

Matrix of Other RHNA Comment Letters Received

| Organization | Date | Contact |
|-------------------------------------------------------------------------------------------------------------------------------------------------|-------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Affordable Housing Network | 10/21/11 | Phyllis Ward, President |
| Latinos Unidos del Valle de Napa y Solano | 8/25/11 | David Grabill |
| League of Women Voters of the Bay Area | 8/27/12 | Marion Taylor, President |
| Public Advocates, Bay Area Legal Aid, California Rural Legal Assistance, California Affordable Housing Law Project, Law Office of David Grabill | 7/16/12 | Richard Marcantonio, Elisabeth Voigt, Samuel Tepperman-Gelfant, Public Advocates, Inc.; David Levine, Bay Area Legal Aid; Ilene Jacobs, California Rural Legal Assistance; Michael Rawson, California Affordable Housing Law Project; David Grabill, Law Office of David Grabill |



AFFORDABLE HOUSING NETWORK
of Santa Clara County

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ABAG
Executive Director Ezra Rapport
PO Box 2050
Oakland, CA 94604

October 21, 2011

The Affordable Housing Network is concerned about ABAG's method of determining the need for affordable housing in our region.

As I understand ABAG's formula, the need does not consider the commuters who cannot find affordable housing in San Jose. As a result, people must live far away to get to their jobs in this area, contributing to traffic congestion and pollution. Also, ABAG does not consider overcrowding in the homes in San Jose. Many residents needing affordable housing must share a residence to make the rent affordable.

There seems to be a large discrepancy between what ABAG reports as the need for affordable housing and what the City of San Jose's Housing Department's Consolidated Plan reports as needed for affordable housing.

The Affordable Housing Network recommends that ABAG consider these additional factors in calculating a current need for affordable housing.

Thank you for considering this request.

Sincerely,

Phyllis Ward
President

Law Office of David Grabill

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August 25, 2011
Via Mail, E-Mail and Fax

Mark Green, President
Ezra Rapport, Executive Director
Association of Bay Area Governments
P. O. Box 2050
Oakland, CA 94604-2050
Fax: 510 464 7970

RECEIVED
AUG 29 2011

EXECUTIVE DIRECTOR'S OFFICE

Re: RHNA Methodology 2014-2022

Dear Mr. Green and Mr. Rapport:

I am writing on behalf of Latinos Unidos del Valle de Napa y Solano, a grass roots organization that promotes equitable development policies and affordable housing in Napa and Solano counties, and on behalf of the Sonoma County Housing Advocacy Group, which advocates for affordable housing in Sonoma County.

We understand that the Housing Methodology Committee of ABAG and ABAG staff are in the process of formulating methodology for determining regional housing needs ("RHNA") for jurisdictions in the ABAG region for the upcoming 2014-2022 Planning Period. We have heard reports from officials in Napa and Marin Counties which indicate that methodology is being considered which would significantly reduce RHNA allocations for the jurisdictions in those two counties. We can only guess at the methodology criteria which would be used to reach such an unfortunate and unjust result.

More than 1/3 of all persons employed in Napa County live outside the County. They commute daily (by car) from Solano, Lake, Contra Costa, and Sonoma counties. The great majority of these commuters would prefer to live in or near one of the cities in Napa County, closer to their worksites, but they cannot find housing there that is affordable to them. The County overall has one of the worst - if not THE worst - imbalance of jobs and housing in the State of California. Marin County has a similar imbalance, with the majority of lower wage workers forced to commute from the East Bay and Sonoma County.

The imbalance in Napa County has worsened significantly over the last two or three decades as employment in the County has surged, but housing construction has lagged. Among the five cities in Napa County, only American Canyon has encouraged residential development to keep pace with employment growth. Calistoga, St. Helena, Yountville and the City of Napa have approved very little housing affordable to low and moderate income households, but have strongly encouraged development of hotels, wineries and tourist-oriented businesses which employ predominately low income workers.

The housing shortage for farmworkers employed in the vineyards of Napa County is especially severe. About 4,500 of the County's 7,000 farmworkers work all year in vineyards in Napa. Others work seasonally in the vineyards and work in other jobs in the County or work as migrant farmworkers in other areas of the state. There is almost no farmworker housing in the County where these workers can live. The County, with some financial help from the wineries, provides three bunk houses with a total of 180 beds where male farmworkers can stay temporarily, but no families are allowed. Most of the County's farmworkers live outside the County because of the lack of affordable housing.

We understand that ABAG staff is recommending a methodology which would allow Napa and Marin Counties and their cities to continue to ignore the housing needs of its lower income workers by relying solely on "household formation" projections to set minimum housing allocations in smaller jurisdictions. This methodology would reward jurisdictions, like those in Napa County, that have resisted affordable housing development in the past by lowering expectations for future growth, while penalizing jurisdictions that have a higher existing concentration of lower income and higher density housing. The RHNA methodology should give substantial weight to addressing the huge backlog of current unmet housing needs in Napa County. Moreover, this approach would appear to violate ABAG's obligations under the Housing Element Law, Government Code §65584 et seq., and other applicable sections of the Government Code. We believe that by condoning exclusionary and discriminatory housing policies in Napa County, it would also violate state and federal fair housing laws.

Government Code 65584(d) requires that the regional housing needs allocation plan for ABAG jurisdictions "shall" be consistent with all of the following objectives:

"(1) Increasing the housing supply and the mix of housing types, tenure, and affordability in all cities and counties within the region in an equitable manner, which shall result in each jurisdiction receiving an allocation of units for low- and very low income households.

"(2) Promoting infill development and socioeconomic equity, the protection of environmental and agricultural resources, and the encouragement of efficient development patterns.

"(3) Promoting an improved intraregional relationship between jobs and housing.

