oct. 16, 2012); Transcribed Interview of Sara Pratt, U.S. Dep't of Housing & Urban Development, in Wash., D.C. at 65 (Apr. 3, 2013); Email from Thomas E. Perez to Sara K. Pratt (Dec. 8, 2011, 10:42 p.m.). [DOJ 279]
[164] Interview of David Lillehaug in Wash., D.C. (Oct. 16, 2012). Pratt testified that this call was between her and Lillehaug. Transcribed Interview of Sara Pratt, U.S. Dep't of Housing & Urban Development, in Wash., D.C. at 65 (Apr. 3, 2013).
[165] *See* Email from Sara K. Pratt to David Lillehaug (Dec. 9, 2011, 10:47 a.m.) ("Thank you for a helpful discussion this morning. I look forward to meeting you on Tuesday at 9:00 am."). [SPA 158]
[166] *Id.*
[167] Email from Sara K. Pratt to Thomas E. Perez (Dec. 9, 2011, 1:04 p.m.). [DOJ 283]
[168] Handwritten notes of conversation between Joyce Branda, Line Attorney 2, and Greg Brooker (Dec. 28, 2011). [DOJ 618/576]

should be declined."[169] Perez also asked Pratt to include him in her meeting with the City. In an email to Pratt, he wrote: "Maybe after you meet with them, you can patch me in telephonically and we can talk to them. We need to talk them off the ledge."[170]

After the meetings, Lillehaug emailed Pratt thanking her for the "productive" meeting with the City.[171] Lillehaug told Pratt "[u]nfortunately, our meeting in the afternoon did not go as well. The possibility of an expanded VCA did not seem to be given much weight by the representatives of the DOJ's Civil Division, who described their job as 'bringing in money to the U.S. Treasury.'"[172] Pratt later emailed Perez: "We should talk; the Tuesday afternoon meeting did NOT go well at all."[173] Perez responded: "I am well aware of that. We will figure it out."[174]

Perez continued to closely oversee the progress of the *quid pro quo* as December progressed. On December 19, Lillehaug and Perez spoke on the telephone. Lillehaug expressed dismay to Perez about the meeting with the Civil Division.[175] Perez told Lillehaug that his "top priority" was to ensure that *Magner* was withdrawn.[176] Perez told Lillehaug that HUD was working the matter "as we speak."[177] Meanwhile, Perez kept the pressure on HUD to ensure that it was satisfying the requests and answering the questions of the Civil Division. In particular, he kept tabs on the progress of a detailed declination memo that Deputy Assistant Attorney General Michael Hertz had requested from HUD after the December 13th meeting. Perez wrote to HUD Deputy Assistant Secretary Pratt on December 20 to ask if the memo had been sent.[178] Pratt responded: "Am trying to find out. I sent to [HUD Line Employee] but didn't hear back from him. [General Counsel] Helen [Kanovsky] has them both and she could send them too . . . but I can't."[179]

In the early weeks of discussions on the *quid pro quo*, there was no guarantee that an agreement would be reached. By the time Perez became aware of *Newell*, three separate entities in the federal government – HUD, the U.S. Attorney's Office in Minnesota, and the Civil Fraud Section – had each recommended that the government intervene in the case. The recommendations of each of these three entities would have to be changed to reach a deal with the City. In early-to-mid-December, Perez painstakingly advised HUD and the City and oversaw their communications with the Civil Division to ensure that these recommendations were changed. Only then did a "consensus" emerge for declining intervention in *Newell*.

[169] Transcribed Interview of Thomas Edward Perez, U.S. Dep't of Justice, in Wash., D.C. at 196 (Mar. 22, 2013).
[170] Email from Thomas E. Perez to Sara K. Pratt (Dec. 12, 2011, 2:03 p.m.). [DOJ 312-13]
[171] Email from David Lillehaug to Sara K. Pratt (Dec. 14, 2011, 12:46 p.m.). [DOJ 371/336]
[172] *Id.*
[173] Email from Sara K. Pratt to Thomas E. Perez (Dec. 16, 2011, 6:13 a.m.). [DOJ 369]
[174] Email from Thomas E. Perez to Sara K. Pratt (Dec. 16, 2011, 8:04 a.m.). [DOJ 369]
[175] Interview of David Lillehaug in Wash., D.C. (Oct. 16, 2012).
[176] *Id.*
[177] *Id.*
[178] Email from Thomas E. Perez to Sara K. Pratt (Dec. 20, 2011, 4:56 p.m.). [DOJ 403]
[179] Email from Sara K. Pratt to Thomas E. Perez (Dec. 20, 2011, 5:34 p.m.). [DOJ 403]

Finding: The "consensus" of the federal government to switch its recommendation and decline intervention in *Newell* was the direct result of Assistant Attorney General Perez manipulating the process and advising and overseeing the communications between the City of St. Paul, the Department of Housing and Urban Development, and the Civil Division within the Department of Justice.

As Discussions Stalled, Assistant Attorney General Perez Took the Lead and Personally Brokered the Agreement

From the day that Assistant Attorney General Thomas Perez became aware that the Supreme Court granted certiorari in *Magner*, time was working against him. The Court was poised to hear oral arguments in the appeal on February 29, 2012, and the deadline for the Department of Justice to file its amicus brief was December 29, 2011. By early January 2012, with only weeks remaining until oral arguments, Perez personally assumed the lead and negotiated directly with the City's outside counsel, David Lillehaug. When discussions broke down in late January 2012, Perez traveled to St. Paul to seal the deal in person with St. Paul Mayor Coleman.

Once Perez had secured a consensus in support of declining *Newell* in exchange for the City's withdrawal of *Magner*, he began to directly negotiate with Lillehaug on the mechanics of the eventual agreement. Acting Associate Attorney General West testified that the decision to allow Perez to begin leading discussions with the City resulted from a meeting between West, Perez, and Deputy Assistant Attorney General Michael Hertz on January 9, 2012.[180] However, documents show that Perez may have taken it upon himself to lead negotiations even before that meeting. An email from a line attorney in Civil Fraud to then-Civil Fraud Section Director Joyce Branda on January 6 states: "[Line Attorney 2] and I just spoke with USAO-Minn. [Assistant U.S. Attorney] Greg Brooker received a call yesterday from Tom Perez. It sounds like Tom Perez agreed to take the lead on the negotiations with the City of St. Paul, in terms of negotiating a withdraw [*sic*] by the City of the cert petition."[181] Notes of this line attorney's call with Assistant U.S. Attorney Brooker show Perez asked Brooker "where are we on these cases" and "who has lead negotiating," and that Perez said that "he needs to start doing this."[182]

According to Lillehaug, he and Perez had a telephone conversation on January 9 – the same day Perez received the approval of then-Assistant Attorney General West to negotiate on behalf of the Civil Division – in which Perez offered a precise "roadmap" to use in executing the *quid pro quo*.[183] Lillehaug told the Committees that Perez proposed that the Department would first decline to intervene in *Ellis*, then the City would withdraw *Magner*, and finally the Department would decline to intervene in *Newell*.[184] Lillehaug further told the Committees that Perez promised "HUD would be helpful" with the *Newell* case in the event Newell continued his suit after the Department declined intervention.[185] This account is confirmed by a voicemail left

[180] Transcribed Interview of Derek Anthony West, U.S. Dep't of Justice, in Wash., D.C. at 79-82 (Mar. 18, 2013).
[181] Email from Line Attorney 1 to Joyce Branda (Jan. 6, 2012, 11:52 a.m.). [DOJ 656/611]
[182] Handwritten Notes (Jan. 6, 2012). [DOJ 647-54/602-09]
[183] Interview of David Lillehaug in Wash., D.C. (Oct. 18, 2012).
[184] *Id.*
[185] *Id.*

for Assistant U.S. Attorney Brooker by Perez on January 12, in which Perez stated: "We should have an answer on whether **our proposal** is a go tomorrow or Monday and just wanted to let you know that."[186] During his transcribed interview, the Committees asked Perez about his use of the phrase "our proposal" on the voicemail during his transcribed interview. Perez testified:

> Q The voicemail says, "And we should have an answer on whether our proposal is a go." What are you referring to when you say "our proposal"?
>
> A Again, up until about the middle of January, the proposal of the United States – the proposal of Mr. Lillehaug was the proposal that was under consideration.
>
> Q Okay.
>
> A And so the Civil Division had completed its review, as I have described, and had determined that it, the *Newell* case, was a weak candidate for intervention. And that is what we are referring to.
>
> Q Okay. I ask because you described it a number of times today as Mr. Lillehaug's proposal, the one he offered the first time you guys spoke on the phone. This is the first time that it's been described, to my knowledge, as "our proposal." And I am wondering if this was a proposal by you on behalf of the Department to Mr. Lillehaug? Or are you describing there the proposal that Lillehaug made to you?
>
> A Well, again, I don't know what you're looking at in reference. But what I meant to communicate in that period of time in January was that the United States was prepared to accept Mr. Lillehaug's proposal.

On January 13, the Civil Fraud Section became aware that Lillehaug had presented a counteroffer to the U.S. Attorney's Office. A DOJ line attorney described the phone conversation in an email to a colleague. He stated:

> Lillehaug says they have been thinking about it, and the City feels pretty strongly that it can win the Gallagher case in the Supreme Court, and will win back at the trial court when it is remanded. The City is concerned that getting us to decline does not really get them what they want – they would still have to deal with the case. The City wants us to consider an arrangement where we agree to a settlement where it will extend the VCA for another year, value that as an alternative remedy, and it would add a small amount of cash for relator's attorney fees, and a small relator's share. They say this has to be a very modest amount of money. In exchange we would have to intervene and move to dismiss.[187]

[186] Voicemail from Thomas Perez to Greg Brooker (Jan. 12, 2012, 5:58 p.m.) (emphasis added). [DOJ 719/670]
[187] Email from Line Attorney 2 to Line Attorney 1 (Jan. 13, 2012, 4:00 p.m.). [DOJ 721/671]

Then-Civil Fraud Section Director Branda's reaction to the development was "quite negative." In an email the same day, she stated: "This is so not what was discussed with [T]om [P]erez as what the plan was – basically we were to decline [E]llis first and use that as the good faith government gesture to get them to dismiss the petition."[188]

By January 18, the prospects for an agreement were beginning to look bleak. In updating Branda on the state of negotiations, a Civil Fraud line attorney explained that the deal was falling apart. He stated:

> [The Assistant U.S. Attorney] says he understood that West, Perez, and Hertz had had a meeting and that the resulting go forward was the plan to decline Ellis, resolve Gallagher, and then decline Newell. . . . [T]he City called and said they are no longer willing to accept the decline [of the] two *qui tams* and dismiss Gallagher deal. That they will not withdrawal [*sic*] Gallagher on that basis, that they are only willing to do the new deal they propose . . . . If we are unwilling to accept this deal, they said they will not dismiss Gallagher.[189]

In the ensuing week, DOJ deliberated about how to respond to the counterproposal from Lillehaug. By late January, the Department had decided to reject the City's counterproposal. On or around January 30, the Assistant U.S. Attorney in Minnesota conveyed to Lillehaug that the Department had declined the counterproposal.[190] The attorney's "conclusion [was] that we are no longer on a settlement track, and we should move forward with our decision making process."[191]

The next day, January 31, Perez emailed Lillehaug, proposing a meeting with the Mayor and City Attorney in St. Paul for February 3.[192] Perez was joined at this meeting by Eric Halperin, a special counsel in the Civil Rights Division. No officials from the Civil Division or the U.S. Attorney's Office were present. At the meeting, Perez initiated a "healthy, robust exchange" about disparate impact and the *Magner* appeal.[193] Perez raised the initial proposal to decline intervention in *Newell* and *Ellis* in exchange for the withdrawal of *Magner* and said the Department could agree to that exchange.[194] The City officials then left the room to caucus privately, and Lillehaug returned to accept the proposal on behalf of the Mayor.[195]

Finding: Assistant Attorney General Perez was personally and directly involved in negotiating the mechanics of the *quid pro quo* with David Lillehaug and he personally agreed to the *quid pro quo* on behalf of the United States during a closed-door meeting with the Mayor in St. Paul.

[188] Email from Joyce Branda to Line Attorney 1 and Line Attorney 2 (Jan. 13, 2012, 5:35 p.m.). [DOJ 735/685]
[189] Email from Line Attorney 2 to Joyce Branda (Jan. 18, 2012, 4:06 p.m.). [DOJ 754/702]
[190] Email from Line Attorney 2 to Line Attorney 1 & Joyce Branda (Jan. 30, 2012, 5:18 p.m.). [DOJ 993/918]
[191] *Id.*
[192] Email from Thomas E. Perez to David Lillehaug (Jan. 31, 2012, 12:09 p.m.). [DOJ 59]
[193] Transcribed Interview of Thomas Edward Perez, U.S. Dep't of Justice, in Wash., D.C. at 48-56 (Mar. 22, 2013).
[194] *Id.*
[195] *Id.*

The Department of Justice Sacrificed a Strong Case Alleging a "Particularly Egregious Example" of Fraud to Execute the Quid Pro Quo with the City of St. Paul

In several settings, officials from the Department of Justice have told the Committees that the decision whether to intervene in *Newell* was a close decision and therefore the United States never gave up anything of substance in exchange for the City withdrawing *Magner*. Assistant Attorney General Perez testified: "[M]y understanding is that the original recommendation was to proceed with intervention, but it was a marginal case."[196] Acting Associate Attorney General West told the Committees "I can tell you that this case was a close call. It was a close call throughout."[197] U.S. Attorney Jones likewise testified: "[T]hey were both marginal cases. We could have gone either way on *Newell*."[198] In addition, now-Deputy Assistant Attorney General Joyce Branda briefed the Committees that after the December 13 meeting with the City, Deputy Assistant Attorney General Michael Hertz whispered to her, "this case sucks," which she interpreted to mean that it was unlikely the Department would intervene.[199] Branda also told the Committees that she personally felt the case was a "close call."[200]

However, testimony and contemporaneous documents indicate that the career Civil Fraud Section and U.S. Attorney's Office in Minnesota officials thought the *Newell* suit was indeed a strong case for intervention. HUD General Counsel Kanovsky told the Committees that these officials had a strong desire to intervene in the case and that they personally met with her in fall 2011 to lobby her to lend HUD's support for the intervention decision.[201] Attorneys from the U.S. Attorney's Office in Minnesota even flew to Washington, D.C. at taxpayer expense specifically for the meeting.[202] At this meeting, Kanovsky did not recall any career attorney mentioning that the case was a "close call" or "marginal."[203]

On October 4, 2011, a line attorney in the Civil Fraud Section wrote to HUD's Associate General Counsel Dane Narode about the *Newell* case: "Our office is recommending intervention. Does HUD concur?"[204] Three days later, Narode replied: "HUD concurs with DOJ's recommendation."[205] The AUSA handling *Newell* in Minnesota forwarded HUD's concurrence to his supervisor with a comment. He wrote: "Looks like everyone is on board."[206]

The memo prepared by the U.S. Attorney's Office in Minnesota recommending intervention used strong language to explain its support for intervention, explaining that the City

[196] Transcribed Interview of Thomas Edward Perez, U.S. Dep't of Justice, in Wash., D.C. at 185-86 (Mar. 22, 2013).
[197] Transcribed Interview of Derek Anthony West, U.S. Dep't of Justice, in Wash., D.C. at 53 (Mar. 18, 2013).
[198] Transcribed Interview of Byron Todd Jones, U.S. Dep't of Justice, in Wash., D.C. at 80 (Mar. 8, 2013).
[199] Briefing with Joyce Branda in Wash., D.C. (Dec. 5, 2012).
[200] *Id.*
[201] Transcribed Interview of Helen Kanovsky, U.S. Dep't of Housing & Urban Development, in Wash., D.C. at 25-30 (Apr. 5, 2013).
[202] *Id.*
[203] *Id.* at 109-11.
[204] Email from Line Attorney 1 to HUD Line Employee (Oct. 4, 2011, 5:05 p.m.). [DOJ 67]
[205] Email from HUD Line Employee to Line Attorney 1 (Oct. 7, 2011, 11:27 a.m.). [DOJ 68]
[206] Email from Line Attorney 3 to Greg Brooker (Oct. 7, 2011, 11:28 a.m.). [DOJ 69]

made "knowingly false" statements and had a "reckless disregard for the truth."[207] This memo also emphasized that administrative proceedings performed by HUD found the City's noncompliance with Section 3 "not . . . to be a particularly close call."[208] Similarly, the initial intervention memo prepared by career attorneys in the Civil Fraud Section described St. Paul's conduct as a "particularly egregious example of false certifications." The memo stated:

> To qualify for HUD grant funds, the City was required to certify each year that it was in compliance with Section 3. . . . Each time the City asked HUD for money, it impliedly certified its compliance with Section 3. At best, the City's failure to take any steps towards compliance while continually telling federal courts, HUD and others that it was in compliance with Section 3 represents a reckless disregard for the truth. We believe its certifications of Section 3 compliance to obtain HUD funds were actually more than reckless and that the City had actual knowledge that they were false.[209]

Neither the U.S. Attorney's Office memo nor the memo prepared by the Civil Fraud Section described the recommendation to intervene as a "close call" or "marginal."[210]

Other documents show that as late as mid-December 2011, career officials in DOJ still supported intervention in *Newell*. On December 20, 2011, then-Civil Fraud Section Director Branda wrote to Deputy Assistant Attorney General Hertz: "The USAO wants to intervene notwithstanding HUD. I feel we have a case but I also think HUD needs to address the question St. Paul is so fixated on, i.e. was their belief they satisfied Section 3 by doing enough with minorities and women reasonable?"[211] On December 21, a line attorney in the Civil Fraud Section wrote to Branda about HUD's memo to decline intervention. The line attorney stated: "Are we supposed to incorporate this into our memo and send up our joint recommendation with the [U.S. Attorney's Office] that we intervene?"[212]

Fredrick Newell and his attorney testified that no individual from DOJ or HUD ever told them that his case was a "close call" or "marginal" or otherwise indicated it was weak.[213] In fact, Newell told the Committees that "[t]here was a real interest . . . and the DOJ felt it was a good case."[214] Newell's attorney stated:

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[207] U.S. Attorney, District of Minnesota, Intervention Memo: *U.S. ex rel. Newell v. City of St. Paul, Minnesota* (Oct. 25, 2011). [DOJ 72-79]
[208] *Id.*
[209] U.S. Dep't of Justice, Civil Division, Memorandum for Tony West, Assistant Attorney General, Civil Division, *U.S. ex rel. Newell v. City of St. Paul, Minnesota* (Nov. 22, 2011). [DOJ 80-91]
[210] U.S. Attorney, District of Minnesota, Intervention Memo: *U.S. ex rel. Newell v. City of St. Paul, Minnesota* (Oct. 25, 2011); [DOJ 72-79] U.S. Dep't of Justice, Civil Division, Memorandum for Tony West, Assistant Attorney General, Civil Division, *U.S. ex rel. Newell v. City of St. Paul, Minnesota* (Nov. 22, 2011). [DOJ 80-91]
[211] Email from Joyce Branda to Michael Hertz (Dec. 20, 2011, 5:05 p.m.). [DOJ 404/365]
[212] Email from Line Attorney 1 to Joyce Branda (Dec. 21, 2011, 7:36 a.m.). [DOJ 419/380]
[213] Transcribed Interview of Fredrick Newell in Wash., D.C. at 55-56 (Mar. 28, 2013).
[214] *Id.* at 48.

> And to build on that, there were a number of indications that Justice was going to intervene in the case, up to and including them saying, we're going to intervene in the case. But it started with the relator interview. And I would say that just the attendance at the interview and the amount of travel expense you're looking at, at the interview, knowing that Justice had already spoken to HUD about the substance of the action and then having that many people from Washington at the meeting [in Minnesota], sent a clear signal to me that this was a case of priority.[215]

Newell's attorney also told the Committees that when the City initially met with DOJ and HUD in 2011, the attorneys from DOJ and HUD were unconvinced by the City's defenses.[216] According to Newell, even then-HUD Deputy Secretary Ron Sims acknowledged the strength of the case, telling Newell in 2009 that the False Claims Act would be the new model for Section 3 enforcement and directing Newell to "keep up the good work."[217]

That the U.S. Attorney's Office in Minnesota and DOJ's Civil Fraud Section perceived Newell's case to be strong is also corroborated by HUD General Counsel Helen Kanovsky's testimony to the Committees. Kanovsky testified that because she believed HUD's programmatic goals regarding future compliance had been met by the VCA, she was not inclined to recommend intervening in *Newell* when it was first presented to her in the summer or early fall of 2011.[218] However, the U.S. Attorney's Office in Minnesota and DOJ's Civil Fraud Division requested a meeting with her in order to persuade her to support intervention. Kanovsky testified:

> Then attorneys from the U.S. Attorney's Office in Minnesota and from Civil Frauds asked if they could meet with me to dissuade me of that and to get the Department to accede to their request to intervene, so there was that meeting. Assistant U.S. Attorneys flew in from Minnesota, people from Civil Frauds came over. They did a presentation on the matter and why they thought this was important from Justice's equities to intervene. And after that presentation, and because this seemed like a matter that was so important to both Main Justice and the U.S. Attorney's Office, we then acceded to their request that we agree to the intervention.[219]

When questioned more closely about her basis for understanding Civil Fraud Division's position, Kanovsky testified:

> A Came from the fact that they and the U.S. Attorney's Office in Minnesota asked for a meeting, came to HUD, spent an amount of time briefing me and trying to convince me that it was in HUD's best interests to agree to

[215] *Id.* at 53-54.
[216] *Id.* at 122-26.
[217] *Id.* at 133-36.
[218] Transcribed Interview of Helen Kanovsky, U.S. Dep't of Housing & Urban Development, in Wash., D.C. at 25, 30 (Apr. 5, 2013).
[219] *Id.* at 25.

> intervention. So . . . I concluded that the fact that they had come over to make that argument to convince me to go the direction that I had already indicated was not my inclination certainly strongly suggested to me that was where they wanted to go.[220]

This meeting undermines the Justice Department's post hoc claim made during the Committees' investigation that the Civil Frauds Division and the U.S. Attorney's Office in Minnesota saw the case as weak from the beginning.

Finding: Despite the Department of Justice's contention that the intervention recommendation in *Newell* was a "close call" and "marginal," contemporaneous documents show the Department believed that *Newell* alleged a "particularly egregious example of false certifications" and therefore the United States sacrificed strong allegations of false claims worth potentially $200 million to the Treasury.

Assistant Attorney General Perez Offered to Provide the City of St. Paul with Assistance in Dismissing Newell's Complaint

St. Paul's outside counsel, David Lillehaug, told the Committees that during a discussion with Assistant Attorney General Thomas Perez on January 9, 2012, Perez told Lillehaug that "HUD would be helpful" if the *Newell* case proceeded after DOJ declined intervention.[221] Lillehaug further told the Committees that on February 4 – the day after Perez reached the agreement with the City – Perez told Lillehaug that HUD Deputy Assistant Secretary Sara Pratt had begun assembling information from local HUD officials to assist the City in a motion to dismiss the *Newell* complaint on original source grounds.[222] This assistance disappeared, Lillehaug stated, after Civil Division attorneys told Perez that DOJ should not assist a False Claims Act defendant in dismissing a whistleblower suit.[223]

In his transcribed interview with the Committees, Perez testified that he did not recall ever suggesting to Lillehaug that HUD would provide material in support of the City's motion to dismiss the *Newell* complaint on original source grounds.[224] However, contemporaneous emails support Lillehaug's version of events and suggest that Lillehaug in fact believed this additional "support" was included as part of the agreement. On February 7, Lillehaug had a conversation with the Assistant U.S. Attorney handling *Newell* in Minnesota.[225] Later that same day, a line attorney in the Civil Fraud Section emailed then-Civil Fraud Section Director Joyce Branda, explaining that Lillehaug had told the Assistant U.S. Attorney that he believed the deal included an agreement that "HUD will provide material to the City in support of their motion to dismiss on original source grounds."[226] The Civil Fraud Section attorneys disagreed strongly with this promise, and they conveyed their concern to then-Assistant Attorney General Tony West.[227]

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[220] *Id.* at 91-92.
[221] Interview of David Lillehaug in Wash., D.C. (Oct. 16, 2012).
[222] *Id.*
[223] *Id.*
[224] Transcribed Interview of Thomas Edward Perez, U.S. Dep't of Justice, in Wash., D.C. at 60-61 (Mar. 22, 20113).
[225] Interview of David Lillehaug in Wash., D.C. (Oct. 16, 2012).
[226] Email from Line Attorney 2 to Joyce Branda (Feb. 7, 2012, 7:17 p.m.). [DOJ 1141/1020]
[227] Email from Joyce Branda to Tony West & Brian Martinez (Feb. 8, 2012, 9:35 a.m.). [DOJ 1141/1020]

West asked his chief of staff, Brian Martinez, to schedule a call with Perez for the morning of February 8.[228]

West told the Committees that providing material to the City outside of the normal discovery processes would have been "inappropriate" and "there was not a question in my mind that we were not going to allow discovery to occur outside the normal *Touhy* channels."[229] West did not recall speaking to Perez about the email from Lillehaug.[230] When asked how the matter was resolved, he replied "[m]y recollection is this somehow got resolved" and "[w]hen I say I don't recall, I don't even know if I know how it was resolved. I just know that that wasn't going to happen, and it didn't happen."[231]

HUD's Sara Pratt testified that she was unaware of any offer for HUD to provide information to the City in support of its motion to dismiss; however, she did state that "to the extent that existing documents or knowledge available at HUD would have supported the City's motion, . . . that doesn't concern me."[232] Although Pratt did not recall any offer for HUD to assist the City in dismissing the *Newell* complaint, on February 8 – the same day West attempted to speak with Perez about the offer – Perez emailed Pratt asking for her to call him.[233] Lillehaug likewise told the Committees that Perez told him on February 8 that HUD would not be providing assistance to the City.[234]

Although Perez testified that he did not recall ever offering HUD's assistance to the City, contemporaneous documents and Lillehaug's statements to the Committees strongly suggest that such an offer was made. This offer was inappropriate, as acknowledged by Acting Associate Attorney General Tony West. However, on a broader level, this offer of assistance potentially violated Perez's duty of loyalty to his client, the United States, in that Newell's lawsuit was brought on behalf of the United States and any assistance by Perez or HUD with the City's dismissal of the case would have harmed the interests of the United States. Because the original source defense would have been unavailable if the United States had intervened in Newell's case,[235] Perez's offer to the City went beyond simply declining intervention to affirmatively aiding the City in its defense of the case.

Finding: Assistant Attorney General Perez offered to arrange for the Department of Housing and Urban Development to provide material to the City of St. Paul to assist the City in its motion to dismiss the *Newell* whistleblower complaint. This offer was inappropriate and potentially violated Perez's duty of loyalty to his client, the United States.

[228] Email from Tony West to Joyce Branda & Brian Martinez (Feb. 8, 2012, 9:48 a.m.). [DOJ 1141/1020]
[229] Transcribed Interview of Derek Anthony West, U.S. Dep't of Justice, in Wash., D.C. at 165-67 (Mar. 18, 2013).
[230] *Id.*
[231] *Id.*
[232] Transcribed Interview of Sara Pratt, U.S. Dep't of Housing & Urban Development, in Wash., D.C. at 82-83 (Apr. 3, 2013).
[233] *See* Email from Thomas E. Perez to Sara K. Pratt (Feb. 8, 2012, 12:35 p.m.). [DOJ 1177/1056]
[234] Interview with David Lillehaug in Wash., D.C. (Oct. 16, 2012).
[235] *See* 31 U.S.C. § 3730(e)(4).

***Assistant Attorney General Perez Attempted to Cover Up the Presence of* Magner *as a Factor in the Intervention Decision on* Newell**

On the morning of January 10, 2012, Assistant Attorney General Perez left a voicemail for Greg Brooker, the Civil Division Section Chief in the U.S. Attorney's Office in Minnesota. In that voicemail, Perez said:

> Hey, Greg. This is Tom Perez calling you at – excuse me, calling you at 9 o'clock on Tuesday. I got your message. The main thing I wanted to ask you, I spoke to some folks in the Civil Division yesterday and **wanted to make sure that the declination memo that you sent to the Civil Division – and I am sure it probably already does this – but it doesn't make any mention of the *Magner* case**. It is just a memo on the merits of the two cases that are under review in the *qui tam* context. So that was the main thing I wanted to talk to you about. I think, to use your words, we are just about ready to rock and roll. I did talk to David Lillehaug last night. So if you can give me a call, I just want to confirm that you got this message and that you were able to get your stuff over to the Civil Division. 202 [redacted] is my number. I hope you are feeling better. Take care.[236]

A career line attorney's notes from a subsequent phone conversation between Brooker and attorneys in the Civil Fraud Section and the U.S. Attorney's Office confirm Perez's request. The notes describe a Tuesday morning "message from Perez" in which he told Brooker "when you are working on memos – make sure you don't talk about Sup. Ct. case."[237] Brooker told those on the call that Perez's request was a "concern" and a "red flag," and that he left a voicemail for Perez indicating that *Magner* would be an explicit factor in any declination memo.[238]

During his transcribed interview, the Committees asked Perez about this voicemail. Perez maintained that the voicemail was merely an "inartful" attempt to encourage Brooker to expedite the preparation of a concurrence memo by the U.S. Attorney's Office. Perez testified:

> So I was – I was confused – "confused" is the wrong term – I was impatient on the 9th of January when I learned that the U.S. Attorney's Office still hadn't sent in their concurrence, because I had a clear impression from my conversation with Todd Jones that they would do that. So I called up and I was trying to put it together in my head, what would be the source of the delay, and the one and only thing I could really think of at the time was that perhaps they hadn't – they didn't write in or they hadn't prepared the language on the *Magner* issue, and so I admittedly inartfully told them, I left a voicemail and what I meant in that voicemail to say was time is moving. . . . And so what I really meant to

[236] Transcribed Interview of Thomas Edward Perez, U.S. Dep't of Justice, in Wash., D.C. at 120-21 (Mar. 22, 2013) (emphasis added).
[237] Handwritten Notes of Line Attorney 2 (Jan. 11, 2012). [DOJ 713/666]
[238] *Id.*

> communicate in that voice message, and I should have – and what I meant to communicate was it is time to bring this to closure, and if the only issue that is standing in the way is how you talk about *Magner*, then don't talk about it.[239]

When pressed, however, Perez stated that he never asked Brooker about the reason for the delay and that he only assumed through "the process of elimination" that the presence of *Magner* as a factor in the decision was delaying the preparation of the memo.[240] He also testified that he believed the memos had not been transmitted to the Civil Division at the time he left the voicemail.[241]

When presented with a transcription of the voicemail and asked why he used the past tense verb "sent" if he believed the memos had not be transmitted to the Civil Division, Perez stated that he disagreed with the transcription of the voicemail.[242] After the Committees played an audio recording of the voicemail for Perez, he suggested that he was unable to ascertain what he had said. He stated: "Having listened to that, I don't think that – I would have to listen to it a number of additional times."[243] However, later in the voicemail Perez again used the past tense, saying he wanted to confirm with Brooker "that you **were** able to get your stuff over to the Civil Division."[244] Perez did acknowledge that his voicemail for Brooker did not mention anything about a delay.[245]

The words that Perez spoke in his voicemail speak for themselves. Perez said: "I . . . wanted to make sure that the declination memo that you sent to the Civil Division . . . doesn't make any mention of the *Magner* case. It is just a memo on the merits of the two cases that are under review in the *qui tam* context. So that was the main thing I wanted to talk to you about." No other witness interviewed by the Committees has indicated that there was any delay in the preparation of a concurrence memo from the U.S. Attorney's Office. Indeed, the U.S. Attorney's Office did not even prepare a concurrence memo for the *Newell* case – instead, it communicated its concurrence in an email from Greg Brooker to then-Civil Fraud Section Director Joyce Branda on February 8, 2012.[246]

Moreover, in a contemporaneous email to Brooker – sent less than an hour after the voicemail – Perez wrote to him: "I left you a detailed voicemail. Call me if you can after you have a chance to review [the] voice mail."[247] This email does not mention any concern about a delay in transmitting concurrence memos. Instead, the email suggests that Perez intended to leave instructions for Brooker, which matches the tone and content of the voicemail to omit a

[239] Transcribed Interview of Thomas E. Perez, U.S. Dep't of Justice, in Wash., D.C. at 111-12 (Mar. 22, 2013).
[240] *Id.* at 113-17.
[241] *Id.* at 117.
[242] *Id.* at 119.
[243] *Id.* at 121.
[244] *Id.* at 121 (emphasis added).
[245] *Id.* at 124.
[246] Email from Greg Brooker to Joyce Branda (Feb. 8, 2012, 4:01 p.m.). [DOJ 1198/1077]
[247] Email from Thomas E. Perez to Greg Brooker (Jan. 10, 2012, 9:52 a.m.). [DOJ 707-08]

discussion of *Magner* from the declination memos. Later the same day, at 1:45 p.m., Perez again emailed Brooker, asking "[w]ere you able to listen to my message?"[248]

Finally, additional contemporaneous documents support a common sense interpretation of Perez' intent. For instance, Perez testified that after he left the January 10 voicemail, Brooker called him back the next day and said he [Brooker] would not accede to his request. And, according to Perez, he told Brooker that in that case he should "follow the normal process."[249] Yet, one month later on February 6, 2012, following Perez' meeting in St. Paul where he finalized the agreement, Line Attorney 1 wrote to Branda updating her on the apparent agreement. The email included eight "additional facts" regarding the deal.[250] Points five and six were:

> 5. Perez wants declination approval by Wednesday, but there is no apparent basis for that deadline.
> 6. USA-MN considers it non-negotiable that its office will include a discussion of the Supreme Court case and the policy issues in its declination memo.[251]

If Perez's version of events were accurate, and the issue was resolved on January 11, 2012, when Brooker returned Perez's phone call, then it is difficult to understand why the U.S. Attorney's office would still feel the need to emphatically state its position that a discussion of *Magner* must be included in the final declination memo approximately one month later on February 6, 2012.

The only reasonable interpretation of the words spoken by Assistant Attorney General Perez in his January 10 voicemail is that he desired the *Newell* and *Ellis* memos to omit a discussion of *Magner*. Acting Associate Attorney General West told the Committees that it would have been "inappropriate" to omit a discussion of *Magner* in the *Newell* and *Ellis* memos.[252] U.S. Attorney B. Todd Jones also told the Committees that it would have been inappropriate to omit a discussion of *Magner*.[253] Thus, even other senior DOJ political appointees felt that Perez was going too far in his cover-up attempt. In addition, the fact that the *quid pro quo* was not reduced to writing allowed Perez to cover up the true factors behind DOJ's intervention decision. When asked by career Civil Fraud attorneys about whether the deal was in writing, Perez responded: "No, just oral discussions; word was your bond."[254] Thus, with nothing in writing, only the fortitude of Assistant U.S. Attorney Greg Brooker in resisting the voicemail request prevented Perez from inappropriately masking the factors in the Department's decision to decline intervention in *Newell* and *Ellis*.

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[248] Email from Thomas E. Perez to Greg Brooker (Jan. 10, 2012, 1:45 p.m.). [DOJ 717-18]
[249] Transcribed Interview of Thomas E. Perez, U.S. Dep't of Justice, in Wash., D.C. at 220 (March 22, 2013).
[250] Email from Line Attorney 1 to Joyce Branda (Feb. 6, 2012, 2:58 p.m.). [DOJ 1027-28/948]
[251] *Id*.
[252] Transcribed Interview of Derek Anthony West, U.S. Dep't of Justice, in Wash., D.C. at 133 (Mar. 18, 2013) ("For me, yes, it would have been inappropriate, which is why I included it along with all of the other things I thought were relevant.").
[253] Transcribed Interview of Byron Todd Jones, U.S. Dep't of Justice, in Wash., D.C. at 177-78 (Mar. 8, 2013).
[254] Handwritten notes (Feb. 7, 2012). [DOJ 1059-60/975-76]

Finding: Assistant Attorney General Perez attempted to cover up the *quid pro quo* when he personally instructed career attorneys to omit a discussion of *Magner* in the declination memos that outlined the reasons for the Department's decision to decline intervention in *Newell* and *Ellis*, and focus instead only "on the merits."

Finding: Assistant Attorney General Perez attempted to cover up the *quid pro quo* when he insisted that the final deal with the City settling two cases worth potentially millions of dollars to the Treasury not be reduced to writing, instead insisting that your "word was your bond."

Assistant Attorney General Perez Made Statements to the Committees that Were Largely Contradicted by Other Testimony and Documentary Evidence

Several times during his transcribed interview with the Committees, Assistant Attorney General Thomas Perez gave testimony that was contradicted by other testimony and documentary evidence obtained by the Committees. These contradictions in Perez's testimony call into question the veracity of his statements and his credibility in general. During his interview, Perez stated that he understood that he was required to answer the questions posed truthfully and stated he had no reason to provide untruthful answers.[255]

Section 1001 of title 18 of the United States makes it a crime to "knowingly and willfully . . . make[] any materially false, fictitious, or fraudulent statement or representation" to a congressional proceeding.[256] Any individual who knowingly and willfully makes false statements could be subject to five years of imprisonment.[257] This section applies to "any investigation or review, conducted pursuant to the authority of any committee, subcommittee, commission or office of the Congress, consistent with the applicable rules of the House or Senate."[258]

First, Perez testified repeatedly – both in response to questions and during his prepared testimony delivered at the beginning of the interview – that it was St. Paul's outside counsel, David Lillehaug, during a November 23, 2011, phone conversation, who first proposed the idea of a joint resolution of *Magner* and *Newell* in which the City would withdraw the *Magner* appeal if DOJ declined to intervene in *Newell*.[259] Lillehaug, however, told the Committees that it was in fact Perez who first raised the possibility of a joint resolution of *Magner* and *Newell* in a November 29 meeting with Lillehaug and City Attorney Grewing.[260] Lillehaug also stated that it was Perez who first proposed the precise "roadmap" in early January 2012 that guided how the Department would decline the False Claims Act cases and the City would withdraw *Magner*.[261] This statement is verified by a voicemail from Perez to Assistant U.S. Attorney Greg Brooker on

[255] Transcribed Interview of Thomas Edward Perez, U.S. Dep't of Justice, in Wash., D.C. at 6-7 (Mar. 22, 2013).
[256] 18 U.S.C. § 1001(a).
[257] *Id.*
[258] *Id.* at § 1001(c)(2).
[259] Transcribed Interview of Thomas Edward Perez, U.S. Dep't of Justice, in Wash., D.C. at 10, 43-44 (Mar. 22, 2013).
[260] Interview of David Lillehaug in Wash., D.C. (Oct. 16, 2012).
[261] *Id.*

January 12, 2012, in which he stated "we should have an answer on whether **our proposal** is a go tomorrow or Monday and just wanted to let you know that."[262]

Second, Perez testified that he did not recall ever asking HUD General Counsel Helen Kanovsky to reconsider HUD's recommendation for intervention in *Newell*.[263] Perez testified:

> Q So just to be clear, you never affirmatively asked [HUD Deputy Assistant Secretary] Pratt or Ms. Kanovsky to reconsider HUD's position in Newell, is that correct?
>
> A Again, my recollection of my conversations with Helen Kanovsky and Sara Pratt was that they concluded, their sense of the Newell case was that it was a weak case and that disparate impact enforcement was a very important priority of HUD, and that they had spent a lot of time preparing a regulation. They were very concerned, as I was, that the Supreme Court had granted cert without the benefit of the Reagan HUD's interpretation. And so for both of them it was based on my conversations with them, they were both very – they rather clearly expressed their belief that it would be in the interests of the Department of Housing and Urban Development to determine whether they could – whether the proposal of Mr. Lillehaug could go forward.
>
> Q I just want to be clear. You never asked them to reconsider that, is that right?
>
> A Again, I don't recall asking them. I don't recall that I needed to ask them because they both understood and indicated their sense that it was a marginal or weak case to begin with, and the importance of disparate impact.[264]

Helen Kanovsky, however, testified that Perez did in fact ask her to reconsider HUD's recommendation. She stated: "He said, well, if you don't feel strongly about it, how would you feel about withdrawing your approval and indicating that you didn't endorse the position? And I said, I would do that."[265] Kanovsky acknowledged that Perez' request was the only new factor in HUD's decision-making process between the time it initially recommended intervention in *Newell* and the time it recommended to not intervene.[266]

Third, Perez's testimony that his voicemail request that Assistant U.S. Attorney Greg Brooker omit a discussion of *Magner* as a factor in the *Newell* declination memo was merely an "inartful" attempt to expedite the memo contradicts the plain language of his request and defies a

[262] Voicemail from Thomas Perez to Greg Brooker (Jan. 12, 2012, 5:58 p.m.) (emphasis added). [DOJ 719/670]
[263] Transcribed Interview of Thomas Edward Perez, U.S. Dep't of Justice, in Wash., D.C. at 131 (Mar. 22, 2013).
[264] *Id.*
[265] Transcribed Interview of Helen Kanovsky, U.S. Dep't of Housing & Urban Development, in Wash., D.C. at 41 (Apr. 5, 2013).
[266] *Id.* at 48.

commonsensical interpretation. When presented with a transcription and an audio recording of the voicemail, Perez testified that he could not be certain what he had said in the voicemail. Contemporaneous documents show, however, that Brooker, the recipient of the voicemail, understood the voicemail to be a "message from Perez" that "when you are working on memos – make sure you don't talk about Sup. Ct. case."[267]

Fourth, Perez testified before the Committees that he had no recollection of offering to provide HUD assistance to the City in support of the City's motion to dismiss the *Newell* complaint.[268] However, contrary to Perez's testimony, the City's outside counsel, David Lillehaug, told the Committees that Perez told him as early as January 9, 2012, that "HUD would be helpful" if the *Newell* case proceeded after DOJ declined intervention.[269] Lillehaug also explained to the Committees that Perez told him on February 4, 2012, that HUD had begun assembling information to assist the City in a motion to dismiss the *Newell* complaint on original source grounds.[270] Evidence produced to the Committees – including a DOJ email from early February 2012 noting Lillehaug's recitation of the agreement included an understanding that "HUD will provide material to the City in support of their motion to dismiss on original source grounds"[271] – support Lillehaug's account.

Fifth, Perez told the Committee that he only became aware of the *Magner* appeal once the Supreme Court granted certiorari;[272] however, HUD Deputy Assistant Secretary Sara Pratt testified that she and Perez likely had discussions about the *Magner* case well before the Court granted certiorari.[273] Pratt testified:

> Q Do you recall speaking to Mr. Perez during that time period?
>
> A The time frame?
>
> Q Between February 2011 and November 2011?
>
> A I'm sure we did have a conversation.
>
> Q About the *Magner* case?
>
> A Yes. Yes. Nothing surprising, nothing shocking about that.
>
> Q Okay.
>
> A Along with many, many other people.[274]

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[267] Handwritten Notes of Line Attorney 2 (Jan. 11, 2012). [DOJ 713/666]
[268] Transcribed Interview of Thomas Edward Perez, U.S. Dep't of Justice, in Wash., D.C. at 60-61 (Mar. 22, 2013).
[269] Interview of David Lillehaug in Wash., D.C. (Oct. 16, 2012).
[270] *Id.*
[271] Email from Line Attorney 2 to Joyce Branda (Feb. 7, 2012, 7:17 p.m.). [DOJ 1141/1020]
[272] Transcribed Interview of Thomas Edward Perez, U.S. Dep't of Justice, in Wash., D.C. at 39-40 (Mar. 22, 2013).
[273] Transcribed Interview of Sara Pratt, U.S. Dep't of Housing & Urban Development, in Wash., D.C. at 33 (Apr. 3, 2013).
[274] *Id.*

Sixth, during his transcribed interview, Perez was asked whether he had used a personal email to communicate about matters relating to the *quid pro quo* with the City of St. Paul.[275] Perez answered: "I don't recall whether I did or didn't" and later clarified, "I don't have any recollection of having communicated via personal email on – on this matter."[276] However, a document produced to the Committees by the City of St. Paul indicates that Perez emailed David Lillehaug from his personal email account on December 10, 2011, to attempt to arrange a meeting with the City the following week.[277] This revelation that Perez used his personal email address to communicate with Lillehaug about the *quid pro quo* raises the troubling likelihood that his actions violated the spirit and the letter of the Federal Records Act.

Seventh, Perez testified that he understood *Newell* to be a "marginal case" and a "weak" case;[278] however, the initial memoranda prepared in fall 2011 by the Civil Fraud Section and the U.S. Attorney's Office never described the recommendation to intervene as a "close call" or "marginal."[279] In addition, whistleblower Fredrick Newell and his attorney testified that no individual from DOJ or HUD ever told them that the case was a "close call" or "marginal" or otherwise indicated it was weak.[280]

The contradictions and discrepancies in Perez's statements in his transcribed interview cast considerable doubt on his truthfulness and candor to the Committees. His testimony departed significantly from that of the City outside counsel, David Lillehaug, on several key elements about the development and execution of the *quid pro quo*. Because documentary evidence exists to support Lillehaug's testimony, the Committees can only conclude that Perez was less than candid during his transcribed interview.

Finding: Assistant Attorney General Perez made multiple statements to the Committees that contradicted testimony from other witnesses and documentary evidence. Perez's inconsistent testimony on a range of subjects calls into question the reliability of his testimony and raises questions about his truthfulness during his transcribed interview.

Finding: Assistant Attorney General Perez likely violated both the spirit and letter of the Federal Records Act and the regulations promulgated thereunder when he communicated with the City's lawyers about the *quid pro quo* on his personal email account.

[275] Transcribed Interview of Thomas Edward Perez, U.S. Dep't of Justice, in Wash., D.C. at 161 (Mar. 22, 2013).
[276] *Id.*
[277] Email from Thomas Perez to David Lillehaug (Dec. 10, 2011). [SPA 159]
[278] Transcribed Interview of Thomas Edward Perez, U.S. Dep't of Justice, in Wash., D.C. at 185-86, 257 (Mar. 22, 2013).
[279] U.S. Attorney, District of Minnesota, Intervention Memo: *U.S. ex rel. Newell v. City of St. Paul, Minnesota* (Oct. 25, 2011); [DOJ 72-79] U.S. Dep't of Justice, Civil Division, Memorandum for Tony West, Assistant Attorney General, Civil Division, *U.S. ex rel. Newell v. City of St. Paul, Minnesota* (Nov. 22, 2011). [DOJ 80-91]
[280] Transcribed Interview of Fredrick Newell in Wash., D.C. at 55-56 (Mar. 28, 2013).

The Ethics and Professional Responsibility Opinions Obtained by Assistant Attorney General Perez Were Not Sufficient to Cover His Actions

In late November 2011, Assistant Attorney General Thomas Perez obtained an ethics opinion from the designated ethics official within the Civil Rights Division and his staff obtained separate professional responsibility guidance from another official.[281] Perez told the Committees that he orally recited the situation to the ethics officer. [282] And when asked, he testified that he "believe[d]" he explained that the United States was not a party to the *Magner* appeal.[283] The ethics official – who was also a trial attorney reporting to Perez in the normal course of his duties – found no ethical prohibition. The attorney wrote:

> You asked me whether there was an ethics concern with your involvement in settling a Fair Lending Act challenge in St. Paul that would include an agreement by the government not to intervene in a False Claims Act claim involving St. Paul. You indicated that you have no personal or financial interest in either matter. Having reviewed the standards of ethical conduct and related sources, there is no ethics rule implicated by the situation and therefore no prohibition against your proposed course of action. Please let me know if you have any questions.[284]

By its terms, the ethics opinion that Perez received advised him that there were no personal or financial conflicts prohibiting his involvement in the *quid pro quo*. It did not address the propriety of the agreement itself or any conflicts broader than Perez's personal or financial interests. As a general matter, ethics officers within the Justice Department answer questions of government ethics, such as conflicts of interest. These officials do not handle questions of professional ethics at issue here, such as duties to clients and global resolution of unrelated cases. The Justice Department's ethics website specifically states: "Questions concerning professional responsibility issues such as the McDade amendment and contacts with represented parties should be directed to the Department's Professional Responsibility Advisory Office."[285] Thus, the ethics opinion Perez received did not address the propriety of the agreement itself or any conflicts broader than Perez's personal or financial interests.

Moreover, two additional points cast doubt on the adequacy of the opinion. First, based on Perez's testimony that he "believe[d]" he informed the ethics advisor the United States was not party in *Magner*, it is not clear Perez equipped him with a full set of facts. Understanding that the United States was not a party to *Magner* – and in fact that it had no direct stake in the outcome – was of course a significant fact. Second, it is curious that Perez did not seek the ethics opinion until well after he had set in motion the entire chain events. More specifically, Perez spoke with Lillehaug for the first time on November 23, 2011. Nine minutes after that telephone call, Perez emailed HUD Deputy Assistant Secretary Pratt, asking to speak with her as

[281] Transcribed Interview of Thomas Edward Perez, U.S. Dep't of Justice, in Wash., D.C. at 191, 202-03 (Mar. 22, 2013).
[282] *Id.* at 194-95.
[283] *Id*.
[284] Email from Civil Rights Division Ethics Officer to Thomas E. Perez (Nov. 28, 2011, 3:53 p.m.). [DOJ 114/109]
[285] U.S. Dep't of Justice, Departmental Ethics Office, http://www.justice.gov/jmd/ethics/.

soon as possible.[286] One minute later, at 2:30 p.m., Perez emailed HUD General Counsel Helen Kanovsky, asking to speak about a "rather urgent matter."[287] At 2:33 p.m., Perez emailed Tony West, head of DOJ's Civil Division and thus ultimately responsible for False Claims Act cases like *Newell*. Perez wrote: "I was wondering if I could talk to you today if possible about a separate matter of some urgency."[288] All of these actions set in motion the quid pro quo. Yet, he did not receive his "ethics opinion" until five days later on November 28.

Assistant Attorney General Perez received no written professional responsibility opinion about his involvement in the *quid pro quo*. Perez told the Committees that he inquired orally, through an intermediary, and "the answer that we received on the professional responsibility front was that because the United States is a unitary actor, that we could indeed proceed so long as the other component did not object and . . . would continue to be the decisionmaking body on those matters that fall within their jurisdiction."[289] This guidance, as described to the Committees by Perez, focused narrowly on his authority to speak on behalf of the Civil Division when negotiating with the City of St. Paul. It did not affirmatively authorize Perez to enter into the *quid pro quo*.

Because both the ethics opinion and the professional responsibility opinion were limited to Assistant Attorney General Perez's theoretical involvement in negotiating the *quid pro quo* – and do not affirmatively approve the agreement or his particular actions in reaching the agreement – the opinions do not suffice to cover the entirety of his actions in the *quid pro quo*. Neither the ethics opinion nor the professional responsibility opinion sanctioned Perez's actions in offering the City assistance in dismissing the whistleblower complaint against his client, the United States. Nor would the ethics opinion have absolved him of responsibility for his attempt to cover up the fact that *Magner* was underlying reason for the *Newell* declination decision.

Finding: The ethics and professional responsibility opinions obtained by Assistant Attorney General Thomas Perez and his staff were narrowly focused on his personal and financial interests in a deal and his authority to speak on behalf of the Civil Division, and thus do not address the *quid pro quo* itself or Perez's particular actions in effectuating the *quid pro quo*.

The Department of Justice Likely Violated the Spirit and Intent of the False Claims Act by Internally Calling the Quid Pro Quo a "Settlement"

The False Claims Act exists to help the United States recover taxpayer dollars misspent or misallocated on the basis of fraud committed against the government. Since it was amended in 1986, the False Claims Act has helped recover over $40 billion of taxpayer dollars that would otherwise be lost to fraud and abuse of federal programs.[290] The Act includes a whistleblower provision allowing private citizens to bring an action on behalf of the United States.[291] This

[286] Email from Thomas E. Perez to Sara K. Pratt (Nov. 23, 2011, 2:29 p.m.). [DOJ 103]
[287] Email from Thomas E. Perez to Helen Kanovsky (Nov. 23, 2011, 2:30 p.m.). [DOJ 165-66]
[288] Email from Thomas E. Perez to Tony West (Nov. 23, 2011, 2:33 p.m.). [DOJ 104]
[289] Transcribed Interview of Thomas Edward Perez, U.S. Dep't of Justice, in Wash., D.C. at 201-02 (Mar. 22, 2013).
[290] *The False Claims Act*, TAF http://www.taf.org/fraud-cases/false-claims-act (last visited April 12, 2013).
[291] *See* 31 U.S.C. § 3730.

provision is powerful, and according to the Department's own press release, since 1986, 8,500 *qui tam* whistleblower suits have been filed since 1986 totaling $24.2 billion in recoveries.[292] Where the government intervenes in the private action and settles the complaint, or where the government pursues an alternate remedy, the whistleblower is afforded the opportunity to contest the fairness and adequacy of the settlement or alternate remedy.[293]

As a result, the False Claims Act, and the *qui tam* whistleblower provisions have become an important part of the Civil Division's enforcement efforts and a key component of Senate confirmation hearings for senior officials at the Department. In fact, Attorney General Holder, Deputy Attorney General Cole, then-Associate Attorney General Perrelli, and Assistant Attorney General West were all asked specific questions about the False Claims Act and all answered that they supported the law and would work with whistleblowers to ensure that their cases were afforded due consideration and assistance from the Department.[294]

Unfortunately, despite these successes, and contrary to the assertions about support for the False Claims Act, the *qui tam* whistleblower provisions, and whistleblowers, Fredrick Newell, was treated differently and given no opportunity to contest the fairness and adequacy of the settlement or alternate remedy– despite DOJ privately labeling the resolution a "settlement."

Several contemporaneous documents suggest that DOJ viewed the *quid pro quo* with St. Paul as a settlement. In fact, in the initial ethics opinion that Perez received, the Division ethics officer evaluated Perez's "involvement in **settling** a Fair Lending Act challenge in St. Paul that would include an agreement by the government not to intervene in a False Claims Act claim involving St. Paul."[295] Handwritten notes of a subsequent meeting between then-Civil Frauds Section Director Joyce Branda, Deputy Assistant Attorney General Michael Hertz, and a Civil Fraud line attorney likewise reflect that "Civil Rights wants a settlement; St. Paul brought up another case," in reference to the *Newell qui tam*.[296] Even then-Assistant Attorney General Tony West's own handwritten notes of a Civil Division senior staff meeting in early January 2012 call the *quid pro quo* a settlement. West's notes state: "City: we've learned that as settlement City means they'll just withdraw the petition."[297] Other notes from January 2012 similarly state:

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[292] Press Release, Office of Public Affairs, U.S. Department of Justice, Justice Department Recovers Nearly $5 Billion in False Claims Act Cases in Fiscal Year 2012 (Dec. 4, 2012), *available at* http://www.justice.gov/opa/pr/2012/December/12-ag-1439.html.

[293] *Id.* § 3730(c).

[294] *See generally*, *Nomination of Eric H. Holder, Jr., Nominee to be Attorney General of the United States*, 111th Cong. 276−277 (2009) (Responses to Written Questions of Senator Chuck Grassley); *Nomination of James Micheal Cole, Nominee to be Deputy Attorney General, U.S. Department of Justice*, 111th Cong. 148−150 (2010) (Responses to Written Questions of Senator Chuck Grassley); *Confirmation Hearings on the Nominations of Thomas Perrelli Nominee to be Associate Attorney General of the United States and Elena Kagen Nominee to be Solicitor General of the United States*, 111th Cong. 129 (2009) (Responses to Written Questions of Senator Chuck Grassley to Thomas Perrelli, to be Associate Attorney General for the U.S. Department of Justice); and *Confirmation Hearings on Federal Appointments*, 111th Cong. 784−785 (2009) (Responses to Written Questions by Senator Chuck Grassley).

[295] Email from Civil Rights Division Ethics Officer to Thomas E. Perez (Nov. 28, 2011, 3:53 p.m.) (emphasis added). [DOJ 114/109]

[296] Handwritten Notes of Line Attorney 2 (Dec. 7, 2012). [DOJ 230/217]

[297] Handwritten Notes of Tony West (Jan. 3, 2012). [DOJ 627/585]

"Newell – mtg w/ Joyce; decline the second case first; do not say there is a *quid pro quo* settlement; settlement is not contingent on declination."[298]

When Perez testified before the Committees, he stated that his discussions with the City's outside counsel, David Lillehaug, about the *quid pro quo* were "settlement negotiations." Perez testified:

> Q Mr. Perez, I just have a couple of follow up questions for you just to clarify some of the discussion you had with my colleague in the previous round. In the time period that we have been discussing, November 2011 to February 2012, is it fair to say that you were the primary representative of the Department in the settlement negotiations with the *Magner* and *Newell* cases with the city?
>
> A Here is how I look at it. I had initial conversations with Mr. Lillehaug, after I had spoken to Mr. Fraser and then Mr. Fraser put me in touch with Mr. Lillehaug. We had those conversations and then took the appropriate measures that I discussed this morning. During a substantial part of this period, Mr. Lillehaug, as I understand it, was also in contact with the U.S. Attorney's Office in Minnesota, so those conversations were occurring. And he obviously met directly with the Civil Division in connection with the discussion of the *qui tams* when the mayor came in, and I was not part of that. So there were a number of different conversations that were ongoing. I was involved in some of them, the U.S. Attorney's Office was involved in others, and the Civil Division was involved in yet others.
>
> *** * ***
>
> Q Were there settlement negotiations going on with the city in January and February of 2012?
>
> A We had – there were discussions underway in January and February of 2012 relating to Mr. Lillehaug's proposal.
>
> Q So the answer to my question is yes then?
>
> A Well, again, there were a number of different – Mr. Lillehaug was talking to the U.S. Attorney's Office, I was discussing – I was having discussions with him. So the reason I wanted to be complete in your other question was about whether it was just me, and I wanted to make sure that the record was complete in connection with the various people with whom Mr. Lillehaug I think was communicating.[299]

[298] Handwritten Notes (Jan. 2012). [DOJ 653/608]
[299] Transcribed Interview of Thomas Edward Perez, U.S. Dep't of Justice, in Wash., D.C. at 105-07(Mar. 22, 2013).

Only after the Department's counsel interjected did Perez begin to contest the characterization of the discussions as "settlement negotiations."[300]

Although the Department of Justice decided to decline intervention in Newell's case in exchange for the City's withdrawal of the *Magner* Supreme Court appeal, Newell was never afforded the opportunity to contest the fairness or adequacy of this resolution. Simultaneously, however, internal Department documents reflect that high-level officials with the Department saw the *quid pro quo* as the outgrowth of settlement discussions with the City. As such, Newell should have been involved in these discussions and allowed the opportunity to opine on the resolution in a fairness hearing. Because he was not, the Department of Justice likely violated the spirit and intent of the False Claims Act.

Finding: The Department of Justice violated the spirit and intent of the False Claims Act by privately acknowledging the *quid pro quo* was a settlement while not affording Fredrick Newell the opportunity to be heard, as the statute requires, on the fairness and adequacy of this settlement.

The Quid Pro Quo Exposed Management Failures Within the Department of Justice

The process by which the Department of Justice arrived at this *quid pro quo* with the City of St. Paul is not at all a template for Departmental management. The Committees' investigation has exposed how Assistant Attorney General Thomas Perez was able to manipulate the bureaucratic mazes of DOJ and HUD to ensure that *Magner* was withdrawn from the Supreme Court. The management failures, however, run far deeper. According to information given to the Committees, senior leadership in the Department – up to and including Attorney General Holder – was unaware of the extent to which Perez had gone to realize his goal.

In November 2011, after the Supreme Court granted the City's appeal in *Magner*, Assistant Attorney General Perez initiated a process that ultimately resulted in an agreement with the City to withdraw the appeal. In this process, Perez asked HUD to reconsider its support for *Newell*, causing HUD to change its recommendation and subsequently eroding support for the case in DOJ's Civil Division. Once a consensus had been reached to decline *Newell*, Perez personally began leading negotiations with the City on the *quid pro quo*. His efforts paid off in February 2012, as the City agreed to withdraw *Magner* in exchange for the Department's declination in *Newell* and *Ellis.*

Senior leadership within the Department of Justice, however, was unaware of the full extent of Perez's actions. Former Associate Attorney General Thomas Perrelli, Perez's supervisor at the time of the *quid pro quo*, told the Committees that he was not aware that the Department of Justice entered into an agreement with the City until he was interviewed by Department officials in preparation for dealing with congressional scrutiny of this matter.[301] While Perrelli stated he was aware of Perez's discussions with the City, he was under the impression that an agreement had never been reached.[302] Perrelli testified that when he became

[300] *Id.* at 109-10.
[301] Transcribed Interview of Thomas John Perrelli in Wash., D.C. at 19 (Nov. 19, 2012).
[302] *Id.* at 94.

aware that *Magner* had been withdrawn from the Supreme Court, Perez told him that it was the "civil rights community" that had encouraged the City to withdraw the case. Perrelli testified:

> A I do remember a conversation with Tom Perez – and I can't remember whether it was a conversation or voicemail, what it was – where he – where I expressed surprise that the case had been dismissed. And he indicated that the civil rights community had encouraged the city to dismiss.
>
> Q So that's all he told you, civil rights community had encouraged the city to dismiss?
>
> A That's what he told me.
>
> Q He didn't tell you anything about the arrangement, *Newell*, the two *qui tam* cases?
>
> A That was the substance of the conversation.
>
> *** * ***
>
> Q And you were surprised because you had thought that this would be so difficult to get done?
>
> A I was surprised because I wasn't aware that the case was going to be dismissed. Obviously, I knew, you know, as Tom had indicated, that was something he was interested in. But I hadn't talked to him about it in a long time and was unaware that that would happen.
>
> Q And at that time, did it occur to you that an agreement may have been reached been [*sic*] the department and the city?
>
> A I was not aware that one was reached at that time and
>
> Q Did the thought cross your mind?
>
> A It didn't, frankly, or at least I don't remember it crossing my mind.[303]

Perrelli also testified that after a congressional inquiry from House Judiciary Committee Chairman Lamar Smith, Perrelli briefed Attorney General Holder on the *quid pro quo* and he "indicated to him that there had been these discussions in the Department that the City had put on the table this idea of the *qui tam* cases, but that that hadn't happened."[304] Instead, Perrelli passed on to Attorney General Holder the incomplete information from Perez that

[303] *Id.* at 96-97.
[304] *Id.* at 104.

encouragement from the civil rights community led to the City's withdrawal of the appeal.[305] Perrelli acknowledged that due to Perez's omission, he "didn't give [Attorney General Holder] a complete set of facts" about the *quid pro quo*.[306]

Finding: The *quid pro quo* exposed serious management failures within the Department of Justice, with senior leadership – including Attorney General Holder and then-Associate Attorney General Perrelli – unaware that Assistant Attorney General Perez had entered into an agreement with the City of St. Paul.

The Department of Justice, the Department of Housing and Urban Development, and the City of St. Paul Obstructed the Committees' Investigation

The House Committee on Oversight and Government Reform and the House Committee on the Judiciary first began investigating the circumstances surrounding the withdrawal of *Magner* in February 2012. The Department of Justice did not acknowledge the existence of the *quid pro quo* until a non-transcribed staff briefing in August 2012. The City of St. Paul, likewise, did not acknowledge the existence of the *quid pro quo* to the Committees until October 2012. This obstruction by DOJ and the City – as well as similar obstruction by HUD – has unnecessarily delayed the Committees' investigation.

For six months, DOJ refused to allow the Committees to speak on the record about the *quid pro quo* with Department officials. The Department reluctantly allowed the Committees to speak to Assistant Attorney General Perez, U.S. Attorney Jones, and Acting Associate Attorney General West in March 2013 only after the Committee on Oversight and Government Reform began to prepare deposition subpoenas. DOJ also refused to allow the Committees to transcribe an interview in December 2012 with Deputy Assistant Attorney General Joyce Branda. During the transcribed interviews, DOJ also attempted to frustrate the Committee's fact-finding effort. A Department attorney directed Perez not to answer questions posed to him about whether he has communicated with any officials at HUD or the parties to *Township of Mt. Holly v. Mt. Holly Gardens Citizens in Action*, a pending Supreme Court appeal with precisely the same legal question as *Magner*.[307]

Similarly, HUD refused for over four months to allow the Committees to speak on the record about the *quid pro quo* with HUD officials. HUD eventually agreed to allow the Committees to speak with General Counsel Helen Kanovsky and Deputy Assistant Secretary Sara Pratt; however, the Department continues to refuse the Committees' requests to speak with Associate General Counsel Dane Narode and Regional Director Maurice McGough. Even during the interviews of Kanovsky and Pratt, HUD objected to the presence of Senator Grassley's staff and their right to ask questions of the witnesses. HUD attorneys also directed Kanovsky and Pratt to not answer questions about the *Mt. Holly* Supreme Court appeal.[308]

[305] *Id.* at 152.
[306] *Id.* at 154.
[307] Transcribed Interview of Thomas Edward Perez, U.S. Dep't of Justice, in Wash., D.C. at 141-43 (Mar. 22, 2013).
[308] Transcribed Interview of Helen Kanovsky, U.S. Dep't of Housing & Urban Development, in Wash., D.C. at 80-82 (Apr. 5, 2013); Transcribed Interview of Sara Pratt, U.S. Dep't of Housing & Urban Development, in Wash., D.C. at 85-90 (Apr. 3, 2013).

The City of St. Paul's cooperation with the investigation has been no better. After the Oversight Committee first wrote to Mayor Coleman in February 2012, City Attorney Grewing telephoned Committee staff and indicated that the City would fully respond to the inquiry. When the City eventually sent its response, it declined to answer any questions about the withdrawal of *Magner*. It was not until May 2012 that the City substantially complied with the investigation. Even today, however, the City continues to withhold twenty documents and one audio recording from the Committees. The City also denied the Committees the opportunity to review these documents *in camera*.

A key difficulty throughout this investigation has been DOJ's insistence that former Deputy Assistant Attorney General Michael Hertz motivated the Department's ultimate decision to decline intervention in *Newell*. Both Acting Associate Attorney General West and Assistant Attorney General Perez testified that Hertz expressed concern about the *Newell* case and suggested that Hertz's negative opinion about the case carried considerable weight.[309] Branda also told the Committees that Hertz expressed to her privately that the *Newell* case "sucks," which she understood to mean that it was unlikely the Department would intervene.[310] The Department positioned Hertz as the central figure in its narrative, which Perez alluded to in his testimony. Perez testified:

> Well, as I said before, in the end, the United States made a decision in this matter, and the decisions in the *qui tam* matters were made at the highest levels of the Civil Division, Mike Hertz and – who is, again, the Department's preeminent expert on *qui tam* matters, personally participated in the meeting and weighed all of the factors, including the weakness of the evidence, in his judgment, resource issues, and policy considerations, and the Magner matter, and they made the decision that it was in the interests of justice to agree to the proposal that – the original proposal that Mr. Lillehaug had put forth.

Sadly, Michael Hertz passed away in May 2012, so the Committees have been unable to ask him about DOJ's assertions about his statements and opinions. Documents produced by the Department, however, call into question the Department's narrative about Hertz's opinions. In particular, an email from Principal Deputy Attorney General Elizabeth Taylor to then-Associate Attorney General Thomas Perrelli in January 2012 suggests that Hertz had some concern about declining *Newell* as a part of the *quid pro quo*. Taylor stated: "Mike Hertz brought up the St. Paul 'disparate impact' case in which the SG just filed an amicus in the Supreme Court. He's concerned about the recommendation that we decline to intervene in two *qui tam* cases against St. Paul."[311]

In addition, notes from a meeting in early January 2012 reflect that Hertz expressed the opinion that the *quid pro quo* "looks like buying off St. Paul" and "should be whether there are

[309] Transcribed Interview of Derek Anthony West, U.S. Dep't of Justice, in Wash., D.C. at 54-56, 77-78 (Mar. 18, 2013); Transcribed Interview of Thomas Edward Perez, U.S. Dep't of Justice, in Wash., D.C. at 89-90 (Mar. 22, 2013).
[310] Briefing with Joyce Branda in Wash., D.C. (Dec. 5, 2012).
[311] Email from Elizabeth Taylor to Thomas Perrelli (Jan. 5, 2012, 34:43 p.m.). [DOJ 631/588]

legit reasons to decline as to past practice."[312] It remains unclear how Hertz truly viewed the merits of the *Newell* case or the propriety of the *quid pro quo* in general.

Finding:	The Department of Justice, the Department of Housing and Urban Development, and the City of St. Paul failed to fully cooperate with the Committees' investigation, refusing for months to speak on the record about the *quid pro quo* and obstructing the Committees' inquiry.

Consequences of the *Quid Pro Quo*

The *quid pro quo* exchange between the Department of Justice and City of St. Paul, Minnesota, is no mere abstraction and not simply a theoretical proposition. This *quid pro quo* has direct and discernible real-world effects. The manner in which the Department of Justice – and in particular Assistant Attorney General Thomas Perez – sought to encourage a private litigant to forego its Supreme Court appeal and the leverage used to achieve that goal have lasting consequences for whistleblowers, taxpayers, and the rule of law.

The Sacrifice of Fredrick Newell

Fredrick Newell has spent over a decade of his life working to improve jobs and contracting programs for low-income residents in St. Paul. A part-owner of three small construction companies, Newell became exposed to the value of Section 3 programs in creating economic opportunities for low-income individuals. St. Paul's noncompliance with Section 3 limited the available contracting opportunities and prevented him from hiring and training new workers.[313] As a minister as well, Newell was acutely aware of the broader effect of Section 3 noncompliance on the community. To help solve this problem, Newell founded a nonprofit organization "to be a watchdog group that would be able to ensure that Section 3 was taking place" in his community.[314]

Since 2005, Newell has fought in the courts and through HUD to improve Section 3 programs in the City of St. Paul. As a result of his advocacy, HUD found six separate areas of noncompliance with Section 3 in St. Paul and further found that the City had "no working knowledge of Section 3 and was generally unaware of the City's programmatic obligations thereto."[315] Newell's advocacy resulted in a Voluntary Compliance Agreement between HUD and the City to ensure improved compliance with Section 3 in the future. Newell pressed for the agreement to include some restitution for the community's opportunities lost by the City's noncompliance. HUD finalized the agreement without Newell's suggestions, however, and HUD officials told Newell that his goals would be met through the False Claims Act.

[312] Handwritten Notes (Jan. 4, 2012). [DOJ 639/587]
[313] Newell testified that "St Paul is a union town, and . . . one of the problems we ran across is most of [the trained workers] couldn't get into the union because they couldn't get someone to hire them." Transcribed Interview of Fredrick Newell in Wash., D.C. at 169 (Mar. 28, 2013).
[314] Transcribed Interview of Fredrick Newell, U.S. Dep't of Justice, in Wash., D.C. at 20 (Mar. 28, 2013).
[315] *Id.* at 11.

In pursuing his False Claims Act cases, Newell indicated that he intended to put the recovered money back into the community. "From the beginning," Newell testified, "when I first started this – and, like I said, as I trace it back to 2000 – it's all been with the efforts of trying to build the Section 3 community."[316] He stated:

> [T]he bottom line is those opportunities belong to those communities. And what's been happening is you've got companies coming out of the suburbs come in, do the [construction] work, hire nobody from the city, and go and take the funds back to the suburbs. And so we wanted this program to work that these communities could be rebuilt.[317]

Every indication Newell received from HUD and DOJ about his False Claims Act lawsuit was positive – that is, until the day that the Department declined to intervene in his case. With DOJ declining to intervene, Newell's complaint stood little chance of success.

The Justice Department – including all three DOJ officials interviewed by the Committees – has maintained that its non-intervention did not affect Newell's case because Newell was still able to pursue the claim on his own.[318] However, the Department's decision had a direct practical effect on Newell's case by allowing the City to move for dismissal of the case on grounds that would have otherwise been unavailable if the Department had intervened. Newell's attorney testified:

> The jurisdictional defense raised in the district court by the City of St. Paul is not available against the United States. Ultimately, at the trial court level, St. Paul prevailed on the theory that the court lacked subject matter jurisdiction over the claims because the relator was not an original source, and the court also relied on prior public disclosures . . . . The point being: a defendant can't raise those defenses on an intervening case because the United States – there's always the subject matter of jurisdiction when the United States intervenes and is the plaintiff before the court.[319]

The Department of Justice's *quid pro quo* sacrificed Fredrick Newell to ensure that an abstract legal doctrine would remain unchallenged. It cut loose a real-world whistleblower and an advocate for low-income residents to protect a legally questionable tactic. When asked whether he believed justice was done in this case, Newell answered "no" and explained: "The problems that existed, they still exist. Our aims weren't just to walk in and blow a whistle on someone or collect money; it was for the greater good of our community. And I have yet to see that happen."[320] Yet, despite the double crossing by the Justice Department, Newell remains optimistic that greater good may still be achieved. He testified: "And like I said earlier, when I

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[316] *Id.* at 81.
[317] *Id.* at 83.
[318] *See* Transcribed Interview of Thomas Edward Perez, U.S. Dep't of Justice, in Wash., D.C. at 110 (Mar. 22, 2013); Transcribed Interview of Derek Anthony West, U.S. Dep't of Justice, in Wash., D.C. at 98-99 (Mar. 18, 2013); Transcribed Interview of Byron Todd Jones, U.S. Dep't of Justice, in Wash., D.C. at 54 (Mar. 8, 2013).
[319] Transcribed Interview of Fredrick Newell in Wash., D.C. at 101-02 (Mar. 28, 2013).
[320] *Id.* at 134.

said Section 3 is that important, to me, and I'm going to speak from the minister's perspective, God just moved us into a bigger ballpark."[321]

The Chilling Effect on Whistleblowers

Above and beyond Fredrick Newell, the *quid pro quo* will likely have a severe chilling effect on whistleblowers in general. The Civil Fraud Section within DOJ's Civil Division is entirely dedicated to litigating and recovering financial frauds perpetrated against the federal government.[322] Acting Associate Attorney General Tony West – who had previously led the Civil Division – told the Committees that the Division takes fraud "very seriously" and that he made "fighting fraud one of [the Division's] top priorities."[323] In particular, he praised the whistleblower *qui tam* provision of the False Claims Act, calling them "a very important tool" that "really allow us to be aggressive in rooting out . . . fraud against the government."[324]

The current *qui tam* provisions of the False Claims Act were authored by Senator Grassley in 1986 and have been a valuable incentive for private citizens to expose waste and wrongdoing. Since 1986, whistleblowers have used the *qui tam* provisions to return over $35 billion of taxpayer dollars to the federal treasury.[325] Without the assistance of private citizens in uncovering waste, fraud, and abuse, the Justice Department's enforcement of the False Claims Act would not be as robust.

The *quid pro quo* between Assistant Attorney General Perez and the City of St. Paul threatens the vitality of the False Claims Act's *qui tam* provisions. In this deal, the Department gave up the opportunity to litigate a multimillion dollar fraud against the government in *Newell* in order to protect the disparate impact legal theory in *Magner*. In doing so, political appointees overruled trial-level career attorneys who initially stated that the allegations in *Newell* amounted to a "particularly egregious example of false certifications." These career attorneys were never given the opportunity to prove Newell's allegations and hold the City of St. Paul accountable for its transgressions.

More alarmingly, the Department abandoned the whistleblower, Fredrick Newell, after telling him for years that it supported his case. The manner in which the Department treated Newell presents a disconcerting precedent for whistleblower relations. Newell stated:

> As noted by Congress, the protection of the whistle blower is key to encouraging individuals to report fraud and abuse. The way that HUD and Justice have used me to further their own agenda is appalling – and that's putting it mildly. This type of treatment presents a persuasive argument

[321] *Id.* at 86.
[322] *See* U.S. Dep't of Justice, Commercial Litigation Branch, Fraud Section, http://www.justice.gov/civil/commercial/fraud/c-fraud.html.
[323] Transcribed Interview of Derek Anthony West, U.S. Dep't of Justice, in Wash., D.C. at 18 (Mar. 22, 2013).
[324] *Id.* at 19.
[325] Press Release, Senator Charles Grassley, Grassley Law Recovers Another $3.3 Billion of Taxpayer Money Otherwise Lost to Fraud (Dec. 4, 2012).

> for anyone who is looking for a reason to not get involved in reporting fraud claim or even discrimination.[326]

Rather than protecting and empowering the whistleblower, the Department used him and his case as a bargaining chip to resolve unrelated matters. This type of treatment and horse trading will likely discourage other potential whistleblowers from staking their time, money, and reputations on the line to fight fraud. This conduct should not be practice of the Department and it should not have been the treatment of Fredrick Newell.

The Missed Opportunities for Low-Income Residents of St. Paul

The saddest irony of this *quid pro quo* is that the Department of Justice and the Department of Housing and Urban Development, by maneuvering to protect a legally questionable legal doctrine, directly harmed the real-life low-income residents of St. Paul who they were supposed to protect. By declining intervention in *Newell*, the Department of Justice has contributed to a continuation of Section 3 problems in St. Paul.

Congress passed Section 3 of the Housing and Urban Development Act of 1968 "to ensure that the employment and other economic opportunities generated by Federal financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed toward low- and very low-income persons."[327] Section 3 requires recipients of HUD financial assistance to provide job training, employment, and contracting opportunities to these low- and very-low-income residents.[328] However, HUD by its own admission has failed to vigorously enforce Section 3. Even Sara Pratt told the Committees that HUD does "not do a lot of enforcement work under Section 3, much, much less than we do in all our other civil rights matters."[329]

In the wake of the settlement in *United States ex rel. Anti-Discrimination Center v. Westchester County*,[330] a landmark 2009 case in which DOJ and HUD used the False Claims Act to enforce fair housing laws, the Administration signaled a new reinvigorated approach to fair housing enforcement. At the time, then-HUD Deputy Secretary Ron Sims proclaimed: "Until now, we tended to lay dormant. This is historic, because we are going to hold people's feet to the fire."[331] Deputy Secretary Sims even told Newell in 2009 that "the False Claims Act lawsuit was the new model for ensuring compliance" with federal housing laws.[332]

With the Administration's actions in the *quid pro quo*, HUD has all but given up on using the False Claims Act as a tool to promote fair housing and economic opportunity. Fredrick Newell testified:

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[326] Transcribed Interview of Fredrick Newell in Wash., D.C. at 16 (Mar. 28, 2013).
[327] 12 U.S.C. § 1701u(b).
[328] 12 U.S.C. § 1701u.
[329] Transcribed Interview of Sara Pratt, U.S. Dep't of Housing & Urban Development, in Wash., D.C. at 22 (Apr. 3, 2013).
[330] United States ex rel. Anti-Discrimination Center v. Westchester County, No. 06-Civ.-2860 (S.D.N.Y. 2009).
[331] Peter Applebome, *Integration Faces a New Test in the Suburbs*, N.Y. Times, Aug. 22, 2009.
[332] Transcribed Interview of Fredrick Newell in Wash., D.C. at 134-35 (Mar. 28, 2013); *see also id.* at 170-71.

> The Section 3 regulations and the Section 3 community have languished under a period of noncompliance and lack of enforcement of the Section 3 statute and regulations for over 45 years. The Section 3 program received its impetus from incidents such as the Watts riot of 1968 and the Rodney King riots of 1992. The Section 3 community has long sought a catalyst to revive this program, the Section 3 program. The Section 3 False Claims Act lawsuit was heralded even by HUD itself to be such a catalyst [of] Section 3 compliance – a nonviolent catalyst. A valuable tool was taken away with the *quid pro quo*.[333]

Newell still sees problems with Section 3 compliance in St. Paul, explaining that: "there's a whole list and host of problems that are there. Some of it is not knowing how the program works. Some of it is just simply no interest, from my belief, no interest in really complying."[334]

If given a fair opportunity with the assistance of the federal government, he could have made a difference. Newell told the Committees that he intended to use his lawsuit as a vehicle to improve economic opportunities in the St. Paul community by putting any False Claims Act recovery back into the community.[335] Now, unfortunately, the *quid pro quo* is just a missed opportunity for the federal government to provide real assistance to the low- and very-low-income residents of St. Paul.

Taxpayers Paid for the Quid Pro Quo

The *quid pro quo* was not cheap for federal taxpayers. The Department of Housing and Urban Development, the U.S. Attorney's Office in Minnesota, and the Civil Fraud Section within the Justice Department each spent over two years investigating and preparing the *Newell* case. By November 2011, all three entities were uniformly recommending that the government join the case. According to the memorandum prepared at the time by the Civil Fraud Section, Newell had exposed a fraud totaling over $86 million.[336] Because the False Claims Act allows for recovery up to three times the amount of the fraud, the United States was poised to potentially recover over $200 million.[337]

The deal reached by Assistant Attorney General Thomas Perez prevented the United States from ever having a chance to recover that money – and odds were high that the case would be successful. The memorandum prepared by the Civil Fraud Section in November 2011 called St. Paul's actions "a particularly egregious example of false certifications" and found that the City knowingly made these false certifications.[338] Newell told the Committees his impression

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[333] Transcribed Interview of Fredrick Newell in Wash., D.C. at 17-18 (Mar. 28, 2013).
[334] *Id.* at 22.
[335] *Id.* at 78-79.
[336] U.S. Dep't of Justice, Civil Division, Memorandum for Tony West, Assistant Attorney General, Civil Division, *U.S. ex rel. Newell v. City of St. Paul, Minnesota* (Nov. 22, 2011). [DOJ 80-91]
[337] In his amended complaint, Newell valued the fraud at $62 million, meaning the government could have recovered over $180 million. *See* First Amended Complaint, United States *ex rel.* Newell v. City of St. Paul, Minnesota, No. 09-SC-1177 (D. Minn. filed Mar. 12, 2012).
[338] U.S. Dep't of Justice, Civil Division, Memorandum for Tony West, Assistant Attorney General, Civil Division, *U.S. ex rel. Newell v. City of St. Paul, Minnesota* (Nov. 22, 2011). [DOJ 80-91]

that it was a strong case matched the language used by the November 2011 memorandum.[339] Newell's attorney called the case a "dead-bang winner,"[340] and indicated to the Committees that federal officials expressed their support for the case to him.[341]

Some of the dollars improperly received by the City appear to be HUD funds financed by the Obama Administration's stimulus in 2009. According to the Civil Fraud Section memorandum, the City initially contested HUD's administrative finding that it was out of compliance with Section 3, "but dropped its challenge in order to renew its eligibility to compete for and secure discretionary stimulus HUD funding."[342] Newell and his attorney confirmed this understanding, telling the Committees that the City disputed HUD's findings and HUD put a deadline on the City to resolve the dispute or risk losing stimulus funding.[343]

The amount of the fraud alleged in *Newell* did not appear to be a concern for HUD. In a briefing with Committee staff, HUD Principal Deputy General Counsel Kevin Simpson stated: "The monies don't supplement HUD's coffers, so [the money] wasn't much of a factor."[344] He elaborated that "HUD did have an institutional interest [in recovering the funds], but it was outweighed by other factors."[345] In the same briefing, Elliot Mincberg, HUD's General Deputy Assistant Secretary for Congressional and Intergovernmental Relations, added that $200 million "wasn't all that much money anyway."[346] HUD Deputy Assistant Secretary Sara Pratt testified that the amount of the alleged fraud was not a factor in her decision whether to recommend intervention in the case.[347] While this funding may not be "much of a factor" for federal bureaucrats, it is no insignificant amount to American taxpayers.

Finding: In declining to intervene in Fredrick Newell's whistleblower complaint as part of the *quid pro quo* with the City of St. Paul, the Department of Justice gave up the opportunity to recover as much as $200 million.

Disparate Impact Theory Remains on Legally Unsound Ground

Assistant Attorney General Perez's machinations to stop the Supreme Court from hearing *Magner* prevented the Court from finally adjudicating whether the plain language of the Fair Housing Act supports a claim of disparate impact. Although courts and federal agencies have asserted that it does, considerable doubts remain about the legality of disparate impact claims. Perez's *quid pro quo* prevented the Court from finally bringing clarity and guidance to this important area of federal law.

[339] Transcribed Interview of Fredrick Newell in Wash., D.C. at 58-61 (Mar. 28, 2013).
[340] Jim Efstathiou Jr., *Whistle-Blower Blames Lost Millions on Perez's Settlement*, Bloomberg, Mar. 22, 2013.
[341] Transcribed Interview of Fredrick Newell in Wash., D.C. at 53-55 (Mar. 28, 2013).
[342] U.S. Dep't of Justice, Civil Division, Memorandum for Tony West, Assistant Attorney General, Civil Division, *U.S. ex rel. Newell v. City of St. Paul, Minnesota* (Nov. 22, 2011). [DOJ 80-91]
[343] Transcribed Interview of Fredrick Newell in Wash., D.C. at 41-46 (Mar. 28, 2013).
[344] Briefing with Kevin Simpson and Bryan Greene in Wash., D.C. (Jan. 10, 2013).
[345] *Id.*
[346] *Id.*
[347] Transcribed Interview of Sara Pratt, U.S. Dep't of Housing & Urban Development, in Wash., D.C. at 123 (Apr. 3, 2013).

Perez testified to the Committees that he encouraged the City to withdraw its *Magner* appeal – and later agreed to exchange *Newell* and *Ellis* for *Magner* – because he believed that "*Magner* was an undesirable factual context in which to consider disparate impact."[348] He also stated that he was concerned that HUD had not yet finalized a rule codifying its use of disparate and believed the Court would benefit from HUD's final regulation.[349] Perez testified:

> [T]he particular facts of *Magner* I thought did not present a good vehicle for addressing the viability of disparate impact. If the court is going to take on the question of the viability of disparate impact it was my hope that they would do so in connection with a typical set of facts. This was not a typical set of facts. And it was further in my view that if the court was going to take a case of this nature that they should have the benefit of HUD's thinking, and the reg was very much in the works and I don't believe the court was aware of that. And so those two factors were sources of concern for me.[350]

HUD General Counsel Helen Kanovsky also testified to the Committees that she feared an "adverse decision" from the Supreme Court that could upset HUD's rulemaking.[351]

The *quid pro quo* did little to bring certainty or clarity to disparate impact claims arising under the Fair Housing Act. In June 2012, the Township of Mount Holly, New Jersey, filed a petition for certiorari asking the Supreme Court to hear its appeal on precisely the same legal issue as *Magner*: whether claims of disparate impact are cognizable under the Fair Housing Act.[352] The Court has yet to decide whether to take the appeal, but has asked the Solicitor General for his thoughts on whether to hear the case. Within this context, there are concerns in some quarters that discussions are underway to prevent the Court from hearing this case as well.[353] When the Committees inquired about the *Mt. Holly* case during the transcribed interviews, Assistant Attorney General Perez, HUD General Counsel Kanovsky, and HUD Deputy Assistant Secretary Pratt were all ordered not to answer by Administration lawyers.[354]

The Rule of Law

Most fundamentally, the actions of the Department of Justice in facilitating and executing the *quid pro quo* with the City of St. Paul represent a tremendous disregard for the rule of law. The Department of Justice was created "[t]o enforce the law and defend the interests of the

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[348] Transcribed Interview of Thomas Edward Perez, U.S. Dep't of Justice, in Wash., D.C. at 9 (Mar. 22, 2013).
[349] *Id.* at 43.
[350] *Id.* at 42.
[351] Transcribed Interview of Helen Kanovsky, U.S. Dep't of Housing & Urban Development, in Wash., D.C. at 36 (Apr. 5, 2013).
[352] Petition for a Writ of Certiorari, Township of Mount Holly et al. v. Mt. Holly Gardens Citizens in Action, Inc., No. 11-1507 (U.S. filed June 11, 2012).
[353] *See* Alan S. Kaplinsky, *Will Mt. Holly Take A Dive Just Like St. Paul*, CFPB Monitor (Jan. 10, 2013).
[354] Transcribed Interview of Thomas Edward Perez, U.S. Dep't of Justice, in Wash., D.C. at 141-43 (Mar. 22, 2013); Transcribed Interview of Helen Kanovsky, U.S. Dep't of Housing & Urban Development, in Wash., D.C. at 80-82 (Apr. 5, 2013); Transcribed Interview of Sara Pratt, U.S. Dep't of Housing & Urban Development, in Wash., D.C. at 85-90 (Apr. 3, 2013).

United States according to the law; . . . to seek just punishment for those guilty of unlawful behavior; and to ensure fair and impartial administration of justice for all Americans."[355] In this *quid pro quo* with the City of St. Paul, the Department of Justice failed in each of those respects.

Rather than allowing the Supreme Court to freely and impartially adjudicate an appeal that the Court had affirmatively chosen to hear, the Department – led by Assistant Attorney General Thomas Perez – openly worked to get the appeal off of the Court's docket. Rather than allowing the normal intervention decision-making process to occur within the Civil Division, Assistant Attorney General Perez usurped the process to ensure his preferred course of action occurred. The Department's action in departing from the rule of law to exert arbitrary authority to jointly resolve two wholly unrelated matters, including one in which the United States is not even a party, is extremely concerning.

Conclusion

The *quid pro quo* resulted in the Department of Justice declining to intervene in two whistleblower False Claims Act lawsuits, *Newell* and *Ellis*, in exchange for the City of St. Paul's withdrawal of *Magner v. Gallagher* from the Supreme Court. The process that culminated in this *quid pro quo* was facilitated and executed by Assistant Attorney General for the Civil Rights Division Thomas E. Perez.

In November 2011, after the Court agreed to hear the *Magner* appeal, Perez's search for leverage against the City led him to discover the existence of *Newell* and the City's desire to jointly resolve both cases. This discovery began a series of events in which Perez asked the Department of Housing and Urban Development to reconsider its initial support for *Newell* and the subsequent erosion of support in DOJ's Civil Division and the U.S. Attorney's Office in Minnesota. Eventually, by January 2012, Perez's machinations had created a "consensus" within DOJ to decline *Newell* and *Ellis* as part of the deal with the City. Perez then began personally leading negotiations with the City, offering a roadmap in early January for how to jointly resolve the cases and asking career attorneys to cover up a linkage between the cases. By late January, as negotiations broke down, Perez flew to St. Paul to personally meet with Mayor Coleman and strike a deal. The agreement he reached with the Mayor led to the Department declining intervention in *Newell* and *Ellis* in exchange for the City withdrawing *Magner*.

This *quid pro quo* has lasting consequences for the Department of Justice, the City of St. Paul, and American taxpayers. In sacrificing Fredrick Newell to protect an inchoate theory, the Department weakened its own False Claims Act standards and created a large disincentive for citizens to expose fraud. The City of St. Paul, likewise, missed a tremendous opportunity to improve the economic opportunities available to the low- and very-low-income residents that Newell championed. American taxpayers lost a good chance to recover as much as $200 million of fraudulently spent funds. Above all, however, the *quid pro quo* demonstrated that the Department of Justice, led by Assistant Attorney General Thomas Perez, placed ideology over objectivity and politics over the rule of law.

[355] U.S. Dep't of Justice, About DOJ, http://www.justice.gov/about/about.html.

Appendix I: Documents

Department of Justice Documents

From: Lillehaug, David [redacted]
Sent: Tuesday, January 31, 2012 2:53 PM
To: Perez, Thomas E (CRT)
Cc: 'Sara Grewing'; Lundquist, John
Subject: RE: Followup

Tom -- We propose 10 a.m. at the Mayor's office, City Hall. If this works for you, please hit "reply all" and let us know. If it doesn't work, the Mayor may well be able to do another time.

We look forward to seeing you.

David Lillehaug
Fredrikson & Byron, P.A.
612-[redacted]

-----Original Message-----
From: Perez, Thomas E (CRT) [redacted]
Sent: Tuesday, January 31, 2012 12:09 PM
To: Lillehaug, David
Subject: Followup

David

It looks like I will be in the twin cities on friday. The morning has some flexibility and I could get over to the meeting we discussed if you are able to arrange. Let me know if that is doable. Anytime until 1230 could happen. If it works, let me know if this works.

Tom

From: Line Attorney 1

Sent: Tuesday, October 4, 2011 5:05 PM

To: HUD Line Emp.

Cc: Line Attorney 3; Line Attorney 2 <Line Attorney 2>

Subject: City of St. Paul qui tam

HUD Line Emp.

Our office is recommending intervention. Does HUD concur? Thank you.

Line Attorney 1
Assistant Director
U.S. Department of Justice
Civil Division
Commercial Litigation Branch
Fraud Section
601 D Street N.W.
Suite RC-1
Washington, DC 20004
(202) RC-1

From: HUD Line Emp.
Sent: Friday, October 7, 2011 11:27 AM
To: Line Attorney 1
Cc: Line Attorney 3; Line Attorney 2 <Line Attorney 2>
Subject: RE: City of St. Paul qui tam

Line Attorney 1: HUD concurs with DOJ's recommendation. HUD Line Emp.

From: Line Attorney 1
Sent: Tuesday, October 04, 2011 5:05 PM
To: HUD Line Emp.
Cc: Line Attorney 3; Line Attorney 2
Subject: City of St. Paul qui tam

HUD Line Emp.: Our office is recommending intervention. Does HUD concur? Thank you.

Line Attorney 1
Assistant Director
U.S. Department of Justice
Civil Division
Commercial Litigation Branch
Fraud Section
601 D Street N.W.
Suite RC-1
Washington, DC 20004
(202) RC-1

From: Line Attorney 3
To: Brooker, Greg (USAMN)
Sent: 10/7/2011 11:28:26 AM
Subject: FW: City of St. Paul qui tam

Looks like everyone is on board.

From: HUD Line Emp.
Sent: Friday, October 07, 2011 10:27 AM
To: Line Attorney 1
Cc: Line Attorney 3; Line Attorney 2
Subject: RE: City of St. Paul qui tam

Line Attorney 1: HUD concurs with DOJ's recommendation. HUD Line Emp.

From: Line Attorney 1
Sent: Tuesday, October 04, 2011 5:05 PM
To: HUD Line Emp.
Cc: Line Attorney 3; Line Attorney 2
Subject: City of St. Paul qui tam

HUD Line Emp. Our office is recommending intervention. Does HUD concur? Thank you.

Line Attorney 1
Assistant Director
U.S. Department of Justice
Civil Division
Commercial Litigation Branch
Fraud Section
601 D Street N.W.
Suite RC-1
Washington, DC 20004
(202) RC-1

From: Line Attorney 3

Sent: Wednesday, October 26, 2011 3:39 PM

To: Line Attorney 2; Line Attorney 1 <Line Attorney 1>

Cc: Brooker, Greg (USAMN) <RC-1>

Subject: Signed USAO-MN authority memo in U.S. ex rel. Newell v. City of St. Paul, Minnesota

Attach: 2011.10.25- Memo.pdf

Our signed memo is attached.

<<...>>

Line Attorney 3

Assistant United States Attorney
612.RC-1

Memorandum

U.S. Department of Justice

United States Attorney
District of Minnesota

Subject	Date
Intervention Memo *U.S. ex rel. Newell v. City of St. Paul, Minnesota*, Case No. 09-SC-001177 (D. Minn.)	October 25, 2011

To	From
Gregory G. Brooker Civil Chief	[redacted] AUSA

The operative qui tam complaint ("Complaint") in this matter was filed in 2009 against the defendant, the city of St. Paul ("St. Paul" or "The City"). The Complaint alleges that the Defendant defrauded the United States by submission of false and fraudulent claims to the United States Department of Housing and Urban Development ("HUD"). The claims were allegedly false because the City falsely certified that it was in compliance with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. § 1701u) ("Section 3") in order to obtain tens of millions of dollars from HUD in the form of Community Development Block Grants and other federal funds which require compliance with Section 3.

After extensive investigation, we have determined that the City was not in compliance with Section 3. For much of the investigation, the City did not seriously dispute that the City did next to nothing to comply with Section 3, notwithstanding the fact that it was put on notice on multiple occasions over the years that it was allegedly out of compliance. After we completed our investigation, the City retained outside counsel, and the outside counsel now argues that the City did not knowingly violate Section 3. Even assuming that the City did not technically comply with Section 3, it argues that the non-compliance was inadvertent. Essentially, it argues that the City had initiatives intended to benefit minority-owned businesses and women-owned businesses, and that the City reasonably believed that these programs brought it into compliance with Section 3. Additionally, the City will likely raise a number of legal defenses.

We are not persuaded by the City's arguments. We believe that the City had the requisite knowledge about its obligations to comply with Section 3 and how to do so.

The City made annual certifications that it was in compliance with Section 3, but knew when it made the certifications that it had no plans to comply with it. While some HUD grantees might argue that they simply do not understand what they must do in order to comply with Section 3, Saint Paul will have a very difficult time making this argument because it received multiple reminders over the years of its obligations under Section 3. Despite knowing that it was out of compliance, the City repeatedly told HUD and others that it was actually in compliance. In short, this is a case of a City knowingly submitting false certifications in order to obtain federal funds.

That said, we will have to contend with a number of difficult arguments by the City, including arguments related to HUD's knowledge or, at a minimum, lack of oversight. These arguments are discussed in more detail below.

I. Applicable Law

A. Section 3

The Defendant is a recipient of Community Development Block Grants ("CDBG") and other federal funds which require compliance with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. § 1701u). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low-and very low-income persons. To receive Section 3 funds, an applicant must annually submit a certification that it will comply with Section 3. Specifically, St. Paul is required to certify annually that the City "will comply with Section 3 of the Housing and Urban Development Act of 1968, and implementing regulations, at 24 C.F.R. Part 135." 24 C.F.R. § 91.225(a)(7).

B. False Claims Act Theory

Our theory is a straightforward one. In order to receive CDBG funds, among others, the City is obligated to certify annually that it is in compliance with Section 3. The City then makes claims for payment that rely on that certification, impliedly certifying compliance with Section 3 each time it does so. This two-part certification theory has been endorsed in cases such as *United States ex rel. Main v. Oakland City Univ.*, 426 F.3d 914 (7th Cir. 2005), and *United States ex rel. Hendow v. Univ. of Phx.*, 461 F.3d 1166 (9th Cir. 2006), but the Eighth Circuit has recently called it into some question in *United States ex. rel. Vigil v. Nelnet*, 2011 WL 1675418 (8th Cir. May 5, 2011).

II. Affirmative Case Against the City

There is little or no question that the City annually certified its compliance with Section 3. The City has also made helpful admissions in the past regarding these certifications. 24 C.F.R. § 91.225(a)(7). When the City's compliance with Section 3 was litigated in the past, the City admitted on multiple occasions that compliance with Section 3 was a requirement for the receipt of federal funds that carry Section 3 obligations. *See* 1991 Affidavit of Jacqui Shoholm ("[c]ompliance with the provisions of section 3 is a condition for the receipt of federal funds provided to the project and binding on all parties to the project."); City's 1985 Summary Judgment Brief ("It is the stated policy of the City of Saint Paul that compliance with section 3, as well as all other applicable rules and regulations promulgated by HUD, shall be a condition for the receipt of the federal assistance provided to the project and binding upon all of the parties.")

It also should be largely uncontested that the City fell well short of compliance with Section 3. While this litigation was ongoing, an administrative claim against the City for Section 3 non-compliance was proceeding on a parallel track. In that administrative proceeding, HUD determined that the City was out of compliance with Section 3. It did not appear to be a particularly close call. The City initially contested that finding, but dropped its challenge in order to retain its eligibility to compete for and secure discretionary HUD funding. The City agreed to enter into a Voluntary Compliance Agreement ("VCA"), which required it to take a number of affirmative steps to come into compliance with Section 3.[1]

Consistent with HUD's findings, although the City has contended for years that it has been in compliance with Section 3, our investigation revealed very little evidence of the City's Section 3 compliance.[2] The closest the City came was a Section 3 clause in various City agreements, but even those clauses fell well short of the Section 3 clause mandated by 24 C.F.R. § 135.38. We interviewed multiple project managers, who would have been responsible for implementing Section 3 on various projects for which the

[1] The VCA addresses compliance with Section 3 on a going-forward basis, and does not deal with a remedy for past violations. FCA liability is specifically reserved from the Agreement.

[2] The City made numerous changes after HUD notified it in 2009 that the City was out of compliance with Section 3. This memo addresses the City's behavior prior to those changes.

funding required Section 3 compliance. All indicated that they did little if anything to comply with Section 3, and many were essentially unaware of Section 3 for most of the relevant time period. The City's purported compliance with Section 3 relies predominantly on its efforts to comply with minority-based contracting initiatives. The City now acknowledges that while there may be some overlap between those initiatives and Section 3, minority-based initiatives are distinct from the Section 3 requirements.

The City should also not be heard to complain that it lacked the requisite knowledge of Section 3. In 1984, the City and HUD entered into a Voluntary Compliance Agreement and associated plan of compliance that lay out in detail what a city needs to do to comply with Section 3. The City's Deputy Director of Community Development informed HUD that "The plan will be incorporated into the City's Compliance Users Manual and monitoring of Section 3." In 1991, in the course of seeking the dismissal of a suit alleging Section 3 non-compliance, the City directed the Court to that Section 3 Plan of Compliance. In 2003, a city employee charged in part with Section 3 compliance notified the City, "This also suggests that MN Statute 469 may not be completely complied with as well as federal section 3..." Most recently, Frederick Newell sued the City in federal court, alleging that the City was out of compliance with Section 3.

Each time its compliance with Section 3 was challenged, the City had an opportunity to consult the Section 3 statute and regulations and compare the mandates contained therein with the City's own performance. In light of what our investigation has uncovered, even a cursory examination of the City's practices would have revealed the City's noncompliance with Section 3. Instead, the City simply and repeatedly told the relevant entities that it was in compliance with Section 3. That includes its responses to the recent Newell lawsuit and the HUD administrative proceeding. See Affidavit of Ronald C. Ross ("Plaintiffs' allegation that the City of Saint Paul is not complying with federal statutes...is wrong."); August 5, 2008 letter to HUD in the administrative context ("The Section 3 complaint against the City lacks merit for the same reasons set forth in the earlier letters...The City continues to fully comply with Section 3 requirements.").

For much of our investigation, the City did not seriously dispute that it had been out of compliance with Section 3 during much of the relevant time period. After bringing in new outside counsel, however, the City now argues that it did not have the requisite knowledge to support an FCA claim. It argues that it reasonably believed that its actions taken with respect to minority-owned businesses and women-owned businesses satisfied its Section 3 obligations. The City's primary basis for this contention is the VCA it

entered into with HUD in the 1980's, which makes reference to tracking the number of minorities and women affected by the VCA in various respects. But shortly after the VCA went into effect, the City entered into the very detailed plan of compliance, referenced above, that set forth all of the things it needed to do in order to comply with Section 3. It will be difficult for the city to rely on the language of the Section 3 VCA while at the same time disavowing knowledge of the detailed plan of compliance.

The City was repeatedly put on notice of its obligations to comply with Section 3. At best, its failure to take any steps towards compliance, while continually telling federal courts, HUD and others that it was in compliance with Section 3, represents a reckless disregard for the truth. Its certifications of Section 3 compliance to obtain HUD funds during the relevant time period were knowingly false.

III. Anticipated Defenses

a. HUD's Inattentiveness or Blessing: Knowledge and Materiality Arguments

The City plans to argue that even if we assume that the City was violating Section 3 for many years, the violations cannot form the basis for an FCA case because HUD was aware of the violations and at least tacitly approved them by not doing anything to address the violations. The City will probably make a combined legal and equitable argument. The legal argument is that under the FCA, a defendant can set out an affirmative defense that the government knew about the offending conduct and approved of it. We are not aware of an actual approval of the conduct at issue. The closest we have seen is a HUD affidavit in the litigation in the early 1990s, indicating that the City was doing an adequate job of complying with Section 3. It is unclear how helpful this is to the City given that this was 20 years ago, and even more importantly, it came at a time when the City was telling HUD that it was following the detailed VCA that it had entered into with HUD in the 1980's. But it is certainly worth noting, and there may be other, similar documents. The City's fallback argument could be that even if HUD did not say in as many words that the City's conduct was approved, its silence over many years is tacit approval. Even acknowledging that HUD must oversee an entire country of grantees, the City would argue that if the City's Section 3 non-compliance is really as complete as we suggest, surely someone from HUD would have noticed and raised this with the City.

This argument does have some persuasive appeal, particularly as an equitable argument. While we will likely be able to show that HUD never approved the City's non-compliance, the City was failing in ways that should have been apparent to HUD. For example, the City is obligated to submit a Form 60002 each year to report its compliance with various aspects of the program. Many years, it failed to submit the

form. HUD did not raise the issue with the City. The City could argue that this failure to monitor Section 3 compliance by the City was consistent with HUD's general lack of oversight of Section 3 over the relevant period. In order to demonstrate liability under the FCA, the pertinent materiality standard requires us to show that the violation "could have affected" HUD's decision to pay the claims. The City could argue that HUD was so unconcerned with Section 3 compliance that the City's failure to comply could not have affected the decision to pay. It could argue that the previous administration was not nearly as concerned with Section 3 compliance as this administration is (a position that has some support in HUD's recent public comments). Essentially, the argument is that it is unfair to require a City to make a boilerplate certification each year, ignore non-compliance, and then seek FCA relief when a new administration comes in that is more concerned with compliance with Section 3.

b. Relevant certifications are prospective and not a condition of payment

The City will likely argue that the certifications of compliance with Section 3 were not conditions of payment. As discussed above, that position is at odds with positions the City has taken in the past. But the City could argue that these positions were taken 20 years ago or more, and they do not relate to the distinction between conditions of payment and conditions of participation that has arisen in the FCA jurisprudence. Cases like *Main* and *Hendow*, mentioned above, stand for the proposition that making a promise that a defendant intends to violate is a violation of the FCA, and we would hope that this argument is dispositive here. But the City will likely direct the Court to *United States ex. rel. Vigil v. Nelnet*, 2011 WL 1675418 (8th Cir. May 5, 2011) and argue that only the City's initial certification is relevant to the court's determination. It will also argue that the certifications are forward-looking, such that a violation of the certification cannot violate the FCA.

We believe that we have the better side of these arguments in the district court. But in light of the Eighth Circuit's recent *Vigil* decision, we should be mindful of the risk that the district court could rely on *Vigil* to rule against the government or that a favorable decision in the district court could be reversed on appeal.

c. Administrative Remedies Argument

This is another argument that became much stronger for the City after *Vigil*. The City will likely argue that if HUD finds that a grantee is out of compliance with Section 3, it has a number of options for dealing with the non-compliance, the most draconian of which is debarment. The City will argue that permitting FCA liability in this context is akin to transforming a discretionary administrative remedy into a mandatory and extremely harsh penalty. Indeed, in this specific instance, HUD found the City to be out of compliance, but permitted it to continue receiving funds and in fact awarded it

significant new funds in a competitive bidding process right around the same time. In light of this, the City will direct the Court to this portion of *Vigil*:

> Finally, we consider it significant that the FFELP statutes and regulations provide detailed remedies for noncompliant Lenders and Servicers... Nowhere do the extensive regulations require that a Lender certify its compliance with FFELP's anti-inducement and false-advertising provisions, nor do they suggest that noncompliance with these regulatory requirements may result in the wholesale recovery of claims previously paid to the offending Lender on eligible student loans. When the statute creates "a complex monitoring and remedial scheme that ends [FFELP] payments only as a last resort," it would "be curious to read the FCA, a statute intended to protect the government's fiscal interests, to undermine the government's own regulatory procedures." *United States ex rel. Conner v. Salina Reg'l Health Ctr., Inc.*, 543 F.3d 1211, 1222 (10th Cir.2008).

Again, we think we have the better of this argument. Defendants make this argument frequently, and we often prevail on it. The FCA provides a remedy that is distinct from administrative remedies, not dependent on them. But it is entirely possible that the district court will consider *Vigil* to be dispositive of the issue in this context, or that the Eighth Circuit would reach a similar conclusion when it considers the issue again in this case.

d. Vagueness of language—to the greatest extent feasible

24 C.F.R. Part 135 contains the phrase "to the greatest extent feasible" in numerous places. The City has indicated that it plans to rely on the potential ambiguity of this language. We do not believe that this is a terribly strong argument for the City. First, the argument ignores HUD's regulations. Although the broad statement in the statute and in the first paragraph of the regulations is general, HUD's Section 3 regulations as a whole are more specific. Further, this argument might be more effective if the City were making some effort to comply with Section 3 but falling short of full compliance. Given the City's complete failure even to try to comply with Section 3, we do not think a vagueness argument is well taken. Finally, we take the position that where a claimant believes regulations are vague, they have an obligation to seek clarification from the government, not to default on their obligations unilaterally. Nevertheless, a court could be persuaded that this "to the greatest extent" language is too slippery to form the basis for an FCA claim.

IV. Most Recent Discussions with the City

On September 6, we met with the City's outside counsel at Civil Frauds. The City continued to argue that any non-compliance with Section 3 was not willful, and that it reasonably believed its programs to benefit minority-owned businesses, women-owned businesses, and small businesses satisfied Section 3, even in the absence of targeted Section 3 programs. It argued that we should not bring the first Section 3 FCA suit against a generally well-intentioned entity, and that a jury would not sympathize with our case. It reiterated these points in a September 14 letter. It further requested that if we decide to recommend in favor of intervention in this matter, it would like to further discuss this matter with "the highest decision-makers" at DOJ and HUD. The City appears uninterested in discussing settlement at this time.

CONCLUSION

For the reasons discussed above we recommend that the United States intervene in this action, and assert False Claims Act claims against the City of St. Paul, Minnesota based on its false certification of Section 3 compliance.

SO APPROVED this 25th day of October 2011.

BY: Gregory G. Brooker
Civil Chief
United States Attorney's Office
District of Minnesota

From: Line Attorney 2

Sent: Tuesday, November 22, 2011 2:54 PM
To: Line Attorney 3
Cc: Line Attorney 1
Subject: FW: Emailing: 2011.11.22 Newell Action Memo - Intervention.rb
Attach: 2011.11.22 Newell Action Memo - Intervention.rb.wpd

Line Attorney 3 - Be aware, this just means the approval has cleared one hurdle. It still needs to be approved in the front office before it is final. - Line Attorney 2

-----Original Message-----
From: Civil Division Admin. Employee
Sent: Tuesday, November 22, 2011 2:52 PM
To: Line Attorney 2; Line Attorney 3
Subject: Emailing: 2011.11.22 Newell Action Memo - Intervention.rb

Memo was signed by Mike Granston for Joyce Branda and sent to the front office via messenger.

Your message is ready to be sent with the following file or link attachments:

2011.11.22 Newell Action Memo - Intervention.rb

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

U.S. Department of Justice

Civil Division

Washington, D.C. 20530

MEMORANDUM FOR TONY WEST
ASSISTANT ATTORNEY GENERAL, CIVIL DIVISION

Re: *U.S. ex rel. Newell v. City of St. Paul, Minnesota*, Case No. 09-SC-001177 (D. Minn.)

DJ No. 46-39-955

REQUEST FOR AUTHORITY TO INTERVENE

TIME LIMIT:	The intervention deadline is November 29. We have sought an extension of the seal until January 13, 2012. At defendant's request, counsel for the City and the Mayor of St. Paul are meeting with Deputy Assistant Attorney General Michael F. Hertz on December 13.
NATURE OF CLAIMS:	*Qui tam* action under the False Claims Act, 31 U.S.C. §§ 3729-3733, alleging that defendant, the City of St. Paul, Minnesota, falsely certified it was in compliance with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. § 1701u) (Section 3) in order to obtain tens of millions of dollars from the Department of Housing and Urban Development (HUD) in the form of community development grants that require compliance with Section 3.
AMOUNT OF CLAIMS:	The total HUD grants the City obtained based on its false certifications were $86,363,362.
CRIMINAL ACTIONS:	There was no criminal investigation.
RECOMMENDATION:	The United States Attorney's Office for the District of Minnesota (Att. A) and HUD (Att. B) recommend that we intervene. We concur.

This False Claims Act (FCA) *qui tam* action was filed in 2009 against the City of St. Paul, Minnesota (the City). Relator, a St. Paul small business owner, alleges that the City failed to comply with Section 3, and that in its annual consolidated federal grant applications, the City falsely certified to HUD that it was in compliance with Section 3. Relator alleges that based on this false certification, the City was given $86 million in federal community development grants. Based on our conclusion that the Relator's allegations are correct, we recommend intervening in this action to assert FCA and common law claims against the City.

BACKGROUND

A. Section 3 of the Housing and Development Act of 1968 (Section 3)

Section 3 requires that employment and other economic opportunities generated by certain HUD financial assistance programs be directed, to the greatest extent feasible, and consistent with existing Federal, State and local law, to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities for low- and very low-income persons.
Section 3 applies to public housing authorities, and to other grant recipients (recipients) who get funds from certain HUD housing and community development programs.[1] Section 3 only applies to funding for projects that involve the construction or rehabilitation of housing, or other public construction. Section 3 applied to grants made to the City of St. Paul during the relevant time period.

Section 3 is race and gender neutral. Preferences are based on income-level and location. HUD's Section 3 regulations require recipients of HUD funding to direct new employment, training, and contracting opportunities to low-income residents, and to businesses that employ them without regard to race or gender.

HUD regulations establish that Section 3's requirements apply to recipients of community development assistance exceeding $200,000 from all sources in any year, and to contractors and subcontractors working for such grant recipients that get contracts in excess of $100,000. The regulations establish numerical goals for grant recipients and contractors. Thirty percent of new hires on covered projects have to be Section 3 residents, ten percent of the dollars awarded for covered contracts have to be awarded to Section 3 businesses, and three percent of the dollars awarded for non-construction Section 3 contracts (i.e. professional services contracts awarded in connection with Section 3 contracts) have to be awarded to Section 3 businesses. These numerical goals are minimum targets. If a recipient or contractor meets the goals, they are considered to be in compliance with Section 3, absent evidence to the contrary. If recipients or contractors fail to meet the goals, they have to document the efforts they took to try to meet them.

Grant recipients have to comply with Section 3 in their own operations, and to ensure compliance in the operations of their contractors and subcontractors. Recipients have to establish procedures to: notify Section 3 residents about Section 3 training and employment opportunities; notify Section 3 business concerns about Section 3 contracting opportunities; notify contractors about Section 3 requirements; include the required Section 3 contract clause in all solicitations and contracts; facilitate the training and employment of Section 3 residents and the award of contracts to Section 3 businesses; assist and actively cooperate with HUD in obtaining the compliance of contractors and subcontractors; document actions taken to comply with Section 3; and, retain compliance records for HUD review. Each recipient also has to submit an annual Form HUD 60002 report to allow HUD to evaluate the effectiveness of Section 3.

To qualify for federal grants, and to draw funds from such grants, fund recipients have to certify each year, in HUD Action Plans, that they "will comply with Section 3."

B. Results of Our Investigation

The City was required to comply with the statute. Our investigation confirms that the City failed to do so. During

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[1] Section 3 applies to the following HUD programs: Community Development Block Grant (CDBG); HOME Investment Partnership (HOME); Neighborhood Stabilization Program Grants (NSP 1, 2 & 3); Economic Development Initiative (EDI); Brownfield Economic Development Initiative Grants; Housing Opportunities for Persons with AIDS (HOPWA); Homeless Assistance Grants (ESG); University Partnership Grants Economic Stimulus Funds (including CDBG-R and CFP Supplemental) 202/811 Grants; Lead Hazard Control Grants.

the relevant period the City: made no effort to comply with Section 3's numerical goals; did not notify Section 3 residents or business concerns about training, employment or contracting opportunities; made no effort to facilitate Section 3 training or employment or the award of Section 3 contracts; made little or no effort to obtain the compliance of contractors with Section 3; did not maintain required documentation; and never submitted a HUD 60002 annual report. In most City contracts we reviewed, there was no Section 3 language at all. In some contracts, there was minimal Section 3 language, but we never saw the required seven paragraph Section 3 contract language in any City solicitation or contract.

Our investigation also established that the City was repeatedly put on notice that it was out of compliance with Section 3, but never took steps to cure that lack of compliance. Late in our investigation, the City retained outside counsel, who now argue that the City did not knowingly violate Section 3, and that any failure to comply was inadvertent. Essentially, the City now asserts that it believed it was complying with Section 3 through initiatives intended to benefit minority-owned, women-owned and small businesses.

C. The City's History of Section 3 Non-Compliance

In 1983, Mr. James Milsap filed a letter-complaint with HUD alleging that St. Paul was in violation of Section 3 and Title VI of the Civil Rights Act of 1964. HUD's resulting investigation found Section 3 violations. In 1984, the matter was resolved when the City and HUD entered into a Voluntary Compliance Agreement (VCA) and associated plan of compliance. The 1984 VCA and plan lay out in detail what the City had to do to comply with Section 3. The City's Deputy Director of Community Development told HUD that the plan would be incorporated into the City's Compliance Users Manual and monitoring of Section 3.

In 1989, Mr. Milsap filed a federal lawsuit against HUD and the City alleging that the City continued to be in violation of Section 3. Moving to dismiss the suit, the City directed the Court to its 1984 Section 3 Plan of Compliance. The case was eventually dismissed on procedural grounds and based on the fact that there is no private right of action under Section 3. The Court did not reach the question of the City's compliance with Section 3's requirements.

In 2003, Mr. Edward McDonald, a City employee, told the City in an e-mail and in reports, that the City "may not" have "completely complied with . . . federal Section 3..." The City subsequently fired Mr. McDonald. In our interview of Mr. McDonald, he confirmed that he told his managers that the City was not complying with Section 3 and told them how the City could comply, but that his Managers were uninterested and took no action.

Most recently, Nails Construction Company, a company owned by Frederick Newell, our relator, sued the City in federal court in 2009, alleging that the City was out of compliance with Section 3, and submitted a parallel administrative complaint to HUD alleging the same failure. The lawsuit was dismissed on the grounds that there was no private right of action under
Section 3. Again, there was no finding as to whether the City was in compliance with Section 3.

In the administrative proceeding that was the result of the Nails Construction HUD complaint, HUD determined the City was out of compliance with Section 3. The City initially contested that finding, but dropped its challenge in order to renew its eligibility to compete for and secure discretionary stimulus HUD funding. The City agreed to enter into a new Voluntary Compliance Agreement, which requires it to take a number of affirmative steps to come into compliance with Section 3.

We interviewed multiple project managers, who would have been responsible for implementing Section 3 on various projects. All indicated they did little if anything to comply with Section 3, and many admitted they were unaware of Section 3's requirements during the relevant time period. To the extent employees asserted the City had complied with Section 3, they relied on the City's efforts to comply with minority- and woman- owned contracting initiatives. City employees admitted they now understand that while there may be some overlap between those initiatives and Section 3, such programs

do not satisfy Section 3's requirements.

HUD will have to admit, and has publically acknowledged, that for a significant period of time it was not focused on Section 3 compliance anywhere in the country. HUD employees conducted annual reviews of St. Paul and regularly approved the City's Action Plans and Consolidated Annual Performance and Evaluation Reports, and conducted on site performance reviews, but did not notice or flag the City's Section 3 deficiencies. As described above, however, in the 1980's and again in 2010, when HUD did focus on Section 3 and St. Paul, it found the City to be out of compliance.

D. Damages

The total HUD awarded to the City in development grants is over $86 million. A substantial portion of that money was devoted to construction projects subject to Section 3. The precise amount is not tracked by HUD and will have to be obtained from the City. The most aggressive damages position to be taken here, based on *United States ex rel. Longhi v. Lithium Power Techs., Inc.*, 575 F.3d 458, 473 (5th Cir. 2009), is that the entire amount of the construction grants to the City are forfeited because Section 3 is designed to benefit third parties, so there is no tangible benefit to the government and the intangible benefit is impossible to calculate; thus, it is appropriate to value damages in the amount the government actually paid to the City. We acknowledge this is an aggressive position, and that some less aggressive approach may be needed for trial. To date, however, we have not yet determined an alternative approach.

DISCUSSION

The City knew about its obligation to comply with Section 3, and knew or should have known how to do so, but failed to comply. The City was repeatedly reminded of its obligations under Section 3. The City repeatedly and falsely told HUD and others it was in compliance. The City knowingly submitted false claims in order to obtain federal funds.

Each time its compliance with Section 3 was challenged, the City had an opportunity to consult the Section 3 statute and regulations and to compare their requirements with the City's activities. Even a cursory examination of the City's practices would have revealed the City's noncompliance. Instead, the City simply and repeatedly told whoever challenged it that it was in compliance with the statute.

To qualify for HUD grant funds, the City was required to certify each year that it was in compliance with Section 3. The City then made claims for payment, drawing down its federal grant funds. Distribution of funds by HUD to the City was based on the City's certifications. Each time the City asked HUD for money, it impliedly certified its compliance with Section 3. At best, the City's failure to take any steps towards compliance while continually telling federal courts, HUD and others that it was in compliance with Section 3 represents a reckless disregard for the truth. We believe its certifications of Section 3 compliance to obtain HUD funds were actually more than reckless and that the City had actual knowledge that they were false.

For much of our investigation, the City did not seriously dispute that it had been out of compliance with Section 3 during the relevant time period. The City's new outside counsel have now, however, raised a number of arguments against liability. We address them in turn.

Lack of Requisite Intent: The City will argue that it reasonably believed minority- and women-owned business programs satisfied Section 3. This is, of course, contrary to explicit

statements made by HUD to program recipients. In making this argument the City relies on the 1984 VCA it entered into with HUD, which makes reference to tracking the number of minorities and women affected by the VCA in various respects. That VCA, however, was in response to a dispute about gender and race discrimination issues as well as the Section 3 violation. It is not surprising, then, that gender, minority and income issues were addressed in the VCA, and the fact that the 1984 VCA requires the City to track race and gender data does not change the requirements of Section 3, which are gender and race neutral. Further, shortly after the 1984 VCA went into effect, the City entered into the very detailed plan of compliance that described all the things it needed to do to comply with Section 3. The City knew how to comply with Section 3.

Government Knowledge/Materiality: The City argues that even if it was violating Section 3, its violation cannot form the basis for an FCA claim because HUD was aware of its failures, and did nothing to address the problem. In 1985, HUD conducted an investigation in response to a Section 3 complaint by a Mr. William Davis, and concluded that the City was complying with Section 3. There is also a HUD affidavit in the 1989 Milsap litigation, where HUD says that the City was doing an adequate job of complying with Section 3. We are not aware of any other or more recent actual approval of the City's conduct by HUD. Given the age

of these approvals and the more recent specific evidence of the City's Section 3 default, we do not expect them to block our claim.

The City will argue that even if HUD did not say it explicitly, HUD's silence over many years is tacit approval. We will have to admit that the City was failing to comply with Section 3 in ways that should have been apparent to HUD. The City did not send HUD its HUD 60002 forms each year. HUD never objected to this failure. The City will argue that HUD was so unconcerned with Section 3 compliance that the City's failure to comply did not affect, or could not have affected a HUD decision to pay.

The City will argue that HUD's failure to monitor its Section 3 compliance was consistent with HUD's general lack of oversight of Section 3 during the relevant period. The City has already noted that previous federal administrations were not concerned with Section 3
(a position with support in recent HUD public comments), and that it is unfair to require a City to make a boilerplate certification each year, ignore the City's non-compliance year-after-year, and then seek FCA relief when a new administration comes in that is more concerned with compliance with Section 3.

We believe we will be able to establish that HUD never approved of the City's failures, that silence is not approval, and that this program is designed as a self-monitoring program, with the City responsible for its own compliance. Any lack of attention by HUD does not change the City's legal obligations, or its default.

Prospective Certifications, and Not a Condition of Payment: The City will argue that its certifications were only that it "will" comply, not that it had done so.

In *United States ex. rel. Vigil v. Nelnet*, 2011 WL 1675418 (8th Cir. May 5, 2011), the Eighth Circuit distinguished between false statements made to induce the payment of a claim, and those made to qualify for a government program. The Court drew a distinction between conditions of payment and conditions of participation. The Appeals Court held that the former could be the basis for an FCA claim but the latter could not.

In *Vigil,* the defendant had to comply with certain Department of Education (DOE) regulations to qualify to participate in a program where it could make government subsidized student loans. The *Vigil* relator alleged that when the defendant lender submitted claims for interest subsidies on student loans it made, and for default insurance related to such loans, without being in compliance with the participation regulations, those claims were false. Under the relevant DOE regulations, however, once a lender was enrolled in the program, their eligibility continued until after a contrary decision in a contested termination proceeding. The lender explicitly continued to be eligible under the program until the termination proceeding was complete. In addition, under the regulations termination did not affect a lender's rights or responsibilities related to its prior loans. In these circumstances, the Court held that the lender's certification that it was an eligible lender was a condition of participation, not payment.

The Section 3 regulations provide procedures for compliance reviews, and administrative complaints, procedures and time lines for cure of identified deficiencies, and sanctions for continuing failure or refusal by a recipient or contractor to comply with HUD's regulations, including remedies under the CDBG or HOME programs (which include contested administrative hearings), debarment, suspension or limited denial of participation. Given these procedures there is a risk a trial court in the Eighth Circuit will consider the annual certifications in this case conditions of participation that will not support an FCA claim.

We will argue, to the contrary, that the annual certifications made in the Section 3 HUD program, that have to be made repeatedly by jurisdictions that have already applied for, been approved for and been allocated federal funds, are distinguishable from the certification in Vigil. We will be able to show that the City has previously acknowledged in a

number of documents in prior litigation that "[c]ompliance with the provisions of section 3 is a condition for the receipt of federal funds. . . ." *See* 1991 Affidavit of City employee Jacqui Shoholm. This question will present issues of fact and law. The possibility that we could lose this argument is an aspect of the litigation risk presented.

Administrative Remedies: The City will argue that if HUD finds that a grantee is out of compliance with Section 3, it has a number of administrative options and procedures to deal with the non-compliance, including suspension and debarment. The City will argue that permitting FCA liability in this context is akin to transforming a discretionary administrative remedy into a mandatory and harsh penalty. We believe this argument is not well taken. The FCA provides a remedy that is distinct from and designed to be supplemental to any available administrative remedies.

Vagueness: The City will argue that the phrase "to the greatest extent feasible" is vague and ambiguous, and that it cannot provide the basis for an FCA claim. We do not believe this is a strong argument for the City. First, the argument ignores HUD's regulations. Although the broad statement in the statute and in the first paragraph of the regulations is general, some of HUD's Section 3 regulations are more specific, weakening the vagueness argument. Second, this argument might be more effective if the City were making some effort to comply with Section 3 but falling short of full compliance. Given the City's complete failure even to try to comply with Section 3, we do not think a vagueness argument is well taken. Finally, we take the position that where a claimant believes regulations are vague, they have an obligation to seek clarification from the government, not to default on their obligations unilaterally.

RECENT DISCUSSIONS WITH THE CITY

On September 6, we met with the City's outside counsel. During the meeting the City made legal and policy arguments against government intervention in this case. The City argued that there has never been a Section 3 FCA case, because such a claim is inappropriate given the lack of precision in the "to the greatest extent feasible" requirement. The City argued that an FCA case, which if successful will burden St. Paul taxpayers, is undesirable. The City argued that it has been a constructive HUD partner over the years, and should not be punished here. The City believes a claim is particularly unattractive given that when its Section 3 deficiencies were identified in the recent administrative action, the City entered into a VCA and is now held up by HUD as a model Section 3 participant, and as a model for other jurisdictions.

The City asked that if we decide to recommend in favor of intervention in this matter, it be allowed to discuss this matter with "the highest decision-makers" at DOJ and HUD. A meeting has been scheduled with Deputy Assistant Attorney General Michael F. Hertz for December 13, 2011. The Mayor of St. Paul, Christopher Coleman, and the United States Attorney for the District of Minnesota, B. Todd Jones, will attend the meeting.

Although we acknowledge that there are significant potential policy issues associated with this case, we note that St. Paul's reform, in response to the threat of missing out on stimulus funds, does not mean it complied with the program prior to that reform. We believe this is a particularly egregious example of false certifications given by a City that was repeatedly shown what it had to do, but repeatedly failed to do it.

We have offered to enter into settlement discussions with the City on a number of occasions. The City's final position is that if a settlement will require the payment of funds, the City is not interested in an agreement. The City appears uninterested in further settlement discussions at this time.

CONCLUSION

For the reasons discussed above we recommend that the United States intervene in this action, and assert False Claims Act claims against the City of St. Paul, Minnesota based on its
false certification of Section 3 compliance, and that the United States assert common law fraud, unjust enrichment and

payment by mistake claims as well.

Joyce R. Branda
Director
Commercial Litigation Branch

Attachments

Reviewer: [redacted]

Senior Trial Counsel: [redacted]

AUSA: [redacted]

MEMORANDUM FOR FILE

Re: *U.S. ex rel. Newell v. City of St. Paul, Minnesota,*
Case No. 09-SC-001177 (D. Minn.)

DJ No. 46-39-955

Authority is hereby granted to intervene in the above-referenced *qui tam* action to assert False Claims Act, common law fraud, unjust enrichment and payment by mistake claims against the City of St. Paul, Minnesota based on the City's false certification of compliance with Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. § 1701u.

_____

Tony West
Assistant Attorney General
Civil Division

Dated: _____

SUMMARY

Section 3 of the Housing and Urban Development Act of 1968 (Section 3) requires that employment and other economic opportunities generated by certain Department of Housing and Urban Development (HUD) financial assistance programs be directed, to the greatest extent feasible, and consistent with existing Federal, State and local law, to low- and very-low-income persons, particularly those who are recipients of certain government assistance for housing, and to business concerns which provide economic opportunities for low- and very low-income persons.

The instant *qui tam* case alleges that the City of St. Paul, Minnesota, was required to comply with Section 3 but failed to do so. At best, the City's failure to take any steps towards compliance with Section 3, while continually telling HUD and others to the contrary, represents a reckless disregard for the truth. We therefore recommend that the United States intervene in the instant *qui tam* action and add common law claims of fraud, unjust enrichment and payment by mistake against the City. The City has asked, if we make this recommendation, that it be allowed to talk to the ultimate Department decision-maker to explain why intervention is not warranted. The City has already met with Director Joyce Branda. A meeting with the City and Deputy Assistant Attorney General Michael Hertz is scheduled for December 13, 2011.

RELATOR'S COUNSEL

Thomas F. DeVincke
Bonner & Borhart LLP
1950 US Bank Plaza
220 South Sixth Street
Minneapolis, Minnesota 55402
(612) 313-0735

DEFENDANT'S COUNSEL

John W. Lundquist
David L. Lillehaug
Fredrikson & Byron. P.A.
200 South Sixth Street, Suite 4000 Minneapolis, MN 55402-1425
(612) 492-7000

From: Pratt, Sara K [RC-1]
Sent: Sunday, November 13, 2011 2:59 PM
To: Perez, Thomas E (CRT)
Subject: Magner

Michael Allen and John Relman are going to meet with the appellees counsel a week from tomorrow (next Monday) to find out what blandishments will be needed. For one of the attorneys, passing the hat may be necessary—there ARE still some fees and damages questions. There are other efforts going on by St. Paul players (Myron Orfield, Jay Wilkinson) with the city players and lawyers.

Sara K. Pratt
Deputy Assistant Secretary for Enforcement and Programs
Department of Housing and Urban Development
451 Seventh Street, SW
Room RC-1
Washington, D.C. 20410
RC-1 (direct line)

From: Fraser, Thomas [RC-1]
Sent: Tuesday, November 22, 2011 7:07 PM
To: Perez, Thomas E (CRT)
Subject: RE: Question

Tom -

As I mentioned when we first talked, we have one matter in which we represent the City of St. Paul. My partner, David Lillehaug, represents the City of St. Paul in that matter, which potentially involves the federal government. He is also somewhat of a political mentor to the City Attorney. He learned of my involvement in this matter via my call to my friend, the City's Head of the Civil Division, who I am sure mentioned it to the City Attorney. (I mentioned all of this to John and Michael yesterday.) He asked me what I knew about this and I told him of my limited role and that John and Michael were trying to work out a resolution.

He (David) has talked to the City Attorney after John and Michael's meeting with her. David would like to talk to you about this other potential federal issue, which (I think) he thinks might bear on the City's handling of the case that Michael and John are working with the City on. I made no commitment to him other than to say I would ask you if you wanted to be in on a three-way call with me and David. By way of background, David was U.S. Attorney for Minnesota under Clinton and, like you, was a candidate for office.

I am going to NYC tomorrow morning with my family for the Macy's parade and assorted festivities, but I could put together a call with David tomorrow afternoon if you are interested and willing.

Tom

P.S. I just saw your email. Happy Thanksgiving to you as well.

-----Original Message-----
From: Perez, Thomas E (CRT) [mailto:RC-1]
Sent: Tuesday, November 22, 2011 2:58 PM
To: Fraser, Thomas
Subject: Re: Question

Thx so much for your help. I am most grateful for your willingness to assist. It is critically important to get someone like you who has local and national respect involved.

Tom

----- Original Message -----
From: Fraser, Thomas [mailto:RC-1]
Sent: Friday, November 18, 2011 12:15 AM
To: Perez, Thomas E (CRT)
Subject: Re: Question

Will call in the morning.

----- Original Message -----
From: Perez, Thomas E (CRT) [mailto:RC-1]

Sent: Thursday, November 17, 2011 08:13 PM
To: Fraser, Thomas
Subject: Question

Tom

I hope you are well. I am sorry about your Vikings. As a lifelong Buffalo Bills fan, I have grown accustomed to playing for draft position.

I had a work related matter I was hoping to discuss with you if you have a free moment in the next 24 hours. If you are able to give me a shout on my cell, I would be most grateful.
202[redacted]

Take care

Tom Perez

From: Perez, Thomas E (CRT)
Sent: Wednesday, November 23, 2011 2:29 PM
To: 'Sara Pratt [redacted]
Subject: Re: Magner

Can u call me asap at 202[redacted]

From: Pratt, Sara K [[redacted]]
Sent: Sunday, November 13, 2011 02:58 PM
To: Perez, Thomas E (CRT)
Subject: Magner

Michael Allen and John Relman are going to meet with the appellees counsel a week from tomorrow (next Monday) to find out what blandishments will be needed. For one of the attorneys, passing the hat may be necessary—there ARE still some fees and damages questions. There are other efforts going on by St. Paul players (Myron Orfield, Jay Wilkinson) with the city players and lawyers.

Sara K. Pratt
Deputy Assistant Secretary for Enforcement and Programs
Department of Housing and Urban Development
451 Seventh Street, SW
Room [redacted]
Washington, D.C. 20410
[redacted] (direct line)

RC-1)

From: Perez, Thomas E (CRT)
Sent: Wednesday, November 23, 2011 2:33 PM
To: West, Tony (CIV)
Subject: Re: RC-2

Tony

So sorry to bother u the day before thanksgiving. I was wondering if I could talk to you today if possible about a separate matter of some urgency. My cell is 202 RC-1

Tom

RC-2: Non-responsive text in multi-subject document.

From: Line Attorney 3
To: Line Attorney 4
Sent: 11/28/2011 11:09:56 AM
Subject: RE: Magner v. Gallagher

Very interesting—man, you really never know what HUD is going to do.

From: Line Attorney 4
Sent: Monday, November 28, 2011 9:40 AM
To: Line Attorney 3
Subject: Magner v. Gallagher

Interesting blog on developments in HUD disparate impact case before Supreme Court:

http://lenderscompliance.blogspot.com/2011/11/empire-strikes-back-hud-fair-lending.html

Notes of Greg Friel

call w/ Tom, Jocelyn, Vicki & Eric 4/28/11

- Magner

- Search for leverage

(1) - aware of:

merger of St Paul - [illegible]
mentor is Mondale

he doesn't want to get
[illegible] accomplished

(2) learned late

False Claims Act case been
filed vs. City of St Paul

re 3 of Housing & Urban
Dev Act of 68

best possible effort

a disgruntled contractor
has filed a claim

- CIV & HUD ~~[illegible]~~
considering to intervene

[redacted] [redacted] [redacted]

gen'l counsel at HUD —
believes Magner case
& would have no problem on
behalf of HUD not doing
this

HUD is willing to leverage
case ~~&~~ to help resolve [illegible]
case.

St Paul is in vet of AG &
Tony West
would look favorable

Reps are flying to DC today
to meet w/ their senators
to apply pressure on AG &
Tony West.

— Tony [illegible] 3 night

— Burkho - [illegible] [illegible]

> Need to happen

– make sure he knows not to tell of we're filing top side

① Need to talk to Sri

② Cannot tell John Robson about other source coverage

③ If have to file top side we need

④ Tried to keep ~~them~~ us out of [illegible].

Toni [illegible] want to talk to Bill.

Ideal resolution:

– [illegible] Mapping [illegible] [illegible] [illegible] cost

– Other case goes away.

From: Civil Rights Division Ethics Officer
Sent: Monday, November 28, 2011 3:53 PM
To: Perez, Thomas E (CRT)
Subject: ethics question

Tom,

You asked me whether there was an ethics concern with your involvement in settling a Fair Lending Act challenge in St. Paul that would include an agreement by the government not to intervene in a False Claims Act claim involving St. Paul. You indicated that you have no personal or financial interest in either matter. Having reviewed the standards of ethical conduct and related sources, there is no ethics rule implicated by this situation and therefore no prohibition against your proposed course of action. Please let me know if you have any questions.

Civil Rights Division Ethics Officer

Notes of Michael Maurer

11/28/11

VICKI, ERIC

unrelated matters

- Matter w/ which DOJ not a party – strong interest in outcome – public entity, private π
- 2d matter – potential matter – False Claims Act – public entity in 1st matter
(private entity files FCA matter – Civil assesses whether gov't will get involved)
→ Civil doesn't know whether Civ has come to a decision

- Q: Any issue if someone fr DOJ meeting w/ lawyer for public entity
- A: Any concerns about quid pro quo
- Defense same lawyer in both matters – City's Council
- Civil will know about meeting
- Appearance issue: would be open to dismissing 1st matter if DOJ will not intervene in 2d matter

MRPC: – Rule 1.6.
– Impliedly authorized to negotiate for US
– US is singular client

11/29/11

RC-2: Non-responsive text in multi-subject document.

→ Duty of fairness / duty to be truthful

Be clear /

→ Confidentiality of information – in process –
duty not to reveal Rule 1.6
* prohibits disclosure, but exceptions
* disclosure is impliedly authorized
– As long as here
– Delegated authority to speak for the client

Sara Greene Represent clients zealously

Counsel ← David Lillehaug – (612) RC-1
Counsel for City

From: Brooker, Greg (USAMN)
To: Line Attorney 3
Sent: 11/30/2011 10:48:26 AM
Subject: RE: Agency Recommendation Regarding Intervention in Newall

HUD is so messed up.

Greg

From: Line Attorney 3
Sent: Wednesday, November 30, 2011 9:46 AM
To: Brooker, Greg (USAMN)
Subject: FW: Agency Recommendation Regarding Intervention in Newall

Quite a change in the HUD case. I just talked to Line Attorney 2, but he doesn't really have any more detail than this. We'll work on figuring out what's going on with this.

From: Line Attorney 2
Sent: Wednesday, November 30, 2011 8:44 AM
To: Line Attorney 3
Cc: Line Attorney 1
Subject: Agency Recommendation Regarding Intervention in Newall

Line Attorney 1 called me briefly from a mediation yesterday, so I have very little detail, but she tells me HUD has changed its mind and now recommends that we decline to intervene in the Newell case. When you get a moment lets discuss.

* * * * *

Line Attorney 2

Senior Trial Counsel

Civil Division, Commercial Litigation Branch, Frauds Section

United States Department of Justice

Patrick Henry Building

Room RC-1

601 D. Street, N.W.

Washington, D.C. 20004

RC-1

From: Perez, Thomas E (CRT)
Sent: Wednesday, November 30, 2011 3:14 PM
To: West, Tony (CIV)
Subject: Re: St. Paul

I am confident that position has changed. You will be hearing from Helen today.

----- Original Message -----
From: West, Tony (CIV)
Sent: Wednesday, November 30, 2011 03:07 PM
To: Perez, Thomas E (CRT)
Subject: St. Paul

Have more info on this. HUD formally recommended intervention. Let's discuss.

From: HUD Line Emp.
Sent: Thursday, December 1, 2011 10:08 AM
To: Line Attorney 1
Cc: Aronowitz, Michelle <RC-1>
Subject: St. Paul Qui Tam

Line Attorney 1 This is to confirm our telephone conversation of Tuesday night in which I informed you that HUD has reconsidered its support for intervention by the government in the St. Paul qui tam matter. HUD has determined that intervention is not necessary because St. Paul's programmatic non-compliance has been corrected through a Voluntary Compliance Agreement with HUD.

If you have any questions, please feel free to contact me. HUD Line Emp.

RC-1

From: Perez, Thomas E (CRT)
Sent: Thursday, December 01, 2011 10:59 AM
To: 'Kanovsky, Helen R'
Subject: RE: So sorry

Thx for that update.

-----Original Message-----
From: Kanovsky, Helen R [mailto RC-1
Sent: Thursday, December 01, 2011 10:50 AM
To: Perez, Thomas E (CRT)
Subject: RE: So sorry

I hope OK. He was aware of our communication to his staff earlier and asked for it in writing. We sent Line Attorney 1 the requested email this morning.

-----Original Message-----
From: Perez, Thomas E (CRT) [mailto RC-1
Sent: Wednesday, November 30, 2011 7:20 PM
To: Kanovsky, Helen R
Subject: Re: So sorry

How did things go with Tony?

----- Original Message -----
From: Kanovsky, Helen R [mailto RC-1
Sent: Tuesday, November 29, 2011 07:18 AM
To: Perez, Thomas E (CRT)
Subject: RE: So sorry

I'm in my office. Feel free to call 202- RC-1 .

-----Original Message-----
From: Perez, Thomas E (CRT) [mailto RC-1
Sent: Monday, November 28, 2011 9:58 PM
To: Kanovsky, Helen R
Subject: Re: So sorry

Can we talk tomorrow morning for 5 minutes regarding a time sensitive matter? My cell is 202 RC-1 . I am just landing in bwi so you could get me for the next hour or alternatively, we could talk tomorrow.

Tom

----- Original Message -----
From: Perez, Thomas E (CRT)
Sent: Wednesday, November 23, 2011 02:30 PM
To: Helen Kanovsky ' RC-1
Subject: So sorry

To bother you the day before thanksgiving, but can we talk today about a rather urgent matter

Tom

202[redacted] is my cell

RC-1 [redacted]

From: Perez, Thomas E (CRT)
Sent: Thursday, December 01, 2011 2:24 PM
To: West, Tony (CIV)
Subject: RE: RC-2 [redacted]

RC-2 [redacted]

On a different matter, it is my understanding you have received a formal request from the other agency. Would love to catch up for 3 minutes if we could. (Perhaps at RC-1 [redacted] party if possible).

RC-2: Non-responsive text in multi-subject document. [redacted]

Tom

-----Original Message-----

RC-2: Non-responsive text in multi-subject document. [redacted]

From: Line Attorney 1 [redacted]

Sent: Friday, December 2, 2011 11:59 AM

To: Branda, Joyce (CIV) <RC-1 [redacted]>

Subject: Friday Report

U.S. ex rel. Newell v. City of St. Paul, MN. HUD sent an email stating that "HUD has reconsidered its support for intervention by the government in the St. Paul *qui tam* matter. HUD has determined that intervention is not necessary because St. Paul's programmatic non-compliance has been corrected through a Voluntary Compliance Agreement with HUD." [redacted] HUD Line Emp. said that if DOJ wants further information about what is driving HUD's decision, someone high level within DOJ might need to call Helen Kanovsky because he does not have any further information. Line Attorney 2 spoke with Tim Moran/Deputy in Civil Rights who said that Civil Rights was not handling the *Gallagher* 8th Circuit case. Greg Friel supervises the Appellate Division for Civil Rights. He is handling the *Gallagher* case. He never heard of the *Newell* case, so he cannot imagine how the *Gallagher* case can be affecting the *Newell* case.

RC-2: Non-responsive text in multi-subject document.

From: Line Attorney 3
To: Brooker, Greg (USAMN)
Sent: 12/2/2011 12:02:54 PM
Subject: FW: Newell

Weirdness

From: Line Attorney 1
Sent: Friday, December 02, 2011 11:01 AM
To: Line Attorney 3; Line Attorney 2
Subject: Newell

Here is the update I just sent my Director, fyi…

U.S. ex rel. Newell v. City of St. Paul, MN. HUD sent an email stating that "HUD has reconsidered its support for intervention by the government in the St. Paul *qui tam* matter. HUD has determined that intervention is not necessary because St. Paul's programmatic non-compliance has been corrected through a Voluntary Compliance Agreement with HUD." HUD Line Emp. said that if DOJ wants further information about what is driving HUD's decision, someone high level within DOJ might need to call Helen Kanovsky because he does not have any further information. Line Attorney 2 spoke with Tim Moran/Deputy in Civil Rights who said that Civil Rights was not handling the *Gallagher* 8th Circuit case. Greg Friel supervises the Appellate Division for Civil Rights. He is handling the *Gallagher* case. He never heard of the *Newell* case, so he cannot imagine how the *Gallagher* case can be affecting the *Newell* case.

Line Attorney 1
Assistant Director
U.S. Department of Justice
Civil Division
Commercial Litigation Branch
Fraud Section
601 D Street N.W.
Suite RC-1
Washington, DC 20004
(202) RC-1

From: Hertz, Michael (CIV) </O=USDOJ/OU=CIVIL/CN=RECIPIENTS/CN=MAILBOXES/CN=MHERTZ>
Sent: Tuesday, December 6, 2011 1:58 PM
To: Branda, Joyce (CIV) <RC-1>
Cc: Line Attorney 1; Line Attorney 2 <Line Attorney 2>
Subject: RE: The Gallagher decision -- to provide context for Newell

---

US ex rel. Ellis v. St Paul:

1) Who is Ellis? (Any relationship between Ellis, Newell and Gallagher or any other named plaintiffs in the cases) (How about relationships between plaintiff's law firms and/or lawyers?)

2) How is this case similar to the Westchester case? I don't recall the fact pattern in Westchester. I don't recall that dace involved condemning and knocking down buildings. I do recall that Westchester was taking some actions (perhaps zoning) without considering certain factors they were required to consider before taking those actions.

3) I also recall that Civil Rights had some concerns in connection with the Westchester case. What were those concerns? How were those concerns ultimately addressed?

From: Branda, Joyce (CIV)
Sent: Monday, December 05, 2011 7:05 AM
To: Hertz, Michael (CIV)
Subject: Fw: The Gallagher decision -- to provide context for Newell

Yes. See below. I am not sure ow gallagher impacts newell.

From: Line Attorney 2
Sent: Wednesday, November 30, 2011 05:40 PM
To: Branda, Joyce (CIV); Line Attorney 1
Subject: RE: The Gallagher decision -- to provide context for Newell

Oops – Although I can't imagine you really want to read it – since it was promised – here is the attachment (a copy of the *Gallagher* opinion).

From: Line Attorney 2
Sent: Wednesday, November 30, 2011 5:37 PM
To: Branda, Joyce (CIV); Line Attorney 1
Subject: The Gallagher decision -- to provide context for Newell

Joyce and Line Attorney 1

Based on my discussion with Joyce this afternoon I offer the following summary of the *Gallagher* Civil Rights case from

Notes of [Line Attorney 2]

Joyce, Mike H., [redacted] 12/07

Gallagher - no one wants up There
- Civil Right concerned about bad law
- ~~Prof~~ It have to file - would have to come out against St. Paul
- This could be disparate impact

St. Paul does not want to be on other side of suit
In our qui tam as Gallagher

Civil Rights wants a settlement
St. Paul brought up another case

Conv. bet. St. Paul & HUD
Probably disc - will continue
St. Paul wants to say we are in compliance w/ §3

~~[redacted]~~
- Still going to have a meeting

- Mayor of St. Paul -
Political protege of Mondale
Who wrote fair housing act
Uncomfortable position

Can we get an extension

St. Paul will continue to discuss w/ HVD

Mike - said we should be involved

Should we

Get extension in - Ellis, - Newell — ext. & lim. lift of the seal

St. Paul coming in to meet on other case

As VSAtty Gjica to see if they have view

Should we push Chandler to be involved

* Get Helen's #

Lillehaug

Notes of Joyce Branda

12-7-11

Newdle

Gallagher - No one wants it there - Cert R does not want it there

may file a brief

US: Agst St. Paul - disparate impact can be used to assess discrimination

St. Paul opposed disparate impact reversed

St. Paul does not want to oppose U.S. in SCT or in question case

They are being urged to settle the SCT case

CR wants to encourage them to do this

- St. Paul brought up the question case

- St. Paul may have talked to HUD - They want to say this is in compliance of Sec. 3 and that's a good reason to decline

1/19 deadline

Mayor of St. Paul - partner of Wilmerdale father of Fair Housing Act

① Can we get an extension at least temporarily?

Idea - push everything off

② - Will they continue to talk to HUD? Is HUD talking to St. Paul + should we be part of meetings

③ Under seal case - for 2d brief? Ask for extension + bound brief

Talk to USAO about tying cases together — if we are going to ask for limited lift whether we want to cite other cases as reasons

* Try to get some lit'd on AFFH questions

From: Line Attorney 1

Sent: Thursday, December 8, 2011 5:14 PM

To: Branda, Joyce (CIV) <RC-1>

Cc: Line Attorney 2; Civil Division Line Attorney <Civil Division Line Attorney>

Subject: RE: Ellis Order Partial Lift as to Defendants

Joyce—Line Attorney 3 reports that the Relator will oppose our request for an extension in the Newell case. L.A. 3 believes it would be helpful to provide some detail about the discussions with the City in *Gallagher* in our Motion for an Extension, but I do not think you and Mike were in favor of that approach. Do you want us to draft something to that effect and see what you think or ditch the idea altogether?

I think we should include the fact that City is meeting with high level Department of Justice Officials and more time is needed to consider its presentation.

Line Attorney 1

Assistant Director

U.S. Department of Justice

Civil Division

Commercial Litigation Branch

Fraud Section

601 D Street N.W.

Suite RC-1

Washington, DC 20004

(202) RC-1

From: Hertz, Michael (CIV)
Sent: Wednesday, December 07, 2011 12:47 PM
To: Line Attorney 2; Branda, Joyce (CIV); Line Attorney 1
Cc: Schmelzer, Eric (CIV)

Subject: RE: Ellis Order Partial Lift as to Defendants

We're still going to need an extension of the intervention deadline. Perhaps that can wait until after our meeting with the City, since we may want a further extension in the Newell case as well, and then we could coordinate the dates.

From: Line Attorney 2
Sent: Wednesday, December 07, 2011 12:25 PM
To: Branda, Joyce (CIV); Line Attorney 1; Hertz, Michael (CIV)
Cc: Civil Division Line Attorney
Subject: FW: Ellis Order Partial Lift as to Defendants

It turns out D. Minn. already got an order allowing us to disclose the Ellis case to the City at our discretion. I will send a copy to St. Paul's counsel.

From: Line Attorney 4
Sent: Wednesday, December 07, 2011 12:18 PM
To: Line Attorney 2
Subject: Ellis Order Partial Lift as to Defendants

Line Attorney 2

As discussed.

Line Attorney 4

<< File: Docket 9 Order granting extension.pdf >>

RC-1

From: Pratt, Sara K RC-1
Sent: Thursday, December 08, 2011 9:15 PM
To: Perez, Thomas E (CRT)
Subject: RC-2

Yep. Right behind me....

From: Perez, Thomas E (CRT) [mailto:RC-1
Sent: Thursday, December 08, 2011 09:14 PM
To: Pratt, Sara K
Subject: RC-2

Is michelle still here?

From: Pratt, Sara K [mailto:RC-1
Sent: Thursday, December 08, 2011 09:08 PM
To: Perez, Thomas E (CRT)
Subject: RC-2

I hear that.....

From: Perez, Thomas E (CRT) [mailto:RC-1
Sent: Thursday, December 08, 2011 09:07 PM
To: Pratt, Sara K
Subject: RC-2

RC-2: Non-responsive text in multi-subject document.

From: Pratt, Sara K [mailto:RC-1
Sent: Thursday, December 08, 2011 09:05 PM
To: Perez, Thomas E (CRT)
Subject: RC-2

RC-2: Non-responsive text in multi-subject document.

From: Perez, Thomas E (CRT) [mailto:RC-1
Sent: Thursday, December 08, 2011 08:54 PM
To: Pratt, Sara K
Subject: RC-2

RC-2: Non-responsive text in multi-subject document.

From: Pratt, Sara K [mailto:RC-1
Sent: Thursday, December 08, 2011 08:52 PM
To: Perez, Thomas E (CRT)
Subject: RC-2

Yep.

From: Perez, Thomas E (CRT) [mailto:RC-1]
Sent: Thursday, December 08, 2011 08:41 PM
To: Pratt, Sara K
Subject: RC-2

Can we talk before I have to leave. I cannot stay too much longer.

From: Pratt, Sara K [mailto:RC-1]
Sent: Thursday, December 08, 2011 08:35 PM
To: Perez, Thomas E (CRT)
Subject: RC-2

Seeing you across the room...coming over to hAve a conversation.....

From: Perez, Thomas E (CRT) [mailto:RC-1]
Sent: Thursday, December 08, 2011 09:27 AM
To: Pratt, Sara K
Subject: RC-2

The trial atty assigned to the matter is Line Attorney 2. He reports to Line Attorney 1, who can be reached at 202RC-1. Line Attorney 1 in turn reports to Joyce Branda, I am told, who can be reached at 202RC-1. My instinct would be to start with Line Attorney 1, and see how it goes. I do not know any of these folks.
Thx again for agreeing to conduct an independent review of this matter.
Tom

From: Pratt, Sara K [mailto:RC-1]
Sent: Sunday, December 04, 2011 6:01 PM
To: Perez, Thomas E (CRT)
Subject: RC-2

202RC-1. Just left you a message.

From: Perez, Thomas E (CRT) [mailto:RC-1]
Sent: Sunday, December 04, 2011 05:41 PM
To: Pratt, Sara K
Subject: RC-2

Can u give me a shout at 202RC-1 if you get a chance.

Thx

From: Pratt, Sara K [mailto:RC-1]
Sent: Wednesday, November 30, 2011 11:00 AM
To: Perez, Thomas E (CRT)
Subject: RC-2

RC-2: Non-responsive text in multi-subject document.

From: Perez, Thomas E (CRT) [mailto:RC-1]
Sent: Wednesday, November 30, 2011 10:30 AM

To: Pratt, Sara K
Subject: RC-2 [redacted]

RC-2: Non-responsive text in multi-subject document. [redacted]

From: Pratt, Sara K [mailto RC-1 [redacted]
Sent: Tuesday, November 29, 2011 08:54 AM
To: Perez, Thomas E (CRT)
Subject: RC-2 [redacted]

RC-2: Non-responsive text in multi-subject document. [redacted]

From: Perez, Thomas E (CRT) [mailto RC-1 [redacted]
Sent: Tuesday, November 29, 2011 8:45 AM
To: Pratt, Sara K
Subject: RC-2 [redacted]

RC-2: Non-responsive text in multi-subject document. [redacted]

From: Pratt, Sara K [mailto RC-1 [redacted]
Sent: Tuesday, November 29, 2011 08:39 AM
To: Perez, Thomas E (CRT); Schultz, Vicki (CRT)
Subject: RC-2 [redacted]

RC-2: Non-responsive text in multi-subject document. [redacted]

Sara

Sara K. Pratt
Deputy Assistant Secretary for Enforcement and Programs
Department of Housing and Urban Development
451 Seventh Street, SW
Room RC-1 [redacted]
Washington, D.C. 20410
202 RC-1 [redacted] (direct line)

RC-1

From: Kanovsky, Helen R RC-1
Sent: Thursday, December 08, 2011 9:36 PM
To: Perez, Thomas E (CRT)
Subject: Re: So sorry

Sure. Call me now if that works for you.

On Dec 8, 2011, at 9:03 PM, "Perez, Thomas E (CRT)" <RC-1 wrote:

> Helen
>
> I just contacted Sara to get an update on the time sensitive matter we discussed. It appears that there is a step that needs to occur in your office that has not occurred and has therefore prevented progress from occurring. Can I speak to you tonight?
>
> Tom
>
> ----- Original Message -----
> From: Kanovsky, Helen R [mailto:RC-1
> Sent: Sunday, December 04, 2011 05:18 PM
> To: Perez, Thomas E (CRT)
> Subject: Re: So sorry
>
> Surem. Call me at home. 301-RC-1
>
> ----- Original Message -----
> From: Perez, Thomas E (CRT) [mailto:RC-1
> Sent: Sunday, December 04, 2011 05:14 PM
> To: Kanovsky, Helen R
> Subject: Re: So sorry
>
> Do you have a few minutes to catch up? Thx
>
> ----- Original Message -----
> From: Kanovsky, Helen R [mailto:RC-1
> Sent: Thursday, December 01, 2011 10:50 AM
> To: Perez, Thomas E (CRT)
> Subject: RE: So sorry
>
> I hope OK. He was aware of our communication to his staff earlier and asked for it in writing. We sent Line Attorney 1 the requested email this morning.
>
> -----Original Message-----
> From: Perez, Thomas E (CRT) [mailto:RC-1
> Sent: Wednesday, November 30, 2011 7:20 PM
> To: Kanovsky, Helen R
> Subject: Re: So sorry
>
> How did things go with Tony?
>
> ----- Original Message -----
> From: Kanovsky, Helen R [mailto:RC-1
> Sent: Tuesday, November 29, 2011 07:18 AM
> To: Perez, Thomas E (CRT)

> Subject: RE: So sorry
>
> I'm in my office. Feel free to call 202-[redacted].
>
> -----Original Message-----
> From: Perez, Thomas E (CRT) [mailto:[redacted]
> Sent: Monday, November 28, 2011 9:58 PM
> To: Kanovsky, Helen R
> Subject: Re: So sorry
>
> Can we talk tomorrow morning for 5 minutes regarding a time sensitive matter? My cell is 202[redacted]. I am just landing in bwi so you could get me for the next hour or alternatively, we could talk tomorrow.
>
> Tom
>
> ----- Original Message -----
> From: Perez, Thomas E (CRT)
> Sent: Wednesday, November 23, 2011 02:30 PM
> To: [redacted] <[redacted]
> Subject: So sorry
>
> To bother you the day before thanksgiving, but can we talk today about a rather urgent matter
>
> Tom
>
> 202[redacted] is my cell

RC-1

From: Perez, Thomas E (CRT)
Sent: Thursday, December 08, 2011 10:42 PM
To: Sara Pratt
Subject: RC-2

He is expecting your call in the morning

From: Pratt, Sara K [mailto RC-1
Sent: Thursday, December 08, 2011 09:16 PM
To: Perez, Thomas E (CRT)
Subject: RC-2

Table behind me.

From: Perez, Thomas E (CRT) [mailto RC-1
Sent: Thursday, December 08, 2011 09:14 PM
To: Pratt, Sara K
Subject: RC-2

Is michelle still here?

From: Pratt, Sara K [mailto RC-1
Sent: Thursday, December 08, 2011 09:08 PM
To: Perez, Thomas E (CRT)
Subject: RC-2

I hear that.....

From: Perez, Thomas E (CRT) [mailto RC-1
Sent: Thursday, December 08, 2011 09:07 PM
To: Pratt, Sara K
Subject: RC-2

RC-2: Non-responsive text in multi-subject document.

From: Pratt, Sara K [mailto RC-1
Sent: Thursday, December 08, 2011 09:05 PM
To: Perez, Thomas E (CRT)
Subject: RC-2

RC-2: Non-responsive text in multi-subject document.

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Sent: Thursday, December 08, 2011 08:54 PM
To: Pratt, Sara K
Subject: RC-2

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Subject: RC-2

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To: Pratt, Sara K
Subject: RC-2

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From: Perez, Thomas E (CRT) [mailto RC-1
Sent: Sunday, December 04, 2011 05:41 PM
To: Pratt, Sara K
Subject: RC-2

Can u give me a shout at 202 RC-1 if you get a chance.

Thx

From: Pratt, Sara K [mailto RC-1
Sent: Wednesday, November 30, 2011 11:00 AM
To: Perez, Thomas E (CRT)
Subject: RC-2

RC-2: Non-responsive text in multi-subject document. [redacted]

From: Perez, Thomas E (CRT) [mailto RC-1 [redacted]
Sent: Wednesday, November 30, 2011 10:30 AM
To: Pratt, Sara K
Subject: RC-2 [redacted]

RC-2: Non-responsive text in multi-subject document. [redacted]

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Subject: RC-2 [redacted]

RC-2: Non-responsive text in multi-subject document. [redacted]

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Subject: RC-2 [redacted]

RC-2: Non-responsive text in multi-subject document. [redacted]

Sara

Sara K. Pratt
Deputy Assistant Secretary for Enforcement and Programs
Department of Housing and Urban Development
451 Seventh Street, SW
Room RC-1 [redacted]
Washington, D.C. 20410
202 RC-1 [redacted] (direct line)

RC-1 [redacted]

From: Perez, Thomas E (CRT)
Sent: Friday, December 09, 2011 1:08 PM
To: Sara Pratt [redacted]
Subject: Re: Next week

Right now works

----- Original Message -----
From: Pratt, Sara K [mailto:RC-1 [redacted]
Sent: Friday, December 09, 2011 01:04 PM
To: Perez, Thomas E (CRT)
Subject: RE: Next week

Very excellent call. Are you available for me to call you?

-----Original Message-----
From: Perez, Thomas E (CRT) [mailto:RC-1 [redacted]
Sent: Friday, December 09, 2011 1:03 PM
To: Pratt, Sara K
Subject: Re: Next week

Did u get chance to talk to them?

----- Original Message -----

RC-2: Non-responsive text in multi-subject document.

[redacted]

Tom

From: Srinivasan, Sri (OSG)
To: Perez, Thomas E (CRT)
Sent: 12/12/2011 8:58:52 AM
Subject: Re: Magner

Let me know if we should speak before our 1230 mtg. I'll be at the Ct from about 930-1015 but otherwise in the office.

----- Original Message -----
From: Perez, Thomas E (CRT)
Sent: Saturday, December 10, 2011 11:15 PM
To: Srinivasan, Sri (OSG)
Subject: Re: Magner

I will call u tomorrow. I will be in my office most of the day

----- Original Message -----
From: Srinivasan, Sri (OSG) (JMD)
Sent: Saturday, December 10, 2011 11:14 PM
To: Perez, Thomas E (CRT)
Subject: Re: Magner

Tom, have been out of town and out of pocket most of the day. Am back tomorrow and will give a call. My cell is RC-1 [redacted].

-- Sri.

----- Original Message -----
From: Perez, Thomas E (CRT)
Sent: Saturday, December 10, 2011 10:12 AM
To: Srinivasan, Sri (OSG)
Subject: Re: Magner

I was not clear in my question. Do u have cell and I will clarify

----- Original Message -----
From: Srinivasan, Sri (OSG) (JMD)
Sent: Saturday, December 10, 2011 09:57 AM
To: Perez, Thomas E (CRT)
Subject: Re: Magner

I think quite slim if the basis for dismissal would be the proposed reg. I said yesterday that its happened before where a reg was pending during the Ct's consideration of a case and became final before the opinion, but was remiss in not noting that it in fact happened this Term in the Douglas (California Medicaid) case. The Ct asked for supplemental briefing on the impact of the reg. I will speak with the attys principally responsible for the case, but I don't know of a material difference at this point, and my instinct all along as you know is that the reg here would not afford a basis for dismissal. There are also other considerations to take into account, which we can discuss.

----- Original Message -----
From: Perez, Thomas E (CRT)
Sent: Saturday, December 10, 2011 07:36 AM
To: Srinivasan, Sri (OSG)
Subject: Re: Magner

Hypothetical question for you: If the petitioners move to dismiss the petition, what is likelihood of it being granted?

----- Original Message -----
From: Srinivasan, Sri (OSG) (JMD)
Sent: Friday, December 09, 2011 11:27 PM
To: Perez, Thomas E (CRT)
Subject: Magner

Also, wanted to follow up very quickly on the mtgs today on one item. Although I do think the calculus changes a bit if the pltfs move to dismiss the petn, I still have doubts about whether we'd weigh in in support of dismissal based on the proposed reg. We can discuss, but just wanted to let you know my intuition. Thanks Tom.

-- Sri.

From: Line Attorney 2

Sent: Monday, December 12, 2011 9:53 AM
To: Branda, Joyce (CIV) <RC-1>; Line Attorney 1 (Line Attorney 1)
Subject: FW: Saint Paul

John Lundquist, the City's counsel, would like to discuss all three cases tomorrow (*Newell, Ellis and Gallagher*). We, of course, only know a little about *Gallagher*.

From: Line Attorney 3
Sent: Monday, December 12, 2011 9:49 AM
To: Line Attorney 2
Cc: Line Attorney 4; Line Attorney 1
Subject: Saint Paul

John just called—it sounds like they want to discuss all three cases tomorrow, although they are understandably still digesting the new one.

Line Attorney 3
Assistant United States Attorney
612.RC-1

RC-1 [redacted]

From: Pratt, Sara K [RC-1 redacted]
Sent: Monday, December 12, 2011 2:05 PM
To: Perez, Thomas E (CRT)
Subject: RE: Next week

I agree and yes... I am going into a union mtg right now but am free from 2:30 to 4:30 or call me at home tonight.

-----Original Message-----
From: Perez, Thomas E (CRT) [mailto:RC-1 redacted]
Sent: Monday, December 12, 2011 2:03 PM
To: Pratt, Sara K
Subject: Re: Next week

Maybe after you meet with them tomorrow, you can patch me in telephonically and we can talk to them. We need to talk them off the ledge.

Can we talk before you meet with them.

----- Original Message -----
From: Pratt, Sara K [mailto:RC-1 redacted]
Sent: Monday, December 12, 2011 01:21 PM
To: Perez, Thomas E (CRT)
Subject: RE: Next week

I meet with them tomorrow at 9 am and have reserved two hours for the meeting. I understand that their meeting with civil is at 2:00.

According to Helen, there is no need for me to meet with civil today.

-----Original Message-----
From: Perez, Thomas E (CRT) [mailto:RC-1 redacted]
Sent: Monday, December 12, 2011 1:21 PM
To: Pratt, Sara K
Subject: Re: Next week

What time is your meeting tomorrow and what time is their next meeting with doj if you know?

----- Original Message -----
From: Pratt, Sara K [mailto:RC-1 redacted]
Sent: Sunday, December 11, 2011 09:27 PM
To: Perez, Thomas E (CRT)
Subject: Re: Next week

Yep I imagine so.

----- Original Message -----
From: Perez, Thomas E (CRT) [mailto RC-1 redacted]
Sent: Sunday, December 11, 2011 09:14 PM
To: Pratt, Sara K
Subject: Re: Next week

I would like to figure out a way to have them come to my office at the end of the day and meet with you and me. If I can arrange that, are you able?

----- Original Message -----
From: Pratt, Sara K [mailto:RC-1]
Sent: Sunday, December 11, 2011 09:09 PM
To: Perez, Thomas E (CRT)
Subject: Re: Next week

Thanks. I am around pretty much all day tomorrow and also in th evening....

----- Original Message -----
From: Perez, Thomas E (CRT) [mailto:RC-1]
Sent: Sunday, December 11, 2011 08:59 PM
To: Pratt, Sara K
Subject: Re: Next week

Thx and good luck

----- Original Message -----
From: Pratt, Sara K [mailto:RC-1]
Sent: Sunday, December 11, 2011 08:54 PM
To: Perez, Thomas E (CRT)
Subject: Re: Next week

City is tuesday at 9 am. Civil hopefully tomorrow.

----- Original Message -----
From: Perez, Thomas E (CRT) [mailto:RC-1]
Sent: Sunday, December 11, 2011 08:33 PM
To: Pratt, Sara K
Subject: Re: Next week

Do you have a meeting with the city tomorrow? If so, can we talk beforehand? Thx

----- Original Message -----
From: Pratt, Sara K [mailto:RC-1]
Sent: Sunday, December 11, 2011 07:19 PM
To: Perez, Thomas E (CRT)
Subject: Re: Next week

RC-2: Non-responsive text in multi-subject document.

----- Original Message -----
From: Perez, Thomas E (CRT) [mailto:RC-1]
Sent: Sunday, December 11, 2011 07:18 PM
To: Pratt, Sara K
Subject: Re: Next week

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Sent: Sunday, December 11, 2011 07:12 PM
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Subject: Re: Next week

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From: Perez, Thomas E (CRT) [mailto:RC-1
Sent: Sunday, December 11, 2011 06:29 PM
To: Pratt, Sara K
Subject: Re: Next week

RC-2: Non-responsive text in multi-subject document.

Thx

Tom

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Sent: Friday, December 09, 2011 01:04 PM
To: Perez, Thomas E (CRT)
Subject: RE: Next week

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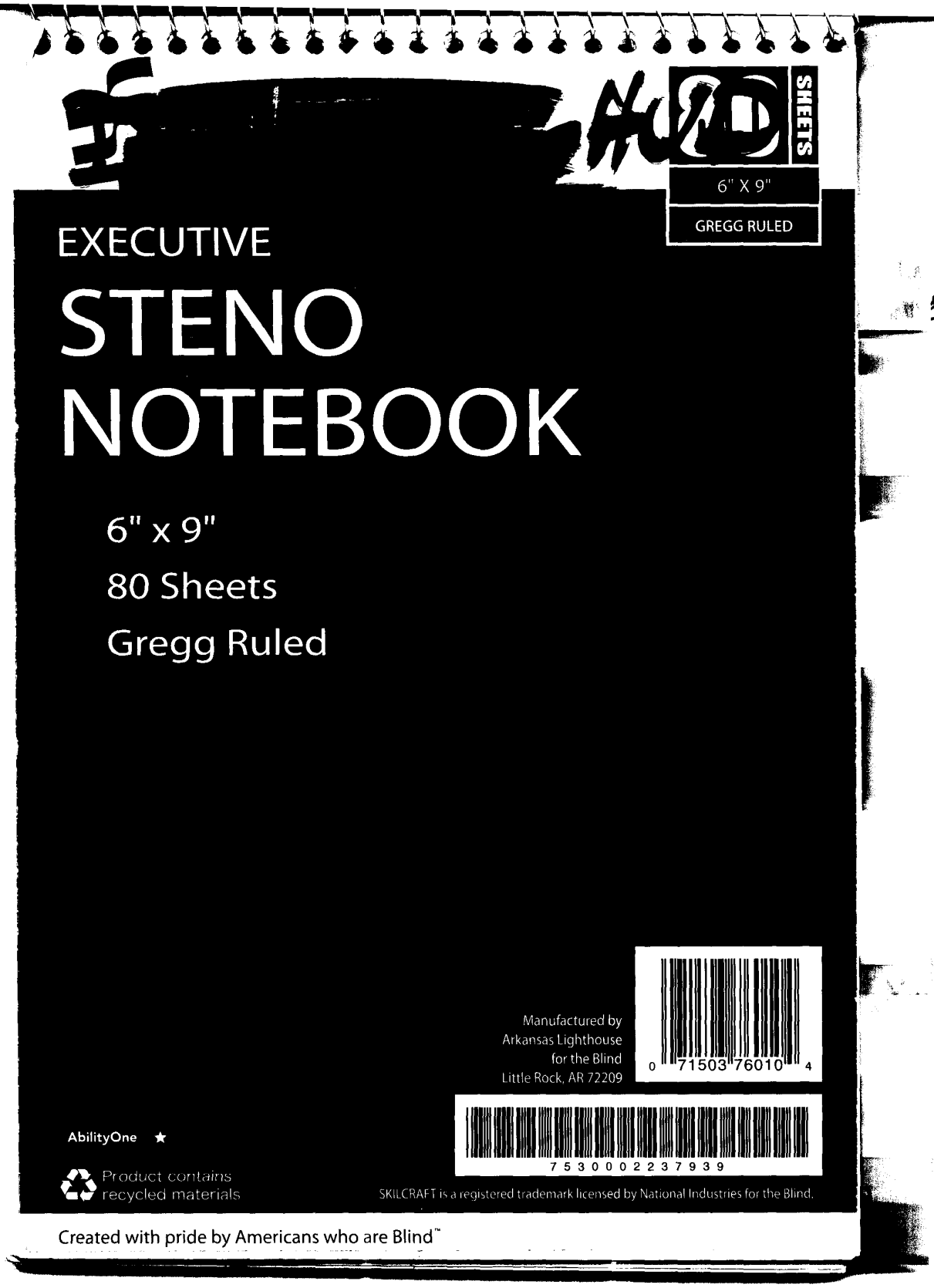
Sent: Friday, December 09, 2011 1:03 PM
To: Pratt, Sara K
Subject: Re: Next week

Did u get chance to talk to them?

----- Original Message -----

RC-2: Non-responsive text in multi-subject document.


SHEETS
6" X 9"
GREGG RULED
EXECUTIVE
STENO
NOTEBOOK
6" x 9"
80 Sheets
Gregg Ruled
Manufactured by
Arkansas Lighthouse
for the Blind
Little Rock, AR 72209
0 71503 76010 4
7530002237939
AbilityOne
Product contains
recycled materials
SKILCRAFT is a registered trademark licensed by National Industries for the Blind.
Created with pride by Americans who are Blind™

Notes of [Line Attorney 1] 12-13-2011

City of St. Paul mtg
they had mtg w/ SG's ofc. - btw City + DOJ
USA - MN was on the call
Seal deadline - 1-13-2012 - City knows that
white paper - policy argu - don't sue
a city
Section 3 is econ. disadvantaged
US ex rel Ellis v. City St. Paul
City approached CivRights Div. + HUD
VCA - Voluntary compliance agreement
Asst AG CRights spoke to T. West - City
sees a connection to the Gallagher case
CivRights made a rec. to SG's ofc in Gallagher
CivRights wonders if we can push the
case down the road a bit

Ase present: 12-13-2011

Saul - City Attorney
John Linquist + Lid - David
Mayor Debbie
Paul Wms + Coney
Mayor - City St. Paul le yus.
social challenges: income, housing,
achievement gap - City been recognized
by fed govt - City did indep. audit - City
complied w/ audit's suggestions
entered a VCA
wd stack us agnst any other community
EPA award last week
John Lunquist - City tabo section 3 v. seriously
legal framework: No section 3 FCA brought un
bc stmd is vague + flexible - pursd
to greatest extent feasible 2) section 3 difficult
to enforce - see OIG's & yr. old report - stmt are
vague F. Erikse criticized the stmt 3)
under flexibility stmt St. Paul acted reasonably
8th Cir. Hickam - if D interprets statute
in a reasonable manner it cannot be found
to violate it - as long as City's interp flexible

4) section 3 does not trump other laws such as econ opp laws - city LD small business fr. 1984 prob City believed by addressing women + minorities, DOES you were addressing section 3 - see VCA language 5) city's & the pgms ket targeted minority Groups J. Milsap lawsuits brought agst city + HUD HUD responded in RAGs what it had done to comply w/ section 3 6) current VCA is the current model other shd use 7) express cuts are prospective 8) implied cutb 9) West Chester case - 6th Cir. - conditions of payment 8th Cir - Nelnet - confirmed the distinction 10) scienter - no evid see Global Tech decision 11) City did a great job - city was not motivated or incentivized to skirt sec 3 12) annual HUD inspections 13) HUD in Milsap supported the City 14) Congressional hrgs - only 4% grant recipients have complied

David - we have not received a copy of the complaint. History
1977 - set aside pgm
1980 - amended to address women, minorities + dbe's
1984 - 1st VCA - assure good faith compliance
1st source employment pgm
1990 - Chp. 31 - set aside pgm - revised - to assist economically disadv. business
1994 - In-depth study - completed 1998
Increasing the No. of contracts
Maya Ranly Keeley - audit by Hall legal team
VCA dated February 2010
17 BK in 3d + 4th years
City doing well under the VCA
975 section 3 residents certified
stats on city's website - 11.35% of contracts
Sarah Pratt - Asst Secty HUD - I am convinced you guys are doing a great job under the VCA.

City is now doing training w/ HD
discussed w/ Pratt - training for medical
emergency personnel -
in tough fin stage
AEC 10 - pgm w/ high sclools
- goal of section 3 is to address low income
in dists
- expanded VCA shld vindicate the City

Rqt: intervene for purposes of settlement
- City has committed resources to suit
- Section 3 has changed enforcement
under this administration

- Gallagher - was is the
all 3 cases relate to HUD + subj. matter
- 56's of C. had a call w/ Gallagher

Hutz points:

1. qui tam's direct the investigative resources
2. all FCA Δs are not bad companies
3. even if we declined you'd be facing a lawsuit + if we settled then need to be a percentage share to relator
4. anything we did w/ minorities + women SBs get no credit

Requests:

1. Wait copy of complaint
2. investigation + what it has shown

Joyce:

we may give credit for the VCA but tough to resolve FCA w/o any payment

City:

- Cannot separate race from socio-econ issues
- Core belief of City - we tried to focus on socio-economic issues
- maybe a technical violation

city's brief due Dec.
dispute impact under FHA
AAG - cd St. Paul move to w/d the petition
LL says City's enforcement of FHA too strong

City - Ms. Pratt connected w/ HUD would be helpful to expand VCA
cd city w/d petition?

late Fri. - USAO provided redacted copy of complaint

if City cd wrap up all matters w/ HUD - we would w/d

declining

USA Todd Jones will change his mind
Jones spoke w/ Wrst - so we shall prepare
a declination memo
Joyce would still like HUD to address
the question we have asked.

USAO-Minn. - City St. Paul call 12/23/2011
Todd, Tom, Tony all connected last
~~week~~ Wed a - USAO-Mn refreshed
Tom Perer called Greg Brooker yesterday
(Thurs) - Perer was announcing the BOA -
Countrywide case
Perer - I want to explain how I have been
involved in all this - Tom Frazier - must be
involved in City of St. Paul for city
Tom innocently called Frazier +
Frazier cd my partner Lillie Hoag is
involved in the qui tam
- Perer cd yesterday - I told City
that you've got to win on the merits
+ not wheel and deal

Notes of [Line Attorney 2]

12/13/2011

HUD

Line Attorney 1

Brenda

HUD Line Emp., HUD Line Emp.

Lonelgurst, Lithonia

Sara Greene

Paul Williams - Dept Mayor
Mayor

Line Attorney 3, Greg, Line Attorney 4

Been Mayor for 6 years
City has taken extraordinary efforts
to address
poverty housing race
achievement gap etc
Recognized for good works
In '93, women, business, minority -
extraordinary efforts
Internal review -
They were doing well - but, id
areas to do better - and City
did that
DOE -
HUD - VCA - to reach further
low income, minority, small bus, woman

Want how hard They have worked
TO be taken into account
in This area

- Pursuant to VCA - been doing good on §3
- On new project - 30% central corridor
- Transportation

Don't think other cities have done any better

City takes §3 seriously - City's leadership is very interested and concerned

Civil Rights contact as well

Legal framework

- Never been an FCA §3 case
- Good reason
  - based on a standard that is vague and flexible
  - "Greatest extent feasible"
  - Leg. hist. says - flexibility is important
    every city can be different

- Difficult to enforce - cause of vagueness

* specific Rep
- Not compelling if there had been some efforts

- OIG report 8 years ago criticized

- City has acted reasonably and in good faith
- for last 20 years

- 8th Cir. law - Hickson FCA case
  If A interps statute in a reasonable fashion - it cannot be found to have violated FCA
  - City interp. is reasonable

§3 - to be interp. consistently w/ other State and Federal laws

§3 does not trump other economic opportunities
  women
  small
  disadvantaged

- Plenty of room to do §3 as well as small, bus. & minority

From 1984 forward City believed that by doing W, S, M – it was complying with §3

VCA – says how – race etc.
* Ignores compliance plan

W, M, S is what you should do

Recitation of history ignores what we were told by city witness after city witness who told us they were doing nothing to comply with §3

After that lots of programs to target
* women & small minority

(1991) Millsap law suit
-HUD pleadings

City did comply w/ §3 of decades

City did not file §3 forms
Some of

Good prog. complained, should've be sued under FCA

Under new VCA they are the model for everyone else

- Prospective certifications - not false unless there is no present intention not to
- Implied certification
  wealth of programs to comply w/ § 3

Conditions of payment and conditions of participation
Nellnet 5th Circuit

Westchester - clear standard

Scienter -
- No proof city acted knowingly
- no willful blindness
- No recklessness

City getting kudos from HUD

No reason for City to try to avoid § 3

Instructions w/ HUD reinforced
What they did

2516 forms filed
Not 2000 forms
Regularly filed

HUD in Millsap said City doing good

My reading of Hall - is it Hall's city is stating that complying

Hall audit -
Hall audit ~~said~~ - Hall interviewed §3 and HUD said they were complying

* New fact

David -
Particular Programs

- 35 years worth of efforts
- Shooting a little bit in the dark - don't have a copy of the complaint

Pete McCall . comply by mistake

1977 Set aside program 10% to econ. distressed businesses
- focused later, women, minority and handicapped bus.
- Those are the very bus. That would be §3

City witnesses have said they now understand that minority, women, small bus are not §3

1986 - added staff to set aside programs

City repeatedly
told it was
not
complying
with § 3
City was not
complying w/
Section 3
Section 3 is not :
Minority, Women and
Small businesses
Nonetheless the City
repeatedly certified it
was in compliance
and repeatedly drew
down grant funds
w/out complying w/ § 3

City has been doing wonderful on §3
- City has exceeded all the goals in VCA
- Frog Town project 27.87% is §3
- Another prog. 11.3% §3

- City has neighborhood ~~revi~~ stabilization 100% to

Met w/ Sarah Pratt - HUD
Deputy Asst. Sec.
"You guys are doing a great job w/ §3"
We would not be having disc. if I was not so compressed

- extend VCA a year
- Make target 15% throughout
- Good faith efforts to provide training to §3 residents

- EMT training program

City in tough financial
- prepared to find partners to extend EMT

- AFL CIO - Apprenticeship program to train people in construction

An expanded VCA would vindicate DOJ and HUD

Intervene for Settlement - and accept expanded VCA

Prepared to litigate -

DNK why we would single out §3

§3 not a priority for HUD over years

- 1.5 FTE directing §3 program

- Don't need to reinforce a §3 FCA case

- Civil rights - reached out to City to discuss Gallagher
- Topics overlapping a little
- New qui tam is closer to this case
- Civil Rights reached out to St. Paul
  - All cases relate to HUD and fair housing
  - Represented by Covington & Burling
  - Want to wrap all matters with HUD
  - Want to wind up Ellis too

Mike

This is a qui tam - so we devote resources to that

Can't separate race from
Socio-economic issues in this
Society

There has never been a moment when
City was not concerned about
low income residents

The suggestion that there was a
willful intent to violate § 3 is
not true
They were not trying to screw the
gov't out of $

Didn't see race and economics
as separate issues

Beyond perplexing - to be accused
of this
given all of the work they have
done to support
race & economics
They have reached out and
done harder

Insult to decades of work
by the City

Minnesota and The City of St Paul are leaders in This area for low-income communities of color

This Mayor particularly pushing These issues Secretary of HUD and DOE Level The City Models of cooperation and collaboration.

Can't imagine how This would be a good test case

- Post w/ out Hertz 12/13/2011

- Magner
  - Disparate impact - Supreme Court
  - Tom Perez - Civil Rights
    - asked if they can settle Magner
  - TP reached out to them
  - Other issues w/ HUD
  - TP put them w/ Pratt
    - to consider expansion of VCA
  - City willing to w/ draw Magner if all matters w/ HUD can be w/ drawn
  - Civil Rights -

Prof. solution
intervene for purpose of settlement

Declining §3 would be helpful

- Joyce - risk assoc. w/ intervening to settle and fairness hearing

- Tom

City hurt by resolution of the Minnesota lay off problem

Brief due on the 22nd

Don't Think
Civil Division and
Civil Rights Division
one of the same mind

Want the two divisions to
totally resolve the cases
- so they want us to get back

Problem they have
disparate impact case

If they leave relator
dangling no good

They would consider a
declination deal if we
present it

HUD wants to see a deal

Notes of Elizabeth Taylor

12-14-11

RC-2: Non-responsive text in multi-subject document.

Cecile

Mike – St. Paul, MN – Gelbaghe –
fair housing – disparate impact thing –
mtt of SG's plan –
– also qui tam – qui tam – what US
should intervene – mid-Jan deadline –
– Tom Perez urges settlement of fair housing –
cert. petition ~~pending~~ granted 2 –
our brief in SCt – Dec. 29 –
HUD agrees settlement appropriate
– declin intervene –

ask Beth SG's

RC-2: Non-responsive text in multi-subject document.

RC-1

From: Perez, Thomas E (CRT)
Sent: Friday, December 16, 2011 8:04 AM
To: Sara Pratt
Subject: RC-2

I am well aware of that. We will figure it out.

From: Pratt, Sara K [mailto:RC-1
Sent: Friday, December 16, 2011 06:13 AM
To: Perez, Thomas E (CRT)
Subject: RC-2

We should talk; the Tuesday afternoon meeting did NOT go welll at all.

From: Perez, Thomas E (CRT) [mailto:RC-1
Sent: Friday, December 16, 2011 12:44 AM
To: Pratt, Sara K
Subject: RC-2

Any word from your end?

From: Pratt, Sara K [mailtoRC-1
Sent: Thursday, December 08, 2011 08:52 PM
To: Perez, Thomas E (CRT)
Subject: RC-2

Yep.

From: Perez, Thomas E (CRT) [mailto:RC-1
Sent: Thursday, December 08, 2011 08:41 PM
To: Pratt, Sara K
Subject: RC-2

Can we talk before I have to leave. I cannot stay too much longer.

From: Pratt, Sara K [mailto:RC-1
Sent: Thursday, December 08, 2011 08:35 PM
To: Perez, Thomas E (CRT)
Subject: RC-2

Seeing you across the room...coming over to hAve a conversation.....

From: Perez, Thomas E (CRT) [mailto:RC-1
Sent: Thursday, December 08, 2011 09:27 AM
To: Pratt, Sara K
Subject: RERC-2

The trial atty assigned to the matter is Line Attorney 2. He reports to Line Attorney 1, who can be reached at 202-RC-1. Line Attorney 1 in turn reports to Joyce Branda, I am told, who can be reached at 202-RC-1. My instinct would be to start with Line Attorney 1, and see how it goes. I do not know any of these folks.

Thx again for agreeing to conduct an independent review of this matter.
Tom

From: Pratt, Sara K [mailto:RC-1]
Sent: Sunday, December 04, 2011 6:01 PM
To: Perez, Thomas E (CRT)
Subject: RC-2

202RC-1. Just left you a message.

From: Perez, Thomas E (CRT) [mailtoRC-1]
Sent: Sunday, December 04, 2011 05:41 PM
To: Pratt, Sara K
Subject: RC-2

Can u give me a shout at 202RC-1 if you get a chance.

Thx

RC-2: Non-responsive text in multi-subject document.

From: Pratt, Sara K [RC-1]
Sent: Friday, December 16, 2011 9:01 AM
To: Perez, Thomas E (CRT)
Subject: Fw: SECTION 3

From: Lillehaug, David [mailto:RC-1]
Sent: Wednesday, December 14, 2011 12:46 PM
To: Pratt, Sara K
Cc: 'Sara Grewing' <RC-1>; Lundquist, John <RC-1>
Subject: RE: SECTION 3

Sara -- Thank you again for a productive meeting yesterday. All three officials of the City of Saint Paul appreciated your suggestions and your approach.

Unfortunately, our meeting in the afternoon did not go as well. The possibility of an expanded VCA did not seem to be given much weight by the representatives of the DOJ's Civil Division, who described their job as "bringing in money to the U.S. Treasury." (By contrast, we appreciated the constructive role played by HUD representative HUD Line Emp. who attended the meeting.)

As a result, we will have to put VCA drafting on the back burner while the City assesses whether it is possible to make any progress with the Civil Division. In the meantime, of course, the City's vigorous efforts on Section 3 will continue unabated.

Please feel free to give me a call if you have any questions or further thoughts.

David Lillehaug
Fredrikson & Byron, P.A.
612-RC-1

From: Pratt, Sara K [mailto RC-1]
Sent: Tuesday, December 13, 2011 12:20 PM
To: Lillehaug, David
Subject: SECTION 3

This is what I have so far (also attached as a document).

