Housing Land Advocates

January 30, 2019

BY EMAIL: DLCD.PR-UGB@state.or.us

Jim Rue, Director
c/o Periodic Review Specialist
Oregon Department of Land Conservation and Development
635 Capitol Street NE Suite 150
Salem, OR 97301

Re: Metro Urban Growth Boundary Expansion Submission

Dear Director Rue:

This letter is submitted on behalf of Housing Land Advocates (HLA), a nonprofit organization that advocates for land use policies and practices that ensure an adequate and appropriate supply of affordable housing for all Oregonians. The Department and Commission have jurisdiction over these proceedings under ORS 197.626(1)(a).

HLA objects to the acknowledgment of the expansion of the Portland Metro Urban Growth Boundary (UGB), following proceedings before Metro in which HLA participated by letter of December 4, 2018, for the reasons that follow.

I. INTRODUCTION

Oregon's Needed Housing Statute (ORS 197.296), Housing Goal (Goal 10), and Goal 10 Interpretive Rules (OAR 660-007 and 660-008) require local governments to develop Buildable Lands Inventories and adopt comprehensive plan and zoning regulations that designate lands for Needed Housing using standards and procedures sufficient to assure compliance with the statewide Housing statutes, goals, and rules. If these measures, including so-called "efficiency measures," are insufficient to meet the entire identified need, then[1] cities must expand their urban growth boundaries to accommodate that excess need.

Unfortunately, experience has shown that Oregon's land use program has been far more successful in meeting demand for well-served, well-located, and efficiently-entitled high-end residential housing of all types, whether owned or rented, single or multi-family, than it has in meeting demand for affordable housing of any type in any but the least-desirable, least accessible, least healthy settings.

[1] And only then, to comply with Goal 14, Oregon's statewide Urbanization Goal.

Since up-market demand is so strong and supplies are so constrained here, housing type alone has proven to be a failure, both as a proxy for affordability and as an assurance of flexibility of housing location.

As a result, low income housing has been effectively excluded from safer neighborhoods with access to better schools, convenient groceries, and either reasonable proximity or good transit access to jobs, services, health care, and other vital services.

The connection between implementing measures, affordability, and locational diversity must be made, and it must be realistic in terms of potential yield during the relevant planning period. As the LCDC has recognized, in rejecting one city's attempt to demonstrate compliance with Goal 10 and the Needed Housing Statute:

> "Goal 10, the Goal 10 implementing rule, and the needed housing statutes also require that the City analyze needed housing types at particular price ranges and rent levels commensurate with the financial capabilities of present and future residents of area residents. The city's record contains much information on projected population and income levels, but neither its adopted plan policies nor its findings clearly tie together how the types and amounts of housing that it is planning for will be affordable for future residents of the area." 2010 LCDC Bend UGB Remand Order, p 31

> "The department found that the city failed to comply with the requirement in ORS 197.307 and Goal 10 to permit needed housing in one or more zoning districts with sufficient buildable lands to satisfy housing needs at particular price ranges and rent levels. The city's findings, studies and the Housing Element of its General Plan show a significant need for housing for low and moderate income households, along with a need for workforce housing. R. at 1072-1079(findings); R. at 1305-13 (Housing Element of the city's General Plan)." 2010 LCDC Bend UGB Remand Order p 33

From that base, HLA presents its objections to the Metro UGB expansion:

II. OBJECTIONS

A. OBJECTION NO. 1 – Metro's Federal Fair Housing Obligations

Metro is a recipient of substantial federal funding and is subject to oversight by DLCD. In its objections to Metro, attached, HLA asserted that Metro had obligations to affirmatively further fair housing and otherwise to meet the Fair Housing Act, as amended, 42 U.S.C. §§ 3601-3619 (FHAA). These obligations are also found in state law. ORS 459A.001(9)(b) and .421-.425. In its findings, Metro denied any legal responsibility for its actions in this area.[2]

[2] For example, Metro states:

> "* * * HLA then asserts that, as part of a UGB expansion, "Metro must use its authority to require cities and counties to change their plans and regulations to comply with the FHA." HLA cites no authority under which Metro is tasked with applying the FHA as part of a UGB expansion, and Metro is aware of no such

The Federal Fair Housing Act, 42 U.S.C. 3604 provides in material part:

"[I]t shall be unlawful—

> (a) 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.*
>
> (b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or *in the provision of services or facilities in connection therewith*, because of race, color, religion, sex, familial status, or national origin." (Emphasis added).

The obligation to affirmatively further fair housing applies to recipients of federal housing and community development funds. The State of Oregon receives such funds and is, therefore, obligated to ensure all of its activities that affect housing affirmatively further fair housing.[3] Thus, DLCD must also ensure its policies and actions affirmatively further fair housing. At a minimum, this means informing local jurisdictions of the factors it will consider and the information it requires when reviewing planning decisions for compliance with their fair housing obligation. With or without this guidance Metro's decision and its analysis on an expansion of the urban growth boundary must comply with the obligation to affirmatively further fair housing if DLCD is to review and affirm Metro's decision.

As shown below, the FHA applies to land use plans and regulations which, although enacted and implemented by local governments, are subject to state supervision under ORS Chapter 197.

The State of Oregon in its *2016-2020 Analysis of Impediments to Fair Housing Choice*,[4] at § VII, p. 2 identified the following impediment to fair housing in the state:

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authority.

There are at least two grounds for Metro's FHA obligations. As indicated elsewhere in these objections, Metro receives and distributes federal grant funds for transportation and other uses and Metro functionally acts as a local government that controls the use of land. *See inter alia* ORS 268.380-.390 and Metro Code (MC) 3.07.730 to .740, 3.07.810; 3.07.850; 3.07.1110(d); 3.07.1120(c) and 3.07.1425.

[3] Oregon acknowledges its obligation to implement planning and zoning regulations in a way that affirmatively further fair housing. "For all of these reasons, it is important that state governments review their zoning, subdivision and land development authorizing legislation to ensure that they do not create unnecessary barriers to private production of affordable housing. It is also important that states take reasonable steps to ensure that state grants of power to regulate housing or to address affordable housing needs do not unintentionally create barriers to fair housing choice. Attachment 1 *State of Oregon Analysis of Impediments to Fair Housing 2016-2020*, Appendix A. p. 5, and Section II, p.1.

[4] The State describes this report as a "HUD-required assessment of barriers to fair housing choice" and noted the

> Impediment 1-1. Lack of affordable, accessible housing, including housing available for persons with disabilities who wish to leave nursing homes or other institutional settings.[5]

The Fair Housing Act prohibits a broad range of housing and land use practices that discriminate against individuals on the basis of seven protected characteristics: race, color, national origin, sex, disability, family status (families with children), and religion.[6] The Supremacy Clause of the U.S. Constitution gives federal laws, such as the FHAA, precedence over conflicting state and local laws. Consequently, the Act prohibits state, local and regional governments from enacting land use and zoning laws, policies, and practices that discriminate based on a characteristic protected under the FHAA.[7] As defined in the Act, prohibited practices include making unavailable or denying housing (including vacant land that may be developed into residences)

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state is to conduct this analysis every five years "as a condition of receiving federal block grants funds for housing and community development." That analysis is attached here as Attachment 1.

[5] Indeed, the research used to justify the State's conclusion includes the following:

> Research Finding #6. Oregon's state laws may limit the ability of cities and counties to employ programs that are known to create a significant amount of affordable units in many other jurisdictions.
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> Barrier 6.1. The state's ban on the use of inclusionary zoning limits municipalities' ability to employ flexible tools and incentives to increase the number of affordable units built. Lack of affordable units limits housing choice for persons of color and low income persons.
> Impediment 6-2. The lack of affordable units significantly limits housing choice for persons of color and low income persons.

One of the remedies for identified impediments expressly called attention to the post-acknowledgment planning process as a remedy to housing discrimination:

> Fund pilot program to review Post Acknowledgement Plan Amendments submitted to DLCD to identify land use proposals with a potentially discriminatory impact. Moderate priority, Short term effort.

The state itself recognizes its role in using its unitary land use system as a means of combating housing discrimination. In these objections, HLA requests that the Department and Commission acknowledge their respective roles in meeting that existing discrimination and not perpetuating the same by requiring Metro to analyze the proposed amendments under state and federal fair housing laws and regulations and submitting any UGB amendments consistent with the same.

[6] The Fair Housing Amendments Act (FHAA) 42 U.S.C. 3601 et seq., was signed into law on September 13, 1988, and became effective on March 12, 1989. The Act amends Title VIII of the Civil Rights Act of 1968, which prohibits discrimination on the basis of race, color, religion, sex or national origin in housing sales, rentals, advertising, financing and land use and zoning.

[7] Joint Statement of The Department of Housing and Urban Development and The Department Of Justice. State and Local Land Use Laws and Practices and the Fair Housing Act. Available at https://www.fairhousingnc.org/wp-content/uploads/2016/11/HUD-DOJ-Joint-Statement-re-Land-Use-11-10-2016.pdf. See also HUD and DOJ Update Fair Housing Act Guidance about Land Use Laws (2018) at *https://nlihc.org/article/hud-and-doj-update-fair-housing-act-guidance-about-land-use-laws and the statement itself at* http://bit.ly/2emU4kE

because of a protected characteristic. The Act has been broadly interpreted by the Courts to prohibit virtually all forms of differences in treatment based on any of the protected characteristics, and has been interpreted to apply to differences in the impact of otherwise neutral policies and practices.[8]

Liability under the Act may be established by showing intentional discrimination or by showing that a defendant's acts have a significant discriminatory effect. *Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmtys.* Project, Inc., 135 S. Ct. 2507 (2015). Discriminatory effect may be proven by showing either (1) adverse impact on a particular minority group or (2) harm to the community generally by the perpetuation of segregation. *Huntington Branch NAACP v. Town of Huntington,* 844 F 2d 926, 937 (2nd Cir.), *aff'd,* 488 US 15, 109 SCt 276, 102 LEd2d 180 (1988); *see also, Summerchase Ltd. Partnership I v. City of Gonzales,* 970 FSupp 522, 527-28 (M.D.La. 1997).

State, local and regional forms of government are required to comply with the various requirements of the Act. HUD's guidance, issued in connection with the publication of its final rule on disparate impact, explains that a discriminatory housing practice is broadly construed to include "any facially neutral actions, e.g., laws, rules, decisions, standards, policies, practices, or procedures, including those that allow for discretion or the use of subjective criteria."[9]

The Metro Charter requires that Metro address growth management and land use planning matters of metropolitan concern. To do so it has adopted policies that guide Metro's actions and decisions in areas involving development of centers, corridors, station communities, and main streets, housing choices, employment choices and opportunities, economic vitality, urban and rural reserves, management of the Urban Growth Boundary (UGB), urban design and local plan and policy coordination as well as affordable housing.[10] Metro's actions and decisions in regional land use planning impacts the density and distribution of housing, including affordable housing, and housing patterns of protected class households within the metropolitan area. As a result, Metro's actions and decisions have the same effect as local zoning decisions and must also comply with the Fair Housing Act Amendments.

Metro does not directly engage in conventional local zoning of land in that it does not adopt zoning ordinances that allocate and regulate development or redevelopment, or

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[8] *Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmtys. Project, Inc.,* 135 S Ct 2507 (2015).

[9] Implementation of the Fair Housing Act's Discriminatory Effects Standard, 78 Fed. Reg. 11,460 (Feb. 15, 2013), available at https://www.hud.gov/sites/documents/DISCRIMINATORYEFFECTRULE.PDF and attached here, as Attachment 2. HLA also attaches its December 4, 2018 letter of objection and refers the Department and Commission to that document, with particular reference to the federal issues raised in these objections, as Attachment 3.

[10] The Regional Framework Plan provides overall guidance for detailed policies with regard to, among other things, housing densities, urban design and settlement patterns. Available at: https://www.oregonmetro.gov/sites/default/files/2015/06/19/Regional-Framework-Plan-Chapter1-LandUse-20150318-final%20%28MD-15-8552%29.pdf

redevelopment of specific properties or groups of property. That local planning and zoning responsibility is assigned to cities and counties within Metro's regional planning area.[11] However, in Oregon's top-down hierarchical regime of local, regional, and state land use planning and zoning authority and responsibility, Metro retains and exercises significant regional land use regulatory authority. Metro is authorized and required by Oregon's statewide land use statutes, goals, and rules to regulate the local land use regulatory authorities within its territory in meeting their local and regional responsibilities under the statewide housing goal, the needed housing statutes, and LCDC's administrative rules.

Zoning and planning both involve the use of property. In Oregon, as elsewhere, planning is the broader concept. Planning generally concerns the overall development of a community. This includes the establishment of binding standards for orderly growth and development, including methods for implementation and achievement of those standards and specification of standards for implementing zoning codes and classifications. Zoning in Oregon is almost exclusively concerned with use regulation whereas planning involves both the aspirational planning of a community and the establishment of prescriptive planning maps and a range of enforceable plan map designations, services, schedules, standards, prohibitions, and other legally-enforceable requirements for implementing local plans, zoning codes, and zoning maps. Here, as elsewhere, planning contemplates the evolution of an overall program or design of the present and future physical development of the total area and services of an existing or contemplated municipality. Thus, zoning is part of the result or product of planning. See *Cnty. Council of Prince George's Cnty. v. Zimmer Dev. Co*. 444 Md 490 (2015). *Baltimore Cnty. v. Wesley Chapel Bluemount Ass'n* 678 A2d 100 (1995) *rev'd on other grounds* 699 A2d 434, (1996), *Mueller v. People's Counsel for Balt. Cnty,* 177 Md App 43 (2007). In Oregon, however, plans are laws, not advice. *Baker v. Milwaukie*, 271 Or 500, 533 P2d 772 (1975). *See generally*, Knaap and Nelson, *The Regulated Landscape: Lessons on State Land Use Planning from Oregon*, Lincoln Inst. Of Land Use Policy (1992)

In the final analysis, Metro's obligation to affirmatively further fair housing may be considered derivative of DLCD's obligation as DLCD's compliance is derivative of the State's. DLCD, as an agency of the State of Oregon, is bound, especially in light of its own *2016-2020 Analysis of Impediments to Fair Housing Choice* in its actions on the Metro UGB change.[12] The Department must undertake this analysis at this time.

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[11] Metro responds to HLA's objections by saying in material part:

> Metro recognizes that courts have held that the FHA prohibits local zoning that has the effect of discriminating against individuals based on protected characteristics such as race, sex, and disability. However, Metro is not a local government with zoning authority, and Metro does not zone property.

[12] A fairly good collection of those obligations is found in two sections of the website of the Texas Department of Housing and Community Affairs, *The Fair Housing Act and Related Laws* at *https://www.tdhca.state.tx.us/fair-housing/policy-guidance.htm* and that state's treatment of its own Analysis of Impediments at https://www.tdhca.state.tx.us/fair-housing/analysis-impediments.htm.

Moreover, distribution patterns of housing by type, tenure and cost determine the degree to which a municipality is either integrated or segregated. *LeBlanc-Sternberg v. Fletcher*, 67 F3d 412, 424 (2d Cir. 1995) (zoning restrictions

Also relevant is HUD's Affirmatively Favoring Fair Housing (AFFH) Rule, the current application of which is under litigation but which HLA believes to be applicable to this proceeding. As described by the Congressional Research Service:

> Another provision of the Fair Housing Act requires that HUD affirmatively further fair housing (AFFH). As part of this requirement, recipients of certain HUD funding—jurisdictions that receive Community Planning and Development grants and Public Housing Authorities—go through a process to certify that they are affirmatively furthering fair housing. In July 2015, HUD issued a new rule governing the process, called the Assessment of Fair Housing (AFH). The rule provided that *funding recipients are to assess their jurisdictions and regions for fair housing issues* (including areas of segregation, racially and ethnically concentrated areas of poverty, disparities in access to opportunity, and disproportionate housing needs), identify factors that contribute to these fair housing issues, and set priorities and goals for overcoming them. HUD is to provide data for program participants to use in preparing their AFHs, as well as a tool that helps program participants through the AFH process. However, as of May 2018, HUD has indefinitely delayed implementation of the AFFH rule. In response, a group of advocacy organizations has filed a lawsuit challenging HUD's failure to implement and enforce the rule.[13] (Emphasis added).

If the rule is found to be in place, Metro would also be obliged to undertake this process in administering its land use related activities, including UGB changes.

Necessary Work Tasks:

Metro must review the application of the FHA to this UGB expansion decision, utilizing the data that is available from HUD and census information. Metro must use its GIS mapping capability in conjunction with data from member cities and counties to prepare an assessment of fair housing on a regional basis so that it can make an informed UGB expansion decision that accommodates affordable housing in all its jurisdictions and does not lead to the perpetuation of segregation.

Metro must analyze the housing data for the four cities that seek expansion here to determine whether housing policies do in fact affirmatively further fair housing rather than cater

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may constitute discriminatory housing practice); *Huntington Branch NAACP v. Town of Huntington,* 844 F2d at 936-38 (zoning that restricted multi-family housing to certain geographical areas adversely affected minorities and perpetuated segregation). Affordable housing is a critical issue in the metropolitan region not only in terms of supply but also in terms of cost and an equitable distribution across the region. Disparities in wealth, home ownership, income, employment and education are all factors that impact minority households' ability to access housing based on cost alone. Piecemeal decisions regarding the expansion of the UGB will not address the need and legal obligation for integrated residential housing patterns in the region.

[13] *See* Congressional Research Service, *The Fair Housing Act: HUD Oversight, Programs, and Activities July 6, 2016 – June 15, 2018* at https://www.everycrsreport.com/reports/R44557.html.

to additional high-end single family development, and revise the meaningless conditions that Metro imposed in this decision in accordance with these work tasks.

B. <u>OBJECTION NO. 2 – Metro's proposed order fails to demonstrate that the UGB expansion complies with Goal 10, the Needed Housing Statutes, and Planning Obligations under Metro Code Chapter 3</u>

Metro's Regional Functional Plan Requirements, Title 1: Housing Capacity demonstrates that Metro is obligated to plan for compact urban form that ensures the provision of all housing types and needs. In light of the ongoing housing crisis and the requirements of Statewide Planning Goal 10, Metro has an imperative planning obligation to review existing shortcomings throughout the Metro region relating to the provision of housing for the most vulnerable community members. Metro's code demonstrates its gatekeeper function, where, for example, it places obligations on local governments to only negligibly reduce minimum residential zoning density. Metro Code 3.07.120(E) provides:

> A city or county may reduce the minimum zoned capacity of a single lot or parcel so long as the reduction has a *negligible effect* on the city's or county's overall minimum zoned residential capacity. (Emphasis added).

The context of this provision is Metro's Code chapter 3.07 as a whole, the purpose of which is set out at §3.07.110:

> The Regional Framework Plan calls for a compact urban form and a "fair-share" approach to meeting regional housing needs. It is the purpose of Title 1 to accomplish these policies by requiring each city and county to maintain or increase its housing capacity except as provided in section 3.07.120.

Metro Code Chapter 3.07 is meant to implement ORS 197.296, especially subsection 6, which requires Metro to either require greater density on existing lands within the UGB or expand that boundary.

The issue raised under this code section is rooted in LUBA's decision in *Housing Land Advocates v. City of Happy Valley*, 75 Or LUBA 227 (2017) in which Petitioner challenged a change in designation of a parcel of 4.78 acres from Mixed Use Residential – Medium (which allows single and multifamily residential uses to Mixed Use Residential – Single Family to eliminate the possibility of multifamily uses and accommodate a 31-lot single family subdivision. The reduced density provided for by the redesignation was assailed on a number of grounds, beginning with the statutes relating to needed housing (ORS 197.307(3) and (4)). This statute requires Metro to take the lead on reviewing urban communities' compliance with the needed housing obligations.

Petitioners also raised compliance with Goal 10 and OAR 660, Division 007. LUBA did not directly address Petitioners' Goal 10 arguments, but framed Goal compliance in terms of Division 007. In these objections, HLA now raises *both* compliance with the Goal and Division

007 because Metro's UGB expansion is the time for demonstrating compliance with both, as well as the needed housing statutes.

Goal 10 provides:

"To provide for the housing needs of citizens of the state.

Buildable lands for residential use shall be inventoried and plans shall encourage the availability of adequate numbers of needed housing units at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location, type and density."

The Goal must also be interpreted under Oregon's Needed Housing Statutes, ORS 197.295 to .314, *of which ORS 197.296 and .299-.302 are material parts*. LUBA's *Happy Valley* opinion seems to carve out an exemption to Goal 10 compliance by suggesting the more specific provisions of ORS 197.296 somehow overcome, *inter alia*, the needed housing provisions of ORS 197.307 and Goal 10. As HLA argued before LUBA and reasserts here, LUBA's conclusion is incorrect even in an individual-member city zone change context where Metro has put on its blinder. In any event, LUBA's decision is not binding on Metro, DLCD, or LCDC. Even if it were correct on its facts, it would only apply to individual local amendments. There is no justification for such a reading of ORS 197.307(3)[14] in these proceedings. HLA contends that ORS 197.296, 197.299 to .302 and 197.307 must be harmonized with each other and with Goals 10 and 14. See e.g. *1000 Friends v. Yamhill County and LCDC*, 244 Or App 239, 259 P33d 1021 (2011).[15]

So how is this amalgam to be applied here? We begin with ORS 197.296(6), which provides that if housing need is greater than housing capacity, Metro must either amend its UGB, as proposed here, *or*:

Amend its comprehensive plan, regional framework plan, functional plan or land use regulations to include new measures that demonstrably increase the likelihood that residential development will occur at densities sufficient to accommodate housing needs for the next 20 years without expansion of the urban growth boundary. A local government or metropolitan service district that takes this action shall monitor and record the level of development activity and development density by housing type following the date of the adoption of the new measures;

When a need has been shown for housing within an urban growth boundary at particular price ranges and rent levels, needed housing shall be permitted in one or more zoning districts or in zones described by some comprehensive plans as overlay zones with sufficient buildable land to satisfy that need.

[15] "We are constrained to construe ORS 197.298 in a way that gives effect to all of its terms. 'As a general rule, we assume that the legislature did not intend any portions of its enactments to be meaningless surplusage.'" *State v. Stamper*, 197 Or App 413, 417, 106 P3d 172, *rev den*, 339 Or 230, 119 P3d 790 (2005); *see also* ORS 174.010 ("In the construction of a statute, * * * where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all.")."

or undertake a combination of the two. Assuming that Metro has made the case on need and capacity, it could entertain expansion of the UGB.[16] LUBA rejected the objection in *Happy Valley* that a redesignation to a lower density violated ORS 197.307(3) and (4) because of the more particular provisions of ORS 197.296, and concluding that the Metro Housing Rule did not require reassessment of housing types and densities except at periodic review (which is before the Department and Commission now) under OAR 660-007-0060:

> (1) The new construction mix and minimum residential density standards of OAR 660-007-0030 through 660-007-0037 shall be applicable at each periodic review. During each periodic review local government shall prepare findings regarding the cumulative effects of all plan and zone changes affecting residential use. The jurisdiction's buildable lands inventory (updated pursuant to 660-007-0045) shall be a supporting document to the local jurisdiction's periodic review order.
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> (2) For plan and land use regulation amendments which are subject to OAR 660, Division 18, the local jurisdiction shall either:
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> (a) Demonstrate through findings that the mix and density standards in this Division are met by the amendment; or
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> (b) Make a commitment through the findings associated with the amendment that the jurisdiction will comply with provisions of this Division for mix or density through subsequent plan amendments.

Metro is a "local government" under ORS 197.015(13) and the needed housing statutes and thus must prepare findings of all plan and zone changes affecting residential use under subsection (1). On this record, Metro has failed to do so. Instead, it has focused on four specific areas where it has projected growth, using its existing plan and zoning designations as an unexamined baseline.[17] Moreover, not only has Metro failed to examine past density–downward

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[16] HLA only assumes these things for purposes of discussion and has challenged elsewhere in these objections the choice of expansion of the UGB over the choice to increase its efficiency without a UGB expansion, as Goal 14 provides, *inter alia*:

> Prior to expanding an urban growth boundary, local governments shall demonstrate that needs cannot reasonably be accommodated on land already inside the urban growth boundary

As advised by DLCD in its letter to Metro of December 5, 2018, Metro must *also* show that other portions of the region cannot reasonably accommodate identified needs and that all cities have adopted measures to accommodate housing needs as much as feasible. We do not believe either of these showings has been made.

[17] Metro is required to review all the plans and land use regulations for the urban lands of its constituent cities and counties at this periodic review and assure that needed housing is provided for on a regional basis under "coordinated comprehensive planning," under OAR 660-007-0050:

> (1) At each periodic review of the Metro UGB, Metro shall review the findings for the UGB. They shall determine whether the buildable land within the UGB satisfies housing needs by type and density for the region's long-range population and housing projections.

redesignations, it has refused to assure that the UGB will function to provide adequate types and densities even as attrition occurs as a result of Metro's failure to examine future redesignations for that purpose.

This objective may be achieved by adopting adequate ordinance provisions to assure in the implementation of subsection (2) that ORS 197.296(6)(a)'s provisions for including "sufficient buildable lands for the next 20 years" are met. Those provisions are also set out in ORS 197.307(3) and (4) and Goal 10, which are neither superseded by ORS 197.296, nor inconsistent with the same. And if it is asserted that no such boundary-assurance obligations are required under Division 007, HLA asserts that such interpretations, or the rules themselves, are inconsistent with Goals 10 and 14, as well as the needed housing statutes.

Metro is obliged to assure that required housing types and densities will not slip away between periodic reviews by adopting adequate measures to that end under ORS 197.296(7):

> Using the analysis conducted under subsection (3)(b) of this section, the local government shall determine the overall average density and overall mix of housing types at which residential development of needed housing types must occur in order to meet housing needs over the next 20 years. *If that density is greater than the actual density of development determined under subsection (5)(a)(A) of this section, or if that mix is different from the actual mix of housing types determined under subsection (5)(a)(A) of this section, the local government, as part of its periodic review, shall adopt measures that demonstrably increase the likelihood that residential development will occur at the housing types and density and at the mix of housing types required to meet housing needs over the next 20 years.* (Emphasis added).

The only provision Metro has made to accommodate the "measures that demonstrably increase" the likelihood that the UGB will not be undermined is Metro Code 3.07.120(E), which provides:

> A city or county may reduce the minimum zoned capacity of a single lot or parcel so long as the reduction has a negligible effect on the city's or county's overall minimum zoned residential capacity.

Combined with conditions imposed on granting of UGB expansions and other Metro ordinances to review and safeguard the integrity of the boundary, ORS 197.296(7) could be met. The statute is not met in this case, however, as no such safeguards are provided.

> (2) Metro shall ensure that needed housing is provided for on a regional basis through coordinated comprehensive plans.

Moreover, Metro has submitted these amendments to its Framework Plan with the apparent consent of the Department and Commission under ORS 197.274(2), so that the entire Metro planning structure, i.e., its Framework Plan and Land Use Code provisions, including Chapter 3.07 of the Metro Code, are before the Department and Commission in these proceedings. *See also* ORS 197.296(2).

Other portions of the Metro Housing Rule apply here as indicated by the Department's December 5, 2018 letter to Metro, i.e., the "50-50 rule" that requires at least half of new construction to be attached single-family or multifamily construction *across the region* and the 6-8-10 rule that requires minimum densities in each city in the region. Neither Metro, nor the State, can "cherry pick" as to review only the expansion areas. Unless Metro can show that *all* parts of the region meet these rules, it cannot justify the expansions (largely for detached single-family housing) it approved in this case. We do not believe Metro has made this case.

Metro, as a planning agency, must lead the charge, rather than react to member-jurisdiction's insatiable appetite for more land for single-family homes. In order to comply with applicable statutes, goals and rules, Metro must reconsider both the need to amend its UGB and its compliance with the standards raised above to accommodate housing, especially needed housing.

Necessary Work Tasks:

Prepare a region-wide assessment of the existing UGB's ability to meet housing needs before considering a proposed UGB expansion under the requirements of state law, and Goal 10.

C. <u>OBJECTION NO. 3 – Metro Has Failed to Justify the Need to Expand the UGB</u>

Substantial evidence or adequate statements of reasons in violation of Goal 2 and of applicable statutes, goals, and rules requiring Metro to demonstrate compliance therewith must be included in the proposed order before authorizing the subject UGB expansion.

As LCDC explained in its 2010 order remanding the proposed Bend Urban Growth Boundary expansion:

> "In determining compliance with Goal 2, the Commission considers whether the submittal is supported by an adequate factual base. The city's and county's decisions on the UGB and related plan and code amendments are legislative decisions. The Goal 2 requirement for an adequate factual base requires that a legislative land use decision be supported by substantial evidence. *1000 Friends of Oregon v. City of North Plains,* 27 Or LUBA 372, 376-378, *aff'd* 130 Or App 406, 882 P2d 1130 (1994), *DLCD v. Douglas County*, 37 Or LUBA 129, 132 (1999)."

> "Substantial evidence exists to support a finding of fact when the record, viewed as a whole, would permit a reasonable person to make that finding. ORS 183.482(8)(c) and *Dodd v. Hood River County*, 317 Or 172, 179, 855 P2d 608 (1993). Where the evidence in the record is conflicting, if a reasonable person could reach the decision the city made in view of all the evidence in the record, the choice between the conflicting evidence belongs to the city. *Mazeski v. Wasco County,* 28 Or LUBA 178, 184 (1994), *aff'd* 133 Or App 258, 890 P2d 455 (1995)."

> "Because the UGB amendment and related submittals embody both basic findings of fact and inferences drawn from those facts, substantial evidence review involves two related inquiries: "(1) whether the basic fact or facts are supported by substantial evidence, and (2) whether there is a basis in reason connecting the inference to the facts from which it is derived." *City of Roseburg v. Roseburg City Firefighters*, 292 Or 266, 271, 639 P2d 90 (1981). Where substantial evidence in the record supports the adopted findings concerning compliance with the goals and the Commission's administrative rules, the Commission nevertheless must determine whether the findings lead to a correct conclusion under the goals and rules. *Oregonians in Action v. LCDC*, 121 Or App 497, 504, 854 P2d 1010 (1993)." LCDC Order No. 10-REMAND-PARTIAL ACKNOW-001795 (Nov. 2, 2010), at Pages 8-9. (See also, DLCD Order No. 001775, as partially incorporated therein.)

The requirements of substantial evidence and adequate findings for review extend to evidence and findings concerning future capacity. See *Barkers Five, LLC v. Land Conservation*, 261 Or App 259, 323 P3d 368, 419-420 (2014).[18]

Even assuming that Metro's population projections are correct, those numbers do not automatically translate into a justification to expand the UGB in and of themselves, because there is additional capacity overlooked in the Metro capacity calculations. Moreover, if in fact the area within the existing UGB can accommodate many more additional dwelling units, that miscalculation may also affect the quite separate Metro determination to grow "up or out" under ORS 197.296(6).[19] HLA contends that Metro incorrectly calculated existing capacity in several ways:

a. Effect of ORS 197.312(5) on capacity calculations. The 2017 legislature required all cities over 2,500 and all counties over 15,000 to require accessory dwelling units be allowed in single-family detached structures. This legislation dramatically changes the capacity of the boundary, does not appear to be reflected in Metro's findings on capacity (nor in the figures that deal with capacity) and thus undermines the case for a boundary expansion. The statute demonstrates the

[18] "Stated simply, Metro and the county's reasoning reduces to nothing more than the proposition that the transportation system will change—and presumably improve—by 2060. However, Metro and the county do not explain, by reference to the evidence in the record, why that is so. Bluntly: Metro and the county's reasoning—which LCDC essentially adopted in resolving the substantial evidence challenge—is impermissibly speculative." *Id. at* 380.

[19] HLA is aware of the portion of ORS 197.296(5) that provides that the determination of housing capacity and need "must be based on data relating to land within the urban growth boundary that has been collected since the last periodic review or five years, whichever is greater." However, these provisions do not require that Metro use a "straight-line" approach that continues the trends of the last 5 years if housing needs for multifamily use are greater than those indicated by the trends. The needed housing statutes and Goals 10 and 14 require planning and allocation of residentially designated lands to provide for the availability of adequate numbers of needed housing units at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location, type and density. The five-year data is the beginning of the exercise, not its end.

legislature's insistence on an efficient UGB.[20] It is, at best, unclear whether most of the jurisdictions within Metro meet the statutory requirements.[21] It is similarly

[20] *See also* OAR 660-024-0050(4) which says in material part:

> * * * Prior to expanding the UGB, a local government must demonstrate that the estimated needs cannot reasonably be accommodated on land already inside the UGB. * * *

This same contention applies throughout this Part 3 of HLA's objections.

[21] On March 31, 2018, Metro completed an audit that reviewed and analyzed the ADU zoning regulations across all 27 Metro cities and counties. Attachment 4. Metro conducted the audit to determine whether these jurisdictions complied with SB 1051, amending ORS 197.312, which requires that:

> "a city with a population greater than 2,500 or a county with a population greater than 15,000 shall allow in areas zoned for detached single-family dwellings the development of at least one accessory dwelling unit for each detached single-family dwelling, subject to reasonable local regulations relating to siting and design." Metro also referred to the guidance DLCD issued to jurisdictions on implementing SB 1051, which encouraged jurisdictions to permit two ADUs per lot, removing off-street parking requirements and removing owner-occupancy requirements. Compliance with this guidance would certainly have lessened some part of the need for a UGB expansion.

As of March 31, 2018, Metro was aware of updates completed, in process or under consideration in: Beaverton (ORD 40.05, 60.50.03), Cornelius (18.20.090), Fairview (19.30.110 B), Gladstone (17.10.030), Gresham (10.0101), Hillsboro (12.40.230), Lake Oswego (50.30.010), Maywood Park (Ordinance NO. 9-D Draft), Milwaukie (19.502.2.A), Oregon City (17.04.010, 17.04.015), Portland (33.205, Program Guide - Accessory Dwelling Units, January 10, 2019), Sherwood (16.52), Tigard (18.410), Tualatin (Ordinance No. 1411-18), Wilsonville (Ordinance NO. 825), Multnomah County (adopted ADU regulations on June 7, 2018, after Metro completed its audit, to permit ADUs within urban areas eligible for ADU development) and Washington County (Ordinance No. 835). Although not listed, Forest Grove also permits one ADU in conjunction with a single-family dwelling (10.7.005 - 10.7.015), as do Happy Valley (16.44.050) and Wood Village (395.010, 395.020). Strangely, Metro does not include this audit in its findings.

Nonetheless, Metro found that none of these codes or proposals permitted more than one ADU per dwelling or per lot, as encouraged by DLCD. This remains the case. (Hillsboro and Milwaukie however, do not specifically limit one ADU per dwelling).

Since the conclusion of Metro's audit, Clackamas County amended its municipal code in fall 2018 to allow for "[o]nly one accessory dwelling unit" to be "allowed per primary attached or detached single-family dwelling" (839.01).

Some jurisdictions do have ADU codes, but as Metro points out, these codes make ADU development difficult. For instance, Troutdale permits "Residential Accessory Structures" (5.010), but this regulation prohibits all new or converted detached ADUs as well as the conversion of an attached garage for use as an ADU. King City also provides for ADUs (16.178), but ADUs are only permitted on lots of 7,500 SF or larger while minimum lot sizes for the residential zones range from 2,400 to 5,000 SF, thus leaving few existing lots to meet the minimum lot size requirements. Finally, West Linn allows for an ADU in conjunction with an existing primary single-family dwelling (34.030), but requires that one off-street parking space be provided for the ADU.

Of the 27 jurisdictions audited by Metro, only Multnomah County (see above) and Johnson City, home to approximately 500 residents, did not have ADU codes. Similar in population to Johnson City, the cities of Durham (1,924), Maywood Park (838), Rivergrove (301) also fall below the 2,500 population requirement under SB 1051.

unclear whether all Metro jurisdictions have lifted restrictions or prohibitions on manufactured homes as a residential use under ORS 197.303(c) and (d), 197.307(8) and 197.314, which would also open up housing capacity.

b. Metro Charter Limitations – At pp. 10-11 of Metro's findings, there is a remarkable statement that appears to exempt from consideration any changes to existing single-family neighborhoods, based on an interpretation of Metro Charter, Section 5(b), which provides in relevant part:

> (b) Density Increase Prohibited. Neither the Regional Framework Plan nor any Metro ordinance adopted to implement the plan shall require an increase in the density of single-family neighborhoods within the existing urban growth boundary identified in the plan solely as Inner or Outer Neighborhoods.[22]

Thus, Metro determined it must expand the boundary because it couldn't require additional efficiencies in single-family areas within the plans and land use regulations of cities and counties in the region and, consequently, didn't look for these efficiencies. In fact, as shown below, Metro conducted no analysis of areas other than the four cities that requested additional urban lands through this inspection.

The subject decision is not supported by substantial evidence or adequate findings supporting Metro's determination of need for expansion of the current UGB because Metro unlawfully excluded any consideration of existing neighborhoods.

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[22] Metro's Functional Plan includes a provision that implements the charter restriction. Section 3.07.1220 provides that "Metro shall not require any city or county to authorize an increase in the residential density of a single-family neighborhood in an area mapped solely as Neighborhood." Like the underlying charter provision, this language is also preempted or, if not preempted, disables Metro from providing DLCD and LCDC with a legally and factually supportable urban growth boundary expansion submittal.

However, as explicit *de jure* housing segregation by race or ethnicity is no longer allowed, local charters and land use regulations have been used to preserve and perpetuate segregated residential patterns by keeping existing single family neighborhoods intact against the threats of government-imposed densification. *See* Parisa Ijadi-Maghsoodi, *Redlining in Our Era: Land-Use Voter Initiatives*, (2018) Sargent Shriver National Center for Poverty Law at http://povertylaw.org/clearinghouse/articles/Ijadi-Maghsoodi, which concludes:

> Just as white families used now-unlawful exclusionary zoning to prevent integration of suburbs, homeowners now employ land-use voter initiatives to achieve the same ends.

See also Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America* (2017).

It should be clear to all by now that ORS 197.013, Oregon's Needed Housing Statutes, and LCDC's Housing Goal do not allow a local government to accommodate white privilege by building a wall around these areas to avoid affordable housing. Metro's Charter provision must yield to Oregon's needed housing statutes, Goals and rules.

Metro made the following finding concerning the capacity of existing neighborhoods:

> ". . . there is an insufficient supply of land inside the [existing Metro] UGB to meet the identified single-family need. Metro's charter prohibits Metro from requiring any increased density in existing single-family neighborhoods, which significantly limits its ability to achieve any further efficiency to address single family [attached and detached] housing demand." Metro also notes that the methodology it employs for creating the buildable land inventory accounts for locally adopted measures that would increase local capacity."

Metro's findings do not set forth the referenced charter text. They do not identify, quantify, or assess the potential capacity of those lands to accommodate the identified need absent the referenced self-imposed restriction on Metro's ability to comply with the statutory requirements of ORS 197.296 and the Urbanization Goal to demonstrate a lack of capacity before expanding an Urban Growth Boundary. They do not reference or take into account the housing measures required of local governments under SB 1051 (ch. 745, Or. Laws 2017). They do not identify or assess the likely effects of any efficiency measures in increasing that capacity as required by ORS 197.296 prior to expansion of an Urban Growth Boundary. Nor do they deal with the alternatives presented by home and room sharing to end homelessness by limiting or prohibiting short-term rentals. *See* Attachment 5, *An Analysis of Homelessness & Affordable Housing Multnomah County, 2018* at p. 24.

The finding also do not explain why such a self-imposed charter restriction overrides state standards and procedures for establishing and enhancing existing capacity before expanding an Urban Growth Boundary. They do not explain why Metro and its constituent jurisdictions are exempt from requirements imposed on Oregon's other urban areas.

HLA contends, in the alternative that:

1. the subject charter provision is preempted by the requirements of ORS 197.296, Goal 14, Goal 10, and LCDC's rules interpreting those goals and statutes; or

2. Until it repeals the subject charter language, Metro has disabled itself from meeting the requirements of state statutes and goals for a sufficient demonstration of an existing capacity shortage and of a need to expand the Metro UGB to meet that need.

Metro does not remedy the deficiency with its notation concerning locally adopted measures. It does not identify those measures. It does not say how and

whether those measures qualify as "efficiency measures" within the meaning of ORS 197.296. It does not say where and whether those measures currently apply or where and whether they are going to apply. It does not even say whether they are in force. It provides neither quantitative nor qualitative analysis or evidence of any kind. Both are essential to a sustainable existing capacity determination.

Local or regional charters may not excuse local and regional governments from following state law. See, e.g., *Stadelman v. City of Bandon*, 173 Or App 106, 20 P 3d 857 (2001) *rev den* 333 Or 73, 36 P3d 974 (2001)("The statutes [regulating landfill permitting] are preemptive to the extent of their inconsistency with the charter provisions, regardless of whether they have any broader preemptive effect. See *La Grande/Astoria v. PERB,* 281 Or 137, 148-49, 576 P2d 1204, *on rehearing* 284 Or 173, 586 P2d 765 (1978).").

In *Stadelman*, LUBA ruled that state statutes preempted the City of Bandon's charter provisions capping its refuse disposal rates, thereby preventing the city from meeting statutory obligations and standards for landfill bonding.

Similarly, Metro's charter limitation, as applied in the subject decision, purportedly enables Metro to evade its statutory obligation to refrain from expanding its urban growth boundary unless it has first established the 20-year capacity of its existing urban growth area including added capacity gained by the use of "efficiency measures" to enhance the capacity of underutilized residential lands. For this reason, the charter provision is invalid as applied. At the very least, it renders the current submittal legally and factually insufficient to support the proposed UGB expansions.

At the same time, the charter limitation prevents Metro from meeting its statutory obligation to maintain a rolling 20-year residential land supply by reevaluating that supply and projected needs every six years and expanding that boundary based upon a statutorily-prescribed analysis, which is fatally-compromised by Metro's exclusion from that analysis of measures to enhance capacity of existing neighborhoods. For this reason, the charter provision is facially invalid because it conflicts with Metro's long-term obligations to correctly update and maintain its HNA, BLI, and UGB and to ensure that all of its constituent cities can and do carry out their local obligations to plan, zone, and inventory in accordance with Goal 10 and the Needed Housing statutes.

Contrary to the Metro charter restriction, Oregon's Needed Housing Statutes, goals, and rules require Metro to assure that it and its constituent jurisdictions can "reasonably accommodate" as much of its future growth as possible within its existing UGB. As part of that demonstration, ORS 197.296, Goal 14 and OAR 660-024-0050(4) require Metro to establish that its projected needs for future land uses cannot reasonably be accommodated on land within its existing UGB, including through the use of "efficiency measures." 197.296(6)(b).

Goal 14 applies in addition to this statutory provision, to require Metro, as well as cities and counties outside of Metro, to consider additional, reasonable, efficiency measures without regard to self-imposed constraints such as a charter provision exempting "existing neighborhoods" and thereby creating vast single-family zoning "sanctuaries."

Goal 10 and ORS 197.296(9) also require Metro, unencumbered by self-imposed plan, ordinance, or charter restrictions, to "ensure that land zoned for needed housing is [planned] in locations appropriate for [needed] housing types * * *." Excluding the vast bulk of the region's residential areas from consideration is both unlawful and unconscionable, considering the regional scale and scope of Metro, the diversity of its housing needs, and the potential for dilution of state housing policy throughout Oregon's largest and most populous urban area. Because the state has entrusted Metro with responsibilities assigned to individual cities and counties elsewhere in Oregon, these locational requirements are especially important as Metro is the gatekeeper to assure that its cities and neighborhoods meet their Goal 10 obligations to provide their "fair share," of "least cost" housing at prices and rents throughout the Metro region in locations and at rents and prices that are affordable by and accessible to all Oregonians. Goal 10; *1000 Friends v. Lake Oswego*, 2 LCDC 138, 143-153 (1981); *1000 Friends v. Milwaukie,* 3 LCDC 1, 5-6 (1979); *Seaman v. Durham,* 1 LCDC 283, 288-293 (1978); *Creswell Court v. City of Creswell*, 35 Or LUBA 234 (1998).

In summary, Metro may not, if it wants to expand its urban growth boundary, use its charter restriction to exclude existing neighborhoods from efficiency measures, reduced maximum lot sizes, increased density minimums, multifamily housing, accessory dwelling units, vacation rental restrictions, or other measures that implement Goal 10, the Needed Housing Statutes, and the accessibility requirements of state and federal fair housing laws.

c. Metro has failed to do a comparative analysis of social consequences for housing affordability, suitability, and location required by the ESEE factors of Goal 14.[23] By not considering whether the existing boundary could accommodate projected

[23] Although the Metro findings at pp. 10-11 concede the applicability of the locational factor:

> Factor 3 - Comparative environmental, energy, economic and social consequences;

The social consequences are never evaluated in the findings. *Compare* the extensive justification provided by the City of Bend in its 2016 successful UGB expansion by explicit consideration of these and other factors required by Goal 14. Because there are *factors* involved and were insufficiently formulated, remand is necessary for Metro to consider factors insufficiently stated or weighed, rather than for the Department or Commission to undertake that analysis in the first instance. Nor is there any discussion of Goal 10 or needed housing statutes regarding the need-supply fit or housing affordability and access for all Oregonians in the Goal 14 factor-balancing findings on social and economic consequences. One consideration militating towards a more compact UGB is the reallocation of space-wasting single-family lots to more efficient and more affordable attached and multifamily units.

growth and by not considering whether wealthier persons in-migrating to the Portland region would push less wealthy persons from their existing neighborhoods to the periphery of the region where land prices and rents are lower, Metro did not fully assess the social consequences of an expansion that more easily accommodates white residents of the region over their racial and ethnic minority counterparts.

d. In its findings defending its process against HLA's objections, Metro states that each of the four cities that wish to expand their UGBs have met the law:

HLA also correctly notes that local governments are required by state law to conduct a housing needs analysis (HNA). All four cities where the UGB is being expanded have HNAs that are acknowledged by DLCD as being in compliance with state law.

That was not the point HLA raised. Because Metro is expanding the *regional* boundary, needs contained in a HNA must be region-wide (as opposed to some portions of the region growing faster than others), for if housing needs can be accommodated within the current UGB, there is no need to expand it. Additionally, it appears that Metro limited its consideration to housing and employment land designations and did not consider whether other lands in the region outside these designations could accommodate its growth needs. Also, there is not indication in the findings that the rest of the region, outside the four cities that are candidates for accommodating the UGB expansion, meets the Metro Housing Rules, in particular whether there is a need for *any* UGB expansion if current residential designations *in the region as a whole* do not meet OAR 660-007-0035 (the 6-8-10 rule) *and* 660-007-0030 (the 50-50 rule for new construction).

Moreover, in addition to limiting its view so as to consider only UGB expansion, Metro has willfully blinded itself on the status of affordable housing provided under local government codes as required by its code:

> 3.07.740 Inventory and Progress Reports on Housing Supply
>
> (1)(a) Local governments shall assist Metro in the preparation of a biennial affordable housing inventory by fulfilling the reporting requirements in subsection (b) of this section.
>
> (b) Local governments shall report their progress on increasing the supply of affordable housing to Metro on a form provided by Metro, to be included as part of the biennial housing inventory described in subsection (a). Local governments shall submit their first progress reports on July 31, 2007, and by April 15 every two years following that date. Progress reports shall include, at least, the following information:

> (1) The number and types of units of affordable housing preserved and income groups served during the reporting period, as defined in Metro's form;
>
> (2) The number and types of units of affordable housing built and income groups served during the reporting period;
>
> (3) Affordable housing built and preserved in Centers and Corridors; and
>
> (4) City or county resources committed to the development of affordable housing, such as fee waivers and property tax exemptions.

Notwithstanding that this ordinance is effective, Metro's administrators decided that compliance with its reporting requirements caused conflicts and unilaterally decided not to enforce its provisions.[24]

e. Metro also touts the use of the conditions imposed on this UGB change as evidence of its commitment to Goal 10 and affordable housing:

> The conditions of approval attached to the ordinance approving the expansion areas are set forth in Exhibit C, and they include numerous conditions that are directly aimed at requiring the four cities to encourage the development of more affordable housing, both in the new expansion areas and within existing city limits. The relevant conditions are A.2, A.3, B.l, B.2, B.3, and B.6.

[24] As HLA noted in its December 4, 2018 letter to Metro:

> Metro has created its own problem to figure out how to make Goal 10 findings in this case. On November 28, 2007, Metro's Chief Operating Officer ("COO") issued a letter to member local jurisdictions suspending reporting requirements related to housing and employment accommodation (then 3.07.120(D)), and housing choice for the affordable housing supply under Metro Code 3.07.740(B). See November 28, 2007 COO Letter attached as Exhibit 3. HLA has no knowledge that the suspension described in the November 28, 2007 letter has been lifted, despite years of advocating for a lift of the suspension. So far as we are able to ascertain, there was no Metro Council action to undertake this suspension. Unfortunately for Metro and the cities seeking the expansion here, a 10-year "temporary suspension" may mean that making Goal 10 findings are more difficult.[24] If the member jurisdictions had submitted reports on meeting their fair share of affordable housing, then the public would be able to analyze whether expanding the UGB to include the proposals here makes sense in the context of the Statewide Planning Goals and regional compliance with Goal 10. (Internal footnotes omitted)

Metro never responded to this objection.

The conditions, as drafted, are largely aspirational and unenforceable and without more will neither require nor accomplish additional affordable housing in these four cities or anywhere else. Nor are they tied into a system whereby the requirements for providing needed and affordable housing are met.

f. As to King City, there is no Transportation Systems Plan, which is necessary to evaluate the locational and public facilities factors. In *Barkers Five*, the Stafford area was found not to be a viable urban reserve candidate because the transportation plans were inadequate. While the criteria for a UGB amendment are different, lack of a TSP is certainly a relevant, if not the decisive, factor in choosing among candidate lands.

HLA joins with the objections filed to Metro's conditions by 1000 Friends of Oregon.

Necessary Work Tasks:

Draft precise and enforceable conditions with findings that explain how the conditions will achieve the region's housing goals. These conditions are necessary so that years from now, when HLA seeks enforcement for the failure of the conditions, everyone will know what Metro's decision meant to achieve.

III. CONCLUSION

For these reasons, HLA objects to acknowledgment of the Metro UGB expansion now before the Department and Commission and requests that these objections be entered into the record of these proceedings and that a copy of any order be sent to HLA at 121 SW Morrison St, Suite 1850, Portland, OR 97204.

Sincerely,

Jennifer Bragar
President, Housing Land Advocates

cc: (by email)
Gordon Howard
Kevin Young
House Speaker Kotek
Taylor Smile-Wolfe
Allan Lazo
Louise Dix
Ed Johnson
Roger Alfred

2016-2020 Analysis of Impediments to Fair Housing Choice

Executive Summary
State of Oregon 2016-2020 Analysis of Impediments to Fair Housing Choice

Fair and equal housing choice is the cornerstone of the State of Oregon's work to provide safe, decent and affordable places for our residents to live. Providing stable housing is critical to addressing poverty and creating access to opportunity. Children and families deserve an opportunity to succeed. Rental vacancy rates in some parts of Oregon are less than one percent, fixing rents far above what most low income households can afford. It is becoming increasingly difficult for renters to remain housed or would-be-homeowners to find an affordable home. Those who put more than half their income towards rent are forced to choose which bills they can pay, which necessities, food or healthcare they will forgo to avoid getting evicted or becoming homeless. This is the lens we use to examine and address impediments to fair housing.

This report, the Analysis of Impediments to Fair Housing Choice, or AI, is a HUD-required assessment of barriers to fair housing choice. The State of Oregon is required to conduct an AI every five years as a condition of receiving federal block grants funds for housing and community development.

The AI was a **joint effort** between **three state agencies:**

- **Oregon Infrastructure Finance Authority**
- **Oregon Housing and Community Services**
- **Oregon Health Authority**

Since the last AI was conducted in 2010, the State of Oregon has invested many resources toward addressing the identified impediments to fair housing choice. In sum, the state has:

- Funded a wide range of fair housing outreach and education and capacity-building activities;
- Funded audit testing to identify where issues of concern or discriminatory activities may exist;
- Examined and enhanced resources available to non-English speaking residents;
- Expanded the state's source of income protections to include income from the Housing Choice Voucher, or Section 8, program, or other local, state, or federal rent assistance;
- Changed how landlords may treat past evictions and criminal histories of rental applicants;[1] and

[1] Residents with criminal histories are not a protected class; however, there can be overlap with protected class categories, most commonly disability and race/ethnicity.

- Continued programs to ensure that subsidized housing is available in a wide variety of neighborhoods.

Our work continues. The state is committed to work to recommit ourselves to reducing barriers to housing choice.

Affirmatively Furthering Fair Housing choice (AFFH)

is a ***complicated*** effort:

Housing choices **are affected by** a variety of **market conditions and actions** by both residents and the industry—**not all** of which are **within the state's control.**

Research Methodology

- Statistically significant survey of 600 residents in nonentitlement areas
- Survey of 485 industry specialists
- Six focus groups with stakeholders and residents in rural areas
- Segregation analysis
- Housing program concentration analysis
- Analysis of home mortgage loan denials
- Review of fair housing complaints and legal cases
- Review of relevant state regulations and policies

2016 Impediments to Fair Housing Choice

The 2016 impediments are organized around the primary research findings from the AI.

Research Finding #1: Persons with disabilities face widespread barriers to housing choice statewide.

54% of complaints filed in Oregon concern discrimination based on disability.

#1 barrier identified by stakeholders: Limited resources for persons with disabilities to transition out of institutional settings.

#2 barrier identified by stakeholders: Lack of housing for persons with disabilities to transition out of institutional settings.

20% of residents' homes in rural areas do not meet their family's disability needs.

46% of persons with disabilities who want to move can't afford to move or live anywhere else in their community.

- **Impediment 1-1.** Lack of affordable, accessible housing, including housing available for persons with disabilities who wish to leave nursing homes or other institutional settings.
- **Impediment 1-2.** Refusal of some landlords to make reasonable accommodations for persons with disabilities.
- **Impediment 1-3.** Persons with disabilities who desire to transition out of institutional settings are limited by the lack of supportive services in housing, in addition to financial and emotional support to assist them in their transitions.
- **Impediment 1-4.** Housing choices for persons with disabilities are severely limited by lack of sidewalks, paved roads and reliable and sufficient public transportation.

- **Impediment 1-5.** Local zoning and land use regulations and/or inexact application of state laws may impede the siting and approval of group homes.

Research Finding #2: Discrimination against protected classes persists statewide.