"(4) Allocating a lower proportion of housing need to an income category when a jurisdiction *already has a disproportionately high share of households* in that income category, as compared to the countywide distribution of households in that category from the most recent decennial United States census. (Emphasis added)

Any methodology leading to RHNA allocations for Napa County jurisdictions that would further reduce the inappropriately low affordable housing numbers they have received in past cycles would violate all of these objectives. Napa County jurisdictions "already [have] a disproportionately high share of [higher income] households." Napa has ample land available for

infill development in both the unincorporated areas and in its cities. A development application is pending for development of 2,000+ units (40% affordable to low and moderate income) on a 150-acre brownfields site adjacent to the City of Napa which is being opposed by the City and County officials as “too much growth.” There are numerous other sites which could be made available by the County and by the cities in the county if required to meet their RHNA for the upcoming planning period.

Government Code §65584.04(d)(1) requires that the methodology which ABAG uses to distribute RHNA to cities and counties must be based on “existing and projected jobs and housing relationship.” In Napa’s case, the RHNA allocated to that County and its cities must be substantially increased to help reduce the County’s huge existing imbalance of jobs and housing. The same goes for Marin jurisdictions.

Napa County, with which I am most familiar, does not “lack capacity for sewer or water.” There are ample sources of water available to all areas of the County to facilitate additional residential development targeted towards moderate and lower income households.

While Napa officials claim that development potential in the County is constrained by Measure J (now Measure P) which precludes residential development in areas of the County zoned for open space and agricultural uses unless approved by vote of the whole county, Measure P adopted in 2007 allows the Board of Supervisors to approve residential development in those areas without a vote if necessary to meet the County’s RHNA obligations. Additionally, §65584.04(d)(2)(B) mandates that ABAG “may not limit its consideration of suitable housing sites or land suitable for urban development to existing zoning ordinances and land use restrictions of a locality, but shall consider the potential for increased residential development under alternative zoning ordinances and land use restrictions.” Subsection (f) of the same statute provides:

“(f) Any ordinance, policy, voter-approved measure, or standard of a city or county that directly or indirectly limits the number of residential building permits issued by a city or county shall not be a justification for a determination or a reduction in the share of a city or county of the regional housing need.”

Measure P restricts residential development on thousands of acres of land adjacent to the cities of Calistoga, St. Helena, and Napa which is not “prime agricultural land” as defined by §56064. ABAG’s RHNA methodology should consider this land - near the cities of Napa County and readily capable of being served by water and sewer - as available for needed workforce housing development.

Napa County has never in its modern history approved a single multi-family housing development affordable to farmworkers or lower income households. This astonishing rejection of housing for its workforce has put an additional burden on other surrounding counties. It has caused extraordinary environmental harm from tens of thousands of long daily commuter trips into and out of the county. It has caused immeasurable human harm by separating Napa's farmworkers from their families for long periods of time, and by forcing thousands of employees to spend hours each day commuting when they would otherwise be able to be with family or friends.

We understand that ABAG staff's proposed methodology would allocate RHNA numbers predominantly to jurisdictions that have volunteered for transit oriented growth through the PDA system, rather than equitably distributing housing based on factors such as existing and projected jobs-housing imbalances and past performance in meeting affordable housing needs. To the extent that staff may be relying on §65584.04(i)(1) to justify this methodology, that reliance is misplaced. Placing more affordable housing in Oakland simply because it is transit connected and has volunteered for growth does nothing to meet the workforce housing needs in Napa County. People who work in Napa County (and Marin County) should be able to live in close proximity to work so they can bike or walk to work if they choose. Methodology which would favor or support riding a bus to work in Napa or Marin from affordable housing in Oakland is contrary to the standards enumerated in §65584. Moreover, it is pure fiction to suggest that low income residents in Oakland could ride a bus to jobs in Napa simply because Oakland has transit access. Such fantasies will not help the Bay Area meet SB 375's greenhouse gas reduction targets.

The staff's proposed methodology - which would assign lower RHNA numbers to jurisdictions which have historically resisted development of affordable housing, and higher numbers to jurisdictions which already have higher numbers of low-income households - will clearly exacerbate existing disparities of race and class in jurisdictions within the ABAG region. This methodology would conflict with Government Code §65008, which prohibits local governments from discriminating against development of housing intended for occupancy by lower income households in their land use and zoning policies. Because lower income households are disproportionately non-white, the methodology would also appear to violate state and federal fair housing laws. And because almost all jurisdictions in the ABAG region have pledged to "affirmatively further fair housing" as a condition of receiving federal funding of one sort or another, the staff's proposed methodology would encourage many ABAG jurisdictions to violate that pledge.

Napa County and some of its cities have formed a "sub-regional entity" for the purpose of allocating those jurisdictions' upcoming RHNA. If history is any guide, this should not be taken to mean that any of the jurisdictions in this entity will make increased efforts to address affordable housing needs. It should, however, mean that these jurisdictions will be able to direct

Mark Green, ABAG President
Ezra Rapport, ABAG Executive Director
August 26, 2011
Page 5 of 5

greater planning and financial resources towards affordable housing production so that housing can be located in close proximity to jobs wherever in the County those jobs may be located.

The City of Napa is one of the jurisdictions in the new sub-regional entity. More than half way through the current 2007-2014 planning period, the City has approved less than 30 units of housing affordable to lower income households - which is less than 4% of its low/very low income RHNA of 800 units. During the previous 7-year planning period, the City produced very little affordable housing other than units restricted to seniors. Napa County has not approved any affordable housing units during this planning period, and did not approve any affordable housing units during previous planning periods. A few "second units" have been built which the county requires be affordable to lower income households if they are rented, but the County does not require that these be actually rented.