INTRODUCTION

On February 2, 2010, the City of St. Paul, Minnesota (City) entered into a Voluntary Compliance Agreement (VCA) with the Department of Housing and Urban Development to resolve a complaint that alleged that the City had failed to comply with Section 3 of the Housing and Community Development Act of 1968, 12 U.S.C. 1701. A review of the city's Section compliance efforts under the VCA indicates achievement of compliance with the VCA to date as well as accomplishment of several key additional objectives, including, but not limited to, the following:

In 2010,

- The City's Office of Planning and Economic Development (PED) exceeded all first-tier subcontracting Section 3 goals for large housing and economic development projects (i.e. Frogtown Square).
- PED awarded 100% of Neighborhood Stabilization Program (NSP) residential rehabilitation projects to Section 3 certified general contractors.
- Approximately $1.5 million in NSP funds were awarded to Section 3 general contractors.
- 517 Saint Paul residents received Section 3 certification.
- 26 Section 3 businesses received work related to PED's NSP projects

Information about Section 3 hires for 2010 to be added

The City having demonstrated significant efforts in achieving Section 3 compliance, it has committed to undertaking additional efforts beyond the scope of the existing VCA to make further progress in providing job and job training opportunities to covered Section 3 individuals and businesses.

Terms of the Agreement

General

1. Nothing in this Agreement waives or modifies any obligation undertaken by the City or by the Department of Housing and Urban Development in the February 2, 2010 Voluntary Compliance Agreement except as explicitly stated here.

Definitions

1. The definitions provided in the February 2, 2010 Voluntary Compliance Agreement shall apply to this document.

Term of the Agreement

1. The February 2, 2010 Voluntary Compliance Agreement is extended by one year and shall be in effect for a period of five years from its effective date.

Specific Provisions

1. **Expanded Contract Coverage:** The City will amend its written Section 3 plan to establish mechanisms to ensure to the maximum extent feasible that a minimum of 15% of the total dollar amount of all Section 3 covered contracts for building trades work arising in connection with housing rehabilitation, housing construction and other public construction be awarded to Section 3 business concerns. Those mechanisms shall include:

2. **Expanded Training Opportunities:** The City will take the following steps to make Section 3 residents a preference group for its successful EMS Training Academy, which provides a 14 week training curriculum to provide college credit and train individuals as EMTs and in Firefighter Awareness, successful completion of which results in the award of National Emergency Medical Technician Certification.

    a. The City agrees to market the EMS Training Academy to Section 3 residents through introductory meetings held in neighborhoods within a Section 3 service area.

b. The City agrees to identify Section 3 residents who attend this program and provide available job opportunity information to successful graduates, including positions with the City's Fire Department and other City positions, should such positions be available.

3. PROPOSED The City agrees to fund its Scholarship fund to be used by Section 3 residents to be used as financial assistance for the payment of items such as union initiation fees or dues, tools, equipment, and work clothing in the amount of _____to cover the longer term of this agreement.

4. More expanded training/apprenticeship opportunities to be discussed

CONFIDENTIAL/DELIBERATIVE/DISCUSSION DRAFT AND WORK PRODUCT

Sara K. Pratt
Deputy Assistant Secretary for Enforcement and Programs
Department of Housing and Urban Development
451 Seventh Street, SW
Room RC-1
Washington, D.C. 20410
202.RC-1 (direct line)

From: Line Attorney 1

Sent: Saturday, December 17, 2011 3:10 PM

To: Line Attorney 2; Civil Division Line Attorney <Civil Division Line Attorney >

Subject: Re: Newell

I think it means this: Hertz told HUD to provide a new analysis and explanation for its changed position. So, we need to get that and incorporate it into our memo.

From: Line Attorney 2
Sent: Friday, December 16, 2011 12:31 PM
To: Line Attorney 1; Civil Division Line Attorney
Subject: Newell

FYI – I just got back in the inter-office my Newell approval memo with no action by the higher-ups – not sure what that means?

* * * * *

Line Attorney 2
Senior Trial Counsel
Civil Division, Commercial Litigation Branch, Frauds Section
United States Department of Justice
Patrick Henry Building
Room RC-1
601 D. Street, N.W.
Washington, D.C. 20004
RC-1

From: Line Attorney 1
To: HUD Line Emp.
CC: Line Attorney 3; Line Attorney 2
Sent: 12/20/2011 4:38:21 PM
Subject: U.S. ex rel. Newell v. City of St. Paul, MN

HUD Line Emp.: per Mike Hertz's request to you on December 13, please provide us HUD's written position on the election decision. We have a looming intervention deadline and need to move this matter forward.
Thank you. --Line Attorney 1

Line Attorney 1
Assistant Director
U.S. Department of Justice
Civil Division
Commercial Litigation Branch
Fraud Section
601 D Street N.W.
Suite RC-1
Washington, DC 20004
(202) RC-1

From: Line Attorney 1

Sent: Tuesday, December 20, 2011 4:44 PM
To: Branda, Joyce (CIV) <RC-1>
Cc: Line Attorney 2; Granston, Michael (CIV) <RC-1>
Subject: FW: U.S. ex rel. Newell v. City of St. Paul, MN

Joyce: the USAO is inquiring about the status of our position. It is not withdrawing its recommendation to intervene, HUD does not seem inclined to give us its position in writing short of the email it sent that states, "HUD has reconsidered its support for intervention by the government in the St. Paul qui tam matter. HUD has determined that intervention is not necessary because St. Paul's programmatic non-compliance has been corrected through a Voluntary Compliance Agreement with HUD". Mike Hertz told HUD Line Emp. at the conclusion of the meeting on December 13 that this was not a reason to decline a qui tam and asked HUD Line Emp. to follow-up with a formal position. In the meantime, Mike Hertz sent the authority memo back to our office. We are in a difficult position because we have an intervention deadline of January 13 and the USAO does not know what, if anything, it is being asked to do at this point.

I sent the below email to HUD to confirm its position.

Line Attorney 1
Assistant Director
U.S. Department of Justice
Civil Division
Commercial Litigation Branch
Fraud Section
601 D Street N.W.
Suite RC-1
Washington, DC 20004
(202) RC-1

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Thank you. --Line Attorney 1

Line Attorney 1
Assistant Director
U.S. Department of Justice

From: Branda, Joyce (CIV) </O=USDOJ/OU=CIVIL/CN=RECIPIENTS/CN=MAILBOXES/CN=JBRANDA>
Sent: Tuesday, December 20, 2011 4:54 PM
To: Line Attorney 1
Cc: Line Attorney 2; Granston, Michael (CIV) <RC-1>
Subject: RE: U.S. ex rel. Newell v. City of St. Paul, MN

We need to have HUD articulate its reasons. If they won't let me know. I take it there is no talk of an agreement with Civil Rights that we need to help facilitate?

I guess the other issue we need to flesh out better (hopefully with HUD) is the extent to which they had a reasonable belief that their compliance with the other requirements for minorities and women satisfied section 3, which is what I think troubled Mike (and to some extent I see the problem as well). The memo may need to address that more fully (as I recall we did address it to an extent but they really focused on this at the meeting and HUD has not said anything directly in response so far as I know). HUD certainly can address it from their perspective.

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I sent the below email to HUD to confirm its position.

Line Attorney 1
Assistant Director
U.S. Department of Justice
Civil Division
Commercial Litigation Branch
Fraud Section
601 D Street N.W.

From: Line Attorney 1 [redacted]
Sent: Tuesday, December 20, 2011 5:00 PM
To: Line Attorney 2 [redacted]
Subject: RE: U.S. ex rel. Newell v. City of St. Paul, MN

Just left him a message. This is ridiculous. I have no control over any of this. Why are higher level people making phone calls?

Line Attorney 1 [redacted]
Assistant Director
U.S. Department of Justice
Civil Division
Commercial Litigation Branch
Fraud Section
601 D Street N.W.
Suite RC-1 [redacted]
Washington, DC 20004
(202) RC-1 [redacted]

From: Line Attorney 2 [redacted]
Sent: Tuesday, December 20, 2011 4:57 PM
To: Line Attorney 1 [redacted]
Subject: FW: U.S. ex rel. Newell v. City of St. Paul, MN

Will you talk to HUD Line Emp. [redacted] again, particularly as to Joyce's second point. Do you want me to participate?

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Sent: Tuesday, December 20, 2011 4:54 PM
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Cc: Line Attorney 2 [redacted]; Granston, Michael (CIV)
Subject: RE: U.S. ex rel. Newell v. City of St. Paul, MN

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From: Line Attorney 1 [redacted]
Sent: Tuesday, December 20, 2011 4:44 PM
To: Branda, Joyce (CIV)
Cc: Line Attorney 2 [redacted]; Granston, Michael (CIV)
Subject: FW: U.S. ex rel. Newell v. City of St. Paul, MN

From: Line Attorney 2 [redacted]
Sent: Tuesday, December 20, 2011 5:02 PM
To: Line Attorney 1 [redacted]
Subject: RE: U.S. ex rel. Newell v. City of St. Paul, MN

It feels a little like "cover you head" ping pong. Do we need to suggest that the big people sit in a room and then tell us what to do? I kinda think Perez, West, Helen and someone from the Solicitor's office need to make a decision.

From: Line Attorney 1 [redacted]
Sent: Tuesday, December 20, 2011 5:00 PM
To: Line Attorney 2 [redacted]
Subject: RE: U.S. ex rel. Newell v. City of St. Paul, MN

Just left him a message. This is ridiculous. I have no control over any of this. Why are higher level people making phone calls?

Line Attorney 1 [redacted]
Assistant Director
U.S. Department of Justice
Civil Division
Commercial Litigation Branch
Fraud Section
601 D Street N.W.
Suite RC-1 [redacted]
Washington, DC 20004
(202) RC-1 [redacted]

From: Line Attorney 2 [redacted]
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RC-1

From: Pratt, Sara K [RC-1]
Sent: Tuesday, December 20, 2011 5:34 PM
To: Perez, Thomas E (CRT)
Subject: RE: Checking in

Am trying to find out. I sent to HUD Line Emp. but didn't hear back from him. Helen has them both and she could send them too...but I can't.

-----Original Message-----
From: Perez, Thomas E (CRT) [mailto:RC-1
Sent: Tuesday, December 20, 2011 4:56 PM
To: Pratt, Sara K
Subject: Re: Checking in

Did the memo go to civil

----- Original Message -----
From: Pratt, Sara K [mailto:RC-1]
Sent: Tuesday, December 20, 2011 04:21 PM
To: Perez, Thomas E (CRT); Kanovsky, Helen R RC-1
Subject: RE: Checking in

Helen is calling you...

-----Original Message-----

RC-2: Non-responsive text in multi-subject document.

From: Hertz, Michael (CIV) </O=USDOJ/OU=CIVIL/CN=RECIPIENTS/CN=MAILBOXES/CN=MHERTZ>
Sent: Tuesday, December 20, 2011 6:03 PM
To: Branda, Joyce (CIV) <RC-1 >
Subject: RE: U.S. ex rel. Newell v. City of St. Paul, MN

I agree we should do nothing unless Civil Rights comes to us. There may be more activity before the government's brief is due in the Sp. Ct., which I believe maybe Dec 29th. Thereafter, if nothing happens by then, I think the next step will be for us to ask for an extension of the intervention deadline.

From: Branda, Joyce (CIV)
Sent: Tuesday, December 20, 2011 5:05 PM
To: Hertz, Michael (CIV)
Subject: FW: U.S. ex rel. Newell v. City of St. Paul, MN

HUD evidently is refusing to give us its reasoning on recommending declination. We have not been asked to do anything to facilitate a deal. Do you want to call Helen? The USAO wants to intervene notwithstanding HUD. I feel we have a case but I also think HUD needs to address the question St. Paul is so fixated on, i.e. was their belief they satisfied Section 3 by doing enough with minorities and women reasonable?

As it stands we won't have anything from HUD and we have an intervention date of 1/13. I am not inclined to call Civil Rights – thwey can come to us if there is some deal they need us to act on.

From: Line Attorney 1
Sent: Tuesday, December 20, 2011 4:58 PM
To: Branda, Joyce (CIV)
Cc: Line Attorney 2 ; Granston, Michael (CIV)
Subject: RE: U.S. ex rel. Newell v. City of St. Paul, MN

So far, HUD Line Emp. has not been instructed to draft a memo per Mike Hertz's request and it does not appear we will be getting a memo such as this from HUD. Therein lies the problem. What do we do now? HUD Line Emp. has been told that Justice will take care of this so he is looking to us. Apparently the City of St. Paul's briefs before the Supreme Court are due on Thursday and Dane thinks Justice is going to work out some deal in time. Are we supposed to initiate something with Perez or the Solicitor's Office?

Line Attorney 1
Assistant Director
U.S. Department of Justice

Civil Division
Commercial Litigation Branch
Fraud Section
601 D Street N.W.
Suite 9004
Washington, DC 20004
(202) RC-1

From: Branda, Joyce (CIV)
Sent: Tuesday, December 20, 2011 4:54 PM
To: Line Attorney 1
Cc: Line Attorney 2 ; Granston, Michael (CIV)
Subject: RE: U.S. ex rel. Newell v. City of St. Paul, MN

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Cc: Line Attorney 2 ; Granston, Michael (CIV)
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I sent the below email to HUD to confirm its position.

Line Attorney 1
Assistant Director
U.S. Department of Justice

Civil Division
Commercial Litigation Branch
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601 D Street N.W.
Suite RC-1
Washington, DC 20004
(202) RC-1

From: Line Attorney 1
Sent: Tuesday, December 20, 2011 4:38 PM
To: HUD Line Emp.
Cc: Line Attorney 3 ; Line Attorney 2
Subject: U.S. ex rel. Newell v. City of St. Paul, MN

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Thank you. --Line Attorney 1

Line Attorney 1
Assistant Director
U.S. Department of Justice
Civil Division
Commercial Litigation Branch
Fraud Section
601 D Street N.W.
Suite RC-1
Washington, DC 20004
(202) RC-1

From: HUD Line Emp.
Sent: Tuesday, December 20, 2011 6:21 PM
To: Branda, Joyce (CIV) <RC-1>
Cc: Kanovsky, Helen R <RC-1>; HUD Line Emp. <HUD Line Emp.>
Subject: U.S. ex rel. Newell v. St. Paul
Attach: U.S. ex rel. Newell v. St. Paul - declination.pdf

Ms. Branda,

Attached please find HUD's memorandum in support of its recommendation that the government decline to intervene in the referenced *qui tam* lawsuit.

Thank you,

HUD Line Emp.

HUD Line Emp.
U.S. Department of Housing and Urban Development
Office of General Counsel
Office of Program Enforcement
1250 Maryland Avenue, S.W.
Suite RC-1
Washington, DC 20024
Tel. RC-1

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410-0500

OFFICE OF GENERAL COUNSEL

December 20, 2011

MEMORANDUM FOR: Joyce R. Branda, Director, Commercial Litigation Branch, U.S. Department of Justice

FROM: HUD Line Emp.

CONCERNING: HUD's recommendation against intervention in *U.S. ex rel. Frederick Newell v. City of Saint Paul, Minnesota*, 09-SC-001177 (D. Minn.)

On December 1, 2011, HUD notified the Department of Justice that HUD was recommending against intervention by the U.S. Government in the above-referenced matter. In response to the Justice Department's request for a fuller explication of HUD's position, HUD provides the following.

As you know, Mr. Newell, the relator in the referenced case, submitted administrative complaints to HUD's Office of Fair Housing and Equal Opportunity (FHEO) in June of 2008, before he filed suit under the *qui tam* provisions of the False Claims Act.[1] The administrative case, like the False Claims Act case, alleged that the City of St. Paul had failed to comply with Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. § 1701u (2000) (amended 2006).

FHEO conducted a broad investigation of the City's compliance with Section 3, which addressed not only the allegations in the administrative complaints, but extended to all aspects of the City's compliance with the contracting provisions of Section 3 over a number of years. Following the completion of that investigation, FHEO worked closely with the City to craft a voluntary compliance agreement (VCA) with the City to resolve the City's Section 3 violations. The VCA, which was executed by St. Paul and HUD in February of 2010, is a comprehensive document that broadly addresses St. Paul's Section 3 compliance, including the compliance problems at issue in the False Claims Act case. The VCA also requires St. Paul to expend city funds, including $650,000 to support certain Section 3 initiatives, as well

[1] HUD also notes that it is wary of supporting the relator, Frederick Newell, who is a disgruntled bidder with a history of propounding baseless lawsuits and administrative complaints against St. Paul and others for, *inter alia*, violating Section 3. These matters include an administrative complaint concerning a contract upon which Newell and his companies did not even bid, and that, therefore, caused them no harm. They also include repeated lawsuits against the City, brought in spite of well-established law providing Mr. Newell and his companies neither standing nor a private right of action under Section 3. Given this, HUD regards the referenced False Claims Act suit as little more than a means for Mr. Newell, after years of unsuccessful litigation, to finally extract monies from a cash-starved City that has already remedied the noncompliance at issue.

as additional monies to develop systems for Section 3 administration and to hire personnel to oversee VCA compliance.

In the twenty-two months since the VCA was executed, HUD has closely monitored St. Paul to ensure its compliance with Section 3 and the terms of the VCA. Throughout this period, St. Paul has met and, in fact, exceeded those requirements. The City's voluntary execution of the VCA and the City's significant strides to provide training and employment to Section 3 residents and businesses not only vindicate its past non-compliance, but constitute a significant achievement for St. Paul and for HUD. HUD's mission is to create strong, sustainable, inclusive communities, and the City's Section 3 activities are directed squarely at accomplishing this goal in the St. Paul community.

Given the City's success in ensuring that its low- and very low-income residents are receiving economic opportunities generated by federal housing and community development funding, as required by Section 3, and the financial and other investments that the City has made and is continuing to make from its own resources to accomplish this, HUD considers it imprudent to expend the limited resources of the federal government on this matter. HUD is particularly concerned that this lawsuit will require HUD to expend extensive resources for further investigation, litigation, discovery and testimony, at a time when HUD's resources are in short supply and its programmatic concerns have been rectified.

From: Line Attorney 1

Sent: Wednesday, December 21, 2011 7:13 AM
To: Branda, Joyce (CIV) <JBranda@CIV.USDOJ.GOV>; Line Attorney 2 <Line Attorney 2>
Subject: Re: U.S. ex rel. Newell v. St. Paul

Well that was a fast change of heart.

From: Branda, Joyce (CIV)
Sent: Tuesday, December 20, 2011 06:32 PM
To: Line Attorney 1; Line Attorney 2
Subject: Fw: U.S. ex rel. Newell v. St. Paul

?

From: HUD Line Emp.
Sent: Tuesday, December 20, 2011 06:21 PM
To: Branda, Joyce (CIV)
Cc: Kanovsky, Helen R <RC-1>; HUD Line Emp.
Subject: U.S. ex rel. Newell v. St. Paul

Ms. Branda,

Attached please find HUD's memorandum in support of its recommendation that the government decline to intervene in the referenced *qui tam* lawsuit.

Thank you,

HUD Line Emp.

HUD Line Emp.
U.S. Department of Housing and Urban Development
Office of General Counsel
Office of Program Enforcement
1250 Maryland Avenue, S.W.
Suite RC-1
Washington, DC 20024
Tel. 202-RC-1

From: Line Attorney 1

Sent: Wednesday, December 21, 2011 7:36 AM

To: Branda, Joyce (CIV) <RC-1>; Line Attorney 2 <Line Attorney 2>

Subject: RE: U.S. ex rel. Newell v. St. Paul

Okay, just reviewed it. I guess HUD Line Emp. felt pressured to draft something in response to my repeated requests yesterday to get something responsive to Mike Hertz's request. Notably, it is signed by HUD Line Emp. and not the General Counsel. It says, there is a VCA, Newell is disgruntled, and HUD doesn't want to spend further resources. Are we supposed to incorporate this into our memo and send up our joint recommendation with the USAO that we intervene?

Line Attorney 1
Assistant Director
U.S. Department of Justice
Civil Division
Commercial Litigation Branch
Fraud Section
601 D Street N.W.
Suite RC-1
Washington, DC 20004
(202) RC-1

From: Branda, Joyce (CIV)
Sent: Tuesday, December 20, 2011 6:32 PM
To: Line Attorney 1; Line Attorney 2
Subject: Fw: U.S. ex rel. Newell v. St. Paul

?

From: HUD Line Emp.
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To: Branda, Joyce (CIV)
Cc: Kanovsky, Helen R <RC-1>; HUD Line Emp.
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U.S. Department of Housing and Urban Development
Office of General Counsel
Office of Program Enforcement
1250 Maryland Avenue, S.W.
Suite RC-1
Washington, DC 20024
Tel. 202- RC-1

From: Branda, Joyce (CIV) </O=USDOJ/OU=CIVIL/CN=RECIPIENTS/CN=MAILBOXES/CN=JBRANDA>
Sent: Wednesday, December 21, 2011 7:51 AM
To: Line Attorney 1 ; Line Attorney 2 <Line Attorney 2 >
Subject: Re: U.S. ex rel. Newell v. St. Paul

It doesn't address the question I have.
Do they agree their belief was reasonable about section 3 compliance? Nothing about the merits.

From: Line Attorney 1
Sent: Wednesday, December 21, 2011 07:36 AM
To: Branda, Joyce (CIV); Line Attorney 2
Subject: RE: U.S. ex rel. Newell v. St. Paul

Okay, just reviewed it. I guess HUD Line Emp. felt pressured to draft something in response to my repeated requests yesterday to get something responsive to Mike Hertz's request. Notably, it is signed by HUD Line Emp. and not the General Counsel. It says, there is a VCA, Newell is disgruntled, and HUD doesn't want to spend further resources. Are we supposed to incorporate this into our memo and send up our joint recommendation with the USAO that we intervene?

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Thank you,

From:	Branda, Joyce (CIV) </O=USDOJ/OU=CIVIL/CN=RECIPIENTS/CN=MAILBOXES/CN=JBRANDA>
Sent:	Wednesday, December 21, 2011 9:17 AM
To:	Hertz, Michael (CIV) <RC-1 >
Subject:	FW: U.S. ex rel. Newell v. St. Paul
Attach:	U.S. ex rel. Newell v. St. Paul - declination.pdf

So HUD did decide to send a letter which talks only about the compliance agreement, the relator (disgruntled), and resources. They do not address the merits. We are asking them to do so.

From: HUD Line Emp.
Sent: Tuesday, December 20, 2011 6:21 PM
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HUD Line Emp.

HUD Line Emp.
U.S. Department of Housing and Urban Development
Office of General Counsel
Office of Program Enforcement
1250 Maryland Avenue, S.W.
Suite RC-1
Washington, DC 20024
Tel. 202-RC-1

From:	Hertz, Michael (CIV) </O=USDOJ/OU=CIVIL/CN=RECIPIENTS/CN=MAILBOXES/CN=MHERTZ>
Sent:	Wednesday, December 21, 2011 10:57 AM
To:	West, Tony (CIV) <RC-1 >
Subject:	FW: U.S. ex rel. Newell v. St. Paul
Attach:	U.S. ex rel. Newell v. St. Paul - declination.pdf

Tony-- I hadn't seen this email with HUD's explanation in favor of declination when we spoke. Still principally focuses on the prospective relief. We still await a further recommendation from the USAO.

From: Branda, Joyce (CIV)
Sent: Wednesday, December 21, 2011 9:17 AM
To: Hertz, Michael (CIV)
Subject: FW: U.S. ex rel. Newell v. St. Paul

So HUD did decide to send a letter which talks only about the compliance agreement, the relator (disgruntled), and resources. They do not address the merits. We are asking them to do so.

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Cc: Kanovsky, Helen R; HUD Line Emp.
Subject: U.S. ex rel. Newell v. St. Paul

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Thank you,

HUD Line Emp.

HUD Line Emp.
U.S. Department of Housing and Urban Development
Office of General Counsel
Office of Program Enforcement
1250 Maryland Avenue, S.W.
Suite RC-1
Washington, DC 20024
Tel. 202-RC-1

From: Perez, Thomas E (CRT)
Sent: Thursday, December 22, 2011 3:21 PM
To: Jones, B Todd (USAMN)
Subject: RE: Minnesota Case

Nice catching up with you yesterday. Don't know how you are doing both jobs, although I do know you have a great staff in Minnesota, which helps immensely. Greg Brooker in particular is a gem, among many gems.

If you are able to forward the memos we discussed yesterday asap to relevant main justice components, that would be great. Your voice is critical.

Merry Christmas and happy holidays

Tom

From: Jones, B Todd (USAMN)
Sent: Tuesday, December 20, 2011 6:04 PM
To: Perez, Thomas E (CRT)
Subject: Minnesota Case
Importance: High

Please call me about the Magner v. Gallager case. As you know the SCOTUS has granted cert and the briefs are due Thurs.

- *BTJ*

From: Line Attorney 1

Sent: Thursday, December 22, 2011 4:45 PM

To: Brooker, Greg (USAMN) <RC-1>; Line Attorney 3; Line Attorney 3; Line Attorney 4

Cc: Line Attorney 2

Subject: City of St. Paul

Minn folks: do the memos from HUD on either/both cases change your office's position at all? Just checking. Thanks. --Line Attorney 1

Line Attorney 1
Assistant Director
U.S. Department of Justice
Civil Division
Commercial Litigation Branch
Fraud Section
601 D Street N.W.
Suite RC-1
Washington, DC 20004
(202) RC-1

From: HUD Line Emp.
Sent: Thursday, December 22, 2011 6:01 PM
To: Line Attorney 1
Cc: HUD Line Emp.
Subject: St. Paul: recommendation against intervention

Line Attorney 1,

HUD's Office of Fair Housing and Equal Opportunity has determined that the City of St. Paul is not only in compliance with the VCA, but is also in compliance with its Section 3 obligations at this time. As described in our December 20, 2001 memo, HUD does not wish to proceed with the False Claims Act case. It is possible that notification to MBEs, WBEs, and SBEs could result in compliance with Section 3 requirements, in which case the existence or non-existence of Section 3 notification procedures would essentially be the basis for technical assistance, not a finding of a violation.

HUD Line Emp.

HUD Line Emp.
U.S. Department of Housing and Urban Development
Office of General Counsel
1250 Maryland Avenue, SW
Suite RC-1
Washington, D.C. 20024
Tel.: 202-RC-1
Fax: 202-401-5153

From: Jones, B Todd (USAMN)
To: Brooker, Greg (USAMN)
Sent: 12/22/2011 6:12:08 PM
Subject: FW: Minnesota Case

FYI.

There appears to be a sense of urgency about this.

From: Perez, Thomas E (CRT) [mailto:[redacted]]
Sent: Thursday, December 22, 2011 2:21 PM
To: Jones, B Todd (USAMN)
Subject: RE: Minnesota Case

Nice catching up with you yesterday. Don't know how you are doing both jobs, although I do know you have a great staff in Minnesota, which helps immensely. Greg Brooker in particular is a gem, among many gems.

If you are able to forward the memos we discussed yesterday asap to relevant main justice components, that would be great. Your voice is critical.

Merry Christmas and happy holidays

Tom

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Sent: Tuesday, December 20, 2011 6:04 PM
To: Perez, Thomas E (CRT)
Subject: Minnesota Case
Importance: High

Please call me about the Magner v. Gallager case. As you know the SCOTUS has granted cert and the briefs are due Thurs.

- BTJ

From: Line Attorney 1

Sent: Friday, December 23, 2011 9:35 AM
To: Line Attorney 2
Cc: Branda, Joyce (CIV) <RC-1>; Granston, Michael (CIV) <RC-1>
Subject: FW: St. Paul: recommendation against intervention

This comes after my conversation with Dane yesterday about seeing if HUD could address Joyce/Mike's concerns. Joyce, we have heard nothing at all from USAO-Minn. It seems as though everyone is waiting for someone else to blink. In the meantime, we have a seal deadline in January. I will draft something for the Friday report in case you want to send it.

Line Attorney 1
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Washington, DC 20004
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From: HUD Line Emp.
Sent: Thursday, December 22, 2011 6:01 PM
To: Line Attorney 1
Cc: HUD Line Emp.
Subject: St. Paul: recommendation against intervention

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HUD Line Emp.

HUD Line Emp.
U.S. Department of Housing and Urban Development
Office of General Counsel
1250 Maryland Avenue, SW
Suite RC-1
Washington, D.C. 20024
Tel.: 202-RC-1
Fax: 202-401-5153

From: Line Attorney 1

Sent: Friday, December 23, 2011 9:59 AM
To: Brooker, Greg (USAMN) <RC-1>; Line Attorney 4 <Line Attorney 4>; Line Attorney 3 <Line Attorney 3>
Cc: Line Attorney 2
Subject: FW: St. Paul: recommendation against intervention

Fyi..

Line Attorney 1
Assistant Director
U.S. Department of Justice
Civil Division
Commercial Litigation Branch
Fraud Section
601 D Street N.W.
Suite RC-1
Washington, DC 20004
(202) RC-1

From: HUD Line Emp.
Sent: Friday, December 23, 2011 9:43 AM
To: Line Attorney 1
Subject: Re: St. Paul: recommendation against intervention

Yes

From: Line Attorney 1
Sent: Friday, December 23, 2011 09:35 AM
To: Silverman, Melissa B
Cc: HUD Line Emp.
Subject: RE: St. Paul: recommendation against intervention

HUD Line Emp. is this responsive to the question you and I discussed yesterday? Thank you.

Line Attorney 1
Assistant Director
U.S. Department of Justice
Civil Division
Commercial Litigation Branch
Fraud Section
601 D Street N.W.
Suite RC-1
Washington, DC 20004
(202) RC-1

From: HUD Line Emp.
Sent: Thursday, December 22, 2011 6:01 PM
To: Brooker, Renee (CIV)
Cc: HUD Line Emp.

From: Line Attorney 1

Sent: Friday, December 23, 2011 3:47 PM
To: Branda, Joyce (CIV) <RC-1>; Line Attorney 2 <Line Attorney 2>
Cc: Granston, Michael (CIV) <RC-1>
Subject: RE: Friday Report

I thought our marching orders were to draft a declination memo and to concur with the USAO-Minn. USAO-Minn. called me today (Greg Brooker, Line Attorney 3 Line Attorney 3, Line Attorney 4). Tony West, Todd Jones, and Tom Perez have apparently had conversations about this. Everything I have is third hand. Tom Perez called Greg Brooker directly yesterday. We discussed this plan today and the USA blessed the idea of L.A. 2 and L.A. 3 reaching out to defendant. The clear implication is that this is what should happen, but certainly I have not heard this directly from Tony West or Perez. Let us know if we should not do this.

Line Attorney 1
Assistant Director
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Civil Division
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Fraud Section
601 D Street N.W.
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Washington, DC 20004
(202) RC-1

From: Branda, Joyce (CIV)
Sent: Friday, December 23, 2011 3:39 PM
To: Line Attorney 1 Line Attorney 2
Cc: Granston, Michael (CIV)
Subject: Fw: Friday Report

Line Attorneys 1 and 2: Who raised the settlement issue? The usao? Civil rights? Why are we trying to do the deal - is the sg and civil rights involved and will they be on the calls with lillehaug? Are we ready to decline the affh case? I take it all this happened today?

From: Granston, Michael (CIV)
Sent: Friday, December 23, 2011 03:32 PM
To: Hertz, Michael (CIV)
Cc: Branda, Joyce (CIV); Anderson, Dan (CIV)
Subject: Friday Report

Notes of [Line Attorney 1]

Tom - Todd & Tony call
position of our USAO - Todd Jones
close call for us to recommend intervention
grant side of HUD not as thrilled
HUD dropped these 2 memos on us.
- it's a fluid situation - intervention to
declaration - USAO-Minn does not want to
be the first to flip
- this case is jointly handled - we are
joined
- if higher-ups decide they want to cut a deal
we understand this is a marching order
Line Attorney 4 's case - we have problems w/us getting
- 1/13 - deadline up to June
- should we re-write memos - do we have a
signal from City of St. Paul
- how do we make this deal?
- Perez's call was to counsel us to be
concerned about the Supreme Ct decision

From: Line Attorney 1

Sent: Friday, December 23, 2011 4:11 PM
To: Branda, Joyce (CIV) <RC-1>; Line Attorney 2 <Line Attorney 2>
Cc: Granston, Michael (CIV) <RC-1>
Subject: RE: Friday Report

By the way, when the district called me this morning to discuss this case, I did not tell them I knew that their USA was planning to decline (as we discussed I would not tell them). It was a difficult conversation to be honest, me playing dumb and them clearly feeling me out to see I had been told about the conversation with their USA. Eventually they got around to telling me, but clearly they were hoping not to be the first office to say "we will decline." I did tell them that I felt confident that we would concur with their declination and that our offices would not be split on this question (of course I know that was our position). This really seems extremely odd and inefficient. Why are hire-ups having numerous one on one conversations instead of us all having a conference call with Tony West, Perez and the USA so we can get perfectly clear on what we are to do.

Line Attorney 1
Assistant Director
U.S. Department of Justice
Civil Division
Commercial Litigation Branch
Fraud Section
601 D Street N.W.
Suite RC-1
Washington, DC 20004
(202) RC-1

From: Branda, Joyce (CIV)
Sent: Friday, December 23, 2011 3:59 PM
To: Line Attorney 1 ; Line Attorney 2
Cc: Granston, Michael (CIV)
Subject: Re: Friday Report

I haven't heard anything. My concern is that we are talking settlement about a case we have nothing to do with. I will talk to the district tuesday. All I was asked about is whether we could comfortably decline the one case, not both, and was not told we should do anything about settlement. Something may have happened after my talk with mike.

From: Line Attorney 1
Sent: Friday, December 23, 2011 03:47 PM
To: Branda, Joyce (CIV); Line Attorney 2
Cc: Granston, Michael (CIV)
Subject: RE: Friday Report

I thought our marching orders were to draft a declination memo and to concur with the USAO-Minn. USAO-Minn. called me today (Greg Brooker, Line Attorney 3

From: Hertz, Michael (CIV) </O=USDOJ/OU=CIVIL/CN=RECIPIENTS/CN=MAILBOXES/CN=MHERTZ>
Sent: Tuesday, December 27, 2011 11:23 AM
To: Branda, Joyce (CIV) <RC-1>; Granston, Michael (CIV) <RC-1>
Cc: Anderson, Dan (CIV) <RC-1>
Subject: RE: Friday Report

1) No insight.

From: Branda, Joyce (CIV)
Sent: Tuesday, December 27, 2011 10:03 AM
To: Hertz, Michael (CIV); Granston, Michael (CIV)
Cc: Anderson, Dan (CIV)
Subject: RE: Friday Report

1. Yes. Mike, the below is news to me but Line Attorney 1 indicated that it came from the U.S. Attorney's office as the direction. I am uncomfortable with it as I don't think we want a written agreement and in any event don't see why we are involved in negotiating for a dismissal of the City's petition as opposed to Civil Rights, the SG. We are going to call the USAO, unless you have some insight about all this.
2. RC-2: Non-responsive text in multi-subject document.

From: Hertz, Michael (CIV)
Sent: Tuesday, December 27, 2011 9:44 AM
To: Granston, Michael (CIV)
Cc: Branda, Joyce (CIV); Anderson, Dan (CIV)
Subject: RE: Friday Report

1) Is the City of St. Paul the Petitioner in the Sp. Ct.?

2) RC-2: Non-responsive text in multi-subject document.

From: Granston, Michael (CIV)
Sent: Monday, December 26, 2011 7:03 PM
To: Hertz, Michael (CIV)
Cc: Branda, Joyce (CIV); Anderson, Dan (CIV)
Subject: Re: Friday Report

Mike,

Here is an addendum to last week's Friday report:

RC-2: Non-responsive text in multi-subject document.

From: Granston, Michael (CIV)
Sent: Friday, December 23, 2011 03:32 PM
To: Hertz, Michael (CIV)
Cc: Branda, Joyce (CIV); Anderson, Dan (CIV)
Subject: Friday Report

From: Granston, Michael (CIV)
Sent: Friday, December 23, 2011 2:00 PM
To: Granston, Michael (CIV) (RC-1)
Subject: Friday Report

1. U.S. ex rel. Newell v. City of St. Paul, Minn (Section 3 case) and U.S. ex rel. Ellis et al. v. City of Minneapolis (AFFH case): The USAO-Minn and our office plan to reach out to the City of St. Paul early next week to see if we can reach an agreement whereby the government declines intervention in both cases and the City agrees to withdraw its petition before the Supreme Court. With the USAO's concurrence, we intend to submit for consideration a memo that recommends declination based on the issues recently raised by HUD, the City, the litigation risks, and any agreement, if one is reached, on the Supreme Court case.

2. **RC-2: Non-responsive text in multi-subject document.**

RC-2: Non-responsive text in multi-subject document.

3.

4.

5.

6.

RC-2: Non-responsive text in multi-subject document.

7.

8.

Have a nice weekend.

Michael D. Granston
Deputy Director
Fraud Section, Civil Division
U.S. Department of Justice
Tel: 202-[redacted]
Email: [redacted]

Notes of [Line Attorney 2]

Greg Brooker 612-[RC-1] 12/28/2011

Source

Line Attorney 2

- J. Trying to clarify where we are
  - declining the Newell case
- Gallagher - Civil Rights / SG decision

After meeting w/ City

Line Attorney 3 & Greg told Todd -
and filled him in on Supreme Court
bomb - nexus between Gallagher
and Newell

Line Attorney 4 had a draft declination memo
- ext. to June

Newell - Jan. 13 deadline

Apparently Tom Perez involved
meeting w/ underseas

Todd talked to Tom Perez

Todd said Tony, Todd and Perez
all spoke

Todd says we should talk
Wed. or Thurs. next week

Todd [redacted] -
knew about Newell
" about HUD letters re declining

Todd -
Civil Rights very concerned about Gallagher
HUD abandoning shop
- may have been lobbied
- There is a VCA
What kind of resources to support from HUD

I would like to recommend declination
Open and clear about declining the Newell case
Discuss every thing

Todd also said
- Dog of a case - she should reconsider - could get that out

Perez calls Greg

Perez – I want to give you some background
I know Tom Frazer – rep. in Sup. Ct.
Perez reached out to Frazer
Does City really want to kill disparate impact
Frazer says – City has HUD issues –
Perez becomes aware of QTs
" talks to Littlehog

Perez told them they have to win on the merits of the QTs
Can't talk about the Sup. Ct case so much
Explain how they got to QT

Brief filing – arbitrary deadline

Greg, [Line Attorney 4] & [Line Attorney 3] –
Talked
conv. w/ [Line Attorney 1]
– Have marching orders as to what USAtty wants them to do

– Who is talking to City of St. Paul
What does city really want

Group consensus
If [redacted] ask - would you consider declinations
City - said - we would consider that

Hypothetical conv.
Would City entertain -
broader discussion
I have no authority

City said "we would be open to that"

Joyce -
Concerned about - no role for us
in resolution of Gallagher
If we are motivated by " - doesn't
Supreme Ct. how to rule

Gowe Flats - USAO
[redacted] return next week -
- Memo coming to us
- Will refer to Sup. Ct. case
- discuss HUD case
Ellis case - to be declined

Get drafts ready to go

No one has mentioned the SG in these discussions

Line Attorney 2 , me

Notes of Joyce Branda

Greg Brooker - St Paul 12-28-11

APN we met up City are filled in Todd
Nexus between Newell + SCT case

Line Attorney 4 - Ellis - extension motion filed (new 6/12 deadline)

Newell 1/13 deadline

We told Todd that ~~Todd~~ Perez was involved

Todd called Perez - traded calls
Next day Todd said Tony, Todd + Perez talked

Todd told Greg we should talk
told Greg later Tony is travelling but
Todd wants to see

Todd → when remember memo we written it
was a close call. HUD support was there
(wishy washy)
Todd had background

We also told Todd about HUD letters/
resources / VCA w/ St Paul

→ Todd says it seems to me that CR is
concerned about Gallagher. HUD is
now standing strong - may be lobbied
by St Paul

But even tho FCA is past conduct, with HHD gone, I must + recommend declination

Very transparent about SCt case - in memo
Will be a new memo - times changing into
POR
Line Attorney 3 is out

Even tho, Line Attorney 4 has Elias - reassert the
decision + get that out

Tom Perez emails Greg that day + we
traded calls - I know him well
Unusual tho for him to call me

Perez told Greg that I know Tom Frazier
(represents City of St Paul in SCt case)
They had a discussion about whether
they will moot out the case

Frazier tells Perez - I know City has
HHD issues. Perez learns of questions +
is referred to Lillehaug

Perez says to Greg - I told them they had
to win on the merits of the questions
+ don't maintain the SCt case

I told Perez it is still fluid

Perez said 12/22 (that day) was fluid

Next day I brought in Line Attorneys 3 and 4

I have marching orders from Todd — Line Attorney 1 said
I am wanting to hear

Moving to dismiss? They are not comfortable with
that

Consensus — let's have Chad reach out to City of St.
Paul — Line Attorney 3 talked to Lundquist or Lillehaug —
we would consider declination

(Hypothetical — would city entertain
broader discussion (civil rights) on
SCt case

declination vs. intervention → They said they
would be open to
that.

Plan Line Attorney 3 will write a new memo recommending
declination - mention SCt case at end

In Ellis — she will work on ~~dead~~ memo

[Is SG involved? Greg doesn't know —
Perez didn't say

Notes of Tony West

Jan 3, 2012

CIV DIV SR STAFF – JAN 2012

COMMERCIAL

I. St. Paul

– City: we've learned that as settlement city means they'll just withdraw the petition → still haven't rec'd the USAO recommendation

RC-2: Non-responsive text in multi-subject document.

Appellate

RC-2: Non-responsive text in multi-subject document.

FED PROG

RC-2: Non-responsive text in multi-subject document.

Notes of Elizabeth Taylor

RC-2: Non-responsive text in multi-subject document.

1-4-12

Ceriel Mtg

Mike -
St. Paul - in SCt -
filed brief -
St. Paul was going to settle to make a case go away - now not settling - just withdrawing
HUD recommends that we decline 2 more cases - so they will settle -

- can they withdraw their petition? - St. Paul petitioned -

Tony needs to decide - is this part of deal? - need US Attys office rec.

Mike -
Odd to
- looks like buying off St. Paul. should be whether there are legit reasons to decline or to part practice -

Follow up
talk to Tony -

RC-2: Non-responsive text in multi-subject document.

From: Taylor, Elizabeth G. (OAAG)
To: Perrelli, Thomas J. (OAAG)
Sent: 1/5/2012 3:43:12 PM
Subject: another issue from civil mtg

Mike Hertz brought up the St. Paul “disparate impact” case in which the SG just filed an amicus brief in the Supreme Court. He's concerned about the recommendation that we decline to intervene in two qui tam cases against St. Paul. Apparently, this will be before Tony soon for his decision. Have you talked to Tony about it? If not, let's discuss when you get a few minutes.

Notes of [Line Attorney 2]

Greg, Line Attorney 3 Line Attorney 2, Line Attorney 1 1/6/2011

Calls from Tom Perez

[redacted]

Perez called Greg
- Where are we on these cases
- Multiple conv. - but we had some concerns

Who has lead negotiating [redacted] resp.

Tom P. said he agrees he needs to start closing this

Perez said - what are the details

Lots of Q on QT procedure

Suggestion to call [redacted] Tony West

Line Attorney 3, Greg, Line Attorney 4
Line Attorney 2, Line Attorney 1

1/6/2012

Perez

spoke w/ Tony West
couldn't get Todd

Tony is thinking Mimi doesn't
want to decline
But Perez said oh-no -
Fed. Cir. and

Meeting on Monday -
Can we get declination memo
up by then

Notes of [Line Attorney 1]

Todd - green light to Line Attorney 2/Line Attorney 3
read out to the city + get their pulse
comprehensive memo rec declination that
includes everything incl. the Supreme Ct.
Case
Todd says he doesn't know why

St. Paul, MN 1/6/2012

Tom Perez called G. Brooker on 1/5/2012
in evening. Brooker told ~~B~~ Tom we
spoke w/ Brand + asked who is taking
the lead on the settlement. Perez sd he
will take the lead. Todd asked a lot
of ques. about qui tams - Todd asked
wh. we cd intervene + move to dismiss.
one deadline is next week. Brooker took
him through all the qui tam procedures
and the like.
Perez sd he does not envision a written
agmt w/ the city on moving to w/d cert. petition

Greg kept urging him to call Tony West.
Perez said he would call Tony.
- got can always intervene for good cause at a later time > Joyce said make sure Perez understands this.

Call w/ Greg Brooker et al. 1-6-2012
Tony thinks Minn does not want to decline
Perez is mtg Mon w/ Holtz + West - Can USA meet + get the declinate memos out - to gather a proposal to make to the City

REDACTED

Novell case
call w/ Greg et al.
met w/ Todd sending memo
mtg w/ Perez + West only Mon
+ w/ Hertz
Minn. wants a very comprehensive
memo that discusses the Supreme Ct case

Dellss Greg stressed we want transparency get a readout relator about how much time

REDACTED

Newell - mtg w/ Joyce
decline the second case first
do not say there is a quid pro quo
settlement
settlement is not contingent on declination

Perez Plan A - contact Ps to dismiss
the dist ct case
Plan B - dismiss the petition

USAO ~~wants~~ shd send that memo fwd.
Huth emphasized a relator can proceed
w/ the meritorious case

USAO's reaction w/ Lilkhoog's offer was neg.

Joyce on Newell
Acc'd to Tony West - Greg thinks we shd
intervene + give the City two weeks to
settle.

Call Lillehaug about settling for dollars

Newell 1-19-2012
Cm call w/ Joyce + USAO-MN

Tony sd in response to Lillehaug - Greg spoke to Perez

Greg: Perez has called Greg frequently.
Perez asked wl. we wd decline w/o
mentioning Supreme Ct. case
Perez taking lead on negotiating w/ Lillehaug
Ds rejected hypothetical proposal -
we decline + they w/d Cert. petition
Lille - wants us to intervene to settle a case
that was his proposal to Perez + City has a
little bit of money to pay relator
Line Attorney 3 : one yr. ext. VCA + No add'l money
to be value - modest amt attnys fee
for relator's counsel
- No possibility of declination

From: Line Attorney 1

Sent: Friday, January 6, 2012 11:52 AM
To: Branda, Joyce (CIV) <RC-1>
Cc: Line Attorney 2
Subject: City of St. Paul Heads up

Line Attorney 2 and I just spoke with the USAO-Minn. Greg Brooker received a call yesterday from Tom Perez. It sounds like Tom Perez agreed to take the lead on the negotiations with the City of St. Paul, in terms of negotiating a withdraw by the City of the cert petition. The USAO-Minn is standing by until they get more explicit instruction that a deal has been made. Tom Perez may be calling Tony West about this today. The seal deadline is next Friday (1/13). Perez expressed some interest in the government declining on that date to keep pressure on the City. Nothing has been decided or requested. L.A. 2 and I can brief you more this afternoon on the call between Greg Brooker and Tom Perez if you like, but I wanted to give you this notice since you are at Main now.

Line Attorney 1
Assistant Director
U.S. Department of Justice
Civil Division
Commercial Litigation Branch
Fraud Section
601 D Street N.W.
Suite RC-1
Washington, DC 20004
(202) RC-1

From: Line Attorney 1 [redacted]
Sent: Monday, January 9, 2012 1:53 PM
To: Branda, Joyce (CIV) <RC-1 [redacted]>
Subject: Significant Cases Chart

Joyce: as an after-thought, I wondered whether you wanted to add the City of St. Paul cases even though the dollar value is not high. If so, here is the information.

U.S. ex rel. Frederick Newell v. City of Saint Paul, Minnesota, (D.Minn.) (Under Seal) Relator alleges that the City of St. Paul knowingly and falsely certified that it was in compliance with Section 3 of the Housing Act (incentives for low and very low income citizens) when it obtained HUD community development block grants (CDBG program, etc.).
U.S. ex rel. Ellis v. City of St. Paul, Minn, et al. (Under Seal) Relator alleges that the City of St. Paul failed to affirmatively further fair housing, when it obtained HUD community development block grants (CDBG program, etc).

The Major of the City of St. Paul has met with Mike Hertz. We are working toward declining both matters. It appears the AAG for Civil Rights (Tom Perez) is working with the City on a deal to withdraw its petition before the Supreme Court in the Gallagher case in exchange for the government's declination in both cases. HUD concurs with declination.

Line Attorney 1 [redacted]
Assistant Director
U.S. Department of Justice
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Commercial Litigation Branch
Fraud Section
601 D Street N.W.
Suite RC-1 [redacted]
Washington, DC 20004
(202) RC-1 [redacted]

From: Branda, Joyce (CIV)
Sent: Monday, January 09, 2012 11:56 AM
To: Anderson, Dan (CIV); Line Attorney 1 [redacted]; Davis, Pat (CIV); Granston, Michael (CIV); Hilmer, Tracy (CIV); Kleinburd, Alan (CIV); McLean, Sara (CIV); Rabinowitz, Judith (CIV); Tingle, Michal (CIV); Yavelberg, Jamie (CIV)
Subject: FW: Significant Cases Chart

We have been asked to identify cases over $250 million in damages that are in litigation, or settlement negotiations, or under investigation and to the point where we know they have merit and are that large, to identify for the front office and Department higher ups. See attached.

Please send me the info to include in the attached chart ASAP.

RC-1

From: Perez, Thomas E (CRT)
Sent: Tuesday, January 10, 2012 9:52 AM
To: Brooker, Greg (USAMN)
Subject: Re:

I left you a detailed voice mail. Call me if you can after you have a chance to review voice mail.

From: Brooker, Greg (USAMN)
Sent: Tuesday, January 10, 2012 09:42 AM
To: Perez, Thomas E (CRT)
Subject: RE:

Sorry. I have been out sick three days with a bad case of influenza. I will try to reach you today.
Greg

Greg Brooker
Chief, Civil Division
U.S. Attorney's Office
600 U.S. Courthouse
300 South Fourth Street
Minneapolis MN 55415
(612) RC-1 (direct dial)
(612) 664-5788 (fax)

From: Perez, Thomas E (CRT) [mailto:RC-1
Sent: Monday, January 09, 2012 10:55 AM
To: Brooker, Greg (USAMN)
Subject: Re:

Could you give me a call asap at 202RC-1. I will have my blackberry with me for the next 30 minutes and then must give it up for 3 hours because I will be RC-2

Tom

From: Brooker, Greg (USAMN)
Sent: Thursday, January 05, 2012 06:38 PM
To: Perez, Thomas E (CRT)
Subject:

Hi Tom,
I just left a message on your cell. Please call me on my cell at your convenience: 612RC-1.
Thanks
Greg Brooker

From: Perez, Thomas E (CRT) [mailto:RC-1
Sent: Thursday, January 05, 2012 5:25 PM

To: Brooker, Greg (USAMN)
Subject: Can you give me a call if you have a free moment

My cell is 202-[redacted]RC-1

Happy New Year

Tom Perez

Notes of [Line Attorney 2]

Line Attorney 1 Line Attorney 2

1/11/2012

Gregg, Line Attorney 3 Line Attorney 4

- Meeting on Monday
- Todd on standby - but doesn't participate

- Tuesday AM
  - Message from Perez
  - When you are working on memos - make sure you don't talk about Sup. Ct. case
  - Concern for Greg
  - Red flag

  - Greg left message - saying the Sup. Ct. info. will be in the memo

  - No memos yet from Minn. yet
  - If there are memos Gallagher will be in it

From: Line Attorney 1

Sent: Wednesday, January 11, 2012 10:56 AM

To: Branda, Joyce (CIV) <RC-1>; Granston, Michael (CIV) <RC-1>

Cc: Line Attorney 2

Subject: City of St. Paul qui tams update

L.A. 2 and I spoke with Minn. AUSAs Greg and L.A. 3 this morning. Greg last spoke with his USA on Sunday morning and voiced his objection to the apparent inclination of AAGs West and Perez to not include a discussion of the Supreme Court case as a reason for declining the Newell qui tam, which Greg described as a close judgment call on the election decision. Greg expressed his strong view that the reasons for the election decision of both offices should be transparent from a discussion in the memo. The USA seems to agree. Therefore, until this issue is resolved with West/Perez, Greg's office will not begin to draft a memo on the election decision. Joyce, for what it is worth to you, L.A. 2 and I feel the same way. We believe transparency is very important.

As for the seal extension request. Given the relator's objection, USAO-Minn will be judicious in the amount of time it asks the court to extend the seal.

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Suite RC-1
Washington, DC 20004
(202) RC-1

RC-1 [redacted]

From: Perez, Thomas E (CRT)
Sent: Wednesday, January 11, 2012 3:51 PM
To: Brooker, Greg (USAMN)
Subject: Re:

Just left a message for you. My cell is 202 RC-1 [redacted]

Tom

From: Brooker, Greg (USAMN)
Sent: Wednesday, January 11, 2012 10:06 AM
To: Perez, Thomas E (CRT)
Subject: RE:

Sorry, I have been out sick – only made it a couple of hours in the office yesterday. I left you a message this morning. At some point we all should talk.
Thanks
Greg

Greg Brooker
Chief, Civil Division
U.S. Attorney's Office
600 U.S. Courthouse
300 South Fourth Street
Minneapolis MN 55415
(612) RC-1 [redacted] (direct dial)
(612) 664-5788 (fax)

From: Perez, Thomas E (CRT) [mailto RC-1 [redacted]]
Sent: Tuesday, January 10, 2012 1:45 PM
To: Brooker, Greg (USAMN)
Subject: Re:

Were u able to listen to my message?

From: Brooker, Greg (USAMN)
Sent: Tuesday, January 10, 2012 09:42 AM
To: Perez, Thomas E (CRT)
Subject: RE:

Sorry. I have been out sick three days with a bad case of influenza. I will try to reach you today.
Greg

Greg Brooker
Chief, Civil Division
U.S. Attorney's Office
600 U.S. Courthouse

300 South Fourth Street
Minneapolis MN 55415
(612) [redacted] (direct dial)
(612) 664-5788 (fax)

From: Perez, Thomas E (CRT) [mailto[redacted]]
Sent: Monday, January 09, 2012 10:55 AM
To: Brooker, Greg (USAMN)
Subject: Re:

Could you give me a call asap at 202[redacted]. I will have my blackberry with me for the next 30 minutes and then must give it up for 3 hours because I will be[redacted]

Tom

From: Brooker, Greg (USAMN)
Sent: Thursday, January 05, 2012 06:38 PM
To: Perez, Thomas E (CRT)
Subject:

Hi Tom,
I just left a message on your cell. Please call me on my cell at your convenience: 612[redacted].
Thanks
Greg Brooker

From: Perez, Thomas E (CRT) [mailto[redacted]]
Sent: Thursday, January 05, 2012 5:25 PM
To: Brooker, Greg (USAMN)
Subject: Can you give me a call if you have a free moment

My cell is 202[redacted]

Happy New Year

Tom Perez

[redacted]

From: postmaster@msgsvr.voip.usa.doj.gov [mailto:postmaster@msgsvr.voip.usa.doj.gov]
Sent: Thursday, January 12, 2012 5:58 PM
To: Greg Brooker
Subject: Voice Message Attached from 202[redacted]RC-1 - DIST OF COLUMBI

Time: Jan 12, 2012 5:58:05 PM
Click attachment to listen to Voice Message

RC-1

From: Perez, Thomas E (CRT)
Sent: Friday, January 13, 2012 12:45 PM
To: Brooker, Greg (USAMN)
Subject: RE:

I will let you know as soon as I have word

From: Brooker, Greg (USAMN)
Sent: Friday, January 13, 2012 12:35 PM
To: Perez, Thomas E (CRT)
Subject: RE:

Thanks for the update Tom. We are ready to roll upon your word.
Greg

From: Line Attorney 2

Sent: Friday, January 13, 2012 4:00 PM
To: Line Attorney 1
Subject: Newell Development

L.A. 3 called. He talked to the City's counsel who called him.

Lillehaug says they have been thinking about it, and the City feels pretty strongly that it can win the Gallagher case in the Supreme Court, and will win back at the trial court when it is remanded. The City is concerned that getting us to decline does not really get them what they want – they would still have to deal with the case. The City wants us to consider an arrangement where we agree to a settlement where it will extend the VCA for another year, value that as an alternative remedy, and it would add a small amount of cash for relator's attorney fees, and a small relator's share. They say this has to be a very modest amount of money. In exchange we would have to intervene and move to dismiss.

I'm not sure how this would really work. If we settle, we don't need to intervene and move to dismiss. Nonetheless, this is what they want us to consider.

L.A. 3's instinct is that the relator will not go for this. L.A. 3 reiterated that he, L.A. 4 and Greg feel strongly that declination is one thing, but that dismissal is another.

I told L.A. 3 we would discuss this development and get back to them. I told him t would not be before Tuesday because I was not sure if people were here still.

Should I set up a call on Tuesday? Would 11:00 AM eastern work for you?

* * * * *

Line Attorney 2
Senior Trial Counsel
Civil Division, Commercial Litigation Branch, Frauds Section
United States Department of Justice
Patrick Henry Building
Room RC-1
601 D. Street, N.W.
Washington, D.C. 20004
RC-1

From: Line Attorney 1

Sent: Friday, January 13, 2012 7:52 PM
To: Branda, Joyce (CIV) <RC-1>; Line Attorney 2 <Line Attorney 2>
Subject: RE: Newell Development

My guess is that USAO-Minn will be on the same page with us.

From: Branda, Joyce (CIV)
Sent: Friday, January 13, 2012 5:35 PM
To: Line Attorney 2; Line Attorney 1
Subject: Re: Newell Development

This is so not what was discussed with tom perez as what the plan was - basically we were to decline elis first and use that as the good faith government gesture to get them to dismiss the petition (and civil rights was trying to talk to plaintiffs about a deal where they would settle the whole case).

We can talk tuesday but my reaction is quite negative. Besides, what is the consideration for dismissing ellis? How would we "value" the vca (also very bad precedent)? This strikes me as lillihaag doing his bullying thing. On the other hand if there is real consideration paid (assuming we could come up with damages calculation in both cases) we could consider a standard settlement. But this proposal is far afield from anything that has been talked about.

From: Line Attorney 2
Sent: Friday, January 13, 2012 04:43 PM
To: Branda, Joyce (CIV); Line Attorney 1
Subject: Newell Development

Joyce –David Lillehaug, called the Newell AUSA today. Lillehaug told L.A. 3 that the City feels strongly it can win *Gallagher* in the Supreme Court, and that it will win back at the District court when the case is remanded. The City is concerned a declination in *Newell* does not really get the City what it needs – because there would still be a case. The City wants us to consider the following settlement: The City extends its HUD VCA for an additional year. A value is assigned to that extension as an alternative remedy. The City adds a small amount of cash for relator's attorney fees, and a small relator's share. The City says this has to be a very modest amount of money. In exchange, the government intervenes and moves to dismiss *Newell* and *Ellis*. L.A. 3 has asked for our reaction. His instinct is that the relator will not go for this unless there is a significant amount of money.

- Line Attorney 2

* * * * *

Line Attorney 2
Senior Trial Counsel
Civil Division, Commercial Litigation Branch, Frauds Section
United States Department of Justice
Patrick Henry Building
Room RC-1
601 D. Street, N.W.
Washington, D.C. 20004

RC-1 [redacted]

RC-1

From: Perez, Thomas E (CRT)
Sent: Wednesday, January 18, 2012 10:21 AM
To: West, Tony (CIV)
Subject: RE: Happy New Year

If it is possible to talk today to confirm whether you are ok with the approach as outlined, it would be very helpful, as the clock is ticking fast and the team would need to get right on it.

Sorry to bother you.

Tom

From: West, Tony (CIV)
Sent: Friday, January 13, 2012 4:14 PM
To: Perez, Thomas E (CRT)
Subject: Re: Happy New Year

Just landed in las vegas for a speech. Call me when you're done: 202 RC-1 .

From: Perez, Thomas E (CRT)
Sent: Friday, January 13, 2012 03:39 PM
To: West, Tony (CIV)
Subject: Re: Happy New Year

I have a meeting that will last til 430. Can we talk today. I now know state of play and we need to talk asap

Tom

From: West, Tony (CIV)
Sent: Wednesday, January 11, 2012 07:17 PM
To: Perez, Thomas E (CRT)
Subject: Re: Happy New Year

Just left you a message. I'm on my cell: 202 RC-1 .

From: Perez, Thomas E (CRT)
Sent: Wednesday, January 11, 2012 05:51 PM
To: West, Tony (CIV)
Subject: Re: Happy New Year

If you have a chance to catch up for 2 minutes, let me know

From: West, Tony (CIV)
Sent: Thursday, January 05, 2012 02:25 PM
To: Perez, Thomas E (CRT)
Subject: Re: Happy New Year

Sure thing. Will try you after this meeting w/tom perrelli.

From: Perez, Thomas E (CRT)
Sent: Thursday, January 05, 2012 01:18 PM
To: West, Tony (CIV)
Subject: Re: Happy New Year

If we are able catch up in the next day, that would be great.

From: West, Tony (CIV)
Sent: Tuesday, January 03, 2012 04:41 PM
To: Perez, Thomas E (CRT)
Subject: Re: Happy New Year

Happy New Year to you too! Was able to spend a lot of time with family, which was wonderful.

I'll try to give you a call this evening or tomorrow about our case. --TW

From: Perez, Thomas E (CRT)
Sent: Tuesday, January 03, 2012 03:26 PM
To: West, Tony (CIV)
Subject: Happy New Year

Tony

RC-1 [redacted]

I was hoping we could follow up to continue our discussion we had before the holidays about the fair lending matter. If you could give me a shout at your convenience, or let me know a time when we could talk, I would be most grateful.

Tom

From: Line Attorney 2

Sent: Wednesday, January 18, 2012 4:06 PM

To: Branda, Joyce (CIV) <RC-1>; Line Attorney 1 (Line Attorney 1)

Subject: Additional Discussion with USAO re Newell

I told L.A. 3 that we were waiting for more information at this end. He reemphasized the situation as we know it, and that the City is waiting for a response. Much of what he said was duplicative of what we have already passed to you, but he was more emphatic about where he thinks we are.

He says he understood that West, Perez and Hertz had had a meeting and that the resulting go forward was the plan to decline Ellis, resolve Gallagher and then decline Newell. The 60 day extension in Newell was supposed to be part of that plan. He explained and asked me to emphasize to you, that subsequently, however, the City called and said they are no longer willing to accept the decline two qui tams and dismiss Gallagher deal. That they will not withdrawal Gallagher on that basis, that they are only willing to do the new deal they propose, which is:

The City would:

- Extend the Section 3 VCA a year, and we would assign a value to that extension.
- Settle the Newell Case, with the City's payment being a) credit for the value of the VCA extension, plus b) some small amount of cash to pay a relator's share and attorney fees.
- Withdrawal its petition in Gallagher.

In exchange the United States would:

- Intervene in and dismiss Newell.
- Intervene in and dismiss Ellis.

If we are unwilling to accept this deal, they said they will not dismiss Gallagher. Chad says the ball is in our court to get back to the City with a response to the offer. L.A. 3 says he would expect the Relator to object to this deal.

I told L.A. 3 we are waiting for you to get a chance to talk to Tony.

The USAO does not have an official position yet. L.A. 3 and I agreed, however, that if this deal is not going forward we will need to make an decision in Newell and Ellis independent of Gallagher to move forward.

The current intervention deadline in Ellis is June 18, 2012. The Newell deadline extension request is to March 13, 2012. We have no word from the Court on our request yet. The deadline was last Monday.

* * * * *

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601 D. Street, N.W.
Washington, D.C. 20004
RC-1

Notes of [Line Attorney 2]

Greg, Line Attorney 4, Line Attorney 3, Line Attorney 2, Line Attorney 1, Joyce

1/19/2012

Tony reports to Joyce
- Greg got message from Lillehaug
- Intervene, 2 weeks to settle, if not go forward with case

Greg and Perez have talked a lot
Perez said - get declination memos
leave out Gallagher
Broker called back and said no

Line Attorney 3 rejected City's proposal
Perez says - Lillehaug wants us to intervene to settle the case
Lillehaug - charge a little bit of $ to settle the case

Line Attorney 3 -

Terms from Lillehaug
- Get a 1 years ext. of VCA - That is what goes to court
- Value of that -
Relator shares based on that
Very modest amount of atty fees

Declining - no possibility any more

Greg -
looks like
Supreme Court will probably have to
move on
Intervention motion came in -
Perez trying to talk to Tony
Haven't been able to talk
Must have committed yesterday

- Give it a college try to try to
negotiate
- Threat that we will intervene in
Newell and litigate

Perez - do well, we tried, may have to go
forward, City not willing to put in
some money

Valuing the VCA - non-starter
But we can talk about a transitional
~~City~~ settlement with the City

If any remaining uncertainty
– about forget the idea

Notes of [Line Attorney 1]

Call Lillehaug about settling for dollars

Newell 1-19-2012
Cm call w/ Joyce + USAO-MN

Tony sd in response to Lillehaug - Greg spoke to Perez

Greg: Perez has called Greg frequently.
Perez asked wh. we wd decline w/o mentioning Supreme Ct. case
Perez taking lead on negotiating w/ Lillehaug
Ds rejected hypothetical proposal -
we decline + they w/d cert. petition
Lille - wants us to intervene to settle a case that was his proposal to Perez + City has a little bit of money to pay relator
Line Attorney 3 one yr. ext. VCA + No add'l money to be value - modest amt attnys fee for relator's counsel
- No possibility of declination

Not much response for Lillelang
Perry was trying to get a hold of Tony West
Perry said yesterday: Lillel. not willing to kick in much money. We may/may not intervene
- if Supreme Ct thing is off the plate
- Perry sounded like he might be throwing in the towel
- Joyce rqts Greg to schedule a mtg w/ all players
- keep posted about seal deadline
- relator will be unlikely to accept a small bond
- Tell Lillel. valuing the VCA is not okay
- get HUD's analysis that concluded the City did not "get credit" for
- Set up a call w/ [redacted]
- Summarize Conversation w/ USAO-Minn, incl. we discussed if uncertainty w/ Civ Rgts - we are very careful of the all principals

FCA settlement - decline - filled Todd in Fri. night
Perez called Brooks - Perez ld mtg w/ the Mayor of St Paul
Todd did not attend the mtg. Lillehog - Mayor - Perez mtg. @ 10:00 am. Fri - 2/3/2012
Perez sd the is a deal - ~~sd~~
- City ready to file stip in Sigurnel ct. by Wed.
- we need to decline L.A. 3 case
- ~~sd~~ Tony West sd don't worry about my people
- Greg + Todd spoke Fri night re Perez phone call and . . .
- Todd said we won't intervene
- Perez today 2/6/2012 tried to call Tony West who did not return Perez's phone calls for this weekend
- Perez wants to bring
- City Council mtg on Wed. - closed session to move to w/d cut pet.

- city accepted offer of declination to be filed
- Brig non-negotiable:
  must be comprehensive memo, incl. Hus letters
- Perez did not say what exactly has been asked to

Notes of Joyce Branda

St Paul

1-19

Greg B. / Line Attorney 3   Line Attorney 1 / Line Attorney 2

Perez has called me frequently

Perez called & said can you get declination memos ready b/4 Gallagher summoned

G said no

Perez is negotiating w/ Lillehaug + [illegible]

Perez called Greg & said he heard Lillehaug is rejecting the proposal to decline cases & they dismiss G.

Lillehaug proposed to P.
to intervene & settle the
case + said they have
a little bit of $

Line Attorney 3 talked to Lillehaug —
terms would be one
get an extension
of 1 year of VCA +
that would be considera-
tion to Gov't - no add'l
money

Then waive the add'l
time of VCA + monetize
that + modest
A. fees.

⇒ NO necessity of dedication
(from Lillehaug)

Lillehaug rejects the deal mark
Perez says we may have
to have to fight another
day - he receives two
is not much of a
response from Lillehaug

Yesterday Perez tried to call
me - he was trying to
call TW - we haven't
been able to talk.
never have connected
yesterday

Perez says we can try
to settle - but it
doesn't look good

- from us the threat will
will upgrade Newell

That may be where he
got the idea of
our intending to litigate
the case

Greg - I am sorry on what
L. Mchaney told me

- We now have an extension
60 Back where we started.
days
↳ extension request in Newell

RC-1 [redacted]

From: Perez, Thomas E (CRT)
Sent: Wednesday, January 18, 2012 9:39 PM
To: Brooker, Greg (USAMN)
Subject: Re: Civil Frauds

Spoke with lillehaug. Call me if u want an update

From: Brooker, Greg (USAMN)
Sent: Wednesday, January 18, 2012 05:57 PM
To: Perez, Thomas E (CRT)
Subject: Civil Frauds

Tom,
FYI: Civil Frauds has asked Minnesota to have a call with them tomorrow at 9:30 Eastern. They seem to be confused as to the next move.
Greg

Greg Brooker
Chief, Civil Division
U.S. Attorney's Office
600 U.S. Courthouse
300 South Fourth Street
Minneapolis MN 55415
(612) RC-1 [redacted] (direct dial)
(612) 664-5788 (fax)

RC-1 [redacted]

From: Perez, Thomas E (CRT)
Sent: Wednesday, January 18, 2012 10:01 PM
To: Brooker, Greg (USAMN)
Subject: Fw: Happy New Year

Just got this from tony west. I think your leadership tomorrow morning will be critical in getting us to the next step.

Thx

From: West, Tony (CIV)
Sent: Wednesday, January 18, 2012 09:44 PM
To: Perez, Thomas E (CRT)
Cc: West, Tony (CIV)
Subject: Re: Happy New Year

Spoke to Joyce Branda. She's touching base with Greg at the USAO to discuss how they can accomplish the proposal consistent with prior practice. I'll circle back with you once I've heard from her (although you may hear from Greg first).

On Jan 18, 2012, at 7:20 AM, "Perez, Thomas E (CRT)" <RC-1 [redacted]> wrote:

> If it is possible to talk today to confirm whether you are ok with the approach as outlined, it would be very helpful, as the clock is ticking fast and the team would need to get right on it.
>
> Sorry to bother you.
>
> Tom
>
> ---
>
> **From:** West, Tony (CIV)
> **Sent:** Friday, January 13, 2012 4:14 PM
> **To:** Perez, Thomas E (CRT)
> **Subject:** Re: Happy New Year
>
> Just landed in las vegas for a speech. Call me when you're done: 202 RC-1 [redacted].
>
> ---
>
> **From:** Perez, Thomas E (CRT)
> **Sent:** Friday, January 13, 2012 03:39 PM
> **To:** West, Tony (CIV)
> **Subject:** Re: Happy New Year
>
> I have a meeting that will last til 430. Can we talk today. I now know state of play and we need to talk asap
>
> Tom
>
> ---
>
> **From:** West, Tony (CIV)
> **Sent:** Wednesday, January 11, 2012 07:17 PM
> **To:** Perez, Thomas E (CRT)
> **Subject:** Re: Happy New Year

Just left you a message. I'm on my cell: 202 RC-1 .

From: Perez, Thomas E (CRT)
Sent: Wednesday, January 11, 2012 05:51 PM
To: West, Tony (CIV)
Subject: Re: Happy New Year

If you have a chance to catch up for 2 minutes, let me know

From: West, Tony (CIV)
Sent: Thursday, January 05, 2012 02:25 PM
To: Perez, Thomas E (CRT)
Subject: Re: Happy New Year

Sure thing. Will try you after this meeting w/tom perrelli.

From: Perez, Thomas E (CRT)
Sent: Thursday, January 05, 2012 01:18 PM
To: West, Tony (CIV)
Subject: Re: Happy New Year

If we are able catch up in the next day, that would be great.

From: West, Tony (CIV)
Sent: Tuesday, January 03, 2012 04:41 PM
To: Perez, Thomas E (CRT)
Subject: Re: Happy New Year

Happy New Year to you too! Was able to spend a lot of time with family, which was wonderful.

I'll try to give you a call this evening or tomorrow about our case. --TW

From: Perez, Thomas E (CRT)
Sent: Tuesday, January 03, 2012 03:26 PM
To: West, Tony (CIV)
Subject: Happy New Year

Tony

RC-1

I was hoping we could follow up to continue our discussion we had before the holidays about the fair lending matter. If you could give me a shout at your convenience, or let me know a time when we could talk, I would be most grateful.

Tom

From: Line Attorney 2

Sent: Friday, January 27, 2012 11:04 AM
To: Line Attorney 1
Subject: Newell Ongoing Discussions

L.A. 3 is very concerned about the fact that the meeting has been moved to next week. He wonders if we can act before a meeting.

He reports that Lillehaug has called to emphasize that need for speed. There have been no discussions about the City's offer with Newell. L.A. 3 expects a negative response form relator if we were to raise it.

L.A. 3 reports Greg talked to Perez yesterday, and Perez is irritated at Lillehaug (who could have had declinations, and got greedy). Perez reports he may have another avenue to try to get rid of the Gallagher case. L.A. 3 believes Perez just wants us to fish or cut bait as to whether or not the City's settlement is possible, or if a traditional FCA settlement is possible, and does not feel strongly either way as to how that should come out.

L.A. 3 has not talked to Todd.

L.A. 3 wonders if we can go back to the City now with our counter – can we say no on their settlement, and ask if they will they do a traditional FCA settlement.

I told L.A. 3 that with a meeting scheduled, this office would likely not be comfortable acting before the meeting, but I told him I would forward his request.

Finally, L.A. 3 does not believe we should oppose the relator's objection to our extension request, because he doesn't believe there is much we can say. I am a little uncomfortable with no response, but I agree there would not be much to say beyond asserting that it is our seal. We cannot really deny that our investigation is done.

Should we report any of this to Joyce? What do you think about going back to the City?

* * * * *

Line Attorney 2
Senior Trial Counsel
Civil Division, Commercial Litigation Branch, Frauds Section
United States Department of Justice
Patrick Henry Building
Room RC-1
601 D. Street, N.W.
Washington, D.C. 20004
RC-1

From: Kappelhoff, Mark (CRT)
Sent: Sunday, January 29, 2012 11:09 PM
To: Perez, Thomas E (CRT)
Subject: Re: Fyi

Thx. Let's chat tomorrow.

----- Original Message -----
From: Perez, Thomas E (CRT)
Sent: Sunday, January 29, 2012 12:28 PM
To: Kappelhoff, Mark (CRT)
Subject: Fyi

The call was made friday by mondale that we discussed

From: Perez, Thomas E (CRT)
Sent: Monday, January 30, 2012 12:09 PM
To: West, Tony (CIV)
Subject: Re: St. Paul

Thx

From: West, Tony (CIV)
Sent: Monday, January 30, 2012 11:47 AM
To: Perez, Thomas E (CRT)
Subject: FW: St. Paul

fyi

From: West, Tony (CIV)
Sent: Monday, January 30, 2012 11:47 AM
To: Branda, Joyce (CIV)
Subject: St. Paul

Joyce, as we discussed, I'm fine with making one more attempt at trying to get the parties to settle before we make any intervention decisions. Let's try to put some time parameters around it, though—something like 10-14 days. Thanks. -- TW

From: Line Attorney 2

Sent: Monday, January 30, 2012 5:18 PM

To: Line Attorney 1 ; Branda, Joyce (CIV)
<RC-1 >

Subject: Newell Settlement Talks Appear to be Done Already (I hope these are not famous last words)

Lillehaug was upset and surprised we are not willing to accept the City's good offer. Lillehaug warned L.A. 3 that Mr. Perez is going to be angry with us. Right after the call with L.A. 3 Lillehaug tried to reach Perez. Perez then called and told Greg he was not inclined to call Lillehaug back right away.

L.A. 3 told Lillehaug that we are rejecting the City's offer. L.A. 3 told him we continue to be willing to discuss a traditional FCA settlement, but discussions would have to move quickly. Lillehaug asked if his "value the VCA" concept as consideration could be part of an FCA settlement. L.A. 3 said no, that the settlement would have to involve the payment of money. L.A. 3 emphasized we can always take ability to pay, and the fact that the defendant is a public entity into account, but there would have to be a money. Lillehaug asked if we have a demand. L.A. 3 told him that our understanding is that the City is not willing to put more any significant money on the table, and so, in our judgment, any number we could give to them would be a non-starter. L.A. 3 asked him to tell us if the City's position changes.

L.A. 3 's conclusion is that we are no longer on a settlement track, and we should move forward with our decision making process.

Line Attorney 1 – I guess we need to get to HUD L.E. to see if this changes HUD's mind.

RC-1

From: Perez, Thomas E (CRT)
Sent: Monday, January 30, 2012 8:23 PM
To: Brooker, Greg (USAMN)
Subject: Re: Civil Frauds

Let's catch up when you get a chance.

From: Brooker, Greg (USAMN)
Sent: Thursday, January 26, 2012 11:17 PM
To: Perez, Thomas E (CRT)
Subject: RE: Civil Frauds

I think we should all move forward with the call without Tony. I will suggest that to Todd and Joyce Branda in the morning.
Greg

From: Perez, Thomas E (CRT) [mailto RC-1
Sent: Thursday, January 26, 2012 11:15 PM
To: Brooker, Greg (USAMN)
Subject: Re: Civil Frauds

I just found out that today's call, which was postponed to tomorrow, has now been postponed by civil to next tuesday due to tony scheduling problems. We must follow up tomorrow. Can we speak in the morning.

From: Perez, Thomas E (CRT)
Sent: Wednesday, January 25, 2012 05:23 PM
To: Brooker, Greg (USAMN)
Subject: Re: Civil Frauds

Was he able to make the call and get through to him

From: Perez, Thomas E (CRT)
Sent: Tuesday, January 24, 2012 03:30 PM
To: Brooker, Greg (USAMN)
Subject: Re: Civil Frauds

Any progress to report?

From: Brooker, Greg (USAMN)
Sent: Friday, January 20, 2012 12:16 PM
To: Perez, Thomas E (CRT)
Subject: RE: Civil Frauds

Tom,
Could you please call me at your convenience?
Thanks
Greg Brooker
Cell: 612 RC-1

From: Perez, Thomas E (CRT) [mailto[redacted]
Sent: Thursday, January 19, 2012 3:59 PM
To: Brooker, Greg (USAMN)
Subject: Re: Civil Frauds

Fyi, David L. looks forward to hearing from [redacted] in the next 24 hours

Tom

From: Brooker, Greg (USAMN)
Sent: Wednesday, January 18, 2012 05:57 PM
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Subject: Civil Frauds

Tom,
FYI: Civil Frauds has asked Minnesota to have a call with them tomorrow at 9:30 Eastern. They seem to be confused as to the next move.
Greg

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U.S. Attorney's Office
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300 South Fourth Street
Minneapolis MN 55415
(612) [redacted] (direct dial)
(612) 664-5788 (fax)

RC-1 [redacted]

From: Perez, Thomas E (CRT)
Sent: Friday, February 03, 2012 1:15 AM
To: Brooker, Greg (USAMN)
Subject: Re: Civil Frauds

Can I talk to you and your colleague in the morning before my meeting. I need to ask a couple questions.

Tom

From: Brooker, Greg (USAMN)
Sent: Thursday, February 02, 2012 09:50 AM
To: Perez, Thomas E (CRT)
Subject: Re: Civil Frauds

Still trying to reach Todd.
Greg

From: Perez, Thomas E (CRT) [mailto:RC-1 [redacted]
Sent: Wednesday, February 01, 2012 11:55 PM
To: Brooker, Greg (USAMN)
Subject: Re: Civil Frauds

Any update on todd availability

From: Brooker, Greg (USAMN)
Sent: Thursday, January 26, 2012 11:17 PM
To: Perez, Thomas E (CRT)
Subject: RE: Civil Frauds

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(612) 664-5788 (fax)

Notes of [Line Attorney 2]

Greg Brooker
Line Attorney 1
Line Attorney 2
Line Attorney 4

2/6/2012

~~[redacted]~~

Perez called earlier in week to invite Todd Jones to go to meeting w/ Mayer
Todd declined to go to meeting

Fri. 4th AM

Lilekang was there

Fri. pm –
Perez left VM – and then talked to Greg

We have a deal
Things are moving quickly

Back to where we were –

City accept declination
Moving quickly

City will be ready to file stip. on Wed
Need a declination in §3 first

- §3 - declined
- Supreme Court - dismissed
- Ellis dismissed

Tony said - don't worry about my people

Perez said - I'll tell Tony

Grad talked to ~~Tony~~ Todd

Todd said This is better - but if these are declinations Sup. Ct. is important

Perez called:
Mon. AM
- Left messages for Tony our weekend
- haven't connected

City Council ~~Session~~
- Closed ~~meeting~~ on ~~Tuesday~~ Wednesday
- Mayor will Thom to approve burning down mail case
- They have agreed to get landlord on board

Greg - wants us to explain
where we are on our memos

Non - negotiable
- how to refer to Supreme Ct. case
- Memo talks about HUD memos

From: Line Attorney 1

Sent: Monday, February 6, 2012 2:58 PM
To: Branda, Joyce (CIV) <RC-1>
Cc: Line Attorney 2
Subject: City of St. Paul update

Joyce: Greg informed me and L.A. 2 this afternoon of a few additional facts (see email below):

1. On Friday, 2/5 @ 10:00am, Lillehog, the Mayor, and Perez had a meeting at which they agreed the government would decline intervention on the Newell case (now) and the AFFH case (later) and the City would withdraw its cert petition asap.
2. The City Council is meeting in a closed session to approve the above action on Wed.
3. Perez gave no further details to Greg about the purported agreement, and there are more questions than answers to how this would play out and whether any such agreement would be in writing.
4. Perez called Tony West repeatedly this weekend to give Tony this update, and presumably, to get Tony's approval, but Tony did not return Perez's phone calls as of an hour or two ago.
5. Perez wants declination approval by Wednesday, but there is no apparent basis for that deadline.
6. USA-MN considers it non-negotiable that its office will include a discussion of the Supreme Court case and the policy issues in its declination memo.
7. Neither me/L.A. 2 nor the USAO has agreed to forward any authority memo until we get further instruction from Tony West or you.
8. Greg is calling his USA to see if we can have an all-hands conference call w/West, Perez, Todd Jones.

Line Attorney 1
Assistant Director
U.S. Department of Justice
Civil Division
Commercial Litigation Branch
Fraud Section
601 D Street N.W.
Suite RC-1
Washington, DC 20004
(202) RC-1

Notes of Joyce Branda

2-7-12 Tom Perez
TW
USAO - Mn.
Line Attorney 2, JB

City of St Paul has committed to withdraw petition in Magner case - Mayor's member is Mondale & he attend hrgs & was offended at prospect of losing Magner case

Preparing to file a motion to withdraw the petition - SG assured me cert will grant. If + case goes away

We had talked (Greg, Mike) 2C

- declaration in Newell
- declaration later in other case

Request to settle Newell - they are now off of that

We could commit to a simple declaration + cases will go as they will

- this week, the Section 3 case
- other case, may not be an issue (?)

Anything in writing? TPerez: no, just oral discussions
would miss your hand

Hope is Section 3 case - more focused if a declaration this week - can't have not ruled on motion

Breaking their entity current framework –

Greg B: Mon. → agent is not in entity?
TPerez: that's correct

Talked to Todd Jones – memo will be very transparent / comprehensive

JPB: not going up good cause intervention
TP: Lillehaug did not mention this ?

I just learned entity is flag tomorrow.
TP: I think we (TP) have "a good relationship of trust"

If decision can't Thurs – Fri
it would be ok

TP: Do of cases we move to intervene ? JPB - few

– but we file briefs – either side
– reserve right to intervene for good cause

We will send std notice to TP
send draft memo to L.A. 3 / Greg

WordPerfect Document Compare Summary

Original document: K:\My Documents\1 CASES\Newell\2012.01.10 Newell Action Memo - Declination.wpd
Revised document: K:\My Documents\1 CASES\Newell\2012.02.07 Newell Action Memo - Declination.wpd
Deletions are shown with the following attributes and color:
~~Strikeout~~, Blue RGB(0,0,255).
Deleted text is shown as full text.
Insertions are shown with the following attributes and color:
Double Underline, Redline, Red RGB(255,0,0).

The document was marked with 74 Deletions, 53 Insertions, 0 Moves.

U.S. Department of Justice

Civil Division

Washington, D.C. 20530

MEMORANDUM FOR TONY WEST
ASSISTANT ATTORNEY GENERAL, CIVIL DIVISION

Re: *U.S. ex rel. Newell v. City of St. Paul, Minnesota*,
Case No. 09-SC-001177 (D. Minn.)

DJ No. 46-39-955

REQUEST FOR AUTHORITY TO DECLINE TO INTERVENE

TIME LIMIT:	Before ~~January~~February 1~~3~~2, 2012~~, which is the intervention deadline~~.
NATURE OF CLAIMS:	Qui tam action under the False Claims Act, 31 U.S.C. §§ 3729-3733, alleging that defendant, the City of St. Paul, Minnesota, falsely certified it was in compliance with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. § 1701u) (Section 3) in order to obtain tens of millions of dollars from the Department of Housing and Urban Development (HUD) in the form of community development grants that require compliance with Section 3.
AMOUNT OF CLAIMS:	The total HUD grants the City obtained based on its false certifications were $86,363,362.
CRIMINAL ACTIONS:	There was no criminal investigation.
RECOMMENDATION:	The United States Attorney's Office for the District of Minnesota (Att. A) and HUD (Att. B) recommend that we decline to intervene. We concur.

This False Claims Act (FCA) *qui tam* action was filed in 2009 against the City of St. Paul, Minnesota. Relator, a St. Paul small business owner, alleges that the City failed to comply with Section 3, and that in its annual consolidated federal grant applications, the City falsely certified to HUD that it was in compliance with Section 3. Relator alleges that based on this false certification, the City was given $86 million in federal community development grants.

HUD recommends we decline to intervene. That recommendation is based on the facts that the City has recently implemented a substantial Section 3 program, and that if the government intervenes, the lawsuit would require HUD to devote substantial resources for further investigation, litigation, discovery and testimony, at a time when HUD's resources are limited, and where its administrative concerns already have been addressed.

HUD ~~had~~ previously recommended that we intervene in this action. Based on that ~~original~~ recommendation and our joint investigation, and although it was a close call, the District of Minnesota and this office ~~previously recommended that we intervene~~believed intervention was warranted. ~~Now, b~~Based on arguments raised by the City in recent discussions, on HUD's change of ~~mind, on a new policy consideration related to the *Gallagher* case in the United States Supreme Court which is discussed below~~recommendation, and the litigation risks enumerated here, both the District of Minnesota and we recommend that the United States decline to intervene.

BACKGROUND

A. Section 3 of the Housing and Development Act of 1968 (Section 3)

Section 3 requires that employment and other economic opportunities generated by certain HUD ~~financial assistance~~housing and community development grant programs be directed, to the greatest extent feasible, ~~and~~ consistent with ~~existing~~ Federal, State and local law, to low- and very low-income persons, ~~particularly those who are recipients of government assistance for housing,~~ and to business concerns ~~which~~that provide ~~economic~~ opportunities for ~~low- and very low-income~~such persons. ~~--~~

Section 3 applies ~~to public housing authorities, and to other grant recipients (recipients) who get funds from certain HUD housing and community development grant programs. Section 3~~ only ~~applies~~ to funding for projects that involve ~~the~~ construction or rehabilitation of housing, or other public construction. Section 3 applied to grants made to the City during the relevant ~~time~~ period.

Section 3 is race and gender neutral. Preferences are based on income-level and location. HUD's Section 3 regulations require recipients of HUD funding to direct new employment, training, and contracting opportunities to low-income residents, and to businesses that employ them, without regard to race or gender. ~~The City's current Section 3 web page, set up after recent HUD administrative action, explicitly acknowledges: "Section 3 is both race and gender neutral. The preferences provided under this regulation are based on income level and location."~~

Section 3's requirements apply to recipients of community development assistance exceeding $200,000 from all sources in any year, and to contractors and subcontractors working for such grant recipients that get contracts in excess of $100,000. HUD's regulations establish numerical goals for grant recipients and contractors. Thirty percent of new hires on covered projects have to be Section 3 residents, ten percent of the dollars awarded for covered contracts have to be awarded to Section 3 businesses, and three percent of the dollars awarded for non-construction Section 3 contracts (i.e. professional services contracts awarded in connection with Section 3 contracts) have to be awarded to Section 3 businesses. These numerical goals are minimums. If a recipient or contractor meets the goals, they are considered in compliance with Section 3~~, absent evidence to the contrary~~. If recipients or contractors fail to meet the goals, they have to document the efforts they took to try to meet them.

Grant recipients have to comply with Section 3 in their own operations, and to ensure compliance ~~in the operations of~~by their contractors and subcontractors. Recipients have to establish procedures to: notify Section 3 residents about Section 3 training and employment opportunities; notify Section 3 business concerns about Section 3 contracting opportunities; notify contractors about Section 3 requirements; include the required Section 3 contract clause in all solicitations and contracts; facilitate the training and employment of Section 3 residents and the award of contracts to Section 3 businesses; assist and actively cooperate with HUD in obtaining the compliance of contractors and subcontractors; document actions taken to comply with Section 3; and, retain compliance records for HUD review. Each recipient also has to submit an annual Form HUD 60002 report to allow HUD to evaluate the effectiveness of Section 3.

To qualify for federal grants, and to draw funds from such grants, fund recipients have to certify each year, in HUD

Action Plans, that they "will comply with Section 3."

B. Results of Our Investigation

The City was required to comply with Section 3. It did not do so. The City did implement programs to provide business opportunities for small, minority-owned and women-owned businesses. The City says ~~that~~ it believed these programs satisfied Section 3. ~~The City says~~, and that HUD was aware of, and approved, the City's belief. The City says it did not knowingly violate
Section 3, and that any failure to comply was inadvertent.

In recent discussions with the City, it makes the additional argument that because minority-owned, women-owned and small businesses often employ low-income individuals, historical analysis could reveal that the City complied with Section 3's numerical requirements even though it made no effort to do so directly. More precisely, the City argues that the United States has not yet proven that the City failed to comply with Section 3's numerical thresholds in any particular year. HUD tells us its analysis contradicts the City's position that ~~it~~the City may have fortuitously complied with Section 3. ~~It is not clear how HUD made this determination.~~

Our investigation reveals that the City did not track data that would have allowed it to determine whether it was in compliance with Section 3's numerical goals; did not have procedures to notify Section 3 residents or business concerns about training, employment or contracting opportunities; did not have programs to facilitate Section 3 training or employment or the award of Section 3 contracts; made little effort to obtain the compliance of contractors with Section 3; and, did not maintain required documentation or submit the required HUD annual report. On a limited number of occasions, the City did include a reference to Section 3 in its contracts or bid papers related to City projects, but HUD's regulations require use of specific language, and we never found that language in any of the City's agreements.

C. The City's Section 3 History

In 1983, James Milsap filed a ~~letter-complaint with HUD~~HUD complaint alleging that St. Paul was in violation of Section 3 and Title VI of the Civil Rights Act ~~of 1964 (Title VI)~~. HUD's resulting investigation found Section 3 and Title VI violations. In 1984, the matter was resolved when the City and HUD entered into a Voluntary Compliance Agreement (1984 VCA) and associated plan of compliance (1984 Section 3 Plan). The 1984 VCA provided, in part:

> It is agreed that ~~[the City of St. Paul] shall comply with the requirements of [various Executive Orders regarding equal employment and equal protection] and contracting opportunities, and that~~. . . [the City] shall adopt appropriate procedures and requirements to assure good faith compliance with the statutory directive of Section 3. (The race and sex of employees, trainees and businesses shall be identified in all progress reports for the purpose of this agreement. . . .).

1984 VCA ¶ 1 (citation omitted). The City asserts that based on this reference to tracking data related to the sex and race of employees, trainees and businesses, it reasonably believed that its efforts related to economic opportunity based on gender and race satisfied Section 3.

In July of 1984, the City sent HUD a Section 3 Compliance Plan that ~~it~~the City said would be incorporated into the City's Compliance User's Manual and would be implemented by the City. That Plan focussed on low- and very-low income residents and businesses, established a detailed procedure for City contracting to implement and track Section 3 requirements, to document its Section 3 efforts, and to monitor contracts for compliance.

In 1985, HUD conducted an investigation in response to a Section 3 complaint by a Mr. William Davis, and

concluded that the City was complying with Section 3.

In 1989, James Milsap filed a second federal lawsuit against HUD and the City alleging ~~that~~ the City continued to be in violation of Section 3. Moving to dismiss the suit, the City directed the Court to its 1984 Section 3 Plan of Compliance. The case was eventually dismissed on procedural grounds and ~~based on the fact that~~because there is no private right of action under
Section 3. The Court did not reach the question of the City's compliance with Section 3.

During the 1989 litigation both HUD and the City submitted affidavits and interrogatory responses that affirmed that as of that time, the City was in compliance with Section 3. According to the City, HUD's discovery responses in ~~the Milsap~~this litigation confirmed that HUD understood and approved of the City's understanding that its efforts directed at women-owned, minority-owned and small businesses ~~was~~were sufficient under Section 3. ~~The City notes that HUD affirmatively asserted that the City was in complaince with Section 3 at that time.~~

In 2003, Mr. Edward McDonald, a City employee, told the City in an e-mail and in reports, that the City "may not" have "completely complied with . . . federal Section 3**...**" In our interview of Mr. McDonald, he said he told his managers that the City was not complying with Section 3, but that his Managers were uninterested and took no action. Mr. McDonald was fired by the City shortly after these events.

Most recently, Nails Construction Company, a company owned by Frederick Newell, our relator, sued the City in federal court in 2009, alleging that the City was out of compliance with Section 3, and submitted a parallel administrative complaint to HUD alleging the same failure. The lawsuit was dismissed on the grounds that there was no private right of action under
Section 3. Again, there was no finding as to whether the City was in compliance with Section 3.

In the administrative proceeding that ~~was the~~ result ~~of~~ed from the Nails Construction HUD complaint, HUD determined the City was out of compliance with Section 3. The City initially contested that finding, but dropped its challenge in order to renew its eligibility to compete for and secure discretionary stimulus HUD funding. The City agreed to enter into a new, comprehensive Voluntary Compliance Agreement, under which it agreed to make a number of reforms to bring it into compliance with Section 3.

We interviewed project managers, who would have been responsible for implementing Section 3 on various projects. Most acknowledged they did little if anything ~~to~~ specific to comply with Section 3. Many were unaware of Section 3's requirements during the relevant time period. Some of the City's employees, including the City counsel responsible for HUD regulatory compliance and various senior managers, told us they understood that the City's efforts to comply with minority- and woman- owned contracting initiatives also compiled with the requirements of Section 3.

Although the City did not complete and send to HUD each year the required Section 3 Form 60002 report, it did submit other required HUD forms that, among other things, identified some of the City's community development contractors as Section 3 contractors.

HUD has publically acknowledged, that for a significant period of time it was not focussed on Section 3 compliance anywhere in the country. HUD employees conducted annual reviews of St. Paul and regularly approved the City's Action Plans and Consolidated Annual Performance and Evaluation Reports, and conducted on site performance reviews, but did not notice or flag the City's Section 3 deficiencies. ~~As described above, however, in the 1980's and again in 2010, when HUD did focus on Section 3 and St. Paul, it found the City to be out of compliance.~~ Since it implemented the second Section 3 VCA in 2010, HUD has he~~a~~ld St. Paul out as a model Section 3 jurisdiction.

D. Damages

The total HUD awarded to the City in development grants is over $86 million. A substantial portion of that money was devoted to construction projects subject to Section 3. The precise amount is not tracked by HUD and would have to be obtained from the City. Of course, because the City is a public municipality, the burden of an FCA judgment against the City would ultimately fall on City taxpayers.

DISCUSSION

Although our investigation reveals that the City did not comply with Section 3, the City has a number of ~~legal~~factual and ~~policy~~legal arguments that support a decision not to intervene ~~in the case~~. Given these arguments, and HUD's lack of support for the case, we recommend against intervention.

Lack of Requisite ~~Intent~~Knowledge/Scienter: The City says it reasonably believed minority- and women-owned business programs satisfied Section 3. The City asserts that it has a long history of trying to address poverty and discrimination in the City. The City points to multiple programs and its sustained efforts in support of populations in the City that often include low-income residents. In support of its argument the City points to the 1984 VCA it entered into with HUD, which makes reference to tracking data related to minorities and women, and HUD's statements in the Milsap litigation that the City was complying with Section 3.

~~The City's arguments ignore HUD's general statements to program participants that Section 3 is gender and race neutral, other warnings the City got from its own employees that it was not complying with Section 3, and the detailed plan the City entered into in 1989, which explicitly told the City how to comply with Section 3. Despite all of this~~While we believe there is evidence the City knew, or should have known, of its race and gender free Section 3 obligations, some of the witness we interviewed did ~~support~~say they thought the ~~City's position that it believed it~~City was complying with Section 3 by providing support for women-owned and minority-owned businesses.

Government Knowledge/Materiality: The City argues that even if it was violating Section 3, its violation cannot form the basis for an FCA claim because HUD was aware of its failures, and did nothing to address the problem. In 1985, HUD did conclude that the City was complying with Section 3 in response to the Davis complaint. In a HUD affidavit in the 1989 Milsap litigation, HUD further ~~says~~said that the City was doing an adequate job of complying with Section 3. The City also ~~explains~~argues that even if HUD did not say it explicitly in the years between 1989 and 2009, HUD's silence over those many years is tacit approval of the City's belief it was in compliance.

We will have to admit that the City was failing to comply with Section 3 in ways that should have been apparent to HUD. The City did not send HUD its HUD 60002 forms each year. HUD never objected ~~to this failure~~. The City will argue that HUD was so unconcerned with Section 3 ~~compliance~~ that the City's failure to comply did not affect, or could not have affected a HUD decision to pay.

The City will argue that HUD's failure to monitor its Section 3 compliance was consistent with HUD's general lack of oversight of Section 3 ~~during the relevant period~~. The City has already noted that previous federal administrations were not concerned with Section 3 (a position with support in recent HUD public comments), and that it is unfair to require a City to make a boilerplate certification each year, ignore the City's non-compliance year-after-year, and then seek FCA relief when a new administration comes in that is more concerned with Section 3 compliance

~~with Section 3~~.

Although silence is not approval, and although this program is designed as a self-monitoring program, with the City responsible for its own compliance, HUD's lack of attention would not be helpful to a case against the City.

Prospective Certifications, and Not a Condition of Payment: The City will argue that its certifications were only that it "will" comply, not that it had done so.

In *United States ex. rel. Vigil v. Nelnet*, 2011 WL 1675418 (8th Cir. May 5, 2011), the Eighth Circuit distinguished between false statements made to induce the payment of a claim, and those made to qualify for a government program. The Court drew a distinction between conditions of payment and conditions of participation. The Appeals Court held that the former could be the basis for an FCA claim but the latter could not.

In *Vigil,* the defendant had to comply with certain Department of Education ("DOE") regulations to qualify to participate in a program where it could make government subsidized student loans. The *Vigil* relator alleged that when the defendant lender submitted claims for interest subsidies on student loans it made, and for default insurance related to such loans, without being in compliance with the participation regulations, those claims were false. Under the relevant DOE regulations, however, once a lender was enrolled in the program, their eligibility continued until after a contrary decision in a contested termination proceeding. The lender explicitly continued to be eligible under the program until the termination proceeding was complete. In addition, ~~under the regulations~~ termination did not affect a lender's rights or responsibilities related to its prior loans. In these circumstances, the Court held that the lender's certification that it was an eligible lender was a condition of participation, not payment.

The Section 3 regulations provide procedures for compliance reviews, and administrative complaints, procedures and time lines for cure of identified deficiencies, and sanctions for continuing failure or refusal by a recipient or contractor to comply with HUD's regulations, including remedies under the CDBG or HOME programs (which include contested administrative hearings), debarment, suspension or limited denial of participation. Given these procedures there is a risk a trial court in the Eighth Circuit will consider the annual certifications in this case to be conditions of participation that will not support an FCA claim.

Administrative Remedies: The City will argue that if HUD finds that a grantee is out of compliance with Section 3, it has a number of administrative options and procedures to deal with the non-compliance, including suspension and debarment. The City will argue that permitting FCA liability in this context is akin to transforming a discretionary administrative remedy into a mandatory and harsh penalty.

We believe this argument is not well taken. The FCA provides a remedy that is distinct from ~~and designed to be supplemental to~~ any available administrative remedies. We are concerned, however, that an FCA case, which is a case to recover money, not a request for injunctive relief, is a blunt tool in the context presented. Rather that taking money out of a financially challenged American city, the right approach here may well be an administrative approach to fixing the City's programs, not an effort to punish the City for past behavior and a trier of fact may well agree. Here, HUD says it has already take the required administrative

action, and that the City is now in compliance with Section 3. Indeed, HUD holds St. Paul up, now, as a model Section 3 participant.

Vagueness: The City will argue that the phrase "to the greatest extent feasible" is vague and ambiguous, and that it cannot provide the basis for an FCA claim. We do not believe this is a strong argument for the City. The argument ignores HUD's regulations. Although the broad statement in the statute and in the first paragraph of the regulations is general, most of HUD's Section 3 regulations are more specific, weakening the vagueness argument. In addition, we take the position that where a claimant believes regulations are vague, they have an obligation to seek clarification from the government, not to default on their obligations unilaterally. Nonetheless, the language of the regulation pointed to by the City is not a model of clarity, and there is some risk that pursuing a case here will result in bad Section 3 law.

Policy Considerations: ~~The City has repeatedly pointed out that there has never been a Section 3 FCA case, because such a claim is inappropriate given the lack of precision in the "to the greatest extent feasible" requirement.~~

The City argues that an FCA case, which if successful will burden St. Paul taxpayers, is undesirable. The City argued that it has been a constructive HUD partner over the years, and should not be punished here. The City believes a claim is particularly unattractive given that when its Section 3 deficiencies were identified in the recent administrative action, the City entered into a VCA and is now held up by HUD as a model Section 3 participant, and as a model for other jurisdictions.

OTHE ~~*GALLAGHER*~~ CASER CONSIDERATIONS

In February 2010, the Eighth Circuit Court of Appeals issued a decision in *Gallagher v. Manger*, 619 F.3d 823 (8th Cir. 2010). That case involves claims by a number of current and former owners of rental properties in St. Paul, against the City and numerous City housing inspectors, alleging that the manner in which the City enforced housing codes was discriminatory and in violation of the Fair Housing Act (FHA). The City allegedly had been focusing aggressive code enforcement efforts on "problem properties" that tended to be rented primarily to low-income, African-American families. The City argued that there were particular health and safety issues that justified their focus on low-income properties, that they need to act decisively to protect its citizens. The District Court for the District of Minnesota granted summary judgment dismissing the claims. The Eighth Circuit reversed in part and remanded, holding that the plaintiffs had established a prima facie case of disparate impact under the FHA, but that a fact issue remained as to whether the City had viable alternative means to achieve its legitimate policy objective of protecting health and safety in rental properties without discriminatory effects. *En banc* rehearing was denied. The City appealed and the United States Supreme Court granted certiorari on November 7, 2011.

The Supreme Court has not decided whether the FHA allows for recovery based on a disparate-impact theory. ~~The Assistant Attorney General for~~We understand that the Civil Rights Division~~, Thomas Perez has told us that his Division does not want this issue to be decided in the *Gallagher* case. Apparently Civil Rights~~ is concerned that there is a ~~significant~~ risk ~~that~~of bad law ~~will be developed on this question in the context of a case where FHA interests are being~~

~~balanced against~~if the Court rules on the question of whether the City's health and safety ~~considerations. The City tells us that Mr. Perez reached out to them and asked them to withdrawal the *Gallagher* petition. The City responded that they would be willing to do so, only if the United States declined to intervene in this case, and in *U.S. ex rel. Ellis v. the City of St. Paul et al.* The Civil Rights division believes that the FHA policy interests at issue here are significant enough to justify such a deal. The *Gallagher* policy interests add another consideration to be weighed in deciding whether or not to intervene in this case.~~

~~**SETTLEMENT**~~

~~We have offered to enter into settlement discussions about the *Newell* case with the City on a number of occasions. The City's final position is that if a settlement will require the payment of funds, the City is not interested in an agreement.~~

~~**CONCLUSION**~~

efforts here justify a departure from the mandates of the FHA. The City has indicated that it will dismiss the *Gallagher* petition, and declination here will facilitate the City's doing so. Under the circumstances, we believe this is another factor weighing in favor of declination.

CONCLUSION

Given all of the factors described above, ~~the fact that HUD does not support the case, the fact that the City may be able to convince a jury that it was in good faith compliance with Section 3, the other legal and factual issues the arguments presented above, and that declination would serve important policy interests in the *Gallahger* case,~~ we recommend that ~~we~~the United States decline to intervene in this case.

Joyce R. Branda
Director
Commercial Litigation Branch

Attachments

Reviewer: [redacted]

Senior Trial Counsel: [redacted]

AUSA: [redacted]

MEMORANDUM FOR FILE

Re: *U.S. ex rel. Newell v. City of St. Paul, Minnesota,*
Case No. 09-SC-001177 (D. Minn.)

DJ No. 46-39-955

Authority is hereby granted to decline to intervene in the above-referenced *qui tam* action.

Tony West
Assistant Attorney General
Civil Division

Dated: _____

SUMMARY

Section 3 of the Housing and Urban Development Act of 1968 (Section 3) requires that employment and other economic opportunities generated by certain Department of Housing and Urban Development (HUD) financial assistance programs be directed, to the greatest extent feasible, and consistent with existing Federal, State and local law, to low- and very-low-income persons, particularly those who are recipients of certain government assistance for housing, and to business concerns which provide economic opportunities for low- and very low-income persons.

The City of St. Paul, Minnesota, was required to comply with Section 3 but did not do so. The City argues, however that it had a good faith belief that it was complying with Section 3 when it put into place women-owned, minority-owned and small business programs, because many of the participants in those programs were also low-income residents. A case against the City based on its failure to comply with Section 3 would further be complicated because HUD may have been aware of, and previously had approved of the City's Section 3 efforts, because HUD likely would have given the community development grants even if had known about the City's Section 3 failures and so the City's Section 3 certifications were not a condition of payment, and because the regulations at issue are arguably vague.

In addition, ~~declination in this case is part of an arrangement that would result in~~ the City is dismissing a Supreme Court appeal in the *Gallagher v. Manger* case. ~~A,~~ a result the Civil Rights Division is anxious to achieve. Declination here would facilitate that result which, we are advised, is in the interests of the United States.

For these reasons we recommend that the United States decline to intervene in this action.

RELATOR'S COUNSEL

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Bonner & Borhart LLP
1950 US Bank Plaza
220 South Sixth Street
Minneapolis, Minnesota 55402
(612) 313-0735

DEFENDANT'S COUNSEL

John W. Lundquist
David L. Lillehaug
Fredrikson & Byron. P.A.
200 South Sixth Street, Suite 4000 Minneapolis, MN 55402-1425
(612) 492-7000

From: Line Attorney 2

Sent: Tuesday, February 7, 2012 7:17 PM

To: Branda, Joyce (CIV) <RC-1>; Line Attorney 1 (Line Attorney 1)

Subject: Follow Up With L.A. 3

I did not talk to L.A. 3 but we traded messages. I will talk to him tomorrow. Based on his message, the two items Lillehaug mentioned he thought were also to be included in the deal that is not a deal are:

(1) HUD will provide material to the City in support of their motion to dismiss on original source grounds;
(2) Civil rights will file an Amicus brief in "the other case." I'm not sure what the "other" case is.

If this is Lillehaug fishing, I guess that is not a surprise. If these were part of Tom Perez's discussions with the City I am disappointed we were not told.

It seems odd HUD would consider such a role, if in fact it is.

* * * * *

Line Attorney 2
Senior Trial Counsel
Civil Division, Commercial Litigation Branch, Frauds Section
United States Department of Justice
Patrick Henry Building
Room RC-1
601 D. Street, N.W.
Washington, D.C. 20004
RC-1

From: Branda, Joyce (CIV) </O=USDOJ/OU=CIVIL/CN=RECIPIENTS/CN=MAILBOXES/CN=JBRANDA>
Sent: Wednesday, February 8, 2012 9:31 AM
To: Line Attorney 3
Cc: Brooker, Greg (USAMN) <RC-1>; Line Attorney 2 <Line Attorney 2>
Subject: st. paul

Line Attorney 3 Did you hear anything from Lillehaug regarding the two other conditions he said HUD had agreed to?

Joyce R. Branda
Director
Commercial Litigation Branch
Civil Division
(202) RC-1

From: Branda, Joyce (CIV) </O=USDOJ/OU=CIVIL/CN=RECIPIENTS/CN=MAILBOXES/CN=JBRANDA>
Sent: Wednesday, February 8, 2012 9:36 AM
To: West, Tony (CIV) <RC-1 [redacted]>; Martinez, Brian (CIV) <RC-1 [redacted]>
Subject: St. Paul development

Tony, Brian:

FYI. I spoke to L.A. 3 last night when he could not reach L.A. 2 Lillehaug had called the AUSA about the 2 items below. I told L.A. 3 to call Lillehaug back and tell him we were aware of no such other conditions and we were not making any promises; all we were doing was processing the declination in Newell at this point. We have not contacted Tom Perez about this.

From: Line Attorney 2 [redacted]
Sent: Tuesday, February 07, 2012 7:17 PM
To: Branda, Joyce (CIV); Line Attorney 1 [redacted]
Subject: Follow Up With L.A. 3

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* * * * *

Line Attorney 2 [redacted]
Senior Trial Counsel
Civil Division, Commercial Litigation Branch, Frauds Section
United States Department of Justice
Patrick Henry Building
Room RC-1
601 D. Street, N.W.
Washington, D.C. 20004
RC-1 [redacted]

From: Line Attorney 3

Sent: Wednesday, February 8, 2012 9:40 AM
To: Branda, Joyce (CIV) <RC-1>
Cc: Brooker, Greg (USAMN) <RC-1>; Line Attorney 2 <Line Attorney 2>
Subject: Re: st. paul

No, he just said he was going to call Tom. Nothing since then.

From: Branda, Joyce (CIV) [mailto:RC-1]
Sent: Wednesday, February 08, 2012 09:30 AM
To: Line Attorney 3
Cc: Brooker, Greg (USAMN); Line Attorney 2
Subject: st. paul

Line Attorney 3: Did you hear anything from Lillehaug regarding the two other conditions he said HUD had agreed to?

Joyce R. Branda
Director
Commercial Litigation Branch
Civil Division
(202) RC-1

From: West, Tony (CIV) </O=USDOJ/OU=CIVIL/CN=RECIPIENTS/CN=MAILBOXES/CN=TWEST>
Sent: Wednesday, February 8, 2012 9:48 AM
To: Branda, Joyce (CIV) <RC-1>; Martinez, Brian (CIV) <RC-1>
Subject: Re: St. Paul development

Thanks. Brian, can you chk w/tom's office to see when he's available for a call this am? Thanks.

From: Branda, Joyce (CIV)
Sent: Wednesday, February 08, 2012 09:35 AM
To: West, Tony (CIV); Martinez, Brian (CIV)
Subject: St. Paul development

Tony, Brian:

FYI. I spoke to L.A. 3 last night when he could not reach L.A. 2 Lillehaug had called the AUSA about the 2 items below. I told L.A. 3 to call Lillehaug back and tell him we were aware of no such other conditions and we were not making any promises; all we were doing was processing the declination in Newell at this point. We have not contacted Tom Perez about this.

From: Line Attorney 2
Sent: Tuesday, February 07, 2012 7:17 PM
To: Branda, Joyce (CIV); Line Attorney 1
Subject: Follow Up With L.A. 3

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* * * * *

Line Attorney 2
Senior Trial Counsel
Civil Division, Commercial Litigation Branch, Frauds Section
United States Department of Justice
Patrick Henry Building
Room RC-1
601 D. Street, N.W.
Washington, D.C. 20004
RC-1

From: Branda, Joyce (CIV) </O=USDOJ/OU=CIVIL/CN=RECIPIENTS/CN=MAILBOXES/CN=JBRANDA>
Sent: Wednesday, February 8, 2012 10:38 AM
To: Brooker, Greg (USAMN) <RC-1>
Cc: Line Attorney 2; Line Attorney 4 <Ann.Bildtsen@usdoj.gov>; Line Attorney 3 <Line Attorney 3>
Subject: RE: st. paul

Greg: Yes, they are talking at 11:45. I recommended that Tony tell Tom we should not agree to provide information outside the normal course, i.e. Touhy and discovery; and they should not commit to filing a brief (I assume in the Ellis case?) as even if Civil Rights had something to say we may need to review such a position to be sure it is not inconsistent with any position we might take on the FCA. So in short, make no more promises.

From: Brooker, Greg (USAMN)
Sent: Wednesday, February 08, 2012 10:35 AM
To: Branda, Joyce (CIV)
Cc: Line Attorney 2; Line Attorney 4; Line Attorney 3
Subject: RE: st. paul

Joyce,
I apologize for the delay in responding to all of these emails. The RC-1 late yesterday afternoon took me out of commission for awhile. I am now back in the office. I am glad to hear that Tony will call Tom. I can also call Tom once Todd gives me the green light.
Greg

Greg Brooker
Chief, Civil Division
U.S. Attorney's Office
600 U.S. Courthouse
300 South Fourth Street
Minneapolis MN 55415
(612) RC-1 (direct dial)
(612) 664-5788 (fax)

From: Branda, Joyce (CIV) [mailto:RC-1]
Sent: Wednesday, February 08, 2012 8:49 AM
To: Line Attorney 3
Cc: Brooker, Greg (USAMN); Line Attorney 2
Subject: RE: st. paul

Looks like Tony will call Tom this a.m. about this.

From: Blumenfield, Chad (USAMN)
Sent: Wednesday, February 08, 2012 9:40 AM
To: Branda, Joyce (CIV)

Cc: Brooker, Greg (USAMN); Line Attorney 2
Subject: Re: st. paul

No, he just said he was going to call Tom. Nothing since then.

From: Branda, Joyce (CIV) [mailto:RC-1]
Sent: Wednesday, February 08, 2012 09:30 AM
To: Line Attorney 3
Cc: Brooker, Greg (USAMN); Line Attorney 2
Subject: st. paul

L.A. 3: Did you hear anything from Lillehaug regarding the two other conditions he said HUD had agreed to?

Joyce R. Branda
Director
Commercial Litigation Branch
Civil Division
(202) RC-1

From: Pratt, Sara K [RC-1
Sent: Wednesday, February 08, 2012 12:39 PM
To: Perez, Thomas E (CRT)
Subject: RE: District Court decision

Yes, will do.

From: Perez, Thomas E (CRT) [mailto RC-1
Sent: Wednesday, February 08, 2012 12:35 PM
To: Pratt, Sara K
Subject: Re: District Court decision

Can you call me if you get a chance. I am tied up til 130 and then free til 3

From: Pratt, Sara K [mailto: RC-1]
Sent: Friday, January 13, 2012 05:10 PM
To: Perez, Thomas E (CRT)
Subject: District Court decision

Nails Construction Co. v. City of St. Paul

UNITED STATES DISTRICT COURT DISTRICT OF MINNESOTA

February 6, 2007

NAILS CONSTRUCTION COMPANY, NEWELL ABATEMENT SERVICES, INC., LEAD INVESTIGATIVE SERVICES, INC., DERRICK WOODSON, AND FREDERICK NEWELL, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED, PLAINTIFFS,
v.
THE CITY OF ST. PAUL, DEFENDANT.

The opinion of the court was delivered by: Joan N. Ericksen United States District Judge

ORDER

This is a putative class action brought by Nails Construction Company, Newell Abatement Services, Inc. (Newell Abatement), Lead Investigative Services, Inc. (Lead Investigative), Derrick Woodson, and Frederick Newell (collectively, Plaintiffs) against the City of St. Paul (City). Plaintiffs seek declaratory, injunctive, and monetary relief to redress the City's alleged violations of Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. § 1701u (2000) (amended 2006). The case is before the Court on Plaintiffs' motion for a preliminary injunction and the City's motion for summary judgment. The City contends that Plaintiffs lack standing and that no private right of action to enforce section 1701u exists. For the reasons set forth below, the Court denies Plaintiffs' motion and grants the City's motion.

I. BACKGROUND

Plaintiffs include three Minnesota corporations owned in part by Newell. Nails Construction provides carpentry services. Newell formed Nails Construction in 2004 and owns 50% of its shares. Newell Abatement was established in 1995 and has been a Minnesota corporation since 1999. It engages in lead and asbestos abatement, demolition services, and lead-risk assessment. Lead Investigative was formed in 2001, and it engages in hazardous waste remediation, Brownfield clean-up, and lead-risk assessment. Newell and his two brothers own both Newell Abatement and Lead Investigative.

The purpose of Section 3 is "to ensure that the employment and other economic opportunities generated by Federal financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed toward low- and very low-income persons." 12 U.S.C. § 1701u(b). The City receives assistance covered by Section 3.

Plaintiffs claim to be business concerns or low-income or very low-income persons within the meaning of Section 3. See id. § 1701u(e). As such, Plaintiffs assert that they are entitled to enjoy the economic benefits set forth in Section 3. See id. § 1701u(c)-(d). They allege that the City has failed to comply with Section 3 in numerous ways: (1) failure to award a sufficient percentage of contracts to Section 3 business concerns; (2) failure to exercise oversight over contractors hired with Section 3 funds to assure that the contractors provide training, employment, and contracting opportunities to Section 3 persons and business concerns; (3) failure to meet Section 3's reporting requirements; (4) failure to "seek out and identify Section 3 [b]usiness [c]oncerns about contracting opportunities"; (5) failure to notify Section 3 persons about training and employment opportunities; (6) failure to train and employ Section 3 persons; (7) failure to provide preferences to Section 3 persons in training and contracting opportunities; (8) failure to provide preferences to Sectio n 3 business concerns in contracting opportunities; and (9) failure to file form HUD-60002.

II. DISCUSSION

A. The City's motion

Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The moving party "bears the initial responsibility of informing the district court of the basis for its motion," and must identify "those portions of [the record] which it believes demonstrate the absence of a genuine issue of material fact." Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). If the moving party satisfies its burden, Rule 56(e) requires the party opposing the motion to respond by submitting evidentiary materials that designate "specific facts showing that there is a genuine issue for trial." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). In determining whether summary judgment is appropriate, a court must look at the record and any inferences to be drawn from it in the light most favorable to the party opposing the motion. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986).

1. Standing

The Court first considers whether Plaintiffs lack standing. See Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992) ("[T]he core component of standing is an essential and unchanging part of the case-or-controversy requirement of Article III."); Young Am. Corp. v. Affiliated Computer Servs. (ACS), Inc., 424 F.3d 840, 843 (8th Cir. 2005) (stating that plaintiff's lack of standing leaves district court without subject matter jurisdiction). To satisfy constitutional requirements of standing, a plaintiff must establish three elements:

First, the plaintiff must have suffered an "injury in fact"-an invasion of a legally protected interest which is (a) concrete and particularized, and (b) "actual or imminent, not 'conjectural' or 'hypothetical.'" Second, there must be a causal connection between the injury and the conduct complained of-the injury has to be "fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court."

Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision."

Lujan, 504 U.S. at 560-61 (citations and footnote omitted); see Young Am., 424 F.3d at 843. "[E]ach element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, i.e., with the manner and degree of evidence required at the successive stages of the litigation." Lujan, 504 U.S. at 561. The Court turns to whether Plaintiffs have submitted evidence to demonstrate their standing.

The Court first considers the corporate plaintiffs. Nails Construction, Newell Abatement, and Lead Investigative do not identify any opportunities covered by Section 3 that they sought or will seek from the City.*fn1 Nor is there any evidence that Nails Construction, Newell Abatement, and Lead Investigative asked the City to recognize them as Section 3 business concerns. Finally, Nails Construction, Newell Abatement, and Lead Investigative do not explain how the City's alleged violations of Section 3's reporting requirements injured them. Viewed in the light most favorable to Nails Construction, Newell Abatement, and Lead Investigative, the record reveals that they have not experienced an injury in fact that is fairly traceable to the City. The Court therefore concludes that they lack standing. Cf. id. at 573-74 (stating that plaintiff's assertion of a "generally available grievance about government-claiming only harm to his and every citizen's interest in proper application of the Constitution and laws, and seeking relief that no more directly

and tangibly benefits him than it does the public at large-does not state an Article III case or controversy"); Madsen v. Boise State Univ., 976 F.2d 1219, 1220 (9th Cir. 1992) (per curiam) ("There is a long line of cases . . . that hold that a plaintiff lacks standing to challenge a rule or policy to which he has not submitted himself by actually applying for the desired benefit."); Albuquerque Indian Rights v. Lujan, 930 F.2d 49, 55-57 (D.C. Cir. 1991) (holding organizational plaintiff lacked standing to challenge government's alleged failure to extend Indian hiring preference to positions for which members did not apply).

The same conclusion is warranted with regard to the individual plaintiffs. Neither Woodson nor Newell identifies any opportunities covered by Section 3 that he sought or will seek from the City. There is no evidence that Woodson or Newell sought the City's recognition as a Section 3 person.*fn2 Finally, there is no evidence that the City's alleged reporting violations injured Woodson or Newell. Viewed in the light most favorable to Woodson and Newell, the record reveals that they have not experienced an injury in fact that is fairly traceable to the City. The Court therefore concludes that they lack standing.

2. Private Cause of Action

If Plaintiffs were able to demonstrate standing, the City would be entitled to summary judgment because no private right to enforce section 1701u exists. Plaintiffs contend that they may enforce section 1701u under 42 U.S.C. § 1983 (2000) or an implied right of action. Different inquiries determine whether a statute may be enforced pursuant to section 1983 and whether a statute implies a private right of action. Gonzaga Univ. v. Doe, 536 U.S. 273, 283 (2002). The inquiries, however, "overlap in one meaningful respect":

[I]n either case [a court] must first determine whether Congress intended to create a federal right. Thus, [the Supreme Court has] held that "[t]he question whether Congress . . . intended to create a private right of action [is] definitively answered in the negative" where a "statute by its terms grants no private rights to any identifiable class." For a statute to create such private rights, its text must be "phrased on terms of the persons benefited."

Id. at 283-84 (citation omitted). "[W]here the text and structure of a statute provide no indication that Congress intends to create new individual rights, there is no basis for a private suit, whether under § 1983 or under an implied right of action." Id. at 286.

In Gonzaga, the Supreme Court offered Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972 as examples of statutes that create individual rights "because those statutes are phrased 'with an unmistakable focus on the benefited class.'" Id. at 284 (quoting Cannon v. Univ. of Chicago, 441 U.S. 677, 691 (1979)). Title VI provides: "No person in the United States shall . . . be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d (2000) (emphasis added). Title IX states: "No person in the United States shall, on the basis of sex, . . . be subjected to discrimination under any education program or activity receiving Federal financial assistance . . . ." 20 U.S.C. § 1681(a) (2000) (emphasis added). Where a statute lacks "this sort of explicit 'right- or duty-creating language,' [a court] rarely impute[s] to Congress an intent to create a private right of action." Gonzaga, 536 U.S. at 284 n.3; see Lankford v. Sherman, 451 F.3d 496, 508-09 (8th Cir. 2006) ("[T]he statute must focus on an individual entitlement to the asserted federal right, rather than on the aggregate practices or policies of a regulated entity, like the state."). The Court turns to whether section 1701u creates private rights.

Section 1701u begins with congressional findings. 12 U.S.C. § 1701u(a). Briefly summarized, Congress found that certain federal assistance produces significant employment and other economic opportunities that should be directed to low- and very-low income persons. Id. Section 1701u continues with an announcement of congressional policy:

It is the policy of the Congress and the purpose of this section to ensure that the employment and other economic opportunities generated by Federal financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed toward low- and very-low income persons, particularly those who are recipients of government assistance for housing.

Id. § 1701u(b). To carry out that policy, section 1701u repeatedly directs the Secretary of Housing and Urban Development to take certain actions with regard to recipients of certain assistance. In general terms, section 1701u directs the Secretary (1) to require that housing agencies, and their contractors and subcontractors, make their best efforts, consistent with other laws and regulations, to give opportunities generated by certain assistance to low- and very-low income persons, and (2) to ensure that recipients and beneficiaries of certain assistance, to the greatest extent feasible and consistent with other laws and regulations, extend opportunities to low- and very-low income persons.*fn3

Section 1701u seeks to benefit low- and very-low income persons, but "it is rights, not the broader or vaguer 'benefits' or 'interests,' that may be enforced" pursuant to section 1983 or an implied right of action. Gonzaga, 536 U.S. at 283. Sectio n 1701u focuses not on an individual entitlement to the opportunities generated by federal financial assistance for housing and community development programs, but rather on the Secretary of Housing and Urban Development. See 12 U.S.C. § 1701u(f) (directing Secretary to consult with other agencies "to carry out" section 1701u). Again, the Secretary is charged with ensuring that "best efforts, consistent with existing Federal, State, and local laws and regulations" are made and that opportunities are extended "to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations." Thus, the focus of section 1701u is at least two steps removed from the interests of individual low- or very-low income persons. Accordingly, Section 1701u does not create individual rights. See Gonzaga, 536 U.S. at 287; Alexander v. Sandoval, 532 U.S. 275, 289 (2001) ("Statutes that focus on the person regulated rather than the individuals protected create 'no implication of an intent to confer rights on a particular class of persons.'" (quoting California v. Sierra Club, 451 U.S. 287, 294 (1981)). Moreover, the standards set forth in section 1701u-"best efforts, consistent with existing Federal, State, and local laws and regulations"; "to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations"; and "[w]here feasible"-are too general to confer individual rights.*fn4

Cf. Lankford, 451 F.3d at 509 ("The only guidance Congress provides in the reasonable-standards provision is that the state establish standards 'consistent with [Medicaid] objectives'- an inadequate guidepost for judicial enforcement.").

In short, section 1701u does not contain language that creates rights. Rather than focusing on individual entitlements, its provisions focus on the Secretary and set forth broad standards. Accordingly, the Court concludes that section 1701u does not create rights enforceable under either section 1983 or an implied right of action.*fn5 See Gonzaga, 536 U.S. at 290 ("In sum, if Congress wishes to create new rights enforceable under § 1983, it must do so in clear and unambiguous terms-no less and no more than what is required for Congress to create new rights enforceable under an implied private right of action.").

B. Plaintiffs' Motion

Because Plaintiffs lack standing, the Court denies their motion for a preliminary injunction. If Plaintiffs were able to establish standing, the Court would deny their motion because they may not enforce section 1701u under either section 1983 or an implied right of action. See Newton County Wildlife Ass'n v. United States Forest Serv., 113 F.3d 110, 113 (8th Cir. 1997) ("If a plaintiff's legal theory has no likelihood of success on the merits, preliminary injunctive relief must be denied.").

III. CONCLUSION

Based on the files, records, and proceedings herein, and for the reasons stated above, IT IS ORDERED THAT:

1. Plaintiffs' motion for a preliminary injunction [Docket No. 7] is DENIED.

2. The City's motion for summary judgment [Docket No. 9] is GRANTED.

3. This case is DISMISSED for lack of subject matter jurisdiction.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Sara K. Pratt
Deputy Assistant Secretary for Enforcement and Programs
Department of Housing and Urban Development
451 Seventh Street, SW
Room RC-1
Washington, D.C. 20410
202.RC-1 (direct line)

From:	Brooker, Greg (USAMN) </O=USDOJ/OU=COAR/CN=RECIPIENTS/CN=DOJ MDS CONTACTS/CN=USA/CN=GBROOKER>
Sent:	Wednesday, February 8, 2012 4:01 PM
To:	Branda, Joyce (CIV) <RC-1 >
Cc:	Jones, B Todd (USAMN) <RC-1 >
Subject:	U.S. ex rel. Newell v. City of St. Paul, Case No. 09-SC-001177
Attach:	2012.02.07 Newell Action Memo - Declination.wpd

Re: *U.S. ex rel. Newell v. City of St. Paul, Minnesota*, Case No. 09-SC-001177 (D. Minn.).

B. Todd Jones, the United States Attorney for the District of Minnesota, concurs with the recommendation that the United States decline to intervene in the above-reference *qui tam* action under the False Claims Act.

Greg Brooker
Chief, Civil Division
U.S. Attorney's Office
600 U.S. Courthouse
300 South Fourth Street
Minneapolis MN 55415
(612) RC-1 (direct dial)
(612) 664-5788 (fax)

From:	[redacted]
Sent:	Thursday, February 9, 2012 5:45 PM
To:	Branda, Joyce (CIV) <[redacted]>
Cc:	[redacted]
Subject:	Newell
Attach:	20120209_AAG Memo re U.S. ex rel. Newell v City of St. Paul, Mn..pdf

Joyce,

Tony West signed the attached memo this afternoon.

[redacted]

MEMORANDUM FOR FILE

Re: *U.S. ex rel. Newell v. City of St. Paul, Minnesota*,
Case No. 09-SC-001177 (D. Minn.)

DJ No. 46-39-955

Authority is hereby granted to decline to intervene in the above-referenced *qui tam* action.

Tony West
Assistant Attorney General
Civil Division

Dated: February 9, 2012

RELATOR'S COUNSEL

Thomas F. DeVincke
Bonner & Borhart LLP
1950 US Bank Plaza
220 South Sixth Street
Minneapolis, Minnesota 55402
(612) 313-0735

DEFENDANT'S COUNSEL

John W. Lundquist
David L. Lillehaug
Fredrikson & Byron. P.A.
200 South Sixth Street, Suite 4000
Minneapolis, MN 55402-1425
(612) 492-7000

SUMMARY

Section 3 of the Housing and Urban Development Act of 1968 (Section 3) requires that employment and other economic opportunities generated by certain Department of Housing and Urban Development (HUD) financial assistance programs be directed, to the greatest extent feasible, and consistent with existing Federal, State and local law, to low- and very-low-income persons, particularly those who are recipients of certain government assistance for housing, and to business concerns which provide economic opportunities for low- and very low-income persons.

The City of St. Paul, Minnesota, was required to comply with Section 3 but did not do so. The City argues, however that it had a good faith belief that it was complying with Section 3 when it put into place women-owned, minority-owned and small business programs, because many of the participants in those programs were also low-income residents. A case against the City based on its failure to comply with Section 3 would further be complicated because HUD may have been aware of, and previously had approved of the City's Section 3 efforts, because HUD likely would have given the community development grants even if had known about the City's Section 3 failures and so the City's Section 3 certifications were not a condition of payment, and because the regulations at issue are arguably vague.

In addition, the City is dismissing a Supreme Court appeal in the *Gallagher v. Manger* case, a result the Civil Rights Division is anxious to achieve. Declination here would facilitate that result which, we are advised, is in the interests of the United States.

For these reasons we recommend that the United States decline to intervene in this action.

U.S. Department of Justice

Civil Division

Washington, D.C. 20530

MEMORANDUM FOR TONY WEST
ASSISTANT ATTORNEY GENERAL, CIVIL DIVISION

Re: *U.S. ex rel. Newell v. City of St. Paul, Minnesota*,
Case No. 09-SC-001177 (D. Minn.)

DJ No. 46-39-955

REQUEST FOR AUTHORITY TO DECLINE TO INTERVENE

TIME LIMIT:	February 10, 2012.
NATURE OF CLAIMS:	Qui tam action under the False Claims Act, 31 U.S.C. §§ 3729-3733, alleging that defendant, the City of St. Paul, Minnesota, falsely certified it was in compliance with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. § 1701u) (Section 3) in order to obtain tens of millions of dollars from the Department of Housing and Urban Development (HUD) in the form of community development grants that require compliance with Section 3.
AMOUNT OF CLAIMS:	The total HUD grants the City obtained were $86,363,362, but we have not determined how much of those grants was devoted to projects subject to Section 3.
CRIMINAL ACTIONS:	There was no criminal investigation.
RECOMMENDATION:	The United States Attorney's Office for the District of Minnesota (Att. A) and HUD (Att. B) recommend that we decline to intervene. We concur.

This False Claims Act (FCA) *qui tam* action was filed in 2009 against the City of St. Paul, Minnesota. Relator, a St. Paul small business owner, alleges that the City failed to comply with Section 3, and that in its annual consolidated federal grant applications, the City falsely certified to HUD that it was in compliance with Section 3. Relator alleges that based on this false certification, the City was given $86 million in federal community development grants.

HUD recommends we decline to intervene. That recommendation is based on the facts that the City has recently implemented a substantial Section 3 program, and that if the government intervenes, the lawsuit would require HUD to devote substantial resources for further investigation, litigation, discovery and testimony, at a time when HUD's resources are limited, and where its administrative concerns already have been addressed.

HUD previously recommended that we intervene in this action. Based on that recommendation and our joint investigation, and although it was a close call, the District of Minnesota and this office believed intervention was warranted. Based on arguments raised by the City in recent discussions, on HUD's change of recommendation, and the litigation risks enumerated here, both the District of Minnesota and we recommend that the United States decline to intervene.

BACKGROUND

A. Section 3 of the Housing and Development Act of 1968 (Section 3)

Section 3 requires that employment and other economic opportunities generated by certain HUD housing and community development grant programs be directed, to the greatest extent feasible, consistent with Federal, State and local law, to low- and very low-income persons, and to business concerns that provide opportunities for such persons. Section 3 applies only to funding for projects that involve construction or rehabilitation of housing, or other public construction. Section 3 applied to grants made to the City during the relevant period.

Section 3 is race and gender neutral. Preferences are based on income-level and location. HUD's Section 3 regulations require recipients of HUD funding to direct new employment, training, and contracting opportunities to low-income residents, and to businesses that employ them, without regard to race or gender.

Section 3's requirements apply to recipients of community development assistance exceeding $200,000 from all sources in any year, and to contractors and subcontractors working for such grant recipients that get contracts in excess of $100,000. HUD's regulations establish numerical goals for grant recipients and contractors. Thirty percent of new hires on covered projects have to be Section 3 residents, ten percent of the dollars awarded for covered contracts have to be awarded to Section 3 businesses, and three percent of the dollars awarded for non-construction Section 3 contracts (i.e. professional services contracts awarded in connection with Section 3 contracts) have to be awarded to Section 3 businesses. These numerical goals are minimums. If a recipient or contractor meets the goals, they are considered in compliance with Section 3. If recipients or contractors fail to meet the goals, they have to document the efforts they took to try to meet them.

Grant recipients have to comply with Section 3 in their own operations, and to ensure compliance by their contractors and subcontractors. Recipients have to establish procedures to: notify Section 3 residents about Section 3 training and employment opportunities; notify Section 3 business concerns about Section 3 contracting opportunities; notify contractors about Section 3 requirements; include the required Section 3 contract clause in all solicitations and contracts; facilitate the training and employment of Section 3 residents and the award of contracts to

Section 3 businesses; assist and actively cooperate with HUD in obtaining the compliance of contractors and subcontractors; document actions taken to comply with Section 3; and, retain compliance records for HUD review. Each recipient also has to submit an annual Form HUD 60002 report to allow HUD to evaluate the effectiveness of Section 3.

To qualify for federal grants, and to draw funds from such grants, fund recipients have to certify each year, in HUD Action Plans, that they "will comply with Section 3."

B. Results of Our Investigation

The City was required to comply with Section 3. It did not do so. The City did implement programs to provide business opportunities for small, minority-owned and women-owned businesses. The City says it believed these programs satisfied Section 3, and that HUD was aware of, and approved, the City's belief. The City says it did not knowingly violate Section 3, and that any failure to comply was inadvertent.

In recent discussions with the City, it makes the additional argument that because minority-owned, women-owned and small businesses often employ low-income individuals, historical analysis could reveal that the City complied with Section 3's numerical requirements even though it made no effort to do so directly. More precisely, the City argues that the United States has not yet proven that the City failed to comply with Section 3's numerical thresholds in any particular year. HUD tells us its analysis contradicts the City's position that the City may have fortuitously complied with Section 3.

Our investigation reveals that the City did not track data that would have allowed it to determine whether it was in compliance with Section 3's numerical goals; did not have procedures to notify Section 3 residents or business concerns about training, employment or contracting opportunities; did not have programs to facilitate Section 3 training or employment or the award of Section 3 contracts; made little effort to obtain the compliance of contractors with Section 3; and, did not maintain required documentation or submit the required HUD annual report. On a limited number of occasions, the City did include a reference to Section 3 in its contracts or bid papers related to City projects, but HUD's regulations require use of specific language, and we never found that language in any of the City's agreements.

C. The City's Section 3 History

In 1983, James Milsap filed a HUD complaint alleging that St. Paul was in violation of Section 3 and Title VI of the Civil Rights Act. HUD's resulting investigation found Section 3 and Title VI violations. In 1984, the matter was resolved when the City and HUD entered into a Voluntary Compliance Agreement (1984 VCA) and associated plan of compliance (1984 Section 3 Plan). The 1984 VCA provided, in part:

> It is agreed that . . . [the City] shall adopt appropriate procedures and requirements to assure good faith compliance with the statutory directive of Section 3. (The race and sex of employees, trainees and businesses shall be identified in all progress reports for the purpose of this agreement. . . .).

1984 VCA ¶ 1 (citation omitted). The City asserts that based on this reference to tracking data related to the sex and race of employees, trainees and businesses, it reasonably believed that its efforts related to economic opportunity based on gender and race satisfied Section 3.

In July of 1984, the City sent HUD a Section 3 Compliance Plan that the City said would be incorporated into the City's Compliance User's Manual and would be implemented by the City. That Plan focussed on low- and very-low income residents and businesses, established a detailed procedure for City contracting to implement and track Section 3 requirements, to document its Section 3 efforts, and to monitor contracts for compliance.

In 1985, HUD conducted an investigation in response to a Section 3 complaint by a Mr. William Davis, and concluded that the City was complying with Section 3.

In 1989, James Milsap filed a second federal lawsuit against HUD and the City alleging the City continued to be in violation of Section 3. Moving to dismiss the suit, the City directed the Court to its 1984 Section 3 Plan of Compliance. The case was eventually dismissed on procedural grounds and because there is no private right of action under Section 3. The Court did not reach the question of the City's compliance with Section 3. During the 1989 litigation both HUD and the City submitted affidavits and interrogatory responses that affirmed that as of that time, the City was in compliance with Section 3. According to the City, HUD's discovery responses in this litigation confirmed that HUD understood and approved of the City's understanding that its efforts directed at women-owned, minority-owned and small businesses were sufficient under Section 3.

In 2003, Mr. Edward McDonald, a City employee, told the City in an e-mail and in reports, that the City "may not" have "completely complied with . . . federal Section 3..." In our interview of Mr. McDonald, he said he told his managers that the City was not complying with Section 3, but that his Managers were uninterested and took no action. Mr. McDonald was fired by the City shortly after these events.

Most recently, Nails Construction Company, a company owned by Frederick Newell, our relator, sued the City in federal court in 2009, alleging that the City was out of compliance with Section 3, and submitted a parallel administrative complaint to HUD alleging the same failure. The lawsuit was dismissed on the grounds that there was no private right of action under Section 3. Again, there was no finding as to whether the City was in compliance with Section 3.

In the administrative proceeding that resulted from the Nails Construction HUD complaint, HUD determined the City was out of compliance with Section 3. The City initially contested that finding, but dropped its challenge in order to renew its eligibility to compete for and secure discretionary stimulus HUD funding. The City agreed to enter into a new, comprehensive Voluntary Compliance Agreement, under which it agreed to make a number of reforms to bring it into compliance with Section 3.

We interviewed project managers, who would have been responsible for implementing Section 3 on various projects. Most acknowledged they did little if anything specific to comply with Section 3. Many were unaware of Section 3's requirements during the relevant time period. Some of the City's employees, including the City counsel responsible for HUD regulatory

compliance and various senior managers, told us they understood that the City's efforts to comply with minority- and woman- owned contracting initiatives also compiled with the requirements of Section 3.

Although the City did not complete and send to HUD each year the required Section 3 Form 60002 report, it did submit other required HUD forms that, among other things, identified some of the City's community development contractors as Section 3 contractors.

HUD has publicly acknowledged, that for a significant period of time it was not focussed on Section 3 compliance anywhere in the country. HUD employees conducted annual reviews of St. Paul and regularly approved the City's Action Plans and Consolidated Annual Performance and Evaluation Reports, and conducted on site performance reviews, but did not notice or flag the City's Section 3 deficiencies. Since it implemented the second Section 3 VCA in 2010, HUD has held St. Paul out as a model Section 3 jurisdiction.

D. Damages

The total HUD awarded to the City in development grants is over $86 million. A substantial portion of that money was devoted to construction projects subject to Section 3. The precise amount is not tracked by HUD and would have to be obtained from the City. Of course, because the City is a public municipality, the burden of an FCA judgment against the City would ultimately fall on City taxpayers.

DISCUSSION

Although our investigation reveals that the City did not comply with Section 3, the City has a number of factual and legal arguments that support a decision not to intervene. Given these arguments, and HUD's lack of support for the case, we recommend against intervention.

Lack of Requisite Knowledge/Scienter: The City says it reasonably believed minority- and women-owned business programs satisfied Section 3. The City asserts that it has a long history of trying to address poverty and discrimination in the City. The City points to multiple programs and its sustained efforts in support of populations in the City that often include low-income residents. In support of its argument the City points to the 1984 VCA it entered into with HUD, which makes reference to tracking data related to minorities and women, and HUD's statements in the Milsap litigation that the City was complying with Section 3.

While we believe there is evidence the City knew, or should have known, of its race and gender free Section 3 obligations, some of the witness we interviewed did say they thought the City was complying with Section 3 by providing support for women-owned and minority-owned businesses.

Government Knowledge/Materiality: The City argues that even if it was violating Section 3, its violation cannot form the basis for an FCA claim because HUD was aware of its failures, and did nothing to address the problem. In 1985, HUD did conclude that the City was complying with Section 3 in response to the Davis complaint. In a HUD affidavit in the 1989 Milsap litigation, HUD further said that the City was doing an adequate job of complying with

Section 3. The City also argues that even if HUD did not say it explicitly in the years between 1989 and 2009, HUD's silence over those many years is tacit approval of the City's belief it was in compliance.

We will have to admit that the City was failing to comply with Section 3 in ways that should have been apparent to HUD. The City did not send HUD its HUD 60002 forms each year. HUD never objected. The City will argue that HUD was so unconcerned with Section 3 that the City's failure to comply did not affect, or could not have affected a HUD decision to pay.

The City will argue that HUD's failure to monitor its Section 3 compliance was consistent with HUD's general lack of oversight of Section 3. The City has already noted that previous federal administrations were not concerned with Section 3 (a position with support in recent HUD public comments), and that it is unfair to require a City to make a boilerplate certification each year, ignore the City's non-compliance year-after-year, and then seek FCA relief when a new administration comes in that is more concerned with Section 3 compliance.

Although silence is not approval, and although this program is designed as a self-monitoring program, with the City responsible for its own compliance, HUD's lack of attention would not be helpful to a case against the City.

Prospective Certifications, and Not a Condition of Payment: The City will argue that its certifications were only that it "will" comply, not that it had done so.

In *United States ex. rel. Vigil v. Nelnet*, 2011 WL 1675418 (8th Cir. May 5, 2011), the Eighth Circuit distinguished between false statements made to induce the payment of a claim, and those made to qualify for a government program. The Court drew a distinction between conditions of payment and conditions of participation. The Appeals Court held that the former could be the basis for an FCA claim but the latter could not.

In *Vigil,* the defendant had to comply with certain Department of Education ("DOE") regulations to qualify to participate in a program where it could make government subsidized student loans. The *Vigil* relator alleged that when the defendant lender submitted claims for interest subsidies on student loans it made, and for default insurance related to such loans, without being in compliance with the participation regulations, those claims were false. Under the relevant DOE regulations, however, once a lender was enrolled in the program, their eligibility continued until after a contrary decision in a contested termination proceeding. The lender explicitly continued to be eligible under the program until the termination proceeding was complete. In addition, termination did not affect a lender's rights or responsibilities related to its prior loans. In these circumstances, the Court held that the lender's certification that it was an eligible lender was a condition of participation, not payment.

The Section 3 regulations provide procedures for compliance reviews, and administrative complaints, procedures and time lines for cure of identified deficiencies, and sanctions for continuing failure or refusal by a recipient or contractor to comply with HUD's regulations, including remedies under the CDBG or HOME programs (which include contested administrative hearings), debarment, suspension or limited denial of participation. Given these

procedures there is a risk a trial court in the Eighth Circuit will consider the annual certifications in this case to be conditions of participation that will not support an FCA claim.

Administrative Remedies: The City will argue that if HUD finds that a grantee is out of compliance with Section 3, it has a number of administrative options and procedures to deal with the non-compliance, including suspension and debarment. The City will argue that permitting FCA liability in this context is akin to transforming a discretionary administrative remedy into a mandatory and harsh penalty.

We believe this argument is not well taken. The FCA provides a remedy that is distinct from any available administrative remedies. We are concerned, however, that an FCA case, which is a case to recover money, not a request for injunctive relief, is a blunt tool in the context presented. Rather that taking money out of a financially challenged American city, the right approach here may well be an administrative approach to fixing the City's programs, not an effort to punish the City for past behavior and a trier of fact may well agree. Here, HUD says it has already take the required administrative action, and that the City is now in compliance with Section 3. Indeed, HUD holds St. Paul up, now, as a model Section 3 participant.

Vagueness: The City will argue that the phrase "to the greatest extent feasible" is vague and ambiguous, and that it cannot provide the basis for an FCA claim. We do not believe this is a strong argument for the City. The argument ignores HUD's regulations. Although the broad statement in the statute and in the first paragraph of the regulations is general, most of HUD's Section 3 regulations are more specific, weakening the vagueness argument. In addition, we take the position that where a claimant believes regulations are vague, they have an obligation to seek clarification from the government, not to default on their obligations unilaterally. Nonetheless, the language of the regulation pointed to by the City is not a model of clarity, and there is some risk that pursuing a case here will result in bad Section 3 law.

Policy Considerations: The City argues that an FCA case, which if successful will burden St. Paul taxpayers, is undesirable. The City argued that it has been a constructive HUD partner over the years, and should not be punished here. The City believes a claim is particularly unattractive given that when its Section 3 deficiencies were identified in the recent administrative action, the City entered into a VCA and is now held up by HUD as a model Section 3 participant, and as a model for other jurisdictions.

OTHER CONSIDERATIONS

In February 2010, the Eighth Circuit Court of Appeals issued a decision in *Gallagher v. Manger*, 619 F.3d 823 (8th Cir. 2010). That case involves claims by a number of current and former owners of rental properties in St. Paul, against the City and numerous City housing inspectors, alleging that the manner in which the City enforced housing codes was discriminatory and in violation of the Fair Housing Act (FHA). The City allegedly had been focusing aggressive code enforcement efforts on "problem properties" that tended to be rented primarily to low-income, African-American families. The City argued that there were particular health and safety issues that justified their focus on low-income properties, that they need to act decisively to protect its citizens. The District Court for the District of Minnesota granted summary judgment dismissing the claims. The Eighth Circuit reversed in part and remanded, holding that the

plaintiffs had established a prima facie case of disparate impact under the FHA, but that a fact issue remained as to whether the City had viable alternative means to achieve its legitimate policy objective of protecting health and safety in rental properties without discriminatory effects. *En banc* rehearing was denied. The City appealed and the United States Supreme Court granted certiorari on November 7, 2011.

The Supreme Court has not decided whether the FHA allows for recovery based on a disparate-impact theory. We understand that the Civil Rights Division is concerned that there is a risk of bad law if the Court rules on the question of whether the City's health and safety efforts here justify a departure from the mandates of the FHA. The City has indicated that it will dismiss the *Gallagher* petition, and declination here will facilitate the City's doing so. Under the circumstances, we believe this is another factor weighing in favor of declination.

CONCLUSION

Given all of the factors described above, we recommend that the United States decline to intervene in this case.

Joyce R. Branda
Director
Commercial Litigation Branch

Attachments

Reviewer: Line Attorney 1

Senior Trial Counsel: Line Attorney 2

AUSA: Line Attorney 3

From: Martinez, Brian (CIV)
Sent: Thursday, February 09, 2012 7:24 PM
To: Perez, Thomas E (CRT)
Subject: RE: Follow up

Tom -

I know that Tony already communicated this to you, but I wanted to make good on my promise to tell you when he signed the St. Paul memo. I know it happened a couple of hours ago, but it's done.

Brian

-----Original Message-----
From: Perez, Thomas E (CRT)
Sent: Thursday, February 09, 2012 4:00 PM
To: Martinez, Brian (CIV)
Subject: Re: Follow up

Thx.

----- Original Message -----
From: Martinez, Brian (CIV)
Sent: Thursday, February 09, 2012 03:58 PM
To: Perez, Thomas E (CRT)
Subject: Re: Follow up

We now have the memo in the front office. Tony has been tied up, so he hasn't signed it yet. I will let you know.

----- Original Message -----
From: Perez, Thomas E (CRT)
Sent: Thursday, February 09, 2012 03:50 PM
To: Martinez, Brian (CIV)
Subject: Re: Follow up

Any word?

----- Original Message -----
From: Martinez, Brian (CIV)
Sent: Tuesday, February 07, 2012 05:27 PM
To: Perez, Thomas E (CRT)
Subject: Re: Follow up

Yes, I was with Tony during the call. I am glad that you all were able to talk and hopefully get closer to wrapping this up. The RC-2 went well. Thanks again.

----- Original Message -----
From: Perez, Thomas E (CRT)
Sent: Tuesday, February 07, 2012 03:24 PM
To: Martinez, Brian (CIV)

Subject: Re: Follow up

Thx for your help. Call occurred as planned and was productive.

----- Original Message -----
From: Martinez, Brian (CIV)
Sent: Monday, February 06, 2012 11:35 PM
To: Perez, Thomas E (CRT)
Subject: Re: Follow up

RC-2 [redacted]

----- Original Message -----
From: Perez, Thomas E (CRT)
Sent: Monday, February 06, 2012 11:06 PM
To: Martinez, Brian (CIV)
Subject: Re: Follow up

Thx! What time is RC-2 [redacted]

----- Original Message -----
From: Martinez, Brian (CIV)
Sent: Monday, February 06, 2012 11:04 PM
To: Perez, Thomas E (CRT)
Subject: Re: Follow up

No problem at all, Tom. I've had my fair share of e-mail glitches in the past. Connie and I will try to set something up for tomorrow. Talk to you soon.

Brian

----- Original Message -----
From: Perez, Thomas E (CRT)
Sent: Monday, February 06, 2012 10:57 PM
To: Martinez, Brian (CIV)
Subject: Re: Follow up

probably my fault Brian that you did not get this. So sorry. Thx for your help in setting this up. We need no more than 30 minutes. RC-1 [redacted] knows my schedule. Thx again

Tom

----- Original Message -----
From: Martinez, Brian (CIV)
Sent: Monday, February 06, 2012 10:40 PM
To: Civil Rights Scheduler [redacted]; Perez, Thomas E (CRT); Brooker, Greg (USAMN); West, Tony (CIV)
Subject: Re: Follow up

Thank you, RC-1 [redacted]. As you noted, I didn't receive the prior messages below. I will follow up with you separately to try to find a time tomorrow for this conference call.

----- Original Message -----

From: Civil Rights Scheduler
Sent: Monday, February 06, 2012 08:47 PM
To: Perez, Thomas E (CRT); Brooker, Greg (USAMN); West, Tony (CIV); Martinez, Brian (CIV)
Subject: Re: Follow up

My last email didn't make it to Brian. Resending with Brian's correct email address.

Thanks,
Civil Rights Scheduler

----- Original Message -----
From: Civil Rights Scheduler
Sent: Monday, February 06, 2012 08:33 PM
To: Perez, Thomas E (CRT); Brooker, Greg (USAMN); West, Tony (CIV); Brian Martinez <RC-1>
Subject: Re: Follow up

Tom is free anytime before 12pm eastern tomorrow.

Thanks,
Civil Rights Scheduler

----- Original Message -----
From: Perez, Thomas E (CRT)
Sent: Monday, February 06, 2012 07:55 PM
To: Brooker, Greg (USAMN); West, Tony (CIV); Brian Martinez
Cc: Civil Rights Scheduler
Subject: Follow up

Greetings:

I just spoke with Tony and we are confident we can come to closure with a brief conversation tomorrow. Brian, can you possibly identify a time after Tony's speech when we can all talk, along with Joyce. Civil Rights Scheduler will let you know when I am available. This should take no more than 30 minutes. It would be very helpful for us to have this tomorrow.

Thx

Tom

From: Perez, Thomas E (CRT)
Sent: Saturday, February 11, 2012 10:58 AM
To: [redacted]
Subject: Re: Follow Up

Your reference to Candyland brings back many fond memories. We have graduated to crazy 8s.

If you are in DC, give me a shout and I would love to have lunch or a drink. We will obviously stay in touch in the weeks ahead. I have a thought or two I wanted to run by you.

Thx again!

Tom

From: Sara Grewing [mailto:[redacted]
Sent: Saturday, February 11, 2012 10:20 AM
To: Perez, Thomas E (CRT)
Subject: Follow Up

Hi Tom - thanks so much for the kind voicemail yesterday. My three year old and I were involved in a vicious Candyland battle and somehow I missed your message until late in the evening.

I am so happy we were able to work everything out on the Magner withdrawal and we look forward to working with you in the future. A million thanks for your time and dedication to this process. Have a wonderful weekend.

Best,
Sara Grewing

Saint Paul City Attorney

RC-1

From: Goldberg, Stuart (ODAG)
Sent: Monday, March 12, 2012 7:38 AM
To: Cole, James (ODAG); O'Neil, David (ODAG)
Subject: FW: Civil Division -- Significant Affirmative Matters
Attachments: Civil Division--Significant Ongoing Affirmative Matters 03-08-12.xlsx

Stuart M. Goldberg
Principal Associate Deputy Attorney General
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Room RC-1
Washington, D.C. 20530
(202) RC-1

From: Martinez, Brian (CIV)
Sent: Sunday, March 11, 2012 5:50 PM
To: Goldberg, Stuart (ODAG); Axelrod, Matthew (ODAG)
Cc: Olin, Jonathan F. (CIV)
Subject: Civil Division -- Significant Affirmative Matters

Stuart and Matt –

Attached please find an updated version of the chart that Tony first provided to your office in January 2012. If you have any questions, please contact Jon Olin (copied here).

Thanks,
Brian

Brian Martinez
Chief of Staff
Civil Division
U.S. Department of Justice
(202) RC-1
RC-1

Significant Affirmative Civil and Criminal Matters

Updated March 8, 2012

Party	USAO	Subject	Status as of March 8, 2012

RC-2: Non-responsive text in multi-subject document.

RC-2: Non-responsive text in multi-subject document.

U.S. v. City of St. Paul, Minn. (involves two different qui tam cases)	D. Minn.	Mortgage fraud	Relators allege in Newell that the City of St. Paul falsely certified that it was in compliance with Section 3 of the Housing Act (incentives for low and very low income citizens) when it obtained HUD community development block grants (CDBG program, etc.). The Ellis case alleges that the City of Minneapolis is inappropriately condemning and knocking down low-income housing, which has a disparate racial impact. Government declined to intervene in Newell, and has agreed to decline to intervene in Ellis, in exchange for defendants withdrawal of cert. petition in Gallagher case (a civil rights action).

RC-2: Non-responsive text in multi-subject document.

RC-2: Non-responsive text in multi-subject document.

Department of Housing and Urban Development Documents

[redacted]

From: [redacted]
Sent: Tuesday, November 29, 2011 8:12 PM
To: [redacted]
Subject: Fw: St. Paul

FYI

—— Original Message ——
From: [redacted]
Sent: Tuesday, November 29, 2011 08:06 PM
To: [redacted]
Subject: St. Paul

[redacted] Can we discuss tomorrow? There is a change of position. Thanks-[redacted]

[redacted]

From: [redacted]
Sent: Thursday, December 01, 2011 10:08 AM
To: [redacted]
Cc: Aronowitz, Michelle
Subject: St. Paul Qui Tam

[redacted] This is to confirm our telephone conversation of Tuesday night in which I informed you that HUD has reconsidered its support for intervention by the government in the St. Paul qui tam matter. HUD has determined that intervention is not necessary because St. Paul's programmatic non-compliance has been corrected through a Voluntary Compliance Agreement with HUD.

If you have any questions, please feel free to contact me. [redacted]

From: [redacted]
Sent: Friday, December 02, 2011 5:41 PM
To: [redacted]
Subject: RE: Minneapolis / St. Paul

Don't make me answer that.

From: [redacted]
Sent: Friday, December 02, 2011 4:38 PM
To: [redacted] Pratt, Sara K
Cc: [redacted]
Subject: RE: Minneapolis / St. Paul

Is he involved in the litigation against the city of St. Paul that's going to the Supreme Court.

From: [redacted]
Sent: Friday, December 02, 2011 4:37 PM
To: Pratt, Sara K; [redacted]
Cc: [redacted]
Subject: RE: Minneapolis / St. Paul

Sure, I'll will handle this. If you get any calls from with Andrew Ellis or John Shoemaker in MN, just forward those calls to me, too.

From: Pratt, Sara K
Sent: Friday, December 02, 2011 4:10 PM
To: [redacted]
Cc: [redacted]
Subject: Minneapolis / St. Paul

I got a phone message today from a Mike Blodgett (cell phone [redacted]) asking about metropolitan planning issues in Minneapolis/St. Paul, particularly in connection with pre emption of local building codes by state codes and the Fair Housing Act, and disparate impact on protected classes. That's what he said, I don't know what it really is about specifically. Could you call him back on my behalf to find out what his concerns are?

Thanks,

Sara

Sara K. Pratt
Deputy Assistant Secretary for Enforcement and Programs
Department of Housing and Urban Development
451 Seventh Street, SW
Room [redacted]
Washington, D.C. 20410
202.[redacted] (direct line)

Pratt, Sara K

From: Perez, Thomas E (CRT) [redacted]
Sent: Monday, December 12, 2011 2:03 PM
To: Pratt, Sara K
Subject: Re: Next week

Maybe after you meet with them tomorrow, you can patch me in telephonically and we can talk to them. We need to talk them off the ledge.

Can we talk before you meet with them.

----- Original Message -----
From: Pratt, Sara K [mailto:[redacted]
Sent: Monday, December 12, 2011 01:21 PM
To: Perez, Thomas E (CRT)
Subject: RE: Next week

I meet with them tomorrow at 9 am and have reserved two hours for the meeting. I understand that their meeting with civil is at 2:00.

According to Helen, there is no need for me to meet with civil today.

-----Original Message-----
From: Perez, Thomas E (CRT) [mailto:[redacted]
Sent: Monday, December 12, 2011 1:21 PM
To: Pratt, Sara K
Subject: Re: Next week

What time is your meeting tomorrow and what time is their next meeting with doj if you know?

----- Original Message -----
From: Pratt, Sara K [mailto:[redacted]
Sent: Sunday, December 11, 2011 09:27 PM
To: Perez, Thomas E (CRT)
Subject: Re: Next week

Yep I imagine so.

----- Original Message -----
From: Perez, Thomas E (CRT) [mailto:[redacted]
Sent: Sunday, December 11, 2011 09:14 PM
To: Pratt, Sara K
Subject: Re: Next week

I would like to figure out a way to have them come to my office at the end of the day and meet with you and me. If I can arrange that, are you able?

----- Original Message -----
From: Pratt, Sara K [mailto:[redacted]
Sent: Sunday, December 11, 2011 09:09 PM
To: Perez, Thomas E (CRT)
Subject: Re: Next week

Thanks. I am around pretty much all day tomorrow and also in th evening....

----- Original Message -----
From: Perez, Thomas E (CRT) [mailto:[redacted]
Sent: Sunday, December 11, 2011 08:59 PM
To: Pratt, Sara K
Subject: Re: Next week

Thx and good luck

----- Original Message -----
From: Pratt, Sara K [mailto:[redacted]
Sent: Sunday, December 11, 2011 08:54 PM
To: Perez, Thomas E (CRT)
Subject: Re: Next week

City is tuesday at 9 am. Civil hopefully tomorrow.

----- Original Message -----
From: Perez, Thomas E (CRT) [mailto:[redacted]
Sent: Sunday, December 11, 2011 08:33 PM
To: Pratt, Sara K
Subject: Re: Next week

Do you have a meeting with the city tomorrow? If so, can we talk beforehand? Thx

[redacted]

From: [redacted]
Sent: Thursday, December 22, 2011 12:01 PM
To: [redacted]
Subject: St. Paul's Vendor Outreach Program

Importance: High

[redacted]I came across news articles reporting on lawsuits against the City of St. Paul in/around 2007 alleging that the City was not awarding contracts to minorities and women, notwithstanding the Vendor Outreach Program (VOP).

On November 2, 2007, a District Court Judge ordered the City to enforce the City's VOP -- a program designed to remedy past discrimination and prevent future discrimination against minority-owned businesses. The Court's order incorporated earlier findings from an order it issued on July 24th, 2007, which acknowledged additional lapses in the City's enforcement of the VOP.

Additionally, according to one news source, an independent audit of St. Paul found that "fewer than 7 percent of $220 million worth of contracts in 2006 went to minority- and woman-owned businesses."

So, just because St. Paul had a VOP doesn't mean it met the goals of the VOP or Section 3.

Pratt, Sara K

From: Pratt, Sara K
Sent: Thursday, December 22, 2011 2:24 PM
To: [redacted]
Subject: RE: St. Paul's Vendor Outreach Program

Yes, I'm treading carefully here.

Will send you a draft in a few minutes.

From: [redacted]
Sent: Thursday, December 22, 2011 2:16 PM
To: Pratt, Sara K
Subject: St. Paul's Vendor Outreach Program
Importance: High

Sara,

As you know, DOJ has asked HUD whether HUD believes that the City of St. Paul, through its Vendor Outreach Program (VOP), ultimately (substantially) complied with Section 3. This statement would be true if the City, in serving the MBEs, WBEs and DBEs that participate in its VOP, ultimately provided contracting opportunities to the companies of low and very-low income individuals at/near the levels provided for by Section 3. The relevant time period is 2000-2010.

In verifying this, I came across news reports about private citizens' lawsuits against the City of St. Paul in/around 2007, alleging that the City was not awarding contracts to minorities and women notwithstanding the VOP (a program initiated to remedy past discrimination against minority-owned businesses).

On November 2, 2007, a state court judge ordered the City to enforce the City's VOP. The Court's order incorporated earlier findings, from an order it issued on July 24th, 2007, that acknowledged additional lapses in the City's enforcement of the VOP. (See article below.)

Additionally, an independent audit of St. Paul, issued in November 2007, found that fewer than 7 percent of $220 million worth of contracts in 2006 went to minority- and woman-owned businesses. MBEs received less than 3% of contract dollars. The audit also found that the office that was responsible for processing more than half of those contracts had failed to adopt the provisions of the City's VOP and Affirmative Action in Employment ordinances, that there was a "lack of monitoring and enforcement procedures and practices" relating to VOP contracting, and that "n[o] one [on the City's staff took] responsibility for monitoring and enforcement of the VOP and AA [contracting] requirements."

Following is one report:

State Judge Directs the City of Saint Paul to Enforce Provisions of the Vendor Outreach Program Targeted to Minority-owned Businesses

ST. PAUL, Minn., Nov. 13 /PRNewswire-USNewswire/ -- On November 2,

District Court Judge Kathleen Gearin ordered the City of Saint Paul to enforce the City's Vendor Outreach Program (VOP) -- a program designed to remedy past discrimination and prevent future discrimination against minority-owned businesses.

The ruling followed a bench trial before Judge Gearin with testimony from the plaintiff, Brian Gurnee, and city officials [illegible]

000225

city contracts. Conover, owner of Abel Trucking, alleged that he was unable to contract with the City on numerous occasions because city officials failed to follow the mandatory provisions of the VOP that were enacted to promote increased participation of qualified, minority-, women-, and small-owned businesses.

Prior to filing this action, Conover had bid on at least 22 projects with the City and was rejected each time without any explanation. The VOP requires that prime contractors notify unsuccessful bidders, such as Conover, about the basis for the rejection. The court concluded that the City's failure to "ensure that this is done by prime contractors.... violates the Vendor Outreach Program." Furthermore, the court acknowledged that the lack of explanation results "in these bidders not developing the necessary skills in preparing their bids so that they can be successful."

On the rare occasion Conover was invited to bid on a project, the invitation came the day before the bid was due, even though the VOP requires certified vendors to be contacted at least 10 days prior to the bid opening date. According to the judge, the City's current practice does not afford bidders adequate time to prepare a competitive bid and further discourages them from submitting a bid.

"We want to make sure the City treats all of its citizens fairly by enforcing both the letter and spirit of the Vendor Outreach Program," said Tricia G. Jefferson, an attorney representing Conover from the Lawyers' Committee for Civil Rights. Conover is also represented by local counsel, Stephen L. Smith, and Blair Jacobs and Kathleen Lahrstein-Bertocci from Sutherland, Asbill & Brennan LLP, located in Washington, D.C.

The court's order incorporates earlier findings from an order it issued on July 26th, which acknowledged additional lapses in the City's enforcement of the VOP. The City must now act expeditiously to implement the combined orders, which include, among other things, providing timely notification of bids and an explanation of rejected bids.

The Lawyers' Committee is a nonpartisan, nonprofit civil rights legal organization, formed in 1963 at the request of President John F. Kennedy to provide legal services to address racial discrimination.

For more information on the Lawyers' Committee, visit us at http://www.lawyerscommittee.org.

###FOR Lawyers' Committee for Civil Rights

[redacted]

From: [redacted]
Sent: Thursday, December 22, 2011 2:57 PM
To: [redacted]
Subject: FW: City of St. Paul
Attachments: 3595_001.pdf

Sara's attachment is the City's "position paper" setting forth reasons why the City thinks the Govt should decline to intervene. Among other things, the City references the Hall audit's review of its VOP, but says nothing other than: "overall, the results were largely positive."

This is just not true. The Hall audit reports the small percentages of contracting dollars directed toward MBEs and WBEs (included in my earlier email) and describes a lack of responsibility, enforcement, etc.

From: Pratt, Sara K
Sent: Thursday, December 22, 2011 2:39 PM
To: [redacted]
Subject: FW: City of St. Paul

fyi

From: Lundquist, John [mailto:[redacted]
Sent: Thursday, December 22, 2011 1:45 PM
To: Pratt, Sara K
Subject: City of St. Paul

Dear Ms. Pratt,

Thank-you for your call this morning. We are working on getting you the materials you requested. In the meantime, I am enclosing a copy of the Position Paper we submitted to DOJ. Pages 4-11 describe some of the City's programs.

Thank you.

John W. Lundquist
Fredrikson & Byron, P.A.
200 South Sixth Street, Suite 4000
Minneapolis, MN 55402-1425
Direct Dial: 612.[redacted]
Main Phone: 612.[redacted]
Fax: 612.492.7077
[redacted]

[redacted]

From: [redacted]
Sent: Thursday, December 22, 2011 3:58 PM
To: Aronowitz, Michelle
Cc: [redacted]
Subject: RE: St. Bernard Parish: Judge Orders Occupancy, Threatens Fines In St. Bernard Housing Battle

Michelle,

DOJ doesn't appear to like the basis for declining the Section 3 case. [redacted] asked [redacted] whether HUD believes that the City of St. Paul, through its Vendor Outreach Program (VOP), ultimately (substantially) complied with Section 3. If so, DOJ would like to rely upon a statement from HUD to this effect.

We spoke to Sara Pratt about this, and she appears to be working on a response.

This statement could be true if the City, in serving the MBEs, WBEs and DBEs that participate in its VOP, ultimately provided contracting opportunities to the companies of low and very-low income individuals at/near the levels provided for by Section 3. The relevant time period is 2000-2010.

Unfortunately, in verifying this, I came across news reports about private citizens' lawsuits against the City of St. Paul in/around 2007, alleging that the City was not awarding contracts to minorities and women notwithstanding the VOP (a program initiated to remedy past discrimination against minority-owned businesses).

On November 2, 2007, a state court judge ordered the City to enforce the City's VOP. The Court's order incorporated earlier findings, from an order it issued on July 24th, 2007, that acknowledged additional lapses in the City's enforcement of the VOP. (See article below.)

Additionally, an independent audit of St. Paul, issued in November 2007, found that fewer than 7 percent of $220 million worth of contracts in 2006 went to minority- and woman-owned businesses. MBEs received less than 3% of contract dollars. The audit also found that the office that was responsible for processing more than half of those contracts had failed to adopt the provisions of the City's VOP and Affirmative Action in Employment ordinances, that there was a "lack of monitoring and enforcement procedures and practices" relating to VOP contracting, and that "n[o] one [on the City's staff took] responsibility for monitoring and enforcement of the VOP and AA [contracting] requirements."

I conveyed this to Sara. We are currently awaiting her statement (about accomplishing Section 3's goals/ objectives through the VOP program).

[redacted]

[redacted]

From: [redacted]
Sent: Thursday, December 22, 2011 4:11 PM
To: Aronowitz, Michelle
Subject: FW: St. Paul issue

Michelle, attached is Sara's draft response to DOJ's question about whether the City (unintentionally) complied with Section 3 through its Vendor Outreach Program.

From: Pratt, Sara K
Sent: Thursday, December 22, 2011 4:07 PM
To: [redacted]
Subject: St. Paul issue

This is a draft. Please take a look and see what you think.

RECRUITMENT OF WOMEN AND MINORITY OWNED BUSINESSES AS PART OF SECTION 3 COMPLIANCE

I have been asked whether recruitment of women and minority owned business by a city, specifically that conducted through St. Paul's Vendor Outreach Program, constitutes compliance with Section 3 requirements.

On its face, the two activities are separate and analytically different. Recruitment of women owned businesses, minority owned businesses and disadvantaged small businesses is not the same as recruitment or outreach for Section 3 purposes. However, notification of these types of businesses about Section 3 contracting opportunities could result in notification of Section covered business concerns. FHEO would not be likely to make a finding based on technical non compliance with such a provision if our review found that the efforts made with minority and women owned businesses, and economically disadvantaged businesses, although not technically referred to as Section 3 outreach, reached appropriate Section 3 businesses and notified them of contracting opportunities with a Section 3 recipient.

The current Section 3 regulations broadly state that there should be procedures to notify Section 3 business concerns about contracting opportunities generated by section 3 covered assistance. The regulations do not mandate what those procedures are or should be, leaving open various interpretations of the obligations of a section 3 recipient in this respect. In the absence of more detailed specifications, there may be some risk to saying that any particular procedure or strategy of notification is right or wrong. FHEO is currently in the final stages of drafting substantive amendments to these regulations in part because they may lack the requisite specificity to hold section 3 recipients liable for their failure to comply with various components of Section 3.

Sara K. Pratt
Deputy Assistant Secretary for Enforcement and Programs
Department of Housing and Urban Development
451 Seventh Street, SW
Room [redacted]
Washington, D.C. 20410
202[redacted] (direct line)

[redacted]

From: Aronowitz, Michelle
Sent: Thursday, December 22, 2011 4:57 PM
To: [redacted] Pratt, Sara K; [redacted]
Subject: RE: St. Paul issue

I'm not sure we need to provide a long response. If we respond at all,why wouldn't we just reiterate that HUD does not want to proceed with the false claims for the reasons stated in our letter, the city is compliance with HUD's section 3 VCA, and it is possible that compliance with MBE, etc, requirements could result in compliance in Section 3.

From: [redacted]
Sent: Thursday, December 22, 2011 4:42 PM
To: Pratt, Sara K; [redacted]
Cc: Aronowitz, Michelle
Subject: RE: St. Paul issue

I just talked to Michelle and think that we could tell DOJ the following:

It is possible that a city's efforts to recruit women-owned, minority-owned and disadvantaged small businesses for construction and rehabilitation contracts *could* result in compliance with Section 3 requirements. While recruitment of WBEs, MBEs and DBEs is not the same as recruitment or outreach for Section 3 purposes, notification to these types of businesses about Section 3 contracting opportunities could result in notification to the appropriate individuals/businesses of Section covered business concerns. HUD's Office of Fair Housing and Equal Opportunity would be unlikely to make a finding of non-compliance if it found that a grantee's efforts with respect to WBEs, MBEs and DBEs, although not technically referred to as Section 3 outreach, reached appropriate Section 3 businesses and notified them of contracting opportunities with a Section 3 recipient.

Without additional information about the specific WBEs, MBEs and DBEs that participated in St. Paul's Vendor Outreach Program (VOP) during the relevant period, however, HUD cannot conclude that St. Paul's VOP reached Section 3 businesses and notified them of contracting opportunities.

From: Pratt, Sara K
Sent: Thursday, December 22, 2011 4:07 PM
To: [redacted]
Subject: St. Paul issue

This is a draft. Please take a look and see what you think.

RECRUITMENT OF WOMEN AND MINORITY OWNED BUSINESSES AS PART OF SECTION 3 COMPLIANCE

I have been asked whether recruitment of women and minority owned business by a city, specifically that conducted through St. Paul's Vendor Outreach Program, constitutes compliance with Section 3 requirements.

On its face, the two activities are separate and analytically different. Recruitment of women owned businesses, minority owned businesses and disadvantaged small businesses is not the same as recruitment or outreach for Section 3 purposes. However, notification of these types of businesses about Section 3 contracting opportunities could result in notification of Section covered business concerns. FHEO would not be likely to make a finding based on technical non compliance with such a provision if our review found that the efforts made with minority and women owned businesses,

and economically disadvantaged businesses, although not technically referred to as Section 3 outreach, reached appropriate Section 3 businesses and notified them of contracting opportunities with a Section 3 recipient.

The current Section 3 regulations broadly state that there should be procedures to notify Section 3 business concerns about contracting opportunities generated by section 3 covered assistance. The regulations do not mandate what those procedures are or should be, leaving open various interpretations of the obligations of a section 3 recipient in this respect. In the absence of more detailed specifications, there may be some risk to saying that any particular procedure or strategy of notification is right or wrong. FHEO is currently in the final stages of drafting substantive amendments to these regulations in part because they may lack the requisite specificity to hold section 3 recipients liable for their failure to comply with various components of Section 3.

Sara K. Pratt
Deputy Assistant Secretary for Enforcement and Programs
Department of Housing and Urban Development
451 Seventh Street, SW
Room [redacted]
Washington, D.C. 20410
202.[redacted](direct line)

Pratt, Sara K

From: [redacted]
Sent: Thursday, December 22, 2011 6:01 PM
To: [redacted]
Cc:
Subject: St. Paul: recommendation against intervention

[redacted]

HUD's Office of Fair Housing and Equal Opportunity has determined that the City of St. Paul is not only in compliance with the VCA, but is also in compliance with its Section 3 obligations at this time. As described in our December 20, 2001 memo, HUD does not wish to proceed with the False Claims Act case. It is possible that notification to MBEs, WBEs, and SBEs could result in compliance with Section 3 requirements, in which case the existence or non-existence of Section 3 notification procedures would essentially be the basis for technical assistance, not a finding of a violation.

[redacted]

[redacted]
U.S. Department of Housing and Urban Development
Office of General Counsel
1250 Maryland Avenue, SW
Suite[redacted]
Washington, D.C. 20024
Tel.:[redacted]
Fax: 202-401-5153

[redacted]

From: [redacted]
Sent: Thursday, December 22, 2011 5:57 PM
To: [redacted]
Subject: Re: St. Paul

An email.

From: [redacted]
Sent: Thursday, December 22, 2011 05:55 PM
To: [redacted]
Subject: RE: St. Paul

As a memo? Or simply an email?

From: [redacted]
Sent: Thursday, December 22, 2011 5:50 PM
To: [redacted]
Subject: Fw: St. Paul

Go ahead and send it to Renee.

From: Aronowitz, Michelle
Sent: Thursday, December 22, 2011 05:44 PM
To: Pratt, Sara K; [redacted]
Subject: RE: St. Paul

This looks good to me. Lets send it.

From: Pratt, Sara K
Sent: Thursday, December 22, 2011 5:43 PM
To: [redacted]
Cc: Aronowitz, Michelle
Subject: St. Paul

FHEO has determined that the City of St. Paul is not only in compliance with the VCA but it is also in compliance with its Section 3 obligations at this time. As described in our December 20, 2001 memo, HUD does not wish to proceed with the false claims case. It is possible that notification of MBEs, WBEs, and SBEs could result in compliance with Section 3 requirements, in which case the existence or non existence of Section 3 notification procedures would essentially be the basis for technical assistance, not a finding of a violation.

Sara K. Pratt
Deputy Assistant Secretary for Enforcement and Programs
Department of Housing and Urban Development
451 Seventh Street, SW
Room [redacted]
Washington, D.C. 20410
202.[redacted] (direct line)

[redacted]

From: [redacted]
Sent: Friday, December 23, 2011 12:32 PM
To: [redacted]
Subject: FW: St. Paul: recommendation against intervention

Have you discussed this with Renee?

From: [redacted] (CIV) [mailto:[redacted]]
Sent: Friday, December 23, 2011 9:35 AM
To: [redacted]
Cc: [redacted]
Subject: RE: St. Paul: recommendation against intervention

Dane: is this responsive to the question you and I discussed yesterday? Thank you.

[redacted]
Assistant Director
U.S. Department of Justice
Civil Division
Commercial Litigation Branch
Fraud Section
601 D Street N.W.
Suite [redacted]
Washington, DC 20004
(202) [redacted]

From: [redacted] [mailto:[redacted]]
Sent: Thursday, December 22, 2011 6:01 PM
To: [redacted]
Cc: [redacted]
Subject: St. Paul: recommendation against intervention

[redacted]

HUD's Office of Fair Housing and Equal Opportunity has determined that the City of St. Paul is not only in compliance with the VCA, but is also in compliance with its Section 3 obligations at this time. As described in our December 20, 2001 memo, HUD does not wish to proceed with the False Claims Act case. It is possible that notification to MBEs, WBEs, and SBEs could result in compliance with Section 3 requirements, in which case the existence or non-existence of Section 3 notification procedures would essentially be the basis for technical assistance, not a finding of a violation.

[redacted]

[redacted]
U.S. Department of Housing and Urban Development
Office of General Counsel
1250 Maryland Avenue, SW
Suite [redacted]
Washington, D.C. 20024
Tel.: [redacted]
Fax: 202-401-5153

Kanovsky, Helen R

From: Donovan, Shaun
Sent: Tuesday, February 07, 2012 9:24 PM
To: Kanovsky, Helen R
Subject: Re: Magner/disparate impact rule

Fantastic - thank you for the great news.

On Feb 7, 2012, at 8:48 PM, "Kanovsky, Helen R" <[redacted]> wrote:

> In case you are in need of good news from another quarter, I just spoke to Tom Perez. The petition to the Supreme Court in Magner will be withdrawn by St Paul this week. Disparate Impact theory in Fair Housing survives for now and the issuance of our final rule shortly will bolster it further.

Kanovsky, Helen R

From: Donovan, Shaun
Sent: Friday, February 10, 2012 11:15 PM
To: Kanovsky, Helen R
Subject: Re: Magner

Spoke to Tom and Sara. Will call the St Paul mayor over the weekend too.

On Feb 10, 2012, at 3:45 PM, "Kanovsky, Helen R" <[redacted] wrote:

> We just received confirmation from the SG's Office, this matter has been dismissed from the Supreme Court's docket. Sara Pratt was very helpful in making this happen. You may also want to call Tom Perez and congratulate him.
>
> Helen R. Kanovsky
> General Counsel
> US Department of Housing and Urban Development
> 451 7th Street, SW
> Washington, DC 20410
> 202-[redacted]
> [redacted] (cell)

[redacted]

From: [redacted]
Sent: Friday, February 10, 2012 1:54 PM
To: [redacted]
Cc:
Subject: FW: Magner being dismissed!

Magner (disparate impact case before the supreme court) will be dismissed.

-----Original Message-----
From: [redacted]
Sent: Friday, February 10, 2012 1:11 PM
To: Branch, Chandra; [redacted]
Subject: FW: Magner being dismissed!

Yippee!!!

-----Original Message-----
From: [redacted]
Sent: Friday, February 10, 2012 1:10 PM
To: [redacted] Aronowitz, Michelle
Subject: FW: Magner being dismissed!

In case you hadn't heard.

----- Original Message -----
From: Lauren Saunders [mailto:[redacted]
Sent: Friday, February 10, 2012 01:04 PM
To: [redacted]
Subject: Magner being dismissed!

Lauren K. Saunders
Managing Attorney
National Consumer Law Center(r)
1001 Connecticut Avenue, NW, Suite 510
Washington, DC 20036
(202) [redacted]
[redacted] (note new email)
www.nclc.org

From: Stuart Rossman
Sent: Friday, February 10, 2012 11:28 AM
To: Advocates_PLUS
Subject: Unbelievable (Good) News

The City of St. Paul, MN, has given up in the Magner case pending in the United States Supreme Court and is withdrawing its petition (whew).
Disparate impact litigation under the FHA lives another day!

Stuart T. Rossman

Director of Litigation

National Consumer Law Center

7 Winthrop Square, 4th Fl.

Boston, MA 02110

[redacted]

[redacted]

From: [redacted]
Sent: Friday, February 10, 2012 3:34 PM
To: Murphy, Donna (CRT); Lynn.M.Gottschalk@frb.gov; Seward, Jon (CRT); abeshara@fdic.gov; Bowman, John B.; larbrown@fdic.gov; kchu@fdic.gov; rclougherty@fdic.gov; jcoburn@fdic.gov; stecohen@fdic.gov; scornell@fdic.gov; jagordon@fdic.gov; jnorcom@fdic.gov; dnordenberg@fdic.gov; toxley@fdic.gov; lpatmon@fdic.gov; krodwell@fdic.gov; lrushing@fdic.gov; alsampson@fdic.gov; lthompson@fdic.gov; mvaldez@fdic.gov; robert.b.avery@frb.gov; neil.bhutta@frb.gov; kenneth.brevoort@frb.gov; gcanner@frb.gov; jason.l.dietrich@frb.gov; carol.a.evans@frb.gov; giovanna.paredes@frb.gov; surge.sen@frb.gov; maureen.c.yap@frb.gov; lhosken@ftc.gov; mluppino@ftc.gov; browe@ftc.gov; cwheeler@ftc.gov; Armstrong, Joel D; Aronowitz, Michelle; Cheung, Kee N; Comeau, John P; Gums, Eathen; Garcia, Michelle T; Kannan, Akila; Lambert, Timothy C; Liu, Feng; Norfleet, Eddy F; Pennington, Kathleen M; Reeder, William J; Suain, Scott J; Zhou, Jian A; Do, Chau; Ho, Rose; Worth, Nancy; Campbell, Linda; theresa.diventi@fhfa.gov; Everson.Hull@fhfa.gov; sylvia.martinez@fhfa.gov; brantley@ncua.gov; lcichocki@ncua.gov; fkressman@ncua.gov; Campos, Marta (CRT); Shou.Wang@treasury.gov; Christine.Ladd@treasury.gov; Rebecca.Gelfond@treasury.gov; Katherine.Worthman@treasury.gov; Cunningham, James (CRT); Postert, Anthony (CRT); mbachman@fdic.gov; Kenneth.Lennon@occ.treas.gov; mark.hotz@occ.treas.gov; lyn.abrams@fhfa.gov; pejohnston@fdic.gov; sarcampbell@fdic.gov; KErnst@fdic.gov; David.Adkins@occ.treas.gov; Richard.bennett@treasury.gov; Worden, Jeanine M; Malden, Reginal M; lrothfarb@ftc.gov; Brian.doherty@fhfa.gov; Hajime.H.Hadeishi@frb.gov; Surge.Sen@frb.gov; Moran, Timothy (CRT); Parr, Elizabeth (CRT); David.Gossett@cfpb.gov; clare.harrigan@cfpb.gov; katherine.worthman@cfpb.gov
Subject: Magner v Gallagher is dismissed

Folks,

The city has withdrawn its cert petition in Magner v. Gallagher and the parties have jointly asked the Court to dismiss the case. This is obviously welcome news. Thanks to all who helped with our brief, and we will keep you posted if the subject arises again.

[redacted]

[redacted]
Attorney, Appellate Section
Civil Rights Division
U.S. Department of Justice
(202) [redacted]

Aronowitz, Michelle

From: Aronowitz, Michelle
Sent: Friday, February 10, 2012 3:40 PM
To: Kanovsky, Helen R
Subject: Fw: Magner dismissed

From the SG's office

From: [redacted]
Sent: Friday, February 10, 2012 03:29 PM
To: [redacted] Aronowitz, Michelle;
Subject: Magner dismissed

For anyone who hasn't heard yet, the parties in Magner v. Gallagher have agreed to dismiss the case. It will therefore no longer be on the Court's docket and (obviously) won't be argued on the 29th. Thanks for all your work on this case.

[redacted]

[redacted] can you please spread the word to the full group of financial-agency folks? Thanks!)

[redacted]
Office of the Solicitor General
U.S. Department of Justice
950 Pennsylvania Ave. NW
Washington, DC 20530
(202) [redacted]

City of St. Paul Documents

Lundquist, John

From: Pratt, Sara K <[redacted]>
Sent: Thursday, December 22, 2011 12:47 PM
To: Lundquist, John
Subject: RE: City of St. Paul

Thank you.

From: Lundquist, John [mailto:[redacted]]
Sent: Thursday, December 22, 2011 1:45 PM
To: Pratt, Sara K
Subject: City of St. Paul

Dear Ms. Pratt,

Thank-you for your call this morning. We are working on getting you the materials you requested. In the meantime, I am enclosing a copy of the Position Paper we submitted to DOJ. Pages 4-11 describe some of the City's programs.

Thank you.

John W. Lundquist
Fredrikson & Byron, P.A.
200 South Sixth Street, Suite 4000
Minneapolis, MN 55402-1425
Direct Dial: 612.[redacted]
Main Phone: 612.[redacted]
Fax: 612.[redacted]
[redacted]@fredlaw.com

Lundquist, John

From: Lundquist, John
Sent: Thursday, December 22, 2011 2:37 PM
To: Sara K. Pratt [redacted]
Subject: St. Paul MBE/WBE/SBE Programs

Dear Ms. Pratt,

I want to call your attention to several sources of information on the City's website which may be helpful.

The City commissioned an audit (the "Hall Audit") in 2007 and a Disparity Report in 2008 to address, among other things, the success of its VOP outreach programs. The City still maintains webpages containing the Hall Audit Report and the Disparity Study on its website. The URL's for those websites are as follows:

Hall Audit: http://www.stpaul.gov/index.aspx?NID=2566

Disparity Study: http://www.stpaul.gov/index.aspx?NID=1224

Our White Paper (the document I sent to you earlier today) included information from both the Hall Audit and the Disparity Study that relates to St. Paul's success in recruiting MBE/WBE/SBE business participation. Section 10 of the Disparity Study contains findings and recommendations about the City's M/WBE utilization. It should be noted that the Study's authors commended St. Paul on its M/WBE programs.

Additionally, the "HRA / PED Report Cards" may be found at: http://www.stpaul.gov/index.aspx?NID=683

Please let me know if this is the sort of information you are seeking. We are also reviewing other materials that mey be responsive to your request.

Thank you for your patience.

John W. Lundquist
Fredrikson & Byron, P.A.
200 South Sixth Street, Suite 4000
Minneapolis, MN 55402-1425
Direct Dial: 612[redacted]
Main Phone: 612[redacted]
Fax: 612[redacted]
[redacted]@fredlaw.com

Lundquist, John

From: Lundquist, John
Sent: Thursday, December 22, 2011 3:16 PM
To: Sara K. Pratt [redacted]
Subject: More Information -- Section 3 / VOP List and MBDR Reports
Attachments: Section 3 Business List.pdf

Dear Ms. Pratt,

I am attaching a recent listing of the City's Section 3 businesses. It cross references those that are also on the VOP list. This confirms the overlap between the two populations, which would also have existed in earlier years.

The MBDR Annual Reports, which contain information about the City's M/WBE utilization rates, may be found at:

http://www.stpaul.gov/index.aspx?NID=3952

We hope this information is helpful.