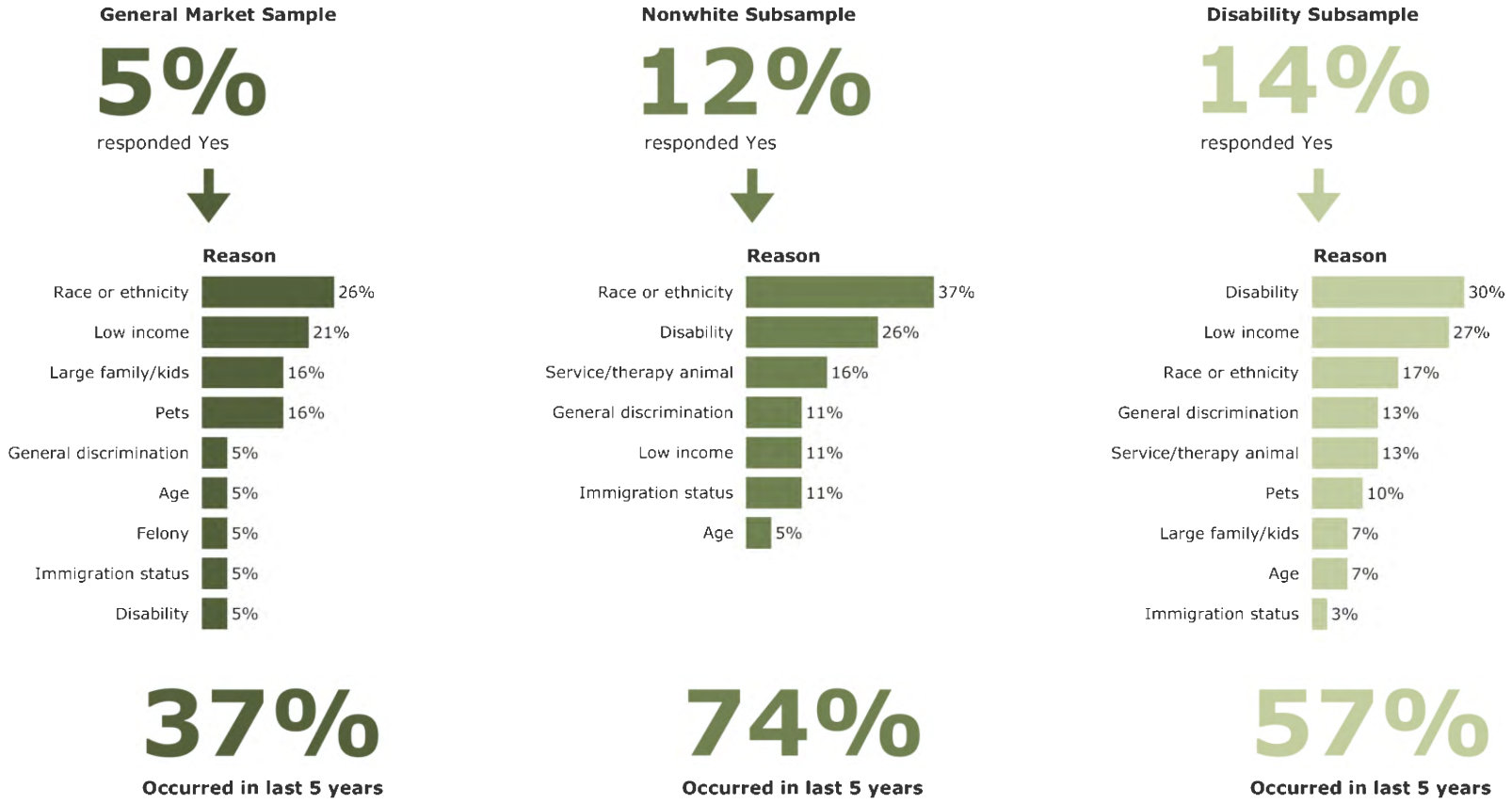
25% of audit tests in rural areas statewide found race-based discrimination may exist in leasing activities or transactions.

Nonwhite and residents with disabilities surveyed for the AI report higher levels of housing discrimination than for Oregonians overall (see Figure ES-1 on the following page).

- **Impediment 2-1.** Lack of enforcement of fair housing violations persists statewide.

- **Impediment 2-2.** Limited housing options for persons most vulnerable to housing discrimination: non-English speakers, persons of Hispanic descent, Native Americans, African Americans, large families and, as discussed above, persons with disabilities.

Figure ES-1.
When you looked for housing in your community, did you ever feel discriminated against?



Note: General market sample n=379, 19 and 19; nonwhite sample n=156, 19 and 19; disability sample n=218, 30 and 30.

Source: BBC Research & Consulting from 2015 Oregon Resident Telephone Survey.

Research Finding #3. Residents lack knowledge of their fair housing rights, are not empowered to take action and have very limited fair housing resources locally.

39% of residents overall in rural areas would "do nothing" if faced with housing discrimination.

53% of nonwhite residents in rural areas would "do nothing" if faced with housing discrimination.

Most residents do not know where to turn for help if they've experienced discrimination.

- **Impediment 3.1.** Local fair housing resources statewide are limited. This is particularly true in rural communities.

Research Finding #4. In many rural areas, credit is limited for residents who want to buy homes and developers who want to build multifamily housing.

HOMEOWNERSHIP → Provides residents **residential stability**

AND

→ Is **the surest way to build wealth** in America

Although differences have declined since 2010, African American, Hispanic and Native American borrowers still face higher denial rates on mortgage loans.

The top counties for lending disparities were all rural.

Disparities in denial rates persist even at high income levels (>$75,000/year).

Very high rates of denials for home improvement loans: Native Americans=51%, Hispanics=43%, African Americans=42%.

Bank mergers, lack of local lenders and local economic conditions → limited capital for both residential and multifamily housing

Inability to get home improvement loans can **affect** neighborhood conditions ***overall.***

Reasons for denials:

Lack of credit, poor credit, high debt-to-income ratios, lack of collateral.

40% of Hispanic residents in Oregon
do not use traditional **banks** (FDIC).

- **Impediment 4.1.** Limited credit alternatives for households in rural areas who seek homeownership.
- **Barrier 4.2.** Lack of capital to develop multifamily housing in rural areas.

Barriers to Fair Housing Choice

Research Finding #5. Condition of affordable housing is generally poor in rural areas.

#4 barrier identified by stakeholders: Poor condition of some affordable housing.

Condition challenges raised frequently by stakeholders and residents in focus groups.

Research Finding #6. Oregon's state laws may limit the ability of cities and counties to employ programs that are known to create a significant amount of affordable units in many other jurisdictions.

Barrier 6.1. The state's ban on the use of inclusionary zoning limits municipalities' ability to employ flexible tools and incentives to increase the number of affordable units built. Lack of affordable units limits housing choice for persons of color and low income persons.

Impediment 6-2. The lack of affordable units significantly limits housing choice for persons of color and low income persons.

Research Finding #7. State laws and local practices, coupled with lack of housing in rural areas; create impediments to housing choice for persons with criminal backgrounds.

Oregon requires that for a minimum of six months after release from prison, a person must reside in the county they were last supervised or lived at the time the offense.

Residency condition requirement can complicate the process of finding housing upon re-entry in housing markets where housing supply is limited and/or costly.

Barrier 7.1. To the extent that certain residents are disproportionately likely to be incarcerated, the residency requirement may disproportionately impact housing choice for protected classes. Persons with criminal backgrounds have few, if any housing options.

Fair Housing Action Plan for 2016-2020

The Fair Housing Action Plan (Action Plan) is a tool to address identified impediments is detailed in Figure ES-1. Activities in the Action Plan will be implemented, monitored and reported on annually as part of the state's Consolidated Plan requirements.

The Action Plan is an ambitious approach to improving access to housing for Oregonians who face barriers to housing choice and are most vulnerable to experiencing housing discrimination. The Action Plan will complement many other state efforts to address broader housing and community development needs. Solving the critical problems of access to housing and housing choice requires partnership and commitment throughout the state. The partners to this report are invested in the results of Oregon's fair housing work.

FOCUS AREAS
for the
2016-2020 Action Plan
for access to fair housing

- **Improve persons with disabilities' access to housing**
- **Reduce discriminatory actions in housing transactions**
- **Improve fair housing knowledge of residents, industry, and local governments**
- **Improve condition of affordable housing**
- **Make regulatory improvements to fair housing protections**

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SECTION I.
Demographic and Housing Profile

An important starting point for the Analysis of Impediments to Fair Housing Choice is a review of the socioeconomic environment in a state, including trends in demographics and income levels. Both affect access to housing choice.

This section has three purposes: 1) to provide an overview of the demographic and economic characteristics of Oregon residents that influence housing choice; 2) to analyze racial and ethnic segregation/integration in Oregon; and 3) to discuss segregation/integration for persons with disabilities.

The section also explores if certain households have disproportionate rates of housing program use. The extent to which certain protected classes benefit from housing subsidies and how subsidies are employed to further economic opportunity is of growing interest to HUD. Surveys of residents and stakeholders conducted for the Analysis of Impediments supplement the housing analysis by providing additional data on the housing choices and needs of different protected classes.

Demographic Summary

Oregon's population grew by almost 450,000 residents between 2000 and 2013, representing a 13 percent increase. Over 19 percent of the state's residents live in Multnomah County, followed by Washington County (14%) and Clackamas County (10%)—each part of the greater Portland area. The 2010 Census reported 81 percent of Oregon residents live in urban areas and 19 percent reside in rural locations.[1]

Race and ethnicity. Figure I-1 presents the racial and ethnic composition of state residents and how the composition has changed since 2000.[2] The Hispanic population comprises 12 percent of all Oregon residents, making it the largest minority group in the state. The Hispanic population grew by more than 185,000 people between 2000 and 2013, equaling a 68 percent increase. This was the highest numerical change of any minority group in the state.

The Asian population is the second largest minority group with almost 150,000 residents, accounting for four percent of all residents. This racial group also grew quickly between 2000 and 2013 (46% increase).

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[1] The 2009-2013 ACS does not report on the urban/rural population distribution.

[2] It should be noted that Census data on race and ethnic identification vary with how people choose to identify themselves. The U.S. Census Bureau treats race and ethnicity separately: the Bureau does not classify Hispanic/Latino as a race, but rather as an identification of origin and ethnicity. In 2010 the U.S. Census Bureau changed the race question slightly, which may have encouraged respondents to check more than one racial category.

The largest population group in the state remains residents who report their race as white, non-Hispanic. Although the percentage growth of white, non-Hispanic residents was slower than many minority groups, numerical growth was the highest because these residents make up so much of the state's residents.

Figure I-1.
Race and Ethnicity, State of Oregon, 2000 and 2013

	2000		2013		2000-2013 Numerical Change	2000-2013 Percent Change
	Number	*Percent*	*Number*	*Percent*		
Total population	**3,421,399**	**100%**	**3,868,721**	**100%**	**447,322**	**13%**
Race						
American Indian and Alaska Native	45,211	1%	47,411	1%	2,200	5%
Asian	101,350	3%	147,986	4%	46,636	46%
Black or African American	55,662	2%	70,328	2%	14,666	26%
Native Hawaiian and Other Pacific Islander	7,976	0%	14,993	0%	7,017	88%
White	2,961,623	87%	3,297,149	85%	335,526	11%
Some other race	144,832	4%	145,000	4%	168	0%
Two or more races	104,745	3%	145,854	4%	41,109	39%
Ethnicity						
Hispanic or Latino	275,314	8%	461,901	12%	186,587	68%
Non-Hispanic White	3,146,085	92%	3,406,820	88%	260,735	8%

Note: The ACS question on Hispanic origin was revised in 2008 to make it consistent with the 2010 Census Hispanic origin question. As such, there are slight differences in how respondents identified their origin between the 2000 Census and 2013 ACS.

Excludes "Some Other Race" category due to inconsistency of reporting between 2000 Census and 2013 ACS.

Source: 2000 U.S. Census, 2009-2013 ACS.

The concentrations of residents by race and ethnicity, in addition to measures of segregation, are discussed in latter parts of this section (beginning on page 14).

Age. According to the 2013 ACS, the median age of residents in Oregon is 38.7, roughly one year older than the national median age (37.3). Figure I-2 shows that a resident between the ages of 25 and 44 years old is the largest cohort in the state, representing 27 percent of the population. The second largest cohort consists of residents under the age of 14 years old, at 18 percent of the population. The fastest growing age cohort between 2000 and 2013 was residents between the ages of 55 and 64 years old, increasing by 71 percent.

Figure I-2. Age, State of Oregon, 2000 and 2013

Source:

2000 U.S. Census, 2009-2013 ACS.

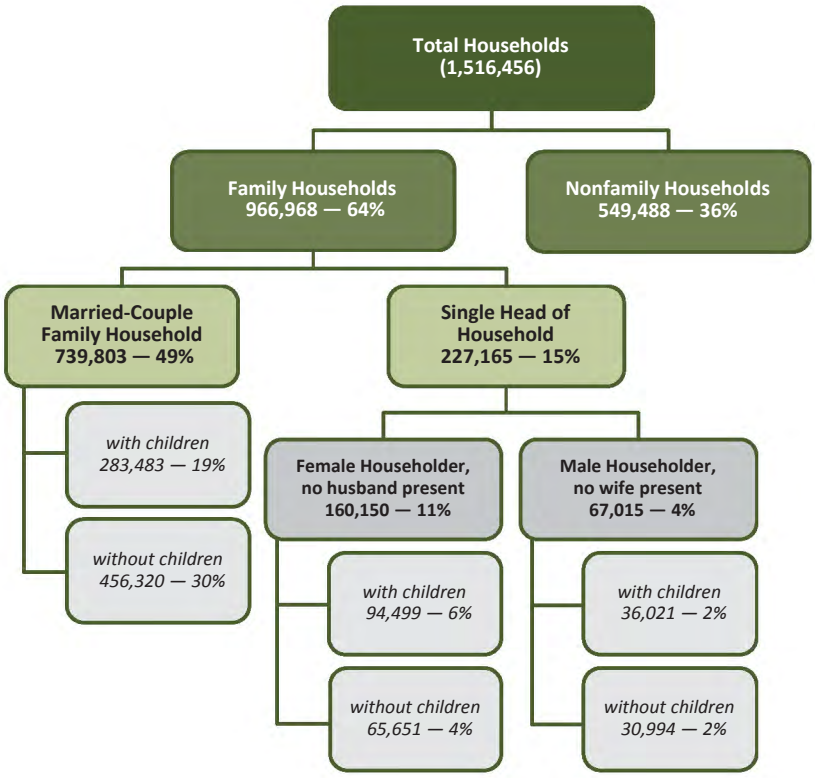
	2000		2013		2000-2013 Numerical Change	2000-2013 Percent Change
	Number	*Percent*	*Number*	*Percent*		
Under 14 years	699,577	20%	714,179	18%	14,602	2%
15 to 24 years	474,833	14%	510,709	13%	35,876	8%
25 to 44 years	997,269	29%	1,033,248	27%	35,979	4%
44 to 54 years	507,155	15%	529,199	14%	22,044	4%
55 to 64 years	304,388	9%	521,313	13%	216,925	71%
65 years and over	438,177	13%	560,073	14%	121,896	28%

The significant increase in Oregon residents over the age of 54 is due to the aging Baby Boomer generation. While the combined age cohorts of 55 to 64 years and 65 years and over currently make up around 27 percent of state residents, this number will continue to increase in coming years. Growth in this age demographic, especially among those ages 65 and older, underscores the importance of housing and community policies and investments that incorporate the needs of older residents, including housing and public infrastructure accessibility and public transportation.

Household composition. According to the 2013 ACS, there are over 1.5 million households in Oregon. Thirty-six percent of households in Oregon are non-family households, which includes unrelated persons living together or individuals living alone. The remaining 64 percent of households are family households. The average household size is 2.5 people and the average family size is 3.0 people. More than a quarter (27%) of all households in Oregon has children (married couple and single parent households). Single parent households make up eight percent of all Oregon households. Figure I-3 displays the state's 2013 household composition.

Figure I-3.
Household Composition, State of Oregon, 2013

Source:
2009-2013 ACS.



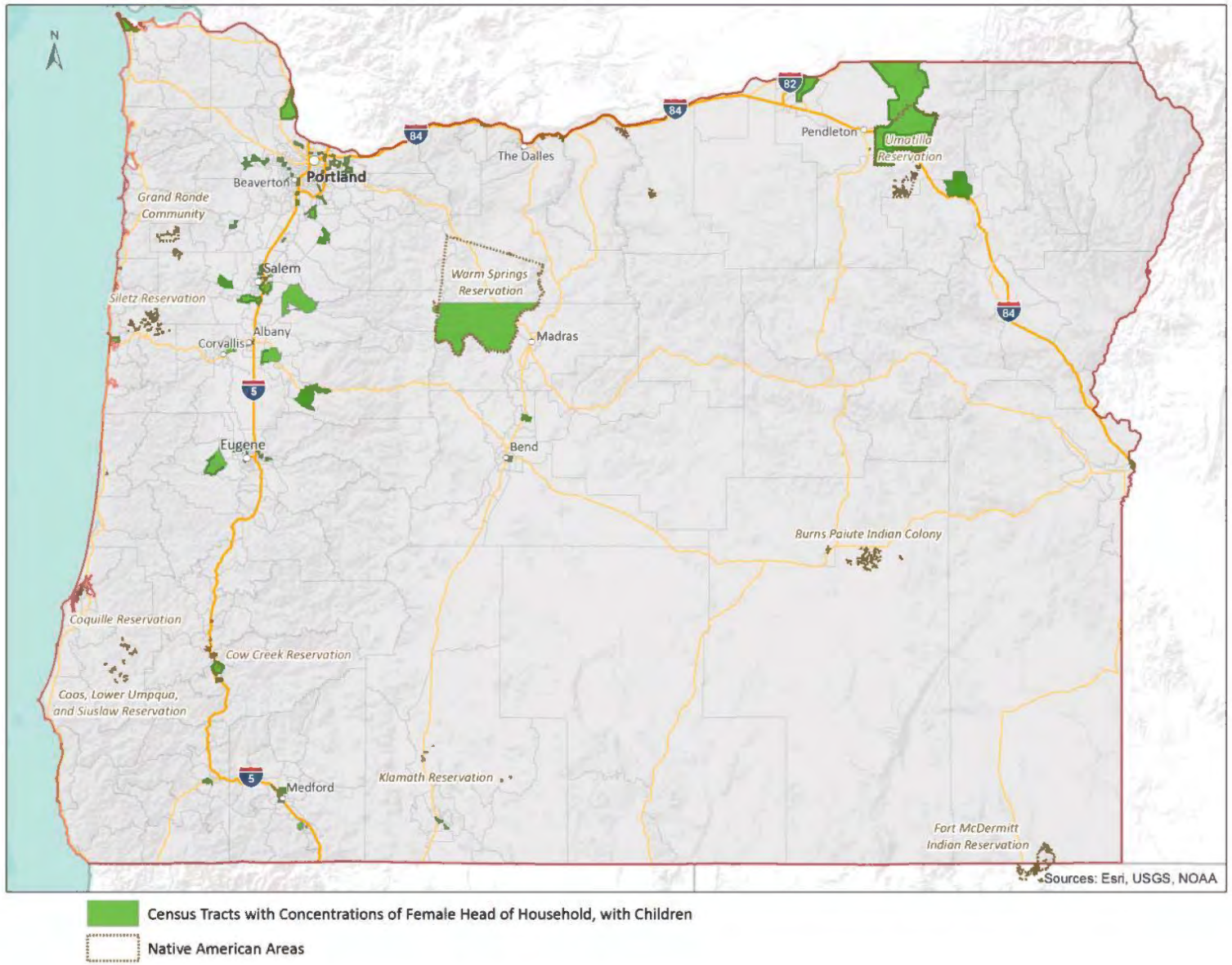
Single parent households—especially those with single mothers—have some of the highest rates of poverty in most communities. As such, they generally have greater needs for social services (child care, transportation, etc.) and affordable housing. Familial status is also a protected class under fair housing law and, in some communities, one of the most common reasons for fair housing complaints. Single parent households may therefore be vulnerable to fair housing discrimination and often have fewer choices in the housing market because of their lower income levels.

Statewide, 6.2 percent of households are single female head of households with children present. Figure I-4 presents Census tracts where more than 10 percent of households are single mother households. Clusters of concentrated single mother households are found in the eastern Portland area, specifically south of I-84 and north of US 26, and between Beaverton and Hillsboro. Census tracts along the I-5 corridor—Salem, Eugene, Medford, etc.—also have concentrations of single mother households. East of I-5, single mother concentrated areas are limited, with Census tracts around Klamath Falls, Bend, Pendleton (Umatilla Reservation) and Ontario.

Figure I-4. Concentrations of Female Head of Household with Children, State of Oregon, 2013

Source:

2009-2013 ACS; BBC Research & Consulting.



Limited English proficiency and linguistically isolated households. With the growing minority population in Oregon, especially Hispanics, it will become increasingly important to ensure fair housing information and materials are available and accessible in multiple languages (e.g. Spanish). Knowing where non-English speakers are located also allows for information and materials to better align socially and culturally, increasing the efficacy and effectiveness of the disseminated information.

Figure I-5 shows limited English proficiency—persons five years and over speaking English less than "very well"—concentrated areas (over 10% limited English proficiency in Census tract). The statewide limited English proficiency average is 2.9 percent. Limited English proficiency concentrated areas are mostly found in the greater Portland area, Salem, Hood River, Klamath Falls, Ontario and the Boardman/Irrigon area.

Figure I-5. Concentrations of Limited English Proficiency Individuals, State of Oregon, 2013

Source:
2009-2013 ACS; BBC Research & Consulting.

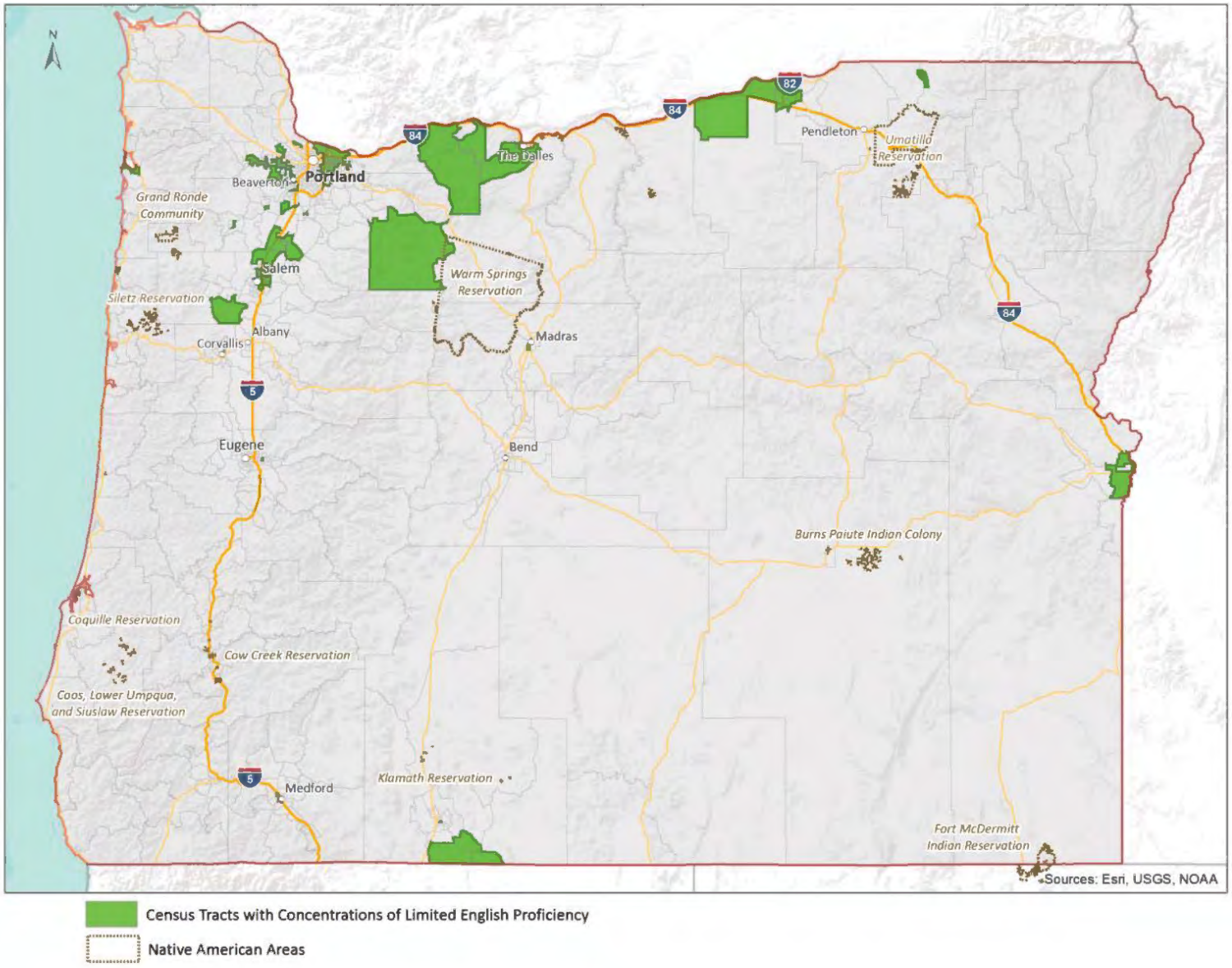
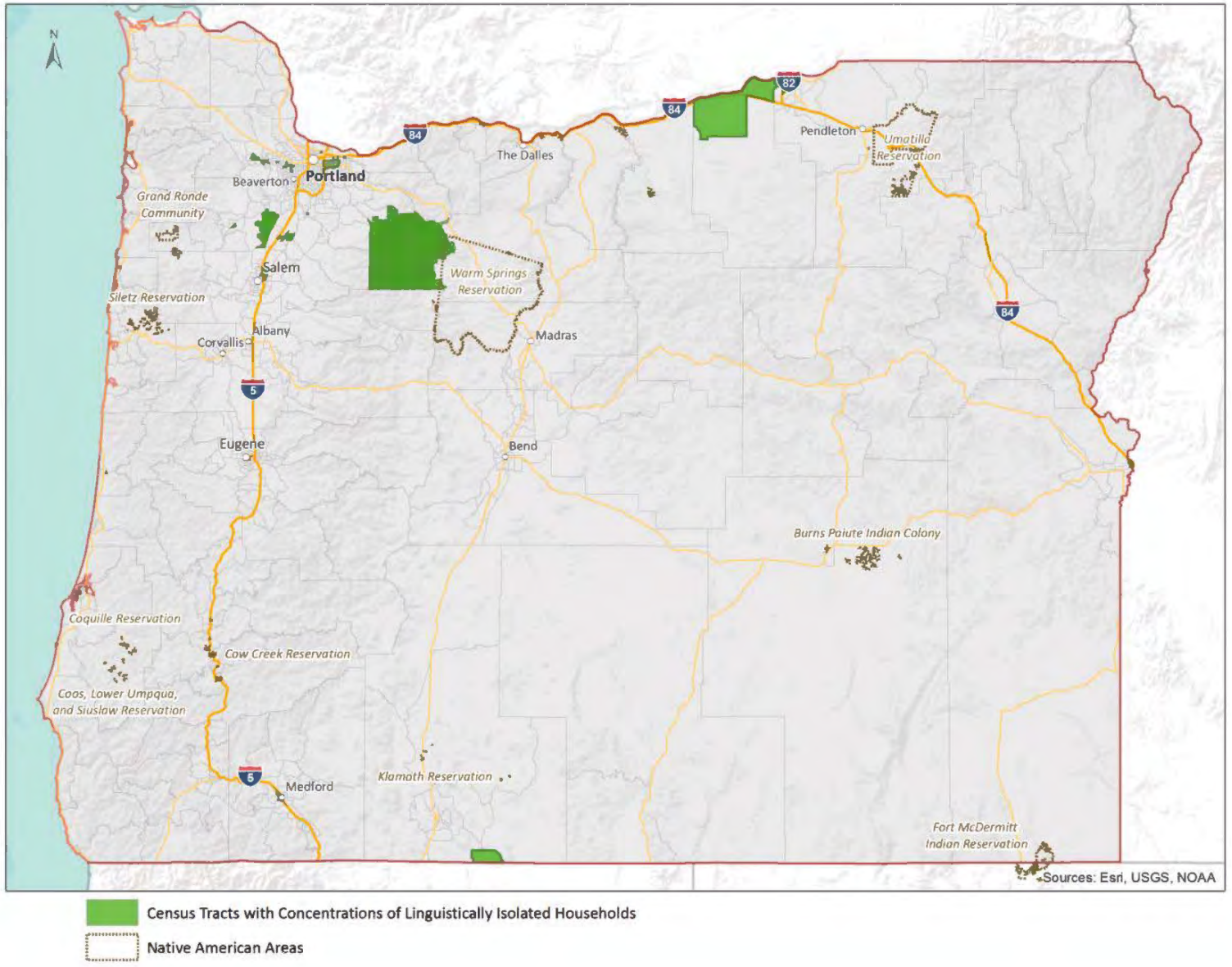


Figure I-6 presents areas where greater than 10 percent of households are defined as linguistically isolated households—all household members 14 years old and over speak English less than "very well." The linguistically isolated household statewide average is 6.2 percent. This map is highly correlated with the above figure, but fewer concentrations are seen because all household members must speak English less than "very well" to fit the linguistically isolated definition.

Figure I-6. Concentrations of Linguistically Isolated Households, State of Oregon, 2013

Source:

2009-2013 ACS; BBC Research & Consulting.



Disability. Figure I-7 presents the number of individuals by age group in Oregon living with a disability. Around 14 percent of all Oregon residents have a disability, with over a third (38%) of all seniors (65 years and over) living with at least one disability. Seniors are most affected by physical (ambulatory and hearing) disabilities and children are most affected by cognitive disabilities.

Figure I-7.
Incidence of Disability by Age

Source:
2009-2013 ACS.

	No. of Residents	% of Residents
Total Residents with a Disability	**526,868**	**14%**
Residents 5 years and younger	**3,041**	**1%**
Residents 5 to 17 years	**35,734**	**6%**
Hearing	3,810	1%
Vision	5,183	1%
Cognitive	27,875	4%
Ambulatory	4,017	1%
Self-care	5,774	1%
Population 18 to 64 years	**280,616**	**12%**
Hearing	69,007	3%
Vision	46,238	2%
Cognitive	126,567	5%
Ambulatory	132,757	6%
Self-care	47,590	2%
Independent living	90,064	4%
Population 65 years and over	**207,477**	**38%**
Hearing	99,550	18%
Vision	35,921	7%
Cognitive	55,352	10%
Ambulatory	126,128	23%
Self-care	47,536	9%
Independent living	82,600	15%

Persons with disabilities are typically more vulnerable to housing discrimination than others, often due to housing providers' lack of knowledge about reasonable accommodation provisions in fair housing laws. Persons with disabilities also face challenges finding housing that is affordable, accessible and located near transit and supportive services.

The high percentage of seniors living with disabilities, coupled with the significant population growth among this age group in Oregon, suggests that the number of total residents living with a disability will increase in the future.

Poverty. The economic ability to rent or purchase housing is a strong determinant of where one lives within a community. Figure I-8 and Figure I-9 below present the percentage of individuals living in poverty within each Census tract. Statewide, about 16 percent of individuals live in poverty. Concentrated areas of poverty—defined as those where more than 40 percent of individuals in live in poverty—are found in the greater Portland area, Salem, Corvallis, Eugene, Klamath Falls and Ontario.[3]

In addition to housing choice, neighborhoods with poverty rates exceeding 40 percent are regarded by social researchers as being areas that are "socially and economically dysfunctional."[4] High poverty is linked to high crime, high rates of unemployment and low educational attainment, all of which have costs to the public. High poverty also impacts community health and food security, frequently culminating in malnutrition among children.[5]

[3] It is important to note that areas with a college/university, such as Corvallis and Eugene, typically experience inflated poverty rates due to the large number of college students claiming residence in the area.

[4] The Costs of Concentrated Poverty: Neighborhood Property Markets and the Dynamics of Decline." In Nicolas P. Retsinas and Eric S. Belsky, eds., Revisiting Rental Housing: Policies, Programs, and Priorities. Washington, DC: Brookings Institution, 116–9.

[5] Understanding the Link between Poverty and Food Insecurity among Children: Does the Definition of Poverty Matter? Vanessa Wright, et. al., Journal of Children and Poverty, 1-20. 2014.

Figure I-8. Percentage of Individuals Below Poverty Rate, State of Oregon, 2013

Source:

2009-2013 ACS; BBC Research & Consulting.

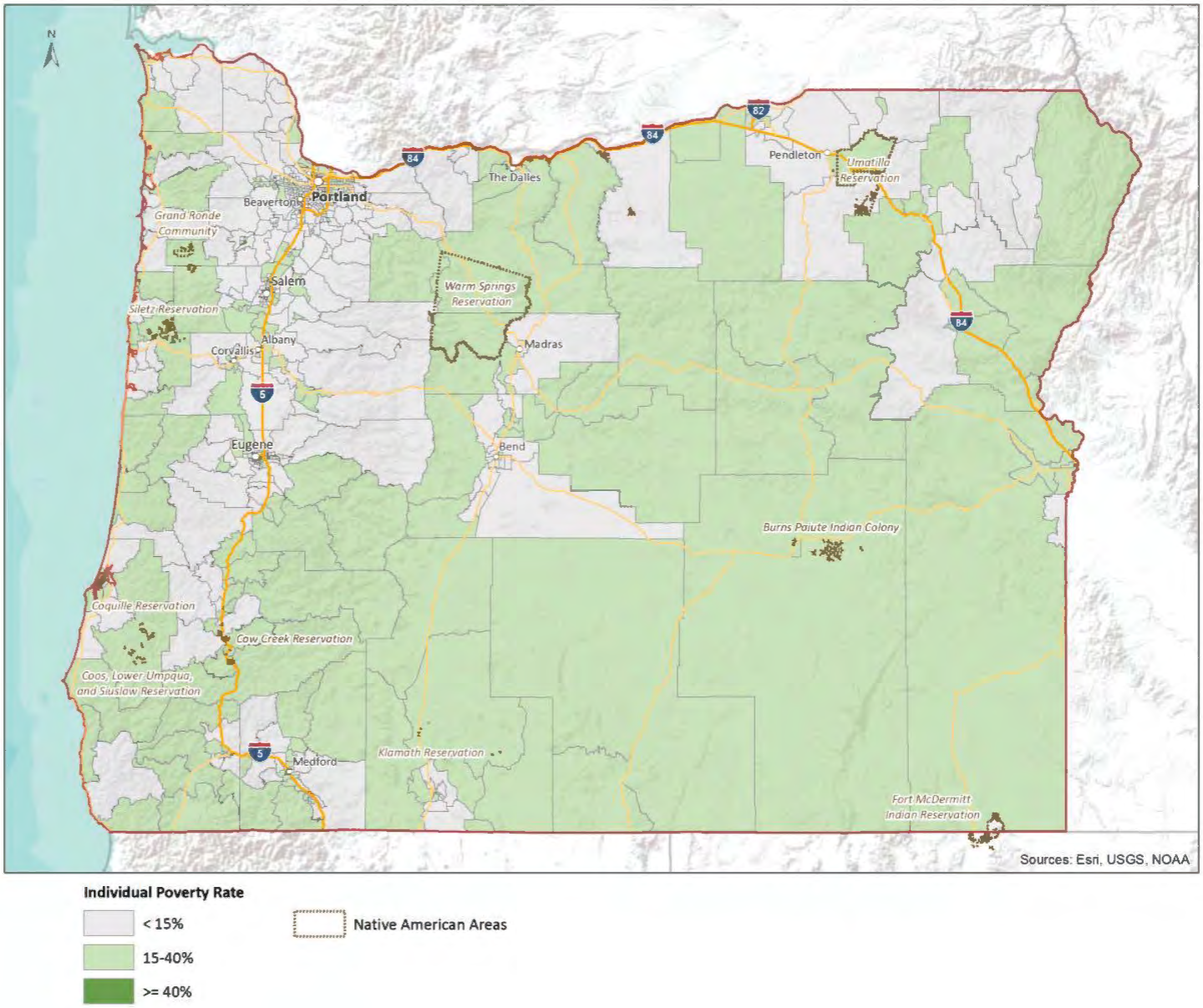
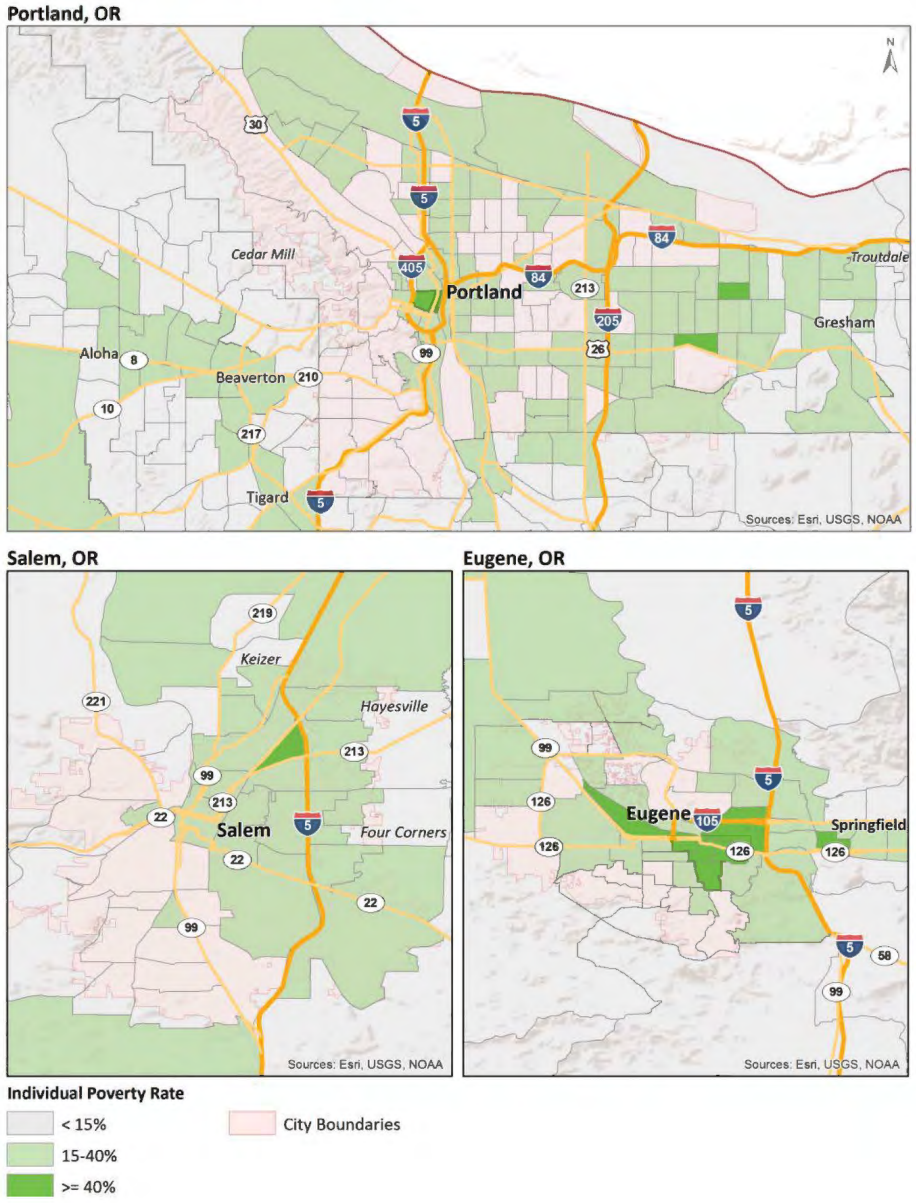


Figure I-9. Percentage of Individuals Below Poverty Rate, Greater Portland, Salem and Eugene Areas, 2013

Source:

2009-2013 ACS; BBC Research & Consulting.



Segregation/Integration Analysis

This section discusses racial and ethnic segregation/integration in Oregon. HUD defines "integrated" geographic areas as those which do not contain high concentrations of protected classes when compared to the representation in a jurisdiction as a whole. "Segregation" occurs when concentrations of protected classes are a result of fair housing barriers or impediments.

Metrics. For this analysis, two measures are used to identify concentrations and segregation.

Concentrations are identified as:

- Census tracts in which the proportion of a protected class is 20 percentage points higher than that in the county overall, and
- Census tracts that are more than 50 percent minority—minority residents defined as those identifying as Hispanic/Latino and/or a non-white race.

Segregation is measured by the dissimilarity index. The dissimilarity index is a way to measure the evenness of minority resident distribution across geographic units—such as Census tracts—that make up a larger geographic area—such as a county. The index compares the proportion of the total population of a minority group in a Census tract and the proportion of the total number of whites in that same Census tract.

Dissimilarity index. The dissimilarity index is a metric used by researchers to measure racial and ethnic integration. The index is measured between 0 and 1. An index of 0 indicates perfect distribution of racial and ethnic groups across all Census tracts in a region; conversely, an index of 1 indicates complete segregation of racial groups across the region. HUD's ratings of dissimilarity are determined by the following score ranges: "Low Dissimilarity"—below 0.40; "Moderate"—between 0.40 and 0.54; and "High"—above 0.54. The U.S. cities found to be the most segregated using the dissimilarity index (Milwaukee, New York and Chicago) have indices approaching 0.8.

Figure I-10 presents the dissimilarity index for Oregon counties. Hispanic populations are well distributed throughout each county, with only Morrow County having a "Moderate" dissimilarity index rating. The dissimilarity index ratings for African Americans throughout the states show seven counties have relatively high levels of segregation, with Curry County and Columbia County having dissimilarity scores over 0.7. Asian and Native American populations are generally more integrated than African Americans, but less integrated than Hispanics. The overall minority dissimilarity index score and rating is heavily weighted towards Hispanics because they comprise a much higher share of minority residents (an aggregate of all minority races and ethnicities) than any other single minority group.

While dissimilarity index ratings may indicate a level of segregation between whites and minority residents, it does not identify the underlying causes for the segregation. It is plausible that some minority residents actively seek housing in neighborhoods (Census tracts) where individuals with similar backgrounds as themselves are living and where familiar cultural amenities can be found (religious centers, specialized supermarkets, etc.). On the other hand,

discriminatory practices could be occurring that steer minority residents towards certain neighborhoods regardless of their actual preferences.

Figure I-10.
Dissimilarity Index by County, State of Oregon, 2013

County	Minority/NHW Dissimilarity Index		Hispanic/NHW Dissimilarity Index		African American/NHW Dissimilarity Index		Asian/NHW Dissimilarity Index		Native American/NHW Dissimilarity Index	
	Index	Rating	Index	Rating	Index	Rating	Index	Rating	Index	Rating
Baker	0.32	Low	0.37	Low	0.47	Moderate	0.37	Low	0.49	Moderate
Benton	0.21	Low	0.36	Low	0.48	Moderate	0.35	Low	0.40	Moderate
Clackamas	0.24	Low	0.33	Low	0.50	Moderate	0.44	Moderate	0.51	Moderate
Clatsop	0.21	Low	0.28	Low	0.38	Low	0.41	Moderate	0.33	Low
Columbia	0.20	Low	0.26	Low	0.72	High	0.25	Low	0.38	Low
Coos	0.23	Low	0.31	Low	0.56	High	0.28	Low	0.29	Low
Crook	0.17	Low	0.26	Low	0.41	Moderate	0.30	Low	0.21	Low
Curry	0.11	Low	0.14	Low	0.73	High	0.49	Moderate	0.31	Low
Deschutes	0.19	Low	0.26	Low	0.44	Moderate	0.35	Low	0.36	Low
Douglas	0.18	Low	0.20	Low	0.60	High	0.34	Low	0.29	Low
Gilliam	N/A - only 1 CT		N/A - only 1 CT		N/A - only 1 CT		N/A - only 1 CT		N/A - only 1 CT	
Grant	0.07	Low	0.13	Low	0.22	Low	0.34	Low	0.12	Low
Harney	0.13	Low	0.11	Low	0.21	Low	0.44	Moderate	0.32	Low
Hood River	0.24	Low	0.26	Low	0.42	Moderate	0.24	Low	0.74	High
Jackson	0.29	Low	0.39	Low	0.52	Moderate	0.39	Low	0.37	Low
Jefferson	0.50	Moderate	0.37	Low	0.32	Low	0.56	High	0.77	High
Josephine	0.16	Low	0.22	Low	0.47	Moderate	0.35	Low	0.30	Low
Klamath	0.22	Low	0.31	Low	0.37	Low	0.40	Low	0.39	Low
Lake	0.06	Low	0.17	Low	0.28	Low	0.23	Low	0.04	Low
Lane	0.18	Low	0.31	Low	0.51	Moderate	0.40	Moderate	0.42	Moderate
Lincoln	0.22	Low	0.30	Low	0.60	High	0.41	Moderate	0.39	Low
Linn	0.25	Low	0.35	Low	0.38	Low	0.36	Low	0.33	Low
Malheur	0.26	Low	0.29	Low	0.46	Moderate	0.31	Low	0.37	Low
Marion	0.35	Low	0.40	Low	0.51	Moderate	0.37	Low	0.37	Low
Morrow	0.38	Low	0.40	Moderate	0.43	Moderate	0.07	Low	0.32	Low
Multnomah	0.27	Low	0.35	Low	0.47	Moderate	0.34	Low	0.45	Moderate
Polk	0.23	Low	0.32	Low	0.33	Low	0.34	Low	0.46	Moderate
Sherman	N/A - only 1 CT		N/A - only 1 CT		N/A - only 1 CT		N/A - only 1 CT		N/A - only 1 CT	
Tillamook	0.26	Low	0.31	Low	0.40	Moderate	0.44	Moderate	0.42	Moderate
Umatilla	0.31	Low	0.38	Low	0.46	Moderate	0.38	Low	0.69	High
Union	0.17	Low	0.27	Low	0.58	High	0.28	Low	0.27	Low
Wallowa	0.16	Low	0.14	Low	0.28	Low	0.27	Low	0.47	Moderate
Wasco	0.22	Low	0.25	Low	0.31	Low	0.45	Moderate	0.55	High
Washington	0.24	Low	0.35	Low	0.41	Moderate	0.35	Low	0.57	High
Wheeler	N/A - only 1 CT		N/A - only 1 CT		N/A - only 1 CT		N/A - only 1 CT		N/A - only 1 CT	
Yamhill	0.23	Low	0.27	Low	0.58	High	0.35	Low	0.44	Moderate

Note: NHW is non-Hispanic white. Some dissimilarity index scores and ratings may not align in the table due to score rounding.

Source: 2009-2013 ACS; BBC Research & Consulting.

Racial/ethnic concentrations. Racial/ethnic concentrations (a census tract in which the proportion of a protected class is 20 percentage points higher than that in the county overall)

exist for Hispanic, African American, Asian and Native American populations in Oregon. Unlike the dissimilarity index, concentrations are not a measure of segregation, but rather a geographic analysis tool to understand where minority neighborhoods exist within the community. Figure I-11 through Figure I-16 present concentrations for each race/ethnicity. The following is a summary of the racial and ethnic concentrations that exist in Oregon:

Hispanic concentrations

- There are 33 Hispanic concentrated Census tracts throughout the state; and
- Clusters of Hispanic concentrated Census tracts exist in the greater Portland area, Hillsboro, The Dalles, Salem, Medford, Klamath Falls and Ontario.

African American concentrations

- There are three African American concentrated Census tracts in Oregon; and
- All three Census tracts are in close proximity (two are adjacent) and are in the north Portland area.

Asian concentrations

- Three Asian concentrated Census tracts exist in the state; and
- Two are located in the Hillsboro area, while the third is west of Portland near the intersection of I-205 and US 26.

Native American concentrations

- There are two Native American concentrated Census tracts in Oregon; and
- Both are Census tracts located within an American Indian Reservation (Warm Springs Reservation and Umatilla Reservation).

Figure I-11. Hispanic Concentrations, State of Oregon, 2013

Source:
2009-2013 ACS; BBC Research & Consulting.

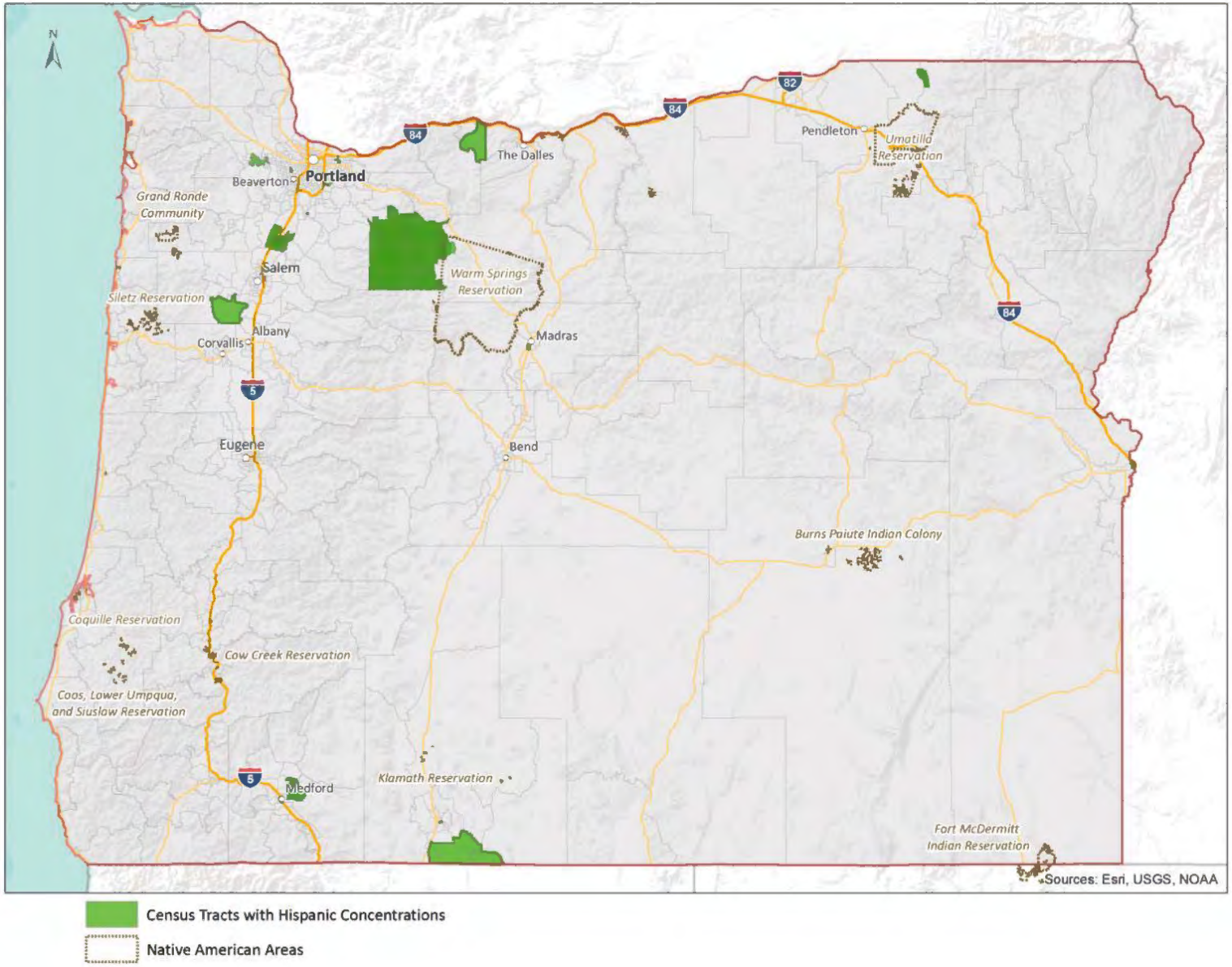


Figure I-12. African American Concentrations, State of Oregon, 2013

Source:
2009-2013 ACS; BBC Research & Consulting.

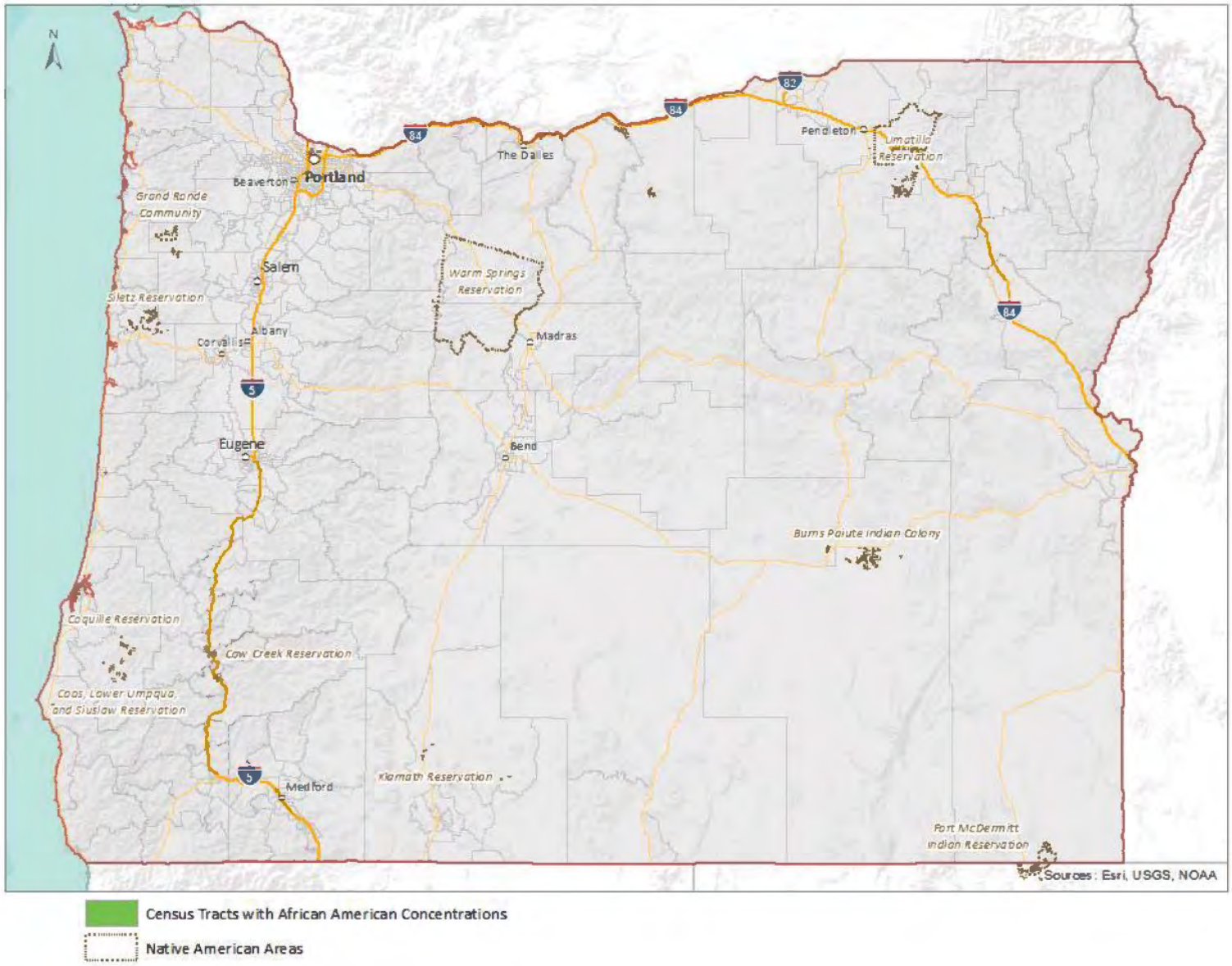


Figure I-13. African American Concentrations, Greater Portland Area, 2013

Source:

2009-2013 ACS; BBC Research & Consulting.