In closing, we would strongly urge ABAG's Housing Methodology Committee to adopt methodology for determining RHNA for its constituent jurisdictions which is fair and equitable to all residents and jurisdictions; which strictly complies with applicable statutory requirements in the Government Code; and which facilitates and encourages compliance with state and federal fair housing laws. RHNA must be assigned to ABAG jurisdictions under a methodology which reduces or eliminates existing jobs-housing imbalances. Remedying such imbalances, rather than exacerbating them, is the only way for our region to decrease vehicle miles traveled and meet its greenhouse gas emissions goals, and promote.

If you have questions, or if we can provide additional information, please do not hesitate to contact me.

Yours truly,



David Grabill



LEAGUE OF WOMEN VOTERS OF THE BAY AREA
An Inter-League Organization of the San Francisco Bay Area



August 27, 2012

Ezra Rapport, Executive Director
Association of Bay Area Governments
101 Eighth Street
Oakland, CA 94607

RE: Regional Housing Needs Allocation Methodology (July 10, 2012)

Dear Mr. Rapport,

The LWVBA strongly supports a regional fair share housing plan, and believes that this plan should be consistent with compact growth principles, which include limiting future growth to existing urbanized areas to prevent urban sprawl, as well as providing workforce housing close to jobs in order to improve the jobs/housing imbalance wherever possible. The LWVBA also believes that the regional housing plan should provide for balanced and equitable housing throughout the area.

We think that the methodology put forth by ABAG does not meet these goals in several ways.

First, we believe RHNA allocations under Housing Element law should require all cities to accommodate their fair share of housing for lower-income households. Because of the emphasis on placing housing in Priority Development Areas (PDA's), wealthy, and sometimes job-rich communities (such as Menlo Park) are seeing a much lower RHNA allocation than in the 2007-14 RHNA period. Meanwhile, lower-income communities such as Oakland, San Jose, Pittsburg, and Oakley are either receiving higher RHNA allocations or numbers similar to the last period as a result of their volunteering to establish PDA's. Because identifying PDA's was voluntary, cities that provide many jobs but didn't choose to identify substantive PDA's received lower allocations than we believe appropriate, based on the strong nexus between jobs and housing.

RHNA allocations are one method under State law to promote distribution of affordable housing throughout all communities. Housing element and fair housing laws encourage wealthy communities such as Alameda, Lafayette, Los Altos, Los Gatos and Saratoga to change their restrictive zoning practices. But because most of these wealthier cities did not opt to include substantive PDA's, they received lower allocations under the current methodology.

Second, we advocate growth near viable, available transit. Yet, the RHNA allocations do not evenly match the presence of public transportation, or lack thereof, and the allocations do not adequately take into account public transportation planned for the near future. Although public transit is limited in many areas of Marin, it is also limited in much of Eastern Contra Costa County. But Eastern Contra Costa County has a higher allocation than all of Napa and Marin Counties.

We urge you to reconsider the allocations and ask for more housing in wealthier, and/or job-rich cities, such as Palo Alto, Menlo Park, Mountain View and Pleasanton. We believe this can be done while still emphasizing housing growth near transit and preventing urban sprawl.

Sincerely,

Marion Taylor,

President

Cc: Linn Warren, Director, Department of Housing and Community Development

Miriam Choin, ABAG

Paul McDougall, HCD

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October 26, 2011

BY ELECTRONIC MAIL

Ezra Rapport, Executive Director
Association of Bay Area Governments
101 Eighth Street
Oakland, CA 94607

Re: Analyzing and Addressing RHNA and SCS Fair Housing Concerns

Dear Mr. Rapport:

The Association of Bay Area Governments (ABAG) shares with the Metropolitan Transportation Commission (MTC) the responsibility for developing the Bay Area's Regional Transportation Plan (RTP), with its Sustainable Communities Strategy (SCS). In that role, and in its role as representative of the Bay Area's cities and counties, ABAG has a responsibility to ensure that its RTP Land Use Scenarios and its Regional Housing Need Allocation (RHNA) promote fair housing opportunities for all and do not perpetuate existing patterns of segregation. ABAG also has the duty to ensure that its RHNA is consistent with the objectives of the Housing Element Law.¹

We write on behalf of our clients and community partners who are low-income people in need of decent, affordable housing in the Bay Area, including people of color, farmworkers, and other protected groups.² We seek to ensure that ABAG will meet its obligations under federal and state law by conducting appropriate analyses to identify any impediments or disproportionate adverse impacts that its proposed alternatives would have on minority populations, and by making all necessary modifications to overcome those impacts.

An analysis of this sort is particularly important because both the RTP Land Use Scenarios and proposed RHNA distribution allocate growth primarily based on local jurisdiction volunteerism into the Priority

See Cal. Gov. Code § 65584(d).

² David Grabill's letter of August 25, 2011, to you and Mark Green details other legal issues of great concern in connection with the RHNA methodology.

Development Area program. This approach raises serious concerns because there is no necessary correlation between local interest in growth and the state and federal fair housing requirements discussed below. In addition, reliance on the volunteerism of jurisdictions may conflict with ABAG's obligation under the Housing Element Law to meet certain statutory objectives that include the avoidance of a disproportionately high concentration of households in any income category,³ and to take into account statutory factors, such as each jurisdiction's existing and projected jobs and housing relationship and high housing cost burdens.⁴ Indeed, given the historic resistance shown by many predominantly wealthy and white cities and counties to lower income housing growth, there is a real danger that over-reliance on local volunteering when distributing growth could actually increase segregation, decrease access to opportunity and allow jurisdictions to evade their affordable housing obligations.