John W. Lundquist
Fredrikson & Byron, P.A.
200 South Sixth Street, Suite 4000
Minneapolis, MN 55402-1425
Direct Dial: 612[redacted]
Main Phone: 612[redacted]
Fax: 612[redacted]
[redacted]@fredlaw.com

Lundquist, John

From: Lundquist, John
Sent: Friday, December 23, 2011 2:05 PM
To: [redacted]
Subject: More Information on St. Paul Programs

Dear Ms. Pratt,

Below is additional information. We hope this, and the other information provided yesterday, meet your needs. Please let me know.
Thanks.
John

I. The City of Saint Paul awarded over* $72.5 million dollars to WBEs & MBEs from 2005 - 2009 as follows:

2005	$ 7.5 million
2006	$ 9.2 million
2007	$14 million
2008	$19.8 million
2009	$22 million

* Above figures include HRA/PED construction projects only. They do not include city construction amounts e.g., Fire, Parks, Police, Public Works, etc.

Additional funds were committed to WBEs & MBEs in the form of commercial loans.

II. Minority Business Development & Retention (MBDR) program

The City expended $250,000 per year since 2003 towards the capacity building, development, and retention of WBEs & MBEs. This program is unique in the state. No other jurisdiction had committed funds targeted solely for this purpose. The reports for the MBDR program were submitted to you yesterday, which report on other achievements.

III. Socially Responsible Investment Funds (SRIF)

The City places a corpus of funds, historically $10 million, spread amongst a few banks for the purpose of leveraging the banks' funds to issue loans in our economically challenged neighborhoods. Loans include commercial and personal loans. The banks, in turn, report to us the number of loans that were issued in our targeted neighborhoods. These figures are found in the MBDR reports.

IV. Capital Investment Budget

In 2008 (prior to the VCA), the City committed $300,000 to broaden Section 3 activities through the Small Business Assistance Program.

John W. Lundquist
Fredrikson & Byron, P.A.
200 South Sixth Street, Suite 4000
Minneapolis, MN 55402-1425
Direct Dial: 612.[redacted]
Main Phone: 612.[redacted]
Fax: 612.[redacted]
[redacted]@fredlaw.com

Lillehaug, David

From: Perez, Thomas E (CRT) [redacted]
Sent: Friday, February 10, 2012 2:38 PM
To: Lillehaug, David
Subject: Re: RELEASE: City of Saint Paul seeks to dismiss Unites States Supreme Court case Magner vs. Gallagher

Thx for the idea. Had a very nice chat.

From: Lillehaug, David [redacted]
Sent: Friday, February 10, 2012 02:43 PM
To: Perez, Thomas E (CRT)
Subject: FW: RELEASE: City of Saint Paul seeks to dismiss Unites States Supreme Court case Magner vs. Gallagher

Here's the City's press release. Other than an unfortunate typo in the headline, I think you'll find it good reading.

Best regards.

David Lillehaug
Fredrikson & Byron, P.A.
612-[redacted]

From: Joe Campbell [redacted]
Sent: Friday, February 10, 2012 1:22 PM
To: Sara Grewing
Subject: Fwd: RELEASE: City of Saint Paul seeks to dismiss Unites States Supreme Court case Magner vs. Gallagher

SAINT PAUL
The Most Livable City in America

CITY OF SAINT PAUL

FOR IMMEDIATE RELEASE
Contact: Clarise Tushie-Lessard
clarise.tushie-lessard@ci.stpaul.mn.us
651.266.8571 (o)
952.217.6036 (c)
February 10, 2012

City of Saint Paul seeks to dismiss Unites States Supreme Court case *Magner vs. Gallagher*

Scope of court's decision could have adverse effects on housing, civil rights

Today, the City of Saint Paul requested that the United States Supreme Court dismiss the city's petition to hear the pending case of *Magner v. Gallagher*. The case is a lawsuit brought by landlords who oppose the city's vigorous enforcement of the city's housing code. The city's

efforts were focused on eliminating conditions such as rodent infestation, missing dead bolt locks, inoperable smoke detectors, poor sanitation, and inadequate heat. While Saint Paul likely would have won in the United States Supreme Court, a victory could substantially undermine important civil rights enforcement throughout the nation. The city fully expects to win the case later at trial.

The City of Saint Paul, national civil rights organizations, and legal scholars believe that, if Saint Paul prevails in the U.S. Supreme Court, such a result could completely eliminate "disparate impact" civil rights enforcement, including under the Fair Housing Act and the Equal Credit Opportunity Act. This would undercut important and necessary civil rights cases throughout the nation. The risk of such an unfortunate outcome is the primary reason the city has asked the Supreme Court to dismiss the petition.

"As we saw recently with the United States Department of Justice's settlement against Countrywide Mortgage, which provided $335 million of relief to homeowners who have been discriminated against, disparate impact analysis is an important tool in fighting predatory lending and economic injustice," Mayor Chris Coleman said. "Yet we still remain firm in our resolve that, when our city protects tenants from substandard housing, such enforcement enhances – not undermines – civil rights and human dignity."

"The Mayor's and the City Council's thoughtful decision should not be cause for these landlords to celebrate, but instead highlights the city's belief that it will be successful in defending its code enforcement actions in any court," said Saint Paul City Attorney Sara Grewing, whose office is defending the case. "The city is confident we will achieve the same result in trial that we would have through the completion of the appeal. We look forward to cross-examining these landlords in front of a jury and we will try the case to win – an outcome the city expects."

###

Lillehaug, David

From: Pratt, Sara K [redacted]
Sent: Friday, February 10, 2012 2:21 PM
To: Lillehaug, David
Cc: 'Sara Grewing'
Subject: RE: City of St. Paul

David--This is very good news and I am particularly glad to hear that the other side has consented. We also look forward to working with you on a variety of issues.

Sara

From: Lillehaug, David [redacted]
Sent: Friday, February 10, 2012 2:56 PM
To: Pratt, Sara K
Cc: 'Sara Grewing'
Subject: City of St. Paul

Sara -- Breaking news: the City of St. Paul just moved to dismiss its petition in *Magner v.* Gallagher. (The other side has consented, so the odds are good that the Supreme Court will grant the motion.)

Attached is the City's press release. Please give me a call if you have any questions.

City Attorney Sara sends her best regards. I know the City looks forward to working with you and your colleagues at HUD on all civil rights issues.

Have a good weekend!

David Lillehaug
Fredrikson & Byron, P.A.
612[redacted]

REDACTED

From: Pratt, Sara K [redacted]
Sent: Friday, December 09, 2011 10:47 AM
To: Lillehaug, David; 'Sara.Greuning[redacted]'
Subject: Follow up to our discussion

Thank you for a helpful discussion this morning. I look forward to meeting you on Tuesday at 9:00 am. My direct contact information is below and my blackberry number is 202 [redacted]

HUD's new business registry website
http://portal.hud.gov/hudportal/HUD?src=/section3businessregistry

Sara

Sara K. Pratt
Deputy Assistant Secretary for Enforcement and Programs
Department of Housing and Urban Development
451 Seventh Street, SW
Room [redacted]
Washington, D.C. 20410
202.[redacted] (direct line)

REDACTED

From: Tom Perez [[redacted]@verizon.net]
Sent: Saturday, December 10, 2011 10:03 PM
To: Lillehaug, David
Subject: Re: From CAO-Copy4

David

I am in the office Monday and then out the rest of the week. If your clients want to stop in Monday late afternoon, early evening, I am happy to do my best to answer questions, and assuage at least some concerns.

tom
On Dec 10, 2011, at 2:49 PM, Lillehaug, David wrote:

>
>
> ----- Original Message -----
> From: [redacted]@ci.stpaul.mn.us [mailto:[redacted]@ci.stpaul.mn.us]
> Sent: Saturday, December 10, 2011 08:50 AM
> To: Lillehaug, David
> Subject: From CAO-Copy4
>
> <SKMBT_C65011121014490.pdf>

Melissa Mailloux

From: Jeremy Gray
Sent: Tuesday, April 04, 2017 8:37 PM
To: Melissa Mailloux
Subject: Fwd: AI Addendum Comments - Please Acknowledge Receipt - Attachments #3
Attachments: Untitled attachment 00349.docx; Untitled attachment 00352.htm

Sent from my iPhone

Begin forwarded message:

> **From:** FREDRICK <fmrrsbs@msn.com>
> **Date:** April 3, 2017 at 7:59:00 PM PDT
> **To:** Jeremy Gray <jeremy@mosaiccommunityplanning.com>
> **Cc:** "Alyssa.Wetzel-Moore@ci.stpaul.mn.us" <Alyssa.Wetzel-Moore@ci.stpaul.mn.us>, John Shoemaker <john@shoemakerlaw.com>
> **Subject: Re: AI Addendum Comments - Please Acknowledge Receipt - Attachments #3**
>
> Jeremy,
>
> The following attachments are referenced in the Access Group's AI Addendum Comments and submitted as supplement to the "Comments".
>
> 1) 2010 Section 3 VCA between HUD and City of St. Paul
>
> 2) **Submittal/document to be included with the AI Addendum Comments**
>
> Below are corresponding locations of facts/excerpts taken from the Congressional Report Document:
>
> During the execution of the Quid Pro Quo, the City of St. Paul elected to misrepresent the findings in the Hall Audit report by presenting the reports as evidence of it providing opportunities for the minority community. (See Congressional Report Documents – page 246-247)
> HUD, being in possession of these reports and my characterization thereof, decidedly disregarded the urgent need of the community; the true characterization of the Hall Audit report and the acknowledgement by Sara Pratt and HUD staff that the Hall Audit report revealed lack of opportunities for the minority community. (See Congressional Report Documents – page 243-245)
> Ms. Pratt provided a declaration that the City had, in fact, provided opportunities for the minority community and (unintentionally) met the requirements of Section 3 based on the Vendor

Outreach Program and the Hall Audit report. (See Congressional Report Documents – page 248) This declaration was in contrast to the finding of the 2009 Section 3 Monitoring Review that had examined the City's assertion that it met the goals of Section 3 through its Vendor Outreach (minority participation) Program. The finding of the Section 3 monitoring review was, in part, that the City had no procedures in place to comply with Section 3 and that City staff had no knowledge of the requirements of Section 3. The HUD staff stated that "it appeared that city staff were confusing Section 3 responsibilities with Saint Paul's efforts to increase participation by minority and women-owned businesses in city contracts" [through its Vendor Outreach Program].

Below are facts extracted from page 31 of the Congressional Oversight Committee on Government Reform Joint Staff Report - The state substantiate the allegation that HUD violated the terms of the 2010 Section 3 VCA by using the VCA to offset the qui tam case.

HUD's Office of Fair Housing and Equal Opportunity has determined that the City of St. Paul is not only in compliance with the VCA, but is also in compliance with its Section 3 obligations at this time. As described in our December 20, 2001 [*sic*] memo, HUD does not wish to proceed with the False Claims Act case. It is possible that notification to MBEs, WBEs, and SBEs could result in compliance with Section 3 requirements, in

which case the existence or non-existence of Section 3 notification procedures would essentially be the basis for technical assistance, not a finding of a violation.

The following is an excerpt from the 2010 Section 3 VCA between HUD and the City of St. Paul:

This Voluntary Compliance Agreement does not release the City from any claims, damages, penalties, issues, assessments, disputes or demands arising under the False Claims Act, 31 U. S. C. sections 3729 to 3733, or any other statutory, administrative, regulatory or common law claims. Additionally, this Voluntary Compliance Agreement and any payments made in connection with this Voluntary Compliance Agreement cannot be used to offset or reduce any claims, damages, penalties, assessments, or demands arising under the False Claims Act or any other statutory, administrative, regulatory or common law claims.

Please look forward to several other e-mails containing attachments.

Any questions, contact me via e-mail or call me @ 651) 403-2266.

Fredrick

The Access Group

501 North Dale Street, St. Paul, MN 55103

April 3, 2017

Submittal/document to be included with the AI Addendum Comments

The following excerpts were extracted from the Congressional Oversight Committee Joint Staff Report. The excerpts reflect the unfair discriminatory practices, procedures and actions undertaken by HUD, DOJ and the City of St. Paul in order to leverage the civil rights and efforts of the citizens of St. Paul to obtain economic opportunities directed to them by Congress.

We respectfully request that the entire contents of the Joint Staff Report and Congressional Documents be examined and included as evidence of the actions, omissions and decisions which have had the effect of restricting housing choices, or the availability of housing choices on the basis of race, color, religion, sex, disability, familial status, or national origin.

Page 16 – 43
On October 4, 2011, a line attorney in the Civil Fraud Section wrote to HUD General Counsel Dane Narode about the *Newell* case: "Our office is recommending intervention. Does HUD concur?"49 Three days later, Narode replied, "HUD concurs with DOJ's recommendation."50 The AUSA in Minnesota handling *Newell* forwarded HUD's concurrence to his supervisor with the comment, "[l]ooks like everyone is on board."51 On October 26, 2011, the AUSA transmitted a memorandum to the two Civil Fraud Section line attorneys with the official recommendation from the U.S. Attorney's Office.52 The memorandum recommended intervention. It stated:

The City was repeatedly put on notice of its obligations to comply with Section 3. At best, its failure to take any steps towards compliance, while continually telling federal courts, HUD and others that it was in compliance with Section 3, represents a reckless disregard for the truth. Its certifications of Section 3 compliance to obtain HUD funds during the relevant time period were knowingly false.53

Page 17 -

The Civil Fraud Section also prepared an official memorandum recommending intervention in Newell's case. This memo, dated November 22, 2011, found that "[t]he City was required to comply with the statute. Our investigation confirms that the City failed to do so."55 The memorandum stated:

To qualify for HUD grant funds, the City was required to certify each year that it was in compliance with Section 3. The City then made claims for payment, drawing down its federal grant funds. Distribution of funds by HUD to the City was based on the City's certifications. Each time the City asked HUD for money, it impliedly certified its compliance with Section 3. At best, the City's failure to take any steps towards compliance while continually telling federal courts, HUD and others that it was in compliance with Section 3 represents a reckless disregard for the truth. **We believe its certifications of Section 3 compliance to obtain HUD funds were actually more than reckless and that the City had actual knowledge that they were false.**56

***HUD's Purported Reasons for Its Changed Recommendation in* Newell *Are Unpersuasive and a Pretext for HUD's Desired Withdrawal of* Magner**

The Department of Housing and Urban Development initially notified the Civil Fraud Section that it had changed its *Newell* recommendation in late November 2011. HUD did not fully explain its reasons until mid-December 2011 – and only then after DOJ attorneys asked HUD to do so. A careful examination of HUD's purported reasons for its changed recommendation reveals that those reasons are unsupported by the evidence and suggests a pretext for a politically motivated decision to prevent the Supreme Court from hearing *Magner*.

On November 29, 2011 – only seven weeks after he signaled HUD's support for intervention and only six days after Perez's first discussion with Lillehaug – HUD Associate General Counsel Dane Narode informed career Civil Fraud Section attorneys that HUD had reconsidered its intervention recommendation in *Newell*.123 On December 1, Narode memorialized the change in an email. He stated:

This is to confirm our telephone conversation of Tuesday night in which I informed you that HUD has reconsidered its support for intervention by the government in the St. Paul *qui tam* matter. HUD has determined that intervention

is not necessary because St. Paul's programmatic non-compliance has been corrected through a Voluntary Compliance Agreement with HUD.124

124 Email

After DOJ asked for further explanation, a HUD attorney sent HUD's formal explanation in a memorandum to the Civil Fraud Section on December 20.125 The memorandum referenced HUD's Voluntary Compliance Agreement with the City, describing it as "a comprehensive document that broadly addresses St. Paul's Section 3 compliance, including the compliance problems at issue in the False Claims Act case."126 The memo stated:

Given the City's success in ensuring that its low- and very low-income residents are receiving economic opportunities generated by federal housing and community development funding, as required by Section 3, and the financial and other investments that the City has made and is continuing to make from its own resources to accomplish this, HUD considers it imprudent to expend the limited resources of the federal government on this matter.127

This explanation initially did not satisfy the career attorneys in the Civil Fraud Section. One line attorney, in an email to her colleague, wrote: "Well that was a fast change of heart."128 Joyce Branda, the then-Director of the Civil Fraud Section, was even more direct: "It doesn't address the question I have. Do they agree their belief was reasonable about section 3 compliance? Nothing about the merits."129 When Deputy Assistant Attorney General Hertz forwarded the memo to then-Assistant Attorney General Tony West, he stated that the memo "[s]till principally focuses on the prospective relief."130

Unconvinced by HUD's explanation, the Civil Fraud Section asked Narode to address whether HUD believed that St. Paul had complied with Section 3 through its women- and minority-owned business enterprises (WBEs and MBEs).131 This request sparked a mild panic within HUD. Melissa Silverman, a HUD Assistant General Counsel, wrote to Dane Narode about the City's Vendor Outreach Program (VOP) for WBEs and MBEs, explaining that there were significant problems with the City's VOP and "just because St. Paul had a VOP doesn't mean it met the goals of the VOP or Section 3."132 Silverman also emailed HUD Deputy Assistant Secretary Sara Pratt to inform her about press reports and an independent audit that found problems with the City's WBE and MBE enforcement.133 Pratt responded: "Yes, I'm treading carefully here."134

As HUD struggled to respond to the Civil Fraud Section, Sara Pratt reached out directly to the City to seek its assistance. On the same day that the Civil Fraud Section made its request, Pratt spoke with St. Paul's outside counsel, John Lundquist, a law partner of David Lillehaug.135 Lundquist responded by sending three separate emails to Pratt with information about the City's programs.136

These emails included information about the City's VOP and the independent audit, as well as a position paper that the City prepared for the Civil Division.137 When Pratt forwarded this information to Silverman, Silverman noted her concerns about the information in an email to Narode. She stated:

Sara's attachment is the City's 'position paper' setting forth reasons why the City thinks the Govt should decline to intervene. Among other things, the City references the Hall audit's review of its VOP, but says nothing other than: 'overall, the results were largely positive.' **This is just not true**. The Hall audit reports the small percentages of contracting dollars directed toward MBEs and WBEs . . . and describes a lack of responsibility, enforcement, etc.138

With this information calling into doubt the City's WBE and MBE programs, HUD had difficulty crafting an adequate response. Pratt and other attorneys traded draft language before HUD Deputy General Counsel Michelle Aronowitz suggested, "if we respond at all, why wouldn't we just reiterate that HUD does not want to proceed with the false claims for the reasons stated in our letter, the city is in compliance with HUD's section 3 VCA, and it is possible that compliance with MBE, etc, requirements could result in compliance with Section 3."139

This is the path HUD took. On December 22, Melissa Silverman wrote to the Civil Fraud Section line attorney. She stated:

HUD's Office of Fair Housing and Equal Opportunity has determined that the City of St. Paul is not only in compliance with the VCA, but is also in compliance with its Section 3 obligations at this time. As described in our December 20, 2001 [*sic*] memo, HUD does not wish to proceed with the False Claims Act case. It is possible that notification to MBEs, WBEs, and SBEs could result in compliance with Section 3 requirements, in which case the existence or non-existence of Section 3 notification procedures would essentially be the basis for technical assistance, not a finding of a violation.140

140 Email

HUD's rationale was so unconvincing that the Civil Fraud Section line attorney had to confirm with Narode that Silverman's email was in response to the Civil Fraud Section's question about St. Paul's compliance with Section 3 via its WBE and MBE programs.141

HUD's rationale supporting its declination recommendation is flawed in at least two respects. First, HUD's Voluntary Compliance Agreement (VCA) with the City was never intended to remedy the City's past violations of Section 3. At the time the VCA was consummated, HUD Regional Director Maurice McGough publicly stated: "The purpose of the VCA isn't to address past noncompliance, but to be a blueprint to ensure future compliance."142

Further, the plain language of the agreement acknowledges its non-application to the False Claims Act. The agreement states: "[t]his Voluntary Compliance

Agreement does not release the City from any claims, damages, penalties, issues, assessments, disputes, or demands arising under the False Claims Act . . . .”143 By its own terms, therefore, the VCA cannot address the City’s “Section 3 compliance, including the compliance problems at issue in the False Claims Act case” as asserted by HUD.144

The preservation of False Claims Act liability in the language of the VCA matches what HUD told whistleblower Fredrick Newell at the time. Newell testified to the Committees that “when we met with [HUD Regional Director] Maury McGough in the first interview regarding the [administrative] complaint process, Maury had stated that the process would allow me to be part of the negotiation and that our companies would be made whole.”145 Instead, when HUD settled the administrative complaint without remedying Newell, McGough told him that he would be made whole through the False Claims Act process.146 Fredrick Newell’s attorney stated: “[T]oward the end of 2009, after Fredrick’s input was solicited and then it became clear that he wasn’t going to be at the table, then they said, ‘Don’t worry, we’ll take care of you later.’ . . . I was told, ‘do not worry, Fredrick will be taken care of through the False Claims Act.’”147

Second, HUD never asserted whether it believed that St. Paul had actually complied with Section 3 through its WBE and MBE programs. The most HUD ever asserted was that “it is **possible**” that the City’s WBE and MBE initiatives in its Vendor Outreach Program satisfied the strictures of Section 3.148 Privately, however, HUD officials acknowledged that the City’s WBE and MBE initiatives were deficient. Newell explained the City’s Vendor Outreach Program to the Committees during his transcribed interview. Newell testified:

St. Paul created had [*sic*] a program called – that resulted in its final naming of the Vendor Outreach Program. That was solely and particularly set up to address minorities and minority contractors. That program is what St. Paul would often throw up when I would say to them that they’re not doing Section 3. They would say, We’re complying based on our Vendor Outreach Program. The truth of the matter is they wasn’t even complying with the Vendor Outreach Program. But I explained to them that they could not meet the Section 3 goals based on the Vendor Outreach Program because the Vendor Outreach was a race based program, and Section 3 was an income based program.149

Tellingly, Sara Pratt – a senior HUD official in the Office of Fair Housing and Equal Opportunity, with responsibility for enforcing Section 3 – could not tell the Committee whether the City of St. Paul’s WBE and MBE programs satisfied the requirements of Section 3.150

Seen in this context, HUD’s changed recommendation appears motivated more by ideology than by merits. Early in the process, Assistant Attorney General Perez told his staff that “HUD is willing to leverage the case.”151 Perez testified that

HUD recognized the "importance" of the disparate impact doctrine and that HUD's Pratt and Kanovsky "rather clearly expressed their belief" that it would be in the interests of HUD to use *Newell* to withdraw *Magner*.152 In addition, shortly after the Court agreed to hear the *Magner* appeal, HUD promulgated a proposed regulation codifying the Department's use of disparate impact.153 HUD did not want *Magner* decided before it could finalize its regulation, as its General Counsel Kanovsky admitted to the Committees. She stated: "[T]o have the Supreme Court grant cert on a legal theory which had been developed by the courts but hadn't yet been part of the regulations of the United States under the Administrative Procedure Act was very problematic to us. We . . . were in the process of meeting our responsibilities to promulgate the rule, and the timing of this was of grave concern."154

After carefully examining HUD's reasons for recommending declination in *Newell*, it is apparent that neither basis – the Voluntary Compliance Agreement or the Vendor Outreach Program for women business enterprises and minority business enterprises – justifies the declination. There is simply no documentation to refute the assertion that the only changed circumstance from October 7, 2011 – when HUD recommended intervention – to November 29, 2011 – when HUD changed its recommendation – was the Supreme Court's decision to hear the *Magner* appeal and the subsequent association between *Magner* and *Newell*.

Finding: The reasons given by the Department of Housing and Urban Development for recommending declination in *Newell* are unsupported by documentary evidence and instead appear to be pretextual post-hoc rationalizations for a purely political decision.

Melissa Mailloux

From: Jeremy Gray
Sent: Tuesday, April 04, 2017 8:38 PM
To: Melissa Mailloux
Subject: Fwd: AI Addendum Comments - Please Acknowledge Receipt - Attachments #4
Attachments: August 10, 2010 Title VI Memo by Thomas Perez.pdf; Untitled attachment 00363.htm; Section 3 Determination Letter-St. Paul[1].pdf; Untitled attachment 00366.htm; Untitled attachment 00369.doc; Untitled attachment 00372.htm; Letter to OIG - 8-15-13.doc; Untitled attachment 00375.htm; Comments Disparate Impact Regulations 1-14-13 final version.doc; Untitled attachment 00378.htm

Sent from my iPhone

Begin forwarded message:

> **From:** FREDRICK <fmrrsbs@msn.com>
> **Date:** April 3, 2017 at 8:53:27 PM PDT
> **To:** Jeremy Gray <jeremy@mosaiccommunityplanning.com>
> **Cc:** "Alyssa.Wetzel-Moore@ci.stpaul.mn.us" <Alyssa.Wetzel-Moore@ci.stpaul.mn.us>, John Shoemaker <john@shoemakerlaw.com>
> **Subject: Re: AI Addendum Comments - Please Acknowledge Receipt - Attachments #4**
>
> Jeremy,
>
> The following attachments are referenced in the Access Group's AI Addendum Comments and submitted as supplement to the "Comments".
>
> 1) August 10, 2010 Title VI Memo by Thomas Perez
>
> 2) Section 3 Determination Letter
>
> 3) Connecting Title VI, Section 109 and Section 3
>
> 4) Letter to OIG - 8-15-13 (HUD OIG (Fredrick Newell and related Newell entities/ St. Paul, Minnesota/Section 3 Complaints/2013 HUG OIG Complaint – 2013-E-HQ-02983)
>
> 5) Comments for the Disparate Impact Regulations
>
> Any questions, contact me via e-mail or call me @ 651) 403-2266.

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

August 19, 2010

MEMORANDUM

TO: Federal Funding Agency Civil Rights Directors

FROM: Thomas E. Perez TP
Assistant Attorney General

SUBJECT: Title VI Coordination and Enforcement

As you know, Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, and national origin in programs receiving federal financial assistance. One year ago, on the 45th anniversary of the passage of Title VI, Acting Assistant Attorney General Loretta King asked you to join the Civil Rights Division in a governmentwide initiative to strengthen Title VI enforcement, including enforcement of your agency's Title VI disparate impact regulations. Over the past year, we have heard from many agencies working to strengthen their compliance programs, and we are also engaged in this effort ourselves. We are committed to continue working with you to vigorously enforce Title VI to prevent, root out, and address intentional and unintentional discrimination by recipients of taxpayer assistance.

To facilitate this important work, this memorandum explains the Department of Justice (DOJ) coordination and enforcement role under Title VI, and also encloses several key resource materials that I hope will be of assistance.

Department of Justice Role Under Title VI

Under Executive Order 12250 (EO 12250), DOJ is charged with ensuring the consistent and effective implementation of Title VI and other civil rights laws "prohibiting discriminatory practices in Federal programs and programs receiving Federal financial assistance." Exec. Order No. 12250, *Leadership and Coordination of Nondiscrimination Laws,* reprinted at 45 Fed. Reg. 72,995 (Nov. 4, 1980). The Section within the Civil Rights Division that provides Title VI assistance and oversight to agency civil rights offices has changed its name, effective this month. This Section, formerly called the Coordination and Review Section, has been renamed the Federal Compliance and Coordination Section (FCS). FCS is also adding staff to increase its capacity to assist federal agencies in their civil rights enforcement work. Among the key functions of FCS are the following:

- **Guidance Documents.** FCS develops guidance regarding implementation of Title VI and related statutes and executive orders. FCS has issued this guidance in a range of formats in the past, including notice-and-comment rulemaking; Frequently Asked Questions and Answers; tips and tools; promising practices documents; and correspondence to federal agencies, recipients, or beneficiaries. These documents are generally sent directly to interested stakeholders and also made available online. A number of our key guidance documents are included in the enclosed resource notebook (described below).

- **Title VI Training.** FCS offers an intensive two-day Title VI training course for federal agencies that have Title VI responsibilities. The training provides an overview of Title VI law and investigative procedures, including coverage of limited English proficient (LEP) individuals. FCS Title VI training also includes case studies tailored to the programs administered by the participating agencies. This year, we gave the two-day training course on three occasions to over 120 federal employees. We also offer half-day and full-day training courses, also tailored to specific agency needs. In addition, I welcome the suggestion that some of you have made that FCS develop a more advanced Title VI training course. We will work to develop such a training presentation within the next few months, and we would be happy to hear your input in this process.

- **Technical Assistance.** In addition to these Title VI training courses, FCS provides less formal assistance through ongoing technical assistance, including legal and policy guidance to federal funding agencies. On an almost daily basis, the FCS staff answer questions presented by staff from other federal agencies. FCS also provides hands-on assistance to individual agencies, including legal or technical assistance on novel issues or complex investigations. FCS can also assist in coordinating or presenting on interagency panels or conferences of recipients or advocacy groups, and can work with your offices to conduct joint outreach through community meetings, webcasts, brochures, or other strategies.

- **Clearance Authority.** DOJ continues to exercise its clearance authority under EO 12250 in a renewed effort to ensure the consistent and effective enforcement of Title VI. EO 12250 provides that federal regulations that effectuate Title VI (and other civil rights statutes, including Title IX of the Education Amendments of 1972) must be approved by the Attorney General. 42 U.S.C. § 2000d-l; EO 12250 at § 1-1. This includes the Title VI and Title IX portions of comprehensive regulations that implement other statutes. For example, if a federal agency drafts a rule governing administrative complaints generally, the rule is covered by EO 12250 to the extent it effectuates Title VI or Title IX. Therefore, I remind you that DOJ must review and clear certain federal agency documents concerning civil rights enforcement. The DOJ clearance role is critical to our responsibility to ensure consistent and effective enforcement of Title VI and other civil rights laws.

In addition, federal implementing directives (whether in the nature of regulations or implementing guidance) that are issued under any of the laws covered by EO 12250 are "subject to the approval of the Attorney General, who may require that some or all of them be submitted for approval before taking effect." EO 12250 at § 1-402. These documents include regulations issued to effectuate statutes that "provide, in whole or in part, that no person in the United States shall, on the ground of race, color, national origin, handicap, religion, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." *Id.* § 1-201(d). The authority to review such guidance documents has been delegated to the Assistant Attorney General for Civil Rights. For any upcoming rules or implementing directives covered by EO 12250, I encourage you to contact FCS for assistance during the early stages of the project.

- **Referral for Litigation.** Title VI authorizes the Attorney General to initiate civil litigation in federal court on behalf of an agency for violations by recipients. Before referring a matter for litigation, agency regulations require that the funding agency make a determination that voluntary compliance cannot be achieved, and the recipient must be notified of the intended agency action to effectuate compliance. Some agency regulations require additional time after this notification to continue negotiation efforts to achieve voluntary compliance. An agency must then formally initiate referral of the matter to DOJ.

  Within this framework, I encourage you to submit Title VI and other civil rights matters for litigation if they cannot be resolved administratively (that is, when your agency determines that informal resolution or fund termination are not viable solutions). FCS can also assist you at the stage when it appears that litigation is a potential outcome.

- **Implementation Plans.** Agencies that administer federally assisted programs are required to submit EO 12250 reports to FCS that describe their past year's performance and upcoming plans to implement Title VI and related statutes. (Data under Section 504 of the Rehabilitation Act of 1973 is submitted to the Disability Rights Section for review.) These reports, called Implementation Plans, contain information from each agency on the major components of their civil rights enforcement programs, including budget and staffing for external civil rights activities, complaint investigations, pre-award and post-award compliance reviews, regulatory and policy development, outreach and technical assistance, and training. FCS reviews each agency's Implementation Plan and works with the agency to clarify any questions or to discuss any issues that arise. When appropriate, FCS meets with the agency to discuss opportunities for FCS to assist in improving civil rights enforcement.

  The Civil Rights Division last requested Implementation Plans for Fiscal Year 2008 activities. We plan to send you a request in October 2010 for FY 2009 and FY 2010 Implementation Plans. This request will include a few new questions intended to assist

us in refining our compliance and coordination activities. If you have thoughts on the Implementation Plan process in the meantime, please feel free to contact us to discuss.

- **Coordination and Clearinghouse.** When a complaint has been filed with several agencies that all fund a particular recipient, FCS sometimes coordinates the investigation. FCS's role involves bringing together representatives from the various agencies to ensure that they approach and conduct their investigations in a consistent manner. In addition, FCS has significant governmentwide coordination responsibilities to act as a clearinghouse for review and referral of mail from the public; non-governmental organizations; federal, state, and local agencies; and others concerning civil rights matters. Agencies should contact FCS when they receive complaints for which they do not have jurisdiction and do not know where the complaints should be forwarded.

Enclosed Guidance Documents and Resources

A number of you have expressed an interest in receiving copies of documents we have prepared to assist in Title VI and language access enforcement. To respond to this request, enclosed with this memorandum is a resource notebook that includes the Civil Rights Division's key guidance documents.

Among the enclosed documents are copies of our Title VI Legal Manual and Investigations Procedures Manual, which were first issued in 2001. We have begun the process of updating these manuals, and would like your feedback concerning those areas in which you most need our guidance. Your input will help us focus on the areas of Title VI enforcement that would be most useful to your programs.

Also among the enclosed documents is a copy of model assurance language that your agency may consider adopting for future assurance agreements to accompany your grants. Title VI implementing regulations (and those of other related statutes) require that funding agencies obtain written assurances of compliance from recipients of federal financial assistance. These assurances are a critical component of the Title VI enforcement scheme, yet are often incomplete or inconsistent across agencies. We frequently receive requests for technical assistance in developing assurances, and are including our model language in the attached materials to assist you in ensuring that your agency's assurances are thorough and enforceable.

As you review the enclosed materials, please let us know if you have questions or if there are additional materials that would be valuable.

As you likely have heard me say, Title VI has been called the "sleeping giant" of civil rights law. Title VI's breadth of coverage is extensive and it can address a huge array of injustices: from environmental racism to discriminatory profiling, and from disparities in health care and basic services to inequities in transportation, housing, and education. Title VI offers federal agencies a powerful tool to fight discrimination based on race, color, and national origin.

Yet all too frequently this authority is underutilized. Working together, I am confident that we can ensure full, fair, and effective enforcement of Title VI.

Toward that end, you will hear more from me in the future concerning interagency opportunities to address the needs of your Title VI compliance program, and to encourage additional collaboration among sister agencies. In the meantime, please do not hesitate to contact Mark Kappelhoff, Acting Chief of FCS, at 202-307-2222, or Christine Stoneman, Acting Deputy Chief, at 202-616-6744. My staff in FCS stands ready to assist you in ensuring the growth of your Title VI program. Thank you for your support for greater enforcement and utilization of Title VI, and I look forward to our continued joint efforts in this critically important work.

cc: Funding Agency General Counsels

Contents of Binder Sent to Federal Agencies with the Attorney General's August 19, 2010 Executive Order 12250 Coordination Letter

- Title VI of The Civil Rights Act of 1964, http://www.justice.gov/crt/about/cor/coord/titlevi.php
- Executive Order 12250, http://www.justice.gov/crt/about/cor/12250.php
- Executive Order 13166, http://www.justice.gov/crt/about/cor/13166.php
- Title VI Coordination Regulations, http://www.justice.gov/crt/about/cor/byagency/28cfr424.pdf
- Title VI Enforcement Guidelines, http://www.justice.gov/crt/about/cor/byagency/28cfr503.pdf
- Title VI Legal Manual, http://www.justice.gov/crt/about/cor/coord/vimanual.pdf
- Title VI Legal Manual - *Sandoval* Note, http://www.justice.gov/crt/about/cor/Sandoval_Fix_070710.pdf
- OMB Draft Assurance Language, http://www.justice.gov/crt/about/cor/draft_assurance_language.pdf
- January 28, 1999 Block Grant Memo, http://www.justice.gov/crt/about/cor/Pubs/blkgrnt.php
- Recovery Act Non-Discrimination Notice, http://www.justice.gov/crt/about/cor/RecoveryActNotice09.pdf
- Investigation Procedures Manual for the Investigation and Resolution of Complaints Alleging Violations of Title VI and Other Nondiscrimination Statutes, http://www.justice.gov/crt/about/cor/Pubs/manuals/complain.php
- 2002 Department of Justice LEP Guidance, www.justice.gov/crt/about/cor/lep/DOJFinLEPFRJun182002.pdf
- Top Tips from Responses to the Survey of Language Access Strategies Used by Federal Agencies, September 3, 2008, http://www.lep.gov/resources/2008_Conference_Materials/TopTips.pdf
- The 2006 Federal Agency Language Access Survey, http://www.justice.gov/crt/lep/resources/2008_Conference_Materials/FedLangAccessSurvey.pdf
- Your Rights Under Title VI of the Civil Rights Act of 1964, brochure, http://www.justice.gov/crt/about/cor/Pubs/TitleVIEng.pdf
- I Speak Language Identification Cards, www.lep.gov/ISpeakCards2004.pdf
- Language Access Know Your Rights Beneficiary, brochure, http://www.justice.gov/crt/about/cor/pubs.php (Arabic, Cambodian, Chinese, Creole, English, Hmong Korean Russian Spanish Vietnamese)
- What Federal Agencies and Federally Assisted Programs Should Know about Providing Services to LEP Individuals, brochure, http://www.lep.gov/lepbrochure.pdf

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Midwest Regional Office, Region V
Ralph H. Metcalfe Federal Building
77 West Jackson Boulevard – Room 2101
Chicago, Illinois 60604-3507

Office of Fair Housing and Equal Opportunity

FYI

August 25, 2009

Honorable Chris Coleman
Mayor of Saint Paul
390 City Hall
15 West Fourth Street
Saint Paul, MN 55102

Dear Mayor Coleman:

SUBJECT: Section 3 Monitoring and Limited Compliance Review
City of Saint Paul and the Housing and Redevelopment Authority (HRA)
Determination of Non-Compliance

The U.S. Department of Housing and Urban Development (HUD), Office of Fair Housing and Equal Opportunity, has completed a limited on-site compliance review of the city of Saint Paul and the Saint Paul Housing and Redevelopment Authority (HRA)[1] pursuant to Section 3 of the Housing and Urban Development Act of 1968[2]. The purpose of the review was to determine whether, and to what extent, the city of Saint Paul and the HRA were administering HUD-funded programs in compliance with the requirements of Section 3 as specified in 24 CFR § 135. The review was limited to Section 3 contracting requirements and therefore the findings contained herein do not address the city's compliance with the Section 3 training and employment requirements.

The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed to low and very low-income persons. Section 3 applies to training, employment, contracting and other economic opportunities arising in connection with the expenditure of community development assistance. Most HUD programs require the grantee to sign a certification stating that it will comply with the requirements of Section 3.

Background:

The city of Saint Paul is a Community Development Block Grant (CDBG) entitlement

[1] The Saint Paul Housing and Redevelopment Authority is a legally distinct public entity which undertakes housing, commercial and business development activities on behalf of the City of Saint Paul. The Saint Paul City Council serves as the HRA Board of Commissioners.

[2] 12 USC 1701u.

AUG 31 2009 9863.002 TFD

community and a HOME program participating jurisdiction. As such it is a recipient of HUD financial assistance. Certain projects carried out by the city utilizing HUD funds constitute "Section 3 covered assistance" as defined in 24 CFR 135.3.[3] Between 2006 and 2008, the city received HUD funds in the following amounts:

2006[4]	CDBG $8,211,748	HOME $2,291,390
2007[5]	CDBG $8,225,675	HOME $2,277,962
2008[6]	CDBG $7,941,344	HOME $2,202,555

On June 23, 2008, Fredrick Newell filed a complaint alleging that the Saint Paul HRA failed or refused to comply with the requirements of Section 3. On June 24, 2008, Mr. Newell filed a second complaint alleging that the city of Saint Paul failed or refused to comply with the requirements of Section 3. Given the functional relationship between the HRA and the city of Saint Paul, the two complaints were consolidated for the purposes of investigation.

During the course of the investigation, HUD staff discovered that the city of Saint Paul had not submitted annual reports (HUD Form 60002) of Section 3 activity as required by 24 CFR 135.90[7] for the last several years. In light of Saint Paul's failure to submit the annual reports as required, HUD determined to incorporate the investigation of Mr. Newell's complaints into a general review of the city of Saint Paul's compliance with the contracting provisions of Section 3.[8]

During the week of May 19, 2009, the following staff conducted a limited review of the city's compliance with Section 3, focusing on contracting opportunities and obligations: Jaime Pedraza, Erika Finkler and Lerdine Darden of the HUD Minneapolis Field Office, and Rafiq Munir of HUD's Section 3 Headquarters office. Data and documents were examined in advance of the on-site review. Key staff were interviewed and selected construction project files were reviewed on-site. Peter McCall, Assistant City Attorney, was present during the entrance and exit meetings and at all staff interviews.

In addition, materials produced pursuant to a federal lawsuit[9] filed by Mr. Newell against the city of Saint. Paul were also reviewed. In his lawsuit, Mr. Newell alleged the city failed to comply with Section 3 in numerous ways including (1) failure to award a sufficient percentage of contracts to Section 3 business concerns; (2) failure to exercise

[3] Section 3 applies to the following HUD assistance...community development assistance that is used for the following projects (i) housing rehabilitation (ii)housing construction and (iii) other public construction.

[4] See http://www.hud.gov/offices/cpd/about/budget/budget06

[5] See http://www.hud.gov/offices/cpd/about/budget/budget07

[6] See http://www.hud.gov/offices/cpd/about/budget/budget08

[7] Each recipient which receives directly from HUD financial assistance that is subject to the requirements of this part shall submit to the Assistant Secretary an annual report in such form and with and with such information as the Assistant Secretary may request, for the purposes of determining the effectiveness of Section 3.

[8] See 24 CFR 135.74 (f).

[9] Nails Construction Company et al v. The City of Saint Paul 2007 WL 423187 (D.Minn.)

oversight over contractors hired with Section 3 funds to assure that the contractors provide training, employment, and contracting opportunities to Section 3 persons and business concerns; (3) failure to meet Section 3's reporting requirements; (4) failure to seek out and identify Section 3 business concerns about contracting opportunities; and, (5) failure to file form HUD-60002. These are essentially the same allegations contained in Mr. Newell's HUD complaint. The lawsuit was ultimately dismissed on summary judgment because the court determined that Section 3 does not provide a right of private action.

Interviews:

HUD staff conducted interviews to determine the extent of knowledge city staff had of Section 3. From these interviews it was apparent that the staff had no working knowledge of Section 3 and was generally unaware of the city's programmatic obligations thereto. It appeared that city staff were confusing Section 3 responsibilities with Saint Paul's efforts to increase participation by minority and women-owned businesses in city contracts. Project managers and grants administrators in the city's Department of Planning and Economic Development (PED) testified that potential contractors are not notified of their Section 3 obligations nor do bid solicitations or contracts reference or incorporate the required "Section 3 clause."[10] Further, they stated that an explanation of Section 3 requirements is not included in pre-bid or pre-construction conferences. Although such conferences are routine and project managers review various contract compliance issues during the conferences, they acknowledged that Section 3 is not one of the matters regularly discussed. Mr. McCall stated that his office works with PED staff to develop contracts using CDBG and HOME funds but that he has never advised that the Section 3 clause be incorporated into said contracts.

HUD requires CDBG entitlement communities to submit an annual report to determine the effectiveness of Section 3. The annual report is to be electronically submitted on Form 60002 with or at the same time the entitlement community submits its Consolidated Annual Performance and Evaluation Report (CAPER). City staff stated that they were unaware of this requirement and that, to their knowledge, the city has never submitted a Section 3 report to HUD.

Ronald Ross, PED Grants Administrator, stated that the city does submit the required Contract and Subcontract Activity Report to HUD annually.[11] This report is submitted pursuant to Executive Order 2516 which requires that all federal agencies develop Minority Business Development Plans. Form 2516 is designed to provide HUD with sufficient information to evaluate a grantee's performance towards meeting its Minority Business Enterprise (MBE) goals. While Form 2516 does include a field for reporting on Section 3 contract activity, filing Form 2516 does not obviate the recipient's obligation

[10] 24 CFR 135.32 Each recipient has the responsibility to comply with Section 3 in its own operations, and ensure compliance in the operations of its contractors and sub-contractors. This responsibility includes...notifying potential contractors for Section 3 covered projects of the requirements of this part, and incorporating the Section 3 clause ... in all solicitations and contracts.

[11] HUD Form 2516 Contract and Subcontract Activity

to file Form 60002.

Form 2516 was not designed to fully capture a recipient's Section 3 contracting activities. However, even if it were, the city's method of data collection would have rendered its efforts in this regard as insufficient. This is demonstrated by a review of the Forms 2516 submitted by the city for 2005, 2006 and 2007. In project reports for each of the three years, there are numerous instances where a contractor is identified as Section 3 business in one report but not in another. When asked about this discrepancy, Mr. Ross stated that when filling out Form 2516 he relies exclusively upon information provided to him by the city's various sub-recipients. He said that upon receipt of said information he enters it onto a Form 2516 which he then transmits to HUD annually. Consequently in those instances where a sub-recipient working on a project asserts that a given contractor is a Section 3 business and another sub-recipient working on a different project does not so certify, the city simply forwards the contradictory information to HUD. Further, as Mr. Ross acknowledged, the city does not have a procedure in place for certifying Section 3 businesses. Therefore there is no mechanism by which the city could have independently evaluated a sub-recipient's assertion concerning a business's Section 3 status.

File review:

Based on information gathered before the on-site review, five community development projects were selected for review[12]. The projects were selected because, per the recipient, they met the Section 3 funding threshold[13]. HUD staff reviewed the contract files maintained by the PED and the Human Rights and Equal Economic Opportunity Department. The reviewers were examining the files for documentation of compliance with Section 3. None of the contracts examined contained the required "Section 3 clause." [14] Further, neither the project bid solicitations nor the official minutes of pre-bid and pre-construction conferences contained any reference to Section 3

The HOME Repayment Loan Agreements for the Winnipeg Apartments, Booth Brown Manor and for the Delancey/Selby Stone Apartments did contain a paragraph on Section 3, but it incorrectly stated that participation in the city's Vendor Outreach Program and Affirmative Action Program are required elements of Section 3 compliance. Nor did these documents include or reference the required Section 3 clause but rather recommended that sub-grantees utilize businesses located in, or owned by people living within, the seven county metropolitan area.

The Request for Qualifications for the Delancey/Selby Stone Apartments renovation

[12] The projects selected were Booth Brown Manor, Commerce Apartments, Delancey/Selby Stone Apartments, City House and Rice-Winnipeg Apartments.

[13] 24 CFR 135.3(a)(3)(ii)(B) The requirements of this part apply to contractors and subcontractors performing work on Section 3 covered project(s) for which the amount of the assistance exceeds $200,000; and the contract or subcontract exceeds $100,000.

[14] 24 CFR 135.38. All Section 3 covered contracts are require to contain a specific clause that details a contractor's Section 3 responsibilities.

project did state that Section 3 requirements apply. However, the Acknowledgment of Receipt of Compliance Documents for this project did not identify any subsequent compliance with Section 3.

Testimony or Other Evidence:

HUD staff reviewed materials developed pursuant to Mr. Newell's federal civil suit against the city of Saint Paul. This material is generally consistent with the information developed during the on-site compliance review. Robert Hammer, Director of Finance and Administrative Services for the city of Saint Paul, provided a sworn affidavit filed with the United States District Court in which he stated that the city of Saint Paul had never instituted, nor had in place at the time, a Section 3 certification and tracking program. Further, Mr. Hammer affirmed that the city had never submitted a Form 60002 to HUD nor was he familiar with a requirement to do so.[15]

Findings and Conclusions:

The city of Saint Paul (including the Saint Paul HRA) is not in compliance with the requirements of the Section 3. It cannot document compliance with the "greatest extent feasible" requirement of Section 3 by demonstrating that its contracting activities meet the numerical goals as set forth in the regulation.[16] Nor has it implemented any of the specific activities defined by the regulation as recipient responsibilities. There are no procedures in place to: 1) notify Section 3 residents about training and employment opportunities generated by Section 3 covered assistance and Section 3 business opportunities;[17] 2) notify potential contractors about the Section 3 requirements and ensure their compliance and their subcontractors' compliance with Section 3 requirements;[18] 3) incorporate the Section 3 clause[19] in all solicitations and contracts;[20] 4) facilitate the training and employment of Section 3 residents and the award of contracts to Section 3 business concerns;[21] or 5) document the actions taken to comply with the Section 3 requirements, the results of the actions and impediments, if any.[22] Furthermore, the recipient has not submitted the Form 60002 annually as required by the regulations.

[15] Second Affidavit of Robert Hammer dated October 3, 2006.

[16] See 24 CFR § 135.30

[17] See 24 CFR § 135.32(a)

[18] See 24 CFR § 135.32(b)

[19] See 24 CFR § 135.38

[20] See 24 CFR § 135.32(b)

[21] See 24 CFR § 135.32(c)

[22] See 24 CFR § 135.32(e)

The city asserts that notwithstanding its inability to document compliance with the "greatest extent feasible" requirement, to implement any of its defined program responsibilities, or to file Form 60002 annually, it administers its community development programs in compliance with Section 3 requirements. The city offers in support of this assertion the fact that HUD's Office of Community Planning and Development (CPD) reviews its community development activities annually to determine compliance with applicable laws and regulations and that the city routinely receives high rating from CPD. However, Section 3 compliance is not an element of a CPD annual review. Although HUD may periodically conduct Section 3 compliance reviews of selected recipients, it relies primarily on a recipient's self-certification in this regard. Absent reason to believe to the contrary, HUD accepts a recipient's self-certification as sufficient evidence that the recipient is carrying out its community development activities in compliance with Section 3. The Section 3 self-certification of compliance is included in every application for new or continued HUD funding.

Given this finding of noncompliance, the Assistant Secretary for Fair Housing and Equal Opportunity will take informal steps to bring this matter to a voluntary and just resolution in accordance with 24 CFR 135.76(f)(2).[23] Where attempts to informally resolve this issue fail, the Assistant Secretary will impose a resolution. Any resolution imposed by the Assistant Secretary will be in accordance with the regulations governing the particular HUD program(s) in question and may result in the imposition of program sanctions if appropriate. Please be advised that you have the right to appeal this decision with fifteen (15) days of the receipt of this notification by requesting a reconsideration of this action. Any request for reconsideration should specify the reasons why this decision should be reconsidered. Your request should be mailed directly to the Assistant Secretary for Fair Housing and Equal Opportunity at:

U.S. Department of Housing and Urban Development
Office of Fair Housing and Equal Opportunity
451 Seventh Street, SW
Suite 5100 Washington, D.C. 20410

If an appeal is not submitted during the indicated time above, you will be contacted by a staff person to begin the voluntary resolution process. If you have any questions

[23] Generally findings of noncompliance identified by way of a compliance review are resolved pursuant to 24 CFR 135.74 (c). However, since the compliance review resulted from an individual complaint, the Assistant Secretary has determined to resolve the matter in the manner detailed above.

regarding any aspect of this review, please contact Ms. Jaime Pedraza at 612-370-3000 ext 2130. Thank you for your cooperation.

Sincerely,

Barbara M. Knox, Director
Office Fair Housing & Equal Opportunity
Region V

cc: Cecile Bedor, PED
Robert Hammer, Administrative Team Leader
Fredrick Newell
Dexter Sidney, Field Office Director
Michele Smith, CPD Director
Jaime D. Pedraza, FHEO Director

Connecting Title VI, Section 109, Section 3 and relevant regulations

Premise – Federal funds generate economic opportunities. According to Title VI, Section 109 and 24 CFR Part I (the Act), members of a certain protected class can not be denied the opportunity to participate in or benefit from the opportunities. Where the recipients of federal funds fail to comply with the requirements of a federal program or activity, the funding agency is required to determine if the failure had a disparate effect upon members of a protected class. According to Title VI legal manual, HUD complaint resolution policies and directives, any finding of noncompliance in a federally funded program should initiate an inquiry into other applicable civil rights violations by the funding recipient. The inquiry/investigation into other applicable civil rights violations should be initiated by the funding agency. If the investigation is based on a complaint by a member of a protected class, the funding agency is required to determine if the complaint is alleged based on racial discrimination. According to the August 2010 Memo from Attorney General Perez, the filing of false certifications by a fund recipient is potential evidence of Title VI violations. According to Section 109, where there is discrimination, noncompliance or the effects of conditions that resulted from limited participation by persons of a protected class, the fund recipient is required to ameliorate the imbalance caused.

The following laws, policies and directives were set forth to protect the civil rights of members of the protected class and ensure inclusions in opportunities generated by the expenditure of federal funds:

Title VI described the protection of member(s) of the protected class that seek to participate in the Section 3 program as follows:

Title VI prohibits discrimination in "any program or activity," any part of which receives Federal financial assistance. Specifically, Title VI provides that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

The same protection is granted to member(s) of the protected class through HUD Section 109 regulations.

Section 109 of Title I of the Housing and Community Development Act of 1974 provides that no person in the United States shall, on the ground of race, color, national origin, religion, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with Federal financial assistance.

According to Title VI legal manual, Section 109 regulations and even the HUD monitoring review process, whenever there is a finding of non-compliance in HUD

programs, HUD FHEO is required to investigate potential violations of Title VI or other civil rights laws.

HUD's multi-jurisdictional complaint policy, HUD's complaint intake directives and the Title VI complaint investigation procedures required HUD intake and investigation specialist to recognize all violations of civil rights laws and to investigate potential violations of discriminations against a member of a protected class.

According to HUD's multi-jurisdictional complaint policy, the Department [FHEO] has an obligation to enforce all of the statutes for which it is responsible. Potential violations of one or more statutes unrelated to the complainant's allegations that are uncovered during the investigation shall be referred for appropriate Department-initiated action rather than addressed in the context of the complaint.

False Certifications, evidence of Title VI violations

As noted in the August 19, 2010 memorandum from Thomas E. Perez, Assistant Attorney General to Federal Funding Agency Civil Rights Directors, subject "Title VI Coordination and Enforcement", DOJ provides that written assurances of compliance from recipients of federal financial assistance are a critical component of the Title VI enforcement scheme.

Title VI

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance.

The matter at hand is access to and inclusion in the economic opportunities generated by federal tax dollars to which all taxpayers of all races [colors, and national origins] contribute.

According to Title VI, Simple Justice,… Simple justice requires that public funds, to which all taxpayers of all races [colors, and national origins] contribute, not be spent in any fashion which encourages, entrenches, subsidizes or results in racial [color or national origin] discrimination.

Summation regarding Title VI and Simple Justice – The federal government is prohibited from spending public funds in a manner that entrenches, encourages or subsidize discrimination and fund recipients are prohibited from discriminating based on race. As a member of the protected class that pays taxes, we, by law, must be allowed to participate in the opportunities generated by tax dollars.

Section 109 (HUD's equivalent Title VI statute)

The purpose of this part is to implement the provisions of section 109 of title I of the Housing and Community Development Act of 1974 (Title I) (42 U.S.C. 5309). Section 109 provides ***that no person*** *in the United States shall, on the ground of race, color, national origin, religion, or sex,* ***be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with Federal financial assistance.***

Sec. 6.2 Applicability.

(a) This part applies to any program or activity funded in whole or in part with funds under title I of the Housing and Community Development Act of 1974, including Community Development Block Grants--Entitlement, State and HUD-Administered Small Cities, and Section 108 Loan Guarantees; Urban Development Action Grants; Economic Development Initiative Grants; and Special Purpose Grants.

Sec. 6.4 Discrimination prohibited.

(a) Section 109 requires that no person in the United States shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with Federal financial assistance, on the grounds of race, color, national origin, religion, or sex.
(1) A Recipient under any program or activity to which this part applies may not, directly or through contractual, licensing, or other arrangements, take any of the following actions on the grounds of race, color, national origin, religion, or sex:
(i) Deny any individual any facilities, services, financial aid, or other benefits provided under the program or activity;
(ii) Provide any facilities, services, financial aid, or other benefits that are different, or are provided in a different

[[Page 79]]

form, from that provided to others under the program or activity;
(iii) Subject an individual to segregated or separate treatment in any facility, or in any matter of process related to the receipt of any service or benefit under the program or activity;
(iv) Restrict an individual's access to, or enjoyment of, any advantage or privilege enjoyed by others in connection with facilities, services, financial aid or other benefits under the program or activity;
(v) Treat an individual differently from others in determining whether the individual satisfies any admission, enrollment, eligibility, membership, or other requirements or conditions that the individual must meet in order to be provided any facilities, services, or other benefit provided under the program or activity;

(ix) Use criteria or methods of administration that have the effect of subjecting persons to discrimination or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to persons of a particular race, color, national origin, religion, or sex; or……..

*(3)(i) In administering a program or activity **in which the Recipient has discriminated** on the grounds of race, color, national origin, religion or sex, **the Recipient must** take any necessary steps to **overcome** the **effects** of prior discrimination.*
*(ii) In the **absence of discrimination**, a **Recipient,** in administering a program or activity, **may take any steps necessary to overcome** the **effects of conditions that resulted in limiting participation by persons** of a particular race, color, national origin, religion, or sex.*
*(iii) **After a finding of noncompliance**, or **after a Recipient has reasonable cause to believe that discrimination has occurred**, a Recipient shall not be prohibited by this section **from taking any action eligible under subpart C of 24 CFR part 570 to ameliorate an imbalance in** benefits, services or facilities provided to any geographic area or specific group of persons within its jurisdiction, where the purpose of such action is to remedy discriminatory practices or usage.*

Summation regarding Section 109

In federal programs or activities where **discrimination exist** [e.g. active or passive discrimination identified by a disparity study, legal action or other means], **the Recipient must** take any necessary steps to **overcome** the **effects** of prior discrimination. In **the absence of discrimination, the Recipient may** take any step necessary to **overcome** the ***effect of conditions*** that **resulted** from **limiting participation** by persons of a particular race, color, national origin, religion, or sex. After **a finding of noncompliance, or the Recipient has reasonable cause to believe that discrimination has occurred** [e.g. active or passive discrimination identified by a disparity study or finding by HUD], the Recipient **shall not be prohibited** from taking any action eligible under *subpart C of 24 CFR part 570* **to ameliorate an imbalance in benefits**, services or facilities provided to **any geographic area or specific group of persons** within its jurisdiction, where the purpose of such action is to **remedy discriminatory practices or usage**.

Section 3 as a Civil Rights Law and/or civil rights related program requirement Summation

As noted in HUD directive 8005.2, dated 12/85, Section 3 of the HUD Act of 1968 is a civil rights law. (See excerpts below on page #7)

As noted in directive 6509.2 REV-5, dated 09/2005, Section 3 of the HUD Act of 1968 is a civil rights related program requirement and 24 CFR Part 135 is the governing regulation. (See excerpts below on pages #7-8)

Upon determining that the City/Recipient has failed to comply with the civil rights law and/or civil rights related program requirement under 12 U.S.C. 1701u, Section 3 of the HUD Act of 1968, as amended, HUD investigators are required investigate other possible

civil rights violations against the protected class. (see HUD's Rule 24 CFR Part 1.7 and other regulations and directives below)

As a member of a protected class, my civil rights were protected by Title VI, Section 109 and Section 3 of the HUD Act of 1968, as amended. According to Section 109, HUD is required to ensure that the Recipient take any necessary steps to ameliorate the effects of the prior discrimination.

Note: Despite HUD directives 8005.2 and 6509.2 REV-5, HUD Section 3 office does not acknowledge Section 3 as a civil rights law. Irregardless, Section 3 is a civil rights related program requirement and Section 3 regulations apply to funds distributed under federal programs such as CPD and PIH, i.e. CDBG, HOME, etc. Therefore Title VI and Section 109 applies even if Section 3 isn't recognized as a civil rights law because Section 3 covered funds are used in CPD, PIH and other federal programs and activities.

HUD and other Federal Regulations and Directives

As dictated by HUD 's rule at 24 CFR § 1.7(c) a finding of noncompliance in a federally funded program or activity should initiate an investigation of other civil rights violations against the complainant and members of the protected class.

HUD's multi-jurisdictional complaint policy, HUD's complaint intake directives and the Title VI complaint investigation procedures required HUD FHEO intake and investigation specialist to recognize all violations of civil rights laws and to investigate potential violations of discriminations against a member of a protected class.

According to HUD Notice FHEO: 2002-01, FHEO offices should perform all compliance reviews necessary:

A. Because an existing civil rights problem (recorded in the FHEO office database and/or identified by a program office, by earlier FHEO monitoring, or as the result of a complaint or through the news media) presents the possibility that the recipient is in violation of federal civil rights law or implementing regulation as stated; or…….

Determination of the existence of civil rights problems should be based on careful tracking of the following data by FHEO staff:

1. Results of monitoring and front-end reviews (checklists) performed by CPD, PIH, and Housing staff or contractors.

5. Charges and findings of noncompliance based on formal fair housing and civil rights complaints filed against HUD recipients.

6. Private civil rights law suits filed against HUD recipients and brought to the attention of FHEO staff.

7. Equal opportunity issues brought to the attention of FHEO staff by other means, such as newspaper reports or reports from outside civil rights or community organizations.

HUD's Policies

According to HUD directives for investigating multi-jurisdictional complaints, HUD provided the following:

Potential violations of one or more statutes unrelated to the complainant's allegations that are uncovered during the investigation shall be referred for appropriate Department-initiated action rather than addressed in the context of the complaint.

The Department has an obligation to enforce all of the statutes for which it is responsible.

Moreover, it strengthens the Department's enforcement efforts to conduct investigations using all relevant civil rights statutes.

According to HUD FHEO complaint intake process:

The Equal Opportunity Specialist (EOS) must recognize all civil rights laws relevant to the allegations included in an inquiry/claim. When an EOS converts an inquiry into a complaint, the complaint must be filed under all relevant civil rights laws. A complaint filed under the Act plus any other civil rights law(s) administered or enforced by HUD is called a multi-jurisdictional complaint. Knowledge of civil rights laws, rules and regulations enforced and administered by HUD, and the ability to apply these laws to a particular set of facts and circumstances is critical.

Based on Title VI investigation procedure manual, an investigator must determine if the violation have a disparate effect upon a certain protected class. Note: If the violation is found based on a Section 3 complaint, a Title VI investigation should be initiated (during the Section 3 complaint process).

In the Title VI legal manual under Complaint Investigation, is the following:

2. *Identification of Bases and Issues*

The investigator should determine if the complainant alleges that discrimination against one or more members of a protected class -- because of race, color, national origin, sex, religion, disability or age -- is wholly, or at least in part, responsible for the complaint: this is the *basis* for the complaint.(28)

The investigator should also identify the specific action, policy, or practice responsible for the alleged discrimination (*e.g.*, denial of educational or health services, harassment, retaliation for filing a complaint or giving testimony in an investigation, provision of unequal services, etc.). Even if intentional discriminatory treatment cannot be ascertained, does the practice, procedure, or service identified have a disparate effect on a certain protected class?

According to the HUD FHEO complaint intake process, the intake office must determine if the complaint meets four criteria, namely standing, timeliness, Respondent jurisdiction and subject matter jurisdiction.

8005.2

CHAPTER 7. CIVIL RIGHTS COMPLIANCE ACTIVITIES
7-1. OVERVIEW.
This chapter describes procedures for carrying out compliance reviews and processing complaints under certain civil rights laws. This chapter:
a. defines civil rights compliance activities;
b. establishes procedures for conducting civil rights investigations and compliance reviews under Title VI and Section 109; and
c. describes roles of FHEO staff in carrying out HUD's civil rights compliance and enforcement responsibilities.

b. Civil Rights Complaints.
Civil Rights complaints allege a violation of one or more of the following legal authorities:
(1) Title VI of the Civil Rights Act of 1964
(2) Title VIII of the Civil Rights Act of 1968, as amended
(3) Section 109 of the HCD Act of 1974, as amended
(4) Section 504 of the Rehabilitation Act of 1973, as amended
(5) Age Discrimination Act of 1975, as amended
(6) Section 3 of the HUD Act of 1968, as amended
(7) Executive Order 11246, as amended
(8) Executive Order 11063, as amended

Attachment: Applicable Civil Rights Laws, Their Applicable Regulations and Coverage

CIVIL RIGHTS LAW	REGULATIONS	WHO MUST COMPLY
Title VI of the Civil Rights Act of 1964 (42 USC 2000d)	24 CFR Part 1	Participants in all CPD programs receiving Federal financia subrecipients.
The Fair Housing Act (42 USC 3601-3620)	24 CFR Parts 100, 103,110,115 & 121	All CPD program participants and their subrecipients involv Includes Affirmatively Furthering Fair Housing (AFFH).
Executive Order (E.O. 11063, as amended)	24 CFR 107	Participants and their subrecipients that use CPD funds for rehabilitation, or operation of housing and related facilities.
Section 504 of the Rehabilitation Act of 1973, as amended (29 USC 794)	24 CFR Part 8	Participants and their subrecipients in all CPD programs tha assistance.
Title II of the Americans with Disabilities Act of 1990 (Public Law 101-336)	28 CFR 35 (Department of Justice)	State and local governments and their partners, agencies, an no Federal funding is provided.
Age Discrimination Act of 1975 (42 USC 6101-07)	24 CFR Part 146	Participants and their subrecipients in all CPD programs tha assistance.
Executive Orders 11246, 12086, 11375	41 CFR Chapter 60 (Department of Labor)	Participants and their subrecipients in all CPD programs rec assistance. Applicable to all their own and subrecipients' e
Section 3, Housing and Urban	24 CFR Part 135	Participants and their subrecipients in CPD programs that g

Development Act of 1968 (12 USC 1701u)		economic opportunities for low- and very-low income perso participant's subrecipients, contractors, and subcontractors applicable monetary threshold.
Section 562 of the Housing and Community Development Act of 1987 (42 USC 3608a)	24 CFR Part 121	Participants and their subrecipients in all CPD programs are specified data.
Section 109 of the Housing and Community Development Act of 1974 (42 USC 5309)	24 CFR Part 6	Participants and their subrecipients in all CPD programs rec under Title I of the Housing and Community Development
Executive Order 12898, Environmental Justice	24 CFR Parts 50.4(l) and 58.5(j)	States, local governments, other participants, and their subr receiving Federal financial assistance, including other entiti subrecipients of funding.
Title IX of the Education Act Amendments of 1972 (20 USC 1681 et. seq.)	24 CFR Part 3	Participants and subrecipients administering CPD programs education components.
Section 104(b)(2) of the Housing and Community Development Act of 1974 (42 U.S.C. 5304)	24 CFR 570.487(b)	Participants and their subrecipients funded under Title I of t Development Act of 1974

HUD Response. HUD's rule at 24 CFR § 1.7(c) requires HUD to undertake "a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part 1." As explained further in Appendix B, Q&As XVI, XVIII, and XIX, FHEO will investigate or review complaints or other information that suggests a recipient is not in compliance with its Title VI obligations.

Finally, the Coordination Regulations require that each Federal agency, (and recipients that process Title VI complaints), maintain a log of Title VI complaints received. 28 C.F.R. § 42.408(d). The log shall include the following: the race, color, or national origin of the complainant, the identity of the recipient, the nature of the complaint, the date the complaint was filed, the investigation completed, the date and nature of the disposition, and other pertinent information. In compliance with the Coordination Regulations, HUD's log of Title VI complaints must include a record of the……

Fredrick Newell
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651) 403-2266

8-15-13

Barry Mclaughlin
Special Agent in Charge
HUD Office of Inspector General
77 West Jackson Blvd
Chicago, IL 60604

Rule of Law: ….To seek just punishment for those guilty of unlawful behavior; and to ensure fair and impartial administration of justice for all Americans.

Simple justice requires that public funds, to which all taxpayers of all races [colors, and national origins] contribute, not be spent in any fashion which encourages, entrenches, subsidizes or results in racial [color or national origin] discrimination.

Who will hold the government responsible when the government is responsible?

In as much as the Office of Inspector General exercises oversight over governmental entities, I hereby request an investigation of the actions and activities of the Department of Housing and Urban Development Agency, Department of Justice, State of Minnesota, City of St. Paul and others associated with the leveraging of the Section 3 False Claim Act Lawsuit, United States ex rel. Newell v. City of St. Paul, in connection with the Magner v. Gallagher case referred to in a congressional inquiry as the Quid Pro Quo of St. Paul; and the mismanagement of the Section 3 administrative complaints discussed herein.

I further request an investigation of the actions and activities of the City of St. Paul, a recipient of federal funds, in denying benefits to a protected class and the failure of the Housing and Urban Development Agency and Department of Justice to investigate and prosecute such violation.

This request for investigation and intervention is based on evidence of a myriad of violations perpetrated by HUD, DOJ and others. The list of violations includes but is not limited to:

- Violation of the Rule of Law
- Violation of Title VI
- Ignoring Title VI Violation
- Violation of whistleblower protection
- Violation of the laws governing the False Claim Act
- Violation of Professional Ethics and Standard of Conduct For Governmental Employees
- Disparate Impact against the Section 3 community and Minority Community of St. Paul
- Mismanagement of the Section 3 complaint administration process

This document is submitted as a synopsis outlining the actions and activities of HUD, DOJ, the City of St. Paul, Newell co-counsel and disparate impact advocates Relman, Dane & Colfax, PLLC, and myself as evidence of the impropriety of many of the parties including the facilitating of the Quid Pro Quo of St. Paul.

Many of the facts supporting this request for investigation and intervention have been compiled in a congressional report generated by the House Committee on Oversight and Government Reform, the Senate Committee on the Judiciary and the House Committee on the Judiciary. The committees released a Joint Staff Report on April 15, 2013 entitled "DOJ's Quid Pro Quo with St. Paul: How Assistant Attorney General Thomas Perez Manipulated Justice and Ignored the Rule of Law. The documentation (e-mails and notes) resulting from the congressional inquiry is also incorporated herewith in support of this request for investigation.

I respectfully request that the Office of Inspector General examine the documents provided and conduct further investigation as warranted to ascertain the extent of violation of laws, rules, standards, policies, practices, or procedures by all parties involved in the Quid Pro Quo; the prosecution of the Section 3 False Claim Act Lawsuit; and the resolution of the Section 3 administrative complaints noted herein.

A narrative of the facts and supporting documentation follows:

Background

My name is Fredrick Newell and I am a minority (Black, descendant of slaves) citizen of the United States and thus I am a member of a protected class**.** I am part owner of three construction companies in St. Paul, Minnesota. I am also the complainant in a number of Section 3 complaints against the City of St. Paul and the relator in a Section 3 false claim act lawsuit entitled United States ex rel. Newell v. City of St. Paul ("Newell").

On April 21, 2008, I filed four (4) complaints with HUD FHEO/Section 3 Office. The complaints were against the City of St. Paul Planning and Economic Development (PED) Case No. 05-08-006-3; the St. Paul Housing Redevelopment Authority (HRA) Case No. 05-08-003-3; the St. Paul Public Housing Authority (PHA) Case No. 05-08-004-3; and the St. Paul Ramsey County Department of Public Health (SPRCDPH) Case No. 05-08-005-3. The complaints alleged that each entity, being a recipients of Section 3 covered funds, had failed to comply with a number of Section 3 requirements. The supporting documentation included over five years of historic data including files from a Section 3 lawsuit dismissed in federal district court on bases of no private right of action. A copy of the supporting documentation, including affidavits and court documents, were submitted to the HUD Washington Section 3 office for review.
The complaints against the PED and HRA were combined by HUD who concluded the agencies to be the same City entity.

The City of St. Paul Planning and Economic Development (PED) Case No. 05-08-006-3 was investigated through a Section 3 monitoring review and resulted in a determination of non-compliance and subsequent Voluntary Compliance Agreement (VCA) on February 2, 2010. I submitted a timely appeal of the VCA based on a number of facts, including: (1) The funding dedicated to capacity building for the Section 3 community was insufficient to address the extent of damage done to the Section 3 community as a result of Saint Paul's extended period of non-compliance; and (2) I received no consideration in the VCA.

The St. Paul Public Housing Authority (PHA) Case No. 05-08-004-3 resulted in no initial determination of (non)compliance but rather an imposed resolution with conditions that would result in a determination of compliance after one year. Despite the imposed resolution, HUD refused to issue an initial determination and further rejected conversation regarding holding the PHA responsible for false certification for receipt of PIH funds.

The St. Paul Ramsey County Department of Public Health (SPRCDPH) Case No. 05-08-005-3 was dismissed based on a determination that SPRCDPH was a sub-grantee and as such not a proper candidate for a Section 3 complaint. Accordingly HUD determined that it lacked jurisdiction.

The determination and/or resolution of each of the complaints are presently under appeal.

In the two years following the initial complaints, I filed two (2) retaliation complaints with HUD FHEO/Section 3 Office, one against the St. Paul Ramsey County Department of Public Health and the other against the St. Paul PHA for retaliatory acts in response to the Section 3 complaints that I filed against their perspective agencies.

HUD issued a determination that the PHA was guilty of retaliation. HUD took the position that it was not able to impose a monetary remedy against PHA. The resolution is presently under appeal.

HUD received the SPRCDPH retaliation in 2009 but failed to begin investigation until 2011. HUD issued a finding of no evidence of retaliation in this matter on June 27, 2012.

On June 1, 2012, I filed a supplement to the VCA appeal of February 2010, and included allegations of over ten additional violations of the VCA and Section 3 regulations, including retaliation by the City of St. Paul. HUD FHEO Section 3 office has not to this date, officially acknowledged the VCA appeal or the supplement and additional complaint.

In May 2009, I filed a False Claim Act ("FCA") lawsuit against the City of Saint Paul, entitled United States ex rel. Newell v. City of St. Paul, based on the City's repeated false certifications of Section 3 compliance made to HUD in order to receive certain HUD funding. The lawsuit was supported by HUD and the Department of Justice and remained under seal until 2012. On or about February 9, 2012, HUD and DOJ leveraged my false claim act lawsuit in order to entice the City of St. Paul to drop an appeal of the Magner v. Gallagher Case before the United States Supreme Court. The facts surrounding the leveraging of my FCA lawsuit were investigated by the House Committee on Oversight and Government Reform, the Senate Committee on the Judiciary and the House Committee on the Judiciary. The committees released a Joint Staff Report on April 15, 2013 entitled "DOJ's Quid Pro Quo with St. Paul: How Assistant Attorney General Thomas Perez Manipulated Justice and Ignored the Rule of Law. The documentation resulting from the congressional inquiry is incorporated herewith in support of this request for investigation.

The particulars of each of the complaints and/or lawsuit are discussed below.

HUD mismanaged the Section 3 complaints

City of St. Paul Planning and Economic Development (PED) Complaint No. 05-08-006-3

August 25, 2009, HUD issued a Letter of Determination finding that the City of St. Paul PED/HRA was in violation of six counts of the Section 3 regulations and thus not in compliance with the statutory and regulatory requirements of Section 3. HUD further found that the City had no procedures in place to comply with the Section 3 requirements and the City staff had no working knowledge of the Section 3 requirements. The HUD staff stated that "it appeared that city staff were confusing Section 3 responsibilities with Saint Paul's efforts to increase participation by minority and women-owned businesses in city contracts" [through its Vendor Outreach Program].

Per HUD Section 3 regulations, 24 CFR 135.76(f)(2), the Assistant Secretary was required to attempt to obtain a voluntary and just resolution between the complainant and the responder.

During the complaint interview at the Minneapolis HUD office on February 18, 2009, HUD Region V FHEO Director Maurice McGough explained the process for conducting a monitoring review of the City of St. Paul and potential actions if a determination of noncompliance resulted. Accordingly, Mr. McGough explained that upon a finding of noncompliance, HUD would mediate a resolution between the City and me. Such mediation would include direct negotiation where I would be an active participant adjoining HUD and the City "at the table". Additional Mr. McGough ensured me that my companies would be made whole as a result of the resolution.

On September 16, 2009, Tim Brausen of the Gamaliel Foundation and I met with Staci Gilliam, Section 3 Director, at the Washington HUD Section 3 Office to discuss the Section 3 VCA process. Within the meeting, I outlined the lost opportunities suffered as a result of the refusal of the City of St. Paul and the St. Paul PHA to implement Section 3 requirements on Section 3 covered projects. Ms. Gilliam assured me that

HUD stood with the residents of St. Paul in providing Section 3 opportunities. Ms. Gilliam stated that my complaint would be resolved within the VCA process and that HUD would support a resolution that provided capacity building for the Section 3 business concerns and Section 3 residents.

Within a letter from Jaime Pedraza, Director of Fair Housing and Equal Opportunity Division,

Minneapolis, dated October 9, 2009, I was assured that any agreement with the City and HRA would incorporate a just resolution of my complaints in accordance with 24 CFR 135.76(f)(2). (see excerpts below)

> Based upon its findings, HUD has determined that the city and the HRA are not operating their HUD-funded programs in compliance with the requirements of Section 3. HUD has notified the city and the HRA of specific deficiencies in this regard. HUD staff is about to enter into discussions with the city and the HRA as to how these deficiencies will be corrected. HUD will also ensure that any agreement with the city and the HRA incorporates a just resolution of Mr. Newell's complaints pursuant to 24 CFR 135.76(f)(2).

> On October 6, 2009, I sent you an email asking to meet to discuss any specific suggestions Mr. Newell has in this regard. However, rather than a meeting, I would like you to consult your client and send me a letter detailing any proposals that he would like considered for inclusion into a draft agreement.
>
> I would appreciate your written response within the next five days. You can send your response to me at U. S. Department of Housing and Urban Development, Suite 1300, 920 South Second Avenue, Minneapolis, MN 55402 or to via email at Jaime.Pedraza@hud.gov.

The letter, however, indicates a shift in HUD's policy through a decision to proceed in the negotiation process without me and rather requested that I provide proposals to be included in a draft agreement. In response to the request, I submitted three (3) documents. (See exhibit #1a, 1b & 1c)
Each document was designed to build the capacity of the Section 3 community utilizing restitution based on a calculation of lost opportunities. The proposed restitution plan was modeled from the Long Beach Rainbow Harbor Section 3 VCA of Long Beach, California. A copy of the Long Beach VCA with recent amendments is included herewith. (See Exhibit AA)

In December '09, I was told that HUD would release a draft VCA the following January. I requested a copy of the draft VCA in advance of its release to the City and received no response. (See e-mails #1)

On January 15, 2010, HUD released a draft agreement wherein it proposed few of the recommendations provided by me. (See exhibit #2) The draft VCA removed me from the VCA process, thus making the VCA an agreement between HUD and the City of St. Paul. I received no consideration in the draft VCA and was allowed no role beyond the initial request for recommendations. I was not provided a copy of the draft VCA. The language in the document portrays HUD's unilateral position, noting that *the City has agreed to enter into this VCA* (the sentence is absent the concurrence of the complainant). Further, the draft VCA proposed to strip me, the complainant, from the VCA and to address my complaints through a separate parallel process. The draft seeks to interpret 24 CFR 136.76 as providing for a second VCA or imposed resolution. (See excerpt of draft VCA below)

The Voluntary Compliance Agreement does not resolve Mr. Newell's pending Section 3 complaints. Rather, these complaints will be resolved by way of either informal resolution between parties or imposed resolution by the Assistant Secretary for Fair Housing and Equal Opportunity in accordance with 24 CFR 135.76.

Several months prior to the VCA and in response to my request, HUD had withheld NSP funds due to the City's noncompliance. Based on the NOFA governing the disbursement of the NSP funds, the deadline for receiving the funds was fast approaching. On or about January 15, 2010, I received a request for a telephone conference with FHEO Assistant Secretary John Trasvina. The call centered on the importance of the VCA and its speedy facilitation. In response to the deadline and telephone call from the AS Trasvina, on January 21, 2009, I forwarded a letter to AS Trasvina proposing to rescind the request for the withholding of the NSP funds in return for, among other things, HUD and the City of St. Paul returning to the negotiation table to negotiate a VCA that was inclusive of myself and the Section 3 community. (See exhibit #3)

Without further response, on February 2, 2010, HUD entered into a voluntary compliance agreement (VCA) between the United States Department of Housing and Urban Development and the City of St. Paul. This was the final VCA and therein was the following statements… *this VCA will and hereby does fully and finally resolve Mr. Newell's pending Section 3 administrative complaints against the City and the HRA without any further action. This VCA does not release the City from any claims, damages, penalties, issues, assessments, disputes or demands arising under the False Claim Act, 31 U.S.C. section 3729 to 3733….Additionally, the payments made in connection with the VCA cannot be used to offset or reduce any claims, damages arising under the False Claim Act or any other statutory or common law claims.*

This VCA imposed a resolution on me with respect to my two consolidated Section 3 administrative complaints against the City of St. Paul. (See exhibit #4)

On February 10, 2010, I filed an appealed of the VCA to Secretary Shaun Donovan in as much as the resolution was imposed without due process of the Section 3 regulations as outlined in 24 CFR part 135.76. (See exhibit #5)

My appeal of the VCA included the following basis:

1. I was not provided with the VCA prior to HUD and the City agreeing to its terms.
2. I received no direct benefit from the VCA.
3. I was not adequately apprised that the complaints were disposed of by the VCA. In fact the only draft VCA that I reviewed specifically excepted the complaints from resolution vis the VCA.
4. The funding dedicated to capacity building for the Section 3 community was insufficient to address the extent of damage done to the Section 3 community as a result of Saint Paul's extended period of non-compliance.
5. The amount of money that Saint Paul has agreed to pay is wholly insufficient to address the scope of Saint Paul's non-compliance.
6. The VCA appears to include a mechanism for assessing penalties against contractors (including Section 3 Business Concerns) that would permit Saint Paul to lessen its financial commitments by fining others.

According to HUD Section 3 regulations, 24 CFR Part 135.76(f)(3) under effective date of informal resolution. *The imposed resolution will become effective and binding at the expiration of 15 days following notification to recipient and complainant by certified mail of the imposed resolution, unless either party appeals the resolution before the expiration of the 15 days. Any appeal shall be in writing to the Secretary and shall include the basis for the appeal.*

On November 5, 2009, in an e-mail from my attorney regarding a telephone conversation with Chad Bloomenfield of the Minnesota U.S. Attorney office, I was requested to cease from contacting HUD during the FCA/VCA process. During this time, I was seeking information on technical assistance grants that would be instrumental in educating the Section 3 community and community advocacy groups on the potential of the Section 3 program. (See E-mail #8)

In 2010, as a follow-up to my appeal of the signed VCA between HUD and the City of St. Paul, I met with Jason Chang of the Washington HUD Office of General Council to discuss HUD position of providing

restitution during a resolution process. According to Mr. Chang, HUD does have the ability and discretion to seek restitution. (See e-mail #5)
Between 2009-2011, I met with FHEO AS John Trasvina and Section 3 Director Staci Gilliam three times in an appeal for opportunities for the low-income community of St. Paul. During each meeting, I also expressed concerns regarding retaliation by the City and the fact that HUD provided no avenue for me to participate in the corrective actions of the VCA. I strongly emphasize the need for reconciliation between the City and myself, a step that was omitted when I was excluded from the negotiation process. A follow-up letter and/or e-mail memorialized each of these meetings. I have met with Region V FHEO Director Maurice McGough and Minneapolis FHEO Director Jaime Pedraza on a number of occasions to review the Section 3 complaints and appeals against the City and to petition for greater opportunities. HUD provided no further relief for the Section 3 community or me.

To date, the appeal to the VCA has not been officially acknowledged or addressed by HUD. Rather, I received a letter from FHEO Assistant Secretary John Trasvina noting that Secretary Donovan acknowledged my concerns, to which I forwarded a response on July 12, 2010. (See exhibit #6 Newell Doc Page 35; See exhibit #17)

Following the VCA, I continued to seek work from the City of St. Paul to no avail. After certifying as a Section 3 business concern, our companies were excluded from notice of Section 3 covered projects and our companies were excluded from the Section 3 business concern list as verified by City employees who let bids in the service area which we provide. After communicating these and other failures to the City of St. Paul and to HUD over a two year period, I filed an additional Section 3 complaint and supplement to the appeal of the 2010 VCA between HUD and the City of St. Paul. The complaint also alleged retaliation on the part of the City of St. Paul.

Additional Section 3 Complaint against City of St. Paul

On June 1, 2012, I forwarded an additional complaint and supplement to the appeal of the 2010 Section 3 Voluntary Compliance Agreement to the Secretary of HUD, Shaun Donovan, (See exhibit #7a, b, c)

The complaint presented over ten allegations acclaiming that the City of St. Paul is in violations of the Section 3 regulations as set forth by 24 CFR 135 and the terms of the Section 3 Voluntary Compliance Agreement.

These violations include failure to apply Section 3 requirements to Section 3 covered funding; failure to adequately identify and list Section 3 Business Concerns; and retaliation against myself and related companies for reporting of Saint Paul to HUD. After speaking with Director Gilliam regarding the lack of response to the complaint in February 2013, I received a request to forward a copy of the complaint to HUD FHEO Region V Investigator John Meade on February 13, 2013. (See E-mail #7)

I have to date received no official acknowledgement or further correspondence regarding the appeal, supplement or complaint.

St. Paul Public Housing Authority (PHA) Complaint No. 05-08-004-3

I submitted complaint and evidence of non-compliance against the St. Paul Public Housing Authority alleging among other things that PHA had not met safe harbor. I provided document/correspondences that evidenced PHA noncompliance that extended beyond a four-year period. HUD's investigation revealed that the PHA, even after being allowed to file revised HUD form 60002, had not met safe harbor along with a number of other issues of non-compliance that I alleged. (See exhibit #6 Newell Doc Page 68)
HUD chose to enter into a resolution process with PHA without issuing a determination of non-compliance or undergoing the regulated voluntary compliance agreement process. I contested the improper procedures and lack of participation but to no avail. (See exhibit #8)

In the resolution between HUD and the St. Paul PHA, the PHA would be required to develop and implement a Section 3 plan and upon successfully reaching the goals within a year, the PHA would receive a finding of compliance. (See exhibit #6 Newell Doc Page 80)
The proposed resolution from HUD was implemented despite my providing evidence of the following facts to HUD:
In 2005, I contacted Bruce Bailey of the HUD Section 3 Office in Washington to discuss the PHA's noncompliance. Mr. Bailey contacted the PHA in 2005 and requested that the PHA develop a Section 3 Plan. As evidenced by a number of e-mails between Newell and PHA, the PHA had forestalled the development of a Section 3 Plan from 2005 to 2007. In 2007, the PHA blatantly stated that it would not continue any action to develop a Section 3 plan without further directive from HUD.

The Section 3 resolution developed between HUD and PHA contains contingencies whereby if PHA failed to meet the safe harbor goals over a number of years, the PHA would be given a pass for its attempt.

Within the resolution, PHA was allowed to erect general and special criteria whereby it would evaluate my companies prior to their being certified as a Section 3 business concern.

I was not included in the resolution process and only received documents exchanged between HUD and PHA in the aftermath.

I appealed HUD's decision to enter into a resolution with PHA without a determination of noncompliance and without permitting PHA and me to undergo the voluntary compliance agreement process. Further, I contested HUD's decision to allow PHA to institute policies, general and special criteria that amounted to retaliation against me, the complainant.

As of February 2, 2010, I had not received a determination regarding the complaint against the St. Paul Public Housing Authority. On that date, I submitted a letter to Maurice McGough of the HUD Region V FHEO office requesting a determination. (See Exhibit #9)

Note: Per the Section 3 regulations, a voluntary compliance agreement is an agreement between the responder and the complainant in lieu of HUD imposing a resolution. A VCA is not an agreement between HUD and the responder. Irregardless of whether HUD facilitated a voluntary compliance agreement or an imposed resolution, the complainant and the responders, as the parties subject to the terms of the resolution, must be active participants and are entitled to due process of the administrative laws.

In response to my constant request for a determination which would result in an agreement process whereby my companies would receive restitution, Maurice McGough indicated, through my attorney, that my companies would receive contracts from the PHA, as had been assured him by the PHA Executive Director. No such contracts materialized. (See e-mail #2)

On October 29, 2010, I filed another Section 3 administrative complaint against PHA alleging retaliation in violation of Section 3 and its implementing regulations.

Despite the standing Section 3 retaliation complaint against St. Paul PHA, on or about December 7, 2010, HUD issued the St. Paul PHA a determination of compliance with the Section 3 regulations as pertaining to the original Section 3 complaint, case no. 05-08-004-3. (See exhibit #6 Newell Doc Page 73)
HUD refused to entertain holding the PHA responsible for false certification for receipt of PIH funds

St. Paul PHA Retaliation Complaint – Complaint No: 05-11-001-3

The October 29, 2010 Section 3 retaliation complaint was based on the PHA implementing the special criteria that it had informed HUD that it would use to evaluate my companies prior to their being certified as a Section 3 business concern. After investigation by John Meade of the Chicago HUD FHEO, HUD substantiated my complaint, but implemented a wholly insufficient remedy. (See exhibit #6 Newell Doc Page 60-61: See exhibit #10)

HUD took the position that it was not able to impose a monetary remedy against PHA. HUD initially proposed to withhold imposing a resolution until it had a chance to review its policy of not imposing a monetary remedy, but subsequently moved forward with a resolution. (See e-mail #3)
HUD required the PHA to certify my companies and provide preference in bid of the next two bids tended by my company. I appealed HUD's decision whereby it stated there was no lost to our company and its interpretation of the regulations limiting its ability to provide monetary relief.
After I appealed the imposed resolution to the retaliation complaint, I through my attorney, was contacted by the Chicago FHEO in request of terms for settlement of the retaliation complaint. Accordingly, I was told that Deputy Secretary Ron Sims was advocating on my behalf to resolve the matter. This fact was confirmed through telephone conversations with Rafiq Munir Senior Analyst of the Washington FHEO Section 3 Office. After providing terms, I received no further communicades on the matter.

As evidenced in HUD's determination letter, the actions of the PHA to retaliate against me occurred prior to HUD issuing a finding of compliance for the PHA regarding the **Section 3 Complaint No. 05-08-004-3**. As such the act of retaliation should have, in combination with the appeal of the PHA resolution, been deemed as further evidence of noncompliance with the Section 3 regulations. HUD should have found the PHA to be in non-compliance appertaining to the initial Section 3 complaint, **Complaint No. 05-08-004-3**. As noted in the determination letter, HUD elected to acknowledge responsibility for the decision to allow retaliatory language but fail to address the Section 3 complaint appeal.

The **Section 3 Complaint No. 05-08-004-3 and Section 3 Complaint No: 05-11-001-3** are presently under appeal.

St. Paul-Ramsey County Department of Public Health Complaint No.: 05-08-005-3

On January 6, 2010, the U.S. Department of Housing and Urban Development issued a letter of finding that HUD lacked jurisdiction regarding the complaint. Its finding was based on the determination that the St. Paul Ramsey County Department of Public Health is not a recipient of federal funds. It is a sub-grantee of the Hennepin County on the Lead Hazard Control Demonstration Grant program. (See exhibit #6 Newell Doc Page 56)

On February 2, 2010, I submitted a letter of appeal to the HUD determination, stating the following:

As stated, Hennepin County is the grantee and St. Paul Ramsey County Department of Public Health is a sub-grantee on the Lead Hazard Control Demonstration Grant Program.

According to the Section 3 regulations, 24 CFR part 135.5, definition of a recipient, and part 135.32(f), responsibilities of the recipient, as a sub-grantee the SPRCDPH receive Section 3 covered assistance and is responsible for compliance with the Section 3 requirements.

To date, I have received no response to the February 1, 2010 appeal. (See exhibit #11)

Saint Paul Ramsey County Public Health Retaliation Complaint No.: 05-09-004-3

On March 19, 2009, I filed an additional complaint against the City of St. Paul and Ramsey County alleging that SPRCDPH retaliated in response to the filing of a Section 3 complaint. Despite my constant inquiries, HUD delayed processing the complaint for over two years.

On November 21, 2010, I received a letter from HUD requesting that I resubmit the retaliation complaint On May 12, 2011, I received a notice of receipt of the retaliation complaint as filed on March 19, 2009. The letter stated that the complaint was being referred to the FHEO Region V Director for handling. (See exhibit #6 Newell Doc Page 78 thru 83)

On June 27, 2012, the U.S Department of Housing and Urban Development issued a letter of finding that St. Paul Ramsey County Public Health had not violated the Section 3 regulations by retaliating against me.

(See exhibit #6 Newell Doc Page 70)

HUD based its determination on the following conclusion:

"… that Jim Yannerally had not been in contact with the CDC representatives. In fact, Seth Benziger was not aware that a Section 3 complaint had been filed in 2008 until the day of his interview, May 24, 2012. The action to remove LISI from the Lead Window Replacement program was not made in retaliation for filing the initial complaint but for the reasons listed in the September 15, 2008, letter from Seth Benziger, Patty Lammers and Sam Hanson representatives of the three CDCs."

In rebuttal and as noted in our MOU with the agency, the St. Paul-Ramsey County Public Health (SPRCPHD) has governing authority and over-site over the Memorandum of Understanding (MOU). The role of the SPRCPHD in the governing of the MOU and project manager was clearly spelled out in the MOU and in each Contractor's Notice to Proceed. The complaints upon which the MOU was terminated were based on concerns identified by the SPRCPHD. In the complaint filed with HUD, I detailed two separate conversations between Mr. Yannerally and myself prior to the retaliation. The first conversation discussed and resolved the issues later raised by the CDC, several months prior to the CDC's termination of our contract. I also noted the role of Jim Yannarelly as Director of the department and project manager over the work we performed. The CDC exercised no project oversight. Finally, I discussed the second telephone conversation between Mr. Yannerally and I whereby he questioned me regarding the Section 3 complaint and expressed his dismay. In the final analysis, the issues for canceling the contract could only have been presented by Mr. Yannerally, the project manager. Finally, one of the CDC partners sent me orders to proceed on another project while, according to the timing of events, it was supposedly preparing to cancel my contract.
Following the cancellation of my contract, I submitted an appealed of the termination to the CDCs'. As noted in the response letter from the CDC, after review of my dispute, the CDC offered to accept a bid from our firm in the next round of contracts.

Section 3 false claim act lawsuit entitled United States ex rel. Newell v. City of St. Paul

In May 2009, I filed a False Claim Act ("FCA") lawsuit against the City of Saint Paul based on its repeated false certifications of Section 3 compliance made to HUD in order to receive certain HUD funding. At the outset, HUD supported my FCA lawsuit entitled United States ex rel. Newell v. City of St. Paul ("Newell") against the City and HUD formally requested that the United States Department of Justice ("DOJ") intervene in the suit. As HUD arbitrarily settled my administrative complaints against the City of Saint Paul, HUD staff repeatedly represented to me that I would be made whole by means of HUD's support for and DOJ's prosecution of my FCA lawsuit. After years of assuring me that my ultimate recovery would come via the FCA litigation against Saint Paul, in 2011, HUD reversed course without notice to me and worked with DOJ on a deal to surreptitiously leverage my FCA lawsuit with Saint Paul. HUD agreed with DOJ that it should decline to intervene in the FCA lawsuit in exchange for Saint Paul's agreement to dismiss its *Magner v. Gallagher* appeal to the United States Supreme Court. According to allegations from the Committee on Oversight and Government Reform, HUD and DOJ provided information to assist the City of St. Paul with its subsequent motion to dismiss the Section 3 false claim act case in District Court. Furthermore, according to the committee, DOJ promised the City that HUD would be helpful in the event that my case continued after DOJ declined to intervene. (See exhibit #14 & 18)

The actions of DOJ and HUD were dubbed a quid pro quo by the congressional committee and a global settlement by DOJ. This settlement, reached without any notice or compensation to me, constituted a violation of the FCA. As a direct result of the secret deal reached between HUD, DOJ and Saint Paul, my FCA lawsuit was dismissed by the District Court in July 2012.
As a direct result of Saint Paul's dismissal of its *Magner* appeal, HUD and DOJ were able to successfully invoke the disparate impact legal theory. It is clear that HUD and DOJ believed that this legal theory would have been struck down by the United States Supreme Court had Saint Paul not dismissed the *Magner appeal*. The doctrine of disparate impacts was then relied upon by HUD and DOJ in concluding the $25 billion mortgage settlement with numerous national mortgage lenders. As part of this settlement,

the United States Treasury received in excess of $755 million in penalties. Even though my case was leverage to secure this settlement, I received no consideration and was not permitted a fairness hearing. (See exhibit # 15)

City of St. Paul- An Egregious Example

In 1997, I register in the City's vendor contracting program, presently known as the Vendor Outreach Program (VOP). In 2000, I attempted to register as a Section 3 business concern and was denied. In 2005, I joined several minority contractors in a class-action lawsuit alleging that the City of St. Paul had discriminated against minority contractors and failed to comply with its Vendor Outreach Program. The VOP was designed to remedy past conditions of discrimination against minority contractors. The State Court found that the City program lacked enforcement and ordered the City to enforce the Vendor Outreach Program. The case was otherwise dismissed as the court found that we were unable to prove intent to discriminate on the part of the City. In 2006, resulting from constant agitation from the minority and low-income communities, the St. Paul City Council conducted an audit of the City's contracting practices as established through the Vendor Outreach Program. The findings of this audit, a.k.a. the Hall Equal Access Performance Audit, (http://www.stpaul.gov/DocumentView.asp?DID=4501), revealed a systemic problem of lack of monitoring and enforcement procedures and practices in the City's contracting departments which resulted in little or no compliance with the goals of the Vendor Outreach Program. Simultaneous, the City Council elected to perform a disparity study as pertaining to the City's contracting practices with the minority-owned and women-owned businesses in St. Paul. The finding of the 2007 MGT Disparity Study, (http://www.stpaul.gov/DocumentView.asp?DID=6384), concluded that disparity existed for all M/WBE groups in Vendor Outreach Program (VOP), except for Asian American prime contractors in construction. The results, released in the Hall Audit, reported that minority contractors had received less than three percent (3%) of contracting opportunities in City contracting and in the Contracting and Analysis Service department (CAS) that contracted $94M, minority contracting was less than $300,000.
In 2006, I filed a lawsuit in District Court alleging that the City of St. Paul, while receiving Section 3 covered funds, was not operating in compliance with the Section 3 regulations. The case was dismissed based on a finding that the federal Section 3 statute provides "no private right of action". Following the court decision, I continued to press the City for Section 3 opportunities but to no avail. In 2008, I filed a number of Section 3 complaints to HUD's administrative complaint process. In 2010, the Department of Housing and Urban Development noted that the City had no knowledge of the Section 3 program and no procedures in place to comply with the regulations. HUD required the City to enter into a voluntary compliance agreement. In 2009, I filed a Section 3 false claim act lawsuit against the City of St. Paul in District Court. The Department of Justice, after conducting an investigation of the City of St. Paul, noted that my false claim case against the City of St. Paul represented one of the most egregious examples of false claim certifications.

The disparities experienced by the minority (protected class) and low-income communities of St. Paul are well documented and such documentation was submitted as evidence of the need for intervention by the federal government. During the Section 3 complaint resolution/VCA process of 2009/10, I provided a copy of a document I drafted, entitled "Disparity in St. Paul", to HUD Secretary Shaun Donovan, to the FHEO Assistant Secretary John Trasvina and to Section 3 Director Staci Gilliam. (See exhibit #6 Newell Doc Page 110; exhibit #16, 17 & 19)
This document delineated nine (9) reports produced over a thirteen-year period from 1996 to 2009, each an independent examination of the disparities in St. Paul, the Twin Cities and the State of Minnesota.
This document was also provided to DOJ during the Section 3 FCA lawsuit interview. The reports highlighted in the Disparity in St. Paul document are listed below:

- 1996 Twin Cities Disparity Study - In 1997, the City of St. Paul, in reaction to the findings of a 1996 Twin Cities Disparity Study (http://www.umn.edu/irp/publications/finalrpt.pdf), created the Targeted Vendors Program, presently known as the Vendor Outreach Program. This program was designed in response to the recommendations by the Institute on Race and Poverty and BBC Research and Consulting that each jurisdiction swiftly enact remedial measures to address the disparity and

discrimination that exist in the Twin Cities marketplace and that each jurisdiction implement race and gender-neutral remedial programs. The City of St. Paul was well aware that the BBC Research and Consulting and the Institute had adjudged that many of these programs would be insufficient to remedy the extant of disparities facing the M/WBEs in the Twin Cities market.

- Mind the Gap: Reducing Disparities to Improve Regional Competitiveness in the Twin Cities (2005) This is a link to a Mind the Gap power point presentation: http://www.mncn.org/bp/brainerdppt.pdf- ***The Twin Cities region is blessed with a number of assets that make it a strong, competitive region.*** *The region has one of the most highly educated populations in the country, both in terms of its share of high school and college graduates. Its median household income is the 14th highest among the 100th largest metropolitan areas, while its poverty rate is one of the lowest among the largest metros. And the region's job growth and per capita income growth have outpaced the nation's for the last decade.* ***However, underneath these broad successes are some disturbing social and economic disparities, demonstrating that progress is not widely shared.*** *There are three sets of "gaps" or disparities in the Twin Cities metro area- among racial and ethnic groups, among different income groups, and between the central cities and suburbs- that show the region's prosperity does not benefit all residents or communities.*
- "Close the Gap: A Business Response to our Region's Growing Disparities. (2006) This is a link to the TPT Documentary: http://hrusa.org/closethegap/community/intropdf.pdf -The core cities of Minneapolis and St. Paul are losing ground to the suburbs on a number of fronts. At the same time the core cities are dealing with greater concentrations of socio-economic problems. For example, the core cities have 22 percent of the metro's overall population but 54 percent of the poverty population. The region ranks second in city-suburb poverty disparity among the 40 largest metro areas- outranking Newark, Baltimore and Detroit. The core cities also perform worse than the suburbs on indicators such as crime rates, high school drop-outs rates and unemployment.
- 2006 Hall Equal Access Audit: Review and Performance Audit of City of St. Paul/Housing Redevelopment Authority Efforts Related to Inclusion in City/HRA Economic Opportunities- In 2005, resulting from constant agitation from the minority and low-income communities, the St. Paul City Council proposed to conduct an audit of the City's contracting practices as established through the Vendor Outreach Program. The findings of this audit, a.k.a. the Hall Equal Access Performance Audit, (http://www.stpaul.gov/DocumentView.asp?DID=4501), revealed a systemic problem of lack of monitoring and enforcement procedures and practices in the City's contracting departments which resulted in little or no compliance with the goals of the Vendor Outreach Program. Simultaneous, the City Council elected to perform a disparity study as pertaining to the City's contracting practices with the minority-owned and women-owned businesses in St. Paul.
- MGT Disparity Study: Minority and Women Business Enterprise Disparity Study for the City of St. Paul- 2002-2006- The finding of MGT Disparity Study, (http://www.stpaul.gov/DocumentView.asp?DID=6384), concluded that disparity existed for all M/WBE groups in Vendor Outreach Program (VOP), except for Asian American prime contractors in construction. The **MGT Disparity Study** goes further to identify the magnitude of disparity and an accounting of the contractors who benefit from City contracts and subsequently HUD Section 3 covered assistance. Based on the data collected, the majority of the contractors are from cities or communities other than St. Paul. Accordingly, the tax dollars generated by these contractors and their employees are exported to their perspective communities.
- Organizing Apprenticeship Project: Minnesota Legislative Report Card on Race Equity 2007, 2008 and 2009 - Minnesota's racial disparities were here even before the election of a Black president. In fact, they are among the worst in the nation – undermining our state's prosperity and competitive advantage. And despite our state's reputation as a leader on key quality-of-life measures such as wealth, health and educational achievement, Minnesota's disparities have been growing. There is much to be done and now is the time to take action (Link to OAP report Card http://www.oaproject.org/files/OAP_ReportCard_09_ExecS_g.pdf)
- Section 3 Monitoring and Limited Compliance Review of 2009: City of St. Paul Planning and Economic Development and the Housing and Redevelopment Authority Determination of Non-Compliance - The City of St. Paul (including the St. Paul HRA) is not in compliance with the requirements of the Section 3. It cannot document compliance with the "greatest extent feasible" requirement of Section 3 by demonstrating that its contracting activities meet the numerical goals as

set forth in the regulation. Nor has it implemented any of the specific activities defined by the regulations as recipient responsibilities. There are no procedures in place to: 1) notify Section 3 residents about training and employment opportunities generated by Section 3 covered assistance and Section 3 Business opportunities; 2) notify potential contractors about Section 3 requirements and ensure their compliance and their subcontractors' compliance with Section 3 requirements' 3) incorporate the Section 3 clause in all solicitations and contracts; 4) facilitate the training and employment of Section 3 residents and the award of contracts to Section 3 business concerns; or 5) document the actions taken to comply with the Section 3 requirements, the results of the actions and impediments, if any. Furthermore, the recipient has not submitted the Form 60002 annually as required by the regulations.

- Segregated Communities: Segregated Finance – An Analysis of Race, Income and Small Consumer Loans in Minneapolis-St. Paul, MN, Portland OR, and Seattle, WA - Segregated communities of color have poor access to neighborhood banks and have far more non-conventional types of lenders that charge much higher rates for small loans. Racially segregated communities of color tend to have fewer banks, more check cashers and payday lenders, especially in Minneapolis-St. Paul where non-white segregated census tracts are more numerous and concentrated in the lower-income core of the region. In contrast, there are fewer segregated neighborhoods in Portland and Seattle, and racially integrated areas, places with an abundance of banks. Lower income neighborhoods have an abundance of all types of lenders, both bank and payday establishments. The abundance of lenders in low-income neighborhood is due in large parts to their central locations near regional job centers and in areas near or accessible to higher income neighborhoods, This is particularly true in Portland and Seattle, The advantages of a central location, however, diminish when potential high income customers are distant from the core of the region. This is the case in Minneapolis-St. Paul where there are fewer banks in the residential portions of the central cities and low-income neighborhoods. (Link to the Segregated Community: Segregated Finance Report - http://www.irpumn.org/website/projects/index.php?strWebAction=project_detail&intProjectID=62)
- 2009 MN/DOT Disparity Study conducted by MGT - The Disparity study was conducted based on a period of 2001 through 2007. The study included review of six agencies, covered prime contracting for six business categories and subcontracting analysis for construction only for four agencies. The following is a representation of the disparity noted across the board: Administration Prime Utilization – The dollar value of M/WBE prime utilization by Admin over the study period was as follows: 59 M/WBEs won prime construction contracts for $15.43M (3.02% of the total); 33 M/WBEs won prime professional services contracts (including A&E) for $10.63M (3.21% of the total); 167 M/WBEs won other services contracts for $15.13 M (8.05% of the total) Mn/DOT Prime Utilization – The dollar value of M/WBE prime utilization by Mn/DOT over the study period was as follows: Nine M/WBEs won prime construction contracts for $12.77M (2.20% of the total) Admin Subcontracting Utilization – The dollar value of M/WBE sub utilization on Admin projects over the study period was as follows: Four M/WBEs won construction subcontracts for $2.07M (1.73% 0f the total) Mn/Dot Subcontracting Utilization – The dollar value of M/WBE sub utilization on Mn/DOT projects over the study period was as follows: Five M/WBEs won construction subcontracts for $1.13 M (0.71% of the total) Private Sector – The utilization of M/WBE firms on private sector commercial construction projects in the City of St. Paul was significantly lower and generally below most measures of M/WBE availability in the marketplace. Over the study period, M/WBEs won less than 2 percent of the private sector commercial construction subcontracts. Two recent studies using Public Use Microdata Sample (PUMS) data found statistically significant disparities in earnings from and entry into self employment for women and minorities in the State of Minnesota. (Link to the State of MN Disparity Study - http://www.mmd.admin.state.mn.us/disparity/2009DisparityStudyPublicPresentation.pdf)

On August 4, 2003, the City of St. Paul was put on notice by an internal memo forwarded from its Minority Business Development and Retention Coordinator, Edward McDonald, that the City was not complying with Civil Rights and federal Section 3 regulations. The memo challenged the City's Chapter 84 Vendor Outreach Program and the City's failure to properly support or implement the race-based program designed to remedy past discriminations in the City's procurement process. (See exhibit #20)

Additionally, the cities of St. Paul and Minneapolis has the dubious distinction of being heralded for having the highest rate of job disparate between white and black residents of all the metropolitan areas in 2009 and in 2011, as reported by the Minnesota Public Radio. (See exhibit #21)

During 2011, the jobless rate for African Americans in the Twin Cities averaged nearly 18 percent, more than three-times that of white residents. That's by far the biggest disparity of all the metropolitan areas covered in a study from the Economic Policy Institute.

It's not the first time the Twin Cities have received this dubious distinction. The region topped this list two years ago, as well. Last year, Minneapolis-St. Paul came in second — because the report accidentally included Milwaukee, which isn't big enough to provide reliable data.

For over seventeen years, the City of St. Paul have been under a microscope resulting in documented evidence that minorities and low-income communities lacks the opportunities generated by the receipt of federal funds. Over the past five years, HUD and DOJ have been inundated with data evidencing the disparate conditions and the discriminatory effects of the policies and practices of the City of St. Paul in regards to its minority and low-income communities.

The City has demonstrated a willful neglect of federal and local provisions designed to benefit its minority and low-income communities.

The City of St. Paul contended that it was in compliance with the Section 3 regulations in federal court in 2006; during and after the HUD investigation and finding of non-compliance in 2009; and further, to DOJ from 2009 to 2012. The City contended that it was in compliance with its Vendor Outreach Program in 2007 and misrepresented the Hall Audit and MGT Disparity to HUD and DOJ in 2011, implying that the reports showed it was providing opportunities to the minority and low-income community. (See exhibit #26 - Congressional Report Documents – page 243-247) As quoted by the House Committee on Oversight and Government Reform Chairman Jordan regarding the leveraging of the Section 3 false claim act case:

It is within this setting that I am so troubled by the quid pro quo between the Department of Justice and the City of St. Paul. In 2009 Fredrick Newell brought a whistleblower complaint alleging that the City of St. Paul, Minnesota, had fraudulently received millions in federal dollars. Career DOJ and HUD attorneys investigated his case for almost three years, and by November 2011, the United States government was poised to join the case on Mr. Newell's behalf. These career attorneys told Mr. Newell that the United States strongly supported his case and would intervene on his behalf.

Documents support this impression that the case was strong. In a memo from November 2011, the career attorneys wrote: "The City repeatedly and falsely told HUD and others it was in compliance. The City knowingly submitted false claims in order to obtain federal funds." The career attorneys also wrote: "We believe this is a particularly egregious example of false certifications given y a City that was repeatedly shown what it had to do, but repeatedly failed to do it." These attorneys recommended that the United States intervene in the case.

As reported by career attorneys at the Justice Department:

The City was repeatedly put on notice of its obligations to comply with Section 3. At best, its failure to take any steps toward compliance, while continually telling federal courts, HUD and others that it was in compliance with Section 3, represents a reckless disregard for the truth. Its certifications of Section 3 compliance to obtain HUD funds during the relevant period were knowingly false.

An additional example of the City's reckless disregard for the truth was provided to HUD and DOJ during the false claim act lawsuit interview meeting with the HUD and Justice department in July '09 where I provide the Justice department with a letter from the City of St. Paul. In the letter, Peter McCall, the St. Paul City Attorney, responding to my request that HUD withhold all HUD funding from the City due to its noncompliance with Section 3, stated that I was incorrect and that the City was in compliance with the

Section 3 regulations. According to HUD, the City Attorney had been informed, prior to his writing the letter that the City was not in compliance and that HUD would issue a letter to that extent. A copy of the letter from the City is included herewith. (See exhibit #6 Newell Doc Page 116)

The City of St. Paul, as a recipient of federal funds, has violated Title VI and its practices and policies have had a disparate impact on the minority and low-income community of St. Paul. The City of St. Paul has failed to provide "Simple Justice".

HUD and DOJ Ignore Title VI Violations

The disparities experienced by the minority (protected class) and low-income communities of St. Paul are well documented. The numerous documents provided to HUD and DOJ showed a clear pattern of disparate conditions and was submitted as evidence of the need for intervention by the federal government. The following notes instances where records of the disparate conditions were submitted to the federal government:

During the Section 3 complaint resolution/VCA process of 2009/10, I provided a copy of a document I drafted, entitled "Disparity in St. Paul", to HUD Secretary Shaun Donovan, to the FHEO Assistant Secretary John Trasvina and to Section 3 Director Staci Gilliam. (See exhibit #6 Newell Doc Page 110; exhibit #16, 17 & 19)
This document delineated nine (9) reports produced over a thirteen-year period from 1996 to 2009, each an independent examination of the disparities in St. Paul, the Twin Cities and the State of Minnesota.
This document was also provided to DOJ during the Section 3 FCA lawsuit interview. The reports highlighted in the Disparity in St. Paul document are listed below:

- 1996 Twin Cities Disparity Study -
- Mind the Gap: Reducing Disparities to Improve Regional Competitiveness in the Twin Cities
- "Close the Gap: A Business Response to our Region's Growing Disparities.
- 2006 Hall Equal Access Audit: Review and Performance Audit of City of St. Paul/Housing Redevelopment Authority Efforts Related to Inclusion in City/HRA Economic Opportunities-
- MGT Disparity Study: Minority and Women Business Enterprise Disparity Study for the City of St. Paul- 2002-2006
- Organizing Apprenticeship Project: Minnesota Legislative Report Card on Race Equity 2007, 2008 and 2009 http://www.oaproject.org/files/OAP_ReportCard_09_ExecS_g.pdf)
- Section 3 Monitoring and Limited Compliance Review of 2009
- Segregated Communities: Segregated Finance – An Analysis of Race, Income and Small Consumer Loans in Minneapolis-St. Paul, MN, Portland OR, and Seattle, WA http://www.irpumn.org/website/projects/index.php?strWebAction=project_detail&intProjectID=62)
- 2009 MN/DOT Disparity Study conducted by MGT

On August 4, 2003, the City of St. Paul was put on notice by an internal memo forwarded from its Minority Business Development and Retention Coordinator, Edward McDonald, that the City was not complying with Civil Rights and federal Section 3 regulations. The memo challenged the City's Chapter 84 Vendor Outreach Program and the City's failure to properly support or implement the race-based program designed to remedy past discriminations in the City's procurement process. (See exhibit #20) This internal memo was provided to HUD and DOJ.

The cities of St. Paul and Minneapolis has the dubious distinction of being heralded for having the highest rate of job disparate between white and black residents of all the metropolitan areas in 2009 and in 2011, as reported by the Minnesota Public Radio. (See exhibit #21)

During 2011, the jobless rate for African Americans in the Twin Cities averaged nearly 18 percent, more than three-times that of white residents. That's by far the biggest disparity of all the metropolitan areas covered in a study from the Economic Policy Institute.

It's not the first time the Twin Cities have received this dubious distinction. The region topped this list two years ago, as well. Last year, Minneapolis-St. Paul came in second — because the report accidentally included Milwaukee, which isn't big enough to provide reliable data.

I provided FHEO AS Trasvina with a copy of this news article as evidence of the disparities faced by the low-income and minority community of St. Paul.

On March 20, 2009, I provided HUD Secretary Shaun Donovan with an e-mail outlining the failures of the City of St. Paul to comply with the Section 3 regulations. I also provided the Secretary with a copy of the Hall Audit of the City of St. Paul and a copy of the 2007/08 MGT Disparity Study. These documents were provided to substantiate the conditions faced by the minority and low-income community due to the City of St. Paul's failure to comply with the Section 3 requirements. The receipt of this information was acknowledged by Aztec Jacobs, HUD Director of the Office of Programs on June 1, 2009 (See exhibit #6 Newell Doc Page 110)
The letter from Mr. Jacobs stated:
While the materials demonstrated the limited amount of economic opportunities that the subject agencies provided to minority- and women-owned businesses, Section 3 is race neutral and gender neutral, and the City's lack of commitment to these groups may not necessarily constitute noncompliance.
Section 3 is intended to provide preference to low- and very-low income persons residing in communities where certain HUD funds are spent, regardless of race and gender, and the businesses that substantially employ these persons. Since Section 3 is not limited to particular groups of persons, all low-income resident (even non-minorities) may qualify for preference.
Notwithstanding this clarification, the Department takes the concerns raised in both of your recent emails seriously. In fact, on May 19-20, 2009, the Department conducted an onsite compliance review of the City of St. Paul, MN, to determine its compliance with the statutory and regulatory requirements of Section 3. We anticipate that the findings of this review will be available within thirty (30) days.

The City of St. Paul corroborated, in correspondence to HUD, the fact that the minority community constitutes much of the Section 3 community in St. Paul. I also provided this information to HUD along with other reports in order to represent to HUD the urgent need to provide restitution. The Hall Audit and MGT Disparity Study clearly state that the City of St. Paul failed to provide opportunities for the minority community (protected class) through its race-based program. The HUD 2009 Section 3 Monitoring Review of the City of St. Paul revealed that the City of St. Paul failed to provide opportunities for the low-income community and (by default) the protected class (minority community) through the Section 3 race-neutral program.

During the execution of the Quid Pro Quo, the City of St. Paul elected to misrepresent the findings in the Hall Audit report by presenting the reports as evidence of it providing opportunities for the minority community. (See exhibit 26 - Congressional Report Documents – page 246-247)
HUD, being in possession of these reports and my characterization thereof, decidedly disregarded the urgent need of the community; the true characterization of the Hall Audit report and the acknowledgement by Sara Pratt and HUD staff that the Hall Audit report revealed lack of opportunities for the minority community. (See exhibit #26 - Congressional Report Documents – page 243-245)
Ms. Pratt provided a declaration that the City had, in fact, provided opportunities for the minority community and (unintentionally) met the requirements of Section 3 based on the Vendor Outreach Program and the Hall Audit report. (See exhibit #26 - Congressional Report Documents – page 248) This declaration was in contrast to the finding of the 2009 Section 3 Monitoring Review that had examined the City's assertion that it met the goals of Section 3 through its Vendor Outreach (minority participation) Program. The finding of the Section 3 monitoring review was, in part, that the City had no procedures in place to comply with Section 3 and that City staff had no knowledge of the requirements of Section 3. The HUD staff stated that "it appeared that city staff were confusing Section 3 responsibilities with Saint Paul's efforts to increase participation by minority and women-owned businesses in city contracts" [through its Vendor Outreach Program].

On January 21, 2010, I provided a letter to Section 3 Director Staci Gilliam requesting a meeting with AS Trasvina and her for the purpose of clarifying the VCA process, seeking to be included in the negotiation. I

also included information regarding the disparities faced by the minority and low-income community. The information included the Hall Audit, MGT Disparity Study, the Mind the Gap and Close the Gap reports and others. (See exhibit # 16)

On January 25, 2010, my attorney and I sent a letter to the Mayor of the City of St. Paul and the City Council members stating the following: (See exhibit # 22)

....I understand that the City of St. Paul and HUD are in the process of negotiating a Voluntary Compliance Agreement ("VCA") regarding St. Paul's Section 3 compliance. I also understand that this proposed VCA does not dispose of Mr. Newell's administrative complaints against St. Paul regarding its Section 3 noncompliance.
Mr. Newell and I understand many members of the Section 3 Community believe that the proposed VCA prepared by HUD is inadequate in addressing the full scope of need within St. Paul's Section 3 community. Accordingly, I write to ask that St. Paul first convene a City Council hearing to consider what additional resources can be committed through the VCA to help rebuild St. Paul's Section 3 community. To that end, I ask that you refrain from entering into any VCA until the City Council can convene a public hearing to more fully consider this matter and to hear testimony on this issue.

HUD and DOJ were informed of the disparities faced by the minority and low-income community of St. Paul and failed to address the disparate impact of the policies and practices of the City of St. Paul.

HUD and DOJ caused Disparate Impact by leveraging the Qui Tam Case

HUD and DOJ, with full knowledge of the consequences of their actions, intentionally scuttled my case in keeping with its part of the deal with the City of St. Paul. The intentional consequences of HUD and DOJ actions, in regards to the Section 3 false claim act case, was the dismissal of the case in District Court. The calculated actions of DOJ and HUD included the providing of material support to the City, contrary to its qui tam interest, and promised support peradventure the relator pursue the case and prevail beyond the federal District Court.

It is clear that HUD and the Justice Department elected to elevate the concerns of protecting the disparate impact theory and the promulgating of the disparate impact regulations over compliance with the Section 3 regulations and the actual disparities experienced by the minority and Section 3 communities of St. Paul, Minnesota. Though the Section 3 community, a.k.a. the low-income community, is not a protected class per se, the members of the protected class are inherently members of the Section 3 community and as such Section 3 promotes the rights and benefits afforded by law to the members of the protected class. As a Black citizen and member of the minority community, I am a member of a protected class. I have experienced disparities due to the failures of the City of St. Paul to comply with the race and gender neutral federal Section 3 regulations and the City's race-based Vendor Outreach Program.

I, the Section 3 community and the minority community of St. Paul, have experienced the discriminatory effect of the actions of HUD and DOJ cause by the arbitrary leveraging of the qui tam case.

Loss to the Minority and Section 3 community – Disparate Impact
During the July '09 Section 3 FCA lawsuit interview meeting where my attorney and I met with representatives from HUD and the Justice department (DOJ), I requested that any settlement received from the false claim act lawsuit be allowed to remain in St. Paul whereby we would be able to redress the lack of capacity of the Section 3 community. As support for this request, I provided HUD and DOJ with numerous documents reporting the disparity conditions experienced by the low-income and minority communities in St. Paul. (See exhibit #6 Newell Doc Page 97 & 110)
DOJ stated that the request would be considered. As DOJ communicated the terms being discussed for settlement of the lawsuit during the 2010/11 period, I was told that DOJ accepted my terms of returning the lawsuit recovery to the Section 3 community with the caveat that I would be required to contribute a portion of the relator's share of the recovery. I agreed to the terms. In 2011, I requested that the seal of the FCA lawsuit be amended to allow me to discuss with other community leaders the potential use of the recovered funds to address the disparities in St. Paul. In response to my request, I was informed that DOJ

expected to render a decision regarding intervention within the next couple months. I was therefore asked to postpone my request. DOJ and HUD's leveraging of the FCA lawsuit without including the relator in the settlement amounted to a loss to the minority and low-income community.

From 2010 through 2011, HUD and the Department of Justice insistently connected the resolution of the Section 3 complaints and subsequent VCA with the support that HUD and DOJ promised on the false claim lawsuit. HUD's constant assertion was that I would be made whole through its support of the Section 3 False Claim Act lawsuit.
The Justice Department indicated that it was in favor of one of the term I proposed for settling the FCA that allowed recovery from the false claim lawsuit to remain in the Section 3 community of St. Paul to redress past harms.

HUD and the Department of Justice held the false claim lawsuit, United States ex rel. Newell v. City of St. Paul, under seal from 2009 to 2012 under the guise of negotiating a settlement with the City of St. Paul. During the period from 2010 to 2012, DOJ rebuffed my attempts to work with HUD and the City to gain Section 3 opportunities.

On or about January 17, 2012, I was informed that the Department of Justice requested my approval for an additional sixty-day extension of the seal on United States ex rel. Newell v. City of St. Paul. I declined an additional extension base on information that negotiations between DOJ and the City had broken down. On February 9, 2012, DOJ notified me of its intention to decline intervention in the case. The Department of Justice and the Department of Housing and Urban Development did not inform me that the true reason it decided to decline the case was that the case had been leveraged as part of a global settlement.

The Department of Justice and the Department of Housing and Urban Development leveraged my false claim act case, United States ex rel. Newell v. City of St. Paul, in exchange for cash and for security for the disparate impact theory. I was an uninformed and unwilling participant in the Quid Pro Quo between the United States government and the City of St. Paul.
The Department of Justice decision to leverage the case indicates a decision to intervene and therefore, as such, I am entitled to share in the benefits gained from the global resolution.

I, as a minority and Section 3 resident, and ultimately the Section 3 community have been disproportionately affected by the action of the Department of Justice and the Department of Housing and Urban Development.
I provided comments to the Office of Management and Budget presenting facts supporting the allegation that the practices and decisions of the Department of Housing and Urban Development and the Justice Department have caused discriminatory effects against the Section 3 community of St. Paul, Minnesota; against the Section 3 Community at large; and against myself, Fredrick Newell, the false claim relator in the matter of United States ex rel. Newell v. City of St. Paul. (See exhibit # 23)

The costs associated with these actions were foreseeable and clearly constituted a discriminatory effect.

The apparent loss to the Section 3 community includes:
- ✓ loss of redress during the VCA process;
- ✓ Loss of recovery/redress from the false claim lawsuit.
- ✓ The efforts and actions of the complainant/relator (whistleblower) were unduly sacrificed.
- ✓ The political, economic and social impact of a properly executed voluntary compliance agreement were unrealized;
- ✓ The political, economic and social impact of a successful Section 3 false claim lawsuit upon program compliance and the Section 3 community at large were unrealized.

The Section 3 regulations and Section 3 community have languished under a period of non-compliance and lack of enforcement of the Section 3 statue and regulations for over forty (40) years. The Section 3 program received its impetus from incidents such as the "Watts Riots" of 1965 and the "Rodney King Riots" of 1992. The Section 3 community has long sought a catalyst to revive the Section 3 program. The Section 3 false claim act lawsuit was heralded, even by HUD itself, to be such catalysis for Section 3 compliance, a

non-violent catalyst. The Section 3 community can not afford to wait another forty years for HUD, Congress and the presiding President to enforce Section 3. The Section 3 community can not afforded to wait another four years for the next false claim lawsuit to navigate the legal process.

Disparate Impact - Less Discriminatory Alternative

One of the established criteria of determining disparate impact according to the regulations is whether there was a less discriminatory alternative to the existing practice.

The practice has a necessary and manifest relationship to one or more of the defendant's or respondent's legitimate, nondiscriminatory interests. …the plaintiff or complainant may still establish liability by demonstrating that these legitimate nondiscriminatory interests could be served by a policy or decision that produces a less discriminatory effect.

It is clear that HUD and the Department of Justice had other tools and/or practices whereby they could have leveraged the Section 3 false claim act case toward the same end of securing a "global resolution", i.e. global settlement. One such tool was to ensure that all parties in the global settlement were apprised of the terms and conditions and allowed to be active participants and beneficiaries of the settlement process.

Questionable actions

I seek to draw your attention to a number of e-mails and notes provided through the congressional inquiry noted herein as the Congressional Report Documents. (See exhibit #26)

The City provided misleading information, as characterized by its use of the Hall Audit Report, to project itself in as favorable light as possible despite its own understanding that its record of providing opportunities for its minority and low-income community had been examined and dismayed by reports such as the Hall Audit Report and others.

HUD, through the actions of Sara Pratt, showed itself to be willing to over look evidence of the City's mis-representation of itself and its record of failing to provide opportunities for the minority and low-income community in order to accomplish its goal of securing withdrawal of the Magner v. Gallagher Case from the Supreme Court.

As evidenced by the e-mails received during the congressional inquiry, the City provided HUD and DOJ with a position paper designed to persuade the government not to intervene in the FCA lawsuit. The City offered the 2006 Hall Audit as evidence that it was providing opportunities for its minority and low-income communities when it knew in fact that the Hall Audit report stated otherwise. HUD staff also acknowledged that the 2006 Hall Audit stated contrariwise and yet HUD chose not to rebuff the City. Rather, HUD drafted policy and a position statement to support the City's position. Below are excerpts from the Congressional Report Documents (Exhibit #26) and my comments regarding the excerpts:

Page 246 – In an e-mail from John Lundquist, attorney from Fredrikson & Byron, PA representing the City of St. Paul, on December 22, 2011, we find the following:

Dear Ms. Pratt, Thank you for you call this morning. We are working on getting you the materials you requested. In the meantime, I am enclosing a copy of the Position Paper we submitted to DOJ. Pages 4-11 describe some of the City's programs.

Page 246- 247 – This e-mail was exchanged between two unidentified government employees. As stated by one, Sara Pratt was provided with the City's position paper outlining why HUD should not intervene. The second party in the e-mail explains how the City was saying that the Hall Audit supported the City's position that it had done a good job. The individual stated that the Hall Audit did not reach the conclusion presented by the City.

Sara's attachment is the City's "position paper" setting forth reasons why the City thinks the Govt should decline to intervene. Among other things, the City references the Hall audit's review of its VOP, but says nothing other than: "overall, the results were largely positive."
This is just not true. The Hall audit reports the small percentages of contracting dollars directed toward MBEs and WBEs (included in my earlier email) and describes a lack of responsibility, enforcement, etc.

Page 243 – 245 – Emails between Sara Pratt and other(s) where Sara Pratt acknowledge that she is "treading carefully" trying to justify the City's VOP program as verification of Section 3 compliance. This acknowledgement is in light of the other individual providing a news article that stated that the Hall Audit revealed that the VOP was providing few opportunities for the minority community; the article reported *about private citizens lawsuit in/around 2007alleging that the City had not contracted with minorities and women, VOP notwithstanding;* and that *the state court judge has issued orders to the City concerning its lack of compliance with the Vendor Outreach Program*. It is unclear whether either Sara Pratt or the other(s) knew that one of the private citizens referenced in the new article is the same individual that filed the Section 3 complaints and Section 3 false claim act lawsuit, Fredrick Newell. The e-mail, forwarded to Ms. Pratt, is flagged as high[ly] important:

From: Pratt, Sara K
Sent: Thursday, December 22, 2011 2:24PM
To: _____
Subject: Re: St. Paul's Vendor Outreach Program

Yes, I'm treading carefully here. Will send you a draft in a few minutes.

From: _____
Sent: Thursday, December 22, 2011 2:12 PM
To: Pratt, Sara K
Subject: St. Paul's Vendor Outreach Program
Importance: High

Sara, As you know, DOJ has asked HUD whether HUD believes that the City of St. Paul, through its Vendor Outreach Program (VOP), ultimately (substantially) complied with Section 3. This statement would be true if the City, in serving the MBEs, WBEs and DBEs that participate in its VOP, ultimately provided contracting opportunities to the companies of low and very-low income individuals at/near the level provided for by Section 3. The relevant time frame is 2000-2010.
In verifying this, I came across news reports about private citizens' lawsuits against the City of St. Paul in/around 2007, alleging that the City was not awarding contracting to minorities and women notwithstanding the VOP (a program initiated to remedy past discrimination against minority-owned businesses).
On November 2, 2007, a state court judge ordered the City to enforce the City's VOP. The Court's order incorporated earlier findings, from an order it issued on July 24, 2007, that acknowledged additional lapses in the City's enforcement of the VOP.

Page 247-253 – Sara Pratt develops a position to support the City's position that it is in compliance with Section 3 through the VOP. The position supported by Sara was explored by the Section 3 investigation team in 2009 when St. Paul raised the argument that it had complied with the Section 3 regulation through the VOP minority program. The HUD Team concluded in the Letter of Findings of 2009 that, despite the City's contentions, the City of St. Paul had not complied with the Section 3 requirements in a number of areas, including the city had no working knowledge of the Section 3 requirement and no procedures in place to comply with Section 3. Further, as noted by the news report presented to Sara Pratt, the City of St. Paul had not enforced the VOP and therefore the City had been placed under court order to enforce compliance with its VOP.

On page 247, we find a follow-up e-mail. In this e-mail, the writer of the previous e-mail notes, among other added facts, that her find/verification of the information regarding VOP was unfortunate. Additionally, she stated that she had conveyed this information to Sara:

Michelle, DOJ doesn't appear to like the basis for declining the Section 3 case. _____ asked _____ whether HUD believes that the City of St. Paul, through its Vendor Outreach Program (VOP), ultimately (substantially) complied with Section 3. If so, DOJ would like to rely upon a statement from HUD to this effect.
We spoke to Sara Pratt about this, and she appears to be working on a response.
This statement could be true if the City, in serving MBEs, WBEs and DBEs that participate in its VOP, ultimately provided contracting opportunities to the companies of low and very-low income individuals at/near the level provided for by Section 3. The relevant time frame is 2000-2010.
***Unfortunately**, in verifying this, I came across news reports about private citizens' lawsuits against the City of St. Paul in/around 2007, alleging that the City was not awarding contracting to minorities and women notwithstanding the VOP (a program initiated to remedy past discrimination against minority-owned businesses).*
On November 2, 2007, a state court judge ordered the City to enforce the City's VOP. The Court's order incorporated earlier findings, from an order it issued on July 24, 2007, that acknowledged additional lapses in the City's enforcement of the VOP.(See article below.)

Additionally, an independent audit of St. Paul, issued in November 2007, found that fewer than 7 percent of $220 million worth of contracts in 2006 went to minority- and women-owned businesses. MBEs received less than 3% of contract dollars. The audit also found that the office that was responsible for processing more than half of those contracts had failed to adopt the provisions of the City's VOP and Affirmative Action in Employment ordinances, that there was a "lack of monitoring and enforcement procedures and practices" relating to VOP contracting, and that "n[o] one [on the City's staff took] responsibility for monitoring and enforcement of the VOP and AA [contracting] requirements."
I conveyed this to Sara. We are currently awaiting her statement (about accomplishing Section 3 goals/objectives through the VOP Program).

On page 248 we find:

Michelle, attached is Sara's draft response to DOJ's question about whether the City (unintentionally) complied with Section 3 through its Vendor Outreach Program.

From: Pratt, Sara K
Sent: Thursday, December 22, 2011 4:07 PM
To:_____
Subject St. Paul Issue

This is a draft. Please take a look and see what you think.

Recruitment of Women and Minority Owned Businesses As Part of Section 3 Compliance

I have been asked whether recruitment of women and minority owned business by a City, specifically that conducted through St. Paul's Vendor Outreach Program, constitutes compliance with Section 3 requirements.
On its face, the two activities are separate and analytically different…..However, notification of these types of businesses about Section 3 contracting opportunities could result in notification of Section 3 covered business concerns. FHEO would not be likely to make a finding based on technical noncompliance with such a provision…

It is clear that Ms. Pratt is making or developing policy in response to the proposed outcome of certifying the City's (unintentional) compliance through the VOP. Such a practice has the potential of setting a bad precedence (bad law). Resulting from this position statement, HUD, (Ms. Pratt), overlooking the HUD Determination of Noncompliance of 2009 against the City of St. Paul and the news reports and court decisions regarding the City's Vendor Outreach Program, HUD (Ms. Pratt) proposed the following position to exonerate the City of St. Paul:

HUD's Office of Fair Housing and Equal Opportunity has determined that the City of St. Paul is not only in compliance with the VCA, but is also in compliance with its Section 3 obligations at this time. As described in our December 20, 2001 memo, HUD does not wish to proceed with the False Claim Act case. It is possible that notification to MBEs, WBEs, and SBEs could result in compliance with Section 3 requirements, in which case the existence or non-existence of Section 3 notification procedures would essentially be the basis for technical assistance, not a finding of a violation.

The City of St. Paul is well aware of its history of disenfranchisement and divestment in its low-income and minority communities. Many of the studies were commissioned by the City as a result of community agitation. These studies/reports were provided to HUD during the negotiation of the Section 3 Voluntary Compliance Agreement in 2009/10 and were provided to DOJ in support of intervention on behalf of the false claim act lawsuit.

The City provided false or misleading information, as characterized by its use of the Hall Audit Report and 2007 MGT Disparity Study, to project itself in as favorable light as possible regarding its record of providing opportunities for its minority and low-income community. The Hall Audit and MGT Disparity report depicts lack of enforcement of the VOP and disparity in contracting for the minority and low-income community.

On page 164, the City insisted upon a revision of the terms whereby it would drop its appeal of the Magner case to the Supreme Court. Within the original deal, DOJ would decline to intervene in the Newell and Ellis false claim act cases. In the revised requested, the City requested that DOJ intervene in the Newell and Ellis false claim act lawsuits and dismiss each case in exchange for the City's dismissal of the Magner v. Gallagher petition to the Supreme Court.

The House Committee on Oversight and Government Reform Report paint a picture of how HUD and DOJ staff ignored the clear evidence of the City's fraud and deceit in order accomplish the goal of persuading the City of St. Paul to drop the Magner v. Gallagher appeal to the United States Supreme Court. Further, the report reveals the City of St. Paul's willingness to falsify information. As echoed by Chairman Jordan:

It is within this setting that I am so troubled by the quid pro quo between the Department of Justice and the City of St. Paul. In 2009 Fredrick Newell brought a whistleblower complaint alleging that the City of St. Paul, Minnesota, had fraudulently received millions in federal dollars. Career DOJ and HUD attorneys investigated his case for almost three years, and by November 2011, the United States government was poised to join the case on Mr. Newell's behalf. These career attorneys told Mr. Newell that the United States strongly supported his case and would intervene on his behalf.
Documents support this impression that the case was strong. In a memo from November 2011, the career attorneys wrote: "The City repeatedly and falsely told HUD and others it was in compliance. The City knowingly submitted false claims in order to obtain federal funds." The career attorneys also wrote: "We believe this is a particularly egregious example of false certifications given y a City that was repeatedly shown what it had to do, but repeatedly failed to do it." These attorneys recommended that the United States intervene in the case.

Disparity in St. Paul – On Pages 78 thru 120 noting a period of December 13th thru 22nd, DOJ, HUD and the City of St. Paul contrived a record of actions to support the City's position of providing opportunities for the low-income and minority community. This record flies in the face of the number of studies, audits and reports that conflicts with the posture that the City presented and DOJ and HUD supported. As noted, I presented HUD and DOJ with documentation of the disparities and HUD staff also discovered similar records but the governmental agencies were willing to over look this information to achieve the proposed agenda.

The Mind the Gap study contradicts the City's stance of an impoverished municipality while debunking the notion that the City had done a good job of providing opportunities to minorities and women. Much ado was made to support the City's position. In truth, according to the information that was presented to HUD

and DOJ, and is now provided to the Office of Inspector General, based on the treatment of the protected-class citizens of its communities, the City of St. Paul should be investigated for violations of Title VI, Disparate Impact and Section 3.

Page 89 - The City purport to trumpet itself as a leader in providing opportunities for minorities and low-income residents. This is untrue. The minority and low-income community had no representative in the meeting with HUD and DOJ and would be surprised and appalled to see the mischaracterization of the City's dismissal record to their communities.

In December 2011, HUD negotiated with the City terms for a revised Voluntary Compliance Agreement without notice or input from the complainant. The revised VCA was designed to remedy/settle the qui tam case in which HUD and DOJ had proposed to exclude the relator. Such is a violation of the laws governing the qui tam case and the Section 3 administrative resolution process.

Page 113 - HUD's position for declining the qui tam case did not address the merit of the qui tam case. Though the issue was raised by DOJ, HUD staff elected to circumvent the issue to arrive at its intended goal of dismissal of the previously supported case.

The government has made the efforts of the relator into a bargaining chip to gain what is considered to be in the best interest of the government with no consideration to the relator.

Page 109 - HUD has elected to value the VCA, an administrative remedy, as a term of settlement for the false claim act lawsuit in contradiction to the terms spelled out in the VCA.

The practice, policies and procedures of HUD and DOJ should be scrutinized. Below is an excerpt from the attached Title VI Standard of Conducted.

HUD Staff Discriminatory Practices
HUD staff is in violation of the Title VI Civil Rights Standard of Conduct (CFR 2005-title 24-vol. 1-part 10) which states…Employees of the Department of Housing and Urban Development (Department) are subject to the executive branch-wide standards of ethical conduct at 5 CFR part 2635, the Department's regulation at 5 CFR part 7501 which supplements the executive branch-wide standards, and the executive branch-wide financial disclosure regulation at 5 CFR part 2634.

The purpose of this part 1 is to effectuate the provisions of title vi of the Civil Rights Act of 1964 hereafter referred to as the Act) to the end that no person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Housing and Urban Development.

DOJ and HUD manipulated/co-opted the Whistleblower's Counsel

The congressional documents paint a picture of HUD and DOJ staff working with advocacy groups to persuade the City of St. Paul to drop the Magner v. Gallagher appeal to the United States Supreme Court. E-mails reveal that Michael Allen and John Relman, co-counsel for the relator in United States ex rel. Newell v. City of St. Paul ("Newell"), worked with and/or in full knowledge of HUD and DOJ as advocates to incentivize the City and opposing party to drop the Magner case. As DOJ and HUD worked to leverage the qui tam case "Newell", DOJ continued to use Mr. Relman and Mr. Allen while withholding knowledge of the government action of leveraging from Newell's co-counsel and thus from Newell.
DOJ and HUD leveraged the false claim act lawsuit in a global settlement and failed to include Newell as a party in the settlement.

The e-mails between representatives of HUD and DOJ and the representing attorneys for the City of St. Paul raises questions of professional ethics of which I request the Office of Inspector General investigate.

The e-mails also raise concerns regarding the voluntary and/or involuntary participation of Michael Allen and John Relman in the Quid Pro Quo due to the following facts:

Michael Allen, an attorney at Relman, Dane & Colfax, PLLC, was hire as Newell's co-counsel in the matter of United States ex rel. Newell v. City of St. Paul as of March 31, 2011. Mr. Allen was brought on as co-counsel based on his experience in false claim act lawsuits and his working relationship with HUD and Assistant Deputy Secretary Sara Pratt, in particular. Mr. Allen was tasked with maintaining a level of communicate between the relator and HUD.
HUD reversed its support for the FCA as early as December 20, 2011 and DOJ declined to intervene in the false claim act lawsuit, United States ex rel. Newell v. City of St. Paul, on February 9, 2012. Michael Allen continued as co-counsel until after February 9, 2012. DOJ staff was noted making meeting/things to do notes, warning against informing John Relman of certain particulars of the Quid Pro Quo as early as November 28, 2011. Michael Allen reportedly met with City Attorneys and attorneys for the plaintiff well into December 2011.

The e-mails give indication that Mr. Michael Allen and Mr. John Relman worked on behalf of and/or in full knowledge of HUD and DOJ to broker a deal that would result in the removal of the Magner v. Gallagher Case from the United Supreme Court docket. The e-mails acknowledge the following:

- DOJ and HUD were aware of the efforts and challenges of the gentlemen from Relman, Dane & Colfax, PLLC.
- Based on the conversation between Thomas Fraser (attorney representative the City) and Thomas Perez of DOJ, the City of St. Paul was aware of DOJ and HUD's interest in the actions of Relman, Dane & Colfax, PLLC.

Based on qui tam court filings of March 31, 2011, HUD, DOJ and the City of St. Paul were aware of Relman, Dane & Colfax, PLLC representation of Newell as co-counsel.

According to the e-mail from Sara Pratt to Thomas E, dated November 13, 2011, Michael Allen and John Relman were working with HUD and DOJ to induce the appellees and their counsel to drop the appeal of Magner v. Gallagher Case to the Supreme Court. As noted, it was the role of Michael and John to determine what "blandishments will be needed". Further, HUD (Ms. Pratt) was aware of the blandishments necessary to induce at least one of the attorneys. (Page 27)
From: Pratt, Sara K
Sent Sunday, November 13, 2011 02:58PM
To: Perez, Thomas E (CRT)
Subject: Magner

Michael Allen and John Relman are going to meet with the appellees counsel a week from tomorrow (next Monday) to find out what blandishments will be needed. For one of the attorneys, passing the hat may be necessary- there are still some fees and damages questions. There are other efforts going on by St. Paul players (Myron Orfield, Jay Wilkinson) with the city players and lawyers.

According to the e-mail from November 22, 2011, Thomas Fraser acknowledges to Perez that his firm has only one case in which it represents the City of St. Paul. As such, his partner, David Lillehaug, was working on the federal Section 3 FCA case. (Page 28)
"As I mentioned when we first talked, we have one matter in which we represent the city of St. Paul. My partner, David Lillehaug, represents the City of St. Paul in that matter, which potentially involves the federal government. He is also somewhat a political mentor to the City Attorney. He learned of my involvement in this matter via my call to my friend, the City's Head of the Civil Division, who I am sure mentioned it to the City Attorney. (I mentioned all of this to John and Michael yesterday.) He asked me what I knew about this and I told him of my limited role and that John and Michael were trying to work out a solution.
He (David) has talked to the City Attorney after John and Michael's meeting with her. David would like to talk to you about this other potential federal issue, which (I think) he thinks might bear on the City's handling of the case that Michael and John are working with the City on. …

In the same conversation, Mr. Fraser acknowledges discussing/mentioning "all of this to John and Michael yesterday". Mr. Fraser goes on to say about David Lillehaug*…" He asked me what I knew about this and I told him of my limited role and that John and Michael were trying to work out a resolution. He (David) has talked with City Attorney after John and Michael's meeting with her. David would like to talk to you about this other potential federal issue, which (I think) he thinks might bear on the City's handling of the case that Michael and John are working with the City on".*

The attorney representing the City in the false claim act case, David Lillehaug, draws direct connection between John and Michael's involvement in brokering a deal on Magner and the case that each of them are a party to, namely United States ex rel. Newell v. City of St. Paul. Mr. Lillehaug follows up by shadowing the meeting between John and Michael and the City Attorney and then seeks to discuss this connection with Perez.

It is apparent that DOJ, HUD and the City are aware of the connection drawn that resulted in the leveraging of United States ex rel. Newell v. City of St. Paul. HUD and DOJ leveraged the advocacy of Newell's co-counsel without including the relator in the resulting settlement.

What is unclear is whether Relman, Dane & Colfax, PLLC was aware of DOJ, HUD and the City's actions of leveraging of its case, United States ex rel. Newell v. City of St. Paul, while, at the same time, the government availed itself of the advocacy of Relman, Dane & Colfax, PLLC.

Along with the e-mails presented herein, the competing interest of the firm of Relman, Dane & Colfax, PLLC of advocacy for disparate impact with its participation in a deal that resulted in the leveraging of the Section 3 False Claim Act Lawsuit raises grave concerns. Further, the firm of Relman, Dane & Colfax, PLLC has ancillary interest in the protection of the disparate impact theory as it pertains to a number of other cases of which the firm has a legal interest.

Irregardless, Relman, Dane & Colfax, PLLC and therefrom, the Newell FCA attorneys were placed in a conflicted/compromised position by the on-going actions of leveraging of the Section 3 false claim act lawsuit by DOJ, HUD and the City of St. Paul.

According to a handwritten note of Greg Friel, dated 11/28/11, page 33-introduced into the congressional report, HUD was willing to leverage the Newell FCA case in exchange for the quid pro quo. Within the text of the notes under "*need to happen"*, is a statement, "*cannot tell John Relman about other source of leverage*".

The handwritten note presents certain facts:

- Greg Friel, as an employee of DOJ who "is handling the Gallagher case, knows or has been informed about John Relman's involvement.
- Greg knows or has been informed about the leveraged case(s).
- Greg knows and/or is made aware of the need to withhold the knowledge of the "*other source of leverage*" from John Relman.
- The note also infers a level of communication between John Relman and DOJ staff.

Since the note refers to the "*other source of leverage*", it is plausible that Relman knows about one of the sources of leverage.
If the note states/implies that John Relman should not be told about Newell's case as leverage, DOJ is knowingly placing Relman and Michael in a conflict situation and has elected to withhold this knowledge.
If the note is referring to the Ellis case due to it being under seal, it is plausible that Relman knows about the leveraging of Newell.

Irregardless of the questions of John Relman and Michael Allen's knowledge, it is clear that DOJ, now well into the development of the Quid Pro Quo, is aware of the conflicting position and therefore DOJ has concluded it important to withhold that knowledge from "Relman".
John Relman and Michael Allen were a party to the false Claim act case, United States ex rel. Newell v. City of St. Paul, and they were used directly and/or indirectly by DOJ and HUD to prompt the City to

withdraw the Magner Case. United States ex rel. Newell v. City of St. Paul was used as leverage by DOJ and HUD regarding the Magner Case.

According to a comment from the congressional investigators, additional information was obtained from the City that indicated that John and Michael were quite helpful. I believe that additional discovery is warranted.

The efforts of John Relman and Michael Allen was instrumental in the formulation of the plan to leverage Newell. DOJ was informed of the nexus drawn by David Lillehaug regarding the involvement of Relman, Dane & Colfax, PLLC. as co-counsel for Newell. DOJ determined it important not to inform Mr. Relman of the concurrent activities designed to accomplish the same goal of removing the Magner case from the U.S. Supreme Court docket. DOJ and HUD put Newell's co-counsel, and thus Newell, in a conflicted position.

(Page 47) - In a December 6, 2011 email from Michael Hertz, questions are raised as to the relationship between the plaintiffs of the three cases involved in the Quid Pro Quo. Mr. Hertz further questioned the relationship between the plaintiff's law firms and/or lawyers. In light of the present matter, the questioning was appropriate based on the dual role of Relman, Dane & Colfax, PLLC as co-counsel in the qui tam case and advocate regarding the Magner case. Both DOJ and HUD had a clear view of the parties and potential conflict of interest involved in the Quid Pro Quo.

It is essential that the Office of Inspector General investigate the matter of conflict of interest that may extend beyond the scope of the congressional inquiry.

DOJ and HUD's Illegal and/or Inappropriate Actions in the Quid Pro Quo

According to David Lillehaug, representing the City of St. Paul, HUD and DOJ promised to "provide material to the City in support of their motion to dismiss on original source grounds". Per the e-mails on pages 205 thru 211, the basis of the allegation is substantiated.

Page 205
From: _____
Sent: Tuesday, February 7, 2012, 7:17PM
To: Branda, Joyce (CIV) <_____>Line Attorney 1
___<Line Attorney 1
Subject: Follow Up With L.A.3

I did not talk to L.A.3 but we traded messages. I will talk with him tomorrow. Based on his message, the two items Lillehaug mentioned he thought were also to be included in the deal that is not a deal are:

1) *HUD will provide material to the City in support of their motion to dismiss on original source grounds;*
2) *Civil rights will file an Amicus brief in "the other case." I'm not sure what the "other " case is.*

If this is Lillehaug fishing, I guess that is not a surprise. If these were part of Tom Perez's discussion with the City I am disappointed we were not told.

It seems odd HUD would consider such a role, if in fact it is.

Page 206
From: Branda, Joyce (CIV)
Sent: Wednesday, February 8, 2012 9:31 AM
To: Line Attorney 3
Cc: Brooker, Greg (USAMN)
Subject: st. paul

Line Attorney 3 Did you hear anything from Lillehaug regarding the two other conditions he said HUD had agreed to?

Page 207

From: Branda, Joyce (CIV)

Sent: Wednesday, February 8 9:36 AM
To: West, Tony (CIV) <RC-1>; Martinez, Brian (CIV)

Subject: St. Paul development

Tony, Brian:

FYI, I spoke to L.A. 3 last night when we could not reach L.A.2. Lillehaug has called the AUSA about the 2 items below. I told L.A. 3 to call Lillehaug back and tell him we were aware of no such conditions and we were not making any promises; all we were doing was processing the declination in Newell at this point. We have not contacted Tom Perez about this.

From: _____
Sent: Tuesday, February 7, 2012, 7:17PM
To: Branda, Joyce (CIV) <_____>Line Attorney 1
<Line Attorney 1
Subject: Follow Up With L.A.3

I did not talk to L.A.3 but we traded messages. I will talk with him tomorrow. Based on his message, the two items Lillehaug mentioned he thought were also to be included in the deal that is not a deal are:

3) *HUD will provide material to the City in support of their motion to dismiss on original source grounds;*
4) *Civil rights will file an Amicus brief in "the other case." I'm not sure what the "other " case is.*

If this is Lillehaug fishing, I guess that is not a surprise. If these were part of Tom Perez's discussion with the City I am disappointed we were not told.

It seems odd HUD would consider such a role, if in fact it is.

According to allegations from the Committee on Oversight and Government Reform, Sara Pratt's, HUD's Deputy Assistant Secretary for Enforcement and Programs, role in the leveraging of my false claim act lawsuit included assembling information to assist the City with its motion to dismiss the case in District Court. Per the allegations, Assistant Attorney General Thomas Perez approved the authorization of this assistance. Further, the committee raised allegations that DOJ (Mr. Thomas Perez) promised the City that HUD would be helpful in the event that my case continued after DOJ declined to intervene. As employees of the government on whose behalf the qui tam case was filed, these and other actions may constitute a violation of Title VI Civil Rights Standard of Conduct which states:

HUD Staff Discriminatory Practices
HUD staff is in violation of the Title VI Civil Rights Standard of Conduct (CFR 2005-title 24-vol. 1-part 10) which states…Employees of the Department of Housing and Urban Development (Department) are subject to the executive branch-wide standards of ethical conduct at 5 CFR part 2635, the Department's regulation at 5 CFR part 7501 which supplements the executive branch-wide standards, and the executive branch-wide financial disclosure regulation at 5 CFR part 2634.

The purpose of this part 1 is to effectuate the provisions of title vi of the Civil Rights Act of 1964 hereafter referred to as the Act) to the end that no person in the United States shall, on the ground of race, color, or

national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Housing and Urban Development.

As attorneys and officers of the Court, Mr. Perez and Ms. Pratt may have breached their duty of loyalty to the United States by aiding St. Paul in defending claims brought on behalf of the U.S.

Ms. Pratt/HUD developed Section 3 policy in response to the proposed outcome of certifying the City's (unintentionally) compliance through the VOP. Such a policy has the potential of setting a bad precedence (bad law). HUD, Ms. Pratt, overlooked the HUD Determination of Noncompliance of 2009, the Hall Audit report, the MGT Disparity Study, news reports and court decisions regarding the City's Vendor Outreach Program and proposed an agency position to exonerate the City of St. Paul.

HUD, through the actions of Sara Pratt, showed itself to be willing to over look evidence of the City's mis-representation of itself and its record of failing to provide opportunities for the minority community (a protected class) and low-income community in order to accomplish its goal of securing withdrawal of the Magner v. Gallagher Case from the Supreme Court. The evidence provided to HUD and DOJ by me, a protected class citizen and subsequently by the City of St. Paul, constituted a violation of Title VI Civil Rights Act against a protected class. HUD and DOJ were by law required to investigate this violation by a recipient of federal funds.

Based on the position of HUD staff on December 22, 2011, noted on page 118, HUD has created ambiguity by presenting the following position – *"It is possible that notification to MBEs, WBEs, and SBEs could result in compliance with Section 3 requirements, in which case the existence or non-existence of Section 3 notification procedures would essentially be the basis for technical assistance not a finding of a violation."* By the comment, notifications in question may in fact net results of reaching the Section 3 community. Section 3 is race and gender neutral and true compliance entails identifying the Section 3 community. The comment appears to cover the intended goals of the department rather than enforcing the Section 3 regulations.

The position of HUD on page 100 stating, *" HUD has determined that intervention is not necessary because St. Paul's programmatic non-compliance has been corrected through a Voluntary Compliance Agreement with HUD"* is not sufficient grounds for electing not to intervene in the FCA. The False Claim Act lawsuit is prosecuted based on past actions including false certification and not contingent on future efforts of compliance. Mike Hertz of the Justice department also questioned this position.

HUD and DOJ malign me as "Disgruntled" and my complaints as "Baseless"

According to the memo from HUD to Justice designed to support the reversal position not to intervene in the FCA page 113, HUD labels me as disgruntled, thus maligning the whistleblower. "It says, there is a VCA, Newell is disgruntled, and HUD doesn't want to spend further resources".

Page 109 (footnote) – *HUD also notes that it is wary of supporting the relator, Fredrick Newell, who is a disgruntled bidder with a history of propounding baseless lawsuits and administrative complaints against St. Paul and others, for. Inter alia, violating Section 3. These matters include an administrative complaint concerning a contract upon which Newell and his companies did not even bid, and that, therefore, caused them no harm. They also include repeated lawsuits against the City, brought in spite of well-established law providing Mr. Newell and his companies neither standing nor a private right of action under Section 3. Given this, HUD regards the referenced False Claim Act suit as little more than a means for Mr. Newell, after years of unsuccessful litigation, to finally extract monies from a cash starved City that has already remedied the noncompliance at issue.*

My interest in establishing a Section 3 program stemmed from the need to provide opportunities for my company(s) and the low-income individuals in my community. Prior to starting the company, I was often

unemployed or under-employed as has been the condition for black men in the Twin Cities for several decades.
I hired low-income individuals and individuals that had been incarcerated in an attempt to level the playing field. In 2001, I provided a letter to the Secretary of HUD, Mel Martinez, noting the conditions faced by the minority and low-income community and seeking assistance in creating Section 3 opportunities (See exhibit #24). In that year, I trained over fifty (50) low-income individuals utilizing HUD and EPA training grants in expectation that I would be able to capitalize on the Section 3 program to provide them with jobs and our companies with opportunities. Documentation of the training and course attendees was provided to HUD and DOJ. Not only did I encourage the City of St. Paul, the St. Paul PHA and the St. Paul Ramsey County Public Health Department (City) to implement a Section 3 program, I offered to help them start a program. I provided the City with information on Section 3 and introduce the City employees to seminars on the Section 3 requirements and provided the City with models of working programs. HUD and DOJ were provided with a comprehensive record of my efforts.

As HUD found merit in my complaint(s) I requested HUD to return to the Section 3 Community, the lost opportunities suffered by the low-income community as a form of restitution. I provided HUD with information on the needs of the low- income community as had been documented by studies and reports. I met with community leaders and gather input into programmatic systems that needed to be implemented to help the low-income community establish self-sufficiency. As a road map for a voluntary compliance agreement, I proposed that HUD follow the precedent setting Long Beach Rainbow Harbor Section 3 Voluntary Compliance Agreement.
I gathered community support around the issue of the City's noncompliance and the potential opportunities to be garnered for the low-income community. I enlisted national support from organizations such as the Gamaliel Foundation, Policy Link, the National Housing Law Project, the Housing Justice Network and others. During the VCA process, I brought together the local Gamaliel Foundation chapter, called Isaiah, and the St. Paul Black Ministerial Alliance to meet with the Mayor of St. Paul to discuss the need for restitution and to request participation in the VCA process. The group insisted that the meeting not be misconstrued as the community having participation but rather as a request to gain access to participate. The City elected to characterize the meeting as community input before the City Council and solicited no additional input from the community. (See e-mails #4)
From 2005 to present, I have worked with many of the national organizations listed above and other Section 3 advocates along with the staff of Congresswoman Nydia` Velazquez and the HUD Section 3 office staff to draft revisions to the Section 3 statute and to the Section 3 regulations. In 2010, I was invited by FHEO Assistant Secretary Trasvina to participate in a Section 3 Listening Forum in Washington, DC. (See exhibit #6 Newell Doc Page 59)

In 2008, I, and representatives from the Gamaliel Foundation, met with Rafiq Munir, Senior Analyst for the Section 3 Program, in Washington, DC to discuss the Section 3 program and complaint process.
In 2009, Tim Brausen of the Gamaliel Foundation and I met with Section 3 Director Gilliam to discuss the upcoming VCA process. I petitioned for a VCA that provided restitution based on the Long Beach Section 3 VCA model. Ms. Gilliam insisted that HUD would not consider restitution but would work to provide capacity building for the Section 3 community. In 2010, as a follow-up to my appeal of the signed VCA between HUD and the City of St. Paul, I met with Jason Chang of the HUD Office of General Council to discuss HUD position of providing restitution during a resolution process. According to Mr. Chang, HUD does have the ability and discretion to seek restitution. (See e-mail #5)
Between 2009-2011, I have met with AS of FHEO John Trasvina and Section 3 Director Staci Gilliam three times in an appeal for opportunities for the low-income community for St. Paul. A follow-up letter memorialized each of these meetings. I have met with Region V FHEO Director Maurice McGough and Minneapolis FHEO Director Jaime Pedraza on a number of occasions to review the Section 3 complaints and appeals against the City and to petition for greater opportunities.

HUD and the Department of Justice are well aware of the efforts that I have put into securing Section 3 opportunities and the challenges that I have faced during the past five (5) years. During and after the VCA process, I never stopped working to secure the opportunities proposed by the Section 3 program and promised by HUD.

In an e-mail from my attorney regarding a telephone conversation with Chad Bloomenfield of the Minnesota U.S. Attorney office, I was requested to cease from contacting HUD during the FCA/VCA process. During this time, I was seeking information on technical assistance grants that would be instrumental in educating the Section 3 community and community advocacy groups on the potential of the Section 3 program. See excerpt below:

> Fredrick, I received a telephone call from Chad today and
> he has asked that you no longer seek to contact or meet
> with HUD while the negotiation process is underway. Also,
> I think it is best if you no longer speak with the City
> reps. Either as it has become clear they are simply using
> any further dialogue with you to obtain "free"
> information. I think the City is going to fight the
> lawsuit and the VCA and I recommend we respond
> accordingly. I understand this is not what you wish to
> hear at this time, but the reality is that the community
> is not going to have a voice that is heard by the City
> until and unless we can prevail on the VCA/False Claim
> first. Tom
>
>
> Thomas F. DeVincke
> Bonner & Borhart LLP
> 1950 US Bank Plaza
> 220 South Sixth Street
> Minneapolis, Minnesota 55402
> Ph: (612) 313-0735
> Fax: (612) 455-2055

In an effort to justify nonintervention in the false claim act case, HUD and DOJ have elected to malign me and overlook the mounds of evidence that I provided and efforts that I had exuded to accomplish Section 3 in St. Paul. Further, HUD and DOJ acknowledged the fact that my lack of satisfaction with the complaint resolutions was not unfounded. HUD blamed the inadequacies of the complaint resolution on the lack of strong Section 3 regulations. In fact, HUD and DOJ often encouraged me to look forward to the ultimate resolution to be accomplished through settlement of the false claim act lawsuit.

The record of HUD and DOJ actions and their inefficiency throughout the complaint and false claim act lawsuit process have evoked a number of emotions in me, of which disgruntlement may be included. Despite my personal feeling, I have patiently and cooperatively worked with the two agencies, pressing for the expressed goal of providing Section 3 opportunities for the low-income community. I have been granted audience with officials of HUD and the Department of Justice. I have even been granted audience before the United States Congress and have without ceasing, pressed for the opportunities that such audience potentially provided. The characterization of being disgruntled is unfair and fails to present all facts in evidence.

HUD and DOJ's action of labeling me as disgruntled are retaliatory and a response to the need to validate its decision to decline intervention in my false claim act lawsuit.
HUD and DOJ's action of labeling me as disgruntled have the potential of poisoning my future endeavor as such labeling by two powerful branches of government have already prejudiced my peers against me. If this position goes unchallenged and uncorrected, my efforts to secure Section 3 opportunities on a local and national level may be severely hampered.

HUD's retaliatory position persist until this day as it has failed to officially acknowledge or investigate standing allegations of Section 3 non-compliance and evidence of retaliation against me by the City of St. Paul. This complaint was filed in June of 2012.

Treatment of the Whistleblower

From the outset of the Complaint process, HUD regulation required an administrative process designed to ensure a just resolution for the complainant.

Rather:

- HUD failed to operate by the regulations governing negotiation of a voluntary compliance agreement.
- HUD imposed resolutions during the complaint process that failed to meet the standard of a just and fair resolution of my complaints.
- HUD failed to operate by the regulations governing the appeal of imposed resolutions.
- HUD failed to timely investigate Section 3 complaints.
- HUD failed to provide proper resolution of the individual Section 3 complaints but rather proposed to seek a global resolution contingent on a recovery from the False Claim Act Lawsuit.
- HUD has elected to disregard existing complaints against the City of St. Paul.
- DOJ and HUD maligned the whistleblower (retaliation) in order to accomplish the Quid Pro Quo
- Through the cooperation/manipulation of my counsel, DOJ and HUD clandestinely made the Whistleblower an instrument (fulcrum) in the leveraging of the Quid Pro Quo.

"Most alarming about this Quid Quo Pro is the precedent that this case sets for future whistleblowers who bring claims of waste, fraud and abuse, only to be thrown under the bus for political purposes," Jordan said.

Overreaching Authority

In regards to the Quid Pro Quo in the case United States ex rel. Newell v. City of St. Paul ("Newell") the OIG should investigate whether any officer of the court participated in the providing of material assistance to the City of St. Paul in conflict with professional ethics.

According to my understanding, Sara Pratt and Thomas Perez are attorneys. As such they may have breached their duty of loyalty to the United States by aiding St. Paul in defending claims brought on behalf of the U.S.

In as much as the false claim act case was under seal through February 9, 2009, the only modification for which DOJ requested modification of the seal was for the U.S. to discuss settlement with the defendant. To the extent that there were discussions of other alternatives and to the extent that the discussions were about whether the U.S. would defend my claim, such discussion violates the seal and as such a federal court order.

As regarding the relator/whistleblower, Congress has clearly expressed its intent that the United States government works with and protects whistleblowers. This matter raises great concerns of violation of the Whistleblower Protection Act. Such concerns include but are not limited to:

- DOJ's policies with respect to whistleblower relations.
- Properly apprising whistleblowers of on-going proceedings.
- Develop practice and procedures to prevent prejudicing the whistleblowers in instances where the qui tam case is declined

The Consolidation of Magner and "Newell"

The Magner v. Gallagher case was petitioned before the U.S. Supreme Court based on violation of the Fair Housing Act and the disparate impact theory. The disparate impact regulations have been promulgated under the Fair Housing Act and the Section 3 regulations were promulgated under the HUD Act. The Newell false claim act case and the Magner Case are related in the protections and opportunities sought for the residents of St. Paul. Otherwise the only perceived nexus between Magner and "Newell" is the Quid Pro Quo actions of HUD and the Department of Justice. A common factor inter-relating the Newell false claim act case and the Magner Case was the government staff assigned to manage the case matters. Within the HUD office, Ms. Sara Pratt, Deputy Assistant Secretary for Enforcement and Programs, was the

managing staff on both the Section 3 complaints and the disparate impact regulations. Based on the outcome of the Quid Pro Quo, Ms. Pratt should have recused herself from one or both subject matters. During the prosecution of the Quid Pro Quo, there was an outstanding Section 3 complaint/appeal against the Voluntary Compliance Agreement of 2010 and thus against the City of St. Paul. In 2010, in responded to the appeal of the VCA, AS Trasvina forwarded a letter wherein he [only] acknowledged my concerns. HUD made no official acknowledgement of the appeal or performed investigation into the merits of the appeal. HUD has to this date failed to address the appeal or a subsequent complaint filed in June 2012. Further, according to the congressional records, Sara Pratt has gone on the record to pronounce the City in compliance with the Section 3 regulations and with the VCA of 2010. In an alternative settlement offer of the FCA, HUD considered amending the VCA and providing the City with credit/value from the VCA This provision is counter to the terms of the 2010 VCA.

HUD's delegation of authority that took place during or in preparation for the quid pro quo is interesting. Therein Sara Pratt was granted a lot of authority that pertained to HUD quid pro quo actions.
<https://www.federalregister.gov/articles/2011/11/29
>https://www.federalregister.gov/articles/2011/11/29

The authorities are listed in a number of notices approved on 11/16/11. These authorities superceded any previous redelegated authorities. Sara was granted authority over our Section 3 complaint but it does not grant her authority to resolve the complaints. To date, there are five outstanding complaints and/or appeals before the Section 3 office that have not been addressed. The most aged complaint is the PHA complaint from 2009.
If Ms. Pratt did cut a deal with the City which affects my complaint she has "in effect' resolved my complaints/appeals. Below are a number of notices pulled from the federal register per the link - <https://www.federalregister.gov/articles/2011/11/29> https://www.federalregister.gov/articles/2011/11/29

1. On or around November 16, 2011, the Secretary issued a notice that consolidated all authority for the AS to address the issues around the quid pro quo. In the Federal notice below, 11/29/11, AS Trasvina was granted authority over civil right statues, including Fair Housing Act, Title VI; and a number of other statutes including Mortgage letters, and the authority to determine if a participant in a HUD program is in compliance with the civil rights related program requirements. (for questions on this notice/action, Sara Pratt is the contact) The notice supposedly provided no new authority but consolidated the authority to perform the necessary roles in one notice.
<https://www.federalregister.gov/articles/2011/11/29/2011-30752/consolidated-delegation-of-authority-for-the-office-of-fair-housing-and-equal-opportunity>https://www.federalregister.gov/articles/2011/11/29/2011-30752/consolidated-delegation-of-authority-for-the-office-of-fair-housing-and-equal-opportunity

2. 11/16/11- HUD/Asst. Secretary Trasvina delegated authority for Section 3 complaint processing to Sara Pratt.
The redelegation does not include the authority to issue or waive authority or to impose resolutions or sanctions in Section 3 complaint investigations.
<https://www.federalregister.gov/articles/2011/11/29/2011-30766/redelegation-of-authority-under-section-3-of-the-housing-and-urban-development-act-of-1968>https://www.federalregister.gov/articles/2011/11/29/2011-30766/redelegation-of-authority-under-section-3-of-the-housing-and-urban-development-act-of-1968

3. 11/16/11 - Sara was granted authority to enforce the FHA and authority for FHA complaint processing.
<https://www.federalregister.gov/articles/2011/11/29/2011-30769/redelegation-of-fair-housing-act-complaint-processing-authority>https://www.federalregister.gov/articles/2011/11/29/2011-30769/redelegation-of-fair-housing-act-complaint-processing-authority

According to the federal register Notice of Order of Succession (link below), the AS, at the same time, redelegated the authority for the same individuals to act on his behalf in regards to any duties that he is unable or unavailable to perform...

<https://www.federalregister.gov/articles/2011/11/29/2011-30754/order-of-succession-for-the-office-of-fair-housing-and-equal-opportunity>https://www.federalregister.gov/articles/2011/11/29/2011-30754/order-of-succession-for-the-office-of-fair-housing-and-equal-opportunity

Ihttps://www.federalregister.gov/articles/2011/11/29/2011-30761/redelegation-of-fair-housing-assistance-program-authority
<https://www.federalregister.gov/articles/2011/11/29/2011-30763/redelegation-of-authority-under-section-561-of-the-housing-and-community-development-act-of-1987>https://www.federalregister.gov/articles/2011/11/29/2011-30763/redelegation-of-authority-under-section-561-of-the-housing-and-community-development-act-of-1987
<https://www.federalregister.gov/articles/2011/11/29/2011-30768/redelegation-of-administrative-authority-under-section-504-of-the-rehabilitation-act-of-1973>https://www.federalregister.gov/articles/2011/11/29/2011-30768/redelegation-of-administrative-authority-under-section-504-of-the-rehabilitation-act-of-1973

Loss to Fredrick Newell the complainant and relator

According to the Section 3 regulations, 24 CFR 135.76(f)(2), HUD was required to provide a just resolution to the Section 3 complaints/monitoring review where HUD found there to be a primae facia case of non-compliance.
As a just resolution for the lack of opportunities and restitution from the VCA and the other Section 3 complaint resolution processes, I was advised by HUD that my ultimate recovery would be realized through the false claim act lawsuit.

During the initial complaint interview process, I was told by FHEO Regional Director Maurice McGough that I would receive restitution and my companies would be made whole for the losses incurred by my company(s) due to the City's lack of compliance. Mr. McGough told me that HUD would make sure that my companies received work but that "I would probably have to change the name of my companies".

During the resolution process, I was advised by Mr. McGough to await certain benchmarks before approaching the City of St. Paul and St. Paul PHA for work for my companies. Excerpts from a set of e-mails from Mr. McGough is below:

> From: McGough, Maurice J
>
[http://ml3.myemail.com/webmail/webmail.cgi?cmd=msg_new&h_from=Maurice.J.McGough@hud.gov&utoken=nasi!40pop.dnvr.qwest.net!3A110_!7E2-f8b3343f3c5269a60de100_0] Sent: Saturday, June
> 20, 2009 4:43 PM To: Thomas DeVincke
> Cc: Pedraza, Jaime
> Subject: RE: Update
>
>
>
> Tom - the attached letter was mailed earlier last week.
> Mr. Newell was not cc'ed (my error). You can obtain a
> signed copy from Jamie.
>
>
>
> As per the letter, the PHA is to submit its review
> criteria concerning Mr. Newell to HUD for prior review.
> Perhaps any outreach by Mr. Newell to the PHA should wait
> until that process is complete.
>
>

>
> I've had a couple of conversations with Chad Blumenfield a
> few weeks ago. At least at the time he seemed enthusiastic
> about your FCA complaint. Has there been any further
> developments. Please let me know. Thanks. - Maury
>
>
>
>
>
> From: McGough, Maurice J
> Sent: Monday, June 01, 2009 8:03 PM
> To: 'Thomas DeVincke'
> Subject: RE: Update
>
>
>
> Tom - ask him to wait until we issue our letter. It should
> go out in the next couple of weeks and Mr. Newell will be
> cc'ed. - maury
>
>
>
> From: Thomas DeVincke
[http://ml3.myemail.com/webmail/webmail.cgi?cmd=msg_new&h_from=tfd@bdbllp.com&utoken=nasi!40pop.dnvr.qwest.net!3A110_!7E2-f8b3343f3c5269a60de100_0]
> Sent: Monday, June 01, 2009 6:53 PM
> To: McGough, Maurice J
> Subject: Update
> Mr. McGough: I had a question from Fredrick today about
> the HRA matter and he wanted to know if he should reach
> out to HRA and make contact with them about opportunities
> for Fredrick and his businesses or if HRA will be
> contacting him and, if so - when that might happen. Any
> thoughts on that matter would be appreciated. Thanks, Tom
>
> Thomas F. DeVincke, Esq.
>
> Bonner & Borhart, LLP

As noted therein, I was requested to wait until HUD issued its letter of finding regarding the City of St. Paul. After HUD issued the letter of determination against the City of St. Paul, all of my communications with the City employees were screened through the City Attorney and I received no opportunities as purported by Mr. McGough.

HUD initially proposed to include me in the VCA negotiation process but subsequently elected to remove me from the negotiations. At this point, HUD suggested that my complaints would not be resolved in the VCA.

The Voluntary Compliance Agreement does not resolve Mr. Newell's pending Section 3 complaints. Rather, these complaints will be resolved by way of either informal resolution between parties or imposed resolution by the Assistant Secretary for Fair Housing and Equal Opportunity in accordance with 24 CFR 135.76.

On February 2, 2010, HUD entered into a voluntary compliance agreement (VCA) between the United States Department of Housing and Urban Development and the City of St. Paul. This was the final VCA and therein was the following statements…

this VCA will and hereby does fully and finally resolve Mr. Newell's pending Section 3 administrative complaints against the City and the HRA without any further action. This VCA does not release the City from any claims, damages, penalties, issues, assessments, disputes or demands arising under the False Claim Act, 31 U.S.C. section 3729 to 3733….Additionally, the payments made in connection with the VCA cannot be used to offset or reduce any claims, damages arising under the False Claim Act or any other statutory or common law claims.

This VCA imposed a resolution on me with respect to my two consolidated Section 3 administrative complaints against the City of St. Paul. The VCA did not provide a just and fair resolution and I received no restitution. HUD convened no other negotiation proceeding and made no request for any terms for negotiation. Rather HUD's constant assertion from this point forward was that I would be made whole through its support of the Section 3 False Claim Act lawsuit.

I advised Assistant Secretary Trasvina, Section 3 Director Staci Gilliam and FHEO Regional Director Maurice McGough of these matters to no avail. In 2012, after collecting data regarding retaliation by the City of St. Paul and further noncompliance with the VCA and Section 3 regulations, I filed an additional set of complaints and supplement to the 2010 VCA appeal. I have received no official response to the complaint.
In 2009, I was requested to await the St. Paul PHA's submittal of the criteria whereby the PHA would evaluate my company(s) prior to soliciting opportunities from the PHA. I appealed the HUD decision regarding the PHA complaint including PHA erecting special criteria to evaluate my company(s). HUD did not respond to my appeal. In August 2010, I applied for Section 3 certification with PHA and was denied. I filed a retaliation complaint against the PHA and HUD determined that the PHA was guilty of retaliation. HUD provided no restitution resulting from the retaliation.

In regarding to the St. Paul Ramsey County Department of Public Health (SPRCDPH), HUD issued a finding that the SPRCDPH was not liable for Section 3 requirements due to it being a sub-grantee. HUD's interpretation of the regulations was wrong and is presently under appeal. HUD delayed investigating the retaliation complaint against the SPRCDPH for over two years and then requested that I resubmit my complaint. HUD issued a finding that it found no connection between my filing the initial Section 3 complaint and the decision to cancel my contract.

To date, the outstanding complaints before HUD are: appeals of the determination of two initial Section 3 complaints (PHA and SPRCDPH); an appeal of the 2010 VCA with the City of St. Paul; an appeal of the resolution of the PHA retaliation complaint; and the Section 3 complaint of 2012 including claim of retaliation. From the two complaints wherein HUD has ruled in my favor, HUD has provided no recovery or restitution.

HUD failed to provide a fair and just resolution regarding the Section 3 complaints where it found the allegations presented by me to be correct.

As a direct and intended consequence to the Quid Pro Quo, the Federal District Court dismissed the Section 3 false claim act lawsuit, United States ex rel. Newell V. City of St. Paul ("Newell").
DOJ and HUD leveraged my qui tam case in a global settlement to protect the disparate impact theory. As a result of the actions between HUD, DOJ and the City of St. Paul, the US government was able to hold five banks accountable under the disparate impact theory for foreclosure fraud. The US government received $25B in the massive foreclosure fraud settlement from five banks, namely Well Fargo and Co., Bank of America Corp., J.P. Morgan Chase & Co., Citigroup Inc. and Ally Financial Inc. (See exhibit #15)

HUD and DOJ negotiated, what DOJ has publicly referred to as a "global resolution", i.e. global settlement.

According to the terms of the global resolution, HUD and DOJ received protection for the disparate impact theory through which the disparate impact regulations exist. The City received release from two DOJ supported false claims lawsuits, "Newell" and "Ellis". The City also received support from DOJ and HUD in defeating the Section 3 false claim lawsuit called "Newell". The US government received $25B in the massive foreclosure fraud settlement
I, the relator, received no consideration in the global resolution. I was not included in the global settlement and my rights to participate in a fairness hearing regarding the terms of the settlement for which my case was made a party (leveraged) were denied. Based on HUD contentions regarding me being made whole regarding the Section 3 complaints, the fair and just resolution of the Section 3 monitoring review/complaints was denied me with the denial of rights for a fairness hearing on the global settlement.

Submittal

The following is a list of submittals for the Office of Inspector General investigation of the allegations noted in this document:

City of St. Paul
1 - Letters to Jaime- 3 submittals for VCA – attachment #1
2 - Draft VCA - attachment #2
3- Letter to Assistant Secretary John Trasvina – dated January 21, 2010
4- Signed VCA
5 – Letter of Appeal to Secretary Donovan – dated 2-10-10
6 – Newell Docs
7 – Complaint and Supplement to the Appeal - dated June 1, 2012

St. Paul Public Housing Authority
8 - 5 Letters to HUD
9 - Letter from HUD to PHA (Retaliation resolution) – 2009
10- Letter from HUD (Compliance letter) – December _, 2010
11 - Determination of Retaliation – 8-19-11

St. Paul Ramsey County Department of Public Health (SPRCDPH)
12 - Determination Letter – 1-6-10
13 - Appeal to Determination – dated 2-1-10
14 - Retaliation Complaint Acknowledgement
15 - Determination Letter from HUD

Quid Pro Quo
16 - House Committee on Oversight and Government Reform
17 – WSJ Newspaper Quid Pro Quo Article
18 – Disparity in St. Paul
19 – Letter to Secretary Shaun Donovan
20 – Letter to AS Trasvina
21 – Letter to Staci Gilliam
22 – Compliance Memo
23 – Newspaper Article on Twin Cities job disparity between White and Blacks
24 – Letter to Mayor Coleman and City Council
25 – Comments regarding Disparate Impact Regulations to HUD/OMB
26 - Congressional Report Documents
27 – Letter to Secretary Mel Martinez
28 – Letter from AS Trasvina
Letter to Sara Pratt dated
Section 3 Complaint and FCA update
Comments Disparate Impact Regulations dated 1-14-13

Letter to Secretary Shaun Donovan (Cover letter – 6-1-12)
Letter to Staci Gilliam – 10-22-10

E-mails

1 - Request of a copy of the draft VCA – December ’09
2 - E-mail from John Mead regarding delaying resolution to retaliation complaint
3 – E-mail from Maurice McGough regarding contracts with City and PHA
4 – E-mails from Isaiah
5 – E-mail from Mr. Jason Chang
6- E-mail to AS Trasvina regarding the jobless rate of minorities in Twin Cities

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
24 CFR Part 100
[Docket No. FR–5508–P–01]
RIN 2529–AA96
Implementation of the Fair Housing Act's Discriminatory Effects Standard

Comments on Disparate Impact Regulations

Submitted by

Fredrick Newell

January 15, 2013

Fredrick Newell
2040 9th Avenue, #314
North St. Paul, MN 55109

Executive Summary

My name is Fredrick Newell and I am part-owner of three construction companies in St. Paul, Minnesota**.** I am also the relator in a Section 3 false claim act lawsuit entitled United States ex rel. Newell v. City of St. Paul ("Newell"). As a Section 3 resident and false claim act lawsuit relator, I contend that the actions of the Department of Housing and Urban Development and the Department of Justice have had a discriminatory effect on the Section 3 community.

I write these comments in appeal to President Barack Obama. The intent of these comments is not to challenge the disparate impact theory and/or need for such regulations but rather to apply the theory to the unprecedented actions undertaken by HUD and the Justice Department for the purpose of ensuring promulgation of the disparate impact regulations.

The actions of the Justice Department and HUD must be able to withstand the scrutiny of the disparate impact theory in order to ensure that the inception and on-going application of the proposed disparate impact regulations are legitimate.

The Department of Housing and Urban Development and the Department of Justice are federal institutions entrusted with upholding the rights of the citizens of the United States. The responsibilities placed upon these institutes include advancing the individual welfare and advancing the cause of civil rights for the citizenry and as such these institutes will be guardians of the disparate impact regulations. Violation of these responsibilities against the least of the citizens on behalf of "the greater good" is, in essence, a violation of the spirit of the disparate impact theory, especially when those actions fail the test suggested within the disparate impact regulations.

Within these comments, I present facts supporting the allegation that the practices and decisions of the Department of Housing and Urban Development and the Justice Department have caused discriminatory effects against the Section 3 community of St. Paul, Minnesota; against the Section 3 Community at large; and against the myself, Fredrick Newell, the false claim relator in the matter of United States ex rel. Newell v. City of St. Paul.

As a Section 3 resident /whistle-blower, I have been working for Section 3 opportunities in St. Paul, Minnesota for over thirteen (13) years. Prior to my actions, the Section 3 community of St. Paul filed a Section 3 complaint against the City of St. Paul in 1982 and subsequently HUD, confirming the violation, required the City to enter into a voluntary compliance agreement in 1984. During the same period, members of the community filed legal actions in federal court in the case, Milsap V. HUD. The legal actions were dismissed in 1994. Despite these legal and administrative actions from 1982 to 1994, the

City of St. Paul had dismantled the gains the Section 3 community achieved by the year 2000.

In 2000, I attempted to register as a Section 3 business concern and was denied. In 2008, I filed a number of Section 3 complaints. In 2009, I filed a Section 3 false claim act lawsuit against the City of St. Paul. In 2010, the Department of Housing and Urban Development noted that the City had no knowledge of the Section 3 program and no procedures in place to comply with the regulations. HUD required the City to enter into a voluntary compliance agreement. The Department of Justice has noted that my false claim case against the City of St. Paul was one of the most egregious examples of false claim certifications.

Over the past five years, HUD has been inundated with data evidencing the disparate conditions and the discriminatory effects of the policies and practices of the City of St. Paul.

The Magner v. Gallagher case is a typical example of the disparate impact of the City's policies against its minority and under-resourced communities. HUD and DOJ, seeking relief from the supposed intentions of the United States Supreme Court to dismantle the disparate impact theory, abetted the City in a case where it was charged with disparate impact violations. HUD and DOJ went a step further and leveraged the efforts and gains of the St. Paul Section 3 community in order to provide the City the one thing it needed, relief from the relentless pressure of the Section 3 community.

Regardless of the government's intentions, the rights of the Section 3 community must be protected from the discriminatory effects of these actions. The Section 3 community **must not be required to endure discriminatory effects in order for disparate impact regulations to be born. The discriminatory effects were predictable and avoidable**.

I call upon the President to look beyond the need for the discriminatory effect regulations and assess the means and methods undertaken to arrive at the submittal of these regulations. If the actions taken fail to meet the test for which these regulations are being promulgated, the President should not, in all fairness, sign the regulations into law without proper corrective actions. If the decisions and practices alleged herein are factual, the regulation, in present form and by its inherent nature is stillborn and spiritually illegitimate.

Disparate Impact – Implementation of the Fair Housing Act's Discriminatory Effects Standard

It is impossible to build a house on quicksand and expect it to stand.

The need of the disparate impact regulations stem from a history of actions that, while conducted of fair intent, have had long lasting discriminatory effects on the minority and under-resourced segments of the community.

The directives of the disparate impact theory and subsequent regulations are designed to look beyond the initial actions as accorded by law or policy, examine the resulting consequence of said actions **and take corrective action where appropriate.**

The proposed rule establishes a uniform standard of liability for facially neutral housing practices that have a discriminatory effect. Under the Fair Housing Act and this proposed rule, a "discriminatory effect" occurs where a facially neutral housing practice actually or predictably results in a discriminatory effect on a group of persons (that is, disparate impact), or community as a whole (perpetuation of segregation).
Any facially neutral action, e.g. laws, rules, decisions, standards, policies, practices, or procedures, including those that allow for discretion or the use of subjective criteria, may result in a discriminatory effect actionable under the Fair Housing Act and this rule.

It is through the lens of the disparate impact regulations that I direct the attention of the President of the United States and the Office of Management and Budget (OMB). The intent of these comments is not to challenge the disparate impact theory and/or need for such regulations but rather to apply the theory to the unprecedented actions undertaken by HUD and DOJ to ensure promulgation of the disparate impact regulations.

It is quite clear that past actions are the progenitors of present conditions. As in the words of Our Lord Jesus Christ, " you shall know a tree by the fruit that it bears". If the disparate impact regulations are to have a prayer toward accomplishing its intended goal, the regulations must be built upon firm footing. The disparate impact regulations and/or the process whereby the regulations are promulgated must not be established through actions that prejudice or denigrate the proposed rule.

In order to properly support my position and allegations as presented within these comments, it is important to provide certain facts of history that culminated into the now disparate impact regulations.

The following facts are substantiated by congressional committee records, judicial court filings, Justice Department and HUD departmental records and Wall Street Journal reports. A copy of the following documents are included with this submittal: the letter from the House Committee on the Judiciary to The Honorable Eric H. Holder, Jr., dated September 24, 2012; the letter from the House Committee on Oversight and Government Reform to the Honorable Shaun Donovan, dated October 26, 2012; a compilation of Wall Street Journal Articles entitled Wall Street Journal Quid Pro Quo Articles; a copy of the Voluntary Compliance Agreement between the U. S. Department of Housing and Urban Development and the City of St. Paul; and a copy of a document entitled Disparity in St. Paul.

HUD and Department of Justice practice-in question

The following are situations that exemplify practices and procedures that facially appear irrelevant to the disparate impact theory. It is only through the practices of HUD and Department of Justice that these matters demonstrate disparate impact.

Section 3 Monitoring and Limited Compliance Review….In 2009, the Department of Housing and Urban Development examined allegations that the City of St. Paul (referred to as the City) was not in compliance with the Section 3 regulations. After a thorough investigation, HUD issued a finding of noncompliance against the City on six counts and required the City to enter into a voluntary compliance agreement process designed to address its noncompliance with the Section 3 regulations. In January 2010, HUD abrogated the voluntary compliance agreement process, by removing me from the process and entering a voluntary compliance agreement between the City and HUD.

United States ex rel. Newell v. City of St. Paul ("Newell")…. In 2009, I filed a false claim act lawsuit against the City alleging that the City had provided false certifications to HUD in order to receive certain HUD funds. HUD requested the Department of Justice civil division to intervene in the False Claim Act lawsuit. The Department of Justice began investigating the claim herein referred to as "Newell" in 2009. DOJ's investigation and subsequent attempts to settle the false claim act lawsuit continued until January 2012, where in an unprecedented move, the Department of Justice and HUD used "Newell" as leverage to obtain its goal of preventing the Magner v. Gallagher case from being heard by the United States Supreme Court.

Magner v. Gallagher….In an unrelated matter, the City of St. Paul faced a challenged to its local property code enforcement policies based on the Fair Housing Act disparity impact theory, namely the Magner v.Gallagher case. On November 11, 2011, the Magner v. Gallagher case was caught up to the Supreme Court which had agreed to entertain hearings on the matter. The Department of Justice and HUD concluded if the Magner v. Gallagher case was allowed to proceed before the Supreme Court, the findings would damage, if not derail, the disparate impact theory and subsequent regulations. Reportedly, DOJ and HUD sought to persuade the City of St. Paul to abandon its appeal to the Supreme Court, to no avail.

