



**MID-MINNESOTA LEGAL AID
MINNEAPOLIS OFFICE**
James E. Wilkinson ▪ (612) 746-3784 ▪ jewilkinson@mylegalaid.org

Steps Towards Fair Housing and Equity for the Twin Cities Metropolitan Region

Introduction:

The time is ripe to discuss equal housing opportunity in this region. Local units of government, philanthropic, community members and others are engaged in the Corridors of Opportunity/Sustainable Communities Initiative.ⁱ The Metropolitan Council is set to revise its regional development framework (Thrive 2040), including its regional housing plan, during the next two years. HUD requires the Council, as lead agency for the CoO effort, to undertake a Regional Fair Housing and Equity Assessment.

The outcome of these efforts will determine whether communities of color, people with disabilities and others who now live in difficult circumstances will equitably participate in and contribute to the residential, employment, education and cultural progress of our region. Some suggest that the stark racial and economic inequities facing the region, with racially segregated areas of poverty and wealth, opportunity and disinvestment, may be the top barrier to future success of the region.ⁱⁱ Others, like PolicyLink, give this a positive spin: Equity is the Superior Growth Strategy.

The Met Council is undertaking a Regional Fair Housing and Equity Analysis. It must include examination of:

1. Segregated Areas and Areas of Increasing Diversity and/or Racial/Ethnic Integration;
2. Racially/Ethnically Concentrated Areas of Poverty;
3. Access to Existing Areas of High Opportunity (employment, education, transit and other features);
4. Major Public Investments that impact access to opportunity or create demographic shifts, and
5. Fair Housing Issues, Services, and Activities.

This data analysis will fuel a dialogue within the CoO and concerned community members and will be integrated into the CoO's regional sustainability plan, the product of the Sustainable Communities Initiative. The RFHEA and its action plan could, and some believe should, become the regionally integrated successor to the jurisdiction-by-jurisdiction Analysis of Impediments to Fair Housing and Action Plans that are required of the State, cities and counties that receive CDBG, HOME and other HUD funds.

The following suggestions touch on parts of the examination that is needed for the RFHEA and some small and large steps that should be considered as the process moves ahead, or immediately. Some will require legislative actions and some parts are already underway. It is not a prioritized list, and the greater detail in some sections reflects early readers' requests for greater specificity. There is much good work to be done by all of us. Surely, there are more and better ideas. Forward them, and I will add them to the mix.

To start with, what are fair housing practices? Fair housing work consists of:

- a. eliminating intentional discrimination;
- b. undoing the effects of past segregation; and
- c. counteracting practices and policies that may unintentionally lead to unjustifiable restrictions of persons' housing choices and perpetuate segregated housing.

The biggest challenge for public policy is recognizing responsibility for and coming up with plans to overcome past segregation and avoiding disparately-impacting policies. (Disparate

impact means policies and actions that, while not necessarily done with malice, have a predictably negative impact on the housing choice of people of color, families with children, persons with disabilities, etc.) All recipients of federal funding are required to “affirmatively further fair housing.”ⁱⁱⁱ HUD, to which Congress gave the authority and responsibility for administering the Fair Housing Act, has repeatedly determined that the Fair Housing Act is directed to the consequences of housing practices, not simply their purpose. 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 a legally sufficient justification.

HUD’s expectations in the 2012 NOFA are that recipients should:

- help overcome any impediments to fair housing choice related to the grant-assisted program or activity itself;
- promote racially, ethnically, and socioeconomically diverse communities;
- promote housing-related opportunities that overcome the effects of past discrimination because of race, color, national origin, religion, sex, disability, and familial status.

Much of the following is addressed to furthering fair housing by such affirmative analysis and positive responses by both public bodies and private interests.