On July 21, 2011, the ABAG Executive Board unanimously approved Supervisor Mark Luce's motion to modify the land use component of one of five SCS alternative scenarios, the Focused Growth Scenario. (Sup. Luce's motion is attached.) This Executive Board action, adopting a proposal by the dozens of stakeholder organizations across the Bay Area that comprise the "6 Wins" Network, directed ABAG staff to revise this scenario in a manner that would "prioritize workforce housing in all of the places with jobs and transit," not just in those cities that volunteered for growth by creating adequate Priority Development Areas (PDAs); in particular, staff was directed to "include some targeted [housing] growth in the specific job-rich and transit-equipped cities that draw thousands of low-wage workers from long distances due to an inadequate local supply of affordable housing."⁵

This Board direction not only aims to reduce Greenhouse Gas emissions by ensuring that workers at all income levels can live near their jobs, but represents a step toward meeting important non-discrimination requirements under federal and California law, by recognizing the regional responsibility to locate housing where it is needed, not just where local officials want it.

Both the Fair Housing Act and the California Fair Employment and Housing Act strongly suggest that the SCS Land Use Scenarios and the RHNA distribution must promote affordable housing in high-opportunity communities. The Fair Housing Act prohibits discrimination in a wide range of activities that impact housing opportunities based on race and national origin, as well as religion, sex, familial status and handicap.⁶ This prohibition extends not only to actions that are intentionally discriminatory, but equally to those that have a "disparate impact" on a

³ Cal. Gov. Code § 65584(d).

⁴ Cal. Gov. Code § 65584.04(d).

⁵ The Executive Board modified the Scenario description by adding a statement that "[g]rowth would be based on maximizing the regional transit network and reducing [greenhouse gas] emissions by providing convenient access to employment for people of all incomes by distributing total housing growth numbers to: a) job-rich cities that are PDAs *and PDA-like*; b) connected to the existing transit infrastructure; and c) lack the affordable housing needed." (Emphasis added.)

⁶ 42 U.S.C. § 3604.

protected group.⁷ Prohibited discrimination under the Act includes racially exclusionary land use practices and policies by a municipality,⁸ as well as policies or practices that promote the exclusion of minorities from one community or their concentration in another community.⁹

California's Fair Employment and Housing Act goes a step further, not only prohibiting discrimination "through public or private land use practices . . . that make housing opportunities unavailable" to members of protected groups,¹⁰ but also making it unlawful "[f]or any person to aid [or] abet . . . the doing of any of the acts or practices declared unlawful in this section, or to attempt to do so."¹¹

The Fair Housing Act further requires that federal programs and funds related to housing and urban development promote "truly integrated and balanced living patterns."¹² This obligation to "Affirmatively Further Fair Housing" is passed on to cities and counties that receive HUD community development block grant funds, including most or all of ABAG's member jurisdictions. It includes the threefold obligation to (1) analyze impediments to integrated housing patterns and access to opportunity in their jurisdiction; (2) to take actions to overcome the effects of these impediments; and (3) to keep records of the analysis and actions.¹³ This affirmative obligation aims to ensure that recipients of

⁷ See, e.g., *Pfaff v. U.S. Dept. of Housing and Urban Development*, 88 F.3d 739 (9th Cir. 1996); *Keith v. Volpe*, 858 F.2d 467 (9th Cir. 1988).

⁸ E.g., *San Pedro Hotel Co. v. City of Los Angeles*, 159 F.3d 470, 475 (9th Cir. 1998); see generally *Metropolitan Hous. Dev. Corp. v. Village of Arlington Heights*, 558 F.2d 1283, 1291 (7th Cir. 1977).

⁹ See, e.g., *Inclusive Comm. Project, Inc. v. Tex. Dep't of Hous. & Comm. Dev.*, 749 F. Supp. 2d 486, 500 (N.D. Tex. 2010) (holding plaintiffs established prima facie case of disparate impact by showing that state housing agency disproportionately approves applications for low-income housing tax credit units in minority neighborhoods, leading to a concentration of such units in these areas). The Housing Element additionally requires that the distribution of the RHNA avoid a disproportionately high concentration of households in any income category. Cal. Gov. Code 65584(d)(4).

¹⁰ Cal. Gov. Code § 12955(l).

¹¹ Cal. Gov. Code § 12955(g). See also § 65008, which prohibits actions that deny "to any individual or group of individuals the enjoyment of residence, landownership, tenancy, or any other land use in this state because of" a variety of attributes, including "The intended occupancy of any residential development by persons or families of very low, low, moderate, or middle income."

¹² *Trafficante v. Metro. Life Ins. Co.*, 409 U.S. 205, 211 (1972) (quoting 114 Cong. Rec. 3422 (1968) (statement of Sen. Mondale); The Fair Housing Act, § 808(d), (e), 42 U.S.C. § 3608(d), (e); HUD Fair Housing Planning Guide (outlining duty to affirmatively further fair housing, including to "provide opportunities for inclusive patterns of housing occupancy regardless of race, color, religion, sex, familial status, disability and national origin."))

The Housing Element Law also requires each jurisdiction to adopt a series of actions "promote housing opportunities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability." Cal Gov. Code § 65583(c)(5).

¹³ See 24 C.F.R. § 91.225.

federal funds are taking the actions necessary to both identify and break down existing patterns of segregation and other barriers to equal housing opportunity.¹⁴

These obligations are further bolstered by the requirements of both Title VI of the Civil Rights Act, which prohibits discrimination by recipients of federal funds,¹⁵ and California Government Code § 11135, which prohibits discrimination by recipients of state funds. Both statutes prohibit discrimination on the basis of limited English proficiency as well as race and ethnicity.¹⁶

To comply with this variety of federal and state requirements, and ensure that ABAG is not aiding or abetting fair housing violations in the land-use practices of its member jurisdictions, a thorough fair housing analysis of the alternatives under consideration is essential. Conducting this analysis, moreover, will be consistent with the regional agencies' commitment in response to comments on MTC's federally-mandated Public Participation Plan,¹⁷ to conduct equity analyses at a number of key decision points, in the process of developing the RTP and SCS, including the evaluation of alternative Scenarios.