It now appears that beginning in December 2011, the City of St. Paul prevailed in persuading HUD and the Department of Justice to reverse its support for the false claim act lawsuit "Newell" in return for a Quid Pro Quo. According to the Quid Pro Quo, the City of St. Paul agreed to withdraw the Magner v. Gallagher case from the Supreme Court docket. As a result of the actions between the City, HUD and DOJ, the US government was able to hold five banks accountable under the disparate impact theory for foreclosure fraud. The US government received $25B in the massive foreclosure fraud settlement from five banks, namely Well Fargo and Co., Bank of America Corp., J.P. Morgan Chase & Co., Citigroup Inc. and Ally Financial Inc.

Position

It is not the intention of these comments to judge the actions of the Department of Justice and Department of Housing and Urban Development as it relates to the legality of the practices used to secure the intended goal. Rather it is the position that such actions have had a discriminatory effect upon me, the false claim act lawsuit relator, the Section 3 community and the Section 3 program.

Within the text of the proposed regulation and regarding the purpose and intent of the Disparate Impact regulations, HUD makes the following assertions:

HUD has determined that the Fair Housing Act is directed to the consequences of housing practices, not simply their purposes. Under the Act, housing practices—regardless of any discriminatory motive or intent—cannot be maintained if they operate to deny protected groups equal housing opportunity or they create, perpetuate, or increase segregation without legally sufficient justification. Accordingly, HUD has concluded that the Act provides for liability based on the discriminatory effects without the need for a finding of intentional discrimination.

I engaged HUD in my efforts to secure Section 3 compliance [opportunities] for my companies and for the Section 3 residents of the City of St. Paul in 2008. According to documents obtained from an on-going Congressional Judiciary Committee and Oversight Committee investigation, DOJ and HUD took unprecedented actions to protect the sanctity of the disparate impact theory, even leveraging the Section 3 false claim lawsuit and the efforts of the Section 3 community. HUD and DOJ negotiated, what DOJ has called, a "global resolution", i.e. global settlement. The purpose of the global resolution was to induce the City of St. Paul into withdrawing the Magner v. Gallagher case from the Supreme Court docket. The false claim lawsuit, United States ex rel. Newell v. City of St. Paul was used as a bargaining chip/leverage in the global settlement. Additionally, HUD and DOJ provided the City with information and/or assistance in defeating United States ex rel. Newell v. City of St. Paul. In as much as I have, to date, received no further correspondence on the outstanding appeals and complaints since 2011, presumably, HUD also dismissed all appeals associated with the Section 3 complaints.

Beneficiaries of the Global Resolution
HUD and DOJ received protection for the disparate impact theory through which the disparate impact regulations exist.
The City received release from my false claims lawsuit, "Newell". The City also received improper support from DOJ and HUD in defeating the Section 3 false claim lawsuit called "Newell".
The US government received $25B in the massive foreclosure fraud settlement

Loss to the Complainant and Relator (Whistleblower)
I, Fredrick Newell, am a Section 3 resident who are also a business owner and a relator in a Section 3 false claim lawsuit against the City of St. Paul.
In 2009, based on the evidence that I provided, HUD found the City of St. Paul in noncompliance with the requirements of 24 CFR Part 135, a.k.a. Section 3. Per the Section 3 regulations, HUD administrative process for remedying the noncompliance requires the noncompliant HUD fund recipient (City) to negotiate with me (Complainant) to produce a voluntary compliance agreement. I provided HUD with a copy of the terms for negotiation, using the Long Beach Section 3 Voluntary Compliance Agreement as a model of an established precedent. To the contrary of the regulations, HUD decided to remove me from the voluntary compliance agreement process and negotiated an agreement with the City. The 2010 agreement, referred to as the Voluntary Compliance Agreement between the U. S. Department of Housing and Urban Development and the City of St. Paul (VCA), provided no redress for lost opportunities as established in the Long Beach precedent and provided no relief for me. I appealed the VCA to Secretary Donovan and to date HUD has not responded to the appeal. In February 2011, I filed a retaliation complaint alleging the St. Paul PHA had retaliated in response to the filing of Section 3 complaints. HUD affirmed the retaliation in August 2011 but failed to provide me with appropriate relief. In July 2011, I filed, to the office of Secretary Donovan, an additional complaint against the City of St. Paul alleging retaliation and further noncompliance with the VCA and the Section 3 regulations. To date, HUD has not acknowledged or responded to the complaint.

During the period of 2010 through 2011, I met with FHEO Assistant Secretary John Trasvinas on three occasions and with Section 3 Director Staci Gilliam twice, with a constant appeal for HUD to provide adequate redress for the Section 3 community of St. Paul and for myself, the complainant. During those meetings and additionally, in writing, I informed AS Trasvinas and Director Gilliam of the retaliation that I experienced due to HUD's failure to mediate a fair resolution, including a reconciliation process.

From 2010 through 2011, HUD and the Department of Justice insistently connected the resolution of the Section 3 complaints and subsequent VCA with the support that HUD and DOJ promised regarding the false claim lawsuit. HUD constant assertion was that I would be made whole through its support of the Section 3 False Claim Act lawsuit.
The Justice Department indicated that it consider a term I proposed for settling the FCA that allowed recovery from the false claim lawsuit to remain in the Section 3 community of St. Paul to redress past harms.

HUD and the Department of Justice held the false claim lawsuit, United States ex rel. Newell v. City of St. Paul, under seal from 2009 to 2012 under the guise of negotiating a settlement with the City of St. Paul. During the period from 2010 to 2012, DOJ rebuffed my attempts to work with the City to gain Section 3 opportunities….[*for my businesses as interference with the FCA negotiation process]*.

On or about January 17, 2012, I was informed that the Department of Justice requested my approval for an additional sixty-day extension of the seal on United States ex rel. Newell v. City of St. Paul. I declined an additional extension base on information that negotiations between DOJ and the City had broken down. On February 9, 2012, DOJ notified me of its intention to decline intervention in the case. The Department of Justice and the Department of Housing and Urban Development did not inform me that the true reason it decided to decline the case was that the case had been leveraged as part of a global settlement.

The Department of Justice and the Department of Housing and Urban Development leveraged my false claim act case, United States ex rel. Newell v. City of St. Paul, in exchange for cash and for security for the disparate impact theory. I was an uninformed and unwilling participant in the Quid Pro Quo between the United States government and the City of St. Paul.

The Department of Justice decision to leverage the case indicates a decision to intervene and therefore, as such, I am entitled to share in the benefits gained from the global resolution.

Loss to the Section 3 community

It is clear that HUD and the Justice Department elected to raise the concerns of the disparate impact theory and the beneficiaries of the disparate impact regulations over compliance with the Section 3 regulations and the concerns of the Section 3 community. Though the Section 3 community, i.e. the low-income community, is not a protected class per se, the members of the protected class are inherently members of the Section community and as such Section 3 promotes the rights and benefits afforded by law to the members of the protected class.

I, as a minority and Section 3 resident, and ultimately the Section 3 community have been disproportionately affected by the action of the Department of Justice and the Department of Housing and Urban Development to secure a victory at "whatever" cost. The costs associated with these actions were foreseeable and clearly constitute a discriminatory effect.

The apparent loss to the Section 3 community includes:

- ✓ loss of redress during the VCA process;
- ✓ Loss of recovery/redress from the false claim lawsuit.
- ✓ The efforts and actions of the complainant/relator (whistleblower) were unduly sacrificed.
- ✓ The political, economic and social impact of a properly executed voluntary compliance agreement were unrealized;

- ✓ The political, economic and social impact of a successful Section 3 false claim lawsuit upon program compliance and the Section 3 community at large were unrealized.

The Section 3 regulations and Section 3 community have languished under a period of non-compliance and lack of enforcement of the Section 3 statue and regulations for over forty (40) years. The Section 3 program received its impetus from incidents such as the "Watts Riots" of 1968 and the "Rodney King Riots" of 1992. The Section 3 community has long sought a catalyst to revive the Section 3 program. The Section 3 false claim lawsuit was heralded, even by HUD itself, to be such catalysis for Section 3 compliance, a non-violent catalyst. Mr. President, the Section 3 community can not afford to wait another forty years for HUD, Congress and the presiding President to enforce Section 3. The Section 3 community can not afforded to wait another four years for the next false claim lawsuit to navigate the legal process.

Less Discriminatory Alternative
One of the established criteria of determining disparate impact according to the regulations is whether there was a less discriminatory alternative to the existing practice.

The practice has a necessary and manifest relationship to one or more of the defendant's or respondent's legitimate, nondiscriminatory interests. …the plaintiff or complainant may still establish liability by demonstrating that these legitimate nondiscriminatory interests could be served by a policy or decision that produces a less discriminatory effect.

It is clear that HUD and the department of Justice had other tools and/or practices whereby they could have leveraged the Section 3 false claim act case toward the same end of securing a "global resolution", i.e. global settlement. One such tool was to ensure that all parties in the global settlement were apprised of the terms and conditions and allowed to be active participants and beneficiaries of the settlement process.

It is upon this premise that I submit comments as to the legitimacy of the Disparate Impact regulations. The actions of the Department of Justice and Department of Housing and Urban Development prior to the decision to achieve a global resolution may bear scrutiny. **Further it is the Department of Housing and Urban Development and the Department of Justice response to the potential complication of the Magner V Gallagher Supreme court case that contradicts the spirit and standards of the disparate impact regulations. As noted by the disparate impact regulations:**

……a discriminatory effect occurs where a facially neutral housing practice actually or predictably results in a discriminatory effect on a group of persons (that is, a disparate impact), or on the community as a whole (perpetuation of segregation). Any facially neutral action, e.g. laws, rules, decisions, standards, policies, practices, or procedures, including those that allow for discretion or the use of subjective criteria, may result in a discriminatory effect actionable under the Fair Housing Act and this rule.

The Department of Housing and Urban Development and the Department of Justice did not follow and/or operate under the constraints of the disparate impact theory during its efforts to promulgate the language within the regulations.

The disparate impact theory requires an individual to look beyond the acceptable practices and/or procedures and consider the potential impact on the community and/or least in our community. There were a number of instances where such foresight was lacking during the Section 3 compliance review and the false claim lawsuit process:

1. The decisions to overlook elements of the Section 3 compliance review process resulting in discriminatory effects on the Section 3 community of St. Paul.
2. The decision to overlook the egregious nature of noncompliance with the Section 3 regulations; the willingness to overlook commitments; the unwillingness to prosecute a municipal recipient of HUD funds; and the self-will to win "at all cost"… all resulted in a willingness to bargain away the rights of the whistle blower and the Section 3 community in exchange for a rule specifically designed against committing such acts.

I call upon the President to make diligent inquiry into the allegations presented herein. If the actions taken by the Department of Housing and Urban Development and the Department of Justice fail to meet the test for which these regulations are being promulgated, the President should not, in all fairness, sign the regulations into law without proper corrective actions. If you deem the decisions and practices alleged herein resulted in a discriminatory effect, I implore you, Sir, to rectify the matter on behalf of myself and the Section 3 community and thus, lend legitimacy to the disparate impact regulations.

Wetzel-Moore, Alyssa (CI-StPaul)

From: Karen Skepper <Karen.Skepper@co.anoka.mn.us>
Sent: Wednesday, March 15, 2017 4:45 PM
To: Wetzel-Moore, Alyssa (CI-StPaul)
Subject: FHIC meeting on Friday

Alyssa,
I have a funeral to go to on Friday and will not be able to attend the FHIC meeting. Here are my very basic comments on both the report and the recommendations:
Report

- Cities zoning policy review – Blaine has not taken entitlement status and has not requested any CDBG or HOME funding for the past 10 years. They are very upset that they were not contacted directly and allowed to put context around the consultants zoning review. I would really like to see some narrative that discusses how the zoning ordinances were reviewed and would like the cities to be able to have meaningful discussions with the consultant before this document is made public. I would like to see a paragraph for each of the cities reviewed that talks about the level of affordable housing and types of housing available in the community. For example, Blaine has a high level of affordable housing in the rental area, starter homes and large manufactured home parks. Without this information being included the zoning report does not paint a true picture.
- Definition page would be very helpful. As an example during the county review we talked about what does "place based" (recommendation #26) really mean. If we had multiple interpretations you can bet anyone reading the report will too.
- There is very little discussion of Anoka County throughout the report. I don't know if I should take this as a good sign or a bad sign. Absence of discussion either indicates county-wide there are not many fair housing issues or the consultant didn't analyze the date and include the data on Anoka. Page 133 does not even include Anoka County is the discussion of proximity to jobs. **This is a reoccurring pattern throughout the report**.
- Transportation needs are not discussed. The report should reflect that housing development naturally occurs in areas where there are transportation options. Transportation is closely tied to zoning policies and should be discussed as part of the document. Page 27 of the document 4th paragraph talks about the region's foreign born population not residing in exurbs and rural areas. I believe there is a direct correlation between housing location choice and available transportation/transit. Page 127 would be another good place to discuss transportation issues.
- Page 26 and page 116 talked about a city called "Findley" I'm guessing they mean to say Fridley.
- Page 60 2nd paragraph "Lakeland" I would guess they meant to say Lakeville.
- Page 82 last paragraph refers to table 30 I think they meant to say table 3-14.
- Page 155 voucher usage - the report fails to mention that most of the areas with a low number of voucher holders living there is rural or exurban and that rental housing is limited.

Recommendations

- Overall I still urge the group to combine and group recommendations into categories that make sense.
- Recommendation 4 – I am very concerned about withholding government business from "poor performing financial institutions" without a definition of what a poor performer is. Recognize the U of M study is a single source. There are better ways to identify poor preforming institutions including conversations with the Federal Reserve Bank during CRA calls. I am not comfortable tying fair housing recommendations to the bank selected by my finance department for payroll/accounts payable.
- Recommendation 13 - I am strongly opposed to Met Council housing performance scores being a criteria for CDBG and HOME funding allocation. While I don't want to offend the Met Council staff working on this project – there is a push at the legislature for significant reform of the Council. In the case of Anoka County we evaluate projects based upon criteria such as ability to use funds timely, low/mod benefit/capacity/and other criteria designed to help us meet HUD requirements. This recommendation should be removed in my opinion.

- Recommendations 15, 20- Remove Blaine from the responsible jurisdiction. Blaine has not accepted entitlement status and has not applied for CDBG funding for many years. They have not been contacted by the consultant. Consider using language similar to "all local governments with zoning authority" similar to what was done with recommendation #17.
- Recommendation 21 – My division (staff of 7) are not planners and do not have the expertise to analyze 21 sets of zoning documents. I would support review and discussion of best zoning practices but would oppose the language in this recommendation.
- Recommendation 27 – need to define capital improvement planning models. I don't understand what the recommendation is referring to and what the source of capital improvement funding is.
- Recommendation 38 – Anoka County does not have code enforcement staff in areas outside public health. Cities are the code enforcement authority related to housing in Anoka County.

Again, my apologies for not being able to attend. If there is a call- in option available I could participate during my drive.
Karen

Karen Skepper
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Cell: 763-227-5807

RAI Policy & Systems Change Recommendations*

The following recommendations are informed by our organizing work, engagement sessions, and our collaborative work with ACER to create a Civil Rights Blueprint in the Brooklyns

Racial Justice- Affordable housing decisions must use a racial equity lens uplifting core principles of

- Equity
- Justice
- Fairness
- Human Rights
- Access to Opportunity
- Solidarity

We call upon all government agencies to **adopt** racial equity analysis and criteria to guide decision making on housing and other issues affecting our community

Explicitly Naming and Welcoming Immigrants, Refugees, Muslims and People of Color- For our communities to truly feel at home, our political leaders need to state explicitly that our communities are welcome in the face of racist attacks and threats taking place against us in the political arena, public policy and the dominant culture.

- We call upon government agencies to **adopt** resolutions in support of immigrant, refugee, Muslim and P.O.C community members, and use them as

guiding documents for all future policy decisions

- We call upon local, regional, state and federal government to **adopt** policies that increase representation of our communities at decision making tables (boards, commissions, committees, government bodies, etc) related to housing, economic development, civil rights, and other important matters.

Freedom to choose where we want to live- We are here, and here to stay. We want affordable housing options that keep our families together: The right to stay where we live with just living conditions; and more affordable housing options throughout the region.

- We call on local, state, regional and federal government to **adopt**:
  1. criteria for resource allocation to guarantee long term affordability
  2. mechanisms for rent control and rent justification
  3. Just cause eviction protections
  4. Use of these as criteria for any public investment in privately owned rental housing as a prerequisite for receiving rehabilitation or any other funds

- We call on all government agencies to **fund** affordable housing at 30% of Area Median Income throughout the region
- We call for the **abolition** of manufactured home park closings, and providing resident with mechanisms to save their homes by-
  1. Strengthening the right of 1st refusal with stronger notification, more time to exercise, and no loop holes
  2. Create an emergency resource pipeline for residents and non-profits to match a developer's offer
  3. Greatly increasing relocation compensation when

parks cannot be saved so that residents can maintain homeownership in the city and/or school districts where they live

Safety with Justice- We all have the right to feel safe in our homes, free from violence or harassment.

- We call for equitable policing in our neighborhoods and the **adoption** ordinances separating local law enforcement from immigration enforcement.
- Government relationships with landlords should focus less on punitive measures against tenants, and more on improvement of living conditions.
- We call on state and local government to **adopt** stronger retaliation laws and ordinances
- We call on state and local government to **adopt** a more tenant/manufactured homeowner centered inspections process where filing complaints leads to justice not displacement, and to **fund** more inspectors, renter engagement and know your rights trainings.

Centering those most impacted

Community organizing is a critical strategy to securing and defending fair housing, and yet it is consistently undervalued by government and philanthropic investments and budgeting. We recognize that legal advocacy, non-profit development, research, consulting and public policy are important tools for a successful strategy; but these cannot be used within a vacuum that is removed from the low wealth communities and communities of color on the front lines of this struggle.

Support for organizing to build leadership and power in communities that are directly impacted by decisions needs to be seen as mandatory, not optional. Sometimes bad

decisions are made because of a lack of information, where community engagement can be critical in educating public officials about what needs to be done. Many times, however, the problem is not as simple as just a lack of information. Too often, privileged political and economic interests (landlords, developers, public agencies, etc.) use their power and influence to contribute to patterns of displacement and gentrification from which they benefit. Therefore, organizing is needed to keep these interests in check, by building power to uplift community voice and agency in achieving self-determination and the systemic changes necessary to secure Fair Housing for All.

Wetzel-Moore, Alyssa (CI-StPaul)

From: Brooke Walker <bwalker@caprw.org>
Sent: Tuesday, March 28, 2017 2:13 PM
To: Wetzel-Moore, Alyssa (CI-StPaul)
Cc: Chip Halbach
Subject: Fair Housing Plan Comments

Follow Up Flag: Flag for follow up
Flag Status: Flagged

Hello Alyssa,

I have read the materials and believe they represent the perspectives and experiences shared by those who participated in our meetings. In fact I noted several of our comments listed in the report.

In regards to the recommendations,one thing I will note is we strongly support measures to prevent landlords from using factors such as credit score, non violent criminal records and/or use of a subsidy to discriminate against those who have lower incomes and communities overrepresented in the criminal justice system.

Brooke

--
Brooke Walker
Program Director Community Engagement
Community Action Partnership of Ramsey & Washington Counties
450 Syndicate Street N - St. Paul MN, 55104
651-603-5882 - bwalker@caprw.org - www.caprw.org
Community Action. Helping People. Changing Lives.

Melissa Mailloux

From: Jeremy Gray
Sent: Monday, April 03, 2017 6:22 PM
To: Melissa Mailloux
Subject: Fwd: AI Addendum Public Draft

Sent from my iPhone

Begin forwarded message:

> **From:** "Warren, Carl M." <warr1838@stthomas.edu>
> **Date:** April 3, 2017 at 5:46:30 PM EDT
> **To:** "Wetzel-Moore, Alyssa (CI-StPaul)" <alyssa.wetzel-moore@ci.stpaul.mn.us>, "jeremy@mosaiccommunityplanning.com" <jeremy@mosaiccommunityplanning.com>
> **Cc:** Chip Halbach <chalbach@mhponline.org>, Marian Biehne <Marian@whittieralliance.org>, Sue Watlov Phillips <suewatlovp@aol.com>, "Gary Kwong" <kwongsgl1@juno.com>
> **Subject: RE: AI Addendum Public Draft**
>
> Hi Jeremy, Please note that I agree with the concerns and proposed recommendations set forth in the comments submitted by the Institute on Metropolitan Opportunity concerning Mosaic's Draft AI Addendum. Carl Warren

City of Apple Valley
7100 147th Street W
Apple Valley, MN 55124-9016

Telephone (952) 953-2500
Fax (952) 953-2515
www.cityofapplevalley.org

April 3, 2017

Alyssa Wetzel-Moore, FHIC Chair
Saint Paul Department of Human Rights
and Equal Economic Opportunity
15 West Kellogg Boulevard, 240 City Hall
Saint Paul, MN 55102

Dear Ms. Wetzel-Moore:

Apple Valley, as a "community for a lifetime", values the analysis of impediments to fair housing choice.

Today, Apple Valley serves diverse, increasingly foreign born populations and housing for those with lower incomes, particularly through housing choices provided by the Dakota County Community Development Agency and non-profits such as Common Bond.

The data analysis and reporting by Mosaic would have benefitted from City of Apple Valley staff discussion that 50 years of housing development is both contextual and generational, and always delivering fair housing choice over time.

That discussion would have pointed out that:

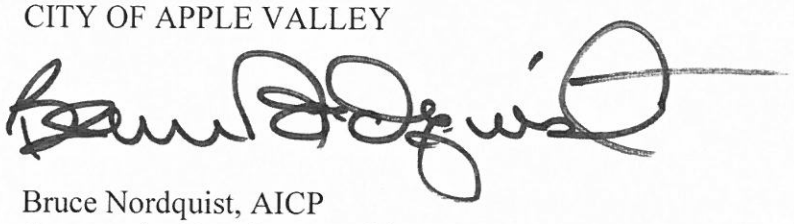
- The lower density zoning designations, supported by the Metropolitan Council through the Comprehensive Plan, exist for about 3.6 per cent of the residential districts that remain for housing built several years ago and are in areas never to be developed for multi-family. The City has initiated several planned development districts and higher density affordable housing developments to counter a label of "exclusionary".
- That discussion would have also clarified that manufactured home parks that "specifically limits to an M7 zoning district" were actually zoned to that district for previously built manufactured parks; not to exclude from the City.
- In the last 10 years, housing developments of 20, 30, 40 and 50 units an acre are common place. They exist with affordable housing providers, next to downtown retail and services, and within one-half mile of the Red Line BRT regional transit line. These are deliberate inclusionary zoning actions of the City which were graded a "3" by Mosaic.

- Finally, the City of Apple Valley is an affordable housing supporter having established its own housing tax increment districts that ensure 20 percent affordability in market rate rental development. The most recent example would be 330 units developed or under construction since 2015.

We appreciate Mosaic's "supportive" grades but maintain the "3", high risk scores, were made in error.

Regards,

CITY OF APPLE VALLEY



Bruce Nordquist, AICP
Community Development Director

cc: CDA

City Of
Burnsville

952-895-4400

100 Civic Center Parkway • Burnsville, Minnesota 55337-3817 www.burnsville.org

March 24, 2017

St. Paul Department of Human Rights and Equal Economic Opportunity
Attn: Alyssa Wetzel-Moore, FHIC Chair
15 West Kellogg Boulevard, 240 City Hall
St. Paul, MN 55201

RE: AI Draft Addendum Comments

Dear Ms. Wetzel-Moore,

The City of Burnsville has received a draft of the Addendum to the FHIC's 2014 Regional Analysis of Impediments to Fair Housing (AI Addendum). We have specifically reviewed Chapter IV. Public Sector Policy Analysis and interpretations made regarding the Burnsville Zoning Ordinance. Burnsville offers a diverse housing stock with options for all and at varying price ranges with many options that are considered affordable. According to the Met Council for 2015, 65% of our existing housing stock is considered affordable at 80% AMI. It should also be noted that Burnsville is 98% developed and has been fully developed for a couple decades.

Changes to zoning ordinances make minimal impacts in a fully developed community, especially as it has to do with increasing affordable housing options. The greatest opportunity comes from redevelopment and increasing areas in the city where multi-family opportunities may exist. The City has progressively done this over the years. The study fails to look at how much land is actually available for development when judging zoning ordinances effectiveness on affordable housing or what redevelopment opportunities that a city has identified to create those opportunities. If the densities and requirements are all in place, but there is no place to accommodate that density, then the zoning seems irrelevant to advance affordable housing.

Further, comparing cities to cities assumes we are the same when in fact we are not. For example, some cities reviewed have vacant land for development and some do not. The opportunities and costs are very different in achieving affordable housing. Some cities have mass transit and seem to get credit for zoning high density around transit stations, while other cities do not have mass transit as readily accessible and they seem to have not scored as well. Transit opportunities are not controlled by the cities and cities should not be penalized (or scored differently) for not having a TOD zoning area if they don't have transit.

The analysis fails to include state shoreland zoning requirements which dictate larger lot sizes, width, lakeshore setbacks, impervious surface maximums and other standards designed to protect shorelands of public waters. The lot standards are based on how the state classifies public waters and are applied

to all land located within 1,000 feet of a lake and within 300' of a river. Lot size requirements in shoreland districts in Burnsville range from 15,000- 40,000 sq. feet for single family to 49,000 – 130,000 sq. feet for duplex, triplex and quad units. The lot standards are substantially larger for unsewered lots (2 acre minimum for single family lots within 1,000 feet of a Natural Environment class lake) in SW Burnsville which is zoned R1-A and includes Horseshoe Lake.

And a last example is that some cities have land that can only be developed using septic systems, which call for larger lots to accommodate a septic system per state regulations. This should be taken into consideration when analyzing densities.

In addition to those general comments, we offer the following specific comments per issue as it relates to Burnsville:

Issue#1: Definition of "Family". We concur with the interpretation made. No more than 4 unrelated persons or 6 unrelated in a residential group home are considered a family. The definition is broad enough to include relatives by marriage or blood or adoption or other familial arrangement. As noted, those of protected class (state licensed group home) can have more unrelated persons that non-protected class persons.

Issue #2: Exclusionary Zoning. Burnsville takes exception to the interpretation made of our Zoning Ordinance in this regard. 65% of all housing units in the City are considered affordable to those earning 80% of the AMI under the existing zoning which reflects that our zoning ordinance is not exclusionary. The majority of the housing in the City is market rate and naturally occurring affordable.

> The R-1 is the most common residential district having a minimum lot size of 10,000 sq. feet, 80' lot width, and 1100 sq. feet floor space. When you look at the City's zoning map, this designation covers the most areas of all other districts. The size and width and floor area are deemed to meet the Met. Council Regional Plan estimation for affordability as referenced on page 97. **Density is up to 4.36u/a**
>
> The R-1A district is primarily an area that is not served by City sewer and water and therefore larger lots are required to accommodate a septic system and back-up system. These lot requirements reflect State of MN septic regulations as administered by the Minnesota Pollution Control Agency (MPCA). As city utilities become available, then smaller lots may be accommodated. Density is at 0.5-1.0 per acre
>
> R-2 is the 2-family zoning district. Minimum lot size if 15,000, minimum lot width of 100' and minimum floor area is 1,500 sq. feet **for 2 units**. **Density is up to 5.80 u/a.**
>
> R-3A is medium density and consist mainly of townhomes throughout the City. Single family and two-family dwelling are permitted in this zone. Buildings with up to 9 units are a permitted use. Minimum lot area is 20,000 sq. feet **for 4 units** and 5,000 sq. feet for anything more than 4 units. Minimum lot with is 100 feet. **Density is up to 8.71 u/a.**

R-3B is the multi-family zoning district consisting of apartments and condominiums and cooperatives. Minimum lot size is 18,000 sq. feet for 6 units and 3,000 sq. feet for each unit over 6. Minimum lot width is 100 feet. **Density is up to 14.52 u/a**

Issue #3: Multi-family Units. Burnsville disagrees with some of the interpretation of the multi-family districts. The densities are interpreted correctly, but the height is not in HOC or MIX.

R-3A is medium density and consists mainly of townhomes throughout the City. Single family and two-family dwellings are permitted in this zone. Buildings with up to 9 units are a permitted use. Minimum lot area is 20,000 sq. feet **for 4 units** and 5,000 sq. feet for anything more than 4 units. Minimum lot with is 100 feet. **Density is up to 8.71 u/a.**

R-3B is a multi-family zoning district consisting of apartments and condominiums and cooperatives. Minimum lot size is 18,000 sq. feet for 6 units and 3,000 sq. feet for each unit over 6. Minimum lot width is 100 feet. **Density is up to 14.52 u/a**

MIX is a fairly new district and intended to allow a mix of uses on redevelopment sites, and is inclusionary of high density housing. **Densities is up to 21.78 u/a. Height allowed is up to 50',** can go higher with a Conditional Use Permit.

HOC is the City's created "town center" district. **Densities permitted are up to 56.9 u/a. Multi-family and mixed use buildings are allowed up to 50'.** Can go higher with a CUP. There are also minimum height of 25' and 30' feet respectively.

The analysis in the chart notes that there is a potential for more density and flexibility with design with a PUD. It should be noted that historically Burnsville has utilized Planned Unit Developments to evaluate most multi-family projects. This provides the greatest flexibility for performance standards (deviations) while looking at the entire project as a whole and considering a range of project benefits. It is typical for the City to grant deviations to parking, height, building materials, and/or density within a PUD.

It was suggested in the report that Cities offer development incentives such as density bonuses and expedited permitting process or fee waivers for voluntary inclusion of affordable units. Burnsville would like you to know that we generally process all land use applications within 60 days as a matter of practice and we bundle applications so a developer only needs to go through the process once. Further, building permit review is done within 2 weeks' time. This is a very quick turn around and what may be consider a development incentive in one city, is considered common practice for us.

Issue #4: Alternative Types of Affordable Housing. Burnsville generally agrees with the interpretation of this section relative to the Zoning Ordinance. Burnsville does allow and has three manufactured home parks.

Issue #5: Design and Performance Guidelines. Burnsville agrees with the interpretation of the zoning ordinance for this section except it should be noted that we do allow for alternative parking with a CUP 10-7-26 (E), and shared parking 10-7-26(I) or with deviation via a PUD. The MIX district specifically allows for reductions in parking 10-22C-9. In the report, it states that low income households typically

have fewer vehicles and reply more on public transportation. It should be noted that Burnsville is a third ring suburb that does not have transit that is as good as the inner city or those communities closer to the inner city such as Richfield or Bloomington. Most households (regardless of income) have at least one vehicle because they would not otherwise be able to navigate in and out of the community. (There is a river barrier with only one bridge in the City that separates us from Bloomington and the more densely populated Hennepin County). According to ACS 2014, only 5.8% of all households in Burnsville had no vehicles available. And yet 65% of Burnsville housing stock is affordable at 80% AMI, meaning most of those living in affordable housing in our city have at least one vehicle.

Issue#6: Inclusionary Zoning. The City agrees with the interpretation of the Zoning ordinance regarding inclusionary zoning provisions. The City currently does not have any said provisions codified. However, that does not mean that the City does not use other mechanisms to require affordable housing. For instance, the Heart of the City (HOC) is a 54 acre, compact urban redevelopment area where high density and reduced parking are encouraged. In some of the Development Contracts provisions require that a certain number of units or percentage be affordable. Inclusionary housing authority is a relatively new provision the state. Prior to that the other tool available is through development contracts where financial incentives are given. The City has used this tool to get affordable housing units in the HOC.

Recommendations from the Draft Addendum. One of the recommendations for Burnsville and other cities is to amend zoning maps to rezone large lot single family developments to higher density to accommodate infill development and/or the conversion of existing homes into multiple family dwellings. It should be noted that this part of the City is primarily served by private wells and septic systems which have larger lot area requirements for public health reasons. The area is within the Metropolitan Urban Service Area (MUSA) and will ultimately be served with municipal sewer and water but the timeframe for urban services is not known. This area of the City was platted in the early 1900's and a majority of the parcels that are not encumbered by wetlands and lakes are developed with single family homes all on private septic systems and wells.

In order to accommodate more density or units to create more affordable housing, additional septic systems would need to be accommodated for as they are sized per sleeping area per state rules. State law requires adequate area for the initial septic system and an alternative second location in the event the 1st system were to fail. Additionally, the size and type of septic system is related to site soil and slope conditions. This area of Burnsville has poor (clay) soils, steep slopes, wetlands, wooded areas, all of which increase the land area needed to accommodate the state required two septic system locations.

There is no city water service to this area and private wells are required for water supply. State law defines setback standards for wells which also add to lot area standards. Similarly, the size of the wells may need to be addressed to accommodate multi-family dwellings. These are very expensive endeavors and would likely not create more affordable housing. Septic systems are expensive to install and maintain compared to public utilities. The cost to extend municipal sewer and water is also very expensive which would likely not yield more affordable housing units unless a very high density can be achieved. Allowing for redevelopment within areas that are served by exiting city sewer and water is the best way to further the goal of increasing affordable housing options. The recommendation to

increase density/units in the rural areas should be eliminated and a focus on utilizing existing utilities more seems to make more sense and is more realistic to achieving more affordable housing.

The City of Burnsville prides itself on being a welcoming community for all. We are a community that offers a range of housing choices that is not exclusionary. If you look at the demographics or actual development in Burnsville you will see we are diverse, affordable, and inclusive. We appreciate the opportunity to provide input to the study and look forward to the final report and recommendations. I may be reached at (952) 895-4467 or jenni.faulkner@burnsvillemn.gov if there questions.

Sincerely,

Jenni Faulkner

Jenni Faulkner

Community Development Director

CC: Heather Johnston, City Manager

Lisa Alfson, Dakota County CDA

Melissa Mailloux

From: Cheryl Bennett
Sent: Tuesday, March 21, 2017 11:11 AM
To: Melissa Mailloux (melissa@mosaiccommunityplanning.com); 'jeremy@mosaiccommunityplanning.com'
Cc: Alyssa.Wetzel-Moore@ci.stpaul.mn.us
Subject: Addendum to 2014 Regional AI re Coon Rapids MN Zoning Review
Attachments: Chapter4.pdf

Good morning, Melissa and Jeremy.

Coon Rapids submits the following comments for consideration regarding the Addendum Comments under Issue No. 6 concerning the Coon Rapids Zoning Review: *Does the zoning ordinance include an inclusionary zoning provision or provide any incentives for the development of affordable housing or housing for a protected classes?*

The analysis is directly related to the City's zoning code and does not reflect other policies, practices and long range planning efforts of the City of Coon Rapids that support affordable housing development. The City supports affordable housing opportunities as demonstrated through its Housing Goals, Objectives and Policies found in its current Comprehensive Plan. The Comp Plan is a required planning document of the Metropolitan Land Planning Act under Minnesota State Statutes, sections 473.851 to 473.871; local zoning ordinances must reflect a city's Comp Plan. To that end, the City has designated sufficient moderate- and high-density, and mixed use residential areas and zoning overlay districts with flexible development standards to support the development of affordable housing opportunities. A copy of the Housing Chapter of the City's current Comprehensive Plan is attached for your reference. Also, to assist in the development of affordable and inclusionary housing, the City uses tools available at both the state and local levels that have included the creation of housing tax increment financing districts, the issuance of housing revenue bonds in support of low income housing tax credit developments, the use of local Housing and Redevelopment Authority funds to write down property acquisition costs [recent examples include Habitat for Humanity single-family redevelopment sites, a senior multi-family (high-density) housing project and a multi-family housing development that includes an affordability component in a transportation oriented overlay district] and the City's zoning code provisions, including Planned Unit Development and Dimensional, Design and Use Flexibility Standards that offer opportunities for density bonuses and variances from development regulations that can lower development costs. Further, the City participates in the Metropolitan Livable Communities Act program and has accepted its affordable housing production goal under that program.

The City of Coon Rapids has long been supportive of affordable housing opportunities. In 1979, it was one of only two Minnesota municipalities permitted to issue housing revenue bonds providing for low interest mortgage rates for new single-family housing production, and the only city permitted a second issue. The program required a percentage of the mortgages be issued to low- and moderate-income households, creating affordable housing opportunities. This program provided later opportunities for funding home improvement loan and down payment assistance programs--assisting households at all income levels--that remain in place today.

Thank you for the opportunity to comment. Please feel free to contact me if you have questions regarding this information.

Cheryl Bennett

Cheryl Bennett
Housing and Zoning Coordinator

City of Coon Rapids
Community Development Department
11155 Robinson Drive, Coon Rapids, MN 55433
p: 763-767-6422 f: 763-767-6573
coonrapidsmn.gov

4 HOUSING

This chapter of the Coon Rapids Comprehensive Plan describes the City's housing stock, housing programs, and states the City's goals and policies for maintaining the existing housing stock and adding a variety of new housing units.

Coon Rapids has a diverse housing stock with a variety of types located throughout the City. The dominant housing type is the detached single-family home. Most of the housing is owner-occupied and about 27% of the housing supply is considered to be affordable to low- and moderate-income people. The pace of construction is slowing substantially as most of the developable land has been built on.

THE CITY'S HOUSING INVENTORY

This inventory section of the Plan includes a variety of elements that describe the state of the City's housing supply. There are sections on housing types, housing tenure, housing costs and family income, housing affordability, housing age, uninhabitable homes, foreclosures, vacant homes, housing rehabilitation, new construction activity, and potential housing sites.

Housing Types

Single-family detached homes are the dominant housing type in Coon Rapids. However, there are a variety of housing types, locations, and costs offered throughout the City for families at all stages of their life cycles. As indicated in the table below, housing diversity has increased in the City as the percentage of single-family homes decreased from 80% in 1980 to 64% in the year 2000 while the percentages of other housing types has risen.

TABLE 4-1: Number of Housing Units by Type

Coon Rapids Housing Units by Type	1980 Units	(%)	1990 Units	(%)	2000 Units	(%)
Single-family detached	8,706	(81)	12,273	(68)	14,557	(64)
Manufactured homes	186	(2)	330	(2)	276	(1)
Single-family attached/Townhouse	434	(4)	2,268	(13)	3,739	(16)
Multi-family	1,409	(13)	3,227	(8)	4,231	(19)
Total	10,735	(100)	18,098	(100)	22,803*	100)
Source: 2000 U.S. Census						

***** The total number of units for the year 2000 was revised later by the Census Bureau to 22,828, but the number of the various types of units was not revised.

This trend toward a smaller share of the residential units being single-family is expected to continue in Coon Rapids as the availability of developable land decreases and costs rise. Other housing opportunities may be realized through the reuse of properties which will incur the additional costs of redeveloping the land. This will mean that increased development densities will be needed to offset the price of increasingly scarce land or added redevelopment costs.

Housing Tenure

The share of the Coon Rapids housing stock that is owner-occupied increased from 77% to 80% in the 1990s even though the share of single-family homes decreased. This increase in owner-occupancy can be attributed, in part, to the level of townhouse construction during this period.

TABLE 4-2: Owner and Renter Units in 1990 and 2000

Ownership Status	1990		2000	
Owner-occupied housing units	13,965	(77%)	18,142	(80%)
Renter-occupied housing units	3,488	(19%)	4,436	(19%)
Vacant units	645	(4%)	225	(1%)
Total housing units	18,098	(100%)	22,803	(100%)
Source: U.S. Census as reported by Metropolitan Council				

Recently, Coon Rapids has experienced a slight increase in the number of non-homestead single-family homes. The Coon Rapids Assessor's data indicates that there were 1,423 non-homestead single-family homes in 2004 and 1,568 in 2007. This is not particularly troubling because it accounts for only one percent of all single-family homes and no concentration in any one neighborhood is found. However, there are spots where there are two or more contiguous non-homestead properties. This needs to be monitored to see if there is any correlation between the presence of non-homestead single-family homes and property maintenance.

Map H-1 shows the distribution of non-homesteaded single-family homes.

Housing Costs and Family Income

Median home values in Coon Rapids are increasing faster than the incomes of City residents. Median rent increases are more in keeping with income increases.

The table below contains U.S. Census income and housing cost figures from 1990 and 2000.

TABLE 4-3: Housing Values and Rent Levels

	1990	2000	Change (1990-2000)
Median Family Income*	$45,135	$62,327	38%
Median Household Income*	$42,074	$55,868	33%
Median Home Value	$82,542	$124,595	51%
Median Rent	$520	$689	33%
Source: U.S. Census			

* In decennial census data, household income includes the income of the householder and all other individuals 15 years of age and older in the household, whether they are related to the householder or not. Because many households consist of only one person, median (average) household income is usually less than median family income.

The increases in rent paid during the 1990s were in line with the increases in income. The median rent level increased 33%. Home value increases, however, were much greater. The median home value in Coon Rapids jumped 51% in the 1990s. This was due primarily to the inflation of housing prices caused by dropping interest rates. Homeowners did not necessarily pay a higher percentage of their income for housing, however, as dropping interest rates just allowed them to buy higher priced homes relative to their incomes.

Housing Affordability

Defining Affordability

There are two standard indicators that describe housing affordability in a community. The first indicator of affordability is the number of households that are paying more than 30% of their income for housing costs. This is measured by the Census Bureau every ten years. The other is the percentage of households with low incomes who pay more than 30% of their income in housing costs. The Metropolitan Council has adopted the standard of 60% of the area median household income (AMI) as the benchmark for determining affordability.

Indicator 1 – 30% of Household Income

Even with lower interest rates, 20% of all Coon Rapids households had housing costs beyond the generally accepted maximum amount of 30% of income in 1999. See the lower right cell in the table below. The 2000 Census revealed that in 1999 there were 2,721 owner- and 1,732 renter-occupied households paying 30% or more of their income for housing. These households comprised 20% of the households in the City. The percent of households paying more than 30% of their income for housing remained virtually the same in the year 2000 as it was in 1990.

TABLE 4-4: Percentage of Households Paying more than 30% of Their Income for Housing

Housing Costs	1990 Census	2000 Census
Owner-occupied households paying over 30% of their income for housing costs	2,204 (16% of all owner-occupied households)	2,721 (16% of all owner-occupied households)
Renter-occupied households paying over 30% of their income for housing	1,423 (41% of all renter-occupied households)	1,732 (39 % of all renter-occupied households)
Total Owner and renter-occupied households paying over 30% of their income for housing	3,627 (21% of all households)	4,453 (20% of all households)
Source: 2000 U.S. Census		

Indicator 2 – Percent of Housing Units Affordable to Households Earning 60% or less of AMI

Affordable housing, according to the Metropolitan Council, is housing that costs not more than 30% of gross income of a household earning 60% of the Twin Cities median family income ($46,200 in 2005). The 60% income threshold is determined each year by the U.S. Department of Housing and Urban Development (HUD) and is the cutoff for tax-credit housing development, the main program for new affordable rental housing construction nationwide. An affordable for-sale house in 2005 would have cost $145,200 using the definition above. Rental units would have cost $673/month for an efficiency or single-room occupancy unit, $721/month for a one-bedroom unit, $866/month for a two-bedroom unit, and $1,001/month for a three-bedroom and larger unit[1]. A survey by GVA Marquette Advisors of 70% of the rental units in Coon Rapids in December of 2006 found that the average rent was very close to these rent levels.

The Metropolitan Council has estimated that 27% of Coon Rapids housing is affordable to those making 60% or less of the area median family income (AMI).[2] The neighboring community of Blaine had the same percentage. Other neighboring communities include Fridley at 36% and Anoka at 43%, while Andover was three percent.

The Metropolitan Council has calculated that 51,000 new affordable housing for-sale or rental units will be needed in the metropolitan area between 2011 and 2020.[3] They have developed a formula to apportion those 51,000 units among all the cities in the metro area based on the amount of existing affordable housing, the wages paid by employers in the area, and the level of public transportation available. It was determined that Coon Rapids should provide 200 additional affordable housing units in the period from 2011 to 2020. This is about 21% of the 940 new units expected in Coon Rapids during the period. The Metropolitan Council's Affordable Housing Need Allocation for Blaine has been established at 1,267 units, Anoka 124, Fridley 116, and Andover 660.

[1] *Report to the Minnesota Legislature on Affordable and Life-Cycle Housing in the Twin Cities Metropolitan Area, 2005*, Twin Cities Metropolitan Council, December 2006, page 3.

[2] *Summary Report: Determining Affordable Housing Need in the Twin Cities 2011 – 2020*, Twin Cities Metropolitan Council, January 2006.

[3] *Summary Report: Determining Affordable Housing Need in the Twin Cities 2011 – 2020*, Twin Cities Metropolitan Council, January 2006.

Factors that Affect Affordability

There are a number of factors that make housing more, or less, affordable.

City Zoning Requirements

Zoning code requirements for residential lot sizes and the amount of density allowed are factors that affect affordability. Lots in the predominant single-family zoning district are required to be a minimum of 80 feet wide by 135 feet deep, with an area of at least 10,800 square feet. This provides for a density of four housing units per acre.

The City believes that this size is reasonable. However, in some cases density for single-family detached homes can be increased through a form of planned unit development. This allows smaller lot sizes that can reduce the overall cost of the housing units. Several projects have been built that utilize this planned unit development tool to increase typical single-family home densities.

The maximum density increases to seven units per acre in the City's Moderate Density Residential district. Density in the High Density Residential district, generally located along collector or arterial streets, depends on a number of development guidelines, including required open space, the number of bedrooms per apartment unit, and the height of the building. The densities of multi-family developments in Coon Rapids are generally 10 to 14 units per acre. However, greater density can be achieved through innovation in site design.

The City realizes that local official zoning requirements and design guidelines can add unnecessarily to the cost of housing construction. Generally, the City's regulations appear to be in line with regulations in adjacent communities; however, the City will take appropriate opportunities to review regulations to identify those issues related to the cost of producing housing.

Federal Rental Assistance

Another key indicator of affirmative municipal efforts to accommodate affordable housing is the number of households that receive federal assistance for rent payments. Assistance comes in the form of Section 8 assistance and public housing. The table below describes the number of households that receive Federal Section 8 assistance and the number of bedrooms in the housing unit in which they reside.

TABLE 4-5: Federally Assisted Section 8 Households in Coon Rapids - 2007

	Studio	One	Two	Three	Four	Five	Total
●Project Based	0	0	6	3	1	0	10
●Voucher	0	182	132	103	16	6	439
Total	0	182	138	106	17	6	449
Source: City of Coon Rapids Housing Assistance Division, May 2007							

The total amount of assistance is relatively low – just two percent of all housing units in the City. However, the number of units with assisted households did increase from 354 units in 1997 to 449 units in 2007. There has been a marked shift away from specific projects that receive Section 8 assistance to portable vouchers in the last ten years. Most of the City's assisted families have rent vouchers that can be used for virtually any rental dwelling unit that meets federal housing quality standards and does not rent for more than the program limits.

In addition to the units above that are administered by the City of Coon Rapids, there are additional public housing units in the City that are administered by the Metropolitan HRA. There are 20 "Holman" units scattered around the City. Residents living in these units pay 30% of their income for rent and utility costs.

Local Rental Assistance

The City has also provided assistance to housing developments so that rental costs to the resident are below normal market rates. The primary tools for these efforts are Tax Increment Financing (TIF) and partnering with the developers to sell bonds at lower than market rates to finance development costs. The table below lists the projects where the City has provided this kind of assistance. There have been 639 units developed with the City's assistance.

TABLE 4-6: Coon Rapids Locally Assisted Housing - 2007

	Subsidy Program	Housing Resource	Units	Bedroom Mix
●Elderly	Bonds*	Epiphany Pines	103	1 and 2
	Bonds*/TIF**	Margaret Place	72	1 and 2
●Mixed Use	Bonds*	North Crosstown Estates	58	1 and 2
	Bonds*	Meadow Manor	148	1, 2, and 3
	Bonds*	Pine Point	60	1 and 2
	Bonds*	Woodland North	198	1, 2, and 3
		Total	639	
* Housing Revenue Bonds-20% of units reserved for renters earning 80% or less of metropolitan median income ** Tax Increment Financing				
Source: City of Coon Rapids, June 1995				

Evaluation of Coon Rapids Affordable Housing Efforts

The Metropolitan Council has analyzed Coon Rapids' efforts to enhance the affordability of housing. Their analysis and the favorable results from an October 2007 report are shown in the following table.

TABLE 4-7: Coon Rapids Affordable Housing Evaluation

Affordable Housing Effort Performance Criteria	Possible Points	Coon Rapids Points
1. Percent of owner-occupied housing with an assessed valuation equal to or lower than an amount affordable to households making 80% of area median income.	8	7
2. Percent of rental units that are affordable to persons making 50% of area median income.	8	6
3. Percent of housing stock that is comprised of twinhomes, quads, apartments, townhomes, condominiums, detached townhomes, mobile homes, and zero lot line homes.	8	7
4. Percent of net units added to the housing stock since 1996 that are affordable.	10	9
5. Housing for special needs.	3	3
6. Presence of fiscal tools such as TIF, housing revenue bonds, and other measures to encourage affordable workforce housing.	15	15
7. Recent local efforts to adjust regulations and requirements such as zoning to preserve or develop affordable housing.	15	15
8. Recent local efforts to utilize programs such as housing maintenance codes, loan and grant programs, or tool sharing programs to foster preservation or rehabilitation of housing.	15	15
9.a. Average net density for attached units. b. Net density for detached units.	6 6	5 5
10. Efforts by Coon Rapids to buy land or financially participate in the development of affordable senior housing units.	6	6
Total	**100**	**93**
Source: Metropolitan Council, September 26, 2007		

The conclusion is that Coon Rapids is generally doing very well with respect to housing affordability and diversity scoring 93 out of 100 possible points. This score represents an improvement over 2006 efforts primarily due to the approval of PORT PORT Riverwalk, a housing development with 286 dwelling units, including a senior housing component. Areas in which the City improved scoring over 2006 include items (3.), (9.a.) and (10.) in the table above.

Housing Age

The housing stock in Coon Rapids is aging as fewer new units are built each year. The Age of Housing Stock Map H-2 shows the time periods when housing was built in the City. About half of the City's housing units were built during the 1980s and 1990s.

The table below compares the age of the housing stock at ten-year intervals from 1990 to 2030.

TABLE 4-8: Age of Housing Stock, 1990-2030

Age of Housing	1990	2000	2010	2020	2030
Over 30 years	3,065 (17%)	6,526 (29%)	10,193 (40%)	17,407 (66%)	22,575 (84%)
21-30 years	3,570 (20%)	3,667 (16%)	7,214 (28%)	5,168 (20%)	3,022 (11%)
11-20 years	3,556 (20%)	7,214 (32%)	5,168 (20%)	3,022 (11%)	900 (3%)
10 or less	7,907 (44%)	5,168 (23%)	3,022 (12%)	900 (3%)	500 (2%)
Total Housing Units	18,098 (100%)	22,575 (100%)	25,597 (100%)	26,497 (100%)	26,997 (100%)

Source: 2000 Census (SF3-H36) Coon Rapids City (Anoka County) Housing Profiles: Tenure by Year Structure Built, State Demographers office, on-line link from Metropolitan Council web site.

The table shows that in 1990, 17% of the City's housing units were over 30 years old and 44% were ten or fewer years old. By 2000, the percentage of dwelling units that were over 30 years of age jumped to 29%, whereas the number of homes ten years or less years of age dropped to 23%. This trend will continue. The projections for the years 2010 through 2030 are derived by aging each age cohort in ten year increments and then adding the number of housing units equal to the Metropolitan Council's projected household numbers for each of those years. The result of this method shows that by the year 2030, the percentage of homes that are at least 30 years of age will be approximately 84% of Coon Rapids' housing stock.

Uninhabitable Houses

Since 2001, the City has been tracking houses that are unfit for habitation. Between 2001 and November 2007, 67 complaints about the condition of a housing unit were registered with the City. The number of complaints and staff time devoted to this problem has been rising steadily. There were seven complaints during the first three years of this period (2001 – 2003) and 23 in the next three years (2004 – 2006). The City received 37 complaints during the first ten months of 2007.

These homes portray a variety of problems. Most of these houses were found filled with garbage or animals. Two have been used for the production of methamphetamines - "meth houses." Some have been damaged by fire.

City staff works with the owners of the houses to resolve the problems. Most of the houses do get cleaned up eventually. However, in rare cases, the properties have been declared as unsafe by the courts and the buildings demolished.

Mortgage Foreclosures

The growth in the number of foreclosed home loans is a concern to the City. There were 180 foreclosures in Coon Rapids in 2006. This accounted for 21% of all foreclosures in Anoka County. Coon Rapids also has 21% of all the housing units in Anoka County. Not only do foreclosures pose a hardship to those residents who lose their homes, they affect neighboring

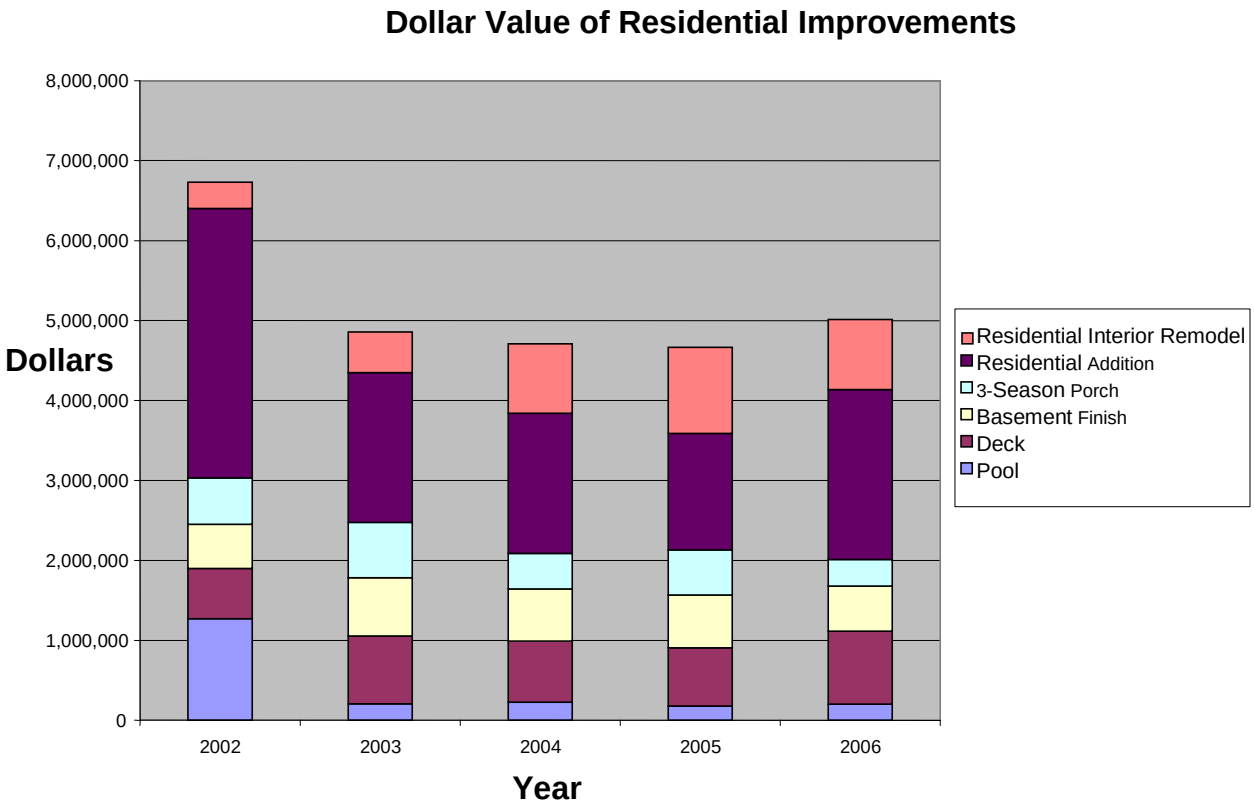
residences when properties exhibit deferred maintenance, as often is the case in foreclosures, and become vacant. Ultimately, this leads to worse housing conditions and potential blight. State laws intended to tighten lending practices in an effort to reduce foreclosures went into effect on August 1, 2007.

Vacant Houses

City records indicate that there were 65 vacant residential structures in April 2007. Roughly two-thirds of the vacant structures were located south of Highway 10 in older residential areas of the City. The presence of vacant homes is a concern. Vacant properties tend to deteriorate and can be a safety concern and attractive nuisance for the neighborhood.

Housing Rehabilitation

There is a great deal of housing rehabilitation that occurs each year – perhaps exceeding $5 million worth. Building permit records for rehabilitation and renovation activity reveal the following level of investment for selected improvements for the designated years.



The City tracks the value of improvements when building permit applications are made. Roof and siding replacements have been excluded from the previous graph, however, because the City's permit system does not distinguish between residential and commercial permits for these kinds of improvements. The exact dollar value of the improvements also is unknown because building permits are not required for several types of work that improves the condition of housing. For example, exterior painting and minor, nonstructural improvements and repairs do not require permits. There are also improvements that occur without the property owner obtaining required permits. Therefore, real dollar numbers are not available.

Most of the work is privately funded. However, the City has several programs designed to help low- and moderate-income homeowners maintain or repair their homes. The dollar value of these improvements is small compared to the dollar value of improvements in all housing units in the City. The City's programs and the amount of activity since 2004 are shown below.

TABLE 4-9: Housing Rehab Program Activity

Housingg Rehabilitation Programs	Level of Activity	Total Loan Amounts
Zero Interest Home Rehabilitation Loan/Grant	70 loans	$1,300,000
Home Improvement Incentive Loan Program	43 loans	$503,465
Home Rehabilitation Assistance Program	36 loans	$592,175
Two-family Home Improvement Program	6 loans	$93,000
Emergency Repair Program	1 loan	$2,573
Source: City of Coon Rapids		

While housing maintenance practices in the City remain effective and there is no significant incidence of deterioration in either detached or attached units, the advanced age of some of the City's housing stock suggests that additional resources will have to be committed to monitoring housing conditions and providing rehabilitation programs.

Maintenance of rental properties is also a priority to the City. All rental properties are required to be licensed. The purpose of the program is to ensure that rental properties are properly maintained. The license of a poorly maintained rental property can be revoked and the owner ordered to have the property vacated.

New Construction Activity

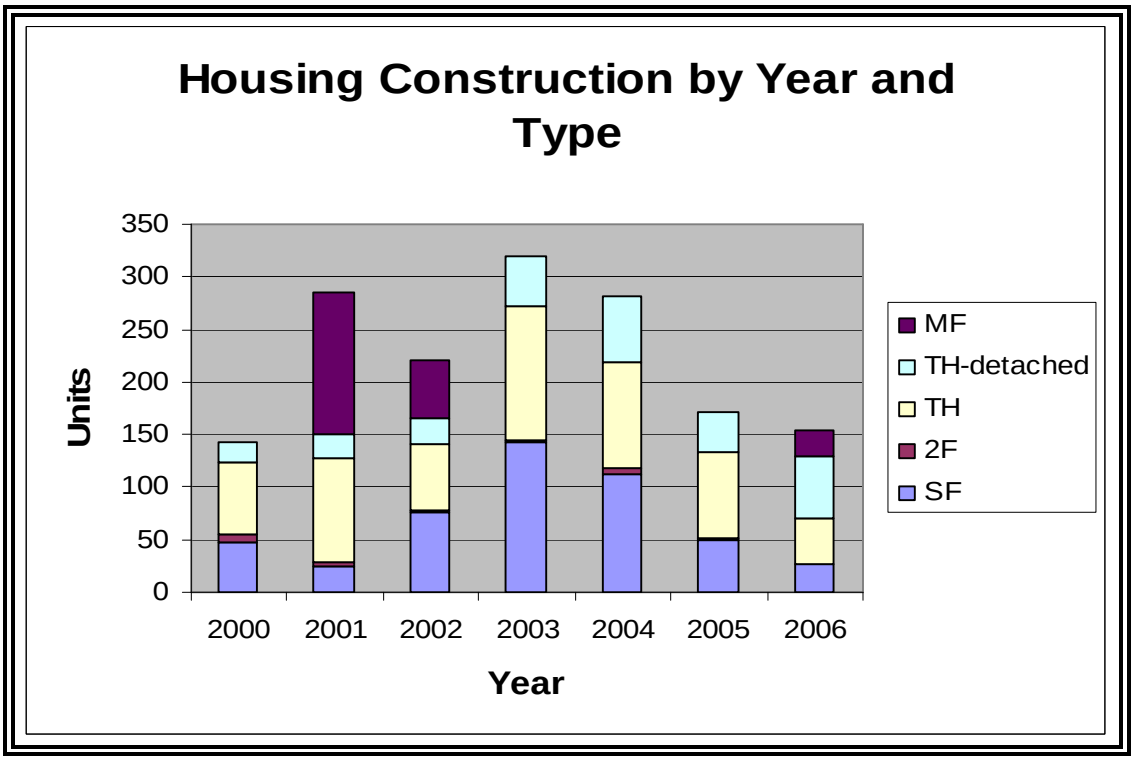
Coon Rapids is virtually developed and only one percent of the City's land remains in agricultural use (sod fields). As a result, the number of new housing units constructed each year has been declining.

The following table and graph show the number and types of housing units that received building permits from the year 2000 through 2006.

TABLE 4-10: New Housing Unit Permits by Year

Type	2000	2001	2002	2003	2004	2005	2006	Total
Single-family (SF)	48	24	76	142	113	49	27	479
Townhouse (TH) - detached	19	23	24	47	64	37	60	274
Two-family	8	4	2	2	4	2	0	22
Townhouse	67	99	63	128	101	83	43	584
Multi-family	0	136	56	0	0	0	25	217
Total	142	286	221	319	282	171	155	1576
Source: Coon Rapids building permit records								

Part of the decline in housing construction activity is explained by market conditions in the Twin Cities region. The Twin Cities housing market peaked in November 2005. Housing demand and values across the region declined after that. Several projects across the metropolitan area were postponed indefinitely in 2006 and 2007 as the housing market went through an adjustment period. The PORT PORT Riverwalk development in Coon Rapids was one of those projects.



Even by the year 2000, residential construction activity was slowing substantially due to the shortage of developable land. The year 2000 showed only 142 dwelling units received building permits. There was a significant increase to 286 units in 2001 as the Wexford area began developing. The economy had a minor effect in 2002 when the number of new housing units fell

to 221 units. However, construction activity rebounded in 2003 to 319 units. The number of new units has fallen steadily since 2003 with 282 new units in 2004, 171 in 2005, and 155 in 2006.

The type of units being built in the City is also changing. The previous graph shows the number of single-family (SF), two-family (2F), townhouse (TH), townhouse -detached (single family detached homes in a common interest community), and multi-family (MF) construction.

Single-family Construction

The traditional single-family detached home is the largest component of the Coon Rapids housing supply. However, with the scarcity of developable land, only 27 permits were issued in 2006 for single-family housing construction. This was not the lowest activity since the year 2000. Prior to the Wexford development at Main and Avocet Streets, only 24 single-family units were constructed in 2001. Single-family activity jumped to 142 units in 2003 as Wexford construction was in full-swing.

As of February 2007**,** there was only one proposed development for single-family detached homes in Coon Rapids. This is the approximately 80-lot development at Main Street and University Avenue. This project was originally approved in 2005 and is now scheduled to start in 2008. There have been some inquiries about developing the Balfany sod fields on the north and south sides of Main Street east of Shenandoah Boulevard, but no firm proposals have been presented to the City for review.

Detached Townhouse Construction

Detached townhouses are detached single-family homes with a homeowners' association that is responsible for exterior maintenance of buildings and upkeep of common open spaces. Examples of this kind of development are Ashley Oaks and Alexandra's Cove.

The number of these types of units permitted in the City grew steadily from the year 2000 when 19 units were permitted to 2004 when 64 units were permitted. There were more of these units permitted in 2006 (60 units) than any other housing type.

Townhouse Construction

More townhouse units were constructed in the City between 2000 and 2006 than any other housing type. They accounted for 43% of all new units. This included two-family homes when they were part of a larger development with a homeowners' association. Townhouse construction reached its peak of activity in 2003 (128 units) with fewer units being constructed each year since. Only 43 townhouse units were constructed in 2006.

A large part of the proposed PORT Riverwalk development contained townhouse units (240 of the 286 unit project).

Multi-family Construction

The development of multi-family dwelling units in Coon Rapids has been sporadic. There have been permits issued in only three of the seven years between 2000 and 2006 for the development of 217 multi-family units. However, only one 48 unit development (Hanson Station) has been permitted since 2002.

Additional multi-family construction might occur at Woodcrest and Egret Boulevards, at PORT Riverwalk, and in mixed use projects in industrial or commercial areas in the City.

Potential Housing Sites

In addition to the potential housing development sites discussed previously, the following sites may be appropriate for residential development:

Coon Rapids Boulevard

It may be possible to develop townhouse or multi-family projects if property can be acquired at various infill and redevelopment sites. These sites include:

- Former Target site – Crooked Lake Boulevard
- Family Center Mall property - Crooked Lake Boulevard
- Commercial properties at Hanson Boulevard
- PORT Riverwalk – Avocet Street (discussion included above)
- DOT Mini-Storage – Vale Street
- WCCO Tower property – east of Pheasant Ridge Drive

Transit Oriented Development Sites

- Riverdale Northstar Commuter Rail transit station area
- Foley Northstar Commuter Rail transit station area

School Sites

Older suburban areas often have declining school enrollments that require schools be closed. Anoka-Hennepin School District #11 has not identified any schools for closure, however, this could happen at some time before 2030. The site(s) may or may not be converted to housing. The new housing type would depend on the housing market at the time and the location of the school closing(s).

Sod Fields

This report has identified two sod field sites where there have been inquiries regarding development potential. One is located north of Main Street and east of Shenandoah Boulevard. This sod field appears to have worse development constraints, including depth to stable soils and flood plain designation, than its twin to the south of Main Street. It is not anticipated that this field will develop. There is a third sod field at Main Street and Crooked Lake Boulevard. This area could develop at some time in the future.

Prospects for Future Construction Activity

The prospects for future construction in Coon Rapids were derived from a 2006 market study and Metropolitan Council projections.

Market Potential

A market study was performed by Maxfield Research Inc. during the fall of 2006 to ascertain the potential for new housing in Coon Rapids during the 2006-2020 period. The Maxfield report examined past production trends, existing supply, and the results of realtor interviews.

The summary of the Maxfield findings is shown in the three paragraphs below.

> "The City of Coon Rapids is almost entirely built-out. With aging housing stock and the continued growth occurring in the North Metro Area, Coon Rapids is in a position to capture a portion of that growth through redevelopment that could provide housing products currently desired by the market; similar to what is being offered in the higher growth communities of Andover and Blaine. The City must accommodate growth with very little available land and must balance the cost of redevelopment with supplying a product that is desirable.
>
> "Our interviews with local area agents indicated that the current market for additional entry-level townhomes seems to be soft. Conversely, the market for single-level townhomes continues to attract empty-nesters and seniors, resizing from their single-family homes. Detached product also remains popular, but pricing of these units may extend beyond the market.
>
> "With a limited number of redevelopment sites, the City will have to balance market demand for specific product types with the costs in bringing these sites to market. In most cases, redevelopment costs could push the product types toward higher density development. Through subsidies or special financing, the City may be able to push down pricing for some of these product types to support lower density. Conversely, the City may be able to encourage different product types that increase density, but still provide features the market desires (i.e. small lot, single-family). In the Coon Rapids housing

market, price is an important issue, and will need to be addressed when considering future development."

Metropolitan Council Forecasts

The Metropolitan Council's systems statement projections are shown in the following table.

TABLE 4-11: Metropolitan Council Forecasts

	2000	2010	2020	2030
Population	61,607	65,700	66,000	65,000
Households	22,578	25,600	26,500	27,000
Employment	21,462	24,200	26,000	27,800
Source: Metropolitan Council				

Two Growth Scenarios

Developable land is very limited in Coon Rapids. This has resulted in an average of 200 units per year permitted from 2000 through 2006. However, there were only 171 and 155 units permitted in 2005 and 2006 respectively. See Table 4-10.

No one knows for certain how many units will be constructed in future years. Two scenarios are considered here.

Scenario 1. Metropolitan Council Growth Scenario

This scenario proposes an average of 109 units will need to be built in Coon Rapids each year between 2007 and 2030 to meet the Metropolitan Council's projection of 27,000 households. (Since there was only a 1% difference between the number of households and the total number of units in the community in the year 2000, for projection purposes, it is assumed that one household equals one dwelling unit.)

The U.S. Census reported that there were 22,828 housing units in Coon Rapids in the year 2000. There was a net increase of 1,545 units in the years 2000 through 2006 after demolitions were subtracted from the 1,576 new units built. Therefore, the construction of 2,627 housing units would be needed from 2007 to the end of 2030 to meet the Metropolitan Council's projections.

This level of housing production is comparable to doing approximately eight projects the size of the PORT Riverwalk housing development that was proposed in 2006. It is likely the City will have to be involved in project assistance (land assembly and/or write-down of land costs) to meet this projection.

Scenario 2. Limited Public Involvement Growth Scenario

This scenario assumes 50 units per year will be constructed and may be a more realistic scenario than Scenario 1. Coon Rapids foresees several development obstacles: developable land is limited, housing production is constrained by new eminent domain laws, and restrictions on the use of Tax Increment Financing will make it very difficult for the City to be involved in project assistance. Therefore, it is likely there may not be more than 1,200 units built in the City before the year 2030 if there is not significant involvement by the City in stimulating or assisting construction activity. The rate of construction proposed under this scenario would result in 25,573 housing units in Coon Rapids by the year 2030, or 1,427 units less than the Metropolitan Council's projection.

Implications

A shortfall of 1,427 units from the Metropolitan Council's forecast will not result in inefficient use of capital investments for parks, transit, sewers, and other regional infrastructure. This is within a one-half percent of the Metropolitan Council's forecast.

The real concern is that declining housing production could mean that aging, obsolete, and blighted sites in the community which might be otherwise redeveloped in a booming real estate market will not be redeveloped. This could result in additional disinvestment in adjacent housing and the appearance that the City is in decline.

GOALS, OBJECTIVES, AND POLICIES

Given the existing housing conditions and development prospects, the City has adopted the following goals, objectives, and policies to address housing production and maintenance.

Goal #1: Housing Quality - A high-quality living environment, the preservation of stable residential neighborhoods, and, where necessary, the upgrading of the existing housing stock in the City.

Objectives:

1-1. Removal or buffering of non-residential uses that are a blighting influence on their residential surroundings.

1-2. Elimination of blighting influences and conditions such as unkempt or weedy yards, glaring lights, unscreened storage, poorly maintained exteriors, uninhabitable homes, and an excessive number of vehicles parked on residential properties.

1-3. Removal of substandard housing units that are economically unfeasible to rehabilitate.

1-4. Construction of high quality new housing.

1-5. Remodeled ramblers that are attractive to young homebuyers.

Policies:

1-1. The City will respond to complaints about owner occupied properties just as aggressively as it does with renter occupied properties that are not being maintained or are apparent nuisances in the neighborhood.

1-2. The City will assure the maintenance of its housing stock by developing and distributing informational materials that help home and apartment owners address maintenance and housing system problems.

1-3. The City will provide information for rental property owners to help them screen tenants and deal with tenant related issues that eventually lead to deteriorating properties.

1-4. The City will provide information, upon request, that does not violate data privacy rules about neighborhood property maintenance or construction activity.

1-5. The City will work with homeowners' associations to help them plan for and manage their maintenance needs.

1-6. The City will continue to monitor housing maintenance and outside storage regulations.

1-7. The City will provide those neighborhoods that have the highest housing maintenance violations the highest priority for financial programs to encourage reinvestment.

1-8. The City will protect the integrity and desirability of established residential neighborhoods by considering the discontinuation of isolated and aging nonresidential uses through buyout and/or amendments to the future land use map as opportunities arise.

1-9. The City will use, if necessary, its legal condemnation authority to remove substandard housing for which rehabilitation has been determined to be economically unfeasible.

1-10. The City will continue its program that helps owners of single-level ramblers to update and renovate their properties in a sensitive way that respects the architectural character of the rambler.

1-11. The City will continue to encourage existing home renovations such as second story additions and exterior curb appeal improvements.

1-12. The City will add to its financial assistance programs to help low-income property owners address deteriorating housing problems.

1-13. The City will give high priority to rehabilitating its aging housing stock when determining the appropriate use of Community Development Block Grant funds.

1-14. The City will use HUD's Section 8 housing quality standards to determine whether a house is in need of substantial rehabilitation or beyond repair, except where a particular funding program or regulation specifies an alternate definition.

1-15. The City will help protect the quality of its housing stock by ensuring that there is full disclosure of existing code violations. Implementation could include a Truth in Housing or Point of Sale requirement. At the very least, this will mean promotion to real estate agents and prospective home buyers or sellers of the practice of contracting for private home inspections prior to purchase of any Coon Rapids home. Promotional efforts may include but shall not be limited to periodic educational items in City publications and information made available to the public by City staff.

1-16. The City will undertake efforts to reduce the number of homes that fall into foreclosure and/or have severe maintenance problems.

Goal #2: Housing Variety - A variety of housing types and designs to allow all people a housing choice.

Objectives:

2-1. New housing units that are designed using "universal design" principles.

2-2. No less than 60% of the City's housing supply being detached single-family homes (includes detached homes in a common interest community).

2-3. No less than 75% of the housing stock being owner-occupied.

2-4. More upper bracket housing costing more than $300,000 to balance the high percentage of housing units valued below $250,000.

Policies:

2-1. The City will continue development management approaches which encourage a wide variety of housing types and ownership and rental options.

2-2. The City will encourage developments for retired and handicapped persons and continue programs offering City financial assistance for these special housing needs.

2-3. The City will continue to offer the flexibility of the Planned Unit Development process in order to achieve affordable housing units.

2-4. The City will identify underused nonresidential sites that may be suitable for higher density residential use.

2-5. The City will designate infill areas and redevelopment sites along major streets and adjacent to commercial or other high activity areas for townhouse and/or apartment type uses.

2-6. The City will encourage upper bracket homes where townhouse and/or apartment units are not compatible with the surrounding neighborhood.

2-7. The City will accommodate energy conserving technologies and construction techniques, including active and passive solar energy features, by advocating their use in application for new residential development and by amending City Code or City policies as appropriate to allow residents to take advantage of new approaches.

2-8. The City will assist in attempts to obtain any applicable funds for City approved development proposals designed to maximize the opportunity of providing a variety of housing types, costs, and densities that meet City objectives. Sources may include, but

are not limited to, federal programs such as the Home Investment Partnership Program (HOME) or Section 202 financing for senior housing, state aid such as the Low Income Tax Credit Program or the Low/Moderate Income Rental Program, Metro Council funds such as the Local Housing Investment Account, or nonprofit assistance such as the Family Housing Fund or Habitat For Humanity.

2-9. The City will, to the extent possible, document the characteristics and neighborhood experiences of community based residential facilities in the City, so that better relations may be forged between such facilities and surrounding neighborhoods.

2-10. The City will develop procedures that result in productive discussions between developers and surrounding residents when there is neighborhood opposition to a housing proposal that meets City objectives.

Goal #3: Affordability - Housing opportunities at a cost low- and moderate-income individuals and families can afford without compromising essential needs.

Objectives:

3-1. A housing supply that has between 20% and 25% of all units affordable to families with an income at 60% of the area median family income (AMI).

3-2. The preservation of existing affordable units, including the manufactured housing at Creekside Estates manufactured home park.

Policies:

3-1. The City will use the Metropolitan Council's definition of affordable housing which is housing that costs no more than 30% of the income of a family earning 60% of the Twin Cities median family income.

3-2. The City accepts the Metropolitan Council's suggested allocation of 200 affordable units between 2011 and 2020 and will continue its efforts to support affordable housing opportunities for current and future residents through provision of location choices for varied housing types, participation in housing assistance programs responsive to local needs, and provision of fiscally prudent public assistance to projects that are a benefit to the community as a whole.

3-3. The City will continue its current development management system of providing reasonable standards that do not contribute to excessive housing production costs and a development review process that provides for efficient and timely decisions.

3-4. The City will continue its programs to assist in the provision of low- and moderate-income and special needs housing resources and the coordination of these local efforts with other programs to maximize results.

3-5. The City will not require new affordable housing to be located adjacent to existing concentrations of affordable housing.

3-6. The City will consider and attempt to reasonably mitigate the loss of or impact on the quality of the existing supply of affordable housing units by any new development or redevelopment proposal that requires removal of affordable homes or that would significantly increase traffic, noise, or other negative impacts near those homes. However, such considerations will not necessarily override other legitimate development concerns.

3-7. The City will consider any potential housing affordability impact prior to adopting or amending any development-related or construction-related regulation. Negative impacts will be balanced against concerns for the general public health, safety, or welfare. Where possible, strategies for mitigating negative affordability impacts will be identified.

3-8. The City will meet with owners of subsidized properties eligible to leave the subsidy program, to learn about their plans and to discuss any obstacles that may keep them from renewing their program contract.

3-9. The City will meet with owners of market rate rental properties to explain the Federal Section 8 voucher program and encourage them to participate in the program.

Goal 4: Nondiscrimination - Equal opportunity in home ownership and renting.

Objective:

4-1. No discrimination against persons seeking housing based on age, religion, race, ethnic origin, sexual preference, gender, or disability.

Policies:

4-1. Staff will investigate any allegations of housing discrimination to see if the City of Coon Rapids should intervene in the dispute.

4-2. The City will conduct ongoing education efforts as necessary to promote equal availability of housing opportunities and fair treatment of all renters and buyers regardless of age, religion, race, ethnic origin, sexual preference, gender, or disability.

4-3. The City will establish a process for early citizen involvement in the siting of new subsidized housing developments.

4-4. The City will continue to participate in the local housing incentives program of the *Metropolitan Livable Communities Act*.

IMPLEMENTATION PROGRAM

The City will take a variety of actions to implement the housing goals and objectives above.

Comprehensive Housing Strategy - It will adopt the *Comprehensive Housing Strategy* developed in 2007. The twelve broad strategies in the report along with the more specific Targeted Implementation Plan and Operational Strategy will be used by Coon Rapids to achieve the City's housing goals, which include providing a balanced supply of housing available to people at all stages of life, and preserving and reinvesting in its existing housing stock.

Housing and Redevelopment Authority (HRA) - The HRA has the authority to acquire blighted property, enforce standards, levy, issue bonds, and facilitate the production of housing, among other powers. The HRA levies about $575,000 a year to undertake projects and fund staff positions. Additionally, the City could choose to participate in the Anoka County HRA/EDA.

Zoning Code - Chapter 462 of Minnesota Statutes provides cities the authority to adopt official controls to further facilitate the development of affordable housing. The City's zoning code provides moderate and high density areas that supply enough density to feasibly develop affordable housing. These areas include Moderate Density Residential, High Density Residential, Planned Unit Development, and the River Rapids Overly District. Many of these areas are adjacent to transportation corridors.

Coon Rapids Mortgage Assistance Foundation Funds - This program grew out of the 1979 issuance of Housing Development Revenue Bonds to assist the development of residential property by providing below market interest mortgage rates for family housing. Coon Rapids Mortgage Assistance Foundation loan program has been developed using the proceeds of the original bonding to provide incentive loan funds for both value-added improvements and housing maintenance. Deferred loans are available to households earning 50% of area median income or lower.

Community Development Block Grant (CDBG) – The City of Coon Rapids is an entitlement community under the CDBG program and utilizes the majority of its federal allocation to support reinvestment in the existing housing stock by providing deferred loans for housing rehabilitation needs to households earning 80% of area median income or lower. Additionally, 15% of the City's entitlement is used to fund public service needs as defined by the federal program within Coon Rapids and the surrounding Anoka County area.

Section 8/HRA Remote Office – The City issues approximately 450 Federal Section 8 vouchers out of City Hall. This provides an avenue for the City to connect with landlords, monitor rental housing quality, and better serve residents. Inspectors regularly inspect properties utilizing

Section 8 vouchers to assure that the units meet the health and safety standards set by the Department of Housing and Urban Development for these units.

Conduit Financing – The City provides conduit financing to lower the cost to construct and remodel affordable housing units throughout the City.

Housing Improvement Areas (HIAs) – Minnesota Statutes allow cities to provide financing via a housing improvement area or HIA for common interest communities (CICs) to make improvements to the structures within the CIC. Without such financing, many CICs would be unable to secure the necessary funding to maintain the units within the development. Many CICs provide affordable housing opportunities and HIAs help preserve such units. According to the Legislative Auditor, Coon Rapids has utilized HIAs more often than any other community in Minnesota.

Neighborhood Reinvestment Program - In 2008, Coon Rapids undertook a new initiative to preserve, enhance, and sustain its neighborhoods. The goal of this Neighborhood Reinvestment Program is to promote reinvestment in the City's neighborhoods by: 1) ensuring neighborhood stability, cohesiveness, and connectedness through the promotion of interaction and communication among residents and City staff; 2) addressing conditions and behavior leading to blight; 3) providing resources, tools, opportunities, and information to residents to promote maintenance and reinvestment; 4) monitoring and addressing of maintenance and behavior issues at rental properties; 5) and coordination of the City's various assets and resources.

Additional Tools - The City will consider the use of additional tools and applications to further its housing objectives stated within this Plan. Examples may include using additional HRA powers, revising zoning codes, or applying new legislation.

City of Eagan

March 31, 2017

Alyssa Wetzel-Moore, FHIC Chair
Saint Paul Department of Human Rights and Equal Economic Opportunity
15 West Kellogg Boulevard, 240 City Hall
Saint Paul, MN 55102

RE: Eagan Response and Comments to Draft Addendum to the Regional Analysis of Impediments to Fair Housing

Dear Ms. Wetzel-Moore:

Thank you for the opportunity to review and provide comment regarding the draft Addendum to the Regional Analysis of Impediments to Fair Housing. The following concerns address the Public Sector Policy Analysis, particularly the Local Zoning Code review conducted for the City of Eagan.

The City of Eagan was one of 23 Twin City entitlement and subrecipient jurisdictions that received zoning code review to determine in what areas and to what degree its zoning ordinance and land use regulations restrict fair housing choice. Eagan received an overall score of 2 (medium Risk of systematic housing discrimination or limitation on fair housing choice), with two categories scored as 3 (High Risk).

The reasons provided for the medium and higher risk scores appear to center around minimum lot size/density requirements, performance standards above those that provide the minimum to meet building safety codes, and lack of inclusionary zoning tools that incentivize affordable housing. Eagan is a fully developed city that had much of its residential growth occur from the early 1980's through the early 1990's primarily due to the completion of the Interstate highway system south of the Minnesota/Mississippi Rivers. During that period, demand for typical suburban residential development was high as was the availability of land that had previously been utilized for agricultural purposes.

The zoning review mentions that single family housing is provided in Agriculture, Estate Zoning and R-1 zoning with large minimum lot size as impediments to affordable housing. The Agriculture zoned properties are typically remnants of Eagan's rural beginning are meant to be a holding zone until further intensity of development is requested. Estate Zoning (1% of residentially zoned land) was used very infrequently to either preserve larger older subdivision lots or due to topography challenges. Both of these zoning categories are expected to be maintained in the Zoning Ordinance; however, they are not anticipated to be used for new development and should not be factored in this review.

While the City has used the base R-1 single family zoning extensively in its past, Eagan also began to use the Planned Development zoning as far back as the late 1970's to allow for smaller lot and mixed use developments. In fact, 34% of Eagan's residential land is zoning Planned Development to allow for variations from stricter code standards. While the zoning review correctly states the Eagan Planned Development zone does not specifically mention affordable

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3830 Pilot Knob Road
Eagan, MN 55122-1810
651.675.5000 phone
651.675.5012 fax
651.454.8535 TDD

Maintenance Facility
3501 Coachman Point
Eagan, MN 55122
651.675.5300 phone
651.675.5360 fax
651.454.8535 TDD

www.cityofeagan.com

housing as an intended outcome, the intent to provide greater flexibility, creativity and efficiency in land use is clear.

The purpose of the R-1S zoning, as stated in the Zoning Ordinance, is to allow smaller single-family lots, reduced setbacks and additional lot coverage to provide a variety of styles and values in the City. The zoning review does not appear to give any scoring credit to this provision compared to other cities with similar lot size requirements.

Additionally, the City of Eagan does not apply minimum floor area ratios for residential property, and deviations to minimum lot area per unit standards have routinely been accommodated, via Planned Development Zoning, for high density/multifamily developments. In fact, the 700+ multifamily units that will be under construction in Eagan in 2017 will have an average density of 42 units/acre. Also, within these developments, the city has approved a mixture of surface and enclosed parking under the standard 2:1 ratio to allow greater densities. The 700+ units referenced above were approved with an average parking ratio of 1.5:1

Since the community is fully developed, it would be difficult for Eagan to change the existing base zoning standards for residential development. Instead, Eagan has implemented a flexible zoning strategy through the use of Planned Developments that allows for more creative and efficient development. An example of this has occurred within Eagan's Cedar Grove Redevelopment Area where the City established a specific Cedar Grove District (CGD) Zoning category that established higher density expectations. This included eliminating: minimum setbacks, maximum building heights and removing density limits. The City then uses the CGD zoning as a base to review a project which typically is approved under a Planned Development to allow greater flexibility in site design.

Also, Eagan works closely with the Dakota County CDA to implement housing programs on behalf of the City. While specific housing incentives are not identified in the Zoning Ordinance, the City provides funding for CDA housing programs and has approved Planned Development zoning to accommodate five workforce family townhome projects.

The City strives to balance affordability, sustainability, and a high quality of life for all of its current and future residents. We believe that the zoning review does not adequately account for Eagan's Planned Development or R-1S zoning, nor does it reflect flexibility within the zoning code relative to floor area ratios, parking, and other factors evaluated during the Planning Development process. Thank you again for the opportunity to comment on the Eagan zoning review, and please do not hesitate to contact us if you have any further questions.

Sincerely,

Jill Hutmacher
Community Development Director

Cc: Lisa Alfson, Dakota County CDA

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MEMORANDUM

TO: Daryl Morey

FROM: D. Daniel Licht, AICP

DATE: 30 March 2017

RE: Lakeville – HUD Regional Analysis of Impediments to Fair Housing

TPC FILE: 135.01

BACKGROUND

Dakota County Community Development Agency (CDA) has provided City staff draft sections of a housing study undertaken by the Department of Housing and Urban Development (HUD) that evaluates provisions of the Lakeville Comprehensive Plan and Zoning Ordinance as to the permissibility of the documents related to fair housing practices. City staff discussed the draft findings and recommendations at the Development Review Committee meeting on 17 March 2017 and our office was directed to review the comments further and provide comment.

Exhibits:

- Lakeville Zoning Review
- Recommendations from the Draft Addendum

ANALYSIS

Response to Question 2:

- Multiple family dwellings are allowed within the O-R, Office Residential Transition District as a conditional use subject to the performance standards of the RH-1, High Density Residential District in accordance with Section 11-70-7.J of the Zoning Ordinance.

- The O-R District allows for mixed use buildings combining commercial and residential uses as a conditional use by Section 11-70-7.I of the Zoning Ordinance. Such mixed use

buildings are allowed within the C-CBD, Commercial Central Business District by administrative permit in accordance with Section 11-74-11.H of the Zoning Ordinance.

- The commentary provided with Question 2 states that the minimum lot area requirements for detached townhome, two-family, townhouse and multiple family Zoning Districts limit development to low to medium density residential uses. The minimum lot area requirement for residential uses platted in a unit and base lot configuration with association maintained open space are governed as a lot area per unit. The minimum lot area requirements of the RH-1 and RH-2 District of The minimum lot area requirements for these uses on a net density basis as required by Section 11-17-21 of the Zoning Ordinance are shown in the table below. The effective density of development for these uses are appropriately within what is commonly considered to be medium to high density range for residential land uses.

	Minimum Lot Area Per Dwelling Unit	Net Density
Detached townhome	7,500sf.	5.8du./ac.
Two-family dwelling	7,500sf.	5.8du./ac.
Townhouse	5,000sf.	8.7du./ac.
Multiple Family Dwelling	2,500sf.	17.4du./ac.

- The Economic Development Commission and City Council have identified development of multiple family housing as a goal adopted as part of the City's 2017-2019 Strategic Plan for Economic Development. The City Council and Planning Commission held work sessions in 2016 to consider possible actions that could be taken within the City's land use controls to facilitate greater opportunity for multiple family development. Actions that the City Council and Planning Commission identified to encourage greater opportunity for housing options include:

    - Development of multiple family dwellings on lots guided by the Comprehensive Plan and zoned for commercial uses.

    - Reduced minimum lot area per dwelling unit requirements based on the number of bedrooms per dwelling unit, proximity to regional transit facilities/corridors, and efficiency in site design.

    - Reduction in off-street parking requirements for multiple family uses based on Institute of Transportation Engineering parking demand studies.

    - Allowance of new exterior materials meeting the sustainability intent of the current exterior finish requirements for multiple family buildings.

    The 2018 Comprehensive Plan update will allow for a community visioning process to identify opportunities for possible changes to the land use plan responding to the

Metropolitan Council's Thrive MSP 2040 Regional Plan, including housing policy recommendations, and identifying locations for possible high density residential land uses (in addition to those currently guided for such uses). An update of the Zoning Ordinance will occur following adoption of the 2018 Comprehensive Plan and will address the measures outlined above. In the interim, the City Council and Planning Commission have stated that potential projects and flexibility consistent with the performance standards outlined above will be considered as Planned Unit Developments. The City Council on 6 February 2017 approved Avonlea Village Green as a three-story, 146 dwelling unit multiple family building with a density of 26 dwelling units per acre. Applications have also been submitted for Lee Lake Commercial, a mixed use development that includes a 120 dwelling unit multiple family building designed consistent with the performance standards outlined above and located within ½ mile of the Metropolitan Council's I-35 park and ride transit facility.

- The 2008 Lakeville Comprehensive Plan establishes a commitment to a minimum density of 7.0 dwelling units per acre along the Cedar Avenue corridor as a Special Study Area outside of the MUSA based on regional transportation planning for the Red Line Bus Rapid Transit. This density commitment will require the City to designate additional land within the Cedar Avenue corridor for high density residential uses as part of the 2018 Lakeville Comprehensive Plan update.

Response to Question 3:

- Section 11-17-7.E of the Zoning Ordinance allows for an increase in building height above that established by individual zoning districts as a conditional use. The City Council approved a conditional use permit for the Lakeville Pointe development to allow for construction of a 49 dwelling unit multiple family building with a defined height of 42 feet, which exceeded the O-R District limit of three stories or 35 feet, whichever is less.

- The City will review the minimum floor area requirements for multiple family dwellings established by Section 11-13-11.B of the Zoning Ordinance as part of the Zoning Ordinance update following adoption of the 2018 Comprehensive Plan update. Developers of recent multiple family use including Avonlea Village Green, Lakeville Pointe, and Lee Lake Commercial have not indicated that the minimum floor area requirements are an impediment to their projects. However, flexibility from the minimum floor area requirements established by the Zoning Ordinance could be considered under a PUD District.

- The City will review the 10 percent limit for efficiency units within multiple family buildings established by Section 11-13-15 of the Zoning Ordinance as part of the Zoning Ordinance update following adoption of the 2018 Comprehensive Plan update. In the interim, flexibility from this requirement may be considered under a PUD District. The proposed Lee Lake Commercial multiple family building proposes 22 percent of the 120 dwelling units as efficiency apartments as part of their PUD application.

Response to Question 4:

- The provisions adopted 4 March 2013 allowing accessory dwelling units by administrative permit within a single family dwelling were established to expand life cycle housing choices within the City while preserving the single family character of a neighborhood.

- The Zoning Ordinance allows renting of rooms within a single family dwelling to unrelated persons is also allowed by administrative permit to provide flexibility for the property owner and expand housing options within the community.

- There are five manufactured home parks within the City allowed subject to the performance standards of the RSMH, Single Family Manufactured Home Park District. Manufactured home parks are also allowed as a conditional use within the RST-1, RST-2, RM-1, RM-2, RH-1 and RH-2 Districts. City staff will need to review the requirement allowing for manufactured home parks as a conditional use within the O-R and C-CBD District, which allow for multiple family dwellings as a conditional use permit to fully comply with Minnesota Statutes 462.357, Subd. 1b.

- Zoning Ordinance updates in 1994 and 2000 included amendments to the zoning for the five existing manufactured home parks to provide performance standards mirroring the approved density and site design for each property so that the use did not have legal non-conforming use status and to comply with Minnesota Statutes 462.357, Subd. 1a.

Response to Question 5:

- Section 11-17-23.F.2 of the Zoning Ordinance requires that the site plan for a single family home to be constructed on a lot platted after January 1, 1994 provide for the location of a three stall garage, but does not require construction of any detached or attached garage.

- As noted above, the City Council and Planning Commission will consider a parking requirement of 2.0 stalls per dwelling unit for multiple family dwellings having an average of 2.0 bedrooms per dwelling unit or less based on Institute of Transportation Engineers parking generation studies. It is expected that this standard will be codified in Section 11-19-13 of the Zoning Ordinance as part of the update to occur following adoption of the 2018 Comprehensive Plan.

- The Zoning Ordinance includes provisions within the RST-2, RM-1, RM-2, RH-1, and RH-2 District exempting developments meeting regional housing affordability criteria from unit construction, garage size, and minimum landscape requirements.

Response to Question 6:

- As noted above, the City will undertake an update of the Zoning Ordinance following adoption of the 2018 Comprehensive Plan that will consider residential density, minimum lot area, minimum lot area per unit, minimum floor area, efficiency dwelling unit limits to encourage greater opportunity for multiple family housing in Lakeville consistent with local and regional housing and economic development goals. In the interim, a development with densities greater than allowed by the current Zoning Ordinance may be proposed as a Planned Unit Development.

CONCLUSION

The information outlined above is provided in response to the comments of the draft HUD Regional Analysis of Impediments to Fair Housing as to provisions of the Zoning Ordinance. The City's intent in providing these comments is to provide clarification and demonstrate how the City has implemented provisions for fair housing within Lakeville. Of particular concern to the City are comments related to perceived restrictions on development of medium to high density residential uses and performance standards deemed to be exclusionary that were rated as being a high risk to result in systematic housing discrimination or limits of fair housing choice. The draft findings of the study in these categories do not adequately acknowledge the implementation mechanisms adopted as part of the existing Zoning Ordinance to create opportunity for a wide range of housing options within Lakeville for all incomes and all life-cycles. Furthermore, the City has demonstrated through both past and recent development approvals a willingness to utilize these tools to further local and regional housing goals. The City fully intends to address the comment that it can take further action to promote affordable housing and fair housing choice as part of its 2018 Comprehensive Plan update and subsequent Zoning Ordinance update.

c. Justin Miller, City Administrator
David Olson, Community and Economic Development Director
Andrea McDowell Poehler, City Attorney

Lakeville Zoning Review

Average Total Risk Score: **2.17**

Key to Risk Scores:
1 = low risk – the provision poses little risk for discrimination or limitation of fair housing choice, or is an affirmative action that intentionally promotes and/or protects affordable housing and fair housing choice.
2 = medium risk – the provision is neither among the most permissive nor most restrictive; while it could complicate fair housing choice, its effect is not likely to be widespread.
3 = high risk – the provision causes or has potential to result in systematic and widespread housing discrimination or the limitation of fair housing choice, or is an issue where the jurisdiction could take affirmative action to further affordable housing or fair housing choice but has not.

Source Documents:
Title 11 of the Code of Ordinances, ***Lakeville Zoning Ordinance,*** available at:
http://www.sterlingcodifiers.com/codebook/index.php?book_id=418

2008 Comprehensive Plan, available at:
http://www.ci.lakeville.mn.us/DocumentCenter/View/575

Issue	Conclusion	Risk Score	Comments
1a. Does the jurisdiction's definition of "family" have the effect of preventing unrelated individuals from sharing the same residence? Is the definition unreasonably restrictive?	The City's definition of family is neither the most restrictive nor the most permissive. It limits the number of unrelated persons who may reside together to up to four. *Family:* "An individual or group that maintains a common household and use of common cooking and kitchen facilities and common entrances to a single dwelling unit, where the group consists of: A. Two (2) or more persons each related to the other by	2	*See* Sec. 11-2-3 definitions. While the Supreme Court has recognized a local government's right to limit the number of unrelated individuals who may live together as constitutionally permissible, the restriction must be reasonable and not exclude a household which in every sense but a biological one is a single family. An unreasonably, or arbitrarily, restrictive definition could violate

	blood, marriage, domestic partnership, adoption, legal guardianship, foster children, and/or cultural or educational exchange program participants hosted by the principal family; or B. Not more than four (4) unrelated persons."		state Due Process and/or the federal FHA as it may have a disproportionate impact on people with disabilities, minorities, and families with children.
1b. Does the definition of "family" discriminate against or treat differently unrelated individuals with disabilities (or members of any other protected class)?	The City's family definition does not treat persons with disabilities differently *because of* their disability. State licensed residential care facilities for persons with disabilities are regulated separately.		Residential facilities for persons with disabilities housing 6 or fewer unrelated persons, are permitted by right in the RS-1, RS-2, RS-3, RS-4, RS-CBD, RS-MH, RST-1, and RST-2 districts. Those serving 16 or fewer are permitted by right in the RM-1, RM-2, RH-1, and RH-2 districts.
2. Do the jurisdiction's zoning and land use rules constitute exclusionary zoning that precludes development of affordable or low-income housing by imposing unreasonable residential design regulations (such as high minimum lot sizes, wide street frontages, large setbacks, low FARs, large minimum building square footage, and/or low maximum building heights)?	The zoning code and map provide for five zoning districts that are exclusively single-family detached districts (in terms of housing type) (R-1, R-2, R-2, R-4, and RSCBD). Minimum lot sizes range from 20,000 sq. ft. to 8,400 sq. ft. The minimum lot size for single family dwellings, which are unsewered and rely on septic systems, (existing after 1977) must be ten acres.	2	*See* Sec. 11-17-13; 11-17-15; 11-17-19; 11-50-1 et seq.; 11-51-1 et seq.; 11-52-1 et seq.; 11-53-1 et seq.; 11-54-1 et seq.; 11-55-1 et seq.; 11-56-1 et seq. Rezoning approval for a Planned Unit Development may provide for a variety of housing types and greater densities consistent with the Comprehensive Plan than allowed by the

	Two-family units are permitted by right in the RST-1 district. Two-family and detached townhomes are permitted in RST-2. Detached townhomes, attached up to 6 units, and 2-family units are permitted in RM-1 and RM-2. Even for two-family and townhome units, density is limited due to minimum lot sizes of 7,500 sq. ft. per unit in the RST districts and 5,000 sq. ft. per unit in the RM and RH districts. The code also imposes minimum livable floor area requirements. One and two-bedroom single family dwellings must have a minimum floor area of 960 sq. ft. above grade; three or more bedroom dwellings must have a minimum floor area of 1,100 sq. ft. above grade. Two-family dwellings require 650 square feet for the first floor above grade, plus 100 additional square feet for each bedroom; townhomes require 600 square feet for the first floor above grade, plus 100 additional square feet for each bedroom. The jurisdiction's minimum lot and design		underlying zoning, but the stated intent and criteria considered is not to necessarily provide for more affordable housing in the jurisdiction. (Sec. 11-96-1 et seq.)

	standards limit density to low and moderate density and may impact the feasibility of developing single-family detached and attached affordable housing.		
3a. Does the jurisdiction allow for a mixture of housing types? Does the zoning ordinance fail to provide residential districts where multi-family housing is permitted as of right? 3b. Do multi-family districts restrict development only to low-density housing types?	The zoning code contemplates single family, two-family, townhomes, and multifamily units. Multifamily housing is permitted by right in the RH-1 and RH-2 districts, and a conditional use in the O-R district. Multifamily developments require a minimum 20,000 sq. ft. lot and density is permitted at 2,500 sq. ft. per unit, which is generally a medium density depending on the jurisdiction. However, this potential density is limited by a 35 feet height maximum in the RH-1 district and 45 feet maximum in RH-2. The minimum floor areas for multifamily units are 500 sq. ft. for efficiency units, 700 sq. ft. for 1-bdr, 800 sq. ft. for 2-bdr, and an additional 80 sq. ft. for each additional bedroom above 2. Efficiency units are	3	*See* Sec. 10-7-49 (density); 10-15-1 et seq.; 10-16-1 et seq.; 10-17-1 et seq.; 10-22B-1 et seq.; 10-22C-1 et seq.; 10-27-1 et seq. The zoning map was not separately analyzed to determine whether enough areas of the jurisdiction are zoned to meet demand for multifamily housing. Other considerations besides density limits, like housing prices and rents, market conditions, existing land-use patterns, the provision of public services and infrastructure, design and architectural requirements, impact fees, and other planning goals also have an impact on the quantity of multifamily and affordable housing. Multifamily zoning would include public housing. People with disabilities, minorities, African-Americans and

	typically a lower-cost alternative for 1 and 2 person households. However, rather than letting the market decide the bedroom composition of multifamily developments, the code limits the number of efficiency apartments in multiple-family dwellings, except for senior housing, to not exceed one unit or 10% of the total number of dwelling units in the building, whichever is greater.		Latinos, and low-income households disproportionately rely on multifamily housing.

4a. Are unreasonable restrictions placed on the construction, rental, or occupancy of alternative types of affordable or low-income housing (for example, accessory dwellings or mobile/manufactured homes)? 4b. Are there any regulations requiring that rental units or accessory dwellings only be occupied by blood relatives of the owner?	The code prohibits accessory buildings from being occupied as a separate dwelling unit. However, in the residential districts, "separate living quarters that include kitchen facilities for housing multiple generations as an accessory use within a single-family dwelling" may be administratively approved. The living space cannot be subdivided into a separate dwelling unit. The accessory unit is limited to related family, which intentionally or not serves to maintain the racial makeup of a neighborhood. Under the Minnesota Planning Act, a manufactured home park is by law a conditional use in any zoning district that allows the construction or placement of a building used or intended to be used by two or more families. Manufactured home parks are a permitted by right use in the RSMH district. Manufactured home parks are a conditional	3	*See* Sec. 11-16-3. *See e.g.*, Sec. 11-50-11(F). Minn. Stat. Ch. 327 et seq.; 462.357; Minnesota Rules 4630.0200 - 4630.1700 and 4630.2210 - 4630.4700.

	use in the RST-1, RST-2, RM-1, RM-2, RH-1, and RH-2 districts.		
5. Do the jurisdiction's design and construction guidelines create unreasonable or arbitrary barriers to affordable housing, i.e. required building or façade materials, landscape requirements, parking, architectural requirements? 5b. Are the jurisdiction's preservation or environmental protection guidelines arbitrary, antiquated, or unreasonable so as to limit development of affordable housing?	The zoning code does impose design, architectural, landscape and lighting, and off-street parking standards on residential uses. While these standards have aesthetic and quality of life value, some may also add additional layers of cost not necessitated by minimum building safety codes and thus impact the affordability of housing throughout the City. For example, for lots of record established after January 1, 1994, all site plans for single-family homes must provide for the location of a three (3) stall attached garage. Off-street parking regulations for multifamily and townhome developments require 2.5 spaces per unit (plus additional guest parking may be required for developments over 8 units). Single-family and two-family units require two spaces per unit. Dwelling units in the RS-2, RM-1, and	2	*See* Sec. 11-17-9; 11-17-24; 11-19-13; 11-57-19(G); 11-58-21(D); 11-59-21(C).

	RM-2 districts require an attached garage for off-street parking that's at least 440 sq. ft. in size.		
6. Does the zoning ordinance include an inclusionary zoning provision or provide any incentives for the development of affordable housing or housing for protected classes? 6b. If so, do the regulations also include mechanisms for maintaining that affordability long term, i.e. deed restrictions, monitoring, etc.? 6c. If so, are the development incentives available in high-opportunity neighborhoods, mixed-income, integrated zoning districts (or limited to low-income, low-opportunity, or historically segregated areas)?	The zoning ordinance does not expressly provide density bonuses for the development of affordable or low-income housing or housing for protected classes. However, it does ease or exempt certain design criteria by administrative permit in the RST-2, RM-1, RM-2, RH-1, and RH-2 district for housing that meets the Metropolitan Council's livable communities' criteria for affordability. Importantly the ordinance requires that guarantees be in place to ensure owner-occupied housing will meet the requirement for initial sales and renter-occupied units will meet the requirement for the initial 10-year rental period.	1	*See* Sec. 11-57-23; 11-58-27; 11-59-27; 11-61-25; 11-62-25. Exemptions may be granted related to design criteria such as exterior building materials, decks and porches, overhangs, garages, landscaping, and open/recreational space, but doesn't go so far as to provide density bonuses, lower administrative fees, or other incentive tools.

Recommendations from the Draft Addendum

No.	Recommendation	Fair Housing Issue Addressed	Timeframe	Responsible Parties
1	Work toward enactment of local source of income protection legislation that specifically covering voucher holders.	Access to Housing is Reduced for Some Groups	2019	Minneapolis, Saint Paul
2	Collect and present local data to elected officials illustrating the need for source of income protection; advocate for such local legislation.	Access to Housing is Reduced for Some Groups	2018	Entitlements and Subrecipients
3	Work toward and advocate local adoption of just cause eviction ordinances.	Displacement Causes a Loss of Affordable Housing	2019	Entitlements
4	Based on results of Responsible Banking study from U of M, withhold government business from poor-performing financial institutions.	Access to Housing is Reduced for Some Groups	2018	Entitlements
5	Monitor state legislation regarding right of first refusal statutes and develop program to implement locally as appropriate.	Displacement Causes a Loss of Affordable Housing	Ongoing	Entitlements Met Council MHP
6	Increase funding for affordable housing; work with marketing firm to develop a campaign that raises awareness among the public about housing affordability and connects the issue to education, jobs, and other infrastructure. Campaign should build political will, counter NIMBYism, and include an appeal to philanthropies for funding.	Distribution of Affordable Housing	Ongoing, beginning 2017	Entitlement Communities
7	Support NOAH Fund, publish success stories, market to susceptible property owners, increase capitalization and funding sources.	Distribution of Affordable Housing	Ongoing	Family Housing Fund
8	Develop and implement an ongoing campaign to encourage more landlords to accept HCVs, especially in suburban communities.	Distribution of Affordable Housing	Ongoing, beginning 2018	Entitlement Communities, Met Council
9	Monitor findings related to the Family Housing Fund's research on pooling vouchers for use in high-opportunity areas as well as its voucher mobility research for MPHA and study applicability for other PHAs.	Multifaceted Values on Neighborhoods and Housing	2017	PHAs HRAs
10	Monitor the success of Met Council's mobility program for strategies that can be adapted or duplicated elsewhere.	Multifaceted Values on Neighborhoods and Housing	2018-2021	PHAs HRAs
11	Met Council should develop the capacity to resource local government staff for fair housing planning.	Segregation & Disparate Access to Opportunity	2018	Met Council
12	Require comprehensive plans to describe how they plan to meet affordable housing need, not just guide the land for it.	Distribution of Affordable Housing	2017	Met Council

13	Integrate Met Council's housing performance scores into county CDBG subrecipient funding processes; study feasibility of integrating scores into prioritization of park and library funding.	Segregation & Disparate Access to Opportunity	2019	Counties
14	Adopt zoning code amendments to either (1) have the definition of "family" more closely correlate to neutral maximum occupancy restrictions found in safety and building codes; (2) increase the number of unrelated persons who may reside together to better allow for nontraditional family types; or (3) create an administrative process that allows for a case-by-case approach to determining whether a group that does not meet the code's definition of family or housekeeping unit is nonetheless a functionally equivalent family.	Regulations and Policies Impact Housing Development	2018	Crystal, Minneapolis, Minnetonka
15	Amend zoning maps to rezone large-lot single-family zones to higher density/ lower minimum lot area standards and allow for infill development or conversion of large single-family dwellings to two-family and triplex units to allow more density on the same footprint or minimum lot size; consider reducing administrative barriers to PUD and cluster development approvals which support affordable housing.	Regulations and Policies Impact Housing Development	2018	Apple Valley, Blaine, Bloomington, Burnsville, Eagan, Eden Prairie, Minnetonka, Washington County
16	Amend zoning codes to reflect more flexible and modern lot design standards such as increasing maximum height allowances, increasing minimum density or floor area ratios, increasing maximum floor area ratios (FAR), decreasing minimum parcel sizes, and decreasing minimum livable floor areas of individual dwelling units.	Regulations and Policies Impact Housing Development	2018	Lakeville, Washington County, Woodbury
17	Consider development incentives such as density bonuses and expedited permitting processes or fee waivers for voluntary inclusion of affordable units or mandatory set asides in cases where local government funding or approvals are provided, should be adopted across all jurisdictions to encourage or require mixed-income, affordable units.	Regulations and Policies Impact Housing Development	2018	All local governments with zoning authority
18	Review and update zoning codes as necessary for consistency with the state Planning Act regarding manufactured and modular homes. Review conditional permit use criteria and inclusionary zoning provisions to ensure they support and encourage this type of alternative affordable housing.	Regulations and Policies Impact Housing Development	2018	Lakeville
19	Consider allowing reductions in off-street parking requirements where there is a showing that shared parking, bike parking, or access to public transportation reduces the actual need or demand for off-street vehicle parking; consider adopting maximum off-street parking restrictions.	Regulations and Policies Impact Housing Development	2018	Brooklyn Park, Minneapolis

20	Consider adoption of an inclusionary zoning ordinance requiring set-asides of affordable housing units especially for developments requiring city funding, site location assistance, or planning approvals.	Regulations and Policies Impact Housing Development	2018	Apple Valley, Blaine, Brooklyn Center, Brooklyn Park, Burnsville, Coon Rapids, Crystal, Eagan, Eden Prairie, Hopkins, Minnetonka, Plymouth, Richfield, Saint Paul
21	Analyze zoning codes in areas not covered by this study for fair housing issues.	Regulations and Policies Impact Housing Development	2020	Counties
22	Continue research into gentrification and loss of affordable housing to identify areas where it may be occurring.	Displacement Causes a Loss of Affordable Housing	Ongoing, beginning 2017	CURA, IMO, MHP
23	Maintain local LIHTC database as a tool for studying trends over time in the development of tax credit projects.	Distribution of Affordable Housing	Ongoing, beginning 2017	MHFA, Suballocators, HousingLink
24	Analyze the MN Challenge recommendations related to reducing the cost of affordable housing for feasibility at the local level; implement as appropriate.	Distribution of Affordable Housing	2018	Entitlements and Subrecipients
25	Explore options for amplifying community voices in local planning decisions. Plan to include non-English speakers, and those of oral traditions.	Concentrated Poverty Requires Place-Based Investment	2018	Minneapolis and Saint Paul
26	Consolidated Plans should be place-based, focusing available funding on improving opportunity in high-poverty areas.	Concentrated Poverty Requires Place-Based Investment	2018	Entitlements
27	Review capital improvement planning models to ensure process is guided by data on concentrated poverty and areas of low opportunity.	Concentrated Poverty Requires Place-Based Investment	2019	Entitlements
28	Maintain data on the racial and ethnic composition of local elected and appointed boards and commissions.	Concentrated Poverty Requires Place-Based Investment	2019	Met Council
29	Research available property tax abatement programs and market them to homeowners in areas of increasing displacement.	Displacement Causes a Loss of Affordable Housing	2019	Minneapolis and Saint Paul (Partners: HOME Line, MHP)
30	In areas where 4% credits have become competitive, attach additional criteria to review processes to better direct projects toward strategic ends (i.e. preservation focus or location of new units in areas of opportunity).	Distribution of Affordable Housing	2018	MHFA, Suballocators
31	Prioritize rehabilitation and preservation of existing affordable housing in areas where displacement is known to be occurring.	Distribution of Affordable Housing	2018	Suballocators, Entitlements
32	Routinely review PHA subsidy standards and LIHTC QAPs to ensure accommodation of units for large, multigenerational families.	Multifaceted Values on Neighborhoods and Housing	Ongoing, annually. Beginning 2018	Suballocators PHAs HRAs

33	Ranked list of municipalities in QAP should be re-examined for impact on perpetuating concentrations of affordable housing; consider whether other measures of affordable housing need may be more effective.	Regulations and Policies Impact Housing Development	2018	Washington County
34	Update tenant screening policies related to criminal background based on revised HUD guidance issued in 2016.	Regulations and Policies Impact Housing Development	2017	PHAs HRAs
35	Remove or amend residency preferences to better advance regional fair housing choice.	Regulations and Policies Impact Housing Development	2018	PHAs HRAs
36	Develop partnerships with credit counseling agencies to reach communities of color and build a pipeline of potential homebuyers.	Access to Housing is Reduced for Some Groups	2018	Entitlements
37	Convene dialogue between code enforcement, child welfare agencies, and housing rehabilitation programs to discuss linkages that would provide assistance to tenants living in substandard conditions.	Displacement Causes a Loss of Affordable Housing	2018	Entitlements
38	Code enforcement personnel should be trained to maintain communication and status updates with complainants as well as property owners.	Fair Housing Enforcement and Education is Needed	2018	Entitlements
39	Develop and deliver a fair housing education and training program for elected officials and municipal staff focused on geospatial concepts such as disparate impact and the impact of public infrastructure investments on fair housing choice.	Fair Housing Enforcement and Education is Needed	2019	FHIC Municipalities and Counties (Partners: Housing Justice Center, MMLA, SMRLS)
40	Organizations offering fair housing education should partner with existing community-based organizations to deliver information in culturally-appropriate ways to non-English speaking communities; education materials should include general information about landlord and tenant responsibilities as well. A "what to do if you're facing eviction" insert could be helpful.	Fair Housing Enforcement and Education is Needed	2018	MMLA, SMRLS, HOME Line
41	Review LEP plans and update as needed to better serve the needs of people of oral-based cultures.	Fair Housing Enforcement and Education is Needed	2018	Entitlements
42	Designate an ombudsman to specific immigrant communities to be responsible for communication regarding available housing programs and needs.	Fair Housing Enforcement and Education is Needed	2020	Minneapolis and Saint Paul
43	Ensure applications for housing program assistance are available online as well as in hard copy and that both options are advertised.	Access to Housing is Reduced for Some Groups	Ongoing, beginning 2017	Entitlements, Subrecipients, PHAs, HRAs
44	Explore partnerships to disseminate fair housing information and resources to undocumented residents through existing organizations.	Fair Housing Enforcement and Education is Needed	2018	FHIC
45	Conduct region-wide fair housing testing specifically in the areas of steering and discrimination on the basis of familial status.	Fair Housing Enforcement and Education is Needed	2019	FHIC

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April 3, 2017

Sent via email

Jeremy Gray/Melissa Mailloux

Mosaic Community Planning, LLC

195 Arizona Ave NE

Suite 123

Atlanta, GA 30307

Subject: Minneapolis Comments on the First Draft Addendum to the 2014 Regional AI

Dear Jeremy and Melissa,

Thank you for the opportunity to comment on the draft AI Addendum. We appreciate how accessible and responsive Mosaic has been throughout the process. As we've stated from the beginning of Mosaic's engagement in this project, the final form of the AI Addendum must satisfy the City of Minneapolis' responsibilities under the HUD Voluntary Compliance Agreement (VCA). These responsibilities include:

Complete a revision to its current Analysis of Impediments to Fair Housing Choice (AI) informed by the instructions and tools provided with HUD's Affirmatively Further Fair Housing rule public on July 16, 2015 (including the Assessment Tool for local governments published on December 31, 2015, the HUD AFFH Data and Mapping tool, and the AFFH Rule Guidebook). The AI is a review of impediments or barriers that affect the rights of fair housing choice. It covers public and private policies, practices, and procedures affecting housing choice. It shall focus on integration and segregation in the region.

The AI will specifically address:

A. The distribution of affordable housing through the Twin Cities metropolitan area;
B. The extent to which the City's administration of its Low Income Housing Tax Credit (LIHTC) allocations reinforces existing racial or ethnic concentrations of poverty or perpetuates racial or ethnic segregation;
C. The extent to which the administration of the City's current zoning ordinances reinforces existing racial or ethnic concentrations of poverty or perpetuates racial or ethnic segregation;
D. The extent to which the City's other housing-related activities and policies affecting affordable housing reinforces existing racial or ethnic concentrations of poverty or perpetuates racial or ethnic segregation;
E. The appropriate balance of investment in place and investment in new construction."

Comments on Draft:

On the discussion of balance of investment in place versus opportunity area in the Section VII Equity Analysis, you indicate the need for a "two-pronged" approach for expanded mobility and investments in place, but do not provide an opinion or assessment of the current or desired balance. Instead, multiple factors for consideration are identified. Reviewing your drafted recommendations, it appears that investment in place rates higher. The data also shows a declining percentage of investments have been made in Areas of Concentrated Poverty with more than 50% racial or ethnic minority populations (ACP50s). But there is not a conclusive statement to that effect. In order to be responsive to the VCA requirements, Minneapolis recommends a general, non-precise conclusory statement about the appropriate balance of investment in place versus investment in new construction.

The following are specific comments and recommended changes to the report:

Page 27- Ventura Village not Venture Village

Page 50- discussion on Changes in the Regional Black and White Dissimilarity Index, the last sentence reads as more opinion than fact, could that be either sourced or rewritten/deleted to provide an objective analysis?

"The patterns of upward class succession may not hold forever, but it looks likely for the next 20 years."

Page 99 (Issue #3:,MF Units) notes that "the Met Council sets a low bar for the minimum densities that local zoning and comprehensive plans should mandate to address the growing need for affordable housing units" at 6 or 12 units per acre. Yet the report does not recommend setting a higher bar. Why not?

Page 105, last paragraph, first sentence should be changed to reflect inclusionary housing is voluntary: "In Minnesota, <u>voluntary</u> inclusionary housing policies are specifically permitted by state law (Minn Stat 462.358 subd 11) in the context of city land use approvals."

Page 107- On page 107, paragraph 2, please change the sentence with the following language "… 5 points to proposals including a written letter of support from a~~n impacted~~ community or neighborhood group." Because of the QAP language around "impacted and non-impacted areas" the use of the word "impacted" in that sentence grammatically implies that these points are only available to proposals that have a letter from the community in "impacted" areas. We wish to clarify that the points are available to projects in any area if the project has a letter of support.

Page 112- we would like the discussion of public housing authority (PHA), housing and redevelopment authority (HRA), and Community Development Agency (CDA) local preferences to state that all residential preference policies should be reviewed to demonstrate that they are not used to exclude households that do not meet residential preferences. In other words, if households who do not meet residential preferences will not be served by the policy, it is probable that the policy is in violation of fair housing law. It should be recognized that any residential preference is in and of itself, a barrier to fair housing choice and mobility.

Page 150, first paragraph- We would like to see discussion of awarding of 4% tax credits changed to reflect that distribution of these is tied to bonding authority and that there is not a separate allocation decision on the part of allocators or a limited supply. In other words, 4% tax credits are allocated to projects that receive an allocation of tax exempt bonds. For example, for projects financed with bonds issued by Hennepin County, the City is the responsible entity for allocating the 4% tax credits, even though the City did not select the project for approval. The report should note that it is often the tax exempt bond allocation policies and procedures that govern the selection of projects that receive 4% tax credits. It would follow that the report should extend recommendations related to the allocation of 4% tax credits to the allocation of tax exempt bonds.

Page 155- Rewrite following sentence in first paragraph as "Other ~~popular locations~~ communities with concentrations of voucher holders are South Saint Paul, West Saint Paul, Burnsville, Bloomington, Hopkins, and St. Louis Park." We would also like this discussion to include the concern of low landlord participation rates/opportunities made in high demand residential areas. Even the concentrations noted in the above communities ignores that fact that in larger geographic cities such as Bloomington, there are particular areas that are in high demand in terms of amenities and housing stock where vouchers are unable to be used.

Page 195, re: discussion of high poverty areas and low performing schools-- We feel that this discussion should include the impact of the shortage of affordable housing in these communities and the resulting high mobility among children in poverty, who are more likely to attend schools in high poverty communities. The assumption made throughout the report is that schools are low performing because students are poor. There is a lot of research on the impact of homelessness, mobility, instability in housing, living in unsafe or unhealthy housing, etc. on kids' ability to learn. ACP50s have higher rates of cost burden (33% of renter households in ACP50s in Minneapolis are severely cost burdened, and a much higher percentage of overall households are renters, relative to the city and region), higher rates of overcrowding, higher rates of eviction, etc. Quality schools exist in ACPs, but due to other conditions such as lack of affordable housing, school performance is affected.

Page 196- rewrite as follows "With so many jobs nearby but at the same time inaccessible to people of color who live in areas of concentrated poverty, workforce development programming should be considered as a key investment that communities could deliver to address this accessibility gap."

Page 197- We suggest rewriting the following paragraph as follows. There is no real debate about gentrification except how to measure its level, which we feel should be at the census block level to capture micro markets. Some areas have experienced single digit increases in rents and home sale prices, while others have experienced increases in excess of 30%. The community engagement work and experience of practitioners indicates that gentrification is happening so it should not be soft-pedaled as being up for debate. The FHAC also agrees that gentrification is occurring in the central cities.

"Gentrification is present in the Twin Cities, especially in its central cities. The ~~idea that~~ level and scope of gentrification ~~is occurring in the Twin Cities region is not a settled point~~ is subject to local debate. ~~A robust debate among academics and other community stakeholders is ongoing, however~~ Residents and practitioners engaged in the process of creating this report frequently cited concerns of gentrification regarding central city neighborhoods, including the possibility of rent increases, rising property taxes, and upscaling of apartments in areas that are now home to many lower income households and people of

color. Furthermore, the objective data needed to study gentrification must be available at small levels of geography, as gentrification's effects tend to apply to blocks and not whole zip codes or cities. This necessitates a substantial lag in the data; for example, in gentrification studies the most current census data on residents' income and educational attainment at a tract level was collected over the period 2010-2014. For a fast-moving phenomenon like gentrification, waiting years for the data to come in before taking action to prevent displacement in gentrifying areas may not be practical. For these reasons, this report assumes that gentrification is likely occurring in some Twin Cities neighborhoods, while acknowledging that this assumption has its detractors."

Page 202- notes that "as demand for 4% credits increases, MHFA has the opportunity to develop a competitive allocation process around those credits and better target their subsidy dollars." We would like to bring to your attention that there is a current legislative proposal by a group called "HAVEN", supported by Minnesota Housing Partnership, and opposed by non-profit housing developers, that preempts our region's ability to prioritize the use of tax exempt bonds and 4% tax credits to create family units for very low income households in high opportunity areas. To expand fair housing choice and mobility for families currently living in racially concentrated areas of poverty, we need to build more very affordable (as opposed to "workforce" units prioritized under HAVEN) serving households with incomes at or below 50% AMI. HAVEN will direct more scarce federal subsidies to support shallow affordability with short term (only 15 years) affordability restrictions, that, when they expire, will provide extremely high returns (on public subsidy investment) to for-profit owners. The HAVEN proposal is a missed opportunity to promote fair housing choice and mobility throughout the region.

Page 203- The report makes several references to the shortage of affordable family housing, especially around producing more 3+ bedroom units, particularly for very and extremely low income families. We recommend adding notes in the public financing discussion that alternative financing mechanisms could be explored and implemented by communities such as sales tax dedication, registry taxes, HRA levies, etc.

Page 204- again as noted with inclusionary housing comment on page 105, change following sentence to: "In Minnesota, state law specifically permits inclusionary housing policies to ~~that may include mandatory set-asides or other voluntary incentives to produce~~ incentivize affordable housing units as part of market-rate development projects. These provisions could be incorporated into local zoning codes and comprehensive plan strategies, especially for developments requiring city funding, site location assistance, or planning approvals."

Recommendations:

You have the recommendations provided by the FHIC with which we agree with the additional exceptions noted below. As a general comment on all recommendations, more specific timelines and language that can operationalize a process would strengthen the language and emphasis of the recommendations. We would like to note that we find missing from the draft AI Addendum recommendations on homeownership capacity building investments for households of color, local financing for affordable housing, and regional collaboration on financing instruments.

Given the report's findings of historical and continued discrimination in homeownership for people of color, and an immense racial disparity gap in homeownership rates of 37.8% regionally, the report should make a recommendation to invest in wealth building models within communities of color. This is especially the case in ACP50s. Regionally, 68.8% of households own their home. In ACP50s only 38% of households

own their home. We feel this data supports recommendations around investing in increased homeownership strategies targeted to people of color within these areas.

A recommendation should be made on Individual jurisdictions using available local financing tools, including, but not limited to, tax increment financing, tax abatement, special tax levy authority (HRA, CDA, EDA), general tax levy authority, general fund, and/or other local resources to support affordable housing production and preservation goals, with emphasis on producing and preserving housing for households with incomes at or below 30% of the area median income and implementing affirmative marketing strategies to expand regional mobility.

We also would like to see a recommendation pushing for a regional collaboration to create new local financial tools to support affordable housing production and preservation.

Recommendation #22- Continue research into and tracking of [by FHIC] gentrification and loss of affordable housing to identify areas where it may be occurring using agreed to common scale measurements.

Recommendation #24- Analysis of MN Challenge recommendations. We request for public transparency including the eleven recommendations of the MN Challenge in the recommendations section (as attached).

Recommendation #26- Consolidated Plans should be place-based, focusing available funding on improving housing and human capital opportunities in high-poverty areas.

Recommendation #29- Research ~~available~~ and create property tax abatement programs and other alternative financing tools and market them to ~~home~~ affordable housing owners in areas of increasing displacement.

Sincerely,

Matt Bower

Matt Bower

Manager Resource Coordination

CC: Andrea Brennan, Alyssa Wetzel-Moore

No.	Recommendation	Fair Housing Issue Addressed	Timeframe	Responsible Parties	Comment
1	Work toward enactment of local source of income protection legislation that specifically covering voucher holders.	Access to Housing is Reduced for Some Groups	2019	Minneapolis, Saint Paul	
2	Collect and present local data to elected officials illustrating the need for source of income protection; advocate for such local legislation.	Access to Housing is Reduced for Some Groups	2018	Entitlements and Subrecipients	
3	Work toward and advocate local adoption of just cause eviction ordinances.	Displacement Causes a Loss of Affordable Housing	2019	Entitlements	
4	Based on results of Responsible Banking study from U of M, withhold government business from poor-performing financial institutions.	Access to Housing is Reduced for Some Groups	2018	Entitlements	
5	Monitor state legislation regarding right of first refusal statutes and develop program to implement locally as appropriate.	Displacement Causes a Loss of Affordable Housing	Ongoing	Entitlements Met Council MHP	
6	Increase funding for affordable housing; work with marketing firm to develop a campaign that raises awareness among the public about housing affordability and connects the issue to education, jobs, and other infrastructure. Campaign should build political will, counter NIMBYism, and include an appeal to philanthropies for funding.	Distribution of Affordable Housing	Ongoing, beginning 2017	Entitlement Communities	
7	Support NOAH Fund, publish success stories, market to susceptible property owners, increase capitalization and funding sources.	Distribution of Affordable Housing	Ongoing	Family Housing Fund	
8	Develop and implement an ongoing campaign to encourage more landlords to accept HCVs, especially in suburban communities.	Distribution of Affordable Housing	Ongoing, beginning 2018	Entitlement Communities, Met Council	
9	Monitor findings related to the Family Housing Fund's research on pooling vouchers for use in high-opportunity areas as well as its voucher mobility research for MPHA and study applicability for other PHAs.	Multifaceted Values on Neighborhoods and Housing	2017	PHAs HRAs	
10	Monitor the success of Met Council's mobility program for strategies that can be adapted or duplicated elsewhere.	Multifaceted Values on Neighborhoods and Housing	2018-2021	PHAs HRAs	
11	Met Council should develop the capacity to resource local government staff for fair housing planning.	Segregation & Disparate Access to Opportunity	2018	Met Council	
12	Require comprehensive plans to describe how they plan to meet affordable housing need, not just guide the land for it.	Distribution of Affordable Housing	2017	Met Council	
13	Integrate Met Council's housing performance scores into county CDBG subrecipient funding processes; study feasibility of integrating scores into prioritization of park and library funding.	Segregation & Disparate Access to Opportunity	2019	Counties	
14	Adopt zoning code amendments to either (1) have the definition of "family" more closely correlate to neutral maximum occupancy restrictions found in safety and building codes; (2) increase the number of unrelated persons who may reside together to better allow for nontraditional family types; or (3) create an administrative process that allows for a case-by-case approach to determining whether a group that does not meet the code's definition of family or housekeeping unit is nonetheless a functionally equivalent family.	Regulations and Policies Impact Housing Development	2018	Crystal, Minneapolis, Minnetonka	

15	Amend zoning maps to rezone large-lot single-family zones to higher density/ lower minimum lot area standards and allow for infill development or conversion of large single- family dwellings to two-family and triplex units to allow more density on the same footprint or minimum lot size; consider reducing administrative barriers to PUD and cluster development approvals which support affordable housing.	Regulations and Policies Impact Housing Development	2018	Apple Valley, Blaine, Bloomington, Burnsville, Eagan, Eden Prairie, Minnetonka, Washington County	
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18	Review and update zoning codes as necessary for consistency with the state Planning Act regarding manufactured and modular homes. Review conditional permit use criteria and inclusionary zoning provisions to ensure they support and encourage this type of alternative affordable housing.	Regulations and Policies Impact Housing Development	2018	Lakeville	
19	Consider allowing reductions in off-street parking requirements where there is a showing that shared parking, bike parking, or access to public transportation reduces the actual need or demand for off-street vehicle parking; consider adopting maximum off-street parking restrictions.	Regulations and Policies Impact Housing Development	2018	Brooklyn Park, Minneapolis	
20	Consider adoption of an inclusionary zoning ordinance requiring set-asides of affordable housing units especially for developments requiring city funding, site location assistance, or planning approvals.	Regulations and Policies Impact Housing Development	2018	Apple Valley, Blaine, Brooklyn Center, Brooklyn Park, Burnsville, Coon Rapids, Crystal, Eagan, Eden Prairie, Hopkins, Minnetonka, Plymouth, Richfield, Saint Paul	
21	Analyze zoning codes in areas not covered by this study for fair housing issues.	Regulations and Policies Impact Housing Development	2020	Counties	
22	Continue research into gentrification and loss of affordable housing to identify areas where it may be occurring.	Displacement Causes a Loss of Affordable Housing	Ongoing, beginning 2017	CURA, IMO, MHP	
23	Maintain local LIHTC database as a tool for studying trends over time in the development of tax credit projects.	Distribution of Affordable Housing	Ongoing, beginning 2017	MHFA, Suballocators, HousingLink	
24	Analyze the MN Challenge recommendations related to reducing the cost of affordable housing for feasibility at the local level; implement as appropriate.	Distribution of Affordable Housing	2018	Entitlements and Subrecipients	

24-1	***Supporting appropriate density.*** The single area with the largest impact on cost is the failure of cities to support the most appropriate and cost effective density and scale of affordable housing projects. The too frequent tendency of cities to downsize the scale and size of projects forces the project's fixed costs to be spread across fewer units, often dramatically increasing costs. Several cities have been quite successful, however, in resisting this tendency.	MN Challenge: Best Practices, McKnight			
24-2	***Contributing local financial resources.*** There are a variety of financial resources available to local governments, which not only help fill the subsidy gap but which also allow those proposals to score better in the competition for state and federal resources, including tax increment, real estate tax reduction, general obligation or revenue bonds, and use of levy authority. The extent of those local contributions currently vary widely, and include in some cases underutilized sources that don't necessarily cost local governments much.	MN Challenge: Best Practices, McKnight			
24-3	***Site identification and acquisition.*** Finding and acquiring sites for new developments is one of the most difficult, time consuming and expensive tasks developers undertake. A number of cities have been quite proactive in easing these burdens, from identifying appropriate sites to zoning sufficient appropriate land, making city owned land available, and even acquiring sites for affordable developers, sometimes at reduced or no cost.	MN Challenge: Best Practices, McKnight			
24-4	***Reduced parking requirements.*** The considerable expense of structured parking, combined with the growing feasibility of reduced car dependence in many circumstances, has engendered considerable interest in reducing the level of parking cities require be incorporated in new developments. While the reduction in city parking requirements does not necessarily always lead to fewer parking spaces (the developer and the lender will have their own views on the parking needed), there are now many examples of local government creativity in this area, with significant savings resulting.	MN Challenge: Best Practices, McKnight			
24-5	***Fee reductions and waivers.*** Local fees, which vary widely in amount, can easily add $20,000-$30,000 in costs per unit. Not only do the total fees per unit vary widely by city, but the practice of waiving some or all of those fees for affordable developments also varies widely.	MN Challenge: Best Practices, McKnight			
24-6	***Streamlined administrative processes.*** Delays in the project approval process can be quite expensive when those delays are lengthy. Although the delays are not always the fault of the city's process, there are frequent developer complaints about city processes. There are a number of good ideas employed to minimize these delays on the local government end.	MN Challenge: Best Practices, McKnight			
24-7	***Material, site and design requirements.*** While city requirements regarding materials and design can add costs, most developers see the value in these requirements. One area where there may be potential for modest cost reductions is in the design of smaller, more efficient units, where city flexibility can remove one barrier to new approaches. It's not clear that this approach is desirable for households with children.	MN Challenge: Best Practices, McKnight			

24-8	***Manufactured and modular housing.*** Some interesting work is being done exploring the feasibility of creating new manufactured home communities, which could potentially lead to new affordable units at a fraction of the cost of stick-built units or apartments. Many communities still attach a stigma to these communities, however, so if feasible models can be developed, cities will need to be open to these new communities.	MN Challenge: Best Practices, McKnight			
24-9	***Openness to all affordable developments.*** Cities frequently voice a preference for mixed income housing, which can be quite challenging when the developer tries to match affordable financing with market rate financing. Occasionally this preference for mixed income can spill over into outright opposition to all affordable projects, based on a fear of concentrating poverty. Particularly in affluent suburban communities, this fear is both misplaced and contrary to the experience many cities have had with all affordable tax credit developments.	MN Challenge: Best Practices, McKnight			
24-10	***Inclusionary Housing/Mixed Income policies.*** Inclusionary housing (IH) policies, also called mixed income policies, are getting considerable attention locally these days as housing markets grow stronger, making these policies more feasible. IH policies are in fact probably the most useful tool to create significant new affordability without using the usual federal and state subsidies. A number of suburban cities have used various forms of IH with success, and new policies have recently been adopted in two suburban cities. While these policies may not be feasible in all cities, there are a number of cities where this approach does have promise, and there are others where improvements in current IH policies may make sense. One outcome of this project to date has been the development of a relationship with Cornerstone Partnership, a national consultant on IH policies, which has been providing assistance to a number of metro cities so far.	MN Challenge: Best Practices, McKnight			
24-11	***Addressing Community Opposition.*** Coping with community opposition to new affordable housing proposals can be particularly challenging for local governments, even when they are supportive of the proposals. In some cases, this opposition can lead to rejection of the proposal altogether, or it can lead to substantial delays, or it can lead to reduced project size or costly add-ons that drive up cost. While these adverse results continue to surface in the Region every year, fortunately a number of cities have developed very effective approaches to generating community support and minimizing or neutralizing opposition.	MN Challenge: Best Practices, McKnight			
25	Explore options for amplifying community voices in local planning decisions. Plan to include non-English speakers, and those of oral traditions.	Concentrated Poverty Requires Place-Based Investment	2018	Minneapolis and Saint Paul	
26	Consolidated Plans should be place-based, focusing available funding on improving opportunity in high-poverty areas.	Concentrated Poverty Requires Place-Based Investment	2018	Entitlements	
27	Review capital improvement planning models to ensure process is guided by data on concentrated poverty and areas of low opportunity.	Concentrated Poverty Requires Place-Based Investment	2019	Entitlements	
28	Maintain data on the racial and ethnic composition of local elected and appointed boards and commissions.	Concentrated Poverty Requires Place-Based Investment	2019	Met Council	

29	Research available property tax abatement programs and market them to homeowners in areas of increasing displacement.	Displacement Causes a Loss of Affordable Housing	2019	Minneapolis and Saint Paul (Partners: HOME Line, MHP)	
30	In areas where 4% credits have become competitive, attach additional criteria to review processes to better direct projects toward strategic ends (i.e. preservation focus or location of new units in areas of opportunity).	Distribution of Affordable Housing	2018	MHFA, Suballocators	
31	Prioritize rehabilitation and preservation of existing affordable housing in areas where displacement is known to be occurring.	Distribution of Affordable Housing	2018	Suballocators, Entitlements	
32	Routinely review PHA subsidy standards and LIHTC QAPs to ensure accommodation of units for large, multigenerational families.	Multifaceted Values on Neighborhoods and Housing	Ongoing, annually. Beginning 2018	Suballocators PHAs HRAs	
33	Ranked list of municipalities in QAP should be re-examined for impact on perpetuating concentrations of affordable housing; consider whether other measures of affordable housing need may be more effective.	Regulations and Policies Impact Housing Development	2018	Washington County	
34	Update tenant screening policies related to criminal background based on revised HUD guidance issued in 2016.	Regulations and Policies Impact Housing Development	2017	PHAs HRAs	
35	Remove or amend residency preferences to better advance regional fair housing choice.	Regulations and Policies Impact Housing Development	2018	PHAs HRAs	
36	Develop partnerships with credit counseling agencies to reach communities of color and build a pipeline of potential homebuyers.	Access to Housing is Reduced for Some Groups	2018	Entitlements	
37	Convene dialogue between code enforcement, child welfare agencies, and housing rehabilitation programs to discuss linkages that would provide assistance to tenants living in substandard conditions.	Displacement Causes a Loss of Affordable Housing	2018	Entitlements	
38	Code enforcement personnel should be trained to maintain communication and status updates with complainants as well as property owners.	Fair Housing Enforcement and Education is Needed	2018	Entitlements	
39	Develop and deliver a fair housing education and training program for elected officials and municipal staff focused on geospatial concepts such as disparate impact and the impact of public infrastructure investments on fair housing choice.	Fair Housing Enforcement and Education is Needed	2019	FHIC Municipalities and Counties (Partners: Housing Justice Center, MMLA, SMRLS)	
40	Organizations offering fair housing education should partner with existing community-based organizations to deliver information in culturally-appropriate ways to non-English speaking communities; education materials should include general information about landlord and tenant responsibilities as well. A "what to do if you're facing eviction" insert could be helpful.	Fair Housing Enforcement and Education is Needed	2018	MMLA, SMRLS, HOME Line	
41	Review LEP plans and update as needed to better serve the needs of people of oral-based cultures.	Fair Housing Enforcement and Education is Needed	2018	Entitlements	
42	Designate an ombudsman to specific immigrant communities to be responsible for communication regarding available housing programs and needs.	Fair Housing Enforcement and Education is Needed	2020	Minneapolis and Saint Paul	
43	Ensure applications for housing program assistance are available online as well as in hard copy and that both options are advertised.	Access to Housing is Reduced for Some Groups	Ongoing, beginning 2017	Entitlements, Subrecipients, PHAs, HRAs	

44	Explore partnerships to disseminate fair housing information and resources to undocumented residents through existing organizations.	Fair Housing Enforcement and Education is Needed	2018	FHIC	
45	Conduct region-wide fair housing testing specifically in the areas of steering and discrimination on the basis of familial status.	Fair Housing Enforcement and Education is Needed	2019	FHIC	

Melissa Mailloux

From: Melissa Mailloux
Sent: Wednesday, April 05, 2017 12:58 PM
To: melissa@mosaiccommunityplanning.com
Subject: FW: Addendum to the 2014 Regional AI - Minnetonka Comments
Attachments: Untitled attachment 00397.htm; Addendum_draft1_022817- reduced size.pdf

From: Alisha Gray <agray@eminnetonka.com>
Date: April 4, 2017 at 2:36:40 PM PDT
To: "'jeremy@mosaiccommunityplanning.com'" <jeremy@mosaiccommunityplanning.com>
Cc: Loren Gordon <lgordon@eminnetonka.com>, Julie Wischnack <jwischnack@eminnetonka.com>, Celeste McDermott <cmcdermott@eminnetonka.com>, "Spencer Agnew (spencer.agnew@hennepin.us)" <spencer.agnew@hennepin.us>, Margo Geffen <Margo.Geffen@hennepin.us>, "'alyssa.wetzel-moore@ci.stpaul.mn.us'" <alyssa.wetzel-moore@ci.stpaul.mn.us>
Subject: Addendum to the 2014 Regional AI - Minnetonka Comments

Jeremy –

The City of Minnetonka has reviewed the draft AI report dated February 2017 and we have a number of comments specifically related to the general language of the report and the Minnetonka Zoning review where the city scored as 3 or "high risk". Please review the following comments and objections.

Minnetonka Zoning Review (pages 332-338)**:**

1a. Does the jurisdiction's definition of "family" have the effect of preventing unrelated individuals from sharing the same residence? Is the definition unreasonably restrictive?

Minnetonka Response:

The report accurately identifies the definition of "family" does not restrict the number of unrelated persons living together. The report also accurately identifies there are restrictions on the number of people living in "community based residential facilities" based on zoning which is consistent with Minnesota Statue § 462.357. Despite being consistent with state law and having no restriction on the number of people constituting a family, the report infers that the city ordinance discriminates against persons with disabilities. This simply false and an incorrect assessment of the code. Section 300.02 includes the following definitions of care facilities which clearly do not discriminate against persons with disabilities.

In fact, the state law is silent on licensed care facilities serving more than six residents. As such, individual communities have the authority to allow and regulate these larger facilities. Historically, the city of Minnetonka has held the view that licensed care facilities provide a valuable service to community residents and their family members. The city has chosen to allow, as conditional uses, facilities that serve between seven and twelve residents.

By State Law, group homes with 6 or fewer residents are allowed in all residential districts.

> 64. "Licensed day care facility" - any facility required to be licensed by a governmental agency, public or private, which for gain or otherwise regularly provides one or more persons with care, training, supervision, habilitation, rehabilitation or developmental guidance on a regular basis,

for periods of less than 24 hours per day, in a place other than the person's own home. Licensed day care facilities include, but are not limited to, family day care homes, group family day care homes, day care centers, day nurseries, nursery schools, developmental achievement centers, day treatment programs, adult day care centers and day services.

65. "Licensed residential care facility" - any facility required to be licensed by a governmental agency, public or private, which for gain or otherwise regularly provides one or more persons with a 24 hour per day substitute for care, food, lodging, training, education, supervision, habilitation, rehabilitation and treatment they need, but which for any reason cannot be furnished in the person's own home. Residential facilities include, but are not limited to, state institutions under the control of the commissioner of human services, foster homes, residential treatment centers, maternity shelters, group homes, residential programs, supportive living residences for functionally impaired adults or schools for handicapped children.

It is entirely unclear why Minnetonka would be scored as a 3 or high risk in this area.

2. Do the jurisdiction's zoning and land use rules constitute exclusionary zoning that precludes development of affordable or low-income housing by imposing unreasonable residential design regulations (such as high minimum lot sizes, wide street frontages, large setbacks, low FARs, large minimum building square footage, and/or low maximum building heights)?

Minnetonka Response:

The city objects to being scored as a 3 or high risk for exclusionary zoning practices for affordable or low-income housing. The report makes a number inaccurate conclusions.

1. Review of development design standards is required for all development. Affordable or low-income housing is treated as equally as other development and therefore is not exclusionary.
2. The city's planned unit development does not include specific development standards. Stated otherwise, there is more flexibility for any development as compared to development in other zoning districts that have specific development standards.
    - The planned unit development district (pud) identifies affordable housing as one of the criteria for utilization of this zoning district. The planned unit development district is therefore an incentive tool for affordable housing. Examples of projects that included affordable housing as one of the criteria to utilize PUD zoning districts:
        - LeCesse (332 units) – will provide 10% of the rental units (32 units) at 80% AMI – did not receive city assistance (2017)
        - Cherrywood Pointe (100 units) - will provide 8 rental units at 60% AMI and 10 units at 80% AMI – did not receive city assistance (2017)
        - Applewood Pointe (87 units) – provided 9 ownership units affordable at 80% AMI (2016)
        - Music Barn (27 units) – approval included all 27 rental units at 60% AMI (not yet under construction)
        - Chase on 9 Mile Creek "At Home Apartments" (112 units) – provided 21 affordable rental units at 50% AMI – (2016)

6. Does the zoning ordinance include an inclusionary zoning provision or provide any incentives for the development of affordable housing or housing for protected classes?
6b. If so, do the regulations also include mechanisms for maintaining that affordability long term, i.e. deed restrictions, monitoring, etc.?

6c. If so, are the development incentives available in high-opportunity neighborhoods, mixed-income, integrated zoning districts (or limited to low-income, low-opportunity, or historically segregated areas)?

Minnetonka Response:

Although the zoning code does not have a specific provision for inclusionary zoning, Minnetonka's actions and development proves that it is a leader among suburban communities and has a long-standing practice for providing affordable housing.

- In 2001, the city council initiated the creation of the Homes Within Reach, which utilized the Community Land Trust (CLT) model, aimed at increasing long-term affordable housing ownership opportunities in Minnetonka and Suburban Hennepin. HWR's mission is to use the CLT model to provide housing for working families who would otherwise be unable to buy in West Hennepin suburban communities, offering communities and homebuyers permanently affordable homeownership. To date the city has invested over $3m to assist with providing affordable housing though the trust. In addition, the city has leveraged its participation to attract additional affordable housing dollars to fund to the program. As of 2016, Homes Within Reach has provided long-term homeownership opportunities for 129 households in Hennepin County, including 54 households living in Minnetonka.

- In 2004, the Minnetonka EDA passed a resolution directing staff to request that developers dedicate 10-20% of units in new multi-family developments as affordable housing when reviewing a change in land use plan and/or changes to the zoning ordinance or when obtaining financing from the city.

    - Additionally, the city council adopted TIF and Tax abatement policies that specifically indicate prioritization of projects that include an affordability level that is greater than what is required by TIF and Tax abatement legislation. Ie: projects that have an overall affordability of more than 20% of the units at 50-60% AMI.
        - Restrictive covenants are included in development agreements to maintain affordability.

- In 2010, the city adopted the Minnetonka Housing Action Plan for 2011-2020 aimed at increasing and preserving affordable and lifecycle housing units with the following goals outlined:
    - Preserving existing owner-occupied housing stock.
    - Adding new higher density development through infill and redevelopment opportunities.
    - Encouraging the rehabilitation and affordability of existing rental housing and encouraging new rental housing with affordability.
    - Working to increase and diversify senior housing options.
    - Continuing to work towards adding affordable housing and maintaining its affordability.
    - Linking housing with jobs, transit, and support services.

- The Minnetonka Housing Action Plan (2011-2020) identified a variety of tools and implementation efforts to provide affordable and lifecycle housing. The city has utilized many of the tools identified in the plan to meet its affordable housing goals.

- As a result of the Minnetonka Housing Action Plan implementation efforts and Metropolitan Council Livable Community Act goals, the city added 122 new affordable units (50% of its goal) and 509 new lifecycle units (136% of its goal) outlined in the 2011-2020 strategy. In addition, there are several projects moving forward that are projected to add additional affordable units

in the community to meet the affordable housing goal. During the 1995 to 2010 affordable housing program years, the city added 202 units of owner occupied new construction (meeting 111% of its goal), and added 213 new rental units (meeting 65% of its goal).

- The city has historically participated in workgroups specifically aimed at increasing and maintaining affordable housing, these include:
    - Opportunity City Pilot Program – Partnership between the Urban Land Institute and Regional Council of Mayors - 2009
    - University of Minnesota – Resilient Communities Partner (2012-2013)
    - Southwest Corridor-wide Housing Inventory (2013)
    - Southwest Corridor Investment Framework (2013)
    - Southwest Corridor Housing Gaps Analysis (2014) – See page 9 for Opus/Shady Oak Stations in Minnetonka

- In 2015, the city of Minnetonka obtained the highest Housing Performance Score (100 out of 100 possible points) from the Metropolitan Council's benchmark for Twin Cities area communities' progress toward providing affordable housing for their residents.

Please contact me if you have questions on any of the information provided in this email or if you would like additional information.

Best,

Alisha Gray | Economic Development and Housing Manager | City of Minnetonka | 14600 Minnetonka Blvd.
Minnetonka, MN 55345 | **p. 952.939.8285** | f**. 952.939.8244**| agray@eminnetonka.com

Plymouth Zoning Review

Average Total Risk Score: **1.67**

Key to Risk Scores:
1 = low risk – the provision poses little risk for discrimination or limitation of fair housing choice, or is an affirmative action that intentionally promotes and/or protects affordable housing and fair housing choice.
2 = medium risk – the provision is neither among the most permissive nor most restrictive; while it could complicate fair housing choice, its effect is not likely to be widespread.
3 = high risk – the provision causes or has potential to result in systematic and widespread housing discrimination or the limitation of fair housing choice, or is an issue where the jurisdiction could take affirmative action to further affordable housing or fair housing choice but has not.

Source Documents:
Appendix 1, Section 21 of the City Code, ***Plymouth Zoning Ordinance***, available at: http://www.plymouthmn.gov/home/showdocument?id=754

2030 Comprehensive Plan, available at: http://www.plymouthmn.gov/departments/community-development/planning/comprehensive-plan

Issue	Conclusion	Risk Score	Comments
1a. Does the jurisdiction's definition of "family" have the effect of preventing unrelated individuals from sharing the same residence? Is the definition unreasonably restrictive?	The City's definition of family is quite permissive as it includes not only biological and legal relationships but also "functional families," which can include a group of unrelated people up to 6 persons plus their children. *Family:* "An individual or two (2) or more persons related by blood, marriage, adoption, or a functional family living together in a dwelling unit and	1	*See* Sec. 21005.02 (definitions).

1b. Does the definition of "family" discriminate against or treat differently unrelated individuals with disabilities (or members of any other protected class)?	sharing common cooking facilities." *Functional Family*: "A group of no more than six (6) people plus their offspring, having a relationship which is functionally equivalent to a family. The relationship must be of a permanent and distinct character with a demonstrable and recognizable bond characteristic of a cohesive unit… ." The City's family definition does not treat persons with disabilities differently *because of* their disability. Residential facilities licensed by the state, serving six or fewer persons in a single family detached dwelling are a permitted use in the residential districts.		
2. Do the jurisdiction's zoning and land use rules constitute exclusionary zoning that precludes development of affordable or low-income housing by imposing unreasonable residential design regulations (such as high minimum lot sizes, wide street frontages, large setbacks, low FARs, large minimum building square footage, and/or low maximum building heights)?	The zoning code and map provide for five primarily single-family detached housing districts (RSF-R, RSF-1, RSF-2, RSF-3, and RSF-4) at varying densities. Low-density two-family dwellings also are permitted in the RSF-4 district. Minimum lot sizes for	1	*See* Sec. 21115; 21352.13 (RSF-R); 21355.13 (RSF-1); 21360.13 (RSF-2); 21365.13 (RSF-3); 21370.13 (RSF-4); 21375 (RMF-1); 21475.09(4) (CC). Approval under the Planned Unit Development

	single family detached range from 1 acre in RSF-R, 18,500 sq. ft. in RSF-1, 12,500 sq. ft. in RSF-2, and 7,000 sq. ft. in RSF-3 and RSF-4. Two-family units require a minimum 6,000 sq. ft. per unit in RSF-4. Single family dwellings are a conditional use in the RMF-1 & 2 districts, with minimum lot sizes of 6,000 sq. ft. and 5,000 sq. ft. Compared to neighboring jurisdictions, Plymouth's minimum lot and design standards would not be a barrier to greater density and affordability of single family and two-family housing somewhere within the jurisdiction.		regulations may allow for more flexibility in terms of lot area, density, lot dimensions, yards, setbacks, location of parking areas and public street frontage than allowed by the underlying zoning. However, the stated intent and criteria considered for the overlay is not to necessarily provide for more affordable housing in the jurisdiction. (*See* Sec. 21655 et seq.)
3a. Does the jurisdiction allow for a mixture of housing types? Does the zoning ordinance fail to provide residential districts where multi-family housing is permitted as of right?	The zoning code contemplates single family, two-family, townhome, manor home, and multifamily units. In the multifamily housing districts, townhome and manor home structures, up to 8 units, are permitted at densities of 5,000 sq. ft. / unit in RMF-1 and 4,500 sq. ft. /unit in RMF-2. In RMF-3, multifamily up to 12 units / building and	2	*See* Sec. 21115.07; 21375.13 (RMF-1); 21380.13 (RMF-2); 21385.13 (RMF-3); 21390.13 (RMF-4); 21395.13 (RMF-5). Efficiency apartment units often may be a source of alternative affordable housing for 1 and 2-person households. The code, however, limits the number of efficiency units which may comprise a multifamily

3b. Do multi-family districts restrict development only to low-density housing types?	townhomes / manor homes up to 12 units / structure are permitted with a min. lot size of 3,000 sq. ft. / unit and a goal density of 10 u/a. In the RMF-4 district, townhomes / manor homes up to 14 units / structure and multifamily is permitted by right with a min. 2,178 sq. ft. / unit and a goal density of greater than 10 u/a. Multifamily also is permitted by right in the RMF-5 district, with a min. lot size of 2 acres and a goal of greater than 10 u/a. In the CC-OT and CC-R mixed-use districts, multifamily, townhomes, and attached housing is a conditional use with a goal of 20 u/a. Height is limited to 35 ft. in the RMF-1, 2, and 3 districts; 45 ft. in the RMF-4 and CC districts, and 100 ft. in the RMF-5 district. These are generally considered medium density allowances, depending on the jurisdiction and demand.		development, rather than letting the market and regional needs decide. "Except for elderly (senior citizen) housing, the number of efficiency apartments in a multiple family dwelling shall not exceed 10 percent of the total number of apartments. In the case of elderly (senior citizen) housing, efficiency apartments shall not exceed 30 percent of the total number of apartments." (See Sec. 21115.05). The zoning map was not separately analyzed to determine whether enough areas of the jurisdiction are zoned to meet demand for multifamily housing. Other considerations besides density limits have an impact on whether the supply of multifamily housing is affordable housing, like housing prices and rents, market conditions, existing land-use patterns, the provision of public services and infrastructure, design and architectural requirements, impact fees, and other planning goals.

Commented [SS1]: We are assuming this means units/area?? Just clarifying.

Commented [SS2]: This should actually say "In the CC-OT & R district"
This is only one district and not multiple districts

Commented [SS3]: Remove this of. Doesn't need to be there.

			Multifamily zoning would include public housing. People with disabilities, minorities, African-Americans and Latinos, and low-income households disproportionately rely on multifamily housing.

4a. Are unreasonable restrictions placed on the construction, rental, or occupancy of alternative types of affordable or low-income housing (for example, accessory dwellings or mobile/manufactured homes)? 4b. Are there any regulations requiring that rental units or accessory dwellings only be occupied by blood relatives of the owner?	Accessory dwelling units may be allowed within residential subdivisions that have received preliminary plat approval on or after June 1, 2001 and that include ten (10) or more single-family lots, subject to the approval of an administrative permit. An accessory dwelling unit, subject to administrative permit approval, may be located above an attached or detached garage that is accessory to a single-family detached home located in the RSF-R, RSF-1, RSF-2, or PUD zoning districts. An additional two off-street parking spaces must be provided for the ADU. Manufactured home parks are conditional uses in the RSF-4 Zoning District and any RMF Zoning District subject to the approval of a conditional use permit. The minimum site area for a home park is 20 acres, and each home lot must be a minimum of 7,800 sq. ft. (65 ft. X 120 ft.). Under the MPA, a manufactured home park is by law a	1	*See* Sec. 21190.04 (accessory dwelling units); 21190.03 (manufactured home parks). Minn. Stat. Ch. 327 et seq.; 462.357; Minnesota Rules 4630.0200 - 4630.1700 and 4630.2210 - 4630.4700. Accessory dwelling units are a low-impact form of affordable housing, and this use could be expanded to the other single-family districts. Off-street parking requirements also could be reduced in areas near transit or commercial corridors.

Commented [SS4]: "shall" Not may

Commented [SS5]: RMf-1 RMF-2, RMF-3, RMF-4 (does not apply to RMF-5 so this statement can't work).

Commented [SS6]: Planning Manager could not find this in the MPA. Would need to be cited somehow if left in.

	conditional use in any zoning district that allows the construction or placement of a building used or intended to be used by two or more families.		
5. Do the jurisdiction's design and construction guidelines create unreasonable or arbitrary barriers to affordable housing, i.e. required building or façade materials, landscape requirements, parking, architectural requirements? 5b. Are the jurisdiction's preservation or environmental protection guidelines arbitrary, antiquated, or unreasonable so as to limit development of affordable housing?	The code's design and construction requirements for residential uses are not overly onerous compared to other jurisdictions in the region. One hindrance, or area for improvement, may be off-street parking regulations. Townhome and manor home units constructed after 7/13/2010 must contain an enclosed, two-vehicle garage with a 400 sq. ft. minimum floor area; must contain two types of façade finishes and paint colors and other strictly aesthetic design features, and must provide at least 2.5 off-street parking spaces /unit. Structures containing 3 or more dwelling units must provide underground or under principal building parking space. Each apartment unit must provide 2 off-street parking spaces	2	*See*, Sec. 21115.07; 21135.5(f), .08(6), .11 (parking); Importantly, developers may request a reduction in off-street parking requirements during site plan review with evidence that demand is less than regulations require.

Commented [SS10]: This is actually section 21135.07, Subdivision 5(f)

Commented [SS7]: Opinion statement/value statement and misses the point.

	(regardless of dwelling size), at least one of which is enclosed. For townhomes, manor homes, and single family, driveways may qualify as required off-street parking but only if certain conditions are met. While all these site and design criteria may have aesthetic and quality of life value, these things also increase development costs and accordingly impact the ability to keep housing costs affordable.		
6. Does the zoning ordinance include an inclusionary zoning provision or provide any incentives for the development of affordable housing or housing for protected classes? 6b. If so, do the regulations also include mechanisms for maintaining that affordability long term, i.e. deed restrictions, monitoring, etc.? 6c. If so, are the development incentives available in high-opportunity neighborhoods, mixed-income, integrated zoning districts (or limited to low-income, low-opportunity, or historically segregated areas)?	No, the zoning ordinance does not expressly provide density bonuses or other objective development incentives for the development of affordable or low-income housing or housing for protected classes.	3	

Commented [SS8]: Remove.

Commented [SS9]: Would rather this say "they in some cases, increase development…"

DEPARTMENT OF PLANNING &
ECONOMIC DEVELOPMENT
Jonathan Sage-Martinson, Director

CITY OF SAINT PAUL
Christopher B. Coleman, Mayor

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Saint Paul, MN 55102

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March 31, 2017

Mr. Jeremy D. Gray
Mosaic Community Planning, LLC
195 Arizona Ave NE, Suite 123
Atlanta, GA 30307

Dear Mr. Gray:

The City of Saint Paul welcomes the opportunity to provide additional comments to the First Draft of the Addendum to the *2014 Regional Analysis to Impediments ("AI")*. The City has long recognized its obligation to further fair housing by responsibly serving the diversity of its citizens, including households of color[1] and cost-burdened households.[2] In its effort to promote fair housing choice, the City's Comprehensive Plan has fair housing concepts; the City's Low Income Housing Tax Credit Selection Criteria recognizes the diversity of its citizens' needs; and Mayor Chris Coleman has further directed all City departments to develop racial equity plans.

The City welcomes the more robust review of the *2014 Regional Analysis to Impediments* to ensure fair housing opportunities in the City of Saint Paul and the Twin Cities metro region, and the City commends the Fair Housing Implementation Council's willingness to recognize the need to support the Addendum to the 2014 AI with its comprehensive review of regional housing policies performed by Mosaic Community Planning, LLC.

Therefore, much of the City's comments to the Addendum of the AI are *additional commentary to provide context.*

[1] Disproportionately Greater Need: Discussion – 91.205(b)(2); 2015-2019 Consolidated Plan
[2] The City has appropriately 25,885 households who are cost-burdened paying more than 30% of income for rent; and 13,290 households paying more than 50% of income for rent. Housing Needs Assessment - 24 CFR 91.205 (a,b,c) 2015-2016 Consolidated Plan.

The City's Demographics Reflect Racial Diversity and Cost-Burdened Households

The City of St. Paul has a population of 296,542 which comprises only 11% of the Twin Cities' population. It is recognized that St. Paul has proportionately more people of color than any other city in the Twin Cities. St. Paul's population is 44% people of color. Also, 45% of St. Paul's census tracts are racially or ethnically concentrated areas of poverty[3] ("R/ECAP"). The City also has significant affordable housing needs. Approximately 28% of all City renters receive some

The City Of St. Paul Demographics Reflect Racial Diversity and Cost-Burdened Households

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The City has long history of responding to the diversity of its citizens and taking appropriate actions to overcome fair housing impediments citywide.[5] The City's Affordable Housing policies state that for City/HRA-assisted new rental units at least 30 percent will be affordable to

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[3] In this Response, where possible the statistics and maps referred to by the City are based on census tracts that are R/ECAPs. An R/ECAP is defined as an area where at least 50% of the residents are people of color and at least 40% of the residents have family incomes that are less than 185% of the HUD-defined poverty threshold.

[4] In this Response, where possible the statistics and maps referred to by the City are based on census tracts that are R/ECAPs. An R/ECAP is defined as an area where at least 50% of the residents are people of color and at least 40% of the residents have family incomes that are less than 185% of the HUD-defined poverty threshold.

[5] On March 18, 2002, then Mayor Randy Kelly held St. Paul's First Cultural Relations Summit which identified 65 potential goals in the following areas of multicultural communities, affordable housing; and cultural inclusiveness. The Cultural Summit clearly identified fair housing concerns, and strongly recommended that City projects and services should be more inclusive of cultural and ethnic groups while also recognizing the importance of educating new residents on their rights. In response, PED implemented the Minority Business Development and Retention Initiative; improved its implementation of Chapter 84 - Targeted Vendor Ordinance; increased its media outreach to communities of color and protected class members; *developed housing polices for Locational Choice* and Visitability Design Standards; implemented the Minority Home Ownership Initiative, and increased its recruitment outreach to community of color for PED professional employment positions. During 2004-2005, the Mayor and his Administration had numerous meetings with communities of color, such as the African-American Community Forum, to receive feedback on how the City can foster a more successful African-American community. The City also worked to improve the City's procedures relating to Chapter 84 which sets targets for vendors outreach goals, and Chapter 183 which outlines affirmative action goals for the city and contractors. All City employees also attended diversity training in 2005, and the Mayor, Deputy Mayor, and City Department Directors attended two full days of sessions of the Undoing Racism Workshop. At that time, the City demonstrated its commitment to better understand and be accountable to remove discrimination in the workplace and in the community. In 2015, Mayor Coleman's Racial Equity Initiative required that City Departments develop a Racial Equity Workplan.

households earning 60 percent of the AMI, of which at least one third will be affordable to households earning 50 percent of the AMI, and at least one third will be affordable to households earning 30 percent of the AMI". For City/HRA-assisted new ownership units, at least 20 percent will be affordable to households earning up to 80 percent of the AMI, and an additional 10 percent will be affordable to households at 60% of the AMI. In the aggregate, the City and Housing and Redevelopment Authority have exceeded this goal over the last 10 years.

Furthermore, response to Mayor Kelly's Housing 5000 program,[6] in 2004, the City Council approved its Locational Choice Policy which encourages economic integration citywide as it moves "the City toward a more equitable distribution of affordable housing throughout the City."[7] The Council's Locational Choice Policy states that the City will pursue policies and programs at all government levels which aggressively encourage the development of affordable housing in all neighborhoods and in the region[8].

In the *Addendum to the Regional AI*, the affordable housing maps reflect the fact that Saint Paul has affordable housing opportunities within most of the City, except the MacGroveland, Summit Hill, and Eastern Heights-Battle Creek areas.

However, as fully-built neighborhoods, Summit Hill and MacGroveland neighborhoods offer limited opportunities for new affordable housing. In fact, St. Paul is made up of 35,931 acres, but only 1,570 acres are undeveloped (2.8%)[9]. Most of that small amount of undeveloped land is in very small parcels. Importantly, almost none of this undeveloped property is within higher income neighborhoods[10]. As a result, affordable housing developments in these neighborhoods would require expensive land assembly and clearance costs for new affordable housing. In contrast, Battle Creek has affordable housing developments, but these developments were financed by older federal programs that were not part of the AI review.

St. Paul's Comprehensive Plan Promotes Fair Housing Choice

The City's Comprehensive Plan has numerous polices, strategies, and principles that have been thoughtfully developed in order to recognize the diverse needs of Saint Paul citizenry, including the need for fair housing choice. Please see Attachment A for more details.

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[6] Housing 5000 Program (2002-2005) created 5000 housing units citywide, including 500 housing units affordable to households at or below 30% AMI and 500 housing units affordable at or below 50% AMI.

[7] Locational Choice Policy was initially cited in 2005 Consolidated Plan.

[8] City Council Resolution CF 04-69, adopted March 3, 2004.

[9] A copy of the Comprehensive Plan can be found at: http://www.stpaul.gov/documentcenter/view/79527. Figure LU-A, City 2010 Comprehensive Plan.

[10] See discussion below regarding Ford Site.

St. Paul's Low Income Housing Tax Credit[11] Program recognizes diversity of its citizenry

As a Credit Suballocator, the Board is authorized to allocate and monitor tax credits to eligible projects within the Board's jurisdiction. The Board is guided in allocating credits by the City of

Minneapolis and the Community Planning & Economic Development (CPED) for projects in Minneapolis and by the Saint Paul Housing and Redevelopment Authority (HRA) for projects in St. Paul. Attachment A details the history of St. Paul priorities and funded projects. Below are some questions and comments specific to the Draft to the Addendum.

Low Income Housing Tax Credit Question:

On Pages 145-147, the discussion of LIHTC unit locations references the distribution of LIHTC units in the context of ACPS over the past 30 years.

Can you please address how the ACP geography has changed over that time period?

Were some of these ACP LIHTC units not located in ACPs when they were constructed?

Zoning Code Comments

Saint Paul City staff have reviewed the AI draft and identified a few areas that require correction or clarification, as discussed below:

Zoning review – Historic Preservation

Given the number of Historic Preservation Districts in Saint Paul, and their potential impact on land use and housing affordability, it would be useful for Mosaic to review the City's Historic Preservation Requirements as referenced here: https://www.municode.com/library/mn/st._paul/codes/code_of_ordinances?nodeId=PTIILECO_TITIXCIPL_CH74HEPRDIPR

Zoning review – Family Definition

Comment 1a: the City's definition of family is neither the most restrictive nor the most permissive. It limits the number of unrelated persons who may reside together to up to four persons.

City Response: the City's family definition refers to four unrelated adults and their minor children, not simply persons. There is no stated limit on the number of legal children. Please also correct the code citation for group quarters/congregate living – it is 65.150, not 65.161.

[11] See Map of Low Income Housing Tax Credit Projects, Exhibit 1, and Spreadsheet of Low Income Housing Tax Credit Projects, Exhibit 2.

Zoning Review – Overlay Districts

> The AI adequately summarizes the regulations in zoning districts in St. Paul. However, the review did not include analysis of the zoning overlay districts in Chapter 67. In some instances, these overlays modify the base zoning requirements for specific areas of the city and could have impacts on fair housing.

In summary, the City of Saint Paul appreciates the opportunity to provide commentary to the first draft of the *Addendum to the AI* as well as highlight some proposed changes in the Zoning Code section.

Finally, the City of Saint Paul welcomes the opportunity to work with its partners to ensure fair housing opportunities in the Twin Cities metro region.

Sincerely,

Patricia Lilledahl, Housing Director
Saint Paul Planning and Economic Development

ATTACHMENT A

Saint Paul's Comprehensive Plan supports efforts to promote fair housing choice.

Adopted in 2010, the City's Comprehensive Plan acknowledged the significant planning challenges, such as reduced funding resources, changing demographics (including a growing minority population, an aging population), the widening income gap, and growth in populations experiencing decreasing economic opportunities. In response, the City's Comprehensive Plan encourages opportunities that offer wealth enhancement and job creation for all residents; enhanced access to transit opportunities citywide; and promoting equal opportunity not only to housing but to amenities city wide.

As a "developed community," Saint Paul must maintain its existing infrastructure while redeveloping land to provide for additional growth of population and employment, such as developing land uses (i.e., mixed-use development) at locations along transit corridors. Saint Paul must also respond to emerging trends, such as an increasingly diverse population, aging population, older housing stock, increasing housing development costs, and limited budgetary resources.

As part of that effort, the City's Land Use Plan[1] directs growth to areas of the city well-served by transit, including Downtown, the Central Corridor, Neighborhood Centers, and Residential and Mixed-Use Corridors. The Plan encourages the creation of job centers as well as it targets growth to "areas of St. Paul where housing, jobs, amenities, and transit can work synergistically. Therefore, the City prioritizes sites within ¼ mile of a transit route and other high-amenity areas[2].

The City's Transportation Plan[3] seeks to create true transportation choices for residents, workers, and visitors in every part of the city"[4] which is in response to the shifting City demographics that reflects more households with no vehicle available to them, and a greater proportion of senior citizens and persons with limited economic opportunity, including persons of color and ethnic minorities. Numerous transportation strategies seeks to connect neighborhoods with low amenities such as poor or no sidewalk or trail infrastructure to such infrastructure, as well as enhancing transit service to those areas; offering enhanced access to community amenities such as schools, shopping, and services; and providing new connections between all neighborhoods[5].

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[1] See: http://stpaul.gov/DocumentCenter/Home/View/11883
[2] This intention is reflected in the priority points given to transit in the QAP for LIHTC.
[3] See: http://stpaul.gov/DocumentCenter/Home/View/11885
[4] http://stpaul.gov/DocumentCenter/Home/View/11885, pp. T10
[5] Ibid, pp. LU23-24

The City's Housing Plan encourages housing opportunities to meet existing and projected local and regional housing needs, including but not limited to the use of official controls and land use planning to promote the availability of land for the development of low and moderate income housing"[6]. The Housing Plan identifies several key trends and then sets forth strategies to address those trends. The trends are: increasing population, increasing focus on housing density, decreasing housing affordability, aging housing stock, disparity of neighborhoods impacted by foreclosures, and growing energy costs. The strategies St. Paul identifies to address these trends are: 1) build upon St. Paul's strengths in the evolving metropolitan market; 2) preserve and promote established neighborhoods; and 3) ensure the availability of affordable housing across the City. Each strategy has broad policy principles to help guide the City – taking number of factors into consideration, including fair housing while being reflective of the City's efforts to balance fair housing concerns with other concerns.

The City's Housing Plan also preserves and promotes established neighborhoods by encouraging new construction of mixed-income housing citywide; supporting housing rehabilitation programs to preserve its aging housing stock; and renovating vacant foreclosed housing structures with innovative programs, such as Inspiring Communities.

Finally, the Housing Chapter of the Plan, in Policy 3.6, identifies that the City and the Housing and Redevelopment Authority will "ensure fair housing" by:

- Promoting fair housing choices for all, particularly those from historically disadvantaged backgrounds;
- Supporting the testing, identifying, analyzing, and eliminating discrimination in the housing and lending industries;
- Providing opportunities for inclusive patterns of housing occupancy regardless of race, color, religion, sex, familiar status, disability, and national origin;
- Promoting housing that is structurally accessible to and usable by all persons, particularly persons with disabilities;
- Enforcing the St. Paul Human Rights Ordinance with respect to housing discrimination;
- Providing educational and outreach programs directed towards housing providers, including landlords, rental agents, real estate sales personnel, mortgage lenders and brokers, property appraisers and property insurers;
- Supporting efforts of the Twin Cities Metropolitan Area Fair Housing Implementation Council to ensure that City/HRA is affirmatively furthering fair housing opportunities and actively removing barriers to fair housing; and
- Supporting homeownership initiatives such as the Home Ownership Alliance Initiative[7].

[6] Minn. Stat. § 473.859.
[7] Ibid. pp. H29

History of St. Paul Priorities[8] for Low Income Housing Tax Credits.

State law allows the cities of Minneapolis and St. Paul to designate the Minneapolis/St. Paul Housing Finance Board ("Board") to receive low income housing credits on behalf of each city.

St. Paul HRA must responsively serve its citizens by recognizing that many St. Paul households, including households of color[9], are housing cost-burdened.[10] Each year, St. Paul HRA recognizes the diversity of its citizenry and their needs when establishing its Selection Priorities for LIHTC housing developments and must allocate its Credits based upon the following:

Federal law gives preference to selected projects that serve the lowest income tenants, are contractually obligated to serve qualified tenants for longest periods, and are located in a Qualified Census Tract for community revitalization. This is an important distinction as federal Internal Revenue Code regulations has preference for affordable housing developments located in qualified census tracts. In contrast, HUD priorities encourage affordable housing in non-qualified census tracts.

Federal law also requires that Selection criteria must include: project location, housing needs characteristics, project characteristics, sponsor characteristics, tenant populations with special needs, public housing waiting lists, tenant populations with children, projects intended for eventual tenant ownership, and projects must be financially-feasible during the Credit period.

The State requires that Credit Applications must meet one of the following threshold types: 1) new construction or substantial rehabilitation in which, for the term of the extended use period, at least 75% of the total tax credit units are SRO units which are affordable by households whose income does not exceed 30% AMI; 2) new construction or substantial rehabilitation family housing projects that are not restricted to persons who are 55 years of age or older and in which, for the term of the extended use period, at least 75% of the total tax credit units contain two or more bedrooms and at least one-third of the 75% must contain three or more bedrooms; or 3) substantial rehabilitation projects of existing housing in neighborhoods targeted by the City for revitalization.

The City requires that the project must be financially feasible and viable as a qualified low-income project throughout the credit period; the project sponsor must be creditworthy (have site control and have financial ability to develop project), and the project must be completed in a timely manner; forecast positive cash flow after debt service; demonstrate reasonable operating expenses; comply with applicable building, land use and zoning ordinances; must not have excessive project costs of intermediaries; and conform to the City's Consolidated Plan. The St. Paul HRA Board has had robust

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[8] See Minneapolis/Saint Paul Housing Finance Board 2015 Low Income Housing Tax Credit Procedure Manual, Exhibit 3, and Qualified Allocation Plan including Saint Paul Scoring Criteria, Exhibit 4.

[9] Disproportionately Greater Need: Discussion – 91.205(b)(2); 2015-2019 Consolidated Plan

[10] **The City has appropriately 25,885 households who are cost-burdened paying more than 30% of income for rent; and 13,290 households paying more than 50% of income for rent. Housing Needs Assessment - 24 CFR 91.205 (a,b,c) 2015-2016 Consolidated Plan.**

discussions about its annual Selection Priorities especially since the City's 9% Credit allocation is sufficient to fund only one project each year. The St. Paul HRA Board must weigh competing public policies, citywide needs, and the availability of limited financial resources in order to respond to the housing needs of its citizenry.

In past years, the St. Paul HRA Board has held workshops to discuss these concerns before establishing their annual Selection Priorities. During 2012, the Saint Paul HRA Board discussed whether the annual Credit Selection Priorities supported the City housing policies, such as the City's Locational Choice Policy, Heading Home Ramsey Plan to End Homelessness, or transit plans, such as the Central Corridor. In 2013, the Board debated the needs of preservation of affordable housing and the needs of new construction. In 2014, the Board held a workshop where it established Selection Priorities that are applicable to new construction or affordable housing preservation. The current Selection Priorities were developed following that workshop. In recognition of the need to preserve existing affordable housing while improving existing affordable housing locations, site selection priority points are awarded to affordable housing developments that provide additional services that can empower its residents. For new construction, priority points are awarded to new construction projects built in stronger economic neighborhoods.[11]

The new scoring worksheet has a total of 71 possible points. Higher points reflect higher HRA priorities.

The highest priority, which earns a project 15 points, is for "substantial renovation" and 5 points for substantial renovation that preserves project based Section 8 units which reflects the City's strong desire to maintain affordable units, especially those residents with lowest incomes.

A project with enhanced residential services can receive up to 7 points in recognition of those services (one point each for: after school programming/ECFE, information and referral services, playground equipment or water feature, case management, health care services, resident association and/or community building, self-reliance/life skills and/or job training, community center, or other), and up to five points for affordable housing developments that provide supportive services to homeless households. Finally, 3 points are awarded for projects that are within ¼ mile of Light Rail Transit, Bus Rapid Transit, or a high frequency bus route. These amenities, particularly in a project preserving existing housing, address issues of the quality of the neighborhood and enhance the level of opportunity available to residents. Taken together, a project can receive up to 15 points (or 21%) for increased services and opportunities for residents.

The next highest priority that awards 10 points for projects located on HRA-owned land or with HRA/City debt obligation is a way for the HRA to leverage various funding resources such as seller notes.

The third highest priority, awards 7 points to projects that address economic integration "in recognition of the HRA Board's intent to address concentrated areas of poverty." This priority is quite obviously aimed at fair housing issues.

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[11] St. Paul Qualified Allocation Plan, Article IX, Sections 3 &Section 4 for Credit Years 2015 and 2016.

During 2007-2017, the St. Paul HRA Board considered the following concerns:

2007: The need for transitional housing for single women versus neighborhood preference for single family housing. (Jeremiah Project, 44 units for transitional housing for single women and single female-headed households, was selected after numerous public forums and City Council public hearings)

2008: Numerous functionally-obsolete Class C office buildings were vacant downtown for several years. These downtown building could be converted into affordable workforce housing located within walking distance of major employers and could also provide supportive housing. (Minnesota Building selected.)

2009-2010: The Recession reduced the pricing value of Credits. Consequently, Credits projects could not be adequately financed. Federal stimulus funds, such as Section 1602 Tax Credit Exchange and TCAP funds were needed. (Minnesota Building, Commerce Building, Renaissance Box)

2011: The strategy to build supportive housing in Highland Park. (Fort Road Flats Apartments selected.)

2012: The need to preserve existing affordable housing with Section 8 Rent Assistance. (St. Alban's Park Townhouses selected)

2013: The need to serve residents with refugee status versus new construction along Central Corridor transit. (Rolling Hills Apartments selected.)

2014: The appropriateness of developing new affordable housing on University Avenue since Central Corridor Light Rail Transit project is completed. (Hamline Station Family Housing Apartments selected.)

2015: Need to preserve existing affordable housing as well as require that additional services be provided to empower residents. (Jamestown Homes selected.)

2016: Need for new construction (72 Cesar Chavez selected; and Jamestown Homes received some additional Credits, as needed.)

2017: Need for new construction (Selby-Milton-Victoria selected.)

During 2006-2017, the City financed 25 affordable housing developments[12] (23 affordable housing developments sites) with LIHTCs (9% or 4% Credits). During this time, each tax credit applicant, except one project, received financing sufficient for their development. Fifteen (60%) of these project sites were located in R/ECAPs and 10 (40%) projects were located outside R/ECAPs. These 25 sites had a

[12] During 2006-2017, St. Paul financed 25 developments with LIHTCs (4% or 9%). Minnesota Building and Commerce Building received both 9% and 4% Credits. TWV had three projects sites that are located in two distinct neighborhoods.

total of 2281 affordable housing units of which 1315 units (58%) were located in R/ECAPs and 966 units (42%) were located outside R/ECAPs[13].

The City's Administration of LIHTC Demonstrates The Twin Priorities Of Preserving Existing Affordable Housing, Regardless Of Location, And Investing In Affordable Housing City-Wide.

The City recognizes the importance of preserving affordable housing in accordance with community concerns, such as MICAH Transit Oriented Development Principles, which supports the preservation of affordable housing along transit corridors. [14] During the public testimony for Central Corridor, MICAH and other community members recommended new construction of affordable housing with density bonuses along Central Corridor in TN3 and TN4 zoning areas. In response, the City developed current City policies and programs for affordable housing resulting in new and preserved affordable housing along the Central Corridor.[15] The City also recognized the Healthy Corridor for All project being led by ISAIAH and its partners sharing ISAIAH's dedication to social, racial, and economic justice. In this regard, the City noted its policy framework from which a wide variety of community-building initiatives have developed.[16] In addition, the St. Paul City Council provided $8,580,000[17] to fund a Businesses Mitigation Program, Parking Program, and Betterments Budget in order to provide an additional transit stop, upgrades to lighting, special paving to guide pedestrians, trees, landscaping, sprinklers, art and sidewalk furniture to enhance the safety and livability along the light rail line.

To further invest in the transit oriented development, the City allocated LIHTC along Central Corridor, West 7th Street and East 7th Street. As examples, the City allocated 2015 Credits (9% Credits) to Jamestown Homes which preserves 77 Project-Based Section 8 housing units. Although located in area of concentrated poverty, Jamestown Homes is located within walking distance of the Model Cities day care center, Mt. Olivet Baptist Church, St. Paul's Gifted and Talented Magnet School, and Central Corridor Light-Rail Transit. The City allocated both 9% Credits and 4% Credits for Hamline Station housing development (108 affordable housing units with 14 units of permanent supportive housing) along the Central Corridor Light-Rail line in a non-impacted area. In addition, the Minnesota Building

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[13] St. Alban's Park and River Pointe Lofts, although within R/ECAPs are located on boundary lines of R/ECAPs.

[14] MICAH recognizes that each transit corridor has the potential for additional affordable housing development, such that MICAH has been working on policies that create affordable housing and benefit the entire community. http://micah.org/home/micah_regional_transit_corridor_campaigns.

[15] Memorandum to Comprehensive Planning Committee regarding Central Corridor/Traditional Neighborhood Zoning Study: Response to Public Testimony, dated February 9, 2011.

[16] In response to the Healthy Corridor for All Project. The city noted community-building initiatives such as framework which included the Central Corridor Zoning Study, Central Corridor Business Resources Collaborative, Parking Mitigation Program, Metropolitan Council Disadvantage Business Enterprise Program, LRT Works Initiative, St. Paul requirements for projects receiving city financing, LAAND, and Invest St. Paul/Neighborhood Stabilization Program. ID. Attachment F.

[17] The Betterments budget included $7,780,000 of TIF and $200,000 of STAR, $1,500,000 of the TIF was used for the Parking Program, which was added to $300,000 of STAR and an additional $300,000 of TIF, for a total of $2.1 million for the parking program.

(135 units with 10 permanent supportive housing units), and Commerce Building (100 affordable units with 11 supportive housing units) are downtown within blocks of Central Corridor Light Rail Transit.

The City also allocates Credits to respond to the needs of its diverse residents. For example, in 2013, the City allocated 4% Credits to preserve Lewis Park Apartments - 103 units of accessible-designed housing for 99 physically-challenged residents who have Project-Based Section 8 Rent Assistance. Lewis Park was uniquely designed to accommodate physically-challenged persons. That same year the City allocated Credits (9%) and HOME funds to Rolling Hills to preserve 107 affordable housing units, (at least 50 units of housing with support services). While Rolling Hills Apartments are located in an area of concentrated poverty, a public purpose for this Credit allocation was to provide housing to St. Paul residents with refugee status.[18]

The Fort Road Flats development (44 units of supportive housing in Highland Park) demonstrates the City's commitment to its Locational Choice Policy. In 2007, Saint Paul HRA Commissioner Pat Harris requested that HRA staff search for supportive housing land sites in Ward 3 (the City's more affluent neighborhoods)[19] and prior to final approval of the 2010 Housing Plan, Commissioner Harris also instructed the HRA staff to indicate how the City will take stronger leadership in the next few years on homeless and supportive housing. In response HRA provided $1.5 million for land assembly to build supportive housing in Highland Park[20] in 2011 which advanced previously established housing objectives.[21] Developing supportive housing for families promotes fair housing choice especially as 49% of homeless parents statewide are African-American parents. [22]

Use of HOME Funds to promote fair housing choice[23]

HOME funds are used to provide decent affordable housing for low income households. The City has primarily used HOME funds for the rehabilitation or new construction of multi-unit housing. City

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[18] With 51% ownership of Rolling Hills, Lutheran Social Services of Minnesota, with its mission to serve refugees, will provide affordable housing to the Karen Community – refugees escaping political turmoil from their native country. With City support, Rolling Hills also has a new community center building in which Healthcare for the Homeless provides nursing services to the residents.

[19] As Ward 3 (area known and "Highland Park" represented by Pat Harris) sites were being reviewed, the real estate market conditions were volatile and potential housing sites were being purchased by private developers.

[20] In 2010, HRA approved $1,191,450-CDBG funds and $350,706-City- ISP funds to finance the land assembly.

[21] PPL West 7th Fort Road Flats – 44 units of affordable supportive housing for families received 2011 LIHTCs. Prior to this Credit reservation, the Shepard Davern Gateway Small Area Plan (1999) stated approving "new multi-family housing" that introduces more housing diversity to the area " in type, form, market options, and costs" (Shepard Davern Gateway Small Area Plan, page III-15.) Furthermore, the District 15 Highland Park Neighborhood Plan Summary recommends housing that welcomed residents from a broad spectrum of age groups and income levels with new housing units that are high quality, affordable, and culturally-welcoming. District 15 Highland Park Neighborhood Plan Summary (2007).

[22] African Americans make up nearly half of homeless parents. Compared to their representation in the overall Minnesota population, African American families (49%) and American Indian (8%) are more likely to be homeless than other racial or ethnic groups. African-Americans are 5% of Minnesota parents, but half of the homeless parents in Minnesota, while American Indians are only 1 percent of the all Minnesota parents yet 8 percent of homeless parents. Data on homeless parents, *2012 Minnesota Homeless Study, Homeless Children and Their Families*, page 4. Wilder Research, May 2014.

[23] See Home Investment Partnership Map, Exhibit 5, Home Investment Partnership Spreadsheet, Exhibit 6.

provided HOME assistance is usually a smaller part of an overall financing package. Recent projects include 2700 University, Cambric, Elders Lodge, Maryland Park Apartments, Hamline Station, Rolling Hills, Midway Pointe, and West Side Flats. Most of the rehabilitation projects are located in lower income areas of the City, and the only new construction project is the Cambric, which is inside an R/ECAP.

The City often leverages HOME funds with other funding sources to make large, economically integrated projects happen. As examples, the West Side Flats Phase I project (located in an area of St. Paul that is not an R/ECAP) is a 178-unit apartment building with commercial space. Twenty percent of the units (36) are affordable to households at 50% or less of area median income; 142 units are market rate. The West Side Flats financing structure demonstrates how St. Paul uses multiple funds to make projects happen. The project secured a HUD insured loan, TIF, HOME funds, a Minnesota Housing loan, Metropolitan Council TBRA and LCDA funds, and DEED funds. On the City's East Side, Maryland Park Apartments, an existing 172-unit affordable rental housing complex constructed in 1969, has a HUD Section 8 assistance contract for 143 of 172 units. The project consisted of acquisition and rehabilitation, including replacing all building mechanicals, interior unit fixtures and appliances, installing insulation, renovating interior common areas, installing digital camera security system and renovating the existing office building into a community clubhouse. The funding for Maryland Park Apartments, among other sources, is made up 4% LIHTC and St. Paul HOME financing.

Another example is the 2700 University – 4% tax credit financed project that is a mixed-income, high density project located next to a light rail transit station on a thriving commercial node comprised of 50 affordable and 198 market rate apartments and 3,000 SF of commercial space. The project received 4% LIHTC, HOME funds, and a TOD Met Council grant

Home Ownership Initiatives - the City of Saint Paul must continue to supports efforts to reduce racial disparity in homeownership

It has been cited that, in 2014, only 39% of people of color in the Twin Cities owned a home, compared with 74.9% of whites—making the target area home to the country's worst racial homeownership gap.[24] The gap has grown over the past decades and has held steady for the past two years at 36%, one of its widest points since 1990.[25]

The Metropolitan Council has also concluded, "Continuing discrimination in mortgage lending and the emergence of new forms of racial steering may prevent people of color from owning homes in communities of their choice."[26]

As commentary to the AI Addendum, the City participates with homeownership strategies, such as Minnesota Home Ownership Center's Home Ownership Alliance (developing strategies to promote

[24] http://www.mncompass.org/housing/homeownership-gap#7-7144-d
[25] http://www.mncompass.org/housing/homeownership-gap#7-5176-d
[26] http://www.metrocouncil.org/METC/files/55/554c6841-270a-4f9e-8e2f-c8c2c279ecf1.pdf

home ownership of color), Saint Paul Home Loan Fund, Saint Paul Mortgage Foreclosure Prevention Program, and Saint Paul's Inspiring Communities.