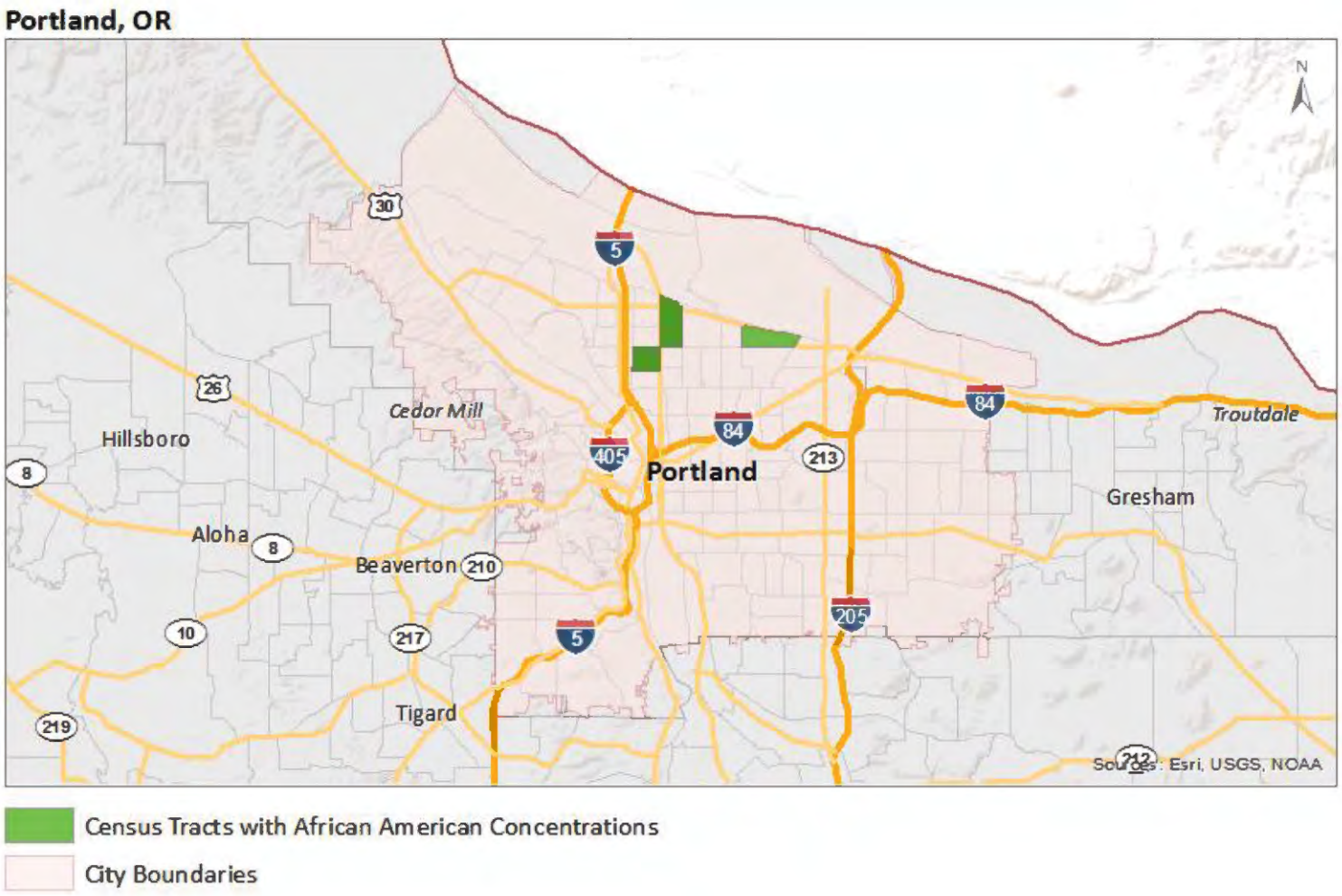


Figure I-14. Asian Concentrations, State of Oregon, 2013

Source:
2009-2013 ACS; BBC Research & Consulting.

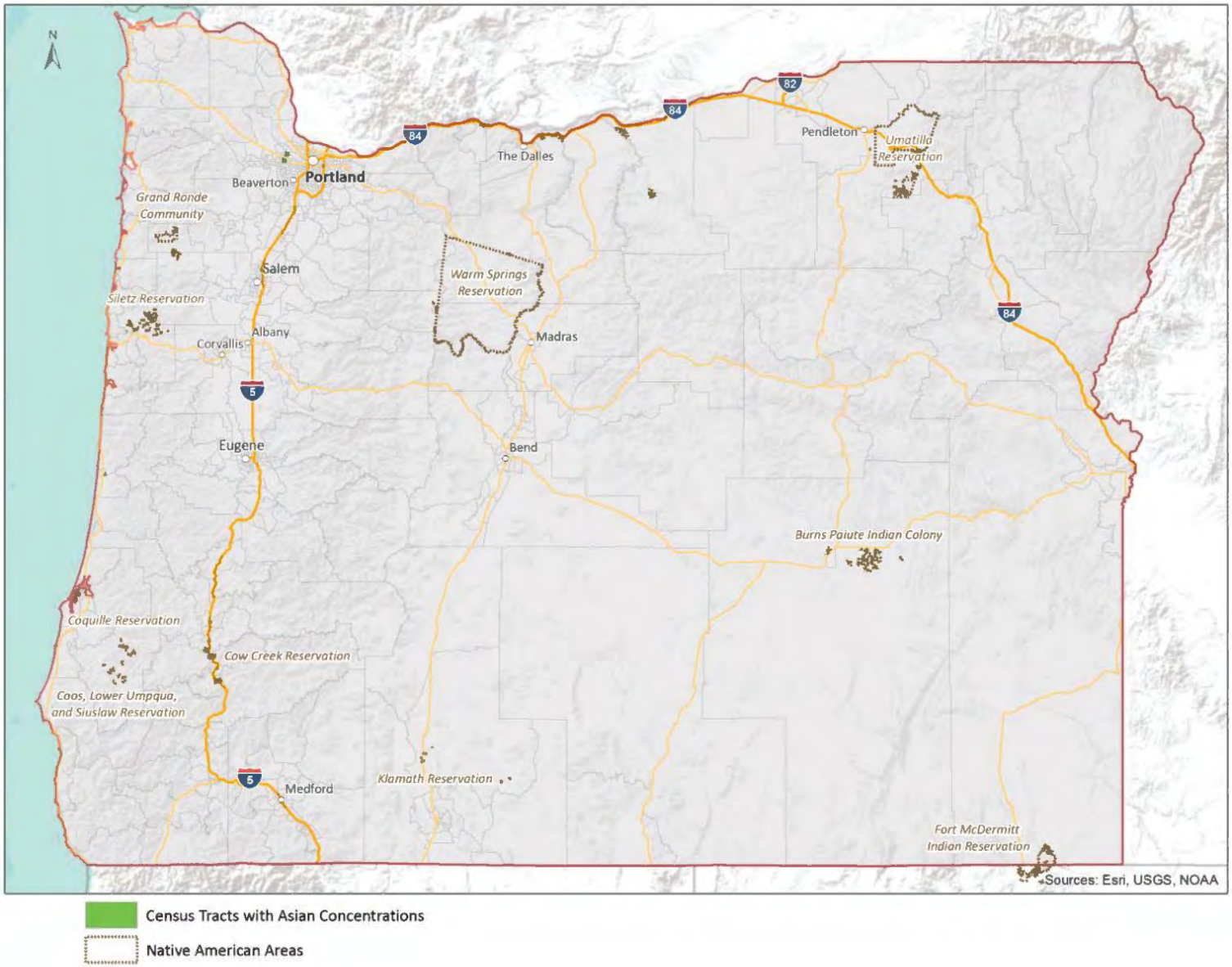
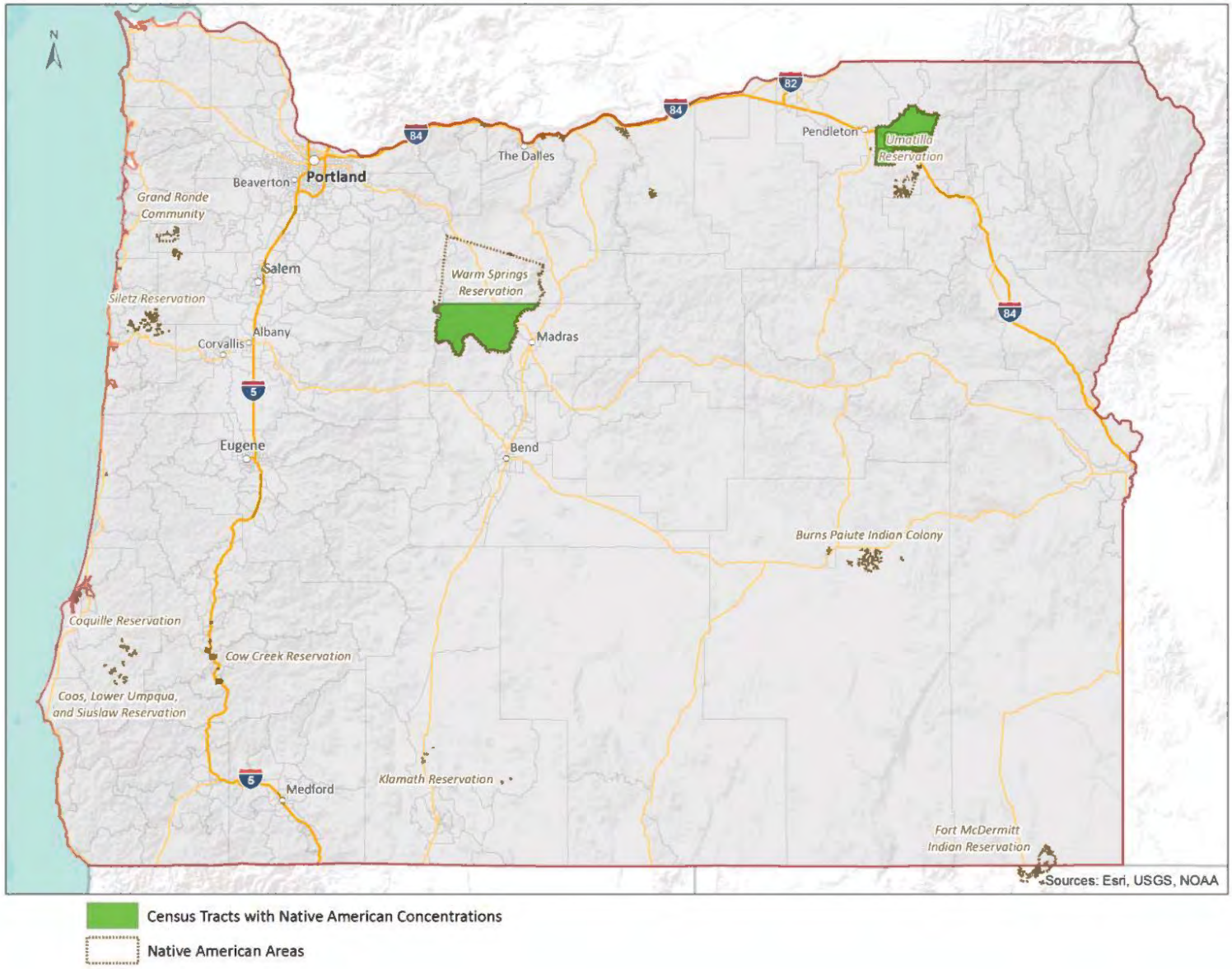


Figure I-15. Asian Concentrations, Greater Portland Area, 2013

Source:
2009-2013 ACS; BBC Research & Consulting.

Figure I-16. Native American Concentrations, State of Oregon, 2013

Source:
2009-2013 ACS; BBC Research & Consulting.



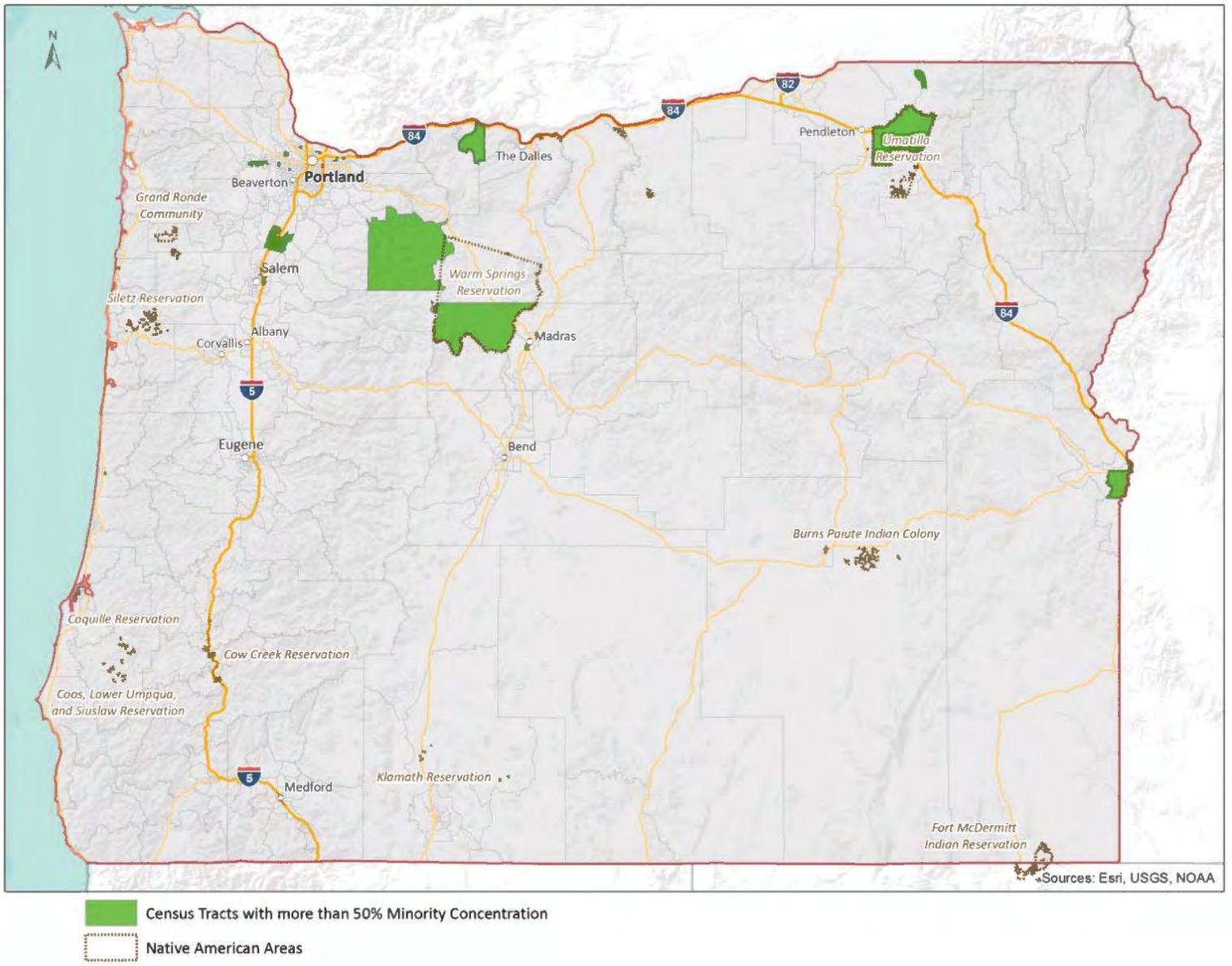
Majority-minority areas. Figure I-17 presents the location of the 31 majority-minority (more than 50% minority) Census tracts throughout the state. While there is some overlap between racial and ethnic concentrations and majority-minority Census tracts, it is possible for a census tract to meet the criteria of one without being the other. A large number of majority-minority Census tracts exist in the greater Portland area, Hillsboro and in the Salem area.[6] Other majority-minority Census tracts are found near The Dalles, around Warm Springs Reservation, Umatilla Reservation and Ontario. Despite the large Hispanic population in Oregon, only nine of the 31 majority-minority Census tracts have Hispanic populations over 50 percent, meaning the remaining majority-minority Census tracts are a combination of racial and ethnic minorities,[7] with the exception of one census tract that has a Native American population over 50 percent.

[6] While the four majority-minority Census tracts located in the Woodburn area (north of Salem along I-5) are all Hispanic concentrated areas, Woodburn also contains a significant Russian Orthodox population. Russian Orthodox residents, however, would not contribute to the minority count if they self-identify as "white" in U.S. Census Bureau surveys.

[7] Other races and multiple races are included in the minority resident calculation.

Figure I-17. Majority-Minority Areas, State of Oregon, 2013

Source:
2009-2013 ACS; BBC Research & Consulting.



Racially and ethnically concentrated areas of poverty. A new component of fair housing studies is an analysis of "racially or ethnically concentrated areas of poverty," also called RCAPs and ECAPs. A Racially Concentrated Area of Poverty or an Ethnically Concentrated Area of Poverty is a neighborhood with significant concentrations of high poverty and is majority-minority.

HUD's definition of a Racially/Ethnically Concentrated Area of Poverty is:

- A census tract that has a non-white population of 50 percent or more (majority-minority) AND a poverty rate of 40 percent or more; OR

- A census tract that has a non-white population of 50 percent or more (majority-minority) AND the poverty rate is three times the average tract poverty rate for the county, whichever is lower.

Figure I-19 and Figure I-20 present the locations of Oregon's five Racially/Ethnically Concentrated Areas of Poverty. Two are in the greater Portland Area (Hillsboro and east Portland), one is in northeast Salem, one lies in a relatively remote area of eastern Clackamas County and the last is in Ontario. Figure I-18 presents associated characteristics for each Racially/Ethnically Concentrated Area of Poverty census tract. The individual poverty rate ranges from 39 percent to 53 percent. The highest percentage of families with children is 55 percent, while the lowest is 17 percent (excluding the Clackamas County census tract). All Census tracts contain limited English proficiency persons greatly above the state average of three percent, with the census tract with the highest percentage of Hispanics (72%) containing the second highest percentage within the state at 42 percent.

Households within Racially/Ethnically Concentrated Area of Poverty Census tracts frequently represent the most disadvantaged households within a community and often face a multitude of housing challenges. By definition, a significant number of Racially/Ethnically Concentrated Area of Poverty households are financially burdened, which severely limits housing choice and mobility. The added possibility of racial or ethnic discrimination creates a situation where Racially/Ethnically Concentrated Area of Poverty households are likely more susceptible to discriminatory practices in the housing market. Additionally, due to financial constraints and/or lack of knowledge (i.e. limited non-English information and materials); Racially/Ethnically Concentrated Area of Poverty households encountering discrimination may believe they have little or no recourse, further exacerbating the situation.

Figure I-18.
Racially/Ethnically Concentrated Areas of Poverty Census Tract Characteristics

Census Tract	County	% Minority	% Hispanic	% Individual Poverty Rate	% Family Households w/ Children	% Single Mother Households	% LEP
41005980000*	Clackamas	52.2%	39.3%	39.3%	0.0%	0.0%	37.8%
41045970400	Malheur	56.9%	53.6%	52.7%	35.0%	16.6%	20.4%
41047000502	Marion	61.5%	45.9%	52.6%	47.4%	18.2%	20.5%
41051009606	Multnomah	54.1%	35.9%	42.3%	39.8%	12.6%	34.5%
41067032409	Washington	75.2%	72.2%	44.7%	55.0%	24.2%	41.5%

Note: *This census tract has a population of only 201 residents, and given that the statistics are based on sampling data, the reported 0% for percentage of family households with children and percentage of single mother households may be underestimated. However, the census tract is in a remote location of Clackamas County and family households is likely to be small.

Source: 2009-2013 ACS; BBC Research & Consulting.

Figure I-19. Racially or Ethnically Concentrated Areas of Poverty, State of Oregon, 2013

Source:

2009-2013 ACS; BBC Research & Consulting.

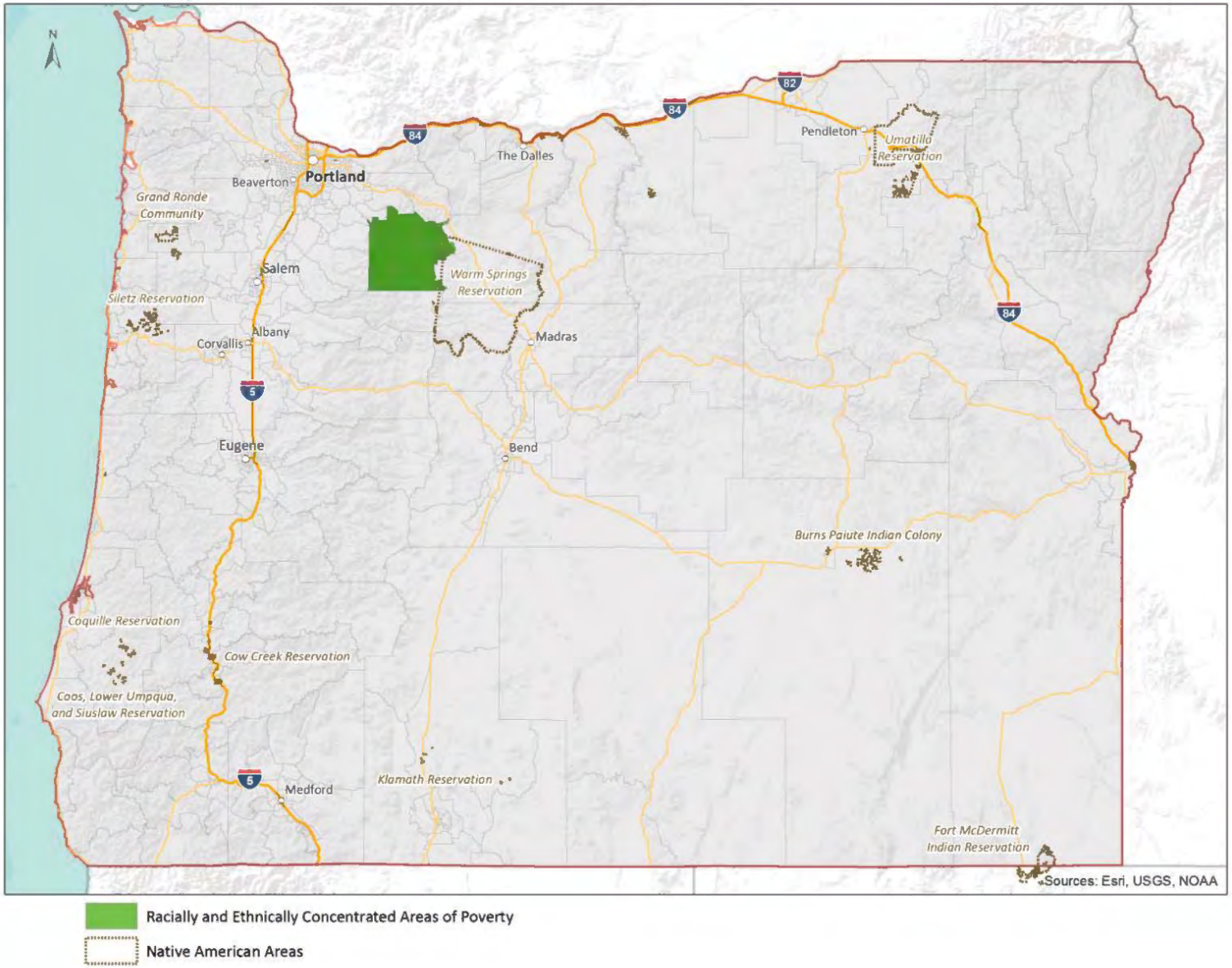
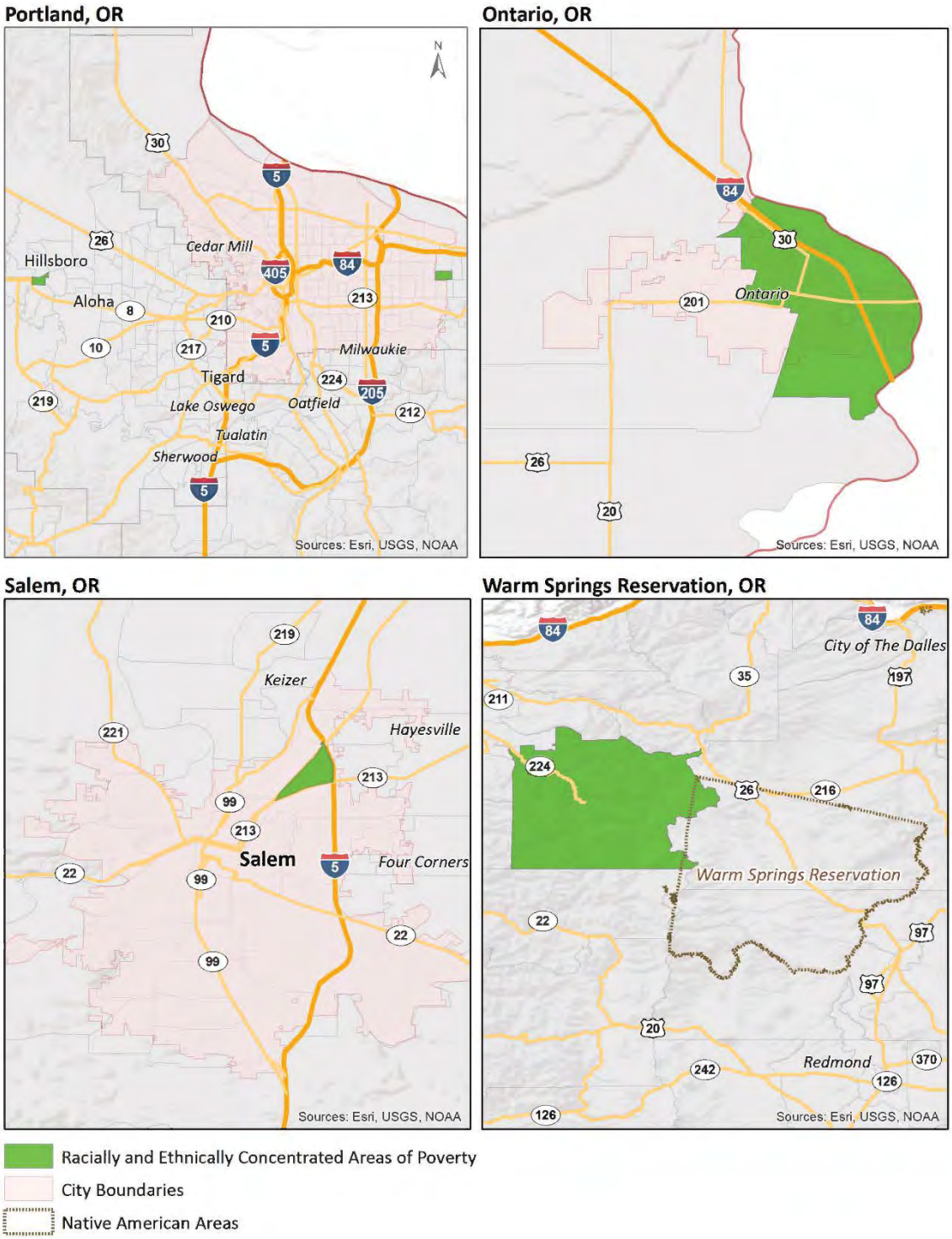


Figure I-20.
Racially or Ethnically Concentrated Areas of Poverty



Source: 2009-2013 ACS; BBC Research & Consulting.

Disability Analysis

This section examines (a) the extent to which certain geographical areas have a concentration of persons with disabilities; and (b) the extent to which persons with disabilities are housed in the most integrated setting appropriate for their needs.

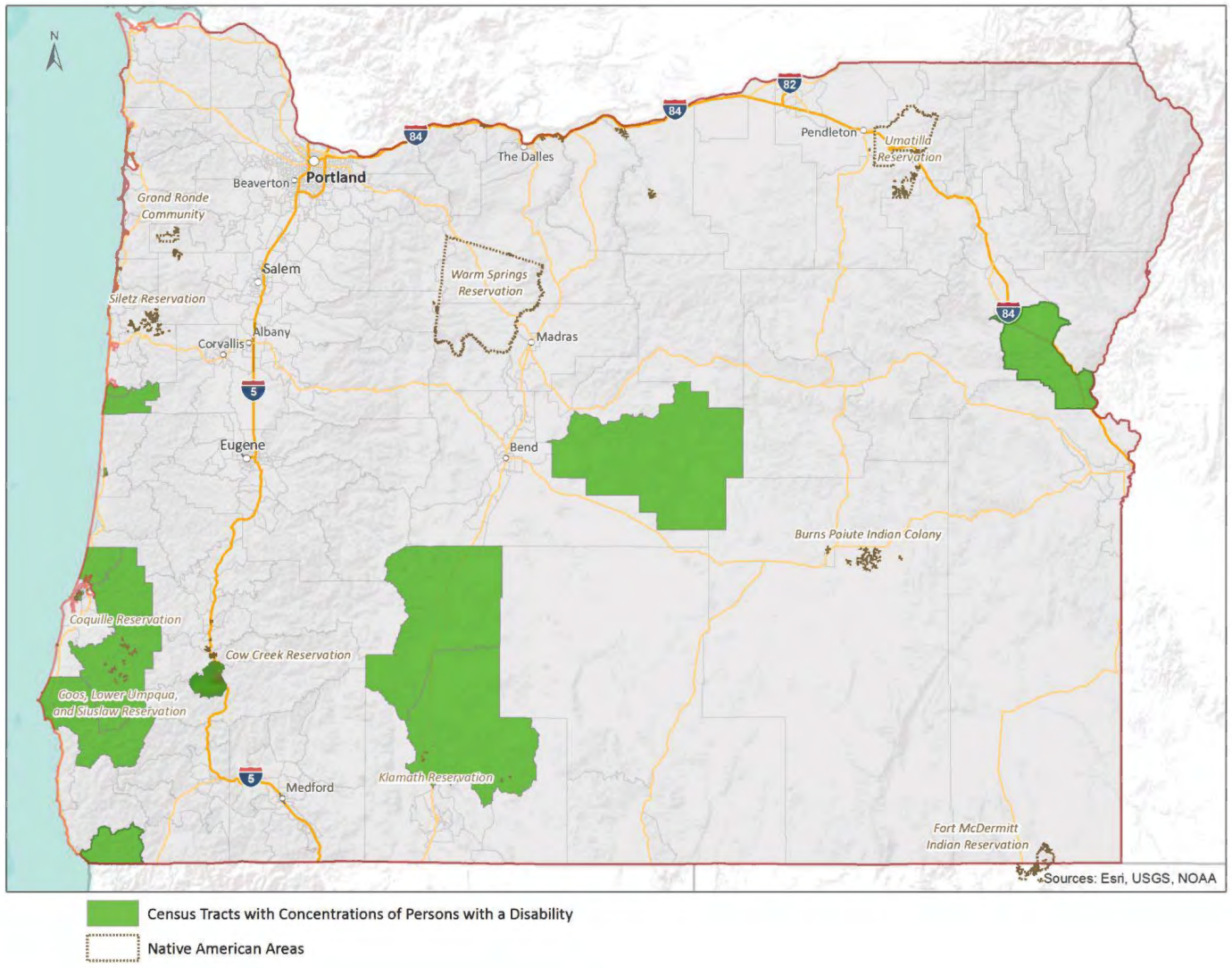
As specified in federal regulations: "The most integrated setting is one that enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible, consistent with the requirements of the Americans with Disabilities Act, 42 USC. 12101, et seq., and Section 504 of the Rehabilitation Act of 1973, 29 USC 794. See 28 CFR. part. 35, App. A (2010) (addressing 25 CFR 35.130)." Under this principle, derived from the Supreme Court's decision in Olmstead vs. L.C., institutionalized settings are to be avoided to the maximum possible extent in favor of settings in which persons with disabilities are integrated with nondisabled persons.

Different types of accommodations and/or services may be needed to allow individuals with disabilities to live in integrated settings. For example, persons with physical disabilities may need units with universal design or accessibility features, both within the public and assisted housing stock, specific to their needs. Persons with other types of disabilities may require access to services and support—e.g., transportation assistance, specific health services—they need to live independently. Many persons with disabilities need housing that is affordable, as well as accessible.

Persons with disabilities concentration analysis. Figure I-21 displays concentrated areas of persons living with disabilities, defined in this analysis as more than 25 percent of individuals in a census tract living with a disability. There are 31 Census tracts in Oregon where at least a quarter of the residents are persons living with disabilities. Statewide, 14 percent of all residents live with a disability, but among seniors (age 65 and over) this increases to 38 percent. The map indicates many of the concentrated areas correlate highly with an aged population—southwest Oregon and areas along the coast are popular locations for retirees. The senior/retiree cohort is more likely to live with a disability, and in particular a physical disability, thus leading to census tract concentrations. As the Baby Boomer generation continues to age and life expectancy continues to increase, the number of Oregon residents living with a disability is likely to substantially increase in the coming years.

Figure I-21.
Persons with Disabilities, State of Oregon, 2013

Source:
2009-2013 ACS; BBC Research & Consulting.



Persons with HIV/AIDS. Residents living with HIV/AIDS fall under the disability classification of protected class, but their housing accommodation needs may differ significantly from residents with other physical disabilities. For example, while a high proportion of people living with HIV live with co-occurring physical, mental, and/or substance use disorders, many do not need units with universal design or accessibility features. Still, unpredictable changes in health status may jeopardize the housing stability of people living with HIV, and, similar to many protected classes, limited housing choice vouchers can be a major challenge in achieving stable housing. Data show that stable housing is an important part of medical management of HIV: people experiencing unstable housing situations or homelessness were more likely to have poor treatment outcomes for HIV.

The 2013 Oregon Health Authority Epidemiologic Profile of HIV/AIDS reports that there are 5,581 people living with HIV/AIDS in Oregon. Fifty-five percent diagnosed lived in Multnomah County. Diagnosis rates are 3.8 times higher among African American residents and 1.6 times higher among Hispanic or Latino residents compared to white residents. The diagnosis rate is seven times higher among men compared to women. The state has noted a significant increase in the diagnosis rate among 20 to 24 year old men since 2006.

Assisted Housing Disproportionality Analysis

This section uses HUD data on assisted housing beneficiaries in Oregon to determine: "Are minorities participating at the same rate as the income eligible population?" This exercise is meant to reveal market areas where protected classes have limited options in the private market and/or opportunities for the state to improve provision of programs to protected classes.

The analysis includes the following rental subsidy programs: public housing, Section 8 Housing Choice Vouchers (HCV), Section 236, Low Income Housing Tax Credit, and any other multifamily assisted projects with FHA insurance or HUD subsidy, including rehabilitation and new construction. For the comparative analysis, the proportion of households earning 60 percent or less of AMI is used as a proxy for income eligible households. County-level data for counties with fewer than 25 program participants was excluded to avoid misleading conclusions.

Figure I-22 on the following page compares the race and ethnicity of program participants to income eligible households. The "Difference" columns reflect the difference between the proportion of beneficiaries and the proportion of eligible participants—negative numbers indicate lower participation in HUD programs than might be expected (i.e. underrepresented) and positive numbers indicate higher participation than might be expected (i.e. overrepresented). Differences of 10 percentage points or more are considered "disproportionate." In the figure, disproportionate differences are shaded blue for underrepresentation in HUD programs and green for overrepresentation.

Statewide, 10 percent of subsidized housing beneficiaries are African American compared to 3 percent of households earning less than 60 percent AMI. The difference of 7 percentage points suggests that African Americans are more likely to participate in HUD programs than might be expected given their income profile. Nine percent of beneficiaries are Hispanic, compared with 10 percent of households earning less than 60 percent of AMI. Therefore, participation for Hispanic residents is about what would be expected given their eligibility.

In Jefferson County and Morrow County, minorities have disproportionately low participation rates in housing subsidy programs—a difference of 17 percentage points in Jefferson and 27 percentage points in Morrow.

Conversely, minorities have disproportionately high participation rates in Malheur County (12 percentage point difference) and Multnomah County (15 percentage point difference).

Figure I-22.
Assisted Housing Beneficiaries, 2013

	Subsidized Housing Beneficiaries				Households Earning Less than 60% AMI				*Difference*		
	Percent Minority	Percent Hispanic	Percent African Am.	Subsidized Units	Percent Minority	Percent Hispanic	Percent African Am.	Total HH <60% AMI	*Minority*	*Hispanic*	*African Am.*
State of Oregon	**24%**	**9%**	**10%**	**50,844**	19%	10%	3%	**552,303**	*5%*	*-1%*	*7%*
Baker County	9%	4%	2%	331	7%	3%	0%	2,945	*2%*	*1%*	*2%*
Benton County	13%	6%	2%	828	16%	6%	1%	16,667	*-3%*	*0%*	*1%*
Clackamas County	13%	5%	4%	2,793	13%	7%	1%	45,009	*0%*	*-2%*	*3%*
Clatsop County	6%	2%	1%	514	12%	7%	0%	5,633	*-6%*	*-5%*	*1%*
Columbia County	7%	3%	1%	613	8%	4%	0%	7,174	*-1%*	*-1%*	*1%*
Coos County	9%	3%	1%	1,041	10%	3%	1%	10,228	*-1%*	*0%*	*0%*
Crook County	4%	1%	0%	120	8%	5%	0%	3,897	*-4%*	*-4%*	*0%*
Curry County	8%	1%	2%	243	6%	3%	0%	4,282	*2%*	*-2%*	*2%*
Deschutes County	7%	4%	1%	1,160	10%	6%	0%	23,478	*-3%*	*-2%*	*1%*
Douglas County	5%	3%	0%	1,328	9%	4%	0%	14,361	*-4%*	*-1%*	*0%*
Grant County	7%	3%	1%	80	5%	1%	0%	1,303	*2%*	*2%*	*1%*
Harney County	6%	6%	0%	89	10%	2%	0%	1,255	*-4%*	*4%*	*0%*
Hood River County	23%	17%	1%	166	26%	23%	0%	2,433	*-3%*	*-6%*	*1%*
Jackson County	12%	7%	3%	2,681	14%	8%	1%	29,661	*-2%*	*-1%*	*2%*
Jefferson County	17%	11%	2%	87	34%	17%	0%	2,649	*-17%*	*-6%*	*2%*
Josephine County	8%	4%	1%	1,043	9%	5%	0%	14,393	*-1%*	*-1%*	*1%*
Klamath County	16%	5%	3%	944	18%	9%	2%	10,789	*-2%*	*-4%*	*1%*
Lake County	2%	0%	0%	56	10%	5%	1%	1,669	*-8%*	*-5%*	*-1%*
Lane County	12%	5%	3%	4,603	14%	6%	1%	57,429	*-2%*	*-1%*	*2%*
Lincoln County	9%	5%	1%	710	13%	4%	0%	8,436	*-4%*	*1%*	*1%*
Linn County	9%	5%	1%	2,135	13%	7%	1%	15,918	*-4%*	*-2%*	*0%*
Malheur County	41%	36%	2%	535	29%	27%	1%	4,316	*12%*	*9%*	*1%*
Marion County	26%	17%	4%	4,901	27%	19%	1%	38,244	*-1%*	*-2%*	*3%*
Morrow County	3%	0%	0%	33	30%	25%	0%	1,151	*-27%*	*-25%*	*0%*
Multnomah County	43%	7%	27%	14,473	28%	10%	8%	122,207	*15%*	*-3%*	*19%*
Polk County	17%	12%	1%	1,398	18%	9%	0%	8,793	*-1%*	*3%*	*1%*
Tillamook County	5%	1%	0%	157	11%	7%	0%	3,759	*-6%*	*-6%*	*0%*
Umatilla County	19%	16%	1%	750	23%	16%	1%	9,889	*-4%*	*0%*	*0%*
Union County	8%	4%	1%	616	9%	4%	0%	4,177	*-1%*	*0%*	*1%*
Wallowa County	7%	4%	2%	109	5%	2%	1%	1,125	*2%*	*2%*	*1%*
Wasco County	15%	10%	0%	523	13%	9%	0%	3,307	*2%*	*1%*	*0%*
Washington County	33%	16%	9%	3,816	27%	15%	2%	62,759	*6%*	*1%*	*7%*
Yamhill County	17%	13%	1%	1,647	16%	12%	1%	12,966	*1%*	*1%*	*0%*

Note: Gilliam, Sherman and Wheeler counties were excluded because they had fewer than 25 total beneficiaries.

Source: HUD's 2013 Picture of Subsidized Households data, 2009-2013 ACS, State of Oregon County Statistics Comparison Table and BBC Research & Consulting.

In 2012, the Oregonian published a story that examined the location of publicly subsidized relative to high poverty and minority-concentrated Census tracts. The story reported that more than two-thirds of African American and Latino renters living in affordable rental developments created through the federal Low Income Housing Tax Credit (LIHTC) program lived in "poverty Census tracts," compared with just over half of whites.

For this Analysis of Impediments, all affordable rental housing developments in a state database maintained by OHCS were compared with concentrated areas of poverty and minority concentrations (defined earlier in this document). This comparison found that 6 percent of all affordable units (3% of all affordable properties) were located in high poverty areas, and 1 percent of all affordable units (1% of all affordable properties) were located in Racially/Ethnically Concentrated Areas of Poverty. Subsidized units for farmworkers were somewhat more likely than other subsidized units to be located in Racially/Ethnically Concentrated Areas of Poverty while subsidized units for the elderly were somewhat less likely than other subsidized units to be located in Racially/Ethnically Concentrated Areas of Poverty.

SECTION II.
Fair Housing Environment

The Federal Fair Housing Act, passed in 1968 and amended in 1988, prohibits discrimination in housing on the basis of race, color, national origin, religion, sex, familial status and disability. The Fair Housing Act—Amended (FHAA) covers most types of housing including rental housing, home sales, mortgage and home improvement lending and land use and zoning. Excluded from the FHAA are owner-occupied buildings with no more than four units, single family housing units sold or rented without the use of a real estate agent or broker, housing operated by organizations and private clubs that limit occupancy to members, and housing for older persons.[1]

States or local governments may enact fair housing laws that extend protection to other groups. The State of Oregon extends protections for marital status, sexual orientation including gender identity, honorably discharged veterans/military status, domestic violence victims and source of income. Source of income is intended to protect benefit income, such as social security income or disability income. Originally, the legislation exempted Section 8 vouchers from this protected class. As of July 1, 2014, Section 8 vouchers and other forms of rental subsidy may not be discriminated against in Oregon.

Fair Housing Complaints

This section reviews fair housing complaints filed by Oregon residents.

Process for filing complaints. The Civil Rights Division of the Bureau of Labor and Industries (BOLI) has primary responsibility for enforcing fair housing laws in Oregon. BOLI also enforces laws related to discrimination and furthers equal opportunity in the areas of employment, public accommodations and career schools.

For Oregon residents who have experienced discrimination, several options are available. Residents can contact the Fair Housing Council of Oregon (FHCO) for guidance on filing a complaint or for a referral to an attorney. Residents can also contact an attorney directly to pursue a civil complaint, or, if a resident meets income qualifications, he or she could seek representation by Legal Aid Services of Oregon (LASO). Finally, residents can file a complaint directly with HUD or BOLI. Because Oregon's fair housing law is designated as "substantially equivalent" by HUD (this designation was granted in 2008), BOLI enforces complaints on behalf of HUD.

To file a complaint with BOLI, the intake process begins by completing a questionnaire available on BOLI's website or by phone. The intake officer then drafts a formal complaint document that

[1] "How Much Do We Know? Public Awareness of the Nation's Fair Housing Laws", The U.S. Department of Housing and Urban Development, Office of Policy and Research, April 2002.

must be signed by the complainant and returned to BOLI. If the basis for the complaint is covered by both state and federal law, the complaint is automatically co-filed with HUD.

If BOLI determines there is prima facie case, a BOLI investigator notifies the complainant and respondent and conducts interviews within 40 days of receiving the case. During the investigation, the case conciliator attempts to find a way to settle the case. The complainant may be required to attend a fact-finding conference, which aims to identify points of agreement and disagreement and, if possible, settle the complaint. If a settlement is achieved at this stage, a conciliation agreement—a voluntary no-fault settlement of a complaint—is created and the case is closed.

If conciliation is not reached, BOLI continues to investigate. This can include interviewing the complainant, witnesses and gathering evidence of damages. If the Fair Housing Council of Oregon is conducting testing, testers will be interviewed. When the investigation is complete, the investigator makes a recommendation whether to find cause or dismiss the case.

If BOLI finds substantial evidence of discrimination BOLI issues such a determination and sends the case to its Administrative Prosecution Unit. BOLI will make one last attempt to conciliate the case before the Administrative Hearings Unit issues a charge. The Hearings Unit represents the complainant at the administrative hearing.

If the outcome is in the complainant's favor, BOLI's Commissioner issues a final order and a remedy from the respondent, which may include rental, lease or sale of real property, expenses lost due to the discriminatory action or compensation for emotional distress and attorney fees.

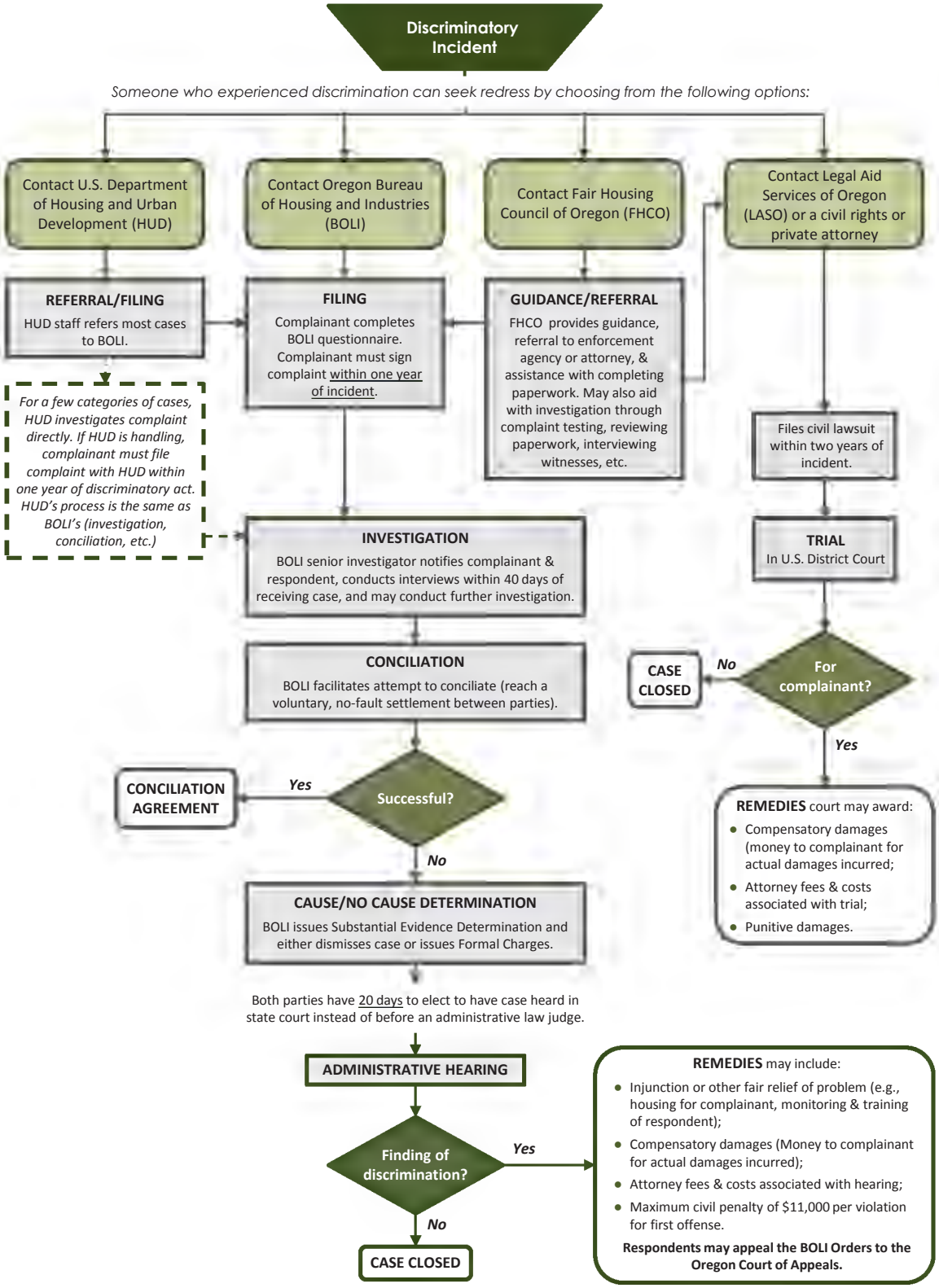
Once the Hearings office issues a charge on an administrative complaint, the complainant or the respondent can to elect to move the case into the court. If there is an election then the DOJ steps in to represent BOLI and the complainant's interests. According to BOLI, in the majority of its fair housing cases someone elects and the case moves to the court.

DOJ requires reimbursement of attorney's fees from BOLI, which can substantially exceed the reimbursement HUD grants to BOLI for handling federal fair housing cases. This is a recent requirement of DOJ and has created a very large outstanding receivable from BOLI to DOJ (estimated at $200,000). This situation—insufficient per-case reimbursements by HUD coupled with the frequency with which cases are moved from BOLI to DOJ and the cost of the DOJ investigation—could compromise the future ability of BOLI and DOJ to continue to process fair housing cases.

Oregon Senate Bill 380, introduced in January 2015, may serve to improve this situation. The Bill would provide BOLI's Commissioner with discretion to choose which cases to pursue and how far to pursue them. Specifically, it would allow BOLI to consider the merits of a case and decide whether to take it through the judicial process or excuse themselves from it, as which point, the respondent or complainant would be responsible for attorney costs if they wish to pursue the case in court.

Figure II-1 provides an overview of the primary steps involved in pursuing a fair housing complaint in Oregon.

Figure II-1.
Fair Housing Complaint Flowchart for Oregon



Note: This diagram is a simplified summary of common pathways for seeking protection of remedies under the Fair Housing Act. It includes principal, but not all, steps and options.

Source: Washington County Fair Housing Plan 2012.

Oregon complaint intake trends. The first step for residents who feel they have been discriminated against is often an inquiry to a fair housing organization. The FHCO conducts intakes for residents statewide in addition to Clark County in Washington.[2]

BBC obtained intake call data from the FHCO from July 1, 2010 to June 30, 2013. The FHCO reported 590 intake calls during this period.

Basis of intake call. Statewide, intake calls based on disability represented 54 percent of all calls. Familial status and national origin represented the second and third largest shares (14% and 13% respectively). Figure II-2 displays the number and percent by basis of intake call from July 1, 2010 to June 30, 2013.

Figure II-2.
Basis of Intake Call

Note:
One primary basis was reported for each intake call.

Source:
Fair Housing Council of Oregon.

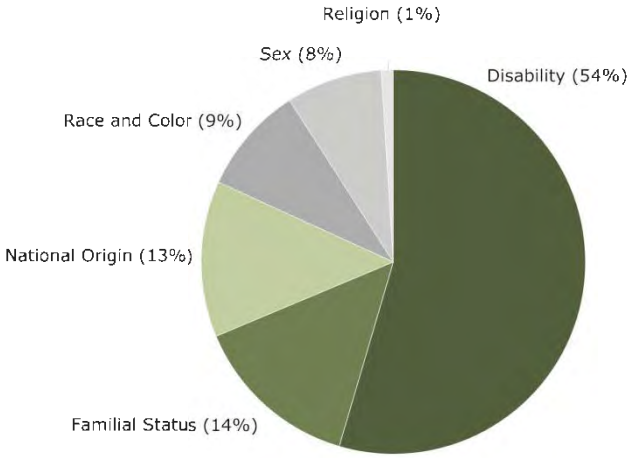
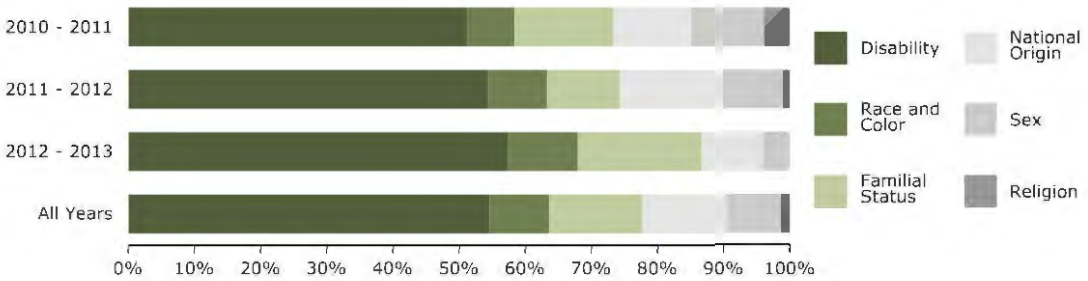


Figure II-3 shows the basis of intake calls by year. Intake calls based on disability accounted for slightly over half of each year's total intakes, ranging from 51 percent in 2010-11 to 57 percent in 2012-13. The share for the other intake bases varied slightly year by year, however in almost all cases, the balance of intake bases in each year represented less than one-third of all intakes.

[2] The complaint data are for the State of Oregon only (Clark County excluded).

Figure II-3.
Basis of Intake Calls by Year, State of Oregon

Intake Type	2010-11	2011-12	2012-13	All Years
Disability	51%	54%	57%	54%
Race and Color	7%	9%	11%	9%
Familial Status	15%	11%	19%	14%
National Origin	12%	15%	9%	13%
Sex	11%	9%	4%	8%
Religion	4%	1%	0%	1%



Note: One primary basis was reported for each intake call.
HUD uses "sex" to refer to gender discrimination.

Source: Fair Housing Council of Oregon.

Geographic distribution. Between July 1, 2010 and June 30, 2013, intake calls came from 31 counties in Oregon. There were no intake calls from Gilliam, Harney, Morrow, Sherman, Wallowa and Wheeler counties. Not surprisingly, the two most populous counties in Oregon, Multnomah and Washington, account for 47 percent of all intake calls between July 1, 2010 and June 30, 2013.

BBC analyzed the distribution of complaints by county compared to the distribution of the state's population by county. For the majority of counties, their proportion of total intakes is similar or smaller than their proportion of the state's population. Multnomah County's proportion of intake calls far exceeds its proportion of the population (35% to 19%) and Polk County's proportion of intake calls is 2 percentage points higher than its proportion of the population.

To adjust for population size, intakes were also analyzed as a ratio (intakes per 10,000 people; see Figure II-7). This ratio is highest for Polk County (3.3), Curry County (3.1), Multnomah County (2.8), and Union County (2.3). Polk County received 21 intake calls in 2012-13, significantly higher than the one call the county received in 2010 and 3 calls in 2011. The elevated 2012-13 number may partially account for Polk County's high ratio.

Curry and Union counties have similarly high complaints per 10,000 people and their higher ratios may be related to the higher proportion of residents in these counties with disabilities (25% and 16% respectively) compared to the 13 percent statewide. Multnomah County's intake ratio is comparable to its complaint ratio of 2.5.

Oregon complaint trends. As part of the State of Oregon AI, complaint data were obtained from BOLI. The information contained all fair housing complaints filed or closed with BOLI between

January 1, 2010 and December 31, 2014. BOLI reported 545 complaint records during this period.

Basis of complaints. Statewide during time period, complaints based on disability represented 52 percent of all complaints filed. Race represented the second largest share at 16 percent, followed by familial status and national origin at 11 percent and 8 percent respectively. Figure II-4 displays the number and percent by basis of complaint from January 1, 2010 to December 31, 2014.

Figure II-4.
Basis of Complaints, State of Oregon, January 1, 2010 to December 31, 2014

Basis	Number	Percent
Disability	284	52%
Race and Color	87	16%
Familial Status	58	11%
National Origin	45	8%
Sex	26	5%
Retaliation	20	4%
Sexual Orientation	12	2%
Religion	8	1%
Source of Income	5	1%
Total	**545**	**100%**

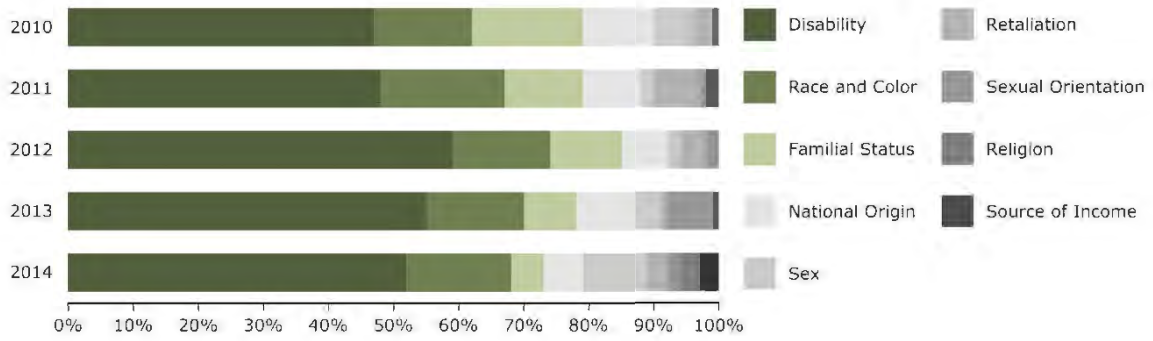
Note:
One primary basis was reported for each complaint.

Source:
Bureau of Labor and Industries.