The U.S. Department of Housing and Urban Development (HUD) recently released guidance on how this kind of analysis of fair housing opportunity should be conducted. Utilizing this HUD methodology would help ABAG ensure that its SCS and RHNA methodologies and outcomes do not perpetuate existing racial and ethnic segregation

¹⁴ Last year, the County of Marin entered into a Voluntary Compliance Agreement with HUD, following numerous initial findings of noncompliance detailed in HUD's Final Investigative Report. Among other things, HUD's Final Report found that "two census tracts within Marin . . . are severely impacted with Blacks comprising over 59% of residents of Marin City, and Hispanics comprising over 47% of the residents of the Canal Area." (p. 65.) On the other hand, HUD found that the lack of affordable housing in much of the rest of Marin had a disproportionate impact on Blacks and Hispanics. (p. 61.) The Compliance Agreement requires Marin to "identify and analyze: the impediments to fair housing within its jurisdiction, including those based on race and ethnicity and municipal resistance to the development of affordable housing. . . 2. the causes of lower racial and ethnic minority residency in the county relative to adjacent counties; and, 3. the actions the Recipient will take to address those impediments." (VCA Sec. III (E)(2).)

The Final Investigative Report may be found at http://www.publicadvocates.org/sites/default/files/library/final_investigative_report_hud_2009.pdf and the Voluntary Compliance Agreement may be found at http://www.publicadvocates.org/sites/default/files/library/voluntary_compliance_agreement_with_full_attachments.pdf.

¹⁵ 42 U.S.C § 2000d.

¹⁶ Cal. Gov. Code § 11135(a); Cal. Code Regs. tit. 22, § 98101 (allowing claims based on disparate impact).

¹⁷ The Plan is available at http://www.mtc.ca.gov/get_involved/ppp/Final_PPP_Dec_3_2010.pdf. See esp. pp. 53-54/85.

patterns. HUD's guidance addresses both the concentration of affordable housing in lower-income communities of color and the lack of affordable housing to affluent, racially-exclusive communities. In addition to meeting existing obligations in this area, all recipients of HUD's Sustainable Communities Regional Planning Grant are required to conduct a Regional Fair Housing and Equity Assessment, which includes analyses of segregation patterns, racially/ethnically concentrated areas of poverty, access to existing areas of high opportunity, major public investments that impact access to opportunity and demographic changes, and the strength of fair housing services and activities. As a member of the Bay Area consortium that applied for a 2011 Sustainable Communities Regional Planning Grant, ABAG will have an obligation to carry out this comprehensive regional analysis if the grant is awarded to the Bay Area.

Specifically, in connection with its Sustainable Communities Regional Planning Grants, HUD recommends utilizing three measures of segregation: (1) a dissimilarity index that measures the evenness with which white residents and residents of color are distributed across a jurisdiction or region (2) predicted racial and ethnic composition, and (3) ethnically concentrated areas of poverty. HUD also recommends an analysis of access to existing areas of high opportunity. (See HUD's attached Regional Fair Housing and Equity Assessment PowerPoint presentation.)

By way of illustration, the second metric – predicted racial and ethnic composition – calculates what one would expect the race and ethnic diversity of a city to be if all households regardless of race or ethnicity were free to live where others at their income level live. Using the racial composition of each income bracket in the Bay Area region as a picture of the regional housing market, we selected a few places to determine what the expected racial composition of residents in each income bracket is. Applying that composition to the actual number of residents in each income bracket in Marin, we found that only 57 percent of households in Marin would be non-Hispanic white in an equal-opportunity housing market; in actuality, Marin's population is 72 percent white. By the same metric, the City of Pleasanton, which is 70.8 percent non-Hispanic white, would be expected to be only 58.5 percent white, while Walnut Creek is nearly 81.9% non-Hispanic white, where 56% white would be expected.¹⁸

ABAG should use each of the approaches HUD recommends to evaluate the impact of potential SCS Land Use Scenarios and RHNA distributions by mapping the proposed affordable housing distributions onto the patterns of segregation and access to opportunity revealed by these analyses. These analyses should be completed before the preliminary draft of the RHNA methodology goes to the ABAG Executive Board in the Spring of 2012.

¹⁸ Source of data: 2005-2009 American Community Survey 5-Year Estimates, Tables B19001 and B19001H. These tables break out the racial composition of households in income increments of \$10,000. In the aggregate, Bay Area households earning up to \$10,000 a year are 43.7 percent non-hispanic white. That proportion steadily increases, reaching 69.9% white at the top income bracket (\$200,000 and above).

Ezra Rapport, Executive Director
Association of Bay Area Governments
October 26, 2011

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Once these fair housing analyses have been conducted, the proposed allocations should be modified to ensure that they will neither perpetuate segregation nor aid and abet local governments in failing to comply with their fair housing and “affirmatively furthering” obligations. ABAG should conduct and respond to these analyses early on, so as to avoid the disruption that legal challenges could bring later on.

We would be happy to discuss the technical details of these HUD measures and to provide you with contacts that could be helpful as you undertake this analysis.

Sincerely,

PUBLIC ADVOCATES INC.