Saint Paul's Inspiring Communities -an innovative home ownership program -consolidates properties that had been acquired by the City under a numerous programs[27] for new construction and rehabilitation. As a neighborhood redevelopment program, it stabilizes neighborhoods while creating job opportunities for local residents, Section 3 certified businesses, minority-owned businesses, women-owned businesses and small businesses.

Inspiring Communities provides energy-efficient, sustainable, and affordable homes in areas of St. Paul with the greatest need for stable housing. The Inspiring Communities Program largely focuses investment on geographically defined cluster areas. These areas were defined by where existing HRA-owned property was located. ISP[28] and NSP[29] both have specific limited eligible areas. The quality of housing also increases the overall affordability, as these homes should not require major capital investments for 10-15 years. Since 2008, over $43,000,000 of federal, state and local funds have been directed to revitalize vacant and foreclosed properties in St. Paul neighborhoods.

As of December 2016, 243 Housing units (181 owner-occupied units and 62 rental units) have been rehabilitated or newly constructed (191 rehabilitated, 52 new construction). Of the 181 owner-occupied units, 48% were households of color, and of the 62 rental units, 70% were households of color.

To address the mortgage foreclosure concerns, the City's Mortgage Foreclosure Prevention Program, a HUD-approved housing counseling agency, proactively assists households-in-mortgage default (i.e., bring mortgage current, securing loan modifications, refinancing mortgages, granting a deed in lieu of foreclosure, executing a short sale, or provided basic default counseling).

---

[27] These individual properties eligible for the program had been acquired with NSP, ISP, CDBG, HRA 117 funds (a local source, revolving loan pool), and Bond Cost of Issuance Account (a local source of funds made up money generated from fees charged in a City-sponsored mortgage program).

[28] Invest St. Paul ("ISP"): this is an initiative funded by the sale of STAR bonds. The initiative had 9 goals: 1) create partnerships among banks, the HRA, CDCs, District Councils, and neighborhood residents; 2) bring together resources, time, talent, and funding in neighborhoods poised to prosper after a prolonged period of disinvestment; 3) reduce number of vacant houses; 4) rehabilitate housing units thereby strengthening the housing stock; 5) work to grow new, stabilized and/or expand existing businesses; 6) develop major gateways and nodes that will grow jobs and provide opportunity for new types of improvements; 7) improve the stability and quality of life in the neighborhoods; 8) grow stable and racially and economically diverse neighborhoods, with well-maintained owner-occupied and rental housing; and 9) build on the strengths of St. Paul's neighborhoods by insuring that neighborhoods remain strong, and strengthening those where confidence is clearly declining. The 4 ISP Target areas were chosen after staff developed a number of key indicators of neighborhood stress. These four areas had the highest concentrations of: 1) low residential property values; 2) 1 and 2 unit rental properties; 3) MLS active residential property listings; 4) vacant residential buildings; 5) properties with 3 or more property maintenance complaints; 6) water shutoff notices issued; 7) foreclosures; 8) quality of life crimes; 9) Part I crimes; 10) arson and fires; and 11) revoked occupancy certificates (based on violation of safety codes).

[29] Neighborhood Stabilization Program (NSP) is a federal program providing HUD emergency assistance for redevelopment of abandoned and foreclosed homes and residential properties. As part of the NSP program, HUD identified a limited number of census tracts that met their definition of need. HUD also provided two foreclosure related need scores at the census tract level, one that is based on the estimated number and percentage of foreclosures and another that combines the estimated foreclosure rate with vacancy rate. The city proposed a target area with high average scores

The City's Mortgage Foreclosure Prevention Program also provides individualized mortgage foreclosure prevention counseling with case management plans, budget counseling, and referrals to community resources, such as emergency assistance from Ramsey County Human Services. Most importantly, the City staff negotiates with lenders for modifications, forbearance agreements, or repayment plans.

The City also participates with other innovative mortgage foreclosure prevention programs. In the Summit/University neighborhood, the Rondo Land Trust pilot foreclosure initiative assists households-in-default who choose to put their home in the Land Trust. In exchange, Rondo Land Trust provides funds to lower mortgage and addresses major repairs, such as roof replacements, furnaces, and plumbing. Rondo Land Trust works with lenders to modify the mortgage to make the mortgage payments affordable for the family. The program benefits are 1) family remains in the home; 2) mortgage becomes affordable, and 3) deferred maintenance is addressed. For East Side neighborhoods, Dayton's Bluff NHS offered its innovative *Bridge to Success Contract for Deed Program* which utilized contracts for deed to create affordable housing opportunities for homebuyers who may not be ready to qualify for a traditional mortgage.[30]

[30] *The Bridge to Success Program* requires homeownership education and financial counseling to ensure that buyers are mortgage-ready in three years.

Jeremy Gray

From: Spencer R Agnew
Sent: Monday, April 03, 2017 2:22 PM
To: Jeremy Gray
Cc: Margo Geffen
Subject: FW: AI Addendum City of St. Louis Park error

Jeremy- see below regarding an error the City of St. Louis Park found in their zoning section.

Spencer Agnew
Hennepin County Community Works

612-348-2205
spencer.agnew@hennepin.us | hennepin.us

From: Marney Olson [mailto:molson@stlouispark.org]
Sent: Monday, April 03, 2017 12:37 PM
To: Margo Geffen <Margo.Geffen@hennepin.us>; Spencer R Agnew <Spencer.Agnew@hennepin.us>
Subject: RE: AI Addendum Public Draft

Margo & Spencer,

We are beyond the 30 day comment period and St. Louis Park does not have any comments as it relates to our score. I wanted to let you know that we did notice one error. On page 373, second column from left, second line, the minimum sq ft in R2 is 7,200 not 8,400 as written.

Thanks, Marney

Marney Olson
Assistant Housing Supervisor | City of St. Louis Park
5005 Minnetonka Blvd, St. Louis Park, MN 55416
Office: (952) 924-2196 | Fax:(952) 924-2199
www.stlouispark.org
Experience LIFE in the Park.

Melissa Mailloux

From: Melissa Mailloux
Sent: Friday, April 07, 2017 1:08 AM
To: melissa@mosaiccommunityplanning.com
Subject: FW: City of Woodbury technical concerns re Addendum to AI

From: Batalden, Karl [mailto:karl.batalden@woodburymn.gov]
Sent: Thursday, March 02, 2017 4:09 PM
To: jeremy@mosaiccommunityplanning.com
Cc: Wetzel-Moore, Alyssa (CI-StPaul) <alyssa.wetzel-moore@ci.stpaul.mn.us>
Subject: City of Woodbury technical concerns re Addendum to AI

Dear Mr. Gray:

Thank you for our phone conversation this afternoon. Having had a chance to undertake a preliminary review of the Addendum to the 2014 Regional AI, Woodbury has several concerns in general that I will discuss at future FHIC meetings, but some specific concerns regarding your analysis of the City of Woodbury's zoning practices (pp. 410-417).

I will list these concerns below but would appreciate an opportunity for my City Planner and myself to have a fifteen minute conversation prior to the March 14th community meeting on the topic that will be held at the Washington County CDA offices.

Please note the following specific concerns:

1. On page 410, you reference a website www.woodbury-web.com. This is not the City's website. For information about the City's Comprehensive Plan, please access https://www.woodburymn.gov/departments/planning/comprehensive_plan.php
2. On pages 413-414, you assigned us a score of 3 for questions 3a and 3b. I believe that there are some technical misunderstanding and that our score should be either a 1 or a 2 which would in turn raise our "average total risk score". Please note the following:
    a. You state "The zoning map was not separately analyzed to determine whether enough areas of the jurisdiction are zoned to meet demand for multifamily housing." As required by law in the State of Minnesota, Woodbury establishes densities for residential parcels through the land use chapter of its Comprehensive Plan. Language straight out of our comprehensive plan (approved by the Met Council as required by law) states the following

> The Metropolitan Council projects that Woodbury will add 7,494 households between 2011 and 2020. Also, the Metropolitan Council has forecast affordable housing needs for all cities and townships within the region. The housing plan element of local comprehensive plans is required to reflect the allocated portion of the forecast demand for affordable housing. The Metropolitan Council's needs allocation formula determines that 2,057 units, or 27% of total projected household growth should be affordable. Woodbury's 2011 - 2020 allocation of affordable housing need comes from the January 2006 report "Determining Affordable Housing Need in the Twin Cities 2011 – 2020". This allocation is based on forecasts of household growth from 2010 to 2020 made by the

Metropolitan Council in 2005. The allocation is based on assumptions on the proportion of low-income households and the number of affordable housing units built by the private market. The analysis of need and local allocation were completed prior to the dramatic slow down in residential construction, increase in mortgage foreclosures and related economic issues.

b. There may be some confusion regarding CUPs. CUP findings require consistency with the Comprehensive Plan and a request for a CUP may not be denied solely because a proposed project consists of multi-family housing, or regarding who future resident would be.
c. Contextually, I would argue that Woodbury is one of the few suburbs in the region with a 50-50 mix between single-family and multi-family housing. So the idea that we would receive a score of 3 to answer the question Does the jurisdiction allow for a mixture of housing types?

   See the attached chart that provides data from 2000 to 2016.
   See the attached pdf of the 2,564 residential units either built or underway in our Phase 2 development area (that's development south of Bailey Road that will represent the City's growth roughly in the 2011 to 2020 timeframe). You'll note the specific breakouts showing 50.4 percent single family and 49.6% multi-family.
d. For added third-party context, Woodbury was one of only six cities in the entire region to meet its 1996-2010 affordable housing goals. We have built affordable housing and continue to do so. (See the attached e-mail from Met Council from 2011 for purposes of verification.)

3. I recognize that you are attempting to analyze our zoning practices through a review of the Chapter 24 of the City Code. However, when you limit your review to Chapter 24, you miss out on other sections of the Code, the Comprehensive Plan, the City's Density Policy and more.

In conclusion, please let me know which of the following 15-minute windows are available for a conference call (all times are MN time):

1. 3/6/17 between 9:30 and 3:30
2. 3/9/17 between 10 and 2
3. 3/10/17 between noon and 4
4. 3/13/17 between 11 and 3
5. 3/15 between 1 and 6

Regards,

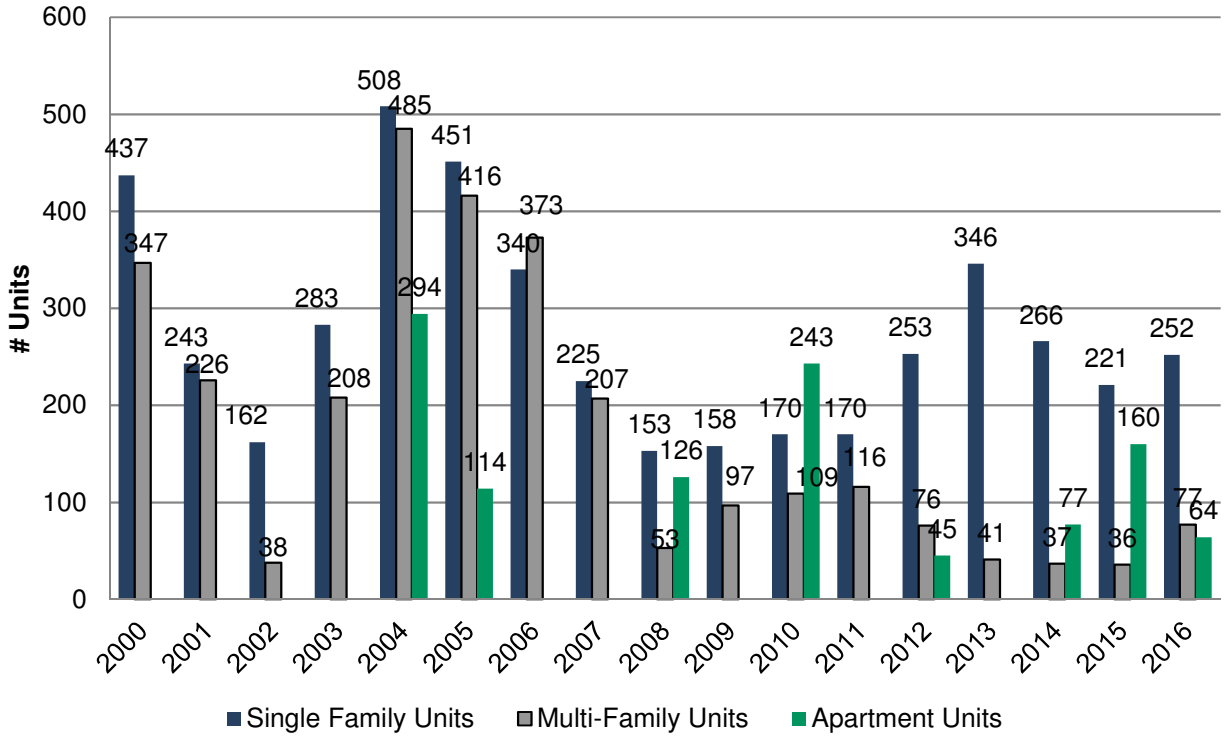
Karl

Karl Batalden
Housing and Economic Development Coordinator
www.woodburyloans.com
8301 Valley Creek Road Woodbury, MN 55125
(651) 414-3438 | www.woodburymn.gov

Please note that my e-mail address has changed to karl.batalden@woodburymn.gov.

Housing Type

	Single Family Units	Multi-Family Units	Apartment Units	Total Units
2000	437	347		784
2001	243	226		469
2002	162	38		200
2003	283	208		491
2004	508	485	294	1287
2005	451	416	114	981
2006	340	373		713
2007	225	207		432
2008	153	53	126	332
2009	158	97		255
2010	170	109	243	522
2011	170	116		286
2012	253	76	45	374
2013	346	41		387
2014	266	37	77	380
2015	221	36	160	417
2016	252	77	64	393
	4638	2942	1123	8703
	0.532919683	0.467080317		



Development	Apartments	Townhome	Detached Townhome	Single Family	Total	Percentage
Bailey Lake	0	0	0	98	98	3.8%
Ashton Ridge	0	0	0	127	127	5.0%
Twenty One Oaks	0	0	23	106	129	5.0%
Woodbury Flats	305	0	0	0	305	11.9%
St. Therese	208	64	0	0	272	10.6%
Harvest View	0	122	0	57	179	7.0%
Bridlewood Farms	0	113	70	148	331	12.9%
Copper Ridge	0	109	69	199	377	14.7%
Cardinal Crossing	0	0	30	0	30	1.2%
Compass Pointe	0	88	0	0	88	3.4%
Pioneer Pointe	0	0	34	0	34	1.3%
Southridge	0	0	0	221	221	8.6%
Villas at Dale Ridge	0	0	38	0	38	1.5%
Summerlin	0	0	0	227	227	8.9%
Dale Bluffs	0	0	0	6	6	0.2%
Fair Haven	0	0	0	102	102	4.0%
	513	**496**	**264**	**1291**	**2564**	
Percentage	20.0%	19.3%	10.3%	50.4%		

Batalden, Karl

From: Nyhus, Joel <joel.nyhus@metc.state.mn.us>
Sent: Monday, June 06, 2011 12:57 PM
To: Batalden, Karl; Barajas, Lisa
Subject: RE: LCA housing goal question

Hello Karl-

Is this the article you were referring to?

http://webcache.googleusercontent.com/search?q=cache:9jrlKUrYZscJ:www.masonryconstruction.com/industry-news.asp%3FsectionID%3D790%26articleID%3D1552263+bob+shaw+pioneer+press+woodbury+2011&cd=9&hl=en&ct=clnk&gl=us&source=www.google.com

I ask because I count 6 communities that had negotiated goals and achieved them and not 3 as it says in the article.
The six communities are: Circle Pines, Norwood Y.A., New Brighton, St. Paul, Willernie, and Woodbury.

Just let me know if this isn't what you need.

Thanks,
Joel

Joel Nyhus
Metropolitan Council
Research - Community Development
(651) 602-1634 Phone
(651) 602-1674 Fax
joel.nyhus@metc.state.mn.us

From: Batalden, Karl [mailto:kbatalden@ci.woodbury.mn.us]
Sent: Monday, June 06, 2011 11:21 AM
To: Barajas, Lisa; Nyhus, Joel
Subject: LCDA housing goal question

Lisa and/or Joel:

Bob Shaw of the *Pioneer Press* made the statement that Woodbury is one of only three communities to have met the 1996-2010 LCDA affordable housing goals. Is that true? If so, I'd love to start incorporating it in some of our PR, speeches, talking points, etc. But I wanted to get some confirmation first.

Thanks in advance,

Karl

Karl Batalden
Housing Specialist/Associate Planner
City of Woodbury
8301 Valley Creek Road Woodbury, MN 55125
☎ (direct) 651-414-3438 | 🖷 (fax) 651-714-3501

Melissa Mailloux

From: Jeremy Gray
Sent: Tuesday, April 04, 2017 7:58 PM
To: Melissa Mailloux
Subject: Fwd: fair housing plan - comments due 3-31
Attachments: image002.png; Untitled attachment 00307.htm; Fair Housing Policy Options.docx; Untitled attachment 00310.htm

Sent from my iPhone

Begin forwarded message:

> **From:** Chip Halbach <chalbach@mhponline.org>
> **Date:** April 3, 2017 at 8:21:03 PM PDT
> **To:** Jeremy Gray <jeremy@mosaiccommunityplanning.com>
> **Subject: FW: fair housing plan - comments due 3-31**
>
> From CLUES
>
> ---
>
> **From:** Eduardo Barrera [mailto:EBarrera@clues.org]
> **Sent:** Monday, April 3, 2017 11:06 AM
> **To:** 'Wetzel-Moore, Alyssa (CI-StPaul)' <alyssa.wetzel-moore@ci.stpaul.mn.us>
> **Cc:** Chip Halbach <chalbach@mhponline.org>
> **Subject:** RE: fair housing plan - comments due 3-31
>
> Hi Alyssa and Chip,
>
> I was out of town the last few days. Here is some input in the document you attached. I feel that the 45 or so recommendations in the document touch on the subjects we addressed during the process. I am worry that because there are so many this would become only a "document" that would be hard top implement. However I feel that it is comprehensive and I strongly encourage the PJ's to prioritize the most critical ones.
>
> Thank you Chip.
>
> ---
>
> **From:** Chip Halbach [mailto:chalbach@mhponline.org]
> **Sent:** Saturday, April 01, 2017 8:23 PM
> **To:** Eduardo Barrera
> **Subject:** FW: fair housing plan - comments due 3-31
> **Importance:** High
>
> Eduardo, I need your response. The comment deadline is this Monday. Chip
>
> ---
>
> **From:** Chip Halbach
> **Sent:** Tuesday, March 28, 2017 3:07 PM
> **To:** 'DrSheronda Orridge' <drsherondaorridge@lsholisticservices.com>; 'nelima@acerinc.org'

Fair Housing Analysis of Impediments Policy Options

3/26/17

Increase production of affordable housing (particularly in areas deemed having high level of opportunity)(how is this "opportunity areas" are defined)

Meet the requirements of the Comprehensive Plan "Housing Element," and document how a community will meet its share of the region's housing need.

Identify specific areas (neighborhoods) that need development affordable housing for residents to have true choice.

Adopt inclusionary housing ordinances (requiring developers of market rate housing seeking city assistance or permissions to include some affordable apartments).

Reduce barriers to providing decent housing at lower cost: lower parking requirements, reduce lot size mandates, lower requirements for building materials, and reduce fees and charges for affordable housing development.

Fund development of affordable housing, particularly housing for large families.

Encourage Section 8 program administrators to provide rental vouchers to tax credit developments ("project base vouchers") in areas of high opportunity, and require tax credit developers to accept the project-based vouchers and affirmatively market to households of color.

Fund local government ombudsman positions to support those developing and maintaining affordable housing.

Support efforts to increase regional or statewide resources for housing production.

Fund efforts to inform the public and foster public backing for investment in housing.

Preserve existing affordable housing

Invest in housing preservation funds (e.g., the NOAH Impact Fund).

Require advance notification of sales of rental properties.

Create first right of refusal for residents to match potential acquisitions.

Support access by households of color to areas of opportunity

Provide low cost mortgage financing, homebuyer counseling, and downpayment assistance to homebuyers of color.

Fund the HousingLink web-based rental housing information service.

Improve conditions in areas of concentrated poverty

Provide comprehensive investment plans for area improvements (address jobs, health, safety, services, health, transportation, education, and housing), and fund action steps included in those plans.

End racial discrimination and strengthen protections for low income tenants

Prohibit denial of tenant applicants due to their having a Section 8 rental voucher.

Prohibit landlords to inquire tenants for legal status.

Create rental licensing requirements that limit cause for eviction, amount and timing of rent increases, and tenant screening requirements.

Test landlords for understanding of fair housing law as a requirement of rental housing licensing.

Fund tenant/homebuyer fair housing and fair lending testing programs.

Support and fund tenant organizing directed at ending poor or unscrupulous property management practices.

Increase participation on community leadership boards by people of color

Fund efforts to recruit and prepare people of color to serve on community boards of directors.

Affirmatively recruit within communities of color for various positions on boards and committees.

Comment Received from Community Stabilization Project

Fair Housing Plan

- **Pages 171-189, the section on community perspectives (Is what you heard from your community fairly represented in the document? If not, what would you add or change?)**

The information in the section is fairly what we heard.

- **Pages 190-210, the equity analysis. These are the major themes and conclusions that speak to what is impacting the abilities of people of color to have affordable homes in areas in which they would choose to live (Is there anything missing in this section based on your experience?)**

In our experience the key things that are impacting people of color to have a choose where families would like to live are: The Rental Criteria : Cost of an application fee(Income 1.5, 2 or3 times the amount of the rent), credit score.

- **Pages 211-217 are the recommendations. What should happen in order to bring about changes needed to ensure that fair housing exists across the Twin Cities. (What other steps do you think need to be taken, and why?)** ***Note that MHP reordered these recommendation to better follow the major themes found in the Equity Analysis***

In order to for changes to happen the Twin Cities need to work together on common issues that are impacting both cities. This include local ordinances with the City Council and Elected Officials.

Wetzel-Moore, Alyssa (CI-StPaul)

From: Elizabeth Johnson <Elizabeth@CROSSServices.org>
Sent: Thursday, March 30, 2017 2:59 PM
To: Wetzel-Moore, Alyssa (CI-StPaul)
Cc: Chip Halbach
Subject: CROSS Comments on Reports

Thank you for compiling all of this data.

Very interesting and eye-opening.

We feel you really touch all areas that needed to be addressed.

It is clear that, regardless of area, there is a common theme that runs through…people of color / families with lower incomes pay a higher price for progressing their lives.

Access to quality education, transportation options, jobs, and safety are barriers to many and not even a passing thought to others.

The summary of agreed upon actions, the steps to successfully take these actions, and the costs associated would be a report I would be interested in seeing.

The data is compelling and interesting, but I fear that it needs to be boiled down into the "doable" in order for change to happen in significant and systematic ways.

Both systemic and personal actions are needed. This document seems to address the systemic almost exclusively, while people thinking differently about their future, their neighborhood, and their opportunities is often where change begins.

Page 188 - The story about the woman who improved her credit rating and educated herself about first-time home buyers and other home purchasing funds is an example of what I mean when I say it takes both systemic and personal determination.

It is unfortunate that her housing experience included such negative experiences, but there has to be 1) a desire to achieve something different, 2) resources that can assist to make that change happen, 3) a fair and clear access to those resources.

Highlighting stories in which people have been able to access these resources in order to address ways to improve access as well as demonstrate the value of funding such resources would be a great way to tell the story of what CAN BE POSSIBLE at a greater level.

CROSS applauds your efforts to bring light to these challenges for those in our community.

Thank You!

Elizabeth Johnson
Executive Director

CROSS
Helping Hands Reaching Out

(763) 425-1050 Ext. 106
(763) 428-9937 Fax

www.CROSSservices.org

Dakota County CDA Comments on the Draft AI Addendum

1. We would like to request an Executive Summary be included.

2. Low Income Housing Tax Credits:
    a. P. 143 Figure 5-10 – it looks like the map only maps projects that are 50 unit or more. If this is correct, then that means several of Dakota County's tax credit projects are not included on the map since they are less than 50 units. The second paragraph on p. 142 states that "*Figures 5-10 and 5-11 illustrate the distribution of <u>all</u> affordable units developed or preserved using LIHTC funding since 1987.*" I think it would be helpful to map the projects 50 units or more with a blue dot and smaller projects with a different color dot.
    b. P. 142, 4th paragraph – It is helpful the maps include by tract the share of the regional rental housing. It might also aide the discussion to include a comment/comparison when discussing the split between the locations (MSP vs. suburbs) of the tax credit units a mention of where most people/households live. Urban areas are denser than the suburbs. Are you able to add more analysis and comment on the question if LIHTC are concentrated

3. VII. Equity Analysis:
    a. P. 202 at the top of the page South Saint Paul is include as a city where… "*…most new development with LIHTCs has been in Lakeville, Apple Valley, Eagan, Maplewood, Plymouth, Maple Grove, **South Saint Paul**, and Coon Rapids*." I do not think this is correct. Maybe you meant West St. Paul?
    b. P. 205 top paragraph - It would be helpful to reword this sentence in bold: *There must also be greater effort on the part of local governments to use planning and zoning policy to make affordable housing development more feasible. **And finally, policies such as local preferences that reduce the availability of existing subsidies or housing units to households that need it must also be reconsidered in order for the region to meet the housing needs of its residents.** Until the supply of affordable housing is increased, low- and moderate- income households (who are disproportionately made up of people of color and immigrants) will continue to face significant barriers to housing choice.*

       I'm not suggesting to change the recommendation concerning preferences, but what I don't like about this sentence is that it implies that households who benefit from preferences don't "need" or qualify for the subsidy. All households must qualify for the subsidy and therefore it is assumed to be needed. I think the emphasis should be on allowing for mobility and access for all across the metro.

4. Recommendations
    a. #13 – *Integrating the Met Council's housing performance scores into County CDBG sub-recipient funding processes* is not supported by Dakota County CDA. The Met Council housing performance scores are a big source of contention between the cities and Met

Council. The scores do not take into account existing affordable housing stock unless it was substantially rehabbed or preserved within the last seven years.

i. We would recommend this recommendation focus more on utilizing the housing performance scores as a resource in the development of the Consolidated Plan. It makes sense to us to see this document as a resource when looking at the overall needs in our community but not as an integrated criterion for annual CDBG funding.

b. #26 – *Consolidated Plans should be place-based, focusing available funding on improving opportunity in high-poverty areas*. According to Met Council and the AI Addendum, there are three Areas of Concentrated Poverty (ACPs) tracts in Dakota County – one in Apple Valley, one in West St Paul, and one in Rosemount. While we will look at these areas during the next Consolidated Plan and Annual Action Plans and consider the funds available for those cities, we will continue our approach to the consolidated plan which is to improve the needs of low/moderate income households throughout the entire County with available funding. We will do this to not only help the three areas of concentrated poverty but to help prevent other areas from becoming ACPs.

Comments Received from Dr. Orridge

Fair Housing Analysis of Impediments Policy Options

Increase production of affordable housing (particularly in areas deemed having high level of opportunity)

- Meet the requirements of the Comprehensive Plan "Housing Element," and document how a community will meet its share of the region's housing need.
- Adopt inclusionary housing ordinances (requiring developers of market rate housing seeking city assistance or permissions to include some affordable apartments).
- Reduce barriers to providing decent housing at lower cost: lower parking requirements, reduce lot size mandates, lower requirements for building materials, and reduce fees and charges for affordable housing development.
- Fund development of affordable housing, particularly housing for large families.
- Encourage Section 8 program administrators to provide rental vouchers to tax credit developments ("project base vouchers") in areas of high opportunity, and require tax credit developers to accept the project-based vouchers and affirmatively market to households of color.
- Fund local government ombudsman positions to support those developing and maintaining affordable housing.
- Support efforts to increase regional or statewide resources for housing production.
- Fund efforts to inform the public and foster public backing for investment in housing.

Preserve existing affordable housing

- Invest in housing preservation funds (e.g., the NOAH Impact Fund).
- Require advance notification of sales of rental properties.

Support access by households of color to areas of opportunity

- Provide low cost mortgage financing, homebuyer counseling, and downpayment assistance to homebuyers of color.
- Fund the HousingLink web-based rental housing information service.
- Partner community up with local organizations such as Habitat For Humanity and Land Trusts so that more community members can have different opportunities to become home owner.

Improve conditions in areas of concentrated poverty

- Provide comprehensive plans for area improvement (address jobs, health, safety, services, health, transportation, education, and housing), and fund action steps included in those plans.
- Make it affordable for homeowners to purchase a second home around the home they live in and make the second home an income property and provide training for the homeowners to become good landlords.
- Give landlords incentives to hire community members to work and maintain the property.

End racial discrimination and strengthen protections for low income tenants

- Prohibit denial of tenant applicants due to their having a Section 8 rental voucher.
- Create rental licensing requirements that limit cause for eviction, amount and timing of rent increases, and tenant screening requirements.
- Test landlords for understanding of fair housing law as a requirement of rental housing licensing.
- Fund tenant/homebuyer fair housing and fair lending testing programs.
- Fund tenant organizing directed at ending poor or unscrupulous property management practices.
- Make it easier for people to get unlawful detainers off of their record.

- Look beyond credit history when considering a tenant.
- Make it easier for people getting out of prison to get decent affordable housing and give them additional resources if they want to purchase a home later down the line.

Increase participation on community leadership boards by people of color

- Fund efforts to recruit and prepare people of color to serve on community boards of directors.
- Affirmatively recruit within communities of color for various positions on boards and committees.

Additional Thoughts

Although the forms we're anonymous there were participants asking for more resources and listed their contact information to receive more information will these people be followed up with?

Equity in Place Comments on RAI Addendum
03/31/17

Gentrification and Displacement Section:

- Including a section on gentrification and displacement is very important given the low vacancy rate for rental housing, rising rents, the flipping of large apartment complexes displacing hundreds of families at once, and the destruction of mobile home parks taking place in our region. It is important to include another layer of analysis in order to frame the threat that many communities feel on these issues. Namely: historic practices which have limited, and continue to limit, wealth-building and homeownership opportunities for people of color and indigenous people, combined with a renewed interest from higher income people in historically disinvested parts of our region creates a condition in which existing residents, especially residents of color, are at particular risk of physical and/or cultural displacement as their neighborhoods change.
- The section which covers an academic debate over the existence of gentrification seems to undermine our stated FHAC commitment to improving community engagement. Many participants from multiple community engagement events spoke to the extent to which gentrification and displacement are indeed happening in the region. To use this document then to frame this struggle as an issue whose existence is debated by white academics seems to undermine our work to engage renters of color. We also see it as downright unhelpful to addressing the real issues that directly impacted people have identified in this community engagement process and others.

Narrative/Framing

- We see a need to move away from the problematic binary language of seeing some communities as “high-opportunity” versus others as “low-opportunity”, which usually break down around racial lines. In general, this draft does a positive job of using the data from the Met Council’s “Choice Place and Opportunity” report to look at measures of access to opportunity in our region across geographies. However, there are places in the addendum in which this binary high/low good/bad worldview remains. We believe different language and framing of communities is needed because a binary definition of communities creates the impression that certain geographies inherently contain better opportunities for residents, instead of looking at the history of policy decisions, investments, and power dynamics that have shaped the health, wealth, and racial makeup of different communities in region. This also frequently leads to a suggested “solution” to deep racial disparities: people of color can simply be moved “to opportunity” while ignoring the systemic barriers that people of color face across geographies in our region, including, and sometimes especially, in whiter, wealthier parts

of the region. We cannot address our region's fair housing issues, without a more nuanced way of discussing these issues.

Recommendations

- Recommendations #3 and #5, relating to just cause eviction and right of first refusal respectively, are strong, much needed policy recommendations that multiple jurisdictions should pursue. We appreciate and support their inclusion.
- A number of the recommendations are positive in that they acknowledge the need for communities of color, renters, and underrepresented people to have active, impactful roles in the planning of their communities and in decision-making processes around housing issues. However we think clearer recommendations are needed with language that articulates who is responsible for taking actions and what steps they should take. Some examples:
    - Recommendation #25- Cities and counties need to include community voices, specifically people of color and renters, in local planning decisions. Jurisdictions need to allocate resources to fund organizations and leaders within their communities to do proper engagement. They also need to adjust their planning processes themselves to accommodate community participation and ensure that engagement is impactful and not merely a "check the box" or tokenizing exercise.
    - Recommendation #28- Current language suggests merely maintaining data on racial and ethnic composition of elected office, boards, and commissions. Cities and counties should track key decision-making commissions, committees, as well as elected boards and publish racial and ethnic, gender identities of members publically. Jurisdictions should also create plans and pipelines, accompanied with resources, to bring people of color, with relationships in their communities, onto boards and commissions. Jurisdictions should connect with groups like Nexus Community Partners' Boards and Commissions Leadership Institute (BCLI) who are equipping members of underrepresented communities with tools to sit on local boards and commissions.
- Recommendation #6 is a good illustration of the need to build political will to support investments in affordable housing. We would recommend, however, that building political will also needs to include investments and partnerships with organizations and people connected with impacted communities, especially people doing tenant organizing and working in communities of color.
- We realize the political difficulty of rent control ordinances in a state in which there is a ban on municipalities passing rent control policy, but it is a policy option that we think should be named nonetheless. Repealing the state law should be on jurisdictions' legislative agendas as we have seen done with other efforts to retain local control. Rent control would help protect against the purchasing and quick flipping of properties that we have seen at places like Crossroads at Penn in Richfield and Meadowbrook in St. Louis Park. It would also prevent landlords in neighborhoods that are experiencing gentrification pressures from new public and private investments from drastically raising rents and potentially displacing people.

Additional recommendations:

- Cities where there are neighborhood associations and district councils, namely Minneapolis and St. Paul, need to do a better job tracking the demographic representation on those neighborhood boards and demanding better representation of those most affected by fair housing issues, namely renters and people of color. Neighborhood boards can be a powerful place for engagement and organizing of underrepresented communities, but unfortunately, in many cases, they repeat the pattern of being dominated by white homeowners, or homeowners in general.
- As cities are working on their comprehensive plans this year, the recommendations outlined here and the housing elements on cities comp plans should be connected, especially when cities are named in this RAI addendum.
- Many of the recommendations will require jurisdictions to alter their community engagement and decision-making practices and processes. It will also require institutional culture change that recognizes the historic and ongoing exclusion on people of color and prioritizes doing the internal and external work to better include and be accountable to underrepresented people and communities.

FAMILY
HOUSING
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April 3, 2017

Alyssa Wetzel-Moore, FHIC Chair
Saint Paul Department of Human Rights and Equal Economic Opportunity
15 West Kellogg Boulevard, 240 City Hall
Saint Paul, MN 55102

Dear Ms. Wetzel-Moore:

The Family Housing Fund commends the members of the Fair Housing Implementation Council (FHIC), including the counties of Anoka, Dakota, Hennepin, Ramsey and Washington; the Metro HRA (Metropolitan Council); the Community Development Agencies of Scott and Carver Counties; and the cities of Bloomington, Eden Prairie, Minneapolis, Minnetonka, Plymouth, Coon Rapids, Saint Paul and Woodbury for publishing an Addendum to the FHIC's 2014 Regional Analysis of Impediments to Fair Housing (AI Addendum) for public comment.

The Addendum to the AI is comprehensive and represents strong leadership to ensure we, as a community, are advancing solutions to barriers that prevent equal and fair access to housing throughout the region. The Family Housing Fund values equal access and we are committed to working with the FHIC to support the recommendations listed in the Addendum AI.

The Family Housing Fund has the following comments related to the recommendations:

Recommendation #7 on page 212 lists the Family Housing Fund as the responsible party. We request that the responsible party be change to the Greater Minnesota Housing Fund.

Recommendation #9 on page 212 outlines important objectives related to Housing Choice Vouchers. We suggest modifying this recommendation to create three points.

1. Evaluate recommendations in the report entitled "Enhancements and Best Practices Designed to Expand Resident Choice and Mobility in Minneapolis" to determine Minneapolis Public Housing Authority's implementation approach of promising recommendations. The Minneapolis Public Housing Authority should be the responsible party for this action.
2. Determine which recommendations in the report entitled "Enhancements and Best Practices Designed to Expand Resident Choice and Mobility in Minneapolis" are relevant for other area Public Housing Authorities (PHAs)/Housing and Redevelopment Authorities (HRAs) and develop implementation approach. PHAs/ HRAs should be the responsible party for this action.
3. Develop a demonstration program to pool Housing Choice Vouchers across multiple PHAs/HRAs to determine whether such strategy increases mobility or otherwise offers more housing choice for low-income families. PHAs/ HRAs should be the responsible party for this action.

Thank you for the opportunity to comment on this important work.

Regards,

Ellen Sahli
President

Comments Received from Gary Kwong

3/14/17

COMMENTS ON THE DATA

p. 19 **It should be made clear that the "Thai born" refugees along with other SE Asians should be broken out using Nativity data rather than saying how many "Asians" live in Woodbury and other suburbs when it is clear that Asians includes the Chinese and Indian upper income groups (which total from Table 2.8) 36,300 born outside US and have smaller families than the refugee cultural groups. The prior text says that Hmong, Cambodian, Vietnamese, Lao, and Burmese (probably lower than real due to census from skipping) total 100,000. So of the "Asians" there are about 26% probably upper income Indian and Chinese non-refugees. The Nativity data showing the Filipino doctors and nurses is not cited. The income values for "Asians" in fig. 2.1-2.3, especially those above $100,000 would reflect his methods also. It seems that no other "racial" group has such skewed data. p. 49 shows that he understands that in some cases Nativity data should be considered along with the racial data.**

Shows that for this part of the discussion that he recognizes nativity and ethnic differences

"Asians showed a low level of segregation relative to whites with a DI of 0.40, the least segregated of the four primary groups. As the ancestry and foreign-born population maps show, however, Southeast Asian populations and other Asian populations including Chinese and Indians tend to live in different parts of the region and likely experience differing level of segregation relatives to whites. The DI between non-Latino whites and all people of color is 0.38. "Only two tracts in central and southern Minneapolis have an Asian population over 5%.

p. 25 **Indicates that a significant recommendation would deal with:**

Why isn't there anything about the cities and Met council working with the "segregated" White communities on opening themselves up to diversity? Whites are segregated because they take measures to exclude lower SES and racial minorities then the impediments to those areas being desegregated should be dealt with by those areas. Just as lower SES areas are "diverse" but not with as many Whites as would be expected. "An important observation, and often overlooked, is that whites are the most segregated group from all other racial and ethnic groups. Whites tend to live around whites whereas other racial and ethnic groups often live in more racially and ethnically diverse communities. Isolation indices indicate that overall in the region, whites live in neighborhoods that are, on average, 80% white. Other racial and ethnic groups live in much more diverse neighborhoods where the proportion of people who share their race/ethnicity is considerably lower, with averages ranging from 3% for American Indians to 22% for African Americans." Is expressing the segregation of Whites in housing "overlooked" in this way in other AI's?

p 26 **It can be shown that the concentrations in Plymouth, Woodbury, Eagan are professionals (Chinese, Japanese, Indian, Pakastani, Nigerian) using nativity and educational data** Table 2.11 Woodbury 1.6% Asian poverty Black 5.8% poverty Table 2.12 poverty Woodbury foreign born 3.8% poverty

p54 **Somali section of Eden Prairie**

The farthest west that African Americans make up at least a 10% share of a census tract is eastern Eden Prairie (Figure 2-7). population in several tracts.

P 54 **This is probably Landfall which is a trailer park community.**

County. On the east side, Latinos make up 5-15% of Lake Elmo in Washington County, while make up at least 40% of at least one tract in Baytown Township along Washington County's eastern edge.

P 65 **What is owner-occupied single-unit attached?**

Tables 3-3, 3-4, and 3-5 contain data related to housing structure types, their relative availability by jurisdiction, and occupancy by race and ethnicity. By far, single-unit, detached housing units are the most common owner-occupied housing type. This is true in the region's principal cities of Minneapolis and Saint Paul as well as in the suburban and rural communities. A little over 10% of the housing units in the suburban and rural communities are owner-occupied single-unit attached structures, a housing type much less common in the region's principal cities. Renter-occupied multifamily structures of five or more units comprised 32.1% of Minneapolis and Saint Paul's housing stock, but only 16.1% of the housing in the outlying communities.

Should the recommendations include community meetings for oral cultures to explain in their housing opportunities by the local city housing staff so that there is more personal contact for trust and not leaving that up to the community groups that don't get funding for such service?

p 102 **Trailer Parks discussed but there doesn't seem to be a recommendation dealing with desegregation or mixed income trailer parks.**

Met Council identifies manufactured home parks as an underutilized form of affordable housing for the region, especially for very low- and extremely low-income households.43 Manufactured housing can often enable homeownership opportunities for economically disadvantaged families who would otherwise not be able to afford homeownership. According to Met Council data, as of June 2016, nearly 39,000 people lived in manufactured home parks within the Twin Cities region. Since 1991, at least ten parks have closed due to redevelopment pressures, aging sewer infrastructure, and highway expansions, and no new parks have been built since that year. However, the number of available pads in the region has remained mostly consistent, suggesting that demand for manufactured homes has not declined and remaining home parks have expanded in response to other parks closing.

P 119

Table 5.2 surprised that Eden Prairie has no acp for Somali area.

Shows nativity effect Woodbury, Plymouth, Minnetonka

P 175 **With (0.07*426+74) Asians / 500 = 21% Asian. They were not asked for their ZIP code because since almost none could read or write English or any language, they would not know their ZIP code for writing or receiving letters. I reported that many could not read English or understand spoken English. It seemed demeaning or laborious to have each person fill out the form by saying "check the Asian box", etc.**

Racial and Ethnic Composition

Of the 463 participants who provided demographic data, 426 identified their race and 359 reported whether or not they identified as Hispanic or Latino. The largest share (39.0%) of participants were Black or African American. The sizeable Other category (13.4%) includes many participants who identified their ethnicity as Hispanic or Latino. Asians made up just 7.0% of the participants who provided individual demographic information however, based on reports submitted from meeting facilitators, three gatherings of Lao and Cambodian residents totaled 74 participants who would likely identify as Asian, but who did not provide demographic records. More than a quarter of participants identified as being Hispanic or Latino.

P 192 **I believe that the housing decisions are based less on center locations and more on where affordable housing is located not jobs.**

76 Minnesota Housing Finance Agency, *Housing Location Preferences of Minnesotans* (February 2012).

Met Council's indicators recognize social services as a key component to opportunity, and input from community members does as well. For many Southeast Asian immigrants and refugees, connections to their community service centers is very important for cultural contact. However, these connections do not depend on living in close proximity to the center or on public transit access. Very few attendees of the five community engagement sessions 192

at Lao, Karen, and Cambodian organizations had ever used public transit, as they face significant language barriers to understanding the system. Instead, agencies transport community members from throughout the metro areas to their community centers. Thus, housing decisions are based less on center locations and more on job locations.

While communication was described as a considerable barrier for Southeast Asians who rely on oral rather than written language and have limited English language skills, socialization at community centers means living among other Southeast Asians is less of a motivating factor for them. However, proximity to family members was extremely important, with adult age children often visiting their parents in senior housing daily to help with shopping and other activities.

Somali, Latino, and American

In addition to describing aspects of a neighborhood they liked or disliked, several respondents described housing features – specifically, size – that they look for. Latinos mentioned difficulty finding affordable housing with three or more bedrooms, and also described instances of discrimination based on familial status by landlords. Size and type of housing is also a factor for many Southeast Asian households, many of which are

p 193

multigenerational and would like co-located one, two, and three bedroom apartments so seniors could live in their own unit but in close proximity to the children and grandchildren.

Overall, community input gathered for this Addendum describes a variety of factors that impact decisions about housing. Some of these factors align closely with the opportunity dimensions developed by Met Council, while others paint a much broader picture of what Twin Cities residents, particularly residents of color, value in a community.

Residential patterns reflect segregation and differing access

The following is presented to show what I thought the Addendum was to cover.

https://www.hud.gov/offices/fheo/images/fhpg.pdf

"How will it work, process-wise? The Department's commitment to devolved decision making is reflected in its Consolidated Plan rule. For fair housing, that means that communities will continue to certify that they will affirmatively further fair housing as a condition of receiving Federal funds. However, in defining that concept the new rule offers both certainty and flexibility. Local communities will meet this obligation by performing an analysis of the impediments to fair housing choice within their communities and developing (and implementing) strategies and actions to overcome these barriers based on their history, circumstances, and experiences. In other words, the local communities will define the problems, develop the solutions, and be held accountable for meeting the standards they set for themselves. The hitch, if there is one, is that all affected people in the community must be at the table and participate in making those decisions. The community participation requirement will never be more important to the integrity, and ultimately the success, of the process."

https://www.hudexchange.info/programs/affh/

1. Home
2. Programs
3. Affirmatively Furthering Fair Housing (AFFH) Final Rule

Affirmatively Furthering Fair Housing (AFFH) Final Rule

Affirmatively Furthering Fair Housing (AFFH) is a legal requirement that federal agencies and federal grantees further the purposes of the Fair Housing Act. This obligation to affirmatively further fair housing has been in the Fair Housing Act since 1968 (for further information see Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3608 and Executive Order 12892). HUD's AFFH rule provides an effective planning approach to aid program participants in **taking meaningful actions to overcome historic patterns of segregation, promote fair housing choice, and foster inclusive communities that are free from discrimination.** As provided in the rule, AFFH means "taking 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. Specifically, affirmatively furthering fair housing means taking meaningful actions 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. The duty to affirmatively further fair housing extends to all of a program participant's activities and programs relating to housing and urban development."

Learn More About the Fair Housing Planning Process Under the AFFH Rule.

https://www.hudexchange.info/resource/5133/afh-assessment-tool-for-local-governments/

AFH Assessment Tool for Local Governments

Date Published: August 2016

Description

The Notice announcing the 30-day public comment period under the Paperwork Reduction Act, for the proposed Assessment Tool for Local Governments was published on August 23, 2016 in the Federal Register. This Notice is part of the process to renew the approval of the Assessment Tool for Local Governments, which was published on December 31, 2015.

This Assessment Tool is for use by local governments that receive Community Development Block Grants (CDBG), HOME Investment Partnerships Program (HOME), Emergency Solutions Grants (ESG), or Housing Opportunities for Persons with AIDS (HOPWA) formula funding from HUD when conducting and submitting their own Assessment of Fair Housing (AFH). **The Local Government Assessment Tool is also available for use for AFHs conducted by joint and regional collaborations between: (1) such local governments; (2) one or more such local governments with one or more public housing agency (PHA) partners; and (3) other collaborations in which such a local government is designated as the lead for the collaboration.**

Resource Links

- Assessment of Fair Housing Tool for Local Governments (Word Version) (DOCX)

- Assessment of Fair Housing Tool for Local Governments (PDF Version) (PDF)
- Assessment of Fair Housing Tool for Local Governments - Compare Version (Word) (DOCX)
- Assessment of Fair Housing Tool for Local Governments - Compare Version (PDF) (PDF)

The Notice announcing the availability of the Assessment Tool for Local Governments, for use by program participants that receive CDBG, HOME, ESG, or HOPWA formula funding from HUD to conduct and submit an Assessment of Fair Housing (AFH), was published in the Federal Register (PDF Notice | HTML Notice) on January 13, 2017. "

https://www.hudexchange.info/resource/5133/afh-assessment-tool-for-local-governments/

Jan 13, 2017

For each fair housing issue with significant contributing factors identified in Question 1, set one or more goals. Using the table below, explain how each goal is designed to overcome the identified contributing factor and related fair housing issue(s).

Contributing Factors of Publicly Supported Housing Location and Occupancy

Consider the listed factors and any other factors affecting the jurisdiction and region. Identify factors that significantly create, contribute to, perpetuate, or increase the severity of fair housing issues related to publicly supported housing, including Segregation, R/ECAPs, Disparities in Access to Opportunity, and Disproportionate Housing Needs. For each contributing factor that is significant, note which fair housing issue(s) the selected contributing factor relates to.

Admissions and occupancy policies and procedures, including preferences in publicly supported housing

Community opposition

Displacement of residents due to economic pressures

Displacement of and/or lack of housing support for victims of domestic violence, dating violence, sexual assault, and stalking

Impediments to mobility

Lack of access to opportunity due to high housing costs

Lack of meaningful language access

Lack of local or regional cooperation

Lack of private investment in specific neighborhoods

Lack of public investment in specific neighborhoods, including services and amenities

Land use and zoning laws

Loss of Affordable Housing

Occupancy codes and restrictions

Quality of affordable housing information programs

Siting selection policies, practices and decisions for publicly supported housing, including discretionary aspects of Qualified Allocation Plans and other programs

Source of income discrimination

Other

A. Disability and Access Analysis

1. Population Profile

a. How are persons with disabilities geographically dispersed or concentrated in the jurisdiction and region, including R/ECAPs and other segregated areas identified in previous sections?

b. Describe whether these geographic patterns vary for persons with each type of disability or for persons with disabilities in different age ranges for the jurisdiction and region

E. Fair Housing Enforcement, Outreach Capacity, and Resources Analysis\

4. List and summarize any of the following that have not been resolved:
5. A charge or letter of finding from HUD concerning a violation of a civil rights-related law;
6. A cause determination from a substantially equivalent state or local fair housing agency concerning a violation of a state or local fair housing law;

D. Any voluntary compliance agreements, conciliation agreements, or settlement agreements entered into with HUD or the Department of Justice;

- Fair Housing Enforcement, Outreach Capacity, and Resources Contributing Factors

Consider the listed factors and any other factors affecting the jurisdiction and region. Identify factors that significantly create, contribute to, perpetuate, or increase the lack of fair housing enforcement, outreach capacity, and resources and the severity of fair housing issues, which are Segregation, R/ECAPs, Disparities in Access to Opportunity, and Disproportionate Housing Needs. For each significant contributing factor, note which fair housing issue(s) the selected contributing factor impacts.

Lack of local private fair housing outreach and enforcement

Lack of local public fair housing enforcement

Lack of resources for fair housing agencies and organizations

p32 **Fair Housing Goals and Priorities**

For each fair housing issue as analyzed in the Fair Housing Analysis section, prioritize the identified contributing factors. Justify the prioritization of the contributing factors that will be addressed by the goals set below in Question 2. Give the highest priority to those factors that limit or deny fair housing choice or access to opportunity, or negatively impact fair housing or civil rights compliance.

For each fair housing issue with significant contributing factors identified in Question 1, set one or more goals. Using the table below, explain how each goal is designed to overcome the identified contributing factor and related fair housing issue(s). For goals designed to overcome more than one fair housing issue, explain how the goal will overcome each issue and the related contributing factors. For each goal, identify metrics and milestones for determining what fair housing results will be achieved, and indicate the timeframe for achievement.

Goal	Contributing Factors	Fair Housing Issues	Metrics, Milestones, and Timeframe for Achievement	Responsible Program Participant(s)
Discussion:				

Comments on the Recommendations and Compliance with https://www.hudexchange.info/resource/5133/afh-assessment-tool-for-local-governments/

Jan 13, 2017

NO OVERALL DESEGREGATION PLAN for the overall Met Council jurisdiction.

In this section, the addendum does not deal at all with the "community opposition" part. Did the complaint only mean desegregation racially or does it also include physical and mental disability? This would relate to group homes, transitional housing, and shelters? which were also omitted in the addendum. Does lack of investment in specific neighborhoods include White areas where there is little affordable housing?

The recommendations do not deal with many of the items in the assessment tool or is all that outside the scope of the complaint? Does “Consider” mean you only have to provide data and not analysis and recommendations with milestones, timelines, responsibilities, and reporting back to HUD?

For p. 32 “Fair Housing Goals and Priorities” there's supposed to be prioritization with milestones not just a date to complete as in the draft and explanation which is not specifically cited.

There is no citation to comply with D. below. “Any voluntary compliance agreements, conciliation agreements, or settlement agreements entered into with HUD or the Department of Justice”;

Require jurisdictions and Met Council develop and overall desegregation plan and allocate LIHTC and tax differential funding accordingly. The plan must include preservation and rehabilitation as well as new construction. This could operate somewhat like the Fiscal Disparities Pool – areas within cities without equitable affordable housing would have preference points and cities within the Met Council area with too much ACP would have fewer credits in those areas allowing people to move to higher opportunity areas with better schools, jobs, and safety. There is no prioritization of the recommendations as described on p. 32 of the assessment tool for local governments.

Even without an overall desegregation plan, the current recommendations do not include sufficient specificity as to what bodies within a city would be responsible, milestones are not set, and deadlines for completion are not specified.

Not covered sufficiently in recommendations:

Transitional housing discussion – those leaving county, state or federal penal system

Group homes for substance abuse, domestic abuse, homeless youth, sex trafficing victims, etc. This is to deal with **Displacement of and/or lack of housing support for victims of domestic violence, dating violence, sexual assault, and stalking**

Group homes for those unable to live independently due to mental developmental or physical developmental conditions. This is to deal with **Displacement of and/or lack of housing support for victims of domestic violence, dating violence, sexual assault, and stalking**

Shelters for the homeless – such as Dorothy Day, Sharing and Caring Hands, This is to deal with **Displacement of and/or lack of housing support for victims of domestic violence, dating violence, sexual assault, and stalking**

LIHTC – 4% and 9% LIHTC historical preservation or rehabilitation used favor larger number of occupants to create housing for as many as possible in preference to groups such as artists who do not have large families or single occupancy. This is to deal with **Lack of private investment in specific neighborhoods and Siting selection policies, practices and decisions for publicly supported housing, including discretionary aspects of Qualified Allocation Plans and other programs**

Require minimum number of affordable housing units as part of rental license granting in each jurisdiction when converting property to market rate which used 4% and 9% LIHTC or even when HUD LIHTC were not used. This is to deal with **Lack of private investment in specific neighborhoods**

Nothing in recommendations about educational system improvement, accessible transportation to high opportunity job areas, and jobs.

Community Engagement – have White areas discuss impediments to having more affordable housing in their area. In part, this should deal with the reasons for **Community opposition** and how to deal with it as seen by the community.

Misleading to say that there are many job opportunities near ACP areas because of the nature of many of the jobs not leading to career development.

The community engagement process as set-up by Mosaic was flawed. There was no preliminary explanation to those attending as to what desegregation of affordable housing means according to the HUD rules based on a Supreme Court decision. So the responses would be limited to what the questions that were provided without understanding what is required for affordable housing to meet the rules. Were the facilitators to do that without being supplied the background information? This is to deal with **taking meaningful actions to overcome historic patterns of segregation, promote fair housing choice, and foster inclusive communities that are free from discrimination. and Quality of affordable housing information programs** While this should involve community groups and social service agencies, there should be diversity of city and Met Council housing staffing to develop appropriate information for distribution in written and oral formats. **Lack of meaningful language access**

I realize that all the "factors" and data described things related to affordable housing but I didn't see anything in the recommendations about educational system improvement, accessible transportation – language and communications, and

jobs.

The followup public comment sessions are afternoon or evening depending on location. So apparently, if you are at work when the session is scheduled near you, you'll have to go someplace quite a distance away to respond. **taking meaningful actions to overcome historic patterns of segregation, promote fair housing choice, and foster inclusive communities that are free from discrimination**

Wetzel-Moore, Alyssa (CI-StPaul)

From: Gary Kwong <kwongsgl1@juno.com>
Sent: Thursday, March 30, 2017 4:05 PM
To: jeremy@mosaiccommunityplanning.com; Wetzel-Moore, Alyssa (CI-StPaul)
Subject: Community Engagement and Information Recommendation, anti-Semitism and anti-Muslim

Follow Up Flag: Follow up
Flag Status: Flagged

Jeremy Gray, Mosaic
Recommendation 1: Jurisdictions receiving HUD money for affordable housing must hold and fund culturally appropriate community meetings to provide Affordable Housing Program Information and to receive community input. The information must include landlord and tenant rental duties and responsibilities and home purchase program information. Also dispute resolution information will be covered. The groups to be served would be at least but not limited to racial minorities, low-income and low education level, non-or limited English speaking, homeless, and mental or physical disability.
Recommendation 2.
Jurisdictions must monitor and issue written reports on religious discrimination in rental and home purchase where HUD funds are involved. A process must be established so that where justified corrective actions must be taken.

Background:
Recommendation 1.
Because a substantial portion of those needing affordable housing are those first and second generation who came as refugees and who because of a lack of formal education are not literate or relatively capable in oral English, it is recommended that the housing jurisdictions receiving HUD money be required to annually hold community meetings to explain affordable housing programs and the procedures for accessing them. Any refugee cultural community with at least 5000 members in the Met council region or 1000 in a particular city or region would be served. This would include Vietnamese, Cambodian, Lao, Hmong, Karen, Karenii, Tibetan, Oromo, Somali, Liberian, Afghan, Iraqi, Syrian, and any other groups admitted to the USA as refugees. The meetings to be jointly planned by the city and/or Met council and a social service agency or agencies serving the particular communities to provide interpretation and transportation to the meeting, if needed, for those without access to personal vehicles or ability to use public transportation due to language or mobility or understanding of the public transportation system.
Likewise, many non-refugee, low income groups such as those who drop out of high school, are not literate, capable in oral English or have mental health issues need housing information in a format other than in writing or a call-in phone answering service. Again they are often served by social service agencies whom they trust and would plan and conduct meetings with the jurisdiction.
While HUD money itself may not cover the funding of the community information sessions, affordable housing for residents of a jurisdiction must be a high enough priority to warrant budgeting for them.

Recommendation 2. Because there has been a long history and a relatively shorter history of anti-Semitism and anti-Muslim discrimination where the Jews and Islam believers have been viewed as a "race" or "other", Segregation of a community or culture because of supposed or actual religious belief should not be allowed.

Jeremy Gray

From: Gary Kwong
Sent: Saturday, April 01, 2017 10:22 PM
To: chalbach@mhponline.org
Cc: alyssa.wetzel-moore@ci.stpaul.mn.us; suewatlovp@aol.com; jewilkinson@mylegalaid.org; jeremy@mosaiccommunityplanning.com
Subject: RE: Re: Analysis of Impediments Amended first Draft comments from Dak ota County

Chip, 8:10 PM, 4/1/17
This is my response to the draft AI addendum as well as the community engagement process for the 4 Asian groups and 1 Somali group. My comments on the draft AI addendum, in part, reflect my understanding of the concerns of the Asian and Somali community.
If the addendum does not follow the HUD assessment tool guidelines and there is not sufficient affordable housing (with enough space for extended families, access to transportation and jobs and good education) integrated across the metro area, there will be on-going complaints about the lack of housing they can afford. I don't feel that the AI addendum deals with those issues.The community engagement process to be used proposed by Mosaic was not very helpful. The Mosaic draft recommendations based on some of the comments (since we did not receive all the comments) did not meet the HUD assessment tool guidelines. No amount of quality community outreach afterwards will increase the amount of integrated affordable housing if this AI addendum doesn't do so.
Please forward everything in this email to Mosaic because I don't wish to be limited to recommendations or comments only resulting from the community engagement micro-grants. I read the draft several times and don't want to be limited to just the Asian and Somali community engagement microgrant resulting comments and recommendations.

Recommendation to Mosaic: The final recommendations should provide more affordable rental housing and single homes of the types needed by multigenerational families, especially those with mental and physical disabilities (because the families want to care for all their members) across the metro area with mileposts and deadlines with accountability assigned to the specific cities and Met Council.

Recommendation to Mosaic: A process to orally inform in a culturally appropriate manner both 1) those able or unable to read English or 2) able or unable to understand spoken English of the availability of and how to access affordable rental housing and single homes of the types needed by multigenerational families including those mental and physical disabilities across the metro area with mileposts and deadlines with accountability assigned to the specific cities and Met Council must be developed.

This is what I'm submitting as my response to the draft AI addendum with the recommendations labeled as such for community engagement (not just for the Asian refugee communities) to inform the public about affordable housing programs and to receive input or response. The bold faced additions to Jim Wilkinson's recommendations are mine.

---------- Original Message ----------
From: Chip Halbach <chalbach@mhponline.org>
To: Gary Kwong <kwongsgl1@juno.com>, "alyssa.wetzel-moore@ci.stpaul.mn.us" <alyssa.wetzel-moore@ci.stpaul.mn.us>
Cc: "suewatlovp@aol.com" <suewatlovp@aol.com>, "jewilkinson@mylegalaid.org" <jewilkinson@mylegalaid.org>

Subject: RE: Re: Analysis of Impediments Amended first Draft comments from Dak ota County
Date: Sun, 2 Apr 2017 01:03:07 +0000

Gary, is this what you are submitting as recommendations that best respond to the issues/concerns raised by the Asian groups you engaged through the micro-grant process?

From: Gary Kwong [mailto:kwongsgl1@juno.com]
Sent: Friday, March 31, 2017 7:04 PM
To: Chip Halbach <chalbach@mhponline.org>; alyssa.wetzel-moore@ci.stpaul.mn.us
Cc: suewatlovp@aol.com; jewilkinson@mylegalaid.org
Subject: Fw: Re: Analysis of Impediments Amended first Draft comments from Dak ota County

Chip and Alyssa, 5:46 PM, 3/31/17

Since the demographic section does mention a facilitator who said that his groups were Asian but didn't include them as Asian because they didn't turn in the demographic section of the forms that seems pretty obsessive about following a requirement. Mosaic lowered the count total I worked with to 84 of the 92 since 8 were Somali that was nice.

More importantly, the followup sessions are afternoon or evening depending on location. So apparently, if you are at work when the session is scheduled near you, you'll have to go someplace quite a distance away to respond.

Why isn't there anything about the cities and Met council working with the "segregated" White communities on opening themselves up to diversity? On page 9 about it says that Whites are segregated and the other, lower SES areas are "diverse". "An important observation, and often overlooked, is that whites are the most segregated group from all other racial and ethnic groups. Whites tend to live around whites whereas other racial and ethnic groups often live in more racially and ethnically diverse communities. Isolation indices indicate that overall in the region, whites live in neighborhoods that are, on average, 80% white. Other racial and ethnic groups live in much more diverse neighborhoods where the proportion of people who share their race/ethnicity is considerably lower, with averages ranging from 3% for American Indians to 22% for African Americans." Is expressing the segregation of Whites in housing "overlooked" in this way in other AI's?

I sent an email that Mosaic should break out the “Thai born” refugees along with other SE Asians using Nativity data rather than saying how many “Asians” live in Woodbury and other suburbs when it's known that that includes the Chinese and Indian upper income groups (which total from Table 2.8) 36,300 born outside US and have smaller families than the refugee cultural groups. The prior text says that Hmong, Cambodian, Vietnamese, Lao, and Burmese (probably lower than real due to census from skipping) total 100,000. So of the “Asians” there are about 26% probably upper income Indian and Chinese non-refugees. I cannot see data for the Filipino doctors and nurses. The income values for “Asians” in fig. 2.1-2.3, especially those above $100,000 would reflect his methods also. It seems that no other “racial” group has such skewed data.

Shouldn't the recommendations include community meetings for oral cultures to explain in their housing opportunities by the local city housing staff so that there is more personal contact for trust and not leaving that up to the community groups that don't get funding for such service?

In some recommendations “explore” and “consider” are used. Why don't recommendations normally have to include “implement” something from among the alternatives?

I assume the HUD "assessment tool" is the final rule. Is this only a specific document for use in another setting and unrelated to an AI or AI addendum because the current case doesn't involve “Date Published: January 2017 Description

The Notice announcing the availability of the Assessment Tool for Local Governments, for use by program participants that receive CDBG, HOME, ESG, or HOPWA formula funding from HUD to conduct and submit an Assessment of Fair Housing (AFH), was published in the Federal Register (PDF Notice | HTML Notice) on January 13, 2017. “

https://www.hudexchange.info/resource/5133/afh-assessment-tool-for-local-governments/

In this section, the addendum does not deal at all with the "community opposition" part. Did the complaint only mean desegregation racially or does it also include physical and mental disability? This would relate to group homes, transitional housing, and shelters? which were also omitted in the addendum. Does lack of investment in specific neighborhoods include White areas where there is little affordable housing?

Is it legit to point out how the recommendations do not deal with many of the items in the assessment tool or is all that outside the scope of the complaint? Does “Consider” mean you only have to provide data and not analysis and recommendations with milestones, timelines, responsibilities, and reporting back to HUD?

For p. 32 “Fair Housing Goals and Priorities” there's supposed to be prioritization with milestones not just a date to complete as in the draft and explanation which is not specifically cited.

For each fair housing issue with significant contributing factors identified in Question 1, set one or more goals. Using the table below, explain how each goal is designed to overcome the identified contributing factor and related fair housing issue(s).

1. **Contributing Factors of Publicly Supported Housing Location and Occupancy**

Consider the listed factors and any other factors affecting the jurisdiction and region. Identify factors that significantly create, contribute to, perpetuate, or increase the severity of fair housing issues related to publicly supported housing, including Segregation, R/ECAPs, Disparities in Access to Opportunity, and Disproportionate Housing Needs. For each contributing factor that is significant, note which fair housing issue(s) the selected contributing factor relates to.

- Admissions and occupancy policies and procedures, including preferences in publicly supported housing
- Community opposition
- Displacement of residents due to economic pressures
- Displacement of and/or lack of housing support for victims of domestic violence, dating violence, sexual assault, and stalking
- Impediments to mobility
- Lack of access to opportunity due to high housing costs

- Lack of meaningful language access
- Lack of local or regional cooperation
- Lack of private investment in specific neighborhoods
- Lack of public investment in specific neighborhoods, including services and amenities
- Land use and zoning laws
- Loss of Affordable Housing
- Occupancy codes and restrictions
- Quality of affordable housing information programs
- Siting selection policies, practices and decisions for publicly supported housing, including discretionary aspects of Qualified Allocation Plans and other programs
- Source of income discrimination
- Other

1. **Disability and Access Analysis**

1. **Population Profile**

1. How are persons with disabilities geographically dispersed or concentrated in the jurisdiction and region, including R/ECAPs and other segregated areas identified in previous sections?

2. Describe whether these geographic patterns vary for persons with each type of disability or for persons with disabilities in different age ranges for the jurisdiction and region

E. Fair Housing Enforcement, Outreach Capacity, and Resources Analysis

1. List and summarize any of the following that have not been resolved:

2. A charge or letter of finding from HUD concerning a violation of a civil rights-related law;

3. A cause determination from a substantially equivalent state or local fair housing agency concerning a violation of a state or local fair housing law;

D. Any voluntary compliance agreements, conciliation agreements, or settlement agreements entered into with HUD or the Department of Justice;

1. **Fair Housing Enforcement, Outreach Capacity, and Resources Contributing Factors**

Consider the listed factors and any other factors affecting the jurisdiction and region. Identify factors that significantly create, contribute to, perpetuate, or increase the lack of fair housing enforcement, outreach capacity, and resources and the severity of fair housing issues, which are Segregation, R/ECAPs, Disparities in

Access to Opportunity, and Disproportionate Housing Needs. For each significant contributing factor, note which fair housing issue(s) the selected contributing factor impacts.

- Lack of local private fair housing outreach and enforcement
- Lack of local public fair housing enforcement
- Lack of resources for fair housing agencies and organizations

p32 **Fair Housing Goals and Priorities**

- For each fair housing issue as analyzed in the Fair Housing Analysis section, prioritize the identified contributing factors. Justify the prioritization of the contributing factors that will be addressed by the goals set below in Question 2. Give the highest priority to those factors that limit or deny fair housing choice or access to opportunity, or negatively impact fair housing or civil rights compliance.
- For each fair housing issue with significant contributing factors identified in Question 1, set one or more goals. Using the table below, explain how each goal is designed to overcome the identified contributing factor and related fair housing issue(s). For goals designed to overcome more than one fair housing issue, explain how the goal will overcome each issue and the related contributing factors. For each goal, identify metrics and milestones for determining what fair housing results will be achieved, and indicate the timeframe for achievement.

• **Goal**	• **Contributing Factors**	• **Fair Housing Issues**	• **Metrics, Milestones, and Timeframe for Achievement**	• **Responsible Program Participant(s)**
• **Discussion:**				

Sent to Jeremy and Alyssa on March 30, 2017

Jeremy Gray, Mosaic

Recommendation 1: Jurisdictions receiving HUD money for affordable housing must hold and fund culturally appropriate community meetings to provide Affordable Housing Program Information and to receive community input. The information must include landlord and tenant rental duties and responsibilities and home purchase program information. Also dispute resolution information will be covered. The groups to be served would be at least but not limited to racial minorities, low-income and low education level, non-or limited English speaking, homeless, and mental or physical disability.

Recommendation 2.

Jurisdictions must monitor and issue written reports on religious discrimination in rental and home purchase where HUD funds are involved. A process must be established so that where justified corrective actions must be taken.

Background:

Recommendation 1.

Because a substantial portion of those needing affordable housing are those first and second generation who came as refugees and who because of a lack of formal education are not literate or relatively capable in oral English, it is recommended that the housing jurisdictions receiving HUD money be required to annually hold community meetings to explain affordable housing programs and the procedures for accessing them. Any refugee cultural community with at least 5000 members in the Met council region or 1000 in a particular city or region would be served. This would include Vietnamese, Cambodian, Lao, Hmong, Karen, Karenii, Tibetan, Oromo, Somali, Liberian, Afghan, Iraqi, Syrian, and any other groups admitted to the USA as refugees. The meetings to be jointly planned by the city and/or Met council and a social service agency or agencies serving the particular communities to provide interpretation and transportation to the meeting, if needed, for those without access to personal vehicles or ability to use public transportation due to language or mobility or understanding of the public transportation system.

Likewise, many non-refugee, low income groups such as those who drop out of high school, are not literate, capable in oral English or have mental health issues need housing information in a format other than in writing or a call-in phone answering service. Again they are often served by social service agencies whom they trust and would plan and conduct meetings with the jurisdiction.

While HUD money itself may not cover the funding of the community information sessions, affordable housing for residents of a jurisdiction must be a high enough priority to warrant budgeting for them.

Recommendation 2. Because there has been a long history and a relatively shorter history of anti-Semitism and anti-Muslim discrimination where the Jews and Islam believers have been viewed as a "race" or "other", Segregation of a community or culture because of supposed or actual religious belief should not be allowed.

This is my version of what James Wilkinson said he would submit.

Action Steps for Fair Housing for Homeowners and Fair Lending

1. Establish an executive level, multi-jurisdiction partnership **of St Paul, Minneapolis, other cities and counties in the Met Council jurisdiction,** to address home lending disparities, including public and private partners.

2. Meet with lenders to inform them of jurisdictions' Consolidated and Comprehensive Plans sections aimed at furthering fair housing in homeownership. Invite lenders to coordinate their business and charitable programs to support jurisdictions' plans.

3. Jurisdictions **shall** (should) follow up on the Wilkins Center's lending disparities work, publishing updates and analysis of and hold public hearings to develop responses to home lending disparities. **The responses should be published to inform the public.**

4. Move jurisdictions' and partners' banking to institutions that show significant improvement in reducing racial lending disparities.

5. Develop **and appropriately publicize in writing and orally through community groups** affirmative marketing for good lending products, including consumer-friendly, non-discriminatory Islamic financing options.

6. Increase fair lending enforcement by public and non-profit agencies.

7. Increase **with appropriate funding** foreclosure defense advocacy services .

8. Expand Section 8 Voucher Homeownership Programs partnering with public housing agencies.

9. Expand affordable homeownership options such as land trusts and limited equity cooperatives.

10. Support **by working with and funding social service agencies** legislative efforts and other ways to boost Individual Development Account program(s) that help low income residents build savings for down payments.

11. Increase income and assets for potential homeowners in neighborhoods with low incomes by using the HUD Section 3 program to support local workers and businesses to participate in HUD-funded projects.

12. Insure that jurisdictions' public services relating to homeownership are available **in writing and orally by working through social service agencies and appropriate cultural groups** to non-English speaking residents.

13. Require that financial institutions make reasonable accommodations in home-lending for people with disabilities through civil rights enforcement and as conditions of doing business with jurisdictions.

14. Support legislative improvements in MN Contract for Deed law to protect buyers, by:

a. strengthening pre-purchase inspection requirements **to include oral presentation of results for those who do not read English or any language**;

b. lowering threshold for notice requirements for multiple CD sellers;

c. requiring **written** notices in English and other languages and **in orally recorded phone messages**;

d. requiring contracts to be written in English and in the language in which contracts are advertised or negotiated;

e. requiring foreclosure process be followed in case of default when 25% of principal has been paid.

15. Reduce neighborhood problems, preserve home values by requiring thorough code enforcement and other steps to make sure that lender-owned, post-foreclosure properties have effective repair, maintenance and security services, especially in areas occupied by low income people of color.

16. Prevent discrimination, price gouging and neighborhood blight that may occur when REO post-foreclosure properties are sold to speculators, out of state investors, and landlords with poor track records, by monitoring, supporting local businesses, and adjusting licensure policies.

17. Include extra-accessibility features in new and rehabbed multi-family buildings, (power doors, more "visitability" features, more extra-accessible units, etc.)

18. Audit for and enforce accessible design in post-1998 multi-family construction.

19. Make accessible homeownership designs a part of TOD plans; e.g. fewer multi-story townhomes.

---------- Forwarded Message ----------
From: sue watlov phillips <suewatlovp@aol.com>
To: chalbach@mhponline.org
Cc: kwongsgl1@juno.com
Subject: Re: Analysis of Impediments Amended first Draft comments from Dakota County
Date: Fri, 31 Mar 2017 18:24:59 -0400

Hi Chip

I thought Gary had already submitted them.

I'll check on that.

Yes, I'll share my full comments with you too.

Thanks,

Sue

-----Original Message-----
From: Chip Halbach <chalbach@mhponline.org>
To: sue watlov phillips <suewatlovp@aol.com>
Sent: Fri, Mar 31, 2017 4:34 pm
Subject: RE: Analysis of Impediments Amended first Draft comments from Dakota County

Thanks Sue, will there be a separate response based on MICAH's work with Asian populations?

Also, if you don't mind please share MICAH's full comments when completed next week. Chip

From: sue watlov phillips [mailto:suewatlovp@aol.com]
Sent: Friday, March 31, 2017 7:09 AM

To: Chip Halbach <chalbach@mhponline.org>
Subject: Analysis of Impediments Amended first Draft comments from Dakota County

Hi Chip,

Attached are specific items missing and concerns expressed by the groups we met with in Dakota County. I put their concerns into goals.

All groups expressed goals to increase and preserve affordable housing. I will address those concerns in my complete comments on the document by Monday.

Thank you,

Sue Watlov Phillips

Executive Director, MICAH

Wetzel-Moore, Alyssa (CI-StPaul)

From: Chip Halbach <chalbach@mhponline.org>
Sent: Friday, March 31, 2017 4:05 PM
To: Wetzel-Moore, Alyssa (CI-StPaul); Jeremy Gray
Subject: FW: fair housing plan - comments due 3-31

From another one of the grantees.

From: sara@hacer-mn.org [mailto:sara@hacer-mn.org]
Sent: Friday, March 31, 2017 2:36 PM
To: Chip Halbach <chalbach@mhponline.org>
Subject: RE: fair housing plan - comments due 3-31

Hello Mr. Halbach,

I have carefully reviewed the documents you sent, and I have a few notes:

1. I am glad they mention the concerns about landlords and the conditions that the people attended the community meetings have to live under because of their legal status
2. I saw some quotes from the participants and those really reflect the overall message I gathered from all the community meetings
3. I appreciate recommendation #25 as it is extremely important to increase the amount of community voices in local planning decisions, especially those of non-English speakers. I hope that some sort of translation service is provided so that people don't feel discriminated against or left out
4. Recommendation #36 is very important, but I don't know how much it can help undocumented people as they can't apply for credit lines
5. Recommendation #40 (and part of #44)- they need to make sure they partner up with organizations that the community trust. People have been taken advantage of many times and their level of trust is very low at the moment.
6. I didn't find many examples as to how undocumented people are going to be benefited from this and how this is going to reduce the amount of discrimination against people of color

Please let me know if you have any questions,

Best,
Sara.

From: Chip Halbach [mailto:chalbach@mhponline.org]
Sent: Wednesday, March 8, 2017 2:47 PM
To: DrSheronda Orridge <drsherondaorridge@lsholisticservices.com>; nelima@acerinc.org; Maleta Kimmons <1fam1community@gmail.com>; Ned Moore <ned@asamblea-mn.org>; ebarrera@clues.org; Asad Aliweyd <todhiye@gmail.com>; Laura Langer <lange744@umn.edu>; Cole St. Arnold <cstarnold@nacdi.org>; sue@micah.org; metric giles <metriccsp@gmail.com>; sara@hacer-mn.org; Ishmael Israel <iisrael@umojacdc.org>; Mustafajumale@gmail.com; Valorie Klemz <VKlemz@iocp.org>; Elizabeth Johnson <Elizabeth@CROSSServices.org>; Brooke Walker <bwalker@caprw.org>; erich@homelinemn.org
Cc: Wetzel-Moore, Alyssa (CI-StPaul) <alyssa.wetzel-moore@ci.stpaul.mn.us>; Owen Duckworth <owen@metrostability.org>
Subject: fair housing plan - comments due 3-31

Fair housing engagement grantees, I want to remind you that we look forward to hearing your reactions to the fair housing draft report. Please, send me your comments by March 31.

This is your final obligation under your grant agreement with us. Once you send me your comments I'll be able to release the final 10% of your grant.

Here is the link to the Ramsey County webpage where you can access the entire draft fair housing document, called the Addendum to the Analysis of Impediments, https://www.ramseycounty.us/fhic You also are welcome to attend our meeting with the Mosaic authors from 10-noon on March 15 at the UROC location, address at bottom of this email.

This is a long document! You might want to focus on these 3 sections and suggested questions – I've attached separate documents for each of these sections to simplify reviewing these parts of the draft:

- Pages 171-189, the section on community perspectives (Is what you heard from your community fairly represented in the document? If not, what would you add or change?)

- Pages 190-210, the equity analysis. These are the major themes and conclusions that speak to what is impacting the abilities of people of color to have affordable homes in areas in which they would choose to live (Is there anything missing in this section based on your experience?)

- Pages 211-217 are the recommendations. What should happen in order to bring about changes needed to ensure that fair housing exists across the Twin Cities. (What other steps do you think need to be taken, and why?) *Note that MHP reordered these recommendation to better follow the major themes found in the Equity Analysis.*

Let me know if you have any questions about this draft report and thank you again for your help.

Location of fair housing meeting on 3/15:

University of Minnesota Robert J. Jones Urban Research and Outreach-Engagement Center (UROC), Room 107, located at:
2001 Plymouth Avenue North
Minneapolis, MN 55411
Metro Transit Routes 7, 19, and 32 have nearby stops, and there is off-street parking at the facility.
Directions:
The U of M UROC building is two blocks east of the intersection of North Penn Avenue and Plymouth Avenue North, Minneapolis.

Chip Halbach | *Executive Director*
Minnesota Housing Partnership
651.925.5547 (o) | 612.396.2057 (c) | mhponline.org

Comments Received from Hennepin County

Comments on AI Recommendations

2. The County has no authority over local (city) legislation or rental licensing/regulation. As identified by the FHIC, this recommendation may be best combined with several others to support the acceptance of vouchers. “Responsible party” should be “Entitlement Cities”, which have this type of authority.

3. Evictions are governed by state statute. Counties have no jurisdiction over eviction ordinances. “Responsible party” should be “Entitlement Cities”, which have this type of authority.

4. Require partner financial institutions to report on Community Presence and Responsibility.

5. “Responsible party” for local implementation should be “Entitlement Cities”, which have this type of authority.

7. Hennepin County is a partner in the NOAH fund which is administered by Greater Minnesota Housing Fund (not FHF, which is listed in the current draft).

9, 10. The Hennepin County HRA does not administer vouchers. The type of HRA which is the “responsible party” should be clarified (most often City HRAs).

13. See FHIC recommendation.

14-20 Hennepin County does not have zoning authority.

21 This includes approximately 30 cities for Hennepin County.

26. The County allocates CDBG funding based on a HUD formula (population, poverty, overcrowding). Activities are only eligible to receive CDBG if low/mod income households are served or if activities are in a majority low/mod census tract. The latter is a form of place-based investment. Requiring Consolidated Plans to be entirely place-based could preclude funding projects outside of high-poverty areas, which would work directly against progress on the “Distribution of Affordable Housing” impediment.

38. Clarify that “responsible party” is “Entitlement Cities”.

HJC
Housing Justice Center
Public Interest Legal Advocates

April 3, 2017

Alyssa Wetzel-Moore, FHIC Chair
St. Paul Department of Human Rights and Equal Economic Opportunity
15 West Kellogg Boulevard, 240 City Hall
St. Paul, MN 55102

RE: Comments on 2017 AI Addendum draft

Dear Ms. Wetzel-Moore:

The Housing Justice Center (HJC) is a Minnesota based public interest law firm dedicated to preserving and expanding affordable housing, both in Minnesota and across the country. HJC has been deeply involved in Fair Housing work for many years, and is pleased to see the important advancement made by the issuance of the AI Addendum draft. We have reviewed the draft and have the following comments to offer:

1. **Not all local government efforts toward affordable housing are equal.** The report makes two related points, that there is a need for expanded distribution of affordable housing across the region, and that there must be greater efforts by local governments to use planning and zoning policy. While true, that kind of generalization implies all local governments are in the same position, which not only obscures accountability, but is not true. The Met Council's analysis reveals that the urban core, largely the central cities, have made much more progress on meeting their goals than has the rest of the region. See, *Metro Stats* report, October 2016, Figure 8, p. 6. So the starting point should be identifying the barriers to making more progress in suburban communities and noting that not all suburban communities are equal in making progress toward their goals. The RAI Addendum should include current data on the performance of jurisdictions in meeting their affordable housing goals. While the total goals themselves may not always be feasible to attain given lack of resources, the relative progress of cities toward those goals is a fair indicator of local efforts.

2. **An assessment of local government efforts to support affordable housing development must go beyond zoning.** The report's extensive analysis of city zoning codes implies that such codes are the primary barrier to more affordable housing production. In some cases such codes do

play a significant factor, such as with respect to single family ownership housing and large lot size, or where the lack of higher density zoning mandates rezoning requests, with the challenges and barriers that can impose. In other cases zoning codes that on their face appear exclusionary are mitigated by the use of Planned Unit developments and the flexibility that brings. Other research, including the MN Challenge report, make clear that other factors are likely more significant, particularly when it comes to multifamily housing. Affordable housing developers will go to communities actively seeking out affordable housing, and which have demonstrated a willingness to provide regulatory relief, financial assistance, and a commitment to supporting the project when community opposition surfaces. Developers will not want to commit their time and resources in cities where those conditions are lacking. HUD's guidance in the AFH Local Government Assessment Tool stresses that zoning practices are just one part of package of commitments a city must make to support new affordable housing. "Affirmatively Furthering Fair Housing: Announcement of Renewal of Approval of the Assessment Tool for Local Governments," 82 Fed. Reg. 4388 (1-13-17), p. 14-16.

3. **Capturing the full range of Fair Housing issues.** At p. 202 the report makes the point that even if housing affordability is not a Fair Housing issue on its face, it becomes one when protected class groups are disproportionately harmed by shortages of affordable homes. It also is a Fair Housing issue when housing affordability is unevenly distributed because that reduces choice and in many cases reduces access to opportunity assets (good schools, jobs, transit, etc.). We are also pleased to see that gentrification-related displacement has been highlighted as a Fair Housing issue, since it is also reducing housing choices. Given the evidence quickly accumulating of the rapid erosion in the supply of naturally occurring affordable housing in many parts of the region, the recommendations related to this deserve more elaboration than currently exists in the draft. See further discussion below.

4. **The recently completed analysis of the location of LIHTC developments throughout the region raise a number of Fair Housing issues.** The discussion of the location of LIHTC projects throughout the metro area describes the pattern of dispersal of such projects but provides no evaluation or analysis of the policy implications of this dispersal. Given that the Fair Housing complaints that gave rise to this project were based in large part on a challenge to the locational pattern of LIHTC developments, has the allocation of such projects by allocators been appropriate or not ? Also, distinctions between projects with 4% credits and those with 9% credits are discussed, as are projects preserved versus newly constructed, but the significance of those distinctions is not explained. For example, any challenge to the location of 4% credit projects must acknowledge such credits are allocated in different ways than those of 9% deals. Also, anyone challenging allocation decisions must acknowledge the very different policy rationale involved in preserving an already located project versus deciding where to build new projects. In our view, when the central city/suburbs split in LIHTC projects is compared with a similar comparison of where inadequately housed households live, the LIHTC allocation looks pretty reasonable (though there may be issues worth considering about

allocations within the two central cities). Analysis of the data on other issues, raises a number of concerns, however :

a. While LIHTC developments meet an important affordable housing need, they do little to meet the needs of the region's lowest income households (except for those lucky enough to access Housing Choice Vouchers). This points up the importance of local and regional actions which contribute additional funds or reduce development costs in order to produce more and more deeply affordable units.

b. Forty tax credit developments in the Region are currently housing no Housing Choice Voucher residents. Given that LIHTC projects are supposed to be a resource for voucher-holders, more investigation must be done to determine why voucher-holders are not accessing these buildings. Similarly a significant number of LIHTC projects have very low rates of minority occupancy, also requiring more investigation. Depending upon the reasons for these discrepancies, project-basing vouchers might be a solution, particularly for developments in high opportunity areas.

c. The number of units in LIHTC developments that are zero or one bedroom units is a large share of the total supply. Given the widely acknowledged need to house families with children, and particularly large families, the report should call for greater investigation into this mismatch and reconsideration of factors that tilt the mix toward smaller units.

d. While it appears that the allocation of LIHTC developments between the central cities and the suburbs is fairly consistent with the allocation of need from across the region, the same is not necessarily true for the placement of tax credit projects within the two central cities. In both Minneapolis and St. Paul, a disproportionate share of LIHTC developments are located within concentrated areas. While in many cases there may be good reasons for this, further attention to overcoming barriers to siting in nonconcentrated areas of the two cities is needed, and should be part of this report.

5. **Cities should link RAI recommendations to the housing elements of their comprehensive plans, and vice versa.** HUD has already indicated in its AFH Tool for Local Governments that an effective strategy is to link a local government's action plans arising from the RAI / AFH process to closely related plans in its comprehensive plan updates under state law. HUD's AFH Rule Guidebook, p. 120. Recommendations coming out of this RAI process that are specific to certain cities, or that cities determine are applicable to them, are well timed to be linked to updates all Metro area cities will have to undertake with respect to the housing elements of their comprehensive plans, due to be completed by 2018. In other words, any actions cities plan to take to promote affordable housing coming out of this RAI process ought to be incorporated into the housing elements of their comprehensive plan updates. Similarly,

relevant actions cities commit to in their housing elements ought to be reflected in future action plans resulting from the RAI and any future AFH. This is a particularly important time to take advantage of these mutually reinforcing planning processes since the Met Council's expectations of these housing elements have risen to be more fully in line with state law requirements. See Housing Policy Plan 2040, p. 113.

6. **Newly emerging issue.** One emerging issue that is not mentioned is the financial pressure on the St. Paul PHA which is leading it to consider selling off its 400 plus scattered site public housing units. Since the loss of this significant level of public housing units would disproportionately harm households of color and those with disabilities, this is a Fair Housing issue which also needs attention in the RAI. Among alternative solutions that ought to be considered is St. Paul exercising its PHA tax levy authority to partially fund public housing capital needs. Under-utilization of PHA/HRA levy authority is a fact in a number of communities.

7. **Comments on Recommendations.** First, a general comment on the Recommendations. We are aware that commitments by various jurisdictions on these recommendations will come in separate Action Plans in the future, which explains some of the vagueness at this point. Still, more is necessary here. The recommendations should identify which governmental or nongovernmental entities should take, or consider taking, the recommended action. There should also be a condition attached to all these recommendations, which is the development of metrics and a timetable for actions/decisions by the accountable party, to ensure follow through, in the subsequent Action Plans.

    a. *How Residents Value neighborhoods section.* Regarding Rec # 9 on pooling vouchers in high opportunity areas, there are particular barriers to PHAs project-basing vouchers which should be highlighted so those barriers can be addressed. For example, the requirement that Housing Choice Vouchers be issued to tenants after a year in buildings with project-based vouchers can cause problems for PHAs and can cause unfairness to families that get bypassed on the HCV waitlist. Mobility can also be enhanced in the Housing Choice Voucher program. The City of Minneapolis recently commissioned a best practices report to examine the local Public Housing Authority practices and make recommendations to increase efficiency and usability in operations. A regional waiting list for public housing units, the exploration of small area FMRs, and lifting portability restrictions were all recommended as key techniques to make the program more accessible to a wider number of users. All jurisdictions in the region should likewise examine their PHA programs for the barriers identified in the report, and take steps to remove them.

b. *Displacement/Neighborhood change section.* Monitoring state legislation on right of first refusal statutes is mentioned but in addition there are practical steps local governments can take to facilitate nonprofit acquisition of NOAH properties. Several jurisdictions are currently working on local ordinances that would function similarly to right of first refusal legislation but would be simpler and less intrusive in the private market, by requiring advance notice of sale of NOAH properties. The recommendations mention just cause eviction but there are other proposals out there meriting further consideration, including relocation benefits for displaced residents, a breathing period for tenants before new owners can increase rents or issue notices to vacate, and packaging incentives including property tax breaks under the state "4d" program to encourage existing owners of NOAH properties to keep them affordable.

c. *Need for Expanded Distribution of Housing section.* Recommendation 12 provides for requiring comp plans to describe how they plan to meet the housing need, not just guide land. The report should include the Met Council's new standard for the expectations it has developed around housing implementation plans. See, Met Council Local Planning Handbook, "Linking Your Implementation Plan to Your Community's Housing Needs." Recommendation 23 addresses the need to maintain a LIHTC database as a tool for studying trends over time. The report should elaborate because this is a critical issue. The region's collective failure to adequately maintain a complete and accurate database of LIHTC projects has severely hampered our ability to utilize this tool. Now that the database is finally largely complete and accurate, there is a need to determine what entity will be responsible for maintaining the database, as well as adjustments in database protocol by multiple agencies to ensure complete, accurate and non-overlapping new data gets entered.

d. *Regulations, Policies and Funding Availability section.*
    i. An additional recommendation in this section should address the need for cooperative and creative work to unlock underutilized financial resources, particularly those resources that can serve the lowest income households. One such area is with respect to the pooling and placement of project based Section 8 vouchers in high opportunity areas. As noted above, dedicating vouchers for this purpose can create challenges for PHAs which need further attention. In a similar vein, the Minneapolis Public Housing Authority has access to a stream of operating subsidy payments from HUD for a substantial number of public housing units, known as "Faircloth units," which can only be utilized if a new public housing unit is first created through construction of a new unit or acquisition of an existing unit. Removing barriers to Faircloth unit access should be another priority, particularly because Faircloth operating subsidies serve extremely low income households, something few other resources can

do. A review should also be done to determine whether there are other Faircloth units in the region currently going unused.

ii. An additional local government policy barrier must be mentioned. The City of Eden Prairie has had a policy of opposing the development of new all affordable LIHTC developments in the city on the grounds that this would concentrate poverty. Instead the city prefers mixed income developments. While mixed income developments are certainly of value and worth pursuing, a policy of refusing 100% affordable LIHTC developments makes little sense, given that it would be located in an affluent community and that most LIHTC developments already reflect a range of incomes. This city policy is a major factor in the city's inability to produce any new affordable housing in the city in many years. This barrier to fair housing must be identified.

iii. Rec 20 discusses Inclusionary Zoning which has become an increasingly useful tool to develop additional affordable housing in those communities with strong market conditions for development. What is particularly notable about the list of cities in the recommendation is the absence of Minneapolis. The state's largest city also has had the most multifamily apartment construction in the state, yet has also spent the longest period of time studying Inclusionary Zoning without taking any action. The city's inaction is creating an enormous lost opportunity and deserves specific mention in this report.

iv. Rec. 34 calls for updating tenant screening policies related to criminal background based on recent HUD guidance. But criminal background screening policies are not the only area where applicants to housing suffer because of overly exclusionary admission practices. Any overly exclusionary screening practice, whether it related to minimum income, minimum credit score or some other criteria, can go too far in assessing tenant suitability. And where such an overly broad screen causes a disparate impact on protected class groups under the Fair Housing Act, it violates the Fair Housing Act. This section should also more directly address the role local governments can play in influencing this area. Many local governments license rental properties and they already play a role in influencing private landlord screening practices through the requirement of participating in crime free programs. Cities should also use their influence in this way to encourage best practices in tenant screening by the private landlords they license. A related barrier tenants face to accessing housing is the cost of multiple application fees. Cities can play a role in some of the creative problem solving going on that is attempting to reduce this burden on tenants while still addressing landlord screening costs.

e. *Fair Housing Enforcement section.* As noted above, two particular issues need further investigation, whether is it through a testing program or some other means. One is the large number of LIHTC developments with no Housing Choice voucher-holders, and the other is the substantial number of LIHTC projects with very low levels of minority occupants.

f. *Community Voices.* Recommendation 25 asks jurisdictions to "explore options" to integrate community voices into decision making. This recommendation identifies Minneapolis and St. Paul as the responsible jurisdictions. One of the reasons that the RAI addendum was necessary was because there was an inadequate community engagement process leading to a lack of community voice in the first Regional Analysis of Impediments. The recommendations should include a directive to *all* the jurisdictions to create opportunities for community engagement, including community representation on the Fair Housing Implementation Council, the regional body which makes decisions regarding local fair housing CDBG funds.

Thank you for the opportunity to comment. If we can provide any further information, please contact us.

Regards,

Tim Thompson
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Institute on Metropolitan Opportunity

Comments on FHIC Draft AI Addendum

In its current state, the Draft Addendum is inadequate and incomplete.[1] It fails to conform to the basic structure prescribed by HUD rules and guidance, and required by the documents governing the drafting process. Moreover, it lacks a number of essential substantive and analytic elements, which eliminate its ability to serve the role envisioned for it by HUD.

The Institute on Metropolitan Opportunity (IMO), the people of the Twin Cities metropolitan area, and the FHIC entitlement jurisdictions all share a moral and practical interest in seeing the FHIC AI restored to adequacy – or even excellence.

Fair housing issues are widespread in our region. The Institute's scholarship has repeatedly found that the Twin Cities suffer from significant segregation. Our region is not like others: compared to demographically similar cities like Portland and Seattle, where segregation is low and stagnant, the 2000s saw a rapid increase in the number of families living in high-poverty census tracts in the Twin Cities.[2] The region suffers from some of the largest income and employment gaps between black and white residents in the nation – a reflection of how it has refused to share its prosperity with all its residents.

But unlike many jurisdictions across the nation, the problem of housing segregation in the Twin Cities is remediable. We have a regional government capable of obligating that every community provide its fair share of housing – even if it has declined to do so in recent years, to injurious effect.[3] We have affluent suburbs and counties that regularly seek subsidized housing funding – even if they are frequently, and inexplicably, turned down in favor of more segregated areas. IMO research suggests that the integration of subsidized housing into the suburbs, alone, without any other intervention, would represent the majority of the progress necessary to desegregate the region's schools.[4]

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[1] FAIR HOUSING IMPLEMENTATION COUNCIL, ADDENDUM TO THE 2014 REGIONAL AI (February 2017) [hereinafter Draft Addendum].
[2] INSTITUTE ON METROPOLITAN OPPORTUNITY, WHY ARE THE TWIN CITIES SO SEGREGATED? (2015), available at https://www.law.umn.edu/sites/law.umn.edu/files/why-are-the-twin-cities-so-segregated-2-26-15.pdf.
[3] *Id.* at 13.
[4] Myron Orfield, Will Stancil, Thomas Luce, and Eric Myott, *Taking a Holistic View of Housing Policy*, 26 HOUSING POLICY DEBATE 287-88 (2016)

And most of all, the region is ready for change. The most prominent local newspaper has called for "serious commitment – at every level of government – to better affordable housing that does not add to racial inequities and that is used for maximum benefit."[5] And it has pointed out that while "[t]he consequences of abandoning racial integration may have been intended . . . they are consequences nonetheless."[6]

By participating in the AI Addendum process, the FHIC jurisdictions have shown they share these interests. And they face a more prosaic concern, as well: the possibility that a defective AI could be deemed insufficient to satisfy their compulsory HUD civil rights certifications, with an attendant loss of essential funding.

Because of our interest in having FHIC jurisdictions remedy the Addendum's deficiencies before it is finalized, these comments do the following: provide an overview of the basic purpose and history of the AI Addendum, review the procedural requirements that it is required to meet, and provide substantive commentary on its analysis. We stand ready to assist the FHIC, its members and its consultant in making the Addendum a document that accurately reflects current patterns of segregation and discrimination and the region's best thinking about remedies.

I. HISTORY AND PURPOSE OF THE ADDENDUM

The origins of the AI Addendum are complex and the drafting process has incorporated work from multiple organizations, including various government entities, private companies, civil rights groups, and advocacy bodies. In light of this, it is essential to review the important civil rights purpose that the document is meant to serve.

In 2014, FHIC released an Analysis of Impediments as a component of its standard civil rights certification process. At the time, IMO's comments sought to describe its overarching purpose:

> As a component of its Fair Housing Act obligations, HUD has required HOME and CDBG grantees to certify that they are Affirmatively Furthering Fair Housing (AFFH). In order to fulfill these requirements, a grant recipient must take three steps[7]:
>
> 1. Conduct an AI identifying obstacles to fair housing choice within its jurisdiction and making recommendations to reduce or remove those obstacles
>
> 2. Take appropriate actions to overcome the effects of the identified impediments

[5] *Federal Tax Credits Are Misused on Costly Artist Lofts in Twin Cities*, STAR TRIBUNE (June 16, 2016).
[6] *The Unintended Consequences of Affordable Housing Policies*, STAR TRIBUNE (Mar. 13, 2015).
[7] U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, FAIR HOUSING PLANNING GUIDE 1-2, 1-3 (1996), available at http://portal.hud.gov/hudportal/documents/huddoc?id=fhpg.pdf [hereinafter FHPG].

3. Monitor these actions and maintain records showing they were taken

> The AI serves as the catalyst for this three-step process. The AI documents existing impediments to fair housing, determines their relative severity, and explores remedies, as well as discussing other actions a grantee may have undertaken to affirmatively further fair housing. Without an accurate AI, it is impossible for entitlement jurisdictions to proceed to Step 2, because they lack information about which impediments they should be taking action against or what strategies would be most effective in reducing those impediments.[8]

The IMO comments continued to highlight the fundamental civil rights aims of the AI process:

> The overarching goal of HUD's fair housing policies, the AFFH certification process, and by extension the AI, is to "eliminat[e] racial and ethnic segregation, illegal physical and other barriers to persons with disabilities and other discriminatory practices in housing."[9]
>
> HUD's Fair Housing Planning Guide lays out, in voluminous detail, the parameters of a successful AI. Although the Guide does not mandate a particular format, and of course does not require that every jurisdiction find the same set of impediments, it does clearly describe specific areas that must be investigated in order to uncover all significant impediments to fair housing. Moreover, it makes the clear the depth of analysis that entitlement jurisdictions must conduct.[10]

Finally, the previous IMO comments highlighted the *comprehensive* nature of the analysis required by an AI:

> For example, in its opening pages, the Guide summarizes the tasks an AI must accomplish – a summary that is repeated in the opening pages of the FHIC draft document:
>
> > The AI is a review of impediments to fair housing choice in the public and private sector. The AI involves:
> >
> > • A comprehensive review of a State or Entitlement jurisdiction's laws, regulations, and administrative policies, procedures, and practices.

[8] INSTITUTE ON METROPOLITAN OPPORTUNITY, COMMENTS ON DRAFT FHIC 2014 ANALYSIS OF IMPEDIMENTS FOR THE TWIN CITIES REGION 1-2 (2015) [hereinafter DRAFT 2014 FHIC AI COMMENTS].
[9] FHPG 1-1.
[10] DRAFT 2014 FHIC AI COMMENTS 2.

- An assessment of how those laws affect the location, availability, and accessibility of housing.

- An evaluation of conditions, both public and private, affecting fair housing choice for all protected classes.

- An assessment of the availability of affordable and accessible housing in a range of unit sizes.

> As this summary indicates, HUD places great emphasis on comprehensive analysis and evaluation of trends and findings. The AI is not meant to function as a depository of facts or data but as an analytic document that synthesizes facts and data into concrete conclusions about the regional causes of housing segregation and housing discrimination. This is bolstered elsewhere in the Guide, where HUD specifies that "[t]he scope of the AI is broad" and that it "covers the *full array* of public and private policies, practices, and procedures affecting housing choice."[11] Through the AI, "jurisdictions must become fully aware of the existence, nature, extent, and causes of all fair housing problems and the resources available to solve them [and a] properly completed AI provides this information."[12] In part, this entails becoming "familiar with all studies that apply to their community and region," and "carefully consider[ing] the conclusions and recommendations of other housing studies prior to deciding what to study in the AI."[13] [14]

IMO's complete comments on the 2014 FHIC AI are attached as Appendix A.

Ultimately, HUD determined that the 2014 FHIC AI was deficient, because it had not undertaken the analysis described above, and did not undertake appropriate remedies. Although its shortcomings were numerous, in IMO's view, they were concentrated in several key areas:

- A failure to analyze or consider racial segregation as an impediment to fair housing, either regionally or within entitlement jurisdictions.
- A failure to incorporate any analysis of data beyond simple summary statistics.
- A failure to consider the public sector's contribution to housing impediments, especially with regards to affordable housing construction and land use policy.
- A failure to develop robust, specific, and actionable policy recommendations, or to incorporate any metric or other system of monitoring progress towards completion of those recommendations.

[11] FHPG 2-8 (emphasis added).
[12] *Id.*
[13] *Id.* at 2-18, 2-19.
[14] DRAFT 2014 FHIC AI COMMENTS 2-3.

- A failure to coordinate with essential regional partners, particularly civil rights organizations and community groups concerned about racial segregation as an impediment to fair housing.

The deficiency of the 2014 FHIC AI was raised by way of an administrative complaint filed with HUD.[15] That complaint was resolved with the adoption of a Voluntary Compliance Agreement with the cities of Minneapolis and Saint Paul, and written undertakings by 11 other entitlement jurisdictions that are FHIC members, to join in the development of an AI Addendum to remedy these deficiencies.[16] The Addendum would include a particular focus on integration and segregation in the Twin Cities region.

When complete, the AI Addendum will be part and parcel of the full 2014 FHIC AI. As such, it must comply with the HUD regulations in place when the 2014 AI was developed, and with the principles and guidance issued by HUD beginning in July 2015 for the Assessment of Fair Housing (AFH) process (including the AFFH Rule Guidebook). The cities of Minneapolis and Saint Paul must also comply with the terms of the VCA, and other FHIC members must comply with their written undertakings with HUD.

Pursuant to the terms of the VCA, the Draft Addendum was to focus on the following areas which HUD deemed deficient in the 2014 AI:

a. The distribution of affordable housing throughout the Twin Cities metropolitan area;

b. the extent to which the recipients administration of its low income housing tax credit allocations reinforces existing racial or ethnic concentrations of poverty or perpetuates racial or ethnic segregation;

c. the extent to which the administration of the recipients current zoning ordinances reinforces existing racial or ethnic concentrations of poverty or perpetuates racial or ethnic segregation;

d. the extent to which the recipients other housing related activities and policies affecting affordable housing reinforces existing racial or ethnic concentrations of poverty or perpetuates racial or ethnic segregation;

e. the appropriate balance of investment in place and in investment in new construction.

[15] MICAH, et al. v. City of Minneapolis, et al., Title VI Case Number: 05-15-0007-6; Section 109 Case Number: 05-15-0007-9 (2015).
[16] Voluntary Compliance Agreement, MICAH, et al. v. City of Minneapolis, et al., Title VI Case Number: 05-15-0007-6; Section 109 Case Number: 05-15-0007-9 (May 16, 2016) [hereinafter VCA].

II. COMPLIANCE WITH HUD REQUIREMENTS AND GUIDELINES

Although there is considerable flexibility in how an AI can be completed, the VCA specifies that the Addendum is to be "informed by the instructions and tools provided with HUD's Affirmatively Furthering Fair Housing rule (including . . . the AFFH Rule Guidebook)."[17]

In turn, the new AFFH rule and Guidebook lays out a simple and logical three-step process by which jurisdictions may overcome impediments to fair housing. It asks jurisdictions to: 1. Identify fair housing issues, 2. Lay out significant factors contributing to those issues, including prioritizing them by order of importance, and 3. Set goals for overcoming the factors as prioritized.[18]

The Draft Addendum does not appear to follow this format, raising questions about its adequacy under the requirements of the VCA. Moreover, failure to follow this format limits the AI Addendum's practical usefulness to entitlement jurisdictions, because it limits their ability to use it as a tool to combat housing impediments. The three-step AFFH format, missing here, is particularly useful for a broad regional fair housing analysis, which is meant to address multiple jurisdictions that face a range of issues, with causes that differ from place to place.

A. IDENTIFICATION AND ANALYSIS OF FAIR HOUSING ISSUES

In several respects, the Draft Addendum does not conform to the requirement to lay out fair housing issues and significant contributing factors.

Identification of Fair Housing Issues

The first step in the three-step AFFH process – as well as the soon-to-be-retired AI process – is the identification of fair housing impediments, issues, and obstacles. The AFFH rule defines fair housing issue as "a condition in a program participant's geographic area of analysis that restricts fair housing choice or access to opportunity."[19] The rule specifies that this "includes such conditions as ongoing local or regional segregation or lack of integration, racially or ethically concentrated areas of poverty, significant disparities in access to opportunity, disproportionate housing needs, and evidence of discrimination or violations of civil rights law or regulations related to housing."[20]

The 2014 FHIC AI, for all its many defects, contained a straightforward list of housing impediments in the region, categorized by the jurisdictions they affected.[21]

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[17] VCA III-A.
[18] 24 CFR § 5.154 (d)(4)(i)-(iii).
[19] *Id.*
[20] *Id.*
[21] FAIR HOUSING IMPLEMENTATION COUNCIL, 2014 ANALYSIS OF IMPEDIMENTS TO FAIR HOUSING CHOICE: TWIN CITIES REGION 101 (2015) [hereinafter FHIC AI].

The Draft Addendum does not directly identify *any* fair housing impediments, issues, or obstacles. The section which would do so in a traditional AI is completely absent. The closest equivalent section in the Draft Addendum, which appears to be intended to serve as a list of impediments, is the section entitled Equity Analysis, which immediately precedes the recommendations.[22]

However, the Equity Analysis is not so much a catalogue of fair housing issues as it is a list of broad subject areas where problems may (or may not) arise. It describes itself as a section where "varied issues [that] intersect and relate one another in important ways . . . are further explored."[23] While this additional qualitative analysis is not unwelcome, it cannot be substituted for a core requirement of the AI.

And nothing in the Equity Analysis fills the role of that core requirement. Some categories in the Equity Analysis do indeed appear to describe a fair housing issue as envisioned by the AFFH guidance; for example, the section entitled "Residential patterns reflect segregation and differing access to opportunity factors by race and ethnicity."[24] But other categories appear to be mere descriptions of facts on the ground; for instance, the section entitled "How residents value neighborhoods and housing is multifaceted."[25]

Nor do all the issues described in the Equity Analysis appear to receive the full endorsement of Draft Addendum's authors; some are dangerously close to speculation. Most notably, in the section summarizing gentrification and displacement, the Draft Addendum admits that the existence of gentrification and gentrification-related displacement is "not a settled point," and that data necessary to show these trends is largely unavailable.[26] But it goes on to, in its words, "assume[] that gentrification is likely occurring in some Twin Cities neighborhoods, while acknowledging that this assumption has its detractors."[27]

Through the AI Addendum drafting process, the Addendum's authors received considerable pressure from outside agencies to incorporate gentrification into its findings.[28] Without sufficient hard evidence that gentrification *is* a fair housing issue, however, it does not belong on equal footing with issues for which significant empirical support *was* found, such as segregation and affordable housing concentration.

It is essential that the completed AI Addendum clearly identify a complete and nonspeculative set of fair housing issues, as defined by AFFH guidelines.

> **Proposed Change:** A formal list of fair housing issues and impediments should be incorporated into the Draft Addendum. Inclusion of issues must be supported

[22] Draft Addendum 190.
[23] *Id.*
[24] *Id.* at 193.
[25] *Id.* at 190.
[26] *Id.* at 197.
[27] *Id.* at 198.
[28] Several members of the Fair Housing Advisory Committee that helped oversee the AI Addendum process focused their commentary primarily or even exclusively on the threat of gentrification. This focus is well-documented in transcripts and minutes of the Committee.

by adequate empirical evidence. This list could replace the Equity Analysis, or, more likely, supplement it.

Failure to Clearly Identify Contributing Factors in Analysis

As described earlier, the AFFH rule formalizes the process of analyzing fair housing issues. First, fair housing issues must be identified; second, significant contributing factors that result in those issues must be identified. The rule defines contributing factor as "a factor that creates, contributes to, perpetuates, or increases the severity of one or more fair housing issues."[29] HUD guidance is explicit that "[c]ontributing factors may be outside the ability of the program participant to control or influence," but "such factors, if relevant to the jurisdiction or region, must still be identified."[30] The two-tiered process for identifying fair housing issues and then contributing factors is critical, because HUD guidance makes clear that it is the *contributing factors*, not the overarching issues, that must be addressed by goals and action steps. This requirement helps ensure that goals and action steps are sufficiently concrete and specific to have a meaningful impact.

Unfortunately, the Draft Addendum makes no attempt to identify significant contributing factors or follow the required two-tiered structure, even in broad strokes. Instead, as discussed above, overarching fair housing issues are loosely identified and described. But there are few attempts to connect these issues to contributing factors.

This problem is pervasive in the Draft Addendum, but is well-illustrated by the Draft Addendum's treatment of segregation. The analysis of segregation is split across several subsections: first, in the Demographic Analysis section, an empirical analysis of where segregation exists and its severity; second, comments related to segregation appear in the community engagement feedback; third, the topic receives two pages of discussion in the Equity Analysis section; finally, an appendix contains more detailed analysis of segregation metrics.

But none of these sections attempts to connect segregation to "significant contributing factors" of any sort. A jurisdiction seeking to determine which factors had created segregation within its borders would be unable to locate any such list. Put bluntly, the Draft Addendum only says that segregation exists, not how it came to exist.

The Draft Addendum does contain, in other sections, information about factors that *may* contribute to segregation – for instance, information about land use policies, subsidized housing placement, community engagement feedback related to housing discrimination, and descriptions of historical housing practices such as redlining. But this information is never connected directly to existing segregation. As a result, jurisdictions would need to engage in an interpretative exercise to determine the contributing factors to their own fair housing impediments. And even then, they could not be certain of their conclusions, because the Draft Addendum occasionally notes that these other factors *do not* seem to be related to existing segregation. For example, at one point it specifically notes that some

[29] 24 CFR § 5.152.
[30] U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, AFFH RULE GUIDEBOOK 109 (2016).

cities with poor zoning "risk scores" nonetheless have plentiful affordable housing, while other cities with favorable risk scores have limited affordable housing.

Rather than supply a jurisdiction-by-jurisdiction analysis about segregation and its causes, and carefully-tailored prescriptions for each jurisdiction to take to combat that condition, the Draft Addendum provides only generalizations. As written, it deprives each entitlement jurisdiction of the very analysis of causes and consideration of remedies envisioned by HUD's regulations, the VCA and the written undertakings. It leaves each jurisdiction vulnerable to the claim that it is not attending to impediments related to segregation, and that its AFFH and other civil rights certifications are inaccurate, incomplete, and unacceptable.

To varying degrees, similar failures cripple the analysis of other fair housing issues, such as access to opportunity and disproportionate housing needs.

Notably, failure "to identify significant contributing factors" is described by HUD AFFH guidance as a condition that renders a document "substantially incomplete or inconsistent with fair housing or civil rights requirements," and risks rejection of the AI Addendum altogether.[31] To provide an example, the guidance lays out a scenario that would risk this outcome:

> Most affordable housing, including publicly supported housing, developed in the jurisdiction and region over the last ten years is located in segregated areas, and the segregation was created by these past siting decisions. . . Nonetheless, the program participant fails to identify the contributing factor of the location and type of affordable housing related to the fair housing issues of segregation and racially or ethnically concentrated areas of poverty.[32]

This scenario closely resembles the Draft Addendum, which also describes underlying fair housing issues but "fails to identify" the contributing factors that created them. This resemblance suggests that, unless this deficiency is corrected, the entire Addendum may be at risk of being rejected as "substantially incomplete."

> **Proposed Change:** Provide a list of significant contributing factors for each fair housing issue identified. These factors must be supported by the research within the Addendum.

Priority Rankings of Contributing Factors

Under the AFFH rule, jurisdictions must not only provide a list of significant contributing factors responsible for each identified fair housing issue, but prioritize the factors on that list. Along with identification of the factors, "prioritization . . . is a process intended to

[31] U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, GUIDANCE ON HUD'S REVIEW OF ASSESSMENTS OF FAIR HOUSING 9-10 (2016).
[32] *Id.* at 9.

inform goal setting, and help identify strategies, actions, and policy responses to fair housing issues."[33] Jurisdictions have some discretion to design the system of prioritization, but it must be explicitly delineated, and it must "giv[e] highest priority to those factors that limit or deny fair housing choice or access to opportunity or negatively impact fair housing or civil rights compliance."[34] In addition, "the prioritization of factors *must be justified*."[35]

In the Draft Addendum, significant contributing factors are not listed, and therefore cannot be prioritized.

Several trends are identified, however, that seem likely to serve as significant contributing factors to fair housing issues. Moreover, as these trends "limit or deny fair housing choice," they seem likely to merit the highest priority in a completed rankings.[36] These include policies which concentrate subsidized housing in low-income neighborhoods; steering, redlining, and other private-market discrimination; and exclusionary zoning.

> **Proposed Change:** Incorporate priority ranking into the list of significant contributing factors for each identified fair housing issue, assigning the highest priority to those factors which meet the conditions specified by HUD guidance.

B. RECOMMENDATIONS

The recommendations are the most important component of an AI, and the third and final step of the three-step AFFH process described above. Particularly with the release of the AFFH rule, HUD has established clear guidelines governing the content and form of recommendations.

Goals established under these guidelines must each be connected with one or more contributing factor to fair housing issues. Jurisdictions are required to provide the following for each goal:

- A description of how the goal "relates to overcoming the identified contributing factor(s) and related fair housing issue(s)."[37]
- "[M]etrics and milestones for determining what fair housing results will be achieved, including timeframes for achieving them."[38]
- For a regional AI, "the responsible party for each goal."[39]

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[33] U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, AFFH RULE GUIDEBOOK 109 (2016).
[34] *Id.* at 110.
[35] *Id.* (emphasis added).
[36] *Id.*
[37] *Id.* at 112.
[38] *Id.*
[39] *Id.*

Additional guidance recommends that goals be specific, measurable, and realistic. They should be accompanied by a firm timeline, including a deadline.[40] And they should be "action-oriented": they should not "simply express an aspiration for change" but describe "specific actions" or "measures" to be taken.[41]

The deficient 2014 FHIC AI fell far short of these standards, a critical shortcoming that contributed to its rejection by HUD. Unfortunately, the Draft Addendum's recommendations, though more numerous, are still insufficient.

Recommendations' Relationship to Contributing Factors and Related Issues

In the Draft Addendum, each recommendation corresponds to one or more "fair housing issue," though no master list of fair housing issues is included in the document. The AFFH rule and Guidebook make clear that this is not an adequate level of specificity. Each recommendation should instead be related to a *contributing factor* to a fair housing issue, such as subsidized housing concentration or exclusionary zoning. Additionally, each high priority factor must be addressed by at least one recommendation. This greater degree of focus ensures that recommendations are more closely tied to the region's root fair housing problems, and acts as a safeguard against generic, "one-size-fits-all" recommendations, which is principally what is offered in the Draft Addendum.

Moreover, the same guidelines require a description of the process through which a recommendation will reduce or ameliorate a contributing factor. In the Draft Addendum, there are no such descriptions; instead, recommendations are confined to single-sentence summaries. Expanding these summaries into lengthier descriptions will both ensure that recommendations are tailored to the underlying fair housing problems, and assist jurisdictions in translating the recommendations into action.

> **Proposed Change:** Ensure that each recommendation corresponds to a contributing factor to a fair housing issue. Expand the description of recommendations to better explain the changes envisioned and how those changes would remedy the specific contributing factors.

Metrics and Milestones

Metrics and milestones are essential to successful recommendations, both under the previous AI process and the newly-instituted AFH process. The AFFH Guidebook calls them "a critical part of the goal" and says it is "important to set measures that are meaningful, realistic, and achievable."[42] It notes that "[i]n many cases . . . there will be a need to define metrics and milestones for determining success that go beyond a yes or no determination of whether a specific goal has been achieved."[43]

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[40] *Id.* at 115-116.
[41] *Id.* at 115.
[42] *Id.* at 114.
[43] *Id.* at 116.

The guidance gives examples of metrics, such as requiring a certain number of affordable units to be produced in high-opportunity neighborhoods by specific dates across a span of time.

At present, no metrics or milestones have been provided for any of the 45 recommendations in the Draft Addendum, let alone metrics and milestones by which any particular jurisdiction's fair housing compliance can be measured. As such, it is difficult for jurisdictions to monitor their progress towards completion of their fair housing obligations, and difficult for outside groups and advocates to ensure whether jurisdictions are attempting to honor those obligations.

> **Proposed Change:** Metrics and milestones should be added to the recommendations, and tailored to the conditions and need for remedies in each FHIC jurisdiction. These should follow the guidelines laid out in HUD AFFH materials. Effort should be made to provide hard numerical metrics when possible, and intermediary goals as well as final measures.

Vague or Aspirational Recommendations

In its comments on the 2014 Draft AI, submitted over two years ago, IMO noted that "[f]ailure to lay out recommendations in sufficient detail, as well as an overreliance on vague recommendations that require future research or discussion, short-circuits the entire AFFH certification process."[44] Those comments strongly criticized the use of aspirational or open-ended language in the recommendations, essentially encouraging jurisdictions to continue the analytic work that is the province of the AI itself. For instance, IMO stated that the 2014 Draft AI suffered from "vagueness":[45]

> They are . . . minimal both in description and content. Most only consist of a single sentence or line. None include any discussion of how they were chosen or developed, or whether other strategies were considered and rejected. . . This sort of highly speculative recommendation, in which jurisdictions are called upon to research problems on their own, and then develop an independent solution with no real input from the AI, is the norm. Many recommendations begin with phrases such as "[e]xplore concepts," "[e]ncourage practices" "[r]eview strategies," and "[d]evelopment of partnerships." . . .
>
> Jurisdictions cannot undertake unreasonably broad remedies, or monitor their performance of actions that have been left undefined, inevitably resulting in a failure to complete steps two and three of the AFFH process. Many of the suggested remedies (e.g., education, outreach, and partnership building) are by their nature difficult or impossible to concretely monitor. A skeptical observer might infer that this is part of an intentional tactic to stymy HUD's fair housing aims: devising nebulous remedies in order to

[44] DRAFT 2014 FHIC AI COMMENTS 5.
[45] *Id.*

> satisfy HUD requirements without making any real, effective, or measurable commitments to remedy segregation or alter living patterns.[46]

The recommendations in the Draft Addendum are more numerous and varied than the recommendations in the 2014 Draft AI, and several request concrete, unambiguous policy changes or steps. (For instance, the first recommendation, that Minneapolis and Saint Paul "work towards enactment" of source of income protections, does not suggest the need for further research or independent policy development.)[47]

However, a number of the recommendations use the same vague, open-ended language that crippled the 2014 Draft AI. For example, consider the following recommendations, with ambiguous passages emphasized:

- Recommendation 21: "Analyze zoning codes in *areas not covered* by this study for fair housing issues."[48]
- Recommendation 22: "*Continue research* into gentrification and loss of affordable housing to identify areas where it *may be* occurring."[49]
- Recommendation 24: "Analyze the MN Challenge recommendations related to reducing the cost of affordable housing for feasibility at the local level; *implement as appropriate*."[50]
- Recommendation 25: "*Explore options for amplifying community voices* in local planning decisions."[51]
- Recommendation 30: "*Prioritize* rehabilitation and preservation of affordable housing in areas where displacement is known to be occurring."[52]
- Recommendation 41: "*Review* LEP plans and update as needed to better serve the needs of people of oral-based cultures."[53]

In accordance with HUD guidelines, "specific" and "action-oriented" goals are favored.[54] By contrast, if the underlying problem is vaguely defined or poorly understood, it may not be an appropriate subject for a recommendation. A smaller number of robust, heavily-supported recommendations, accompanied by metrics and milestones, is preferable to a large number of open-ended or aspirational recommendations.

> **Proposed Change**: Recommendations containing inappropriately open-ended or vague language should be elaborated upon, or eliminated.

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[46] *Id.*
[47] Draft Addendum 212 (emphasis added).
[48] *Id.* at 214 (emphasis added).
[49] *Id* (emphasis added).
[50] *Id.* at 215 (emphasis added).
[51] *Id* (emphasis added).
[52] *Id* (emphasis added).
[53] *Id.* at 217 (emphasis added).
[54] U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, AFFH RULE GUIDEBOOK 115 (2016).

III. COMMENTS ON AI CONTENT

In addition to the more procedural comments above, we have a number of comments on the content and analysis of the Draft Addendum. This includes both information and analysis that we believe was improperly or unwisely omitted, and substantive topics that were framed or addressed incorrectly. We have subdivided these comments into three broad categories:

> A. Sources of information and data that were not included in the Addendum, or were included but should have received greater emphasis.
>
> B. Areas in which the Draft Addendum's identification of fair housing issues or analysis of those issues is substantially flawed or incomplete.
>
> C. Concerns related to the Addendum's recommendations, including subjects that were included in the analysis but have been omitted from the recommendations, or have been insufficiently addressed by the recommendations.

As laid out in the first section, the subject matter focus of this Addendum has been specified in advance by the VCA leading to its drafting. The substantive shortcomings discussed below prevent the Addendum from adequately analyzing those subjects, and thus, if left unaddressed, would render it inadequate for the purpose of satisfying the VCA or any jurisdiction's ongoing obligation to certify compliance with AFFH and other civil rights requirements as a precondition to receiving HUD funding. This is particularly true of the Draft Addendum's treatment of subsidized housing policy and funding, and its failure to examine zoning laws and policies in the context of actual (as opposed to potential) segregative impacts.

Each of the three categories above will be discussed in turn.

A. OMITTED SOURCES

The new AFFH rule requires jurisdictions to supplement their fair housing planning process with "local data and local knowledge."[55] This is not discretionary: the AFFH Rule Guidebook states that "where useful data exists, is relevant to the program participant's geographic area of analysis, and is readily available at little or no cost, the rule *requires that it be considered*."[56]

The Guidebook further specifies that sources of local data include "[c]onsultation with local or regional universities, who may have relevant research and reports."[57] Examples of the knowledge these sources may provide include "[l]ocal history on fair housing

[55] 24 CFR § 5.154 (c).
[56] U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, AFFH RULE GUIDEBOOK 47 (2016) (emphasis added).
[57] *Id.* at 48.

issues and the capacity of fair housing outreach and enforcement efforts in the jurisdiction and region."[58]

This is no minor requirement: HUD guidance suggests that the Addendum's failure "to employ local data and local knowledge" is sufficient to render it "substantially complete or inconsistent with fair housing or civil rights requirements."[59]

The Institute on Metropolitan Opportunity (IMO) has produced a variety of peer-reviewed articles, reports, sets of public comments, and other documents that are highly relevant to fair housing issues in the Twin Cities. Most of this information appears to have been omitted from the Draft Addendum. In addition, other scholarship on economic opportunity from the Humphrey School of Public Affairs has been omitted.

In some instances the reasons for these omissions are unclear. In other instances, however, it is clear that the drafters of the Addendum were aware of the research. Indeed, some of the IMO work *did* appear in an earlier draft of the Addendum, but mentions were eliminated after pushback in the Fair Housing Advisory Committee from the representative of the city of Minneapolis and the registered lobbyist of an affordable housing organization.[60]

After a draft Addendum was presented at the December 7, 2016 FHAC meeting, which included references to IMO work on the role of the housing industry in creating segregation, the Minneapolis representative made the following statements:

> Andrea Brennan: The section of residential segregation policies beginning at the bottom of page five, and then there's two paragraphs in that section. The first paragraph and I will read here to quote says, "Unfortunately the push to maintain affordable housing opportunities in the suburbs diverted resources from affordable housing efforts in the central cities. The Family Housing Fund created in 1980 set out to build affordable housing in the cities of Minneapolis and St. Paul but has faced criticism over the location of many of these units in racially concentrated census tracks." This is, and then I want to comment on the next paragraph. Related to this paragraph, there's nothing in your data analysis that ties to this kind of conclusion that I can see. I guess it looks like the notation you have here is quoting from a MinnPost article that highlights Institute on Metropolitan Mobility or Metropolitan Opportunities study that has received a lot of criticism in this metropolitan area. There's not consensus that the conclusions reached in that article or that body of work is really agreed upon by the industry, by other academics in our metropolitan area.

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[58] *Id.* at 49.

[59] U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, GUIDANCE ON HUD'S REVIEW OF ASSESSMENTS OF FAIR HOUSING 7-8 (2016).

[60] The earlier draft of the AI Addendum was not distributed publicly. It was, however, discussed in public hearings, and review of those hearing transcripts and minutes make clear the reports in question were IMO reports.

Later in the same meeting, the registered lobbying for the Alliance for Metropolitan Stability, an affordable housing group dedicated to promoting "place-based" remedies, commented on the same subject:

> Owen Duckworth: Yeah I don't want to double back down on the previous criticisms but I think it is important Jeremy to have you clearly understand that citing that report in particular is going to create major, major push backs in the legitimacy of this report at a lot of us at this table and well beyond this table as well. There's a perception that that report comes with a very clearly outlined agenda in terms of where housing investments should go and in the context of analysis of impediments that's attempting to get to people actually impacted by these issues is of coming to, not to say that these studies don't provide data and expertise of their own but also the expertise of community. To come in with something that's already drawing conclusions about data especially without citations of that data is really problematic and I think is something, I want to hear that something you guys aren't going to put in this reports is the point I'm at with that.

The Draft Addendum consultant responded with newfound skepticism over the IMO research.

> Jeremy Gray: Yes I hear that clearly. I want to go back in and look at that source. I did that clearly and I have [inaudible] I mean I'm not sure that I can commit at the moment to excluding that but I think I can take what you're saying into consideration. It probably does need to come out because I would like to look at that report again and see.

References to IMO's work were removed in the subsequent draft.[61]

The elimination of IMO's research from the Draft Addendum is particularly alarming in light of sustained, and successful, efforts by the same FHAC members to *include* reports that they believed promoted their viewpoints. For instance, a report by the Minnesota Housing Partnership (MHP) – entitled *Sold Out* – featured heavily in the Draft Addendum.[62] After comments opposing inclusion of IMO's work were presented at the December 7 meeting, Chip Halbach, the head of MHP and the organizer for the Advisory Committee, offered to provide "other sources" to the AI consultant:

> Chip Halbach: Jeremy it sounds like you may need some help to get other sources of other things that maybe you're not aware of. This group will provide some for you to sort through.

[61] Transcript of the December 7, 2016 meeting available upon request.
[62] Minnesota Housing Partnership, *Sold Out* (2016), available at http://www.mhponline.org/images/Sold_Out_final_revised_small.pdf.

The aforementioned Alliance for Metropolitan Stability lobbyist also contrasted IMO's work (published in 2015) with the ostensibly more up-to-date MHP report (published in 2016):

> Owen Duckworth: There's a lot of newer studies that I'm thinking about particular, I don't know maybe this is less relevant to this section of the addendum but certainly reports like the MHP Sold Out report in regards to the displacement and selling of a lot of apartment units and a [Center for Urban and Regional Affairs] study that's coming out about more tangibly measuring gentrification and displacement pressures in the City of Minneapolis in particular. I think there's a lot of good data out there.

Both the MHP *Sold Out* report and Center for Urban and Regional Affairs gentrification study were then heavily covered by the Draft Addendum.[63]

The inclusion of this latter "study" is impossible to square with the removal of IMO's research, and especially in response to claims that IMO's work is not supported by industry consensus or is otherwise incomplete or unfounded. The Center for Urban and Regional Affairs study, far from being complete or uncontroversial, is a preliminary, unpublished PowerPoint.[64] The PowerPoint's findings are, by its own admission, substantially incomplete; they have already been heavily contested.[65] Despite this, the PowerPoint forms the majority of the Draft Addendum's analysis of gentrification.

By contrast, while IMO's work has been attacked by the very development industry that it critiques, it has also been peer-reviewed, published in credible academic journals, and widely reported in local and national media.

HUD rules and the AFFH Guidebook make clear that it is inappropriate to exclude "local data and knowledge" simply because some local entities are uncomfortable with that data or knowledge. The following IMO data sources should be incorporated (or reincorporated) into the Addendum's analysis.

Housing Policy Debate Articles on Affordable Housing Development Costs (2015-16)

IMO staff published a series of three articles in the peer-reviewed journal *Housing Policy Debate* in 2015 and 2016. The initial article, entitled *High Costs and Segregation in Subsidized Housing Policy*, was accompanied by commentary and discussion from a number of housing policy experts, including Douglas Massey and Jill Khadduri, both preeminent housing and urban policy scholars.[66] In response to rebuttals by Edward

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[63] *See, e.g.*, Draft Addendum 158-69.
[64] *See*, Center for Urban and Regional Affairs, CURA Twin Cities Gentrification Project Summary, http://www.cura.umn.edu/gentrification.
[65] *See, e.g.*, Myron Orfield and Will Stancil, *Counterpoint: Gentrification Isn't the Rental Problem; Poverty Is*, STAR TRIBUNE (Nov. 30, 2016).
[66] Myron Orfield, Will Stancil, Thomas Luce, and Eric Myott, *High Costs and Segregation in Subsidized Housing Policy*, 25 HOUSING POLICY DEBATE 574 (2015); Douglas S. Massey, *The Social Science of Affordable Housing*, 25 HOUSING POLICY DEBATE 634 (2015); Jill Khadduri, *The Affordable Housing*

Goetz and Alex Schwartz, IMO staff published two followup pieces.[67] The series is attached as Appendix C.

Taken together, these articles discuss several key fair housing issues in the Twin Cities region. First, they address the region's changes to regional housing policy that are partially responsible for Twin Cities segregation. Second, they describe the patterns of concentration of affordable housing in the central cities of Minneapolis and Saint Paul. Third, they provide what is, to date, the only attempt to analyze the cost of subsidized housing construction in the region by geographic location and other building characteristics, using a proprietary dataset not available in public data sources. Fourth, they offer an industry-wide analysis of the public and private interactions that result in current subsidized housing development patterns in the Twin Cities. And finally, they test a common claim relevant to subsidized development strategies: that such development will provide revitalizing economic benefits to surrounding neighborhoods.

This series of articles, and the supplemental articles by Massey and Khadduri, contribute essential information to the understanding of contributing factors to fair housing issues in the Twin Cities, and help reveal the economic and organizational forces that have helped produce current regional living patterns.

Why Are the Twin Cities So Segregated? (2015)

This article, first published as a 2015 report and soon to be published as an article in Mitchell-Hamline Law Review, offers a historical and institutional analysis of Twin Cities segregation.[68] Beginning in the 1960s, it analyzes the policies and behavior of a number of key public and private actors, including the Metropolitan Council, the governments of the two central cities, and two parallel industries critical to civil rights and fair housing industry: the poverty housing industry and the poverty education complex.

By tracing this historical narrative, the article shows the ways in which distinct and discrete policy changes over the course of several decades have increased housing segregation and reduced access to opportunity in the Twin Cities. In contrast to most analyses of this subject, which suffer from a present-day bias, the article focuses on historical factors, bolstered by newspaper and archival research, and government

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Industry Needs to Develop Capacity to Work in High Opportunity Neighborhoods, 25 HOUSING POLICY DEBATE 639 (2015).

[67] The IMO pieces are Myron Orfield, Will Stancil, Thomas Luce, and Eric Myott, *Response to Poverty-Pimping CDCs: The Search for Dispersal's Next Bogeyman*, 25 HOUSING POLICY DEBATE 619 (2015); Myron Orfield, Will Stancil, Thomas Luce, and Eric Myott, *Taking a Holistic View of Housing Policy*, 26 HOUSING POLICY DEBATE 284 (2016). The other pieces are Alex Schwartz, *The Low-Income Housing Tax Credit, Community Development, and Fair Housing: A Response to Orfield et al.*, 26 HOUSING POLICY DEBATE 276 (2016); Edward Goetz, *Poverty-Pimping CDCs: The Search for Dispersal's Next Bogeyman*, 25 HOUSING POLICY DEBATE 608 (2015).

[68] INSTITUTE ON METROPOLITAN OPPORTUNITY, WHY ARE THE TWIN CITIES SO SEGREGATED? (2015), available at https://www.law.umn.edu/sites/law.umn.edu/files/why-are-the-twin-cities-so-segregated-2-26-15.pdf; Myron Orfield and Will Stancil, *Why Are the Twin Cities So Segregated?*, HAMLINE-MITCHELL L. REV. (forthcoming 2016).

documents. Because not all contributing factors to fair housing impediments are readily visible in current policy, this historical perspective is indispensable if a full understanding of the issue is to be obtained.

The article also discusses an essential contributing factor to fair housing issues in the Twin Cities: a long-standing historical preference by the central cities for greater affordable housing subsidies, accompanied by a willingness to go to great lengths to retain these subsidies. Many of the segregative funding policies currently in place in the region were instituted as part of an explicit attempt by Minneapolis and Saint Paul to recapture funding that had been lost during efforts by the Met Council to create greater housing integration. This includes the installation of a "suballocator" scheme for low-income housing tax credits to ensure minimum allocations to the central cities, the creation of Family Housing Fund and other, derivative organizations as "quasi-public" entities dedicated exclusively to affordable housing production in the central cities. In more recent years, these efforts have taken the form of numerous "public-private" partnerships, such as the Central Corridor Funders' Collaborative and Corridors of Opportunity, designed to produce affordable housing alongside transit lines and therefore primarily in the central cities. To date, this article provide the only in-depth look at this critical component of Twin Cities segregation.

The Rise of White-Segregated Subsidized Housing (2016)

This report, completed in 2016, describes a troubling fair housing issue in the Twin Cities region.[69] While most subsidized housing is occupied by families of color, a small but growing subset of regional housing is predominantly occupied by white families. That housing tends to be located in more affluent, whiter areas, tends to be constructed at much greater expense, and tends to utilize a variety of screening mechanism (e.g., application deposits or "artist screening") that eliminate lower-income and nonwhite people from the tenant pool. The report describes the combination of political, financial, and legal trends that have resulted in the creation of such housing.

This report contributes to the AI Addendum in two ways. First, it identifies a previously overlooked discriminatory trend in subsidized housing, which has the effect of creating a legally impermissible "dual" system, in which separate buildings are operated for white and nonwhite residents.

Because the trend is both national in scope and previously unknown, the report received considerable media coverage, including in the *Star Tribune*, *Pioneer Press*, *Atlantic Monthly* and *New York Times*.[70] As a result, many local and national organizations are

[69] INSTITUTE ON METROPOLITAN OPPORTUNITY, THE RISE OF WHITE-SEGREGATED SUBSIDIZED HOUSING (2016), available at https://www.law.umn.edu/sites/law.umn.edu/files/metro-files/imo-white-segregated-subsidized-housing-5-18-2016.pdf.

[70] *See, e.g.*, *Federal Tax Credits Are Misused on Costly Artist Lofts in Twin Cities*, STAR TRIBUNE (June 16, 2016); Frederick Melo, *Minneapolis-St. Paul Subsidized Artist Housing Segregates, Report Says*, PIONEER PRESS (May 30, 2016); Alana Semuels, *The Artist Loft: Affordable Housing (for White People)*, ATLANTIC (May 19, 2016); Editorial Board, *Who Gets the Subsidized Apartments?*, NEW YORK TIMES (July 5, 2016).

aware of and concerned about the fair housing issues posed by white-segregated subsidized housing. The *Times* editorial board noted that, in the Twin Cities, "traditional affordable housing projects had been dumped into economically desolate minority communities," and "HUD needs to make sure all subsidized housing – including artist housing – meets" the goals of the Fair Housing Act.[71]

Second, the report provides analysis of demographic occupancy trends in affordable housing, which, to our knowledge, is not analyzed in other public data sources. In doing so it provides important nuance to several assumptions underlying affordable housing policy, namely that affordable housing is uniformly occupied by families of color. This is important context for the Draft Addendum's analysis of subsidized housing policies and siting.

Work on Labor Market Access by Fan, Guthrie, and Das

Recent work by researchers at the University of Minnesota's Humphrey School of Public Affairs highlights that geographic and skills mismatches are increasing in the region in ways that decrease opportunities in the central cities and inner suburbs

A 2016 paper by Yingling Fan, Andrew Guthrie, and Kirti Vardhan Das, entitled *Spatial and Skills Mismatch of Unemployment and Job Vacancies* shows that spatial mismatch between disadvantaged or unemployed workers and vacant jobs is a serious problem, and one that has worsened between 2000 and 2010.[72]

The paper states:

> Overall, the regional mapping analysis shows a pattern of increasing spatial mismatch as urban and inner-suburban concentrations of unemployment expand and job vacancies suburbanize. This trend persists even through the recession; in fact, job vacancies appear to have shifted farther out into the suburbs as the economy has recovered.[73]

Work by IMO on job clusters in the region has shown that middle and outer suburban job centers outperformed central city and inner suburban job centers in both the 1990s and 2000s. In addition, job growth in dispersed, unclustered job sites (largely in the suburbs) outperformed both by substantial margins.

The general implication of preexisting data and the work of Fan, Guthrie, and Das is that growing mismatches are due both to suburbanization and to greater dispersal of jobs.

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[71] Editorial Board, *Who Gets the Subsidized Apartments?*, NEW YORK TIMES (July 5, 2016).
[72] Yingling Fan, Andrew Guthrie, and Kirti Vardhan Das, *Spatial and Skills Mismatch of Unemployment and Job Vacancies*, CENTER FOR TRANSPORTATION STUDIES (2016), available at http://www.cts.umn.edu/research/featured/transitandworkforce.
[73] *Id.* at 7.

This work is highly relevant to any analysis of contributing factors to fair housing issues because it has bearing on the role that transit improvements can play in improving access to opportunity.

Because jobs are less and less likely to be in central locations, or job centers with job densities high enough to serve as efficient transit destinations, currently planned transit improvements will have little impact on the spatial mismatch between unemployed workers and job vacancies. The neighborhood case studies in the Fan, Guthrie, and Das study suggest that transit could increase access to job vacancies in a few neighborhoods, but the absolute improvement is small. For instance, transit provides access to 312 job vacancies for residents of Brooklyn Park; 219 vacancies in the Gateway Corridor; 9 vacancies in the Golden Triangle; and 1,008 vacancies in all of North Minneapolis. These minor improvements result from the full completion of the planned 2040 regional transitway system, a process costing many billions of dollars.

This has major implications for various approaches to providing access to opportunity for housing, suggesting that strategies involving increases in the amount of affordable housing near growing suburban job centers and dispersed, unclustered jobs have much greater potential to deal with spatial mismatches over time.

Fan, Guthrie, and Das's work also finds that skill mismatches are a significant problem in access to opportunity. For instance, although while many central city neighborhoods are located close to the region's largest concentrations of jobs, unemployed workers in those neighborhoods do not have the right skills, for the most part, to fill job vacancies in those job centers.

B. COMMENTS ON ANALYSIS

We have a number of comments on the substance of the Draft Addendum's analysis. As these comments are varied, we simply raise those comments in the order their corresponding subjects appear in the Addendum.

Omission of the Met Council's Historical Policies from Historical Narrative

The Draft Addendum's Historical Narrative discusses some of the ways in which private market factors and housing discrimination in shaping present patterns of segregation and access to opportunity. It almost completely omits, however, the fundamental role that the Met Council, as a regional government, played in shaping those patterns. These will be described in brief below; they are described in much greater detail in IMO's *Why Are the Twin Cities So Segregated?* report.[74]

Minnesota's Land Use Planning Act requires that local governments "provide sufficient existing and new housing to meet the local unit's share of the metropolitan area need for

[74] INSTITUTE ON METROPOLITAN OPPORTUNITY, WHY ARE THE TWIN CITIES SO SEGREGATED? (2015), available at https://www.law.umn.edu/sites/law.umn.edu/files/why-are-the-twin-cities-so-segregated-2-26-15.pdf.

low and moderate income housing," and empowers the Met Council to coordinate, monitor, and enforce this requirement through the adoption of metro-wide policy plans.[75] The Met Council has done so, as required by statute, through the adoption of a series of Housing Policy Plans. Historically, this has been the *primary vehicle* through which equal access to housing for all socioeconomic groups has been ensured in the Twin Cities.

Beginning in the 1970s, the Met Council used this statutory scheme to implement a true "fair share" system in which local governments were required to accept their regional share of low-income housing. If they did not do so, cities faced the loss of various funding sources, including federal grants, state grants, and parks, sewers, and transportation funding. This was called Policy 13, and later renamed Policy 39.

The Met Council's powers over regional housing policy have increased over time. The passage of the Livable Communities Act (LCA) in 1990s allowed the Council to set an additional series of goals for participating communities, and score communities on housing performance. LCA funding could be conditioned on housing performance.

These early efforts were highly successful in promoting desegregation and access to opportunity: in contrast to national trends, 73 percent of new Twin Cities subsidized housing units in the 1970s were produced in comparatively affluent suburban municipalities instead of increasingly segregated central cities.[76]

Over time, however, enforcement of the "fair share" policy and the Land Use Planning Act declined. Although the laws and policies remained on the books, the Council ceased conditioning most funding on housing performance. It also adopted a more limited position with regard to its own powers: that it could *not* condition funding on progress towards providing fair share housing. This policy change occurred in the absence of any notable change to the underlying legal authorities, many of which had been in place since the 1960s.

After these changes in the Met Council's activities, production of suburban affordable housing slowed. After over a decade of rapid progress, the central cities' share of regional subsidized housing froze, and has never declined below 57 percent. This is particularly problematic in light of the changing regional distribution of population: as the central cities' share of total population has continued to decline, the central cities' share of subsidized housing has grown ever more disproportionate.

In short, policy changes at the Met Council are a major – if *the* major – contributing factor to ongoing inter-jurisdictional segregation in the Twin Cities, and ongoing lack of access to opportunity in the suburbs. Without their inclusion, a number of important regional trends cannot be fully described or understood.

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[75] Minn. Stat. § 473.859 Subd. 2(c).

[76] INSTITUTE ON METROPOLITAN OPPORTUNITY, WHY ARE THE TWIN CITIES SO SEGREGATED? 13 (2015), available at https://www.law.umn.edu/sites/law.umn.edu/files/why-are-the-twin-cities-so-segregated-2-26-15.pdf.

Proposed Changes: The Met Council's historic land use and housing policies should be included in the Historical Narrative. This should include both the original policies, their historical outcomes, subsequent changes to the substance and enforcement of those policies, and a summary of current outcomes.

Statistical Analysis of Segregation

The AI Addendum's analysis of segregation is critical to the success of the Addendum as a whole and, indeed, to the adequacy of each FHIC jurisdiction's civil rights certifications. Absence of segregation analysis was perhaps the most striking deficiency of the unmodified 2014 FHIC AI.

The Draft Addendum's empirical analysis adopts a useful frame for addressing these deficiencies, but lacks the necessary scope. The use of multiple metrics of segregation is an appropriate starting point for understanding the complex patterns of segregation that define the Twin Cities region. Especially useful is the use of a predictive model to determine where racial concentrations do not correspond with those predicted by economic characteristics alone.

However, other than Figure 2-19, which does not consider specific racial groups, this predictive analysis is only conducted at the jurisdictional level – cities and counties.[77] In reality, much segregation occurs at much smaller scale – the neighborhood or census tract level. There is no apparent reason the predictive analysis could not be conducted at smaller scales.

Proposed Change: Conduct the predictive demographic analysis at the neighborhood and tract levels, in order to identify potentially discriminatory areas or practices with greater specificity. We understand that it would be difficult to report the results of such analysis in table form for the entire region, but a threshold criterion – e.g., a certain degree of nonwhite concentration beyond predicted levels – could be set, and all tracts meeting that criterion listed and displayed.

Local Zoning Codes

In terms of data collection and categorization, the Draft Addendum's local zoning analysis is thorough and impressive. The zoning analysis, however, suffers from several methodological quirks.

The practice of generating scores and subscores of 1, 2, or 3, representing "low risk," "medium risk," and "high risk," is potentially confusing for entitlement jurisdictions. First, the scores necessarily represent the somewhat arbitrary assignment of risk values to complex and multifaceted land use policies. In additional, there are some purely mathematical oddities to this system: the absence of a score of 0 creates a situation in which 1 is the minimum possible score. But in most instances multiple scores are averaged together, which means a score anywhere near 1 (or 3) is very unlikely. Simple

[77] Draft Addendum 48.

regression to the mean ensures that most scores will be approximately 2, while a score of 1.5 is extremely low and a score of 2.5 is extremely high. None of these facts are likely to be intuitively obvious to readers, or, for that matter, jurisdictions.

More importantly, as the text of the Draft Addendum notes, the impact of zoning codes on existing fair housing impediments and segregation often cannot be analyzed using a simple numerical score system. Qualitative considerations may, and do, play a role. For example, in dense, built-out urban environments with ongoing construction, inclusionary zoning rules could mitigate segregation. But in areas with less ongoing construction, and lower-density land-use patterns, inclusionary zoning is unlikely to have an impact.

The AFFH rule and guidance offers one pathway around this difficulty. Land use laws, rather than being an independent fair housing issue, are more typically a "significant contributing factor" to underlying problems like segregation or lack of access to opportunity. As such, it may be appropriate to analyze zoning and land use laws in the context of the Draft Addendum's findings with regard to other issues. For instance, if the Addendum finds that a particular community suffers from segregation, or scarcity of subsidized housing, zoning laws may be considered in the context of that finding, in order to determine if any particular zoning policy is likely to contribute to it.

> **Proposed Changes:** Integrate local zoning code analysis with findings about disparities, housing access, and segregation. In jurisdictions with critical fair housing issues, directly attempt to identify any linkage between zoning codes and those issues.

Omission of Met Council Land Use Policy from Public Policy Analysis

In the Twin Cities metropolitan area, there are three levels on which public policy impacts fair housing: the local, the state, and the regional.

The Draft Addendum analyzes local land use policy, and partially analyzes state policy in the form of housing tax credit allocation. It omits, however, any substantive discussion of the suitability or effects of the Met Council's current regional housing planning regime.

The Met Council, of course, is not an entitlement jurisdiction for the purposes of this Addendum. However, it unquestionably is a major pillar of public policy in housing in the Twin Cities, and thus *must* be incorporated into the Addendum's public policy analysis. As previously stated, the AFFH Guidebook makes clear that "[c]ontributing factors may be outside the ability of the program participant to control or influence," but "such factors, if relevant to the jurisdiction or region, must still be identified."[78]

At present, Met Council housing policy is governed by the agency's Housing Policy Plan (HPP), released in 2015.[79] The HPP suffers a number of substantial defects, virtually all

[78] U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, AFFH RULE GUIDEBOOK 108-09 (2016)
[79] METROPOLITAN COUNCIL, HOUSING POLICY PLAN (2015), available at https://metrocouncil.org/Housing/Planning/2040-Housing-Policy-Plan.aspx [hereinafter HPP].

of which perpetuate and worsen the growth of housing segregation and impede access to opportunity.

In general terms, the HPP overemphasizes transit-oriented development, which tends to concentrate low- and moderate-income housing in areas already suffering from concentrations of poverty.[80] It also broadly ignores the interactions between housing opportunity and educational opportunity. It removes enforcement provisions that appeared in early Housing Policy Plans, most importantly Policy 39, which instructed the Council to withhold funding from municipalities that were failing to provide their fair share of affordable housing.

The HPP also directs regional affordable housing development. It does this through three measures: the Housing Need Allocation; the LCA Goals for Affordable and Lifecycle Housing, and the Housing Performance Scores.[81] Each of these measures is severely flawed in practice. These flaws will be described in brief below. IMO has described them in much greater detail, with supporting documentation and fully-complete alternative proposals, in two sets of comments submitted to the Met Council previously. These comments are attached as Appendix B.

The Housing Need Allocation suffers from a range of shortcoming that bias it towards higher affordable allocations for the two central cities and inner-ring suburbs. First, it relies heavily on regional growth projections that consistently overstate growth in the urban core. Second, its method of accounting for existing affordable housing suffers from a critical mathematical defect, arbitrarily switching between absolute and proportional figures, in such a way that ensures that no community's existing affordability can ever eliminate the need to produce large quantities of additional affordable housing. This in turn reduces the allocations to higher-income communities. Finally, the "income banding" used by the Need Allocation is badly designed, such that a shortage of housing in one income band can create a larger allocation in other income bands.

The Met Council's own Fair Housing Equity Assessment opportunity analysis, repurposed for the Addendum, demonstrate the deficiencies of the Need Allocation: there is a negative correlation between cities that receive high numerical housing allocations and cities that score highly on the crime, education, and environmental dimensions of the analysis.[82]

For their part, the LCA goals for low-income housing appear to punish housing performance: they have grown larger in cities that have historically met their goals, and smaller in cities that have historically fallen short.

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[80] *See, e.g.*, HPP 107 ("The Council has an important stake in maximizing the potential of TOD along existing and proposed transit corridors . . . Ensuring sites are available for affordable housing development in station areas and other efficiently located sites requires intentional land acquisition strategies and resources.").

[81] HPP 95.

[82] METROPOLITAN COUNCIL, CHOICE, PLACE, AND OPPORTUNITY (2014), available at https://metrocouncil.org/Planning/Projects/Thrive-2040/Choice-Place-and-Opportunity/FHEA/Choice,-Place-and-Opportunity-Executive-Summary.aspx [hereinafter Met Council FHEA].

Lastly, the Housing Performance Scores are applied to only a narrow pool of funding – much of it affordable housing funding – and therefore can do little to incentivize greater affordability in municipalities reluctant to produce affordable units on their own.

> **Proposed Changes:** Incorporate an analysis of the effects of the Met Council's Housing Policy Plan. Discuss and analyze the relationship between the Met Council's affordable housing measures and the existing allocation of affordable and subsidized housing in Twin Cities communities.

Subsidized Housing Funding Policy

In the Draft Addendum, the only source of subsidized housing funding subjected to thorough scrutiny is the low-income housing tax credit (LIHTC). Because LIHTC is the single largest source of affordable housing funding, this is a logical starting place for analysis. However, there are several shortcomings to this approach.

First, LIHTC does not account for the entirety of affordable housing funding. Other sources – for instance, Minneapolis's Affordable Housing Trust Fund (AHTF), which is capitalized by a combination of federal block grant and local funds – also play an important role in completing project funding and producing affordable units. Allocative policies related to these other sources of funds are important components of regional subsidized housing policy. This is particularly true because most affordable projects are funded from multiple sources; without funding from any one of those sources, the projects cannot continue. As a result, if segregative restrictions are placed on the use of *any source of funding*, all of a project's funding may be use segregatively, regardless of how the other sources of funding (such as LIHTC) are distributed. While analyzing every potential source of funding might be labor-intensive, acknowledging the role of these other programs is essential. In addition, it would be wise to consider the fair housing impacts of the largest of these programs, such as the aforementioned Minneapolis AHTF.

Second, the Draft Addendum's treatment of point scoring systems applicable to funding applications is incomplete. It rightfully considers the fair housing effects of points assigned for integrative development, and the potentially segregative effects of points allocated for neighborhood support. However, a number of other common point allocations have potentially segregative effect. Among the most important of these are points allocated for location along a transit line, particularly in Minneapolis and Saint Paul. The vast majority of transit lines and transit stops are located in highly segregated, low-opportunity neighborhoods. In addition, points allocated for receipt of additional funding can contribute to segregation, because additional funding sources are often easier to come by in segregated areas heavily served by central city development agencies and nonprofits. Comparatively affluent suburban areas, by contrast, rarely offer much in the way of subsidized housing funding.

Finally, and perhaps most importantly, the analysis of LIHTC allocations overlooks the single most segregative component of the Minnesota tax credit system. This is the "suballocator" system, in which the two central cities receive a minimum annual share of tax credits. This system was instituted in the late 1980s for the purpose of ensuring that

Minneapolis and Saint Paul receive an above-average share of affordable housing funding; since that time, the region's population has continued to shift into the suburbs, while the suballocator shares have been adjusted only infrequently. The consequence of these trends is that the two central cities have received an increasingly-disproportionate share of the metropolitan area's tax credits. In addition, a certain number of tax credits are set aside by the state housing agency for nonprofits, and can be awarded across the region. However, because most housing nonprofits are located in heavily-segregated central city neighborhoods, these tax credits also tend to end up in Minneapolis and Saint Paul. No examination of tax credit outcomes in the Twin Cities can be complete without considering the suballocator system.

> **Proposed Changes:** Discuss and examine non-LIHTC sources of affordable housing funding. Consider the fair housing effects of additional LIHTC point criteria. Consider and discuss the fair housing impacts of the suballocator system.

Areas of Economic Opportunity

The Draft Addendum's Opportunity Indicators analysis concludes that "Areas of Concentrated Poverty where at least 50% of residents are people of color have superior access to jobs."[83] This conclusion rests on a very limited and inadequate analysis of the labor market, comprised of a single page of text accompanied by a chart and a map borrowed from the Metropolitan Council's *Choice, Place and Opportunity*.[84]

The analysis falls short in two ways. First, it fails to use the two measures provided by HUD for this purpose, relying instead on an inferior version of one the HUD measures. Second, it ignores available data on a very important characteristic of the region's labor market – the very uneven distribution of job growth across the region.

The overall impact of these three shortcomings is that the draft badly overstates the employment opportunities available to low-income residents of areas of concentrated poverty. Each of these shortcomings will be addressed in greater detail below.

1**. *Failure to use all HUD-provided measures***. HUD provides two indices to support the analysis of employment opportunities – the Jobs Proximity Index which measures both the physical proximity of the residences of groups in the labor force to jobs and the proximity to potential competition from other workers; and the Labor Market Index which measures the health of parts of the regional labor market by labor force participation, unemployment rate and education of the labor force.[85]

The AI Addendum's analysis of employment opportunities relies solely on a substitute, developed by the Metropolitan Council, for HUD's Job's Proximity Index. However, the Metropolitan Council measure *does not* adjust for potential competition for local jobs.

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[83] Draft Addendum 139.
[84] Met Council FHEA Section 6.
[85] U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, AFFIRMATIVELY FURTHERING FAIR HOUSING DATA DOCUMENTATION 10 (2016), available at https://www.hudexchange.info/resources/documents/AFFH-Data-Documentation.pdf.

The HUD index, on the other hand, accounts for both distance from jobs and distance from other workers.

Predictably, the Metropolitan Council's more limited measure shows high levels of access to jobs in the most densely settled parts of the region, near the two central business districts, areas with concentrations of minority and low-income populations. This is due to the fact that it does not account for the greater numbers of potential competitors for jobs in these densely settled areas. As a result, access to employment opportunity in these areas is inflated in comparison to HUD's metric.

The HUD measure (see Map 1, below) shows a very different pattern than the Council's proximity map. Proximity to jobs in the central cities and inner suburbs is far less consistent, and many of the areas encompassing areas of concentrated poverty are in the low-proximity categories.

HUD also provides a second measure to assess employment opportunities – the labor market index. The labor market index includes three indicators of labor market vitality – the unemployment rate, labor force participation and the percentage of residents 25 and over with bachelor's degrees.

This measure shows a markedly different distribution of labor market opportunities (Map 2) than the simple job proximity measure used in the AI Draft. The highest ratings (in blue) are in middle- and upper-income portions of the central cities and inner suburbs and in higher-income middle and outer suburbs. The lowest ratings (in red) are mostly in areas of concentrated poverty in the central cities and inner suburbs.

2. ***No analysis of uneven job growth in the region***. Access to areas where job opportunities are growing is an aspect of opportunity at least as important as access to existing jobs. In most U.S. metropolitan areas, job opportunities have been suburbanizing alongside population. The Twin Cities region is no exception.

Between 2000 and 2015, on net, the cities of Minneapolis and St. Paul added just 893 jobs, while the region's inner suburbs lost 25,757 jobs. During the same period, the remainder of the suburbs gained 94,626 jobs.

Access to job growth is important because opportunities for long-term employment and advancement are greater in areas where firms are adding new jobs than in job centers that are losing jobs. By definition, firms in growing areas are less likely to lay off existing workers. Similarly, growing areas create more opportunities for currently unemployed residents because job vacancies do not come about only through turnover – new job creation also generates vacancies.

Access to job growth in the Twin Cities is very unevenly distributed and the distribution looks much different than for existing jobs. Maps 3 and 4 show access to job growth in the region by automobile (at the morning peak) and by transit at midday. The two measures use the same methods and data employed by the Metropolitan Council in *Choice, Place and Opportunity*.

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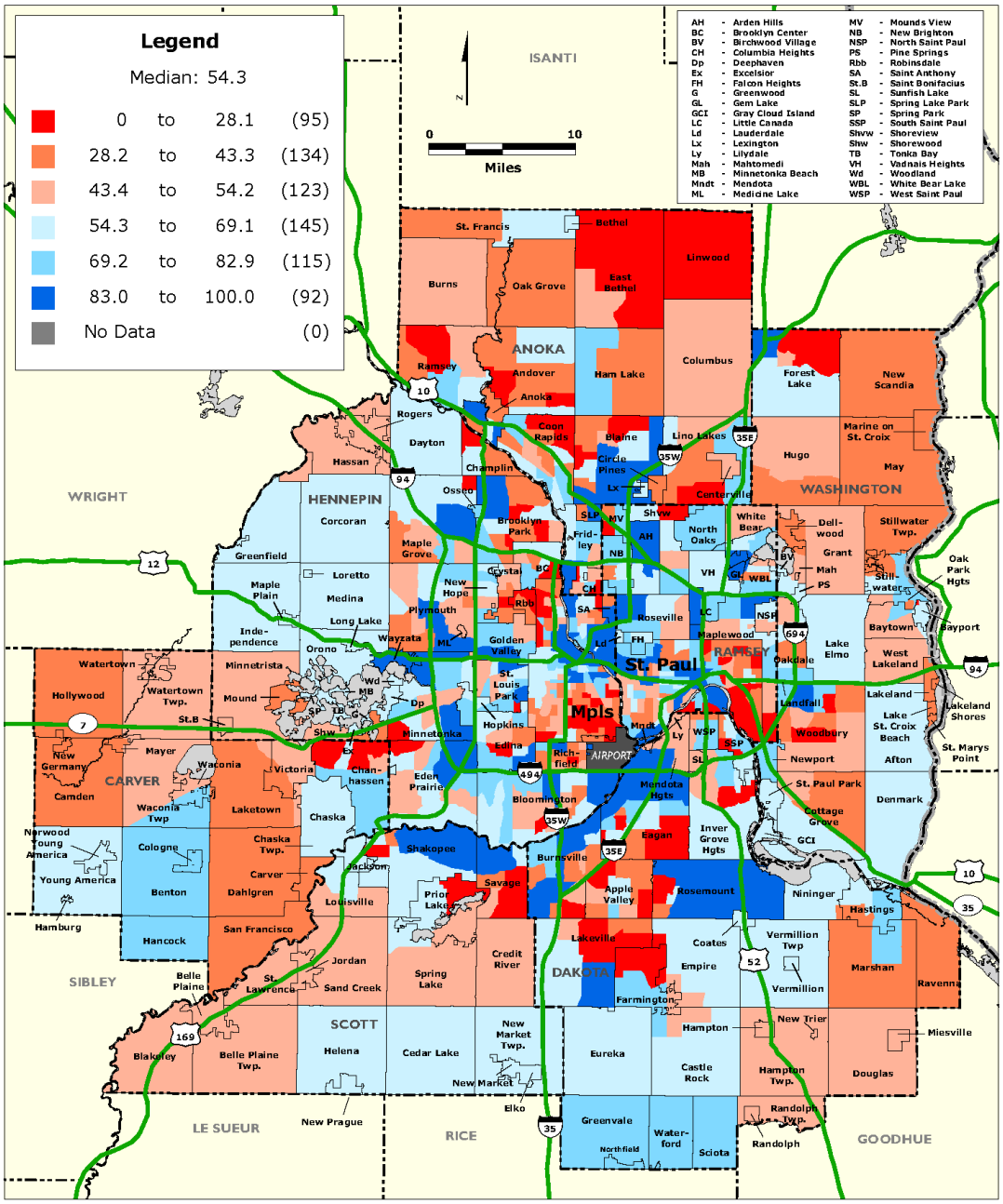
Map 1: MINNEAPOLIS - SAINT PAUL REGION HUD Job Proximity Index



Data Sources: U.S. Census Bureau; Minnesota Department of Education.

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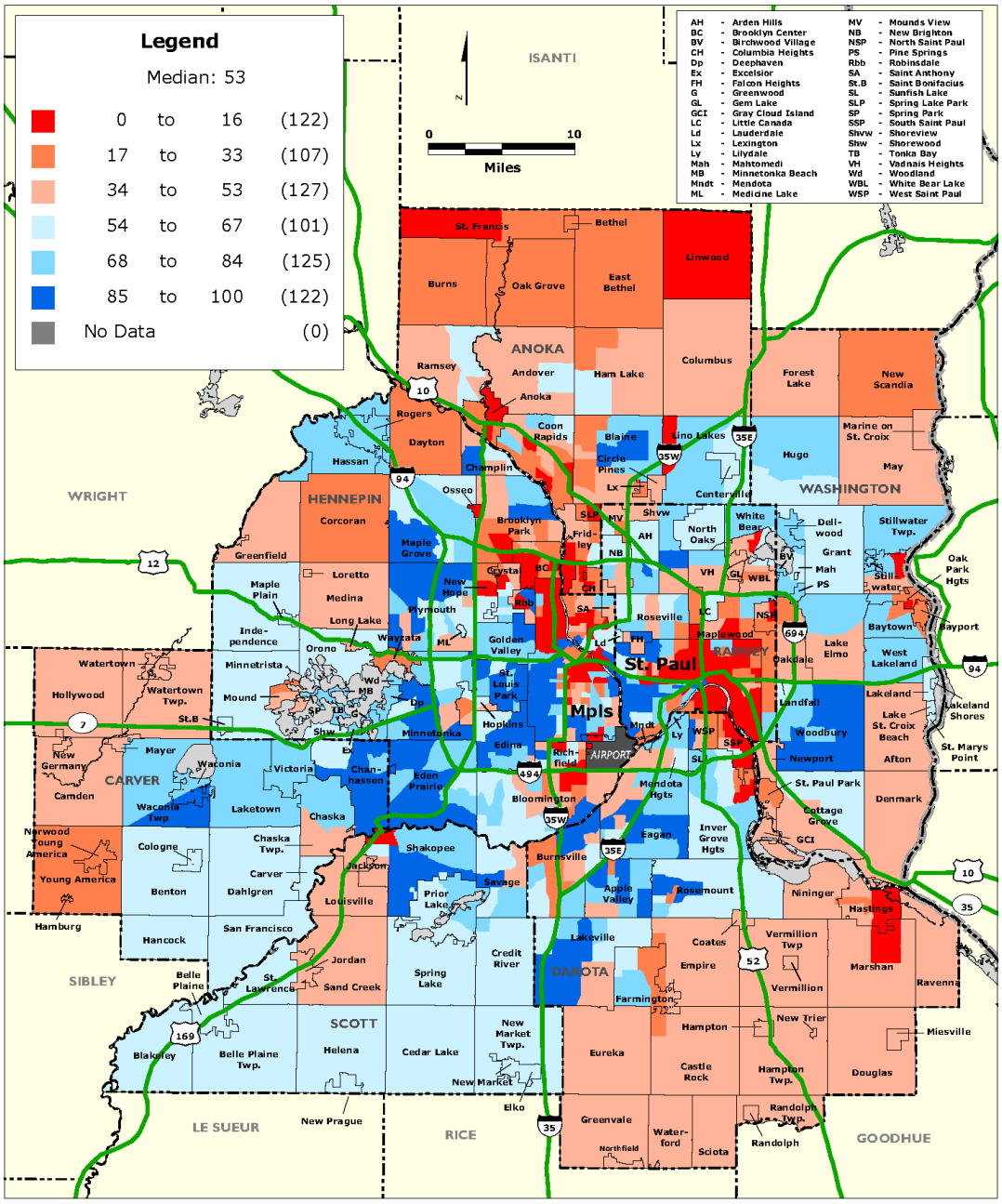
Map 2: MINNEAPOLIS - SAINT PAUL REGION HUD Labor Market Index



Data Sources: U.S. Department of Housing and Urban Development; U.S. Census Bureau.

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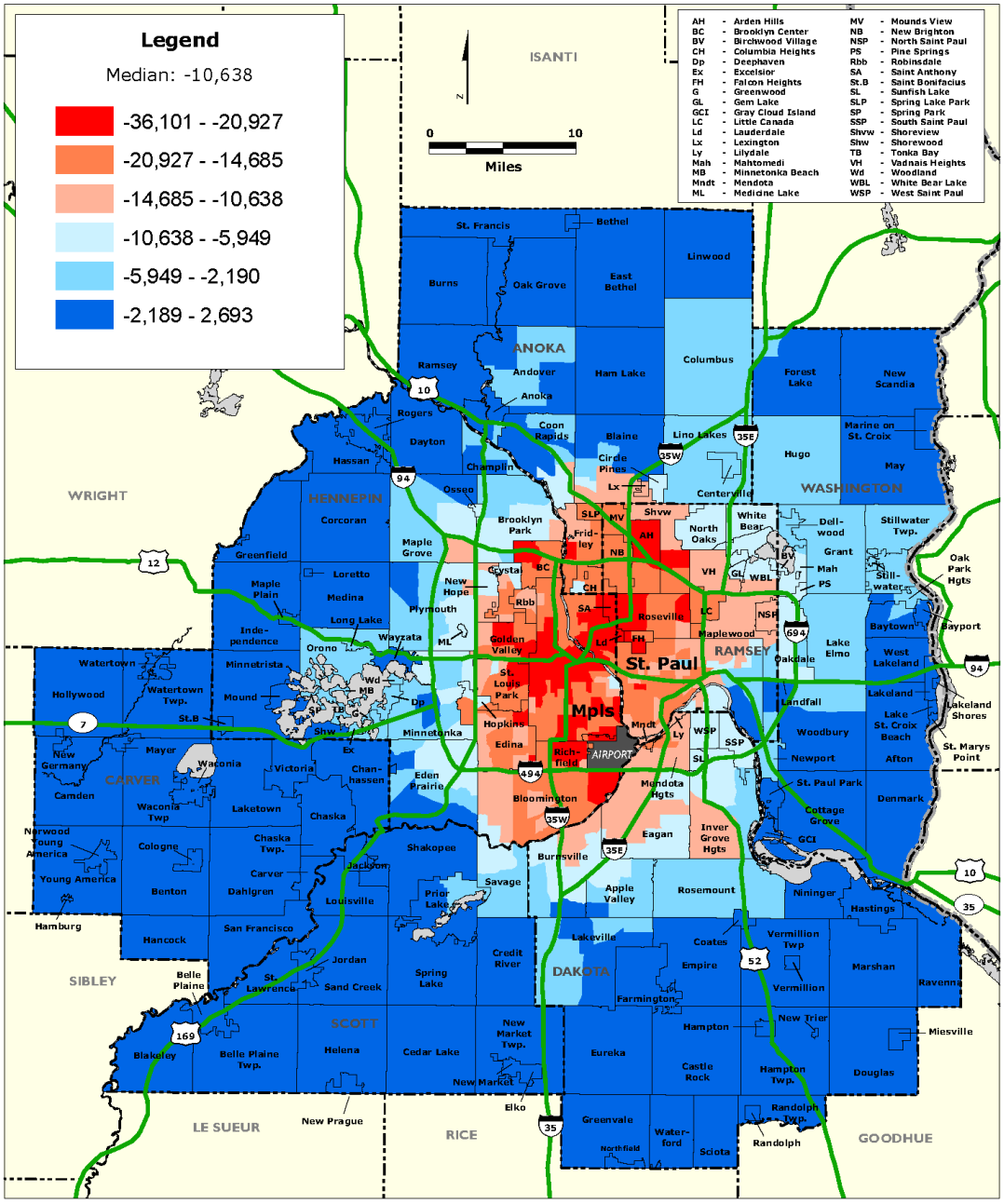
Map 3: MINNEAPOLIS - SAINT PAUL REGION Change in the Number of Jobs Accessed by AM Automobiles in Census Tracts, 2005 to 2010



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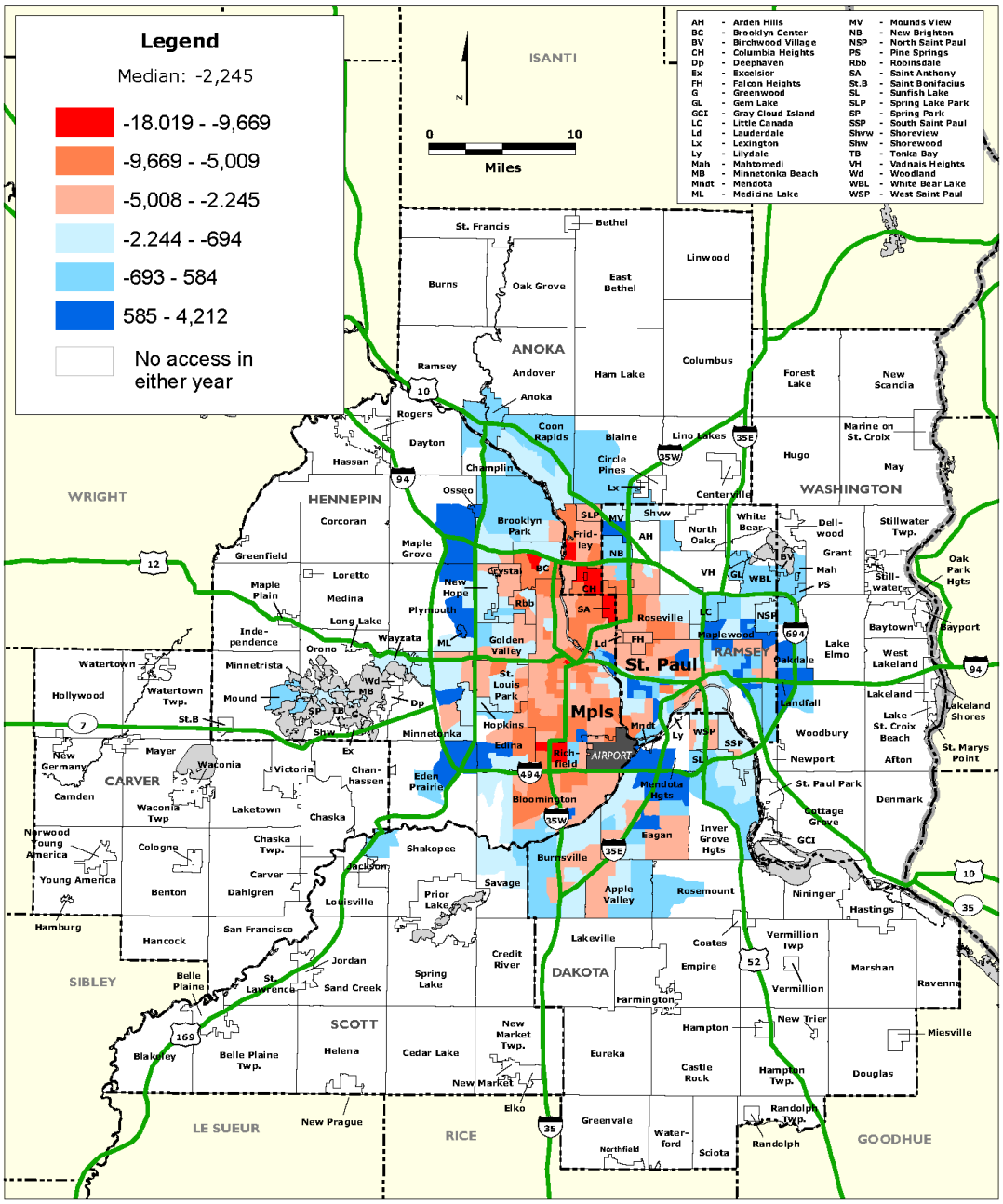
Map 4: MINNEAPOLIS - SAINT PAUL REGION
Change in the Number of Jobs Accessed by Midday Transit in Census Tracts, 2005 to 2010



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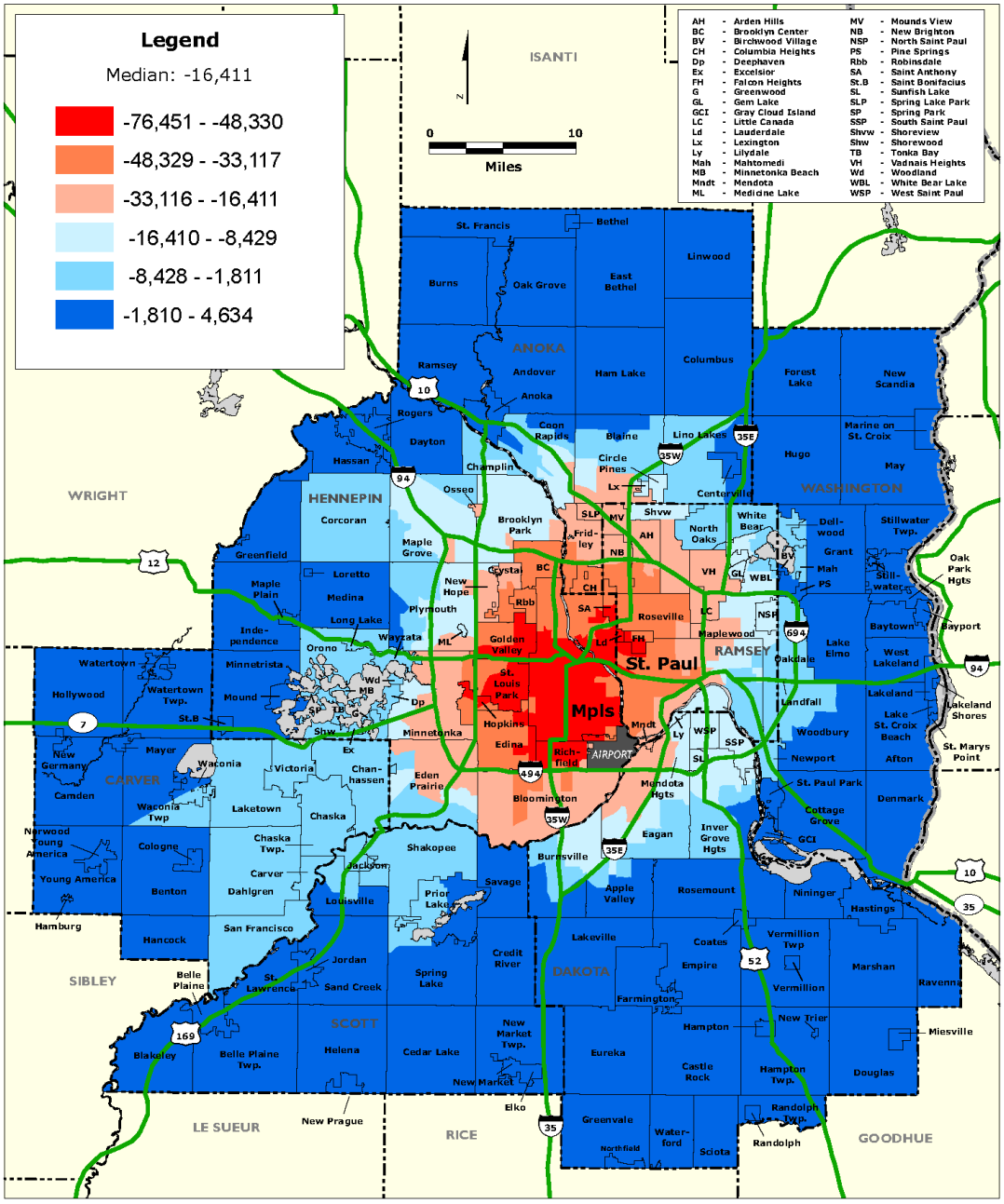
Map 5: MINNEAPOLIS - SAINT PAUL REGION
Change in the Number of Low Wage Jobs Accessed by AM Automobiles in Census Tracts, 2005 to 2010



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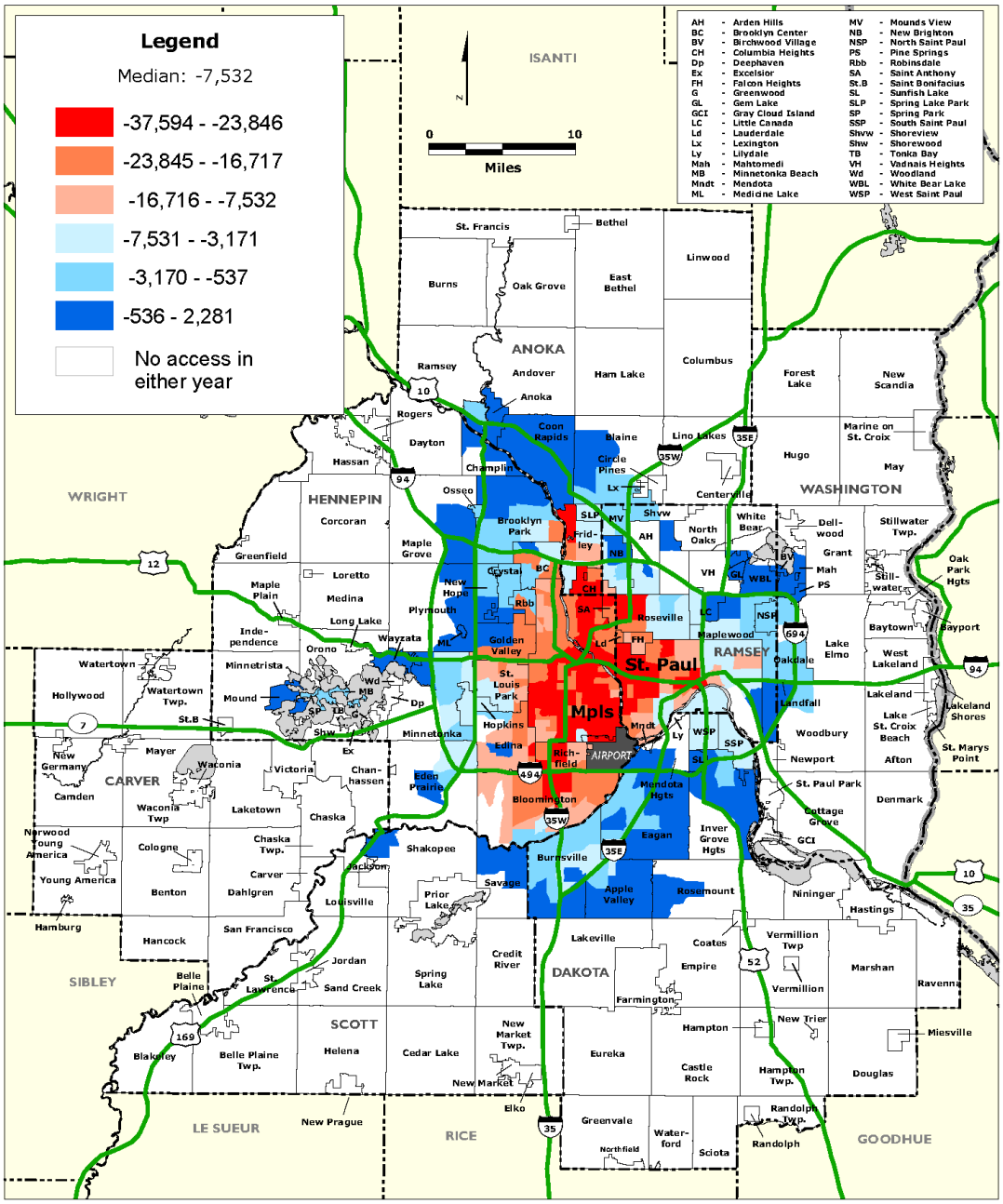
Map 6: MINNEAPOLIS - SAINT PAUL REGION Change in the Number of Low Wage Jobs Accessed by Midday Transit in Census Tracts, 2005 to 2010



The maps show a starkly different pattern than the proximity to jobs measure. Access to job growth is clearly better in middle and outer suburbs than in the central cities and inner suburbs. Not surprisingly, the pattern is stronger for access by automobile than for transit (since transit is focused in the core of the region). However, even the map for transit access shows that middle suburbs provide the best access to job growth.

This pattern is even starker for the types of jobs most accessible (in terms of skills) to lower-income workers (Maps 5 and 6). Access to growth in low-wage jobs by auto and transit is even more heavily concentrated in middle and outer suburbs than for total jobs.

> **Proposed Changes:** Adopt the full set of HUD employment opportunity metrics in place of the more limited Met Council metric. Analyze job growth in addition to the location of existing jobs.

Gentrification

In the context of fair housing, discussion of gentrification must be undertaken with great care. This is because many of the possible remedies for gentrification—creation of affordable housing, efforts to moderate market-rate housing development and private investment, efforts to preserve neighborhood character or existing affordability—can, if applied to a non-gentrifying neighborhood, create or accelerate the concentration of poverty.

As a result of this, it is essential to clearly identify *where* and *to what degree* gentrification is occurring, as well as what fair housing harms result from it. The Addendum cannot merely "assume[] that gentrification is likely occurring in some Twin Cities neighborhoods, while acknowledging that this assumption has its detractors."[86] Such an assumption risks causing far greater fair housing harm than benefit. In order to generate coherent action steps, the Addendum must "nail down" gentrification so that it can be clearly located and comprehensible to entitlement jurisdictions.

The process of identifying gentrification is complicated by the fact that there is no single, accepted definition of the phenomenon. Even the Draft Addendum's discussion of gentrification discusses several, loosely related definitions of the phenomenon, with no clarification as to why those particular metrics were selected. Without a firm definition, virtually any neighborhood can be labeled as gentrifying, gentrified, or at risk.

Much like segregation, gentrification is a phenomenon that occurs at the neighborhood level, not at the jurisdictional level. However, because gentrification typically occurs more rapidly than segregation, analyzing changes at the smallest geographic units introduces considerable risk of sampling error. This is particularly true if gentrification measures are sensitive to neighborhood improvements, no matter the scale. For instance, several of the metrics in the Draft Addendum regard *any* increase in neighborhood educational attainment as symptomatic of gentrification – a standard which would likely produce many "false positives" as a consequence of sampling errors in Census data. As a

[86] Draft Addendum 198.

result, it is not always preferable to use the smallest possible unit of geography when measuring gentrification.

For the reasons above, the Draft Addendum's attempts to identify the areas in which gentrification is occurring in the Twin Cities region are not sufficiently specific or rigorous to be useful to jurisdictions concerned about potential gentrification. Equally concerning is the inclusion of third-party findings on the subject in the form of a CURA draft report, which suffers from many of the problems described above. The Addendum attempts little independent analysis of this report – particularly necessary in this instance since the report is far from complete. But the CURA report's conclusions about where gentrification is occurring are inconsistent, and alarmingly, 80 percent of the census tracts it flags as suffering from gentrification have shown increases in poverty over the same time period. The inclusion of these finding thus risks causing further concentration of poverty by mistakenly triggering opposition to investment in declining neighborhoods.

> **Proposed Change*:*** Provide a more-complete definition of gentrification, ideally including statistical measures that can be empirically tested. Clearly delineate the fair housing impediments gentrification creates, especially beyond the harm of displacement, which should be treated separately (see below). Limit the inclusion of incomplete studies of gentrification, or provide adequate independent analysis to support those studies.

Displacement

The Draft Addendum makes little attempt to separate its discussion of displacement from its discussion of gentrification. In reality, however, the connection between the two problems is loose and often nonexistent.

Research consistently shows that displacement is equally or even *more* likely to occur from neighborhoods where economic indicators are declining than neighborhoods where indicators are improving.[87] This is because real wages in declining neighborhoods tend to fall faster than rents, while, in improving neighborhoods, they keep pace with rents. Another confounding factor is regional housing costs, which can rise and fall in concert. Increasing housing costs in one neighborhood may mean nothing about that neighborhood but instead be part of a broader regional trend.

Moreover, in declining neighborhoods, the overall number of housing units is frequently declining or stagnant, often *despite* increases in subsidized housing. By contrast, in improving neighborhoods, Census data shows that the overall number of housing units is often growing, meaning that in-movers do not necessarily displace previous residents.

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[87] *See, e.g.*, JOE CORTWRIGHT AND DILLON MAHMOUDI, LOST IN PLACE (2014) ("Careful comparisons of gentrifying and non-gentrifying neighborhoods show measurable displacement is no higher in gentrifying neighborhoods than in non-gentrifying neighborhoods."); T. McKinnish and T.K. White, *Who Moves to Mixed-Income Neighborhoods?*, REGIONAL SCIENCE AND URBAN ECONOMICS (2011); Lance Freeman, *Neighbourhood Diversity, Metropolitan Segregation and Gentrification: What Are the Links in the US?*, 46 URBAN STUDIES 2079 (2009); Lance Freeman, *Displacement or Succession? Residential Mobility in Gentrifying Neighborhoods*, 40 URBAN AFFAIRS REVIEW 463 (2005).

Notably, these processes can cause neighborhood residents to misreport gentrification where none is occurring. From a ground's-eye view, it is hard to distinguish between displacement due to rising rents and displacement due to falling incomes, and many residents assume any displacement at all is symptomatic of gentrification. Consistent with this tendency, the community engagement process for the Draft Addendum seemed to identify more gentrification-caused displacement than is apparent in empirical measures.

The Draft Addendum appears to inadvertently recognize that there is a contrast between displacement and gentrification when discussing the *Sold Out* report that forms the basis for much of its displacement section.[88] It notes that areas with large amounts of so-called apartment "upscaling" do not appear to be the same areas as those which have been flagged as gentrifying: "Upscaling appears to be more a function of the region's tight rental market than a side effect of gentrification . . . [T]he locations of multifamily property sales between 2010 and 2015 are largely inconsistent with the tracts CURA identifies as having gentrified."[89] It also notes that apartment property sales, which is what *Sold Out* focuses on, do not "necessarily" result in either higher rents or displacement.[90] It, however, does not take this observation further, and recognize that displacement and gentrification are two separate phenomena, which occur in different places, and have different causes.

In discussions of both gentrification and displacement, the Draft Addendum makes little effort to identify the scale of the problem – a necessary consideration when determining the scale of efforts to remedy it.

In the case of displacement caused by gentrification, the scale of the problem appears minimal. In Minneapolis and Saint Paul between 2000 and 2014, only 17 out of 198 census tracts gained non-poverty population and lost poverty population, which would be necessary if newcomers were displacing existing residents. The total poverty population in those tracts only decreased by 1608. For comparison, 111 of 198 tracts saw a *decline* in non-poverty population and an *increase* in poverty population – a pattern consistent with the concentration of poverty. The number of individuals in poverty in these tracts *increased* by 35,111. Similar patterns were observed regionwide. The full findings of this analysis are included in the tables below.[91]

Although these figures are not precisely accurate due to sampling error, this preliminary analysis suggests the number of residents newly impacted by concentration of poverty is ten to twenty times greater than the number of residents impacted by displacement.

> **Proposed Changes**: Specify that displacement and gentrification are separate phenomena and often unrelated. Conduct a more rigorous analysis of where displacement is occurring, and the scale of the problem.