Figure II-5 shows the basis of complaint by year. Complaints based on disability accounted for the greatest share of complaints each year, ranging from 47 percent in 2010 to 59 percent in 2012. Complaints based on race accounted for the second largest share of complaints in all years, except for 2010 when complaints based on familial status accounted for a slightly higher share than complaints based on race. The share for the other basis of complaint categories varied year by year, although in most years, the balance of complaint bases represented less than one-third of all complaints.

Figure II-5.
Basis of Complaints Share by Year, State of Oregon, January 1, 2010 to December 31, 2014

Basis	2010	2011	2012	2013	2014	All Years
Disability	47%	48%	59%	55%	52%	**52%**
Race and Color	15%	19%	15%	15%	16%	**16%**
Familial Status	17%	12%	11%	8%	5%	**11%**
National Origin	11%	9%	7%	9%	6%	**8%**
Sex	6%	2%	2%	4%	10%	**5%**
Retaliation	3%	7%	4%	1%	3%	**4%**
Sexual Orientation	1%	1%	3%	7%	2%	**2%**
Religion	1%	2%	0%	1%	3%	**1%**
Source of Income	0%	1%	0%	0%	3%	**1%**



Note: One primary basis was reported for each complaint.

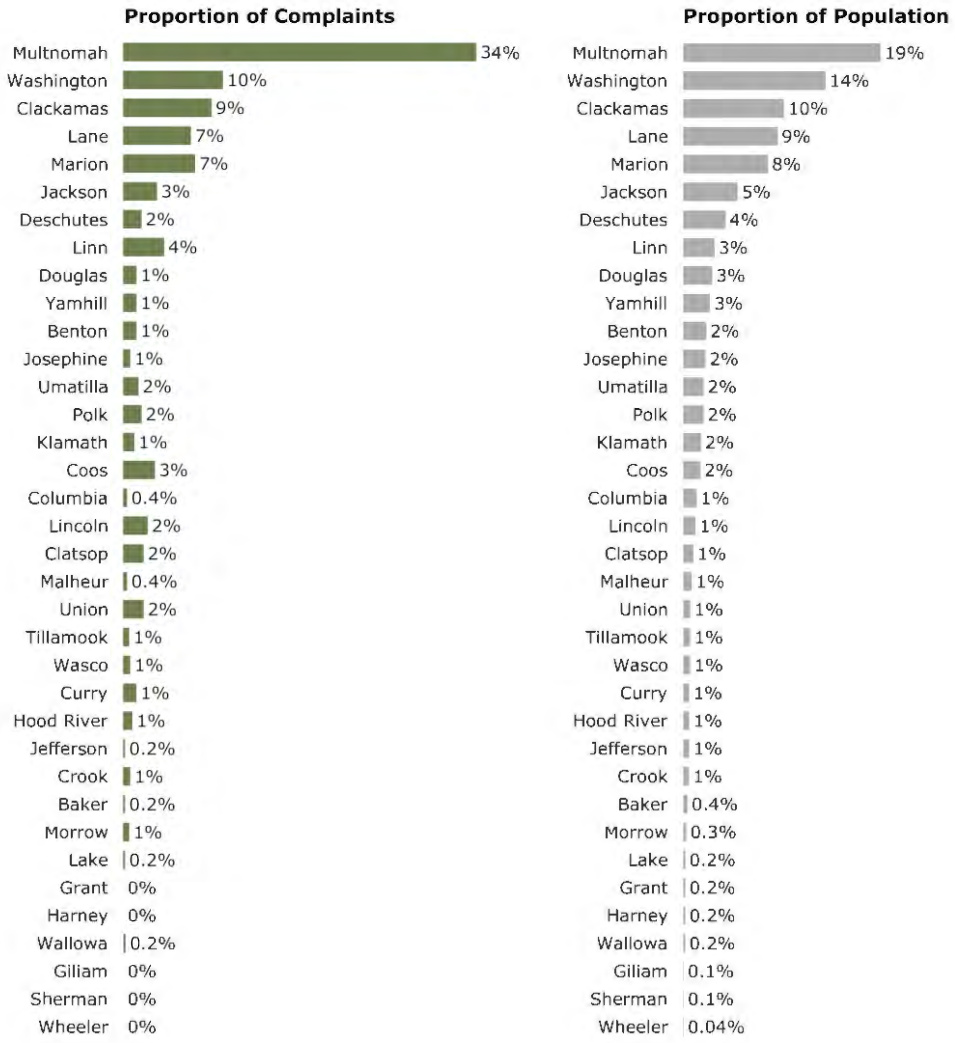
Source: Bureau of Labor and Industries.

Geographic distribution. Figure II-6 shows the distribution of complaints by county compared to the distribution of the state's population by county.

As with intake call trends, counties with the largest proportion of complaints are found in the most populous counties in the state, specifically Multnomah County, which includes the City of Portland and the City of Gresham, and Washington and Clackamas counties, the second and third most populous counties respectively.

In most cases, the proportion of complaints is similar to each county's share of the state's population. Nine counties have a higher proportion of complaints than their proportion of the population, with Multnomah County's proportion of complaints far exceeding its proportion of the population (34% v. 19%).

Figure II-6.
Proportion of Complaints and Population by County, State of Oregon, January 1, 2010 to December 31, 2014.



Note: No complaints were filed for Gilliam, Grant, Harney, Sherman and Wheeler counties between January 1, 2010 and December 31, 2014.

Source: Bureau of Labor and Industries, 2010 Census.

Figure II-7 displays the top 10 counties by number of complaints and complaints per 10,000 residents.[3] Multnomah, Washington and Clackamas—the state's most populous counties—had the highest number of complaints.

Complaints were also analyzed as a ratio (complaints per 10,000 people) to control for population size. This ratio is highest for Union, Curry and Clatsop counties. The higher prevalence of complaints in these counties may be related to the higher proportion of residents with disabilities (16% in Union County, 25% in Curry County and 17% in Clatsop County) compared to the 13 percent statewide. Union County and Curry County also have a high dissimilarity index between African American and non-Hispanic whites, which may increase the

[3] A full list of complaints by number and per 10,000 residents is located in Figure II-22.

likelihood of complaints based on race. Complaints per 10,000 residents for the State of Oregon overall was 1.4.

Figure II-7.
Total Complaints, Top 10 Counties, State of Oregon, January 1, 2010 to December 31, 2014

	Top 10 Counties	Number of Complaints
1	Multnomah	187
2	Washington	53
3	Clackamas	47
4	Marion	38
5	Lane	36
6	Linn	22
7	Jackson	18
8	Coos	17
9	Lincoln	13
10	Clatsop	11
	State of Oregon	**545**

	Top 10 Counties	Complaints per 10,000 people
1	Union	4.3
2	Curry	3.1
3	Clatsop	3.0
4	Lincoln	2.8
5	Coos	2.7
6	Morrow	2.7
7	Multnomah	2.5
8	Hood River	2.2
9	Crook	1.9
10	Linn	1.9
	State of Oregon	**1.4**

Note: One primary basis was reported for each complaint.

Source: Bureau of Labor and Industries, 2010 Census.

Figure II-8 shows the counties with the highest percentage of complaints based on disability. One hundred percent of Coos County and Union County complaints were based on disability, compared to 52 percent of complaints for the state overall. Clatsop, Lincoln, Marion, Linn and Lane counties also had a high share of disability based complaints among nonentitlement jurisdictions. All of these counties have a higher proportion of residents with disabilities than the statewide proportion; this may be influencing the high share of disability related complaints in these counties.

Figure II-8.
Top Disability Based Complaint Counties, State of Oregon, January 1, 2010 to December 31, 2014

Note:
One primary basis was reported for each complaint.

Source:
Bureau of Labor and Industries.

County	Disability Based Complaints	Total Complaints	Percent
Coos	17	17	100%
Union	11	11	100%
Clatsop	7	11	64%
Lincoln	8	13	62%
Marion	22	38	58%
Linn	12	22	55%
Washington	28	53	53%
Lane	18	36	50%
Clackamas	23	47	49%
Multnomah	88	187	47%
State of Oregon	**284**	**545**	**52%**

Figure II-9 of shows the counties with the highest percentage of complaints based on race and color. Umatilla County and Klamath County have the highest percentages, partially due to the low number of total complaints.

Figure II-9.
Top Race and Color Based Complaint Counties, State of Oregon, January 1, 2010 to December 31, 2014

Note:
One primary basis was reported for each complaint.

Source:
Bureau of Labor and Industries.

County	Race/Color Based Complaints	Total Complaints	Percent
Umatilla	3	8	38%
Klamath	2	6	33%
Multnomah	51	187	27%
Lincoln	3	13	23%
Polk	2	10	20%
Clatsop	2	11	18%
Washington	9	53	17%
Lane	6	36	17%
Clackamas	5	47	11%
Marion	3	38	8%
Jackson	1	18	6%
State of Oregon	**85**	**545**	**16%**

Resolution of complaints. Figure II-10 shows the resolution of closed complaints between January 1, 2010 and December 31, 2014. Of the 545 complaints filed with BOLI during this time, 13 percent remain open and 87 percent have been closed.

Among closed complaints, 59 percent were closed due to no substantial evidence, which occurs when BOLI investigators determine a lack of substantial evidence of a fair housing violation. Twenty-five percent were conciliated and closed; this occurs when the complainant and defendant agree on how to address the cause of the complaint. The remaining complaints were closed for a range of reasons, each accounting for a small share all closed complaints.

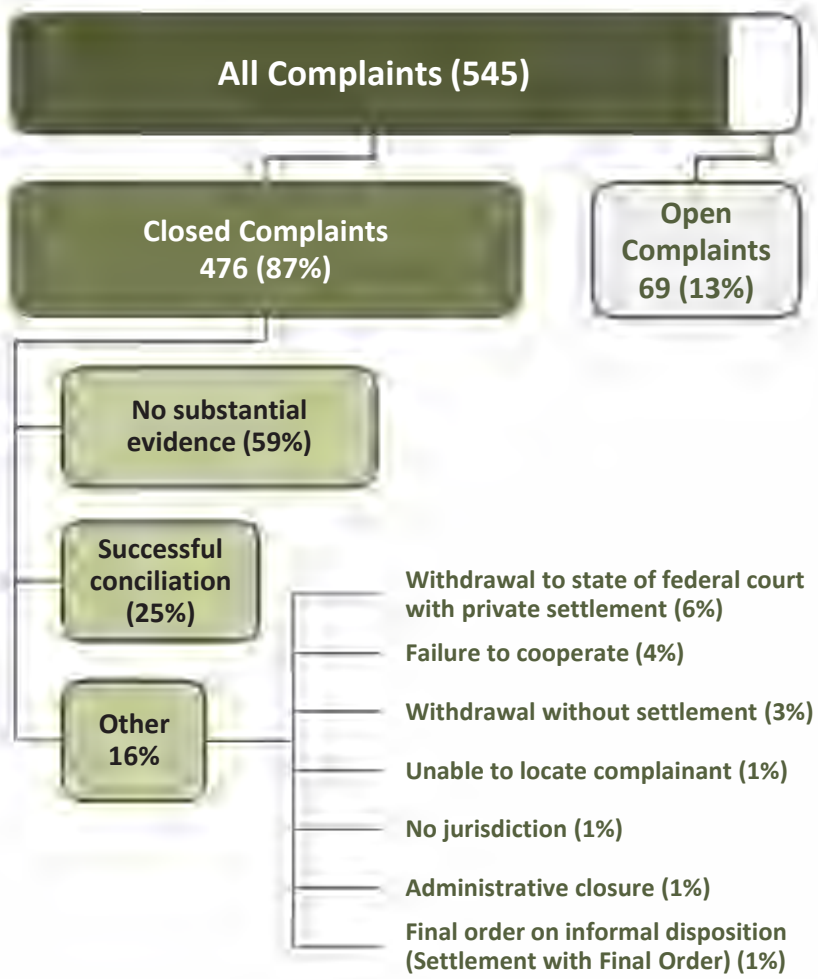
Figure II-10.
Resolution of Closed Complaints, January 1, 2010 to December 31, 2014

Note:

Successful conciliation is a combination of: negotiated conciliation before determination of cause, successful conciliation agreement after cause finding, conciliation prior to cause finding, and successful mediation during or after investigation.

Source:

Bureau of Labor and Industries.



Fair Housing Legal Case Review

This section describes fair housing legal actions that were brought and/or resolved during the past ten years, to assess trends in Oregon legal challenges and outcomes. The sources for the cases below are from the National Fair Housing Advocate Online Case Database and the United States Department of Justice Housing and Civil Enforcement Cases Database.

The purpose of the legal summaries below is to highlight, in a non-technical way, recent legal findings that concern fair housing laws. The summaries are provided in order for local government leaders and staff, stakeholders, and the public to better understand some of the more complex aspects of fair housing laws and be aware of the potential for violations.

The cases are grouped by the primary fair housing violation that was challenged in the case. The cases review begins with cases that involve fair housing accessibility challenges and/or disability discrimination, which represent most of the cases found in the legal review.

Bureau of Labor and Industries of the State of Oregon v. Prometheus Real Estate Group Inc., et al. (2014). This case involves a complaint filed with the Bureau of Labor and Industries (BOLI) against Prometheus Real Estate Group for failure to make reasonable accommodation.

In October 2011, the complainant requested a disabled parking spot closer to his unit because his disability limited his ability to walk. The apartment complex in which the complainant lived failed to comply with the request. On January 29, 2012, the complainant fell and was injured in the parking lot of the housing complex. One week after the fall, the housing complex installed the requested signage. The complainant died the following day. A complaint was filed with BOLI, which found substantial evidence of unlawful discrimination on the part of the Prometheus Real Estate Group, including a failure to make reasonable accommodation.

On January 28, 2015, the Prometheus Real Estate Group agreed to pay $475,000 to settle allegations that it failed to provide a reasonable accommodation. The agreement included a number of stipulations, including that Prometheus provide BOLI with a list of all owned or managed properties, conduct annual fair housing training for employees, maintain a reasonable accommodation log that documents these requests for BOLI semi-annually, and notify all tenants of their rights to reasonable accommodation.

Fishing Rock Owners' Association, Inc. v. David Roberts and Sharon Roberts (2014). This case is related to a proposed drug rehabilitation facility in the Fishing Rock subdivision. In February 2009, the defendants, who owned three adjacent lots in the Fishing Rock subdivision, informed the Fishing Rock Owners' Association of their intention to operate an outpatient drug rehabilitation program out of their home. The Association filed a complaint that this action violated the subdivision's prohibition of commercial activity and requested a judgment to stop the defendants from operating a business on their property. The defendants then filed counterclaims alleging disability discrimination in violation of the FFHA.

The court ruled that the defendants failed to present any evidence to support a reasonable accommodation claim or to support the defendants' claim that the Association interfered with their attempts to establish a rehabilitation facility by creating restrictive parking rules. The court dismissed the defendants' counterclaims.

Book v. Hunter (2013). This case involves a refusal to make reasonable accommodation. The complainant, a resident with a disability living with an emotional assistance service dog, sought to rent an apartment from the defendants. After the complainant's rental application was preliminarily approved, she provided the defendants with a physician's note identifying her need for a companion animal. The rental application was subsequently denied due to, "inaccurate or false information supplied by applicant", and "undisclosed or unpermitted pet".

The court held that the defendants violated the FFHA by failing to reasonably accommodate the complainant's disability. The court ruled in favor of the complainant and awarded $12,000 in damages and recovery of attorney's fees and costs.

McVick LLC and JDV Corporation v. United States Department of Housing and Urban Development (2012). This case involves noncompliance with accessibility requirements in the FFHA for persons with disabilities. On September 21, 2009, the Fair Housing Council of Oregon (FHCO) filed a complaint with HUD alleging that McVick LLC discriminated on the basis of disability by building a property that did not comply with the FFHA's accessibility requirements. Over many months McVick LLC repeatedly refused to allow HUD to inspect the interior of the units. They also filed counterclaims that HUD's inspection should be banned

because the complainant, the FHCO, lacked standing and was not an "aggrieved person" under the FFHA.

The court ruled in favor of HUD, concluding that McVick LLC knew of the defendant's desire to inspect the property and that they failed to provide evidence of irreparable harm cause by allowing interior inspections.

Steven Kulin v. Deschutes County (2010). This case involves alleged violation of FFHA and ADA based on disability status. The complainant was a disabled business owner who operated his business from his home. He received notices from Deschutes County that he violated the county code associated with his property and that a variance from the code was required. The complainant claimed that the county deprived him of his property and enjoyment of his home due to their refusal to accommodate the disabled in the application of the county code and by requiring the disabled to apply for a variance in order to receive accommodation. The court did not find sufficient evidence to support the allegation that the defendants were liable for the violation and dismissed the complainant's claims.

Garcia v. Washington County Dept. of House. Services (2006). This case involves an alleged refusal to make reasonable accommodation. The complainant has a schizoaffective disorder and other related disabilities. He began receiving Section 8 voucher rental assistance in 1994 and continued using the voucher when he moved into a home owned by his brother in 1997. The assistance ended in December 2005 at HUD's direction due to a rule that prohibits using a voucher at a dwelling owned by a person related by blood or marriage where the relative also resides. The complainant submitted a request to HUD to continue to live with his brother and receive assistance. The defendant then sent two letters to HUD recommending the request be denied. HUD subsequently denied the request. The complainant claimed the defendant intentionally failed to help him find alternative means to accommodate his disability.

Despite the prohibition on receiving Section 8 voucher assistance if living in a home and related by blood or marriage to the owner, the court noted that not making reasonable accommodation to ensure a disabled person has an equal opportunity to use and enjoy a dwelling is unlawful discrimination under the FFHA. Furthermore, the court found no evidence to support the defendant's argument that the complainant's claim should be dismissed because the FFHA exempts public housing agencies from suits related to discriminatory housing practices.

Woodworth v. Bank of America (2011). This case involves alleged discrimination in lending by a financial institution. The complainants are permanently disabled and rely on Social Security Disability for their income. In 2005, they contacted Bank of America to obtain financing for needed repairs to their home. Instead of providing a home equity line of credit, the bank refinanced their home loan in 2005, 2006, 2007 and 2008. The complainants were unable to make the payments on the 2008 loan refinance and defaulted. A foreclosure sale of the complainants' home was scheduled for April 5, 2010.

The complainants claimed that their housing was made unavailable through unaffordable mortgage loans that the bank knew or should have known the complainants could not afford. They also claimed that the bank discriminated against them by issuing successive refinance

mortgage loans instead of a conventional home equity line of credit that may be offered to applicants without disabilities.

The court ruled in favor of the defendants, who argued the FFHA only applies to purchase transactions, not refinance loans at issue in this case. The court also held that the complainants failed to provide substantial evidence showing directly or raising the inference that discriminatory intent motivated the defendants' conduct.

Pacific Community Resource Center et al., v. City of Glendale Oregon (2014). This case involves alleged discriminatory enforcement of the City of Glendale's ordinance on occupancy requirements. In October 2009, the complainants established a motel in Glendale's commercial zone. They requested City Council permission for residential tenants to rent rooms. Shortly after, Glendale City Council removed multi-family housing from the permitted uses in the commercial zone and the complainants subsequently received notice from the city of a potential zoning ordinance violation. The complainants were later convicted by a circuit court judge of operating without obtaining an R-2 Certificate of Occupancy or a Conditional Use Permit. The complainants continued to operate the motel for residential uses while they unsuccessfully sought a Certificate of Occupancy and incurred civil penalties totaling $65,000 by September 16, 2013.

The court found the complainants' evidence provided only an inference of discriminatory impact, not a direct discriminatory impact. The complainants' claim of disparate impact on the American Indian community of Glendale was considered insufficient by the court because two of the three Native American tenants were able to relocate during litigation. The court denied the complainants' motion for relief.

United States of America and Fair Housing Council of Oregon v. Hadlock (2010). This case involves a violation of the FFHA based on familiar status. The Fair Housing Council of Oregon (FHCO) filed a complaint on behalf of the complainant against the defendant for discriminating on the basis of familial status. In June 2007 the complainant contacted the defendant to inquire about an advertised rental property. The defendant asked the complainant if she had any children because she did not intend to rent the property to anyone with children. Testing phone calls submitted in the case revealed the defendant repeatedly asked callers about family composition and size and noted to one caller that she did not want to rent to families.

The court found substantial evidence that the defendant made discriminatory statements that discouraged families from renting. The complainants successfully demonstrated the differential treatment resulting from the defendant's statements. The court ruled in favor of the complainant and required the defendant retain a professional management company if she continues to rent her property, to obtain fair housing training and to pay damages and attorney's fees to FHCO.

United States v. Ballis (2007). This case involves a refusal to rent based on race and sex. In February 2006, a complaint was filed that alleged that the owners of an apartment building in Portland refused to rent to a couple on the basis of one individual's race and sex; the individual was an African American male. The complaint also alleged that the defendants discriminated against the FHCO by engaging in disparate treatment against an African American male tester.

The court ruled in favor of the complainant and required the defendants to pay damages and to attend fair housing training.

Dean v. Jones (2010). This case involves alleged violation of due process rights and retaliation under the FFHA. The complainant represented himself and the other residents of the Alder House, a low income housing facility that receives federal housing credits. The complainant alleged that the defendants discriminated against the Alder House tenants by posting unlawful violation notices and fines against the complainants.

The court held that the complainant cannot claim discrimination under the FFHA because he did not allege that he is a member of any of the classes protected by the Act or that the defendants' adverse actions were based on his status as a protected class member. The court ruled in favor of the defendant and dismissed the complainant's claims. The court also recommended the complainant re-file a complaint that establishes that he is a member of a protected class or that he suffered adverse consequences because he complained about discrimination against tenants of protected classes.

Fair Lending Review

Homeownership is valuable for many reasons, including the primary role it plays in building equity, strengthening credit and providing long-term residential and economic stability. Gaps in homeownership rates among some minority groups compared to whites are common. These gaps may relate to factors such as historic housing discrimination leading to segregation of minorities in neighborhoods with low home values and disproportionately lower incomes and employment stability among some minority groups.

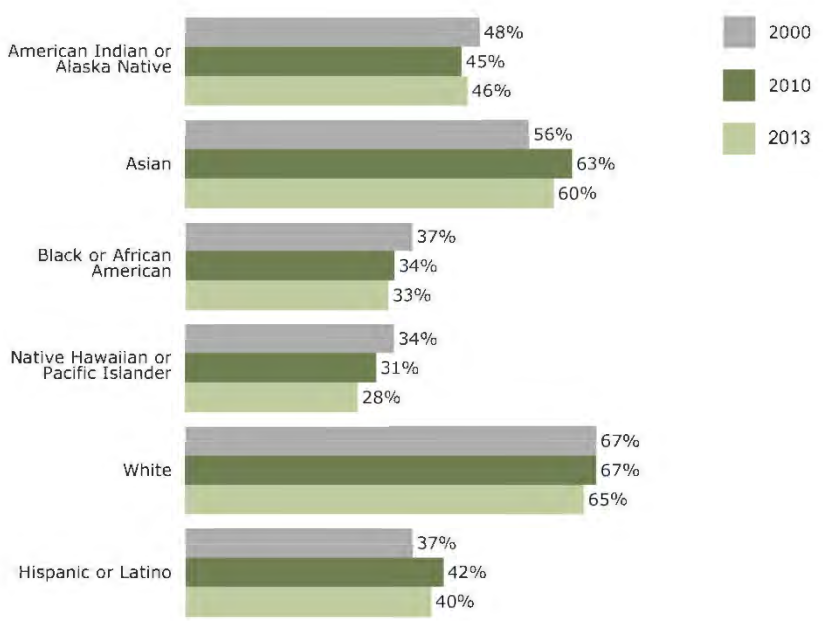
Figure II-11 compares homeownership rates among minority and White residents in 2000, 2010 and 2013. White households consistently have the highest rates of homeownership, between 65 and 67 percent. Asians have the second-highest rate. These compare to much lower rates of ownership for other minority groups: In 2013, 46 percent of American Indian or Alaska Natives, 40 percent of Hispanic s, 33 percent of African Americans and 28 percent of Native Hawaiian/Pacific Islanders were homeowners.

In 2013, the African American/White homeownership gap was greater in Oregon than the gap nationwide: African Americans in Oregon had a homeownership rate 32 percentage points lower than whites, compared to 29 percentage points lower nationwide. The Native Hawaiian or Pacific Islanders/White gap was also greater in Oregon compared to the gap nationwide. Hispanic/White and American Indian/White gaps in Oregon were similar to national trends and the Asian/White gap was considerably lower in Oregon than nationwide.

Except for Asian and Hispanic households, the past decade was a period of declining homeownership. Hispanics in Oregon experienced an increase in homeownership, from 37 percent in 2000 to 42 percent in 2010 and 40 percent in 2013. In contrast, the rate for African Americans declined from 37 percent in 2000 to 33 percent in 2013; the rate for American Indian or Alaska Natives declined from 48 percent in 2000 to 45 percent in 2010; and the rate for Native Hawaiian or Pacific Islanders declined from 34 percent in 2000 to 28 percent in 2013.

Figure II-11. Homeownership Rates by Race and Ethnicity, State of Oregon, 2000, 2010 and 2013

Source:
US Census 2000, 2010, 2013.



The following section discusses how disparities in access to capital explain some of the gaps in homeownership.

Mortgage loan data analysis. Home Mortgage Disclosure Act, or HMDA, data are widely used to detect evidence of discrimination in mortgage lending. In fact, concern about discriminatory lending practices in the 1970s led to the requirement for financial institutions to collect and report HMDA data. The variables contained in the HMDA dataset have expanded over time, allowing for more comprehensive analyses and better results. However, despite expansions in the data reported, HMDA analyses remain limited because of the information that is *not* reported.

As such, studies of lending disparities that use HMDA data carry a similar caveat: HMDA data can be used to determine disparities in loan originations and interest rates among borrowers of different races, ethnicities, genders, and location of the property they hope to own. The data can also be used to explain many of the reasons for any lending disparities (e.g., poor credit history). Yet HMDA data do not contain all of the factors that are evaluated by lending institutions when they decide to make a loan to an applicant. Basically, the data provide *a lot* of information about the lending decision—but *not all* of the information.

Beginning in 2004, HMDA data contained the interest rates on higher-priced mortgage loans. This allows examinations of disparities in high-cost, including subprime, loans among different racial and ethnic groups. It is important to remember that subprime loans are not always predatory or suggest fair lending issues, and that the numerous factors that can make a loan "predatory" are not adequately represented in available data. Therefore, actual predatory practices cannot be identified through HMDA data analysis. However, the data analysis can be used to identify where additional scrutiny is warranted, and how public education and outreach efforts should be targeted.

The Federal Reserve is the primary regulator of compliance with fair lending regulations. The Federal Financial Institutions Examination Council (FFIEC) is responsible for collecting and providing public access to HMDA data.

When federal regulators examine financial institutions, they use HMDA data to determine if applicants of a certain sex, race or ethnicity are rejected at statistically significant higher rates than applicants with other characteristics are. The Federal Reserve uses a combination of sophisticated statistical modeling and loan file sampling and review to detect lending discrimination.

This section uses the analysis of HMDA data to examine disparities in lending and loan denials across different racial and ethnic groups and income categories, to determine if loans are being apportioned more favorably to some racial and ethnic groups as opposed to others.

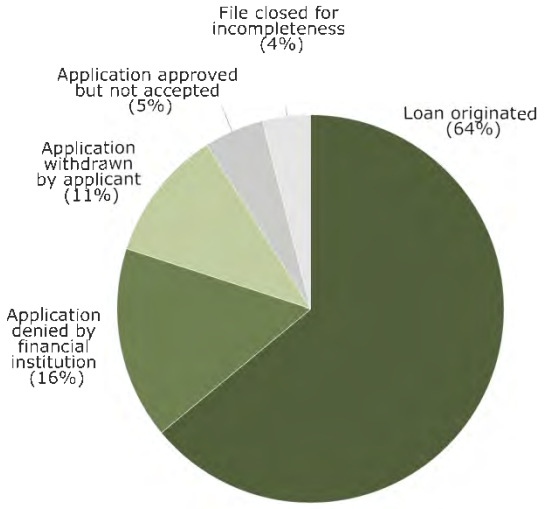
Loan applications in Oregon. During 2013, the latest year for which HMDA data are publicly available, there were 170,751 loan applications made in Oregon secured by residential properties that intended to be occupied by owners. Sixty-five percent of the loan applications were for refinancing, 31 percent were for home purchase and the remaining four percent were for home improvement. Seventy-eight percent of the loans were conventional loans, 12 percent were Federal Housing Administration-insured, 7 percent were Veterans Administration-guaranteed and 2 percent were Farm Service Agency or Rural Housing Service loans.

Almost two-thirds (64%) of all loan applications were approved and originated. Sixteen percent of all loan applications in Oregon were denied and 11 percent were withdrawn by the applicant. Figure II-12 displays the actions taken on Oregon loan applications in 2013.

Figure II-12.
Loan Applications and Action Taken, State of Oregon, 2013

Note:
Does not include loans for multifamily properties or non-owner occupants.

Source:
FFIEC HMDA Raw Data, 2013 and BBC Research & Consulting.



Outcome of loan applications. Figure II-13 presents more detail on the outcomes of loan applications, focusing on differences in race and ethnicity and income.

Loan origination rates were lowest for Hispanic applicants (55%) and American Indian or Alaska Native applicants (56%). These groups had their loans denied 23 and 24 percent of the time, respectively. Asian and White applicants had the highest origination rates—and the lowest denial rates—with around two-thirds of loans originated and 15 percent of loans denied.

Originations of loans are dependent upon the loan application being submitted in a complete form to the lending officer. Loans that are withdrawn, incomplete or not accepted by the borrower affect borrower origination rates. Figure II-13 also includes these outcomes for borrowers by race and ethnicity. In all three categories, racial and ethnic minority applicants had either the same share or a slightly higher share than White applicants—as such, the effect of withdrawals, incomplete loan applications and non-approvals on the origination rates is minimal.

The last three rows in the figure compare the application outcomes of potential minority borrowers with potential White borrowers. The largest difference in originations is for Hispanics/non-Hispanics: Hispanics received loans 10 percentage points less frequently than non-Hispanics. Similar differences exist for African Americans and American Indians or Alaska Natives (8 and 9 percentage point disparities).

The largest difference in the denial rate is for American Indian or Alaska Natives/whites and Hispanic/non-Hispanics. American Indian or Alaska Natives received a denial 8 percentage points more frequently than whites. Similarly, Hispanics received a denial 8 percentage points more frequently than non-Hispanics.

Figure II-13.
Outcome of Mortgage Loan Applications by Race/Ethnicity, State of Oregon, 2013

Race/Ethnicity	Percent Originated	Percent Approved but Not Accepted by Applicant	Percent Denied	Percent Withdrawn	Percent Incomplete
Race					
American Indian or Alaska Native	56%	7%	24%	10%	3%
Asian	66%	6%	15%	10%	3%
Black or African American	57%	6%	20%	12%	4%
Native Hawaiian or Pacific Islander	60%	6%	18%	11%	5%
White	65%	5%	16%	10%	3%
Ethnicity					
Hispanic or Latino	55%	6%	23%	11%	4%
Non-Hispanic or Latino	65%	5%	15%	10%	3%
American Indian / White Difference	**-9%**	**1%**	**8%**	**0%**	**0%**
African American / White Difference	**-8%**	**1%**	**5%**	**2%**	**0%**
Hispanic / Non-Hispanic Difference	**-10%**	**1%**	**8%**	**1%**	**1%**

Note: There is a statistically significant difference between White and African American denial rates, White and American Indian denial rates and non-Hispanic and Hispanic denial rates at 95% confidence.

Does not include loans for multifamily properties or non-owner occupants.

Differences between racial and ethnic groups may be impacted by rounding.

Source: FFIEC HMDA Raw Data, 2013 and BBC Research & Consulting.

As displayed in Figure II-14, these disparities in denial rates persist even at high income levels. Among applicants earning $75,000 or above, the denial rate among American Indian or Alaska Natives was 7 percentage points higher than whites and the denial rate for African American applicants was 4 percentage points higher than whites.

Similarly, among Hispanics earning $75,000 or above, the denial rate was 6 percentage points higher than that of non-Hispanic applicants. African American applicants earning less than $24,999 experienced the highest denial rate (48%).

Figure II-14.
Mortgage Loan Application Denials by Race/Ethnicity and Income, State of Oregon, 2013

Race/Ethnicity	Overall Percent Denials	Percent of Denials by Income			
		$0 - $24,999	$25,000 - $49,999	$50,000 - $74,999	$75,000 and Over
Overall	**16%**	**36%**	**21%**	**16%**	**13%**
Race					
American Indian or Alaska Native	24%	41%	29%	20%	20%
Asian	15%	42%	22%	15%	11%
Black or African American	20%	48%	28%	19%	16%
Native Hawaiian or Pacific Islander	18%	44%	25%	18%	12%
White	16%	35%	20%	15%	12%
Ethnicity					
Hispanic or Latino	23%	41%	27%	21%	18%
Non-Hispanic or Latino	15%	35%	19%	15%	12%
American Indian / White Difference	**8%**	**6%**	**10%**	**5%**	**7%**
African American / White Difference	**5%**	**13%**	**9%**	**4%**	**4%**
Hispanic / Non-Hispanic Difference	**8%**	**7%**	**8%**	**6%**	**6%**

Note: Does not include loans for multifamily properties or non-owner occupants.
Differences between racial and ethnic groups may be impacted by rounding.

Source: FFIEC HMDA Raw Data, 2013 and BBC Research & Consulting.

The denial rate displayed in Figure II-13 and Figure-14 above is calculated by dividing the number of denials by the total number of loan applications. The denial rate could also be calculated by dividing the number of denials by the number of denials+originations (excluding applications that are withdrawn, not accepted, closed). Calculating the denial rate this way results in a higher denial rate because the other outcomes—withdrawal by applicant, approved but not accepted by applicant and closed for incompleteness—are not considered.

This calculation was used to compare the denial rate in 2013 with the 2008 denial rate in the 2011 Oregon AI, which used the denials/loans denied+originated approach. This comparison is shown in Figure II-15. The loan denial rate decreased for all groups between 2008 and 2013 except for American Indian or Alaska Natives. The denial rate declined by 8 percentage points for Hispanics and 7 percentage points for African Americans.

This trend may be partially related to the passing of the Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act) in 2008. The Act, which was designed to improve the mortgage loan market and enhance consumer protections, mandated that states license mortgage loan originators and set the minimum licensing requirements that states must comply with in their licensing programs.

Figure II-15.
Mortgage Loan Application Denials by Race/Ethnicity Based on Loans Originated, State of Oregon, 2008 and 2013.

Note:

Native Hawaiian or Pacific Islander not included in 2011 AI.

Does not include loans for multifamily properties or non-owner occupants.

Source:

FFIEC HMDA Raw Data, 2013, Western Economics 2011 Oregon AI and BBC Research & Consulting.

Race/Ethnicity	2008	2013	Percent Change
American Indian or Alaska Native	26%	30%	4%
Asian	25%	19%	-6%
Black or African American	33%	26%	-7%
White	24%	19%	-5%
Hispanic or Latino	38%	30%	-8%

Figure II-16 displays the denial rate by race and ethnicity by loan purpose. Denial rates were lowest for home purchase loans and highest for home improvement loans for all racial and ethnic groups. Among refinancing loans, which accounted for 65 percent of all loans, the denial rate was highest for Hispanic applicants and American Indian or Alaska Native applicants at 26 percent. White applicants and Asian applicants had the lowest denial rate at 17 percent and 18 percent respectively. A similar trend was found for denial rates for home purchase loans.

Home improvement had the highest denial rates across racial and ethnic groups. Consistent lack of home improvement capital for certain racial/ethnic groups and/or neighborhoods can lead to disproportionate impact in housing quality and neighborhood conditions.

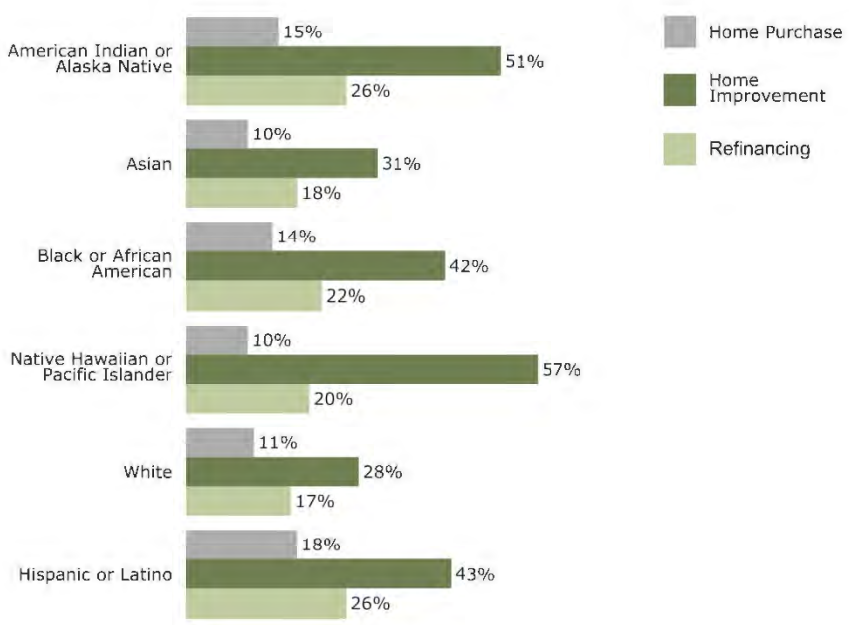
Figure II-16.
Denial by Race/Ethnicity and Loan Purpose, State of Oregon, 2013

Note:

Does not include loans for multifamily properties or non-owner occupants.

Source:

FFIEC HMDA Raw Data, 2013, BBC Research & Consulting.



HMDA data contain some information on why loans were denied, which can help to explain differences in denials among racial and ethnic groups. Figure II-17 shows the reasons for denials in Oregon. As the table demonstrates, racial and ethnic minorities, with the exception of Asian applicants, are more likely to be denied a loan based on credit history than White and non-Hispanic applicants.

Figure II-17.
Reasons for Denials of Loan Applications by Race/Ethnicity of Applicant, State of Oregon, 2013

Race/Ethnicity	Debt-to-Income Ratio	Employment History	Credit History	Collateral	Insufficient Cash	Unverifiable Information	Credit Application Incomplete	Mortgage Insurance Denied	Other
Race									
American Indian or Alaska Native	15%	2%	29%	21%	4%	5%	10%	1%	13%
Asian	30%	4%	17%	14%	2%	6%	10%	0%	16%
Black or African American	21%	0%	27%	13%	4%	5%	12%	0%	18%
Native Hawaiian or Pacific Islander	20%	2%	31%	9%	2%	7%	12%	0%	17%
White	21%	2%	21%	21%	3%	5%	11%	0%	16%
Ethnicity									
Hispanic or Latino	22%	2%	29%	14%	4%	5%	8%	0%	15%
Non-Hispanic or Latino	21%	2%	20%	21%	3%	5%	11%	0%	16%

Note: Does not include loans for multifamily properties or non-owner occupants.

Source: FFIEC HMDA Raw Data, 2013, BBC Research & Consulting.

Stakeholder perspectives on denials. The Stakeholder Advisory Committee (SAC), an advisory group assembled for the AI made up of lenders, real estate industry experts, and advocates, offered their perspective on the results mortgage lending analysis.

- Cosigning on loans for family members and sometimes friends is a common practice among certain cultural groups, particularly when capital is difficult to obtain. This will raise debt-to-income ratios and sometimes damage credit, making it harder to be approved for traditional loans.

- Minority groups tend to have lower FICO scores and higher debt-to-ratio income ratios, which may cause higher rates of loan denials.

- Some minority groups have higher percentages of undocumented income, which may be a factor that influences loan denials.

- High loan denials in rural areas are a factor of market conditions and depressed economies.

- Some first time homebuyer programs don't require a large down payment, so an individual may start with only three percent equity. Given this, even a small change in value can put homeowners underwater. This is especially impactful in rural areas which had lower home values to begin with.

- "Character lending" remains a common practice in small towns. Applicants who do not fit the traditional borrower mold may be at a disadvantage.

Lack of access to capital and "unbanked" residents. When residents are reluctant to seek capital or bank accounts with traditional financial institutions and need banking services they patronize other, non-traditional sources. The Federal Deposit Insurance Corporation (FDIC) has consistently surveyed such residents, whom they term "unbanked and underbanked" households. Unbanked households are those that lack any kind of deposit account at an insured depository institution. Underbanked households hold a bank account, but also rely on alternative financial providers such as payday lenders or pawn shops.

The latest survey (2012) found that in the United States, 28 percent of households are unbanked or underbanked (8.2% unbanked and 20.1% underbanked). In Oregon, 4.3 percent of households are unbanked and 14.4 percent are underbanked—nearly 10 percentage points lower than the U.S. proportion. Oregon had one of the lowest proportions of unbanked or underbanked households in the nation, behind New Hampshire, Minnesota and Wisconsin.

Oregon's Hispanic households are disproportionately likely to be unbanked: in 2009, 17 percent were unbanked compared to 3 percent for whites. An additional 24 percent of Hispanics were underbanked (v. 14% for whites); the banking status of 13 percent was unknown.[4] In sum, 46 percent of Hispanics in Oregon are "banked" compared to 75 percent of whites.

[4] Data on other races were not available in the 2009 survey The 2012 report did not include demographic details on the unbanked.

Household types that are least likely to be banked include: single female households (15%), households earning less than $15,000/year (22%), households with low educational attainment (17% of households without high school degrees are unbanked), renters (15%) and younger and middle age households (7% between 15 and 34 are unbanked and 9% between 35 and 44 are unbanked).

Geographic variation in denials. Figure II-18 displays the 10 counties in Oregon with the highest percent of loan applications that were denied in 2013.[5] The denial rate for the top 10 counties ranged from 56 percent to 24 percent, compared to 16 percent for the state overall. It is important to note that Wheeler County—with a very high denial rate of 56 percent—had only 27 loan applications in 2014.

Figure II-18.
Mortgage Loan Denials in the Top 10 Counties, State of Oregon, 2013

Note:
Does not include loans for multifamily properties or non-owner occupants.

Source:
FFIEC HMDA Raw Data, 2013 and BBC Research & Consulting.

	Top 10 Counties	Percent Denied For All Races and Ethnicities	Total Number of Loan Applications
1	Wheeler	56%	27
2	Lake	34%	248
3	Grant	31%	202
4	Malheur	28%	654
5	Sherman	27%	41
6	Curry	26%	860
7	Harney	26%	176
8	Wallowa	25%	295
9	Morrow	24%	321
10	Jefferson	24%	666
	State of Oregon	**16%**	**170,751**

Overall, denial rates are higher in rural counties and in non-Metropolitan Statistical Areas (MSAs) than in urban counties/areas for all races and ethnicities (including whites) except for African Americans.

The map in Figure II-19 displays the percent of loan applications that were denied in 2013 by county. The counties with the highest denial rates are mostly in Eastern Oregon. Counties with the lowest denial rates were part of or adjacent to the state's largest cities.

[5] Figure II-23 shows denial rates by race and ethnicity for all counties.

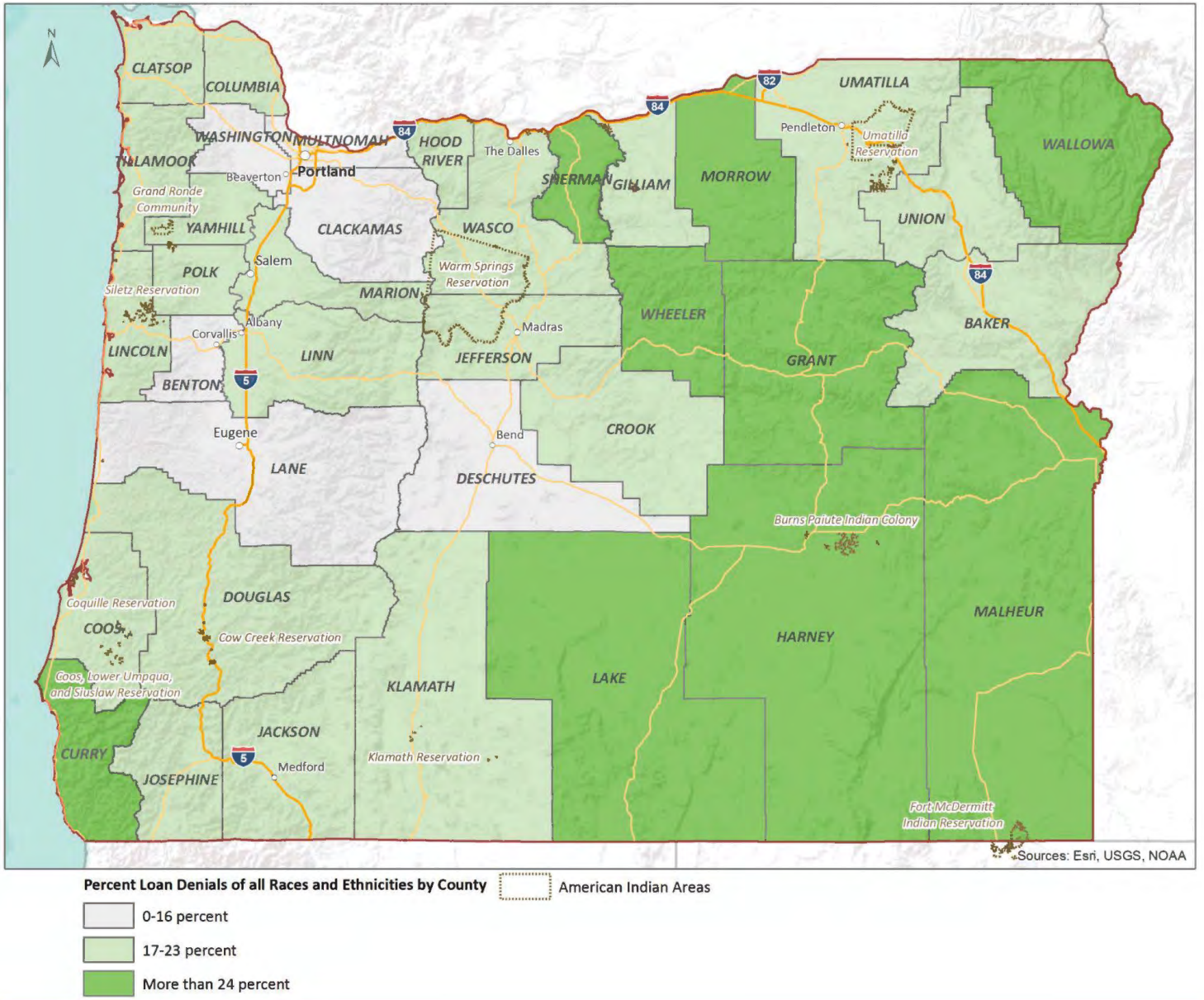
Figure II-19. Mortgage Loan Denials all Races and Ethnicities by County, State of Oregon, 2013

Note:

Does not include loans for multifamily properties or non-owner occupants.

Source:

FFIEC HMDA Raw Data, 2013 and BBC Research & Consulting.



Subprime analysis. This section examines how often racial and ethnic minority loan applicants in Oregon received subprime loans compared to White applicants. For the purposes of this section, we define "subprime" as a loan with an APR of more than three percentage points above comparable Treasuries. This is consistent with the intent of the Federal Reserve in defining "subprime" in the HMDA data.

There was not a large difference in the percent of subprime loans between racial groups in 2013. At the highest income level, Asian applicants and White applicants had slightly lower rates of subprime loans compared to other racial groups. A three or four-percentage point difference was found between Hispanic applicants and non-Hispanic applicants in income categories from $74,999 and under. Figure II-20 displays subprime loans by race, ethnicity and income in 2013.

Figure II-20.
Subprime Loans by Race/Ethnicity and Income, State of Oregon, 2013

Race/Ethnicity	Overall Percent Subprime	Percent Subprime Loans by Income			
		$0 - $24,999	$25,000 - $49,999	$50,000 - $74,999	$75,000 and Over
Race					
American Indian or Alaska Native	4%	4%	3%	5%	4%
Asian	1%	1%	2%	2%	1%
Black or African American	3%	2%	4%	3%	3%
Native Hawaiian or Pacific Islander	4%	4%	11%	3%	3%
White	3%	4%	4%	3%	2%
Ethnicity					
Hispanic or Latino	5%	7%	8%	7%	3%
Non-Hispanic or Latino	3%	3%	4%	3%	2%
American Indian/White Difference	***1%***	***0%***	***-1%***	***2%***	***2%***
African American/ White Difference	***0%***	***-2%***	***0%***	***0%***	***1%***
Hispanic/ Non-Hispanic Difference	***3%***	***3%***	***4%***	***3%***	***1%***

Note: Does not include loans for multifamily properties or non-owner occupants.
Differences between racial and ethnic groups may be impacted by rounding.
Source: FFIEC HMDA Raw Data, 2013 and BBC Research & Consulting.

Figure II-21 displays the 10 counties in Oregon with the highest percent of originated loans that were subprime in 2013.[6] The percent of originated loans that were subprime ranged from 11 percent to 5 percent, compared to 3 percent for the state overall.

[6] A full list of subprime rates by race and ethnicity and county is in Figure II-24.

Figure II-21.
Subprime Loans in the Top 10 Counties, State of Oregon, 2013

Note:
Does not include loans for multifamily properties or non-owner occupants.

Source:
FFIEC HMDA Raw Data, 2013 and BBC Research & Consulting.

County	Percent Subprime Loans for All Races and Ethnicities	Total Number of Originated Loans
Sherman	11%	19
Morrow	10%	179
Lake	8%	105
Jefferson	7%	362
Harney	7%	87
Malheur	7%	346
Clatsop	5%	845
Tillamook	5%	554
Curry	5%	402
Columbia	5%	1508
State of Oregon	**3%**	**108,497**

Full county lists. The following figures include all counties in Oregon (prior figures contained only the 10 counties with the highest rates). Figure II-22 provides complaints by number and per 10,000 residents by county, Figure II-23 shows denial rates by race and ethnicity and county, and Figure II-24 provides subprime rates by race and ethnicity and county.

Figure II-22. Complaints by County, State of Oregon, January 1, 2010 to December 31, 2014

Note:

No complaints were filed for Gilliam, Grant, Harney, Sherman and Wheeler counties between January 1, 2010 and December 31, 2014.

Source:

Bureau of Labor and Industries, 2010 Census.

County	Number of Complaints
Multnomah	187
Washington	53
Clackamas	47
Marion	38
Lane	36
Linn	22
Jackson	18
Coos	17
Lincoln	13
Clatsop	11
Union	11
Deschutes	10
Polk	10
Umatilla	8
Benton	7
Curry	7
Yamhill	7
Douglas	6
Klamath	6
Hood River	5
Crook	4
Josephine	4
Wasco	4
Morrow	3
Tillamook	3
Columbia	2
Malheur	2
Baker	1
Jefferson	1
Lake	1
Wallowa	1
State of Oregon	**545**

County	Complaints per 10,000 people
Union	4.3
Curry	3.1
Clatsop	3.0
Lincoln	2.8
Coos	2.7
Morrow	2.7
Multnomah	2.5
Hood River	2.2
Crook	1.9
Linn	1.9
Wasco	1.6
Wallowa	1.4
Polk	1.3
Lake	1.3
Clackamas	1.3
Marion	1.2
Tillamook	1.2
Umatilla	1.1
Lane	1.0
Washington	1.0
Klamath	0.9
Jackson	0.9
Benton	0.8
Yamhill	0.7
Malheur	0.6
Deschutes	0.6
Baker	0.6
Douglas	0.6
Josephine	0.5
Jefferson	0.5
Columbia	0.4
State of Oregon	**1.4**

Figure II-23.
Mortgage Loan Denials by Race and Ethnicity and County, State of Oregon, 2013

County	Percent Denied All Race and Ethnicity	Percent Denied by Race					Percent Denied by Ethnicity		American Indian/White Difference	African American/ White Difference	Hispanic/Non-Hispanic Difference
		American Indian	Asian	Black or African American	Native Hawaiian or Pacific Islander	White	Hispanic or Latino	Non-Hispanic or Latino			
Baker	23%	50%	0%	-	0%	23%	33%	23%	27%	-	10%
Benton	14%	22%	11%	20%	23%	13%	22%	13%	9%	7%	9%
Clackamas	15%	21%	15%	25%	19%	14%	21%	14%	7%	11%	7%
Clatsop	21%	18%	25%	17%	0%	19%	27%	19%	-1%	-2%	8%
Columbia	21%	23%	25%	13%	13%	20%	15%	20%	3%	-7%	-5%
Coos	19%	23%	15%	17%	0%	19%	20%	19%	5%	-2%	1%
Crook	20%	20%	0%	0%	0%	19%	14%	19%	1%	-19%	-5%
Curry	26%	31%	50%	0%	-	26%	33%	27%	4%	-26%	6%
Deschutes	15%	12%	17%	11%	5%	15%	23%	14%	-3%	-3%	8%
Douglas	19%	22%	22%	11%	10%	18%	26%	18%	4%	-7%	8%
Gilliam	23%	-	-	-	-	25%	0%	26%	-	-	-26%
Grant	31%	20%	-	-	-	30%	0%	30%	-10%	-	-30%
Harney	26%	17%	-	-	-	27%	17%	27%	-10%	-	-10%
Hood River	22%	18%	18%	100%	25%	20%	34%	20%	-2%	80%	14%
Jackson	17%	32%	19%	15%	25%	16%	23%	16%	16%	-2%	7%
Jefferson	24%	50%	0%	-	0%	22%	26%	22%	28%	-	4%
Josephine	18%	12%	27%	17%	0%	17%	28%	17%	-5%	0%	12%
Klamath	21%	16%	20%	50%	17%	20%	23%	20%	-4%	30%	3%
Lake	34%	0%	100%	-	-	34%	0%	34%	-34%	-	-34%
Lane	17%	25%	17%	16%	22%	16%	25%	16%	9%	1%	9%
Lincoln	22%	27%	13%	33%	50%	21%	32%	21%	6%	13%	11%
Linn	20%	29%	16%	17%	18%	20%	23%	20%	9%	-3%	4%
Malheur	28%	60%	17%	-	0%	27%	36%	25%	33%	-	11%
Marion	19%	33%	18%	17%	25%	18%	24%	17%	15%	0%	7%
Morrow	24%	0%	-	-	100%	23%	25%	23%	-23%	-	2%
Multnomah	14%	19%	18%	21%	18%	13%	18%	13%	6%	9%	5%
Polk	18%	21%	22%	0%	14%	18%	28%	17%	3%	-18%	10%
Sherman	27%	-	-	-	-	28%	-	28%	-	-	-
Tillamook	24%	40%	0%	0%	33%	24%	40%	24%	16%	-24%	16%
Umatilla	22%	34%	39%	11%	25%	21%	34%	20%	13%	-10%	14%
Union	21%	0%	50%	0%	0%	22%	19%	22%	-22%	-22%	-3%
Wallowa	25%	0%	-	-	-	24%	33%	24%	-24%	-	10%
Wasco	23%	46%	0%	-	50%	22%	37%	22%	24%	-	15%
Washington	12%	19%	12%	20%	16%	12%	20%	12%	7%	8%	9%
Wheeler	56%	-	-	-	-	54%	100%	52%	-	-	48%
Yamhill	18%	31%	17%	15%	8%	18%	26%	17%	13%	-3%	9%
State of Oregon	**16%**	**24%**	**15%**	**20%**	**18%**	**16%**	**23%**	**15%**	**8%**	**5%**	**8%**

Note: Does not include loans for multifamily properties or non-owner occupants. Differences between racial and ethnic groups may be impacted by rounding. Dashes represent the absence of applicants.

Source: FFIEC HMDA Raw Data, 2013 and BBC Research & Consulting.