Richard A. Marcantonio
Managing Attorney

Elisabeth Voigt

Senior Staff Attorney

Samuel Tepperman-Gelfant

Staff Attorney

**CALIFORNIA AFFORDABLE HOUSING
LAW PROJECT**

Michael Rawson

Director

BAY AREA LEGAL AID

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**CALIFORNIA RURAL LEGAL
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Ilene Jacobs

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Attorney for Antonio Manzo

LAW OFFICE OF DAVID GRABILL

David Grabill

Enclosures: (1) Executive Board motion, approved July 21, 2011
(2) HUD PowerPoint presentation on Regional Fair Housing and Equity
Assessment

Addressing Equity & Opportunity: *The Regional Fair Housing and Equity Assessment (FHEA) Grant Obligation*





Webinar Overview

1. Rationale for FHEA
2. Overview of FHEA Grant Obligation
 - FHEA Context
 - Discussion of FHEA Components
 - FHEA Caveats and Uniqueness
 - Organization of the Product
3. Next Steps



Rationale

Sustainability also means creating "geographies of opportunity," places that effectively connect people to jobs, quality public schools, and other amenities. Today, too many HUD-assisted families are stuck in neighborhoods of concentrated poverty and segregation, where one's zip code predicts poor education, employment, and even health outcomes. These neighborhoods are not sustainable in their present state.

—HUD Secretary Shaun Donovan, February 23, 2010



Regional FHEA Grant Obligation Objectives: *What We Expect of You*

1. **Understand** the historical, current and future context for equity and opportunity in the region and the data and evidence that demonstrates those dynamics
2. **Engage** regional leaders and stakeholders on findings and implications of analysis
3. **Integrate** knowledge developed through the Regional FHEA exercise into the strategy development process (e.g., priority setting and decision making)

Regional Fair Housing and Equity Assessment (FHEA) Grant Obligation Overview



FHEA Context

- The Fair Housing Act requires HUD and its grantees to do more than just combat discrimination
- The FHEA concept emerges from the linkage of two distinct strands intended to more effectively promote inclusive, sustainable regions
 - Regional is better than local for certain decisions
 - Refined thinking regarding fair housing is starting to inform policy
- The FHEA structure represents the marrying of these two
 - 5 dimensions: 3 are informed by the refined thinking, the other 2 explore regional issues



Components of the Regional FHEA

Identification and Assessment of:

- Segregated Areas and Areas of Increasing Diversity and/or Racial/Ethnic Integration
- Racially/Ethnically Concentrated Areas of Poverty
- Access to Existing Areas of High Opportunity
- Major Public Investments
- Fair Housing Issues, Services, and Activities



Regional FHEA: Segregation and Integration

Section I: Identification and Assessment of Racial/Ethnic Segregation and Integration

- Overview: Why we are looking at racial and ethnic segregation and integration

- Sample Questions
 - Is your region segregated? What are possible drivers?
 - Are particular racial/ethnic minorities more segregated than others?
 - Are particular jurisdictions far below their predicted racial/ethnic population based on their current economic profile?
 - Are certain areas integrated or in the process of integrating? What are the drivers?
 - What do the demographic trends over time reveal regarding segregation and integration?



Regional FHEA – Quick Note About Data

- Data Notes
 - *HUD will be making the data used in this presentation available to all OSHC grantees*

- Data Geographies

- **Metropolitan/Micropolitan Areas:** Data in this presentation is provided at the metropolitan/micropolitan area-level using OMB's Core-Based Statistical Area definition:

Metropolitan Statistical Areas have at least one urbanized area of 50,000 or more population, plus adjacent territory that has a high degree of social and economic integration with the core as measured by commuting ties. Micropolitan Statistical Areas – a new set of statistical areas – have at least one urban cluster of at least 10,000 but less than 50,000 population, plus adjacent territory that has a high degree of social and economic integration with the core as measured by commuting ties. Metropolitan and Micropolitan Statistical Areas are defined in terms of whole counties.

- **Census Tract:** Small, relatively permanent statistical subdivisions of a county or statistically equivalent entity have between 1,500 and 8,000 people, with an optimum size of 4,000 people.

[<http://www.census.gov/geo/www/tiger/glossry2.pdf>]



Regional FHEA – Assessment of Racial/Ethnic Segregation

- Analytical Tools

- Dissimilarity Index

- Metro/Micro level statistic that builds up from tract-level (“neighborhood level”) data
 - Used to summarize segregation or integration of two groups (e.g. Black, White)
 - Index can take on a value from zero (0) to one (1), with zero representing complete integration and one representing complete segregation
 - Can be loosely interpreted as the percentage of one group that would need to move in order for each tract to match the composition of the area

- Predicted Racial/Ethnic Composition

- Jurisdiction level statistic derived from regional demographic and economic characteristics of the Metro/Micro Area
 - Answers question: given the current household income characteristics for each jurisdiction, what would we expect the racial/ethnic composition to look like?



Segregation – Dissimilarity Indices

| Racial Segregation | |
|------------------------------------------------|-------|
| Metro/Micro - Dissimilarity Indices | |
| Chicago-Naperville-Joliet, IL-IN-WI Metro Area | |
| | Score |
| Non-White - White | 0.57 |
| Black - White | 0.79 |
| Hispanic - White | 0.59 |
| Asian - White | 0.51 |

| Racial Segregation | |
|-------------------------------------|-------|
| Metro/Micro - Dissimilarity Indices | |
| Asheville, NC Metro Area | |
| | Score |
| Non-White - White | 0.41 |
| Black - White | 0.58 |
| Hispanic - White | 0.51 |
| Asian - White | N/A |

| Racial Segregation | |
|-----------------------|--------|
| Dissimilarity Indices | |
| Low | Green |
| Moderate | Yellow |
| High | Red |



See Segregation Maps



Regional FHEA: RCAP

- Section II: Identification and Assessment of Racially Concentrated Areas of Poverty (RCAP)
 - Overview: Why we care about RCAPs
 - Sample Questions
 - Does your region contain racially concentrated areas of poverty? If so, what percentage of the regional population resides in RCAPs?
 - Are particular racial/ethnic minorities acutely concentrated in RCAPs?
 - Do certain jurisdictions harbor the majority of the regions RCAPs?
 - How much HUD/assisted housing/LIHTC is in each RCAP?