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[88] Minnesota Housing Partnership, Sold Out (2016), available at http://www.mhponline.org/images/Sold_Out_final_revised_small.pdf.
[89] Draft Addendum 199.
[90] *Id.* at 163.
[91] Tables generated using U.S. Census data.

Minneapolis and St. Paul (2000-2014)

	Tracts that gained non-poverty population	Tracts that lost non-poverty population
Tracts that gained poverty population	46 tracts with: **20,891 gain** in non-poverty population and **14,677 gain** in poverty population	111 tracts with: **46,183 loss** in non-poverty population and **35,111 gain** in poverty population
Tracts that lost poverty population	17 tracts with: **2,963 gain** in non-poverty population and **1,608 loss** in poverty population	24 tracts with: **6,537 loss** in non-poverty population and **2,771 loss** in poverty population

Twin Cities Metro Region (2000-2014)

	Tracts that gained non-poverty population	Tracts that lost non-poverty population
Tracts that gained poverty population	46 tracts with: **260,811 gain** in non-poverty population and **50,811 gain** in poverty population	111 tracts with: **125,012 loss** in non-poverty population and **94,901 gain** in poverty population
Tracts that lost poverty population	17 tracts with: **22,381 gain** in non-poverty population and **3,526 loss** in poverty population	24 tracts with: **17,869 loss** in non-poverty population and **3,916 loss** in poverty population

Representativeness of Community Engagement Feedback

In the Twin Cities region, people of color and families in poverty are more likely to live in the suburbs than in the central cities of Minneapolis and Saint Paul. The Draft Addendum's community engagement results, however, appear to draw disproportionately from the central cities than the suburbs, and that may skew the reliability of any data collected.

While, without additional data, it is impossible to make precise determinations of the relative representation of different areas in the process, the maps in the community engagement demographic summary make clear that the vast majority of responses were collected from Minneapolis and Saint Paul. But the majority of every nonwhite demographic group resides in the suburbs: 51.2 percent of black residents, 65 percent of Asian residents, 59.8 percent of Hispanic residents, and 50.3 of American Indian residents.

This problem is further exacerbated by an apparent geographic focus on a handful of areas within Minneapolis and Saint Paul – primarily higher-poverty ZIP codes that contain neighborhoods with heavy concentrations of poverty. For example, just four high-poverty ZIP codes in Minneapolis and Saint Paul account for at least 104 responses, approximately 25 percent of the total who provided responses. (It is possible that these areas account for a considerably larger share; again, without exact data, it is impossible to say.)

It is sometimes assumed these heavily segregated neighborhoods, representing North and South Minneapolis, the Central Corridor, and East Saint Paul, contain a significant portion of the region's population of people of color. But this is not the case. Instead, they contain only a tiny fraction of the nonwhite families of the Twin Cities: 14.2 percent of black residents, 14.3 of Asian residents, 8.0 of Hispanic residents, and 8.5 of American Indian residents.[92]

In short, the results of the community engagement process seem likely to reflect the priorities and concerns of the minority of Twin Cities residents who live in the central cities, and especially those living in a minority of neighborhoods in those cities. The priorities and concerns of these residents are certainly essential to a successful AI. However, they are not sufficient: the AI Addendum is regional in scope and must incorporate feedback from the majority of individuals and families living elsewhere, who, owing to the very different geographic, political, and social contexts of suburban life, likely face a very different set of impediments to fair housing.

There are a variety of techniques that can adjust for this problem. As in scientific surveys, subsamples can be analyzed separately, with feedback broken down by demographics and geography. Feedback can also be weighted to better reflect existing demographics - if suburban residents are underrepresented in the raw feedback, concerns that appear to be shared by many suburban residents can nonetheless be given greater weight in the final

[92] Figures generated using U.S. Census data.

analysis than an unadjusted tabulation would suggest. This would, in effect, help correct for errors and shortcomings in the engagement process.

> **Proposed Changes:** Weight feedback analysis by geography and regional demographics to better capture the concerns of populations underrepresented in the raw feedback. Provide more detailed demographic information with crosstabs by demographics and location.

Analysis of Community Engagement Feedback

Most of the Draft Addendum relies heavily on empirical metrics. But in the community engagement section, this reliance on numerical measures breaks down. Outside of the initial summary statistics, the section does not place the engagement analysis in any sort of quantitative frame. Instead, the section relies entirely on "theme analysis" - what appears to be a euphemism for subjective interpretation. The primary work product here is a series of short summaries attempting to summarize the views expressed in the aggregate feedback. Although some direct comments are included prior to each summary, these appear not to be broadly representative, but individually selected to support a pre-conceived observation of the Draft Addendum's authors. It is unknown how many comments *do not* appear, or what those comments may say. In addition, the characteristics of any given commenter are unknown. Thus, the comments serve little informational function.

Simply put, the community engagement analysis seems to have simply placed comments into somewhat arbitrary "piles," and sorted by loosely defined "themes." The subjective risks of this technique are substantial: they enable the interpreter to build an ad hoc narrative out of raw data. Such a process can be steered to produce widely varying conclusions from precisely the same feedback.

The previous 2014 FHIC AI attempted to categorize respondents' comments to produce rough tallies of observed impediments. Moreover, the previous AI included an appendix with every single comment received, allowing third parties to review the data themselves rather than relying fully on the consultant's own efforts to subjectively characterize the data. These efforts should be replicated here to reduce the subjectivity of the analysis. In addition, locational data on commenters should be provided where possible.

> **Proposed Change:** More empirical data on feedback should be provided. Comments should be made available as an index. Where possible, comments should be categorized by the ZIP code and jurisdiction where they were collected.

Omission of Fair Housing Complaints and Other Civil Rights Proceedings

The AFFH rule and Guidebook specify that a "[s]ummary of fair housing issues and capacity" must include any "findings, lawsuits, enforcement actions, settlements, or judgments related to fair housing or other civil rights laws" in a jurisdiction.[93]

[93] 24 CFR § 5.154 (d)(1).

Notably, guidance provided on HUD on its review of AFH documents suggests that a jurisdiction's failure to "provide information about a consent decree or pending fair housing enforcement matters to which it is a party" is sufficient to render an Assessment of Fair Housing "substantially incomplete or inconsistent with fair housing or civil rights requirements."[94]

In an appendix, the Draft Addendum briefly updates the 2014 FHIC AI's tabulation of fair housing complaints. But it does not provide any qualitative description of those complaints. At present, there are several complaints and lawsuits ongoing in the Twin Cities region that require more detailed discussion in the AI Addendum.

1. ***HUD Fair Housing Complaints.*** The AI Addendum is the product of a settlement agreement that concluded a HUD Fair Housing Complaint between a civil rights organization, several neighborhood organizations, and the cities of Minneapolis and Saint Paul.[95] The complaint alleged that the two central cities had, through funding allocation and land use policy, overconcentrated subsidized and affordable housing in areas of concentrated poverty, thus perpetuating segregation in violation of the Fair Housing Act.

A second complaint was filed by the same civil rights organization and several suburban municipalities against the State of Minnesota, the Minnesota Housing Finance Agency, and the Metropolitan Council.[96] It made similar allegations: that state and regional policymakers had pursued a variety of policies that concentrated affordable and subsidized housing in areas of concentrated poverty. The policies in question included funding policies, land use policies, tax credit allocation schemes, and the Met Council's Housing Policy Plan (as well as its abandonment of its previous, more integrative Housing Policy Plan).

The allegations made in these complaints are directed towards important fair housing issues and contributing factors that appear elsewhere in the Draft Addendum; for instance, they are founded in part on the overconcentration of tax credit housing in a handful of neighborhoods and communities. Because the existence of these complaints represents important data regarding fair housing enforcement, the empirical observations elsewhere in the complaint (for instance, on tax credit siting) corroborate observations made in the complaints, and the complaints corroborate empirical data from the Draft Addendum, the complaints should be discussed.

2. ***School Desegregation Lawsuits.*** HUD rules not only require the discussion of fair housing complaints, but lawsuits and complaints related to "other civil rights laws."[97]

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[94] U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, GUIDANCE ON HUD'S REVIEW OF ASSESSMENTS OF FAIR HOUSING 7-8 (2016).
[95] MICAH v. City of Minneapolis, Title VI Case Number: 05-15-0007-6; Section 109 Case Number: 05-15-0007-9 (2015).
[96] MICAH v. State of Minnesota, Title VI Case Number: 05-15- 0003-6; Section 109 Case Number: 05-15-0003-9 (2015).
[97] 24 CFR § 5.154 (d)(1).

At present, the state of Minnesota is facing a major civil rights lawsuit over ongoing segregation in its school system. This lawsuit, *Cruz-Guzman v. State of Minnesota*, alleges that the failure of the state to provide desegregated schools on a metropolitan basis violates the fundamental right to an adequate education laid out in the Minnesota constitution.[98] Besides being a required subject of discussion under HUD rules, the lawsuit has important fair housing implications, suggesting a failure of the state to enforce civil rights rules and requirements in the Twin Cities region in education, with significant consequences for access to educational opportunity. It increases the relevance of the Draft Addendum's analysis of access to educational opportunity in housing.

> **Proposed Changes:** Include discussion of the HUD Fair Housing Complaints and *Cruz-Guzman* lawsuit. Where relevant, relate the allegations in those proceedings to observed fair housing issues and contributing factors.

C. COMMENTS ON RECOMMENDATIONS

Source of Income Protections

Recommendation 1 is that Minneapolis and Saint Paul adopt source of income protection for voucherholders. Minneapolis recently adopted such an ordinance, so this recommendation is partially outdated. Moreover, adopting such an ordinance in the central cities alone risks concentrating poverty by providing protections in areas where concentrations already exist. Source of income protections should be instituted regionally.

> **Proposed Change:** Extend recommendation to all jurisdictions, as well as the Metropolitan Council.

Central City Affordable Housing Funding

Data in the Draft Addendum demonstrates that a disproportionate share of subsidized housing in the Twin Cities region is concentrated in Minneapolis and Saint Paul. In addition, Minneapolis and Saint Paul command independent sources of affordable housing funding, such as the Minneapolis Affordable Housing Trust Fund, while most suburban jurisdictions do not. There is little evidence that fair housing planning is considered when this funding is allocated. Nor is there any evidence that the central cities have considered the fair housing impacts of previous investments from these sources, or even gathered the project data necessary to begin such an examination.

> **Proposed Change:** Add a recommendation that the central city community development departments integrate fair housing planning into their existing financing efforts. Recommend that impact on segregation and access to

[98] *See, e.g.*, Grey Plant Mooty Mooty & Bennett, Quick Facts about the Cruz-Guzman v. State of Minnesota Educational Adequacy Case, available at http://www.gpmlaw.com/portalresource/Cruz-Guzman_quick-facts.pdf.

opportunity be addressed as a gateway consideration in all projects financed by the central cities.

Central City Fair Housing Planning

As the Draft Addendum demonstrates, fragmentation of policymaking is a major obstacle to fair housing. Although housing financing, land use law, private market trends, and other factors can all work in concert to create segregation and reduce access to opportunity, no one entity is empowered to address all of these problems or consider their impact on outcomes.

One potential solution to this problem would be for large jurisdictions to designate a Fair Housing Office or ombudsman, who would be consulted on an advisory basis in municipal policymaking, including development decisions, land use planning, enforcement action, and elsewhere. This organization or individual could help coordinate city fair housing policy, provide ongoing monitoring of the municipality's progress towards civil rights goals (including those of this Addendum), and keep records of its interventions, recommendations, and the city's response.

> **Proposed Change:** Add a recommendation that Minneapolis, Saint Paul, and other large jurisdictions designate a Fair Housing Office or ombudsmen to act as an advisor and monitor on fair housing issues.

Suballocator System

The suballocator system helps create the concentration of tax credits seen in the Draft Addendum, by creating minimum allocations for the central city municipalities. The system also reduces the ability to effectively coordinate regional tax credit policy, by placing it in the hands of several different entities. A more consolidated tax credit system would eliminate both these problems and pave the way for intentionally integrative LIHTC allocations.

> **Proposed Change:** Add a recommendation that suballocators dissolve their suballocator authority and delegate full allocative powers to the state housing finance agency. Alternatively, add a recommendation that suballocator shares be assigned on the basis of fair housing performance and suballocator population share.

Public-Private Interactions in the Housing Industry

A key contributing factor to the concentration of subsidized housing in low-income neighborhoods is the presence of a dense network of community developers in those neighborhoods, as well as close relationships between those neighborhoods and regional affordable housing organizations like Family Housing Fund. Accentuating the problem, municipalities, agencies, and policymakers can become accustomed to dealing with these experienced housing companies, enabling them to capture a disproportionate share of limited subsidized housing resources. Public entities should be aware of this problem and

take steps to prevent it from increasing housing segregation or reducing access to opportunity by concentrating subsidized housing.

> **Proposed Change:** Add a recommendation requiring entitlement jurisdictions review their subsidized housing allocation systems to ensure that they do not favor organizations with geographic service areas in highly-segregated neighborhoods or areas of concentrated poverty.

Segregation within the Subsidized Housing System

As described earlier in these comments, there is strong evidence of internal segregation within the subsidized housing system, with certain projects serving primarily white families. This segregation is likely illegal, but at present, no enforcement action has been undertaken.

> **Proposed Change:** Add a recommendation that entitlement jurisdictions enact policies to ensure subsidized housing is leased in a nondiscriminatory fashion. Recommend that housing funders ensure that legally-required affirmative marketing plans are complete and adequate before funding is awarded, and that greater enforcement action be taken with regards to those plans after project completion.

Regional Fair Housing Enforcement

A number of current recommendations are directed at the Met Council. However, none of these recommendations address the abandonment of the Met Council's historical fair share housing program, or the abandonment of Policy 39, allowing the Council to withhold funding for nonperformance, which was used to enforce that program. Given the historical effectiveness of these approaches, they should be reconsidered

> **Proposed Change:** Add a recommendation that the Met Council readopt Policy 39 or an equivalent policy, and readopt a true fair share affordable housing program, which requires each municipality to provides its share of the regional low-income housing need.

Regional Fair Housing Allocation and Planning

The Met Council's current housing need allocation system is severely flawed, failing to adequately account for existing affordable housing or adequately address income bands in housing. In addition to reducing the goals of affluent communities with little affordable housing, many municipalities have expressed concerns the current system insufficiently recognizes their historical efforts to produce affordable housing or saddles moderate-income communities with unrealistic goals.

> **Proposed Change:** Add a recommendation that the Met Council revisit its Housing Need Allocation formula, with a specific aim of fixing the income banding formula and the existing affordability formula.

Regional Fair Housing Goals

In the 1970s, due to Met Council efforts, a large majority of subsidized housing in the Twin Cities was constructed in suburban areas. Today, as the Draft Addendum suggests, Minneapolis and Saint Paul contain a majority of subsidized housing. As regional population suburbanizes, this ensures continued housing segregation.

> **Proposed Change:** Add a recommendation that the Met Council institute an overarching policy goal that the urban-suburban shares of subsidized housing reflect the urban-suburban population split, and pursue and enforce that goal in its various housing allocation and planning systems.

Coordination with Civil Rights Efforts

Housing is not the only field in which there are severe civil rights concerns in the Twin Cities. Twin Cities schools are also heavily segregated, and school segregation (as well as residents' concerns about access to education) can be a major contributing factor to housing segregation. Communities addressing fair housing issues cannot succeed if they treat those issues in isolation. There are a number of ways in which communities can assist or coordinate with civil rights efforts in education: guiding or zoning land to ensure that schools are integrated, communicating with local districts to prevent land use or school boundary decisions from destabilizing school or neighborhoods, encouraging districts to participate in multidistrict or regional integration plans, providing land for integrated magnet schools, or supporting legal efforts at the local or state level to desegregate schools.

> **Proposed Change:** Add a recommendation that municipalities and entitlement jurisdictions take proactive action to prevent school segregation from creating greater housing segregation, especially by fully considering impacts on school demographics when guiding or zoning land, and maintaining channels of communication with districts when making land-use decisions.

Revitalization

Place-based strategies currently in operation often rely on several faulty assumptions: that affordable housing development is a viable revitalization method, that gentrification is a widespread threat to low-income neighborhoods in the Twin Cities, and that new neighborhood residents typically displace existing residents. These strategies have led municipalities to adopt policies that have been more likely to trap low-income neighborhoods in poverty and population decline than restore them.

Proposed Change: Add a recommendation that municipalities and jurisdictions avoid revitalization strategies that create greater segregation, and instead rely on revitalization strategies that attract an integrated mix of neighborhoods to a region. These can include market-rate development, commercial development, development of strong magnet schools, and similar approaches.

IV. CONCLUSION

In its current form, the Draft Addendum fails to comply with HUD guidance, and is lacking important substantive elements. It runs substantial risk of being found inadequate by HUD, an outcome that could not only endanger entitlement jurisdiction funding, but would squander the sustained efforts of the many groups involved in the AI Addendum process. Most of all, such an outcome would represent the passing of a truly unique opportunity. At present, the Twin Cities are on a course towards ever-greater segregation, ever-larger disparities, and the permanent dimming of the economic and social fortunes of its most-disadvantaged residents. This process gives the region an opportunity to stop, assess its direction, and change it – restoring the promise of equal opportunity that defined the Twin Cities for many decades.

Such a course change will not come easily. But we believe the recommendations above, if adopted, will not only salvage the AI Addendum from falling afoul of HUD rules and guidelines, but denote the first step towards real prosperity and integration in the region.

APPENDIX A

Comments on Original FHIC AI

1. Comments on Draft AI

2. Comments on Final AI

INSTITUTE ON METROPOLITAN OPPORTUNITY
UNIVERSITY OF MINNESOTA LAW SCHOOL

Institute on Metropolitan Opportunity

Comments on the Draft FHIC 2014 Analysis of Impediments for the Twin Cities Region

The draft Analysis of Impediments to Fair Housing Choice completed by the Fair Housing Implementation Council is entirely inadequate.[1] It is a series of tables and charts, followed by a handful of pages of vaguely-described impediments and action steps. It is a hodgepodge of copy-paste drafting that eschews the analysis required by federal law in favor of ambiguously presented summary statistics. Among its most notable omissions are its failure to discuss segregation in a substantive fashion, and its refusal to analyze the role of public sector in creating impediments to fair housing. It is particularly shocking that such a substandard AI would come forward after the region has spent the last two years assembling data and analysis in the FHEA process.

In its current state, the draft Twin Cities regional AI is deficient to such an extent that it cannot conceivably fulfill its prescribed statutory role in the Affirmatively Further Fair Housing (AFFH) certification process. Unless these deficiencies are corrected, it is therefore impossible for the entitlement jurisdictions relying upon this AI to accurately certify that they are complying with the HUD AFFH requirements.

I. Role of the AI in the AFFH Certification Process

As a component of its Fair Housing Act obligations, HUD requires HOME and CDBG grantees to certify that they are Affirmatively Furthering Fair Housing (AFFH). In order to fulfill these requirements, a grant recipient must take three steps:[2]

1. Conduct an AI identifying obstacles to fair housing choice within its jurisdiction and making recommendations to reduce or remove those obstacles

2. Take appropriate actions to overcome the effects of the identified impediments

3. Monitor these actions and maintain records showing they were taken

[1] Fair Housing Implementation Council, 2014 Analysis of Impediments to Fair Housing Choice: Twin Cities Region (Public Comment Draft), available at http://www.housinglink.org/files/2014-FHIC-AI-Public-Comment-Draft.pdf [hereinafter FHIC AI].
[2] U.S. Department of Housing and Urban Development, Fair Housing Planning Guide 1-2, 1-3 (1996), available at http://portal.hud.gov/hudportal/documents/huddoc?id=fhpg.pdf [hereinafter FHPG].

The AI serves as the catalyst for this three-step process. The AI documents existing impediments to fair housing, determines their relative severity, and explores remedies, as well as discussing other actions a grantee may have undertaken affirmatively further fair housing. Without an accurate AI, it is impossible for entitlement jurisdictions to proceed to Step 2, because they lack information about which impediments they should be taking action against or what strategies would be most effective in reducing those impediments.

The overarching goal of HUD's fair housing policies, the AFFH certification process, and by extension the AI, is to "eliminat[e] racial and ethnic segregation, illegal physical and other barriers to persons with disabilities and other discriminatory practices in housing."[3]

HUD's Fair Housing Planning Guide lays out, in voluminous detail, the parameters of a successful AI. Although the Guide does not mandate a particular format, and of course does not require that every jurisdiction find the same set of impediments, it does clearly describe specific areas that must be investigated in order to uncover all significant impediments to fair housing. Moreover, it makes the clear the depth of analysis that entitlement jurisdictions must conduct.

For example, in its opening pages, the Guide summarizes the tasks an AI must accomplish – a summary that is repeated in the opening pages of the FHIC draft document:

> The AI is a review of impediments to fair housing choice in the public and private sector. The AI involves:
>
> - A comprehensive review of a State or Entitlement jurisdiction's laws, regulations, and administrative policies, procedures, and practices.
>
> - An assessment of how those laws affect the location, availability, and accessibility of housing.
>
> - An evaluation of conditions, both public and private, affecting fair housing choice for all protected classes.
>
> - An assessment of the availability of affordable and accessible housing in a range of unit sizes.

As this summary indicates, HUD places great emphasis on *comprehensive* analysis and evaluation of trends and findings. The AI is not meant to function as a depository of facts or data but as an analytic document that synthesizes facts and data into concrete conclusions about the regional causes of housing segregation and housing

[3] *Id.* at 1-1.

discrimination. This is bolstered elsewhere in the Guide, where HUD specifies that "[t]he scope of the AI is broad" and that it "covers ***the full array*** of public and private policies, practices, and procedures affecting housing choice."[4] Through the AI, "jurisdictions must become ***fully aware of the existence, nature, extent, and causes of all fair housing problems and the resources available to solve them*** [and a] properly completed AI provides this information."[5] In part, this entails becoming "familiar with all studies that apply to their community and region," and "carefully consider[ing] the conclusions and recommendations of other housing studies prior to deciding what to study in the AI."[6]

HUD encourages jurisdictions, where possible, to undertake "metrowide" or regional fair housing planning. It notes a number of advantages to this approach, including its ability to allow jurisdictions to "overcome spatial separation and segregation" and "affirmatively further fair housing throughout the metropolitan area" by integrating the policies of local jurisdictions.[7]

Conducting an AI is no small task. AIs in many jurisdictions frequently run into the hundreds of pages, much of which is spent on complex discussion of specific local housing trends. They frequently include dense appendices of qualitative and quantitative background research, which informed this discussion.[8] Unfortunately, these successful AIs bear no resemblance to the FHIC's draft document.

It is essential to recognize that promulgating an inadequate AI can have severe consequences for HUD grantees, including a loss of funding and severe penalties running into the many millions of dollars. This was demonstrated in a recent landmark federal court case. In *United States ex rel. Anti-Discrimination Center v. Westchester County*, a federal court found that a New York county, by certifying to HUD it had affirmatively furthered fair housing after producing a badly deficient AI, was committing fraud against the United States government.[9] In a settlement, the County agreed to pay penalties exceeding $62 million dollars – a sum greater than the total of its HUD grants over the five year period covered by the deficient AI.

The FHIC AI is deeply and unambiguously insufficient. The following sections will describe some of the document's most severe deficiencies.

II. The FHIC AI Contains No Analysis Whatsoever

[4] *Id.* at 2-8 (emphasis added).
[5] *Id.* at 2-8 (emphasis added).
[6] *Id.* at 2-18, 2-19.
[7] *Id.* at 2-11.
[8] *See, e.g.*, Portland Housing Bureau, 2011 Analysis of Impediments to Fair Housing, available at http://www.portlandoregon.gov/phb/60788; City and County of Denver, Analysis of Impediments to Fair Housing Choice, available at http://www.denvergov.org/Portals/690/documents/DenverAnalysisOfImpedimentsToFairHousingChoice.pdf.
[9] United States ex rel. Anti-Discrimination Center v. Westchester County, 668 F.Supp.2d 548 (2009) [hereinafter Westchester II].

The most pervasive flaw in the FHIC AI is its complete lack of analytic content. Rather than evaluating the condition of fair housing in the Twin Cities region, it instead provides a smattering of data and statistics related to housing opportunity and discrimination, unaccompanied by the in-depth analysis that HUD requires from an AI. The entire draft can be summed up in four words: "But where's the beef?"

The vast majority of the FHIC draft consists of background data on the demographic makeup of entitlement jurisdictions and summary data of housing complaints. This information is presented devoid of context or discussion and cannot be plausibly be said to constitute any sort of analytic thinking.

The demographic section – which the HUD Guide says should only be used as "background data" – alone makes up approximately 50 percent of the substantive material of the document.[10] Moreover, this data is presented in a format that is minimally useful: tables of summary statistics of each entitlement jurisdiction (e.g., the percent of each jurisdiction that is a member of various racial or ethnic groups). Only a handful of lines in the entire document acknowledge or discuss the contents of these tables; they are essentially presented without further comment. There is no data at all about geographic subdivisions below the city and county level, meaning that intra-jurisdictional disparities are effectively invisible in these summary tables. Though the AI professes to be "regional," it includes no data about cities that are not members of the FHIC, meaning that there is no indication of disparities among or within over one hundred of the region's incorporated municipalities. Also included are a number of school district maps, which simply overlay racial composition of census tracts over school district boundaries. But because they are accompanied by no figures whatsoever about racial or demographic composition of the districts, schools, or census tracts, and because census tracts can be of varying density, it is impossible to even roughly approximate the composition of actual school districts – much less individual schools – with these maps alone. They are, in a word, useless.

HUD recommends that an AI include an "evaluation of [the] jurisdiction's current fair housing legal status," including a summary of complaints and current discrimination suits, reasons for trends and patterns, and discussion of fair housing concerns or problems.[11] The draft AI includes nearly 20 pages of summary statistics of fair housing complaints in the region, but once again, this section it contains absolutely no substantive discussion of those complaints. Rather than attempting to discern or explain trends, it takes the entirely neutral approach of summarizing complaints by their protected class basis, issue, location, resolution, etc. The task of identifying patterns or revealing their origins is, for all intents and purposes, left to the reader.

The draft's "identification of impediments" section is equally deficient. HUD's Guide makes clear that this section is ordinarily meant to be the heart of the document, where all previous analysis is synthesized into a detailed list of specific impediments within the jurisdiction. The Guide's recommended AI format subdivides the section into

[10] FHPG at 2-30.
[11] *Id.* at 2-30, 2-31.

subject matter groups, "zoning and site selection," "neighborhood revitalization, municipal and other services, employment-related-transportation linkage," "sale of subsidized housing and possible displacement," "property tax policies," "planning and zoning boards," "building codes," "fair housing enforcement," and "visitability in housing."

FHIC's draft AI instead disposes of the list of impediments with a single short section comprised of less than three full pages, on which ten impediments are listed in outline form, each described in a single sentence. (The document's "executive summary" includes a list of the impediments and recommendations; embarrassingly, this is not as summary at all but the entirety of the AI's "identification of impediments," reprinted in full at the beginning of the text. In other words, the identified impediments are so brief and so cursory that they can masquerade as their own summary.) There is absolutely no discussion at all of the nature or extent of each impediment, or the causes of any impediment. There is also absolutely no discussion of how these impediments were identified, or how they connect to the statistical or survey work that constitute the bulk of the AI. Many of the identified impediments are unacceptably vague; for instance, Impediment 10 says only "NIMBY-ism with regard to siting and placement of affordable housing," making no attempt to answer the all-important questions of where, when, who, and how often.

The recommendations suffer from the same vagueness. They are, once again, minimal both in description and content. Most only consist of a single sentence or line. None include any discussion of how they were chosen or developed, or whether other strategies were considered and rejected. Many are imprecise enough that they are likely to prove entirely useless to entitlement jurisdictions; for example, confronted with Impediment 5 – "Housing choices for people of color are impacted by perceptions about school performance and neighborhood safety" – the AI recommends that, unhelpfully, that jurisdictions "[d]evelop outreach and education strategies based on results of paired testing." This sort of highly speculative recommendation, in which jurisdictions are called upon to research problems on their own, and then develop an independent solution with no real input from the AI, is the norm. Many recommendations begin with phrases such as "[e]xplore concepts," "[e]ncourage practices" "[r]eview strategies," and "[d]evelopment of partnerships."

Failure to lay out recommendations in sufficient detail, as well as an overreliance on vague recommendations that require future research or discussion, short-circuits the entire AFFH certification process. Jurisdictions cannot undertake unreasonably broad remedies, or monitor their performance of actions that have been left undefined, inevitably resulting in a failure to complete steps two and three of the AFFH process. Many of the suggested remedies (e.g., education, outreach, and partnership building) are by their nature difficult or impossible to concretely monitor. A skeptical observer might infer that this is part of an intentional tactic to stymy HUD's fair housing aims: devising nebulous remedies in order to satisfy HUD requirements without making any real, effective, or measurable commitments to remedy segregation or alter living patterns.

The impermissible lack of analysis in the FHIC AI mirrors the flaw that doomed Westchester County's AI in the *Westchester* court case. The lawsuit in *Westchester* was founded on the plaintiffs' claim that the County failed to "engage in any independent analysis or exploration of impediments, and refused to identify or analyze community resistance to integration on the basis of race and national origin as an impediment."[12] The plaintiffs argued that the County had a duty to consider race and racial segregation in its AI, which it had violated. The County attempted to counter this argument by referencing charts and tables in the AI which addressed race. The court ultimately sided with the plaintiffs, responding that analysis "certain demographic data as to the racial makeup of County and municipality populations does not in any way show that the County conducted any analysis as to how this demographic data related to the existence or lack of race-based impediments to fair housing choice."[13]

In the present case, the AI consists of *virtually nothing but* "certain demographic data as to the . . . makeup" of the jurisdictions in question. In other words, the AI "does not in any way show that the [FHIC] conducted any analysis" related to *any element of* fair housing choice. If the Westchester County AI fails because it omitted an essential assessment of racial segregation, the FHIC AI must also fail – for omitting the very act of assessment.

III. The FHIC AI Completely Ignores the Public Sector as a Source of Impediments

The Fair Housing Planning Guide makes clear that any AI should conduct a very searching analysis of "public activities, practices, and procedures involving housing and housing-related activities."[14] This requirement is unambiguous; indeed, HUD's recommendations envision analysis of the public sector taking up half or more of the final document.

According to HUD, government "actions or omissions" that should be addressed in an AI include straightforward factors like housing or zoning codes, but also indirect government actions such as job creation efforts, patterns in the provision of services, and redevelopment activities. The Guide also places an emphasis on intra-governmental interactions – both horizontal, between different municipalities, and vertical, between agencies with overlapping authority.[15]

Special attention is given to issues surrounding site selection. The Guide is unambiguous on the subject: "[i]f fair housing objectives are to be achieved, the goal must be to avoid high concentrations of low-income housing."[16] It also recognizes the

[12] United States ex rel. Anti-Discrimination Center v. Westchester County, 495 F.Supp.2d 375, 377 (2007) (internal quotation omitted) [hereinafter Westchester I].
[13] Westchester II at 564.
[14] FHPG at 2-9.
[15] *Id.* at 5-5.
[16] *Id.* at 5-6

considerable challenge of doing so: "many communities feel strongly that housing for [low-income, homeless, and disabled] persons should be provided but 'not in my backyard.'"[17]Additionally, it identifies jurisdictional divisions as a major obstacle to providing less concentrated subsidized housing: "in metropolitan areas, serious consideration should be given to ways [communities] can participate in cooperative, interjurisdictional planning for construction of assisted housing."[18]

The Guide suggests several specific questions to guide this inquiry. These include "Are there concentrations of low- and moderate-income housing in one more localities or neighborhoods within the jurisdiction's geographic area?" and "Has the jurisdiction adopted policies and procedures that promote the placement of new or rehabilitated housing for lower-income households . . . in a wide spectrum of neighborhoods?"[19]

It is also suggested that an AI consider actual demographic trends among public housing occupants; for instance, whether "there [is] a pattern in or more assisted housing developments of concentration of tenants by race or ethnicity," or if there is a "pattern, by location and family type, of minority and nonminority certificate and voucher holders who rent units under the Section 8 . . . voucher housing assistance program."[20]

HUD's Guide includes a number of "example" impediments, which demonstrate the type of public sector "actions or omissions" that should appear in an AI. These include the absence of an enforcement mechanism for correcting housing site selection disparities,[21] zoning ordinances in suburban communities that prevent construction of multifamily housing,[22] failure to support the local fair housing agencies,[23] and even apathy and status quo bias among political and community leaders.[24]

In other words, HUD's guidance makes clear that an analysis of the public sector is an essential – if not the most essential – component of an AI. But the FHIC draft document, in effect, writes government activity out of fair housing. The following is a complete summary of the AI's treatment of government impediments to fair housing:

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[17] *Id.*
[18] *Id.*
[19] *Id.* at 5-6, 5-7.
[20] *Id.* at 5-13, 5-14.
[21] "The State does not have an enforceable site selection policy for affordable housing that will compel its major cities to select sites for affordable housing located outside of minority or low-income areas or allocate such housing on a metropolitanwide basis." *Id.* at 3-13.
[22] "The suburban jurisdictions of the State's major cities have exclusionary zoning ordinances that preclude the construction of affordable multifamily housing and keep out lower-income and minority persons." *Id.* at 3-11.
[23] "The local fair housing agencies are under-funded and ill-equipped to enforce their local fair housing ordinances." *Id.* at 3-13.
[24] "The AI also documents the results of extensive interviews with all segments of the real estate community and community leaders of all races and ethnic groups; these interviews and surveys reveal that all parties concerned feel comfortable with the status quo of segregated housing patterns, racial hostility as it relates to housing issues, and the lack of any resolve to tackle these problems." *Id.* at 3-12.

- One map, unaccompanied by any discussion or analysis, depicting "Access to Social Services and Basic Necessities and Concentrated Areas of Poverty"[25]
- One survey question, unaccompanied by any discussion or analysis, asking whether "Government Agencies . . . provide interpreters for housing meetings"[26]
- One listed impediment, which reads in its entirety "Development processes in local government can limit construction of affordable housing and housing for people with disabilities"[27]

This approach is utterly inadequate. One map and one survey question could not conceivably lead to a fuller understanding of the complex interactions between public policy and fair housing. Moreover, the identified impediment is general to the point of meaninglessness, and self-evident: it should be obvious that development processes "can" limit construction of affordable housing. The question, of course, is whether this has in fact occurred in the Twin Cities, and if so, where, how often, to what degree, and in what respect. But the information to evaluate these questions is completely absent from the AI and nothing in the document suggests any attempt was made to acquire it or answer them.

The failure to include an evaluation of government policies is especially bizarre in light of the fact that, on its very first page, the draft AI quotes the HUD Guide, noting that "[a]n AI involves . . . [a] ***comprehensive*** review of a State or Entitlement jurisdiction's laws, regulations, and administrative policies, procedures and practices."[28] But the remainder of the document contains absolutely no analysis that fits this description. It does not address the role of subsidized housing policy in altering housing patterns or contributing to concentrations of poverty; it does not directly discuss the role of regional land use or housing policy in creating or sustaining living patterns; it does not analyze zoning regulations, housing investments, or any other element of local housing policy.

The only *direct* mention of specific laws, regulations, or policies comes in a more positive light, in the section entitled "Assessment of Current Fair Housing Activities."[29] Even this section, however, is minimalistic and cursory, with the same defects as the rest of the AI: it simply summarizes information without providing analysis, commentary, or placing it in a regional context.

The section makes no effort to comprehensively evaluate the fair housing activities of the various jurisdictions, or even investigate in even moderate detail what those activities consisted of. The descriptions of specific policies being implemented by jurisdictions are often perfunctory, stating, for example, only that Carver County "[c]onducted agency-wide Fair Housing training," or that Washington County

[25] FHIC AI at 51.
[26] *Id.* at 68.
[27] *Id.* at 93.
[28] *Id.* at 5 (emphasis added).
[29] *Id.* at 54-59.

"[p]articipated in Fair Housing testing with 'secret shoppers' at random properties," without any further explanation of the activity or its results. (Dakota County's work is described in slightly greater detail than any other jurisdiction; this appears to be because those passages are copied verbatim from the County Development Authority's public website.)

The AI's failure to comment on the breadth, effectiveness, or sufficiency of this or any other jurisdiction's activities is especially alarming because even the AI's minimalistic approach demonstrates that the vast majority of Twin Cities jurisdictions have made little or no effort to support fair housing. For instance, the AI's entire description of Anoka County's fair housing activities is only 24 words long and consists of two minor undertakings: "Advertis[ing] Fair Housing Month in April every year" and "Promot[ing] Fair Housing on website."

This section also includes the document's only specific acknowledgement of city-level laws and policies. Understanding local laws is essential to conducting a successful AI: while describing potential impediments that should be investigated, the HUD Fair Housing Planning Guide addresses "zoning and site selection" as the very first avenue of inquiry.[30] On this topic, the Guide lists no fewer than 19 detailed questions that an AI's drafters should explore.[31] The FHIC draft, by comparison, dedicates only eight lines of text to two zoning changes in one city, Woodbury. (Six of these discuss a change designed to allow church congregations "to start holding their worship services and other events in commercial areas," a strange inclusion given the explicitly residential aims of fair housing policy.)

This abbreviated summary of local policies is especially troubling, as Woodbury is only home to 66,000 of the region's approximately 3.5 million citizens. Seven other regional cities – including Minneapolis and Saint Paul, which together constitute one-fifth of the regional population – are FHIC members and therefore relying upon this AI in order to certify to HUD that they have met their AFFH obligations. None of these other cities' fair housing policies, zoning laws, or regulations are discussed *in any fashion whatsoever* in this draft document.

The exclusion of the public sector from the regional AI is astonishing and unacceptable. To the extent that segregation and the concentration of poverty exist within the region, they cannot be understood without reference to the overlapping laws and regulations that constrain and encourage development in particular localities, the subsidies that provide a large share of the housing occupied by low-income and nonwhite families, and the broad housing policies developed by major regional public bodies, including the two central cities and the regional government. These omissions are especially baffling because housing policy in the Twin Cities region is unusually cooperative, controlled in part by a regional authority with an explicit statutory role in facilitating a "fair share" model of affordable housing construction. While some entitlement jurisdictions may be able to plead ignorance with regards to the ways that

[30] FHPG at 2-31
[31] *Id.* at 5-6, 5-7, 5-8.

public policy can affect residential demographics, the Twin Cities are engaged in a public, coordinated effort to change living patterns throughout the metropolitan area by relying upon centralized policy development.[32] Somehow, none of this merits evaluation in the AI.

During recent years, IMO has produced extensive commentary on virtually every major housing policy document drafted in the Twin Cities region. For use during the finalization of the FHIC AI, this commentary is included in Appendices II-VIII and incorporated by reference. This commentary would provide an adequate starting point for an analysis of public sector involvement in housing.

IV. The AI Does Not Perform Any Direct Analysis of Regional Racial Segregation

One of the most important aims of the Fair Housing Act, and the AFFH process to which it has given rise, is remedying entrenched segregation, particularly racial and ethnic segregation. The centrality of racial segregation in fair housing has been confirmed by HUD itself, which opens its Fair Housing Planning Guide with a reaffirmation of its commitment to "eliminating racial and ethnic segregation."[33] It has also been confirmed by numerous federal courts, such as in *Otero v. NYC Housing Authority*, where the Second Circuit Court of Appeals held that the Fair Housing Act was intended to accomplish "the goal of open, integrated residential housing patterns and to prevent the increase of segregation, in ghettos, of racial groups."[34] Justice Stephen Breyer, writing for the First Circuit in *NAACP v. HUD*, has said that the Act "reflects the desire to have HUD use its grant programs to assist in ending discrimination and segregation, to the point where the supply of genuinely open housing increases."[35]

The recent *Westchester* case applies the question of racial segregation directly to the development of an AI. The court in *Westchester* held that "[i]n identifying impediments to fair housing choice, [a HUD grantee] must analyze impediments erected by race discrimination or segregation."[36] Quoting from the Fair Housing Planning Guide, the same court explained further: "HUD's suggested AI format includes a housing profile describing the degree of segregation and restricted housing by race, ethnicity, disability status, and families with children; and how segregation and restricted housing supply occurred."[37] Those suggestions are more than simple persuasive authority: "The HUD Guide's suggestion that . . . the grantee should analyze the degree of segregation within its jurisdiction, are firmly rooted in the statutory and regulatory framework."[38]

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[32] *See, e.g.,* Metropolitan Council, Housing Policy Plan, available at http://www.metrocouncil.org/Housing/Planning/Housing-Policy-Plan.aspx.
[33] FHPG at 1-1.
[34] Otero v. N.Y. City Housing Authority, 484 F.2d 1122, 1133-34 (2d Cir. 1973).
[35] NAACP v. Sec. of HUD, 817 F.2d 149, 155 (1st Cir. 1987).
[36] Westchester II, 668 F.Supp.2d 548, 552 (2009).
[37] *Id.* at 555 (internal quotations omitted).
[38] *Id.* at 564.

The draft AI ignores these precedents and only touches on the problem of segregation obliquely. Although it includes several tables and maps indicating that Minneapolis and Saint Paul contain significant racial concentrations (e.g., 45 percent of all census tracts in Saint Paul are racially concentrated), and that this represents a major regional disparity (e.g., five of the seven counties covered by the AI contain no racially concentrated census tracts), the document does not acknowledge or discuss that this represents racial segregation that must be remedied.[39] None of the ten brief impediments reference discuss segregation or racial concentrations of poverty, or, for that matter, the concentration of any protected class. If anything, one recommendation seems neutral or even skeptical of the value of pursuing integration, suggesting only that jurisdictions "[a]nalyze how nationwide deconcentration strategies and best practices related to housing and transportation impact fair housing protected classes."[40] Remarkably, the word "segregation" only appears four times in the entire document – once in an appendix of community comments, twice in a summary of a report detailing Twin Cities segregation, and once, ironically, in a summary of *Westchester* itself.

An AI cannot reduce racial segregation if it refuses to discuss segregation as a housing impediment. HUD grantees are not permitted to take a neutral stance towards ongoing racial concentration – they are required by the Fair Housing Act to break down the barriers that have prevented racial groups from freely intermixing. The FHIC AI, however, maintains a detached agnosticism towards the problem of racial segregation, failing to explore its exact dimensions or devise targeted measures to reduce it. Tellingly, a major increase or reduction in the degree of regional racial isolation would appear to have no bearing on any of its recommended action steps; the AI's proposed solutions are simply disconnected from the segregated status quo.

Again, the material reproduced in Appendices II-VIII discuss regional racial segregation extensively would provide a sound starting point for any revisions to the FHIC AI.

V. FHIC Was Notified of AI Requirements and Had Access to Sufficient Resources to Conduct a Valid AI

The FHIC AI's extraordinary deficiency is especially alarming because the parties involved in its construction have had every opportunity to do better. The Twin Cities region is currently concluding the process of producing a Fair Housing Equity Assessment, which has been coordinated by the Metropolitan Council, the regional entity charged with developing metrowide housing policy. Although this equity assessment is not itself without flaws, it nonetheless does directly address the issues of racial segregation and public sector involvement in fair housing. Unlike the draft AI, it also conducts analysis rather than simply presenting data, in order to generate a more cohesive understanding of the causes of housing inequality. HUD recognizes the value of this sort of preexisting store of information, and its Guide to drafting an AI, it states that

[39] FHIC AI at 12-14
[40] *Id.* at 93.

"[j]urisdictions should not waste effort restudying and reanalyzing problems for which good information already exists."[41] The FHIC, however, opted to not rely upon the FHEA document or utilize the resources it produced. Its AI only mentions the FHEA in passing and does appear not incorporate any of its work, even when doing so could help fill obvious deficiencies in the AI.

FHIC was clearly notified, in advance, of the required elements of its AI. A memorandum provided to the drafters described these requirements – with special emphasis on the need to analyze public sector impediments to fair housing and to address racial segregation. This memorandum is incorporated by reference into these comments, and included as Appendix I below.

The earlier memorandum also described in summary form a number of governmental impediments to fair housing, none of which have been acknowledged in the present AI draft. These include:

- **A severely segregative distribution of affordable housing.** Up to 92 percent of very-low income subsidized housing units are located in the two central cities, which contain the region's most significant areas of racial concentration.
- **The Metropolitan Council's housing policy.** The Council maintains a regional affordable housing policy which assigns heavier targets to racially segregated municipalities. It also negotiates Livable Community Act housing goals with individual cities; these have historically been reduced in affluent white suburbs in response to suburban noncompliance, and increased in the central cities and racially diverse suburbs.
- **The regional Low Income Housing Tax Credit (LIHTC) system.** A disproportionate share of regional housing tax credits are awarded to projects in the central cities. The state distributes credits through a "suballocator" system which ensures the central cities have a disproportionately large minimum share of LIHTC. In addition, the central cities and Minnesota Housing Finance Agency maintain Qualified Allocation Plans which tend to award credits to developers who are building affordable housing in low-income, segregated neighborhoods.

This list is merely meant as a demonstration of key regional impediments and is incomplete. The vast array of local zoning laws, housing programs, and administrative policies also impact fair housing in the Twin Cities; once again, many of these are discussed in extensive detail in the various appendices following these comments. Some FHIC members directly control major housing policy instruments – for instance, the Minneapolis Community Planning and Economic Development agency's Affordable Housing Trust Fund, which distributes millions of dollars a year to build subsidized low-

[41] FHPG at 2-18.

income units within the city. The FHIC AI gives no inkling that these policies even exist, much less that they may create or affect impediments to fair housing.

The AI drafting process also failed to utilize a number of other readily available resources, leading to a large number of additional deficiencies. Problems include:

- **The FHIC did not consult local civil rights organizations such as the NAACP.** This is in spite of the HUD Fair Housing Planning Guide encouraging AI drafters to "use existing organizational relationships," specifically noting that "fair housing groups . . . have proven to be effective in uncovering and addressing housing discrimination."[42]
- **The AI does not communicate the results of previous AI recommendations.** Monitoring results is required by the three-step AFFH process. Discussing these results would strengthen the AI's analysis. Nor does the current AI lay out an oversight plan so that the results of its recommendations can inform future studies.
- **The AI does not analyze housing occupancy data, or patterns of occupancy among Section 8 recipients.** A number of housing agencies maintain data on the demographics of the occupants of their low-income subsidized units. This data is a valuable resource for revealing the effectiveness of particular fair housing approaches and uncovering existing segregation. In addition, US Census data includes information about the number of Section 8 voucher beneficiaries in particular census tracts – information which reveals major concentrations in many Twin Cities neighborhoods. Both sources are ignored.
- **The AI does not utilize university resources.** The University of Minnesota includes a number of policy-oriented centers and institutes engaged in the study of fair housing and housing policy. These were not consulted in the drafting of the AI.
- **The FHIC did not coordinate with state agencies.** The Minnesota Housing Finance Agency and the Metropolitan Council both work heavily in the housing sector in the Twin Cities region. Rather than working alongside these agencies, the FHIC chose instead to conduct a separate AI, fragmenting government resources and undermining the final product.
- **The AI does not identify the participants in its stakeholder engagement sessions.** This is problematic because fair housing discussions are frequently dominated by parties with an economic interest in building affordable housing, such as housing developers. This can lead to a process that focuses too heavily on the provision of housing and ignores impediments to housing choice, as was the case in *Westchester*.

[42] FHPG at 2-15.

For these reasons, and the other reasons laid out above, the FHIC draft AI is badly inadequate. In order to fulfill its role as the basis of an AFFH certification, it must be substantially revamped and extended, with a new emphasis on analysis, reducing segregation, and comprehensively evaluating public *and* private sector impediments to fair housing. Any other outcome would endanger the hundreds of millions of dollars in HUD funding that rely upon the FHIC's ability to produce an acceptable analysis of impediments.

INSTITUTE ON METROPOLITAN OPPORTUNITY
UNIVERSITY OF MINNESOTA LAW SCHOOL

Institute on Metropolitan Opportunity
Comments on the 2014 Twin Cities Regional Analysis of Impediments

The Fair Housing Implementation Council's (FHIC's) Twin Cities Regional Analysis of Impediments (AI) is severely inadequate.[1] It compounds the failings of earlier drafts with erroneous legal theories and poor analysis. It argues that it does not have to examine important housing topics and dismisses its own recommendations as "aspirational." FHIC's public comment process has produced a document that is even less adequate than the previous version. Moreover, FHIC's alterations to the AI in response to public comments leave no doubt that its deficiencies are the result of intentional policy decisions.

This memorandum is intended to accompany the Institute on Metropolitan Opportunity's (IMO's) earlier comments on the AI.[2] It focuses on new additions to the AI in the final draft, many of which appear to be directly in response to earlier critiques. The additions fail to address those critiques.

I. Background

Every version of the Twin Cities AI has suffered from numerous, critical shortcomings, any one of which is individually sufficient to undermine its prescribed role as the chief policy document guiding the Affirmatively Furthering Fair Housing (AFFH) process. These include:

- The AI contains no analysis, instead functioning only as a repository of basic statistical data.
- The AI ignores the public sector as a source of impediments.
- The AI does not directly discuss or analyze regional segregation.
- The AI does not utilize the region's recent Fair Housing Equity Assessment, which contains extensive information about segregation and housing impediments, or other important data sources such as low-income housing occupancy data.

[1] Fair Housing Implementation Council, 2014 Analysis of Impediments to Fair Housing Choice: Twin Cities Region (2015), *available at* http://www.housinglink.org/Files/2014_FHIC_AI_FINAL.pdf [hereinafter FHIC AI].
[2] Institute on Metropolitan Opportunity, Comments on FHIC 2014 Draft AI (2015), *available at* http://www.law.umn.edu/uploads/f3/e0/f3e0da2aa9163568346b0083ae5f6967/IMO-Comments-on-FHIC-AI.pdf [hereinafter IMO Comments].

- The AI makes minimalistic policy recommendations and cedes most of the responsibility for developing the details of those recommendations to future policymakers.
- The AI does not report the outcomes of the recommendations in the previous AI nor suggest any system for monitoring the results of its own policy recommendations.
- The AI was not developed in coordination with essential regional partners, such as civil rights organizations or major state agencies.

In an effort to remedy these shortcomings, IMO provided public comments on the FHIC's earlier draft AI that catalogued its deficiencies in detail.[3] The public comments were then provided to the drafting agency, and to all thirteen entitlement jurisdictions which intend to rely on the AI.[4] No response was received.

The finalized AI, which adds 13 pages to the public comment draft, was released on February 13, 2015. It does not resolve any of the deficiencies. Despite receiving notice that the earlier draft was "entirely inadequate," the AI has undergone minimal revision.[5] Nonetheless, the few revisions and additions have introduced a number of errors, misstatements, and half-truths into the AI.

Significant changes in the final AI appear to be limited to the following items:

- A new preface has been added, running from pages 6-11.
- Minor changes have been made to the identified impediments: Impediment 2 has a new recommendation, Impediment 4 has been extended to more protected classes, and Impediment 8 has a new recommendation.
- Passing mentions to the recent Regional Fair Housing Equity Assessment have been added in several places.
- A new section on "public sector investment" has been added, on pages 44-46.
- The "Assessment of Current Fair Housing Activities" section has been reorganized.
- The list of fair housing activities conducted by the entitlement jurisdiction, on pages 64-67, has been extended, with a number of activities added to Hennepin County. Activities have also been added for Bloomington and Minneapolis, which were omitted from the draft.
- An appendix listing organizations that were purportedly invited to participate in the AI process has been added, on pages 144-145.

[3] *Id.* The public comment draft of the FHIC AI has been removed from the drafting agency's website, but is on file with the Institute on Metropolitan Opportunity.
[4] *See* Letter from Myron Orfield, Director, Institute on Metropolitan Opportunity, to Maury McGough, Director, Midwest Regional Office, HUD (Jan. 21, 2015) (on file with Institute on Metropolitan Opportunity).
[5] IMO Comments at 1.

- An appendix listing purported collaborators in the AI process has been added, on page 146.

Many of these alterations appear to be in response to critiques offered in comments on the public comment draft. However, most are either superficial in nature, or actively detrimental to the AI. Significantly, the identified impediments are all but identical to the public comment draft; there is no reason to believe that this AI would function any differently in practice than the earlier version.

The following sections will describe and critique the revisions to the AI in detail.

II. The New Introductory Section Misleadingly Describes the AI's Contents and Presents Invalid Legal Theories

The most substantial addition to the draft AI is a new introductory section. Much of this section appears to be devoted to responding to concerns raised in IMO's comments on the earlier AI. It fails to address those issues, however, and the introduction is problematic in its own right.

a. Topics Omitted from the AI

The most damaging new addition to the AI is the introductory subsection entitled "Policy Items Outside the Purview of this AI."[6] This short section opens with the assertion that "[i]t is important . . . to identify what an AI is but also to define what an AI is not."[7] Unfortunately, the subsection appears to contain no such definition, and suffers from uneven grammar and scattered organization that makes its formal purpose hard to discern. It functions primarily as a short apologia for the AI, attempting to justify the minimization or omission of certain subjects – in particular, any subject which tends to show the concentration of low-income housing or protected classes in particular neighborhoods or municipalities.

The subsection strongly implies that the AI is permitted to exclude any housing policy not emerging directly from a limited set of HUD funding. It states that the recent Fair Housing Equity Assessment, regional Housing Policy Plan, and recent fair housing complaints "do not apply directly to this AI because they stemmed from causes or funding stream different from those of the AI."[8] Statements elsewhere in the document reinforce this idea. For instance, in order to excuse an incomplete list of public fair housing activity, the AI notes that certain municipal "financing tools . . . are local in nature and not funded by the CDBG, ESG, HOME or HOPWA that trigger the need for this AI."[9] While these sentences do not propose an explicit legal theory, they seem premised on that the idea that, to merit inclusion in an AI, a housing impediment or policy must have "stemmed from" the CDBG, ESG, HOME, or HOPWA grants that give

[6] FHIC AI at 7.
[7] *Id.*
[8] *Id.*
[9] *Id.* at 46.

rise to the AI itself. Other impediments are outside the purview of the analysis and, presumably, are included at FHIC's discretion.

As a legal theory, this is plainly incorrect. It is directly contradicted by HUD guidance:

> Although the grantee's AFFH obligation arises in connection with the receipt of Federal funding, its AFFH obligation is *not restricted to the design and operation of HUD-funded programs at the State or Local level*. The AFFH obligation *extends to all housing and housing-related activities in the grantee's jurisdictional area whether publicly or privately funded.*[10]

Other sources of authority are equally unambiguous. HUD's Fair Housing Planning Guide, a 170-page document describing the AFFH process, contains dozens of far-reaching questions that should be examined or considered when drafting an AI, the vast majority of which have no direct relation to any particular source of federal funding (e.g., "[a]re there concentrations of low- and moderate-income housing in one or more localities or neighborhoods within the jurisdiction's geographic area?").[11] The point is echoed in HUD's newly proposed AFFH rule, which establishes that, once triggered, a jurisdiction's obligations extend to all of its programs and activities, and strategies and actions "will be accomplished with federal *and other* resources."[12] Finally, this viewpoint was confirmed in the recent *Westchester* litigation, in which a federal court found that a jurisdiction's failure to broadly discuss racial segregation was enough to render an AI deficient.[13] Nowhere in the *Westchester* decision did the court consider whether racial segregation had any direct connection to CDBG, ESG, HOME, or HOPWA funding.

Even the AI's own drafters do not seem to believe this theory. After all, most of the subjects actually described in the AI are unrelated to HUD grants. Nor does the document ever describe how any particular impediment connects to any particular HUD funding stream. The only circumstance in which FHIC's novel theory of relevance arises is when it is attempting to explain the absence of a specific topic. Considering that this reasoning only appeared *after* IMO's previous comments pointed out a number of omissions in the AI, it is hard not to think that the entire theory is a flimsy attempt to cover the document's shortcomings.

The new subsection also spends several paragraphs discussing the Section 8 Housing Choice Voucher (HCV) program, arguing that many aspects of the program are not an appropriate subject for the AI.[14] It states that "[i]ndividual entitlement jurisdictions

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[10] U.S. Department of Housing and Urban Development, Fair Housing Planning Guide 1-3 (1996) (emphasis added), *available at* http://portal.hud.gov/hudportal/documents/huddoc?id=fhpg.pdf [hereinafter FHPG].
[11] *Id.* at 5-6.
[12] Affirmatively Furthering Fair Housing, 78 Fed. Reg. 43729 (proposed July 19, 2013) (to be codified at 24 C.F.R. pt. 5).
[13] United States ex rel. Anti-Discrimination Center v. Westchester County, 668 F.Supp.2d 548 (2009).
[14] FHIC AI at 7-8.

may choose to address this issue depending on the context of how vouchers and managed within their geographic area."[15] It notes repeatedly that voucher policies are reviewed by HUD, and begs off any responsibilities for these policies: "[A]ny concerns about such preferences should be directed to the appropriate HUD office."[16] With regard to vouchers, the AI's position is unmistakable: "The review of local preferences adopted by housing authorities is beyond the scope of this AI."[17]

Unfortunately, HUD's position is equally unmistakable, and the opposite. This Fair Housing Planning Guide proposes that an AI address the following question:

> "Do the policies and procedures of the [Public Housing Authority] or other administering agency in the grantee's jurisdiction, or PHAs or agencies administering one or more assisted housing programs in neighboring jurisdictions, discourage or reject applications from lower-income households that do not reside in their jurisdiction by imposing residency or other local preferences?"[18]

Alongside this question are no fewer than 39 other proposed questions, including both broad topics like the geographic concentrations of voucher recipients, and narrower inquiries into the specific policies used to administer the voucher program at the local level.[19]

Nor does HUD suggest that its own administrative review of voucher policies somehow obviates the need to discuss vouchers in an AI, and for good reason: the two requirements serve very different purposes. An AI provides a comprehensive overview of discriminatory housing pressures in a region, and seeks to capture the full interplay of economic forces, zoning laws, housing policy, and other factors that create segregation and isolation. In this context, it is incoherent to argue that the HCV program – the single largest housing subsidy provided to low-income families – is "beyond the purview" of the analysis.

Finally, the new subsection appears to preemptively undercut the AI's recommendations. It argues that, rather than forming the basis of a structured effort to affirmatively further fair housing, the AI's recommendations are subject to the vicissitudes of local politics, and form no binding commitment for jurisdictions. The section notes that "[a]s they mature in their status, it is possible that entitlement jurisdictions may choose to change internal policies and/or procedures in the future."[20] While it is of course possible that entitlement jurisdictions may change their policies and procedures in the future, this does not diminish the role of the AI – this is, in fact, the exact process which the AI seeks to channel. (As for the dependent clause suggesting

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[15] *Id.* at 8.
[16] *Id.*
[17] *Id.*
[18] FHPG at 5-14, 5-15.
[19] *Id.* at 5-13, 5-14, 5-15, 5-16.
[20] FHIC AI at 7.

entitlement jurisdictions may "mature in their status," it appears to be nonsensical garble with no meaning whatsoever.)

Worse, however, is the next sentence, which states that "many cities and counties budget on one-year calendar cycles" and that "aspirational goals must not be confused as budgetary commitments."[21] These statements misrepresent the purpose of an AI. While jurisdictions are not required to set forth firm budgets in their AIs, AFFH obligations require grantees to "[t]ake appropriate action to overcome the effects of any impediments identified" by their analysis.[22] In other words, the recommendations of an AI are far from being mere "aspirational goals," and a failure to diligently pursue those recommendations would invalidate an entitlement jurisdiction's ability to complete its AFFH certification. Budget process notwithstanding, jurisdictions cannot ignore or deemphasize the AI's findings without consequence. It is disturbing that the Twin Cities AI appears to regard its own recommendations as non-binding and optional.

b. Historic background

Another introductory subsection provides a brief overview of the impediments identified by the previous Regional AI, which was drafted in 2009.[23] This may be in response to IMO's criticism that the AI's public comment draft "[did] not communicate the results of previous AI recommendations."[24] If so, however, it does not address the previous criticism in a meaningful way.

The new section is short and lacks detailed information. It lists the previous set of impediments and a handful of actions taken to address those impediments. Only three responses are identified: testing for discrimination, workshops for landlords on unfair housing practices, and "outreach," consisting of a series of YouTube videos, which were released in 2014 and mostly received fewer than 100 views.[25] Nowhere does the AI analyze the outcome of those actions, except to note that the results of investigatory pairs-based testing were "somewhat inconclusive."[26] No empirical data is provided on the outcomes of the outreach or education programs. The only quantitative component of the subsection is a small table listing expenditures in response to the previous AI, averaging about $35,000 annually.[27] This is far from the "records reflecting the analysis and actions taken" that HUD requires jurisdictions to maintain; indeed, the presentation casts some doubt on whether such records even exist.[28]

c. Other concerns

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[21] *Id.*
[22] FHPG at 1-2.
[23] FHIC AI at 8-10.
[24] IMO Comments at 12.
[25] FHIC AI at 9. Outreach videos available at https://www.youtube.com/channel/UCOayo1Yxmlbo61ssrihsUBA.
[26] FHIC AI at 9.
[27] *Id.* at 10.
[28] FHPG at 1-2.

The new introductory section also contains a number of smaller – but still troubling – errors and omissions.

The AI's preface now contains an accurate description of the AI's purpose. It states that "[t]he overarching goal of HUD's fair housing policies, and by extension this Analysis of Impediments . . . is to eliminate racial and ethnic segregation, illegal physical and other barriers to persons with disabilities and other discriminatory practices in housing."[29] This accords well with IMO's description of the AI from the earlier public comments – in fact, the final AI seems to have lifted this language directly from those comments.[30] This passage leaves no doubt, at least, that those comments were read and considered.

But there has been no discernible attempt to modify the AI to comport with this language, creating strange discrepancies between the document's preface and its body. For instance, while the introduction states that an "overarching goal" of the AI is to "eliminate racial and ethnic segregation," the subject of segregation is never again substantively addressed.[31] The word "segregation" only appears four more times in the entire document: once in a public comment in an appendix; twice in the description of a recent report which warned of growing segregation in the Twin Cities area; and once more, ironically, in a description of the recent *Westchester* case, which held that an entitlement jurisdiction's AI constituted fraud on the federal government – because it had not discussed segregation.[32]

Previous comments also critiqued the AI's failure to rely on the regional Fair Housing Equity Assessment (FHEA) in a substantive fashion.[33] In response, a number of mentions of the FHEA – entitled *Choice, Place, and Opportunity* – have been added to the text. Unfortunately, these mentions are almost entirely superficial. For instance, a newly inserted sentence acknowledges that the *Choice* report identifies "the place-based dynamics of racial disparities," – i.e., public and private sources of segregation.[34] But the AI goes no further. The actual findings of the *Choice* report are not revealed in any way. These off-hand references to the FHEA are no substitute for the AI's failure to incorporate the FHEA's actual findings.

The authors leave no doubt the omission of the FHEA was intentional, because the introductory section takes care to draw a clear line between the *Choice* report and the AI. It notes that "*completely separate from the statutory requirements governing this AI,*

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[29] FHIC AI at 6.
[30] *See* IMO Comments on FHIC AI at 2 ("The overarching goal of HUD's fair housing policies, the AFFH certification process, and by extension the AI, is to eliminat[e] racial and ethnic segregation, illegal physical and other barriers to persons with disabilities and other discriminatory practices in housing." (internal quotations omitted)).
[31] FHIC AI at 6.
[32] *Id.* at 72, 75, 120.
[33] Metropolitan Council, *Choice, Place, and Opportunity: An Equity Assessment of the Twin Cities Region* (2014), *available at* http://www.metrocouncil.org/Planning/Projects/Thrive-2040/Choice-Place-and-Opportunity.aspx.
[34] FHIC AI at 56.

HUD required the Metropolitan Council . . . to complete an FHEA."[35] The emphasis is in the original document, and this is the only phrase in the entire AI to be highlighted in such a way.

III. The New "Public Sector Investment" Section Is Inadequate and Inaccurate

In the earlier comments, IMO criticized the draft AI for "completely ignor[ing] the public sector as a source of impediments."[36] As IMO pointed out at the time, HUD requires grantees to conduct "a very searching analysis of public activities, practices, and procedures involving housing and housing-related activities," noting that the Fair Housing Planning Guide apparently envisioned this analysis taking up half or more of the AI.[37] Topics for analysis include zoning codes, government services, redevelopment, job creation, intra- and inter-governmental interactions, jurisdictional divisions, and, especially, site selection and the concentration of subsidized housing.[38] Notably, the Guide is careful to include policy "omissions" (e.g., of enforcement mechanisms) as an important potential topic for an AI.

The finalized FHIC AI newly acknowledges the need to analyze the public sector for housing impediments, an improvement from the earlier draft. In lieu of actually conducting any such analysis, however, the final AI instead inserts one short subsection entitled "Public Sector Investment," which totals less than three pages. The subsection does not mention impediments. Instead, it casts the public sector's role in housing as entirely and unambiguously positive. Most significantly, in the new subsection's opening paragraphs, the AI makes the expansive claim that "[w]ithin the Twin Cities metropolitan region, housing affordable to low-income households is in fact diversely spread across city and county borders."[39]

This is not an assertion that can be made lightly. In the last year alone, academic research on subsidized housing placement[40], coverage in local media sources[41], and a

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[35] *Id.* at 11.
[36] IMO Comments at 5.
[37] *Id.* at 6 (internal quotations omitted).
[38] *Id.*
[39] FHIC AI at 44.
[40] *See, e.g.*, Institute on Metropolitan Opportunity, *Why Are the Twin Cities So Segregated?* (2015), *available at* http://www.law.umn.edu/uploads/ed/00/ed00c05a000fffeb881655f2e02e9f29/Why-Are-the-Twin-Cities-So-Segregated-2-26-15.pdf.
[41] *See, e.g.*, David Peterson, *Fury Likely to Build over Met Council's Affordable Housing Plan*, STAR TRIBUNE (Mar. 15, 2015), *available at* http://www.startribune.com/local/west/296392961.html; Peter Callaghan, *Why Are the Twin Cities So Segregated? A New Report Blames Housing Policies – and Education Reforms*, MINNPOST (Mar. 5, 2015), *available at* https://www.minnpost.com/politics-policy/2015/03/why-are-twin-cities-so-segregated-new-report-blames-housing-policies-and-edu; Editorial Board, *Facing the Facts on Affordable Housing in the Twin Cities*, STAR TRIBUNE (Jan. 18, 2015), *available at* http://www.startribune.com/opinion/editorials/288886771.html; Editorial Board, *Find a Fairer Balance in Metro's Affordable Housing*, STAR TRIBUNE (Sept. 29, 2014), *available at* http://www.startribune.com/opinion/editorials/277519181.html; Frederick Melo, *Twin Cities Housing Policies Contribute to Segregation, Report Says*, PIONEER PRESS (Feb. 10, 2014), *available at*

HUD fair housing complaint filed by multiple suburban cities[42] have all argued that there are severe imbalances in the siting of affordable housing in the Twin Cities. The AI makes no attempt to work these competing narratives into its account, or even to rebut them in a systematic fashion. Instead, it mounts a flubbed defense of public sector investment – a defense that is at turns methodologically outrageous, poorly executed, and factually false.

The AI offers only two pieces of evidence in support of its contention that subsidized housing is distributed equitably throughout the region:

- A single map, which "shows the location of affordable rental projects funded in whole or in part by public sector financing between the year [*sic*] of 2010 and 2013."[43]
- A brief bulleted list noting public financial contributions to housing by several of the AI's entitlement jurisdictions.[44]

Each of these items is severely deficient.

Because the map is restricted to projects funded during a short span of years, only a small fraction of the region's existing subsidized housing informs the AI's public investment "analysis." Discussion or depiction of broader regional patterns in subsidized housing availability is nowhere to be found. The AI treats the many tens of thousands of units of publicly funded housing constructed prior to 2010 as if they simply do not exist. Instead, the document states that the map shows "that while Minneapolis and St. Paul are the region's two largest communities, affordable housing is in fact present in a much broader number of locales."[45] It does not disclose names of those locales, their relative degrees of prosperity or poverty, the amount of housing they contain, the characteristics of their schools, or any other information relevant to housing opportunity.

The AI offers a remarkable excuse for these omissions: it argues that "[t]he significant quantity of publicly-funded affordable housing investments makes it difficult to show on a single map."[46]

HUD does not assign page limits for AIs. There was nothing preventing FHIC, if it had so chosen, from including several – or even many – maps. Nor is there any shortage of data on the location and characteristics of the region's subsidized housing

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http://www.twincities.com/localnews/ci_25105588/twin-cities-housing-policies-contribute-segregation-report-says.

[42] *See, e.g.*, Peter Callaghan, *Civil Rights Complaint Seeks to Stop Cities from Concentrating Low-Income Housing in High-Poverty Neighborhoods*, MINNPOST (Apr. 14, 2015), *available at* https://www.minnpost.com/politics-policy/2015/04/civil-rights-complaint-seeks-stop-cities-concentrating-low-income-housing-hi; Shannon Prather, *Brooklyn Park, Brooklyn Center Accuse State of Fair-Housing Violations*, STAR TRIBUNE (Sept. 20, 2014), *available at* http://www.startribune.com/local/north/275901391.html.

[43] FHIC AI at 45.

[44] *Id.* at 46.

[45] *Id.* at 44.

[46] *Id.* at 45.

stock; the group contracted to produce the AI maintains a detailed and well-organized database containing precisely this information. The only reasonable explanation for this information's absence from the AI is that it was intentionally omitted.

It is worth noting that, methodological failings aside, the AI also botches the map's presentation. The map is so small that most key details are illegible, and the dots depicting individual projects frequently overlap and obscure each other. It appears to have been vertically compressed, badly distorting the region's geography. These readability issues are compounded by minimalistic labelling, particularly of municipal boundaries. The result is muddled and amateurish.

Ironically, despite these problems, one conclusion *can* safely be drawn from the map: there are severe regional disparities in the distribution of subsidized housing. The map clearly shows that the the vast majority of recent publicly funded rental units are located in Minneapolis and Saint Paul, while investment is sparse or nonexistent in most surrounding suburbs. In other words, the AI claims that housing is "diversely spread" throughout the region – and then presents evidence that immediately refutes that conclusion.

The bulleted list of financial activity by entitlement jurisdictions is equally deficient. The items listed are not presented in a consistent format, do not use a consistent metric (whether that be expenditures made, units created, or something else), do not cover a consistent timeframe, and seem to be drawn haphazardly from whatever public investments could be tangentially connected to housing. For instance, Anoka County's efforts are limited to $1.5 million spent on "infrastructure improvement, water hookups, wastewater treatment and septic system updates," while Washington County's "land acquisition for a food shelf" is included.[47] Even when the information relates directly to housing, it is not described in a way that reveals what actually transpired. For example, while Eden Prairie spent "$119,000 helping 202 households avoid homelessness," no further detail is provided.[48] Meanwhile, one item for Washington County – "42 single-family units funded for new construction Habitat for Humanity or land trust housing options" – is not intelligible as an English sentence.[49]

The AI once more admits that its own methods are incomplete and insufficient. The authors state that the examples given are "certainly not an exhaustive list" but instead "highlighted to illustrate how public sector agencies are, in fact, investing in projects that assist low-income communities across the region and are not investing solely in areas that have high concentrations of low-income housing." Rather than the "comprehensive" analysis demanded by the Fair Housing Planning Guide, the AI's authors here confess to selectively picking evidence to support the point they wish to convey.[50]

And here again, the evidence does not tell the story the AI claims it does. Given the mixed-finance nature of much publicly-subsidized affordable housing, simply

[47] *Id.* at 46.
[48] *Id.*
[49] *Id.*
[50] *Id.*

repeating unit counts or total spending can be deceiving. One municipality may spend a great deal on new affordable rentals because it is footing nearly the entire bill for the new development, another may generate many more units, while spending much less, because of substantial private sector and charitable assistance. (Indeed, the lopsided availability of such assistance in low-income neighborhoods is a potential cause of poverty concentration.)

But most importantly, the same regional imbalances that appeared in the AI's public investment map also appear in the list of housing investments. Minneapolis is cited for building 60 new multifamily projects – surely numbering into the many hundreds of units, though the exact number is conspicuously absent.[51] Hennepin County, in which Minneapolis located, has contributed 643 affordable units. Ramsey County, in which Saint Paul is located, has produced 451 affordable units.[52] Apart from an ambiguous reference to a Dakota County program from 2002, no other municipality or county is described as having produced affordable rental units.[53]

In short, the AI's assertion that the region that has "diversely spread" its subsidized housing cannot survive even brief contact with its own evidence. The discrepancy between the information presented and the conclusion drawn is so great that it is difficult to believe it arose from an objective evaluation of the data. Instead, the authors appear to be engaged in a purposeful exercise in evasion – either because the drafters do not think the subject important enough to address, or because they do not wish to discuss impediments that implicate the entitlement jurisdictions themselves.

It is also worth noting that the new additions do not even purport to have examined zoning laws, land use laws, or any non-fiscal public sector activity in any way. Perhaps the best way to demonstrate the severity of this omission is through comparison: the last AI for the city of Moorhead, Minnesota, population 39,000, conducts a more extensive analysis of its laws and regulations than the Twin Cities AI conducts for any of its thirteen entitlement jurisdictions, which contain a combined population of 2.85 million people.[54]

IV. The New Appendices Do Not Demonstrate Sufficient Collaboration with Regional Experts

The final AI also incorporates two new appendices meant to illustrate the collaborative process by which the AI was drafted. The Fair Housing Planning Guide encourages AI drafters to "use existing organizational relationships" when conducting their analysis.[55] This process is particularly vital in the context of the Twin Cities, because "members of the FHIC wanted to undertake the 2014-2015 AI with a closer

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[51] *Id.*
[52] *Id.*
[53] *Id.*
[54] City of Moorhead, *Analysis of Impediments for Moorhead* (2002), *available at* http://www.cityofmoorhead.com/home/showdocument?id=1822.
[55] FHPG at 2-20.

focus on community engagement-driven data as opposed to heavy reliance on Census and other online data."[56] By deemphasizing quantitative, empirical sources of information like the Census, the FHIC has increased the importance of the AI's collaborative element. Unfortunately, the new appendices do not suggest that FHIC has sufficiently harnessed the expertise of third party organizations or the communities that surround them.

The first of the new appendices, Appendix C, is entitled "List of Organizations Invited to Participate."[57] The invitation in question, however, was not for close or detailed collaboration. Instead, the AI specifies elsewhere that this is a list of organizations included on a mass e-mail invitation to join in-person engagement meetings.[58] An examination of this list reveals the flaw in this "one size fits all" approach: the organizations involved run the gamut from dozens of real estate developers and landlords, to law firms, to the Minnesota Public Radio news office. The scale of the invitees ranges from single individuals to the University of Minnesota, the local campus of which educates or employs approximately 73,000 people. A large number of private health care providers are included, as are some government entities – HUD, the Metropolitan Council, and public housing authorities. However, no school districts and few educational groups appear on the list, despite interplay of schools and housing. Inviting, via e-mail, such a diverse range of entities to an undifferentiated set of engagement sessions is unlikely to result in productive collaboration.

Appendix D, the second new addition, demonstrates the failure of the e-mail engagement strategy. Out of nearly 170 organizations receiving invitations, only fifteen attended the "in-person community conversations."[59]

V. The AI's Deficiencies Are Intentional

The earlier drafts of the Twin Cities Regional AI were deficient. The final version is worse: it makes clear beyond a doubt that the document's critical shortcomings are the result of an intentional policy choice by its authors.

FHIC has been repeatedly notified of its responsibility to conduct a searching examination of all regional impediments, to consider racial segregation, and to investigate public sector investment. It has been notified of these obligations both during the drafting process and during the public comment period. The shortcomings of the earlier draft were catalogued at length, and a copy of those comments was provided not only to the drafting agency but to the relevant government officials in all thirteen entitlement jurisdictions.

Nonetheless, the AI's drafters have remained resolute in their refusal to admit that public investment, site selection, zoning law, or other mainstays of public housing policy either reflect or produce any actual impediments to housing choice. According to this AI, the entitlement jurisdictions, other regional municipalities, the regional government, and

[56] FHIC AI at 10.
[57] FHIC AI at 144.
[58] *Id.* at 76.
[59] *Id.* at 146.

the state have been all but faultless in their support for fair housing. If this AI is to be believed, the Twin Cities remain unburdened by segregation. When asked to produce analysis to support these assertions, the FHIC has added a scant thirteen pages to a 146-page document – pages which say, in essence, "There's no problem here, and if there were, it's not ours to worry about."

To make matters worse, the AI deploys a series of cynical evasions to justify these failings. We are left with no choice but to conclude that it has been written in bad faith. Its omissions and deficiencies are too egregious, and its deflections too implausible, to be attributed to carelessness. This is not an honest effort to reckon with the problem of housing discrimination in the Twin Cities. The jurisdictions have created, in essence, a mock-up calculated to satisfy HUD – a perfunctory document designed to check a box, which gives the outward appearance of examining impediments to fair housing without actually doing so.

If this document is any indication, the thirteen entitlement jurisdictions intending to rely upon the FHIC AI remain profoundly unserious about HUD's AFFH requirements. Metropolitan-area Minnesotans should not be forced to endure this level of indifference about fair housing from their local governments. Until the jurisdictions make a genuine attempt to grapple with the difficult problem of analyzing and addressing impediments to fair housing, HUD should not certify that they have fulfilled their federal civil rights requirements.

APPENDIX B

Comments on Original FHIC AI

1. Comments on Housing Policy Plan

2. Comments on Amendments to Housing Policy Plan

INSTITUTE ON METROPOLITAN OPPORTUNITY
UNIVERSITY OF MINNESOTA LAW SCHOOL

Comments of the Institute on Metropolitan Opportunity on the Metropolitan Council's Draft Housing Policy Plan

September 26, 2014

One of the most severe obstacles for the Twin Cities in the 21st century is the concentration of poverty and segregation, and the divisions they are creating across the metropolitan region. Unfortunately, the Metropolitan Council's draft Housing Policy Plan, which perpetuates the region's segregation while failing to affirmatively further fair housing, is insufficient to overcome these obstacles.[1]

The Plan itself clearly acknowledges many of the challenges it faces. Its first and second parts – "Housing for a Growing, Thriving Region" and "Outcomes," respectively – discuss the disparities that afflict the Twin Cities. However, the substantive policies described in the third part, "Council Policies and Roles to Expand Viable Housing Options," barely attempt to reduce those disparities. Rather than proposing any sort of aggressive measures to remedy the problems it had described, Part III in many cases "adopts" policies that the Council already follows – policies which, with the benefit of hindsight, we can confidently say have *actively contributed to* the region's disparities. A change of direction is needed, but the current Plan manifests nothing so much as a desire to stay the course.

This is wholly inadequate. In order to reverse current trends, major adjustments need to be made to the Council's housing policy – adjustments which the Housing Policy Plan does not require, or even consider. Most strikingly, the Plan is almost completely bereft of strong incentives to encourage local governments to address housing disparities, and in particular, appears to envision no consequences for cities which ignore the Council's housing guidance. Moreover, the Plan makes no attempt to reinstitute the more effective approach of previous years, where bold and easily-understood policies attacking segregation and income disparity were supported with penalties for areas that refused to meet their housing obligations. The Plan as it currently exists is not only unlikely to reverse the deplorable regional trend toward greater poverty and segregation, but is in violation of the Metropolitan Council's legal obligations to combat racial and economic inequality in housing.

The comments below first briefly discuss the extent of racial disparities in the Twin Cities and the Council's legal obligations, then summarize the Plan's description of housing issues and subsequent failure to address those issues. They propose a number of

[1] Metropolitan Council, *Housing Policy Plan* (2014) [hereinafter Housing Policy Plan].

specific policy changes that would dramatically improve the Plan's ability to accomplish its goals.

I. Growing Segregation in the Twin Cities

Housing and schools in the Twin Cities were not always segregated. In the early 1990s, only 3 percent of the region's population lived in majority nonwhite, high poverty areas; only about 2,000 (or 2.5 percent) of the region's nonwhite students were in schools that were more than 90 percent nonwhite.[2]

Over the previous two decades, this has all changed. By 2010, the percentage of the regional population in majority nonwhite, high-poverty areas rose by three times to 9 percent.[3] Today, the two central cities together only contain 23 percent of regional population, but 55 percent of the region's nonwhite residents.[4] They also contain over half the region's subsidized affordable housing: 37 percent in Minneapolis and 21.7 percent in Saint Paul. The number of schools with more than 90 percent nonwhite students had increased more than seven-fold (from 11 to 83); the number of nonwhite students in those schools had risen by more than 10 times (from 2,000 to 25,400), representing an increase in the percentage of nonwhite students in highly segregated environments from 2.5 percent to 16 percent.

Some of these changes simply reflect the fact that the region became more racially diverse during the period. However, other metropolitan areas of roughly the same size and with similar demographic histories have not shown the same pattern of deterioration. For instance, the number of schools in the Portland region with more than 90 percent nonwhite students was just 2 in 2009 (up from 0 in 2000); in Seattle it was only 25 (up from 14); and in Pittsburgh it was 25 (down from 27).[5] The neighborhood comparisons are no better. In 2012, 19 percent of low-income black residents of the Twin Cities lived in high-poverty census tracts (up from 13 percent in 2000) compared to just 3.4 percent of low-income black residents in Seattle (down from 3.5 percent in 2000) and 1.6 percent in Portland (down from 1.9 percent in 2000).[6]

Not surprisingly, the Twin Cities region now shows some of the widest racial disparities in the country. Recent data show alarming gaps between whites and nonwhites in income, unemployment, health, and education. Poverty rates for black Minnesotans are more than four times those for whites; while household incomes for blacks are less than half of those for whites; reading proficiency rates for black students are less than half those for whites in most school grades and years; incarceration rates for blacks are 20-25

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[2] Metropolitan Council, *Choice, Place and Opportunity: An Equity Assessment of the Twin Cities Region* (2014).
[3] *Id.*
[4] *Id.*
[5] National school data are from the National Center for Education Statistics. The equivalent numbers for the Twin Cities from this source are even worse than those generated using local data sources: 112 schools with more than 90 percent non-white students in 2009, compared to 37 such schools in 2000.
[6] National residential statistics are derived from Census data compiled and provided by Paul Jargowsky and the Center for Urban Research and Education at Rutgers University.

times greater than for whites; and black unemployment rates are two to three times those for whites. All of these disparities put the region and the state near the bottom of national rankings.[7]

II. The Metropolitan Council's Legal Obligations

There are at least three independent, though related, sources of law that obligate the Met Council to reduce segregation and pursue fair housing goals: § 3604 of the Fair Housing Act (FHA)[8], § 3608 of the FHA[9], and the Metropolitan Land Use Planning Act (MLUPA)[10].

Section 3604

All entities, public or private, are forbidden from taking actions which discriminate in the provision of housing on the basis of race. This proscription is explicitly extended to the implementation of "land-use rules, ordinances, policies or procedures" with a racially discriminatory impact.[11] For the purposes of § 3604, discrimination includes actions which perpetuate segregated living patterns – for instance, actions which prevent the construction of racially integrative housing or concentrate segregative housing in a single neighborhood or municipality. Because affordable housing is typically disproportionately occupied by nonwhite populations, the placement of affordable housing has been frequently treated by the courts as a proxy for the placement of segregated housing. The perpetuation of segregation can be established by evidence of disparate impact on a protected racial group or pattern of segregated housing placement and/or occupancy.

Section 3608

Governmental recipients of federal housing funds have an obligation under § 3608(d) of the FHA to "affirmatively further" fair housing, which requires them to use their "immense leverage" to create "integrated and balanced living patterns."[12]

In a recently proposed rule, designed to provide guidance for recipients of fair housing funding, HUD defines "[a]ffirmatively furthering fair housing" as "taking proactive steps beyond simply combating discrimination to foster more inclusive communities."[13] Specifically, the proposed rule states that affirmatively furthering fair housing "means taking *steps to overcome segregated living patterns and support and*

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[7] *See, e.g.,* Jonathan Rose, *Disparity Analysis: A Review of Disparities Between White Minnesotans and Other Racial Groups* (2013).
[8] 42 U.S.C. § 3604
[9] 42 U.S.C. § 3608
[10] Minn. Stat. § 473 *et seq.*
[11] 24 C.F.R. §100.70(d)(5).
[12] NAACP v. Sec'y of Hous. and Urban Dev., 817 F.2d 149, 156 (1st Cir. 1987) (Breyer, J., holding the Title VIII imposed a duty on HUD beyond simply refraining from discrimination).
[13] Affirmatively Furthering Fair Housing, 78 Fed. Reg. 43710-01 § 5.152.

promote integrated communities, to end racially and ethnically concentrated areas of poverty, and to foster and maintain compliance with civil rights and fair housing laws."[14]

The rule's commentary further notes:

> [R]acially or ethnically concentrated areas of poverty are of particular concern because they couple fair housing issues with other significant local and regional policy challenges. These areas clearly fall in the domain of fair housing, as they often reflect legacies of segregated housing patterns. Of the nearly 3,800 census tracts in this country where more than 40 percent of the population is below the poverty line, about 3,000 (78 percent) are also predominantly minority. . . *Consequently, interventions that result in reducing racially and ethnically concentrated areas of poverty hold the promise of providing benefits that assist both residents and their communities*.[15]

With HUD issuing new guidance on the issue, the outer limits of the obligation to affirmatively further fair housing have not yet been tested, and may still expand. Unquestionably, however, the provision requires affirmative steps above and beyond merely avoiding the activities proscribed by § 3604 and § 3605. Case law has illuminated some of these requirements.

First, and minimally, government agencies must analyze the impact of new housing on racial concentration. This obligation was most thoroughly discussed in the foundational case *Shannon v. HUD*, cited at length in the new HUD rule.[16] According to *Shannon* and its progeny, § 3608 does not merely prevent government agencies from building low-income housing in areas of minority concentration, which would already be unlawful under § 3604(a)'s perpetuation-of-segregation cause of action. It also obligates governments to *undertake the analysis* required to demonstrate that they are not creating segregation, *in advance of* the siting of low-income housing. In other words, while § 3604 disallows certain discriminatory outcomes, § 3608 places on public agencies an additional requirement that they use particular methods. In one notable case, HUD was found to have violated § 3608 for administering grants to the City of Boston without ensuring that the grants were not creating discriminatory effects – even though subsequent analysis showed that no discrimination was occurring.[17] Governments are not permitted to "fly blind", so to speak, when it comes to housing.

Another consequence of § 3608 is that local agencies with discriminatory practices, or whose practices create a discriminatory effect, can potentially be stripped of their federal housing funds by HUD. In the past, private plaintiffs have successfully sought relief from HUD through fair housing complaints directed at local and state

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[14] *Id.* (emphasis added).
[15] *Id.* at 43713 (emphasis added).
[16] Shannon v. HUD, 436 F.2d 809 (3d Cir. 1970).
[17] NAACP v. Sec'y of Hous. and Urban Dev., 817 F.2d 149, 156 (1st Cir. 1987).

governments.[18] And under § 3608(e)(5), a claim can be brought against HUD itself "if it is aware of a grantee's discriminatory practices but has made no efforts to force it to comply with the Fair Housing Act by cutting off existing federal financial assistance."[19] This standard can place many tens of millions of dollars in local funding at risk, even in cases where a local entity is not itself subject to lawsuit or discrimination claim.

Metropolitan Land Use Planning Act

As acknowledged by the proposed Plan, the Met Council is obligated by MLUPA, which created the Council and governs its activities, to help communities coordinate their housing efforts. The Act requires local governments to adopt regional "fair share" housing requirements and means of enforcing those requirements: comprehensive plans must incorporate "a housing implementation program . . . which will provide sufficient existing and new housing to meet the local unit's share of the metropolitan area need for low and moderate income housing."[20] The law envisions for the Met Council a key coordinating role in this process: the Act requires it to "prepare and adopt guidelines and procedures . . . which provide assistance to local governmental units" in fulfilling the fair share provisions.[21] As a result, the Met Council is not only subject to § 3604's duty to not perpetuate segregation, and § 3608's duty to affirmatively further fair housing, but, through state law, a duty to implement a true fair share system which pursues an even distribution of housing among local units of government.

III. The Plan's Discussion of Concentrations of Poverty and Racial Segregation

The Plan does not shy away from identifying many disparities sufficient to trigger these legal obligations, discussing at length the problems that plague housing in the Twin Cities. In a discussion of concentrations of poverty and racial concentrations of poverty, it bluntly acknowledges that "[l]iving in areas of concentrated poverty hurts people in many ways," and alluding to the high crime, underperforming schools, poor health, and lack of economic mobility that plague residents of these regions.[22] A later section cogently lays out the ways which concentrated poverty can self-perpetuate:

> The social and supportive services that often arise to address the problems of the community (jobs programs, public assistance offices, supportive housing) only strengthen the perception that investment is a losing proposition. Thus a destructive cycle perpetuates. Public and non-profit investments—in both development and services—become concentrated in neighborhoods where the need now exists. Market-rate investment in

[18] *See, e.g.*, HUD, Letter of Determination of Noncompliance In Re: Diamond State Community Land Trust v. Sussex County Planning and Zoning Commission (Aug. 23, 2012).
[19] Anderson v. City of Alpharetta, Ga., 737 F.2d 1530, 1537 (11th Cir. 1984).
[20] Minn. Stat. 473.859 subd. 4.
[21] Minn. Stat. 473.854.
[22] Housing Policy Plan 10.

> neighborhoods with concentrations of low-income households becomes risky for both the private and public sectors.[23]

Admirably, the Plan also recognizes the importance of housing choice. For instance, on page 28, it states that "perhaps above all, people need real choice in determining *where*, in what style, and with what amenities both inside and out their home might be."[24] It continues in the same vein, stating that "[a] region with truly viable housing choice is one that allows households to secure housing affordable to them, *in communities where they would like to live* . . ."[25] On page 10, it explicitly connects housing choice and segregation, noting that "[b]arriers that limit residential choices – *such as racial discrimination and a lack of affordable housing in a variety of locations* – hinder the ability of residents to move out of areas of concentrated poverty and contribute to the creation of Racially Concentrated Areas of Poverty."[26] Behind the cautious policy language is a straightforward idea: because there isn't enough affordable housing in desirable neighborhoods, the Twin Cities are becoming more segregated.

The Plan admits that excessive alarm over gentrification is an obstacle to an equitable housing distribution. Although it does briefly fret over the possibility of distressed neighborhoods receiving *too much* investment – "improvements to an impoverished neighborhood, such as transit investment, may inflate the cost of housing and displace residents . . . just as conditions are improving" – it also concedes that, in some cases, "[t]he scale of these concerns may be *only resident perceptions*."[27] Ultimately, the Plan seems to assert that fear of gentrification primarily serves as an obstacle to housing equity: "[l]ow-income neighborhoods may be as wary of market-rate development as so-called higher-income neighborhoods are of affordable housing."[28] The discussion concludes by prescribing more housing to higher-income regions, and more private investment to low-income neighborhoods: "[i]n addition to attracting a mix of investment to Areas of Concentrated Poverty, creating a more equitable region requires simultaneously increasing housing choices for low- and moderate-income households outside of Areas of Concentrated Poverty."[29]

Finally, on page 44, the Plan briefly discusses the well-known interaction of housing and education. The language in this section is needlessly timid. For instance, rather than provide readily-available statistics on school performance and poverty, it only notes that "[a]reas of concentrated poverty have – or are believed to have – poorer performing schools."[30] But ultimately, the Plan does identify the corrosive downward spiral that can bind together poverty and education:

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[23] *Id.* at 30.
[24] *Id.* at 28 (emphasis added).
[25] *Id.* (emphasis added).
[26] *Id.* at 10 (emphasis added).
[27] *Id.* at 30 (emphasis added).
[28] *Id.*
[29] *Id.*
[30] *Id.* at 44.

> Children living in neighborhoods with concentrated poverty may be less prepared for school and may receive an education inferior to children in neighborhoods with less poverty, limiting their ability to stop the cycle of poverty. Families with enough income to live where they choose are less likely to live in areas of concentrated poverty, in part due to expectations that schools elsewhere are better.[31]

Notably absent from these passages is any substantive discussion of intentional discrimination. However, while intentional discrimination undoubtedly occurs in the Twin Cities housing market, it is not a necessary precursor to any of the legal obligations faced by the Council.

Throughout Part II, the Plan assigns the Council a concrete – if nonspecific and sometimes noncommittal – set of roles in response to the maldistribution of housing and opportunity. It envisions direct investment in affordable housing in higher-income areas (e.g., "[s]trategically invest Council resources to assist community efforts to increase . . . housing types and costs [and] create and preserve mixed-income neighborhoods," "[i]nvest in and encourage new affordable housing in higher-income areas of the region"[32]). It also anticipates close work in collaboration with local municipalities to expand affordable housing options, "especially in areas underserved by affordable housing and to house extremely-low-income households earning less than 30% of the area media income."

These broad recommendations, however, are not reflected in the Plan's more specific policy initiatives.

IV. Critique of Proposed Council Policies

Starting on page 49, the Plan discusses a so-called "triumvirate" of quantitative affordable housing measures, which "inform the regional understanding of affordable housing needs." While there is much benefit in adopting quantitative measures of housing progress, and using such measures to award funding, each of the proposed measures is severely flawed in design or implementation.

Housing Need Allocations

The Council's first measure, the Allocation of Housing Need, is derived from its obligations under MLUPA, which require that local units of governments design a housing implementation program to "provide sufficient existing and new housing to meet the local unit's share of the metropolitan area need for low and moderate income housing."[33] MLUPA also requires the Met Council to coordinate local activity in this

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[31] *Id.*
[32] *Id.* at 29.
[33] Minn. Stat. 473.859 subd. 4.

regard.[34] The Housing Policy Plan recognizes that these provisions of MLUPA require a "fair share" approach to housing.

In the past, the council has assigned each municipality a base "fair share" target arising out of projected growth, and then adjusted that figure on the basis of three factors: the regional distribution of low-wage jobs and workers, transit access, and the availability of existing affordable housing in a municipality. The Plan proposes using the same three adjustment factors, and recent materials distributed to the Needs Allocation Subgroup of the Housing Policy Plan – the workgroup formed to advise the Council on its fair share calculations for 2020-2030 – outline a similar overall approach for the new plan. All of the proposed methods continue to calculate local "fair share" based on the Council's growth projections for the period. Proposed adjustments to a basic fair share target included:

- Adjusting the fair share proportionately with the ratio of low-wages jobs within five miles of the town's centroid and low-wage workers within five miles. For instance, if this ratio is 1.2, the fair share allocation would be increased by 20 percent.

- Increasing the fair share by 20 percent in municipalities in the two highest categories of a four-level measure of transit access and decreasing it by 20 percent in areas in the lowest-access category.

- Adjusting the fair share for existing affordable housing in one of two ways:

    - Proportional adjustments based on the difference between the locality's current share of affordable housing and the regional average.

    - Lowering the localities target to 10 percent of projected growth if the local share of affordable housing is higher than the 2030 regional target. However, IMO simulations show that this method would not produce region-wide fair targets anywhere close to the calculated need of 54,600. It will therefore not be a factor in the following discussion.

Although this process is incomplete, a number of fundamental problems unite all the methods under discussion.

Housing Need Allocations: Growth Share

First, the proposed methodologies all rely on the Council's household growth projections. This procedure creates a serious risk of artificially inflated targets in the central cities and inner suburbs while reducing them in middle and outer suburbs. Historically, the Council's growth projections have always overstated expected growth in core areas. There is significant institutional pressure to project growth in the core of the

[34] Minn. Stat. 473.854.

region, as it is politically unpalatable to forecast stable or declining population in the core of the region, where the Council's policies are often designed to enhance growth.

The effects of this can be clearly seen in Maps 1 and 2, below.[35] These maps compare earlier Council forecasts for the years 2000 and 2010 to actual population growth over the same periods. In both maps, core areas grew consistently less than predicted, while the outer suburbs received more growth than expected. There is no reason to assume that current projections will not suffer from the same biases.[36] Whatever else might be drawn from this, it is important that the Council's housing policy not be based on faulty indicators.

Second, even if the Council's growth projections were reliable, the use of projected growth in this manner is problematic. MLUPA requires each community in the metropolitan area to contribute "the local unit's share" of affordable housing; the Council itself reads this as a "fair share" obligation.[37] However, relying on growth to set the base share can potentially insulate communities with stable population growth from any need to contribute additional affordable housing, regardless of whether low- and moderate-income families have housing choice in those areas.

[35] These maps are replicated from MYRON ORFIELD AND TOM LUCE, REGION: PLANNING THE FUTURE OF THE TWIN CITIES (2010).
[36] Despite the fact that the central cities (especially Minneapolis) have had many housing starts/permits in recent years, the most recent data show the old growth pattern re-emerging (as people adjust to higher gas prices, the economy recovers, and the financial/foreclosure crisis eases in the outer suburbs).
[37] Minn. Stat. 473.859 subd. 4; *see also* Housing Policy Plan 49.

Housing Need Allocations: Existing Affordable Housing

The way that the proposed methods adjust for existing affordable housing stocks is also seriously flawed. The targets are given in absolute numbers of housing units, and surpluses or shortfalls in affordable housing are also calculated in numbers of housing units.[38] However, under the current method, adjustments to the base share for the existing affordable housing factor are proportional, not absolute.[39] In other words, a community with a 20 percent oversupply of housing has its base share adjusted downwards by 20 percent. This is mathematically nonsensical, especially since the adjustment is applied to the growth share, not the community's overall housing. There is simply no reason to expect that an area that has over- or under-provided affordable housing by a certain proportion in the past can be restored to its fair share by over- or under-providing that same proportion of *new* affordable housing growth. Proportional adjustments – increasing or decreasing a fair share target by a percentage – also guarantee that *all* places will be required to add affordable housing even if they already have much greater affordable housing shares than other parts of the region – indeed, even if their existing housing stock is already 100 percent affordable. This directly contradicts MLUPA's description of local fair share obligations, which explicitly allows for communities to meet their obligation by "providing sufficient *existing* or new housing."[40]

For instance, using the Met Council's estimate of the percentage of current housing (inside the MUSA) affordable at 80 percent or less of regional median income (53 percent according to Council data used to support the Subgroup), Minneapolis had 15,296 more affordable units in 2010 than its "fair share" of 53 percent. Using the current methodology, however, Minneapolis's affordable need allocation is still approximately 10,700 units from 2020 to 2030 – or *82 percent of total projected growth*. What sense would it make to require Minneapolis to build more affordable housing in future years, given that the model already acknowledges that the city's current share of affordable housing exceeds the regional average by an even larger number of units? St. Paul and many inner suburbs are in similar situations.

This flaw is particularly egregious because a fairer and more intuitive method is easily available. Instead of using a proportional approach, the Plan should use absolute figures. Surpluses (or shortages) of affordable units should simply be subtracted from (or added to) fair share targets.[41]

Maps 3 and 4 demonstrate the enormous practical implications of this flaw. They show how fair share obligations would be distributed around the region using a proportional affordable housing adjustment (Map 3) versus an adjustment that adds or subtracts units (Map 4). A city's fair share obligation was capped at 65 percent of

[38] *See* Metropolitan Council, *Allocation of Housing Needs 2010-2020*.
[39] *Id.*
[40] Minn. Stat. 473.859 subd. 4 (emphasis added).
[41] Low-wage jobs and workers and transit access are measured in fundamentally different units than housing counts, so it is reasonable to use proportional adjustments in those cases.

projected growth in both simulations, an adjustment suggested in materials submitted to the Needs Allocation Subgroup.

Both of the calculations underlying the maps make proportional adjustments for low-wage workers and jobs and transit access like those used in the past (and outlined in materials distributed by Met Council staff to the Subgroup).[42] Map 3 shows each city's fair share as a percentage of projected growth, if fair shares were increased or decreased by the percentage that the place's current affordable housing rate differs from the regional average. For instance, in this case the number of additional affordable units required of Minneapolis would be reduced by 9.2 percent because its current affordable housing share is estimated to be 62.2 percent and the regional average is 53 percent.

Map 4 shows each city's fair share as a percentage of projected growth, if current shortages or surpluses are added or subtracted to need allocations in absolute numbers, after adjusting for low wage jobs/workers and transit.

The differences between the two methods are dramatic. Fair share obligations are concentrated in the central cities, inner suburbs and a few middle suburbs west of Minneapolis using the proportional adjustment (Map 3). Using this method, Minneapolis and almost all inner suburbs would be at the maximum percentage fair share (65 percent of projected growth in housing units) while most middle and outer suburbs would have much lower obligations. In this scenario, Minneapolis would be expected to add 8,515 new affordable units during the decade out of total growth of 13,100 units – the 65 percent maximum. Many inner ring suburbs that already have greater than average affordable housing shares – such as Richfield, Hopkins, and West St. Paul – are also at the cap. At the same time, many relatively affluent middle and outer suburbs get relatively low fair shares – like Apple Valley where the fair share would be only 26 percent of projected growth (whether capped or not).

Map 4 shows the results of the alternative affordable housing adjustment. A band of areas along the I-94 corridor with large current surpluses of affordable housing, from Oakdale to Anoka, show much lower obligations, while higher-income middle and outer suburbs with little affordable housing show larger fair share targets.

Overall, the fair share targets in Map 4 correlate much more strongly (negatively) with current affordable housing distributions.[43] In other words, the proportional method used in the first simulation (Map 3) would further concentrate poverty in the central cities and some inner suburbs while the additive method (Map 4) would help to spread low-income households more evenly across the region.

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[42] Each method produces a regional total of fair share obligations reasonably close to the estimated need of 54,600. The proportional adjustment runs produces regional totals of about 65,500 units (uncapped) and 57,000 units while the additive adjustment models give totals of about 62,000 and 45,100. The formulas could be easily fine-tuned to produce the exact amount needed.

[43] The correlation between the fair share percentages in Map 3 and current affordable housing percentages is -.34 while it is -.84 for the percentages in Map 4.

The Map 4 distributions would also be much more likely to direct new affordable housing to areas near higher-performing schools. The percentages in Map 4 are strongly positively correlated with local school performance while those in Map 3 are weakly negatively correlated.[44]

[44] The correlation coefficients are +.55 for the Map 4 percentages and -.01 for the Map 3 percentages. Local school performance scores were drawn from the data in Metropolitan Council, *Choice, Place and Opportunity: An Equity Assessment of the Twin Cities Region* (2014).

Housing Need Allocations: Affordability Threshold

The current Housing Need Allocation uses a single affordability threshold, at 60 percent of Area Median Income (AMI).[45] The Plan states that the 2020-2030 Need Allocation will use an upper threshold of 80 percent of AMI, an annual income of $63,900.[46] It also says the allocation will be broken into three bands, at 30 percent, 50 percent, and 80 percent of AMI.[47]

At present, however, the materials provided by the Need Allocation Subgroup do not indicate that the banding has been applied. The Plan's proposed income banding is an important and laudable addition to the Need Allocations; it is essential that the Council follow through with the Plan's instructions in this regard. MLUPA requires local units to provide their fair share of low- *and* moderate-income housing; a single income band cannot simultaneously capture both categories, particularly when the band is as high as 80 percent of AMI.

Goals for Affordable and Lifecycle Housing

The second measure of the "triumvirate" is negotiated affordable and lifecycle housing goals. The goals are a statutorily mandated component of the Livable Communities Act of 1995 (LCA). As the goals are individually negotiated with participating cities, the Plan does not include specific instructions for determining a city's goal. However, in the past, the negotiated goals have exhibited extremely worrying trends.

These trends can be seen in Maps 5, 6, 7, and 8. Map 5 shows LCA Goals for the period of 1996 to 2010. Map 6 shows LCA Goals in the most recent period, 2011 to 2020. Comparing Maps 5 and 6 immediately reveals a pattern: the suburban goals dropped significantly between the two periods, while the goals of the central cities increased. Map 7 shows the progress each community made towards its goals in the first period. Map 8 shows the progress each community made towards it *rental housing* goal in the first period. The two central cities both met rental housing goals, with Minneapolis only failing to provide the owner-occupied housing it had promised. Meanwhile, many of the suburban goals were missed by 80 percent or more.

As the Plan acknowledges, the Housing Need Allocations are the base for negotiating LCA Goals, after which adjustments are made for other factors, including, ostensibly, concentrations of poverty.[48] However, only two communities in the entire metropolitan area maintain goals of 100 percent of their Need Allocation – Minneapolis and Saint Paul. The vast majority of participating communities have had their goals adjusted downwards from the Need Allocation by 30 percent or more.

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[45] *See* Metropolitan Council, *Allocation of Housing Needs 2010-2020*.
[46] Housing Policy Plan 50-51.
[47] *Id.*
[48] *Id.* at 52.

These maps and figures suggest that the LCA Goals have been misused by the Council. The Goals are part of a larger scheme wherein cities are incentivized to develop affordable housing, in order to maintain their eligibility for LCA funding. However, when cities have failed to meet their commitments, the Council has appeared to respond by reducing their commitments. By contrast, the cities that met their commitments were only rewarded with increased future goals. This undermines the incentives envisioned by the LCA, and, from a fair housing perspective, is simply backwards. Furthermore, the Council's supposed willingness to account for concentrations of poverty is undermined by the fact that the two central cities, with the most severe concentrations of poverty, have simply been given their original Need Allocation with no adjustments whatsoever.

Housing Performance Scores

The third measure in the "triumvirate" is the Housing Performance Scores, a system in which the availability of funding is dependent upon an annual score, generated using quantitative measures of housing progress. This system is already used by the Council with regards to LCA funding, although the Plan suggests that it may be extended to additional sources of funding. The Plan also suggests the score criteria may be revised.

The scoring criteria (both current and proposed) heavily emphasize preexisting affordable housing and recent progress towards creating affordable housing.[49] The ultimate effect of this system is to give the highest priority scores to municipalities which already contain heavy concentrations of housing – and frequently, high concentrations of poverty and segregation. In 2013, the two highest-ranked communities, with scores of 98 and 97 out of 100, respectively, were Minneapolis and Saint Paul. Of the 179 additional communities also ranked, most of the diverse inner-ranked suburbs fell in the first quartile, while larger white suburbs like Wayzata, Stillwater, or Golden Valley frequently fell in the second quartile or below.[50] There is a very strong statistical correlation between a city's Housing Performance Score and nonwhite population – stronger than the correlation between a city's score and poverty rate, or a city's score and population.[51]

The Housing Performance Scores have great potential to reduce concentrations of poverty and promote fair housing. They appear to be a vestige of the Council's Policy 39, which was created in 1985 by the Council's previous housing policy plan.[52] Policy 39 required the agency to "use its review authority to recommend funding priorities for communities based on their housing performance," and in particular, to provide or withhold state and federal funding to communities on the basis of their efforts to provide low- and moderate-income housing.[53]

However, the Housing Performance Scores in their current iteration do not replicate Policy 39's carrot-and-stick approach. Instead, the current approach effectively removes the stick, and as a consequence, the Performance Scores are likely to worsen the problems Policy 39 sought to ameliorate. This is because, rather than being used to help prioritize *all* funding, the scores are only used to prioritize a limited selection of LCA funding, much of which is used to conduct affordable development. (For instance,

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[49] Housing Policy Plan 53-54.
[50] Metropolitan Council, Housing Performance Scores 2013, available at http://www.metrocouncil.org/getattachment/20eb2650-9d34-4773-a27d-14d0114a07c0/.aspx.
[51] The correlation for nonwhite population was +.62 in 2012 and 2013. For poverty rate, the figures are +.32 and +.31, respectively. For population, the correlations are +.54 and +.56. However, a multivariate regression run with all three factors confirms that racial composition is the most important of the three, as poverty loses its statistical significance altogether, and population, while remaining statistically significant, accounts for less than a 1-point swing in most cities. By contrast, each additional percentage of nonwhite population in a city tends to increase its Performance Score by over one point.
[52] Metropolitan Council, *Housing Development Guide* 45 (1985) [hereinafter HDG).
[53] *Id.*

between 2011 and 2013, LCA funds contributed to the construction 4,338 affordable units within the metropolitan area.)[54]

As a result, rather than facing a financial incentive to think and plan integratively, communities resistant to change are under little pressure to alter their policies. The cost of maintaining economically or racially segregated living patterns is reduced access to Council funds for affordable housing – funds segregated communities never wanted in the first place. On the opposite end of the spectrum, the central cities and racially transitioning suburbs, where nonprofit developers and housing agencies have concentrated most of the region's subsidized housing stock, are heavily prioritized for Council funding.

To ensure the Performance Scores reduce, rather than exacerbate, the region's disparities, the Plan must apply them to a wider range of funding, including funding for non-housing metropolitan systems.

Education and Concentrations of Poverty

Despite identifying, in an earlier section, the manner in which concentrated poverty can diminish school performance and, in a vicious cycle, further accelerate the concentration of poverty, Part III of the Plan contains no substantive mention of education whatsoever.[55] Indeed, the role assigned to the Council in that earlier section suggests that it would rather wash its hands of the matter entirely. Rather than take any direct action itself, it only promises to bring together other groups for unspecified "collaboration" and "empowerment," agreeing to "[c]onvene housing policy stakeholders," "[e]xplore how to empower school districts to more effectively comment on local comprehensive plans," and "[e]ncourage school district planners and local planners to communicate and collaborate."[56] This omission is unacceptable and could potentially undermine the Council's other efforts.

Economically and racially integrative housing could dramatically transform the region's schools, partially eliminating the low-performing, segregated schools which tend to confound attempts to equitably allocate housing. The Institute on Metropolitan Opportunity has run a simulation of the racial make-up of the region's schools, after more evenly distributing housing subsidies across the region.[57] The simulation shows that if Section 8 voucher usage was distributed evenly across the region and the distribution of households was race-neutral, a total of 5,531 nonwhite students currently in predominantly nonwhite schools would instead be attending a racially balanced school. Adding the effects of equalizing the distribution of LIHTC and Section 8 project-based units increases the total number of nonwhite students in racially balanced schools to 9,729.

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[54] Housing Policy Plan 55.
[55] Housing Policy Plan 44.
[56] *Id.*
[57] This simulation will be described in greater detail in an upcoming report. Institute on Metropolitan Opportunity, *Why Are the Twin Cities So Segregated?* (forthcoming 2014).

This represents a very substantial share of the total number of student moves that would be needed to completely eliminate racially segregated schools (predominantly white as well as predominantly nonwhite) in the region. In fact, it represents between two-third and four-fifths of the number of students who would need to change schools to reach that objective.

The Council already plays an important role in the administration of the region's schools. According to MLUPA, the Met Council "shall adopt a development guide" that "will encompass the physical, social and economic needs of the metropolitan area and those future developments which will have an impact on the entire area" including "the location of *schools*."[58] The Council's authority to coordinate land use in metropolitan area municipalities extends to education: MLUPA requires that local government unit's comprehensive plans, subject to review by the Council, shall contain a statement on "the effect of the plan on affected school districts," and that these comprehensive plans must be submitted to the affected school district for review and comment six months prior to their submission to the Council.[59] Additionally, it suggests that these comprehensive plans contain an intergovernmental coordination process for cooperation with school districts generally and the siting of public schools in particular.[60]

MLUPA also states that for purposes of the statute "local government unit" means "school district," and the Met Council is required to provide notice of rule changes and related hearings to all school districts in the metropolitan area.[61] The law further requires the Council to "construct an inventory" of all schools in the metropolitan area and the unused space within each school; it may then submit comments to the commissioner of education on any school district facility that is proposed in the metropolitan area.[62]

Given its considerable statutory authority over the subject, and the interwoven nature of housing and education, it cannot ignore the Plan's effects on schools – particularly because educational trends will, in turn, affect the Council's housing policy. Ironically, the Plan itself notes the importance of a forthright discussion of the interactions of land use and education: "Often these situations involve discussions that are extremely sensitive; acknowledging the relationship between land use and school districts up front can minimize the potential controversy."[63] The Council must take its own advice, and rather than glossing over education as component of housing policy, incorporate it fully into the Plan.

Transit-Oriented Development

While the Plan implicitly downplays the importance of education, it seems to consider transit a primary – if not *the* primary – consideration in the siting of housing. It

[58] Minn. Stat. 473.145 (emphasis added).
[59] Minn. Stat. 473.858 (2); Minn. Stat. 473.859 (1).
[60] Minn. Stat. 473.858 (2).
[61] Minn. Stat. 473.121 (6); Minn Stat. 473.852 (11); Minn. Stat. 473.174 (5).
[62] Minn. Stat. 473.23 (1).
[63] Housing Policy Plan 44.

commits to "focus[ing] housing around emerging transit investments," and envisions a Council role with a large number of well-specified responsibilities.[64] The Plan describes the Council's intention to "[p]rovide technical assistance for station area planning," "[d]efine density expectations for new housing and mixed-used development and redevelopment around transit stations," "[p]romote transit-oriented development," and "[d]evelop guidance based on existing best practices, to aid local cities . . . in the identification of high opportunity sites, districts, or areas."[65] Where the Council only expressed a limp willingness to play a secondary role in the field of housing and education, it enthusiastically commits to integrating housing policy and transportation policy.

In Part III, the Plan discusses the importance of transit-oriented development (TOD), and expresses a desire to maintain the affordability of housing near "transitways and high-frequency bus routes."[66] While transit undoubtedly plays a role in the region's future housing distribution, the Plan fails to acknowledge the potentially harmful effects of concentrating affordable housing on transit lines. Many of the region's transit lines in the region are situated in the urban core, particularly in the central cities of Minneapolis and Saint Paul. These same areas often suffer from concentrations of poverty and segregation. As a result, the desire to build affordable housing on transitways must be tempered with policies designed to avoid creating or worsening existing housing disparities.

The problem is particularly severe with regards to the high-frequency (e.g., LRT and BRT) lines that are the focus of most transit-oriented policies. Map 9, below, shows the geographic extent of existing high-frequency lines within the region. The network is entirely situated within the center of the region; only one route, the 515 bus line, does not primarily serve Minneapolis and Saint Paul. (It instead primarily serves Richfield, a rapidly segregating first-ring suburb.) As Chart 1 illustrates, high-frequency station stops tend to be much more nonwhite than the region as a whole. But the problem grows even worse when housing, transit, and schools are all considered together. As can been seen in Chart 2, over 90 percent of elementary school areas at high-frequency station stops have large nonwhite populations; housing sited at these stops is much more likely to be within a segregated school area than housing elsewhere.

TOD is not necessarily incompatible with fair housing. Transitways frequently pass through high-income as well as low-income areas. But without proactive efforts to ensure that affordable development is well-sited, affordable TOD is often located in low-income neighborhoods, where it generates the least political resistance. In these cases, the benefits of TOD are sometimes used as justification for problematic outcomes. TOD must coexist with integrative fair housing policies; it cannot be allowed to trump them.

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[64] *Id.* at 23-24.
[65] *Id.*
[66] *Id.* at 57.

The Plan does not exhibit any awareness of the complexities of this issue. It instead expresses blanket approval of TOD.

Review of Local Comprehensive Plans

Under MLUPA, the Council is required to review local comprehensive plans for conformity with its own systems plans, compatibility with other communities, and consistency with Council policies.[67] The Plan accurately recognizes that this review must include a review of the local units' "fair share" low- and moderate-income housing obligations and implementation plan.[68] This review, however, must be strengthened if the Council is to fulfill its statutory role as regional coordinator.

The review of local comprehensive plans may be the most fundamental of the Council's many powers. MLUPA imposes on imposes on municipalities a number of requirements and responsibilities, including the aforementioned "fair share" requirement. But as the Minnesota legislature recognizes in the preamble of the statute's Land Use Planning subsection, "local governmental units within the metropolitan area are interdependent . . . [and] developments in one local governmental unit may affect the provision of regional capital improvements."[69] In the statute's own words, "there is a need for the adoption of coordinated plans, programs and controls by all local governmental units in order to protect the health, safety and welfare of the residents of the metropolitan area and to ensure coordinated, orderly, and economic development."[70] The statute seeks to address this need by creating a regional authority – the Council – tasked with aligning local development activity.

As the preamble suggests, the coordination of local comprehensive plans, in order to ensure that each city can meet its MLUPA obligations, is perhaps the Council's primary responsibility. It is therefore extremely problematic that the Plan does not include any specific measures to ensure that plans are compatible with each other or consistent with Council policies. Instead, the only Council actions recommended by the Plan are "[w]ork[ing] with local governments and other appropriate stakeholders . . . to determine how to more effectively review . . . local comprehensive plans" and then "[i]ncorporate [the] new review criteria into . . . the Local Planning Handbook."[71] Whatever criteria the review uses, it is meaningless unless the Council is willing to take action upon finding that a local unit's comprehensive plan is incompatible with the policies of other communities or of the Council itself. As MLUPA requires, or at the very least, allows that Council policy plans be incorporated into systems plans to the extent they are rationally related, actions could include the direct revision of the comprehensive plan as "having a substantial impact on . . . a metropolitan systems plan."[72] Alternatively,

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[67] Minn. Stat. 473.175.
[68] Housing Policy Plan 58.
[69] Minn. Stat. 473.851. The Minnesota Supreme Court has also recognized this interdependence. Village of Burnsville v. Onischuk, 301 Minn. 137, 152 (1974).
[70] *Id.*
[71] Housing Policy Plan 58.
[72] Minn. Stat. 473.175; *see also* Minn. Stat. 473.146; Brian Ohm, *Growth Management in Minnesota: The Metropolitan Land Use Planning Act*, 16 HAMLINE L. REV. 359, 380 (1993).

the Council could withhold financial support from the local government in question, a practice it has adopted in the past.[73]

Reduce Impediments to Fair Housing

The Plan contains a section discussing the expansive requirements of the Fair Housing Act (FHA), but downplays both the law's reach and the Council's own authority.[74] Section 3608 of the FHA requires entities receiving housing funding from HUD and other federal agencies to "affirmatively further" fair housing.[75] (In the years 2012 and 2013, the Council received $58,300,363 and $57,705,185 from HUD, respectively.) As previously discussed, there is a great deal of legal precedent on the applicability of § 3608 and HUD has released a draft rule clarifying the requirements of the provision.

The Plan, however, does not even mention § 3608, and dismisses the HUD rule, stating that it is "facing political challenges in the U.S. House of Representatives."[76] This is legally unsupportable, and appears to be premised on a bizarre constitutional theory of unicameral executive power. The obligations of § 3608 are enshrined in federal law and exist regardless of HUD guidance or "political challenges." Moreover, the agency's interpretation of the rule is binding, despite political opposition in one house of Congress. The only means through which Congress can alter the requirements of the FHA, and HUD's interpretations of those requirements, is to pass a bill with the approval of both houses of Congress and the President. Any other interpretation would violate the Presentment Clause of the U.S. Constitution.[77]

The Plan further dodges the issue by stating that "[t]he Council and the Council's Housing Policy Plan have a role to play in the larger regional fair housing conversation but lack the authority to tackle this issue alone."[78] It goes on to assign the Council a role characterized by timid commitments: "[p]rovide financial support to regional research," "[c]ollaborate in regional initiatives," "[p]artner with HousingLink to connect renter households with opportunities," "[r]ecognize local efforts to further Fair Housing."[79] The tone is dissembling: "[T]here is no clear agreement who is responsible for ending [discriminatory] practices."[80] The Plan does promise to "includ[e] Fair Housing elements in the Housing Performance Scores," but as discussed above, this would accomplish little unless the scores themselves are put to broader use.[81] The section concludes with minimalistic, noncommittal policy recommendations, centered around a vague promise of

[73] HDG at 45.
[74] Housing Policy Plan at 67.
[75] 42 U.S.C. § 3608.
[76] Housing Policy Plan 69.
[77] U.S. CONST. art. I, § 7, cl. 2-3.
[78] Housing Policy Plan 69.
[79] *Id.* at 69-70.
[80] *Id.* at 69.
[81] *Id.* at 70.

further discussion: "The Council hopes to engage in a larger regional conversation to develop strategies, roles, and responsibilities to expand fair housing in the Twin Cities."[82]

This passage, pitifully weak on its own, is nearly unbelievable when viewed in context of the rest of the Plan. The measures discussed above – the Housing Need Allocations, the LCA Goals, the Housing Performance Scores, and the ability to review comprehensive plans – together and separately represent powerful sources of authority to promote fair housing. Not only does the Council have the power to affirmatively further fair housing by leveraging these policy instruments, it is *required* to do so by federal law. After spending dozens of pages describing housing disparities in the metropolitan area and delineating its plans to promote its own housing priorities, the Council simply cannot credibly reverse course and claim to be powerless over the issue. While some fair housing problems – in particular, private market discrimination – may be out of the Council's direct control, it has the resources to institute protective measures. And other fair housing problems – namely, the distribution and maldistribution of affordable and subsidized housing units – are in fact under the Council's direct authority.

Without major revisions, the Plan's cursory dismissal of fair housing almost certainly places it in direct violation of the FHA.

V. Eliminated Policies

The striking weakness of the Plan's policy section is particularly conspicuous when compared to the strong policies the Plan formally abandons. The 1985 Housing Development Guide, which served as the Council's previous housing policy, contained aggressive measures designed to combat segregation, reduce disparities, and promote fair housing. (Curiously, the new Plan claims that "Council actions in 1998 and 1999 eliminated [the previous plan] from the metropolitan development guide," but neither independent research nor multiple information requests have been able to identify the Council actions in question.[83] The Council's own response suggested that the policies were eliminated by implication through nonenforcement, apparently relying on a legal theory in which regulated entities can assume a law has simply evaporated if it goes unmentioned for a few years. None of this inspires much confidence that the Council will pursue its new Plan with vigor, especially because the new Plan is incomparably more vague.)

The most noticeable absence is the previous policy's strong enforcement power, which leveraged the Council's role as funder of regional systems in order to promote better housing outcomes. This was contained in Policy 39, which states:

> In reviewing applications for funds the Metropolitan Council will recommend priority in funding based on the local government's current

[82] *Id.* at 69.
[83] Housing Policy Plan 14.

> provision of housing opportunities for people low and moderate incomes, and its plans and programs to provide such opportunities in the future.[84]
>
> The commentary to Policy 39 states:
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> Many communities have demonstrated a commitment to expanding their supply of low income and modest cost housing. They take justifiable pride in their efforts to provide housing for their citizens and to help solve regional housing problems. To encourage and support such local efforts, the Council uses review authority to recommend funding priorities for communities based on their housing performance. The priorities reward communities that have provided a full range of housing opportunities. They also help communities compensate for any additional costs for services that might be incurred by subsidized lower income units.
>
> *This policy applies to all local applications for state and federal funding. These funds include community development block grants, and transportation, parks open space and aging grants among others.*[85]

This powerful policy, whose enforcement has long been ignored by the Council on dubious legal grounds, reveals the fundamental weakness of the current Housing Performance Scores and other ostensible attempts to promote a more equal distribution of housing. By applying the policy to *all* local applications for funding, Policy 39 created the strong incentives that are absent from the proposed Plan. Policy 39 also demonstrates how flimsy the Plan's protestations about fair housing truly are – the Council does not lack the authority to affirmatively further fair housing, it only refuses to consider measures which had worked towards that end in the past.

In addition to Policy 39, the Housing Development Guide included Policy 19, which stated that "subsidized housing should not be excessively concentrated, or developed in inferior locations."[86] The commentary to this policy notes:

> Another problem with the concentration of assisted housing is that they increase the proportion of neighborhood residents who depend on public services, thereby undermining the market for retail businesses that help support neighborhood vitality. Subsidized housing for families with children should be provided in scattered site single-family homes, townhouses, duplexes, or garden apartments.[87]

In similar fashion, Policy 23 declared that "a major objective [in the central cities] should be to retain and attract individuals and families with middle and upper incomes to achieve a more balanced income distribution," and "[s]ubsidized new construction should be used

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[84] HDG at 45.
[85] *Id.* (emphasis added).
[86] *Id.* at 25.
[87] *Id.*

only in economically integrated, scattered site or small-scale developments, and should be located in neighborhoods with limited amounts of lower income housing."[88]

These policies and their commentaries stand in stark contrast to the current Plan's approach to same issue. While acknowledging the harms of concentrated poverty, it never once directly warns of the dangers of concentrated subsidized housing, despite the clear logical link between the two phenomena. Rather than adopting policies to avoid this problem, it proposes campaigns to encourage investors to keep an open mind about areas of concentrated poverty: "Public interventions should address educational opportunities, crime, and the quality of the housing stock as well as spread the message that many wonderful, desirable opportunities exist in these neighborhoods…"[89]

The Plan also abandons Policy 35, which gives priority to family housing and economic integration. It declares that "priority will be given to proposals designed to serve families and proposals to further economic integration."[90] Once again, concentration in low-income neighborhoods is attacked: "[D]evelopments [in] which the majority of units will be subsidized proposed in predominantly low-income neighborhoods are neighborhoods are strongly discouraged."[91]

The Housing Development Guide included direct instructions to local governments to fight discrimination, such as in Policy 43, which stated:

> Local governments should adopt plans, policies and strategies for ensuring nondiscrimination in the sale and rental of housing in their communities. These should include affirmative marketing programs and relocation services in areas of low income minority concentration to broaden housing choice for people who have been discriminated against in the sale and rental housing.[92]

In Policy 44, it anticipated discriminatory lending and suggested a direct remedy: "[The Council will] monitor the Twin Cities home mortgage financing market [and if] adequate information for consumers about new mortgage types is not available, the Council will try to provide this information."[93]

The proposed Plan only mentions discrimination in passing, primarily in the previously discussed section on fair housing, which is devoted to explaining the Council's lack of powers to address fair housing. In place of the previous strong instruction for cities to fight discrimination, the Plan now feebly suggests "financial support to regional research . . . *to determine if discriminatory practices are occurring*

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[88] *Id.* at 30.
[89] Housing Policy Plan 30.
[90] HDG at 44.
[91] *Id.*
[92] *Id.* at 48.
[93] *Id.*

and limiting housing choices."[94] Rather than laying out specific remedies in advance, the Council promises to "[c]ollaborate in regional initiatives to address . . . discriminatory practices."[95] The regional initiatives in question are left unspecified.

VI. Conclusion

For the reasons described above, the Housing Policy Plan is insufficient to meet the challenges it faces and in dire need of amendment. The Plan also suffers from a critical lack of focus – it appears to pursue every conceivable policy priority at once. It would benefit from cleaner and more comprehensible organizational structure, and a greater willingness to clearly set out priorities and specific policies that achieve them.

Its greatest defect, however, remains its unwillingness to reconsider policies that have failed in the past, even when faced with evidence of severe continuing problems in the Twin Cities housing market. Until it does, the Council will remain out of compliance with MLUPA and with the FHA, will be perpetuating segregation and failing to affirmatively further fair housing, and will be failing in its duty to make the Twin Cities a more equitable and prosperous region.

[94] Housing Policy Plan 69 (emphasis added).
[95] *Id.*

INSTITUTE ON METROPOLITAN OPPORTUNITY
UNIVERSITY OF MINNESOTA LAW SCHOOL

Institute on Metropolitan Opportunity

Comments on the Metropolitan Council Proposed Amendments to the Housing Policy Plan (May 2015)

These comments describe the Institute on Metropolitan Opportunity's (IMO's) primary concerns with the amendments to the Metropolitan Council's Housing Policy Plan. Many of these concerns have been noted in previous comments to the Council.[1] Also included below is an alternative method for calculating housing need allocations, which ameliorates some – but by no means all – of these concerns.

At the outset, it is worth noting that many of the difficulties described below are the product of the Council's attempt to describe housing need and goals in exact numerical totals. This approach complicates the Council's role, because it requires the Council to accurately project population growth, housing need, and other trends fifteen years into the future, tasks it has historically struggled with. When the projections miss the mark, or insufficient resources are available to build the housing the Council has assigned, the Council's system risks breaking down, producing outcomes that are actively detrimental to the region.

A simpler approach would be to simply require that a certain share of new housing in each community be affordable, and adjust those shares annually based on existing affordability, past performance, and current conditions. However, such a system would require a significant rethinking of Council housing policy, and the following comments assume that the Council is committed to a system similar to the one described in its proposed amendments.

Objectives

If it hopes to create a sound affordable housing strategy, the Council must adhere to two broad objectives.

First, the Council should seek to implement a true "fair share" system, in which cities' allocations and goals are lowered and increased in relation to a cities' existing affordable housing stock, in an attempt to ensure that each metropolitan community provides its share of regional need. In the past, the Council has described its allocation system as a "fair share" policy, and the architects of the Minnesota Land Planning Act

[1] *See, e.g.* Institute on Metropolitan Opportunity, Comments to Metropolitan Council on Draft Housing Policy Plan (2014).

(MLPA) clearly envisioned such a policy.[2] A fair share system reverses the regional disparities that can result in racial and economic segregation, and eliminates the ability of individual communities to isolate themselves economically and socially at the region's expense. Much of the Twin Cities' success in the past has been a result of the region's commitment to ensuring that each of its communities does its part in providing for regional need.

Second, the Council should examine its allocations and goals, as well as the enforcement mechanisms connected with those allocations and goals, to ensure that they do not exacerbate existing economic and racial disparities. For instance, the Council should examine its policies to confirm that they do not result in the creation or excessive preservation of low-income housing in neighborhoods and municipalities with disproportionately large shares of affordable housing. Policy research around the nation continues to confirm the strong link between individual economic mobility and neighborhood characteristics – particularly racial and economic integration, crime rates, and K-12 educational opportunity.[3] In light of this fact, the Council should ensure that its housing allocations result in greater housing availability in areas that excel along these dimensions. The Council's housing policy should seek to reverse existing disparities at the municipal, neighborhood, and individual level, improving the lives and livelihoods of lower-income families by increasing housing choice and providing safe and affordable housing in areas where opportunity is high.

Combatting racial disparities and promoting integration are not only advisable as a practical matter, they are legally required. Because the Metropolitan Council receives a variety of funding from the federal government, it is subject to the requirement that it "affirmatively further fair housing," as described in federal law and HUD regulations.[4] It is subject to civil rights certifications and must take steps to ensure subsidized housing – in this case, a large subset of the affordable housing affected by its need allocations – is not concentrated in areas of high poverty and segregation. Federal law requires that the Council's policies actively promote the racial integration of housing.

Unfortunately, the proposed amendments to Council's housing plan do not accomplish these goals. The Council could use the adoption of a new Housing Policy Plan – the first in three decades – as an opportunity to reconfirm and strengthen the its commitment to a more equal, equitable, integrated, and sustainable region. Instead, the Council has proposed to readopt slightly modified versions of policies that have been in place for more than a decade. During this time span, inequality and segregation in the

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[2] *See, e.g.*, Metropolitan Council, *A "Fair Share" Plan: Subsidized Housing Allocation in the Twin Cities Metropolitan Area* (1977).

[3] *See, e.g.*, Raj Chetty and Nathaniel Hendren, *The Impacts of Neighborhoods on Intergenerational Mobility: Childhood Exposure Effects and County-Level Estimates* (2015), *available at* http://scholar.harvard.edu/hendren/publications/impacts-neighborhoods-intergenerational-mobility-childhood-exposure-effects-and.

[4] *See* 42 USC §§ 3608 (e), 5304 (b) (2), 5309 (a); 24 CFR §§ 91.225 (a), 91.325 (a); Affirmatively Furthering Fair Housing, 78 Fed. Reg. 43729 (proposed July 19, 2013) (to be codified at 24 C.F.R. pt. 5); *see also* U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, FAIR HOUSING PLANNING GUIDE (1995).

Twin Cities has increased. Gaps between communities have grown and a number of cities have entered a process of racial and economic transition. More of the same cannot be expected to reverse these trends.

Opportunity

In the recent Fair Housing Equity Assessment (FHEA), the Council developed a sophisticated opportunity analysis which examined local conditions across a number of dimensions.[5] In large part, the purpose of this analysis was to construct a framework by which the Council could determine the impact of its place-based policies on lower-income families. It examined five dimensions: school performance, crime rates, employment opportunities, poverty-related public services, and environmental factors.

Recent research has reaffirmed the wisdom of this analysis. One recent, comprehensive Harvard study revealed that neighborhoods play an important role in the wellbeing of young residents.[6] The study used tax records to conduct a robust analysis of over five million families, and ultimately found nearly incontrovertible evidence of major neighborhood effects on families across generations. Every single year spent by a child below 21 in a "better" neighborhood translates linearly into higher income, higher college attendance rates, lower teenage birth rates, and higher marriage rates in adult. Importantly, the study found five factors that distinguished "worse" neighborhoods from "better" neighborhoods, which were only loosely correlated with housing prices: degree of racial and economic segregation, quality of schools, crime rates, degree of income inequality, and marriage rates.

This study and others confirm that any attempt to use housing policy to affect existing racial and economic disparities must begin with a searching analysis of neighborhood opportunity. Likewise, neighborhood opportunity is an effective lens through which the Council can examine the equity effects of its housing policy.

While the Council's housing allocations do not incorporate its FHEA opportunity analysis, this does not mean the opportunity analysis should have no bearing on the allocative model. On the contrary, the findings of the FHEA offer an important mechanism for evaluating the consequences of the Council's housing plan: if its allocations place housing in areas that score poorly in the opportunity analysis, or stifle the access of lower-income families to areas of high opportunity, then the plan is critically flawed. Such a plan could not be said to constitute an equitable, coherent, or intelligent policy. It may also run afoul of statutory requirements, such as the "affirmatively furthering" requirements described above.

Unfortunately, the housing allocations in the Council's current proposed amendments do not appear to adequately provide lower-income families access to

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[5] Metropolitan Council, *Choice, Place and Opportunity: An Equity Assessment of the Twin Cities Region* (2014).

[6] Raj Chetty and Nathaniel Hendren, The Impacts of Neighborhoods on Intergenerational Mobility: Childhood Exposure Effects and County-Level Estimates (2015.

opportunity, as defined by the Council's FHEA analysis. There is a negative correlation between cities that receive high numerical housing allocations and cities that score highly on the crime, education, and environmental dimensions of the analysis.[7] This indicates that the Council's housing plan tends to direct more housing into neighborhoods lacking opportunity in these regards, with potentially generations-long consequences on the wellbeing of low-income families in the region. The allocations make it more likely that low-income families will be stuck in low-performing schools, forced to endure high crimes rates, and live in unhealthy environments. This is, in effect, the exact opposite of the desired result.

Growth Projections

The proposed amendments still rely heavily on the Council's growth projections. As noted in IMO's September 2014 comments on the Council's first round of revisions, there are two problems associated with the use of the Council's growth projections as the basis for the need calculations.[8] First, this procedure creates a serious risk of artificially inflated targets in the central cities and inner suburbs while reducing them in middle and outer suburbs. Historically, the Council's growth projections have always overstated expected growth in core areas. There is significant institutional pressure to project growth in the core of the region, as it is politically unpalatable to forecast stable or declining population in central areas, where the Council's policies are often designed to enhance growth.

The effects of this can be clearly seen in Maps 1 and 2, below.[9] These maps compare earlier Council forecasts for the years 2000 and 2010 to actual population growth over the same periods. In both maps, core areas grew consistently less than predicted, while the outer suburbs received more growth than expected. There is no reason to assume that current projections will not suffer from the same biases.[10] Whatever else might be drawn from this, it is important that the Council's housing policy not be based on faulty indicators.

Second, even if the Council's growth projections were reliable, the use of projected growth in this manner is problematic. The MLPA requires each community in

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[7] Opportunity measures are from Metropolitan Council, *Choice, Place and Opportunity: An Equity Assessment of the Twin Cities Region* (2014). The correlation coefficient for school performance is -.30 (significant at 99%); the correlation coefficient for crime rates is +.14; the correlation coefficient for environmental conditions is -.11. Correlation coefficients for job opportunities and public services are positive; however, as discussed below, an alternative model can maintain the positive correlation with job opportunities while reversing the correlations for the three factors above.

[8] Institute on Metropolitan Opportunity, Comments to Metropolitan Council on Draft Housing Policy Plan (2014).

[9] These maps are replicated from MYRON ORFIELD AND TOM LUCE, REGION: PLANNING THE FUTURE OF THE TWIN CITIES (2010).

[10] Despite the fact that the central cities (especially Minneapolis) have had many housing starts/permits in recent years, the most recent data show the old growth pattern re-emerging (as gas prices ease and people adjust to higher average prices, the economy recovers, and the financial/foreclosure crisis eases in the outer suburbs).

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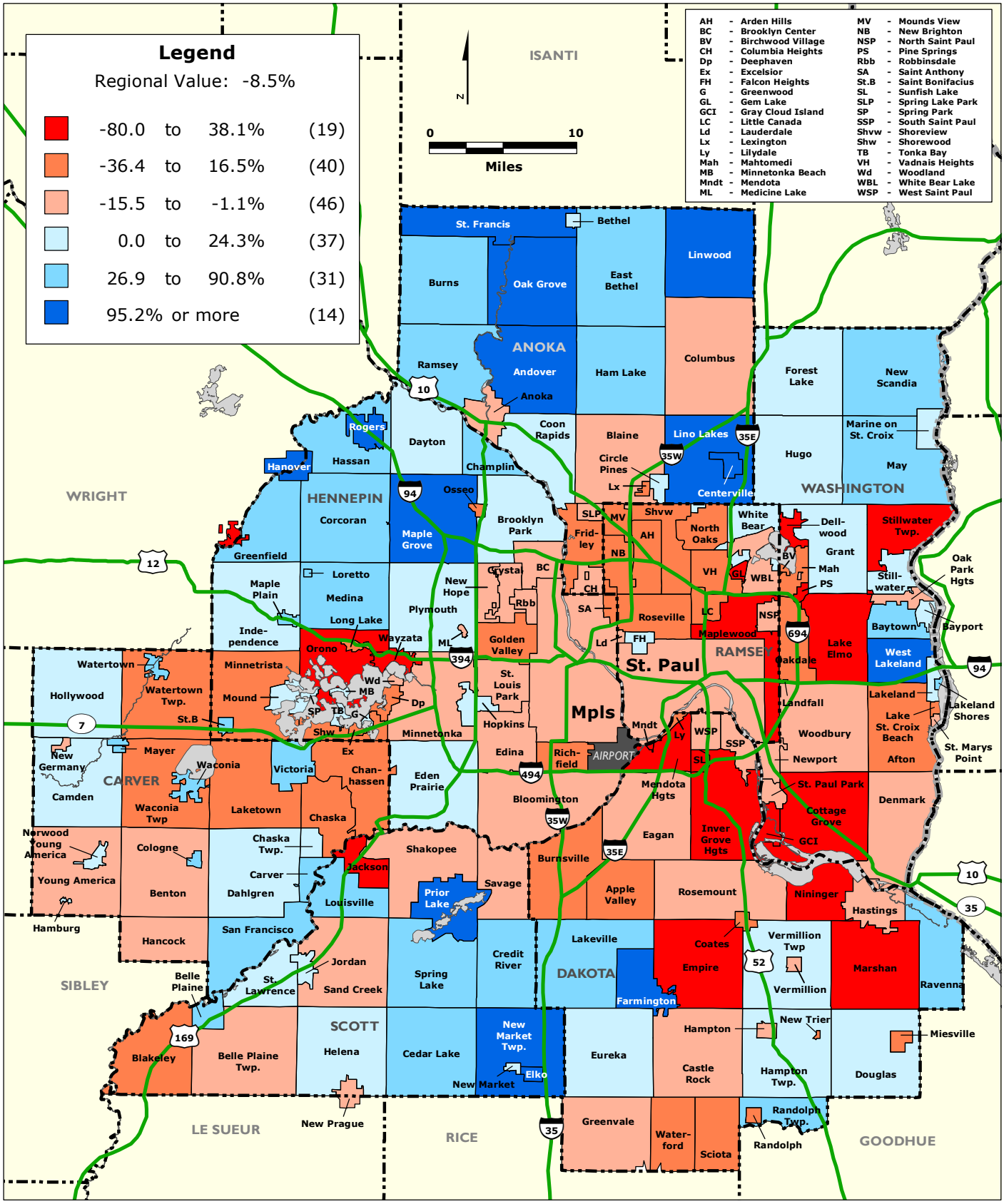
Map 1: Percentage Difference Between the Actual Population in 2000 and the 2000 Forecasted Population from 1975



Data Source: Metropolitan Council.

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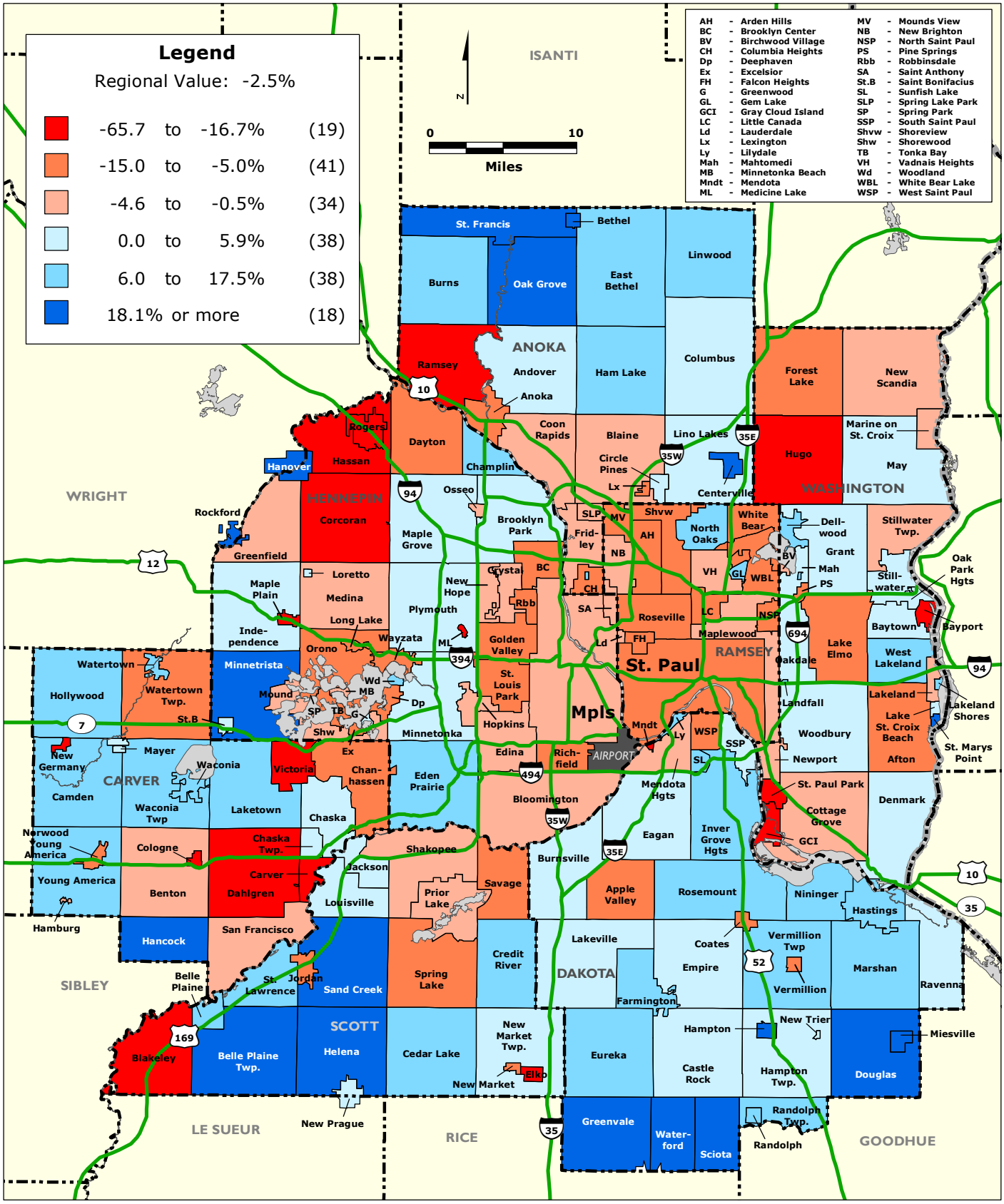
Map 2: Percentage Difference Between the 2005 Population Estimate and the 2005 Forecasted Population from 2000



Data Source: Metropolitan Council.

the metropolitan area to contribute "the local unit's share" of affordable housing; the Council itself reads this as a "fair share" obligation.[11] However, relying on growth to set the base share can potentially insulate communities with stable populations from any need to contribute additional affordable housing, regardless of whether low- and moderate-income families have housing choice in those areas. This problem is aggravated by the use of a ratio adjustment for existing affordable housing (discussed below). The ratio adjustment does not fully reward (penalize) places with current surpluses (shortages) in available affordable housing.

Existing Affordable Housing

The proposed amendments also do not rectify the other major problem with the previous need allocation formula. As has been noted by IMO previously, the manner in which the proposed methods adjust for existing affordable housing stocks is seriously flawed.[12] The targets are for absolute numbers of housing units, and surpluses or shortfalls in affordable housing are also calculated in numbers of housing units.[13] However, under the current method, adjustments to the base share for the existing affordable housing factor are proportional, not absolute.[14] The complicated formula (involving scale-adjusted Z scores and a two-thirds weight) used in the proposed amendments changes a city's affordable housing allocation by a percentage equal to 78 percent of the actual percentage point difference between the city's existing affordable housing percentage and the un-weighted regional average of city-level affordability rates. This is mathematically nonsensical, especially since the adjustment is applied to the growth share, not the community's overall housing. There is simply no reason to expect that an area that has over- or under-provided affordable housing by a certain proportion in the past can be restored to its fair share by over- or under-providing 78 percent of that same proportion of *new* affordable housing growth.

Proportional adjustments – increasing or decreasing a fair share target by a percentage – also guarantee that *all* places will be required to add affordable housing even if they already have much greater affordable housing shares than other parts of the region – indeed, even if their existing housing stock is already 100 percent affordable. This directly contradicts the MLPA's description of local fair share obligations, which explicitly allows for communities to meet their obligation by "providing sufficient *existing* or new housing."[15] Under the Council's allocation model, there is simply no way for a city to meet its fair share obligation with its existing housing stock.

For instance, using the estimate of the region-wide percentage of housing (inside the MUSA) affordable at 80 percent or less of regional median income implied by the data in Exhibit 5 of the Proposed Amendment, Minneapolis would have 11,462 more

[11] Minn. Stat. 473.859 subd. 4.
[12] Institute on Metropolitan Opportunity, Comments to Metropolitan Council on Draft Housing Policy Plan (2014).
[13] *See* Metropolitan Council, *Allocation of Housing Needs 2010-2020*.
[14] *Id.*
[15] Minn. Stat. 473.859 subd. 4 (emphasis added).

Table 1: The Inadequacy of the Proportional Ajustment for Existing Affordable Housing

City	Existing Affordable Housing Share	Affordable Housing Surplus (Shortfall)	Met Council Proportional Adjustment for Affordable Housing Stock	Adjustment as a % of Surplus/ Shortfall
Minneapolis	77%	11,462	-272	2.4%
St. Paul	84	16,535	-306	1.9
Blaine	79	2,020	-132	6.5
Brooklyn Cente	94	2,751	-65	2.4
Brooklyn Park	85	4,150	-138	3.3
Coon Rapids	93	5,843	-125	2.1
Richfield	93	3,486	-44	1.3
Chanhassen	33	(3,646)	161	4.4
Eden Prairie	43	(8,117)	199	2.5
Edina	35	(7,822)	58	0.7
Lakeville	51	(4,328)	155	3.6
Maple Grove	57	(3,754)	78	2.1
Minnetonka	46	(6,047)	93	1.5
Plymouth	47	(7,278)	112	1.5
Woodbury	37	(8,496)	281	3.3

Source: Metropolitan Council, Proposed Amendment to the 2040 Housing Policy Plan.

Surpluses and Shortfalls were calculated as the difference between the number of estimated affordable units in 2020 in a city and 71 percent of 2020 units. (71 percent is the regional average based on 2020 housing unit estimates and the existing affordable housing share.)

affordable units in 2020 than its "fair share" of 71 percent.[16] However, Minneapolis' 2020-2030 target for affordable housing is reduced by only 272 units using the proportional adjustment in the Council's Proposed Amendments. Minneapolis ends up with an overall target of 3,368 affordable units – the largest allocation in the region. Why should a municipality that already has a surplus of affordable units in excess of 11,000 be expected to add another 3,368 affordable units, when there are many municipalities that are currently nowhere near providing their fair share? St. Paul and most of the region's inner suburbs show similarly illogical results.

At the other extreme, equivalent estimates for Minnetonka and Plymouth show affordable housing shortfalls in 2020 of about 6,000 and 7,200, respectively. But the Council's proportional adjustment for existing affordable housing increases the allocations for these two high-opportunity locations by only 93 and 112 units – or less than two percent of the existing shortfalls. Other high-income areas with high-performing schools, low poverty and low crime (like Edina, Eden Prairie, Chanhassen, Lakeville, Maple Grove and Woodbury) show similar results.

Table 1 shows a selection of the most glaring examples of the inadequacy of the proportional adjustment method.

This flaw is particularly egregious because a fairer and more intuitive method is easily available. Instead of using a proportional approach, the Plan should use absolute figures. Surpluses (or shortages) of affordable units should simply be subtracted from (or added to) fair share targets.[17]

IMO has devised an alternative method for calculating fair share that relies on absolute numbers of existing units. As in the Council's model, each municipality is assigned a base allocation of 33.5 percent of its projected growth. Next, the model determines the absolute number of units each city has above or below the regional weighted mean share of affordable housing, which is 71 percent. For instance, a city with 100 units of housing and 50 units of affordable housing would have a shortage of 21 units (i.e., 50 – (100 x .71)), while a city with 200 units of housing and 150 units of affordable housing would have a surplus of 8 units (i.e., 150 – (200 x .71)). In absolute numbers, this surplus (or shortage) is then subtracted (or added) to the city's base allocation.

The IMO model then incorporates the proportional adjustments for low-wage workers and jobs used in the Council's Proposed Amendments. In order to prevent any city from receiving an excessive need allocation, targets are capped at 65 percent of projected growth (where applicable). Negative numbers are, of course, adjusted to zero.

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[16] The proposed amendments actually use 66.4 percent – the un-weighted average of affordability rates across cities – as the regional average. This makes sense when calculating the Z scores for the Council's proposed adjustment procedure. However, the actual regional affordable housing rate to be used when calculating over- or under-supplies of affordable units is better estimated by the weighted average (or by the total affordable units in the region divided by the total number of housing units in the region).

[17] Low-wage jobs and workers are measured in fundamentally different units than housing counts, so it is reasonable to use proportional adjustments in those cases.

Finally, income bands are applied in the same manner as in the Council's model.[18] The resulting alternative model allocates the same number of units as the Council's model, but in a far more equitable fashion.[19]

Maps 3 and 4 demonstrate the enormous practical implications of the Council's proportional approach. They show how fair share obligations would be distributed around the region using the Council's proposed proportional affordable housing adjustment (Map 3), versus IMO's alternative adjustment, which adds or subtracts units in absolute terms (Map 4).[20] (Table 2, appended to the end of the text, shows the figures used to calculate overall housing need for each individual municipality.)

The fair share targets in IMO's alternative model have a strong negative correlation with current affordable housing concentrations.[21] In general, the proportional method used in the Council's proposed model (Map 3) would further concentrate poverty in the central cities and some inner suburbs, while the additive method (Map 4) would help to spread low-income households more evenly across the region.[22]

Importantly, IMO's alternative model fares much better than the Council's proposal when viewed through the lens of the Council's own opportunity analysis, as described above. IMO's model is much more likely to allocate new affordable housing to cities served by higher-performing schools. Unlike the Council's allocations, which, as previously discussed, are strongly negatively correlated with local school performance, IMO's allocations are positively correlated with local school performance.[23] The same is true with a number of other dimensions of the opportunity analysis conducted by the Council in its recent Fair Housing Equity Assessment: while the Council's allocations correlate with higher crime rates and poorer environmental conditions, IMO's correlate with lower crime rates and better environmental conditions.[24] *In sum, the Council's model*

[18] The distributions of the allocations for the three income bands using the alternative adjustments are similar to Map 4. These maps are available on request.

[19] The alternative simulation produces a total regional obligation of roughly 38,700, very close to, but slightly greater than, the Council's projected regional need. The formulas could be easily fine-tuned to produce the exact amount if needed. However, as it is extremely unlikely that need allocations will be followed precisely, it is, from a practical standpoint, far more important to use a model that equitably distributes housing than a model that produces an artificial, and ultimately meaningless, degree of numerical precision.

[20] A city's fair share obligation was capped at 65 percent of projected growth in the alternative shown in Map 4.

[21] The correlation between the fair share allocations in Map 3 and current affordable housing percentages is statistically insignificant (-.09) while it is statistically significant at the 99 percent confidence level (-.33) for the allocations in Map 4.

[22] The distributions of the allocations for the three income bands using the alternative adjustments are similar to Map 4. These maps are available on request.

[23] The correlation coefficients are +.19 (statistically significant at 95%) for the IMO allocations and -.30 (significant at 99%) for proposed Council allocations. Local school performance scores were drawn from the data in Metropolitan Council, *Choice, Place and Opportunity: An Equity Assessment of the Twin Cities Region* (2014).

[24] The correlations for crime rates are +.14 for the Council allocations and -.18 (significant at 95%) for IMO allocations, and for environmental conditions are -.11 for the Council allocations and +.12 for IMO allocations. Both models result in positive correlations with job opportunities. IMO's allocations correlate

*directs affordable housing **away from** better opportunities (better schools, cleaner environments and lower crime rates) while IMO's directs it **toward** greater opportunities.*

Housing Performance Scores

Current data suggest that the Council is failing to create sufficient incentive for municipalities to provide their share of allocated housing, or even meet their minimum LCA goals. For example, by 2013, only seven of the 95 LCA participating communities were on track to meet their 2010-2020 LCA goals.[25] Even more problematically, five of these communities were inner-ring suburbs and one was Minneapolis – all areas which already contain a substantial surplus of affordable housing, relative to the regional average. In other words, the vast majority of cities will likely miss their minimum LCA goals, including, with a single exception, all of the higher-income outer-ring suburbs, where affordable housing is currently scarce.

The LCA's inability to achieve its intended outcomes is, at least in part, a consequence of the misapplication of the Council's primary incentive for affordable construction, the Housing Performance Scores.

The current scoring system is improved from the previous iteration, particularly by the inclusion of a greater focus on local housing programs and policies, and the extra points awarded for housing affordable at the very lowest incomes. There is still room for significant improvement. In particular, Housing Performance Scores should consider local zoning and land use laws, which often form a key barrier to improved housing choice. This is especially important because many cities that are currently rewarded for their high housing scores – e.g., the central cities of Minneapolis and Saint Paul – also exhibit internal patterns of economic and racial segregation, often as a result of land use rules that restrict low-income development.

However, the more troubling aspect of the Housing Performance Scores is not their implementation, but their application, which the proposed amendment leaves unchanged. The scores are applied to a very narrow set of funding, limiting their incentive value. Municipalities with low housing performance are penalized in applications to two (of three) LCA programs. But the LCA is itself a voluntary program, and only 95 of the 124 communities receiving a housing need allocation have negotiated LCA goals. In other words, nearly 25 percent of regional cities are not even eligible for the majority of the funding that is intended to incentivize them to improve their housing performance.

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negatively with the final opportunity dimension used in the Council's study – access to poverty-related public services – while the Council's correlates positively with this measure. However, in IMO's alternative model, most communities with low allocations *already have* substantial supplies of affordable housing – in other words, families who prioritize access to services have significant housing options in these communities.

[25] A city was deemed to be on track if it had produced 40 percent of the upper end of it LCA affordability range during the four years from 2010 through 2013. The data was derived from Metropolitan Council, *Affordable Housing Production, Twin Cities Area* (2013).

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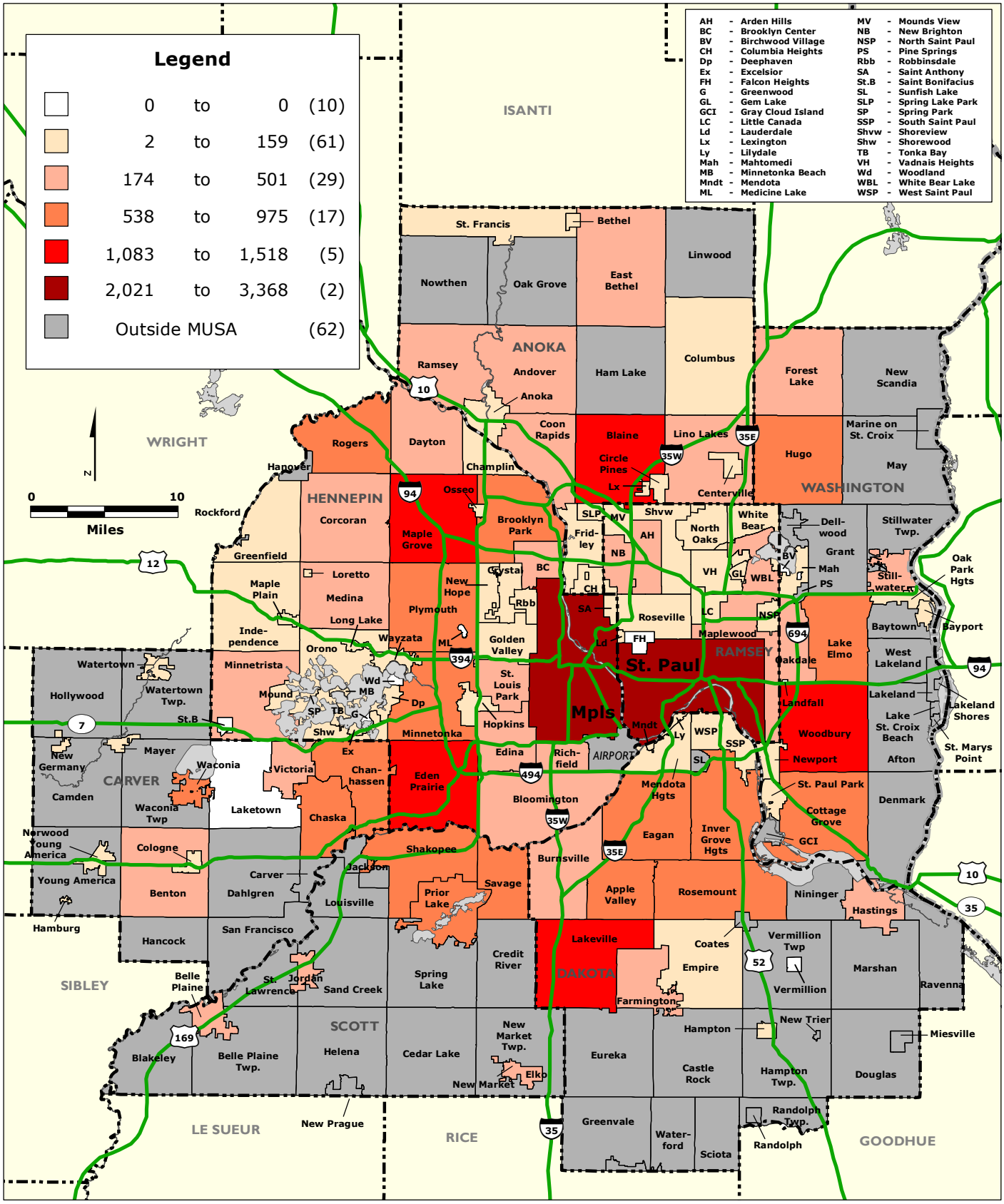
Map 3: Metropolitan Council Allocations from Proposed Amendments to the 2040 Housing Policy Plan, March 16, 2015



Data Source: Metropolitan Council.

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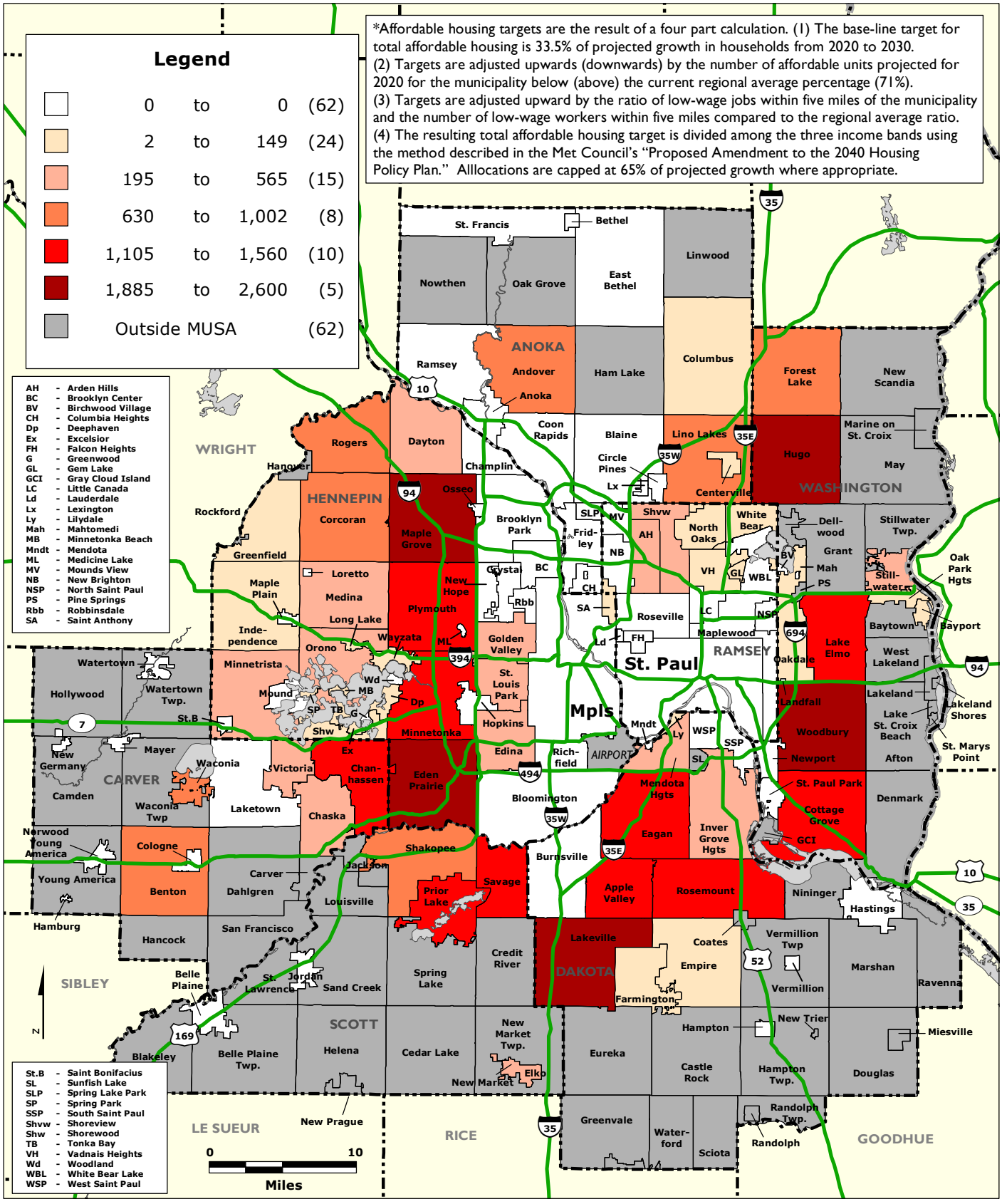
Map 4: Allocations with Proportional Adjustment for Jobs/Workers and Absolute Adjustment for Existing Affordable Housing-Capped (Total for All Affordability Ranges)*



Data Source: IMO calculation using data from the Metropolitan Council.

Cities with a low score are, by contrast, *more* eligible for affordable housing subsidies. While this approach assists cities that are voluntarily seeking to reduce affordable housing shortfalls, it cannot be said to create a significant incentive to produce affordable housing. Many higher-income communities resist affordable housing for political reasons, and are unlikely to avail themselves of housing funding, even if they receive high priority for that funding.

Housing scores also constitute 7 percent of the available points in the scoring system for transportation funding. This system, however, is unlikely to have much effect on local policies or performance, because communities can compensate for poor housing performance by improving their scores across the other 93 percent of available points.

The simplest means of strengthening the Housing Performance Scores would be to utilize the scores in evaluating applications for a broader array of funding. In the 1985 Housing Development Guide – the Council's previous housing policy plan – housing performance was used by the Council to prioritize "all applications for state and federal funding."[26] This was accomplished through a variety of means, including the Council's statutory power to review "matters of metropolitan significance" and a series of cooperative agreements with state and local agencies.[27] The Housing Policy Plan notes that the Housing Performance Scores are a direct continuation of this previous policy.[28]

The current Housing Policy Plan states that the Council's previous review authority was derived from the federal A-95 review process, which was repealed in 1982. That description, however, omits important historical details. While, in the 1970s, the Council's reviews were sometimes conducted within the framework of the A-95 process, A-95 was not the source of the Council's review authority. Instead, the Council relied on its authority under the MLPA, and additionally maintained a number of cooperative agreements with HUD and state agencies, empowering it to prioritize funding. Notably, the MLPA authority and cooperative agreements remained in effect after the repeal of A-95. This is clearly demonstrated by the funding priority language within the 1985 Housing Development Guide, which entirely postdates A-95. Moreover, the 1985 and previous housing policy plans leave no doubt that the Council's review authority extended to state sources of funding, such as park, transportation, sewer, and other grants. A-95, as a federal policy, could neither increase nor, in its repeal, reduce the Council's authority to prioritize this state funding. Therefore, there can be no question that Council retains its extensive review powers today, even if it has chosen to exercise them less broadly.[29] (As noted above, the Council continues to condition a small portion of

[26] Metropolitan Council, *Housing Development Guide* 45 (1985).
[27] Minn. Stat. § 473.171; Minn. Stat. § 473.173.
[28] Metropolitan Council, *Housing Policy Plan* 81-82 (2014).
[29] In the 1970s, these cooperative agreements were sometimes conducted under the auspices of the federal A-95 process. However, other cooperative agreements with HUD and state agencies – and the 1985 Housing Development Guide itself – postdate the A-95 review process, which was repealed by executive order in 1982. Moreover, A-95, as a federal policy, could neither increase nor, in its repeal, reduce the Council's authority to prioritize state funding. Therefore, the Council still retains the authority to implement similar policies today.

transportation funding on housing, demonstrating that the Council has the capacity to integrate housing and other sources of funding.)

Conclusion

IMO asks the Council to strongly reconsider its methods for allocating affordable housing need and incentivizing housing performance. In the past, the Council was a national leader in housing policy, and the impacts of its innovative techniques and clearheaded pursuit of a fairer region are still felt today. However, the past several decades have seen a rapid reversal of these gains. This process has been accelerated by Council policy. With the adoption of a new Housing Policy Plan, the Council has an important opportunity to change course and build powerful tools that support institutional fairness while eliminating regional disparities. The Council is urged to do so.

Table 2: Comparison of Met Council and Institute on Metropolitan Opportunity Affordable Housing Allocations for 2020-30

County	City	Projeted Growth in Housing Units	Base Allocation	Met Council Adjustment for Existing Affordable Housing	Met Council Final Allocation	IMO Adjustment for Existing Affordable Housing	IMO Final Allocation[1]	IMO/ Met Council Difference
Anoka	Andover	1,350	452	16	416	695	878	462
Anoka	Anoka	650	217	-48	153	-1,897	0	-153
Anoka	Bethel	20	7	-2	4	-53	0	-4
Anoka	Blaine	3,900	1,305	-132	1,119	-2,020	0	-1,119
Anoka	Centerville	110	37	-2	31	-23	2	-29
Anoka	Circle Pines	80	27	-5	21	-372	0	-21
Anoka	Columbia Heights	350	117	-28	98	-2,261	0	-98
Anoka	Columbus	120	40	4	41	40	72	31
Anoka	Coon Rapids	1,800	602	-125	426	-5,843	0	-426
Anoka	East Bethel	920	308	-29	230	-365	0	-230
Anoka	Fridley	600	201	-45	155	-2,845	0	-155
Anoka	Hilltop	40	13	-3	11	-131	0	-11
Anoka	Lexington	70	23	-6	17	-243	0	-17
Anoka	Lino Lakes	1,530	512	40	496	676	995	499
Anoka	Ramsey	1,600	535	-51	438	-693	0	-438
Anoka	St. Francis	410	137	-29	90	-315	0	-90
Anoka	Spring Lake Park	160	54	-12	43	-730	0	-43
Carver	Carver	1,310	438	61	441	425	706	265
Carver	Chanhassen	1,850	619	161	788	3,646	1,203	415
Carver	Chaska	1,800	602	-17	538	89	565	27
Carver	Cologne	360	120	-17	95	-111	0	-95
Carver	Hamburg	20	7	-2	4	-60	0	-4
Carver	Laketown Township	0	0	0	0	53	0	0
Carver	Mayer	160	54	-10	35	-146	0	-35
Carver	New Germany	50	17	-4	11	-52	0	-11
Carver	Nor/America	680	227	-48	159	-434	0	-159
Carver	Victoria	730	244	79	298	1,509	475	177
Carver	Waconia	1,680	562	11	563	352	898	335
Carver	Watertown	340	114	-24	76	-407	0	-76
Dakota	Apple Valley	2,800	937	-15	833	581	1,266	433
Dakota	Burnsville	1,000	335	-28	302	-1,636	0	-302
Dakota	Eagan	1,950	652	18	717	2,308	1,268	551
Dakota	Empire Township	280	94	9	100	42	130	30
Dakota	Farmington	1,350	452	-28	374	-244	73	-301
Dakota	Hampton	10	3	-1	2	-64	0	-2
Dakota	Hastings	1,300	435	-64	363	-1,394	0	-363
Dakota	Inver Grove Heights	2,100	702	-29	631	-116	482	-149
Dakota	Lakeville	4,000	1,338	155	1,410	4,328	2,600	1,190
Dakota	Lilydale	40	13	2	17	123	26	9
Dakota	Mendota	10	3	0	3	-11	0	-3

Table 2: Comparison of Met Council and Institute on Metropolitan Opportunity Affordable Housing Allocations for 2020-30

County	City	Projeted Growth in Housing Units	Base Allocation	Met Council Adjustment for Existing Affordable Housing	Met Council Final Allocation	IMO Adjustment for Existing Affordable Housing	IMO Final Allocation[1]	IMO/ Met Council Difference
Dakota	Mendota Heights	330	110	32	150	2,014	215	65
Dakota	Rosemount	2,400	803	41	832	1,006	1,560	728
Dakota	South St. Paul	350	117	-27	83	-2,225	0	-83
Dakota	Vermillion	0	0	0	0	-31	0	0
Dakota	West St. Paul	400	134	-27	123	-2,056	0	-123
Hennepin	Bloomington	1,350	452	-32	501	-1,775	0	-501
Hennepin	Brooklyn Center	900	301	-65	219	-2,751	0	-219
Hennepin	Brooklyn Park	2,950	987	-138	803	-4,150	0	-803
Hennepin	Champlin	550	184	-16	159	-574	0	-159
Hennepin	Corcoran	970	324	35	329	494	631	302
Hennepin	Crystal	200	67	-15	52	-2,377	0	-52
Hennepin	Dayton	1,170	391	0	384	112	492	108
Hennepin	Deephaven	10	3	1	4	823	7	3
Hennepin	Eden Prairie	3,250	1,087	199	1,518	8,117	2,113	595
Hennepin	Edina	700	234	58	348	7,822	455	107
Hennepin	Excelsior	10	3	0	3	118	7	4
Hennepin	Golden Valley	400	134	9	150	1,230	260	110
Hennepin	Greenfield	60	20	4	23	62	39	16
Hennepin	Greenwood	0	0	0	0	172	0	0
Hennepin	Hopkins	300	100	-11	121	-917	0	-121
Hennepin	Independence	100	33	11	45	158	65	20
Hennepin	Long Lake	90	30	-1	30	14	46	16
Hennepin	Loretto	10	3	0	3	-8	0	-3
Hennepin	Maple Grove	3,050	1,020	78	1,083	3,754	1,983	900
Hennepin	Maple Plain	90	30	-4	25	-99	0	-25
Hennepin	Medicine Lake	0	0	0	0	60	0	0
Hennepin	Medina	480	161	53	216	1,040	312	96
Hennepin	Minneapolis	9,700	3,245	-272	3,368	-11,462	0	-3,368
Hennepin	Minnetonka	1,800	602	93	802	6,047	1,170	368
Hennepin	Minnetonka Beach	10	3	1	4	128	7	3
Hennepin	Minnetrista	820	274	100	339	607	533	194
Hennepin	Mound	250	84	-6	67	-186	0	-67
Hennepin	New Hope	400	134	-27	111	-1,892	0	-111
Hennepin	Orono	350	117	39	153	1,467	228	75
Hennepin	Osseo	120	40	-9	31	-314	0	-31
Hennepin	Plymouth	2,250	753	112	942	7,278	1,463	521
Hennepin	Richfield	650	217	-44	195	-3,486	0	-195
Hennepin	Robbinsdale	250	84	-19	65	-1,538	0	-65
Hennepin	Rogers	1,460	488	49	544	820	949	405
Hennepin	St. Anthony	250	84	-3	102	-5	144	42

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County	City	Projeted Growth in Housing Units	Base Allocation	Met Council Adjustment for Existing Affordable Housing	Met Council Final Allocation	IMO Adjustment for Existing Affordable Housing	IMO Final Allocation[1]	IMO/ Met Council Difference
Hennepin	St. Bonifacius	0	0	0	0	-69	0	0
Hennepin	St. Louis Park	900	301	-12	332	-99	338	6
Hennepin	Shorewood	100	33	12	44	1,404	65	21
Hennepin	Spring Park	60	20	0	18	41	39	21
Hennepin	Tonka Bay	30	10	3	13	308	20	7
Hennepin	Wayzata	120	40	6	50	515	78	28
Hennepin	Woodland	0	0	0	0	119	0	0
Ramsey	Arden Hills	810	271	43	333	878	527	194
Ramsey	Falcon Heights	0	0	0	0	71	0	0
Ramsey	Gem Lake	30	10	1	11	34	20	9
Ramsey	Lauderdale	10	3	-1	3	-251	0	-3
Ramsey	Little Canada	130	43	-5	39	-497	0	-39
Ramsey	Maplewood	1,550	518	-75	419	-2,374	0	-419
Ramsey	Mounds View	50	17	-4	14	-1,174	0	-14
Ramsey	New Brighton	700	234	-22	232	-727	0	-232
Ramsey	North Oaks	80	27	13	41	485	52	11
Ramsey	North St. Paul	250	84	-19	60	-1,235	0	-60
Ramsey	Roseville	400	134	-8	145	-546	0	-145
Ramsey	Saint Paul	6,650	2,224	-306	2,021	-16,535	0	-2,021
Ramsey	Shoreview	300	100	3	106	862	195	89
Ramsey	Vadnais Heights	350	117	-4	119	10	149	30
Ramsey	White Bear Township	180	60	4	66	561	117	51
Ramsey	White Bear Lake	700	234	-32	206	-1,373	0	-206
Scott	Belle Plaine	800	268	-59	206	-706	0	-206
Scott	Elko New Market	890	298	27	287	311	502	215
Scott	Jordan	660	221	-25	174	-243	0	-174
Scott	Prior Lake	2,400	803	87	871	1,858	1,560	689
Scott	Savage	1,700	569	51	580	1,877	1,105	525
Scott	Shakopee	2,950	987	-33	938	43	1,002	64
Washington	Bayport	120	40	0	41	47	78	37
Washington	Birchwood Village	0	0	0	0	184	0	0
Washington	Cottage Grove	2,350	786	17	698	1,011	1,515	817
Washington	Forest Lake	1,250	418	18	431	654	813	382
Washington	Hugo	2,900	970	138	975	1,556	1,885	910
Washington	Lake Elmo	1,770	592	173	733	1,641	1,151	418
Washington	Landfall	0	0	0	0	-87	0	0
Washington	Mahtomedi	80	27	7	34	1,118	52	18
Washington	Newport	260	87	-14	66	-269	0	-66
Washington	Oakdale	700	234	-10	214	-109	104	-110
Washington	Oak Park Heights	230	77	3	82	221	150	68

Table 2: Comparison of Met Council and Institute on Metropolitan Opportunity Affordable Housing Allocations for 2020-30

County	City	Projeted Growth in Housing Units	Base Allocation	Met Council Adjustment for Existing Affordable Housing	Met Council Final Allocation	IMO Adjustment for Existing Affordable Housing	IMO Final Allocation[1]	IMO/ Met Council Difference
Washington	St. Paul Park	430	144	-32	102	-545	0	-102
Washington	Stillwater	750	251	20	284	1,244	488	204
Washington	Willernie	0	0	0	0	-45	0	0
Washington	Woodbury	3,700	1,238	281	1,443	8,496	2,405	962
Total		113,300	37,898	197	37,907	-1,434	38,718	

[1] IMO final allocations are capped at 65% of projected growth where applicable.

Source: Metropolitan Council, Proposed Amendment to the 2040 Housing Policy Plan.

APPENDIX C

Housing Policy Debate Articles

1. Orfield, et al., *High Costs and Segregation in Subsidized Housing Policy*

2. Goetz, *Poverty-Pimping CDCs: The Search for Dispersal's Next Bogeyman*

3. Orfield, et al., *Response to Poverty-Pimping CDCs: The Search for Dispersal's Next Bogeyman*

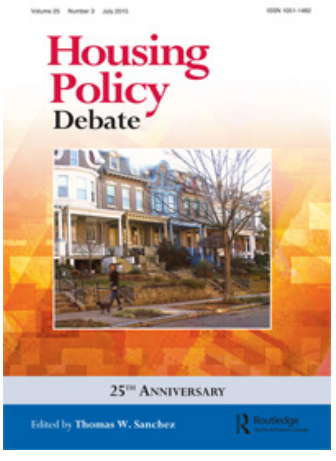
4. Massey, *The Social Science of Affordable Housing*

5. Khadduri, *The Affordable Housing Industry Needs to Develop Capacity to Work in High Opportunity Neighborhoods*

6. Dawkins, *Place-Based Housing Assistance and Access to Opportunity: Implications for Fair Housing in the Twin Cities*

7. Schwartz, *The Low-Income Housing Tax Credit, Community Development, and Fair Housing: A Response to Orfield Et Al.*

8. Orfield, et al., *Taking a Holistic View of Housing Policy*



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High Costs and Segregation in Subsidized Housing Policy

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FORUM

High Costs and Segregation in Subsidized Housing Policy

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This article examines the public policies determining the distribution of subsidized housing in the Twin Cities metropolitan area of Minnesota, the resulting distribution of subsidized housing, and the comparative costs associated with building in the region's central cities or in suburbs. The analysis concludes that current policies are clearly not meeting the region's responsibility to affirmatively further fair housing. The metropolitan area abandoned its role as a national leader in this area decades ago. The result is an affordable housing system that concentrates subsidized housing in the region's poorest and most segregated neighborhoods. This increases the concentration of poverty in the two central cities, in the region's most racially diverse neighborhoods, and in the attendance areas of predominantly nonwhite schools. In the long run, this hurts the regional economy and exacerbates the racial gaps in income, employment, and student performance that plague the Twin Cities.

Keywords: low-income housing; minorities; community development; suburban

The Twin Cities metropolitan area of Minnesota is among the wealthiest and least diverse in the United States, characteristics that once enabled the region to implement one of the nation's most integrative affordable housing programs. But in 1986, the cities abandoned their ambitious, coordinated integration efforts. Affordable housing policy was turned over to a loose network of regional, local, and private entities. The result has been a reversal of the region's previous integrative trends—and the growth of a large, hard-to-regulate affordable housing industry.

Today, affordable housing policy in the Twin Cities actively contributes to deepening segregation. Present-day regional subsidized housing construction has largely been centered on building and rebuilding housing in the region's poorest neighborhoods. While this practice has been rationalized as a form of economic development, the evidence to date suggests that these policies have intensified racial segregation and the concentration of poverty.

This upswing in housing segregation has accompanied, and likely contributed to, other segregative trends in the Twin Cities, most notably in education. In the 1970s and 1980s, the region proactively pursued school integration, a policy lasting until the early 1990s, by which time the region contained very few segregated schools. But this progress has been reversed at an alarming pace. Today, over 130 of the region's schools are segregated, and racial isolation in schools mirrors residential segregation.

As a consequence of these policy changes, the Twin Cities region is unusually segregated for an American city with its demographic characteristics. For instance, it is

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much more segregated than similarly composed cities such as Portland, Oregon, and Seattle, Washington (Orfield & Luce, 2010). And the gap has worsened in recent years, as the most deeply segregated neighborhoods of the Twin Cities have endured an unusually harsh period of decline and disinvestment. Moreover, because many policymakers and analysts have explicitly rejected the goals of racial integration, the region is unlikely to change trajectory in the near future.

These broad segregative trends form the backdrop of other changes in the region's housing policy. Most notable is the emergence and preservation of a clear city–suburb divide in affordable construction. In recent decades, the central cities of Minneapolis and St. Paul, despite containing most of the region's low-income and minority population, have captured a disproportionate share of subsidized housing funding. That this practice helps perpetuate segregation is clear. Less obvious, however, is that it is inefficient. An analysis of available data on affordable construction suggests that central city development programs are comparatively expensive, with each new unit of urban affordable housing costing more than an identical unit in a less segregated, more affluent, opportunity-rich suburb.

This wasteful approach to housing construction, in which public subsidies are prioritized for central city projects, despite the fact that they return fewer units on the dollar and create negative social externalities, has a number of root causes. In part, it has arisen because the system by which affordable housing subsidies are distributed frequently incentivizes and rewards developments in dense urban areas (and to some extent, developments in segregated, relatively impoverished first-ring suburbs). It has also been encouraged by the growth of a sophisticated "poverty housing" industry with a firm stake in continued central city development. The industry incorporates a throng of government, nonprofit, and for-profit entities, including a number of investors and intermediaries. For some of these parties, affordable development is a highly profitable venture, facilitating high salaries and lucrative investment strategies.

Proponents of this strategy argue that subsidizing housing in low-income neighborhoods strengthens areas deprived of private credit. Most research, however, contradicts this view. The most significant regional attempt to revitalize a neighborhood through housing construction—the Franklin–Portland Gateway—is one of the most expensive affordable housing projects in recent history and appears to have done little or nothing to change its neighborhood's downward trajectory.

In the meantime, potential projects in higher opportunity suburban areas have gone unfunded. Affordable housing projects in these areas not only are much more cost effective but can also reduce the concentration of poverty and provide the region's low-income citizens with greater access to better schools, safer neighborhoods, and more economic opportunity.

Not only is this policy detrimental to the region, but it also violates federal law. The Fair Housing Act requires recipients of housing dollars to affirmatively further fair housing. Simply put, federal funding must be used on projects that encourage integration. The region's current subsidized housing strategies are clearly not meeting this requirement.

In short, the failure of the Twin Cities to pursue housing integration in a coordinated fashion has led to diffuse, decentralized affordable housing policy. A bevy of housing subsidies with unaligned policy objectives, each awarded based on different rules, frequently has the effect of rewarding central city developments. Meanwhile, responsibility for subsidized construction is divided among heterogeneous organizations pursuing a variety of interests and objectives. In these ways, regional authorities have encouraged inefficient, wasteful construction in the central cities, while doing little to

resolve fundamental problems like segregation and access to opportunity. Serious reforms must be undertaken to address these concerns.

The Twin Cities Metropolitan Council and the Requirements of the Federal Fair Housing Act

Housing policy tends to fall under two broad frameworks. One framework focuses overwhelmingly on the production of units, using physical structures and the immediate neighborhood as the focal points for analysis. This housing research tends to emphasize the technical details of packaging, financing, and activities within the frame of single neighborhood, rather than viewing a metropolitan area as an interconnected system. Although these concerns are an important component of housing development, this viewpoint is necessarily incomplete.

The second perspective conceptualizes housing more broadly: as a means of providing access to desirable communities that offer strong opportunities for adults, foster the development of children, and pose few threats to health and safety. It sees regional housing policy as an interconnected system, where small changes can have broad effects throughout a metropolitan area: strengthening or weakening neighborhoods by causing population shifts, supporting or hindering cities in their bid to remain racially and socially integrated, and making suburbs more or less competitive in the cost and provision of services. This broader framework also views racial segregation and discrimination by government, private firms, and individuals as central to housing policy. It is concerned with the impact of residential segregation on local school quality, the metropolitan dynamics of housing markets, and migration patterns for households of all races.

Put more succinctly, one framework views housing policy on a micro scale, as being primarily a question of putting together funding and gaining access to sites, whereas the other views housing policy on a macro scale, as being broadly related to the dynamics of opportunity within metropolitan space.

Both Minnesota and federal law require that lawmakers and administrators incorporate the second, regional perspective when determining housing policy. This is particularly true with the effect of housing policy on racial segregation.

The Twin Cities Metropolitan Council ("Met Council"), in collaboration with the Minnesota Housing Finance Agency (MHFA), has had the primary responsibility to regulate and coordinate the placement of subsidized housing in the Twin Cities since its inception, and the passage of the Minnesota Land Use Planning Act of 1976 strengthened this obligation. The Met Council's responsibilities under the Federal Fair Housing Act are therefore an important overlay on any discussion of subsidized housing policy in the region.

According to Robert Freilich, the principal consultant retained to draft the Land Use Planning Act,[1] the Met Council's housing program was shaped by the Gautreaux case in Chicago, Illinois, and the Shannon case in Philadelphia, Pennsylvania, both of which involved remedies for federal civil rights laws violations involving governmental policies that concentrated affordable housing in racially segregated or resegregating neighborhoods (Freilich & Ragsdale, 1974b). In its guiding documents prior to the Land Use Planning Act, the Met Council had declared that its fair share housing system was intended to reduce racial and economic segregation and eliminate exclusionary zoning; it also declared its intention to use its affirmative powers to increase regional racial and economic integration for the benefits of individuals and neighborhoods, and to strengthen the region's workforce and economic vitality (Metropolitan Council of the Twin Cities Area, 1973).

The Federal Fair Housing Act declares that it shall be unlawful to make unavailable or deny a dwelling to any person because of race, color, religion, sex, familial status, or national origin (Fair Housing Act of 1968). The federal rule implementing this section states that a "practice has a discriminatory effect where it actually or predictably . . . perpetuates segregated housing patterns because of race, color, religion, sex, handicap, familial status, or national origin" (Fair Housing Act of 1968, 24 C.F.R. § 100.500). In *Inclusive Communities Project v. Texas Department of Community Affairs*, a federal court in Texas recently found a "perpetuation of segregation" disparate impact violation of the Fair Housing Act when the state housing agency disproportionately awarded low-income housing tax credits in minority neighborhoods (Inclusive Communities Project v. Texas Department of Community Affairs, 2010; Inclusive Communities Project v. Texas Department of Community Affairs, 2012; Project, Inc. v. Tex. Dept. of Community Affairs, 2010).

Recipients of federal housing funds have an obligation under the Federal Fair Housing Act to "affirmatively further" fair housing (Fair Housing Act of 1968, 42 U.S.C. § 3608(d), 2013), which requires them to use their "immense leverage" to create "integrated and balanced living patterns" (NAACP v. Secretary of Housing and Urban Development, 2012). In its proposed rule, which codifies existing case law, the U.S. Department of Housing and Urban Development (HUD) defines "affirmatively furthering fair housing" as "taking proactive steps beyond simply combating discrimination to foster more inclusive communities." Specifically, the proposed rule states that affirmatively furthering fair housing "means taking steps to overcome segregated living patterns and support and promote integrated communities, [and] to end racially and ethnically concentrated areas of poverty" (Affirmatively Furthering Fair Housing, 2013).

Despite these clear responsibilities, Twin Cities governmental agencies and housing developers frequently privilege the first, technically oriented policy framework over the second, regionally oriented perspective. As the following analysis will show, the Met Council's broad powers are not utilized, and the Fair Housing Act's requirements are ignored, as affordable units are consistently placed in struggling neighborhoods with few opportunities for residents.

Placement of Subsidized and LIHTC Housing Units in the Twin Cities

This section examines how subsidized housing is distributed across the Twin Cities metropolitan area.[2] The analysis uses data from HousingLink's Streams data set, which includes information for housing units receiving subsidies from nearly all public sources, excluding in particular HUD's Section 8 voucher program (HousingLink, 2013). The locations of all subsidized units and units supported by the Low-Income Tax Housing Credit (LIHTC) are broken out in three ways: by central cities and suburbs, by the racial composition of the surrounding neighborhoods, and by the racial composition of the elementary schools assigned to the units by school district attendance boundaries.