Figure II-24.
Subprime Loans by Race and Ethnicity and County, State of Oregon, 2013

County	Percent Subprime All Race and Ethnicity	Percent Subprime by Race					Percent Subprime by Ethnicity		American Indian/White Difference	African American/ White Difference	Hispanic/ Non-Hispanic Difference
		American Indian	Asian	Black or African American	Native Hawaiian or Pacific Islander	White	Hispanic	Non-Hispanic			
Baker	3.8%	0.0%	0.0%	-	0.0%	4.4%	0.0%	4.0%	-4.4%	-	-4.0%
Benton	1.6%	0.0%	1.5%	0.0%	0.0%	1.6%	1.9%	1.6%	-1.6%	-1.6%	0.3%
Clackamas	2.4%	1.6%	1.6%	1.5%	6.3%	2.4%	4.8%	2.2%	-0.8%	-0.9%	2.6%
Clatsop	5.3%	0.0%	14.3%	0.0%	0.0%	5.6%	5.6%	5.6%	-5.6%	-5.6%	0.0%
Columbia	4.9%	20.0%	0.0%	0.0%	20.0%	5.4%	0.0%	5.5%	14.6%	-5.4%	-5.5%
Coos	2.8%	4.3%	0.0%	0.0%	0.0%	2.9%	4.0%	2.9%	1.5%	-2.9%	1.1%
Crook	3.8%	0.0%	0.0%	-	0.0%	4.1%	6.7%	3.9%	-4.1%	-	2.8%
Curry	5.2%	0.0%	0.0%	0.0%	-	5.5%	12.5%	5.4%	-5.5%	-5.5%	7.1%
Deschutes	3.2%	6.5%	3.9%	0.0%	15.4%	3.1%	1.8%	3.2%	3.3%	-3.1%	-1.4%
Douglas	3.3%	0.0%	0.0%	0.0%	0.0%	3.3%	0.0%	3.4%	-3.3%	-3.3%	-3.4%
Gilliam	0.0%	-	-	-	-	0.0%	-	0.0%	-	-	-
Grant	3.2%	0.0%	-	-	-	3.7%	0.0%	3.7%	-3.7%	-	-3.7%
Harney	6.9%	0.0%	-	-	-	7.5%	0.0%	7.5%	-7.5%	-	-7.5%
Hood River	1.3%	0.0%	0.0%	-	0.0%	1.5%	1.8%	1.4%	-1.5%	-	0.4%
Jackson	4.1%	5.9%	0.0%	5.3%	0.0%	4.2%	7.9%	4.1%	1.7%	1.1%	3.8%
Jefferson	6.9%	0.0%	0.0%	-	0.0%	6.8%	16.0%	6.0%	-6.8%	-	10.0%
Josephine	4.3%	14.3%	0.0%	0.0%	0.0%	4.2%	9.4%	4.1%	10.1%	-4.2%	5.4%
Klamath	3.7%	6.1%	9.1%	0.0%	0.0%	3.7%	4.1%	3.8%	2.3%	-3.7%	0.3%
Lake	7.6%	0.0%	-	-	-	4.8%	25.0%	3.7%	-4.8%	-	21.3%
Lane	2.7%	2.6%	0.6%	6.7%	3.3%	2.7%	2.5%	2.7%	-0.2%	3.9%	-0.2%
Lincoln	3.8%	5.3%	0.0%	0.0%	0.0%	3.6%	0.0%	3.3%	1.7%	-3.6%	-3.3%
Linn	3.9%	4.2%	0.0%	0.0%	0.0%	4.0%	3.9%	4.0%	0.1%	-4.0%	-0.1%
Malheur	6.6%	0.0%	0.0%	-	0.0%	6.8%	10.7%	5.3%	-6.8%	-	5.4%
Marion	3.4%	6.4%	5.3%	5.6%	5.7%	3.3%	6.3%	3.1%	3.0%	2.2%	3.2%
Morrow	10.1%	0.0%	-	-	-	11.2%	9.7%	11.5%	-11.2%	-	-1.8%
Multnomah	1.9%	3.4%	1.3%	3.4%	3.9%	2.0%	4.8%	1.8%	1.5%	1.4%	3.0%
Polk	3.2%	13.6%	3.2%	0.0%	0.0%	3.1%	4.3%	3.1%	10.5%	-3.1%	1.2%
Sherman	10.5%	-	-	-	-	11.1%	-	11.1%	-	-	-
Tillamook	5.2%	20.0%	0.0%	-	0.0%	5.1%	0.0%	5.2%	14.9%	-	-5.2%
Umatilla	4.3%	4.3%	0.0%	0.0%	20.0%	4.5%	12.1%	3.4%	-0.1%	-4.5%	8.7%
Union	3.9%	0.0%	0.0%	0.0%	0.0%	3.7%	0.0%	3.7%	-3.7%	-3.7%	-3.7%
Wallowa	1.9%	0.0%	-	-	-	2.1%	0.0%	2.1%	-2.1%	-	-2.1%
Wasco	3.1%	20.0%	0.0%	-	-	3.0%	0.0%	3.4%	17.0%	-	-3.4%
Washington	1.7%	2.9%	0.4%	3.0%	2.6%	1.8%	4.8%	1.6%	1.1%	1.2%	3.2%
Wheeler	0.0%	-	-	-	-	0.0%	-	0.0%	-	-	-
Yamhill	4.0%	0.0%	0.0%	0.0%	0.0%	4.2%	3.6%	3.8%	-4.2%	-4.2%	-0.2%
State of Oregon	**2.7%**	**4.2%**	**1.1%**	**3.2%**	**3.9%**	**2.8%**	**5.2%**	**2.6%**	**1.4%**	**0.4%**	**2.6%**

Note: Does not include loans for multifamily properties or non-owner occupants. Differences between racial and ethnic groups may be impacted by rounding. Dashes represent the absence of borrowers.

Source: FFIEC HMDA Raw Data, 2013 and BBC Research & Consulting.

SECTION III.
Public Policies and Regulations

This section of the AI contains an analysis of state regulations, policies and programs that could potentially affect housing choice of protected classes.

It begins with a review of relevant Oregon Revised Statutes (ORS). HUD's Fair Housing Planning Guide was used in determining which regulations to examine. HUD prescribes that state regulations related to the following are reviewed:

- Building, occupancy, health and safety codes,
- Construction of assisted and private housing,
- Site and neighborhood standards for new construction,
- Accessibility standards for new construction and/or laws that restrict housing choices of persons with disabilities,
- Demolition of housing and displacement of low income residents,
- Multifamily rehabilitation, and
- Tax and finance policies that affect fair distribution of services to protected classes.

This section also discusses state programs and policies associated with the distribution of assisted housing, in addition to those which may affect housing choice but are not directly related to the provision of affordable housing. It concludes with a discussion of housing barriers from the perspective of public housing authorities (PHAs), important providers of subsidized housing to low income households.

HUD also requires an examination of steering (real estate agents directing potential homebuyers to certain areas based on their race or ethnicity), deed restrictions, and discriminatory brokerage services. These potentially discriminatory actions were examined through stakeholder surveys and interviews and are addressed in the sections that report survey results. Fair lending is discussed in the Fair Housing Environment section of the AI, which discusses mortgage lending activities.

State Regulations (ORS) that Affect Provision of Housing

The detailed review of ORS is found in Appendix A. The review examined state-level statutes, regulations and programs related to fair housing, needed housing, and housing in general.

Overall, the review found that Oregon statutes include a fairly detailed system to evaluate demands for various types of housing (mostly based on income levels), to prepare plans based on those evaluations of need, and to adopt local land use regulations to implement the adopted

plans. Perhaps most notably, the state has put in place numerous statutes that reflect the language of the FHAA, the ADA, and the Rehabilitation Act of 1973.

Summary of ORS review. The review found Oregon's laws to be favorable to fair housing. More specifically, Oregon statutes**:**

- Require that local governments provide for "needed housing" through both single-family and multi-family housing for both owner and renter occupancy, government assisted housing, mobile or manufactured home parks, manufactured homes on individual lots, and housing for farmworkers. Manufactured homes and farmworker housing must be treated as substantially the equivalent of other single-family and multi-family housing. These statutes are facially neutral with respect to FHAA-protected citizens.
- Prohibit local governments from barring government assisted housing that is similar to unassisted housing.
- Grant cities and counties relatively standard zoning and subdivision powers, with the important qualification that their need be consistent with adopted comprehensive plans created through the statewide land use planning system, through statutes that are facially neutral with respect to FHAA-protected citizens.
- Create some exceptions to its strict limits on residential development on forest, agriculture, and other resource lands in order to promote economically viable rural land uses or to reduce burdens on rural property owners in ways that would not have major impacts on the overall statewide planning system. The state could have made additional exceptions to allow the construction of housing needed for FHAA-protected citizens (such as assisted living facilities) in rural areas—yet it has no legal duty to do so, and failure to do so does not constitute a barrier to fair housing choice.
- Allow rehabilitation of farmworker housing stock in areas outside cities to standards that do not meet the statewide building code. While this may have an effect on the resulting quality of farmworker housing, it appears to have been adopted in order to expand the supply that type of housing.
- Require that residential homes (for up to 5 residents, including but not limited to FHAA-protected citizens, plus caregivers) be permitted in each residential and commercial district that permits single-family homes, and that the standards for approval for a residential home be no stricter than those applied to a single family dwelling. In addition, the statutes allow residential homes to occupy existing dwelling structures in farm use zones without the imposition of requirements different than occupancy of the structure by a single-family home. These provisions are more favorable to the accommodation of assisted housing than those of many other states.
- Require that residential facilities (for 6 to 15 residents, including but not limited to FHAA-protected citizens, plus caregivers,) be permitted wherever multifamily residential uses are a permitted use and a conditional use in any zone where multifamily residential uses are a conditional use. These strong provisions could be further strengthened by imposing a standard similar to that for residential homes prohibiting the adoption for residential facilities that are stricter than those for multifamily housing.

- Require local governments to provide reasonable modifications to housing (particularly for the disabled), as well as reasonable accommodation in housing rules and policies.
- Include key language related to housing accessibility from the Americans with Disabilities Act, the FHAA, and the Rehabilitation Act of 1973, including the FHAA's broad definition of "disability," the ADA's definition of places of "public accommodation," and requirements that renovations of "affected buildings" include improvements to accessibility.
- Prohibit discrimination on the basis of disability in the selling, renting, or making available of housing units.
- Establish building features to promote accessibility that must be included in housing development projects that include state or federal subsidies.
- Include standards to allow reasonable landlord limits on building occupancy based on health and safety concerns, and taking into account the size of the rooms and the nature of the dwelling unit, provided those standards are applied equitably.

In general, Oregon's standards are stronger, and remove barriers to fair housing choice more effectively, than those in the statutes of several other states. The exception is Oregon's limit on municipalities' ability to enact inclusionary zoning programs, which is discussed in further detail below.

Oregon could further strengthen its regulations by:

- Making additional exceptions to allow the construction of housing needed for FHAA-protected citizens (such as assisted living facilities) in rural areas.
- Imposing a standard similar to that for residential homes prohibiting the adoption for residential facilities that are stricter than those for multifamily housing.
- We understand that not all Oregon local governments have standards that comply with the "clear and objective" requirement regulating the development of needed housing on buildable land. Improving enforcement of compliance with this requirement could have the effect of further increasing housing supply.
- While ORS 443.400 requires that all residential facilities providing care for six or more residents be licensed by the state, ORS 197.660 and 197.665 only require that residential facilities with between six and 15 residents are required to be licensed by the state—but are not required to be permitted in multifamily and commercial zone districts. If Oregon wanted to strengthen its fair housing protections, it could extend coverage of ORS 197.665 to require that the state's local governments treat residential facilities licensed by the state the same way it treats multifamily apartment buildings or condominiums of the same size. The result would be that Oregon cities and counties would need to permit a licensed residential facility of 25 or 30 residents in the same zone districts where it would allow an unlicensed multifamily dwelling structure of the same size.

Inclusionary zoning. Inclusionary zoning is a program commonly used in high cost areas to produce affordable housing. In general, inclusionary zoning programs require that residential developments of a certain size incorporate a proportion of units that meet affordable price points. Inclusionary zoning can be applied to rental or homeownership housing or both.

A handful of states, including Oregon, have state regulations that directly or indirectly prohibit local governments from using inclusionary zoning. In Oregon, the ability of municipalities to enact inclusionary zoning programs is limited by two state statutes:

- ORS 197.309 affects the sale of housing:

  (1) Except as provided in subsection (2) of this section, a city, county or metropolitan service district may not adopt a land use regulation or functional plan provision, or impose as a condition for approving a permit under ORS 215.427 or 227.178, a requirement that has the effect of establishing the sales price for a housing unit or residential building lot or parcel, or that requires a housing unit or residential building lot or parcel to be designated for sale to any particular class or group or purchasers.

  (2) Nothing in this section is intended to limit the authority of a city, county or metropolitan service district to adopt or enforce a land use regulation, functional plan provision or condition or approval creating or implementing an incentive, contract commitment, density bonus or other voluntary regulation, provision or condition designed to increase the supply of moderate or lower cost housing units.

- ORS 91.255(2) concerns rental of housing: *a city or county shall not enact any ordinance or resolution which controls the rent that may be charged for the rental of any dwelling unit.* Exceptions include natural or man-made disasters and in the case of state run housing programs.

The connection of inclusionary zoning and fair housing. Disallowing inclusionary zoning as part of a community's affordable housing toolkit limits the provision of affordable housing in general. In addition, limits on the use of inclusionary zoning may disproportionately affect members of protected classes to the extent that they have a greater need for affordable housing. This situation is called discriminatory effect or disparate impact.

HUD has consistently concluded that policies which may be neutral to protected classes can be found to have a discriminatory effect on the basis of a protected class regardless of intent. For example, HUD has described occupancy requirements that limit the number of persons per dwelling unit as having a discriminatory effect on families.

HUD recently addressed questions about how disparate impact should be considered in fair housing in its "Implementation of the Fair Housing Act's Discriminatory Effects Standard" Rule.[1] The purpose of the rule is to "formally establish a three-part burden shifting test…thereby providing greater clarity and predictability for all parties engaged in housing transactions as to how the discriminatory effect standard applies."

[1] http://portal.hud.gov/hudportal/documents/huddoc?id=discriminatoryeffectrule.pdf.

The three-part test works in the following way:

- The plaintiff (party who brings the complaint) must initially prove that a practice results in, or would predictably result in, a discriminatory effect on the basis of a protected characteristic.
- If the charging party or plaintiff proves such a case, the burden of proof shifts to the respondent or defendant to prove that the challenged practice is necessary to achieve one or more of its substantial, legitimate, nondiscriminatory interests.
- If the defendant is successful, then the charging party or plaintiff may still establish liability by proving that the substantial, legitimate, nondiscriminatory interest could be served by a practice that has a less discriminatory effect.

Discriminatory effect is not addressed directly in the Federal Fair Housing Act. As such, the question of whether disparate impact is part of the Act has been considered in many lawsuits. At the time this AI was prepared, disparate impact was under consideration by the U.S. Supreme Court in a case brought by the State of Texas against the nonprofit Inclusive Communities Project (*Texas Department of Housing and Community Affairs v. Inclusive Communities Project).*

Effect of Oregon's law. At the very least, Oregon's state laws prohibiting inclusionary zoning limit the ability of cities and counties in the state to employ a program that has created a significant inventory of affordable units in many other cities. Depending on the pending Supreme Court decision, prohibitions on, or the lack of polices allowing inclusionary zoning could be challenged under the theory of disparate impact. Researcher Rolf Pendall has documented a statistically significant correlation between the absence of multifamily housing opportunities and African American residents.[2]

A bill proposed in the state legislature would address the prohibition on inclusionary zoning by amending ORS 197.309 to allow municipalities to establish affordable-housing requirements of developers, with up to 30 percent of units in a development to be sold at below market prices. The programs would need to provide some type of development incentives such as fast-track approvals, fee waivers/reductions, density bonuses and/or floor/area adjustments.[3]

Because this bill only addresses the for sale provisions of price controls in the ORS, inclusionary zoning would still not apply to rental developments until ORS 91.255(2) is repealed or changed.

Another bill that was proposed, but not carried forward would have addressed rental increases but only for residents of mobile home parks. Senate Bill 452 would have formed a Task Force on Affordable Manufactured Home Park Living to develop recommendations to protect manufactured home owners from predatory and inappropriate rent increases.[4]

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[2] Pendall, Rolf, "Local Land Use Regulation and the Chain of Exclusion," Journal of the American Planning Association. 2000;66:125–142.

[3] https://olis.leg.state.or.us/liz/2015R1/Downloads/MeasureDocument/HB2564/House%20Amendments

[4] https://olis.leg.state.or.us/liz/2015R1/Downloads/ProposedAmendment/6149

Regulations and policies related to demolition and displacement. In rural areas, displacement of low income households is often related to closure and/or redevelopment of manufactured home parks (v. demolition of affordable apartment complexes that characterize urban area displacement). From 2001 through 2007, at the apex of the housing boom, approximately 2,800 Oregon households were displaced when the owners of 69 manufactured home parks closed these communities. Most of the estimated 6,000 displaced residents had low incomes, most were homeowners and many were seniors. According to Oregon Department of Revenue sources, most were not able to find new manufactured housing communities to which they could move their home, and abandonment of the home resulted.

Research has found that the closure of manufactured housing communities can have profound, adverse impacts on displaced individuals. These effects range are both financial (loss of affordable housing and increase in monthly housing costs; loss of the household's primary asset) and social (loss of community and friends, convenience of location, loss of independence for seniors) in nature.

In response to community closures, several jurisdictions adopted local ordinances to soften the impacts. On a state level, the 2007 Oregon Legislature adopted provisions that amended existing state landlord tenant law to provide more advance notice to residents about community closures, financial payments and refundable tax credits to those displaced, and the opportunity to establish nonprofit resident owned communities through park purchases from willing sellers. These changes were proposed by the Manufactured Housing Landlord Tenant Coalition and adjusted during the legislative process.

The principal provisions adopted are as follows:

- Owner must provide 365 day notice to residents of proposed manufactured housing community closure.
- Park owners must make payments to displaced homeowners of $5,000 for a singlewide, $7,000 for a doublewide or $9,000 for a triple-wide or larger home.
- If residents are not able to move the home, the park owner must pay for disposal costs.
- The State of Oregon authorized a $5,000 refundable tax credit for each displaced manufactured housing homeowner (one per home).
- The legislature authorized a new type of legal entity, a manufactured dwelling park nonprofit co-operative, to foster the development of resident-owned communities through purchases from willing park sellers.

In addition, ORS 197.480 requires that Oregon cities and provide, in accordance with urban growth management agreements, for mobile home or manufactured dwelling parks as an allowed use. The statute also requires that cities and counties establish the need for areas to be planned and zoned to accommodate the potential displacement of mobile home or manufactured housing parks.

These regulations help address many of the market challenges that manufactured home owners face, with the exception of rising rents. In many rural areas, manufactured or mobile homes provide the most affordable housing, particularly for households who need larger units. Yet the affordability of manufactured homes is often eroded by the cost of land leases charged by park owners. Because manufactured homes are costly to move and the supply of parks is limited, manufactured home households are more likely to accept lease increases and/or tolerate actions by park owners that may be in violation of fair housing laws. Remedying this condition would require changes to the state's prohibition on rent control law, as discussed on page 5.

Land planning efforts related to housing provision. Oregon has a long history of state-involvement in land use planning. Indeed, some of the state's regulations intended to minimize urban sprawl and preserve environmental and agricultural interests have existed for more than 30 years. For example, the state requires that municipalities plan for a wide variety of residential uses including "a determination of expected housing demand at varying rent ranges and cost levels… [and]…allowance for a variety of densities and types of residences in each community."

This section reviews two state efforts related to land planning that affect housing provision: the Urban Growth Boundary and Model Development Code.

Urban Growth Boundary. In 1973, the State of Oregon adopted the nation's first set of statewide land use planning laws under Senate Bill 100. The bill created the state Department of Land Conservation and Development (DLCD) and within it, the Land Conservation and Development Commission (LCDC). It requires every city or metropolitan area to submit their proposed urban growth boundary to the LCDC and justify it according to the state's planning goals, which include the preservation of agricultural land, forests and open spaces and the development of high-quality, livable cities and towns by increasing density, improving public transit, and encouraging affordable housing close to jobs. The law also requires jurisdictions to assess the capacity of their urban growth boundary every five years and determine whether it contains sufficient land supply to support 20 years of population and employment growth. There are currently 240 urban growth boundary jurisdictions in the state.

The impact of the urban growth boundary system on housing affordability has been raised in the past, largely in relation to urban areas. In 2005, the Oregon Task Force on Land Use Planning was created to conduct a review of the system. This review resulted in Senate Bill 1011 in 2007, which allowed Metro and Portland-area counties to identify urban and rural reserves outside the urban growth boundary in order to define where future growth would be directed over the next forty to fifty years, providing a longer-term vision than the five-year planning cycles.

Stakeholders who participated in the AI survey were asked if *state* land use laws and growth limitations create barriers to housing choice. This was rated as a medium barrier, with an average rating of 4.9 out of 9. A second question asked about overly restrictive *local* land use and zoning regulations; this received an average rating of 4.8 out of 9.

Just handful of stakeholders offered comments about why they felt land use laws created housing choice barriers. Stakeholders differed somewhat in their opinions: Most were concerned that land use limitations lead to increased housing prices; others felt state laws and local actions

needed to be revisited to determine if they are addressing housing needs at all affordability levels.

TGM Model development code. In response to numerous requests for planning assistance from communities throughout Oregon, the state's Transportation and Growth Management (TGM) Program developed the Model Development Code and User's Guide for Small Cities (TGM Model Code). This was originally published in 1999 with the third edition issued in October 2012. The TGM Program reports that the Model Code has been used widely around Oregon, particularly in small cities that often lack the necessary planning resources to perform such a large-scale effort on their own. In this way, the Model Code provides these cities with consistent guidance and technical expertise in zoning, development standards, review procedures, and implementation of state and planning rules and statutes. The Model Code is intended to help these cities integrate land use and transportation planning, meet new legal requirements and provide a user-friendly, flexible model code.

The Model Code can be found at: http://www.oregon.gov/LCD/TGM/pages/modelcode.aspx

Development codes are adopted by ordinance to implement a city or county comprehensive plan and in Oregon, municipalities are required to ensure the development (or zoning) code comply with the adopted comprehensive plan. Specific elements of a comprehensive plan outline policies on needed housing and housing choice and form the basis by which zoning and development standards are applied. To allow for flexibility between municipalities, many relevant fair housing provisions of the Model Code are placeholders, dependent on the findings and policies adopted in each comprehensive plan.

The analysis of the Model Code for this AI identified some issues that could be considered potential barriers to affirmatively furthering fair housing. It also found opportunities to better align the Model Code with the suggested requirements and best practices found in the Inclusive Communities Toolkit's Land Use and Fair Housing Evaluation Tool.[5]

Opportunities to refine the TGM Model Code include the following:

- To avoid disparate treatment of development types that could be occupied by persons with disabilities, add guidance in the Model Code as to when boarding housing may be different than other types of residential structures, for the purposes of applying development standards.

- The Land Use and Fair Housing Evaluation Tool in the Model Code does a nice job of providing examples of land use options to increase housing choice that may be new to rural communities. To avoid restricting these options to a few (which may not work in every rural community), the examples could be expanded upon to include a wider variety of creative housing options

[5] http://www.fhco.org/pdfs/Guide-for-Neighbors-Web.pdf and http://www.fhco.org/pdfs/Guide-for-Elected-Officials-Web.pdf

- The Model Code discusses several design concepts but, without explicit definitions, these terms could be misinterpreted and inadvertently create pathways for neighbors to legally appeal development of needed housing or housing to be occupied by people in protected classes. Community character or context language should be further clarified.

- Expand the guidance in the Model Code related to parking minimums for residential uses and potential impacts those minimums have on affordability and housing choice.

- Use the Model Code and its user's guide to inform and educate planners on where issues in development processes arise related to Conditional Use permitting and how cities can address uses with potential impacts to neighboring properties and still affirmatively further fair housing.

- Review and revise Model Code definitions for: Dwelling (including all applicable subsections), and Group Living. Unbundle development regulations from the various arrangements people choose to live. Ideally, these definitions would separate the concepts of occupancy (number and relations of people who do or will reside within a unit) from concepts of physical development (number of rooms/kitchens/bathrooms, size of structure, relationship of units to lots, etc.).

Tax Policies Related to Housing Provision[6]

All real property within the State of Oregon is subject to assessment and taxation unless exempted as provided by Oregon law. There are two primary kinds of tax exemptions affecting housing:

1) Exemptions available automatically to any qualifying property owner who applies for an exemption, and

2) Exemptions that must first be adopted by local governments and/or taxing jurisdictions before they go into effect and qualifying property owners may apply.

These are discussed in turn below.

Property tax exemptions applicable statewide. The principal property tax exemptions which do not require local adoption and are applicable to housing throughout the state include:

- **ORS 307.092 Property of housing authority**. Property owned or under lease by a housing authority is considered to be public property exempt from all taxes and special assessments of a city, county, state or any of their political subdivisions. This exemption also includes properties leased to low income households by a partnership, nonprofit corporation or limited liability company for which the housing authority is a general partner, limited partner, director, member, manager or general manager. Thus, this exemption provides a

[6] Information for this section comes from *Oregon Revised Statutes, 2013 Edition* and the *Washington County Fair Housing Plan 2012*. Kim Armstrong, Washington County Department of Housing Services, wrote the tax exemption summary that appears in that plan.

means through which LIHTC projects and other affordable housing projects can obtain long-term tax exempt status without a locally-adopted exemption, provided that the local housing authority is willing to be party to the limited partnership or other ownership entity. The housing authority is permitted to make a Payment in Lieu of Taxes, although such payments are not required. The law excludes commercial property leased to a for-profit entity from this exemption. There is no legislative sunset for this exemption, and the exemption applies as long as the property qualifies.

- **ORS 307.130-162 Property of art museums, volunteer fire departments or literary, benevolent, charitable and scientific institutions.** This section of the law grants an exemption to property (or a portion thereof) owned or being purchased by benevolent, charitable or religious nonprofit institutions, as long as the property is being used solely for the religious or charitable work of the organization. The law has numerous provisions and exceptions. The organization must apply to the tax assessor for this exemption, but once it is in hand, the owner is not required to submit renewals unless the ownership or use changes. Some jurisdictions have provided tax exemptions under this section of the code for projects providing housing in conjunction with treatment programs or supportive services. There is no legislative sunset date for this exemption, and it may apply as long as the property qualifies.

- **ORS 307.181 Land acquired or owned by Indian tribe.** Tribal-owned property that is used exclusively for housing for low income households may qualify for a tax exemption if it is located in a county in which more than 10 percent of the enrolled members of the eligible tribe reside. This exemption also applies to property held under lease or a lease purchase agreement by an eligible tribe and property belonging to a partnership, nonprofit corporation or limited liability company of which an eligible Indian tribe is a general partner, limited partner, director, member, manager or general manager. This exemption applies exclusively to Oregon's ten recognized tribes.

- **ORS 307.241-245 Property of nonprofit corporation providing housing to elderly persons.** Housing for older adults owned by nonprofit corporations, funded by specific funding sources (e.g., Section 202 grant), constructed after January 1, 1977 and placed in service by January 1, 1990 is eligible to apply for a tax exemption. The Oregon Department of Revenue reimburses the county for the lost tax revenue annually. There is no legislative sunset for this exemption, and the exemption may be received as long as the property qualifies.

- **ORS 307.471 Student housing exempt from school district taxes.** Housing owned by a nonprofit corporation and used exclusively for student housing may qualify for an exemption from school district taxes. Housing must be provided on a non-discriminatory basis. A fraternity or sorority house may qualify if it is owned by a nonprofit and if housing is offered to non-members. Owners must apply to the county assessor for the exemption, but once it is granted, it remains in effect until the property no longer qualifies for the exemption. There is no legislative sunset date for this exemption.

- **ORS 307.480-490 Farm labor camp and child care facility property.** Eligible nonprofits that own or operate a farm labor camp providing housing to current and prospective agricultural workers or a childcare facility for agricultural workers' families may apply

annually for an exemption from property taxes. However, the nonprofit must make a Payment in Lieu of Taxes equal to 10 percent of rental receipts. The property must meet health and fire safety regulations and pass inspection. There is no legislative sunset date for this exemption, and it may apply as long as the property qualifies.

Property Tax Exemptions Requiring Local Adoption. Oregon law also authorizes additional categories of property tax exemptions that require local governments and other taxing entities to take some action in order to enable the exemption. For some taxing entities (such as school districts, parks districts and water districts), the governing body may simply need to agree to allow the exemption on qualifying properties. For jurisdictional governments, such as cities and counties, the governing body may need to adopt the exemption, hold public hearings, designate areas in which the exemption will be granted, develop rules and guidelines, accept applications for exemptions, and administer the exemption program. The specific local action required to enable the exemption varies for each ORS-authorized tax exemption.[7]

Tax exemptions requiring local adoption include:

- **ORS 307.515-527 Low Income Rental Housing.** This law allows for-profit and nonprofit owners of rental housing for households earning no more than 60 percent of median family income to apply for a 20-year property tax exemption. The property must be offered for rent or held for developing low-income housing. The value of the exemption must be reflected in reduced rents. The exemption may not be applied retroactively to for-profit corporations. These provisions require local governments to develop and adopt policy standards and guidelines to be used to assess applications, determine eligibility, and approve exemptions. The governing body may charge a fee for accepting and processing applications, and it may require property owners to submit renewal applications over the life of the exemption, if so specified in the local policies. This enabling legislation has been extended multiple times and will now sunset in 2020 unless extended further.

- **ORS 307.540-548 Nonprofit Corporation for Low-Income Housing.** This law allows nonprofit owners of rental housing for households earning no more than 60 percent median family income to apply for property tax exemption. The property must be offered for rent or held for developing low-income housing. The value of the exemption must be reflected by tenant benefits (including, but not limited to, rent reductions). If the nonprofit is a general partner and is responsible for day-to-day operations, the property may be eligible. A nonprofit with leasehold interest may be considered the property purchaser if the full value of the exemption is reflected in reduced rents. The property owner must apply for the exemption and submit an annual application for renewal for every year the exemption is sought. The governing body may charge a fee for accepting and processing

[7] Each taxing district is only authorized to exempt a property from its own share of property taxes. However, if the sum of the rate of taxation of all the taxing districts that agree to the exemption equals 51 percent or more of the total combined rate of taxation for the property, then 100 percent of the taxes may be exempt, if the taxing district that initially adopted the exemption so requests. Typically, gaining a full exemption requires cooperation among two or more taxing districts.

applications. The exemption may be received as long as the property qualifies, or until the legislative sunset date, whichever comes first.

- **ORS 307.600-637 Multiple-Unit Housing.** This law allows owners of multiple-unit housing to apply for a 10-year property tax exemption if they are located in locally-designated district, such as core urban areas or transit districts. If the exemption is established to provide exemptions for affordable housing, the designated area may be an entire city or county. However, to qualify for an affordable housing exemption, the property must be subject to a low income housing assistance contract with a government entity. Local governments must designate an area for exemptions, develop and adopt policy standards and guidelines to be used to assess applications, determine eligibility, and approve exemptions. The governing body may charge a fee for accepting and processing applications, and it may require property owners to submit renewal applications over the life of the exemption, if so specified in the local policies. The sunset for these provisions was extended to 2022, at which point exemptions will end, unless the sunset is extended further.

Two categories of tax exemptions that require local adoption but may be less relevant to small cities and rural areas are as follows:

- **ORS 307.651-687 Single-Unit Housing in Distressed Urban Areas (cities only).** This law allows owners of new construction with one or more qualified single-family dwelling units with a market value no more than 120 percent of median sales price for the area to apply for a 10- year property tax exemption, if the property is located within a distressed urban area. The sunset for this exemption occurs in 2025, unless further extended.

- **ORS 307.841-867 Vertical Housing in Development Zones**. This law allows cities or counties to designate an area in a city or unincorporated urban area as a vertical housing development zone to encourage the development of new multi-story projects in a core urban area or a transit oriented area. Residential properties within that zone may apply for a partial property tax exemption.

How tax policies and regulations affect housing choice. As evidenced above, Oregon allows tax exemptions to support affordable housing development—but these exemptions may be difficult to obtain for certain types of housing developments. The projects that typically can obtain exemptions include projects that are clearly owned by nonprofit entities such as Single Asset Entities for a HUD 202 project (ORS 307.130-162), farmworker housing projects (ORS 307.480-490 Farm labor camp and child care facility property), tribal housing (ORS 307.181), and Housing Authority projects (ORS 307.092). Other types of housing developments may have trouble obtaining exemptions or may be prohibited from doing so. Specifically,

- The LIHTC program is one of the most significant resources for affordable rental housing. LIHTC projects typically are not granted an exemption under existing statewide exemptions because the ownership entity, the limited partnership, is a for-profit corporation. However, if a Housing Authority is a "general partner, limited partner, director, member, manager or general manager" in a LIHTC project, the property is exempt from property tax under ORS 307.092.

- Local jurisdictions can grant exemptions to LIHTC projects by adopting adopts ORS 307.515-527 or ORS 307.540-548, However, the appetite for local tax exemptions is likely to be influenced by the existing level of revenue generation with in a city or county. Through two voter-approved ballot measures (5 and 50, passed in 1990 and 1997, respectively), Oregon limited the amount of property taxes that can be generated locally. Jurisdictions which have little private property (e.g., because much of their land is federally-owned) may be poorly positioned to approve tax exemptions. Two nonentitlement jurisdictions currently provide locally-adopted tax exemptions under ORS 307.515-527 Low Income Rental Housing, La Pine and Prineville.

- Oregon's existing tax exemptions do not incentivize the development of mixed-income communities. Instead, they limit exemptions to properties owned by specific entities (e.g., tribes and housing authorities) or to households earning 60 percent of median family income or less.

The challenges presented by the state's tax policies were identified by stakeholders surveyed for the AI, who ranked "State tax policy that promotes local government reliance on property taxes" as the 6th highest-rated barrier to housing choice among 51 potential barriers. The reliance on local property taxes, combined with a lack of effective statewide exemptions, increases the cost of operating subsidized housing. The complexity of obtaining an exemption was raised by stakeholders interviewed for the AI who noted that the process may discourage developers from outside of the state from developing in Oregon, therefore limiting the overall capital available for affordable housing development.

Three bills in the state legislature could provide some smaller adjustments that help remedy aspects of these challenges:

- HB 3082 would allow local jurisdictions to adopt a provision allowing properties where existing residents' incomes rise to as high as 80 percent median family income to remain tax exempt;

- HB 2690 would exempt from property taxation land acquired and held by nonprofits for building residences to be sold to individuals whose income is not greater than 80 percent of area median income; and

- HB2610 would add farmworker housing to the types of property receiving agricultural property tax exemptions.

Oregon may want to look to the State of Colorado, which has exemption provisions that apply statewide and do not require local hearings, rules or guidelines (C.R.S. 39-3-112 (2014)). Colorado's exemptions explicitly benefit housing for seniors, persons with disabilities, single-parent households, transitional housing providers and providers of housing to extremely low income households.

Other Regulations that Affect Housing Provision

Barriers to housing choice created by state laws can extend beyond regulations that are directly related to housing production. This section reviews regulations that are not directly related to the construction of housing yet may affect the provision of housing in other ways. These topics were raised by stakeholders in the interviews and surveys conducted for the AI and include:

- Fair housing protection of housing choice vouchers holders/Section 8 and recipients of other local, state or federal rent assistance under and the Housing Choice Landlord Guarantee Program;
- Laws related to past evictions, criminal background checks and affecting re-entry housing options;
- The state's Qualified Allocation Plan (QAP) for Low Income Housing Tax Credit (LIHTC) properties;
- Notice period for evictions; and
- Restraining orders.

Housing Choice Voucher holder protections and Landlord Guarantee Program.

Oregon state fair housing laws have historically contained protection from "source of income"—but this definition excluded income related to federal rental subsidies. This was perceived as a barrier to housing choice in the past and, because voucher holders are more likely to be racial and ethnic minorities and/or have a disability, the law could have a disparate impact on the protected classes.

This potential barrier is included here because of a recent change in state law which mitigated the fair housing concern. As of July 1, 2014, the State of Oregon expanded its source of income protections in state fair housing law to include income from Housing Choice Vouchers (HCV) or Section 8, or other local, state or federal programsWith this expansion, the state created the Housing Choice Landlord Guarantee Program to mitigate losses that landlords might experience from unpaid rent or damages caused by tenants as a result of their occupancy under the HCV program. Through the program landlords are entitled to up to $5,000 in reimbursement of damages after a court order for the damages claimed. As of March 31, 2015, seven claims have been paid totally approximately $31,000.

The state has partnered with a number of organizations to ensure that residents and landlords are aware of the new protection. These include the foundation Meyer Memorial Trust; organizations which advocate on behalf of tenants including Community Alliance of Tenants, Oregon Law Center, and Lane County Legal Aid; organizations which represent landlords including Multifamily Northwest, Oregon Rental Housing Association, and the Rental Housing Alliance Oregon; and Public Housing Authorities and their representative, Oregon Housing Authorities; as well as other organizations and agencies such as the Bureau of Labor and Industries (BOLI) and the Fair Housing Council of Oregon (FHCO). Training consists of educating landlords and tenants, including public housing authorities; housing unit pre-inspection programs; tenant navigation services; and deposit assistance.

Criminal histories, evictions and credit blemishes. A consistent theme among stakeholders surveyed and interviewed for this AI was the lack of housing options for persons with past criminal histories. Onerous look back periods for criminal charges of rental applicants was the second-highest housing practice barrier identified by stakeholders surveyed in this AI. A secondary concern was lack of housing for residents with more minor infractions—e.g., credit blemishes or prior evictions.

Consideration of certain criminal charges or convictions may impede housing opportunities for post-incarcerated members of protected classes commonly overrepresented in prison populations, such as persons with mental illness and African American males. According to a 2014 State of Oregon Legislative report, approximately 50 percent of Oregon's prison population in 2012 needed mental health treatment (48% of male inmates and 80% of female inmates). Fifteen percent of all male inmates and 44 percent of all female inmates were diagnosed with severe mental illness.

ORS Chapter 144 provides the procedures and conditions for parole and post-prison supervision. Section 144.102 requires that for a minimum of six months after release, a person must reside in the county they were last supervised or, if the person was not supervised at the time of the offense, in the county the person lived at the time the offense. The statute states:

- When a person is released from imprisonment on post-prison supervision, the board shall order as a condition of post-prison supervision that the person reside for the first six months after release in the county that last supervised the person, if the person was on active supervision as an adult for a felony at the time of the offense that resulted in the imprisonment. (ORS 144.102.7a)
- If the person was not on active supervision as an adult for a felony at the time of the offense that resulted in the imprisonment, the board shall order as a condition of post-prison supervision that the person reside for the first six months after release in the county where the person resided at the time of the offense that resulted in the imprisonment. (ORS 144.102.7b)

The residency condition requirement can complicate the process of finding housing upon re-entry in housing markets where housing supply is limited and/or costly. To the extent that certain residents are disproportionately likely to be incarcerated, the residency requirement may disproportionately impact housing choice.

The statute allows for a waiver of this residency condition if the person being released meets at least one of the following conditions. Per the Department of Corrections Administrative Rule 291-019-0100, offenders must receive permission from supervising officers before moving between counties. Conditions for moving include:

- Proof of employment with no set ending date in a different county;
- The person is found to pose a significant danger to the victim residing in the county, or a victim or victim's family is found to pose a significant danger to the person;

- The person has a family member residing in a different county who can help with rehabilitation and post-prison supervision;
- The person is required to participate in a treatment program that is not available in the county;
- The person requests release to another state; or,
- The board finds other good cause for the waiver.

The last condition could encompass lack of housing options; however, a waiver that specifically addresses limited housing choice may be a more effective way in preventing disproportionate impact on certain protected classes.

It is common for criminal histories to affect the housing options of residents long after they have fulfilled their sentence. Beginning in January 2014, ORS 90.300 changed how landlords may treat past evictions and criminal histories of rental applicants. Landlords may not consider a previous eviction filing if the action was dismissed or won by the applicant. This does not apply if the eviction filing is still pending at the time the applicant submitted the application. Specifically,

- Landlords may not consider a previous eviction filing that resulted in an eviction against the applicant that occurred five years or more before the time the applicant submitted the application.
- Landlords may not consider a previous arrest that did not result in a conviction. This does not apply if the arrest resulted in charges for criminal behavior that have not been dismissed at the time the application is submitted.
- Landlords may consider an applicant's criminal convictions and charging history if the conviction or pending charge is for conduct that is a:
    - Drug-related crime;
    - Person crime;
    - Sex offense;
    - Crime involving financial fraud, including identity theft or forgery; or,
    - Any other crime that could adversely affect the landlord's property, or the safety and wellbeing of other residents.

Additionally, Oregon law allows people charged or convicted of certain minor offenses to apply to set aside, or expunge, their conviction. Convictions for serious crimes cannot be set aside.

It is important to note that although the law limits the "look back" period for evictions to five years, it does not provide a time limit for criminal charges.

Qualified Allocation Plan (QAP). In the stakeholder survey conducted for the AI, stakeholders were asked about the extent to which state scoring preferences (Qualified Allocation Plan or QAP) for the Low Income Housing Tax Credit (LIHTC) program created barriers to housing choice. Stakeholders rated this barrier as moderate, rating it 4.1 out of 9,

with 9 representing the most significant barrier. Thirty-seven percent of stakeholders said the QAP created strong or significant barriers to housing choice. Many of these respondents offered open-ended comments about why the QAP was a challenge. The comments fell into two primary categories:

- Challenges in development and management of subsidized affordable housing in rural areas. Although the division of competitive funds into separate pools (i.e., urban and rural projects do not compete against one another) assures that small cities and rural areas do not compete against applications from areas with more resources and greater development capacity, some stakeholders recommend that the state take an additional step and consider developing a few alternate program guidelines that apply exclusively to Balance of State projects. The alternate guidelines might affect both how applications are scored within the pool and also how projects are underwritten once they have been selected.

- Concern was expressed about the geographic scale of how the level of saturation of LIHTC/affordable housing is calculated. If there's a subsidized housing project in a town 30 miles away, the area can be considered "saturated," even though residents don't benefit from the housing 30 miles away.

These concerns were shared with the state administrators of the LIHTC program. State administrators discussed recent changes in the QAP that had the intent of equalizing the playing fields for urban and rural projects. For example, metropolitan and rural areas do not compete against one another for funding and there is no minimum unit requirement that prevents small scale projects from receiving funding (the state has funded projects of between 6 and 8 units). Balance of state awards have recently made up more than one-third of all projects receiving funding. Finally, state scoring does not require applicants to maintain their developments with contractors (which may be hard to find in rural areas); the state simply evaluates capacity as part of the award consideration.

Eviction notices. Oregon's eviction requirements are fairly typical: Landlords must give tenants who have resided in a property for less than one year a 30 day notice of eviction; the requirement is 60 days for longer-term tenants. Longer leases (1 year+) are reportedly becoming less common in the state due to rising rental prices. Lower income households are more likely to be adversely affected by shorter-term leases and practices of no-cause lease terminations because landlords have a greater incentive to raise prices on low rent properties (the market is generally tighter for more affordable units). This could disproportionately affect protected classes who are more likely to be low income—racial and ethnic minorities, persons with disabilities and female-headed households with children.

Restraining orders. Restraining orders against persons who are harassing and/or threatening non-related parties are reportedly difficult to obtain. The state allows two types of restraining orders: 1) Stalking, which sometimes can be challenging to obtain due to First Amendment (free speech) protections; and 2) Protections for elderly persons and persons with disabilities.

Some stakeholders have recommended modifications of the current law to allow for restraining orders against residents who are harassed because of their race or ethnicity (and potentially other protected classes).

Public Housing Authority Housing Provision

As part of the AI, public housing authorities (PHAs) in nonentitlement areas were asked to complete a survey on barriers to housing choice and their practices promoting equitable and fair housing choice. Fourteen PHAs responded to the survey and represented an equal mix of rural and semi-urban areas in Oregon.

Housing supply and landlord practices. Overall, PHAs reported that it is difficult (69%) or very difficult (31%) for a voucher holder to find a unit that accepts Section 8. PHAs identified that the following four groups face greater challenges than others in finding rental units that accept vouchers:

1) Residents with criminal backgrounds (69%);

2) Large families (46%);

3) Persons with disabilities (31%); and

4) Single person households (31%).

Despite concerns about housing condition in the non-PHA stakeholder survey, (see Section V), Housing Quality Standards were not identified by PHAs as a barrier in finding landlords to participate in the Section 8 voucher program (94% of PHAs said the standards were not a problem).

PHAs identified the following practices of landlords as being the top barriers to housing choice:

- Onerous "look back periods" for criminal charges of rental applicants;
- Refusal to provide lease agreements or information on rentals in accessible formats for persons with disabilities; and
- Refusal to allow assistance/emotional support animals.

PHAs were asked if public support or opposition affected the siting and supply of public and other affordable rental housing in their community. Some PHAs described environments welcoming of affordable housing: "There is generally decent public support depending on the locality with which we work. We have experienced lots of support for siting affordable housing developments."

Some linked affordable housing opposition to Housing Choice Voucher holder protected status: "Landlords have responded to protected status by increasing screening criteria, requiring three times income and charging water and sewer. Landlords know these 'screening techniques' will effectively rule out renting to Section 8 participants."

When asked directly about the new source of income regulation, 42 percent of PHAs said that this change has led to *more landlords* accepting vouchers, while 58 percent said there has been *little or no change* in the number of landlords accepting vouchers.

Concentration of units and tenants. The majority of PHAs (83%) said that certain racial or ethnic groups are not more likely to reside in certain developments. One reason that a PHA gave for why certain racial or ethnic groups are more likely to reside in certain developments was "People are most comfortable surrounded by people like themselves." Another was related to the types of programs used to obtain housing: "Certain developments that are restricted to a particular workforce (i.e., Rural Development 514) more often attract certain racial groups and cultural preferences."

PHAs were asked about the primary reasons their developments are located where they are. Sixty-nine percent of PHAs identified two main factors: historical patterns and developments were built where land was available. Other factors identified included: land cost (31%), proximity to services (23%), proximity to transit (15%), and unit were created through redevelopment (15%).

Sixty percent of PHAs said there is little or no difference between the neighborhoods in which their tenants live compared with the composition of the community overall. Among PHAs that identified differences, 40 percent said that tenants were more likely to live in mixed income neighborhoods and 40 percent said tenants were more likely to live in neighborhoods with older housing. Other differences included that tenants were more likely to live in neighborhoods that are: low income; racially mixed; or racially segregated.

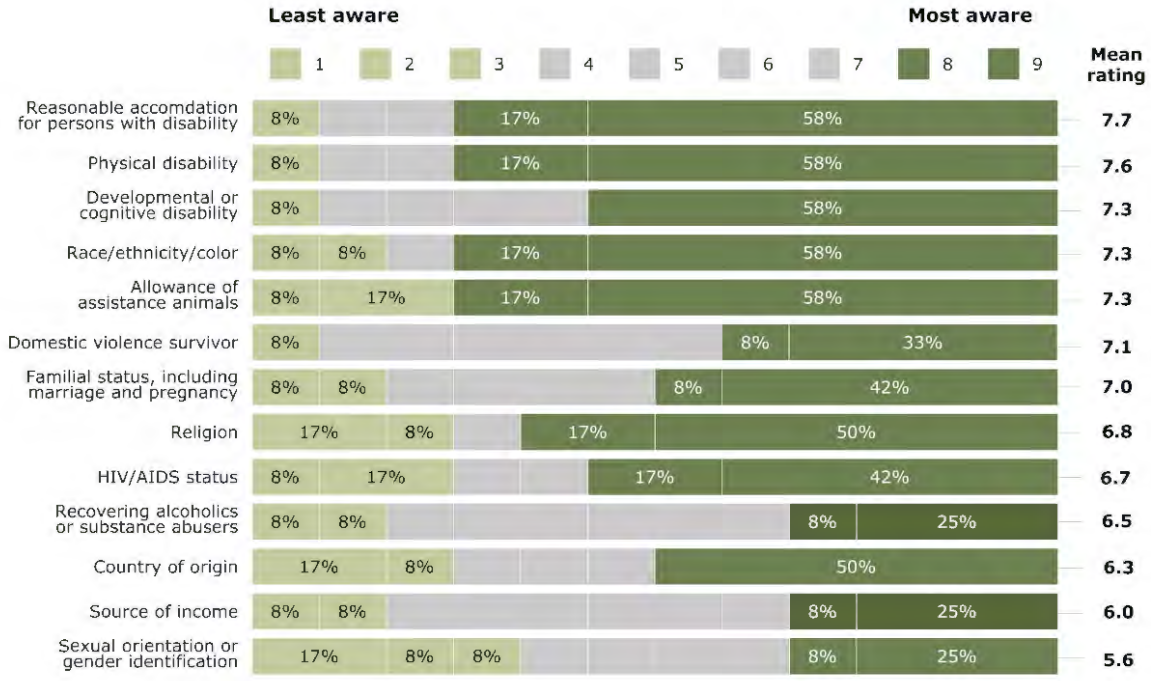
The majority of PHAs (62%) said that voucher holders were more likely to live in low income neighborhoods than compared with the composition of the community overall. Voucher holders were also more likely to live in mixed income neighborhoods (38%). Thirty-one percent of PHAs said that there is little of no difference between the neighborhoods in which voucher holders live compared with the composition of the community overall.

Only one PHA said that LIHTC properties in their community are located in racially or ethnically segregated neighborhoods. The PHA identified the reasons why this is case: historical patterns, land costs are too high in other areas of the community, proximity to transit, proximity to services, developments were built where land was available, and redevelopment of existing complex.

Barriers to housing choice. When asked about federal, state and locally created contributors to fair housing choice, most PHAs identified none. Land costs and community opposition were the most common barriers described: "Many affordable housing developments end up being developed in area of poverty concentration, possibly due to the low cost of land and reduced neighborhood opposition."

PHAs were asked which housing protections their clients are most and least aware of. Overall, PHAs reported that their clients were well aware of most housing protections. The protections that their clients were least aware of are: national origin(average 6.3), source of income (average 6.0), and sexual orientation or gender identification (average 5.6).

Figure III-1.
Client awareness of fair housing protections



Source: BBC Research & Consulting 2015 Oregon PHA Survey.

PHAs were asked to give examples of implicit discrimination occurring in their service area and/or against their clients. Examples included:

- Source of income discrimination for families with vouchers;
- Income three times the rent used as screening criteria;
- Resident not wanting low income renters in their neighborhood;
- Complaints to law enforcement or other government agencies by neighbors; and
- Private landlords seem to have implicit discrimination against clients with mental illness.

The majority of PHAs (77%) reported that there is adequate information, resources and training on fair housing available in their community. PHAs that reported inadequate available information said the following resources would be helpful: more frequent landlord training, training for onsite private property managers, and general training resources free of charge for landlords.

When asked what fair housing activities PHAs use to inform their communities about fair housing laws, the most common were: 1) listing fair housing information on websites and 2) providing voucher or rental unit applicants with fair housing information.

A fewer number of PHAs participate in the following activities: sponsor fair housing education and outreach events of residents (2 PHAs), hold or sponsor fair housing training (3), and support fair housing month activities (1).

Policies, practices and fair housing activities. All but one PHA reported giving preferences to certain resident groups. Preferences were wide ranging and included: homeless, elderly/disabled on a fixed/no income, victims of domestic violence, terminal illness, families working on training or education programs, applicants that live in the PHAs jurisdiction, transitional housing graduates, families, local county preference, public housing reasonable accommodations, rent burden, involuntary displacement, public housing residents who need to move due to medical or family change, and residents selected to participate in transitional housing sites where the PHA has reviewed and approved the supportive services being provided.

Adaptive modifications for voucher holders and mobility counseling—to programs that can be important in improving housing opportunities—were less common than preferences:

- The majority of PHAs (92%) do not provide funds for adaptive modification of Section 8 funded units.

- The majority of PHAs (67%) do not have a mobility counseling programs for voucher holders. Of the four PHAs that do provide mobility counseling, two said their program is very effective, one said their program is moderately effective, and one declined to say.

What would you change?

When asked what they would change to increase access to housing for all types of residents in Oregon, PHAs said:

- "Create policies that encourage landlords to limit rent increases and maintain rents at affordable levels;"

- "Create a fund for move in costs such as deposits;" and

- "Have a hotline number for folks to call to discuss situations when they think they are being discriminated against where they can be either educated about what are protected classes versus being discriminated based upon other issues, or they could be assisted with completing an appropriate discrimination complaint right away. Some folks do not complete the complaint because they cannot get immediate answers."

SECTION IV.
Stakeholder Consultation

This section presents the findings from the stakeholder consultation elements of the Analysis of Impediments. Unless otherwise noted, the findings reflect the opinions and experiences of stakeholders whose agencies or organizations operate or provide services in Oregon's nonentitlement communities.

Participation Opportunities

All interested stakeholders had the opportunity to respond to a comprehensive online survey designed to identify public and private practices and policies that may constitute or contribute to impediments to fair housing choice in Oregon's nonentitlement areas. As needed, the study team interviewed subject matter experts to validate data findings and explore issues in more depth. To lend local expertise and perspective to the data and policy analyses, the team convened a Stakeholder Advisory Committee, drawn from agencies and organizations in the public, private and nonprofit sectors.

Stakeholder survey. The stakeholder survey was available online from January 15 to February 28, 2015. The stakeholder survey included the following topics:

- Current housing market and needs;
- The degree of seriousness of 51 potential barriers to fair housing in the local areas served;
- Availability and need for fair housing training, resources and assistance at the local level;
- Housing opportunities for persons with disabilities; and
- Opportunities for the State of Oregon to affirmatively further fair housing.

A total of 485 individuals from across the state participated. Overall, 280 of the respondents operate or provide services either statewide or in nonentitlement areas and 205 provide services solely in one of Oregon's entitlement communities. Only data from stakeholders serving nonentitlement communities are included in this analysis.

Key person interviews and focus groups. To supplement the stakeholder survey, the study team conducted 15 in-depth interviews with subject matter experts on topics related to affordable housing; housing needs and preferences of persons with disabilities; housing needs of post-incarceration individuals, farmworkers, and tribes; and rural housing markets and housing development. Stakeholders in Ontario, Coos Bay and Klamath Falls participated in focus groups.

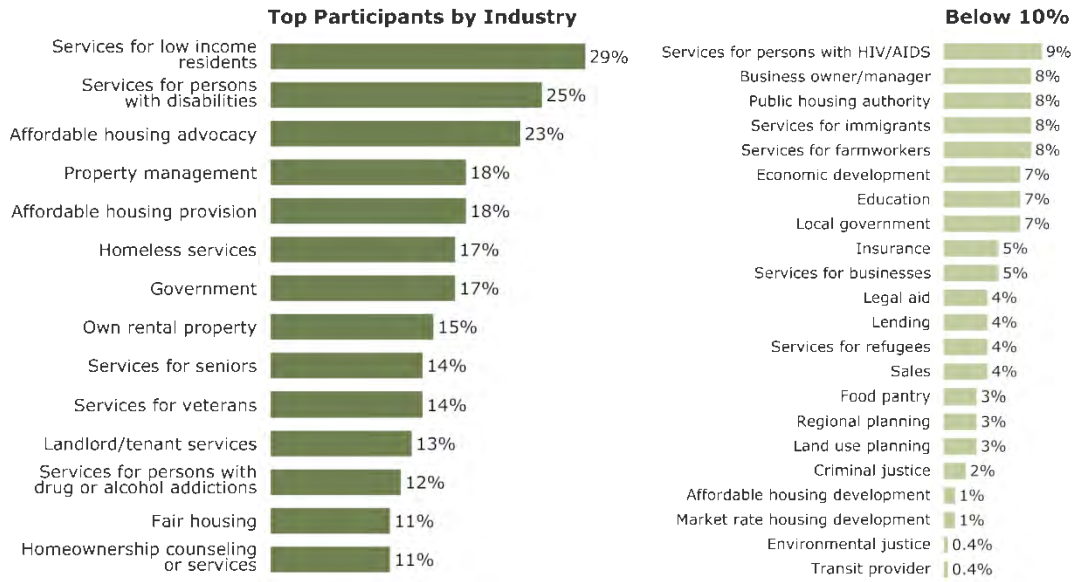
Stakeholder Advisory Committee. Over the course of the study period, 20 Oregon experts in fields related to housing, human services and advocacy participated in a Stakeholder Advisory

Committee. Members engaged in thoughtful dialogue on key policy issues in a series of conference calls. Members reviewed and discussed interim findings related to concentration of members of protected classes; lending data; State policies and practices associated with development or preservation of affordable housing and housing that meets the needs and preferences of persons with disabilities; community and housing re-entry; and potential impediments to fair housing. Each conversation focused on the state's nonentitlement areas.