Regional FHEA: ID & Assessment of Racially Concentrated Areas of Poverty (RCAP)

- Analytical Tools :
 - Uses census tract characteristics to define “racially-concentrated area of poverty”
 - HUD defines RCAP as a census tract with
 - A family poverty rate $\geq 40\%$ or
 - A family poverty rate $\geq 300\%$ of the metro tract average* (whichever is lower)
 - AND a majority non-white population ($>50\%$)
 - Examines relative concentration of particular racial/ethnic groups in these “RCAP census tracts”



Case 1: RCAP in Chicago

| Racially Concentrated Areas of Poverty | | | |
|------------------------------------------------|--------------|----------------------------------|----------------------------|
| Metro/Micro | | | |
| Chicago-Naperville-Joliet, IL-IN-WI Metro Area | | | |
| | | Count | Percent |
| Total Tracts | | 4053 | 100% |
| RCAP Tracts | | 253 | 19% |
| Non RCAP Tracts | | 3800 | 83% |
| | | | |
| | Count | % of Group in Percent | Percentile Rank |
| Total Population in RCAP | 594,076 | 6.28% | 88 |
| Black in RCAP Tracts | 399,626 | 24.08% | 91 |
| Hispanic in RCAP Tracts | 131,449 | 7.25% | 82 |
| Asian in RCAP Tracts | 13,162 | 2.70% | 86 |



Case 2: RCAP in Asheville

| Racially Concentrated Areas of Poverty | | | |
|----------------------------------------|--------------|----------------------------------|----------------------------|
| Metro/Micro | | | |
| Asheville, NC Metro Area | | | |
| | | Count | Percent |
| Total Tracts | | 312 | 100% |
| RCAP Tracts | | 3 | 19% |
| Non RCAP Tracts | | 309 | 83% |
| | | | |
| | Count | % of Group in Percent | Percentile Rank |
| Total Population in RCAP | 4,762 | 1.18% | 63 |
| Black in RCAP Tracts | 2,592 | 13.16% | 80 |
| Hispanic in RCAP Tracts | 455 | 2.33% | 70 |
| Asian in RCAP Tracts | 0 | 0.00% | 1 |



See RCAP Maps



Regional FHEA: Equal Access to Opportunity

Section III: Identification and Assessment of Disparity in Access to Opportunity

- Overview: Why we care about disparity in access to opportunity
- Sample Questions
 - Where are the areas of high opportunity? What proportion of the region's residents live in such areas?
 - Are there disparities of neighborhood opportunity for racial/ethnic minorities? Are they significant?
 - Are certain elements of opportunity more inequitably located across groups?
 - How do these inequities (or lack of) align with your public investments?



Regional FHEA: Disparity in Access to Opportunity

- Analytical Tools
 - Indices
 - Indices can be calculated many different ways
 - HUD created five indices School Proficiency Index, Poverty Index, Labor Market Index, Housing Stability Index, Job Access Index
 - Other applications: Crime? Health?
 - Exposure Indices
 - Metro-level Statistic built from census tract data
 - Interpreted as “the average neighborhood that a given group is “exposed to”
 - Disparity Comparison
 - Compare the differences in exposure indices across racial/ethnic groups
 - Use statistical tests to validate the accuracy of the disparity



Asheville Opportunity

Metro Asheville, NC Metro Area

| Dimension | All Persons | Poor Persons | Persons in Voucher households | Persons in PH | White Persons | Black Persons | Hispanic Persons | Asian Persons |
|-------------------------|-------------|--------------|-------------------------------|---------------|---------------|---------------|------------------|---------------|
| School Index | 7.60 | 7.29 | 7.35 | 7.00 | 7.66 | 6.98 | 7.24 | 7.81 |
| Poverty Index | 4.95 | 3.66 | 3.84 | 2.14 | 5.12 | 3.39 | 3.66 | 5.32 |
| Labor Engagement Index | 5.72 | 5.13 | 4.90 | 4.19 | 5.75 | 5.56 | 5.03 | 6.96 |
| Housing Stability Index | 5.98 | 5.16 | 5.18 | 2.98 | 6.08 | 4.94 | 5.21 | 6.52 |
| Job Accessibility Index | 4.97 | 5.47 | 5.56 | 8.30 | 4.78 | 7.41 | 5.64 | 5.99 |
| Opportunity Index | 6.01 | 5.01 | 5.06 | 3.89 | 6.08 | 5.60 | 5.06 | 7.23 |

| | Poor Persons | Poor White | Poor Black | Poor Hispanic | Poor Asian | Disparity Black-White | Disparity Hispanic-White | Disparity Asian-White |
|-------------------------|--------------|------------|------------|---------------|------------|-----------------------|--------------------------|-----------------------|
| School Index | 7.29 | 7.44 | 6.34 | 7.13 | 7.41 | 1.10 | 0.30 | 0.03 |
| Poverty Index | 3.66 | 4.04 | 2.22 | 2.47 | 3.45 | 1.81 | 1.57 | 0.58 |
| Labor Engagement Index | 5.13 | 5.20 | 4.69 | 4.89 | 5.79 | 0.51 | 0.31 | -0.60 |
| Housing Stability Index | 5.16 | 5.35 | 3.99 | 4.68 | 5.82 | 1.36 | 0.66 | -0.48 |
| Job Accessibility Index | 5.47 | 5.07 | 7.93 | 5.63 | 7.29 | -2.86 | -0.56 | -2.22 |
| Opportunity Index | 5.01 | 5.17 | 4.28 | 4.37 | 6.04 | 0.89 | 0.80 | -0.87 |