The central city–suburb comparison matters for a variety of reasons. First, the complicated administrative structure that controls the regional distribution of large amounts of subsidized housing divides the region this way. LIHTC funding in the metropolitan area is distributed through four "suballocators"—public entities designated by the State of Minnesota to determine LIHTC allocations within their borders. Both of the central cities are a suballocator in this system, along with Dakota County and Washington County. MHFA allocates funds across the entire state, including to some projects within the boundaries of the other suballocators. The central city–suburb comparison thus provides a window into how the administrative structure affects the regional distribution of subsidized housing. In addition, other funding streams often contribute to LIHTC projects and other

programs (e.g., Section 8 vouchers) are affected by how LIHTC sites are spread across the region, so the suballocator system has effects beyond LIHTC.

The region's central cities are also crucial to the economic and social well-being of the region. Minneapolis and St. Paul are already home to greatly disproportionate shares of the region's low-income population and people of color (Orfield & Luce, 2010). Job growth also lags behind the suburbs in most years (Luce, Orfield, & Mazullo, 2006). Research shows that cities and suburbs sink or swim together (Haughwout & Inman 2004: Leichenko, 2001; Solé-Ollé & Viladecans-Marsal, 2004; Voith, 1998). A subsidized housing system that concentrates poverty in the central cities and increases regional segregation levels creates significant long-run costs for the region.

The composition of the neighborhoods where subsidized housing is located matters because public agencies distributing housing subsidies are required by law to affirmatively further fair housing. This means that public actors should not pursue policies that further concentrate subsidized housing in neighborhoods that already contain disproportionate shares of the region's affordable housing stock and poor populations. Similarly, they should not concentrate subsidized housing in ways that increase racial segregation in the region's neighborhoods.

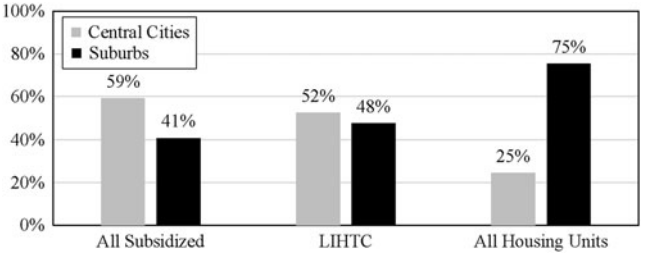
The makeup of schools near subsidized housing matters because a large body of research shows that a school's poverty rate is the most powerful predictor of student performance and that integrated schools are associated with better student performance for children of all races (Institute on Race and Poverty, 2008, pp. 6–7). The Twin Cities consistently ranks at or near the bottom of large U.S. metropolitan areas in the magnitude of racial achievement gaps, regardless of the measures used to evaluate student performance. A distribution of subsidized housing that provides the region's children from low-income families with access to low-poverty and racially integrated schools should therefore be a high priority.

Central Cities and Suburbs

Subsidized housing in the Twin Cities is highly concentrated in the region's two central cities. In 2012, about 25% of the region's population and housing units were located in Minneapolis and St. Paul. However, more than twice this share of the region's subsidized housing was located there—59% of all subsidized units and 53% of LIHTC units (see Figure 1).

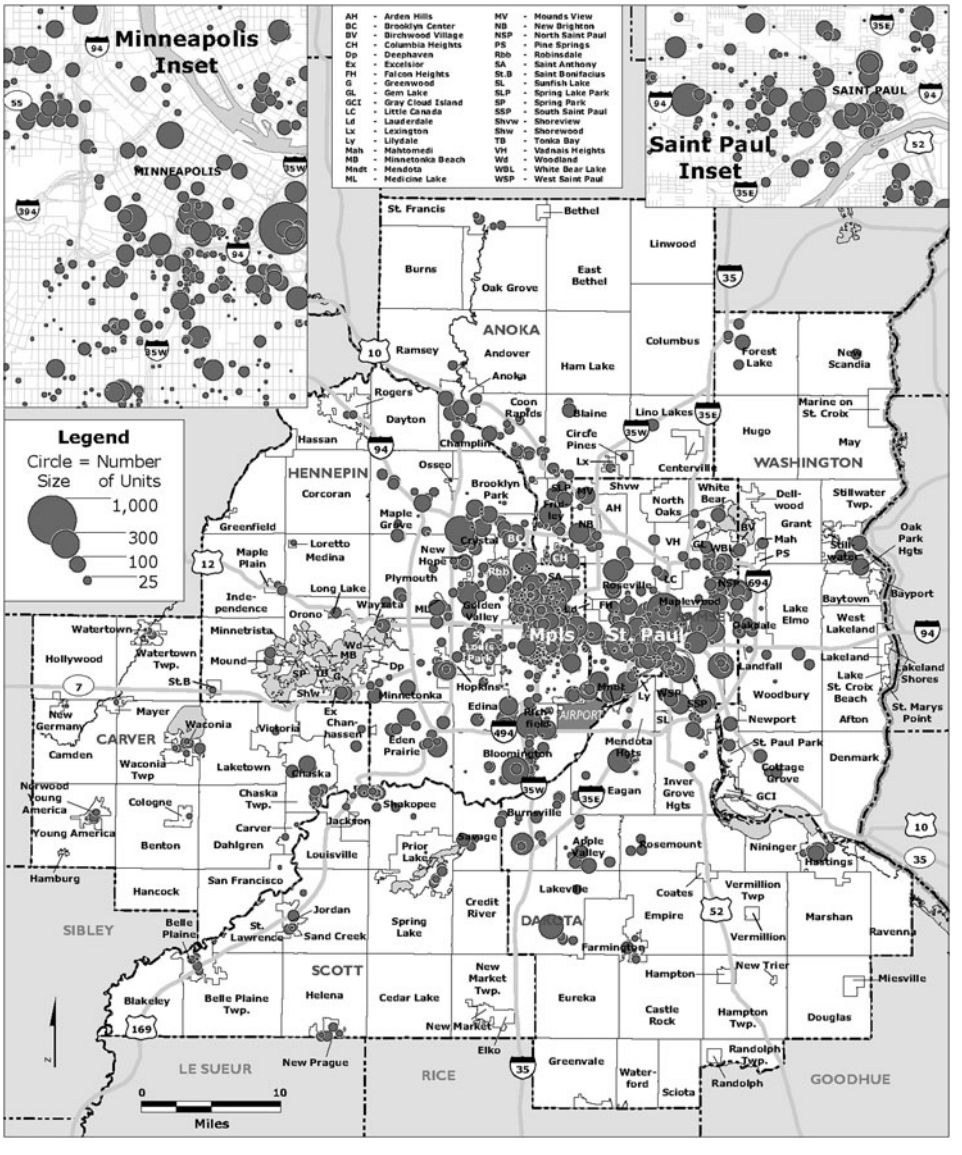
The distribution of subsidized housing within the central cities and across suburbs also shows a distinct pattern (see Figure 2). In the central cities, subsidized units are highly concentrated in neighborhoods along the I-94 corridor through central St. Paul and east-central and northwest Minneapolis—the areas in those cities with high concentrations of low-income people and people of color. Although subsidized units are more scattered in

Figure 1. Distribution of housing units in central cities and suburbs, 2012.



Note. LIHTC = Low-Income Housing Tax Credit.

Figure 2. Minneapolis–St. Paul, Minnesota, seven-county region: All subsidized housing by project site in 2012.



Note. From HousingLink Streams 2012 subsidized housing data, NCompass street data, Minnesota Housing Finance Agency subsidized housing data.

the suburbs, the bulk of the units are in inner suburbs, near to the central cities—areas which generally exhibit more poverty than other suburban areas and which are more likely to be in racial transition.

Neighborhood Types

The distribution of subsidized housing across neighborhoods with different racial mixes provides a window on how well the regional system has met its responsibility

to affirmatively further fair housing. By this criterion, an effective housing system should not increase economic and racial segregation by concentrating subsidized housing in nonwhite segregated neighborhoods—areas which are often already characterized by high poverty and poor economic opportunities. Similarly, predominantly white neighborhoods—areas which typically show the lowest crime rates, the strongest environmental and health conditions, and the fastest-growing job markets—should not be underrepresented in subsidized housing markets. Finally, integrated, racially diverse areas are of interest because these areas are often unstable—in the midst of rapid economic and/or racial transition. Targeting these areas for subsidized housing development may further destabilize them.

The data show very clearly that publicly subsidized housing is heavily concentrated in areas that are already majority nonwhite. Further, racially diverse, integrated neighborhoods—areas that are often very unstable and susceptible to economic decline—are also home to disproportionate shares of subsidized housing. Despite the fact that most of the region's housing units are in predominantly white areas, subsidized units are much more likely to be found in majority nonwhite or racially diverse areas. This can be seen in two ways.

Figure 3 shows the percentage of the population that was nonwhite in census tracts across the region. It is easy to see that racially diverse (20–50% nonwhite) and majority nonwhite areas are distributed in much the same pattern as subsidized housing (see Figure 2). Majority nonwhite neighborhoods follow the I-94 corridor through St. Paul and Minneapolis, just as the subsidized units do. Racially diverse and majority nonwhite areas in the suburbs are also concentrated in inner suburban areas, often mirroring the subsidized housing patterns in Figure 2.

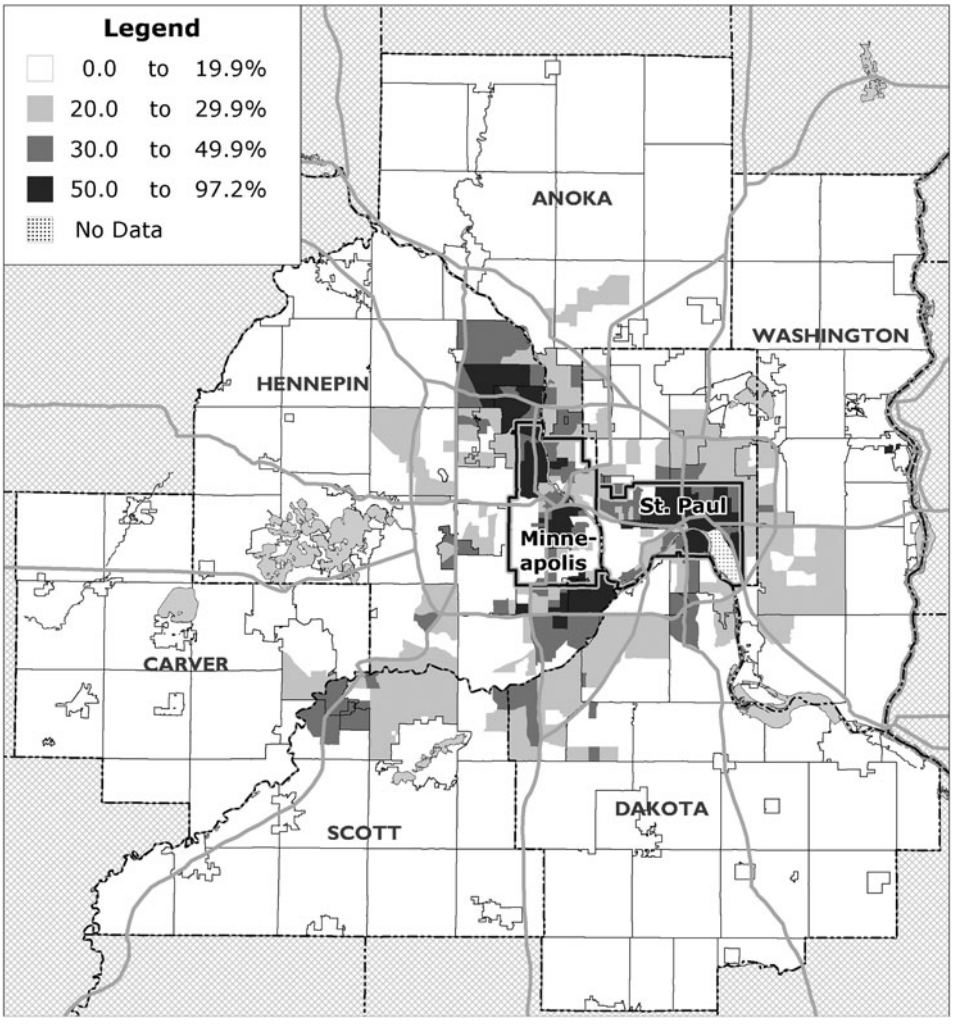
Tables 1 and 2 show the relationship more explicitly. In 2012, the share of all subsidized housing units in majority nonwhite census tracts (33.3%) was more than 3 times greater than the percentage of all housing units in those areas (10.7%). Racially diverse areas were also home to disproportionate shares of subsidized housing—44.5% of the region's subsidized units compared with just 33.6% of all housing units. In contrast, predominantly white areas contained less than a fourth of all subsidized units, despite containing more than half of all housing.

School Types

The makeup of the schools serving subsidized housing is an important indicator of the opportunity structure available to housing residents. Highly segregated schools are also nearly always high-poverty schools, and school poverty is a powerful predictor of student performance. Racially integrated schools are of value in and of themselves as well; integration is associated with better student performance for children of all races. The Twin Cities' consistently poor rank on racial disparities of all kinds, especially student achievement, makes it doubly important to use all means available to reduce disparities. Employing prointegrative strategies in the placement of subsidized housing is one such tool.

Not surprisingly, comparing the distribution of subsidized housing with the composition of elementary schools shows patterns much like the population data. Despite the fact that the majority of all students in the region are located in areas with predominantly white student populations in elementary schools, only about one-sixth of subsidized units are in those areas (see Tables 3 and 4). This part of the region, of course, is where educational opportunities are strongest for the most part, where crime is lowest,

Figure 3. Percentage minority population by census tract, 2010.



where environmental and health conditions are strongest, and where jobs are growing most quickly. The lack of housing in these areas that is affordable for lower income households shuts off long-run opportunities to low-income children of color, contributing to the region's enormous racial gaps in educational performance.

Table 1. Twin Cities, Minnesota, seven-county area number of total subsidized, Low-Income Housing Tax Credit (LIHTC), and housing units by percentage minority in census tracts.

Share of minority in tract	Subsidized units	LIHTC units	Total units	Renter units
0–19%	13,296	3,143	620,429	111,015
20–29%	13,571	3,868	238,646	82,431
30–49%	13,131	3,481	134,306	62,802
50–100%	19,950	4,100	118,685	64,347
Total	59,948	14,592	1,112,066	320,595

Note. Data from HousingLink (2012 subsidized unit data), U.S. Census Bureau (2010 census tract race data).

Table 2. Twin Cities, Minnesota, seven-county area share of total subsidized, Low-Income Housing Tax Credit (LIHTC), and housing units by percentage minority in census tracts, 2005–2011.

Share of minority in tract	Subsidized units	LIHTC units	Total units	Renter units
0–19%	22.2	21.5	55.8	34.6
20–29%	22.6	26.5	21.5	25.7
30–49%	21.9	23.9	12.1	19.6
50–100%	33.3	28.1	10.6	20.1
Total	100.0	100.0	100.0	100.0
Total metro sum	59,948	14,592	1,112,066	320,595

Note. Data from HousingLink (2012 subsidized unit data), U.S. Census Bureau (2010 census tract race data).

Table 3. Twin Cities, Minnesota, seven-county area number of total subsidized, Low-Income Housing Tax Credit (LIHTC) units, and students by percentage minority in elementary school attendance areas.

Share of minority in area	Subsidized units	LIHTC units	Student population
0–29%	9,356	2,416	100,980
30–49%	15,806	3,970	43,407
50–100%	34,786	8,126	43,666
Total	59,948	14,512	188,053

Note. Data from HousingLink (2012 subsidized unit data), Minnesota Department of Education (2013 school race data).

Table 4. Twin Cities, Minnesota, seven-county area share of total subsidized, Low-Income Housing Tax Credit (LIHTC) units, and students by percentage minority in elementary school attendance areas.

Share of minority in area	Subsidized units	LIHTC units	Student population
0–29%	15.6	16.6	53.7
30–49%	26.4	27.4	23.1
50–100%	58.0	56.0	23.2
Total	100.0	100.0	100.0
Total metro sum	59,948	14,512	188,053

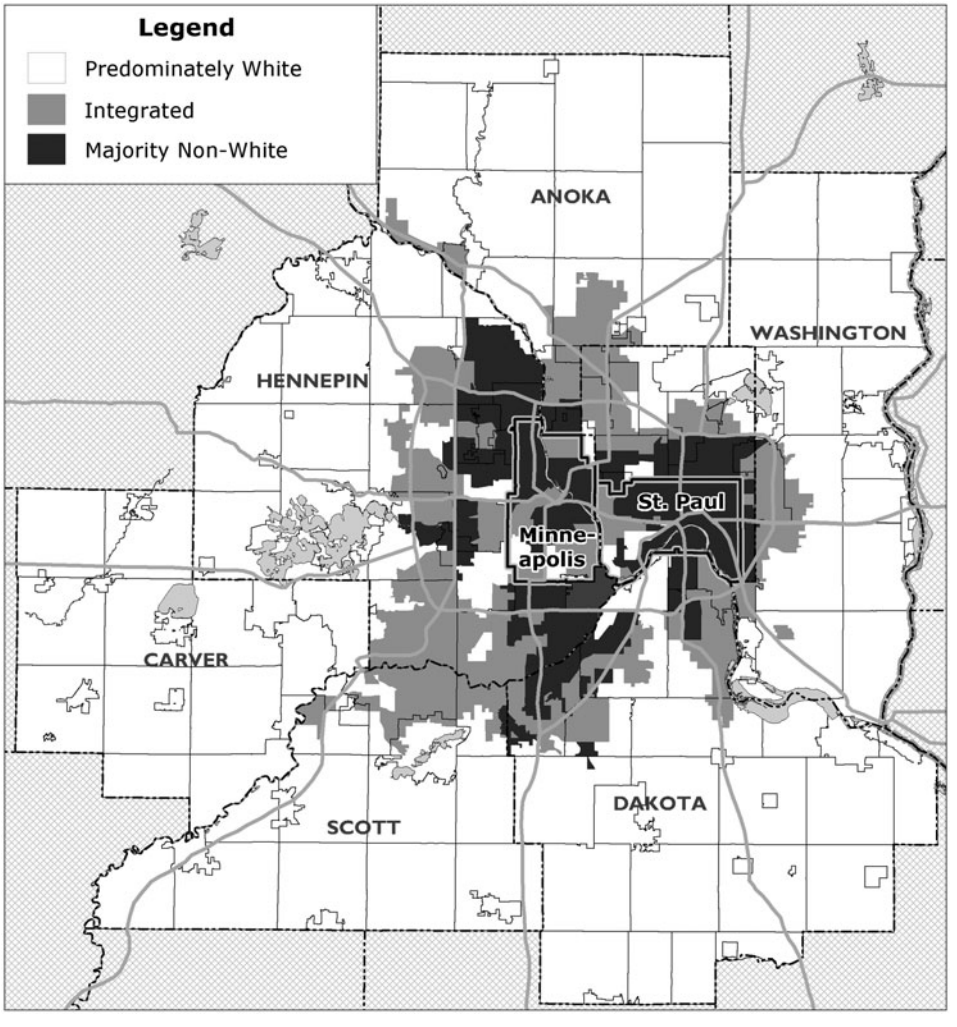
Note. Data from HousingLink (2012 subsidized unit data), Minnesota Department of Education (2013 school race data).

Reflecting this pattern, nearly 60% of subsidized units are in attendance boundaries for majority nonwhite schools, even though those areas have less than a fourth of all students in the region. These areas are home to the greatest concentrations of lower performing schools.

Attendance boundaries for integrated schools—those with 30–50% nonwhite students—contain a proportionate share of subsidized housing. Roughly a fourth of the region's subsidized housing is in these areas, reflecting their share of the elementary student population. This positive result is tempered by the fact that like neighborhoods with similar compositions, many of these schools are actually in racial and economic transition. Although integrated in 2012, these schools can be very unstable, meaning that it is inadvisable to add more subsidized housing in these areas.

Figure 4 shows the attendance boundaries of elementary schools in the region, divided into three categories: predominantly white (schools with nonwhite shares between 0 and 30%), integrated (nonwhite shares between 30% and 50%), and majority nonwhite (nonwhite shares greater than 50%). A comparison with Figure 2 shows how closely subsidized housing patterns mirror the distribution of predominantly nonwhite and integrated schools.

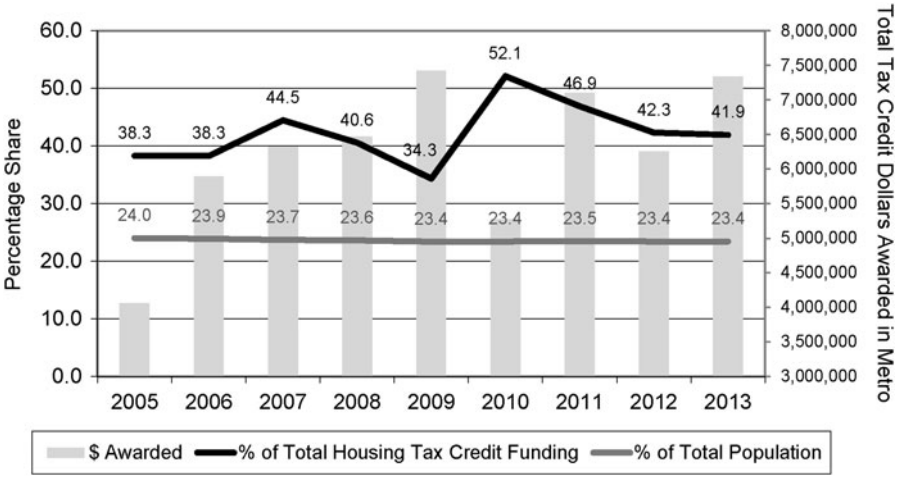
Figure 4. Racial composition of public elementary schools by school attendance areas, 2012–2013.



Recent Patterns of MHFA LIHTC Allocations

A great deal of the imbalance in the distribution of subsidized housing is due to the disproportionate share of subsidized housing in the two central cities. Data shortcomings make it difficult to see if recent funding patterns have improved or worsened the imbalance. Data showing recent LIHTC awards are limited largely to projects with MHFA participation (Minnesota Housing Finance Agency, 2005–2013). Data are not available for some projects awarded solely by the cities of Minneapolis and St. Paul. The two central cities distribute roughly a third of the region's LIHTC funding in their roles as suballocators. Projects with some degree of MHFA participation are counted in the figures below. However, some projects receiving LIHTC funding from suballocators may not be included in the MHFA reports. Nonetheless, the available data show a greatly disproportionate share of LIHTC funding going to sites in Minneapolis and St. Paul; because the central cities are the largest suballocators, more accurate data would almost certainly increase their total share of LIHTC funding.

Figure 5. Central city Low-Income Housing Tax Credit (LIHTC) and population shares, 2005–2013.



Note. Population estimates shown are from population estimates provided by the Met Council, available at http://stats.metc.state.mn.us/data_download/DD_start.aspx.

The LIHTC allocation data show that the percentage of LIHTC awards going to the central cities, measured in dollars, hovered near 40% from 2005 to 2009, rose to 50% in 2010, and dropped slightly to the mid- to low-40% range from 2011 to 2013 (see Figure 5). Although these shares (which understate the actual distribution of all LIHTC funds to the central cities) are lower than the share of LIHTC units shown in Figure 1, they still indicate that a disproportionate amount of LIHTC funding is going to central city locations. The two central cities were home to less than 24% of the region's population during this period but received 42% of the tax credit funding during the period. Between 2005 and 2013, $23 million of funding went to the central cities, resulting in over 1,200 new LIHTC units, often in segregated neighborhoods. At the same time, the state rejected about $33 million worth of requests from suburban areas—places more likely to have higher achieving and more integrated schools.

The Costs of Subsidized Housing in the Central Cities and Suburbs

The two central cities are home to disproportionate shares of the regional pool of subsidized housing. Together, Minneapolis and St. Paul contain 59% of the region's subsidized housing, compared with only 25% of all housing units (and an even smaller share of the population).

Although this unbalanced distribution concentrates poverty and increases racial segregation, one possible defense is that it also provides more bang for the buck by focusing funding in lower cost areas, thereby maximizing the regional total of affordable housing units generated by limited funds. Similarly, if it is cheaper to build affordable housing in the cities and the award process rewards lower costs, then the application process might create an advantage for projects in city locations. This section evaluates and rejects that argument, determining that per-unit total development costs are significantly higher in the central cities. It also explores some possible explanations for these higher costs.

Costs of Subsidized Housing Construction

Data for 166 MHFA-funded projects involving new construction of subsidized housing between 1999 and 2013 show that it is more expensive to construct subsidized housing in

Minneapolis or St. Paul than elsewhere in the metropolitan area.[3] This conclusion is drawn from a statistical model built from MHFA data, HousingLink's Streams data set, and various other sources. The analysis controls for building characteristics and a number of other project attributes that could affect costs. The results imply that, all else being equal, it costs significantly more to construct new subsidized housing units in the central cities than in the rest of the region—$30,000 more per housing unit in Minneapolis and $37,900 more in St. Paul. These amounts represent 14% and 18%, respectively, of the regional average cost per unit of constructing new subsidized housing during this period.

Table 5 shows the characteristics of new construction projects in the Twin Cities region between 1999 and 2013 for the region as a whole, the two central cities, and the suburbs. The data set includes cost and other information for the 166 new construction projects reported by MHFA for that period. The simple cost data show that the region-wide average cost per housing unit (in 2012 dollars) was $209,334. Projects located in Minneapolis and St. Paul show substantially higher costs per unit—$227,660 in Minneapolis and $224,157 in St. Paul—while those in the suburbs were less expensive at $194,174. However, the simple averages do not reflect other characteristics of the projects and the sites that could affect costs, perhaps enough to reverse the conclusion that projects in the central cities are more expensive.

First, and most obviously, cost is heavily impacted by the characteristics of the units in question. If the central cities were building larger units—or perhaps targeting slightly higher income residents—then one might expect different construction costs. As it turns out, the opposite was occurring: Central city units are disproportionately efficiencies or one-bedroom, while suburban units are more likely to contain two or three bedrooms. Higher shares of central city units also tended to be affordable at lower incomes.

Another possible explanation for higher costs in the cities is commercial space. City developments were in fact more likely to be mixed-use, with commercial space intended for retail or offices. This space is theoretically eligible for fewer public dollars than housing, but even mixed-use developments tend to be very heavily publicly subsidized. Similarly, city projects were more likely to include land acquisition costs, demolition costs, or historic buildings—all factors that could increase costs.

Other factors may impact costs but have less predictable effects on the city–suburb cost comparison. These include the percentage of units to be rented at market rents, whether the project includes some rehabilitation of existing units, the number of buildings, the number of units per building, and whether the project includes LIHTC funding.

The statistical model (see Table 6) includes all of the above factors and demonstrates that many do in fact affect per-unit costs. However, controlling for these characteristics actually results in a wider cost gap between central cities and suburbs than in the simple averages. After accounting for all of these factors, the gap nearly doubles to $30,000 for Minneapolis and more than doubles to $37,900 for St. Paul. Indeed, a location in Minneapolis or St. Paul remains among the most important of all the factors affecting costs per unit.

The large cost effect of a central city location is rivaled in the results only by whether the project included LIHTC funding, the number of units per building, the percentage of units that are market rate, whether land acquisition was required, and whether the project includes high percentages of large (three- or four-bedroom) units.[4] That site and unit characteristics are important is not surprising. The large effect for LIHTC funding—all else being equal, projects with LIHTC funding had costs $40,660 higher per unit—is less easy to explain. It is not simply an effect of public funding because all projects in the data set received some amount of public money. It could represent higher costs caused by red tape (if LIHTC is more heavily regulated than other funding sources) or those caused by

Table 5. Summary statistics for variables included in the statistical analysis.

	Full sample		Minneapolis, Minnesota		St. Paul, Minnesota		Suburbs	
Variable	Mean	*SD*	Mean	*SD*	Mean	*SD*	Mean	*SD*
Total development cost per unit (2012 $)	209,334	53,816	227,660	62,381	224,157	64,263	194,174	39,330
Percentage of units:								
0 bedrooms	15	33	21	36	15	33	10	30
1 bedroom	16	26	22	26	25	30	10	23
2 bedrooms	32	24	26	22	29	25	36	25
3 bedrooms	24	23	18	21	15	23	30	24
4 bedrooms	2	7	3	7	2	5	2	7
Percentage of units affordable at:								
30% of regional median income	23	35	29	36	37	41	16	32
50% of regional median income	42	42	34	38	33	38	48	45
60% of regional median income	24	39	25	37	15	31	26	42
80% of regional median income	1	5	2	9	0	0	0	1
Percentage of units market rate	11	21	10	17	11	23	11	23
Land acquisition included (0/1)	0.32	0.47	0.51	0.51	0.55	0.51	0.15	0.36
Demolition required (0/1)	0.24	0.43	0.38	0.49	0.41	0.50	0.10	0.31
Historic building(s) involved (0/1)	0.02	0.13	0.04	0.19	0.05	0.21	0.00	0.00
Rehabilitation of existing unit (0/1)	0.09	0.29	0.13	0.34	0.18	0.40	0.05	0.21
Conversion (0/1)	0.03	0.17	0.05	0.23	0.09	0.29	0.00	0.00
Nonresidential development (sq. ft. per res. unit)	23	77	47	115	23	57	7	40
Nonresidential development (0/1 – sq. ft. n.a.)	0.06	0.24	0.13	0.34	0.14	0.35	0.00	0.00
Units per building	33	35	41	32	54	52	23	27
Number of buildings	3.3	3.8	2.5	4.1	2.1	2.7	4.1	3.7
LIHTC included (0/1)	0.75	0.43	0.80	0.40	0.59	0.50	0.76	0.43
Minneapolis location (0/1)	0.33	0.47						
St. Paul location (0/1)	0.13	0.34						

Note. LIHTC = Low-Income Housing Tax Credit. *SD* = standard deviation. Data from HousingLink, Minnesota Housing Finance Agency, various news articles, real estate listings and LIHTC proposal documents.

Table 6. Regression results: Determinants of per-unit cost of Low-Income Housing Tax Credit (LIHTC) affordable housing projects (2012 $).

Variable	Coefficient	*t* statistic	Standardized coefficient
Minneapolis location	30,025	3.56[a]	0.28
St. Paul location	37,903	3.36[a]	0.27
Percentage of units:			
1 bedroom	142	0.89	0.07
2 bedrooms	304	1.74[a]	0.14
3 bedrooms	467	2.37[a]	0.20
4 bedrooms	1,979	3.34[a]	0.22
Percentage of units affordable at:			
50% of regional median income	−5	−0.04	0.00
60% of regional median income	−149	−1.27	−0.11
80% of regional median income	−330	−0.63	−0.04
Percentage of units market rate	556	3.20[a]	0.26
Land acquisition included	27,366	3.44[a]	0.25
Demolition required	4,758	0.57	0.04
Historic building(s) involved	65,223	1.92[b]	0.18
Rehabilitation of existing unit	−9,009	−0.73	−0.05
Conversion	−23,378	−0.85	−0.09
Nonresidential development (sq. ft. per res.)	27	0.68	0.05
Nonresidential development included (sq. ft.)	1,070	0.08	0.01
Units per building	−363	−3.32[a]	−0.30
Number of buildings	−1,409	−1.52	−0.12
LIHTC included	40,661	4.33[a]	0.33
Constant	140,095	11.20[a]	0.00
Adjusted R^2	0.46		
N	163		

[a]Coefficient significant at 95% confidence level. [b]Coefficient significant at 90% confidence level. Weighted least squares: weight = total units.

less strict rules about how to spend the money (if LIHTC is less heavily regulated than other funding sources). In either case, it is a finding worthy of further research.

The actual cost discrepancy may be even greater than indicated by the statistical analysis because it could be argued that the model controls for characteristics that should be omitted as policy variables. Building size and composition are as much a function of a development's geographic location as they are a discretionary choice of the developer. Likewise, if historic preservation and other project characteristics drive up costs, this may form part of the case against city building. Nonetheless, the model errs on the side of caution by including these factors; despite this, the cost disparity remains.

The econometric model only incorporates characteristics of the developments in question. If the full cost difference between city and suburb cannot be predicted by looking at what is being built, the gap must be the result of how projects are being built or funded or who is building them.

It is possible that construction costs in the cities are higher because of the relative difficulty of building large developments in a densely populated area. These costs can arise from a number of sources. Land suitable for development is scarcer in the cities and therefore likely costs more as well. (Note, however, that the land for affordable developments is not always acquired at market price and is often in low-cost, high-poverty neighborhoods.) Additionally, other costs associated with construction might be higher in central city locations; for instance, sites might be more difficult to access or might require additional

safety measures. If building is on or near a former industrial site, pollution cleanup could be required before development can begin. Last but hardly least, the cities might more strictly regulate construction and development. Traffic studies, pollution studies and environmental certifications, historic preservation rules—all increase the expense of building.

With more extensive data, it may be possible to incorporate some of these factors into the regression model. This, however, poses a number of technical difficulties—for instance, affordable developers frequently pay below-market price for land acquisition—and would in any case undermine the model's analytic purpose, which is not to isolate every specific factor that could account for project cost differentials. Instead, the model is meant to demonstrate cost differences between otherwise identical construction projects being built in different locations. Characteristics of the locations themselves must therefore be omitted.

The other notable feature of affordable housing development in the central cities is the number of private firms and interest groups with a hand in its creation. While housing construction in the suburbs is frequently managed by county development agencies, the cities are home to a large network of heterogeneous organizations, all with a role in the process. This could work to raise costs in several ways, particularly if the housing industry is able to exert influence on government funding sources. First, some groups may directly benefit from increased spending in the housing sector—particularly public spending, some of which is little more than free money for developers. Another, more subtle mechanism by which interest groups increase costs is by promoting projects without regard to cost efficiency. For instance, while developing in a particular neighborhood may be expensive, a community development corporation based in that neighborhood creates a political constituency for development activity focused in that neighborhood. These development constituencies are not necessarily geographic; for instance, some of the largest development organizations in the Twin Cities focus on housing for recovering addicts. Nor are they necessarily private. Minneapolis's Department of Community Planning and Economic Development is far larger, better funded, and better organized than its suburban equivalents; it has the clout to substantially increase development within the city.

Because of their number and complexity, determining which of these factors is primarily responsible for the cost difference between cities and suburbs is impossible without better data. Indeed, it is unlikely that one single explanation exists; instead, some combination of the above factors probably contributes to the higher cost of affordable housing construction in the cities.

Nonetheless, the available data are sufficient to determine that affordable housing supply is not especially responsive to cost. The emphasis on expensive city building over cheaper suburban building suggests that the amount of construction is not strongly impacted by small marginal increases or decreases in unit cost. Of course, some of this is by design. Cost effectiveness is not the primary goal of affordable housing construction; rather, affordable housing fills a range of needs that the private housing market has failed to provide. But, all else being equal, increased cost effectiveness would allow more bang for the public's buck. What's more, unresponsiveness to cost helps demonstrate defects in the affordable housing market—defects that have deepened as the affordable housing funding has become more tangled and the development community has fragmented.

The Twin Cities Development Community

One potential explanation for the higher cost of affordable housing in the central cities is the number of private firms and interest groups with a hand in its creation. Affordable development in the metro area (and especially in the central cities) is dominated by a web

of sundry developers, community development corporations, investors, and financial professionals, many of which exhibit a preference for projects in urban areas. The large number of participants helps draw public funds into the development apparatus while complicating any attempt to align funding with discernible policy goals. Moreover, the size and scope of the Twin Cities affordable housing community, combined with the necessity that it interact closely and frequently with the public agencies that provide the bulk of funding, creates a significant risk of regulatory capture, in which the community's (central city oriented) development priorities are imposed on or adopted by policymakers themselves.

The central role of this industry in affordable construction calls for further analysis. Analyzing community developers, however, poses a difficulty: There is no truly "typical" organization. Instead, the industry is composed of many heterogeneous firms. At present, the Metropolitan Consortium of Community Developers (MCCD), which includes almost all the major players in the Twin Cities housing nonprofit scene, has 49 members, which range from tiny community groups to large nonprofits with yearly revenues in the tens of millions of dollars. Some organizations such as Twin Cities Habitat for Humanity, are affiliated with larger national groups, while others are closely associated with for-profit companies. Activities run the gamut as well: Large developers are able to independently conduct most development, while neighborhood groups are forced to partner with builders, architects, financiers, and each other.

Housing Nonprofit Financial Overview

The affordable housing industry in the Twin Cities region is quite expansive and commands considerable financial resources. In 2011, the last year for which data are available, MCCD members had combined expenses of $178,111,075. Although the sector includes dozens of organizations, its resources, particularly in terms of raw spending and revenue, are concentrated in the hands of a relatively few large institutions. The activities of just eight of the 49 member organizations accounted for $110,193,034, or nearly 62%, of total spending. These organizations were Aeon, Artspace, Twin Cities Habitat for Humanity, RS Eden (a nonprofit building supportive housing for substance abuse victims), Commonbond, the Greater Metropolitan Housing Corporation, Project for Pride in Living, and the Community Housing Development Corporation, each with more than $10 million in expenses.[5]

By comparison, the expenditures of small neighborhood development corporations, which usually operate within a single neighborhood, are much lower. For example, 17 organizations spent under a million dollars in 2011, accounting for less than 5% of total spending.

MCCD members derived the largest share of their 2011 revenue from program services, earning $90,318,705. Coming next, private contributions provided $52,288,626 in funding. Finally, governments granted $46,719,761 to MCCD members.

Nearly 90% of reported MCCD expenses go to program services, with the remainder spent on administration and fund-raising. Approximately 30% of total expenses are in the form of employee compensation. However, both of these figures, and particularly compensation, vary widely between organizations.

There appears to be little relationship between an organization's reported financial characteristics and the amount of government grant money it receives. The percentage of total revenue accounted for by grants varies widely among organizations, both large and small, ranging from nothing or a few percentages to nearly the entirety of an organization's

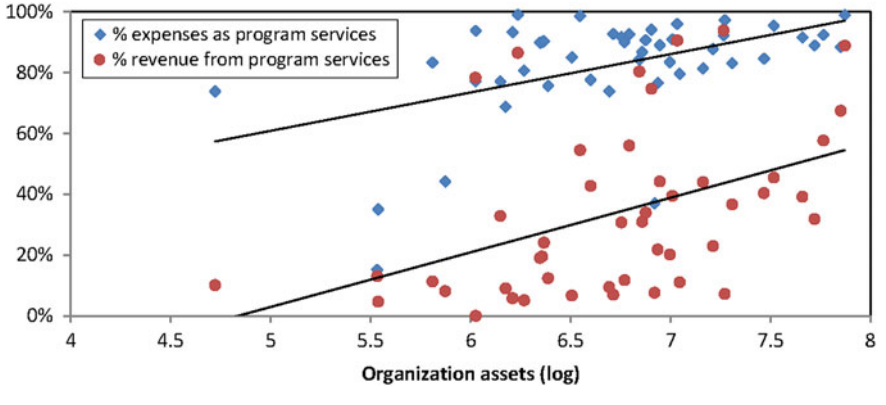
yearly income. Nor does an organization's size (in assets or in members) seem to correlate well with the percentage revenue received through grants. Among the eight highest spending organizations, for instance, the Greater Metropolitan Housing Corporation received $5,233,407, while CommonBond received a comparatively meager $690,000 in grants. And smaller nonprofits frequently received large sums: for instance, Dayton's Bluff Neighborhood Housing Services ($2,834,567), Emerge Community Development ($2,942,801), and the Hmong American Partnership ($3,440,103).

Unsurprisingly, executive compensation appears to be associated with an organization's size. Of the "Big Eight" organizations that account for most expenses, seven also have the highest paid chief officers of MCCD member organizations, with yearly salaries ranging from $144,056 to $207,200. (The eighth member of the Big Eight comes in 10th, paying its president $123,861.) In general, heading up a housing nonprofit appears to be fairly lucrative, with only eight organizations paying their chief executives less than $50,000 a year. (Compensation may be higher than it appears, even in those organizations, because at least one of these is overseen by the chief executive officer of a Minneapolis for-profit developer. It is possible that the leadership of other MCCD members also includes for-profit business owners.)

There is one area in which clear distinctions among organizations emerge, however: program services expenditures and revenues. While most MCCD members' expenses are largely dedicated to program services, that proportion tends to increase in organizations with more assets. Furthermore, larger organizations derive a significantly higher percentage of their revenue from program services.[6]

The rather strong association between an organization's size and its programs' finances suggests that MCCD's large nonprofits operate more efficiently and in a manner more akin to for-profit enterprises. They draw large amounts of their funding from service fees and cover the gap between revenues with grants and contributions, while smaller organizations tend to fund more of their activities directly out of grants and contributions (see Figure 6). This distinction may also represent the large organizations' tendency to participate in stable, ongoing arrangements which they are successfully able to monetize—for instance, participating in continuous housing development for fees—instead of a selection of relatively heterogeneous activities, primarily linked by their geographic focus. Some scholars have argued that Community Development Corporations (CDCs) perform a dual role as technical specialists and neighborhood advocates (Goetz &

Figure 6. Percentage of revenue and expenses from program services, Metropolitan Consortium of Community Developers members (2011).



Sidney 1995); these figures complicate that picture, suggesting that larger CDCs tend to be somewhat more oriented toward technical and development work, while smaller CDCs may be somewhat more oriented toward political advocacy.

Affordable Housing Financial Intermediaries: Local Initiatives Support Corporation and Family Housing Fund

The aforementioned statistics only include community developers, who are perhaps the most visible members of the affordable housing community. However, affordable development also relies on financial intermediaries—organizations that frequently exceed the developers in size and influence. These entities, frequently nonprofits as well, provide coordination, technical assistance, and loans and grants to housing projects, helping developers cover funding gaps and navigate the complexities of the financing process. In essence, they fill a market niche created by the complexity of the affordable housing system, bringing together the vast number of government and private entities that participate financially in the construction of a single housing project.

Family Housing Fund is one notable local housing intermediary, comparable in size to the larger local developers (e.g., Aeon, Community Housing Development Corporation). In 2011, it maintained assets of $72,156,907 and liabilities of $34,384,044. Its expenses, $10,554,586, significantly exceeded its income of $6,414,242. As with for-profit financial firms, its executives are well compensated, with its president receiving $173,159 and its vice president getting $139,495.

Family Housing Fund represents a convergence of the public and private sectors in affordable housing; it was founded in 1980 as a collaboration between the cities of Minneapolis and St. Paul. Given these origins, it is perhaps unsurprising that the organization is disproportionately focused on the two central cities. For the first decade of its existence, the fund explicitly focused its efforts within the cities, contributing 10,500 low-income units to Minneapolis and St. Paul. In the following years, it expanded both its geographic scope and its program activities, inaugurating a series of programs designed to expand access to housing and reduce homelessness. Although some of these efforts are directed into the suburbs, a wildly disproportionate amount of the organization's resources is still expended in the central cities: MHFA records show that the intermediary contributed over $15 million to new affordable development from 1999 to 2013, approximately $9 million of which was to projects in Minneapolis and St. Paul.

Expenditures alone understate the organization's real influence over housing development. As one of the best-funded affordable housing entities in the Twin Cities, with substantial financial expertise at its disposal, Family Housing Fund also plays an important role in directing policy. It maintains leadership roles in a number of important regional projects: for instance, Corridors of Opportunity, which focuses on revitalizing distressed neighborhoods (primarily in the central cities); the Minnesota Preservation Plus Initiative, which seeks to maintain the existing housing stock; and the Central Corridor Funders Collaborative, a project helping guide investment along the Twin Cities' new light rail line.

Family Housing Fund also has created several major subsidiaries. In 1986, it organized the Twin Cities Housing Development Corporation, an entity charged with the direct development of affordable housing. More recently, the fund has created the Twin Cities Community Land Bank, which fills a variety of roles as a financial intermediary in its own right. In addition to making loans and otherwise providing financing, the land bank works directly with private banks to acquire foreclosed properties for conversion into affordable units, usually by transferring the property into the portfolio of a community developer.

These activities are sharply focused within the City of Minneapolis, particularly in the heavily distressed North neighborhood, which was devastated by the foreclosure crisis.[7]

But even the largest Minnesota organizations are dwarfed by national nonprofit housing intermediaries. One of the largest national players in affordable housing financing is Local Initiatives Support Corporation (LISC), which is headquartered in New York. It is comparable in size to a significant national financial firm, with assets totaling $440,406,573 in 2011 and an income of $149,668,788. Its size is reflected in its payroll: The same year, LISC paid out $5,299,110 in salary, with its president receiving $408,432.

LISC maintains a Minnesota subsidiary, Twin Cities Local Initiatives Support Corporation (TC LISC). Like Family Housing Fund, TC LISC plays a major role in policy development—even serving as a partner on almost the exact same set of local initiatives. This is not as strange as it may first seem: The lists of board members and organizational partners for Twin Cities affordable development collaborations are frequently near carbon copies of one another, as a handful of major organizations—the aforementioned largest CDCs, and the largest financial intermediaries—take a leading role in almost every venture.

Public–Private Interactions in the Affordable Housing Industry

Affordable developers' ability to obtain public funding, despite pursuing projects with a high per-unit cost, suggests that there may be some degree of regulatory capture in the affordable housing industry. Regulatory capture can be a complex phenomenon. Contrary to popular belief, *capture* does not mean that government and industry are engaging in any sort of corrupt activity or quid pro quo. Instead, a governmental agency can be captured if it develops a highly collaborative relationship with regulated entities, such that it begins to see its interests and the industry's as parallel. While a good working relationship with private industry can be beneficial, it can also prove corrosive to the public interest. This is because agencies and private firms that are too closely tied together are less likely to take antagonistic positions or question the assumptions undergirding the industry's activities, even when doing so would ultimately serve larger policy goals.

Capture is more likely in highly technical fields, where regulators and industry members must share the same narrow expertise. As a result, both groups frequently contain members with similar professional and educational backgrounds, and there is a higher probability of a revolving door developing, where industry members are selected for government positions, and former government workers enter the industry they once regulated. Capture is also more plausible in situations where there is frequent contact between regulators and private institutions, as participants see greater benefit in maintaining harmonious relationships and pursuing common goals.

Twin Cities affordable housing development easily satisfies these conditions. It boasts an extremely complex financial backend, which can only be navigated by technically proficient financial professionals. (In the words of one Minnesota Housing staff member, "Nobody really understands this stuff except the developers and underwriters.") Affordable developers—and, therefore, housing policymakers—also must possess the considerable engineering and planning expertise required to site and design a large multiunit building in a dense urban environment. As the technical complexity of development has increased, and financial and development specialists have come to dominate local and state housing agencies, "housing policy" has been increasingly defined by a focus on relative minutiae related to project funding, permitting, and construction. By contrast, questions of a broader scope—for instance, siting trends, neighborhood

effects, and preferences for cities or suburbs—rarely appear in policy documents and are almost never thoroughly analyzed in connection to individual projects. The proliferation of technical specialists within public agencies seems to have encouraged the view that the agencies should not play any role as prescriptive policymakers or address any matter that cannot be resolved by reference to industry specialists.

In addition, the affordable housing industry relies heavily on repeat players. Almost all local affordable projects include the participation of one (or more) of a small handful of very active housing nonprofits, which usually possess years or decades of experience working in the same communities and with the same government funding sources. Many of these institutions are run by individuals with former careers in government housing agencies; likewise, many positions in local governmental bodies are filled by alumni of the affordable housing industry. (Most notably, the current appointed chair of the Met Council has remained in her position as the head of the local branch of Habitat of Humanity while at the council.) Consequently, policymakers working in affordable housing are frequently navigating the well-worn grooves of long-standing relationships. Nor is there much incentive to closely interrogate or disrupt these arrangements, as doing so would make life more difficult for all involved.

In some instances, the line between public and private in affordable housing has almost completely dissolved. For instance, the aforementioned Family Housing Fund was created in 1980 by the cities of Minneapolis and St. Paul; to this day, neighborhood advocates have expressed confusion about whether its employees are public servants. (In most of its public materials, the fund is referred to as a nonprofit.) The same ambiguity extends to its subsidiaries; for instance, the Twin Cities Housing Development Corporation was described by local media as "quasipublic" upon its creation but today also bills itself as merely a nonprofit (Sundstrom, 1986). If, how, and when these organizations transitioned from public to private entities is unclear. Nonetheless, the Family Housing Fund is treated as a public agency in at least one important step in the affordable development process: Minnesota Housing conducts a consolidated request for proposals (also known as the "Super RFP") in which potential developers can simultaneously request funding from a number of public entities, including MHFA, the central cities housing agencies, the Met Council—and the Family Housing Fund.

Elsewhere, governments and nonprofits are layered so closely into collaborative projects that it becomes difficult to distinguish where one ends and the other begins. Initiatives surrounding the recent Green Line light rail, which runs between the two central cities, illustrate the problem. The regional Met Council created the Corridors of Opportunity, a partnership designed to, in its own words, "accelerate the build out of a regional transit system for the Twin Cities in ways that would advance economic development." Corridors of Opportunity (2014), which has heavily focused its efforts on the Green Line central corridor, includes on its leadership team executives from the Met Council, TC LISC, and the central city housing agencies Project for Pride in Living, the MCCD, the Family Housing Fund, and the Twin Cities Community Land Bank, among others. Meanwhile, a private funding collaborative, the Central Corridor Funders Collaborative, was also created to spur development along the Green Line. But this initiative includes nearly the same set of local housing players as the Corridors of Opportunity: TC LISC, the Twin Cities Community Land Bank, the Project for Pride and Living, the Met Council, the housing agencies, and the Family Housing Fund.

These initiatives' work thus far has ably demonstrated the perils of densely intermingled public–private interactions: The Funders Collaborative helped create a recommendation that 4,500 affordable units be constructed or preserved along the Green

Line, after which Corridors of Opportunity and the Funders Collaborative routed millions of dollars of funding into affordable projects in this area. And, recently, the Funders Collaborative produced a report lauding the cities' progress toward its goal. Lost among this whirlwind of collaboration was the fact that much of the progress has been made by placing thousands of units in a handful of heavily segregated census tracts, one of which is the state's second-poorest by median income.

Other Factors Leading to Greater Spending in Central Cities

This section explores two other features of the subsidized housing sector that contribute to the central city focus of regional spending: the system and criteria used to select projects for public funding, particularly low-income housing tax credits, and the use of subsidized housing as a means of boosting neighborhood economic development.

Project Selection

Funding for affordable housing is provided by a complex web of public and private agencies and through a variety of financial vehicles. The best-known and most influential of these is LIHTC, allocated to the states by the federal government and to developers by a series of suballocators. In the Twin Cities, the largest suballocators are MHFA, Minneapolis, and St. Paul. In addition, a variety of other local entities receive a portion of tax credits, including Dakota County and some municipalities.

Public agencies also provide funding to developers through a range of different direct loans and grants. Public money is sometimes augmented with private grants, which usually works their way through a network of nonprofits. Frequently, private grants originate from organizations that themselves received significant contributions of public money; at least some part of these private grants represents indirect public contributions. Finally, of course, some purely private investment capital is spent on developing low-cost units, although the layering of funding mechanisms tends to obscure the exact size of the private contribution.

One explanation for why affordable housing construction focuses on the central cities despite higher costs is because funding allocators deemphasize project cost. Tax credit allocations take cost into consideration, but LIHTC projects are evaluated by point-based allocative systems that give more emphasis to a welter of other factors. Other sources of funding seem to function in a similar fashion. In addition, money is frequently allocated to geographic areas, which prevents lower cost projects from outcompeting high-cost projects, to the extent that lower cost projects are outside prioritized funding areas.

Another important consideration is the way in which the allocation process shields geographic shares of LIHTC funding from competitive pressure. The suballocator system ensures that the vast majority of central city allocations cannot be diverted to the suburbs, no matter how much cheaper it is to pursue suburban development. Nonetheless, other factors must also be at play, as the Washington and Dakota suballocators do not appear to encourage similarly high costs.

How the LIHTC Works

LIHTC allocation is complex. Minnesota splits its federal LIHTC allocation three ways. First, 10% is removed from the total as a nonprofit set-aside, as required by federal law. The remainder is split into two regional allocations: a metropolitan pool and a greater

Minnesota pool. The share of each pool is determined by a formula specified by state law. Currently, the metropolitan area receives 62% of the state's total allocation.

The determination of which projects receive LIHTC allocations is independent of the determination of the number of credits that will be allocated. As a result, a particularly expensive project, requiring a large number of credits, is not necessarily at a disadvantage when compared with a cheaper project.

Suballocators. While MHFA is the state's primary agency for administering LIHTC, state law allows local housing authorities to serve as suballocators of tax credits (Minn. Stat. 462A.222). Projects applying for tax credits within the geographic jurisdiction of a suballocator are expected to seek credits through the suballocator instead of through MHFA (with one important exception in the nonprofit set-aside, discussed below). Suballocators also develop their own Qualified Allocation Plans for selecting tax credit recipients, giving them discretion to pursue local priorities. Each suballocator maintains its own competitive round, meaning that applications within a particular jurisdiction only compete with other applications within that jurisdiction.

Today, there are four suballocators drawing from the metropolitan pool: Minneapolis, St. Paul, Washington County, and Dakota County. Minneapolis and St. Paul have jointly developed a Qualified Allocation Plan governing their allocation process and designated their respective housing agencies as the recipients of their tax credit shares. They do not, however, jointly evaluate project proposals; each city maintains an independent competitive round.

Minnesota state law does not specify any particular formula for distributing tax credits from the metropolitan pool to these suballocators. Instead, it instructs the Met Council to develop and submit a plan to Minnesota Housing for allocating tax credits, "based on regional needs and priorities." The statute also gives Minnesota Housing authority to "amend the distribution plan after consultation with the Metropolitan Council, representatives of local governments, and housing and redevelopment authorities" (Minnesota Statute 462A.222 subd 4). In other words, the statute instructs that suballocator shares will be determined by a collaborative effort between the Met Council and Minnesota Housing, and grants each agency significant discretionary authority over the final distribution.

Unfortunately, at present, the Met Council's distribution plan does not appear to be publicly available, nor has the agency yet responded to inquiries about the plan or its development. However, it is possible to determine the shares themselves by looking at Minnesota Housing's annual distribution projections, which specifies how many tax credits it expects to be available in each pool and to each suballocator. In 2015, 20.4% and 15.2% of the metropolitan pool's total tax credits were allocated to the Minneapolis and St. Paul suballocators, respectively.

As previously mentioned, 10% of the annual federal tax credits are placed into a nonprofit set-aside. The set-aside is administered by MHFA, which chooses to divide it between the metropolitan area and greater Minnesota in the same proportion as the other funds. Because of this practice, 62% of the set-aside—6.2% of the state's LIHTC funding—is earmarked for metro area nonprofits. This 6.2% is governed by MHFA's point system and can be allocated anywhere in the metro region, even within a suballocator's jurisdiction.

Proposal Grading System. Federal law requires that developments meet one of two criteria to qualify for tax credits: Either (1) 20% or more of a development's units must be rent restricted and occupied by families below 50% of the region's average median income, or

(2) 40% or more of a development's units must be rent restricted and occupied by families below 60% of the region's average median income. Confusingly, this multidimensional standard incorporates local average incomes, the relative number of units provided, the actual rents on those units, the actual occupancy of those units, and the actual incomes of the occupants (Iglesias & Lento, 2011).

Projects that meet these criteria are chosen for tax credit allocations in a competitive process, the particulars of which are governed by the suballocating agency. In Minnesota, projects are assigned points based on their characteristics; proposals with more points are given priority over proposals with fewer points. The point system is the suballocator's most direct means of incentivizing certain types of affordable housing construction and prioritizing particular policy goals (MHFA, 2013).

To qualify for tax credits, projects must score at least 30 points. However, each year, developments seek far more credits than are available. Because most developments depend on credits for a substantial portion, and often the majority, of their funding, developers have a strong incentive to maximize the number of points scored and therefore their chances of receiving adequate funding (Iglesias & Lento, 2011).

The number of tax credits a project receives is determined by the project's characteristics, not the competitive point process. A handful of points is available for more cost-efficient projects; outside of those, a project cannot increase its chances of receiving tax credits by cutting costs. The formula for the number of credits allocated takes into account a range of different factors and incorporates multiple, shifting standards. The number of tax credits provided also varies with the number of affordable units included in the project, of course.

Determining eligibility is only the first step. In order to calculate the actual number of credits allocated, allocators must also determine the project's eligible basis, which includes most costs of construction but omits certain expenses, such as land costs. Tax credits are then assigned to cover a certain percentage of the eligible basis. The percentage varies based on whether the project is rehabilitating an existing unit or constructing a new unit; the former qualifies for tax credits covering 30% of the project's cost, while the latter qualifies for credits covering 70%. Additionally, a certain number of credits is set aside to be allocated to nonprofit organizations. Finally, projects to be constructed in "qualified census tracts (QCTs) or difficult development areas (DDAs), determined by HUD on a yearly basis, are allowed to increase their eligible basis by up to 30% (Iglesias & Lento, 2011).

Further confusing the matter is the process of actually generating capital from tax credits. A given dollar value of credits does not translate directly into the same amount of cash for a developer. Instead, a tax credit entitles the holder to deduct that amount from its taxes for 10 years. Thus, $10 in credits can potentially reduce the holder's tax bill by $100 over a decade. But the *present* value to a holder might be markedly less than $100. This is both because simply multiplying the allocation by 10 ignores the reduced future value of money and because uncertainty about future events introduces an element of risk into the credit grantee's expected returns. Two major risks include the project owner's ability to ensure the project remains qualified for credits for the following decade and that the tax credits available in a given year could exceed the applicable tax burden, meaning that some go to waste (Iglesias & Lento, 2011).

This complicated structure has produced an equally complicated financial back end. Because a project's backers will rarely generate enough taxable income to make full use of the credits, credits are usually distributed by forming a partnership or limited liability corporation with for-profit investors. (This unusual arrangement is necessary to comply

with the requirements of federal tax law.) The developer or tax credit recipient becomes the general partner, and the investors join as limited partners. The limited partners invest capital into the partnership—effectively the "price" being paid for the tax credits—and receive a 99.99% share of profits generated, thus transferring the benefit of the tax credits from the recipient to investors. This process is collectively known as syndication (Iglesias & Lento, 2011).

Effects of Suballocator and Point Systems on Project Placement and Characteristics. The suballocator shares serve, in effect, as a tax credit funding floor for the central cities. In the coming year, 35.6% of the metropolitan tax credit pool is effectively earmarked for use by the two central cities, which only contain 23% of the metropolitan population. In addition, MHFA can, at its discretion, make geographically unrestricted allocations from the 10% nonprofit set-aside. Since 2005, the central cities have received an average of 42% of all metro area LIHTC funding. This suggests that in addition to their suballocator shares, the central cities are receiving most of the set-aside.

Beyond simply overallocating funding to the central cities, this system may create greater incentives for developers to propose central city projects. Developers have an incentive to minimize competition for tax credits. Developers who apply for tax credits from the suballocators are only required to outscore rival projects in the same geographic jurisdiction, and are therefore exposed to less competitive pressure. In addition, the nonprofit set-aside allows nonprofit developers to apply jointly for MHFA and suballocator credits but only so long as they are developing a project within a suballocator's jurisdiction. This dual eligibility further increases the attractiveness of central city projects.

The point system for allocating tax credits among different projects also has a clear potential to affect the characteristics of project proposals. As the primary suballocator in the state of Minnesota, MHFA's point system represents a particularly influential set of policy priorities.

MHFA assigns a relatively large number of points to projects targeting certain populations. Ten points are given to projects in which 75% of the units contain two or more bedrooms and are prioritized for families with children; alternatively, a project is assigned 10 points if 50% or more of its units are single-bedroom and affordable at 30% of the area median income. Obviously, these two conditions are mutually exclusive. Another 10 points are available to projects for which 50% of the units are set aside for special populations, often meaning residents with disabilities or drug dependencies. The prevalence of larger units in the suburbs and smaller units in the central cities suggests that suburban developers have availed themselves of the first criteria while urban developers have relied upon the second. One potential explanation for this trend is the higher cost of developing in the cities: Since the points awarded are the same in either case, developers facing higher costs might be more likely to rely on the route that allows them to build smaller units (MHFA, 2013).

Ten points are also awarded for units that rehabilitate existing structures, and an additional 2 points if the rehabilitation is part of a community stabilization plan. If a project involves new construction, 10 points are only available if it will not require a substantial extension of existing utility lines. This criterion also significantly favors urban developers, who have a larger number of existing structures to choose from and, presumably, a more thorough network of utilities to draw upon (MHFA, 2013).

Five points are given to projects in or near top growth communities, where MHFA has determined that rapid job growth has created extra housing demand. In 2013, Minneapolis was included in these communities. Once again, this seems to advantage Minneapolis

developers, particularly in conjunction with the point allotment for new construction relying on existing utilities. In smaller, thriving cities, land with existing utility connections might be subject to higher competing demands; in comparison, Minneapolis's larger geographic area gives developers more opportunity to obtain the top growth community points while building on relatively cheap, previously developed land (MHFA, 2013).

A heavy emphasis is placed on providing housing to combat long-term homelessness. Project proposals that meet certain conditions related to providing permanent housing for the homeless receive 100 bonus points, until $1,795,000 in tax credits are exhausted. Afterward, projects can earn up to 10 points for setting aside 50% or more of their units for long-term homelessness; even projects that only set aside 5–10% of their units can earn 5 extra points. Many affordable housing developments include a smattering of units targeted for the long-term homeless; this provision probably explains why. It also likely advantages developments in areas that suffer from higher rates of homelessness and disadvantages developments appropriate primarily for lower income families (MHFA, 2013).

Three points are available for projects with access to mass transit. Once again, this advantages proposals in regions with dense mass transit near land available for development (MHFA, 2013).

Comparatively few points are awarded to projects on the basis of cost effectiveness. Up to 6 points are available, on a sliding scale, for projects that keep soft costs down. Up to 20 points can be earned by projects that are fully funded or have a large percentage of their funding secured; this does not directly address the issue of cost but might provide an advantage to cheaper developments, which are presumably easier to fund. And up to 10 points are given to proposals that receive some percentage of their funding from other government contributions—a factor which may or may not favor lower cost projects (MHFA, 2013).

Finally, it is worth noting that economic integration of affordable housing projects appears to be an extremely low priority, at least as reflected by the point system. Developments with between 25% and 50% affordable units—in other words, developments that mix lower income and middle or higher income populations—are eligible for a meager 2 points. Projects located in higher income communities are also eligible for just 2 points. Notably, the point system allows applicants to count only one of these two sources, even if both apply. For comparison, a developer can also earn 2 points by providing high-speed Internet access and declaring its building smoke-free. Developers looking to maximize their chance of being awarded tax credits face no real incentive to consider economic integration (MHFA, 2013).

Other aspects of the LIHTC system can also influence the placement and composition of developments. In particular, the public–private financing system and syndication have the potential to add new dimensions to the construction of affordable housing, by adding a set of investment conditions and constraints to housing projects that are often difficult to predict. One such constraint is the developer's bureaucratic intelligence, as an organization with expertise and experience in setting up the financial infrastructure for housing might have a substantial advantage over a developer who is merely a competent builder. Syndication also subjects developers and credit allocators to new pressures. For instance, investors regularly demand financial commitments from the housing project owner (which may endanger its nonprofit status, if it exists). A project that is depreciating and running at a loss may allow further tax write-offs, to the delight of investors, although probably not to occupants seeking long-term housing (Clarke, 2012).

Perhaps even more importantly, syndication drags a number of third parties into the affordable housing market—parties who often have a very limited interest in actually providing housing. These include not only the private investors but also specialized coordinators, or syndicators. These additional participants may have incentives that are at odds with the housing objectives of the tax credit grant. For example, if tax credits, for whatever reason, are a particularly profitable investment in some circumstances, then investors and syndicators might especially support projects that maximize the allocation of tax credits. Placing projects in lower income QCTs and DDAs helps accomplish this end, as does building projects in which 100% of the units are affordable.

Other components of the LIHTC system suggest additional reasons for the emphasis on development in the central cities. Even absent investor pressure, the tax credit bonus provided to QCTs or DDAs provides a higher incentive for urban developers to focus on acquiring tax credits. Studies have shown that housing construction is disproportionately encouraged by the bonus, and high-density QCTs or DDAs are primarily found in the cities (Baum-Snow & Marion, 2009).

Subsidized Housing as Economic Development Policy

Deficiencies in the private credit market underlie one common argument in favor of subsidized development in low-income neighborhoods. According to some advocates of central city development, low-income areas that fail to attract private lending can be revitalized by public lending for the purposes of building low-income housing.

Unfortunately, while ameliorating the effects of unfair lending is an attractive policy goal, research shows that affordable housing generally fails to revitalize stricken neighborhoods. Indeed, development often has a negative effect, as these neighborhoods are frequently at high risk of racial or economic transition and are among the most likely to be adversely affected by the addition of subsidized housing (Institute on Race and Poverty, 2009; Orfield & Luce, 2013). For instance, Galster's (2004) literature review concluded that neighborhood characteristics influence how subsidized housing affects surrounding areas and that there is growing evidence that neighborhoods with moderate home values and poverty rates are at greater risk of experiencing negative effects, even at lower concentrations of affordable or multifamily housing. Galster also concluded that "affordable housing seems least likely to generate negative impacts when it is inserted into high-value, low-poverty, stable neighborhoods" (p. 200). Similarly, a literature review by Abt Associates concluded that the effect of subsidized housing on nearby properties appears to depend on the scale of the project and the stability of the neighborhood (Khadduri, Burnett, & Rodda, 2003). A small project in a stable neighborhood has either no effect or a small positive effect. In contrast, a project added to an unstable neighborhood, especially a large project, can either cause a decline in property values or prevent revitalization that would otherwise occur as a result of market forces (Khadduri et al., 2003, pp. 41, 63).

These trends are in evidence in the Twin Cities. The new consolidated plan for the City of Minneapolis, for instance, expands the neighborhoods eligible for subsidized housing to include census tracts with minority shares between 29% and 50%, potentially intensifying the city's pattern of racial segregation. As the following case study will demonstrate, huge amounts of public funding are poured into large housing developments in these low-income, segregated areas. But there is little evidence of the predicted economic boost that would make such projects worthwhile.

East Phillips, Minneapolis: Franklin–Portland Gateway Development

An informal survey of the leading community development organizations in the region was conducted, requesting examples of a low-income housing project that had revitalized a neighborhood. Very few examples were forthcoming. However, the City of Minneapolis, the private nonprofit developer involved with the project, and the Minnesota Housing Partnership all pointed to the Franklin–Gateway Project as an example of such a project. There was no other project with a similar level of response.

The Franklin–Portland Gateway, also known as the South Quarter, demonstrates how considerable resources, including LIHTC, are used to build subsidized housing in racially segregated, inner cities. (Figure 7 shows the location of the project and highlights the nearby neighborhoods covered by Table 7.) Located in the northwest portion of Minneapolis's Phillips neighborhood on four blocks surrounding the intersection of Franklin and Portland Avenues, the Gateway is one of the most expensive affordable housing developments in the region. According to MHFA data on funding streams, total development costs for the four buildings included in the project exceeded $66 million: $9,816,165 for the Children's Village Center, completed in 2004; $9,549,952 for the Jourdain building, completed in 2006; $13,216,898 for the

Figure 7. Franklin–Portland Gateway.

Table 7. Race and economics of the Gateway neighborhood, Minneapolis, and the Twin Cities metropolitan area.

	Percentage race and ethnicity in 2010		
	Gateway[a]	Minneapolis	Metro
White	26.9	60.3	78.6
Black	40.1	18.3	7.3
American Indian	3.4	1.7	0.6
Asian	1.7	5.6	5.7
Hispanic or Latino	23.1	10.5	5.4
All others	4.9	3.7	2.4
Population	3,198	382,578	3,279,833
Median household income ($)	21,757	47,478	66,157
Percentage below the poverty line	44.6	22.3	9.9
Percentage labor force participation	68.2	73.0	73.2
	Median sales 2010 through October 2013 ($)		
Single-family homes	125,000	195,000	n/a
Duplexes/triplexes	144,000	172,528	n/a
Condos/co-ops	123,000	213,000	n/a
Apartments (per foot)	37.8	59.2	n/a
Commercial (per foot)	69.8	63.9	n/a

Note. Data from U.S. Bureau of the Census (2000 and 2010 Census of Population, 2007–11 American Community Survey), City of Minneapolis (property sales data).
[a]Gateway includes all of Ventura Village and West Phillips neighborhood for sales data and Census Tract 59.02 in Minneapolis for U.S. Census data.

Wellstone building, completed in 2008; and, finally, $33,899,340 for Phase IV, which is still under development.[8]

The $32.5 million spent so far has produced 126 units of new housing, 97 of which are affordable. Unusual for a central city project, many of these units are geared toward families, with 74 containing two or more bedrooms. Plans for Phase IV include an additional 120 units, almost all of which are to be affordable. However, history gives some cause for caution: In the earlier phases, the number of units and the percentage of affordable units were adjusted downward as construction progressed.

The project is not dedicated solely to housing. The existing buildings contain approximately 8,500 square feet of rentable commercial space and about 2,700 square feet dedicated to tenant community space.[9] They also contain an office complex for Hope Community, the CDC responsible for orchestrating the development. This may help explain the relatively high costs associated with the project, which ranged from $259,857 to $340,849 per housing unit (in 2012 dollars) for the four phases. However, the multivariate statistical analysis described above and shown in Table 6 implies that the addition of commercial space does not add very much to the average per-unit development costs.

Like virtually every modern affordable housing development, the Franklin–Portland project relies on a complex mix of funding. The project has drawn from, or plans to draw from, over two dozen different funding sources, including federal, state, county, and city programs that provide grants and interest-free loans, private grant-writing foundations (which in turn receive public money), charitable contributions, and a small portion of private developer capital. A brief overview of these funding sources provides a window into the byzantine world of affordable housing financing, where a dizzying collection of

programs (almost invariably assigned an opaque acronymic title) are mined for construction capital. The end result is a confusing alphabet soup that effectively obscures many of the incentives faced by housing developers.

The most significant single source of funding for the project, by far, is the LIHTC. Syndication of tax credits is responsible for $14.6 million of funding for the existing buildings and is planned to provide another $12.2 million for Phase IV.

The remaining costs are covered by a diverse array of programs. For Phase II, the developers received a $3.2 million federally insured Section 221(d)4 mortgage from HUD; Phase IV will incorporate another $9.1 million federally insured mortgage. Phase I was awarded a $1.9 million loan from MHFA's Minnesota Families Affordable Rental Investment Fund program. Approximately $3.2 million in loans were also received from the City of Minneapolis, with at least some of these traveling through the Affordable Housing Trust Fund program. Through its Livable Community Demonstration Account, the Minneapolis Community Development Agency provided $1.2 million to the first three phases and is slated to give $790,000 to Phase IV. The agency also awarded Phase I a $400,000 Community Development Block Grant and a $305,000 HOME Investment Partnerships Program (HOME) loan. Another $2 million is expected to come through MHFA's Economic Development and Housing Challenge program, and Phase III was selected for a $185,000 loan from the agency's Housing Trust Fund for Ending Long-Term Homelessness. Hennepin County has contributed approximately $2 million through a smattering of loan programs. The nonprofit affordable housing financier Family Housing Fund loaned the project $890,000, some portion of which was presumably granted to the fund by government entities. Phases I and II received $225,000 from the HUD Empowerment Zone initiative, which helped fund projects in designated geographic zones. (Conveniently, three corners of the Franklin–Portland intersection fall into these zones. The corner that does not is the location of Phase IV, which was delayed until after the Empowerment Zone program expired in 2011.[10]) Finally, a variety of other private and nonprofit entities provided the remaining moneys.

As is the norm with affordable housing development, public agencies ultimately pick up most of the tab. Of the $32.5 million spent on the first three phases, only somewhere between $2.7 and $6.1 million (8–19%) is from purely private sources. Similar figures are expected for Phase IV, which expects to raise from private sources only $6.2 million of its $33.9 million price tag.

Proponents of the Gateway argue that the development will bring viability to an economically struggling and undercapitalized area and that it will be a catalyst for further development in the area (Aeon, 2013; Gilyard, 2011; Olson, 2013). However, although the development has replaced many dilapidated structures that surrounded the intersection, there is no evidence that the Gateway has revitalized the surrounding area in a significant way. In fact, the area has fared much worse over the last 10 years than the city and region as a whole.

Tables 7 and 8 show racial and economic trends over the last 10 years in the area surrounding the Gateway development. As of 2010, the census tract containing the Gateway (the dark gray area in Figure 7) has a population that is 73% people of color, a decline of 7 percentage points since 2000. While population was essentially stable in the City of Minneapolis between 2000 and 2010 (and growing 10% in the metro area overall), the Gateway's population declined by 3.3%.

This area compares poorly economically as well. The median household income is $21,757, less than half that of the City of Minneapolis, which is $47,478 and only one-third the income level of the metropolitan area as a whole, which is $66,157. During the

Table 8. Change in race and economics of the Gateway neighborhood, Minneapolis, and the Twin Cities metropolitan area.

	2000 to 2010 Point change		
	Gateway[a]	Minneapolis	Metro
White	7.4	−2.2	−6.1
Black	4.1	0.5	2.0
American Indian	−2.8	−0.3	−0.1
Asian	−1.5	−0.5	1.6
Hispanic or Latino	−2.4	2.8	2.0
All others	−4.8	−0.3	0.5
	2000 to 2010 Percentage change		
Population	−3.3	0.0	10.5
Median household income ($)	4.9	25.4	21.8
	2000 to 2010 Point change		
Percentage below the poverty line	2.5	5.4	3.2
Percentage labor force participation	16.0	−5.0	0.6
	2002–05 to 2010–13 sales % change		
Single-family homes	−31.3	1.0	n/a
Duplexes/triplexes	−38.7	−30.2	n/a
Condos/co-ops	−35.8	2.1	n/a
Apartments (per foot)	−37.8	−16.2	n/a

Note. Data from U.S. Bureau of the Census (2000 and 2010 Census of Population, 2007–11 American Community Survey), City of Minneapolis (property sales data).
[a]Gateway includes all of Ventura Village and West Phillips neighborhood for sales data and Census Tract 59.02 in Minneapolis for U.S. Census data.

2000s, household incomes rose 25% in the City of Minneapolis and 22% in the metro area but only 5% in the census tract containing the Gateway.[11]

The Gateway tract also has a very high poverty rate of 44.6%, double that of Minneapolis and more than 4 times that of the metro area, and the area's poverty rate increased by 2.5 percentage points in the 2000s. Labor force participation is just 68% in the neighborhood, lower than either Minneapolis or the metro area (both at 73%), although participation rates increased more during the period in the Gateway tract than in the city or the region.

Property sales prices are also lower and have dropped more dramatically in neighborhoods that surround the Gateway than in the city as a whole. Data from the Minneapolis City Assessor's Office show that since 2010, all property sales values (except commercial) are significantly lower in the Gateway neighborhoods than in the city overall (see Table 6).

There are enormous differences between the Gateway area and Minneapolis when it comes to sales price changes between the prerecession (2002–2005) and the postrecession (2010–2013) periods (see Table 7). Single-family property prices dropped 31% in the Gateway area, while they increased 1% in Minneapolis; sales prices for condos/co-ops dropped 36% while climbing 2% in Minneapolis; apartment (per square foot) prices declined twice as much and commercial (per square foot) prices 4 times as much in the Gateway as prices in Minneapolis; and, finally, duplex/triplex property sales declined in the Gateway by 39% and in Minneapolis by 30%.

Comparing the socioeconomic outcomes of the neighborhood surrounding the Gateway with other similarly situated neighborhoods (rather than to the City of Minneapolis and the region) changes very little. The comparison uses neighborhoods east

Table 9. Race and economics in neighborhoods similar to the Gateway in Minneapolis 2000, and change from 2000 to 2010.

	2000		2000–2010 change	
	Gateway	12-neighborhood average	Gateway	12-neighborhood average
Percentage white	20	30	7	0
Percentage black	36	34	4	3
Percentage American Indian	6	6	−3	−2
Percentage Asian	3	10	−2	−3
Percentage Hispanic	25	14	−2	3
Percentage all others	35	21	−7	1
Population	3,307	4,328	−3	−5
Median household income	21,601	22,316	13	11
Percentage below the poverty line	42	33	5	9
Percentage labor force participation	52	60	16	7
Percentage homeownership	10	23	0	−1
Vacancy rate	5	6	5	6

Note. Data from U.S. Bureau of the Census (2000 and 2010 Census of Population, 2007–11 American Community Survey).

and south of the Gateway (East Phillips, Phillips West, Midtown Phillips, East Ventura Village, East Phillips, Cedar Riverside, East Stevens Square, and North Whittier) and in North Minneapolis (Harrison, Near North–South, and Near North–North). Table 9 shows the Gateway neighborhood with typical values on most measures both at the beginning of the period (2000) and in changes during the subsequent decade, despite the enormous investments that occurred during the period.

Conclusions and Policy Recommendations

The public policies determining the distribution of subsidized housing in the Twin Cities are clearly not meeting the region's responsibility to affirmatively further fair housing. The metropolitan area abandoned its role as a national leader in this area decades ago. The result is an affordable housing system that concentrates subsidized housing in the region's poorest and most segregated neighborhoods. This increases the concentration of poverty in the two central cities, in the region's most racially diverse neighborhoods, and in the attendance areas of predominantly nonwhite schools. In the long run, this hurts the regional economy and exacerbates the racial gaps in income, employment, and student performance that plague the Twin Cities.

There are a variety of possible responses that could put the region back on track:

- The suballocator system that arbitrarily distributes a disproportionate share of the region's tax credits to the two central cities should be abandoned so all potential projects compete on equal footing for tax credits, or MHFA and the Met Council should adjust the central cities' share to reflect their share of regional population.
- The point system used to evaluate tax credit proposals should be redesigned to greatly increase the values given to cost effectiveness, strategies promoting economic and racial integration, and access to educational opportunities.
- Every possible means should be pursued to guarantee that all parts of the region contribute their fair share of affordable housing (subsidized or not) to the regional housing market. This means, in particular, that the Met Council should use all of its powers to ensure that affordable housing is located to enhance access to all types of

opportunities for households at all income levels. It also means that areas that are currently economically and racially diverse should not be overburdened, putting them at risk of rapid transition.

- The metro area should pursue a regionalized system to distribute Section 8 vouchers. If the current system (which allocates vouchers to several agencies) remains, then the portability of all vouchers from one agency to another should be required.
- All possible actions should be taken to ensure that Section 8 vouchers are redeemable in all parts of the region, particularly in high-opportunity areas where this is currently not the case.
- Finally, and perhaps most importantly, federal, state, and regional resources for policies designed to improve economic and social conditions in the region's poorest neighborhoods over the long term should be increased dramatically. These include, for instance, programs to create living wage jobs, better access to high-performing schools, and safer streets. The current lack of such funding in these areas creates the cutthroat competition by central cities for the only significant funding sources left—those for subsidized housing—despite the fact that any economic development benefits of such spending (if they even exist) are short-lived and come with clear long-term costs in the form of greater concentrations of poverty.

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Notes

1. See Freilich and Ragsdale (1974a). The report was later published in the Minnesota Law Review (Freilich & Ragsdale, 1974b) with the following note: "This article is the result of a 1971–73 grant from the Met Council to Professor Freilich to study and recommend a legal policy for regional growth in accordance with the council's decision to pursue growth in a timed and sequential manner" (p. 1009).
2. For the purposes of this work, the Twin Cities metropolitan area is defined as the region's seven central counties: Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington counties. The HousingLink data set is limited to these counties, which contain the overwhelming majority of subsidized housing in the official 13-county metropolitan area.
3. The analysis is for new construction only. An effective model of costs for rehabilitation projects would be impossible with the available data given how varied these projects are. The cost data are based on budgeted costs, and the data set was edited to exclude duplicated records resulting from revised budgets. In the case of duplicates, the most recent entry was used. The resulting sample of 166 projects is meant to capture all new construction projects that received MHFA funding. Cost data include total development costs—funding from all sources, including non-MHFA public funding and private money. The sample includes projects that received LIHTC funding only from MHFA as well as projects that received LIHTC funds from both MHFA and another regional suballocator. See Other Factors Leading to Greater Spending in Central Cities for a description of the suballocator system.
4. This comparison is based on standardized coefficients shown in Table 6. Only the LIHTC and units per building coefficients exceed the Minneapolis and St. Paul coefficients (in absolute value).
5. Nonprofit financial data are drawn from the Form 990s Aeon, Artspace, Twin Cities Habitat for Humanity, RS Eden, Commonbond, the Greater Metropolitan Housing Corporation, Project for Pride in Living, and the Community Housing Development Corporation for the year 2011, available at www.guidestar.com.

6. This correlation is statistically significant at a 99% confidence level.
7. See Loan & Acquisition Map, Twin Cities Community Land Bank, http://www.tcclandbank.org/downloads/Map-Property-Acquisition-and-Loans.pdf.
8. All information on project costs and funding in the Franklin–Portland development is collected from a spreadsheet of proposed funding sources provided by MHFA.
9. Information about the Franklin–Portland Gateway is from the City of Minneapolis Community Planning and Economic Development. http://www.ci.minneapolis.mn.us/cped/projects/cped_franklin_portland_gateway, last accessed 12/5/2013.
10. See the HUD Empowerment Zone locator, available at http://egis.hud.gov/ezrclocator/.
11. Income growth rates were not adjusted for inflation.

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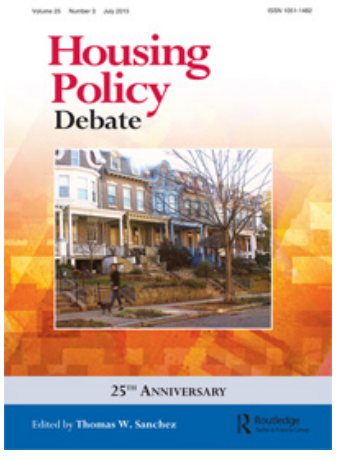

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Poverty-Pimping CDCs: The Search for Dispersal's Next Bogeyman

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COMMENTARY

Poverty-Pimping CDCs: The Search for Dispersal's Next Bogeyman

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There are three points made by Orfield et al. that I will address in my comments. The first is the authors' contention that housing policy should be driven by the obligation to integrate. Second, the authors suggest that higher costs of building affordable housing in Minneapolis and Saint Paul is due to the particular characteristics of the "poverty housing" industry in the two cities. Finally, the authors conduct an analysis of a specific affordable housing development in Minneapolis and purport to show that the project has produced no community level benefits.

The Obligation to Integrate

The consensus interpretation of the Fair Housing Act is that it embodies two goals, the eradication of discrimination in housing and the goal of creating inclusive, integrated communities (Polikoff, 1986; Schwemm, 2011). The nondiscrimination goal is concerned with providing equal access to housing for all people, whereas the integration goal is aimed at producing a specific spatial pattern of settlement. Orfield et al. begin with the proposition that federal housing resources must be used to create integrated, inclusive communities. In this section, the authors argue that federal fair housing policy requires recipients of federal housing funds to create integrated and balanced living patterns. This obligation stems from the requirement in the Fair Housing Act that U.S. Department of Housing and Urban Development (HUD) "affirmatively furthering fair housing" (AFFH) in all of its programs. Furthermore, the meaning of AFFH is taken by the authors to mean proactive steps beyond simply combating discrimination to foster more inclusive communities, "that in fact recipients of federal funds must, in using those funds 'support and promote' integrated communities." In short, the promotion of integration, the spatial goal of fair housing, is the foremost goal of federal housing policy (and by extension, any local efforts that involve federal funds).

Such a position distorts matters in a number of ways. To begin with, there are other, equally important goals of housing policy related to the provision of decent, safe, and affordable housing to disadvantaged families, and related to the revitalization of declining neighborhoods that also demand our attention. Furthermore, the reasons for pursuing these other goals of housing policy are just as compelling as the reasons for pursuing the spatial goals of fair housing. In fact, a complete reading of the legislative, judicial, and political history of fair housing and housing policy since the 1960s does not, on the whole, indicate that the spatial goals of fair housing should be privileged over the other goals of housing policy. In fact, the courts, Congress, and the administrative branch of government have been inconsistent in the relative weight they give these various goals of housing policy.

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Indeed, the issue of the relative importance of spatial goals versus social welfare goals has been variously resolved over several decades, and remains, in fact, an open question.

Housing policy has, over time, been used to pursue a number of different purposes. The two most frequently cited are (a) the desire of providing decent, safe, and affordable housing to lower-income households who currently lack such housing; and (b) the goal of improving the communities in which lower-income people live by upgrading the physical environment. The first of these purposes we can refer to as the *social welfare* policy objective, whereas the second can be called the *community development* objective.[1]

Conflict over the relative importance of social welfare and community development goals on the one hand, and the spatial goals of fair housing is longstanding. In fact, the conflict is as old as subsidized housing itself (see Smith 2012 on the debate within the black community in Chicago during the 1940s between those who saw the meeting of critical housing needs within the community as a priority and those who wanted to see a dispersal of assisted housing).

Fair housing advocates are forceful in describing the problems of segregation and the compelling need for policy that provides for a different and more integrated pattern of settlement (see, e.g., Roisman, 2007, Hartman & Squires, 2010). At the same time, however, equally compelling arguments can be made for meeting the social welfare goals of housing policy. The lack of affordable housing is a serious impediment to the welfare of millions of people across the country, producing significant burdens of families and children that seriously and adversely affect life chances.

Evidence from a national survey of families indicates that housing affordability is positively correlated with children's health (Harkness & Newman, 2005). Another study indicated that children of low-income parents living in subsidized homes have a higher chance of meeting well-child criteria than children in similar families that do not live in subsidized housing (March et al., 2009). Additional studies indicate that children in low-income families lacking affordable housing are more likely to suffer from under-development resulting from malnutrition and iron deficiencies compared with those living in subsidized, affordable housing (Frank et al., 2006; Meyers, Rubin, Napoleone, & Nichols, 1993; Meyers et al., 2005). Affordable housing can reduce stress levels for adults and children by lessening the financial pressure of market-rate rents and providing a stable housing environment. The adverse emotional and psychological impacts of housing instability have been documented for a range of housing conditions. Difficulties in keeping up with house payments have been shown to lead to lower levels of psychological health and greater rates of engagement with medical systems (Nettleton & Burrows, 1998; Smith, Easterlow, Munro, & Turner, 2003; Weich & Lewis, 1998). Residential instability, eviction, and doubling up induced by lack of affordability has also been linked to negative psychological outcomes (Bartlett, 1997; Guzman, Bhatia, & Durazo, 2005). In the case of the extreme instability of homelessness, many studies have documented the damaging psychological outcomes in both adults and children (Bassuk & Rosenberg, 1990; Goodman, Saxe, & Harvey, 1991; Wood, Valdez, Hayashi, & Shen, 1990; Zima, Wells, & Freeman, 1994). Affordable housing also reduces the incidence of overcrowding, which is implicated in the spread of infectious disease and can contribute to stress in the home (Baker et al. 2000; Cardoso, Cousens, de Goes Siqueira, Alves, & D'Angelo, 2004; Evans, Lepore, Shejwal, & Palsane, 1998;; Gove, Hughes, & Galle, 1979; Lepore, Evans, & Palsane, 1991).

Affordable housing also provides a stable home environment for children, which proves to be important in their educational outcomes. Children living in a low-income family move much more frequently than children from a nonpoor family

(Newman & Holupka, 2009). Hypermobility can have negative effects on children, resulting in stress, behavior problems, and poor performance in school (Craig 1998; Kerbow, 1996; Reynolds, Chen, & Herbers, 2009; Scanlon & Devine, 2001). Frequent interruptions of educational instruction make progressive learning increasingly difficult (Brennan, 2011). Schools that serve a highly mobile student population and that take steps to respond to the needs of highly mobile students show slower overall rates of educational progress (Kerbow, 1996).

The lack of affordable housing across the country is both chronic and severe. In 2010 HUD estimated that 1.6 million people spent at least one night in a shelter or transitional housing following an episode of homelessness (HUD, 2010). In the same year, the U.S. Census Bureau estimated that 15.5 million Americans lived "doubled-up" with members of another household and that 13% of all households in the country lived in such arrangements (U.S. Census Bureau, 2010). In 2010, more than 25% of all renters in the United States paid more than half of their incomes on housing, twice the rate seen in 1960 (Bravve, Bolton, Couch, & Crowley, 2012). The official threshold for affordability, according to federal policy is whether a family is paying more or less than 30% of its income on housing. By that standard, 18.5 million renters lack affordable housing, more than half of all renters in the nation (Bravve et al., 2012).

For very-low-income families, the shortage of affordable housing is most acute; in 2009 only 32 units renting at rates affordable to very-low-income families existed for every 100 very-low-income households (Bravve et al., 2012). An annual income of $38,400 is needed to afford the average two-bedroom apartment at the fair market rent (FMR) in the United States. This translates to an hourly wage of $18.46 per hour. The minimum wage in 2011 was $7.25. There is not a single state in the country in which a person making the minimum wage can afford the average two-bedroom apartment at the FMR. In Hawaii, for example, it would take 4.2 jobs at minimum wage to do so. For most low-income families, the typical FMR is well beyond their ability to pay; the typical very-low-income household is able to afford a rent that is roughly $500 less per month than the national average FMR.

In the Twin Cities, the subject of Orfield et al.'s interest, the vacancy rate for rental housing was less than 3% in 2014. The average rent for a two-bedroom unit in the region was $1,083 per month, requiring a salary of $20.82 per hour.[2] There are an estimated 155,000 households in the region paying more than half of their incomes on housing, more than double the number just 10 years earlier. People of color experience this "severe housing cost burden" at nearly twice the rate that whites do. Another 226,000 households (more than a third of all households in the region) pay between 30% and 50% for housing.[3] The metropolitan council of the Twin Cities will open its waiting list for Section 8 housing soon. They anticipate 60,000 people will make applications to sign up. The 2007 waiting list, which officials anticipated would last for 2 or 3 years, has instead lasted 7 (Melo, 2015).

Metropolitan regions across the country are in the aggregate millions of housing units short of what is needed to adequately house the population. The production of decent, safe, and affordable housing needs to be several times greater than it is currently to even come close to providing enough stable shelter for low- and moderate-income families in the United States who currently lack it.

Given these counter claims on housing policy, is there any evidence for the proposition that integration is a privileged objective of federal housing policy? Certainly not in the Fair Housing Act itself. The legislation is in fact vague on several critically important issues in this respect, including what the definition of fair housing is, what the explicit

intent of Congress was in terms of the multiple objectives that might constitute fair housing, and on the exact nature of the government obligations related to fair housing in the implementation of its own programs of housing and urban development (Vernarelli, 1986).

Deliberation about the meaning of the Fair Housing Act begins with debate over the nature of the equal access and spatial goals of the Act. Tein (1992) argues that the elimination of discrimination is explicit in the law, and that the integration objectives have been "read into the act" by the Courts. For example, the word *integration* never appears in Title VIII; nor is there any direct statement of policy or intent in the Act that suggests that by passing Title VIII, Congress intended to achieve residential integration. Despite the lack of specific language identifying spatial goals, integration is widely understood to be a goal of the law. Tein's argument however, suggests that Title VIII in no way privileges spatial goals over nondiscrimination. Indeed, were one to limit the inquiry to the language of the Act, one must agree with Lake and Winslow (1981) and Rubinowitz and Trosman (1979) that the "best understanding of the statute is that it is aimed at reducing barriers" to equal housing opportunity and that integration was thought to be an outcome that would result from greater choice in the housing market.

The legislative history of the Fair Housing Act also does not provide much guidance as to the intent of Congress related to these two goals. Florence Roisman (2007, 2010) argues that the legislative debate indicates clearly that integration *is* the main objective. She notes that the "floor debates in the Senate in 1968 were very focused on allowing blacks to move to the suburbs" (Roisman, 2007, p. 385). The quote most widely used to support the notion that Congress was intentionally acting to integrate communities through Title VIII is from Walter Mondale, Democratic Senator from Minnesota who was the bill's sponsor in the Senate. During the debate, Mondale argued that the Act was intended to "replace the ghettos by truly integrated and balanced living patterns" (quoted in Polikoff, 1986, p. 48). This quote has been used by the U.S. Supreme Court to establish the legal basis of the integration goal (in its decision in *Trafficante v. Metropolitan Life Insurance Co.*, 1972) and is referenced by HUD in its proposed rule for implementing the AFFH requirement of Title VIII (HUD, 2013).

Yet, other evidence strongly contests the notion that integration was an explicit goal of Congress when it created the Fair Housing Act Tein (1992), for example, notes that Mondale made other statements about the bill that seem to contradict the notion that it was about anything other than enhancing choice on the part of disadvantaged populations. In reference to Title VIII, Mondale said, "obviously [the act] is to be read in context with the entire bill, the objective being to eliminate discrimination in the sale or rental of housing . . . without doubt, it means to provide for what is provided in the bill. It means the elimination of discrimination in the sale or rental of housing. That is all it could possible mean," (quoted in Tein, 1992, p. 1467). Mondale also said that the basic purpose of this legislation is to "permit people who have the ability to do so−-to buy any house offered to the public if they can afford to buy it" (quoted in Sidney, 2003, p. 31).

In the absence of clear Congressional signals about the spatial goals of fair housing, the courts have stepped in and interpreted the law. A full analysis of the legal history is beyond the scope of my comments here, but it is clear that the courts have ratified the notion that the pursuit of integration is a central objective of the Fair Housing Act. In a range of cases since 1970, courts at multiple levels have established integration as one of the chief objectives of the Act and have required government bodies to direct their use of federal housing resources, ranging from public housing to the Low Income Housing Tax Credit, so as to achieve greater levels of integration.[4] What is not clear in the legal history is that the

courts regard this obligation as the first purpose of federal housing policy (see, e.g., Relman, Schlactus, & Goel, 2010; Tein, 1992; Vernarelli, 1986).

Finally, HUD policy and Congressional input on this question has produced something of a wandering path over the years. For HUD and Congress, the central policy question is whether assisted housing investment should be restricted or targeted for predominantly white neighborhoods to achieve greater integration, and whether doing so harms nonwhite neighborhoods by denying them the investment necessary for maintaining and improving the housing stock and providing affordable housing for residents. Thus, for example, in the first 10 years after establishing siting guidelines for assisted housing developments to ensure greater dispersal of projects (pursuant to the court's direction in *Shannon v. HUD*), HUD revised the guidelines twice, first to acknowledge rehabilitation and reinvestment needs in core neighborhoods and again to introduce greater flexibility in agency decision-making. In 1978 HUD was criticized by the U.S. General Accounting Office (GAO) for not doing enough to deconcentrate its assisted housing. HUD Secretary Patricia Harris responded by arguing that the agency had multiple objectives and was simply balancing dispersal objectives with "equally important legislative goals such as neighborhood revitalization," (Vernarelli, 1986, p. 223). In the same year, a Congressional hearing was held in Chicago, Illinois, to assess how the decision in *Gautreaux v. Chicago Housing Authority* had affected the construction of new assisted housing in the city. The Chair of the House Manpower and Housing Subcommittee, Cardiss Collins (Dem, IL) was concerned that the judicial remedy in Gautreaux was starving the central city of much needed affordable housing investment. Just 2 years after that, Congress, urged on by members representing urban areas, moved to prohibit HUD from denying housing proposals based solely on the impaction limits and called for greater flexibility in siting decisions (Goering, 1986). Members were worried about whether the guidelines were keeping affordable housing investment out of communities where it was greatly needed.

This issue has endured for decades. Strong internal divisions have existed within HUD on the issue of the relative importance of integration and production. Fair housing advocates, both within and outside the Agency, have complained about the deeply entrenched opposition to fair housing enforcement at HUD and recommended taking fair housing enforcement out of the agency and placing it in an independent organization (NCFHEO, 2008).

The current situation, in contrast to most of the history on this issue, is one in which the administrative branch is more receptive to pursuing the spatial goals of fair housing, whereas the judicial branch seems more antagonistic to fair housing in general. As of this writing, HUD has prepared a draft rule for interpreting the AFFH mandate, explicitly interpreting AFFH as requiring the pursuit of integrated living patterns and deconcentration of poverty. At the same time, the Supreme Court seems eager to restrict fair housing litigation in general by undermining the disparate impact rule.

There is, of course, much more to this issue, including debates about both the moral and instrumental justifications for integration (see for example, Anderson, 2010) and the legitimacy of what Young (2000, p. 197) calls *differentiated solidarity,* or affirmation of "the freedom of association that may entail residential clustering and civic differentiation." A full examination of the *right to stay* or the choice not to integrate is also beyond the scope of this comment. These are worth mentioning simply to further establish at this point that the obligation to integrate that is forcefully argued by Orfield et al. is a contested proposition on many levels. There is no clear political, legal, or philosophical mandate for the primacy of integration. Instead, there exists a multiplicity of objectives related to the conduct of housing policy that demand attention, including

addressing the housing needs of lower-income families who live in disproportionately nonwhite neighborhoods in the core areas of our metropolitan regions.

Inefficiencies in the Development of Affordable Housing in Minneapolis and Saint Paul

Orfield et al. present a regression model showing that development costs for assisted housing are higher in the central cities of Minneapolis and Saint Paul than in the suburbs. The model controls for the number of bedrooms, the affordability level of the units, and other characteristics such as number of buildings, amount of nonresidential development, and units per building that typically influence development costs. Net of these they find that location within Minneapolis or Saint Paul (as opposed to suburban location) is "among the most important factors affecting costs per unit."

This is an important and policy-relevant finding. The next step would be to go beyond their model, which is limited to predicting development costs, and attempt to explain what is different about development in the two central cities and how those differences contribute to the cost differential.

The authors actually list a number of additional characteristics that might explain the locational differences, including land cost, pollution clean-up costs, and the regulatory requirements made in central cities that are not made in the suburbs. That regulatory policies impact housing prices is a foundational reality of housing policy. Could the central cities have constructed a regime of regulations that, intentionally or not, drives up the cost of development far in excess of what prevails in the suburbs? If so, what are these local policies? Alas, we do not know the answer to either question because Orfield et al. do not pursue them. Instead they make the assertion that to pursue the issue would undermine the purpose of their previous model. This is difficult to understand because at this point in the analysis the objective should be to explain the findings of their previous model (i.e., why the coefficients for the location dummy variables are so large and statistically significant). Thus, we want to move on from the original model and toward a new analysis that can explain the cost differential. In fact, at this point, the "characteristics of the locations themselves" which Orfield et al. oddly argue should be ignored, are exactly what *should be* analyzed.

Having abandoned the best possible avenue for explaining the cost differential, Orfield et al. instead embarked on a description of the affordable housing development network in the Twin Cities. It is unclear whether this section of the article is an attempt to explain the cost differential or simply a new line of thought. On the one hand, the authors note that without better information on this network, it is impossible to determine if it responsible for the city/suburban cost differential. On the other hand, the next major heading in the article is "*Othe*r Factors Leading to Greater Spending in Central Cities" (emphasis added), suggesting that this section is considered to be one factor leading to the cost differential.[5]

Their subsequent observations about the housing development network in the Twin Cities, for all the heat, produce little light. In the first place, virtually all of what they write about occurs regionally and thus, cannot be the basis of the city/suburb cost differential. But more than that, there is little that is new or particularly insightful in this section. Observers and practitioners of affordable housing have known for more than two decades that putting together housing deals requires piecing together financing from a large number of partners, public and private. This is as true in the suburbs as it is in the central cities. Most also understand that without intermediary organizations such as

Local Initiatives Support Corporation (LISC) and the Family Housing Fund, it would take even more time and staff resources to put together the necessary financing to complete an affordable housing development. It is also not uncommon for the largest housing developers to be managing portfolios that easily range in the tens, if not hundreds, of millions of dollars. Yet, Orfield et al. think it unseemly if the directors of these groups make more than $50,000 per year in salary (an amount that represents about 75% of the area median income in the Twin Cities). This ad hominem "poverty pimp" argument is among the more regrettable aspects of the Orfield et al. piece.

Even the observation that the network operates as a classic policy subsystem is not new. Nineteen years ago, Mara Sidney and I analyzed the affordable housing system in Minneapolis and demonstrated the ways in which public agencies work in close collaboration with private and/or nonprofit organizations to implement policies and programs and how the system is designed to self-reinforce (Goetz & Sidney, 1997).

Sidney and I did not address the question of whether this subsystem contributed to higher development costs. It is possible, of course, that the operation of the subsystem could lead to higher costs. But to connect the subsystem with the city/suburb cost differential, one would have to establish that the subsystem operated in the central cities and not in the suburbs. In addition, one would have to analyze or specify, or provide some empirical evidence to support the notion that the characteristics of the system actually contribute to a cost differential. One would have to show how the work of the intermediaries, for example, drive up costs in the central city but not in the suburbs, or that the tight relationships between public and private entities in the policy subsystem increase costs in the cities but not in the suburbs. Unfortunately, however, the major players in this particular subsystem are regional, producing and financing affordable housing in both the suburbs and the cities. Furthermore, Orfield et al. make no attempt to provide empirical evidence of the connection between the characteristics or the operation of the subsystem and actual cost increases in any development projects. In the end, the entire discussion of the *poverty housing* system as Orfield et al. call it sheds no light at all on the issue of development costs. I wish the authors had followed up on the issues of land cost and regulations as possible explanations for the city/suburb cost differential.

The Franklin-Portland Gateway Development

The final section of their article is an attempt to assess the impact of a single affordable housing/community development project, the Franklin-Portland Gateway Development, implemented by Hope Community, Inc. The thrust of the analysis is that despite millions of dollars of investment in affordable housing at the intersection of Franklin and Portland Avenues in south Minneapolis, the larger neighborhood has not experienced an economic turnaround. "In fact," reads the article, "the area has fared much worse over the last 10 years than the city and region as a whole."

First, it should be noted that the time frame for Orfield et al.'s analysis is from 2000 to 2010. The housing crash of 2007 and the subsequent recession hit poor and working class neighborhoods like the Gateway neighborhood much harder than it did many other areas. That the timing of the recession may have been at least partially responsible for the findings of this analysis is not mentioned by the authors despite the clear possibility that in fact, the crash could have easily swamped any potential impact of the project.

But apart from that oversight, the time frame for the analysis is simply inappropriate. The authors note that phase I of the Franklin-Portland Gateway project was completed in 2004, phase II in 2006, phase III in 2008, and the final phase, the largest of the four, is still

(in 2015) under construction. None of the four phases of the development had been in operation for the full 10-year period of the study. In fact, only phase I (which accounts for only 17% of the total number of units in the projects and a similarly small percentage of the commercial space) had been in place for a majority of the decade. Phase II operated for only 4 of the 10 years, and phase III for only 2 of the 10 years. Phase VI remains a construction site even 5 years after the end of the study period. It is unlikely that even the most wildly optimistic of Gateway supporters would have projected significant benefits to the neighborhood emerging prior to 50% completion of the project. Yet, that is exactly what Orfield et al. have tested for.

Apart from the faulty time frame for the analysis, there is an issue of scale and local context as well. The scale at which Orfield et al. look for effects is the census tract. This includes residential areas that are six or seven blocks distance from the project site. The first and the largest impacts of affordable housing developments are going to be on the sites themselves and on the blocks in which they are located. Even then, however, the specific placement of this project (one block east of eight lanes of freeway and two blocks south of six lanes of freeway) might reasonably dampen spillover effects. The use of census tracts as proxy for neighborhoods and as the scale at which to examine neighborhood effects is quite common. But, it is generally used in large-N studies where it is impossible to collect data for more contextually appropriate geographically defined areas. The Orfield et al. study has an N of one, and the neighborhood in question is less than 2 miles from the authors' offices. A stronger research design might have been one in which they interview neighbors, nearby property owners, business owners, and/or local officials. Perhaps a more fine-grained analysis would have led them to the same conclusion; that the project did not have significant or measurable benefits. But by looking at a handful of census tract indicators for a time period that does not even capture the one in which the project had been completed and could be expected to produce impacts, they produce very little in the way of useful information.

Finally, in addition to examining the wrong time frame at the wrong scale, they have, arguably, looked at the wrong indicators. Note that the analysis is meant to test the proposition that the Gateway project "will bring viability to an economically struggling and undercapitalized area and that it will be a catalyst for further development in the area." How is this operationalized by Orfield et al.? They operationalize it by measuring change in the racial makeup of census tract residents, the economic characteristics (median household income, percent below poverty line, and labor force participation) of those residents, and sales prices of neighborhood real estate.

Several issues are raised by these choices. First, the set of variables that come closest to measuring the concept of neighborhood viability and development stimulus is the real estate sales data. As Tables 5 and 6 indicate, however, the scale at which these data are collected "includes all of Ventura Village and West Phillips neighborhood," an area roughly 4 times larger than the census tract. Such a vast area does not represent a realistic scale for finding impacts from a localized community development project that was not even 50% complete when the data were collected.

The other variables raise the issue of whether community development projects should be assessed on the degree to which they lead to resident turnover. Most community developers will argue that their work is not meant to change the residential profile of the neighborhood, but to make the neighborhood a better place to live for the residents who are already there. In that case, measures of success might be various quality-of-life indicators such as local crime rates, fear of crime, satisfaction with neighborhood services and amenities, and measures of housing quality, and business activity. Many of these

indicators are difficult to collect in large-N studies, and thus there is a frequent resort to more standardized measures. But such constraints should not have been in operation in this particular study.[6]

Notes

1. On the other hand, one could also note that housing policy has been enlisted in service of any number of additional policy objectives, from macroeconomic recovery to the maintenance of racial or class segregation, privatization, the expansion of the "ownership society," the facilitation of gentrification, etc. That is, housing policy has sometimes been used, cynically or not, to produce outcomes that have little or nothing to do with the welfare of low-income people or the healthy functioning of their communities.
2. Taken from Family Housing Fund (2014) "Working doesn't always pay for a home." http://www.fhfund.org/wp-content/uploads/2014/10/Working_Doesnt_Pay_for_Home_H-T_May-2014.pdf.
3. Metropolitan Council, (2014). *Housing Policy Plan*, St. Paul, MN. http://www.metrocouncil.org/METC/files/54/54ec40bb-d6ce-45bb-a571-ee00326ccd20.pdf.
4. See, e.g., *Shannon v. HUD* 436, F.2d. 809 (1970), *Trafficante v. Metropolitan Life Insurance*, Co., 409 U.S. (1972), *Otero v. New York City Housing Authority*, 484 F.2d, 1122 (1973), NAACP Boston Chapter v. Secretary of HUD, 817 F.2d 149 (1987), Thompson V. HUD, 220 F. 3d 241 (2000), Inclusive Communities Project v. Texas Department of Housing and Community Affairs, 860 F. Supp. 2d 312 (N.D. Tex. 2012).
5. To add to the confusion of this part of the article, the authors turn their attention, at least initially, away from the cost differential to how the characteristics of the "Twin Cities Development Community" contribute to the more general "unresponsiveness to cost" of affordable housing in the region. Unfortunately, Orfield et al. have not demonstrated that affordable housing in the region is "unresponsive to cost." What they demonstrated in their original model is that there is a cost differential between the cities and the suburbs. The assertion that there is a generalized unresponsiveness to cost is supported by neither data nor any analysis.
6. An alternative interpretation of the choice of income, poverty, and labor force participation as measures of success is that Orfield et al. may have anticipated that the project would have put into motion economic transformations that would have improved labor force participation among residents, increased their incomes, and reduced poverty. If this is the case, the deficiencies of their study related to time frame and scale of analysis are relevant.

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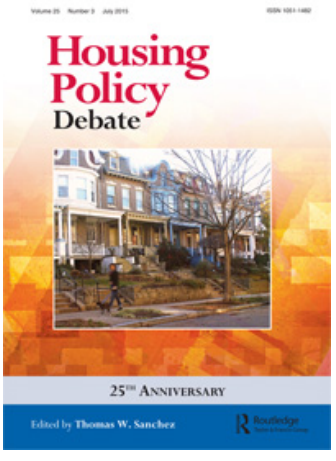

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Response to Poverty-Pimping CDCs: The Search for Dispersal's Next Bogeyman

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RESPONSE TO COMMENTARY

Response to Poverty-Pimping CDCs: The Search for Dispersal's Next Bogeyman

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Keywords: low-income housing; minorities; community development; suburban

The following is our response to Professor Goetz's rebuttal of our work. We will address each of his major objections in turn.

The Duty to Reduce Segregation as a Component of Housing Policy

At the outset, it is important to point out a central error in Professor Goetz's case against the duty to integrate. He draws evidence from two very different debates: first, the *legal* debate over the civil rights obligations of public agencies and private housing developers, and second, the *policy* debate over development priorities in the affordable housing industry. Unfortunately, he ignores this distinction, using policy evidence to interpret the legal evolution of the Fair Housing Act (FHA). But the two questions are quite distinct, and less closely intertwined than he suggests.

To rebut our statement that the FHA creates a clear duty to pursue integrated housing, Goetz focuses heavily on internal conflicts within what he describes, at one point, as the housing "policy subsystem." Goetz's argument treats the FHA's requirements as an outgrowth of historical disagreements over whether to emphasize "spatial" or "social welfare" goals in subsidized housing, and he concludes that integration is not "a privileged objective of federal housing policy." But this approach is backward, relying on an apparent misconception of the relationship between the FHA and the affordable housing community.

No one questions, as Goetz points out time and again, that housing programs operated by U.S. Department of Housing and Urban Development (HUD) and other government agencies have multiple objectives—spatial and social welfare alike. The FHA, however, does not emerge from these programs or their objectives, nor does it represent a competing set of interests. It is instead a legal device, envisioned as a direct response to severe public and private housing segregation. The Act was never intended to replace existing housing programs, with their diverse objectives; instead, it was intended to *overlay* them, constraining the range of permissible policy actions that they can support. Thus, Goetz's description of our argument that "housing policy should be driven by the obligation to integrate" badly misses the mark. We are instead asserting that the FHA imposes a duty to reduce segregation, and to affirmatively further fair housing, and policymakers are

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required to, at minimum, satisfy these obligations, independent of their other goals. This requirement may prevent certain approaches to subsidized housing policy, but it hardly mandates any single approach; there is still plenty of room for inventive policymaking and experimentation.

Moreover, historical evidence of HUD's failure to enforce civil rights rules can not indicate that these rules have somehow been rendered legally subordinate to the agency's other programs. In fact, the historical policies of HUD and other instrumentalities of the federal government are a major cause of residential segregation; one primary objective of the FHA was to reverse this pattern and force federal spending into alignment with civil rights objectives. At times, HUD itself has frankly admitted its failings. Roberta Achtenberg, writing as one of the Agency's assistant secretaries, has confessed as much: "[t]hat the federal government, including HUD, has a long history of having precipitated and perpetuated housing discrimination, there can be no question" (Achtenberg, 1995, p. 1191). Federal "home-ownership programs . . . reinforced discrimination and separation by income and race," and "programs to assist low-income renters have helped concentrate poor, minority families in poor, minority neighborhoods," all while HUD "utterly fail[ed] to expand affordable housing opportunities outside traditional areas of minority concentration" (Achtenberg, 1995, pp. 1193–1194). "Federal fair-housing law enforcement has been weak and inadequate" while "the 1988 [FHA] amendments provided HUD with a powerful enforcement tool" and the first Bush administration "was not quick to seize the opportunity" (Achtenberg, 1995, p. 1194). Given this history, it would be unwise to draw conclusions from the mere fact that HUD refused to cooperate with the FHA and its requirements.

When housing agencies have ignored or downplayed their civil rights obligations, federal courts have been quick to hold them liable. Indeed, early in the FHA's history, the principal use of the affirmatively furthering provisions in U.S. Code §3608 "was to challenge HUD's support for housing projects located in neighborhoods [with] a high concentration of minority and low-income residents," a process resulting in landmark decisions such as the transformative Gautreaux integration project (Schwemm, 1969). Later, similar challenges produced additional defeats for HUD, such as in the influential cases of *Shannon v. HUD* and *NAACP v. HUD*.[1] This principle was most recently highlighted in the Westchester County litigation, where a federal court permitted a private party to bring suit to enforce HUD's own civil rights requirements, after the agency itself failed to do so.[2] This all demonstrates that, although the policy debate over various housing objectives has at times been animated, the legal realm has produced a much stronger consensus over the FHA's civil rights requirements.

Among the judicial and academic authorities that have addressed the question so far, few have disputed that the federal FHA prohibits practices that perpetuate segregated housing patterns.[3] It also been long established that one common means of perpetuating segregation is the disproportionate placement of subsidized housing in poor neighborhoods.[4] Under the FHA, governmental recipients and administrators of federal housing funds have an obligation to affirmatively further fair housing,[5] which requires them to use their immense leverage to create integrated and balanced living patterns.[6]

Ironically, while Goetz attempts to cast these conclusions as controversial, none of the well-known legal scholars he cites as support—Schwemm, Roisman, Verendelli, Relman—question the integrative objective of the FHA. These writers have also all opposed, on legal grounds, the concentration of low-income housing in segregated neighborhoods. Roisman and Schwemm have previously endorsed our reading of the FHA

over Goetz's. In the words of Schwemm, perhaps the nation's foremost legal expert on fair housing:

> I feel completely comfortable with . . . Orfield's interpretation of the Fair Housing Act and its "affirmatively further" clause in §3608. Integration is the major, if the determinative, goal of this part of the Fair Housing Act. [Arguing] that the word "integration" is not in the text of the Fair Housing Act . . . is like arguing that the words "racial discrimination" are not in the Equal Protection Clause. In both cases—the concept of furthering "integration" in the Fair Housing Act and of prohibiting "racial discrimination" in the Equal Protection Clause—the provisions' texts do not contain these words, but the concepts embodied in these words are absolutely central to the laws' proper interpretation. Anybody who knows anything about the "affirmatively further" mandate of §3608 knows this.[7]

Many of the articles cited by Goetz (e.g., Relman's and Polikoff's) actually address a narrower, unrelated question: the constitutionality of using particular race-conscious policies; for example, racial ceiling quotas, or homeowner counseling that steers individuals to particular areas based on their race, to maintain stable integration programs. Since *Bakke* and its progeny, individual raced-based decisions that admit or deny benefits to an individual solely on the basis of race are subject to strict judicial scrutiny. As a result, policies such as ceiling quotas are evaluated in light of the particular facts of a case; they can be upheld if they are necessary to achieve overarching integration goals, but are sometimes struck down if they are not sufficiently narrowly tailored or grounded in clear evidence of resegregation. However, this complex legal question has little bearing on government actions to further the compelling governmental interests in avoiding racial isolation *without* subjecting individuals to individual race-based decisions.[8] The constitutionality of such actions is broadly accepted. Moreover, these matters of constitutional law are completely divorced from the historical debate about the correct interpretation of the FHA, which has centered on legislative intent, not on constitutional boundaries.

Goetz does heavily cite one source, which directly contests the FHA's integration goals—a student note from more than two decades ago—but even this writer admits that the question has been resolved judicially and only disagrees with the courts' interpretation of the Act's legislative history. Goetz's discussion of this idea is telling, arguing that "were one to limit inquiry to the language of the Act," the FHA's antidiscrimination purpose would seem to take precedence over its prointegration purpose. But this is hardly a useful approach when more than 40 years of judicial interpretation have settled the question, and in the process confirmed that one of the FHA's primary goals is supporting integration. In 1988, Congress itself effectively endorsed this reading as the correct one, by making major amendments to the FHA without altering its long-standing proscription of segregation.

In the end, legal authorities have been nearly unanimous in saying that it is illegal to direct most affordable housing to poor, segregated neighborhoods. Certainly, none of these articles that Goetz cites, and none the federal cases therein relied upon, provide any support for the proposition that it is legal to perpetuate segregation or to fail to affirmatively further fair housing.

Even more fundamentally, however, Goetz's response is premised on a false dichotomy. He discusses the FHA's civil rights objectives as if they were inevitably in tension with other important goals of housing policy, such as social welfare and community development. In essence, he argues, government and housing developers must ignore segregation if they are to "fulfill the goal of providing decent, safe, and affordable housing to lower-income households who currently lack such housing," and "improve[e]

the communities in which lower-income people live by upgrading the physical environment." This is a line of argument frequently used against civil rights proponents: that the missed opportunities associated with integrative development are just too great. Integration would be nice, it usually concedes, but by spending scarce financial resources in the suburbs, government agencies waste money that could build many more housing units in the inner city, and would, in the process, revitalize urban neighborhoods.

We would certainly contend that, even if integrative development costs more than segregative development, it ought to be pursued; indeed, we maintain that governments are legally obliged to pursue it.[9] Segregated development forces tenants to live where crime and health outcomes are worse, the schools have the lowest test scores and highest dropout rates, and where more young men are more likely to end up in the criminal justice system than in higher education. It is worth paying a premium to provide residents the benefits of safer neighborhoods, better schools, and better health; moreover, integrated development can benefit the metropolitan area at large by reducing white flight, stabilizing school demographics, and supporting neighborhood economies.

But if the central policy finding of our article demonstrates anything, it is that governments may be able to satisfy their duties to affirmatively further fair housing and avoid segregation *without* making any such financial tradeoffs. And given the results of our study, it is particularly difficult to see how this conflict arises in the Twin Cities. Our model, the results of which Goetz admits are an "important policy finding," shows that in the Twin Cities, decent, safe, and affordable housing can be provided to disadvantaged families *more* cost-effectively in the suburbs. The missed opportunity, then, occurs when housing is built in the comparatively expensive central cities, reducing the total number of units that can be built.

Nor, our study suggests, does suburban development reduce opportunities to revitalize central city neighborhoods, because even massive, high-dollar housing investments like the Franklin-Portland project can have minimal revitalization impact. Concentrations of subsidized housing are most frequently found in high-poverty, segregated neighborhoods. Despite the influx of affordable housing money, these neighborhoods are as troubled as ever. Credit does not flow into these neighborhoods; schools decline and entry-level jobs disappear; residents with any real opportunity to relocate usually do. In other words, suburban affordable housing investment doesn't undermine true revitalization, but instead only disrupts the palliative development strategy of saturate and segregate.

If the potential benefits of integration and the benefits of subsidized housing can be obtained simultaneously; if the spatial and social welfare goals are complementary, not contradictory, much of Goetz's argument collapses. Yet nothing in his rebuttal demonstrates that these two goals are mutually exclusive. He cites a bevy of studies that show subsidized housing reduces mobility and improves the health and well-being of poor households who receive this benefit. With these studies we have no issue. But not one of them looks at the impact of factors outside the housing unit, such as the significant and well-established harms of living in areas of racial segregation and concentrated poverty. We cannot help but think that this approach raises an obvious question: if the benefits of affordable housing are uncontested, and if it is cheaper to provide such housing in the suburbs, why not direct these subsidies where they could produce even greater improvements to health and wellbeing?

The welfare effects attributable to neighborhood makeup are at least as significant as the welfare effects attributable to the quality of one's housing unit. Concentrated poverty and segregation, as Goetz himself notes, are associated with severe isolation in language, low performing schools, early childhood poverty, low labor force participation, and

many other negative conditions. On the other hand, the evidence shows that attending a low-poverty school can increase graduation rates, college attendance, and later life earnings. There are also clear social benefits: children in integrated schools grow up more comfortable living and working in an integrated environment.[10] The few studies that look at poor residents of racial ghettos who move to middle-class suburbs show similar benefits and, in addition, improved employment prospects and improved health and well-being of adults and children (Massey, Albright, Casciano, Derickson, & Kinsey, 2013; Rubinowitz & Rosenbaum, 2002). A 2009 survey of the literature reporting on 32 studies of the effects of racial segregation on health found consistent results—segregation is associated with poor pregnancy outcomes and increased mortality and homicide rates for blacks (Acevedo-Garcia, Lochner, Osypuk, & Subramanian, 2003; Kramer & Hogue, 2009).[11]

Professor Goetz highlights the health benefits of affordable housing. Although few studies have examined the tradeoffs between affordability, quality, and location, those that have been able to account for affordability indicate that residence in a lower-poverty neighborhood also has beneficial effects on many life outcomes (including health) above and beyond affordability. For instance, in a recent study of Latino and African American public housing residents in Denver, Colorado, Santiago et al. (2014) found negative effects on a wide variety of outcomes across several dimensions including physical and behavioral health, exposure to violence, risky behaviors, educational outcomes, labor market outcomes, marriage, and childbearing. The most consistent predictors were neighborhood characteristics including safety, social status, ethnic composition, and physical characteristics (like housing age). In general, characteristics associated with concentrated poverty and segregation had negative effects across a wide range of outcome measures. The findings specifically related to health (including measures for diagnoses of asthma, neurodevelopmental disorders, obesity, internalizing behaviors, and behavioral health service utilization) concluded "that low-income Latino and African American children will demonstrate one or more comparatively superior health outcomes if they live in a neighborhood with a lower property crime rate, social problems index, and respiratory and neurological pollution risk, and with higher occupational prestige score, public resources factor score, and degree of walkability and land use mixes" (see also Galster & Santiago, 2014). The subjects included in the study were all living in assisted housing so the analysis implicitly controlled for affordability.

These health benefits were also revealed by the Moving to Opportunity program, a large-scale federal effort to move families from public housing in racial ghettoes. Many had hoped the destination locations would be in middle-class suburbs with schools having at least average levels of performance. But this did not occur, and most families were relocated to adjacent neighborhoods, where poverty rates were slightly reduced and schools remained low performing. Nonetheless, the evidence from a battery of studies showed that even this limited change in living environment created substantial health benefits for families and children. Some of the benefits included a lower prevalence of diabetes, extreme obesity, physical limitations and psychological distress, and lifetime depression—although there were some reported negative mental health outcomes for young African American men (Genenetian et al., 2012; Sanbonmatsu et al., 2011, 2012).

Why does Goetz, and the affordable housing industry not concede that the spatial and social welfare components of affordable housing could be accomplished simultaneously? One clue can perhaps be found in housing debates in the Twin Cities. In public world debates, Goetz and other advocates of place-based housing policy often switch between maintaining, as in his rebuttal, that segregated affordable housing is an unfortunate

outgrowth of competing priorities and scarce resources, and then, on the other hand, asserting that individual low-income families can actually be better served by affordable housing in impoverished central city neighborhoods. In other words, some members of the housing community simply favor development in segregated locations, even before any potential tradeoffs enter the picture.

Conflict over this highly dubious assertion has played out in real time in recent months in the Twin Cities. During the process to create the region's Fair Housing and Equity Assessment (required by HUD), the Metropolitan Council used an opportunity analysis to frame affordable housing discussions. Goetz and representatives of the affordable housing industry insisted that access to high-frequency transit and public services for low-income residents be emphasized in the definition of opportunity used in the analysis. Since both of these infrastructures already overwhelmingly serve high-poverty neighborhoods, these areas scored high on the opportunity measures for these dimensions. Proximity to large clusters of employment also received heavy weight in the analysis, although most of the jobs in the region's largest job centers (e.g., the Minneapolis central business district) are ill-suited for low-income residents with fewer education credentials. When it was suggested that nearby job growth be included as a measure of economic vitality, this was rejected because it created a map that was more difficult to interpret than a simple job density map.

These decisions created a typology of places that included a group of census tracts with schools that are more than 80% nonwhite and poor (compared with a regional average for both measures of about 35%). This group of census tracts contains just 15% of the region's housing units but it also already includes more than 50% of the region's subsidized rental units affordable to households at 60% or less of regional median income.[12] However, because the tracts in this group have relatively good access to the Twin Cities transit system (compared with suburban areas), the group scored very high on access to public services and jobs while scoring very low on the other opportunity dimensions, crime, education, and environment. Measuring opportunity in this fashion has created a rationale for putting more subsidized housing in the region's lowest-income, most-segregated neighborhoods.

This sort of analysis, where inner city and suburban affordable housing are depicted as having (at least) equal advantages, flies in the face of the most reliable survey evidence available, which says that low-income Twin Cities families prioritize safety and education in housing. A recent survey by the state housing agency shows that the neighborhood characteristics most valued by low- and moderate-income residents were low crime rates and good schools, desired by nearly four of five residents. Benefits associated with the central city, such as transit, access to shopping, and public services, were further down the list of important neighborhood characteristics.[13]

Strangely, although Goetz and affordable developers have been happy to argue that the subsidized housing system should be explicitly integrated with transit infrastructure, they have been reluctant to apply the same reasoning to education and housing. Goetz, in fact, has asserted that the problem of segregated education and failing schools is separate from housing, and ought to be addressed independently, including once during a public debate with Myron Orfield:

> I am affected by Myron's maps [showing new affordable units in segregated areas] as well. And those maps that show this rapid change in segregation in the schools from 2000. And I'm thinking to myself, "Wow, have we added that many units of subsidized housing since 2000?" What's different in the last 10 years? What's different is that we gave up our school desegregation plan, and we went back to neighborhood schools, all right? ***If we have problems***

> ***with segregation in the schools, let's deal with school policy to try to fix it, rather than subordinating affordable housing to the goals of the schools.*** And Myron's right, I actually didn't include a page, or even a word, about schools in my book. My book was about housing. My book was about community development. And if we want to fix school policy, let's fix school policy.[14]

Of course, 80% of the surveyed low-income housing residents disagree with this assessment, and see educational problems as intertwined with housing deficiencies.[15] Moreover, a housing policy that takes schools into account could help break the cycle of intensifying segregation that drives people and wealth out of the central city in the first place. The number of schools in the Twin Cities region with more than 90% students of color increased from six in 1995 to 87 in 2014. The 6,000 subsidized units built in the city during this time could have been sufficient to avoid this sharp increase had they been built in predominantly white or integrated suburbs.[16]

In other words, in the Twin Cities, it is, ironically, advocates of affordable development who have suffered from tunnel vision, failing to see the multiplicity of objectives of housing policy. By contrast, civil rights proponents have consistently incorporated the complex dynamics of housing choice and opportunity into their proposals, calling for racial integration to be a central part of the goals set for individual communities, and arguing that higher priority should be placed on putting new subsidized units in neighborhoods where the schools were less than 30% nonwhite. Not only are these units often cheaper to build and more likely to produce good outcomes for tenants, but they are also better aligned with the expressed preferences of low-income housing residents.

Inefficiencies in the Subsidized Housing Market

Goetz acknowledges the importance of the central finding of the empirical analysis of development costs, that location within Minneapolis or Saint Paul is "among the most important factors affecting costs per unit." But he then criticizes our work for not going further and fully revealing which characteristics of the two central cities explain this finding.

The purpose of the empirical model, however, is simply to document that building and development characteristics (the most commonly cited reasons for cost differences across building sites) do not by themselves explain the difference between costs in the central cities and the suburbs. Although some (including Goetz) may regard this as a modest goal, we believe it was a necessary step. Indeed, although anecdotal evidence regarding city–suburb cost differences abounds, we know of no other work that has documented this gap with hard data. Given the data limitations, this is a significant step that should not be minimized.

Having established the city–suburb cost differential, we believe that two separate, related questions arise:

(1) What is causing higher costs?
(2) If costs are higher in the central cities, why is affordable development so lopsidedly situated within them or, put differently, why hasn't the market availed itself of comparatively cheap suburban development opportunities?

There are many potential answers to the first question. For instance, it is certainly conceivable, as Goetz notes, that one driver of high costs is stricter regulatory policies in the central cities. This is a possibility that should be studied in the future, and would be particularly appropriate for scholars with deep familiarity with the practical realities of

construction, development, and their interaction with the regulatory regime. Land cost is another topic worth examining further, particularly because its exclusion from the eligible basis for the LIHTC means it can have an outsized impact on project viability. Unfortunately, land cost in the case of affordable development is not easy to determine, as many projects developers acquire their land at below-market prices (sometimes even for a nominal fee, such as $1) in carefully negotiated deals with cities or banks.

But what is important to recognize is that no matter the answer to the first question, answering the second requires an analysis of the affordable housing industry, to understand why it is not more responsive to cost. In other words, although we may not know the root cause of expensive city development, we do know that the industry is exacerbating the problem by not responding to the cost differential. On top of this, the industry itself may well be a major contributing factor to project cost. Institutional actors in the affordable housing sector are a subject that has received very little attention. Anecdotal evidence is very common about how interactions between public, nonprofit, and for-profit actors contribute to costs in the construction of subsidized housing. But there has been little academic discussion of the characteristics of this industry. As a result, the industry is an obvious subject for further analysis.

Goetz is correct to point out that his own work has described the housing policy subsystem, and his earlier article on the topic does a good job of relating the basic web of interactions between public and private entities in the affordable housing sector (Goetz & Sidney, 1997, p. 490). But that earlier article contains a major error when describing incentives in housing policy, an error, we believe, that undermines its ability to explain the housing industry's apparent preference for central city development, even in the face of countervailing factors.

In their previous article, Goetz and Sidney (1997, pp. 504–505) describes a conflict in housing policy between, on one side, Community Development Corporations (CDCs) and their allies, and on the other, neighborhood groups and organizations (which they collectively term citizen participation organizations; CPOs). They suggest, accurately in our estimation, that CPOs often disproportionately represent the interests of white, upper- and middle-income property owners. But they then depict CDCs as the CPOs' opposite, representing the interests of the low-income, nonwhite occupants of subsidized housing. Frankly, this institutional model does not make sense. It fails to acknowledge that, just as neighborhood organizations frequently protect the parochial interests of their members, CDCs also have a parochial organizational self-interest to protect. Community development is an industry producing hundreds of millions of dollars of construction per year in the Twin Cities alone. The status quo in this industry supports the careers of thousands of people. It is hard to believe that these individuals are altogether unconcerned with maintaining the steady flow of familiar projects that is their livelihood.

Just who are these individuals? Surveys by the industry itself demonstrate that they have very different demographics than low-income housing residents (Hall & Gray, 2009). In 2007, approximately 78% of CDC members were white (Changing the Face of Housing in Minnesota, 2008, p. 24). Among managers and leaders, 85% were white (Changing the Face of Housing in Minnesota, 2008, p. 24). CDCs' boards of directors had a similar makeup. And if anything, these numbers may understate the problem: the larger and more influential an organization is, the whiter its leaders tend to be. Some leading lights of the industry live in high-income enclaves far from the segregated neighborhoods where their organizations focus their efforts; for instance, certain prominent developers reside in the wealthy suburb of Wayzata, where the average mean income exceeds $170,000 and over

93% of the population is white.[17] It is hard to square these figures with the depiction of CDCs as community-minded, anti-NIMBY (Not In My Back Yard) agents.

We argue, contrary to Goetz's assertion, that CDCs often represent their own interests, in addition to or in place of the interests of housing residents. It should not come as a surprise to anyone to discover that the low-income, under-resourced, minority families that disproportionately make up affordable housing frequently lack a strong political voice in community development debates.

In lamenting our article's focus on the affordable housing industry, Goetz also argues that the entities we examine in our work all act regionally, so they cannot be part of an explanation for city–suburb cost differences. This is simply not accurate.

The central cities are home to an extremely dense network of housing organizations that simply has no suburban equivalent. These include community groups, housing nonprofits affiliated with particular low-income neighborhoods, and land banks and other intermediaries with distinct geographic jurisdictions. By contrast, outside of the central cities, affordable housing projects are much more likely to be overseen by governmental units (e.g., county development agencies) than CDCs.

What's more, although a number of the largest actors in the affordable housing sector profess to work regionally, the available data suggest that many of these organizations focus their activities on the urban core, and particularly in the central cities. For instance, from 1999 to 2013, more than 70% of the units subsidized by Family Housing Fund (FHF), an ostensibly regional intermediary, were sited within the borders of Minneapolis and Saint Paul. (More than 70% of these central cities units were, in turn, sited in majority non-white census tracts, an addition of more than 4,400 housing units to segregated areas.) As Table 1 shows, FHF is considerably more city-oriented than other funders working with the state housing finance agency. A number of regional organizations (e.g., the Twin Cities Community Land Bank) exhibit similar development patterns, directing most of their work into segregated central city neighborhoods such as the Central Corridor or North

Table 1. Twin Cities Seven County Area Subsidized Units Covered by Family Housing Fund and Other Funders by Percentage Minority in Census Tracts in Central Cities and Suburbs, 1999–2013.

	Family Housing Fund		Other Funders	
% Minority in Tract:	Central Cities	Suburbs	Central Cities	Suburbs
Number of Units:				
0 to 19%	122	1,157	97	3,637
20 to 29%	544	981	940	2,961
30 to 49%	1,199	303	2,861	443
50 to 100%	4,404	229	3,938	362
Total	6,269	2,669	7,836	7,402
% share in Central City	70.1		51.4	
Share of Units in Tracts:				
0 to 19%	1.9	43.3	1.2	49.1
20 to 29%	8.7	36.7	12.0	40.0
30 to 49%	19.1	11.4	36.5	6.0
50 to 100%	70.3	8.6	50.3	4.9
Total	100.0	100.0	100.0	100.0

Sources: Minnesota Housing (MHFA), 2012 HousingLink.

Minneapolis.[18] Many regional entities are, first and foremost, part of the urban affordable housing network.

As a consequence, when affordable housing is developed in the central cities, there are often quite a lot of people sitting at the table. This is surely an important factor in development outcomes, and one that merits further analysis. Unfortunately, Goetz mischaracterizes any attempt to discuss the influence of these factors as a "poverty pimps" argument.

In similar fashion, Goetz believes that we "think it unseemly if the directors of these groups make more than $50,000 a year in salary." On the contrary, we are not surprised that successful private developers and financial experts are well-compensated; these people are professionals at the top of their field. Our article makes no argument about "appropriate" salaries for such positions. But a yearly salary in excess of $150,000 (as a number of local community developers are paid) is not a trifle. At larger organizations such as Local Initiatives Support Corporation (LISC) annual compensation can surpass $400,000. These are substantial financial interests that depend, at least in the short term, on an uninterrupted stream of money into politically palatable development projects; a fact that can clearly have an impact on organizational and individual decision making. They are an important part of any attempt to describe the behavior of the affordable housing industry.

Unfortunately, discussion about affordable housing in the political sphere is sometimes distorted by the perception that the sector is essentially philanthropic in nature. Although virtually no one asserts that the current system for developing housing is ideal or efficient, criticism of existing practices can be nonetheless blunted by the sense that we should avoid, so to speak, looking the community development gift horse in the mouth. With this in mind, we feel it is important to be candid about what exactly comprises the affordable housing community: a densely integrated economic sector, with distinct incentives, well populated with highly paid professionals. As in any industry, community developers are influenced by personal and organizational self-interest and are subject to financial and political considerations. These entities are politically active, lobbying lawmakers and agencies for more development money and greater freedom to conduct projects. Moreover, changes to the industry, for instance, to bring its activities in line with civil rights law, would alter the status quo for many current participants. Ignoring these facts in discussions of affordable housing development would be akin to ignoring the structure of the banking industry in a discussion of the mortgage crisis.

In light of this reality, we make no apologies for taking the first steps toward describing the affordable housing industry as exactly that—an industry.

The Franklin-Portland Project and Neighborhood Revitalization

Professor Goetz makes a series of objections to our analysis of the Franklin-Portland project. First, he objects to our assessment of project's neighborhood impact, on the grounds that the 2008 recession occurred during the covered time period. The recession certainly did affect low-income neighborhoods, including the Gateway District where Franklin-Portland (Minneapolis, Minnesota) is located. One would hope, however, that the presence of major, sustained investment in the Gateway District would soften the blow. In fact, shows the area fared no better than any of the other surrounding low-income neighborhoods, which did not receive the same scale of investment. To further establish this point, we have made additional neighborhood-level comparisons, using neighborhoods near Lake and Franklin Streets[19] and in North Minneapolis.[20] For most measures,

Table 2. Change in race and economics in neighborhoods surrounding the gateway in Minneapolis, 2000–2010*.

	Gateway (West Ventura Village)	Phillips West	Midtown Phillips	East Ventura Village	East Phillips	Cedar Riverside	East Stevens Square	Northy Whittier	Harrison	Near North (South)	Near North (North)	11-neighborhood average
% Point Change												
White	7.4	7.2	−2.5	−11.6	1.7	−3.5	4.0	9.5	6.4	0.0	0.9	0.5
Black	4.1	9.8	1.5	12.1	−2.8	13.1	6.2	−3.1	1.1	.3	1.0	3.1
American Indian	−2.8	−1.2	−5.5	−3.5	−3.0	−0.3	−0.9	0.5	−0.1	−0.2	−0.6	−1.6
Asian	−1.5	−2.3	−6.0	−3.0	−4.3	−4.7	−0.1	0.3	−9.3	2.9	−3.9	−2.9
Hispanic or Latino	−2.4	4.0	14.9	11.2	10.9	−2.2	−8.4	−6.4	4.0	4.6	1.3	2.9
All others	−7.2	0.9	12.5	6.0	8.4	−4.6	−9.2	−7.1	1.9	5.5	2.7	0.9
% Change												
Population	−3.3	−0.9	16.1	−3.6	29	7.4	−5.3	−13.6	−22.7	−17.4	−18.5	−5.3
Median household income ($)	13.3	−17.1	34.3	10.6	13.6	−5.8	−8.4	17.3	28.4	−20.4	50.3	10.6
% Point Change												
% Below poverty-line	5.1	19.5	1.5	13.7	19.7	13.3	16.1	6.0	1.1	5.7	−5.5	8.7
Labor force Participation %	16.0	4.2	13.3	9.7	9.0	−5.0	−2.0	3.3	10.1	4.5	9.7	6.6
Homeownership %	−0.5	−1.1	−8.5	0.2	−0.3	−1.8	9.5	4.5	−3.3	−3.5	−0.7	−0.5
Vacancy rate	5.3	4.4	4.6	3.4	4.9	2.5	6.3	8.2	2.0	13.3	5.0	5.5

*Poverty, Labor Force Participation, and Median Household Income are from the 5-year 2008–2012, U.S. Census American Communities Survey. The remaining information is from the 2000 and 2010 U.S. Census SF 1 and 2000 U.S. Census Sf 1 & 3. HH = household.

changes in the Gateway neighborhood between 2000 and 2010 were comparable to changes in the comparison group. (The neighborhood did experience an unusual bump in labor force participation.)

One characteristic of the Gateway neighborhood should have helped it escape some of the effects of the recession. With a homeownership rate of less than 10%, the Gateway area did not experience the same magnitude of subprime and predatory lending endured by many other Minneapolis neighborhoods during this period, and was thus somewhat insulated from the subsequent foreclosure crisis. Despite this, the neighborhood still did no better than other nearby areas.

Second, Goetz points out that the time period used for the data does not exactly match the chronology of the Gateway's development, and argues that the scale of the data (the census tract level) is too large for such a project. The time period, however, was constrained by data availability. A starting point before project units were completed was needed. Because Phase 1 was completed in 2004, we used data from the 2000 U.S. Census Bureau. While it would have been helpful to have extensive socioeconomic data for the year 2003 (just before Phase 1 was completed), the U.S. Census Bureau does not provide census tract data for years between 2001 and 2004. And of course, it was (and still is) impossible to provide data from after completion of all four phases of the project, because the final phase is still in progress.

The scale of the neighborhoods used in the analysis were also constrained by available data, U.S. Census Bureau and City of Minneapolis property sales data. Although census data may lack the granularity desired by Goetz, it is nonetheless the smallest-scale socioeconomic data available. He suggests that we conduct interviews of local stakeholders, but we question the overall usefulness of this approach. The anecdotal observations of local residents and business owners located on the project site's block are simply less useful than hard data in making objective assessments of change, particularly since, unlike hard data, they cannot easily be compared with observations from neighboring areas or elsewhere in the city. Individual residents are heavily influenced by their subjective experiences and are unlikely to have precisely accurate views about demographic and economic trends; in addition, there is some concern about bias when some potential survey subjects could have either directly benefited from money flows into the neighborhood or stand to benefit from additional spending. Of course, interviews and surveys could act as a useful addition to our findings; nonetheless, concrete statistics are ultimately more useful.

Goetz also criticizes our use of a larger neighborhood boundary to document changes in Gateway area property sales. These data were collected at a larger neighborhood scale because of the very small number of reported real estate sales near the Gateway project. The area had a small number of real estate transactions because of the low share of owner-occupied properties in the neighborhood and the low number of commercial property sales in the area.

It is hard to understand Goetz's argument that an assessment of a large development project should be limited to the project itself. He objects even to measures that cover locations "six or seven blocks distant from the project site." But large projects are part of broader urban revitalization strategies meant to improve both individuals and communities. The existence (or not) of neighborhood effects is therefore crucial.

Goetz is correct to point out that the physical barrier formed by a freeway to the west and north of the project might dampen revitalization effects in those directions. His objection on these grounds, however, is confusing: as our map clearly shows, tracts on the opposite side of the freeway were omitted from the analysis.

Ultimately, the timing and exact boundaries of the census tracts do complicate interpretation of the data; this would be true no matter what timeframe or boundaries were chosen. Nonetheless, the Franklin-Portland project still represents the steady expenditure of tens of millions of dollars, and the addition of many units of affordable housing, over the course of nearly a decade. Given the magnitude of the funding, we would have expected to see at least some other developments and investments generated in the area during the years since 2006 positively impacting the area's socioeconomic status and the real estate market (compared with surrounding residential areas). So far we have not seen such evidence near the Gateway, nor have we found indications that any large low-income housing development projects in the inner city have generated such benefits anywhere.

Third, Goetz objects to our use of socioeconomic indicators like median income, poverty, and labor force participation, suggesting that they are measures simply of neighborhood turnover and that "[m]ost community developers will argue that their work is not meant to change the residential profile of the neighborhood, but to make the neighborhood a better place to live for residents who are already there." Maybe this is so, but we believe that policymaking, accountability, and common sense all require improvements to the lives of residents that are quantifiable and observable, not mystical and ethereal. Surely it is not too much to expect that projects of the magnitude of Franklin-Portland also include significant commercial and economic development components that will enhance the overall vitality of the neighborhood. After all, participants like LISC and the state housing finance agency certainly sell these projects to funders and the public by touting them as major boons for the city's economic life.

Finally, we would like to emphasize that our selection of this project was not random. We consulted community development officials for the project most likely to prove the revitalization hypothesis and Franklin-Portland was the overwhelming recommendation, which makes sense, because it is the largest-scale new construction project in the region. We have asked development experts—including Goetz—to name better subjects for study, but have yet to receive a clear answer. In the absence of counterexamples, we find it hard to accept that the Twin Cities have ever experienced a significant neighborhood revitalization resulting from a major subsidized housing project.

Disclosure statement

No potential conflict of interest was reported by the authors.

Notes

1. Shannon v. HUD, 436 F.2d 809 (3d Cir. 1970); NAACP, Boston Chapter v. HUD, 817 F.2d 149 (1st Cir. 1987). Other cases describing HUD's obligation to uphold the FHA include Clients' Council v. Pierce, 711 F.2d 1406 (8th Cir. 1983); Anderson v. City of Alpharetta, Ga., 737 F.2d 1530, 1537 (11th Cir. 1984); Young v. Pierce, 544 F.Supp 1010 (E.D. Tex. 1982); Jaimes v. Toledo Metropolitan Housing Authority, 715 F.Supp. 835 (N.D. Ohio 1989).
2. United States ex rel. Anti-Discrimination Center v. Westchester County, 668 F.Supp.2d 548 (2009).
3. 24 C.F.R. § 100.500 (2013).
4. See Inclusive Cmtys. Project, Inc. v. Tex. Dep't of Cmty. Affairs, 860 F. Supp. 2d 312 (N.D. Tex. 2012); Inclusive Cmtys. Project, Inc. v. Tex. Dept. of Cmty. Affairs, 749 F. Supp. 2d. 486 (N.D. Tex. 2010).
5. 42 U.S.C. § 3608(d)
6. NAACP v. Sec'y of Hous. and Urban Dev., 817 F.2d 149, 156 (1st Cir. 1987) (Breyer, J., holding the Title VIII imposed a duty on HUD beyond simply refraining from discrimination).

7. Institute on Metropolitan Opportunity Response to Professor Edward G. Goetz's Comments on IMO's Report: *Reforming Subsidized Housing Policy in the Twin Cities* February 25, 2014 at 7 (comments of Robert G. Schwemm), The Ashland Speers Distinguished Research Professor at the University of Kentucky and author of, *Housing Discrimination: Law and Litigation.*
8. See Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1, 551 U.S. 701, 797–98 (2007) (Kennedy, J., concurring). Again, almost all of the scholars cited by Professor Goetz support stable integration programs, even while acknowledging their legal precariousness under the Roberts Court. It must be remembered that the legal campaign against these programs was intended to undermine civil rights enforcement, and was spearheaded legal thinkers on the far right. In the end Goetz both misstates the law, and associates himself—perhaps unknowingly—with conservative forces untroubled by racial segregation.
9. Federal courts have confronted this question of tradeoffs head-on in the past. For instance, during the course of the historic Gautreaux litigation, the Seventh Circuit Court of Appeals disapproved of "HUD's decision . . . that it was better to fund a segregated housing system than to deny housing altogether," holding that "approval and funding of [segregated housing] cannot be excused as an attempted accommodation of an admittedly urgent need with the reality of . . . resistance." Gautreaux v. Romney, 448 F.2d 731, 737 (7th Cir. 1971).
10. See Institute on Race and Poverty, "A Comprehensive Strategy to Integrate Twin Cities Schools and Neighborhoods," 2009, pp. 9–10 for a summary of studies on this issue; http://www.law.umn.edu/uploads/ec/fd/ecfdc6101486f404170847f46b03a083/1-Comprehensive-Strategy-to-Integrate-Twin-Cities-Schools-and-Neighborhoods.pdf
11. Another literature survey on the health effects of segregation found 29 studies of the effects of racial segregation on health. A majority of the studies showed a positive correlation between black-white dissimilarity and infant mortality after controlling for metropolitan poverty rates. These studies also found a positive correlation between residential segregation and black mortality rates and homicide rates.
12. Metropolitan Council. *Choice, Place and Opportunity: An Equity Assessment of the Twin Cities Region*, Figure 7.5, section 7, p. 12.
13. Minnesota Housing Finance Agency, "Housing Preferences of Minnesotans," February 2012, Table 3, p. 3.
14. Edward Goetz quote from "A Sponsored Debate Between Myron Orfield and Edward Goetz," September 21, 2007, Blegen Hall, University of Minnesota, 12:15 pm. (46:30-46:25). Emphasis added.
15. Minnesota Housing Finance Agency, "Housing Preferences of Minnesotans," February 2012, Table 3, p. 3.
16. See Institute on Race and Poverty, "A Comprehensive Strategy to Integrate Twin Cities Schools and Neighborhoods," 2009, p. 39. The school counts are from Minnesota Department of Education data and exclude special education, pre-school, and other alternative education centers.
17. Figures drawn from U.S. Census, 2013 5-Year American Community Survey.
18. See Twin Cities Community Land Bank, Loan & Acquisition Map, available at http://www.tcclandbank.org/downloads/Map-Property-Acquisition-and-Loans.pdf.
19. The neighborhoods used were East Phillips, Phillips West, Midtown Phillips, East Ventura Village, Cedar Riverside, East Stevens Square, and North Whittier.
20. The neighborhoods used were Harrison, Near North-South, and Near North-North.

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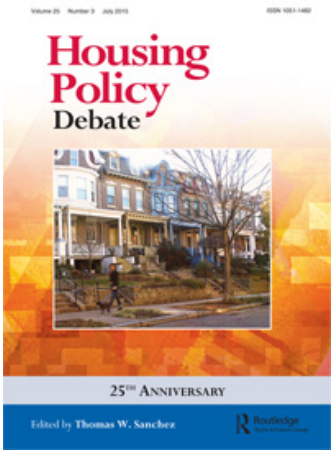

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The Social Science of Affordable Housing

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COMMENTARY

The Social Science of Affordable Housing

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The debate between Myron Orfield and Edward Goetz on the appropriate strategy for locating affordable housing in metropolitan areas touches on many issues, legal, practical, and philosophical. I am not a lawyer, so I do not wish to discuss what the Fair Housing Act does or does not say about an affirmative obligation to promote integration. Likewise, I am not an urban planner so I do not feel obliged to opine on the cost-effectiveness of different strategies for providing housing to low-income families; and, philosophically, I cannot adjudicate which goal is more worthwhile—combating discrimination in the rental and sale of housing, promoting the racial integration of neighborhoods, or investing in the economic development of poor, segregated areas—although I note that these actions are not mutually exclusive. I am a social scientist, and I do feel well qualified and, indeed, professionally obligated to summarize what I think social science research has revealed about the levels, causes, and consequences of segregation by race and class, and how affordable housing can exacerbate or ameliorate those consequences.

Segregation in the Twin Cities

As with many metropolitan areas, in the Twin Cities (Minneapolis–St. Paul, Minnesota) there is good news and bad news with respect to trends in segregation. The degree of segregation between two groups is commonly measured using an index that varies from 0 to 100 and gives the relative share of each group that would have to exchange neighborhoods to achieve an even, or integrated, residential distribution. On this measure, the level of black–white segregation in the Twin Cities metropolitan area fell from 80 in 1970 to 50 in 2010, an impressive decline to be sure. The bad news is that segregation persisted or rose for other groups. After falling from 1970 to 1990, Hispanic–white segregation rose thereafter and stood at 43 in 2010. The Asian–white segregation index fluctuated around 40 throughout the period with no clear trend, whereas the level of segregation between rich (annual income over $120,000) and poor (annual income below $30,000) rose slightly from 44 in 1970 to stand at 46 in 2010.

Another way of conceptualizing segregation is in terms of spatial isolation—the degree to which group members inhabit neighborhoods inhabited only by members of the same group. The index of spatial isolation for African Americans is thus defined as the percentage black in the neighborhood of the average black person. This index depends on the relative size of the group as well as on the geographic distribution of its members; and

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because minority percentages historically have been quite small in the Twin Cities area, isolation indices there have never been very high. As of 2010, only 8% of metropolitan residents were black, 6% were Asian, and 5% were Hispanic. Although the black isolation index dropped from 39 to 21 between 1970 and 2010, for Hispanics it rose from 5 to 12, whereas for Asians it climbed from 3 to 13. Moreover, despite rising racial–ethnic diversity in the metropolitan area, whites remained isolated in overwhelmingly white neighborhoods. As of 2010, the white isolation index stood at 83, meaning that the average white resident lived in a neighborhood that was 83% white. In many ways, the most impressive shifts in neighborhood isolation occurred with respect to income. The isolation index for the poor rose from 19 to 29 between 1970 and 2010, and that of the rich increased from 20 to 29. Over the past four decades, therefore, the rich increasingly came to live with other rich people, while the poor increasingly lived with other poor people.

Segregation and the Concentration of Poverty

In sum, despite the decline in black–white segregation, levels of Hispanic and Asian segregation persisted and class segregation rose in Minneapolis–St. Paul, MN, leaving all groups—rich, poor, black, Asian, and Hispanic—with segregation indices in the 40 to 50 range, a moderately high level of residential segregation. In this context, rising minority percentages and the growing share of both rich and poor functioned to increase isolation by both race and class. Increasingly, however, it was not race or class alone that came to determine neighborhood circumstances in the Twin Cities, but an interaction between the two, such that the concentration of poverty for minority group members vastly exceeded that for whites. Whereas the average poor white person in 2010 lived in a neighborhood that was 25% poor, the average poor black person lived in a neighborhood that was 40% poor.

In fact, the concentration of black poverty in the Twin Cities area has hardly changed in 40 years (it stood at 39 in 1970); and if the average poor black person lives in a neighborhood that is 40% poor, that means that a sizeable share of black residents live in neighborhoods that are even poorer. It is well established that the combination of high rates of minority poverty and ongoing minority segregation inevitably will produce a high degree of concentrated minority poverty (Massey & Denton, 1993; Massey & Fischer, 2000; Quillian, 2012). Such a concentration of minority poverty is clearly what we observe in the Twin Cities today. This is important because among social scientists there is a consensus that exposure to concentrated neighborhood disadvantage has profoundly negative consequences for wellbeing and is a critical factor in perpetuating poverty over time and across generations (Ludwig et al., 2013; Massey, 2013; Sampson, 2012; Sharkey, 2013).

Recent work has shown that exposure to concentrated disadvantage impairs cognitive development (Sampson, Sharkey, & Raudenbush, 2008; Sharkey, 2010; Sharkey & Sampson, 2015), undermines educational achievement (Burdick-Will et al., 2011), compromises adult physical and mental health (Sanbonmatsu et al., 2012), and lowers subjective wellbeing (Ludwig et al., 2012). Although recent studies have detected no significant effects of neighborhood disadvantage on the health of children, researchers recently found that exposure to disadvantage significantly shortens children's telomeres (Mitchell et al., 2014). These are nucleotide sequences located at the ends of human chromosomes that protect genetic material from deterioration and errant recombination, and shorter telomeres predict poor health at later ages (Epel et al., 2004), even if poor outcomes are not yet visible in children.

Concentrated neighborhood poverty is also strongly associated with a high allostatic load, a deleterious condition that results from the repeated and prolonged triggering of the fight-or-flight response in response to ongoing stress (Schulz et al., 2012). A high allostatic load has been shown to increase the frequency of a variety of negative physiological and cognitive outcomes, including impaired cognition, cardiovascular disease, autoimmune reactions, and inflammatory disorders (McEwen & Lasley, 2002). The sequence of poverty and segregation interacting to produce concentrated neighborhood disadvantage and subsequent negative health outcomes has been identified as a major channel of racial stratification in the United States (Massey, 2004).

Concentrated neighborhood poverty plays a powerful role in conditioning the transition to adulthood, such that exposure to elevated levels of neighborhood disadvantage increases early and unwed childbearing, poor health outcomes in adolescence, poor grades and low completion rates in high school and beyond, and joblessness and depressed earnings in young adulthood (Massey & Brodmann, 2014). Exposure to neighborhood disadvantage while growing up has been shown to reduce quite dramatically the earnings that people receive as adults, even controlling for individual and family background (Rothwell & Massey, 2015). According to model estimates, the expected lifetime income for people born into the bottom quartile of the neighborhood income distribution would be $910,000 greater if they were instead raised in a top-quartile neighborhood, controlling for regional differences in purchasing power (Chetty, Hendren, Kline, & Saezet, 2014; Rothwell & Massey, 2015).

Moving to Opportunity

Although the foregoing estimates are based on survey data, and the causality of the observed neighborhood effects might, therefore, be challenged, a quasi-experimental analysis of affordable housing project residents who relocated to an affluent white suburb clearly demonstrates that the move from racially segregated, high-poverty areas into affluent white neighborhoods dramatically lowered exposure to disorder and violence, improved mental health, increased employment rates, and raised earnings among adults (Massey et al., 2013). Among children, the move improved the quality of schooling, reduced exposure to within-school disorder, brought about greater parental support for education, and increased hours of study. As a result, although children in the study attended much more competitive schools, their grades did not suffer.

Finally, all of these positive outcomes were achieved without imposing any negative effects on neighborhoods surrounding the fair housing development or the host community in general. Contrary to dire predictions before the fact, the opening of the affordable housing project had no effect on property values, tax burdens, or crime rates in the municipality or adjacent neighborhoods (Massey et al., 2013). In the end, the siting of the affordable housing development in an affluent white suburban area was a win for all concerned. Poor families got access to decent housing in advantaged neighborhood that set them firmly on a path of upward mobility, and integration was achieved with no ill effects on the surrounding community.

The social scientific evidence thus yields several firm conclusions. First, the combination of racial segregation, class segregation, and high rates of minority poverty mechanically combine to produce neighborhoods of concentrated disadvantage. Second, exposure to concentrated disadvantage reduces human wellbeing along multiple dimensions, with powerful negative effects on health, cognition, education, employment, and earnings. Third, housing programs that channel poor minority families away from

disadvantaged racially isolated neighborhoods into affluent white areas can have a huge effect in mitigating these effects on wellbeing without imposing costs on the host communities.

One does not need a PhD in social science to understand that systematically channeling subsidized housing developments to already-poor, segregated neighborhoods will simply exacerbate the existing spatial concentration of disadvantage to undermine the welfare of its residents, providing no real benefit to the poor households who take up residence in the new development. Whatever the affirmative mandate of the Fair Housing Act or the practical costs of building units in suburbs versus cities, putting poor people into a new, high-quality housing development will not benefit them if it is located in a neighborhood characterized by concentrated deprivation, high crime, and limited opportunities for education and employment. I therefore concur with Orfield's critique of the common practice of channeling affordable housing to poor, inner-city, minority neighborhoods in the Twin Cities area. His critique is entirely supported by social science research and his recommended reforms will not simply promote integration but will enhance the mobility prospects of poor minorities who are currently trapped in disadvantaged neighborhoods, turning them from dependents to taxpayers. The interests of poor minorities and affluent whites alike are best served by scattering affordable housing developments into more advantaged neighborhoods throughout the metropolitan area.

Notes on Contributor

Douglas S. Massey is the Henry G. Bryant Professor of Sociology and Public Affairs at Princeton University, where he directs the Office of Population Research.

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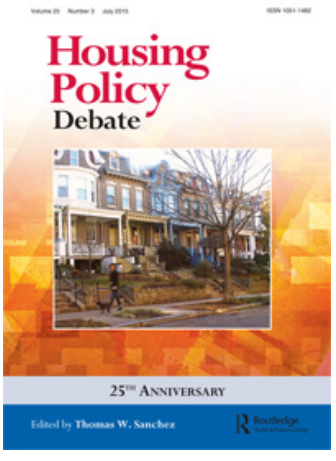

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The Affordable Housing Industry Needs to Develop Capacity to Work in High Opportunity Neighborhoods

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COMMENTARY

The Affordable Housing Industry Needs to Develop Capacity to Work in High Opportunity Neighborhoods

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This very interesting article by Myron Orfield and his colleagues, "High costs and segregation in subsidized housing policy," begins by establishing that relatively few publically subsidized affordable housing units have been located in suburban portions of the Minneapolis–St. Paul, Minnesota, metropolitan area and in areas that have low rates of poor people and minorities. A disproportionate number of subsidized rental units have been located in the central cities and in areas with concentrations of minorities. Orfield et al. conclude that allocators of public funds for affordable housing in Minnesota have failed in their obligation to affirmatively further fair housing.

The States and Affirmatively Furthering Fair Housing

In an analysis of the locations of units subsidized by the Low-Income Housing Tax Credit (LIHTC) in metropolitan areas across the country between 1995 and 2003, my colleagues and I found that states were succeeding in locating family housing in low-poverty census tracts (less than 10% poor), often by funding new developments in the same suburban locations where other rental development was taking place during that period (Khadduri, Buron, & Climaco, 2006). We focused on housing developments that have units with two or more bedrooms on the premise that access to areas with high opportunity, in particular, good schools, is particularly important for families with children. We found that Minnesota was placing LIHTC units with two or more bedrooms in census tracts with less than 10% of the population in poverty to about the same extent that all renter households lived in such tracts and that just over half (55%) of Minnesota's LIHTC family housing was in tracts with lower minority rates than metropolitan Minnesota as a whole.

However, we did not look at how much of the total LIHTC program was family housing in low-poverty locations, noting only that, on a national basis, only 22% of LIHTC units were family housing units in low-poverty locations. Our analysis differs from the analysis by Orfield and his colleagues in that respect; they also focus on the missed opportunity represented by developing housing with smaller units in high-poverty locations. We also used as a benchmark the location of all rental housing, not the location of all housing, with the implicit (and perhaps mistaken) assumption that affordable housing production cannot be used to increase the share of rental housing in low-poverty, low-minority locations.

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Furthermore, our analysis is 10 years old, and fewer affordable housing units may have been built in suburban or low-poverty locations in metropolitan Minnesota in more recent years. In sum, I am persuaded by the tables and maps in the Orfield et al. article that funders of affordable rental housing in Minnesota are not doing all they could to affirmatively further fair housing.

The obligation to affirmatively further fair housing has been clearly established by the Civil Rights Act of 1968 and its interpretation by the courts. The obligation applies to the state agencies that allocate the LIHTC, the largest source of federal funds for the development of affordable housing, as well as to local and state recipients of U.S. Department of Housing and Urban Development (HUD) grant funds. With few exceptions, HUD no longer funds the development of rental housing directly. That responsibility has devolved in large part to the states because of the size and importance of LIHTC. HUD is in the process of issuing a regulation clarifying its grantees' obligation to affirmatively further fair housing and has announced its intention to design a separate tool that applies to states rather than to local jurisdictions.[1] That tool should be given the highest priority. Even if affirmatively furthering fair housing were not a legal obligation, it is a social imperative because of the effect on the life chances of children of the type of neighborhood they grow up in and, in particular, the quality of the schools they are able to attend.

Cost-Effective Use of Housing Development Resources

In addition to the fair housing imperative, there is another public policy issue that should drive the allocators of funds for affordable housing to emphasize placement of developments with income and rent restrictions in areas with relatively high rents, relatively little rental housing, and small portions of minorities. That issue is cost-effectiveness. Meeting affordable housing needs through the development of "hard," project-based units costs more and provides less consumer choice than meeting those needs with housing vouchers (Government Accountability Office, 1997). The development (or substantial rehabilitation) of hard units makes sense only when that housing serves an additional purpose besides lowering the rents paid by low-income families and individuals. The affordable housing goal per se can be addressed better through demand-based housing vouchers. Three purposes for the production of affordable housing besides the affordability goal have been identified: (a) affirmatively furthering fair housing by placing units in communities and neighborhoods where households with vouchers find it difficult to find units with rents within voucher payment standards and with willing landlords; (b) providing housing with on-site supportive services for vulnerable households; and (c) supporting the revitalization of distressed neighborhoods.

The third purpose, supporting neighborhood revitalization, is often claimed as a reason for locating subsidized rental housing in areas with concentrations of poor people and minorities, but the rationale rarely holds up. Without a plan for fundamentally transforming a neighborhood and the resources to back it up, producing new housing in poor neighborhoods (or making existing housing the equivalent of new) is much more likely to weaken the neighborhood by reducing the demand for other housing nearby. The vast majority of projects said to support neighborhood revitalization are not associated with well-designed and adequately funded plans. Neighborhood revitalization is difficult and only very rarely has succeeded, despite the efforts of well-intentioned funders and implementers.

I am much more sympathetic to the second purpose, special needs housing, although recent experimentation with scattered-site locations for service-supported housing appears

successful. Those efforts respond to the mandate articulated by the Supreme Court's 1999 Olmstead Decision to provide housing for people with disabilities in the least restrictive feasible setting.

Costs of Developing Housing in the Suburbs

Because the fair housing imperative and the case for the use of housing development resources in places low-income families (both subsidized and unsubsidized) are unlikely to live, why do we find so little affordable rental housing produced in low-poverty areas without concentrations of minorities? Orfield and his colleagues turn to that question, first confronting the issue of whether the cost of producing housing in the suburbs is a barrier. They conclude that it is not, based on an analysis of development costs for affordable rental housing across the Minneapolis–St. Paul metropolitan region. Their results go further, showing that building in city neighborhoods actually costs *more* than building in the suburbs. That leads them to frame the question as to why funders of affordable housing in the region seem to ignore relative costs when choosing among potential recipients of housing development funds.

The Orfield et al. analysis of relative costs is sound as far as it goes but is limited, as all such analysis is, by the data they have available. Land acquisition costs are included in the total development costs they seek to explain in their model, but the data they used may have missed some acquisition costs.[2] In addition, other than the number of bedrooms, they are not able to include a variable for the quality of the housing produced. This may, in part, explain the finding that units supported by LIHTC cost substantially more than units without that source of funding. LIHTC does not have cost ceilings unless they are imposed by the allocating agency. Like many other allocating agencies, the Minnesota Housing Finance Agency does not appear to limit the dollar amount of the eligible basis (nonland development costs) on which the tax credit may be taken. Thus, LIHTC housing may be of higher quality than subsidized rental housing developed without LIHTC funding. It may have more durable systems and materials and more attractive finishes. It is not necessary to conclude on the basis of the analysis by Orfield and his colleagues that LIHTC developers are inefficient. In any case, it is not necessary to demonstrate that housing in the suburbs costs less to develop to ask why more of it is not done.

The Affordable Housing Development Industry

Orfield and his colleagues go on to analyze institutional factors that may explain why so much publicly funded affordable rental housing is located in cities rather than suburbs and in relatively poor neighborhoods with concentrations of minorities. They describe the housing development system in the Minneapolis–St. Paul region at some length, but basically they identify two institutional factors, both persuasive: (a) the characteristics of the industry that has developed in Minnesota (as elsewhere) for developing affordable rental housing and (b) the structural characteristics of the allocation of rental subsidy funds.

The industry for developing affordable housing focuses on city neighborhoods for several reasons, of which two are particularly salient. First, the affordable housing development industry, and in particular the important part of the industry made up of mission-driven nonprofits, has been nurtured over many years by philanthropic institutions interested in the revitalization of distressed neighborhoods. For whatever reasons, foundations have not paid equal attention to creating an industry of housing developers

with a mission of developing rental housing in high-opportunity neighborhoods. It is time that they did.

Second, starting in the late 1980s, public policy has focused on preserving the rent and income restrictions and meeting the accumulated capital needs of rental developments subsidized by older federal programs—notably Section 236 and project-based Section 8 new construction and substantial rehabilitation. Housing produced by those programs, especially housing for families, is disproportionately located in high-poverty neighborhoods (Newman & Schnare, 1997).

HUD funds for preservation have been forthcoming—first under the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPPRA), which provided grant funds, and then under the Mark-to-Market program enacted in 1998, which makes resources available by forgiving Federal Housing Association (FHA)-insured loans (Khadduri & Wilkins, 2008). State allocators of LIHTC have joined the preservation effort enthusiastically, in part because they are concerned that Section 8 subsidies attached to the federally funded units will disappear if the properties are not preserved.[3] Housing developers have responded to funding opportunities and thus have focused heavily on the already-built inventory of HUD-subsidized housing. So the historic pattern of locating affordable rental housing in high-poverty, minority-concentrated neighborhoods is self-perpetuating. A recent HUD policy change that permits Section 8 subsidies to be moved from project to project may help break that cycle, but industry capacity to take advantage of that option will need to be developed.[4]

The Structure of Funding Affordable Rental Housing

Orfield et al. also explore the structural factors that result in the disproportionate location of subsidized rental developments in cities—notably the political geography of the allocation of housing funds and the way in which the Minnesota Housing Finance Agency (Minnesota Housing) makes decisions about funding specific projects. They point out that, in Minnesota, suballocations to Minneapolis and St. Paul serve as floors rather than ceilings of the amount of tax credits going to the cities. Probably equally important, HUD block grant funds allocated to those cities through the Community Development Block Grant and the HOME program can be (and no doubt are) used to provide additional subsidies to developments applying for tax credits, making them more financially feasible and more attractive on other counts such as providing units affordable to households at lower income levels than the LIHTC maximum rents. Orfield and his colleagues point out that Minnesota Housing encourages joint funding with city housing agencies through a consolidated Request for Proposals. Recognizing this structural issue, at least one housing finance agency serving a different state has tried to make suburban housing more competitive by creating a LIHTC set-aside within which suburban properties do not have to compete with city projects that have access to these other resources (Khadduri, 2013).

Analyzing a Qualified Allocation Plan (QAP) that controls the project-specific decisions made by LIHTC allocators is notoriously difficult, because of the mixture of set-asides, threshold requirements, scoring points, and tie-breaker policy objectives that QAPs can contain. Seemingly large numbers of scoring points may make no difference if all proposed projects are likely to qualify for those points, whereas a small number of points may make a difference at the margin. Nonetheless, the analysis done by Orfield et al. does seem to show that Minnesota Housing is not giving a high priority to affirmatively further fair housing in its 2013 QAP.

Another point made by Orfield and his colleagues has to do with the close professional ties that the affordable housing development industry establishes with funding agencies. Financing affordable housing is, as they point out, very complex, because of the typical use of multiple sources of funds and because of the need to structure tax incentives to appeal to investors. Therefore, it is not surprising that affordable housing development is dominated by companies that have developed the needed specialized capacity and by staff that sometimes move between the industry and the public sector. Public policy objectives articulated in the QAP notwithstanding, agencies that allocate tax credits are looking, above all, for capacity—for developers with a track record of placing projects in service on the schedule demanded by the LIHTC program and for managing properties successfully once they are built. This is not likely to change, and points again to the need to develop a segment of the affordable housing industry that focuses explicitly on developing housing in high-opportunity neighborhoods.

Notes

1. Federal Register, January 9, 2015. https://www.federalregister.gov/articles/2015/01/15/2015-00468/affirmatively-furthering-fair-housing-re-opening-public-comment-period-on-subject-of-later-first-afh
2. In an email exchange with coauthor Tom Luce, he noted that properties in the suburbs were *less* likely to have acquisition costs than properties in the cities, and that running the model without *land acquisition included* as one of the independent variables results in an even higher estimate of the additional costs of a city location. Because land costs are not included in the eligible basis against which investors take the tax credit, the Minnesota Housing Finance Agency, which is the source of some of the data, may not have reported those costs for some properties.
3. In theory, an equivalent number of housing vouchers are allocated to the local public housing authority when a HUD-subsidized property leaves the assisted-housing inventory, but HUD and Congress have failed to manage the Housing Choice Voucher program to make sure that happens.
4. See HUD Notice H-2014-14, issued October 9, 2014.

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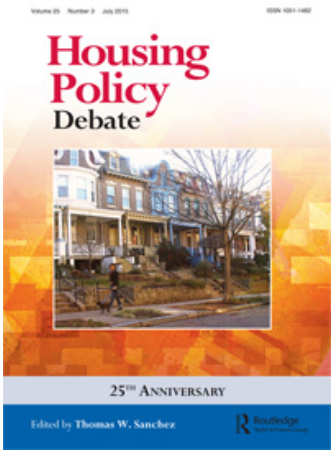

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Place-Based Housing Assistance and Access to Opportunity: Implications for Fair Housing in the Twin Cities

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COMMENTARY

Place-Based Housing Assistance and Access to Opportunity: Implications for Fair Housing in the Twin Cities

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Orfield, Stancil, Luce, and Myott's "High Costs and Segregation in Subsidized Housing Policy" presents an interesting analysis of the spatial distribution of place-based housing subsidies within the Minneapolis–St. Paul, Minnesota, region. Orfield et al. interpret their findings as evidence that housing policy within the Minneapolis–St. Paul region has been implemented in a manner that runs counter to the goals of the Fair Housing Act. The authors also argue that affordable housing in the region could be provided in a less expensive manner if policymakers pursued a policy of spatial dispersal, given that the cost of constructing affordable housing is shown to be more expensive in the central cities than in the suburbs of Minneapolis–St. Paul.

As noted by Goetz in this Forum, Orfield et al. take an integrationist view of federal fair housing policy, and the normative implications of their analysis are framed in terms of this perspective. Also noted by Goetz and the other commentaries in this Forum, important tensions have characterized the fair housing movement since its inception in the 1950s, and the integrationist view of fair housing has been hotly contested as advocates disagree over the priority that should be placed on the elimination of discrimination in private-sector housing versus the more active creation of integrated settlement patterns. Although the Congressional debates surrounding the 1968 Fair Housing Act often conflated these two objectives, assuming that ending discrimination in housing would produce neighborhoods that were integrated by race, the legal and scholarly history of the fair housing movement since the passage of the Fair Housing Act points to ongoing tensions between these two views. Integrationists draw upon the abundant literature pointing to the negative social consequences of racial segregation and concentrated poverty, cited by Massey in this Forum, to argue for housing policy interventions to create more racially and economically balanced residential patterns. Critics of the prointegrationist interpretation of the Fair Housing Act argue that: (a) The choice-enhancing feature of the Fair Housing Act can be at odds with spatial objectives if racial minorities are constrained in their mobility decisions; (b) Integration is often used as a justification for gentrification or the forced displacement of low-income households; and (c) Forcing an integrative spatial outcome while attributing negative qualities to majority–minority neighborhoods is paternalistic (Goetz, 2015).

The Comments in this Forum nicely frame this debate and offer different views of the mandate to affirmatively further fair housing. I would argue that much of the tension

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between the competing views expressed in this Forum is due to the manner in which the issue is framed by the Orfield et al. analysis. Orfield et al. emphasize the spatial location of housing subsidies that are tied to specific housing units, which I refer to in this critique as *place-based subsidies*, ignoring tenant-based subsidies and other policies that influence the spatial distribution of affordable housing. In the case of public housing, local public housing authorities decide where units are placed. In the case of the Low-Income Housing Tax Credit (LIHTC) program, state Qualified Allocation Plans award bonus points or additional credits for affordable housing developments located in particular areas. In contrast to tenant-based subsidies, whose spatial location is ultimately determined by a qualifying household's decision of where to use the subsidy subject to certain constraints, place-based policies directly affect housing choices by altering the spatial pattern of affordable housing supply. As a result, courts and federal regulators have taken a more integrationist interpretation of the mandate to affirmatively further fair housing when it applies to place-based subsidy policies. Several court cases since Gautreaux, referenced in Orfield et al. and the subsequent commentaries, have reaffirmed this obligation. The courts have been more divided over affordable housing policies that seek to achieve a racial balance in neighborhoods, particularly in cases of policies that use racial quotas to constrain choices of racial minorities, and other housing policies that indirectly affect the housing choices of protected class members by influencing the cost of housing. Thus, I agree that although there has been tension among scholars regarding the appropriate interpretation of the Fair Housing Act, the courts have consistently reaffirmed governments' obligation to affirmatively further fair housing by paying particular attention to the impact of place-based subsidies on patterns of segregation by race.

Unfortunately, Orfield et al.'s emphasis on place-based subsidies and their relationship to measures of spatial opportunity limits our understanding of the influence of affordable housing policy on racial segregation and access to opportunity in the Twin Cities region. Orfield et al. do not examine the impact of the region's innovative fair-share housing program or tenant-based subsidies, both of which likely have a larger impact than place-based subsidies do on patterns of racial segregation. Furthermore, the *Hollman v. Cisneros* lawsuit settled in 1995, that called for an aggressive plan for desegregating public housing projects in Minneapolis, is not mentioned in Orfield et al.'s analysis. Given this, my critique will focus on two issues: (a) the implications and limitations of Orfield et al.'s emphasis on the spatial pattern of place-based housing assistance, and (b) the ambiguous policy implications of Orfield et al.'s opportunity analysis.

Emphasis on Place-Based Housing Assistance

Orfield et al.'s primary analyses focus on the spatial pattern of LIHTC properties and other subsidized housing units, the associated development costs of such projects, and the impacts of place-based housing assistance in one Minneapolis neighborhood over the 2000–2010 period. One limitation of the analysis is that it fails to account for the differences in the characteristics of different forms of place-based housing assistance. It is not clear from Table 1 what constitutes other subsidized housing units, but one must assume that it includes units financed using some combination of project-based federal assistance and other state or local financing sources. The authors fail to acknowledge that these different programs serve different populations earning different incomes, and, as a result, the community impacts likely vary by program. The LIHTC program serves a higher income population than most U.S. Department of Housing and Urban Development (HUD) programs, and as a result, may actually deconcentrate poverty within low-income

neighborhoods, if the incomes of LIHTC residents exceed the incomes of residents in the surrounding community. Also, LIHTC-financed new construction may produce spillover benefits to the surrounding neighborhood, given that new LIHTC units are often of higher quality than the existing housing being replaced. LIHTC new construction may also attract local retail and other neighborhood amenities that would not have existed before (Baum-Snow & Marion, 2009). Ellen and Horn (2012) demonstrate that although LIHTC families tend to live in lower-performing school districts than other renters, a larger share of LIHTC families are located near higher-performing schools than are families receiving assistance from HUD programs, including tenant-based voucher programs, public housing, and project-based subsidies.

I also question whether redirecting place-based housing subsidies would have an appreciable impact on segregation levels in the Twin Cities region. According to Table 1, subsidized units constitute about 5% of the region's housing supply. Given their small percentage of total housing, reallocating the spatial distribution of subsidized units would not likely have a meaningful impact on metropolitan patterns of racial and economic segregation. Not only do these units constitute a small portion of the total housing stock, but the segregation literature highlights a number of factors other than the spatial distribution of subsidized housing that contribute to segregated residential patterns (Dawkins, 2004).

The focus on place-based assistance also ignores demand-side rental assistance programs such as the Housing Choice Voucher (HCV) program, which likely serves a much larger population in the Minneapolis region given its relatively larger size nationally. Because the rents in the Minneapolis–St. Paul region are likely higher in suburban areas, the total public expenditures required to serve households living in those areas would also be higher per household, resulting in a spatial pattern of costs that would likely be different from those funded by LIHTC and project-based assistance programs. Furthermore, HCV program costs are attributable to the cost of rental assistance contracts and administrative costs, rather than the cost of financing construction. HCV recipients also face a host of other constraints that have fair housing implications, such as the difficulty of porting from one jurisdiction to another, rents in excess of the region's Fair Market Rent, and exclusionary land-use regulations in suburban areas. A full accounting of the fair-housing dimensions of housing-policy assistance within any region should take these different programs into account, highlighting their differential impact on location choices by race. It also would have been interesting to know whether the region's fair-share housing policies have had an impact on HCV recipients' ability to find and secure housing throughout the region.

The Uses and Abuses of Opportunity Analysis

Orfield et al.'s analysis is based on the *opportunity analysis* approach pioneered by the Kirwin Institute at Ohio State University. This approach emphasizes the spatial dimension of opportunities within a region, and compares the location of these opportunities with the residential locations of low-income households, minority households, and subsidized households, for the purpose of identifying spatial mismatches. The approach has been integrated into HUD's Sustainable Communities Regional Planning Grant program and forms the basis for the HUD's new Affirmatively Furthering Fair Housing Rule, now available for public comment. My comments in this section refer both to Orfield et al.'s opportunity analysis and to the technique itself more broadly applied.

The opportunity analysis presented by Orfield et al. suffers from several limitations that reduce its usefulness as a proscriptive policy tool. First, mapping the spatial distribution of households and opportunities does not give insights into the factors giving rise to those patterns. Existing patterns of segregation by race reflect current and historical discriminatory practices, income differences, heterogeneous preferences for local public amenities and services, and preferences for self-segregation (Dawkins, 2004). Some of these factors can be directly influenced by policy; others cannot. Orfield et al. tend to oversubscribe the segregation patterns they observe to the spatial pattern of place-based assistance.

Second, the literature offers no clear definition of spatial opportunity and how it should be measured. Orfield et al.'s rebuttal in this Forum highlights the difficulty of defining precisely which dimensions of spatial opportunity are most policy relevant. Orfield et al. implicitly define opportunity in terms of exposure to higher quality schools, yet the authors' rebuttal notes that others in the Twin Cities region have argued for a definition of opportunity that includes access to employment and public transit, both of which are more spatially concentrated near the region's central cities. Depending on which aspect of opportunity is deemed most important, each of these variables would likely produce a very different map of opportunity. Heterogeneity in household needs and wants is also rarely factored into analyses of spatial opportunity. Families with children are more likely to take advantage of different spatial opportunities than are elderly and disabled persons, for example.

Finally, opportunity analyses often do not suggest clear policy interventions, in part because of the lingering tensions over the meaning of fair housing itself and the appropriate policy responses for alleviating spatial mismatches. If, for example, racial minorities living below the poverty line are found to be concentrated in neighborhoods with poor amenities and services, it is not clear how to alleviate those mismatches, or whether resolving spatial disparities would result in appreciable differences in economic outcomes. One can identify at least three strategies that would seem to follow from spatial imbalances: (a) improving living conditions within segregated areas, (b) promoting the relocation of households to high-opportunity areas, or (c) enhancing transportation services to allow households to travel to high-opportunity areas more easily (Ihlanfeldt, 1999). If households without access to automobiles are constrained in their ability to reach employment opportunities, the solution to the problem may require a transportation solution and not a housing solution. Similarly, the relocation of households to high-opportunity areas does nothing to alleviate the poor neighborhood conditions in low-opportunity areas. Finally, spatial policy solutions often ignore the nonspatial determinants of poverty.

Opportunity analyses are a useful first step to understanding the spatial geography of opportunity within a region, but a complete understanding of the determinants of that geography and the region-wide impacts of resolving spatial imbalances requires more sophisticated analyses that explore the impact of neighborhood effects on household outcomes, controlling for the determinants of location choice and the impact of choice constraints on residential outcomes. Residential mobility programs such as the Moving to Opportunity experiment and the Minneapolis Special Mobility Program, created in response to the *Hollman v. Cisneros* litigation referenced earlier, offer an opportunity to explore these issues using natural experiments. Economists have identified a variety of instrumental variables that can be used to isolate the causal influence of segregation patterns on racial and economic inequality (Cutler & Glaeser, 1997). Finally, recent innovations in agent-based land-use/transportation models provide promise for simulating

the impact of changes to the regional opportunity structure on the location choices of households by race and income.

Notes on Contributor

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FORUM COMMENTARY

The Low-Income Housing Tax Credit, Community Development, and Fair Housing: A Response to Orfield et al.

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In their recent article, "High Costs and Segregation in Subsidized Housing Policy," Orfield, Stancil, Luce, and Myott, argue that the placement of subsidized rental housing for low-income people in central city neighborhoods violates the Fair Housing Act. They also argue that the cost of developing new low-income housing is higher in the inner city than in suburban locations, and that there is no evidence that the development of subsidized housing for low-income people in central city locations improves the quality of the surrounding neighborhood or the lives of the residents (Orfield, Stancil, Luce, & Myott, 2015a, 2015b). As the centerpiece of a "Forum" in *Housing Policy Debate*, the article was joined by four commentaries about Orfield et al.'s thesis and the evidence marshaled to support it (Dawkins, 2015; Goetz, 2015; Khaddurri, 2015; Massey, 2015). Although the commentators raise several important points, both supportive and critical, about the argument, their discussion was not exhaustive. Orfield et al.'s article, as well as previous related work, has received considerable amounts of attention in public discourse. For example, Thomas Edsall (2015) published a column in *The New York Times* that drew closely on Orfield's work to criticize affordable housing development as a strategy for community development. The editorial board of *The New York Times* has also voiced similar concerns ("The End of Federally Financed Ghettos," 2015).

Given the prominence and apparent influence of Orfield's viewpoint, I believe it is important to provide a different, balanced view of subsidized housing, fair housing, and community development. In this essay I raise several points not discussed in the commentaries, and I elaborate on a few that were analyzed.

My argument has three dimensions. First, federal policy has played an immense role in promulgating, abetting, and perpetuating racial discrimination and racial segregation, but the Low-Income Housing Tax Credit is not a significant part of this story. Second, Orfield et al. are right to emphasize the need for affordable housing to be accessible to good schools, but they overlook the fact that many recipients of low-income housing subsidies do not have school-age children. These households may value other neighborhood characteristics more highly than the quality of local schools. My third point is that Orfield is overly dismissive of affordable housing as a community development strategy, and unfairly denigrates the work of community development organizations. In developing this argument I join Orfield et al. in drawing on data specific to the Minneapolis–St. Paul metropolitan area.

Federal Housing Policy and Racial Discrimination and Segregation

Current levels of racial discrimination in the housing market and of residential racial segregation would not be so high were it not for federal, state, and local government policies. The courts did not ban racial covenants until 1948. The Federal Housing Administration's underwriting criteria prevented millions of Black Americans from becoming homeowners and the FHA redlined their neighborhoods so

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that property owners could not obtain mortgages except on the most usurious terms (Immergluck, 2004; Jackson, 1987; Satter, 2010). Thousands of suburban communities have used and continue to use land-use and building code regulations to limit if not exclude rental housing and homes that could be affordable to lower income households (Downs, 1994; Pendall, 2013). Public housing during the first two or three decades of the program was frequently built in ways and at densities that perpetuated segregation, with development slated for Black occupancy situated in Black neighborhoods, and White-only developments placed in White neighborhoods (Hirsch, 1998). Various administrative rules and practices make it difficult for recipients of Housing Choice Vouchers to obtain housing outside of low-income and segregated neighborhoods (DeLuca, Garboden, & Rosenblatt, 2013).

Congress passed the Fair Housing Act in 1968, but it was largely symbolic for the next two decades, as enforcement mechanisms were weak and penalties for noncompliance minimal (Massey & Denton, 1993; Yinger, 1995). The Fair Housing Act Amendments of 1988 did make it easier to prosecute Fair Housing violations and stiffened the sanctions for violations (Schill & Friedman, 1999; Yinger, 1995), but federal funding for Fair Housing enforcement has always been low. Moreover, the federal government has always been reluctant to apply the law against the discriminatory or exclusionary land-use practices of local governments (Hannah-Jones, 2012).

The Low-Income Housing Tax Credit (LIHTC) is a minor player in this narrative—if it plays a role at all. The LIHTC is the nation's largest subsidy program for the construction, rehabilitation, or acquisition of low-income rental housing. It has helped finance more than 2.5 million low-income units since its inception in 1987, and has generated about 85,000 units annually since 2000. Almost all new subsidized housing involves the LIHTC, as it is frequently combined with tax-exempt bonds, federal block grants, and philanthropic donations.

Nationally, the geography of LIHTC housing tracks closely with that of the Housing Choice Voucher program, one which gives recipients, at least in theory, access to almost any neighborhood in the United States. For example, although 29% of all LIHTC units are in census tracts where minority groups account for 80% or more of the population, the same is true for 31% of all voucher holders; conversely, while 10% of all LIHTC units are in tracts where minorities make up less than 10% of the population, this is only one percentage point less than the share of voucher holders in these neighborhoods (Schwartz, 2014: 171). Compared with public housing, housing supported by the LIHTC is far less concentrated in impoverished, highly segregated neighborhoods.

Although a sizable share of all LIHTC units are located in census tracts with relatively high percentages of minority populations and/or with high poverty rates, on balance the program has *not* been shown to be a cause of racial segregation or concentrated poverty. Horn and O'Regan, for example, conclude their econometric study of the LIHTC program and racial segregation with the following:

> [w]e find no evidence that the LIHTC program is associated on average with greater racial segregation for minorities. Indeed, MSAs with greater construction of LIHTC units experience relative declines in segregation. Focusing on those units that may have the greatest potential for heightening segregation, we again find essentially no evidence to support this concern but, rather, evidence of the reverse (Horn & O'Regan, 2011: 466–67; see Freedman & McGavock, 2015) for similar findings regarding the relationship between the LIHTC and poverty concentration).

It is also important to recognize that the LIHTC operates at too small a scale to have a discernible effect on racial segregation. Dawkins points this out in his commentary, but let me provide an illustration from the Twin Cities.[1] The program has produced 22,966 affordable rental units in 406 developments from its start in 1987 through 2014[2] (see Figure 1 and Table 1). Annually, this translates to an average of 821 new or rehabilitated units distributed across just 15 developments within the entire metropolitan area. Moreover, more than half of the LIHTC housing produced to date is located outside Minneapolis and St. Paul; in other words in the suburbs and smaller cities of the metro area. So, leaving aside the question of whether suburban LIHTC housing is located in low-income or segregated neighborhoods, it is extremely hard to understand how, in a metropolitan area of 1.3 million households (896,000 home owners and 371,000 renters), a shift of less than 6,000 LIHTC units from low-income neighborhoods in the two cities to suburban locations would make any discernible dent on racial segregation or economic isolation.[3]

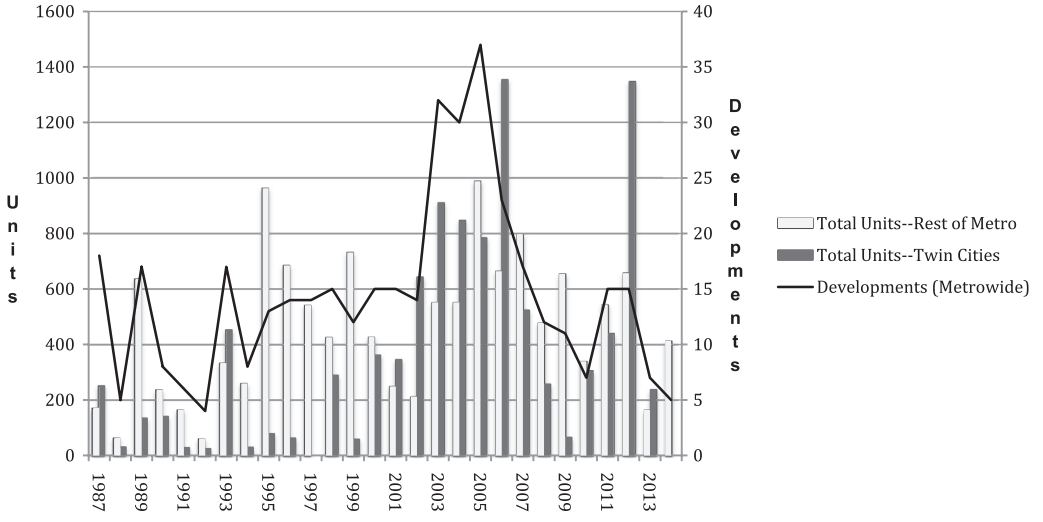

Figure 1. LIHTC units and developments placed in service, Minneapolis Metro Area 1987–2014.
Source: U.S. Department of Housing and Urban Development, LIHTC Database.