Industry and Organization Type

Stakeholder participants serving Oregon's nonentitlement communities represent a diverse range of organizations, as shown in Figure IV-1. These include housing development and property management, economic development, criminal justice, planning, advocacy and services for special needs populations. One in four respondents work in an agency that provides services for persons with disabilities.

Figure IV-1.
Type of Industry, Organization



Note: n=280 stakeholders serving nonentitlement communities. Numbers add to greater than 100 percent due to multiple responses.

Source: BBC Research & Consulting from the 2015 Oregon Stakeholder Survey.

Recent Changes in Local Housing Markets

To provide context for stakeholders' assessments of fair housing locally, survey respondents shared their perceptions of the most significant changes in the housing market in the area(s) they serve in the past five years and the population segments most impacted by these changes. Most stakeholders described changes in housing markets driven by increased demand for rental housing.

- **Increased demand for affordable rental housing.** By far, the majority of stakeholders' characterizations of the most significant changes in local housing markets related to an increased demand for rental housing, and affordable rental housing in particular. Stakeholders associated the increased demand with several factors, including

foreclosures shifting households into the rental market; lack of product for first-time homebuyers; stricter lending requirements for homeownership overall (e.g., size of down payment, credit scores); flat or falling household income; and population growth.

Rising cost of rental housing and low vacancy rates. The increased demand for rental housing has resulted in very low vacancy rates in some areas, increasing rents and increases in the number of applicants for a given unit. In many places, HUD's Fair Market Rents have not kept pace with the rental market. Prospective tenants with criminal histories, imperfect rental or credit histories or with incomes less than three times the monthly rent face increased difficulty in securing a unit, as other candidates may be less "risky" on paper to a landlord. A few stakeholders attributed rising rent to passage of Oregon's Housing Choice Act of 2013.

Policy issues. Stakeholders raised several policy issues in their descriptions of significant changes in local housing markets. These include:

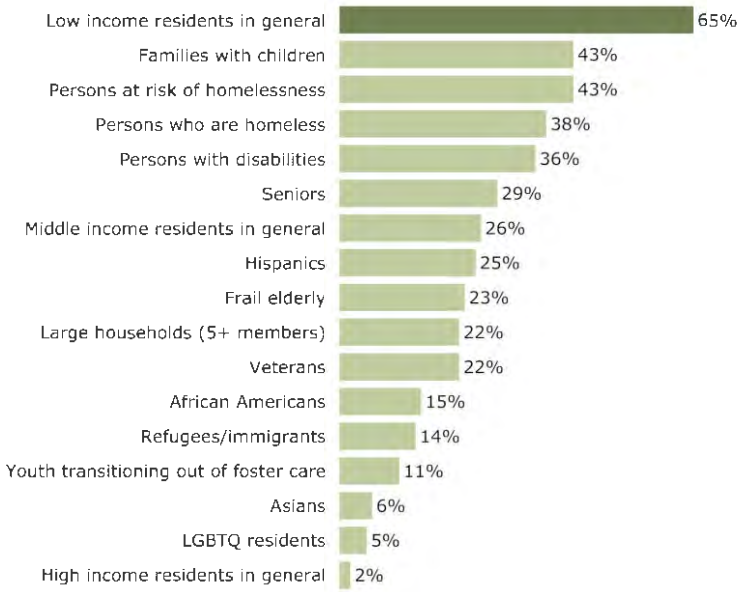
- Housing Choice Act of 2013 ("Section 8 Bill");
- Increased number of tenant requests for companion animals/assistance animals;
- Increased oversight by the (federal) Consumer Finance Protection Bureau and other consumer lending policies; and
- Changes in federal funding priorities (e.g., decreased HOME funds, increased allocation of funds to homeless veterans).

Population segments most impacted. As shown in Figure IV-2, nearly two-thirds of stakeholders report that low income residents in general are most impacted by the changes in the housing market, followed by families with children (43%); persons at risk of homelessness (43%); persons who are homeless (38%) and persons with disabilities (36%).

Figure IV-2.
Resident Groups Most Affected by Housing Market Changes

Note:
n=280. Numbers add to greater than 100 percent due to multiple responses.

Source:
BBC Research & Consulting from the 2015 Oregon Stakeholder Survey.



Potential Barriers to Fair Housing Choice

Stakeholders evaluated the degree of seriousness in the communities they serve of 51 potential barriers to fair housing choice. Respondents were asked to rate only those potential barriers of which they considered themselves reasonably knowledgeable. This comprehensive set of potential barriers addressed several aspects related to fair housing choice:

- Location of affordable housing;
- Availability of affordable housing;
- Private and public housing practices;
- Local, state and federal policies and practices; and
- Knowledge of fair housing.

Summary of most serious barriers. Figure IV-3 presents the potential barriers to fair housing stakeholders rated a 5.5 or higher on a scale of 0-9 (where a rating of 0 is "not a barrier" in the community and a rating of 9 is a "very serious barrier" in the community).

Nearly 60 percent of stakeholders consider limited resources to help persons with disabilities transition out of institutional settings to be a serious barrier. This lack of resources is compounded by a lack of housing available for persons with disabilities who wish to leave nursing homes or other institutional settings (the second most serious barrier rated). That a majority of stakeholders viewed these issues as significant barriers means that concern about this issue extends beyond the 25 percent of respondents who serve people with disabilities. Other potential barriers receiving high average ratings by stakeholders include poor condition of some affordable housing; lack of knowledge of some landlords of the Fair Housing Act and new state laws pertaining to Section 8/Housing Choice Vouchers; lack of larger housing units for families; NIMBYism; and onerous "look back" periods for criminal charges.

Figure IV-3.
Summary of Barriers Rated Most Serious by Stakeholders

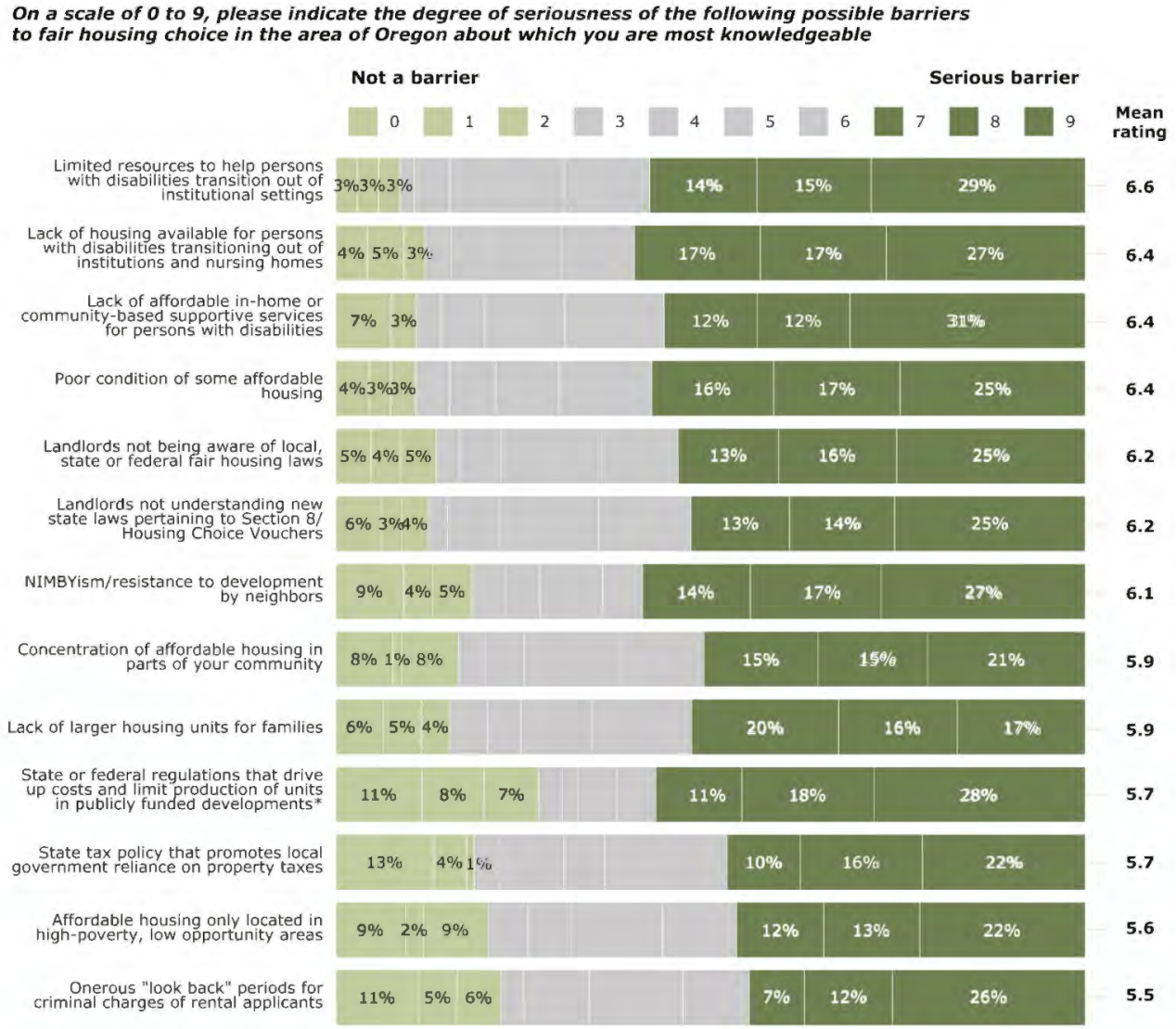
Note:

Barriers shown had average ratings of 5.5 or higher on a 0-9 scale. n ranges from 150 to 202.

Full question text: *State or federal laws, regulations or policies which hold publicly funded/subsidized housing developments to design and constructions standards that exceed those of market rate housing, thus driving up costs and limiting production of units.

Source:

BBC Research & Consulting from the 2015 Oregon Stakeholder Survey.

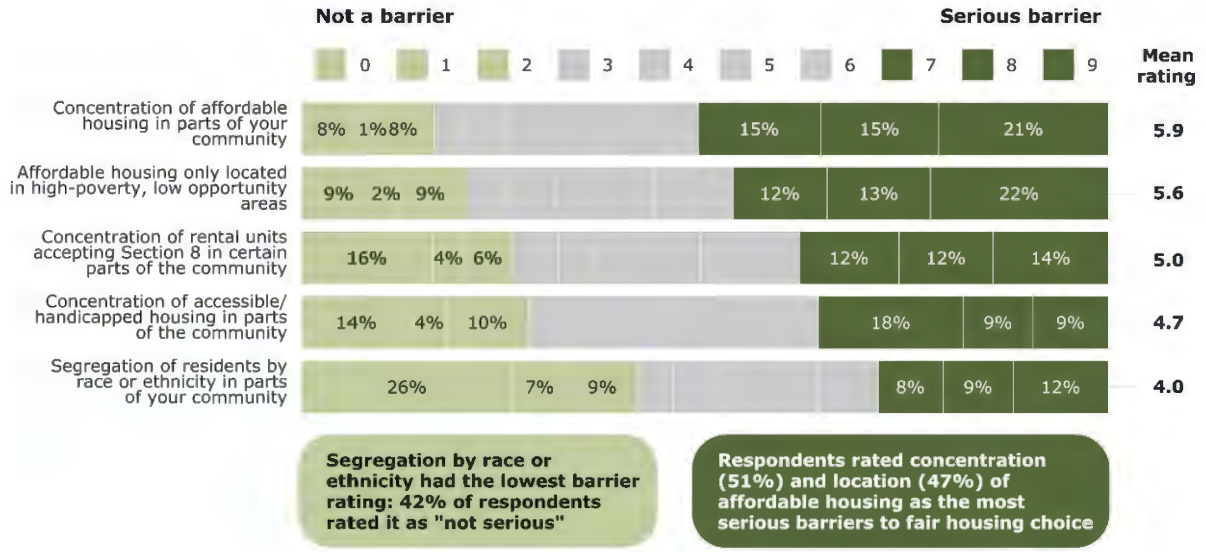


Housing location. Stakeholders rated the degree of seriousness of five potential barriers to fair housing associated with housing location (Figure IV-4). Among them, a concentration of affordable housing in certain parts of the community was the most serious barrier. Segregation by race or ethnicity was considered the least serious barrier in this group. Overall, 29 percent of stakeholders considered racial/ethnic segregation to be a serious barrier in their community (ratings of 7, 8, 9) while serious barrier, versus 42 percent who did not consider segregation to be a barrier (ratings of 0, 1, 2).

For persons with disabilities, particularly mobility impairments, another dimension of housing location is the need for housing located in areas with accessible sidewalks, and, ideally, access to public transportation. In interviews, stakeholders emphasized the linkage between housing and transportation in general, but for persons with disabilities in particular. Some suggested the need for increased coordination between state and local government and the Oregon Department of Transportation (ODOT).

One interview participant described the transportation challenges of those who are not able to get a driver's license because of a lack of documentation. In searching for housing in areas with poor transit, they are limited by a lack of a vehicle. They are faced with limiting their housing search to places where they can reach employment and daily destinations without a vehicle, obtaining rides from friends or family or driving illegally.

Figure IV-4.
Housing Factors that Create Barriers to Fair Housing Choice



Note:

n ranges from 139 to 172.

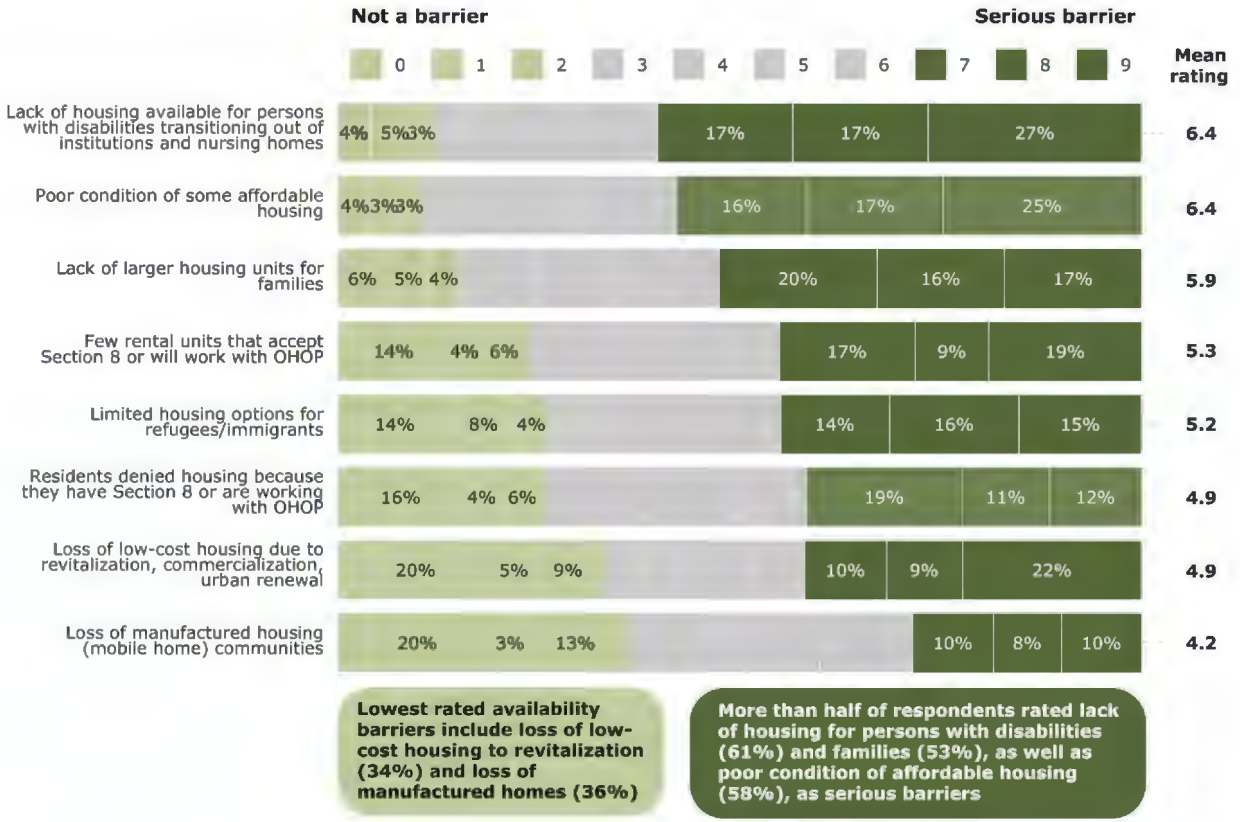
Source:

BBC Research & Consulting from the 2015 Oregon Stakeholder Survey.

Housing availability. Figure IV-5 presents stakeholder ratings of seven potential barriers to fair housing measuring housing availability overall and for particular protected classes. As shown, three out of five stakeholders (61%) consider a lack of housing available for persons transitioning out of institutions and nursing homes to be a serious barrier to fair housing. Nearly the same proportion rate poor condition of some affordable housing to be a serious barrier. Slightly more than half of stakeholders find a lack of larger housing units for families to be a barrier.

Among the housing availability factors rated, most stakeholders did not cite displacement as serious barriers. It may be that policies addressing resident displacement due to revitalization or other municipal projects and loss of manufactured housing communities have been largely effective. Stakeholders evaluated two factors related to Section 8 vouchers: 1) the number of units that accept Section 8 or OHOP vouchers and, 2) denials due to having Section 8 or OHOP assistance. All things being equal, we would anticipate that the relative seriousness of both these measures as barriers to fair housing will fall over time as landlords' knowledge of the Housing Choice Act of 2013 increases. Market forces will continue to impact the availability of units for voucher holders, especially if Fair Market Rents do not keep pace with local conditions.

Figure IV-5.
Barriers to Housing Availability



Note:

n ranges from 118 to 178.

Source:

BBC Research & Consulting from the 2015 Oregon Stakeholder Survey.

Housing practices, including steering and blockbusting. With respect to public and private housing practices, nearly three in five stakeholders considered NIMBYism/resistance to development to be a serious barrier to fair housing. Slightly less than half of stakeholders rated onerous "look back" periods for criminal charges for rental applicants to be a serious barrier. As discussed in Section IV, changes to state law governing how landlords may treat an applicant's criminal history became effective January 1, 2014. In discussing the degree to which criminal history may be an impediment to fair housing, some stakeholders shared that the full impact of the changes in law have yet to be fully realized and that more outreach needs to be done.

In interviews, stakeholders discussed difficulties farmworkers and immigrants face when searching for housing. These include language barriers, especially for those who speak indigenous Central American languages or who do not have green cards or social security numbers. Many do not understand American rental practices such as security deposits, and leases or manufactured home park rules are rarely offered in languages other than English. These challenges increase their vulnerability to discriminatory practices.

Some housing providers make assumptions about Hispanic renters (e.g., that they are low income; do not have documents; or have large families and will bring more family members from Mexico), which further limits access to housing. One interviewee described segregation of Hispanic farmworkers taking the form of labor camps on the outskirts of Woodburn. Another interviewee described segregation by building within a development; one building comprised of white tenants next door to a building comprised of Hispanic tenants.

In interviews, some stakeholders discussed patterns of discriminatory practices against American Indians, including landlord refusals to accept housing vouchers issued by tribal housing authorities.

In focus groups and interviews, several participants raised particular challenges faced by prospective tenants who are domestic violence survivors. In some cases, the prospective tenant may be a former homeowner, so no prior rental history is available. Others, particularly in very small communities, are "known" survivors, and some landlords refuse to rent to these applicants because they "know" that the abuser will return and damage the unit or that the tenant will disrupt other residents due to their domestic situation. From these discussions, it was clear that neither local landlords nor survivors are aware of the state's applicable fair housing protections.

From the perspective of some interviewees, NIMBYism related to low income or farmworker housing is driven by fear and rumor. One gave the example of a project proposed in Independence that neighbors feared would yield crowded schools and gang activity. Neither steering nor blockbusting was raised by stakeholders as significant barriers. In interviews, stakeholders surmised that affordability was the primary driver behind neighborhoods shown to potential homeowners rather than steering.

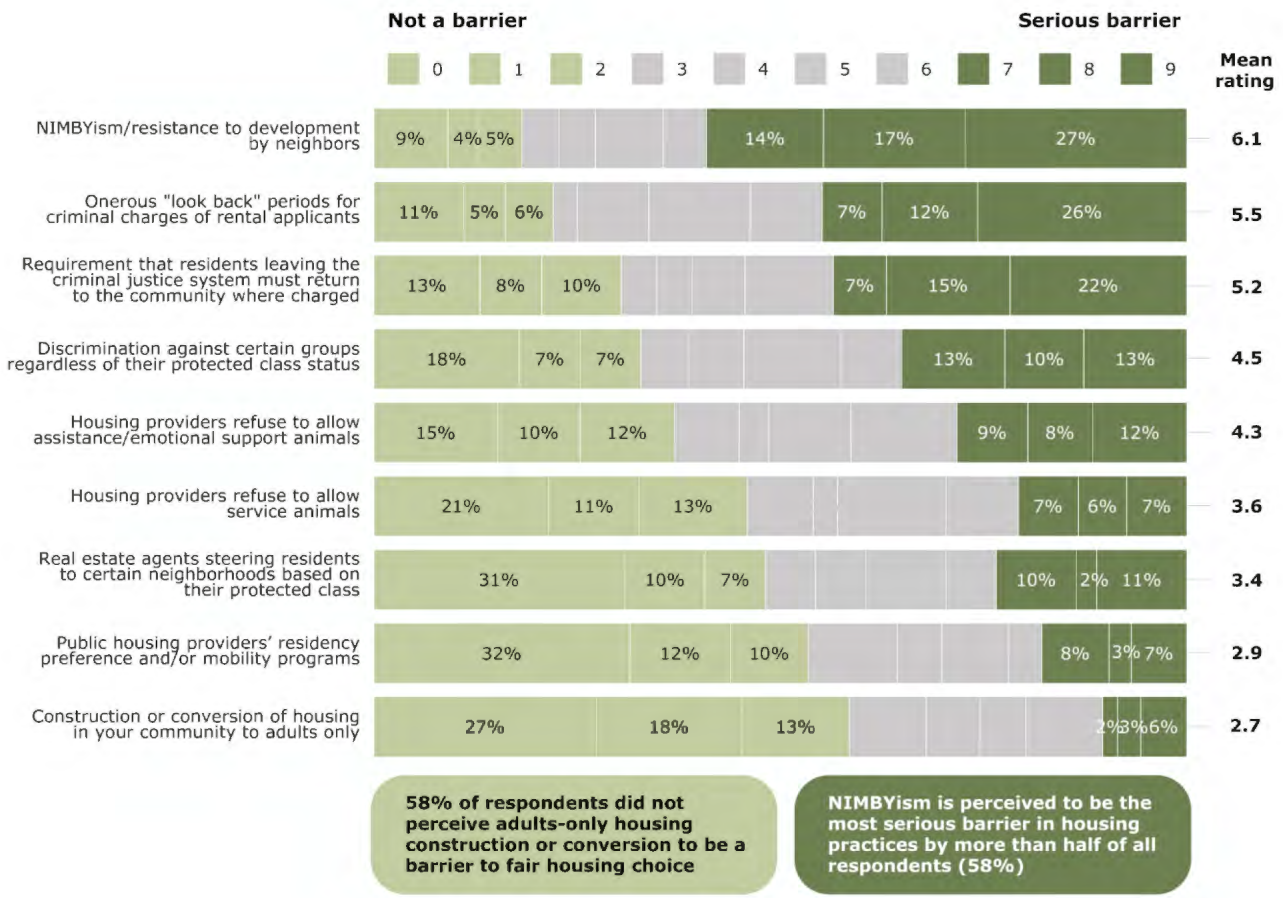
Figure IV-6.
Housing Practices that Create Barriers to Fair Housing Choice

Note:

n ranges from 73 to 138.

Source:

BBC Research & Consulting from the 2015 Oregon Stakeholder Survey.



State and federal policies. Stakeholders evaluated the degree to which 10 state or federal policies create barriers to fair housing choice in Oregon's nonentitlement areas. The top four policy barriers considered most serious all influence housing affordability, either by raising development costs or limiting options for local communities to pursue a broad range of policies to develop or preserve affordable housing.

As shown in Figure IV-7, nearly 60 percent of stakeholders perceive "State or federal laws, regulations or policies which hold publicly funded/subsidized housing developments to design and constructions standards that exceed those of market rate housing, thus driving up costs and limiting production of units" to be a very serious barrier to fair housing choice in the state's nonentitlement areas. Nearly half of stakeholders (48%) consider the state's tax policy that promotes local government reliance on property tax to be a very serious barrier. Both of these policies increase the cost of developing and providing housing, perhaps exacerbating the economic impacts of hot rental markets or decreasing the potential for less dense, rural affordable housing developments to pencil out.

The state's prohibition of inclusionary zoning and limitations on General Obligation bond use constrain policy choices of local governments. While these policies may not be appropriate for every housing market, the state's limitations deny local governments the option of pursuing these policies to address particular local market failures.

Where state agencies have been successful, in the experience of stakeholders, is minimizing loss of low-cost housing through direct agency actions. Nearly half of stakeholders do not think loss of such housing due to state action is a barrier.

In focus groups and interviews, stakeholders underscored the importance of developing state policies with an eye to capacity differences between rural counties and agencies and those located in more populous or affluent areas. For example, a Department of Environmental Quality program funds housing rehabilitation in certain situations, but participation requires a full time staff member to manage the program; few rural counties can afford such a staffing commitment and are therefore unable to participate. Other issues related to a lack of local capacity included requirements related to program reporting and outreach requirements, many of which are not relevant or are inefficient for small communities.

In interviews and SAC meetings, stakeholders discussed conflicts between community need for housing for persons with disabilities and limitations placed on the percentage of units that can be allocated—20 percent—as part of the state's policies to comply with the Supreme Court's *Olmstead v. L.C.* decision. Participants thought that the 20 percent threshold could be relaxed in rural communities and still achieve the goal of providing integrated housing opportunities.

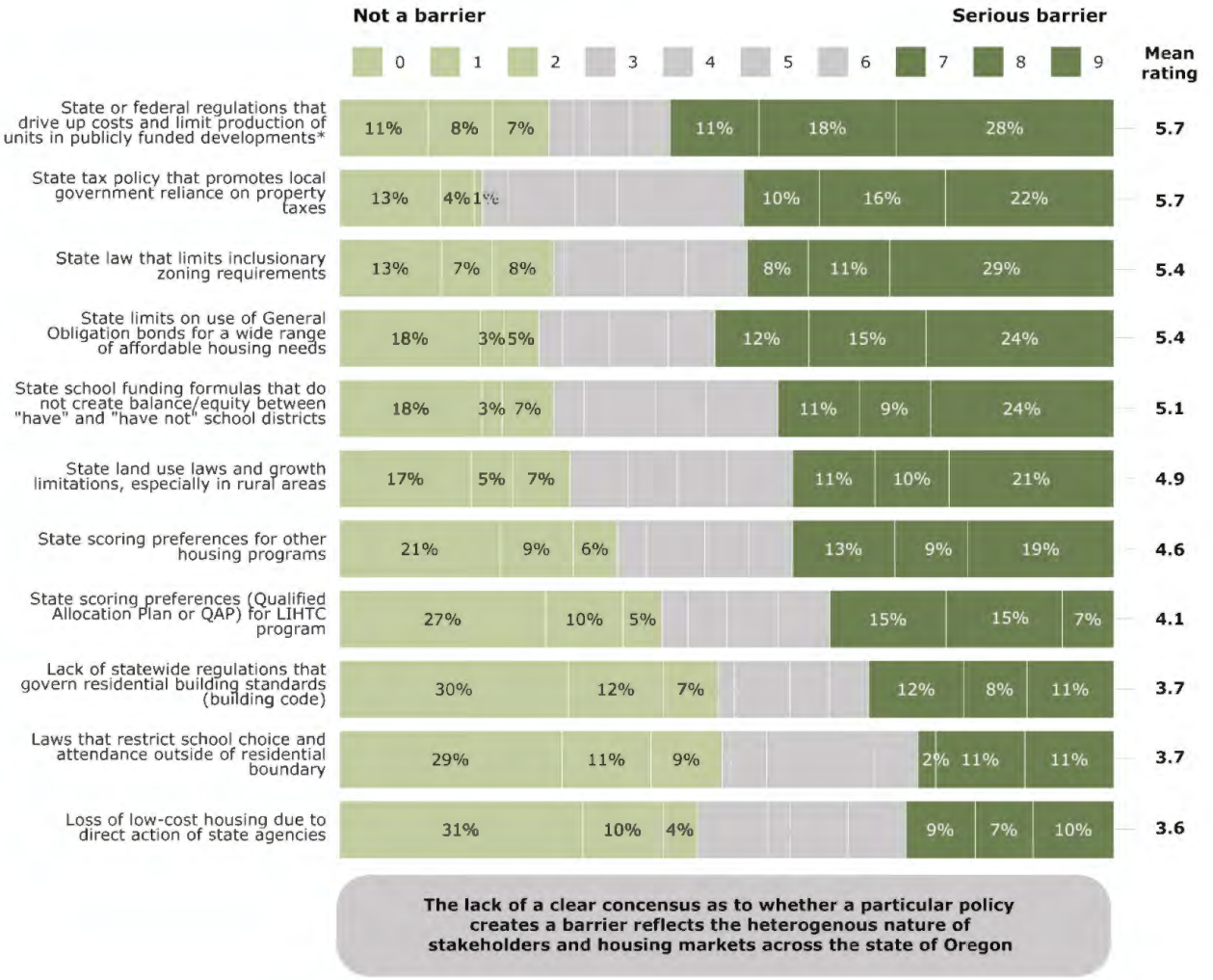
Figure IV-7.
State and Federal Policies that Create Barriers to Fair Housing Choice

Note:

Full question text: *State or federal laws, regulations or policies which hold publicly funded/subsidized housing developments to design and constructions standards that exceed those of market rate housing, thus driving up costs and limiting production of units.

Source:

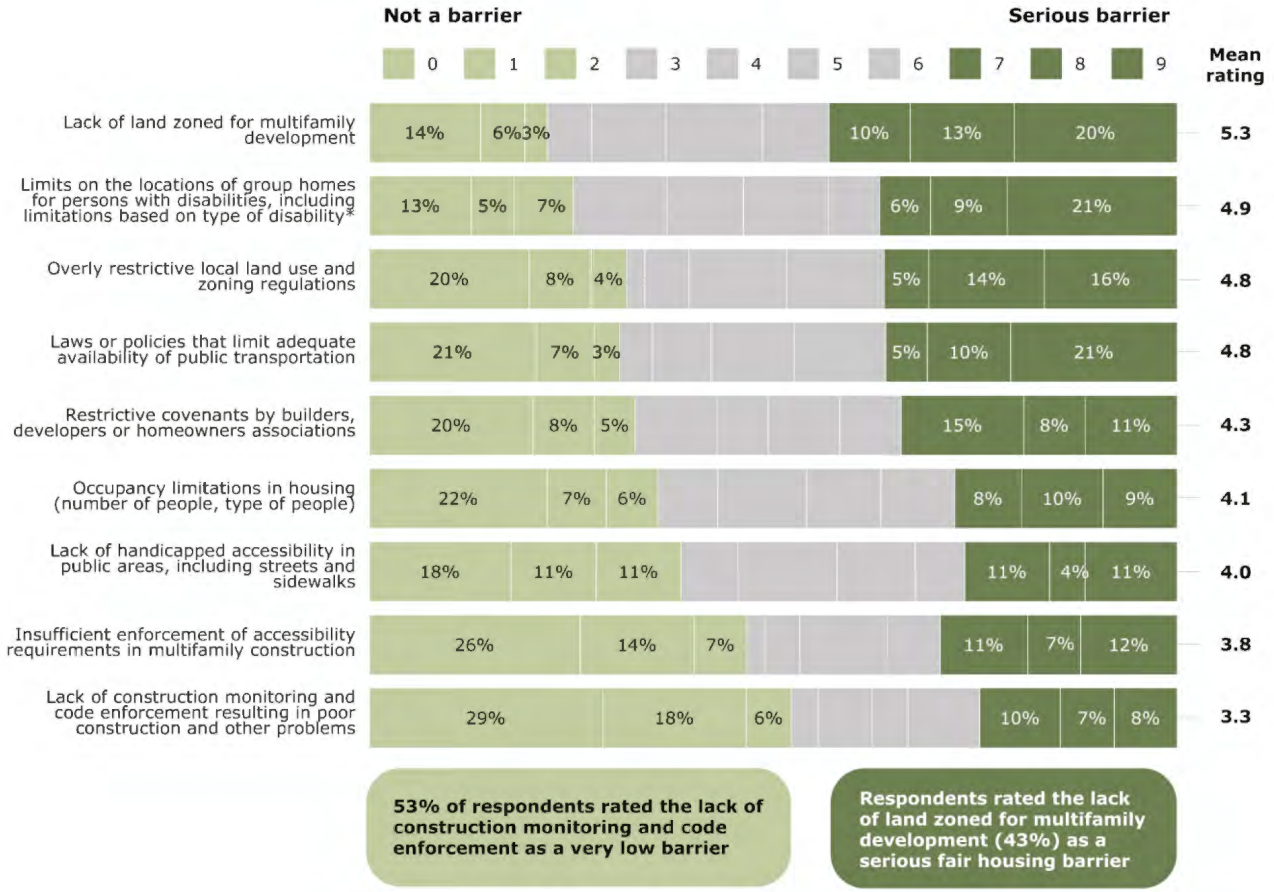
BBC Research & Consulting from the 2015 Oregon Stakeholder Survey.



Local policies, including deed restrictions. Figure IV-8 presents stakeholder ratings of nine local policies that may create barriers to fair housing choice. Among these local policies, about two in five stakeholders consider a lack of land zoned for multifamily development to be a serious barrier, compared to about one in five stakeholders who do not consider this to be a barrier. Stakeholders are split in their perception of the degree to which restrictive covenants (i.e. deed restrictions) by builders, developers or homeowners associations create barriers to fair housing choice—one-third consider restrictive covenants to be a very serious barrier while one-third do not consider such covenants to be a barrier.

Limitations on the location of group homes for persons with disabilities, including limitations based on type of disability, are considered a serious barrier to fair housing by two in five stakeholders. Slightly more than one in three stakeholders (36%) rate overly restrictive local land use and zoning regulations a serious barrier. Among the local policies considered, stakeholders were least likely to cite a lack of construction monitoring and code enforcement to be a serious barrier. However, in interviews and focus groups, participants frequently described poor conditions often found in market rate affordable housing.

Figure IV-8.
Local and Jurisdictional Policies that Create Barriers to Fair Housing Choice



Note: * Limits on the locations of group homes for persons with disabilities, including limitations based on type of disability (e.g., physical, developmental, intellectual, mental, addiction recovery, HIV status).

Source:

BBC Research & Consulting from the 2015 Oregon Stakeholder Survey.

Capacity and knowledge. Stakeholders evaluated nine potential barriers to fair housing related to knowledge and capacity. Among these, nearly 60 percent rate limited resources to help persons with disabilities transition out of institutional living situations a very serious barrier. A similar proportion considers a lack of affordable in-home or community-based supportive services for persons with disabilities a very serious barrier to fair housing choice. Other barriers perceived to be serious relate to landlords' lack of knowledge of state and federal fair housing protections in general, and more specifically a lack of understanding related to Section 8/Housing Choice Vouchers.

Some SAC members suggest that landlords are deliberately choosing to deny housing to voucher holders, while other SAC members believe that some landlords are still unaware of the change in law. The degree to which all stakeholders serving nonentitlement areas believe landlords' lack of knowledge of fair housing creates impediments suggests the need for continued outreach and education.

In interviews, some stakeholders described clients who encountered landlords who flatly refused to allow service animals. Others allowed the animal, but had numerous and overly-restrictive rules that made it impossible for the tenant to comply, leading to moves or threats of eviction.

About two in five stakeholders believe that the complexity of filing fair housing complaints itself is a serious barrier to fair housing choice, while one-third does not agree. In interviews, stakeholders expressed concern about the lack of prompt remedies to discriminatory situations.

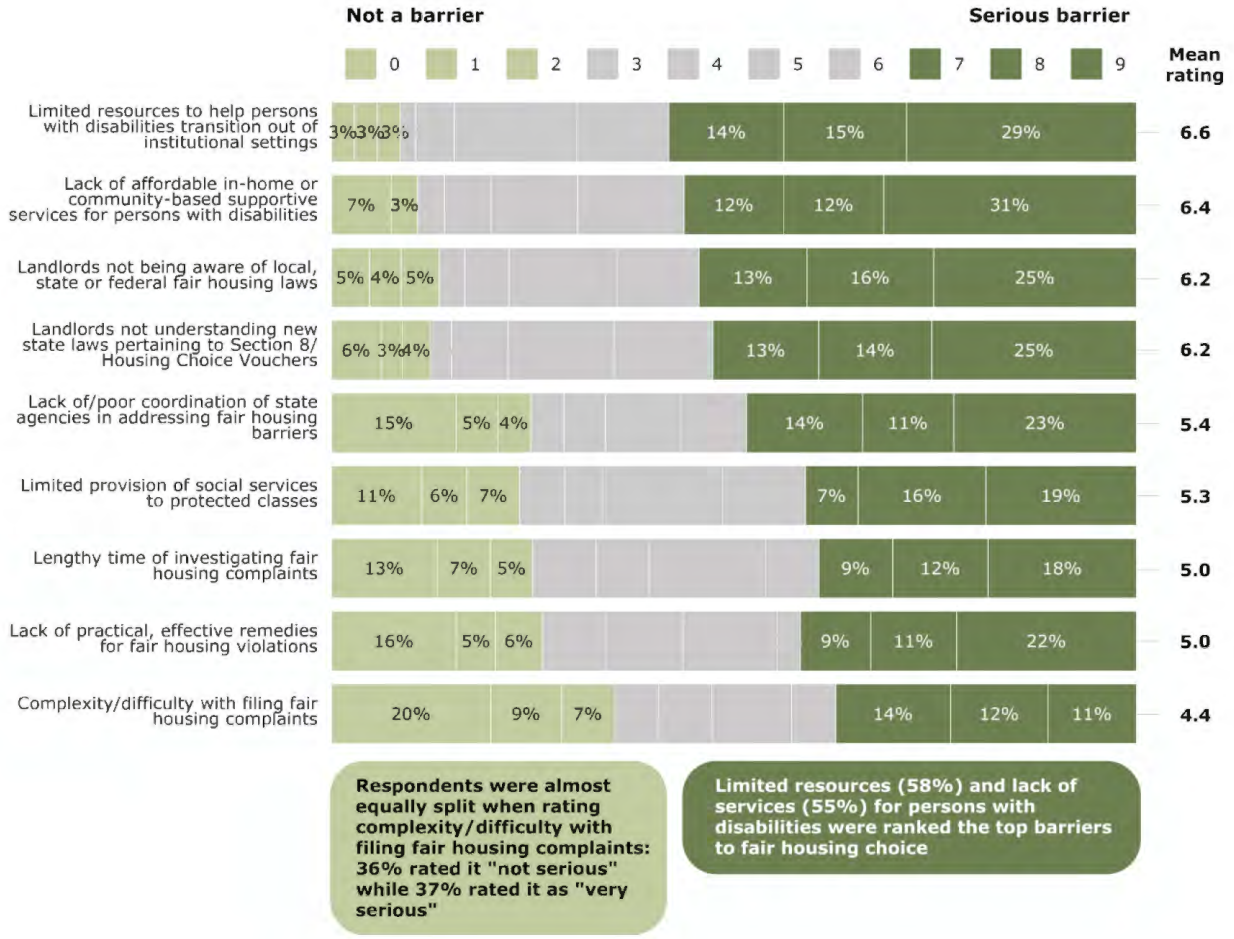
In interviews and focus groups, stakeholders described a need in western and southern Oregon for increased local capacity to address housing discrimination and near-criminal practices that take advantage of poor residents. Examples include requiring a tenant to pay large security deposits and then evicting the tenant for a "safety" violation, such as removing batteries from smoke detectors. Others believe a "good old boys" network manipulates the Eviction Court and eviction proceedings to the benefit of a small group of landlords.

With respect to affordable housing development in nonentitlement areas, SAC members and stakeholder survey respondents suggest that an additional barrier is a lack of local lending capacity to develop complex financial deals required for LIHTC or other opportunities. This results in developers having to try to persuade urban or nonlocal lenders that the project will succeed.

Figure IV-9.
Housing Capacity and Knowledge that Create Barriers to Fair Housing Choice

Source:

BBC Research & Consulting from the 2015 Oregon Stakeholder Survey.

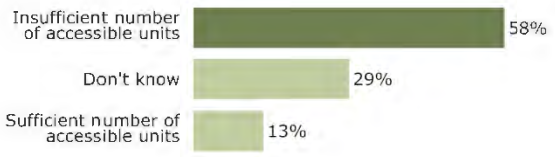


Housing for Persons with Disabilities

Among protected classes, data describing the housing needs and access to opportunity of persons with disabilities are particularly scarce. To supplement the publicly available data, stakeholders responded to a series of questions related to the housing needs and access to opportunity of persons with disabilities. In forming their responses, stakeholders were asked to consider all types of disabilities, including, but not limited to physical, developmental, intellectual, mental, addiction recovery, and HIV status.

Accessible housing availability. As shown in Figure IV-10, most stakeholders believe the communities in which they work have an insufficient number of units accessible to persons with disabilities. Slightly more than one in 10 stakeholders believes sufficient accessible units exist in their local market to accommodate the needs to persons with disabilities.

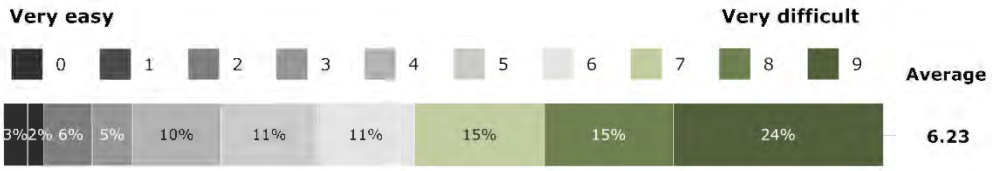
Figure IV-10.
How would you characterize the availability of housing stock in the area you serve that is accessible to persons with disabilities?



Note:
n=143.
Source:
BBC Research & Consulting from the 2015 Oregon Stakeholder Survey.

Knowledge of funding sources for modifications. With respect to learning about opportunities to fund accessibility improvements or modifications, about half of stakeholders think it is very difficult to find information about these programs.

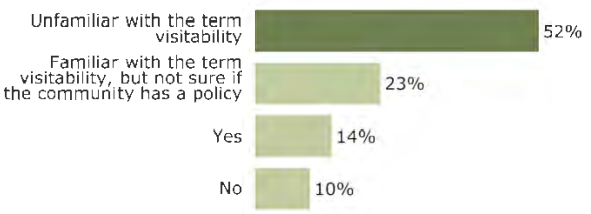
Figure IV-11.
In your opinion, how easy is it for persons with disabilities to find information about grant and loan programs to make needed accessibility improvements/modifications to their homes?



Note: n=109.
Source: BBC Research & Consulting from the 2015 Oregon Stakeholder Survey.

Local visitability policies. More than half of stakeholders are unfamiliar with the term "visitability, " and another quarter are familiar with the term but uncertain whether or not the areas they serve have formal policies.

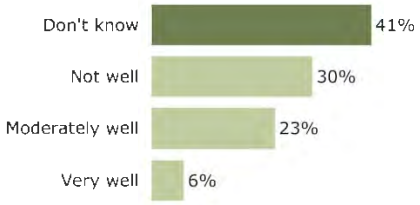
Figure IV-12.
Does the community in which you work have a visitability policy or incentives to encourage visitability in new housing construction?



Note:
n=134.
Source:
BBC Research & Consulting from the 2015 Oregon Stakeholder Survey.

Policies to encourage integrated community settings. The greatest proportion of stakeholders, 41 percent, does not know how well state or local policies or practices encourage placement of persons with disabilities in integrated settings.

Figure IV-13.
How well do state and local policies and practices encourage the placement of persons with disabilities in apartments, single family homes and other integrated community settings?



Note:
n=142.
Source:
BBC Research & Consulting from the 2015 Oregon Stakeholder Survey.

Principal housing challenges. Most stakeholder depictions of the principal housing challenges of persons with disabilities focus on affordability, accessibility, supportive services and transportation. Many underscored that, in addition to challenges related to household income, this population also experienced challenges specific to the type of disability that one had, such as stigma association with mental illness or addiction recovery or physical barriers experienced by people with limited mobility. Some individuals need access to supportive services such as case management or in-home health care in order to live independently. Without supportive services, some individuals must live in group or congregate homes when they would prefer a more independent situation. Access to transportation is also a challenge, amplified by the Analysis of Impediments focus on Oregon's nonentitlement areas, where public transportation in general is rare.

Examples of stakeholder descriptions of the principal housing challenges of residents with disabilities include:

- *"It depends. Physical accessibility, obviously. For those with mental illness or addiction recovery, prejudice. For those with developmental intellectual, supportive services." (Stakeholder survey respondent)*

Affordable and accessible housing.

- *"Availability of housing resources that are affordable for persons with a disability. In addition, units available may not be affordable within the budget of the persons seeking housing resources." (Stakeholder survey respondent)*

- *"Lack of housing options that fall within the 20 percent disability allowance, cost of housing for someone on disability or homeless with NO INCOME." (Stakeholder survey respondent)*

- *"Beyond the obvious that there are limited homes with adequate modifications to assist wheelchairs, costs to modify individual homes is so out of reach to most persons who live on a fixed or disability income. Or, contractors just do not understand the unique needs for handicapped individuals." (Stakeholder survey respondent)*

- *"Acquiring accessible housing and remaining connected to necessities. There are few sidewalks, limited public transportation and few available residences without stairs." (Stakeholder survey respondent)*

- *"Another problem our clients have is securing housing after a hospitalization. It is tough to get a place of their own and tough to get back to their community." (Stakeholder interview)*

Supportive services.

- *"Access to consistent supportive service in order to live independently. Inadequate resources to appropriate service providers." (Stakeholder survey respondent)*

- *"Also, lack of support once housing is located for tenants who are mentally disabled makes maintaining the housing challenging and can lead to chronic homelessness." (Stakeholder survey respondent)*

- *"It is primarily persons with mental disabilities who do not have enough support to make it in their own apartment." (Stakeholder survey respondent)*

- *"Stigma. Lack of prior rental history, possible criminal and credit issues. Limited assistance helping them navigate through the initial process of obtaining housing, then help staying successful." (Stakeholder survey respondent)*

- *"There are not enough supportive services for those trying to transition into housing. Individuals may not have the skills to pay rent and bills and have a fear of failure. Often the housing has tight and restrictive rules; both the rules of OHOP and the rules of the housing complex, including clean and sober living; this can be intimidating." (Stakeholder interview)*

Transportation.

- *"I think transportation is difficult for most residents in our community and therefore even more problematic for persons with disabilities." (Stakeholder survey respondent)*

- *"Lack of public transportation." (Stakeholder survey respondent)*

- *"Availability of housing in general. Lack of transportation options. Sufficient resources to assist with housing-first options."*

Other challenges: prejudice and stereotypes.

- *"Local residents' lack of awareness of 'invisible disabilities' and fear of certain types of disabilities, i.e. emotional or mental or addicts." (Stakeholder survey respondent)*

- *"Landlords and managers giving them a chance. I tend to find that managers will have a predisposition with individuals with disabilities and will automatically believe that they will fail. It's very frustrating." (Stakeholder survey respondent)*

- *"Things are slowly changing, but a major problem is still low expectations for individuals with intellectual development disorders (IDD). They can't be served in general classrooms, so they are separated from their peers at a young age. There is discrimination in the community; individuals are ostracized. There is a lot of fear because people do not understand individuals with IDD." (Stakeholder interview)*

- *"The biggest tension point is associated with the line between a mental disability that involves behavior that is just different and one that harms community habitability/peace." (Stakeholder survey respondent)*

- *"Landlords are reluctant to work with our clients. The population we serve usually has an additional stigma to deal with beyond HIV, such as being gay or a drug history." (Stakeholder interview)*

Fair Housing Knowledge and Capacity

Stakeholders responded to a series of questions related to fair housing knowledge and capacity to identify education and outreach needs.

Knowledge of where to file a complaint. Slightly more than half of stakeholders would refer a client to a state fair housing organization, such as FHCO, if they wanted to help a client file a fair housing complaint. Slightly less than one in 10 would not know where to direct a client, and a similar proportion would need to search for a resource.

Figure IV-14.
If you wanted to help a client file a fair housing complaint, to whom or where would you refer them?

Note:
n=157. Numbers add to greater than 100 percent due to multiple responses.

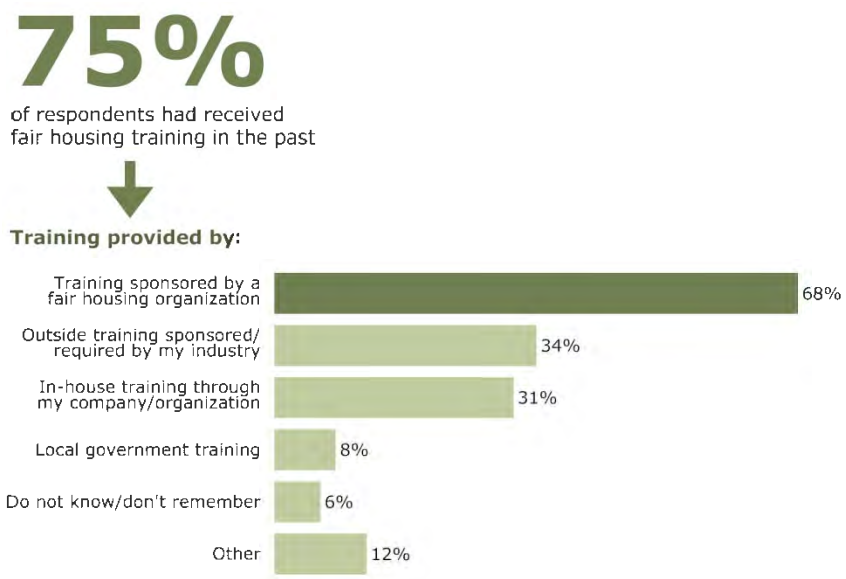
Source:
BBC Research & Consulting from the 2015 Oregon Stakeholder Survey.

Part participation in fair housing training. Most stakeholders have received fair housing training in the past; most of these had received training from a fair housing organization. Three in 10 had received training in-house through their employer.

Figure IV-15.
Have you received fair housing training in the past?

Note:
n=157 and n=118.

Source:
BBC Research & Consulting from the 2015 Oregon Stakeholder Survey.



Need for local fair housing resources. Stakeholders provided their assessment of the adequacy of local fair housing resources and the types of fair housing activities needed in the community.

Adequacy of resources, training and information available locally. About one in three stakeholders believe local fair housing information, resources and training is inadequate.

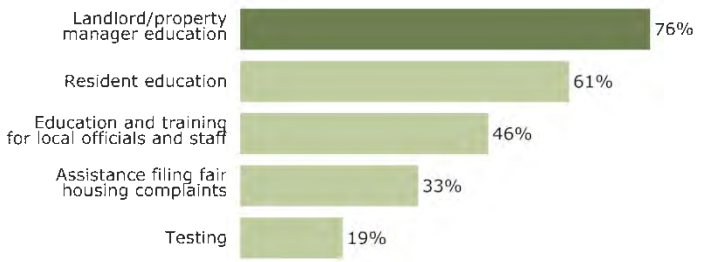
Figure IV-16.
Do you feel there is adequate information, resources and training on fair housing laws in the area you serve?

Note:
n=156.

Source:
BBC Research & Consulting from the 2015 Oregon Stakeholder Survey.

Types of fair housing activities needed locally. With respect to the types of fair housing activities needed locally, most stakeholders emphasized education and training. By far, the greatest proportion of respondents (76%) point to a need for local landlord/property manager fair housing education and training, followed by resident education (61%).

Figure IV-17.
What types of fair housing activities are most needed in the area you serve?



Note:

n=156. Numbers add to greater than 100 percent due to multiple responses.

Source:

BBC Research & Consulting from the 2015 Oregon Stakeholder Survey.

Affirmatively Furthering Fair Housing: The Role of the State of Oregon

Stakeholders shared their perspectives regarding how the state could most effectively work to mitigate fair housing barriers in the nonentitlement communities and contribute to local efforts to affirmatively further fair housing choice.

Stakeholders offered a number of suggestions to mitigate barriers and affirmatively further fair housing. The most common suggestions include:

- Fair housing education for landlords. Some suggested regulating landlords to ensure they are informed of their fair housing obligations. Other emphasized the importance of a training and education approach rather than enforcement and fines;
- Fair housing education for renters;
- Fair housing and policy education and training for housing authorities and local governments;
- Increase funding for supportive services to help persons with disabilities remain housed;
- Restore funds to the Fairview Trust, which was intended to support persons with IDD; funds could be used to transition individuals from group homes to the community;
- Change the policy that allows the state to take an individual's SSDI if the individual lives in a group home, allowing for the individual to have more flexibility for those funds.
- Prioritizing housing and supportive services for persons with disabilities, promoting independent, integrated housing and increased production of visitable and accessible housing;
- Tax credit or other builder/landlord incentives to develop or preserve affordable housing or to offer below market rents to low income households;
- Work with HUD to ensure Fair Market Rents reflect current market conditions;
- Allow local jurisdictions to adopt inclusionary zoning policies;
- Move toward state-level guidelines for housing and services program implementation, not current county-level systems;

- Property tax relief for nonprofit-owned affordable housing;
- Revisit policies that increase the cost of affordable housing development; and
- Improved coordination among state agencies that provide funding and services.

Summary of Top Issues

The stakeholder consultation process yielded numerous insights on the housing choices of Oregon residents living in nonentitlement communities; effects of local, state and federal policies on housing opportunities and issues specific to individual protected classes. The analysis suggests the following:

- A lack of affordable, accessible housing and resources for supportive services greatly limits fair housing choice of persons with disabilities.
- Landlords, particularly "mom and pop" operations, lack knowledge of their fair housing obligations, and may not be aware of recent changes in state law that impact their tenant selection process.
- Residents, especially renters, lack knowledge of their fair housing protections. Residents who do not speak English or have mental or intellectual disabilities are particularly vulnerable to discriminatory practices, but stakeholders also provided examples of discrimination based on familial status, race or ethnicity, sexual orientation and disability.
- State policies crafted to suit the scale of metropolitan areas are difficult to implement in rural communities due to a lack of population density, population diversity or staff capacity.
- State policies that increase the costs of developing or managing affordable housing pose additional challenges in rural communities.
- Local lenders do not have the staff capacity or experience needed to finance multifamily deals, much less navigate the complexity of affordable housing finance. This results in providers or developers seeking loans from out-of-market financial institutions who may not understand the local market.
- In some more isolated areas of the state, outright discriminatory practices continue, particularly toward Hispanic and Native American renters.
- The transition from an institutionalized setting, regardless of whether it is a hospital or a jail, represents a vulnerable time for members of protected classes. Both a lack of housing options and a lack of transition services are seen as problems.
- State policies which limit the array of tools that jurisdictions may use to support affordable housing are seen as an issue.
- Poor housing conditions represent a significant problem in more economically depressed areas of the state.