Chicago Opportunity

Metro Chicago-Naperville-Joliet, IL-IN-WI Metro Area

| Dimension | All Persons | Poor Persons | Persons in Voucher households | Persons in PH | White Persons | Black Persons | Hispanic Persons | Asian Persons | | | |
|-------------------------|--------------|--------------|-------------------------------|---------------|---------------|---------------|-----------------------|--------------------------|-----------------------|--|--|
| School Index | 5.88 | 3.86 | 3.15 | 2.78 | 7.29 | 2.94 | 4.13 | 6.98 | | | |
| Poverty Index | 5.25 | 3.15 | 2.91 | 2.14 | 6.35 | 2.87 | 4.03 | 5.87 | | | |
| Labor Engagement Index | 5.60 | 3.86 | 3.17 | 3.39 | 6.71 | 2.94 | 4.34 | 7.19 | | | |
| Housing Stability Index | 5.59 | 3.59 | 2.93 | 3.07 | 7.04 | 2.75 | 3.69 | 6.35 | | | |
| Job Accessibility Index | 5.52 | 5.38 | 4.70 | 5.53 | 5.58 | 4.76 | 5.79 | 6.33 | | | |
| Opportunity Index | 5.61 | 3.47 | 2.74 | 2.63 | 7.02 | 2.57 | 3.87 | 6.93 | | | |
| | Poor Persons | Poor White | Poor Black | Poor Hispanic | Poor Asian | | Disparity Black-White | Disparity Hispanic-White | Disparity Asian-White | | |
| School Index | 3.86 | 6.19 | 2.32 | 3.37 | 6.06 | | 3.87 | 2.82 | 0.13 | | |
| Poverty Index | 3.15 | 4.91 | 1.94 | 2.94 | 4.28 | | 2.97 | 1.96 | 0.63 | | |
| Labor Engagement Index | 3.86 | 5.75 | 2.33 | 3.80 | 6.09 | | 3.42 | 1.94 | -0.34 | | |
| Housing Stability Index | 3.59 | 5.86 | 2.24 | 2.97 | 5.22 | | 3.63 | 2.90 | 0.64 | | |
| Job Accessibility Index | 5.38 | 5.88 | 4.57 | 5.82 | 6.57 | | 1.31 | 0.06 | -0.69 | | |
| Opportunity Index | 3.47 | 5.73 | 1.94 | 3.04 | 5.55 | | 3.78 | 2.69 | 0.18 | | |



See Opportunity Maps



Regional FHEA: Major Public Investments

Section IV: Identification and Assessment of public investment triggers that impact access to opportunity and demographic changes

- Overview: Why we care about public investments
- Sample Questions
 - What major public investments (e.g., transportation, economic development) are slated for the region, and where? Are they reflected in current plans (e.g., long range transportation plan, CEDS plan)? Will these investments affect any communities of racially concentrated poverty (RCAP)? Areas of high opportunity? Diversifying/integrating communities?
 - What is the likely or projected impact of those investments on the affected places and the current residents of those places (positive/negative impact; adverse/unintended consequences; disruptive/revitalizing, etc.)?



Regional FHEA: Fair Housing Issues, Services, Activities

Section V: Identification and Assessment of the existing fair housing issues, services, and activities

- Overview: Why we care about fair housing infrastructure
- Sample Questions
 - How is the region faring in complying with the Fair Housing Act i.e., the state of housing discrimination in the region? What data/evidence is most probative of your assessment (e.g., volume and kind of complaints)?
 - What is the state of play with fair housing capacity in the region (e.g., # and quality of fair housing education and advocacy organizations, jurisdictional capacity to monitor and enforce, etc.)?
 - Does your data/evidence related to fair housing compliance suggest a systemic issue that requires a systemic, public policy response (e.g., patterns of discriminatory practice, common bad actors, ineffective support systems, etc.)? Given the systemic issues, what is the strategy to address?



Regional FHEA Grant Obligation Caveats

While this guidance has been informed by the ongoing policy development conversations at HUD related to equity and opportunity issues, it is important to distinguish it in the following ways:

1. FHEA is **NOT** a revision of the Analysis of Impediments standard and obligation
2. FHEA can help inform, but does **NOT**, on its face, count for the Analysis of Impediments obligation that jurisdictions currently have



What Makes the FHEA Unique

- **Analysis**: Scope and scale of analysis is to be performed at a regional scale and includes data elements that are consistent with the Livability Principles
- **Engagement**: data analysis and baseline assessment summarized in the Regional FHEA is intended to help focus and inform consortia deliberations
- **Data sources**: HUD will provide a consistent, baseline data packet that describes thresholds for comparison within and across jurisdictions within each region. Regions can supplement this data
- **Bridge**: This product should be completed in time to serve as a living document that informs the development of the regional plan



Organization of the Product

There are **eight** expected headers within your document

1. Executive Summary
2. ID and Assessment of Areas of Racial/Ethnic Segregation as well as Integration
3. ID and Assessment of Racially Concentrated Areas of Poverty
4. ID and Assessment of Access to existing areas of high opportunity
5. ID and Assessment of Major Public Investments (current and future)
6. ID and Assessment of Fair Housing issues, services, and activities
7. Conclusions regarding findings from the identification and assessment phases and recommendations to be implemented through regional planning.
8. Major takeaways from stakeholder engagement related to the findings of the FHEA
9. Lessons learned (optional)



Next Steps

Fulfilling the Grant Obligation:

- Talk to your GTR about questions and comments you have on how to incorporate this guidance into your work
- Be on the lookout for more guidance, data resources and capacity building training

Opt-In Option – *Going Beyond Grant Obligation:*

- While the work created here will only satisfy your Regional Planning Grant obligations, our hope is that you can use this work as a basis for fulfilling other federal requirements.
- If you are interested in opting in to have this analysis count for other requirements, please let your GTR know. Your GTR will follow up with specific information about the next steps for the “opt-in” and what additional work may be necessary.