Table 1. Overview of Low Income Housing Tax Credit (LIHTC) housing in the Minneapolis–St. Paul-Bloomington Metropolitan Area (CBSA-MN only).

	Total	Minneapolis–St. Paul	Rest of metro area
Total LIHTC developments & units			
Total LIHTC developments	406	147	259
Total LIHTC units	22,996	10,027	12,969
Percent share LIHTC developments	100.0	36.2	63.8
Percent share LITHC units	100.0	43.6	56.4
Average annual developments placed in service	14.5	5.3	9.3
Average annual units placed in service	821	358	463
Ownership			
Percent total units owned by nonprofits	20.3	20.7	19.7
Construction type			
Percent share new construction units	100	37.3	62.7
Percent share acquisition/rehab units	100	51.8	48.2
Percent share of units by bedrooms			
0–1 bedroom ($N = 9,541$)	100	55	45
2 bedrooms ($N = 8,689$)	100	45	55
3+ bedrooms ($N = 4,168$)	100	35	65
Qualified Census Tract (QCT)			
Percent total units in QCTs	25.2	56.6	0

Source: U.S. Department of Housing and Urban Development, LIHTC data base.

A key part of Orfield et al.'s argument against placing subsidized housing in low-income, predominantly minority neighborhoods, concerns the quality of local schools:

> The [racial] "makeup" of the schools serving subsidized housing is an important indicator of the opportunity structure available to housing residents. Highly segregated schools are also nearly always high-poverty schools, and school poverty is a powerful indicator of student performance. Racially integrated schools are of value in and of themselves as well: integration is associated with better student performance of all races (Orfield et al. 2015a: 580)

I agree that schools are very important and that housing subsidies should enable people to access the best possible schools for their children, whether this involves housing vouchers or supply-side subsidies such as the LIHTC. However, it is also important to recognize that families with children under 18 account for 44% of all families in the United States and only 29% of all households—and 48 and 31%, respectively, in the Twin Cities metro area. Most households, in other words, do not have school-age

children and therefore may value other neighborhood characteristics more highly than the quality of local schools.

It is also important to recognize that subsidized housing is not exclusively designed or intended for families with children. Some subsidized housing is built for the elderly; other properties house formerly homeless individuals. Many units may cater to other childless households who may not care about schools. Forty-one percent of all housing units subsidized with the LIHTC in the Twin Cities metropolitan area consist of one-bedroom or studio apartments, which are unlikely to accommodate many children. Two-bedroom units, which may not always house families with children, account for 39% of the total. Units with three or more bedrooms, the ones most likely to accommodate families with children, represent only 18% of all LIHTC housing.

Moreover, larger LIHTC units are already more likely to be located in the suburbs than are smaller units. Indeed, 65% of all LIHTC apartments with three or more bedrooms and 55% of all two-bedroom apartments are located in the suburbs other localities outside of Minneapolis and St. Paul (see Table 1).

Orfield et al. seem to suggest that the Fair Housing Law requires that all LIHTC and other subsidized housing should be situated outside low-income and predominantly minority neighborhoods of the central cities and inner-ring suburbs. This position gives scant regard for the fact that as the largest subsidy source for low-income rental housing development, and one of the only sources, the LIHTC is increasingly used for the preservation of existing subsidized housing in addition to the development of new housing. Nationally, according to the Harvard Joint Center for Housing Studies, nearly 2.2 million units of federally subsidized housing are at risk of loss due to the expiration of subsidy contracts and compliance periods, including more than 1.2 million units of LIHTC housing (Harvard Joint Center for Housing Studies, 2015: 33).

States and localities frequently use the LIHTC to rehabilitate and refinance existing low-income housing. Indeed, all but four states specify preservation as a criterion for awarding tax credits to proposed projects. If public policy proceeded along the lines suggested by Orfield et al., housing tax credits for rehabilitation of existing housing in urban cores could not be deployed, placing thousands of families at risk of residing in physically deficient conditions or, as neighborhoods gentrify, displacement. Moreover, the nation would lose thousands of subsidized housing units at a time when there are more than three qualified low-income households for every unit of federally subsidized housing. Preserving existing housing is also usually less expensive than building new housing.

On the other hand, I agree with Orfield et al. that the "basis boost" given to projects located in high-poverty census tracts can result in an excessive amount of tax-credit housing located in the most distressed and racially segregated neighborhoods.[4] Alternatively, projects located in neighborhoods with strong public schools and other resources could be allocated basis boosts as well, especially since land costs are likely to be higher in these communities. In fact, state housing finance agencies have been able to do just that since 2008, when the Housing and Economic Recovery Act of 2008 gave states the ability to set their own criteria for awarding basis boosts to LIHTC projects to better reflect their priorities Some states have used this authority to issue basis boosts to projects located in areas with high-cost land, and presumably in high-performing school districts and other amenities (see Shelbourne, 2011).

Subsidized Housing and Community Development

Orfield et al. are disdainful of the organizations that develop housing in low-income neighborhoods, and of housing development as a community development strategy. Orfield et al. seem especially scornful of nonprofit housing groups and the intermediaries that support them, although for-profit groups are criticized as well. They speak of a "poverty housing industry," and "regulatory capture," in describing for-profit and especially nonprofit housing groups active in low-income communities. Moreover, they cite the salaries of the chief executives, implying that producers of low-income housing should be paid less; furthermore, they state that senior staff do not live in the neighborhoods they work in, implying that they are therefore not fully committed to the well-being of these places. In addition, Orfield et al.

claim that there is no evidence to suggest that housing development improves the quality of life in low-income neighborhoods.

In my opinion, Orfield et al.'s scurrilous attack on low-income housing groups is outrageous. It is especially unfortunate that he cites the salaries of nonprofit executives—as this information was repeated in Thomas Edsall's column in *The New York Times*. The authors imply that the six-figure salaries of some CDC executive directors are excessive. They do not compare these salaries with those of the chief executives of other nonprofit organizations of similar size, or of for-profit housing groups either. They also fail to consider the pension, medical, and other fringe benefits these executives receive in relation to the benefits received by the chief executives of other nonprofit and for-profit organizations of similar size and complexity. Nor do they consider the number of years that the executives have worked at their organizations. Orfield et al. imply that executives of nonprofit housing groups are overpaid, but provide no evidence to support this suggestion.

Orfield et al. also overemphasize the role of nonprofit organizations in the development of low-income rental housing. By law, 10% of all Low-Income Housing Tax Credits must be allocated every year to nonprofit organizations. In the Minneapolis–St. Paul metro area, nonprofit organizations account for 20% of all LIHTC housing developed since 1987. For-profit developers are clearly dominant. Moreover, nonprofit organizations account for the same 20% share of all LIHTC housing in the suburbs and in the two central cities of Minneapolis and St. Paul (see Table 1). In short, the vast majority of housing produced through the LIHTC program has been developed by for-profit organizations, not nonprofits, yet for some reason Orfield et al. focus almost entirely on nonprofit organizations.

Orfield et al. provide very little evidence to support their claim that housing investment in low-income neighborhoods fails to foster community development. To support this argument, the authors refer to a single example, the Franklin-Portland Gateway project in Minneapolis. They say that several informants recommended this project as the best example of the salutary effects of low-income housing development within an inner city community. They provide a variety of demographic and economic indicators to show that conditions in the immediate vicinity of the project did not improve over time, and that the area compares unfavorably across most indicators with other low-income Minneapolis communities.

Goetz (2015) raises several issues with this case study. First, Goetz points out that the Franklin-Portland Gateway project is not yet finished and that the mortgage crisis and subsequent Great Recession occurred soon after the project began. He also questions the wisdom of some of the indicators Orfield et al. use in their analysis.

I agree with Goetz that it is probably premature to judge the ultimate effect of the Gateway project on the surrounding community. Moreover, Orfield et al. do not apply statistical techniques such as difference-in-difference or adjusted interrupted time series (Ellen & Voicu, 2007; Galster, Tatian, & Accordino, 2006) to assess whether the development altered the longer-term trajectory of neighborhood change in the Gateway area. Nor do they check to see if the nearby neighborhoods used for comparison also saw significant real estate investments.

A bigger problem with Orfield et al.'s argument is that it is based on but a single example. The authors make no reference to other studies that have examined the effect of housing development on community conditions. Orfield et al. justify their decision on the fact that Gateway is the largest, most prominent low-income housing development in the Twin Cities, and that it was the only one nominated by the experts they canvassed for suggestions. This is immaterial. The article addresses a national if not international audience, and their argument was clearly not meant to apply only to Minneapolis. Moreover, the authors are naïve or disingenuous to think that a single subsidized development is likely to revitalize an entire neighborhood. The Franklin-Portland Gateway project to date includes 126 units of new housing, 97 of which are affordable, with 120 units to be built in a future phase of the project. Assuming all of the completed units are occupied, the project accounts for less than 12% of the surrounding census tract's estimated 1,068 households in 2010 (ACS 5-year estimates). It is not realistic to expect a project of this relatively small scale would be sufficient to transform the overall neighborhood over a period of less than a decade—much less during a period that experienced the worst recession

since the Great Depression. Studies have demonstrated that individual low-income housing developments can improve conditions (as proxied by changes in property values) in their immediate vicinity, but the effect diminishes sharply with distance (Ellen & Voicu, 2007).

Housing development may be an important element for community revitalization, but it is seldom sufficient. Indeed, most community development organizations engage in a wide array of activities to improve the quality of life in the neighborhoods they serve. Besides housing development and rehabilitation, these include various types of housing counseling (eviction and foreclosure prevention, home-purchase advice, home maintenance assistance), economic development, social services (after school programs, seniors programs, nutrition programs, prisoner reentry programs), and advocacy and community organizing (see National Alliance of Community Economic Development Associations, 2010). Housing is often part of broader comprehensive community initiatives (Kubisch, Auspos, Brown, & Dewar, 2010). It is also difficult to isolate the effect of housing and community development activities when neighborhoods are often affected by much stronger economic and social currents (e.g., job loss, crime spikes).

However, as difficult as it is to document and assess the impact of affordable housing development and other place-based community development endeavors, such studies do exist. For example, Orfield et al. could have cited Galster, Levy, Sawyer, Temkin, and Walker's (2005) analysis of the neighborhood impact of four community development corporations in four cities, which compared change in property values in neighborhoods with extensive CDC activity with change in four control neighborhoods. Combining econometric analysis and qualitative research, they found that CDCs did make a difference. Orfield et al. could also have referred to Galster, Tatian, and Accordino's study (2006) of targeted community development investments in Richmond VA. Using econometric techniques, they found that low-income neighborhoods that saw major amounts of investment saw substantially greater appreciation in the value of single-family homes than did similarly distressed neighborhoods that did not receive similar amounts of investment (Galster et al., 2006). Orfield et al. could also have cited a recent study of how a CDC's acquisition and rehabilitation of distressed housing in the East Liberty neighborhood of Pittsburgh resulted in dramatic reductions in crime (Berg, 2015; Fabusuyi & Vitoria, 2013). Orfield et al. could also have looked at studies showing how concentrated investments in housing development and rehabilitation completely rebuilt the urban fabric in many previously devastated neighborhoods of the South Bronx, Harlem, and Central Brooklyn (Schwartz, 1999). Indeed, many neighborhoods, such as Williamsburg and Bushwick in Brooklyn, and Harlem in Manhattan that saw extensive investments in affordable housing are now being priced beyond the reach of most New Yorkers.

This speaks to yet another benefit of affordable housing development in the inner city. Markets can change. Neighborhoods can lose and gain favor. Neighborhoods that were once impoverished and segregated can, if their location is right, become trendy and expensive. This has happened across much of New York City, Washington, DC, Chicago, IL, San Francisco, CA, Portland, OR, Seattle, WA, Pittsburgh, PA, and other cities. In such situations, subsidized housing (and, in New York, rent regulation) is what enables low-income families to remain in place.[5]

Orfield et al.'s article is a polemic against place-based community development strategies that involve the development or preservation of low-income housing. The authors write as if affordable housing development within low-income urban neighborhoods is incompatible with fair housing. This is a false dichotomy. Indeed, the federal government says as much in its final rule for "Affirmatively Furthering Fair Housing." The Final Rule explicitly states that "place-based solutions" in racially and/or ethnically defined areas of concentrated poverty are consistent with a "balanced approach" to fair housing. More specifically, the rule:

> recognizes the role of place-based strategies, including economic development, to improve conditions in high-poverty neighborhoods, as well as preservation of the existing affordable housing stock, including HUD-assisted housing, to help respond to the overwhelming need for affordable housing. Examples of such strategies include investments that will improve conditions and thereby reduce disparities in access to opportunity between impacted neighborhoods and the rest of the city or efforts to maintain and preserve the existing affordable rental housing

stock, including HUD-assisted housing, to address a jurisdiction's fair housing issues (U.S. Department of Housing & Urban Development, 2015: 42,279).

Fair housing need not and should not be incompatible with affordable housing investments in low-income and minority communities. Both are essential. Needless attacks on one goal or the other do not benefit either cause. Rather than engage in a full-bore attack on subsidized housing as a community development strategy in low-income communities, the goals of fair housing would be better served by addressing discriminatory practices among realtors and other actors in the housing and mortgage markets, and exclusionary land-use policies of many suburban jurisdictions.

Notes

1. My analysis is based on a larger definition of the Minneapolis–St. Paul metropolitan area than that used by Orfield et al. Whereas they focus on a seven-county region covered by the HousingLink data base of subsidized housing, my analysis is based on the Minnesota portion of the Minneapolis–St Paul-Bloomington Core Based Statistical Area. Although this larger geography encompasses more counties than Orfield et al.'s definition, it is only slightly larger in total households (1.3 million vs. 1.1 million in 2010).
2. This figure excludes 3,500 market-rate units that are part of some of the region's LIHTC developments.
3. The 6,000-unit figure refers to the 5,600 units located in "Qualified Census Tracts"—tracts where at least 50% of all households have incomes below 60% of the area median family income.
4. Table 1 shows that more than half of Minneapolis' and St. Paul's LIHTC housing is located in Qualified Census Tracts, while the rest of the metro area has none. In the metro area as whole, 25% of all LIHTC units are situated in Qualified Census Tracts.
5. Michael Bodaken, Executive Director of the National Housing Trust, made this point in his presentation at a symposium in New York City sponsored by the New York Housing Conference on "Fair Housing: Impact on Affordable Housing Preservation and Development" (September 11, 2015).

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Taking a Holistic View of Housing Policy

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RESPONSE TO COMMENTARY

Taking a Holistic View of Housing Policy

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Orfield, Stancil, Luce, and Myott (2015) has spurred significant discussion and commentary, as well as several critiques. Here, we respond to the preceding critique mounted by Schwartz, as well as the commentary provided by Dawkins (2015), which was published concurrently with the original article.

Schwartz and Dawkins have both raised questions about the focus of our earlier article, suggesting that it emphasizes particular housing programs too much, or too little.

In his response, Schwartz admits that whereas federal policy has contributed significantly to racial discrimination and segregation, the Low-Income Housing Tax Credit (LIHTC) "is not a significant part of this story" (Schwartz, in this issue). He argues that LIHTC units are less concentrated in high-minority tracts than other types of subsidized units are, and that LIHTC operates at too small a scale to have a significant effect on regional segregation. Dawkins also raises this point.

At the outset, we point out that our analysis, arguments, and policy recommendations were by no means focused solely on LIHTC. Most of the regional data summarized in Orfield et al., (2015, Tables 2–3) (Table 1). Include separate breakouts for all place-based subsidized units and LIHTC units. LIHTC units represent only about a fourth of the units included in these data.[1]

The cost analysis (reported in Orfield et al., 2015, Table 4) also included all units funded between 1999 and 2013 for which the Minnesota Housing Finance Agency (MHFA) was able to provide financial data—not just LIHTC units, or even just units receiving federal funding.

LIHTC units alone represent 5%–6% of the total rental market in the Twin Cities, and subsidized units in the aggregate represent 5% of the entire housing market—19% of the rental market at a minimum. These shares are clearly large enough to warrant the attention of policymakers, and are even greater if Housing Choice Vouchers are included.

But even if analysis is limited to LIHTC units alone, Schwartz is wrong to declare that their impact on segregation is insignificant. Although tax credits are distributed slightly less segregatively than other subsidies are, our data show very clearly that LIHTC units are dramatically overrepresented in high-minority tracts and school attendance areas. Fifty-two percent of LIHTC units allocated by MHFA between 2005 and 2011 were in census tracts with minority shares greater than 30%, compared with just 23% of all housing units and 40% of all rental units. Similarly, 83% of LIHTC units were in school attendance areas with minority shares greater than 30%, compared with just 46% of the student population in the Twin Cities.

As discussed in our original article, in the process of maintaining this segregative pattern, state housing authorities have turned down a substantial number of LIHTC funding proposals from more-affluent suburban areas. This represents a set of selection priorities and systems, laid out in the state's Qualified Allocation Plan, that favor segregative development.

Schwartz also claims we overemphasize the importance of the link between LIHTC and education policy. For instance, Schwartz argues that "most households . . . do not have school-age children," pointing out that only 29% of all Twin Cities households include children under 18 (Schwartz, in this issue).

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But families with children are overrepresented among those receiving or benefiting from housing subsidies. MHFA occupancy data reveal that 49.7% of households in subsidized units include children. (Although precise figures are unavailable, these households almost certainly constitute a significant majority of the population of subsidized housing beneficiaries, because they naturally tend to be larger than households without children.)

Whereas some LIHTC units serve populations such as homeless individuals and the elderly, the majority of LIHTC units in both the central cities and suburbs—60% and 71%, respectively—are theoretically eligible for family occupancy. Moreover, whereas single-bedroom units do account for a substantial fraction of LIHTC units in the Twin Cities, unit sizes are not assigned by quota. Instead, unit size often appears to be a function of unit location. LIHTC units within the central cities tend to be smaller (49.5% are one-bedroom or studio units), whereas units in the suburbs are much more likely to be family appropriate (only 35.4% are one-bedroom or studio). In other words, a less central city-oriented housing policy would likely produce even more housing that could and would be plausibly occupied by families with children, further strengthening the link between housing and school integration.

The best that can be said of LIHTC in a fair housing context is that, at present, it mirrors patterns of segregation in the private market, rather than accentuating those patterns. This is what Horn and O'Regan (2011) determine in their evaluation of LIHTC and segregation, which compares the distribution of tax credit units across low-, middle-, and high-minority tracts with the distribution of lower income households, rather than with the distribution of all households. Far from vindicating LIHTC policy, this is instead a classic example of federal housing subsidies "perpetuating" existing segregation. Federal rules, discussed below, require that public entities ameliorate housing segregation. But simply as a matter of pragmatic policymaking, it is also hardly unreasonable to ask that federal subsidies not reflect discriminatory trends in the private market. (Horn and O'Regan themselves acknowledge this as a potential shortcoming of their work.)

Ultimately, however, the practical realities of subsidized housing development mean that focusing on a narrow subset of housing subsidies such as LIHTC is often inadvisable. Because most modern subsidized development is mixed finance and relies on more than one funding stream, it is frequently pointless to treat various financing programs as if they exist in isolation from each other. The necessity of acquiring more than one source of funding means that incentives and limitations placed on one funding stream can influence the use of other funding as well. For instance, if a project cannot fully fund itself without both LIHTC and a local grant, restrictions on the use of LIHTC effectively apply to the local grant as well, and vice versa. As LIHTC is the single largest source of affordable housing funding, trends in its geographic distribution are most likely to have an outsized impact in this manner and are therefore of particular importance.

Whereas Schwartz claims LIHTC is not as segregative as other programs, Dawkins (2015) argues that we have focused too much on place-based assistance and ignored the potentially integrative effects of rental assistance policies like the Housing Choice Voucher. Dawkins is correct to note that assistance programs have the potential to function as an important tool for housing mobility. Unfortunately, as he recognizes, there are many well-documented bureaucratic and economic constraints that limit the ability of these programs to create housing mobility—namely, exclusionary zoning, high suburban rents, and obstacles to voucher portability. In Minnesota, another, more severe constraint exists: the ability of landlords to legally refuse a tenant because the tenant wishes to use vouchers.[2] This is consistently cited by voucher holders as one of the primary obstacles to finding an affordable unit.[3]

In this vein, Dawkins critiques our piece for not discussing the mobility program resulting from the Hollman v Cisnernos case settled in 1995. This is ironic, because there is perhaps no more potent illustration of the limitations of voucher-only strategies in the current legal and economic environment. The Hollman v Cisneros settlement provided low-income families special "mobility vouchers," in an attempt to facilitate housing choice and mobility. Subsequent studies showed that 71.9% of the voucher applicants were unable to locate a qualifying lease (Goetz, 2002). In other words, whatever the theoretical use of rental assistance programs, significant changes to regional housing policy will be needed if they are to truly improve housing choice for low-income tenants.

Table 1. School integration simulations.

	Elementary	Middle	High	Total
Number of minority students who would have to change schools to achieve racial balance[a] in 2012–2013				
100% replacement[b]	6,847	2,469	2,791	12,107
75% replacement[c]	8,056	3,528	3,284	14,868
50% replacement	9,782	3,987	3,987	17,756
Number of additional minority students who would already be in a racially integrated school if the racial makeup of subsidized housing were the same across the region and:				
LIHTC units were distributed across school attendance areas in proportion to school enrollments	2,028	355	541	2,924
Section 8 project-based units were distributed across attendance areas in proportion to school enrollments	837	178	259	1,274
Housing Choice Voucher usage were distributed across attendance areas in proportion to school enrollments	3,541	774	1,216	5,531
Total	6,406	1,307	2,016	9,729
Percentage of total moves needed for racially balanced schools (100% replacement)	94	53	72	80
(75% replacement)	80	37	61	65
(50% replacement)	65	33	51	55
Number of schools included in analysis	Elementary	Middle	High	Total
Predominantly White (0–20% non-White	102	35	38	175
Diverse (20–60% non-White)	153	36	43	232
Predominantly White (60–100% non-White)	58	18	13	89
Total	313	89	94	496

Note: LIHTC = Low-Income Housing Tax Credit. Data from U.S. Bureau of the Census, Department of Commerce; Minnesota Department of Education; and Minnesota Housing Finance Finance Agency.

[a]An outcome where the racial makeup of all schools in the region falls between 20 and 60% non-White.

[b]All non-White students leaving a predominantly non-White school are replaced by White students from predominantly White or racially diverse schools.

[c]All non-White students leaving a predominantly non-White school are replaced by White students from predominantly White or racially diverse schools.

The difficulty of relying solely upon vouchers to achieve integration is also reflected in census data: Housing Choice Voucher participants in the Twin Cities area are extremely concentrated, perhaps more than low-income households are generally. Only 21 of the region's 705 census tracts—all but one in Minneapolis or Saint Paul—have voucher use rates exceeding 10%, whereas the region's median census tract has a voucher usage rate of only 0.85%. Across the metropolitan area, 50% of voucher holders live in census tracts that contain only 15.9% of households; meanwhile, 37.4% of all households live in census tracts where there are five or fewer vouchers being used.

The concentration of rental assistance beneficiaries only highlights the importance of geographically distributed place-based assistance such as subsidized housing construction. Most projects receiving public subsidy are forced, as a condition of the subsidy, to accept voucher holders as tenants. Better integrated subsidized housing, then, is one of the few relatively foolproof ways to cut through layered cultural and economic impediments and open up otherwise inaccessible areas to low-income and minority families.

Finally, Dawkins also expresses concern that we do not explicitly discuss the Twin Cities' innovative fair share housing program. We find this an odd critique: our article does examine the geographic distribution of subsidized housing, and concludes that it is inadequate and at odds with federal fair housing law (Orfield et al., 2015, 577–584). The nominal existence of a fair share program cannot change this outcome; instead, the outcome reflects on the fair share program. Whereas the general thrust of our article should make clear that we strongly support fair share requirements such as the Twin Cities', our analysis should make it equally clear that the current program is not performing as hoped.

Elsewhere, we have indeed produced extensive commentary on the fair share program.[4] Whereas it is not necessary to reproduce that commentary in full here, we feel compelled to revisit two key points. First, the regional government has gradually relinquished its enforcement authority over the fair share requirements, allowing suburban municipalities to revert to their former exclusionary practices. Second, and worse still, the regional government has itself, over time, begun to allocate affordable housing in a concentrated fashion, with the highest goals (and largest decennial increases) invariably assigned to the central cities. We recommend a comprehensive revision of this policy, incorporating LIHTC, the Housing Choice Voucher, and all other forms of housing subsidy, as well as local land-use policy and other factors, in housing placement.

Modeling the Impacts of a More Integrative Regional Housing Policy

To illustrate the potential effects of a broad-based, integrative regional fair housing policy that reaches all forms of housing subsidy, we have modeled a scenario in which existing subsidies have been distributed more evenly across the region.[5] This simulation found that if subsidized housing was distributed across the region in proportion with student populations and if the racial mix in subsidized housing was the same everywhere, it would take the region 50 to 80% of the way to eliminating both White- and non-White-segregated schools.

School integration is an essential component of housing policy. Beyond the many well-documented empirical benefits of school integration on student outcomes and generational poverty, integrated schools would also reduce private-market housing segregation. Segregated schools can induce White flight from central city and inner-ring suburban neighborhoods, intensifying housing segregation in a negative feedback loop. An integrative subsidized housing policy represents a major step toward reintegrated schools, which helps break the feedback loop and stabilize racially diverse neighborhoods.

At present, school segregation in the Twin Cities is rapidly increasing, which is both a cause and an effect of growing housing segregation. Between 1995 and 2010, the regional population in majority non-White, high-poverty census tracts increased by about 300%. Simultaneously, the number of schools made up of more than 90% non-White students increased from 11 to 83, and the number of non-White children in these highly segregated environments rose by more than 1,000% (from 2,000 to 25,400)—nearly one sixth of the metropolitan student population. For comparison, during the same time span, the numbers of equally segregated schools in Seattle, Washington, and Portland, Oregon, which have similar demographics to the Twin Cities, increased from 14 to 25 and zero to two, respectively.

For the purposes of the simulation, an integrated school was defined as one with non-White enrollment between 20 and 60%—a range consistent with most definitions. In 2012–2013, 230 of the roughly 500 schools with defined attendance boundaries[6] in the seven-county region had racial mixes in this range, 86 had non-White shares of greater than 60%, and 175 had non-White shares of less than 20%.

Fully integrating the region's schools using student reassignment alone is a tall order, requiring many thousands of student transfers. If integrating all schools was achieved simply by having students of appropriate races in the appropriate schools trade places, then roughly 12,100 non-White students in schools above the 60% ceiling would have to trade places with 12,100 White students in schools below the 20% floor.

In reality, however, most integration programs are unlikely to achieve one-to-one White- non-White student swaps. If, instead, only 75% of the non-White students leaving predominantly non-White schools were replaced by White students, then about 14,850 non-White students would have to relocate to predominantly White and already integrated schools in order for all schools to be below the 60% ceiling. If 50% of moving non-White students were replaced by White students, then 17,750 non-White students would have to move.[7]

Distributing LIHTC and other subsidized housing can dramatically reduce the difficulty of creating integrated schools. Our model distributes LIHTC units, Section 8 project-based units, and Housing Choice Voucher beneficiaries across the region in proportions equal to the distribution of students in the region's schools.[8] Individual units and projects were also integrated evenly across the region, with

the racial mix of units and voucher holders adjusted to reflect the region-wide racial mix in subsidized housing. The children in each of the households in subsidized units were then assumed to attend the relevant neighborhood school.[9]

If Housing Choice Vouchers, LIHTC units and Section 8 project units had been originally distributed as described, a total of 9,729 non-White students currently in predominantly non-White schools would instead be attending a racially balanced school. This represents a very substantial share of the total number of moves needed to fully eliminate racially segregated schools in the region—including predominately White schools. With the generous assumption of a one-to-one replacement rate, fully 80% of the needed student moves would now be unnecessary—or 35% if the model is limited to LIHTC and Section 8 project-based units. But even if only 50% of non-White students leaving predominantly non-White schools were replaced by White students, 55% of the needed moves would be unnecessary—24% if counting only LIHTC and Section 8 project-based units.

Whereas these simulations are rough and surely leave many factors unaccounted for, the fundamental message is equally clear. Because housing subsidies are at present so segregative, a modest, fair share approach to subsidized housing—that is, one that distributes housing in a location- and race-neutral fashion—would nonetheless have had significant integrative impacts.

If housing subsidies had actually been used in a *proactively* integrative fashion, as required by law, their contribution toward a stably integrated regional school system would be even greater.

In addition, because of a lack of data availability, this model necessarily ignores many subsidized units, such as those funded through non-Section 8, non-LIHTC federal programs, or exclusively funded by state and local agencies. A regional fair share policy toward subsidized housing, however, would reach all of these units, bolstering integrative effects beyond those seen in the model. Likewise, if, as many housing experts advocate, subsidy programs are ever expanded to levels commensurate with demand, their potential to reduce racial segregation will also expand—but only if policymakers have previously ensured they are put to use fairly and integratively.

As a final note, we would like to emphasize that any successful metropolitan integration strategy to increase suburban residential choice for low-income minority households should be accompanied by a concerted plan for urban reintegration. Attempts to introduce White or affluent families into segregated central-city neighborhoods are sometimes unfairly characterized as gentrification, but in our view, gentrification occurs when incoming families wholly displace current residents, resulting in a neighborhood that still lacks economic or racial diversity. By contrast, urban reintegration is designed to create a diverse mix of races and incomes, to stave off White flight and disinvestment. Such a strategy might include, for instance, the creation of racially integrated magnet schools, which draw in White residents from the suburbs and improve the education of children who would otherwise attend low-performing segregated public schools. These schools have had been used effectively in several metropolitan areas (like Louisville, Kentucky, and Raleigh-Durham, North Carolina) (Orfield, 2015).

Preserving Affordability

Schwartz also argues that we have overlooked the key role of LIHTC and other subsidies in preserving existing affordable housing. He suggests that creating and preserving affordability might even serve as a bulwark against resident displacement in the event of sudden neighborhood gentrification.

Although we agree that preservation of existing affordable units can be, at times, a valid use of housing subsidies, this is not a subject free from the fair housing concerns raised in our original piece. Selective preservation can create or reinforce segregative housing patterns. To illustrate this process, consider that whereas the Twin Cities do have a substantial number of affordable units located outside of Minneapolis and Saint Paul, these units appear to rarely receive preservation funding. Instead, evidence suggests the vast majority of money spent preserving affordability is put to use in the central cities. For example, in 2014, the state housing finance agency helped preserve 1,427 units of affordable housing. Of these, just 32—2.2.%—were located outside of Minneapolis and Saint Paul.

Such imbalances are not particularly surprising. As Schwartz points out, preservation funding may go further in poor areas than rich areas. Likewise, housing managers in comparatively affluent areas face greater opportunity costs when they operate nonmarket-rate units, and likely would have little difficulty filling an unsubsidized unit. In depressed neighborhoods devoid of opportunity, a rental unit may not even be economically viable without subsidies to minimize rents and attract residents, giving managers a strong incentive to repeatedly seek new infusions of funding.

As a result of these dynamics, if preservation is not undertaken with care, even the disproportionately few subsidized units built in integrated areas can eventually revert to market rates. Meanwhile, subsidized units in segregated neighborhoods risk becoming, for all intents and purposes, permanently subsidized. This in turn can lock in income restrictions for many decades, excluding the middle-class families who might otherwise lift a neighborhood's economic fortunes. Perversely, because market rents in distressed neighborhoods may not be substantially higher than subsidized rents, preservation and the accompanying rent restrictions may be more effective at keeping out new wealth than at ameliorating rents for low-income families.

As for Schwartz's concerns about gentrification, they seem to have been informed by his own studies in New York City. He cites the South Bronx, Williamsburg, and Harlem as examples of places where a neighborhood's meteoric economic ascent has displaced residents.

But New York City is a poor model for most of the nation. New York is a massive metropolitan area and economic engine that is simply not comparable to mid-sized regions, such as the Twin Cities. Demand for housing in New York is vastly greater than in most other regions, and space comes at a much higher premium. Population density in the boroughs cited by Schwartz ranges from about 32,000 per square mile to about 70,000 per square mile, whereas the population densities of Minneapolis and Saint Paul are about 7,500 per square mile and 5,700 per square mile, respectively.

Outside of a few tightly packed, economically unique regions—namely, New York and San Francisco—gentrification involving displacement of residents is exceedingly rare. Of the many poor, segregated neighborhoods receiving disproportionate shares of housing funding, only a tiny handful will ever gentrify. Data produced for one recent study conducted by several of our authors showed only 6% of majority non-White census tracts in 1980 transitioning into racial diversity in the following quarter-century, and less than 0.3% becoming predominately White. Investing in affordable housing in these places *just in case* they become the next Williamsburg is wasteful at best and actively detrimental at worst (Orfield and Luce, 2013).

Subsidized Housing, Revitalization, and the Franklin-Portland Project

Schwartz criticizes our earlier article for not citing several studies that find positive impacts of concerted community development efforts on neighborhoods. But these studies are, on the whole, too broad to be of much use for our purposes. Our article never sought to measure or discuss the broad impact of community economic development, and, indeed, we strongly favor increasing investment and development *apart from low-income housing* in distressed urban neighborhoods. Our critique of community development extends to housing alone: we are skeptical of the beneficial effect of additional affordable housing, all else being equal, on the economic fortunes of these neighborhoods. Although policymakers and scholars sometimes treat economic development and subsidized housing development as virtually synonymous, we would argue that they are in fact distinct and, indeed, can work at odds with each other. Economic development seeks to draw investment into a neighborhood, whereas subsidized housing can reinforce segregated neighborhood demographics, perpetuating and strengthening patterns of disinvestment.

Unfortunately, isolating the impacts of LIHTC and other subsidized housing on nearby housing and neighborhood economies can be very difficult. To effectively isolate the effects of housing programs requires a model and data that control for all other contributors to the neighborhood economy—factors that vary in complicated ways between metropolitan areas, and sometimes between individual neighborhoods within a metropolitan area.

This difficulty is reflected in the range of results in studies of the impacts of subsidized housing. Some reviews of the literature suggest, for instance, that positive spillover effects are more likely in high-income, high-opportunity areas than they are in low-income areas (Housing Research Synthesis Project, 2008). Others conclude the converse (Baum-Snow & Marion, 2009).

The other studies cited by Schwartz have complications that limit their applicability. Galster, Levy, Sawyer, Tempkin, and Walker (2005) look at a commercially oriented community development corporation (CDC) strategy in neighborhoods that were either already gentrifying or racially stable—but this approach has little in common with housing-oriented development that focuses on very low-income neighborhoods. Galster's Richmond study (Galster, Tatian, & Accordino, 2006) also did not focus on housing alone. (Indeed, Galster has noted elsewhere that, in very poor neighborhoods, the concentration of low income housing by itself has very negative effects; Galster, 2004). The other "studies" Schwartz mentions—a newspaper article in *The Guardian* and a housing industry promotional publication—are neither rigorous nor persuasive.

We could as easily argue that Schwartz should have cited Khadduri's (2013) conclusions about this literature:

> Most of the time, however, the LIHTC housing has, at most, a small positive impact on property values beyond the footprint of the LIHTC development [Baum-Snow & Marion, 2009; Funderburg & MacDonald, 2010]. . . . [T]he author has found no research showing that distressed neighborhoods with LIHTC investments improve as measured by other quality measures such as well-performing schools, responsive public services, or safety (p. 2).

The same complexities that limit studies of housing development elsewhere are present in our discussion of the Franklin-Portland project, which Schwartz criticizes for not being broad enough. Conducting a complex econometric analysis of the project, as Schwartz would prefer, would be a major endeavor and would require substantially more data than are available. However, we do find it telling that this particular project—at the time, the largest new construction project in our data set—did not appear to even move the needle, so to speak, on local economic indicators.

Notably, Schwartz essentially endorses our conclusion that the project has had little effect on the surrounding area. He argues that this is because the project includes only 120 units. We would counter that it is perfectly reasonable to expect a $66 million project to completely rebuild several city blocks, which is directly responsible for the production of 12% of a low-income neighborhood's housing stock, to have a neighborhood impact which is quantitatively discernible without reliance upon a specially built econometric model. And, whereas Schwartz argues that the project is not completed, it constitutes a decade-long endeavor, large portions of which were online as early as 2004 and others completed by 2008.

In the end, the Portland Gateway project was discussed because the local community development movement has repeatedly cited it as an example of a game-changing housing project. In scale and ambition, it is hardly average or typical—it supposedly represents community development at the peak of its transformative power. And yet it seems to have done little to change the trajectory of the surrounding neighborhood. We believe that the mediocre outcomes produced by this flagship project bode poorly for the thousands of other subsidized units saturating poor neighborhoods in Minneapolis and Saint Paul. And, indeed, studies consistently show these neighborhoods and their residents are worse off now than they were 30 years ago when these organizations began their work. School performance is down, there is less private credit, there are fewer jobs, the pathway to prison for young men is shorter, health outcomes are worse, and the region exhibits some of the widest racial gaps in the country in income, poverty, unemployment, and education outcomes.

The Legal Obligation to Integrate

Even if there were some evidence that subsidized housing alone could spur economic development in poor neighborhoods, or head off gentrification, it would need to be weighed against the Fair Housing Act's prohibition on the perpetuation of segregation, and the obligation of recipients of federal housing aid to affirmatively further fair housing. Since our article's publication, these obligations have

been reinforced and reaffirmed by the Supreme Court's decision in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project*, and the U.S. Department of Housing and Urban Development (HUD)'s release of its final Affirmatively Furthering Fair Housing rule.

These obligations are frequently misunderstood. For instance, Schwartz speculates that we are "suggest[ing] that the Fair Housing Act requires that all LIHTC and other subsidized housing be situated outside low-income and predominantly minority neighborhoods of the central cities and inner suburbs" (Schwartz, in this issue). But we are saying no such thing. Instead, we are asserting that subsidized housing policy be, on balance, integrative in effect, compared with current living patterns. Areas with greater segregation should receive fewer housing subsidies, not more.

In a very similar fashion, Schwartz cites the Affirmative Furthering rule as "recogniz[ing] the role of place-based strategies" (Schwartz, in this issue). But he omits the essential qualifier that appears in the very next paragraph:

> There could be issues, however, with strategies that rely solely on investment in areas with high racial or ethnic concentrations of low-income residents to the exclusion of providing access to affordable housing outside of those areas. For example, in areas with a history of segregation, if a program participant has the ability to create opportunities outside the segregated, low-income areas but declines to do so in favor of place-based strategies, there could be a legitimate claim that HUD and its program participants were . . . failing to affirmatively further fair housing as required by the Fair Housing Act. (U.S. Department of Housing & Urban Development, 2015, 42,279)

In other words, the law does not forbid building low-income housing in poor and minority neighborhoods, but it does forbid a recipient of federal funds from failing to increase racial integration in its housing siting decisions. It is illegal for a state to deny funding for integrative housing projects in predominantly White areas to further concentrate subsidized housing in high-poverty, segregated areas, as has occurred in Minnesota.

The Role of CDC in Subsidized Housing

Schwartz claims that our previous article's focus on the nonprofit affordable housing sector is inappropriate, in part because "nonprofit organizations account for 20% of all LIHTC housing developed since 1987" (Schwartz, in this issue). Schwartz attempts to support this contention with data from HUD's database of LIHTC units.

The HUD data do not support Schwartz's claim, however. The HUD data only indicate nonprofit involvement through one narrow lens: a single nonprofit sponsor variable. But LIHTC projects only allow one sponsor per project, even though many developments incorporate a network of for-profit and nonprofit entities. In a number of cases, projects with heavy nonprofit involvement appear to have been recorded as for profit for HUD purposes. In other words, the HUD data provide a poor window on whether nonprofits account for any particular housing development.

To generate a more accurate picture, we have conducted a modified version of Schwartz's analysis. Using the same HUD data as a starting point, each project reported in the metropolitan area was examined for evidence of major nonprofit involvement (i.e., as a developer or owner), using a varied collection of data sources.[10]

This task was complicated by LIHTC's tendency to obscure the full set of participants in a project. Syndication of tax credits often requires the formation of a single-purpose limited partnership; that partnership is sometimes listed as owner in both HUD data and other sources of data, such as MHFA records. It is frequently difficult or impossible to determine a partnership's membership using public data alone. News reports sometimes discuss project backers, but many projects are never reported on. (Information about a project's provenance, it should be noted, is particularly difficult to come by in the case of suburban developments.) To ensure that our figures were appropriately conservative, any development without strong evidence of nonprofit involvement was considered a for-profit project. As a result, our determination of nonprofit participation rates should be considered a floor, not a ceiling.

Our analysis showed that approximately 31.7% of regional LIHTC units monitored by HUD included significant nonprofit involvement. But within the central cities of Minneapolis and Saint Paul, nonprofits

were involved in the creation of approximately 44.4% of LIHTC units. Moreover, nonprofit participation appears to be increasing over time—when only the most recent decade of data is included, the regional share of nonprofit LIHTC units rises to 39%. Of all units with a nonprofit connection, 60% were located in Minneapolis or Saint Paul—compared with 35.4% of other units. This distribution seems to comport with the national figures generated by Horn and O'Regan (2011) in their analysis of LIHTC, which show that nonprofits are more likely than for-profits to focus their development efforts in areas of high minority concentration. (And, of course, nonprofit developers also produce non-LIHTC affordable housing, which is more concentrated than LIHTC housing is, although fewer data are available on these units.)

But even these figures downplay the actual influence of nonprofit community developers over affordable housing policy and outcomes, especially in the central cities. Our original article identifies eight CDC, which account for 62% of CDC expenditures in the Twin Cities; of these, six participate in LIHTC development.[11] Within the central cities, those six organizations are together involved in the development of 28% of all LIHTC units and 65% of nonprofit LIHTC activity.

HUD data also reveal that several large for-profit LIHTC producers and managers operate in the region, including Dominium, Sherman Associates, Sand Companies, Shelter Corporation, and Northstar Residential. But of these entities, only Sherman Associates appears to have conducted significant LIHTC development in the central cities, comparable to the major CDC. Most for-profit LIHTC activity in the cities is conducted by much smaller developers, each contributing a few dozen units every decade or so. The central cities contain a majority of the region's subsidized housing, and control a disproportionate amount of housing resources as LIHTC suballocators with large, well-funded community development departments. It is surely relevant, then, that the most stable, experienced stakeholders in affordable housing in the central cities are nonprofits.

What's more, the role of these organizations in housing policy can extend beyond the formal production of housing. Particularly in the central cities where infill development is the norm, for-profit developers are forced to engage with the political system and community organizations in order to compete for housing funding. Often, this includes taking on smaller CDC as community partners or in informal advisory roles, or working with neighborhood-oriented CDC to coordinate activities. In the field of central-city affordable housing, CDC are treated as local experts, or valid representatives of low-income communities. They are thus able to exert influence on development activity out of proportion with their size.

The dense network of CDC in a confined geographic area can help produce what Goetz and Sidney (1997, p. 490) termed a "local policy subsystem." They described the growth of this system and its success in interweaving itself into the urban housing policy apparatus, including the creation of "the Consortium of Nonprofit Housing Developers [which] was created to provide a coalitional body to represent the interests of CDCs" (p. 497). As a result of such activity, "[Minneapolis] began to restructure its housing subsidies to match the type of housing CDCs wanted to do" (p. 497). Despite the substantial number of affordable subsidized units developed by for-profit entities in 1997, Goetz and Sidney recognize that CDC, in effect, led the charge driving affordable units back to the central city: "Although traditional private-sector-development actors (including lenders and developers) had withdrawn and widely disinvested from inner-city neighborhoods in the 1970s, these actors were eventually drawn back into the subsystem by the success of CDCs in generating development activity. . . " (p. 498).

In short, the data support what practical experience suggests and other academic studies have described: the central cities contain a constellation of longstanding nonprofit developers, with many opportunities to form close connections to each other, to specific urban neighborhoods, and to political leaders and policymakers. The leading lights of the nonprofit sector are based out of and oriented toward the central cities, whereas the major for-profit players in affordable housing exhibit a decided emphasis on the suburbs. With this in mind, and given the important fair housing consequences of the place-based development that many nonprofit organizations advocate, it is important to analyze and discuss the role these entities play in capturing and redirecting scarce resources.

But it is also important to recognize that the distinction between for-profit and nonprofit developers can be overstated. If the foregoing analysis demonstrates anything, it is that the line between

a nonprofit project and a for-profit affordable housing project is fuzzy indeed. A great many projects have participants from both sides of the fence, with governmental entities playing a role as well. In HUD's LIHTC data for the Twin Cities, a large number of projects with for-profit managers are recorded as having had nonprofit sponsors, and vice versa.

This, in fact, was a central point of the discussion of CDC in our earlier work. Nonprofit developers work shoulder to shoulder with for-profit developers. As complex entities with a financial, professional, and ideological stake in housing development, they are not immune to the laws of economic and organizational self-interest. In the aggregate, they work to pull money, resources, and political capital toward their areas of focus, which, as it turns out, are frequently lower income central city neighborhoods.

Nonetheless, Schwartz lambasts our inclusion of CDC salaries as "scurrilous" (Schwartz, in this issue). But, as we emphasized in our earlier response to Professor Goetz, the salaries of housing nonprofit executives were included in our previous article not to imply that these developers are somehow undeserving of their generous compensation, but to draw attention to how closely this sector mimics the for-profit sector. As in any industry, some people earning high salaries at housing nonprofits are probably overpaid, whereas others might well be underpaid. But we make no attempt to answer the question of individual deservedness, only asking that the housing industry be discussed *as an industry*, with personal and organizational economic incentives.

Without a major restructuring of how public agencies fund and support subsidized housing development, CDC and related organizations will continue to play an important role in how and where low-income families live. Their impact on fair housing and housing policy deserves critical evaluation.

Notes

1. These data do not include Housing Choice Vouchers, unless, of course, a voucher holder is occupying an otherwise subsidized unit. However, as Schwartz notes, Housing Choice Vouchers are distributed even more segregatively than LIHTC.
2. Edwards v Hopkins Plaza Unilimited Partnership (2010).
3. For instance, this problem is frequently cited by voucher holders in surveys of housing discrimination. See, for example, Fair Housing Implementation Council (2015), p. 109.
4. See for example the Institute on Metropolitan Opportunity report, *Why Are the Twin Cities So Segregated?* (2015).
5. The analysis included LIHTC, Section 8 projects and Housing Choice Vouchers. Only family units were included. The total number of units involved was 22,878. The MHFA data used for the analysis were unit-level data that included whether there was a child in the unit and the race of the head of household.
6. This definition excludes charter, magnet, and special purpose schools without clearly defined attendance boundaries.
7. Although these numbers are substantial, it should be noted that they represent just 7, 9, and 11% of total non-White student enrollment in the seven-county metropolitan area.
8. Race data were available for LIHTC, Section 8 vouchers and most (roughly two thirds of) Section 8 project-based units. Race distributions for Section 8 project-based units with no race data were estimated using the racial make-up of the Section 8 project-based sites closest to each unit missing data.
9. The number of children per subsidized unit was estimated using household data from the Bureau of the Census for households with income below the poverty line. The number and age distribution of children per unit were allowed to vary by race. Children in subsidized units were then assigned to the neighborhood elementary, middle, and high schools based on the estimated age distribution for all subsidized units assigned to specific school attendance boundaries.
10. These included: HUD data; MHFA data recording LIHTC awards; other MHFA records with specific project information; public data made available by city community development departments; and the archives of the *Minneapolis Star Tribune*, *Saint Paul Pioneer Press*, and *Finance & Commerce*, a local real-estate newspaper.
11. These are Eon, Artspace, CHDC, Common Bond Communities, Project for Pride in Living, and RS Eden.

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Notes on Contributors

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Will Stancil is an attorney at the Institute on Metropolitan Opportunity. He holds a juris doctorate and a master's degree in public policy from the University of Minnesota and a master's degree in modern history from Queens University Belfast. He received his undergraduate education from Wake Forest university.

Thomas Luce is the Institute on Metropolitan Opportunity's research director. His research focuses on American metropolitan areas. His work includes co-authored books on economic, fiscal, and planning issues in the Twin Cities, Philadelphia and other metropolitan areas, analysis of the effects of local taxes on metropolitan growth patterns, research on the Twin Cities Fiscal Disparities Tax Base Sharing Program and various pieces on other aspects of metropolitan area development.

Eric Myott develops and conducts research projects at the Institute on Metropolitan Opportunity. Previously he served as a geographic information systems specialist with the Institute. Myott has worked on the Neighborhood Planning for Community Revitalization and Sustainable Lakes Projects, as well as on projects for St. Paul Water and Utility Maps and Engineering. He has a BA in geography from the University of St. Thomas and a master's in geographic information systems from the University of Minnesota.

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Jeremy Gray

From: Jeremy Gray
Sent: Thursday, May 04, 2017 12:01 AM
To: Jeremy Gray
Subject: FW: Comments on Mosaic Partners, LLC Addendum to 2014 Regional Analysis of Impediments to Fair Housing

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From: Wetzel-Moore, Alyssa (CI-StPaul) [mailto:alyssa.wetzel-moore@ci.stpaul.mn.us]
Sent: Monday, April 17, 2017 2:39 PM
To: 'jeremy@mosaiccommunityplanning.com' <jeremy@mosaiccommunityplanning.com>; Melissa Mailloux (melissa@mosaiccommunityplanning.com) <melissa@mosaiccommunityplanning.com>
Subject: FW: Comments on Mosaic Partners, LLC Addendum to 2014 Regional Analysis of Impediments to Fair Housing

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From: Jon Erik Kingstad [mailto:kingstad@pressenter.com]
Sent: Monday, April 17, 2017 12:06 PM
To: Wetzel-Moore, Alyssa (CI-StPaul) <alyssa.wetzel-moore@ci.stpaul.mn.us>
Subject: Re: Comments on Mosaic Partners, LLC Addendum to 2014 Regional Analysis of Impediments to Fair Housing

Hello,Ms. Wetzel-Moore,

No, I did not. I didn't read your out-of-office response that closely. I assumed it was a standard "I'm not here" automatic memo. Is that a problem?

Jon Erik Kingstad

On 4/17/2017 10:29 AM, Wetzel-Moore, Alyssa (CI-StPaul) wrote:

> Hello Mr. Kingstad,
>
> Thank you for taking the time to provide these. Did you send them to Jeremy Gray as directed by my out of office reply?

Alyssa Wetzel-Moore
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Human Rights & Equal Economic Opportunity
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HREEO Champions Justice and Equity by confronting issues of discrimination and providing innovative avenues for accessibility and economic opportunities for all residents and businesses.

From: Jon Erik Kingstad [mailto:kingstad@pressenter.com]
Sent: Monday, April 3, 2017 4:12 PM
To: Wetzel-Moore, Alyssa (CI-StPaul) <alyssa.wetzel-moore@ci.stpaul.mn.us>
Subject: Comments on Mosaic Partners, LLC Addendum to 2014 Regional Analysis of Impediments to Fair Housing

Dear Ms. Etzel--Moore:

I'm submitting these comments on the Addendum to the 2014 Regional Analysis of Impediments to Fair Housing prepared by Mosaic Partners, LLC dated February, 2017. It is my understanding that the FHIC is accepting comments through today, April 3, 2017.

The Addendum is the most recent of a long line of studies which document the barriers to fair housing which exist in the Metropolitan Area of the Twin Cities yet which always seem to fall short of making any advancement in reducing those barriers. The Mosaic Partners Addendum, in the final analysis, comes up very short of any kind of action plan to address reducing or eliminating these barriers.

I would point to one study in January, 2001 by the Office of the Minnesota Legislative Auditor, titled Program Evaluation Report: Affordable Housing . This study was aimed at evaluating the Livable Cities Program which had been adopted in 1995 to create incentives for Metro Area cities to allow for more "affordable housing" under Minn. Stat. §§ 473.25-473.255 (Minnesota Livable Communities Act). The Legislative Auditor concluded that the Act was a "voluntary, incentive-based approach to prodifiding affordable housing that has been only marginally successful in producing more affordable housing." Report, p. 83.

This was damning with faint praise. The Auditor did not expressly say so but did mention that this "voluntary, incentive based approach" was instituted as a compromise with then-Governor Arne Carlson who had vetoed legislation adopted during the two previous sessions which would have adopted a mandatory approach along the lines of court ordered planning for "fair share" of low and moderate income housing. The Legislative Auditor mentions this in his discussion of the legislative history of the Livable Communities Act: at pp. 15-18 of the Report.

During each of the two legislative sessions prior to its 1995 passage, the Legislature adopted a more stringent housing bill. The Comprehensive Choice Housing Bill would have required the Metropolitan Council to declare annually whether each municipality in the metropolitan area provided a pre-determined "fair share" of affordable housing. Municipalities that failed to do so could have satisfied the requirements of the act by complying with the Metropolitan Council's directions to (1) eliminate barriers to affordable housing, (2) allow proposed affordable housing developments in the community, and (3) preserve the affordability of existing housing into the future.

Municipalities unwilling to meet the requirements would have faced serious penalties, including a loss of state revenue-sharing payments and the ability to use tax increment financing. Although the penalties were removed from the final version of the bill in both 1993 and 1994, Governor Carlson still vetoed the bill in both years.

In the end, the Livable Communities Act replaced requirements and penalties of the earlier bill with voluntary participation and incentives. As shown in Figure 3.2, 104 of 186 metropolitan municipalities currently participate in the program, including Minneapolis, St. Paul, and nearly every major suburb. Municipalities that elect to participate in the LCA must negotiate housing goals with the Metropolitan Council. The goals address (1) affordable housing, (2) the mix of rental versus owner-occupied housing, and (3) housing density. In reviewing the goal-setting process, we found that:

•

The Metropolitan Council bases each municipality's affordable housing goals on its location and level of development, not on projected needs for affordable housing. Each municipality's affordable housing goals are based on "benchmarks" that the Council developed by determining the average proportion of affordable housing in municipalities within similar geographic locations and at similar stages of growth and development. If the proportion of affordable housing in a municipality is below the benchmark, the Council attempts to negotiate goals that would increase the proportion of affordable housing. Some municipalities already meet or exceed the benchmark range, including Minneapolis, St. Paul, and several older suburbs. These municipalities typically have goals of "maintaining within the benchmark"—which does not include producing additional affordable housing. Thus, the LCA goals-setting process encourages increased production ofaffordable housing in the developing suburbs, but is not linked to the region's affordable housing needs.

Jay R. Lindgren, the (2001) Regional Administrator of the Metropolitan Council, disagreed with the Legislative Auditor's conclusions arguing that LCA "has been very successful in encouraging local government to address affordable and life-cycle housing issues, [but] the LCA is not housing production legislation." Instead, he said, "LCA implementation has been about raising communities' awareness and commitment regarding affordable and life-cycle housing."

Nevertheless, the 103 participating municipalities "have negotiated goals to add over 12,000 affordable rental units and over 64,000 affordable ownership units by 2010."

Obviously, the degree of racial segregation in the Twin Cities Metropolitan Area has only increased since 2001 not least because the disportionate location of low and moderate income housing development in Minneapolis and St. Paul and insufficient amounts in the surrounding suburban areas. The Addendum does support this analysis but offers only more of the same "voluntary, incentive based approach" of the Livable Communities Act which was failing in 2001 to address the problem.

As I understand it, Minneapolis and St. Paul have entered into a consent decree with Metropolitan Interfaith Council on Affordable Housing (MICAH) that complained to The U.S. Department of Housing and Urban Development (HUD) that alleged that the two cities were acting to place affordable housing in areas of the region that had already absorbed a high percentage of such housing and also alleged "that an assessment of how the region performed in furthering integration was substandard, giving the cities passing grades that they did not deserve." *"Settlement Could Alter How Affordable Housing is Built Throughout Twin Cities" Pater Callaghan,* MinnPost, May 13, 2016.

I would urge the FHIC to adopt the "fair share" approach set forth by the Minnesota Legislature in the bills which were vetoed by Governor Carlson in 1995 referenced in the Legislative Auditor's January, 2001 Report. I'm attaching a summary of that report with my comments. The full report is available online from the Legislative Auditor's Archives.

"Fair share" goals are consistent with the court –ordered fair housing actions taken under state law in New Jersey, Pennsylvania and California (e.g. *South Burlington County N.A.A.C.P. v. Tp. of Mt. Laurel*, 336 A.2d 713, 731-732 (N.J. 1975)) which addressed the various ways local governments often impeded affordable and fair housing with zoning, tax and other subtler devices to raise the cost of housing beyond the reach of even government subsidies. The FHIC must do more than the tepid recommendations set forth in the Mosaic Addendum.

Thank you.

Respectfully,

Jon Erik Kingstad

3684 Garden Court North

Oakdale, Minnesota 55128

(Washington County)

(651)-773-2197

Jeremy Gray

From: Chip Halbach
Sent: Friday, March 31, 2017 9:11 PM
To: Jeremy Gray
Cc: Wetzel-Moore, Alyssa (CI-StPaul)
Subject: FW: fair housing plan - comments due 3-31

From Khyre Solutions

From: Mustafa Jumale [mailto:mustafajumale@gmail.com]
Sent: Friday, March 31, 2017 6:34 PM
To: Chip Halbach <chalbach@mhponline.org>
Subject: Re: fair housing plan - comments due 3-31

Hi Chip,

Hope you are well. Below are response to the draft report. Hope you have a good weekend.

Pages 171-189, the section on community perspectives (Is what you heard from your community fairly represented in the document? If not, what would you add or change?)

- Most of the points raised in our interviews are represented in the draft. I think, there should be a section that focus on the community benefits that are lost by displacing POC/immigrants folks from their communities. It's mentioned throughout this section but it should be more clearly laid out.
- In our engagement, participants complained about the lack of public housing units that accommodate larger families. Such policies separate families and displace them from their communities.

· Pages 190-210, the equity analysis. These are the major themes and conclusions that speak to what is impacting the abilities of people of color to have affordable homes in areas in which they would choose to live (Is there anything missing in this section based on your experience?)

- This is a very good analysis. I think, it is pretty clear that gentrification is happening in the region. There are clear examples of that throughout the city and if one just walks certain neighborhoods, it's hard to avoid.
- Also, many folks have mentioned to us that once affordable buildings satisfy the agreements of any federal tax credits. They become market rate and there are examples of that in St. Paul along the light rail and other areas. It would be good to note, how federal policies to increase affordable housing sometimes backfire.
- Many of the folks that participated in our interviews didn't know how to report housing discrimination. Others, were fearful that landlords would evict them for reporting unsafe housing issues.

· Pages 211-217 are the recommendations. What should happen in order to bring about changes needed to ensure that fair housing exists across the Twin Cities. (What other steps do you think need to be taken, and why?) *Note that MHP reordered these recommendation to better follow the major themes found in the Equity Analysis.*

- We need the state to make it illegal to deny section 8 vouchers
- There should serious consideration of restricting rent.
- We need to create programs to allow low-income people access to home ownership.
- People who are directly impacted by these changes should be at the table. They know best how to improve their access to housing.
- Residents should have as much input on new developments as City hall does.

On Tue, Mar 28, 2017 at 2:06 PM, Chip Halbach <chalbach@mhponline.org> wrote:

> Fair housing engagement grantees, this is a second reminder that your comments on the fair housing plan are due by March 31. I have received comments from two of you so far.
>
> Send your comments to Alyssa Wetzel-Moore, the Fair Housing Chair, alyssa.wetzel-moore@ci.stpaul.mn.us. And copy me so that I know your comments have been submitted.
>
> The fair housing plan is a very long document. That is why in my earlier email I sent just those portions of the document that relate to your community engagement, the consultant's equity analysis and recommendations. I can send these sections again if you request them.
>
> Whatever you do would be welcomed by the fair housing committee and consultant but if you need to set priorities for your time I recommend that you focus on **recommendations**. I have attached to this email all of the recommendations that I have heard. I suggest that you go through these and submit those that best respond to the issues/concerns raised by the groups you engaged through your grant (plus any others you deem important and not on the list).
>
> Let me know if you have any questions.
>
> As I mentioned before, this is your final obligation under your grant agreement with us. Once you send me your comments I'll be able to release the final 10% of your grant.
>
> In case you want to see the entire document, here is the link to the Ramsey County webpage where you can access the draft, called the Addendum to the Analysis of Impediments, https://www.ramseycounty.us/fhic.

Chip Halbach | *Executive Director*
Minnesota Housing Partnership
651.925.5547 (o) | 612.396.2057 (c) | mhponline.org

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Mustafa Jumale

Memorandum

DATE: April 4, 2017

TO: Jeremy Gray, Mosaic Consulting

FROM: Libby Starling, Manager of Regional Policy and Research,

SUBJECT: **Metropolitan Council Staff Comments on the Draft Addendum to the Regional Analysis of Impediments**

These comments consolidate multiple Metropolitan Council reviewers of the draft addendum. Please feel free to contact me if you have any questions about these suggestions.

p. 7: Suggested rewrite for clarity: "By 2040, the populations ~~forecasted population~~ of blacks and Latinos ~~will~~ are forecast to double while Asian population groups ~~will~~ are forecast to triple."

pp. 7-8: There is inconsistency in the bottom paragraph, which begins with, "Minnesota has welcomed refugees into the state since the early twentieth century. And then includes, "In the Twin Cities, these migrants were generally not welcomed…"

p. 11 The numbers are backwards: "People of color make up ~~42.5~~ 57.5% of the population of Brooklyn Center and ~~48.1~~ 51.9% Brooklyn Park."

p. 11: Given the extremely large sampling error on the American Indian population, I suggest less emphasis on these numbers in: "Lakeville's American Indian population decreased by 90.6% and Brooklyn Park lost more than half of its American Indian residents."

p. 16: The numbers can be updated beyond 2006-2010: "As of the 2011-2015 American Community Survey (the latest ACS survey for which this data was available), the majority of the region's Somali population resides in Minneapolis (14,890 ~~12,303~~ persons, 46% of the region's total of 32,538) or Saint Paul (4,770 ~~4,697~~ persons, 15% of the region's total).

p. 26: Sumner-Glenwood, not Summer-Glenwood.

p. 27: The entire seven-county area is considered the Twin Cities (or Twin Cities region or Twin Cities area); do not refer to Minneapolis and Saint Paul as the "Twin Cities". "Overall, ~~the Twin Cities~~ Minneapolis and Saint Paul and their inner ring suburbs are home to the majority of the region's foreign-born population; few reside in exurbs and rural areas."

p. 50: "These losses were concentrated in ~~the Twin Cities~~ Minneapolis and Saint Paul, in which losses were one-fifth (20%) or more each decade." And "The reduction in the Indian population in ~~the Twin Cities~~ Minneapolis and

Saint Paul and the stability of rural and suburban populations combined to further reduce the DI by 0.03 points in the 2000s." and "~~The Twin Cities~~ Minneapolis and Saint Paul held 53% of the Latino population in 1990 and 54% in 2000 and the rural/suburban areas reduced their share only from 47% to 46% (Table 2-4)."

p. 65: "Figures 3-2 and 3-4 show the distribution of rental housing with three or more bedrooms across the Twin Cities region and ~~the Twin Cities~~ Minneapolis and Saint Paul."

p. 71: The source should cite CHAS from 2008-2012 not 2009-2013.

pp. 89-101: This entire section seems to rely on the number of single-family or low-density zoning districts instead of examining the actual acreage of land guided at medium (6+) or more units/acre. For example, according to Metropolitan Council analysis, Lakeville's land guided at medium to high densities allows for 5,143 potential multifamily units. The addendum states, "The zoning map and future land use map for each jurisdiction were not separately analyzed to determine whether enough land area or percentage of residential districts for each jurisdiction are actually permissibly zoned to meet demand for multifamily housing." In fact, the Metropolitan Council has reviewed the land use maps in 2030 Comprehensive Plans for all of these jurisdictions and has determined that there is adequate land to meet forecasted demand for multifamily housing.

p. 93: Minnetonka has an inclusionary housing policy that lives in its Tax Increment Financing (TIF) policy rather than in its zoning code. As they have had a lot of success getting mixed income developments with this policy, we believe they should have a 1 or at least a 2 rather than a 3. Conversely, it is not clear to us why Bloomington, Lakeville and Maple Grove received a 1 on Inclusionary Housing Incentives.

pp. 94, 99: The share of units that are affordable to households earning 51 to 80% of AMI should include the share of units that are affordable to households earning 50% of AMI or less. Brooklyn Park's number (using the same data used in the addendum; the websites have since been updated) should be 79%, Edina should be 33%, Crystal should be 93%, New Hope should be 87%, Richfield should be 87% and Robbinsdale should be 92%.

p. 97: The following sentence does not refer to language that's in any Regional Plan in the Twin Cities area: "There are jurisdictions in the region where single-family districts allow minimum lot sizes and minimum floor areas that meet the Regional Plan's estimation of affordability (10,000 sq. ft. or less minimum lot sizes and 1,200 sq. ft. or less minimum floor area requirements)."

p. 99: It may be worth noting that the *2040 Housing Policy Plan* language around minimum residential densities to address the regional need for affordable housing will inform the 2040 Comprehensive Plan Updates that local jurisdictions are presently developing; local comprehensive plans that now exist were developed with guidance of a minimum density of 6 units / acre.

p. 100: It is not clear to me that it is more desirable to let the market dictate the bedroom composition of multifamily developments rather than city minimums or maximums. We are currently seeing a market preference to construct smaller units (especially 1-BR units) that is increasing the pressure of the availability of rental units that serve families.

p. 100: The share of units that are affordable to households earning 51 to 80% of AMI should include the share of units that are affordable to households earning 50% of AMI or less. Lakeville should be 41% and Woodbury should be 36%.

p. 101: Comprehensive plans can only designate specific sites that are appropriate for affordable housing development if the city has site control of the land (as Woodbury did in the example cited in the Housing Justice Center report).

p. 101: The Mixed Income Housing Calculator, available online at *http://mncalculator.housingcounts.org/* , provides a tangible way of calculating the potential of inclusionary housing policies.

p. 112: While the Metro HRA has no residency preferences, the Metro HRA has a waiting list preference for residents of the region, awarding 95% of waiting list placements to applicants who reside, work, have been hired to work or go to school full-time in the seven-county metro area. (Administrative Plan, p. 4-5)

p. 116: The Council has updated its maps of Areas of Concentrated Poverty – see *MetroStats*. However, I don't think it makes sense to change all of the analysis / tables in the addendum. Rather, I would suggest simply noting that Areas of Concentrated Poverty are a fluid concept and making a note about more recent data.

p. 118: I think there's some confusion here between RCAPs and ACP50s. The text seems to imply that *Choice, Place and Opportunity* was written using HUD's definition of RCAPs and that the maps on p. 119 use HUD's definition as well. This is not true; *Choice, Place and Opportunity* simply used the "RCAP" terminology (but the threshold of 40% of residents below 185% of the federal poverty threshold) before the Council changed its terminology to ACP50.

p. 122: It's misleading to suggest that purchasing a home is typically more difficult for households in areas of concentrated poverty because this assumes that there are equal opportunities for homeownership between areas of concentrated poverty and the rest of the region. In some of our region's areas of concentrated poverty, homeownership is low not only because of the income challenges of their residents but also because the housing stock is largely rental apartments.

pp. 127-140 *Choice, Place and Opportunity* is now three years old, and many of the data sources we used are closer to five years old. While I certainly don't think you should replicate the analysis with newer data, I think it's important to note how old some of these data sources are and note that more recent trends and distributions may be different.

p. 137: Battle Creek not Battlecreek

p. 142: "Their use has not been restricted to areas near Minneapolis and Saint Paul~~the Twin Cities~~ though. Forest Lake, Stillwater, Chaska, and Hastings also benefitted from the program." and "Overall, LIHTC units in were roughly evenly split between ~~the Twin Cities~~ Minneapolis and Saint Paul and the remainder of the region."

pp. 142-6: This section would be stronger if it consistently provided the disaggregated analysis as done on pp. 145-146, distinguishing between new construction and acquisition /

rehabilitation as those have distinctly different spatial orientations (it's impossible acquire / rehab in an area that did not develop until the 1980s or later).

p. 143: Typo in the label – should be 2010-2014.

p. 145: "Fifty-five percent (54.9%) were in ~~the Twin Cities~~ Minneapolis and Saint Paul and 45.1% were in the suburbs."

p. 145: "In comparison, 62.9% of affordable units acquired and/or rehabilitated using 9% of credits were in ~~the Twin Cities~~ Minneapolis and Saint Paul."

p. 147: These sentences appear to be missing something or are inaccurate: "Newly constructed units were less likely to be in ACP50s (38.6%). This share was down considerably over the last decade to 26.7%, from 51.1% in 1998-2007." Is it 38.6% or 26.7%? And when?

p. 147: "Outside of ~~the Twin Cities~~ Minneapolis and Saint Paul, locations that have built the most affordable units using 9% LIHTC credits include…"

p. 150: "In the Twin Cities ~~and the~~ region, affordable units supported by 4% tax credits (not in combination with 9% credits) are the majority of LIHTC units (57.0%)."

p. 150: I can't tell if this is supposed to be "Minneapolis and Saint Paul" or the Twin Cities region: "By activity type, 56.8% of units acquired and/or rehabbed using 4% credits were in the Twin Cities, compared to 69.3% of new construction."

p. 150: It's important to note that while 4% credits have not historically been competitive, this has changed in the last year or two.

p. 153: I think it's misleading to map new construction and acquisition / rehabilitation on the same map, particularly for the 9% credits.

p. 165: "Outside of ~~the Twin Cities~~ Minneapolis and Saint Paul, most sales (by number of units) occurred in Eagan (1,736), Plymouth (1,261), and Minnetonka (1,124)."

p. 195: Areas of concentrated poverty where at least 50% of residents are persons of color (ACP50s) are scattered throughout ~~the Twin Cities~~ Minneapolis and Saint Paul and in some inner-ring suburbs.

p. 197: The community engagement process referenced ties to the work of the multijurisdictional Corridors of Opportunity initiative, not explicitly to the Met Council's work on *Choice, Place and Opportunity*.

p. 197: Citing specific elected officials is somewhat problematic – if you're referencing state Hmong legislators, it may make more sense to cite Mee Moua, first elected in 2002, or Cy Thao, first elected in 2003. (Neither continues to serve in the state Legislature.) Blong Yang is the first Hmong-American elected to the Minneapolis City Council; Dai Thao is the first Hmong-American elected to the Saint Paul City Council.

p. 200: "1,832 subsidized LIHTC units that came online in 2015" must include acquisition / rehabilitation; these were almost-always already affordable units. The sentence suggests that these are new affordable units, which is incorrect.

p. 202: All of the tax credit suballocators – not just MHFA -- have the opportunity to develop competitive allocation processes around 4% tax credits to better target their subsidy dollars.

p. 202: Inclusionary zoning ordinances (we prefer the terminology “mixed-income housing policies”) can encourage affordable apartment development in suburban areas with hot housing markets, but may discourage any new multifamily development in suburban areas with cooler markets for multifamily development (there are suburbs within our region that have been unable to find developers willing to build new apartments at any price).

p. 203: 1,296 seems high for new affordable tax credit units – although the statement is, “were placed into service”. Is this number including both acquisition / rehabs AND new construction? If that’s true, then the framing of “were placed into service” is inaccurate as nearly all of the acquisition / rehab projects were previously subsidized affordable housing.

pp. 203-4: It’s not quite right to give the Met Council the sole authority over “requiring” cities to plan; the Council is simply interpreting and implementing state statute (Minn. Stat. 473.859). I also request that you not use the term “targets”.

p. 204: It’s inaccurate to say that the “Over a third of municipalities in the region have adopted zoning codes that could be considered exclusionary” when the analysis has only examined 22 cities out of nearly 180 jurisdictions in the seven-county area.

p. 204: It’s somewhat misleading to say that municipalities have zoning codes that could be considered exclusionary because “the areas zoned for single- and two-family dwellings limit density through large minimum lot sizes and may impose other restrictive design criteria such as unreasonably large minimum floor areas, large setbacks, or large minimum lot dimensions, which likely impact the feasibility of developing affordable single family and two-family housing” when those same municipalities have guided enough land at moderate-to-high-densities to meet the Council’s Allocation of Affordable Housing Need.

p. 206: There’s not a direct correlation between long waiting lists and low voucher placement rates. The age of the information on a waiting list impacts how quickly a HRA is able to contact names on the waiting list. We suggest the following language: “According to Metro HRA, there are many factors that influence voucher lease up success rates including the age of the waiting list, landlord willingness to participate in the voucher program, participant criminal and rental background, rental market and vacancy rate and rents.”

p. 283: The citation for housing affordability in the column on the right is extremely old; suggest using the Existing Housing Assessments, similar to what was used on pp. 90-100. Rather, the Council estimates that 88% of Coon Rapids housing is affordable to those making 80% or less of the area median family income (AMI). The neighboring community of Blaine had 70%. Other neighboring communities include Fridley at 92% and Anoka at 91%, while Andover was 44%.

p. 299: The land in Eden Prairie’s Rural Residential district is bluff areas along the Minnesota River Valley and should not be developed at higher densities due to their sensitive environmental nature. Zoning is consistent with this policy guidance. This land should not be mentioned as an opportunity for higher density.

METROPOLITAN INTERFAITH COUNCIL ON AFFORDABLE HOUSING

"Do Justice, love mercy, walk humbly with your God." Micah 6:8

MICAH

April 2, 2017

MICAH's Comments on **FHIC Draft AI Addendum**
The Draft Addendum is inadequate and incomplete. . It fails to conform to the basic structure prescribed by HUD rules and guidance, and required by the documents governing the drafting process. It lacks a number of essential substantive, analytic elements, as well as clear measurable goals. Please see attached Institute on Metropolitan Opportunity Comments on FHIC Draft AI Addendum which MICAH supports.)
General Comments

1. The report did compile a significant amount of data which included additional data from community members impacted by housing, Housing Justice Center, Zoning information and cited many resources.
2. Concerns
   A. **Housing Opportunity is about the ability and opportunity to choose where you want to live-**(affordable housing is a key component not just transit). People need to have opportunities to live where they are currently living **and** opportunities to move if they choose (this is NOT an either or opportunity)
   B. Housing Data included and not included
      1. LIHTC- data missing on 25% of funded projects- this is not identified as a major concern. An overlay of areas of concentrated poverty and race should be added to identify where units are located
      2. No data is included on the location of emergency shelters, transitional housing, supportive housing, group homes, GRH units, public housing or other housing funded by entitlement communities, State, Met Council and/or HUD, Naturally Occurring Affordable Units (NOAH) loss and potential loss. **All Housing data needs to be included.**

         (Use MHP Sold Out report and State of Housing Report)

   C. Community engagement segment is about 5% of the report and Equity Analysis is about 5% of report. The data from the community has many erroneous interpretations. The youth perspective was not included. These sections will need significant revisions. The data is overly represented by urban areas and less representative of suburban and rural fringe of the metro region.

   D. **Recommendations** – over 95% are process goals- (review, monitor, study, watch, maintain, consider). There are only a few potential operational goals but there are no outcomes, timelines, who is responsible are identified.

      No change will occur or be measured with these recommendations

      This Section needs to be rewritten.

Specific Recommendations:

Community Engagement/ Perspective additional information or clarification needs to include:

1. Housing Availability, Accessibility, Quality and suitability: The need for thousands of new and rehabbed units that are available, accessible decent, safe, and affordable throughout the region is critical to fair housing choice.
2. Involvement of people in political and community processes: The barriers that preclude many from participating include but not limited to: access to meeting- transportation, site of meeting, time of meeting, language barriers, unable to read materials, ways meetings are publicized (websites, Facebook), format of the meetings and opportunity for community input, lack of childcare and food at meetings, being able to actually attend meetings due to work and family requirements. Even with these barriers many residents want to actively involved in the decisions being made that will impact their lives.
3. Fair Housing Rights, Fair Housing Complaints, Tenant Rights and Responsibilities: Most residents had limited or no knowledge of their fair housing rights and how to make a fair housing complaint. The residents lack of knowledge of landlord tenant rights and knowledge and access to legal assistance is a major concern and needs to be addressed immediately.
4. Income discrimination: Landlords unwilling to accept any form of rent subsidy and requirement of 2-3 x the income for housing, high deposits, pet deposits, and non-refundable application fees for credit/tenancy/criminal background checks impacts fair housing choice.
5. What people look for in a neighborhood: Social capital the sharing of resources by community members needs to be identified in the report. While HUD's framework identifies several types of opportunities- each individual and family may value each of those opportunity differently and generalized statements are inappropriate in describing any specific portion (race, ethnicity, religion, culture) of our community.
6. Neighborhood Culture and Diversity: People's choices on living in diverse communities and living in communities with shared cultures, may change due to multiple issues including length of time in the country, income levels, children, educational system, availability and accessibility of decent, safe, accessible and affordable housing.
7. Opportunities to choose where to live in the Community: The concept of stay or move is an extremely simplistic view of the complexities facing individuals and families whose choices are often limited by multiple personal circumstances including but not limited to: financial, previous credit, tenant, criminal issues, number of children and structural challenges including lack of decent, safe, accessible and affordable housing, discrimination, lack of acceptance of housing subsidies, and exclusionary zoning.
8. Neighborhood Change, Gentrification, and Displacement: Most residents in a community, not involved in the housing or social justice arenas, would tend not to identify these changes in this manner rather that housing costs and property taxes are becoming too high to continue to live in the community, new owners/management are

kicking out current tenants by raising the rents, chain stores are driving local businesses out of business are more typical ways people describe these changes.

9. Communication Barriers Include: Multiple languages spoken in many communities (over 100 in some school districts), ability to read in their own language, and/or English, many communities are oral traditions, limited access and ability to utilize computers, internet, and social media. The generational differences within each culture. Communication barriers within the community of diverse people, with government entities and within one's own culture.
10. Housing needs and desires of New Americans : Intergenerational housing, affordable apartments and homes that have 4-7 bedroom units, manufactured housing options, ancillary housing options
11. NIMBYISM and Discrimination by Neighbors- This is demonstrated by lack of open and welcoming attitude fear and often negative and threatening comments by some community members toward people of differing cultures, race and faith in the community. Exclusionary zoning, opposing multi family or subsidized units being built.
12. Discrimination in purchasing or renting: Blatant violations of Fair Housing Law is often demonstrated through illegal Steering people of differing cultures to and away from specific communities and landlords who refuse to rent to specific cultures, faiths, people with criminal, credit, tenancy issues, people with rent subsidies, youth, GBLTQ communities.
13. Discussion on youth homelessness needs to include the lack of preparation to successfully enter the rental market by any (educational) system, discrimination because of race, age and LGBTQ status. Issues with Housing Assistance application on line for youth with limited access to internet and computer skills
14. Somali populations live throughout the Dakota communities and utilizing their social networks (social capital) help meet each other needs. Culture, faith, race barriers to accessing resources including Housing Assistance.
15. Homeownership- More opportunities toward homeownership are available due to the passage of the HOME Law in 2014 and the Homeownership Capacity program (MHFA) to assist diverse cultures to be trained in homeownership opportunities by their own culture. After the last foreclosure crisis where ½ assets of African Americans was stripped from North Minneapolis residents, there is more hesitancy towards this option. The rising rents, lack of affordable rental housing, and the need for larger units to accommodate larger and/or multigenerational families is making this a more important housing choice opportunity.

Specific Goals:

1. The FHIC will continue to include a Community Advisory Committee and fund community engagement /listening sessions in the development of amendments, addendums and/or new Analysis of Fair Housing Plans ongoing.
2. The FHIC will diversify its membership to be more representative of the Metro community by June 30, 2018.

3. The FHIC will require communities under their jurisdiction to expand community engagement and decision making tables to include the diversity of that community as a requirement to be eligible to obtain funding by December 31, 2018.
4. The FHIC will require annual completion of housing goals set forth in the Community's Comp Plan as a requirement to be eligible to obtain funding by December 31, 2018.
5. The FHIC requires all communities to adopt inclusionary zoning as a requirement to be eligible to obtain funding by December 31, 2018
6. The FHIC requires all communities to adopt zoning codes to allow ancillary and/or multigenerational units as a requirement to be eligible to obtain funding by December 31, 2018
7. Fair Housing and Analysis of Impediments be required in the 2018 Comp Plan of each community in the FHIC's jurisdiction as a requirement to be eligible to obtain funding by December 31, 2018.
8. The FHIC will prioritize funding for large multi housing units to be eligible to obtain funding by June 2018
9. The FHIC will require each community under their jurisdiction to pass rental licensing laws that protect current residents from displacement including the acceptance of rent subsidies/ Section 8/ Housing Choice Vouchers when a property changes ownership or management and one to one replacement within ½ mile at similar rental levels for current resident if unit is demolished as a requirement to be eligible to obtain funding by December 31, 2018.
10. The FHIC require that all communities require Landlords to accept housing subsidies/ Section 8 /Housing Choice Vouchers as a requirement to be eligible to obtain funding by December 31, 2018.
11. The FHIC and communities represented by the FHIC will enforce and pursue legal/ criminal recourse(as well as withhold resources) against violators of the Fair Housing Act (Landlords, Realtors, Financial Institutions) and Landlord Tenant Law by October 1, 2017 as a requirement to be eligible to obtain funding.
12. The FHIC and communities represented by the FHIC will contract, develop and pass legislation with the Housing Justice Center and other appropriate entities to make all application fees refundable and/or an annually updated tenant record to be used that meets the background check requirements for tenants by May 31, 2019.
13. The FHIC will contract with HOMELINE or SMRLS to develop a tenant training program for High school students by October 31, 2017. FHIC will identify at least one school district in each community to implement program by December 31, 2017
14. The FHIC will contract with HOMELINE or SMRLS to develop a tenant training program culturally diverse groups by contracting with specific people from each culture to assist in translation and cultural competence (people from community engagement process) by October 2017. The FHIC will identify at least 3 culturally diverse groups from community engagement to field test and implement program by December 31, 2017.

15. The FHIC will initiate regional culturally appropriate sites to apply in person for Housing Assistance programs by October 1, 2017. FHIC will contract with people from the specific cultures represented in that community to assist in the face to face application.
16. FHIC will immediately contract with HOMELINE to train FHIC members on Landlord Tenant Law by October 31,2017
17. FHIC will provide landlord training to each City in its jurisdiction to train landlords on Landlord Tenant Law and each City makes this a requirement for City License and accessing funds through Consolidated Plans by October 31, 2018.
18. FHIC will contract with the Link to educate FHIC Members on youth housing issues by October 31, 2017.
19. FHIC will require each City in its jurisdiction to provide a specific plan to provide housing for homeless youth as a requirement as a requirement to be eligible to obtain funding by October 31, 2018.
20. FHIC will require communities under their jurisdiction, to adopt rental licensing laws and complete a rental unit inspection including lead testing on each rental unit at least biannually to be eligible to obtain funding by December 31 2018
21. The FHIC will contract with Housing Justice Center, SMLS or other entity to conduct Fair Housing Testing rental and home ownership) in each community represented by the FHIC and publicly report the results by December 31, 2018.
22. The FHIC will engage diverse PR businesses in a multi-media campaign utilizing diverse media sources to educate our diverse communities of their rights under the Fair Housing Law, how to file a Fair Housing Complaint, and Landlord Tenant Law by December 31, 2018.

Thank you for the opportunity for MICAH to comment on the DRAFT Addendum to the Twin Cities Analysis of Impediments.

Sincerely,
Sue Watlov Phillips
Sue Watlov Phillips, M.A.
Executive Director, MICAH

Institute on Metropolitan Opportunity Comments on FHIC Draft AI Addendum

In its current state, the Draft Addendum is inadequate and incomplete as a matter of law. It fails to conform to the basic structure prescribed by HUD rules and guidance, and required by the documents governing the drafting process. Moreover, it lacks a number of essential substantive and analytic elements, which eliminate its ability to serve the role envisioned for it by HUD.

In the interest of remedying these deficiencies, these comments do the following: give an overview the basic purpose and history of the AI Addendum, review the procedural requirements that it is required to meet, and provide substantive commentary on its analysis.

I. HISTORY AND PURPOSE OF THE ADDENDUM

The origins of the AI Addendum are complex and the drafting process has incorporated work from multiple organizations, including various government entities, private companies, civil rights groups, and advocacy bodies. In light of this, it is essential to review the important civil rights purpose that the document is meant to serve.

In 2014, FHIC released an Analysis of Impediments as a component of its standard civil rights certification process. At the time, IMO's comment sought to describe its overarching purpose:

> As a component of its Fair Housing Act obligations, HUD has required HOME and CDBG grantees to certify that they are Affirmatively Furthering Fair Housing (AFFH). In order to fulfill these requirements, a grant recipient must take three steps[1]:
>
> 1. Conduct an AI identifying obstacles to fair housing choice within its jurisdiction and making recommendations to reduce or remove those obstacles
> 2. Take appropriate actions to overcome the effects of the identified impediments
> 3. Monitor these actions and maintain records showing they were taken
>
> The AI serves as the catalyst for this three-step process. The AI documents existing impediments to fair housing, determines their relative severity, and explores remedies, as well as discussing other actions a grantee may have undertaken affirmatively further fair housing. Without an accurate AI, it is impossible for entitlement jurisdictions to proceed to Step 2, because they lack information about which impediments they should be taking action against or what strategies would be most effective in reducing those impediments.

The IMO comments continued to highlight the fundamental civil rights aims of the AI process:

[1] U.S. Department of Housing and Urban Development, Fair Housing Planning Guide 1-2, 1-3 (1996), available at http://portal.hud.gov/hudportal/documents/huddoc?id=fhpg.pdf [hereinafter FHPG].

> The overarching goal of HUD's fair housing policies, the AFFH certification process, and by extension the AI, is to "eliminat[e] racial and ethnic segregation, illegal physical and other barriers to persons with disabilities and other discriminatory practices in housing."[2]
>
> HUD's Fair Housing Planning Guide lays out, in voluminous detail, the parameters of a successful AI. Although the Guide does not mandate a particular format, and of course does not require that every jurisdiction find the same set of impediments, it does clearly describe specific areas that must be investigated in order to uncover all significant impediments to fair housing. Moreover, it makes the clear the depth of analysis that entitlement jurisdictions must conduct.

Finally, the IMO comments highlighted the *comprehensive* nature of the analysis required by an AI:

> For example, in its opening pages, the Guide summarizes the tasks an AI must accomplish – a summary that is repeated in the opening pages of the FHIC draft document:
>
> > The AI is a review of impediments to fair housing choice in the public and private sector. The AI involves:
> >
> > - A comprehensive review of a State or Entitlement jurisdiction's laws, regulations, and administrative policies, procedures, and practices.
> > - An assessment of how those laws affect the location, availability, and accessibility of housing.
> > - An evaluation of conditions, both public and private, affecting fair housing choice for all protected classes.
> > - An assessment of the availability of affordable and accessible housing in a range of unit sizes.
>
> As this summary indicates, HUD places great emphasis on comprehensive analysis and evaluation of trends and findings. The AI is not meant to function as a depository of facts or data but as an analytic document that synthesizes facts and data into concrete conclusions about the regional causes of housing segregation and housing discrimination. This is bolstered elsewhere in the Guide, where HUD specifies that "[t]he scope of the AI is broad" and that it "covers the *full array* of public and private policies, practices, and procedures affecting housing choice."[3] Through the AI, "jurisdictions must become fully aware of the existence, nature, extent, and causes of all fair housing problems and the resources available to solve

[2] *Id.* at 1-1.
[3] *Id.* at 2-8 (emphasis added).

them [and a] properly completed AI provides this information."[4] In part, this entails becoming "familiar with all studies that apply to their community and region," and "carefully consider[ing] the conclusions and recommendations of other housing studies prior to deciding what to study in the AI."[5]

Ultimately, the 2014 FHIC AI was found deficient, and unable to fill the above-described role. Although its shortcomings were numerous, they were concentrated in several key areas:

- A failure to analyze or consider racial segregation as an impediment to fair housing, either regionally or within entitlement jurisdictions.
- A failure to incorporate any analysis of data beyond simple summary statistics.
- A failure to consider the public sector's contribution to housing impediments, especially with regards to affordable housing construction and land use policy.
- A failure to develop robust, specific, and actionable policy recommendations, or to incorporate any metric or other system of monitoring progress towards completion of those recommendations.
- A failure to coordinate with essential regional partners, particularly civil rights organizations and community groups concerned about racial segregation as an impediment to fair housing.

These critical shortcomings ensured that the 2014 FHIC AI was unable to serve as any sort of roadmap for entitlement jurisdictions seeking to affirmatively further fair housing, rendering it deficient and inadequate.

The deficiency of the 2014 FHIC AI was raised in HUD Fair Housing Complaint against the cities of Minneapolis and Saint Paul. That complaint terminated in a Voluntary Compliance Agreement (VCA). One component of the VCA was the initiation of the present process to create an AI Addendum, with the ultimate goal of restoring the 2014 FHIC AI to sufficiency.

When complete, the AI Addendum will be part and parcel of the full 2014 FHIC AI, required to fill the role described in the comments above.

However, as a component the VCA, several subjects were to be emphasized in the AI Addendum – largely those deemed to be have been especially ill-treated in the FHIC AI. These are:

a. The distribution of affordable housing throughout the Twin Cities metropolitan area;

b. the extent to which the recipients administration of its low income housing tax credit allocations reinforces existing racial or ethnic concentrations of poverty or perpetuates racial or ethnic segregation;

[4] *Id.*
[5] *Id.* at 2-18, 2-19.

c. the extent to which the administration of the recipients current zoning ordinances reinforces existing racial or ethnic concentrations of poverty or perpetuates racial or ethnic segregation;

d. the extent to which the recipients other housing related activities and policies affecting affordable housing reinforces existing racial or ethnic concentrations of poverty or perpetuates racial or ethnic segregation.

e. the appropriate balance of investment in place and in investment in new construction

Finally, because the VCA was completed after the 2015 release of the HUD AFFH rule, it instructs that the AI Addendum be informed by the rule and the supporting material released alongside it, most notably the Rule Guidebook.

Thus, the AI Addendum must serve a complex and specific set of purposes: it must restore the 2014 FHIC AI to adequacy and fulfill the general purposes of an Analysis of Impediments; it must comply with the VCA's requirement to focus on certain subjects; and it must be informed by the newly released AFFH rule.

II. COMPLIANCE WITH HUD REQUIREMENTS AND GUIDELINES

Although there is considerable flexibility in how an AI can be completed, HUD guidelines and other factors impose important boundaries on how fair housing issues must be identified and analyzed in the present AI Addendum.

This AI Addendum was initiated in part by the completion of a Voluntary Compliance Agreement (VCA) between several Fair Housing Advisory Committee members and several FHIC jurisdictions. The VCA specifies that the Addendum should be "informed by the instructions and tools provided with HUD's Affirmatively Furthering Fair Housing rule (including . . . the AFFH Rule Guidebook)."[6]

In turn, the AFFH rule and guidebook lays out a simple and logical three-step process by which jurisdictions may overcome impediments to fair housing. It asks jurisdictions to: 1. Identify fair housing issues, 2. Lay out significant factors contributing to those issues, including prioritizing them by order of importance, and 3. Set goals for overcoming the factors as prioritized.[7]

Unfortunately, the analysis in the Draft Addendum does not appear to follow this format, raising questions about its adequacy under the requirements of the VCA. Moreover, failure to follow this format limits the AI Addendum's practical usefulness to entitlement jurisdictions, because it limits their ability to use it as a tool to combat housing impediments. The three-step AFFH format, missing here, is particularly useful for a broad regional document like the 2014 FHIC AI, which addresses multiple jurisdictions that face a range of issues, with causes that differ from place to place.

[6] Voluntary Compliance Agreement.
[7] 24 CFR § 5.154 (d)(4)(i)-(iii).

A. IDENTIFICATION AND ANALYSIS OF FAIR HOUSING ISSUES

In several respects, the Draft Addendum does not conform with the requirement to lay out fair housing issues and significant contributing factors.

Identification of Fair Housing Issues

The first step in the three-step AFFH process – as well as the soon-to-be-retired AI process – is the identification of fair housing impediments, issues, and obstacles. The AFFH rule defines fair housing issue as "a condition in a program participant's geographic area of analysis that restricts fair housing choice or access to opportunity."[8] The rule specifies that this "includes such conditions as ongoing local or regional segregation or lack of integration, racially or ethically concentrated areas of poverty, significant disparities in access to opportunity, disproportionate housing needs, and evidence of discrimination or violations of civil rights law or regulations related to housing."[9]

The 2014 FHIC AI, for all its many defects, contained a straightforward list of housing impediments in the region, categorized by the jurisdictions they affected.

The Draft Addendum does not straightforwardly identify *any* fair housing impediments, issues, or obstacles. The section which would do so in a traditional AI is completely absent. The closest equivalent section in the Draft Addendum, which appears to be intended to serve as a list of impediments, is the section entitled Equity Analysis, which immediately precedes the recommendations.

However, the Equity Analysis is not so much a catalogue of fair housing issues as it is a list of broad subject areas where problems may (or may not) arise. It describes itself as a section where "varied issues [that] intersect and relate one another in important ways . . . are further explored." While this additional qualitative analysis is not unwelcome, it cannot be substituted for a core requirement of the AI.

And nothing in the Equity Analysis fills the role of that core requirement. Some categories in the Equity Analysis do indeed appear to describe a fair housing issue as envisioned by the AFFH guidance; for example, the section entitled "Residential patterns reflect segregation and differing access to opportunity factors by race and ethnicity." But other categories appear to be mere descriptions of facts on the ground; for instance, the section entitled "How residents value neighborhoods and housing is multifaceted."

Nor do all the issues described in the Equity Analysis appear to receive the full endorsement of Draft Addendum's authors; some are dangerously close to speculation. Most notably, in the section summarizing gentrification and displacement, the Draft Addendum admits that the existence of gentrification and gentrification-related displacement is "not a settled point," and that data necessary to show these trends is largely unavailable. But it goes on to, in its words,

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[8] *Id.*
[9] *Id.*

"assume[] that gentrification is likely occurring in some Twin Cities neighborhoods, while acknowledging that this assumption has its detractors."

Through the AI Addendum drafting process, the Addendum's authors received considerable pressure from outside agencies to incorporate gentrification into its findings. This, however, cannot be sufficient reason to include gentrification as a fair housing issue, on equal footing with issues for which significant empirical support *was* found, such as segregation and affordable housing concentration.

It is essential that the completed AI Addendum clearly identify a complete and nonspeculative set of fair housing issues, as defined by AFFH guidelines.

Proposed Change: A formal list of fair housing issues and impediments should be incorporated into the Draft Addendum. Inclusion of issues must be supported by adequate empirical evidence. This list could replace the Equity Analysis, or, more likely, supplement it.

Failure to Clearly Identify Contributing Factors in Analysis

As described earlier, the AFFH rule formalizes the process of analyzing fair housing issues. First, fair housing issues must be identified; second, significant contributing factors that result in those issues must be identified. The rule defines contributing factor as "a factor that creates, contributes to, perpetuates, or increases the severity of one or more fair housing issues." HUD guidance is explicit that "[c]ontributing factors may be outside the ability of the program participant to control or influence," but "such factors, if relevant to the jurisdiction or region, must still be identified." The two-tiered process of identifying fair housing issues and then contributing factors is critical, because HUD guidance makes clear that it is the *contributing factors*, not the overarching issues, that must be addressed by goals and action steps. This requirement helps ensure that goals and action steps are sufficiently concrete and specific to have a meaningful impact.

Unfortunately, the Draft Addendum makes no attempt to identify significant contributing factors or follow the required two-tiered structure, even in broad strokes. Instead, as discussed above, overarching fair housing issues are loosely identified and described. But there are few attempts to connect these issues to contributing factors.

This problem is pervasive in the Draft Addendum, but is well-illustrated by the Draft Addendum's treatment of segregation. The analysis of segregation is split across several subsections: first, in the Demographic Analysis section, an empirical analysis of where segregation exists and its severity; second, comments related to segregation appear in the community engagement feedback; third, the topic receives two pages of discussion in the Equity Analysis section; finally, an appendix contains more detailed analysis of segregation metrics.

But none of these sections attempts to connect segregation to "significant contributing factors" of any sort. A jurisdiction seeking to determine which factors had created segregation within its borders would be unable to locate any such list.

The Draft Addendum does contain, in other sections, information about factors that *may* contribute to segregation – for instance, information about land use policies, subsidized housing placement, community engagement feedback related to housing discrimination, and descriptions of historical housing practices such as redlining. But this information is never connected directly to existing segregation. As a result, jurisdictions would need to engage in an interpretative exercise to determine the contributing factors to their own fair housing impediments. And even then, they could not be certain of their conclusions, because the Draft Addendum occasionally notes that these other factors *do not* seem to be related to existing segregation. For example, at one point it specifically notes that some cities with poor zoning "risk scores" nonetheless have plentiful affordable housing, while other cities with favorable risk scores have limited affordable housing.

In short, by failing to identify significant contributing factors, the Draft Addendum forces entitlement jurisdictions to synthesize their own conclusions about why segregation has grown, perhaps relying on pieces of information scattered across the document. Put bluntly, the Draft Addendum only says that segregation exists, not how it came to be.

To varying degrees, similar failures cripple the analysis of other fair housing issues, such as access to opportunity and disproportionate housing needs.

Proposed Change: Provide a list of significant contributing factors for each fair housing issue identified. These factors must be supported by the research within the Addendum.

Priority Rankings of Contributing Factors

Under the AFFH rule, jurisdictions must not only provide a list of significant contributing factors responsible for each identified fair housing issue, but prioritize the factors on that list. Along with identification of the factors, "prioritization . . . is a process intended to inform goal setting, and help identify strategies, actions, and policy responses to fair housing issues." Jurisdictions have some discretion to design the system of prioritization, but it must be explicitly delineated, and it must "giv[e] highest priority to those factors that limit or deny fair housing choice or access to opportunity or negatively impact fair housing or civil rights compliance." In addition, "the prioritization of factors *must be justified*."

In the Draft Addendum, significant contributing factors are not listed, and therefore cannot be prioritized.

Several trends are identified, however, that seem likely to serve as significant contributing factors to fair housing issues. Moreover, as these trends "limit or deny fair housing choice," they seem likely to merit the highest priority in a completed rankings. These include policies which concentrate subsidized housing in low-income neighborhoods; steering, redlining, and other private-market discrimination; and exclusionary zoning.

Proposed Change: Incorporate priority ranking into the list of significant contributing factors for each identified fair housing issue, assigning the highest priority to those factors which meet the conditions specified by HUD guidance.

B. RECOMMENDATIONS

The recommendations are the most important component of an AI, and the third and final step of the three-step AFFH process described above. Particularly with the release of the AFFH rule, HUD has established clear guidelines governing the content and form of recommendations.

Goals established under these guidelines must each be connected with one or more contributing factor to fair housing issues. Jurisdictions are required to provide the following for each goal:

- A description of how the goal "relates to overcoming the identified contributing factor(s) and related fair housing issue(s)."
- "[M]etrics and milestones for determining what fair housing results will be achieved, including timeframes for achieving them."
- For a regional AI, "the responsible part for each goal."

Additional guidance recommends that goals be specific, measurable, and realistic. They should be accompanied by a firm timeline, including a deadline. And they should be "action-oriented": they should not "simply express an aspiration for change" but describe "specific actions" or "steps" to be taken.

The deficient 2014 FHIC AI fell far short of these standards, a critical shortcoming that contributed to its rejection by HUD. Unfortunately, the Draft Addendum's recommendations, though more numerous, are still insufficient.

Recommendations' Relationship to Contributing Factors and Related Issues

In the Draft Addendum, each recommendation corresponds to one or more "fair housing issue," though no master list of fair housing issues is included in the document. However, the AFFH rule and guidelines make clear that this is not an adequate level of specificity. Each recommendation should instead be related to a *contributing factor* to a fair housing issue, such as subsidized housing concentration or exclusionary zoning. Additionally, each high priority factor must be addressed by at least one recommendation. This greater degree of focus ensures that recommendations are more closely tied to the region's root fair housing problems, and acts as a safeguard against generic, "one-size-fits-all" recommendations.

Moreover, the same guidelines require that the process through which a recommendation will reduce or ameliorate a contributing factor be described. In the Draft Addendum, there are no such descriptions; instead, recommendations are confined to single-sentence summaries. Expanding these summaries into lengthier descriptions will both ensure that recommendations are tailored to the underlying fair housing problems, and assist jurisdictions in translating the recommendations into action.

Proposed Change: Ensure that each recommendation corresponds to a contributing factor to a fair housing issue. Expand the description of recommendations to better explain the changes envisioned and how those changes would remedy the specific contributing factors.

Metrics and Milestones

Metrics and milestones are essential to successful recommendations, both under the previous AI process and the newly-instituted AFFH process. The AFFH guidance calls them "a critical part of the goal" and says it is "important to set measures that are meaningful, realistic, and achievable." It notes that "[i]n many cases . . . there will be a need to define metrics and milestones for determining success that go beyond a yes or no determination of whether a specific goal has been achieved."

The guidance gives examples of metrics, such as requiring a certain number of affordable units to be produced in high-opportunity neighborhoods by specific dates across a span of time.

At present, no metrics ore milestones have been provided for any of the 45 recommendations in the Draft Addendum. As such, it is difficult for jurisdictions to monitor their progress towards completion of their fair housing obligations, and difficult for outside groups and advocates to ensure whether jurisdictions are attempting to honor those obligations.

Proposed Change: Metrics and milestones should be added to the recommendations. These should follow the guidelines laid out in HUD AFFH materials. Effort should be made to provide hard numerical metrics when possible, and intermediary goals as well as final measures.

Vague or Aspirational Recommendations

In its comments on the 2014 Draft AI, submitted over two years ago, IMO noted that "[f]ailure to lay out recommendations in sufficient detail, as well as an overreliance on vague recommendations that require future research or discussion, short-circuits the entire AFFH certification process." Those comments strongly criticized the use of aspirational or open-ended language in the recommendations, essentially encouraging jurisdictions to continue the analytic work that is the province of the AI itself. For instance, IMO stated that the 2014 Draft AI suffered from "vagueness":

> They are . . . minimal both in description and content. Most only consist of a single sentence or line. None include any discussion of how they were chosen or developed, or whether other strategies were considered and rejected. . . This sort of highly speculative recommendation, in which jurisdictions are called upon to research problems on their own, and then develop an independent solution with no real input from the AI, is the norm. Many recommendations begin with phrases such as "[e]xplore concepts," "[e]ncourage practices" "[r]eview strategies," and "[d]evelopment of partnerships." . . .
>
> Jurisdictions cannot undertake unreasonably broad remedies, or monitor their performance of actions that have been left undefined, inevitably resulting in a failure to complete steps two and three of the AFFH process. Many of the suggested remedies (e.g., education, outreach, and partnership building) are by their nature difficult or impossible to concretely monitor. A skeptical observer might infer that this is part of an intentional tactic to stymy HUD's fair housing aims: devising nebulous remedies in order to satisfy HUD requirements without making any real,

effective, or measurable commitments to remedy segregation or alter living patterns.

The recommendations in the Draft Addendum are more numerous and varied than the recommendations in the 2014 Draft AI, and several request concrete, unambiguous policy changes or steps. (For instance, the first recommendation, that Minneapolis and Saint Paul "work towards enactment" of source of income protections, does not suggest the need for further research or independent policy development.)

However, a number of the recommendations use the same vague, open-ended language that crippled the 2014 Draft AI. For example:

- Recommendation 21: "Analyze zoning codes in areas not covered by this study for fair housing issues."
- Recommendation 22: "Continue research into gentrification and loss of affordable housing to identify areas where it may be occurring."
- Recommendation 24: "Analyze the MN Challenge recommendations related to reducing the cost of affordable housing for feasibility at the local level; *implement as appropriate*." (emphasis added)
- Recommendation 25: "Explore options for amplifying community voices in local planning decisions."
- Recommendation 30: "Prioritize rehabilitation and preservation of affordable housing in areas where displacement is known to be occurring."
- Recommendation 35: "Remove or amend residency preferences to better advance regional fair housing choice."
- Recommendation 41: "Review LEP plans and update as needed to better serve the needs of people of oral-based cultures."

In accordance with HUD guidelines, "specific" and "action-oriented" goals are favored. By contrast, if the underlying problem is vaguely defined or poorly understood, it may not be an appropriate subject for a recommendation. A smaller number of robust, heavily-supported recommendations, accompanied by metrics and miletsones, is preferable to a large number of open-ended or aspirational recommendations.

Proposed Change: Recommendations containing inappropriately open-ended or vague language should be elaborated upon, or eliminated.

III. COMMENTS ON AI CONTENT

In addition to the more procedural comments above, we have a number of comments on the content and analysis of the Draft Addendum. This includes both information and analysis that we believe was improperly or unwisely omitted, and substantive topics that were framed or addressed incorrectly. We have subdivided these comments into three broad categories:

A. Sources of information and data that were not included in the Addendum, or were included but should have received greater emphasis.

B. Areas in which the Draft Addendum's identification of fair housing issues or analysis of those issues is substantially flawed or incomplete.

C. Concerns related to the Addendum's recommendations, including subjects that were included in the analysis but have been omitted from the recommendations, or have been insufficiently addressed by the recommendations.

As laid out in the first section, the subject matter focus of this Addendum has been specified in advance by the VCA leading to its drafting. The substantive shortcomings discussed below prevent the Addendum from adequately analyzing those subjects, and thus, if left unaddressed, would render it inadequate for the purpose of satisfying the VCA. This is particularly true of the Draft Addendum's treatment of subsidized housing policy and funding, and its failure to examine zoning laws and policies in the context of actual (as opposed to potential) segregative impacts.

Each of the three categories above will be discussed in turn.

A. OMITTED SOURCES

The new AFFH rule requires jurisdictions to supplement their fair housing planning process with "local data and knowledge." This is not discretionary: the AFFH Rule Guidebook states that "where useful data exists, is relevant to the program participant's geographic area of analysis, and is readily available at little or no cost, the rule *requires that it be considered*."

The Guidebook further specifies that sources of local data include "[c]onsultation with local or regional universities, who may have relevant research and reports." Examples of the knowledge these sources may provide include "[l]ocal history on fair housing issues and the capacity of fair housing outreach and enforcement efforts in the jurisdiction and region.

The Institute on Metropolitan Opportunity has produced a variety of peer-reviewed articles, reports, sets of public comments, and other documents that are highly relevant to fair housing issues in the Twin Cities. Most of this information appears to have been omitted from the Draft Addendum. The reasons for this omission are unclear, given the HUD requirement that such data be considered, and the prevalence of this data both in local discussions of fair housing issues and in the underlying Fair Housing Complaints that gave rise to the AI Addendum process. Moreover, other University of Minnesota data sources were included and featured heavily in the Draft Addendum's analysis, most notably preliminary, unpublished data, derived from an unpublished PowerPoint presentation, produced by the University's Center for Urban and Regional Affairs.

The following IMO data sources should be incorporated into the report's analysis.

Housing Policy Debate Articles on Affordable Housing Development Costs (2015-16)

IMO staff published a series of three articles in the peer-reviewed journal *Housing Policy Debate* in 2015 and 2016. The initial article, entitled *High Costs and Segregation in Subsidized Housing Policy*, was accompanied by commentary and discussion from a number of housing policy experts, including Douglas Massey and Jill Khadduri, both preeminent housing and urban policy

scholars. In response to rebuttals by Edward Goetz and Alex Schwartz, IMO staff published two followup pieces.

Taken together, these articles discuss several key fair housing issues in the Twin Cities region. First, they address the region's changes to regional housing policy that are partially responsible for Twin Cities segregation. Second, they describe the patterns of concentration of affordable housing in the central cities of Minneapolis and Saint Paul. Third, they provide what is, to date, the only attempt to analyze the cost of subsidized housing construction in the region by geographic location and other building characteristics, using a proprietary dataset not available in public data sources. Fourth, they offer an industry-wide analysis of the public and private interactions that result in current subsidized housing development patterns in the Twin Cities. And finally, they test a common claim relevant to subsidized development strategies: that such development will provide revitalizing economic benefits to surrounding neighborhoods.

This series of articles, and the supplemental articles by Massey and Khadduri, contribute essential information to the understanding of contributing factors to fair housing issues in the Twin Cities, and help reveal the economic and organizational forces that have helped produce current regional living patterns.

Why Are the Twin Cities So Segregated? (2015)

This article, first published as a 2015 report and soon to be published as an article in Mitchell-Hamline Law Review, offers a historical and institutional analysis of Twin Cities segregation. Beginning in the 1960s, it analyzes the policies and behavior of a number of key public and private actors, including the Metropolitan Council, the governments of the two central cities, and two parallel industries critical to civil rights and fair housing industry: the poverty housing industry and the poverty education complex.

By tracing this historical narrative, the article shows the ways in which distinct and discrete policy changes over the course of several decades have increased housing segregation and reduced access to opportunity in the Twin Cities. In contrast to most analyses of this subject, which suffer from a present-day bias, the article focuses on historical factors, bolstered by newspaper and archival research, and government documents. Because not all contributing factors to fair housing impediments are readily visible in current policy, this historical perspective is indispensable if a full understanding of the issue is to be obtained.

The Rise of White-Segregated Subsidized Housing (2016)

This report, completed in 2016, describes a troubling fair housing issue in the Twin Cities region. While most subsidized housing is occupied by families of color, a small but growing subset of regional housing is predominantly occupied by white families. That housing tends to be located in more affluent, whiter areas, tends to be constructed at much greater expense, and tends to utilize a variety of screening mechanism (e.g., application deposits or "artist screening") that eliminate lower-income and nonwhite people from the tenant pool. The report describes the combination of political, financial, and legal trends that have resulted in the creation of such housing.

This report contributes to the AI Addendum in two ways. First, it identifies a previously overlooked discriminatory trend in subsidized housing, which has the effect of creating a legally impermissible "dual" system, in which separate buildings are operated for white and nonwhite residents. (Because the trend is both national in scope and previously unknown, the report received considerable media coverage, including in the *Star Tribune*, *Pioneer Press*, *Atlantic Monthly*, and *New York Times*. As a result, many local organizations are aware of and concerned about the fair housing issues posed by white-segregated subsidized housing.)

Second, the report provides analysis of demographic occupancy trends in affordable housing, which, to our knowledge, is not analyzed in other public data sources. In doing so it provides important nuance to several assumptions underlying affordable housing policy, namely that affordable housing is uniformly occupied by families of color. This is important context for the Draft Addendum's analysis of subsidized housing policies and siting.

B. COMMENTS ON ANALYSIS

We have a number of comments on the substance of the Draft Addendum's analysis. As these comments are varied, we simply raise those comments in the order their corresponding subjects appear in the Addendum.

Statistical Analysis of Segregation

The AI Addendum's analysis of segregation is critical to the success of the Addendum as a whole and, indeed, to the adequacy of the 2014 FHIC AI. Absence of segregation analysis was perhaps the most striking deficiency of the unmodified 2014 FHIC AI.

The Draft Addendum's empirical analysis adopts a useful frame for addressing these deficiencies, but lacks the necessary scope. The use of multiple metrics of segregation is an appropriate starting point for understanding the complex patterns of segregation that define the Twin Cities region. Especially useful is the use of a predictive model to determine where racial concentrations do not correspond with those predicted by economic characteristics alone.

However, other than Figure 2-19, which does not consider specific racial groups, this predictive analysis is only conducted at the jurisdictional level – cities and counties. In reality, much segregation occurs at much smaller scale – the neighborhood or census tract level. There is no apparent reason the predictive analysis could not be conducted at smaller scales.

Proposed Change: Conduct the predictive demographic analysis at the neighborhood and tract levels, in order to identify potentially discriminatory areas or practices with greater specificity. We understand that it would be difficult to report the results of such analysis in table form for the entire region, but a threshold criterion – e.g., a certain degree of nonwhite concentration beyond predicted levels – could be set, and all tracts meeting that criterion listed and displayed.

Local Zoning Codes

In terms of data collection and categorization, the Draft Addendum's local zoning analysis is thorough and impressive. The zoning analysis, however, suffers from several methodological quirks.

The practice of generating scores and subscores of 1, 2, or 3, representing "low risk," "medium risk," and "high risk," is potentially confusing for entitlement jurisdictions. First, the scores necessarily represent the somewhat arbitrary assignment of risk values to complex and multifaceted land use policies. In additional, there are some purely mathematical oddities to this system: the absence of a score of 0 creates a situation in which 1 is the minimum possible score. But in most instances multiple scores are averaged together, which means a score anywhere near 1 (or 3) is very unlikely. Simple regression to the mean ensures that most scores will be approximately 2, while a score of 1.5 is extremely low and a score of 2.5 is extremely high. None of these facts are likely to be intuitively obvious to readers, or, for that matter, jurisdictions.

More importantly, as the text of the Draft Addendum notes, the impact of zoning codes on existing fair housing impediments and segregation often cannot be analyzed using a simple numerical score system. Qualitative considerations may, and do, play a role. For example, in dense, built-out urban environments with ongoing construction, inclusionary zoning rules could mitigate segregation. But in areas with less ongoing construction, and lower-density land-use patterns, inclusionary zoning is unlikely to have an impact.

The AFFH rule and guidance offers one pathway around this difficulty. Land use laws, rather than being an independent fair housing issue, are more typically a "significant contributing factor" to underlying problems like segregation or lack of access to opportunity. As such, it may be appropriate to analyze zoning and land use laws in the context of the Draft Addendum's findings with regard to other issues. For instance, if the Addendum finds that a particular community suffers from segregation, or scarcity of subsidized housing, zoning laws may be considered in the context of that finding, in order to determine if any particular zoning policy is likely to contribute to it.

Proposed Changes: Integrate local zoning code analysis with findings about disparities, housing access, and segregation. In jurisdictions with critical fair housing issues, directly attempt to identify any linkage between zoning codes and those issues.

Subsidized Housing Funding Policy

In the Draft Addendum, the only source of subsidized housing funding subjected to thorough scrutiny is the low-income housing tax credit (LIHTC). Because LIHTC is the single largest source of affordable housing funding, this is a logical starting place for analysis. However, there are several shortcomings to this approach.

First, LIHTC does not account for the entirety of affordable housing funding. Other sources – for instance, Minneapolis's Affordable Housing Trust Fund (AHTF) – also play an important role in completing project funding and producing affordable units. Allocative policies related to these other sources of funds are important components of regional subsidized housing policy. This is particularly true because most affordable projects are funded from multiple sources; without funding from any one of those sources, the projects cannot continue. As a result, segregative or otherwise problematic conditions placed on *any source of funding* can have a segregative effect, regardless of whether the other sources of funding are distributed integratively or neutrally. While analyzing every potential source of funding would be prohibitively resource-intensive,

acknowledging the role of these other programs is essential. In addition, it would be wise to consider the fair housing impacts of the largest of these programs, such as the aforementioned Minneapolis AHTF.

Second, the Draft Addendum's treatment of allocative point systems is incomplete. It rightfully considers the fair housing effects of points assigned for integrative development, and the potentially segregative effects of points allocated for neighborhood support. However, a number of other common point allocations have potentially segregative effect. Among the most important of these are points allocated for location along a transit line, particularly in Minneapolis and Saint Paul. The vast majority of transit lines and transit stops are located in highly segregated, low-opportunity neighborhoods. In addition, points allocated for receipt of additional funding can contribute to segregation, because additional funding sources are often easier to come by in segregated areas heavily served by central city development agencies and nonprofits. Comparatively affluent suburban areas, by contrast, rarely offer much in the way of subsidized housing funding.

Finally, and perhaps most importantly, the analysis of LIHTC allocations overlooks the single most segregative component of the Minnesota tax credit system. This is the "suballocator" system, in which the two central cities receive a minimum annual share of tax credits. This system was instituted in the late 1980s for the purpose of ensuring that Minneapolis and Saint Paul receive an above-average share of affordable housing funding; since that time, the region's population has continued to shift into the suburbs, while the suballocator shares have been adjusted only infrequently. The consequence of these trends is that the two central cities have received an increasingly-disproportionate share of the metropolitan area's tax credits. In addition, a certain number of tax credits are set aside by the state housing agency for nonprofits, and can be awarded across the region. However, because most housing nonprofits are located in heavily-segregated central city neighborhoods, these tax credits also tend to end up in Minneapolis and Saint Paul. No examination of tax credit outcomes in the Twin Cities can be complete without considering the suballocator system.

Proposed Changes: Discuss and examine non-LIHTC sources of affordable housing funding. Consider the fair housing effects of additional LIHTC point criteria. Consider and discuss the fair housing impacts of the suballocator system.

Gentrification

In the context of fair housing, discussion of gentrification must be undertaken with great care. This is because many of the possible remedies to gentrification—creation of affordable housing, efforts to moderate market-rate housing development and private investment, efforts to preserve neighborhood character or existing affordability—can, if applied to a non-gentrifying neighborhood, create or accelerate the concentration of poverty.

As a result of this, it is essential to clearly identify *where* and *to what degree* gentrification is occurring, as well as what fair housing harms result from it. The Addendum cannot merely "assume[] that gentrification is likely occurring in some Twin Cities neighborhoods, while acknowledging that this assumption has its detractors." Such an assumption risks causing far

greater fair housing harm than benefit. In order to generate coherent action steps, the Addendum must "nail down" gentrification so that it can be clearly located and comprehensible to entitlement jurisdictions.

The process of identifying gentrification is complicated by the fact that there is no single, accepted definition of the phenomenon. Even the Draft Addendum's discussion of gentrification discusses several, loosely related definitions of the phenomenon, with no clarification as to why those particular metrics were selected. Without a firm definition, virtually any neighborhood can be labeled as gentrifying, gentrified, or at risk.

Much like segregation, gentrification is a phenomenon that occurs at the neighborhood level, not at the jurisdictional level. However, because gentrification typically occurs more rapidly than segregation, analyzing changes at the smallest geographic units introduces considerable risk of sampling error. This is particularly true if gentrification measures are sensitive to neighborhood improvements, no matter the scale. For instance, several of the metrics in the Draft Addendum regard *any* increase in neighborhood educational attainment as symptomatic of gentrification – a standard which would likely produce many "false positives" as a consequence of sampling errors in Census data. As a result, it is not always preferable to use the smallest possible unit of geography when measuring gentrification.

For the reasons above, the Draft Addendum's attempts to identify the areas in which gentrification is occurring in the Twin Cities region are not sufficiently specific or rigorous to be useful to jurisdictions concerned about potential gentrification. Equally concerning is the inclusion of third-party findings on the subject in the form of a CURA draft report, which suffers from many of the problems described above. The Addendum attempts little independent analysis of this report – particularly necessary in this instance since the report is far from complete. But the CURA report's conclusions about where gentrification is occurring are inconsistent, and alarmingly, 80 percent of the census tracts it flags as suffering from gentrification have shown increases in poverty over the same time period. The inclusion of these finding thus risks causing further concentration of poverty by mistakenly triggering opposition to investment in declining neighborhoods.

Proposed Change*:* Provide a more-complete definition of gentrification, ideally including statistical measures that can be empirically tested. Clearly delineate the fair housing impediments gentrification creates, especially beyond the harm of displacement, which should be treated separately (see below). Limit the inclusion of incomplete studies of gentrification, or provide adequate independent analysis to support those studies.

Displacement

The Draft Addendum makes little attempt to separate its discussion of displacement from its discussion of gentrification. In reality, however, the connection between the two problems is loose and often nonexistent.

Research consistently shows that displacement is *more* likely to occur from neighborhoods where economic indicators are declining than neighborhoods where indicators are improving.

This is because real wages in declining neighborhoods tend to fall faster than rents, while, in improving neighborhoods, they keep pace with rents. Another confounding factor is regional housing costs, which can rise and fall in concert. Increasing housing costs in one neighborhood may mean nothing about that neighborhood but instead be part of a broader regional trend.

Moreover, in declining neighborhoods, the overall number of housing units is often declining or stagnant. By contrast, in improving neighborhoods, the overall number of housing units is often growing, meaning that in-movers do not necessarily displace previous residents.

Notably, these processes can cause neighborhood residents to misreport gentrification where none is occurring. From a ground's-eye view, it is hard to distinguish between displacement due to rising rents and displacement due to falling incomes, and many residents assume any displacement at all is symptomatic of gentrification. Consistent with this tendency, the community engagement process for the Draft Addendum seemed to identify more gentrification-caused displacement than is apparent in empirical measures.

The Draft Addendum appears to inadvertently recognize that there is a contrast between displacement and gentrification, when it notes that areas with large amounts of so-called apartment "upscaling" do not appear to be the same areas as those which have been flagged as gentrifying. It, however, does not take this observation further, and recognize that displacement and gentrification are two separate phenomena, which occur in different places, and have different causes.

In discussions of both gentrification and displacement, the Draft Addendum makes little effort to identify the scale of the problem – a necessary consideration when determining the scale of efforts to remedy it.

In the case of displacement caused by gentrification, the scale of the problem appears minimal. In Minneapolis and Saint Paul between 2000 and 2014, only 17 out of 198 census tracts gained non-poverty population and lost poverty population, which would be necessary if newcomers were displacing existing residents. The total poverty population in those tracts only decreased by 1608. For comparison, 111 of 198 tracts saw a *decline* in non-poverty population and an *increase* in poverty population – a pattern consistent with the concentration of poverty. The number of individuals in poverty in these tracts *increased* by 35,111. Similar patterns were observed regionwide. The full findings of this analysis are included in the tables below.

Although these figures are not precisely accurate due to sampling error, this preliminary analysis suggests the number of residents newly impacted by concentration of poverty is ten to twenty times greater than the number of residents impacted by displacement.

Proposed Changes: Specify that displacement and gentrification are separate phenomena and often unrelated. Conduct a more rigorous analysis of where displacement is occurring, and the scale of the problem.

Representativeness of Community Engagement Feedback

In the Twin Cities region, people of color and families in poverty are more likely to live in the suburbs than in the central cities of Minneapolis and Saint Paul. The Draft Addendum's community engagement results, however, appear to draw much more from the central cities than the suburbs.

While, without additional data, it is impossible to make precise determinations of the relative representation of different areas in the process, the maps in the community engagement demographic summary make clear that the vast majority of responses were collected from Minneapolis and Saint Paul. But the majority of every nonwhite demographic group resides in the suburbs: 51.2 percent of black residents, 65 percent of Asian residents, 59.8 percent of Hispanic residents, and 50.3 of American Indian residents.

This problem is further exacerbated by an apparent geographic focus on a handful of areas within Minneapolis and Saint Paul -- primarily higher-poverty ZIP codes that contain neighborhoods with heavy concentrations of poverty. For example, just four high-poverty ZIP codes in Minneapolis and Saint Paul account for at least 104 responses, approximately 25 percent of the total who provided responses. (It is possible that these areas account for a considerably larger share; again, without exact data, it is impossible to say.)

It is sometimes assumed these heavily segregated neighborhoods, representing North and South Minneapolis, the Central Corridor, and East Saint Paul, contain a significant portion of the region's population of people of color. But this is not the case. Instead, they contain only a tiny fraction of the nonwhite families of the Twin Cities: 14.2 percent of black residents, 14.3 of Asian residents, 8.0 of Hispanic residents, and 8.5 of American Indian residents.

In short, the results of the community engagement process seem likely to reflect the priorities and concerns of the minority of Twin Cities residents who live in the central cities, and especially those living in a minority of neighborhoods in those cities. The priorities and concerns of these residents are certainly essential to a successful AI. However, they are not sufficient: the AI Addendum is regional in scope and must incorporate feedback from the majority of individuals and families living elsewhere, who, owing to the very different geographic, political, and social contexts of suburban life, likely face a very different set of impediments to fair housing.

There are a variety of techniques that can adjust for this problem. As in scientific surveys, subsamples can be analyzed separately, with feedback broken down by demographics and geography. Feedback can also be weighted to better reflect existing demographics - if suburban residents are underrepresented in the raw feedback, concerns that appear to be shared by many suburban residents can nonetheless be given greater weight in the final analysis than an unadjusted tabulation would suggest. This would, in effect, help correct for errors and shortcomings in the engagement process.

Proposed Changes: Weight feedback analysis by geography and regional demographics to better capture the concerns of populations underrepresented in the raw feedback. Provide more detailed demographic information with crosstabs by demographics and location.

Analysis of Community Engagement Feedback

Most of the Draft Addendum relies heavily on empirical metrics. But in the community engagement section, this reliance on numerical measures breaks down. Outside of the initial summary statistics, the section does not place the engagement analysis in any sort of quantitative frame. Instead, the section relies entirely on "theme analysis" - what appears to be a euphemism for subjective interpretation. The primary work product here is a series of short summaries attempting to summarize the views expressed in the aggregate feedback. Although some direct comments are included prior to each summary, these appear to be individually selected as support for the summary's various conclusions. It is unknown how many comments *do not* appear, or what those comments may say. In addition, the characteristics of any given commenter are unknown. Thus, the comments serve little informational function.

Simply put, the community engagement analysis seems to have simply placed comments into somewhat arbitrary "piles," and sorted by loosely defined "themes." The subjective risks of this technique are substantial: they enable the interpreter to build an ad hoc narrative out of raw data. Such a process can be steered to produce widely varying conclusions from precisely the same feedback.

The previous 2014 FHIC AI attempted to categorize respondents' comments to produce rough tallies of observed impediments. Moreover, the previous AI included an appendix with every single comment received, allowing third parties to review the data themselves rather than relying fully on the consultant's own efforts to subjectively characterize the data. These efforts should be replicated here to reduce the subjectivity of the analysis. In addition, locational data on commenters should be provided where possible.

Proposed Change: More empirical data on feedback should be provided. Comments should be made available as an index. Where possible, comments should be categorized by the ZIP code and jurisdiction where they were collected.

C. COMMENTS ON RECOMMENDATIONS

Source of Income Protections

Recommendation 1 is that Minneapolis and Saint Paul adopt source of income protection for voucherholders. Minneapolis recently adopted such an ordinance, so this recommendation is partially outdated. Moreover, adopting such an ordinance in the central cities alone risks concentrating poverty by providing protections in areas where concentrations already exist. Source of income protections should be instituted regionally.

Proposed Change: Extend recommendation to all jurisdictions, as well as the Metropolitan Council.

Central City Affordable Housing Funding

Data in the Draft Addendum demonstrates that a disproportionate share of subsidized housing in the Twin Cities region is concentrated in Minneapolis and Saint Paul. In addition, Minneapolis and Saint Paul command independent sources of affordable housing funding, such as the

Minneapolis Affordable Housing Trust Fund, while most suburban jurisdictions do not. There is little evidence that fair housing planning is considered when this funding is allocated. Nor is there any evidence that the central cities have considered the fair housing impacts of previous investments from these sources, or even gathered the project data necessary to begin such an examination.

Proposed Change: Add a recommendation that the central city community development departments integrate fair housing planning into their existing financing efforts. Recommend that impact on segregation and access to opportunity be addressed as a gateway consideration in all projects financed by the central cities.

Central City Fair Housing Planning

As the Draft Addendum demonstrates, fragmentation of policymaking is a major obstacle to fair housing. Although housing financing, land use law, private market trends, and other factors can all work in concert to create segregation and reduce access to opportunity, no one entity is empowered to address all of these problems or consider their impact on outcomes.

One potential solution to this problem would be for large jurisdictions to designate a Fair Housing Office or ombudsman, who would be consulted on an advisory basis in municipal policymaking, including development decisions, land use planning, enforcement action, and elsewhere. This organization or individual could help coordinate city fair housing policy, provide ongoing monitoring of the municipality's progress towards civil rights goals (including those of this Addendum), and keep records of its interventions, recommendations, and the city's response.

Proposed Change: Add a recommendation that Minneapolis, Saint Paul, and other large jurisdictions designate a Fair Housing Office or ombudsmen to act as an advisor and monitor on fair housing issues.

Suballocator System

The suballocator system helps create the concentration of tax credits seen in the Draft Addendum, by creating minimum allocations for the central city municipalities. The system also reduces the ability to effectively coordinate regional tax credit policy, by placing it in the hands of several different entities. A more consolidated tax credit system would eliminate both these problems and pave the way for intentionally integrative LIHTC allocations.

Proposed Change: Add a recommendation that suballocators dissolve their suballocator authority and delegate full allocative powers to the state housing finance agency. Alternative, add a recommendation that suballocator shares be assigned on the basis of fair housing performance and suballocator population share.

Segregation within the Subsidized Housing System

As described earlier in these comments, there is strong evidence of internal segregation within the subsidized housing system, with certain projects serving primarily white families. This segregation is likely illegal, but at present, no enforcement action has been undertaken.

Proposed Change: Add a recommendation that entitlement jurisdictions enact policies to ensure subsidized housing is leased in a nondiscriminatory fashion. Recommend that housing funders ensure that legally-required affirmative marketing plans are complete and adequate before funding is awarded, and that greater enforcement action be taken with regards to those plans after project completion.

Comments received from James Wilkinson, Mid-Minnesota Legal Aid

2015/17 FHIC AI Addendum & Homeownership Comments and Recommendations

The Addendum identifies the extent of the problem (p.p. 62 et seq) but does little to develop steps to address it. We re-emphasize the extent of the problem here, including pointing out several systemic fair lending and fair banking practices cases in the region. We update recommendations made plans of action for jurisdictions to address discrimination in the field were lacking during the 2014-15 AI process and should be a part of this Addendum.

In 2014, only 39% of people of color in the Twin Cities owned a home, compared with 74.9% of whites—making the target area home to the country's worst racial homeownership gap.[1] The Twin Cities gap ranks highest of the country's 25 largest metropolitan areas: With a homeownership gap of 36.5%, it is 3 points worse than St. Louis, 10 points worse than Atlanta, and 15 points worse than Houston.[2] The gap has grown over the past decades and has held steady for the past two years at 36%, one of its widest points since 1990.[3]

Local studies point to lending discrimination in the Twin Cities as a significant factor for its continued inequality and residential segregation. A study by the National Community Reinvestment Coalition, after controlling for income-level differences, concluded that borrowers of color were much more likely to receive a high-cost mortgage loan than white borrowers.[4] The Minneapolis-St. Paul area had the second-highest racial disparity on the NCRC measure in the U.S.[5] Likewise, the Metropolitan Council concluded, "Continuing discrimination in mortgage lending and the emergence of new forms of racial steering may prevent people of color from owning homes in communities of their choice."[6] After conducting dozens of focus groups, interviews, and surveys among potential homeowners of color, a local study concluded:

> Karen, Latinos, Hmong, Somalis and African Americans all said they yearned for the chance to build wealth within their families, to hand something down to their

[1] http://www.mncompass.org/housing/homeownership-gap#7-7144-d
[2] http://www.mncompass.org/housing/homeownership-gap#7-6926-g
[3] http://www.mncompass.org/housing/homeownership-gap#7-5176-d
[4] http://www.ncrc.org/images/stories/pdf/research/ncrc%20nosheild%20june%2009.pdf at 12.
[5] http://www.ncrc.org/images/stories/pdf/research/ncrc%20nosheild%20june%2009.pdf at 23.
[6] http://www.metrocouncil.org/METC/files/55/554c6841-270a-4f9e-8e2f-c8c2c279ecf1.pdf

children, to be free and unrestricted by landlords' rules within their own homes, and to enjoy the increased respect they felt accrued to home owners.[7]

A summary of a Humphrey Institute report[8] on (un)fair lending in 2015 states: "…racial discrimination is present in the Twin Cities lending market, and recovering from the crisis will require major financial institutions to look at their efforts to serve minority communities."

In the fall of 2016, the U.S. Department of Justice filed a civil rights case against Klein Bank for its failure to lend to people of color in the region, accusing it of "redlining."[9] In 2015, Associated Bank, settled a HUD redlining fair lending case that included relief for the metro area.[10]

Indirect but significantly deleterious effects of lenders' past marketing of bad home loans and poor customer service and foreclosure activity continues to hurt residents and potential homeowners today. The Star Tribune reported on March 16, 2017 that the affordable single family home market has suffered because national investment firms have bought post-foreclosure homes for the lucrative rental market.[11]

The National Fair Housing Alliance's investigations have shown that in communities of color, post-foreclosure homes controlled by banks (including Bank of America[12], U.S. Bank and Wells Fargo) and Fannie Mae suffer from neglect and poor maintenance far more often than in white neighborhoods.[13] (Minnesota neighborhoods suffered from differential care according to NFHA investigations.)

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[7] Howard, Johnny, *Pushing Against Barriers: Home Ownership and Rehab Loans in Communities of Color* (Oct. 1, 2014) (on file with author) at 3.
[8] https://drive.google.com/drive/folders/0B2L0_Tafp1oBTVFJMEtZc2M3QzQ.
[9] https://www.justice.gov/opa/pr/justice-department-sues-kleinbank-redlining-minority-neighborhoods-minnesota.
[10] http://archive.jsonline.com/business/associated-bank-settles-racial-discrimination-complaint-by-hud-b99507317z1-305035121.html.
[11] http://www.startribune.com/with-fewer-homes-coming-on-the-market-sales-leveled-out-in-twin-cities-last-month/416239224/.
[12] http://www.mvfairhousing.com/pdfs/2016-08-31_NFHA_Bank_of_America/2016-08-31_Sixth_amended_complaint_NFHA_BofA.PDF.
[13] http://www.nationalfairhousing.org/tabid/4295/Default.aspx.

Action Steps for Fair Housing for Homeowners and Fair Lending

1. Establish an executive level, multi-jurisdiction partnership to address home lending disparities, including public and private partners.

2. Meet with lenders to inform them of jurisdictions' Consolidated and Comprehensive Plans sections aimed at furthering fair housing in homeownership. Invite lenders to coordinate their business and charitable programs to support jurisdictions' plans.

3. Jurisdictions should follow up on the Wilkins Center's lending disparities work, publishing updates and analysis of and hold public hearings to develop responses to home lending disparities.

4. Move jurisdictions' and partners' banking to institutions that show significant improvement in reducing racial lending disparities.

5. Develop affirmative marketing for good lending products, including consumer-friendly, non-discriminatory Islamic financing options.

6. Increase fair lending enforcement by public and non-profit agencies.

7. Increase foreclosure defense advocacy services.

8. Expand Section 8 Voucher Homeownership Programs partnering with public housing agencies.

9. Expand affordable homeownership options such as land trusts and limited equity cooperatives.

10. Support legislative efforts and other ways to boost Individual Development Account program(s) that help low income residents build savings for down payments.

11. Increase income and assets for potential homeowners in neighborhoods with low incomes by using the HUD Section 3 program to support local workers and businesses to participate in HUD-funded projects.

12. Insure that jurisdictions' public services relating to homeownership are available to non-English speaking residents.

13. Require that financial institutions make reasonable accommodations in home-lending for people with disabilities through civil rights enforcement and as conditions of doing business with jurisdictions.

14. Support legislative improvements in MN Contract for Deed law to protect buyers, by:
    a. strengthening pre-purchase inspection requirements;
    b. lowering threshold for notice requirements for multiple CD sellers;
    c. requiring notices in English and other languages;
    d. requiring contracts to be written in English and in the language in which contracts are advertised or negotiated;
    e. requiring foreclosure process be followed in case of default when 25% of principal has been paid.

15. Reduce neighborhood problems, preserve home values by requiring thorough code enforcement and other steps to make sure that lender-owned, post-foreclosure properties have effective repair, maintenance and security services, especially in areas occupied by low income people of color.

16. Prevent discrimination, price gouging and neighborhood blight that may occur when REO post-foreclosure properties are sold to speculators, out of state investors, and landlords with poor track records, by monitoring, supporting local businesses, and adjusting licensure policies.

17. Include extra-accessibility features in new and rehabbed multi-family buildings, (power doors, more "visitability" features, more extra-accessible units, etc.)

18. Audit for and enforce accessible design in post-1998 multi-family construction.

19. Make accessible homeownership designs a part of TOD plans; e.g. fewer multi-story townhomes.

20. See 2015 AI and current draft Addendum for homeownership counseling and other recommendations.

3-18-17

James Wilkinson
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Comments received from New American Academy

Pages 171-189, the section on community perspectives (Is what you heard from your community fairly represented in the document? If not, what would you add or change?)

What People Look for in a Neighborhood? I hear from the East African Somali community that I work with that:

1. Section 8 vouchers isn't accepted anymore in the Southwest suburban communities specially Eden Prairie
2. Approximately 40% of Eden Prairie Somali residents were forced to move out of the city due inadequate affordable housing and almost all apartment buildings refused to accept the voucher since 2012. If a section 8 voucher household get a child, they told that they are over the limit, so they have to move out from the property. Unfortunately, the property mangers don't let other family move in for that specific apartment. They told the section 8 recipients that they don't accept the certificate anymore.
3. Last time to build affordable housing in Eden Prairie was a two decades ago
4. Homeowner associations and landlords put policies that systematically make low-income and immigrant community vulnerable and fragile
5. Local government, the county and the Met-council don't come up with effective policies that accommodate affordable housing availability in Eden Prairie and Southern Hennepin County.

Neighborhood Culture and Diversity: According to our local community estimate, The Somali American population in Eden Prairie is about 10% of the city's population. However, the last census said that the community is about 6%. As we all know that almost half of the community don't fill-up the census forms because they don't even understand the language not they can differentiate the form from other mails that they receive.

23% of the city's population is people of color, and about 22% of the K-6 students are free and reduced lunch kids where majority of those kids are Somalis.

These families and children don't receive a cultural appropriate services sponsored either the city or the schools. They are low-income, black, immigrant and refugee who live in the middle of one of the best city to live in the United States.

Desire to Stay or Move: All families and children that we serve or I know throughout our programs want to stay and live this city. However, due to large size family household, affordable housing inaccessibility, and unwillingness of the decision makers to do anything made many Somali families o move to Shakopee, Chaska, and Minneapolis.

Communication Barriers: Communication barriers is one of the most devastating issues that this community faced because they don't know their rights, and couldn't able to advocate themselves

Pages 190-210, the equity analysis. These are the major themes and conclusions that speak to what is impacting the abilities of people of color to have affordable homes in areas in which they would choose to live (Is there anything missing in this section based on your experience?)

As I agree all the equity analysis on the document, I would like to add all transit-oriented development (TOD) in the meto should have an authentic equity plan for the accessibility of affordable housing and economic development for the low-income community. For the Somali community, people feel that they are tripled disadvantageous because they are black, they are Muslim and they are new to the country. Thus, community developers ought to give extra consideration for planning and execution of any project.

Pages 211-217 are the recommendations. What should happen in order to bring about changes needed to ensure that fair housing exists across the Twin Cities. (What other steps do you think need to be taken, and why?) ***Note that MHP reordered these recommendation to better follow the major themes found in the Equity Analysis.***

1. Low-income communities and immigrants are asset to Minnesota's future growth in terms of workforce and paying taxes. Thus, we need to invest them now by providing a good affordable housing, good jobs, and build their skills
2. Section 8 voucher became insignificant because landlords refused to accept, and no enforcement from local, regional, state or federal government
3. Access to a culturally appropriate homeownership program should be encouraged
4. Metcouncils 2040 was a great example of having communities to be included in the discussion. Susan Hoyt, a former Met-council engagement staff colabrated with New American Academy to host

a dozen community event where youth, elders and women made their ideas and input included in that document. Thus, local government and community developers need to do the same.

5. Decision making tables should be included grassroots organization

April 03, 2017

Alyssa Wetzel-Moore, FHIC Chair
Saint Paul Department of Human
Rights and Equal Economic Opportunity
15 West Kellogg Boulevard, 240 City Hall
Saint Paul, MN 55102

Dear: Ms. Wetzel-Moore:

RE: Submission of OFEO's comment to the Fair Housing Implementation Council's Addendum to the 2014 Analysis of Impediments to Fair Housing Choice.

April 3, 2017, is the Fair Housing Implementation Council's (FHICs) deadline for submission of the proposed Addendum to its 2014 Analysis of Impediments (AI) to fair housing.

Equal access to housing choice is crucial to America's commitment to equality and opportunity for all. Title VIII of the Civil Rights Act of 1968, is the same as the Fair Housing Act (FHA). It prohibits discrimination in the sale or rental of housing on the basis of race, color, religion, sex, and national origin. HUD's Office of Fair Housing and Equal Opportunity (FHEO), is responsible for administration and enforcement of the FHA and other civil rights laws. Moreover, the U.S. Congress established Section 3 policy to: *Guarantee that the employment and other economic opportunities created by Federal financial assistance for housing and community development programs should, if possible, be directed toward low- and very-low income persons, particularly those who are recipients of government assistance for housing.*

HUD and its Officials Blocked All Progress

On March 22, 2013, HUD rejected the Organization Four Equal Opportunity's (OFEO's) right to file their Complaint as provided by federal regulations found at 24 C.F.R. 135.76. (Four is no grammatical error. It stands four Red, Yellow, Black and White races) have equal opportunity.

On December 02, 2015, OFEO, Arrington Floor Covering and other minority Section 3 contractors, (hereinafter collectively "we" or "us") filed their Complaint, (pursuant to Federal regulation found at § 135.76(b) for violations committed against Us on the $20 million dollar Western-University Plaza project in St. Paul, MN.

Further, pursuant to § 135.76 (d)(1)(iv) OFEO's Chairman, James Milsap, personally called Assistant Secretary Velasquez's Washington, DC office to amend, telephonically, their Complaint to include prior decades of violations HUD's Chicago Regional office and its officials had committed against OFEO and

its minority, Section 3 contractors, businesses and organizations.

Nevertheless, on December 14, 2015, rather than Mr. Velasquez, as provided by regulatory law, resolving our Complaint in his Washington, DC office, we received a letter from him, (**Exhibit 30** attached hereto), advising us that he had forwarded our Complaint to HUD's Regional Director Mr. Maurice Mc Gough's Chicago office. (OFEO, and some of its member organizations have experienced serious violations against them by him). Additionally, Mr. Velasquez's letter stated: ***The FHEO Region V Office will reviews your correspondence and contact you directly in the next 30 days to notify you of next steps.*** It has now been 448 days and we have heard nothing. Per usual, Mr. Mc Gough dismissed HUD's directive with impunity; and freedom to continue violating ad nauseam.

In August 2000, the United States Departments of the Treasury, HUD and Justice entered into a memorandum of understanding (MOU) in a cooperative effort to promote enhanced compliance with the FHA, 42 U.S.C. §§ 3601 et seq., for the benefit of residents of low-income housing tax credit properties and the general public.

Pursuant to the MOU, HUD is required to investigate allegations of housing discrimination, attempt conciliation of the complaint and determine whether there is reasonable cause to believe discrimination has occurred under the FHA. Mr. Mc Gough disregarded the MOU, and rather than attempting to resolve FHA's problems, he has become them.

The Department of Justice (DOJ) is responsible for enforcing the FHA, 42 U.S.C. 3601 et seq. Pursuant to section 3614 of the FHA. Justice may file a lawsuit whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of discrimination or denial of rights to a group of persons where such a denial raises an issue of general importance. Federal and local governments and some officials have made their deceitful behavior customary and routinized so as to become a *pattern or practice.*

Steven H. Rosenbaum, Chief, Special Litigation Section of the Civil Rights Division of the DOJ claimed, (in his March 22, 20213, letter to OFEO's Board Chairman, James Milsap, attached hereto), that ***the FHA does not cover the types of housing violations filed by OFEO.*** That statement was and is patently false.

Section 805 [42 U.S.C. 3605] clearly states at (b): *as in this section, the term "residential real estate-related transaction" means any of the following* **(**1**)** *The making or purchasing of loans or providing other financial assistance—***(A)** *For purchasing, constructing, improving, repairing, or maintaining a dwelling.*

The ad hoc FHIC was established in 2002 to coordinate efforts of its participating members to comply with their obligations to affirmatively further fair housing (AFFH) throughout the Twin Cities metro housing market area.

To AFFH is a legal requirement that federal agencies and federal grantees further the purposes of the FHA. The obligation to AFFH has been in the FHA since 1968. Title VIII of the Civil Rights Act of 1968, [42 U.S.C. 3608(e)(5)] is the same as the FHA, and requires that HUD programs and activities be administered in a manner that affirmatively furthers the policies of the FHA.

The FHIC has contracted with Mosaic Community Planning, LLC to conduct an Addendum to the FHIC's 2014 Regional Analysis of Impediments to Fair Housing (AI Addendum). The Addendum is to specifically address housing discrimination, gentrification and displacement, barriers to housing choice, and the conditions of segregation and integration in the seven-county area that includes Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington Counties in Minnesota.

The majority of OFEO's present involvement is in the Twin Cities. Therefore, I will show a few of the myriad of problems OFEO encountered due to violations committed by three HUD officials. They are: Sara K. Pratt, former Deputy Assistant Secretary for Enforcement and Programs in the Office of Fair Housing and Equal Opportunity. Her office had jurisdiction over Mr. Maurice Mc Gough's office. He is HUD's Director of Region V; and whose office had jurisdiction over Ms. Jaime Pedraza's office. She was former Director of Minnesota's HUD.

Violations committed by the above HUD officials made it impossible for OFEO to effectuate the meaningful economic program it had previously successfully completed in St. Paul's poverty community. OFEO was and is qualified to provide it again to the poverty communities but is prevented from doing so by the bureaucracy.

FHIC retaining Mosaic to address racial barriers to housing choice is farcical and nothing more than a smoke screen to hide federal and local governments and their officials' underlying devious plots to maintain the status quo. At best, Mosaic has limited knowledge, if any, of the underlying problems that plague the Black community. The Black community does not trust City officials, **and will not** trust Mosaic, because they were presented, or believed to be appendages of the City.

Thus, Mosaic's AI Addendum will be ineffective without structural changes that emanate from federal and local governments and their officials. HUD's Office of Fair Housing and Equal Opportunity (FHEO), is responsible for administration and enforcement of the FHA and other civil rights laws.

OFEO Members Qualified to Perform Multimillion Dollar Contracts

Section 3 is a provision in the Housing and Urban Development Act of 1968 [12 U.S.C. 1701u] which policy provides at (b): *It is the policy of the Congress and the purpose of this section to ensure that the employment and other economic opportunities generated by Federal financial assistance for housing and community*

development programs shall, to the greatest extent feasible, be directed toward low- and very low-income persons, particularly those who are recipients of government assistance for housing. It is the policy of the Congress and the purpose of this section to ensure that the employment and other economic opportunities generated by Federal financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed toward low- and very low-income persons, particularly those who are recipients of government assistance for housing.

Section 3 is a multibillion dollar program. Were it to be properly run, there would be continual funding for on the job training, etc. As unbelievable as it may seem, on August 25, 2009, a Limited Compliance Review conducted by HUD found St. Paul did not understand the Section 3 program. In addition to not understanding the Section 3 program, it was also found that St. Paul did not even have the program. Yet, HUD regularly funded St. Paul's multimillion dollar invoices submitted.

On the other hand, OFEO completed a 60acre subdivision in the heart of the inner city ("ghetto") which contained substandard homes. We provided to former substandard homeowners an opportunity to purchase a new home in the newly renovated area. We provided them$1000 per bedroom through the government's 235 program. They were also paid for their substandard homes by the federal Urban Renewal Program. We further trained, and provided good paying construction jobs for the new homes.

We replicated this phenomenon as often as possible, but encountered problems with the Trades and Labor Unions and HUD officials.

In sum, we demonstrated that the Section 3 program could be the beginning of viable resolutions to poverty communities' many entrenched problems.

We trust this information will give insight into the myriad problem we have daily encountered.

Should additional information be requested, please do not hesitate to ask.

Yours truly,

James W. Milsap,
Board Chairman OFEO

U.S. Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section

SHR:JRT:DMS:KD
DJ# 175-39-0

U.S. Mail: 950 Pennsylvania Ave, N.W.
Washington, DC 20530
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Suite 7002
Washington, DC 20006
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Mr. James W. Milsap
Organization Four Equal Opportunity
1853 Cottage Avenue East
Saint Paul, MN 55119

MAR 2 2 2013

Dear Mr. Milsap:

This is in response to your correspondence to Attorney General Eric Holder concerning your complaint against the City of St. Paul ("City") for alleged violations of the Housing and Urban Development Act of 1968 ("Section 3"). You state that the City violated Section 3 on two projects, the Frogtown Square Project and the Redeemer Arms Project. You also complain that the U.S. Department of Housing and Urban Development ("HUD") denied your right to file a Section 3 complaint against the City, and wrongly asserted that its Voluntary Compliance Agreement with the City resolved the violation. We hope you can understand that the Attorney General cannot respond personally to all of the correspondence that he receives. We apologize for the delay in our response.

This office is responsible for enforcement of the Fair Housing Act of 1968, as amended, 42 U.S.C. §§3601, et seq., which prohibits discrimination in housing based upon race, color, national origin, religion, sex, familial status, or disability. However, we do not have authority to take action on allegations concerning the denial of other rights related to housing that are not covered by the Fair Housing Act.

We have carefully reviewed the information that you provided in your letter. Although we would like to be of assistance, your complaint does not involve the type of discrimination prohibited by the Fair Housing Act. Accordingly, we have no authority to investigate or act upon your complaint. Moreover, we are not authorized to provide legal advice or assistance to private citizens.

In addition, the Department does not have authority to review the findings, determination or compliance agreements of HUD. Any complaint that you may have against HUD must be raised directly with that agency which your correspondence indicates you have done. If you are not satisfied with the attention your complaint received, you may wish to seek the advice of a private attorney.

If you wish to pursue this matter further, we would suggest that you consult with a private attorney. You may find the Minnesota Bar Association helpful in locating an attorney. You may reach this office at the following address and telephone number:

Minnesota State Bar
514 Nicollet Mall
Minneapolis, MN 65401
(612) 333-1183

We hope this information is helpful to you. We regret we cannot offer you further assistance.

Sincerely,

Steven H. Rosenbaum
Chief

By: K. Delancy

K. Delancy
Paralegal Specialist
Housing and Civil Enforcement Section

April 22, 2016 **EX. 30**

Mr. Gustavo Velasquez, Assistant
Secretary for Fair Housing and
Equal Opportunity
451 7th Street, South West
Washington, D. C. 20410

Dear Assistant Secretary Velasquez:

Re: Region Vs continued refusal to administratively enforce federal statutes, executive orders and regulations in Section 3 Complaints.

On December 14, 2015, MASCA C/O Silas Houston, CEO; James Arrington, McLemore Construction Inc. (MCI) Neeka McLemore, Zachary Luckett, Troy Holliday, Holliday Construction, Inc. Edmund Alexander and the Organization Four Equal Opportunity (OFEO) [hereinafter "Complainants"] received a letter from your office advising us that our Complaint had been forwarded to HUDs Region V Director Mr. Maurice Mc Gough's office of Fair Housing and Equal Opportunity (FHEO) for review and appropriate action.

Mr. Velasquez also stated that: *"FHEO administratively enforces federal statutes, executive orders and regulations designed to afford all persons an equal opportunity to live in housing of their choice and to participate in HUD-assisted programs and activities without regard to race, color, national origin, sex, religion, familial status (families with children under 18), disability, or age."* Mr. Velasquez further stated: ***"The FHEO Region V Office will reviews your correspondence and contact you directly in the next 30 days to notify you of next steps."*** Complainants submit that HUD and St. Paul officials have never abided by FHEOs administrative law. We filed our Complaint in your DC office because of problems historically experienced with HUDs Regional office. Moreover, HUDs Sara K. Pratt, Deputy Assistant Secretary for Enforcement and Programs, office had jurisdiction over Mr. Mc Gough's and Ms. Pedraza's, failed to correct the unlawful parts of their record but rather exacerbated them. **Emphasis added.**

Complainants' Complaint is based upon persistent unlawful conduct of HUD and St. Paul officials in violation of federal and state law since Complainants' personal October 30, 2015, meeting with Mr. Mc Gough; the December 02, 2015, violations (Fair Housing Act 42 U.S.C. 3601 et seq./Section 312 U.S.C. 1701u) committed at Western University Plaza (WUP) and continuing through the present.

Complainants further submit that HUD and St. Paul officials have denied contracts, jobs and business opportunities for "protected class" members as defined under federal law and violated their duties to Affirmatively Further Fair Housing ("AFFH") through facially neutral advertising and contracting policies and practices.

Some of the violations include but are not limited to the following: illegally elevated qualifying standards for Section 3 contractors above the minimum found at 24 CFR 135.5 to exclude the poor and poverty communities; HUD funded a phony four year Consolidated Plan submitted by St. Paul that excluded Section 3 contractors; St. Paul officials convened a meeting to which HUD officials attended as program participants; and later biasly judged programs that excluded Section 3contractors/ businesses of color. Use of other punitive contracting policies directed at Section 3 contractors of color, businesses and residents located in high poverty minority neighborhoods.

In 2015 the Sand Companies Inc. (SCI) was General contractor and recipient at WUP. SCI withheld money owed Arrington Floor Covering (AFC) as a "bargaining chip" for AFC to release its part in the Complaint against SCI for Section 3 violations at WUP. AFC was forced to incur significant legal fees to release money SCI owed for work completed.

The Section 3 Plan for St. Paul and its Housing and Redevelopment Authority was revised October 10, 2011. The department of Human Rights & Equal Economic Opportunity (HREEO) was supposed to designate a full-time Section 3 Administrator and a part-time Section 3 Coordinator who would work with City departments, Contractors and sub-recipients, Section 3 business owners, members of the community and Section 3 residents to coordinate and monitor activities that contribute to Section 3 compliance. St. Paul's Plan failed to achieve Section 3 compliance at WUP.

HUD officials permitted St. Paul to repeat the same types of noncompliance violations in 2011at the $13,566,227 million dollar Frogtown Square-Kings Crossing housing project, and the $12.9 million dollar renovation of Redeemers Arms that it did those found in HUD Department's August 2009 Section 3 Limited Noncompliance Investigation. Complainants were denied opportunities to participate in Low Income Housing Tax Credit programs. They also desire to again amend their Complaint.

St. Paul's Section 3 Plan (Plan) identified the goals, objectives, and actions that it was supposed to implement to ensure compliance in its own operations and those of developers, sub-recipients, bidders, covered contractors, and covered subcontractors (hereinafter collectively referred to as "Contractors and subrecipients") with the requirements of Section 3 and its regulations found at 24 CFR Part 135 at WUP. Again, St. Paul's Plan totally failed to implement those promises at WUP.

Should you need additional information, please do not hesitate to ask.

_____

C/o James W. Milsap, Board Chairman OFEO.

1523 Wynne Avenue, St. Paul, MN 55108-2660
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April 3, 2017

Via E-mail to: Alyssa.Wetzel-Moore @ci.stpaul.mn.us

Alyssa Wetzel-Moore, FHIC Chair
Saint Paul Department of Human Rights and Equal Economic Opportunity
15 West Kellogg Boulevard, 240 City Hall
Saint Paul, MN 55102

Re: FHIC – draft Addendum to 2014 Regional Analysis of Impediments to Fair Housing

Dear Ms. Wetzel-Moore:

Our law firm represents the interests of private owners of low-income rental housing located in the Twin Cities Metro. On behalf of our clients, we are providing you with the attached Comment to the Draft Addendum to the 2014 Regional Analysis of Impediments to Fair Housing prepared by FHIC's contractor Mosaic Community Planning, LLC and released for public comment on March 1, 2017.

Thank you for your attention to this matter.

Sincerely,

John R. Shoemaker
Attorney at Law

encl.

cc: Mosaic Community Planning, LLC
Raven Financial, LLC
Vue Properties
Frank J. Steinhauser, III
Fredrick Newell
Kevin Riley and Katie Riley
Bee Vue and Lamena Vue
Andrew Ellis and Harriet Ellis
Johnny Howard

April 3, 2017

COMMENT TO DRAFT ADDENDUM TO 2014 REGIONAL ANALYSIS OF IMPEDIMENTS TO FAIR HOUSING

By:

Raven Financial, LLC,
Kevin Riley and Katie Riley;

Vue Properties,
Bee Vue and Lamena Vue;

Frank J. Steinhauser, III;

and

Andrew Ellis and Harriet Ellis.

Legal Counsel

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INTRODUCTION

Raven Financial, LLC, Kevin Riley and Katie Riley, Bee Vue and Lamena Vue, d/b/a Vue Properties, Frank J. Steinhauser, III, and Andrew Ellis and Harriet Ellis, private owners of low-income rental housing and/or associated real estate interests, located in Saint Paul and Minneapolis, submit this public comment concerning the draft AI Addendum to the FHIC's 2014 Regional Analysis of Impediments to Fair Housing (AI Addendum).

FHIC public notice internet link at https://www.ramseycounty.us/fhic states the purpose of the Addendum:

> The FHIC has contracted with Mosaic Community Planning, LLC to conduct an Addendum to the FHIC's 2014 Regional Analysis of Impediments to Fair Housing (AI Addendum). The Addendum will specifically address the housing discrimination, gentrification and displacement, barriers to housing choice, and the conditions of segregation and integration in the seven-county area that includes Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington Counties in Minnesota.

In May 2016, following the settlement of the MICAH complaint against Saint Paul and Minneapolis, HUD notified Raven Financial and Vue Properties that their earlier complaints against Saint Paul filed in 2013 and 2014 alleging the city had failed to Affirmatively Further Fair Housing, had been resolved by the Voluntary Compliance Agreement (VCA) between MICAH and the cities. The MICAH VCA led to the 2014 FHIC Addendum project that this Comment targets. The FHIC members controlling the 2014 Addendum project failed to seek comments or input from the private providers of affordable rental housing despite over a decade of federal fair housing litigation and five years of HUD complaints against the largest members of FHIC, the City of Saint Paul, and more recently, the City of Minneapolis.

This Comment is submitted to demonstrate that the 2014 AI and draft Addendum to the 2014 AI are deficient in failing to identify impediments and barriers to fair housing choice created by Public Sector policies and practices of Entitlement Jurisdictions and FHIC members St. Paul, Minneapolis, and Dakota County (responsible for City of Burnsville). HUD's Fair Housing Planning Guide (FHPG) provides that federal funded government units must review and analyze their individual building, fire, maintenance and related housing codes and practices that impact housing for protected class members in their communities. The FHPG also requires review of all local government policies and practices that impact the cost of housing, the availability of housing, the return on investment to low-income housing providers and incentives to provide such housing. Unfortunately, FHIC and its members have totally failed to conduct such an analysis of their own ordinances, policies, regulations and practices, collectively and individually.

Moreover, the 2014 AI and the 2017 Addendum are completely deficient in failing to provide the community with full and fair notice of the numerous ongoing and unresolved legal challenges low-income rental housing providers have pursued in Minnesota federal court and in the federal appellate courts since 2004. See page 73, of the 2014 AI – AI refers to *Magner v. Gallagher* federal lawsuit but falsely states case was dismissed by the U.S. Supreme Court, when in fact (see

below) the City of St. Paul actually dismissed its appeal to the Supreme Court, thereby resulting in the disparate impact Fair Housing claims of plaintiff low-income rental housing providers to move toward trial in Minnesota Federal Court where they sit after more than 12 years of litigation and appeals.

Equally as important is the complete lack of disclosure in the 2014 AI and Addendum to the many challenges filed with HUD since 2012 by other low-income rental housing providers to St. Paul and Minneapolis housing policies and practices claimed to constitute impediments and barriers to housing choice. These housing discrimination claims are pending before HUD and have not been resolved.

Raven Financial, LLC

Raven Financial, LLC holds legal title to five low-income dwellings located in Saint Paul. Raven Financial held ownership in 9 low-income rental dwellings until 2014-2015. Kevin and Katie Riley are the principals in Raven Financial. In November 2013, Raven Financial filed a housing discrimination complaint with U.S. Department of Housing and Urban Development (HUD) under Title VIII (Fair Housing) and Title VI (Federal Funding), challenging Saint Paul's illegally elevated building, nuisance and housing maintenance code standards above the standards allowed by the Minnesota State Building Code. Raven Financial has claimed that these illegal housing policies and practices of Saint Paul have negatively impacted fair housing choice, illegally thinned out available low-income home rental housing needed disproportionately by minority families, and violated the City's duty to affirmatively further fair housing (AFFH). Raven Financial's AFFH complaint, filed with HUD in November 2013, was accepted for investigation January 6, 2015; HUD has recently stated that its investigation continues.

Interestingly, Saint Paul City officials in January 2017 admitted that its building and housing maintenance codes had been stricter than allowed under the State Building Code, and that in January 2017, the City was moving to amend its code of ordinances to finally ensure that City code followed and complied with the State Building Code. See Pioneer Press article, "***St. Paul updates housing code to give older homes a break***," January 9, 2017.

On December 27, 2013, after Raven Financial filed its HUD complaint against the City of Saint Paul, the Pioneer Press published its editorial "**St. Paul: The Code vs. the poor?**" giving support to the challenges to City housing regulations, stating, "*This is a useful dispute*".

Vue Properties

Vue Properties own and manage approximately 150 units of low-income rental housing located in Saint Paul. Bee and Lamena Vue are the principals of Vue Properties. In September 2014, Vues filed a housing discrimination complaint with HUD under Title VIII (Fair Housing) and Title VI (federal funding assistance), challenging Saint Paul's illegally elevated building, nuisance and housing maintenance code standards above the standards allowed by the Minnesota State Building Code. Vues have claimed that these illegal housing policies and actions of Saint Paul have negatively impacted fair housing choice, illegally thinned out available low-income home rental housing needed disproportionately by minority families, and violated the City's duty to

affirmatively further fair housing (AFFH). Vues' AFFH complaint was accepted by HUD in March 2015 and currently continues under investigation.

Raven Financial and Vues' AFFH complaints alleging that Saint Paul's housing policies and practices have dramatically reduced the availability low-income rental housing needed by minority families were filed 16 months (Raven) and 6 months (Vues) before the complaints of *MICAH v. City of St. Paul* and *MICAH, et al*. v. *City of Minneapolis* complaints alleging that these cities were placing most affordable housing in high-minority and low-income inner-city areas leading to unlawful segregation.

Frank J. Steinhauser, III

Frank J. Steinhauser, III holds legal title to two low-income dwellings located in Saint Paul. For decades, Mr. Steinhauser held ownership in 15 low-income rental dwellings in the city providing minority families with affordable rental housing. As a direct result of Saint Paul's illegally elevated building and housing maintenance code standards above the standards allowed by the Minnesota State Building Code (recently admitted to by Saint Paul officials) and other illegal housing policies and practices applied to Steinhauser's rental dwellings in 2002-2005, Mr. Steinhauser was forced to sell his rental dwellings.

In May 2004, Mr. Steinhauser along with other low-income rental dwelling owners, Kelly Brisson and Mark Meysembourg filed a civil action in Minnesota Federal District Court against the City of Saint Paul and various City officials and employees alleging the City had disparately impacted protected classes in violation of the Fair Housing Act (FHA). See *Frank J. Steinhauser, et al. v. City of St. Paul*, et al., Minnesota Federal District Court Case No. 04-CV-2632, currently pending in federal court.

In March 2005, additional low-income rental dwelling owners Sandra Harrilal, Steve Johnson and Bee and Lamena Vue commenced their civil action against Saint Paul and officials and employees also alleging the City during the period of approximately 2002 through 2005 had violated the FHA by disparately impacting protected class members' housing rights. See *Sandra Harrilal, et al. v. Steve Magner, City of St. Paul, et al.*, Minnesota Federal District Court Case No. 05-CV-0461, currently pending in federal court.

In July 2005, additional St. Paul rental housing providers filed the third federal lawsuit against the City of Saint Paul. These additional housing providers were led by Tom Gallagher and Joe Collins. See *Gallagher, et al. v. Steve Magner, City of St. Paul, et al*., Minnesota Federal District Court Case No. 05-CV-1348.

In 2006, the *Steinhauser*, *Harrilal* and *Gallagher* Fair Housing cases against Saint Paul were consolidated for discovery and motion practice. In December 2008, the Minnesota District Court dismissed all claims of the rental housing provider plaintiffs. Following appeal by the plaintiffs in 2009, the United States Court of Appeals for the Eighth Circuit on September 1, 2010, reversed the lower court's dismissal and ordered the fair housing claims to trial in Minnesota. See *Gallagher, v. Magner*, 619 F.3d 823 (8th Cir. 2010) (titled on appeal, *Gallagher v. Magner*, but consisting of *Steinhauser, et al*., and *Harrilal, et al*. cases against St. Paul as well).

Following the Eighth Circuit Court's 2010 decision in *Gallagher v. Magner*, the City of Saint Paul filed its petition in February 2011 for certiorari review with the United States Supreme Court. In the fall of 2012, the Supreme Court granted the City's petition. After full briefing, the City dismissed its Petition February 9, 2012 shortly before oral arguments at the Supreme Court. The cases brought by the *Steinhauser, Harrilal* and *Gallagher* plaintiffs were not "dismissed" by the Supreme Court as the FHIC 2014 Analysis of Impediments to Fair Housing Choice (published 2/13/2015) wrongly states on page 73. The housing providers' legal claims survived the City's dismissal of its appeal, and continued thereafter in Minnesota Federal District Court on the mandate from the Eighth Circuit Court of Appeals in 2010 for trial of the Fair Housing Act claims. Three years after the City's dismissal of its appeal before the Supreme Court, the plaintiffs in the third case, Tom Gallagher, Joe Collins and other plaintiffs, dismissed their claims against the City. The *Gallagher, et al*. group had been in federal court seeking relief under the Fair Housing Act for almost ten years without their claims being resolved.

The plaintiffs in the *Steinhauser, et al*. and *Harrilal, et al.* cases have continued to pursue their Fair Housing claims against Saint Paul since the City's February 2012 dismissal of its Supreme Court appeal. The *Steinhauser and Harrilal* plaintiffs have been expecting a decision by Senior Judge Michael Davis on Status Briefs by attorneys for all parties filed with the Court August 3, 2015 - 20 months ago. The *Steinhauser, et al.* and *Harrilal, et al*. Fair Housing Act disparate impact claims continue against Saint Paul without resolution for 12 and 13 years now since these cases were filed in 2004 and 2005.

Andrew and Harriet Ellis

Andrew and Harriet Ellis own and manage approximately 14 low-income rental dwellings with 33 units in Minneapolis, primarily renting to minorities. The Ellises filed their fair housing lawsuit against Minneapolis in July 2014 alleging Minneapolis through its housing and related policies and practices was disparately impacting the minority tenants occupying the rental dwellings owned by Ellises and other similar low-income rental housing providers. See *Ellis, et al. v. City of Minneapolis*, Minnesota Federal District Court Case No. 14-CV-03045. The Ellises are challenging Minneapolis' targeting of low-income, older rental dwellings with ever increasing municipal regulations, costs, fees, assessments, administrative burdens, and illegally heightened housing standards above acceptable minimum standards, all admittedly designed by the City to "Make it more expensive and harder to rent out single-family homes". See page 6, Minneapolis "Where We Are" 2009 Report. Ellises' claims are currently before the United States Court of Appeals for the Eighth Circuit wherein the Court is expected in May or June 2017 to issue its first decision impacting fair housing disparate impact claims since the U.S. Supreme Court's 2015 decision in *Texas Dept. of Housing v. Inclusive Communities Project.* The *Ellis v Minneapolis* decision is also expected to impact the Court's 2010 disparate impact decision in *Gallagher v. Magner*.

Other low-income rental housing owners and providers have filed federal lawsuits against FHIC members including:

Raven Property Management, LLC and Robert McCampbell v. City of St. Paul, filed in Minnesota Federal Court, February 2008, wherein the low-income rental housing provider challenged the City's unlawfully heightened housing standards and resulting disparate impact on protected class tenants. Claims were dismissed by McCampbell without resolution of the disparate impact claims.

Michael McRath, et al. v. City of St. Paul, filed in Minnesota Federal Court, May 2010. Rental housing provider challenged the City's unlawfully heightened housing standards, illegal code compliance requirements to present code in violation of the State Building Code grandfathering protections, and resulting disparate impact on protected class tenants. Rental housing owners dismissed their claims in 2015 without resolution of the disparate impact claims.

Mahmood Khan v. City of Minneapolis, Minnesota Federal District Court, 2016, challenging the City's rental housing policy and practice of "lose two rental dwelling licenses, you lose all your remaining rental licenses" – The City revoked two Khan rental licenses, and has recently revoked 43 additional Khan rental licenses, leaving 200+ tenants, mainly minority protected class members, in jeopardy of losing their rental homes.

Dakota County District Court decision February 2017, held that the City of Burnsville (a sub-recipient of federal CDBG funds through Entitlement Jurisdiction FHIC member, Dakota County), had violated state and federal law due to the City's code enforcement crackdown on Rambush Estates Mobile Homepark. Judge Colleen G. King stated the City's crackdown was motivated by prejudice against poor people and minorities.

PUBLIC HOUSING AGENCY
SAINT PAUL

March 31, 2017 **SENT BY E-MAIL & U.S. MAIL**

Alyssa Wetzel-Moore, FHIC Chair
St. Paul Department of Human Rights and Equal Economic Opportunity
15 West Kellogg Blvd., 240 City Hall
St. Paul, MN 55102

Re: Draft AI Addendum

Dear Ms. Wetzel-Moore:

The St. Paul Public Housing Agency (PHA) appreciates the opportunity to comment on the February 2017 First Draft Addendum to the previously completed Analysis of Impediments.

We recognize the good work and coordination accomplished by the Fair Housing Implementation Council (FHIC) to further fair housing in our region, and in obtaining community feedback to support these steps. We stand ready to educate and inform on the steps we have taken and will continue to take as a Public Housing Agency to affirmatively further fair housing. However, this Agency is not a party to the Fair Housing complaint that gave rise to this addendum. While we certainly support fair housing (and demonstrate that in the work we do daily), this Draft Addendum was just published and necessarily requires thorough review and discussion with our governing body before the PHA could possibly agree to being named as a "Responsible Party" throughout this addendum, either specifically or by implication.

For example draft recommendation #32, "review PHA subsidy standards and LIHTC QAPs to ensure accommodation of units for large, intergenerational families" is interesting but again requires discussion with our Board of Commissioners and the City of St. Paul. This concern holds for all draft recommendations that name the PHA as a Responsible Party.

If you have any questions or concerns, please contact me, or Dominic Mitchell, our Section 8 Programs Manager at dominic.mitchell@stpha.org, or Al Hester, our Housing Policy Director, at al.hester@stpha.org.

Sincerely,

Jon Gutzmann
Executive Director
St. Paul PHA

CC: Patty Lilledahl, Director of Housing, St. Paul Planning and Economic Development

Melissa Mailloux

From: Melissa Taphorn
Sent: Saturday, March 04, 2017 10:38 AM
To: Jeremy Gray (jeremy@mosaiccommunityplanning.com); Melissa Mailloux (melissa@mosaiccommunityplanning.com)
Cc: Angie Shuppert; Wetzel-Moore, Alyssa (CI-StPaul)
Subject: Draft AI Addendum

Hi Jeremy and Melissa,

We noticed one error in the information related to Washington County. The website cited for our comp plan links to the city of Woodbury rather than the County, page 378. Should be https://www.co.washington.mn.us/404/Comprehensive-Plan

In addition, I have two questions for you. One of my questions is time sensitive and can't wait for a consolidation of FHIC/FHAC comments.

I need to discuss any changes to our 2018 QAP with my CDA Board on March 21 and need to prepare that item by Friday, March 10. I appreciate your comment about our scoring based on location/submarket demand. We surely do not want to perpetuate concentration of affordable housing or poverty. The original intent of this priority was to incent locating affordable housing where affordable housing was lacking and there would be future demand. Can you clarify how you concluded that the projected 10-20 year demand for these submarkets would result in continuing existing conditions? And, would your recommendation be to eliminate this priority altogether or would you recommend giving higher priority to locations where the existing affordability gap is the greatest?

My second question (really third question but second issue) is about evaluating the Washington County zoning/development code. I noticed that there are no other counties on the list. Does it make sense to include our county's zoning code? The county's development and zoning code is only applicable to the townships and unincorporated cities in the county, which would cover 6 of our 33 jurisdictions. The other cities that were reviewed are, I think, areas with populations over 50,000. They are completely different from jurisdictions covered by the county's development code. Woodbury is our only city of that size and their zoning code is separately evaluated.

Thank you!
Melissa

Melissa Taphorn | Deputy Executive Director
Washington County Community Development Agency
7645 Currell Boulevard, Woodbury, MN 55125 | (651) 202-2821 | www.wchra.com

Melissa Mailloux

From: Melissa Taphorn
Sent: Thursday, March 09, 2017 4:50 PM
To: Jeremy Gray (jeremy@mosaiccommunityplanning.com)
Cc: Angie Shuppert; Alyssa Soderlund (Alyssa.Soderlund@co.washington.mn.us); Melissa Mailloux (melissa@mosaiccommunityplanning.com)
Subject: Washington County Development Code

Jeremy,

Thank you for talking with me earlier this week. Since our conversation, I have since learned that Washington County is no longer responsible for the land use and planning for the townships in Washington County. Therefore, I would recommend deleting it from the addendum's review of zoning/development codes.

Thank you,
Melissa

Melissa Taphorn | Deputy Executive Director
Washington County Community Development Agency
7645 Currell Boulevard, Woodbury, MN 55125 | (651) 202-2821 | www.wchra.com

Melissa Mailloux

From: Angie Shuppert
Sent: Tuesday, March 21, 2017 12:35 PM
To: Jeremy Gray (jeremy@mosaiccommunityplanning.com)
Cc: Melissa Mailloux (melissa@mosaiccommunityplanning.com)
Subject: FW: FHIC Comments on Recommendations

Jeremy & Melissa,

Please see my note on recommendation #33. It's not "done" but we are going through the process. Also, we wanted to confirm/make sure that Washington County Zoning was being removed per our conversations. Thank you!

Thanks,
Angie

Angie Shuppert
Community Development Programs Manager
Washington County Community Development Agency
7645 Currell Boulevard, Woodbury, MN 55125 | D: 651-379-9551 | F: 651-458-1696 www.wchra.com

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From: Angie Shuppert
Sent: Monday, March 20, 2017 8:07 AM
To: 'Wetzel-Moore, Alyssa (CI-StPaul)'
Subject: RE: FHIC Comments on Recommendations

Alyssa,

Not a huge edit but #33 is a draft of the new QAP with the change and that starts the public comment period until April 18th. On that date we will have a public hearing & County Board will have to approve it on 4/25. I am not sure if that changes anything as far as Mosaic goes.

Thanks,
Angie

Angie Shuppert
Community Development Programs Manager
Washington County Community Development Agency
7645 Currell Boulevard, Woodbury, MN 55125 | D: 651-379-9551 | F: 651-458-1696 www.wchra.com

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From: Wetzel-Moore, Alyssa (CI-StPaul) [mailto:alyssa.wetzel-moore@ci.stpaul.mn.us]
Sent: Friday, March 17, 2017 4:27 PM
To: Melissa Mailloux (melissa@mosaiccommunityplanning.com); 'jeremy@mosaiccommunityplanning.com';

March 23, 2017

Submitted by: Whittier Alliance Neighborhood Assn
Marian Biehn, Representative
Submitted to: Mosaic Community Planning
Jeremy Gray
Re: Comments to the March 1, 2017 Mosaic's *Draft* Alternative Analysis Addendum

As one of complainant organizations, the Whittier Alliance Neighborhood Assn. respectfully submits the following comments to Mosaic's Draft AI Addendum. (Referenced as: "draft AI.") The comments are feedback on the March 1, 2017 draft AI Addendum based on how effectively they addressed the Whittier Alliance complaint and VCA, recommendations specific to the City of Minneapolis housing policy and practices and the potential trickle down impacts they would have on the Whittier neighborhood.

It is first necessary to address the demographics and housing data within the Whittier neighborhood which brought the neighborhood to file the complaint. Whittier hosts over 1400 units of subsidized affordable housing and over 30 supportive, transitional and emergency housing facilities. It has no single family zoning. It has a high poverty level. This is information is not considered in the broader sweep of the AI Addendum, but it is at the core of Whittier's complaint. It should be considered as part of the City of Minneapolis' affordable, transitional, supportive and emergency housing evaluations and decisions. Whittier continues to have additional subsidized affordable, transitional, supportive and emergency housing placed within neighborhood boundaries despite its high poverty level and the existence of subsidized and naturally occurring affordable housing. The draft AI calls for a broader distribution of affordable housing but fails to make meaningful measurable recommendations to move it beyond the core neighborhoods.

MNCompas 2010-2014 Whittier Demographics:
Residents: 13,900
Number of Housing Units: 7,295
Number of Households: 6716 (averages size of household is just under 2.0 both renters and home owners)
Renters: 83%
Owner Occupied: 16%
Average Rent: $815 (2014 dollars)
Population mix: 42% people of color and 58% caucasian
Income: 47% earn $35,000 or less per year
29% have income below the poverty level

Whittier Alliance Survey 2014:
Subsidized Affordable **housing units** and known/countable **housing vouchers**: 1443
Approx 40 properties in or within 1 block of the Whittier neighborhood
Supportive, Transitional & Emergency Housing **facilities** (not units or number of residents) in Whittier or within 1 block of the Whittier neighborhood boundary 31
Affordable housing & community residential facility maps and listing provided upon request

As previously stated, the Whittier Alliance Neighborhood Assn. comments on the draft AI are specific to Minneapolis but applicable to all jurisdictions.

Generally the information provided by the Mosaic Draft AI Addendum (draft AI) was informative. However, the tone at times seemed speculative and subjective creating a sense that the AI Draft or the final report might be more of a summary of existing conditions vs. a data driven report with firm directives, timelines, and expected outcomes that are focused on better housing choice and social outcomes. The broad data backed up with graphs and regional comparisons were helpful in visualizing trends, movement and distribution of people and housing. The data also supports the Whittier neighborhood's complaint that a significant portion of the affordable housing is in areas of poverty and concentration of services. While Whittier is not advocating dissolving of any exiting affordable housing, it does support the draft AI conclusion that broader distribution is needed. However, the draft AI does not provide strong enough recommendations (and they are "recommendations" not directive) to approach a more equitable distribution of subsidized affordable housing much less parity.

When working with the City of Minneapolis and housing proposals, it is done on a neighborhood basis rather than a "tract" basis. The draft AI data moved back and forth between neighborhood and tract. The use of neighborhood boundaries and data is more telling than tract data. Each neighborhood has its own housing characteristics and needs. Tracts seem to homogenize and flatten the data.

The draft AI understandably views the broader impacts and scope of housing in the region. While the regional view showing trends is very revealing, housing is a very personal choice. Each jurisdiction should first be accountable to the balance and needs in its own housing development starting with the very thing that makes a City unique: the neighborhood.

Further a whole genre of significant housing data is missing that falls under the Fair Housing Act protections.

Comment:
The data and narrative addressed only affordable housing and does not incorporate into the draft AI the facilities or properties providing supportive, transitional, residential care facilities and emergency housing which are frequently concentrated in the inner cities and areas of concentrated poverty. (This is definitely true in the Whittier neighborhood. See info above from Whittier survey). The number and type of this type of facilities affects the housing balance of a neighborhood.
Recommendation:
*Include these additional housing facilities and their distribution in the AI Addendum report to provide a more comprehensive view of housing throughout Minneapolis and the region.

Supportive, transitional and emergency housing need to be charted and considered when discussing housing in each jurisdiction and specifically in neighborhood. Residents in emergency housing for the homeless, supportive & transitional housing for mentally ill, sex offenders, addiction treatment facilities, and other transitional housing often lack housing choice and quality opportunities and should be part of the regional distribution discussion. If clustered with a significant amount of subsidized affordable housing, it can impede a neighborhood from thriving.
*Direct the city of Minneapolis to include the number of subsidized affordable, supportive, transitional and emergency housing units in a neighborhood as part of an evaluation of housing & poverty concentration prior to approving additional similar housing in a neighborhood.

Comment:
There isn't any directive for the City of Minneapolis to review their zoning code, address the exclusionary language and its influence on segregation and discrimination as it relates to subsidized affordable, supportive, transitional and emergency housing. Neighborhoods with medium & high zoning levels bear a higher likelihood of having to accept an inequitable share of affordable, supportive, transitional and emergency housing. Whittier, Phillips, Stevens Square, etc are such neighborhoods and are also concentrated areas of poverty.
Recommendation:
The Whittier neighborhood and other Minneapolis core neighborhoods have high zoning levels. Whittier has no R-1 (single family housing) zoning while all other neighborhoods have at least some. Areas considered "opportunity neighborhoods" are primarily zoned R-1 thus avoiding the multi unit or multi person housing they view as undesirable.

The following is an excerpt from the staff report at a City of Mpls Public Hearing BZZ-6915 from Nov. 24, 2014. The Whittier neighborhood objected to a Reasonable Accommodation application by a residential treatment facility which already had 4 other facilities in the neighborhood. The City used the following argument to support the reasonable accommodation which further concentrated supportive services in Whittier. With or without the "quarter mile spacing" clause and the need for a conditional use permit, only a small portion of the City of Minneapolis is zoned to accept this type of housing. This zoning irregularity needs to be changed. The transcript from the public hearing staff report:

Due to the presence of several nearby uses that meet the definition of "community residential facilities," the proposed facility is unable to meet the first specific development standard requiring that it be located at least a quarter-mile from other supportive housing facilities and community residential facilities.

Therefore, the necessity of the request for reasonable accommodation stems from the combination of zoning and spacing restrictions imposed by the zoning code. Although the location restrictions affirmatively affect the subject property, this request is for reasonable accommodation is not solely warranted because the desired use doesn't work with this particular parcel. The combination of spacing and zoning restrictions makes establishing supportive housing impossible nearly ***anywhere*** *(Whittier Alliance emphasis) in the city.*

Supportive housing is not permitted in low-density zoning districts, and is allowed only as a conditional use in medium- and high-density districts. Thus, only 7.6% of land in Minneapolis meets zoning requirements. Eligible properties must also comply with the quarter-mile spacing requirement. This further limits eligible properties to 1.7% of land in the city.[1] This measurement does not take into account the practical viability of the qualifying sites. For instance, the land value may be too high, or the likelihood that such a use could ever be established on this land could be extremely low (for example, much of the University of Minnesota campus meets spacing and zoning requirements).

By contrast, approximately 74% of the city is residentially zoned, and 85.6% of the city allows residences as a permitted use.[2] Limiting the housing locations for certain handicapped persons to 1.7% of the City's land area violates the intent of the 1988 FHAA and illustrates the necessity of the request.

Locations for supportive housing are also limited due to the broad range of services that are considered "community residential facilities."

*Incorporate into the final AI Addendum a directive to the City of Minneapolis to revisit and amend its zoning code to more equitably distribute affordable housing and community residential facilities to be placed in all neighborhoods.

[1] The area of Minneapolis is 58.2 square miles (37,376 acres). Zoning districts in which supportive housing could potentially be located have an area of 4,917 acres, or 7.6% of the area. Of the 4,917 acres, only 628 acres meet both the zoning and quarter-mile spacing requirements.
[2] 27,810 acres are residentially zoned (74% of the land area). Residential uses are permitted in all zoning districts except industrial. When considering the potential locations for residential uses, the total acreage available for residential uses is (32,001/37,376) 85.6%. This figure is a raw measurement of zoned area and does not take into account features such as rivers, lakes, infrastructure, and parks.

Comment:
No data was provided about existing naturally occurring affordable housing: location; average rent vs existing affordable housing: location, average rents.
Recommendation:
Naturally occurring affordable housing is a very important component in knowing where additional affordable housing is needed as well as the appropriate price point. The average apartment rent in Whittier is $815 per month—very affordable especially in comparison to other parts of Minneapolis. Additionally, the subsidized affordable housing in Whittier is more expensive than the naturally occurring affordable housing.
Direct the City of Minneapolis to chart and overview of the average rent of naturally occurring affordable housing and its location juxtaposed against the average rent and location of subsidized affordable housing. Direct Minneapolis and other jurisdictions to assess all existing housing and balance the need and the proposed rents as they review affordable housing development proposals.

Comment:
The draft AI identifies the City of Minneapolis (and St Paul) as having the highest amount of subsidized affordable housing within areas of concentrated poverty. Figure 5-4 pg 125. The Whittier neighborhood is familiar with many of the issues identified in Part V Geography of Opportunity.
Recommendation:
Direct the City of Minneapolis to establish a method to evaluate the specific area where subsidized affordable housing currently exists and is being proposed; assess the needs of the specific area- current subsidized and naturally occurring affordable housing and concentration of poverty; develop a matrix to more equitably distribute subsidized affordable housing; attach the tax credits to areas not currently providing subsidized housing; remove or reduce tax credits from areas of concentrated poverty; work with developer and investors to locate the housing in areas of opportunity.

The City also needs to listen to feedback from the neighborhood organization and residents about what type of housing is needed. For example, the Whittier neighborhood has a significant immigrant population in need of 2 & 3 bedroom housing. However, in a recently completed building and in 4 current development proposals with over 300 units, only studio and 1 bedroom units are being proposed. Further, one building in the south section of Whittier in an area of concentrated poverty with over 50% residents of color is proposing that 100% of the units be subsidized affordable units. This proposal sits in the middle of multiple other subsidized units. This is contrary to the point of this AI Addendum and existing Fair Housing guidelines.

Comment;
The draft AI identifies a growing need for affordable housing due in part to falling wages, lack of education or language skills and employment training. It is unrealistic, economically unsupportable and socially irresponsible expect to build or subsidize housing to fulfill the gap in need and ability to pay. No other alternative or concurrent resolution was put forth.
Recommendation:
The AI report should direct the City of Minneapolis to fast track a multi-disciplined, comprehensive collaboration between governmental and private sectors representing housing, social services, economic development, schools and job training, etc. to elevate people out of poverty and the need for subsidized housing. In the long run, it is more sustainable financially and would provide a more balanced City—a healthier investment for the City's in terms of human and economic growth, the individuals well being and urban posterity.

Comment:
To what extent does the existing Minneapolis affordable housing funding application process, tax incentives and development decisions contribute to the subsidized affordable rents being higher than much of the market rate and/or naturally occurring affordable rents? How does new mixed use affordable housing contribute to economic "gentrification" or displacement of local businesses? What is the projected sustainability of the current affordable housing subsidy model if 30 years of tax breaks are given to new build or to extend existing affordable housing? How long can the remaining tax base bear the burden of increased or increasing taxes to feed a growing subsidized pool? If current trends continue, the growing subsidized pool will also be a growing pool of people in poverty.
Recommendation:
The draft AI concludes that more affordable housing is needed to address the current gap in need vs availability. The draft AI also projects that the gap is growing. However the question of a financial tipping point on the current tax base is never addressed.
Direct the City of Minneapolis and other jurisdictions to do a self evaluation on current affordable housing investment and development practices including an assessment of the return on the investment and the future financial demand. The assessment should include a variable that would incorporate a holistic (interdisciplinary as mentioned previously) approach for a client to more easily cycle out of the need for affordable housing.

Comment:
The draft AI recommendations specify a timeframe year but not qualitative or quantitative benchmarks, oversight accountability or implementation goals. Further, they are recommendations, leaving the City and other jurisdictions an "at will" way out. If the intent is to improve housing for those most in need and provide more equitable opportunity the recommendations need to be framed as directives.

Comments Submitted by:
Marian Biehn
Whittier Alliance Representative to the Affordable Housing Committee