ACTION STEPS

- I. Identify increasing racial integration in housing and other equal housing opportunities as high level Metropolitan Council (MC) priorities. The Council could adapt the vision of the National Fair Housing Alliance: “We aim for a region free of housing discrimination where every individual, group and community enjoys equal housing opportunity and access in a bias free and open housing market where integrated neighborhoods are the norm, and the private and public sector guarantees civil rights in an open, and barrier free region.”^{iv} Along with the vision, the Council should adopt explicit goals for reducing racial and economic segregation throughout the region.
- II. Identify and respond to illegal discrimination in all parts of the housing market.

- A. Conduct fair housing audits – e.g. survey housing for covert discrimination using secret shoppers, esp. in home purchase and higher rent markets^v.
 - B. Increase support for current public and non-profit enforcement efforts and augment enforcement services in markets not covered by legal aid programs’ fair housing work.^{vi}
 - C. Undertake a comprehensive fair housing public education initiative to promote the benefits of equal housing opportunity.
 - D. Govt. agencies such as cities, counties and the MC should adopt comprehensive fair housing policies and give staff in various divisions^{vii} explicit responsibilities for addressing fair housing issues.
 - 1. Adopt a fair housing operations policy.^{viii}
 - 2. Include fair housing in standard staff training.
 - 3. Ask employees to be accountable to identify and respond to fair housing issues, including making referrals (internal or external), making decisions that favor equal housing opportunity and avoid actions with discriminatory effect.^{ix}
 - 4. Make fair housing and civil rights a departmental responsibility.
 - a. Assign a lead fair housing person in each relevant division, or
 - b. Divisions should establish a work share relationship with external resources such as the MN Dept. of Human Rights, HUD Office of Fair Housing, legal aid offices and outside monitor and training resources.^x
 - 5. Establish fair housing performance criteria for key staff.
 - E. Government agencies can make a condition of contracting that housing and service providers show the same commitment to fair housing, e.g., adopt fair housing policies, designate lead staff, etc.
- III. Establish standards and practices that address the housing needs of people with disabilities.
- A. Include a minimum number of accessible rental units in new and rehabbed housing, especially in non-poverty areas.

- B. Remove zoning and other barriers that limit group living arrangements for people with disabilities.
 - C. Require all new multi-unit housing to go beyond accessibility minimums, e.g., use visitability standards, have at least one power door entrance in addition to basic accessible routes, etc.
 - D. Require training and policies on reasonable accommodation for all staff and contractors.
 - E. Audit new construction for accessibility construction features.
 - F. Prioritize accessible and 1st floor homes for use of people with disabilities.^{xi}
 - G. Aggressively pursue single level REO properties when they come on the market in areas of opportunity with a plan for rehabbing for accessibility.
- IV. Involve in decision-making the people and communities whose needs are greatest.
Examples of this include:
- A. The CoO’s commitment to the Community Engagement Team approach is an experiment to study, improve and replicate.
 - B. Housing industry and government agencies have sought to bring people of color into the business side of housing in the “Changing the Face of Housing” Initiative.
 - C. The Emerging Markets Homeownership Initiative, now a part of The Homeownership Center, has focused on bringing new immigrant and minority homebuyers safely into the housing market.
 - D. Renters, new immigrants, people with disabilities and others in disadvantaged communities should be recruited and trained for volunteer positions, zoning commissions, agency boards, and candidates for public bodies and other ways included in meaningful participation.
 - E. Include accessibility and Limited English Proficiency (LEP) interpreting services in program and event planning. *See* MN. Stat. §§ 15.44 and 15.441 as well as ADA, MHRA and federal LEP mandates.
- V. Create policies that provide full range of housing choices throughout the region.