SECTION V.
Public Input

This section summarizes findings from the public input elements of the State of Oregon 2015 Analysis of Impediments. Unless otherwise noted, all participants live in nonentitlement communities.

Participation Opportunities

Resident participation opportunities for the 2015 Analysis of Impediments included a survey and focus groups.

Resident survey. BBC designed a resident survey to capture the experiences, attitudes and preferences of Oregon's nonentitlement residents with respect to housing choice, community norms and perceptions and housing discrimination.

Statistically-valid, representative resident telephone survey. The resident survey results are representative of households in Oregon's nonentitlement areas at the 95 percent confidence level. The general population surveys (*general market sample*) are supplemented by oversamples of nonwhite residents (*nonwhite subsample)* and households which include a member with a disability (*disability subsample)*. A detailed methodology for the resident telephone survey is provided in Appendix C.

Self-selected resident survey. The resident survey was available online, on paper with postage-paid mailing or by phone (respondents could call BBC's 800 number and take the survey by phone in English or Spanish with BBC staff). Overall, 369 residents completed the online survey. Of these, 91 lived in nonentitlement areas. Approximately 20 residents participated in the survey by phone (all English speakers) and 18 returned paper surveys by mail. Where appropriate, findings from the self-selected survey are used to supplement the representative survey.

Focus groups. BBC and Commonworks Consulting partnered with local organizations in Coos Bay, Dallas, the Dalles, Hood River, Klamath Falls and Ontario to host and recruit focus groups with local residents. Partner organizations included Head Start agencies, Community Action Agencies, a county developmental disability services department, a housing authority and a nonprofit housing provider. BBC prepared promotional flyers in English and Spanish for distribution. Each local partner conducted outreach to residents, clients and other partners. A total of 27 residents participated in the focus groups. One focus group was conducted in Spanish. In Klamath Falls and Coos Bay, focus groups were comprised of local stakeholders (10 participants).

Participant Profile Summary

Appendix C presents a full demographic and socioeconomic profile of respondents to the statistically valid, representative resident telephone survey. Respondent characteristics include:

- **Race and ethnicity—**Among general market sample participants, 86 percent identify as white, followed by 5 percent Hispanic, 3 percent Native American and 2 percent multi-racial. In the nonwhite sample, 52 percent of respondents identify as Hispanic; 21 percent Native American; 10 percent multi-racial; 5 percent African American and 5 percent Asian. Three in four members of the disability sample are white; 10 percent Native American and 6 percent Hispanic.

- **Age—**Respondents in the general market sample ranged in age from 18 to 88, with a median age of 48. The nonwhite sample respondents have a median age of 47 and an average age of 46, ranging overall from 18 to 74. The disability sample skews older and ranges from 20 to 87, with an average age of 55 and median of 58.

- **Household size and composition—**The median household size in each sample is three members. Large households (five or more members) comprise 17 percent of the general market sample, 28 percent of the nonwhite sample and 15 percent of the disability sample. The greatest proportion of households in each sample consists of the respondent, a spouse/partner and children (40% general market, 37% nonwhite, and 33% disability). Nearly one in five general market households (15%), 21 percent of nonwhite sample households and 20 percent of disability sample households include adult family members other than the respondent's spouse or partner.

- **Household income—**The median household income in the general market and disability samples is $35,000 up to $50,000 and $25,000 up to $35,000 for the nonwhite sample. Households earning less than $25,000 are 15 percent of the general market sample, 31 percent of the nonwhite sample and 35 percent of the disability sample.

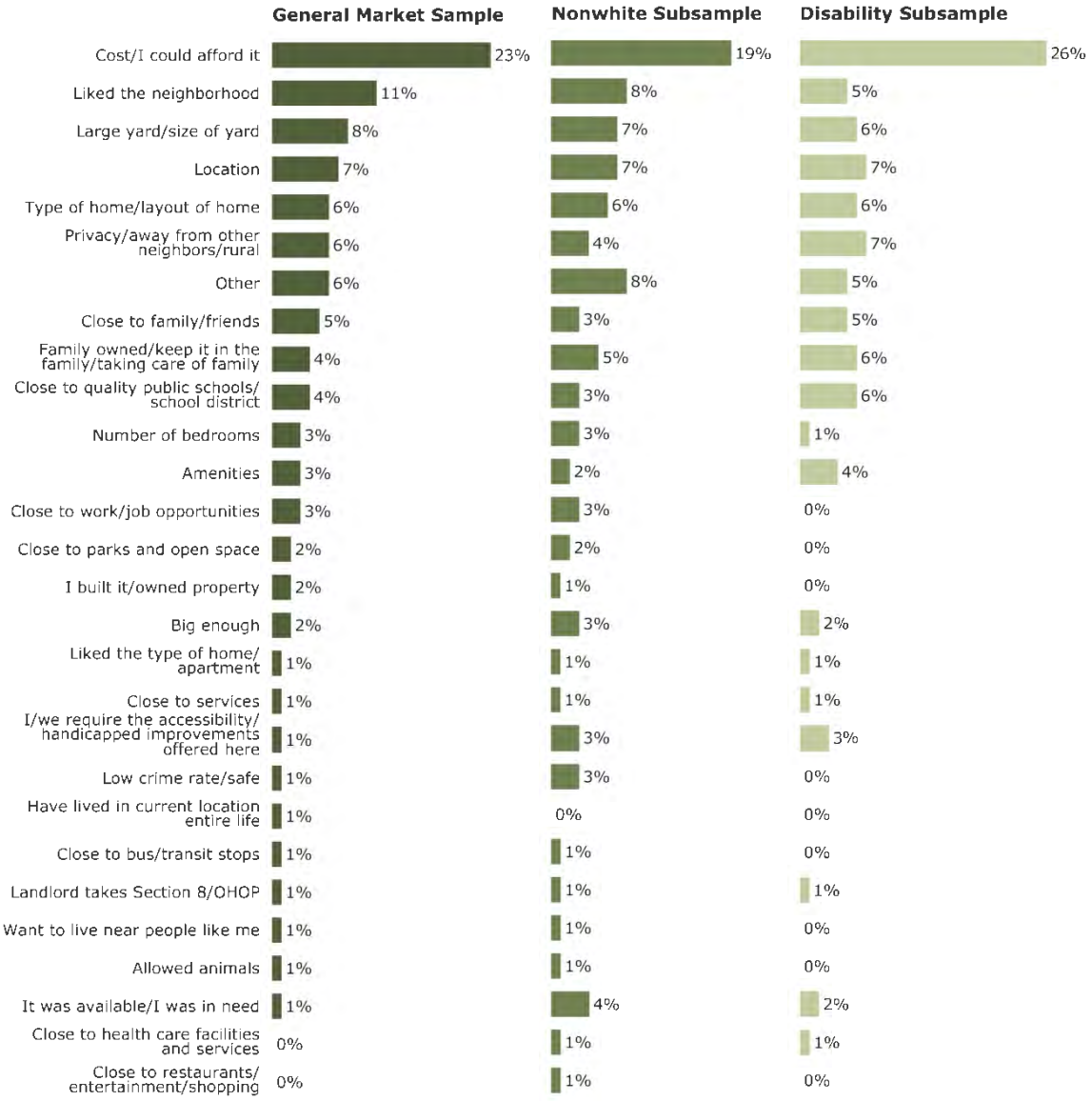
- **Disability—**By design, all of the respondents included in the disability sample have at least one household member with a disability of any type (e.g., physical, mental, intellectual, or developmental). Households with a member with a disability comprise 22 percent of the general market sample and 31 percent of the nonwhite sample.

Housing Choice and Preferences

This section explores residents of Oregon's nonentitlement areas' housing preferences, including the factors most important to them in choosing their current home and whether or not they would like to move to another housing unit or location.

Most important factor in choosing current home. Survey respondents identified the single most important factor that led to their choice of home. As shown in Figure V-1, cost was the most important factor for one in four respondents in both the general market and disability samples and one in five nonwhite respondents. Other important factors to each population include characteristics of the housing unit, neighborhood and location factors and proximity to family/friends and employment. In focus groups, participants described difficulty finding affordable housing, and this is compounded by long waitlists for vouchers or other subsidized housing.

Figure V-1.
What is the factor that was most important to you in choosing your current home or apartment?



Note: General market sample n=398, nonwhite sample n=156, disability sample n=217.

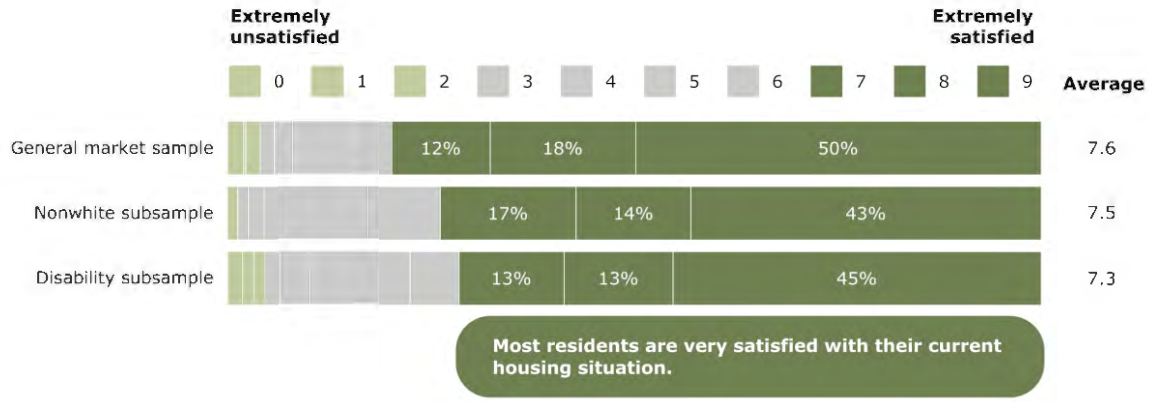
Source: BBC Research & Consulting from 2015 Oregon Resident Telephone Survey.

Satisfaction with current housing. Most residents are very satisfied with their current housing situation, and half of general market respondents are 'extremely satisfied' (Figure V-2). Only a small proportion of respondents—8 percent of general market, 5 percent of nonwhite, and 10 percent of disability sample—were somewhat or very unsatisfied (rating of 0-4) with their housing. Across all three groups, top reasons include:

- Landlord won't make repairs;
- Home/apartment needs repairs that I can't afford;
- Does not meet our handicapped accessible needs;
- Can't refinance/problems with lender; and

- Foreclosure concerns.

Figure V-2.
How satisfied are you with your housing situation?



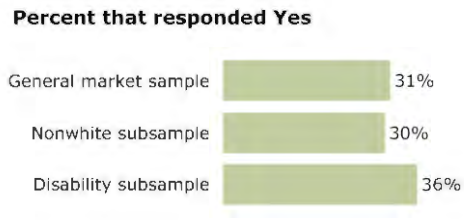
Note: General market sample n=400, nonwhite sample n=156, disability sample n=217.

Source: BBC Research & Consulting from 2015 Oregon Resident Telephone Survey.

In focus groups, many participants living in more rural or economically depressed communities described poor housing conditions due to lack of maintenance and inexpensive housing construction. Other condition issues include the presence of black mold and poor ventilation. Others, particularly those living in nonprofit affordable housing or housing owned or inspected by housing authorities or voucher agencies, report satisfaction and good housing conditions. Those living in more suburban and economically stable communities experience higher housing costs and a more limited supply of affordable housing.

Desire to move. Regardless of their satisfaction with current housing, at least three in 10 respondents would like to move from their current home or apartment (Figure V-3). A greater proportion of respondents in the disability subsample (36%) are more likely to desire a move than the general population or nonwhite respondents.

Figure V-3.
If you had the opportunity, would you like to move from your current home or apartment?



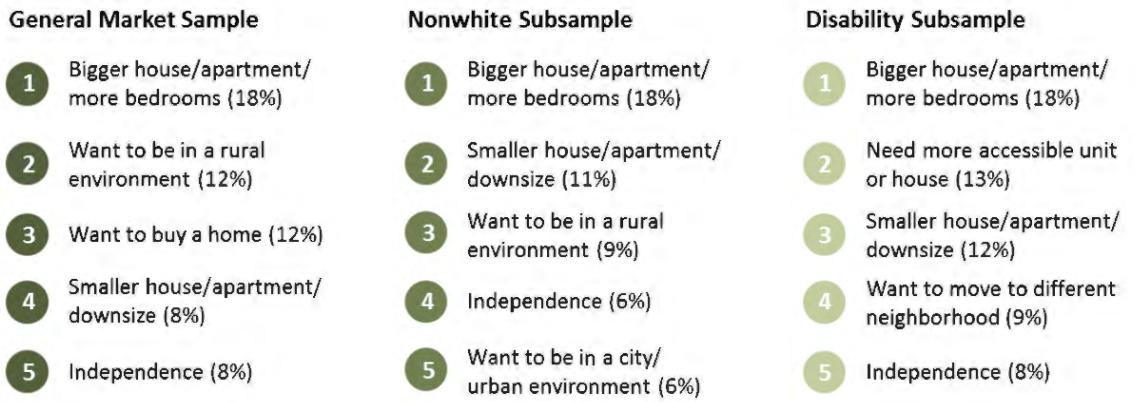
Note:
General market sample n=398, nonwhite sample n=156, disability sample n=217.
Source:
BBC Research & Consulting from 2015 Oregon Resident Telephone Survey.

Figure V-4 presents the top five reasons for wanting to move shared by respondents. In each sample, one in five respondents wants to move to a bigger housing unit or a unit with more bedrooms. Slightly more than one in 10 participants in the disability sample identified a need for housing that better meets their accessibility needs. A desire for "independence" ranked in the top five reasons for wanting to move. Examples of the how respondents define independence includes:

- "I'm getting older and I want my own home."
- "Make my own decision and do my own repairs."

- "To have more privacy."

Figure V-4.
Top 5 Reasons for Wanting to Move

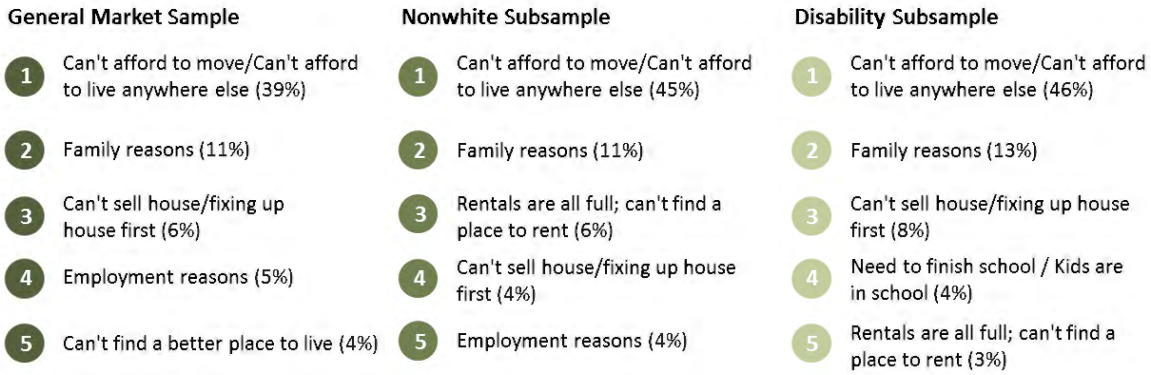


Note: General market sample n=122, nonwhite sample n=47, disability sample n=78.

Source: BBC Research & Consulting from 2015 Oregon Resident Telephone Survey.

By far, the cost of moving or the lack of other affordable options in the area is the reason the greatest proportion of those who would like to move has not. Market forces related to home sales or vacancy rates are barriers to moving for some respondents. In addition to the top five reasons shown in Figure V-5, leases/contracts; divorce proceedings; waiting for the housing market to improve are factors respondents shared.

Figure V-5.
What is the main reason why you haven't moved yet? Top 5 Reasons



Note: General market sample n=122, nonwhite sample n=47, disability sample n=78.

Source: BBC Research & Consulting from 2015 Oregon Resident Telephone Survey.

Housing for People with Disabilities

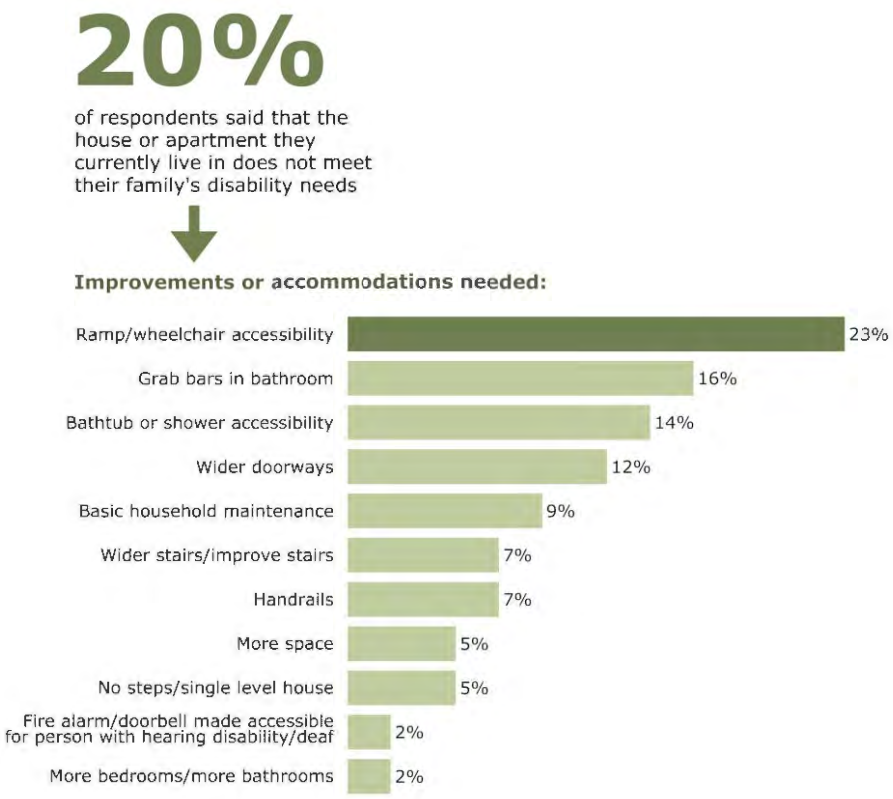
All participants who affirmed that they or a member of their household has a disability of any type (e.g., physical, mental, intellectual, developmental) responded to a series of questions related to their housing accessibility needs and their experience requesting reasonable accommodations.

Accessibility and suitability of current home. One in five households with a member with a disability is living in home that does not meet their accessibility or accommodation needs. Of these households, the greatest proportion report needs for ramps or wheelchair access followed by bathroom accessibility features.

Figure V-6.
Suitability of Home and Needed Improvements

Note:
Disability sample n=208 and n=43.

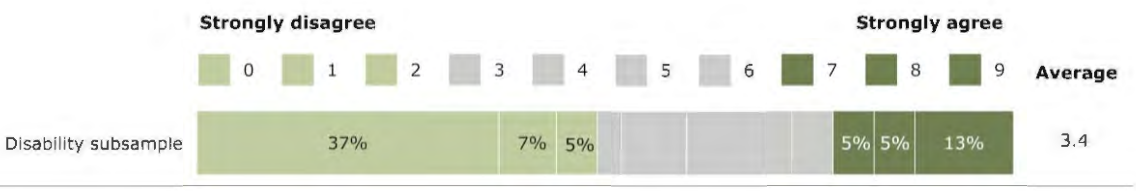
Source:
BBC Research & Consulting from 2015 Oregon Resident Telephone Survey.



In focus groups, most participants did not report having particular difficulty finding accessible housing for themselves or household members with mobility impairments. More challenging is finding and maintaining suitable housing arrangements for persons with mental illness or emotional behavioral disorders.

Affordable accessible housing. On average, households that include a member with a disability report that they can afford the housing that has the accessibility features needed. However, one in four households cannot afford housing with the features they need.

Figure V-7.
I can't afford the housing that has accessibility/handicapped features we need.



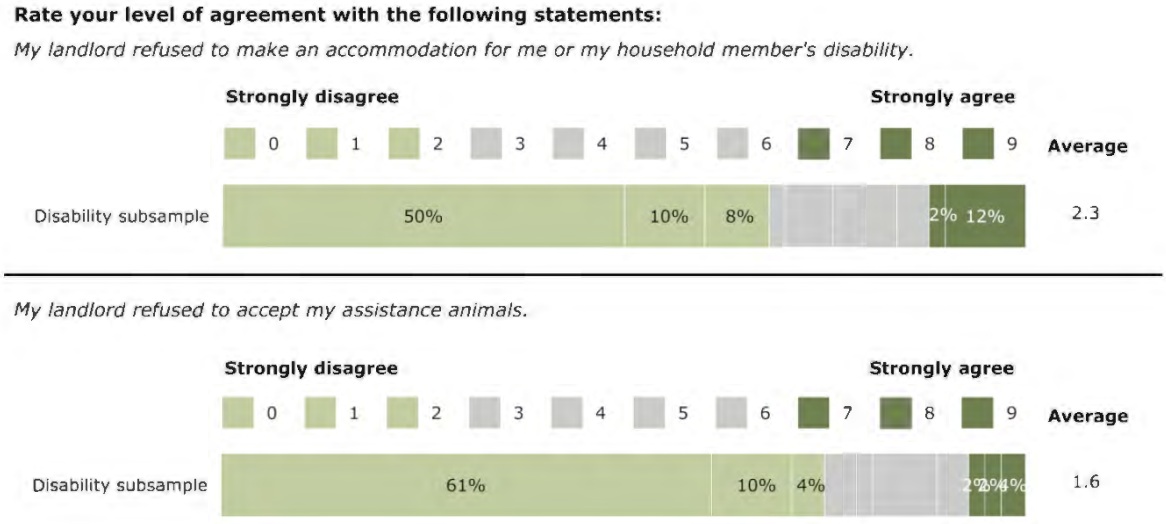
Note: Disability sample n=208.

Source: BBC Research & Consulting from 2015 Oregon Resident Telephone Survey.

Reasonable accommodations. Renters and homeowners were asked the degree to which requests for reasonable accommodations were granted by either landlords or, if applicable, homeowners associations (HOAs).

Landlords. The majority of renter households in the disability sample strongly disagreed with statements describing landlord refusal of reasonable accommodation requests or denial of assistance animals. This suggests that most landlords are accommodating the needs of tenants with disabilities. Slightly more than one in 10 strongly agreed that "my landlord refused to make an accommodation." With respect to assistance animals, most landlords are accepting; with only 8 percent of responding agreeing that a landlord refused the animal.

Figure V-8.
Reasonable Accommodations by Landlords

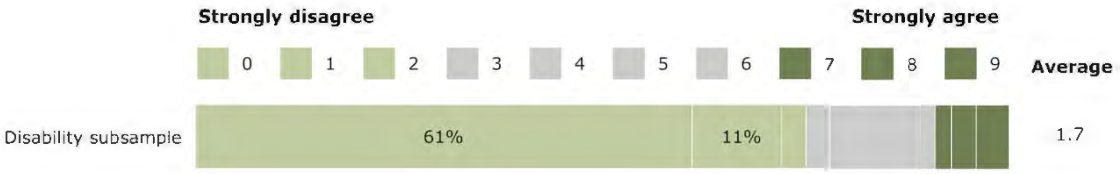


Note: Disability sample n=52.

Source: BBC Research & Consulting from 2015 Oregon Resident Telephone Survey.

HOAs. Few homeowners in the disability sample indicated problems receiving reasonable accommodations from their homeowners association.

Figure V-9.
The HOA in my neighborhood wouldn't let me make changes to my house or property for my disability.



Note: Disability sample n=120.

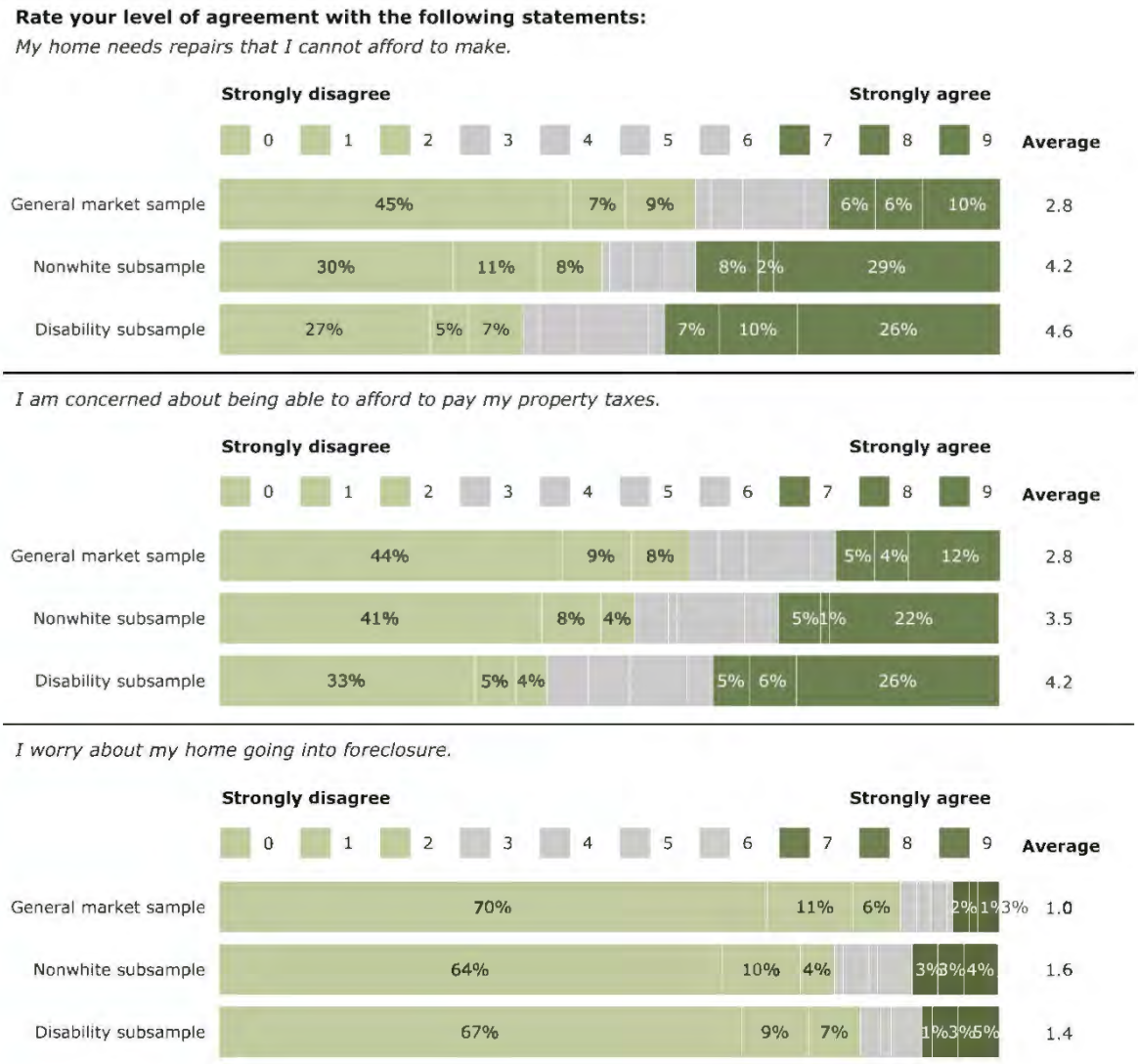
Source: BBC Research & Consulting from 2015 Oregon Resident Telephone Survey.

Housing Concerns and Challenges

To better understand the housing circumstances of Oregon residents living in nonentitlement areas, participants responded to a series of questions related to concerns they may have about their current housing situation as well as challenges they may encounter when trying to secure housing to rent or buy due to their personal circumstances.

Homeowner concerns and challenges. Figure V-10 presents homeowners' degree of concern with respect to home repairs they cannot afford to make; ability to pay property taxes; and foreclosure. While most homeowners do not report concerns about these issues, about one in four general market homeowners cannot afford to make needed repairs, and this proportion increases to nearly two in five nonwhite homeowners and slightly more than two in five disability subsample households. About one in three disability subsample homeowners worry about paying property taxes. On average, few homeowners worry about foreclosure.

Figure V-10.
Homeowner Concerns and Challenges



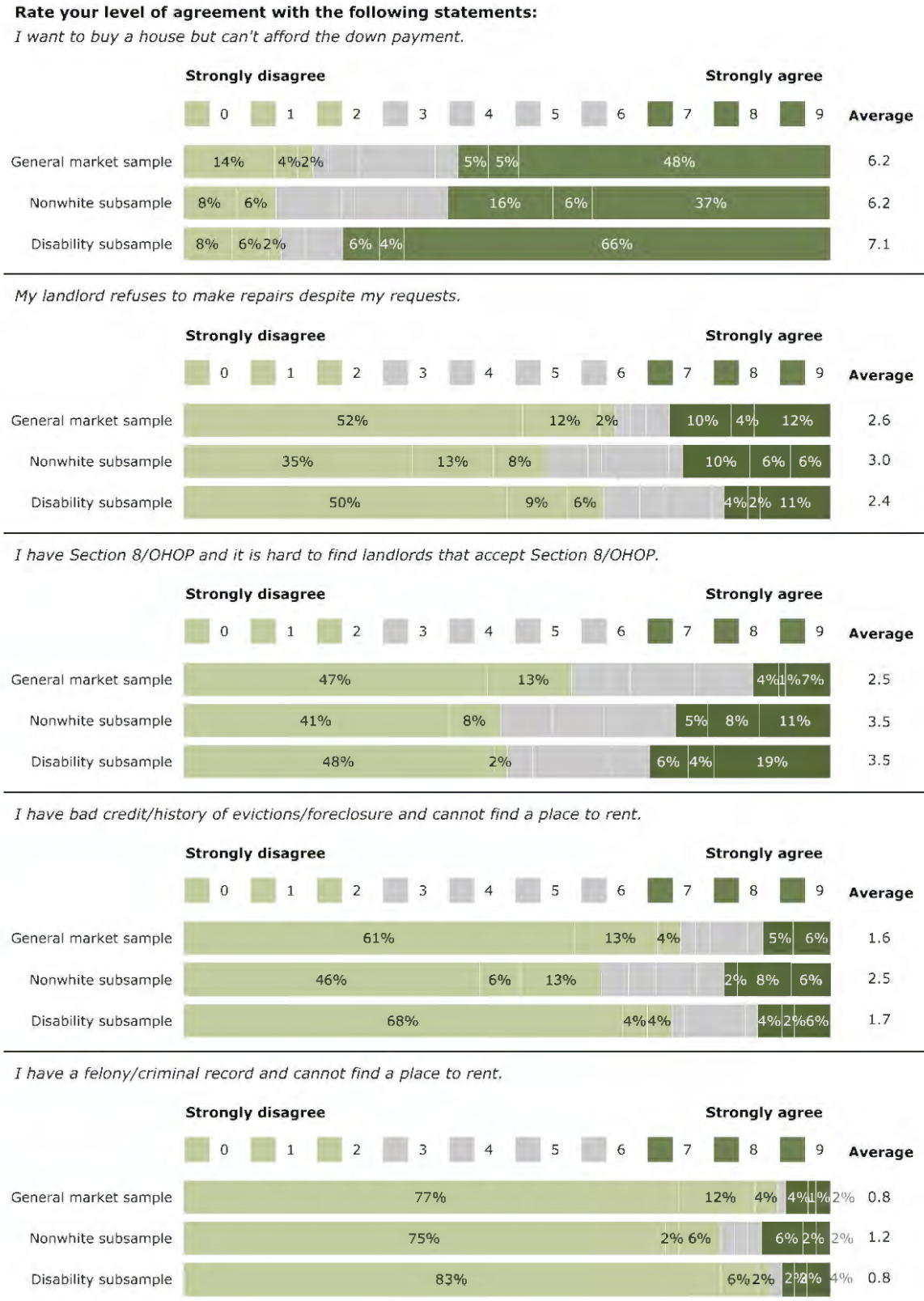
Note: General market sample n=282, 280 and 282; nonwhite sample n=91, 92 and 90, disability sample n=150, 150, and 151.

Source: BBC Research & Consulting from 2015 Oregon Resident Telephone Survey.

Renter concern and challenges. As shown in Figure V-11, about 60 percent of general market and nonwhite renters want to buy a home but cannot afford the down payment; this rate increases to 75 percent among disability subsample renters. Although not a concern to most renters, a sizeable minority (about one in four) experience landlords refusing to make repairs. A greater proportion of nonwhite and disability sample renters report difficulty finding landlords who accept Section 8 /Housing Choice Vouchers or OHOP programs than experiencing credit-related renting difficulties. The extension of source of income protections effective July 2104 is anticipated to ease this difficulty. While most renters do not have criminal records/felonies, about one in 10 general market and nonwhite renters agree that this history has impeded their ability to find a place to rent.

As previously discussed, several focus group participants shared examples of poor housing conditions, lack of repair and the presence of black mold. Several described instances where they had made repairs or improvements to a rental house only to have the landlord increase the rent beyond what the family could afford.

Figure V-11.
Renter Concerns and Challenges

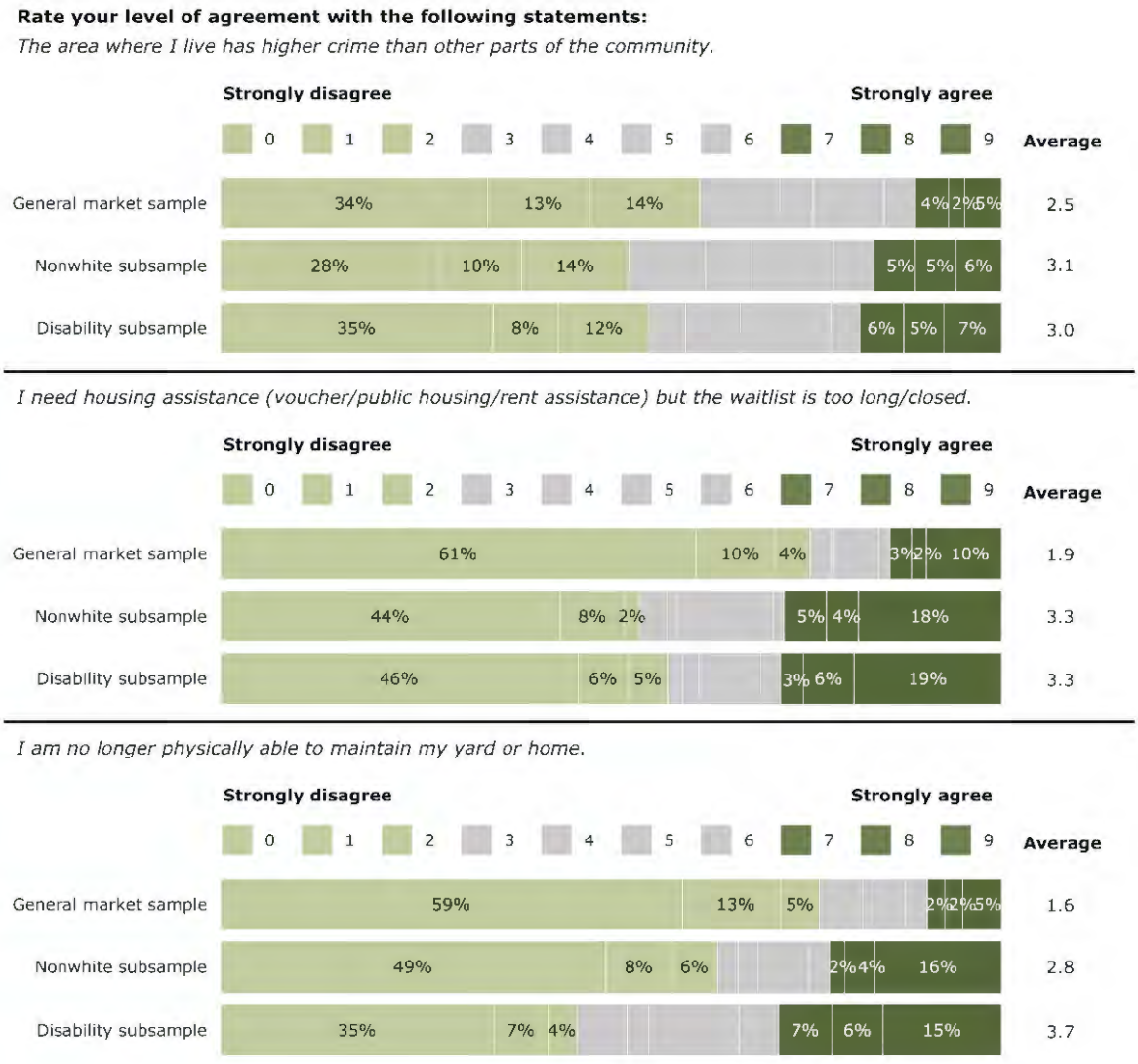


Note: General market sample n=84, 85, 70, 86 and 85; nonwhite sample n=48, 49, 37, 48 and 47; disability sample n=54, 53, 52, 53 and 53.

Source: BBC Research & Consulting from 2015 Oregon Resident Telephone Survey.

Other housing challenges and concerns. Homeowners and renters alike responded to questions about the relative level of crime in their neighborhood; their need for housing assistance; and their ability to maintain their home and landscape. While most do not agree that their neighborhood has higher crime, respondents in the nonwhite and disability subsamples are more likely than those in the general market to agree. Slightly more than one in four nonwhite respondents and disability sample households agree that they need housing assistance but waitlists are too long or closed. Nearly three in 10 respondents in the disability subsample and 27 percent of nonwhite respondents agree that they are no longer physically able to maintain their yard or home, compared to 15 percent of the general market.

Figure V-12.
Crime, Need for Assistance, and Home Maintenance Challenges



Note: General market sample n=398, 399 and 363; nonwhite sample n=153, 147 and 154, disability sample n=215, 201, and 217.

Source: BBC Research & Consulting from 2015 Oregon Resident Telephone Survey.

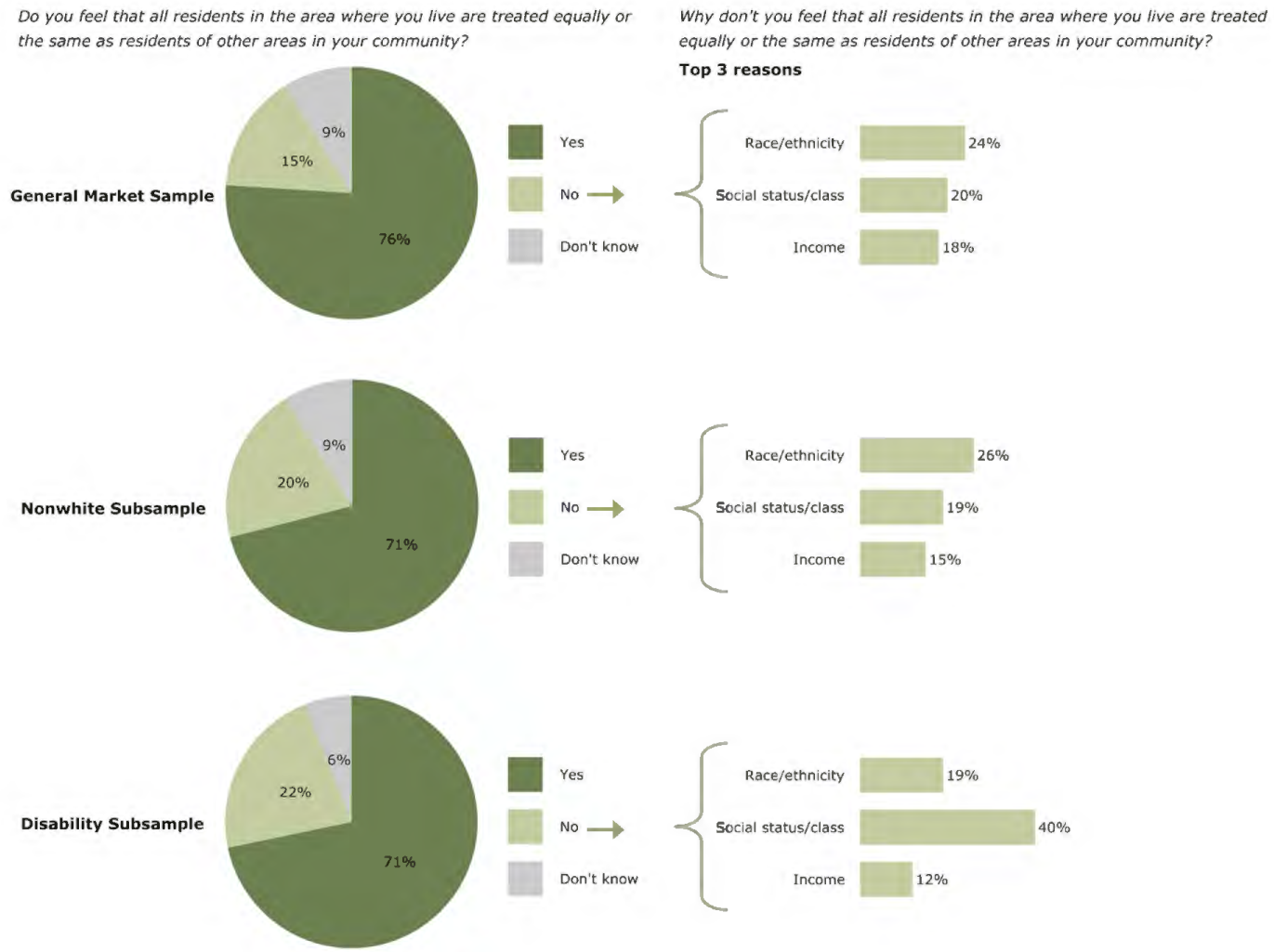
Community Norms and Preferences

The fair housing landscape in any community is influenced by direct and indirect actions. Similar households may naturally cluster together due to personal preferences unrelated to outside actions; in other cases, similar households may cluster together due to lingering impacts of historic segregation. Residents responded to a series of questions designed to measure community norms and preferences related to equitable treatment of all residents, regardless of individual characteristics and to gauge the relative tolerance of the community at large toward different types of households and housing options.

Equitable treatment. Figure V-13 presents responses to the question, "do you feel that all residents in the area where you live are treated equally or the same as residents of other areas in your community?" As shown, responses from the general market, nonwhite and disability samples are quite similar: 76 percent of general market participants and 71 percent of both the nonwhite and disability samples believe that residents are treated equally. The top three reasons offered by the greatest proportion of those who disagree suggest that not all residents are treated equally due to race or ethnicity; social status or class; and income. Other reasons for unequal treatment address age, disability, discrimination against renters, beliefs, and being a newcomer to a community (i.e., "not from here"). Examples include:

- *"There's a large population of people that live in poverty that live in southern Deschutes and I feel they are not treated equally." (Nonwhite subsample respondent)*
- *"I think they are still prejudiced against Mexicans in rentals." (Nonwhite subsample respondent)*
- *"The way some people feel about immigrants. Stereotypes. Assuming someone's legal status may be something when they don't know either way." (General market respondent)*
- *"I absolutely know there's an old boys club, and there is discrimination against Hispanics, and people assume they are illegal. They have experienced a lot of discrimination and they are discriminated against here." (Disability subsample respondent)*
- *"Can't get to the places you need to get to." (Disability subsample respondent)*
- *"Biggest problem is the way upper income folks treat the lower income people." (General market subsample)*
- *"Because we are in a rural area here, and the concerns of the rural people are not being addressed by the cities." (General market respondent)*

Figure V-13.
Equal Treatment of Residents

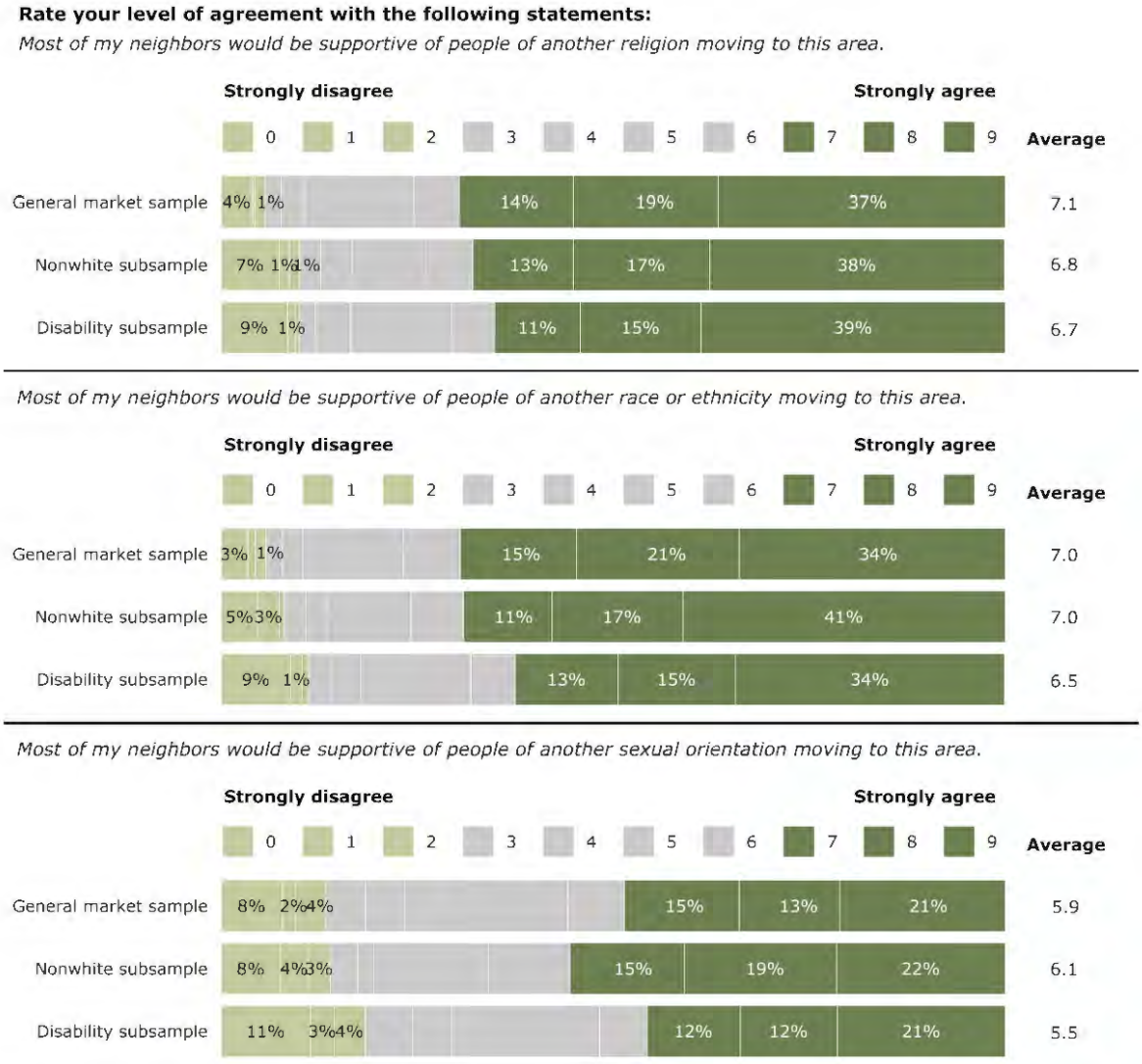


Note: General market sample n=400, nonwhite sample n=156, disability sample n=218.

Source: BBC Research & Consulting from 2015 Oregon Resident Telephone Survey.

Community norms—household diversity. Most respondents believe that their neighbors would be supportive of different types of households moving into the area, including people of other religions, races or ethnicities, and sexual orientation. Greater proportions of respondents in each sample believe their neighbors would be supportive of people of another religion or race/ethnicity than of people of another sexual orientation. None of the observed differences in proportion between the three respondent segments are statistically significant. With respect to sexual orientation, a greater share of respondents in each population rated their neighbors' degree of support in the neutral (gray) area—neither agreeing nor disagreeing.

Figure V-14.
Community Norms: Support of Different Types of Households Moving to the Area



Note: General market sample n=384, 379 and 360; nonwhite sample n=150, 149 and 144, disability sample n=213, 201, and 201.

Source: BBC Research & Consulting from 2015 Oregon Resident Telephone Survey.

Community norms—support of housing types. Respondents' assessments of support for five different housing types are presented in Figure V-15. As shown, support for different types of housing or housing situations varies significantly, from broad support of housing for people with disabilities and low income seniors to majority opposition to apartment buildings (the building form, not the occupants). The results demonstrate the fear or discomfort of many residents regarding people with substance abuse disorders and underscore the need for multifamily development to be of an appropriate scale and aesthetic to complement existing neighborhoods.

- **Perceptions of neighbor support for residential home for people with disabilities.** Regardless of sample, respondents are very consistent in their perceptions of neighbors' support of a residential home for people with disabilities locating in their area. About 60 percent of respondents, strongly believe their neighbors would be supportive and about 10 percent strongly disagree.

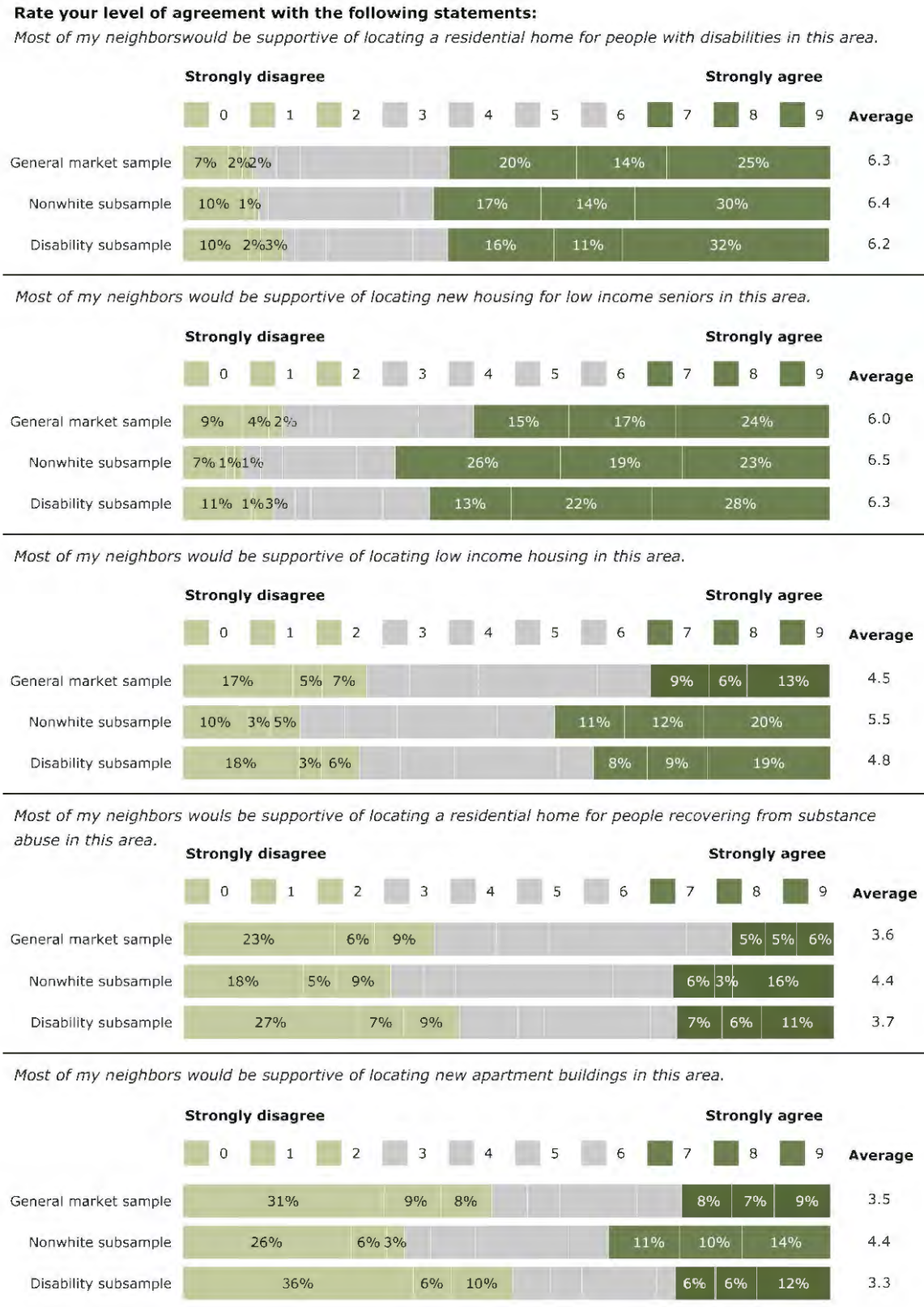
- **Perceptions of neighbor support for new housing for low income seniors.** A majority of residents strongly agree that most neighbors would support new housing for low income seniors. Perceptions of strong support are greatest among nonwhite respondents. About 15 percent of general market and disability sample respondents strongly disagree that most neighbors would be supportive.

- **Perceptions of neighbor support for locating low income housing in the area.** Respondents in the general market sample are equally split in strong agreement (28%) and strong disagreement (28%) in their perceptions of neighbor support for locating low income housing in the area. Compared to the general market, respondents in the nonwhite and disability subsamples are more likely to strongly agree that neighbors would support low income housing.

- **Perceptions of neighbor support for locating a residential home for people recovering from substance abuse in the area.** About one in four respondents in the nonwhite and disability samples strongly agree that most neighbors would support recovery housing, compared to 15 percent of the general market. Two in five disability subsample respondents and about one-third of nonwhite and general market respondents strongly disagree that most neighbors would be supportive.

- **Perceptions of neighbor support for locating new apartment buildings in the area.** Of all the measures considered, respondents were least likely to think most neighbors would be supportive of locating new apartment buildings in the area—48 percent of the general market, 51 percent of the disability subsample and 34 percent of the nonwhite subsample strongly disagreed. Among the samples, nonwhite respondents were more likely to strongly agree that most neighbors would support new apartment buildings—34 percent compared to 23 percent of the general market and 24 percent of the disability subsample.

Figure V-15.
Community Norms: Support of Different Housing Types



Note: General market sample n=380, 375, 376, 370 and 380; nonwhite sample n=145, 145, 148, 141 and 145; disability sample n=207, 207, 205, 201 and 207.

Source: BBC Research & Consulting from 2015 Oregon Resident Telephone Survey.

Experience with Housing Denial and Discrimination

Survey respondents and focus group participants shared their experience with housing denial and housing discrimination.

Housing denial. Within the past five years, about one-third of respondents in the general market and nonwhite subsample and two in five households in the disability subsample seriously looked for housing in Oregon (Figure V-16). Of these households who seriously looked for housing, about 14 to 28 percent were denied housing to either rent or purchase. The observed differences in denial rates are not statistically significant between the three samples. This means that, statistically, nonwhite households and households with a disabled member are no more or less likely to have been denied housing in the past five years than residents of the nonentitlement communities overall.

Those who experienced denial of housing described their perception of the reason(s). Among general market respondents, the top three reasons for denial were:

- Bad credit;
- Income too low; and
- Criminal background/felony/charges.