- A. Allocate funds, including Tax Credits, to give poor people a greater geographic choice of housing, especially in areas of high levels of success in schools, employment, health, etc.^{xii} PRRAC identifies practices such as:
 - 1. Allocation plans that promote developments outside of low income areas;
 - 2. Prioritizing use of vouchers;
 - 3. Affirmative marketing;
 - 4. Environmentally conscious siting;
 - 5. Designs and set-asides for persons with disabilities; and
 - 6. Record-keeping to monitor progress in integration
- B. Consider strategies like Myron Orfield’s proposals for “Stabilized Metropolitan Racial Integration Approach.”^{xiii}
- C. Implement Limited English Proficiency service policies.
- D. Use CoO/SCI project to break down barriers like zoning restrictions, to leverage funds for affordable housing, to gain multi-jurisdiction commitments to desegregation.
- E. Prioritize efforts to address foreclosure impacts in areas where people of color predominate; plan for anticipated bulk sale of foreclosed FHA/Freddie/Fannie homes in a manner that makes for greater housing choice in region and does not create new challenges in troubled neighborhoods^{xiv}.
- F. Initiate discussions between the affordable housing sector and public education in the region on how affordable housing can impact segregation in schools.^{xv}
- G. Implement a fair housing impact assessment process that measures for integration potential regional plans for development projects, QAP decision-making, etc.^{xvi}
- H. Use tenant-based housing subsidies to increase integration;
 - 1. Require voucher quotas to augment mixed income housing;
 - 2. Adjust voucher rents to discourage concentration;
 - 3. Ban discrimination against voucher users;
 - 4. Set up a unified subsidized housing wait list for the metro area;
 - 5. Require TOD-related housing to notify HousingLink and Voucher administrators of openings;
 - 6. Support housing counseling & other steps to help with integrative moves;

7. Reduce administrative burdens, perhaps through single regional administration, and assign trouble-shooter for managers.
 8. Buy use restrictions that include commitment to rent to a percentage of voucher users.
 9. Reinstate property tax incentives (former 4d program.)
- I. Inclusionary zoning. *See* Forest Lake, MN comprehensive plan and studies of Montgomery County, MD programs.
 - J. Develop strong density bonuses for housing development, making them uniform along transit corridors.
 - K. “Fair Share” affordable housing policies. Improve LUPA and LCA. *See*: Mt. Laurel program in N.J. others in MA, CA.
 - L. Strengthen and update policy linking cities’ affordable housing performance to access to infrastructure and transit funding provided by MC and MN DoT, pick out and re-establish the most effective parts of former policies 13/39, leading regional development policy from the front with a goal of increasing equity across the region.
 - M. Establish comprehensive and effective affirmative (pro-integration) marketing as a standard business practice – not just in subsidized housing.^{xvii}
- VI. Develop an equity-focused public policy discussion to support fair housing policies and outcomes - link justice, development, work force needs, and faith concerns into existing policy, legal and institutional frames. Use bully pulpits to promote fair and affordable housing with same dedication as the promotion of transit. Promote web-based Fair Housing Resource Guide. Strengthen leadership in Community Engagement efforts. Call out the problem of racially concentrated areas of poverty and ingrained inequities, Promote integrated housing policies as wise choices for sustainable development.^{xviii}
- VII. Use MC’s new regional development framework (Thrive 2040), housing plan and Regional Fair Housing and Equity Assessment to guide all the above.
- A. Take RFHEA to the next stage by updating local jurisdictions and State Analyses of Impediments to Fair Housing into an operating RFHEA and Action Plan,

securing buy-in from all jurisdictions to a coordinated regional approach in the CoO's Sustainable Community plan, as well as jurisdictions' Consolidated Plans (for U.S.), Comprehensive Plans, LUPA, LCA (for M.C.) and the Living Cities initiative. (A schematic representation of possible arrangements is attached at the end of this document.)

- B. Strengthen the existing Fair Housing Implementation Council to give on-going leadership to the RFHEA and Action Plan.
- C. Act on upcoming HUD's "affirmative furthering fair housing" regulation.
- D. Follow through on Community Engagement efforts being started in the CoO to broaden decision-making process to engage under-represented persons throughout the changes set out above.

June, 2012
James Wilkinson
Mid-Minnesota Legal Aid
430 1st Av. N., Suite 300
Minneapolis, MN 55401
www.midmnlegal.org
jewilkinson@midmnlegal.org
612 746 3784 (phone/fax)

Thanks to Tim Thompson, Mike Hagedorn, Repa Mekha, Myron Orfield, Jim Erkel, and Libby Starling for setting out some challenges and suggesting a number of improvements to this.

ⁱ "The Corridors of Opportunity (CoO) initiative promotes sustainable, vibrant, and healthy communities, using the region's emerging transitway system as a development focus. The Metropolitan Council and a broad consortium of policymakers, foundations, community organizations, and leaders are engaged in these efforts."
<http://www.metrocouncil.org/planning/COO/index.htm>

ⁱⁱ <http://www.minnpost.com/cityscape/2010/12/census-2010-can-metro-area-so-sharply-divided-income-race-and-geography-continue-to-thrive-on-the-national-stage>.

ⁱⁱⁱ HUD will issue a regulation on affirmatively furthering fair housing in 2012 and 2012 funding criteria strongly emphasize this. See p. 25 in its current General NOFA:
<http://portal.hud.gov/hudportal/documents/huddoc?id=2012gensecNOFA.pdf>

^{iv} <http://nationalfairhousing.org/AboutNFHA/MissionandVision/tabid/2606/Default.aspx>

^v HUD's HD 2000 Study had few results from MN; notable was a finding that the highest level of discrimination nationally was against American Indians here. Other audits have shown 30-70% rates of differential treatment.

^{vi} Legal Aid programs have handled more than 300 metro-area fair housing complaints from low income clients yearly for more than a decade; other agencies have a much smaller caseload.

^{vii} The HRA is obvious, but regional planning for and operation of sewers, transit and other community development functions all impact the availability of housing in the region.

^{viii} A housing provider version of a protocol is available from Legal Aid and can be adapted for others' use.

^{ix} Staff should know that it is the agency's core value to promote fair housing and that each is responsible to act in accordance with that value. Every employee presumably knows what sexual harassment on the job is, that it is contrary to organizational values and that they should act if they learn of such harassment affecting operations of the Council. The same should be true for fair housing – both overt discrimination and disparate effects need to be recognized and acted on.

^x Work-share relationships need to have authority, at a minimum in the form of firm support of MC leadership.

^{xi} HUD regulations require managers of subsidized buildings to have non-disabled renters move from accessible units to other units when needed for person with mobility limits. Similar obligations could be applied to a wider range of housing.

^{xii} See <http://www.prrac.org/pdf/2008-Best-Practices-final.pdf> for PRRAC's nationwide overview of best practices for civil rights in the tax credit program.

^{xiii} 'Myron Orfield' orfield@umn.edu, see "Land use and housing policies to reduce concentrated poverty and racial segregation" 33 Fordham Urban law JI. 877 (Mar. 2006) www.thefreelibrary.com/Land+use+and+housing+policies+to+reduce+concentrated+poverty+and+d...-a0147825456>Land use and housing policies to reduce concentrated poverty and racial segregation.

^{xiv} http://www.rooflines.org/2626/from_burden_to_boon_reos_can_expand_housing_choice/

^{xv} "The office (of Desegregation/Integration) shall periodically consult with the Metropolitan Council to coordinate metropolitan school desegregation/integration efforts with the housing, social, economic, and infrastructure needs of the metropolitan area." Minn. Stat. § 124D.892.

^{xvi} Tim Iglesias, "HOUSING IMPACT ASSESSMENTS: OPENING NEW DOORS FOR STATE HOUSING REGULATION WHILE LOCALISM PERSISTS," Oregon Law Review, (Summer 2005) 82 Or. L. Rev. 433 http://works.bepress.com/tim_iglesias/3/

^{xvii} Legal Aid is working on a toolkit to improve affirmative marketing as well as a comprehensive fair housing resource guide with the support of HUD, MHFA, and Met Council.

Twin Cities Metropolitan Region Fair Housing and Equity Initiative.