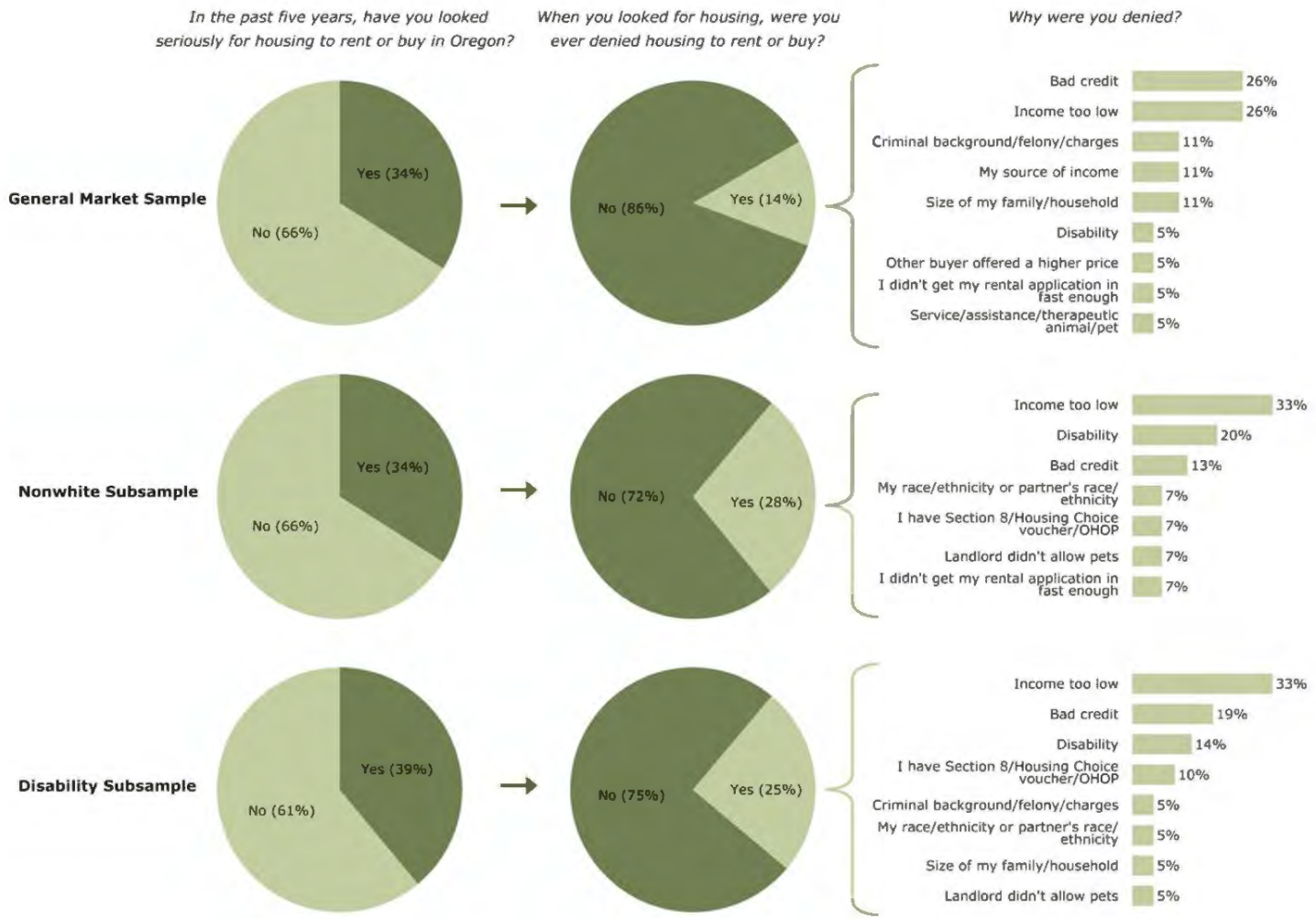
The top three reasons for denial among the nonwhite subsample and disability subsample respondents were the same:

- Income too low;
- Bad credit; and
- Disability.

Examples of other reasons for housing denial include:

- *"The landlord said I should not have to borrow money for the deposit. But I know it was because I am disabled, and he did not feel safe renting to me." (Disability subsample respondent)*
- *"Because I was a homeowner, I did not have any references as a renter." (General market respondent)*
- *"I have my own business and am self-employed. I was denied in getting a mortgage because of that at multiple financial institutions." (General market sample)*

Figure V-16.
Experience with Denial of Housing



Note: General market sample n=400, 136 and 19; nonwhite sample n=156, 53 and 15; disability sample n=218, 85 and 21. Showing all reasons for denial equal to or greater than 5 percent.

Source: BBC Research & Consulting from 2015 Oregon Resident Telephone Survey.

Experience of housing discrimination. Figure V-17 presents the proportion of survey respondents who believe they have experienced housing discrimination and the reasons for the discrimination. By design, no definition of housing discrimination under state or federal law was provided to respondents; these data reflect respondents' perception of discrimination based on their experience and knowledge. Similarly, the question asking the reason for the discrimination was open-ended, so as not to bias the results not to limit responses to only those circumstances defined by law.

Overall, one in 20 residents of Oregon's nonentitlement areas reports having experienced discrimination when looking to rent or buy housing in Oregon. This rate more than doubles for nonwhite respondents (12%) and disability subsample respondents (13%).

Among residents in the general market sample, the top three reasons for the housing discrimination experienced are:

- Race or ethnicity;
- Low income; and
- Large family/kids.

Nonwhite respondents attributed the housing discrimination experienced to:

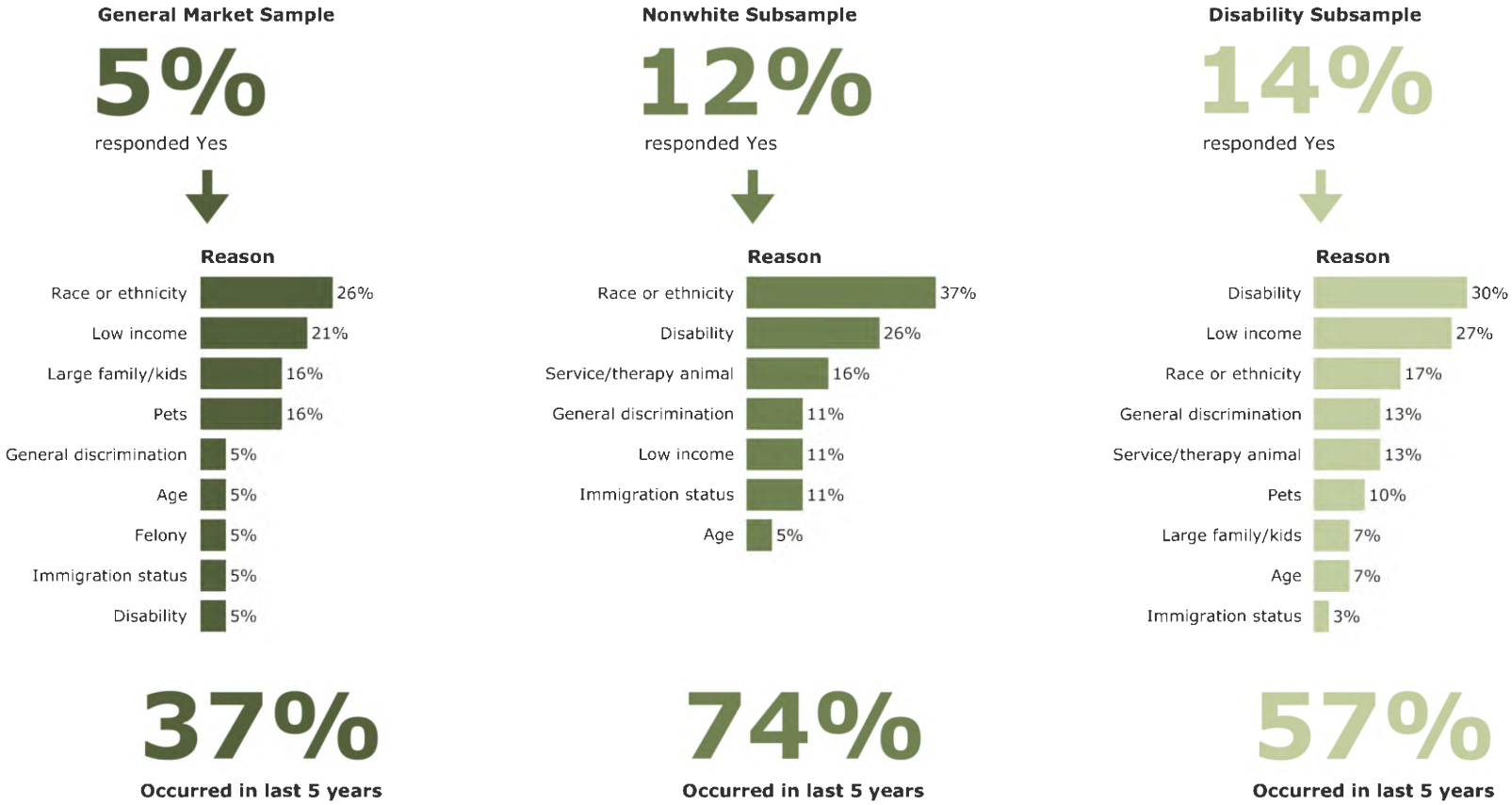
- Race or ethnicity;
- Disability; and
- Service animal/therapy animal.

Respondents in the disability sample attribute their housing discrimination experience to:

- Disability;
- Low income; and
- Race or ethnicity.

Although sample sizes are small, results indicate that a greater proportion of nonwhite (74%) and disability (57%) sample respondents experienced housing discrimination in the past five years than those from the general market (37%).

Figure V-17.
When you looked for housing in your community, did you ever feel discriminated against?



Note: General market sample n=379, 19 and 19; nonwhite sample n=156, 19 and 19; disability sample n=218, 30 and 30.

Source: BBC Research & Consulting from 2015 Oregon Resident Telephone Survey.

Reasons for discrimination. As shown in the previous figure, respondents who believe they experienced discrimination when looking for housing in their community shared the reason(s). Focus group participants shared their experience with housing discrimination. Examples in their own words include:

Disability.

- *"Because we spoke about wanting a wheelchair ramp." (Disability subsample respondent)*
- *"I believe it was because I am older and disabled. They said I could not come up with the deposit money fast enough, but I do not believe him. It was because I am disabled." (Disability subsample respondent)*
- *"The landlord was worried she was going to have to put in money to make changes for me. I was falling after having a reaction to my medication. She didn't want to do anything. She just wanted to collect a check." (Disability subsample respondent)*
- *"Because I am a paranoid schizophrenic." (Disability subsample respondent)*

Familial status.

- *"I was taking in four kids, and could not find place that would accept the kids." (General market respondent)*

Income.

- *"Because the Realtors and Banks didn't want to talk to me because of the size and price I could afford. I was renting the house I live in and I ended up buying it because everything else I saw was junk. I had to find alternate financing to buy the home." (Disability subsample respondent)*
- *"Because I was poor and I was on Section 8, and it didn't allow me enough money to live in a place I wanted to. I was stuck in an apartment for fifteen years that I didn't want to live in." (Disability subsample respondent)*

National origin.

- *"Everywhere we went, they asked us for our Social Security cards or a about what our legal status was and if you have neither of those, they do not rent to you." (Nonwhite subsample respondent)*

Race or ethnicity.

- *"I wasn't given the consideration another person was. It was puzzling to me but I spoke with a Caucasian friend who said, 'sometimes you forget your skin is brown.'" (Nonwhite subsample respondent)*
- *"People were looking at me and waving while calling me "nigger." I was on the PTA and doing everything I can to help but there is a lot of ignorant people. Moreover, they treat all Indian/Mexican/Latinos poorly." (Nonwhite subsample respondent)*

- *"The landlord that I spoke to refused to do anything because I was an American Indian." (Nonwhite subsample respondent)*

Other.

- *"Because I tried to get in one of the low income apartments. If you're not a migrant worker you can't get them." (General market respondent)*

- *"Just for the main reason, they wanted to know my account information and because they looked down on me having an older car—I ended up going elsewhere." (Nonwhite subsample respondent)*

- *"I had a dog." (General market respondent)*

In focus groups, a few participants described discriminatory or unfair treatment by landlords:

- A landlord taking longer to respond to maintenance requests of voucher holders than other tenants.

- A landlord harassing a Hispanic mother who does not speak English by going through her trash, installing motion-activated security cameras to film her back door, preventing her children from playing in common areas and refusing to let guests park in the resident's assigned parking space.

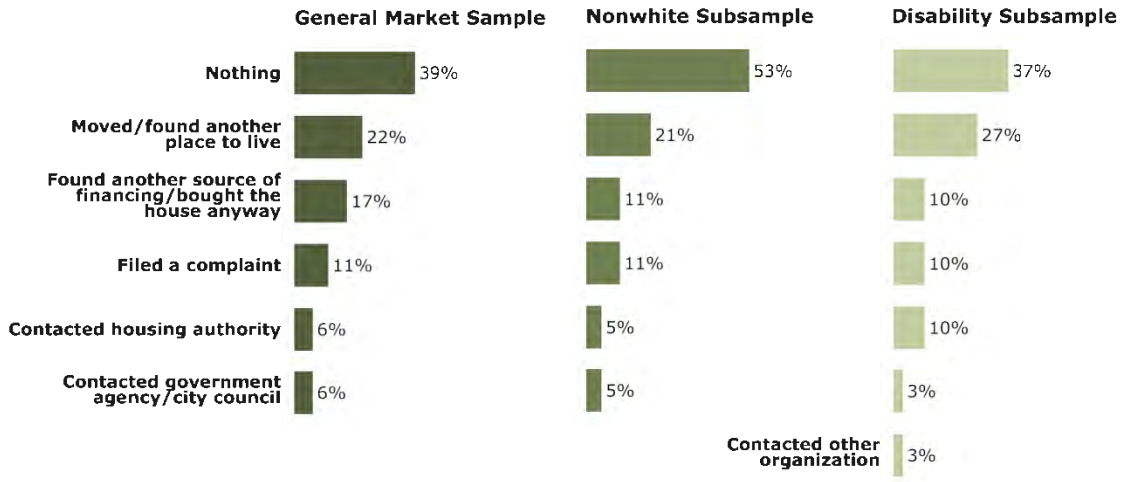
- One mother moved rather than face eviction due to noise complaints about her children filed by a downstairs neighbor.

- Reluctance or refusal to accept Section 8 vouchers.

- Refusal to rent to someone with a felony from 10 years ago.

Response to housing discrimination experience. The greatest proportion of respondents who experienced housing discrimination did "nothing" in response. The second greatest proportion moved or found someplace else to live. Although sample sizes are small, about one in 10 (two respondents) shared that they filed a complaint about the housing discrimination.

Figure V-18.
What did you do about the discrimination?



Note: General market sample n=18; nonwhite sample n= 19; disability sample n= 30.

Source: BBC Research & Consulting from 2015 Oregon Resident Telephone Survey.

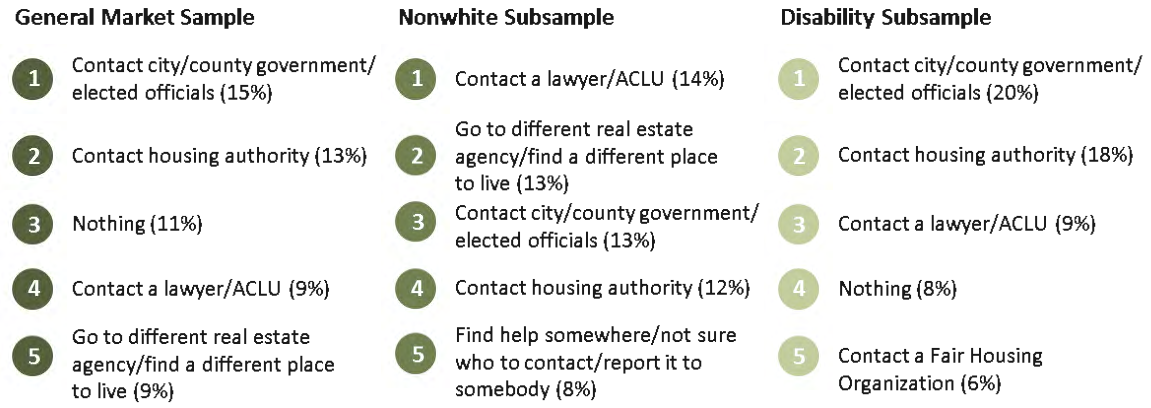
The two respondents who filed a complaint did so with HUD (one respondent) and the Oregon Attorney General's Office (one respondent). The complaint filed with the Oregon Attorney General's Office was resolved in three months to the resident's satisfaction. The respondent who filed with HUD stated that more than seven years have passed without a resolution—"It did not get resolved; I did not hear anything about it. It did not go anywhere."

Response to hypothetical housing discrimination. All survey respondents were asked how they would respond if they or someone they knew was discriminated against when looking for housing. About one in 10 general market and disability subsample respondents would do "nothing." Those who would do something think that they would contact: local government or local elected officials; a lawyer or the ACLU; or the housing authority. None would contact HUD and only respondents in the disability subsample suggested they would contact a fair housing organization (6%).

In focus groups, participants were generally unaware of their fair housing rights and did not know where to turn for help or information.[1]

[1] Commonworks Consulting provided resident focus group participants with informational brochures from the Fair Housing Council of Oregon.

Figure V-19.
If you felt you or someone you knew were discriminated against when looking for housing, what would you do? Top Five Responses



Note: General market sample n=358; nonwhite sample n= 126; disability sample n= 218.

Source: BBC Research & Consulting from 2015 Oregon Resident Telephone Survey.

Summary of Top Issues

Key findings from the public input process include:

- Most residents are satisfied with their current housing situation; those that are not report issues with condition, size and suitability. Costs associated with moving or a lack of suitable affordable alternative housing options are the primary barriers to moving.
- One in five households that include a member with a disability live in housing that is not suitable for the person with a disability. Generally this is associated with a lack of needed accessibility features, particularly in bathrooms.
- Most residents perceive their neighbors to be tolerant of different types of households moving into the area.
- A majority of residents believe their neighbors would be supportive of housing for people with disabilities, low income seniors, and to a somewhat lesser extent housing for low income people in general. Participants believe their neighbors would be least supportive of new apartment buildings in the area.
- Anywhere from 14 to 28 percent of residents who looked for housing to rent or buy in Oregon in the last five years experienced denial. Of these, bad credit, income, disability and criminal history were the most common reasons for denial.
- One in 20 households in Oregon's nonentitlement areas believe they have experienced housing discrimination in the past, and this rate climbs to slightly more than one in 10 nonwhite households or households that include a member with a disability. Race or ethnicity, disability and low income are among the most common factors.
- Residents are generally unaware of who to contact to report housing discrimination.

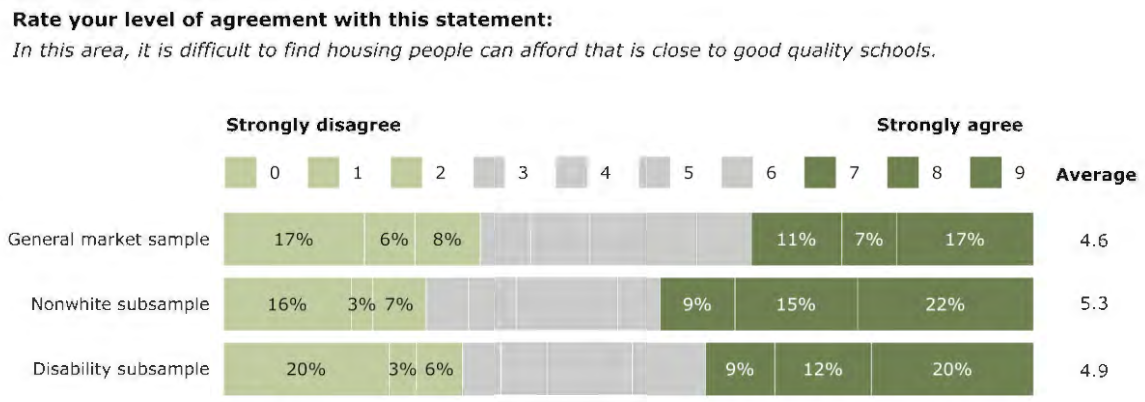
SECTION VI.
Access to Community Assets

This section explores the degree to which residents of Oregon's nonentitlement areas are able to access community assets, including such as quality public schools, employment opportunities and health care services. This section also explores community accessibility to persons with disabilities. The purpose is to examine the landscape for access to community assets for nonentitlement areas as a whole and to discern needs or challenges shared by residents.

Schools

School quality and the degree to which low income households are able to access good schools is one aspect of examining access to community assets. As shown in Figure VI-1, respondents are mixed in their opinion of ease of finding housing close to good schools. Overall, about two in five respondents agree that finding housing people can afford near good schools is difficult. Nearly half of nonwhite respondents (46%) agree that it is difficult to find affordable housing near quality schools, but 26 percent disagree.

Figure VI-1.
In this area, it is difficult to find housing people can afford that is close to good quality schools.



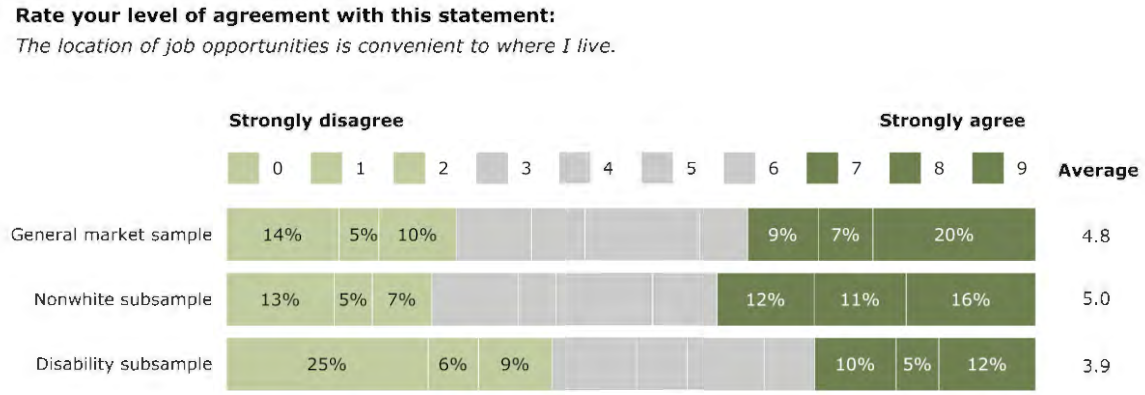
Note: General market sample n=385, nonwhite sample n=152, disability sample n=210.

Source: BBC Research & Consulting from 2015 Oregon Resident Telephone Survey.

Employment

Proximity of housing to employment opportunities is a measure of access to opportunity. Figure VI-2 presents respondents' assessment of the convenience of job opportunities to their home location. General market and nonwhite subsample respondents are more likely to agree that job opportunities are convenient; participants in the disability subsample are much more likely to disagree. Given the geographic diversity and dispersed population and employment centers throughout Oregon's nonentitlement areas, it is not surprising that the overall picture of access to job opportunities is mixed when examined as a whole.

Figure VI-2.
The location of job opportunities is convenient to where I live.



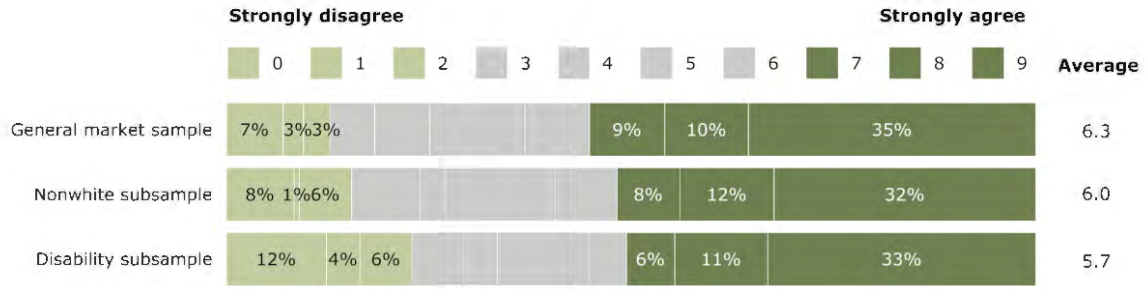
Note: General market sample n=388, nonwhite sample n=150, disability sample n=209.

Source: BBC Research & Consulting from 2015 Oregon Resident Telephone Survey.

Health Care

Residents of nonentitlement communities are more likely to agree than not that health care facilities are conveniently located. Individuals with disabilities are more likely than the general population or nonwhites to disagree about the convenience of health care facilities.

Figure VI-3.
The location of health care facilities is convenient to where I live.



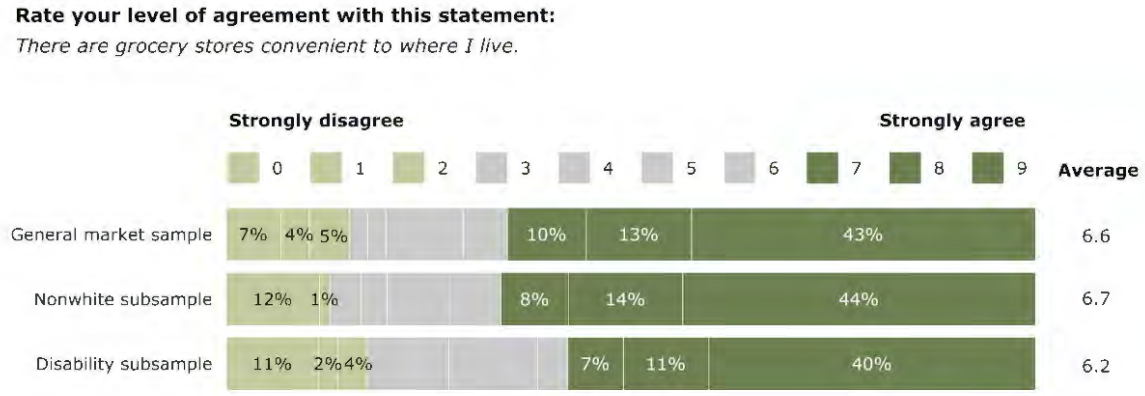
Note: General market sample n=388, nonwhite sample n=155, disability sample n=209.

Source: BBC Research & Consulting from 2015 Oregon Resident Telephone Survey.

Grocery

The majority of respondents reported that grocery stores are convenient to where they lived. Respondents in the disability subsample were slightly less likely than the general population and nonwhites to agree that stores are conveniently located.

Figure VI-4.
There are grocery stores convenient to where I live.



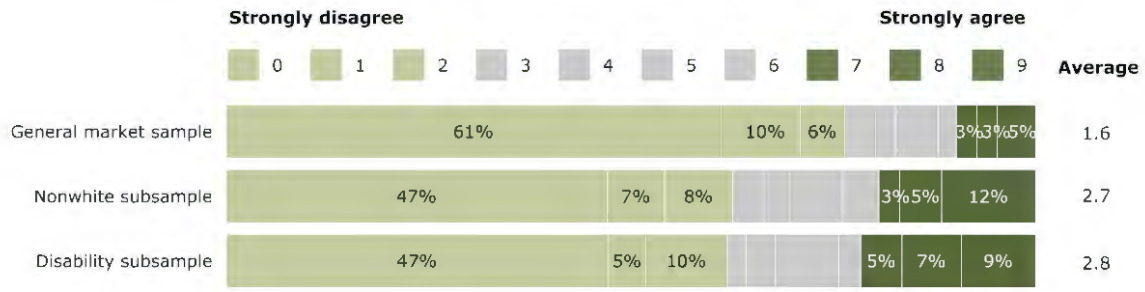
Note: General market sample n=400, nonwhite sample n=156, disability sample n=218.

Source: BBC Research & Consulting from 2015 Oregon Resident Telephone Survey.

Transportation

The majority of residents did not perceive transportation issues to be a problem. However, nonwhites and individuals with disabilities were more likely than the general population to respond that they have difficulties with transportation (20% and 21% respectively).

Figure VI-5.
I have difficulty getting to the places I want to go because of transportation problems.

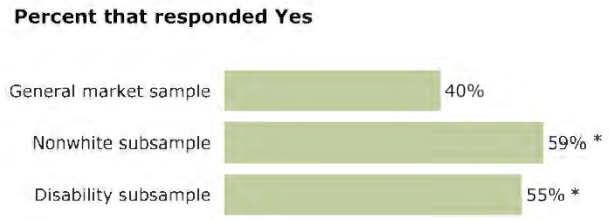


Note: General market sample n=399, nonwhite sample n=155, disability sample n=218.

Source: BBC Research & Consulting from 2015 Oregon Resident Telephone Survey.

Although most residents of nonentitlement communities do not report having difficulty getting to the places they want to go because of transportation problems, fairly large proportions would use public transit if it were available. A greater proportion of respondents in the nonwhite sample and disability samples would use public transit than respondents in the general market sample. This is a statistically significant difference.

Figure VI-6.
If public transit were available to you, would you use it?



Note:

*Statistically significant difference from the general market sample at the 95 percent confidence level.
General market sample n=362, nonwhite sample n=145, disability sample n=192.

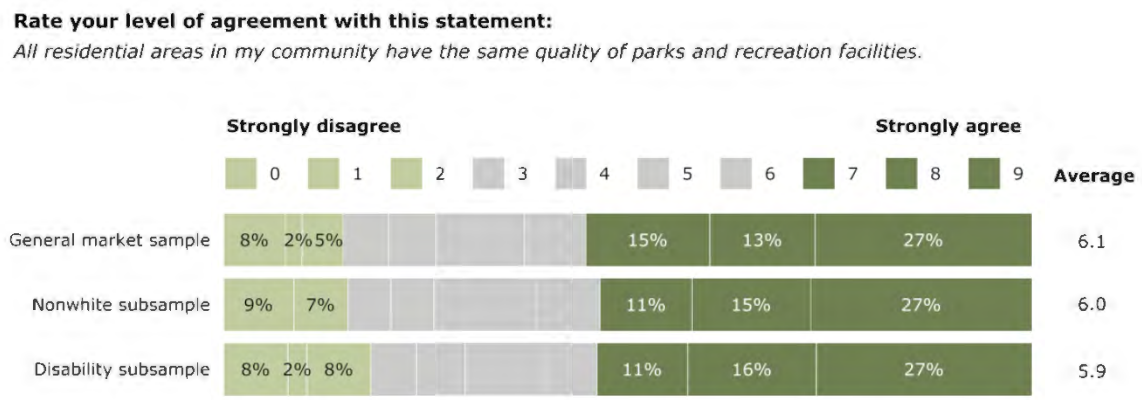
Source:

BBC Research & Consulting from 2015 Oregon Resident Telephone Survey.

Parks and Recreation

In some communities, park and recreation facilities in older or lower income neighborhoods are considered to be lower quality or less well maintained than newer parks or those located in more affluent neighborhoods. This does not appear to be the case for Oregon's nonentitlement areas as a whole. Overall, most residents believe that all residential areas in their community have the same quality of parks and recreation facilities. As shown in Figure VI-7, responses were remarkably similar across each population segment. Overall, fifteen percent of the general population, 17 percent of the nonwhite sample and 18 percent of the disability sample disagreed that parks were the same quality in all areas.

Figure VI-7.
All residential areas in my community have the same quality of parks and recreation facilities.



Note: General market sample n=392, nonwhite sample n=150, disability sample n=214.

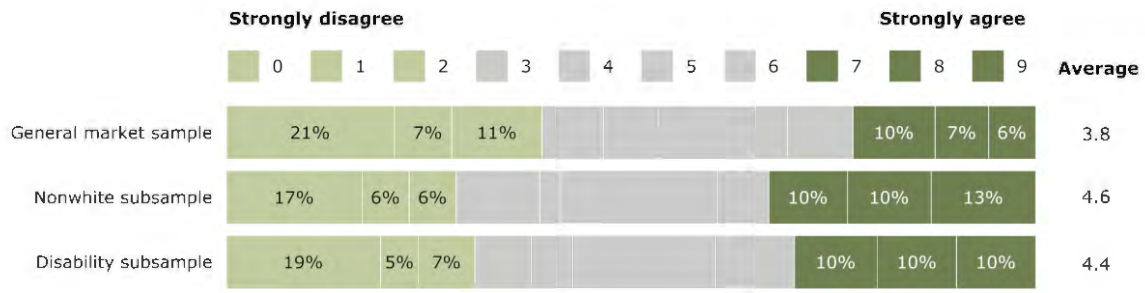
Source: BBC Research & Consulting from 2015 Oregon Resident Telephone Survey.

Housing Stock Condition

On average, residents' perception of the housing conditions in their community is mixed. Nonwhites and disability subsample respondents are more likely than the general market respondents to agree that housing in their community is in poor condition and needs repair. In interviews and focus groups, stakeholders shared stories of poor housing conditions common to market rate affordable housing in many rural areas. In some places, tenants are reluctant to request repairs or maintenance for fear of landlord retaliation. Others suggested that poor conditions are due to the landlord's inability to afford repairs. They suggested a need for more

resources for tenant education so that they better understand their rights and responsibilities. Others discussed the need for more intensive rental housing code enforcement.

Figure VI-8.
Housing in my community is in poor condition and needs repair.



Note: General market sample n=395, nonwhite sample n=155, disability sample n=215.

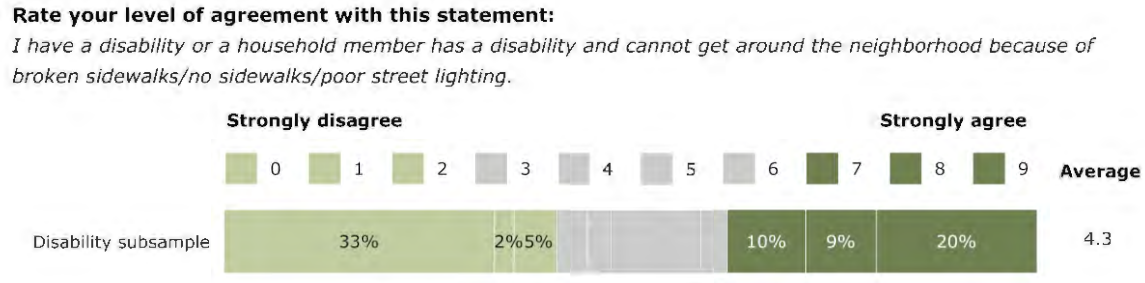
Source: BBC Research & Consulting from 2015 Oregon Resident Telephone Survey.

Community Asset Accessibility

Participants in the disability subsample responded to a series of questions regarding the ability of the member of their household with a disability to get around their neighborhood and access community assets such as employment opportunities, health services and community amenities, facilities and services.

Accessible infrastructure. As shown in Figure VI-9, respondents are split as to whether it is challenging for individuals with disabilities to navigate their neighborhood. Almost 40 percent of respondents strongly agreed that it can be difficult for individuals with disabilities to get around their neighborhood, while the same proportion disagreed. This underscores the case by case nature of the need for community accessibility infrastructure.

Figure VI-9.
I have a disability or a household member has a disability and cannot get around the neighborhood because of broken sidewalks/no sidewalks/poor street lighting.



Note: Disability sample n=218.

Source: BBC Research & Consulting from 2015 Oregon Resident Telephone Survey.

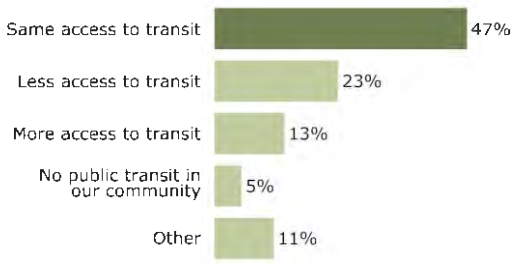
When asked to specify the types of improvements needed in their community, the most common resident responses related to poor (or nonexistent) sidewalk systems and lack of ramps to

access public buildings and local businesses. Residents and stakeholders described the challenges encountered or needed improvements:

- *"Actually I went to a town meeting for Veterans that were being discriminated against with bad bridges and sidewalks; they were not accommodating the disabled veterans and other disabled people by repairing the bad sidewalks or providing ramps for them." (Resident survey respondent)*
- *"I have noticed the old courthouse has many stairs and no elevator." (Resident survey respondent)*
- *"Some of the businesses could have handicapped ramps." (Resident survey respondent)*
- *"The curbs in the community need to be modified for electric wheelchairs. My husband and I need to walk in the street." (Resident survey respondent)*

Access to transportation. In describing how their community could become more accessible for the household member with a disability, more than 20 percent of responses referenced transportation needs, particularly accessible public transit. Stakeholders also weighed in on transit access for persons with disabilities. Nearly half report that access to transit for persons with disabilities is the same as that of the general population. (Same access does not necessarily imply actual access to public transit; it also includes communities where no public transit exists.) Nearly one in four stakeholders believe persons with disabilities have less access to transit.

Figure VI-10
How does access to public transit for people with disabilities compare to the rest of the community?



Note:
n=133.
Source:
BBC Research & Consulting from the 2015 Oregon Stakeholder Survey.

Access to health care services. Transportation was identified as the main barrier for individuals with disabilities accessing health services. Respondents also reported that location can be a barrier due to the distance they must travel to visit a health facility. Several participants also discussed the need for more doctors and specialists in their community. Other factors mentioned included affordability, accessibility, and lack of mental health services.

Access to employment opportunities. Respondents identified several necessary improvements to ensure that individuals with disabilities are able to access employment opportunities. Accessibility issues were mentioned by several respondents, namely the need for more sidewalks and wheelchair ramps. Respondents also identified transportation as a barrier to employment, specifically the need for more public transportation. Lastly, many participants reported the economy, and the general lack of jobs, especially in rural areas as issues that need improvement.

SECTION VII.
Impediments to Fair Housing Choice

Since the last AI was conducted in 2010, the State of Oregon has invested many resources toward addressing the identified impediments to fair housing choice. In sum, the state has:

- Funded a wide range of fair housing outreach and education and capacity-building activities;
- Funded audit testing to identify where issues of concern or discriminatory activities may exist;
- Examined and enhanced resources available to non-English speaking residents;
- Expanded the state's source of income protections to include income from the Housing Choice Voucher, or Section 8, program or other local, state or federal rent assistance;
- Changed how landlords may treat past evictions and criminal histories of rental applicants;[1]
- Continued programs to ensure that subsidized housing is available in a wide variety of neighborhoods.

However, affirmatively furthering fair housing choice (AFFH) is a complicated effort, as housing choices are affected by a variety of market conditions and actions by both residents and industry—not all of which are within the state's control. This AI found barriers to housing choice that had not been identified previously, as well as barriers that continue to exist. Those barriers are discussed below. Actions to address these barriers are described in the Fair Housing Action Plan section, Section VIII.

2015 Impediments to Fair Housing Choice

The remainder of this section is divided into two parts:

1) Impediments to housing choice. These are barriers that affect protected classes covered under state and federal fair housing laws; and

2) Barriers to housing choice. These barriers may not affect one or more protected classes directly; instead they limit housing opportunities for households in general. In certain circumstances, when disparately impacting a certain resident group protected by fair housing laws, they may become impediments.

[1] Residents with criminal histories are not a protected class; however, there can be overlap with protected class categories, most commonly disability and race/ethnicity.

Impediments to Fair Housing Choice

According to HUD's proposed rule on fair housing, impediments to fair housing choice can take a variety of forms and include: building and zoning codes, processes for site selection for low income housing, lack of public services in low income areas, less favorable mortgage lending for minority borrowers and lack of public awareness of rights and responsibilities associated with fair housing.[2]

Key to the definition of "impediment" is the effect on protected classes. An action may be an impediment, for example if it prevents people from moving out of racially concentrated areas of poverty and/or neighborhoods that perpetuate disparities in access to community assets.

The following impediments are organized around the primary research findings from the 2015-2019 AI.

Research Finding #1: Persons with disabilities face widespread barriers to housing choice. Discrimination against persons with disabilities in accessing housing was evidenced through fair housing complaint data (consistently more than half of complaints and intake calls) and respondents to the resident survey. The top two barriers to housing choice identified by stakeholders surveyed for this AI were related to housing persons with disabilities.

Impediments that have contributed to this finding include:

- ***Impediment 1-1.*** There is a lack of affordable, accessible housing, including housing available for persons with disabilities who wish to leave nursing homes or other institutional settings. Twenty percent of disability respondents to the AI resident survey said their homes do not meet their family's disability needs. Forty-six percent want to move and said they can't afford to move or live anywhere else in their community. Units that are developed for persons with disabilities (ADA-compliant) are often filled with people without disabilities because there is no functional referral system and no requirements that landlords match units with residents who need accommodations.

- ***Impediment 1-2.*** Some landlords refuse to make reasonable accommodations for persons with disabilities. This is the most common reason for complaints statewide and in many entitlement areas. It is important to note that, according to residents surveyed for this AI, most landlords *do* comply with reasonable accommodations requests, yet some are still unaware or refuse to comply with fair housing laws.

- ***Impediment 1-3.*** There are limited resources to help persons with disabilities transition out of institutional settings.

- ***Impediment 1-4.*** Infrastructure in rural areas is generally inaccessible due to lack of sidewalks and paved roads. Public transit is very limited and is often difficult to access.

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[2] http://www.gpo.gov/fdsys/pkg/FR-2013-07-19/pdf/2013-16751.pdf

- ***Impediment 1-5.*** Some aspects of state statutes could be improved to clarify how group homes should be treated in local land use regulations and zoning codes. Although state law provides very prescriptive regulations in some areas, some loopholes exist that may cause differential treatment of group home facilities.

Research Finding #2: Discrimination against protected classes persists statewide. According to the statistically significant resident survey conducted for this AI, 5 percent of residents in Oregon's nonentitlement areas believe they have experienced some form of housing discrimination. This rate more than doubles for nonwhite respondents (12%) and disability subsample respondents (13%). The survey results indicate that a greater proportion of nonwhite residents and residents with a disability experience housing discrimination than residents overall.

The top three reasons for the housing discrimination are generally consistent across resident types and include:

- Race and ethnicity (all respondents),
- Disability (disability and nonwhite respondents),
- Low income (disability and nonwhite respondents),
- Large families/children (all respondents).

Discriminatory behavior can result in and be the reason for segregation. Although Oregon has few areas of segregation, those that do exist in rural areas are generally high poverty and have high proportions of non-English speakers—characteristics which can limit residents' access to opportunity.

Results from fair housing audit testing—which was conducted independent of this AI—support the resident survey findings on discrimination. Discrimination based on race or ethnicity was found in 25 percent of nonentitlement tests. More frequent audits have been completed in entitlement areas, where discrimination in rental transactions based on race and ethnicity was found in about two-thirds of cases. Although these test samples are relatively small, they corroborate stakeholder and resident observations and reported experiences.

In many cases, housing discrimination is subtle and can be difficult to detect, especially for residents who are unaware of their fair housing rights. The AI relied on interviews with stakeholders who work closely with protected classes and residents' self-reported experiences to uncover some of the more subtle discriminatory activities. These included:

- A landlord refusing to rent to a person with a disability because they had to borrow money for the security deposit;
- Landlords requesting Social Security cards and asking about legal status;
- Landlords imposing unreasonable conditions or refusing to work with organizations who provide services to persons with disabilities because they are nervous they will "fail."

- Harassment by neighbors (repeated complaints about noise made by children, pointing firearms at residents).

Impediments that contribute to discrimination include:

- ***Impediment 2-1.*** Lack of enforcement of fair housing violations in rural areas.

- ***Impediment 2-2.*** Limited housing options for persons most vulnerable to housing discrimination: non-English speakers, persons of Hispanic descent, Native Americans, African Americans, large families and, as discussed above, persons with disabilities.

Research Finding #3. Residents lack knowledge of their fair housing rights, are not empowered to take action and have very limited fair housing resources locally. According to the resident survey conducted for the AI, 39 percent of residents of nonentitlement areas would take no action if they felt they had been discriminated against. This is much higher for nonwhites: 53 percent would take no action, suggesting lack of knowledge of what to do and/or lack of faith that taking action would result in a positive outcome.

The resident survey also revealed low awareness of fair housing rights. Most residents do not know where to turn for help if they've experienced discrimination.

According to stakeholders, immigrants and non-English speakers are very vulnerable to discrimination because of their lack of fair housing knowledge: New immigrants, farmworkers and non-English speakers who are "told no at the front door" do not file complaints because they are completely unaware of their fair housing rights; "they don't realize they aren't second class citizens."

Those residents who said they would take action are mostly likely to contact a city/county/government website or a housing authority. Yet a review of how nonprofit housing providers, including public housing authorities (PHAs), communicate fair housing information on websites found that fair housing information was limited.

In general, the housing provider websites do a very good job of detailing affordable housing developments in a community and the process for applying for subsidized housing. Nearly all of the websites could be improved, however, by adding:

- Fair housing information that is upfront and easy to find (i.e., on the front page),

- A description of how to file a complaint and links to the FHCO and HUD websites, and

- Information in languages other than English.

Impediments related to this finding include:

- ***Impediment 3-1.*** Local fair housing resources are limited statewide, particularly in rural communities.

Research Finding #4. In many rural areas, credit is limited for residents who want to buy homes and developers who want to build multifamily housing. Homeownership not only provides residents residential stability, homeownership is the surest way to build wealth in America. The implications of lack of access to credit affect more than the borrower: Lack of capital for home improvements affects neighborhood quality which, in turn, affects home values and residents' ability to access credit.

A review of mortgage lending data for this AI found that African American, Hispanic, and Native American residents face challenges in accessing home mortgage credit. According to the analysis of Home Mortgage Disclosure Act (HMDA) data, African American, Hispanic and Native American loan applicants face higher loan denial rates than non-Hispanic white applicants (differences of 8 to 10 percentage points). These disparities in denial rates persist even at high income levels (<$75,000/year). Denial rates are particularly high for home improvement loans: 51 percent of Native American, 43 percent of Hispanic and 42 percent of African American applicants were denied home improvement loans in 2013.

The top counties for lending disparities were all rural. Overall, denial rates are higher in non-Metropolitan Statistical Areas (MSAs) than in MSAs for all races and ethnicities (including whites) except for African Americans.

A combination of factors captured in the HMDA data explains the disparities including poor/lacking credit histories, high debt-to-income ratios and lack of collateral. In some cases, applicants have weakened their credit profile by cosigning loans for family and friends in an effort to help them access credit. The FDIC estimates that 40 percent of Hispanic residents in Oregon do not use traditional banks.

In addition to the HMDA review, stakeholders expressed concern about the lack of available credit for development of multifamily units in rural areas. Capital is reportedly very difficult to obtain due to market conditions in rural areas and bank mergers reducing the number of local financial institutions in rural areas. Although this is more of a barrier than an impediment, it is included here because it involves capital constraints.

Impediments and barriers related to this finding include:

- ***Impediment 4-1.*** Limited credit alternatives for households in rural areas who seek homeownership, and
- ***Barrier 4-2***. Lack of capital to develop multifamily housing in rural areas.

Barriers to Fair Housing Choice

The following barriers affect housing opportunities for households in general in Oregon, particularly low income households. They may also disproportionately affect protected classes—but that nexus depends on each particular case.

Research Finding #5. Condition of affordable housing is generally poor in rural areas. Housing condition in rural areas was frequently raised as a barrier to housing choice by stakeholders.

Poor condition of affordable housing was the fourth highest rated barrier by stakeholders in the AI survey. In focus groups, many participants living in more rural or economically depressed communities described poor housing conditions due to lack of maintenance and inexpensive housing construction, most commonly associated with privately-provided housing.

Although poor housing condition generally affects households similarly regardless of protected class, it can be a particular problem for certain protected classes when:

- Fear of landlord retaliation if condition issues are reported and the experience of discrimination limits other housing choices of certain protected classes;
- Landlords maintain properties differently depending on the occupants; and
- Lack of code enforcement is selectively applied to certain types of properties (e.g., manufactured home parks mostly occupied by Hispanic residents or large families).

Research Finding #6. Oregon's state laws may limit the ability of cities and counties to employ programs that are known to create a significant amount of affordable units in many other jurisdictions. Oregon's state laws prohibiting inclusionary zoning (ORS 197.309 and ORS 91.255(2)) may limit the ability of cities and counties in the state to employ a program that has created a significant inventory of affordable units in many other jurisdictions.

Depending on the U.S. Supreme Court's disparate impact ruling (expected in June 2015), Oregon's state laws prohibiting IZ could also be challenged for disparate impact on protected classes if the housing produced with IZ would result in expanded housing choices for certain resident groups. This is particularly true for residents of manufactured home parks whose affordability of housing is often eroded by the cost of land leases charged by park owners. Because manufactured homes are costly to move and the supply of parks is limited, manufactured home households are more likely to accept lease increases and/or tolerate actions by park owners that may be in violation of fair housing laws. Remedying this condition would require changes to the state's prohibition on inclusionary zoning.

Research Finding #7. State laws and local practices, coupled with lack of housing in rural areas, create impediments to housing choice for persons with criminal backgrounds. A consistent theme among stakeholders surveyed and interviewed for this AI was the lack of housing options for persons with past criminal histories. Onerous look back periods for criminal charges of rental applicants was the second-highest housing practice barrier identified by stakeholders surveyed in this AI. A secondary concern was lack of housing for residents with more minor infractions—e.g., credit blemishes or prior evictions.

Consideration of certain criminal charges or convictions may impede housing opportunities for post-incarcerated members of protected classes commonly overrepresented in prison populations, such as persons with mental illness and African American males. According to a 2014 State of Oregon Legislative report, approximately 50 percent of Oregon's prison population in 2012 needed mental health treatment (48% of male inmates and 80% of female inmates). Fifteen percent of all male inmates and 44 percent of all female inmates were diagnosed with severe mental illness.

ORS 144.102 requires that for a minimum of six months after release, a person must reside in the county they were last supervised or, if the person was not supervised at the time of the offense, in the county the person lived at the time the offense. The residency condition requirement can complicate the process of finding housing upon re-entry in housing markets where housing supply is limited and/or costly. To the extent that certain residents are disproportionately likely to be incarcerated, the residency requirement may disproportionately impact housing choice.

SECTION VIII.
Fair Housing Action Plan

This section contains the recommended Fair Housing Action Plan ("Action Plan") for 2016-2020 to address identified impediments and barriers to housing choice. The Action Plan follows the order of the impediments and barriers discussed in Section VII.

The fair housing barriers identified in the AI research are discussed below. As specified in HUD's AFH tool, the action items to address the barriers are assigned a priority ranking. The prioritization was based on:

- The significance of the barrier in contributing to segregation,
- The significance of the barrier in limiting housing choice, and
- Ease of implementation—i.e., the ability of the city and its partners to address the barrier.

Recommended 2016-2020 Fair Housing Action Plan

Research Finding #1: Persons with disabilities face widespread barriers to housing choice statewide.

Impediments found to contribute to barriers to housing choice for persons with disabilities include:

- ***Impediment 1-1.*** Lack of affordable, accessible housing, including housing available for persons with disabilities who wish to leave nursing homes or other institutional settings.
- ***Impediment 1-2.*** Refusal of some landlords to make reasonable accommodations for persons with disabilities.
- ***Impediment 1-3.*** Persons with disabilities who desire to transition out of institutional settings are limited by the lack of affordable, accessible and supportive services housing, in addition to financial and emotional support to assist them in their transitions.
- ***Impediment 1-4.*** Housing choices for persons with disabilities are severely limited by lack of sidewalks, paved roads and reliable and sufficient public transportation.
- ***Impediment 1-5.*** Local zoning and land use regulations and/or inexact application of state laws may impede the siting and approval of group homes.

Recommended **Action Items** to address impediments:

- ***Action items 1-1.***

    a. Determine the specific housing needs for persons with disabilities and develop proactive strategies to address the need. *High priority, Long term effort (3-4 years)*

    b. Determine how to better match persons with disabilities with accessible units, including if persons with disabilities have access to units as they become available. *High priority, Moderate term effort (2-3 years)*

    c. Examine how the state can increase the number of accessible units in publicly funded multifamily developments while complying with all relevant regulations and constraints. *High priority, Moderate term effort*

    d. Support the efforts of Public Housing Authorities to implement adaptive modification programs. *Low priority, Moderate term effort*

    e. Promote polices that support aging in place and funding for retrofitting of senior housing. Support the continued dissemination of information on how communities can provide opportunities for residents to age in place and how to improve community access for persons with disabilities living in independent settings. *High priority, Moderate term effort*

- ***Action item 1-2.*** Identify resources and provide opportunities for education and training on the requirements to provide reasonable accommodations. *Moderate priority, Short term effort*

- ***Action item 1-3.*** Convene service providers and persons with disabilities to prioritize the needs to transition persons with disabilities into the community from medical or other systems of care. *High priority, Moderate term effort*

- ***Action item 1-4.*** Prioritize accessibility improvements in publicly funded community development projects, to promote housing choice for persons with disabilities. *Moderate priority, Long term effort*

- ***Action item 1-5.*** Review and support best practices to further housing choice for persons with disabilities, including potential modifications to state statutes to further fair housing protections for persons with disabilities residing in group home settings. *Moderate priority, Long term effort*

Research Finding #2: Discrimination against protected classes persists statewide.

Impediments found to contribute to housing discrimination include:

- ***Impediment 2-1.*** Lack of enforcement of fair housing violations persists statewide.

- ***Impediment 2-2.*** Limited housing options for persons most vulnerable to housing discrimination: non-English speakers, persons of Hispanic descent, Native Americans, African Americans, large families and, as discussed above, persons with disabilities.

Recommended **Action Items** to address impediments:

- ***Action items 2-1.***

    a. Continue to fund efforts of Fair Housing Council of Oregon (FHCO) to provide fair housing education and training services. Continue to fund the fair housing complaint line and provide broader assistance with landlord/tenant disputes. Promote increasing the language accessibility of these services. *High priority, Long term effort*

    b. Strengthen the certification that all publicly funded grantees comply with all federal, state and local nondiscrimination laws. Provide educational materials to ensure grantees understand fair housing obligations. *Moderate priority, Short term effort (1-2 years)*

- ***Action item 2-2.***

    a. Continue to fund and expand fair housing audit testing to inform educational, outreach and enforcement efforts. Incorporate retesting and verification in efforts. *High priority, Long term effort*

    b. Promote housing alternatives for persons reentering community from incarceration and persons surviving domestic violence. *High priority, Long term effort*

    c. Provide stakeholder education and training on fair housing laws and requirements. *Moderate priority, Long term effort*

    d. Fund complaint intake process at FHCO as well as technical assistance for federal funding recipients. *High priority, Long term effort*

    e. Fund pilot program to review Post Acknowledgement Plan Amendments submitted to DLCD to identify land use proposals with a potentially discriminatory impact. *Moderate priority, Short term effort*

    f. Continue to staff the Housing Choice Advisory Committee and monitor implementation of HB 2639 (2013). *Moderate priority, Long term effort*

    g. Continue efforts to expand housing choices in rural areas. *High priority, Long term effort*

    h. Promote access to mediation services for neighbor on neighbor harassment in manufactured home parks. These services are also available for landlord tenant disputes. *High priority, Long term effort*

    i. Promote tools and education for housing providers to understand fair housing requirements—e.g., working with apartment associations to distribute model

lease agreements in English and Spanish and reasonable accommodations policies. *Moderate priority, Long term effort*

j. Continue to fund advocacy services to persons living with HIV/AIDS through locally based housing case managers. *High priority, Long term effort*

k. Promote housing alternatives for persons surviving domestic violence. *High priority, Moderate term effort*

Research Finding #3. Residents lack knowledge of their fair housing rights, are not empowered to take action and have very limited fair housing resources locally.

- ***Impediment 3-1.*** Local fair housing resources statewide are limited. This is particularly true in rural communities.

Recommended Action Items to address impediment:

- ***Action items 3-1.***

a. Ensure that fair housing resources are provided statewide. Ensure that rural communities are able to effectively access services and resources. To the extent possible, prioritize long-term support for fair housing activities. *High priority, Long term effort*

b. Provide culturally specific fair housing education and outreach for tribal communities, Spanish speaking communities, new immigrants and persons with limited English proficiency. *High priority, Long term effort*

c. Ensure persons living with HIV/AIDS have access to Fair Housing information and resources. *High priority, Long term effort*

Research Finding #4. In many rural areas, credit is limited for residents who want to buy homes and developers who want to build multifamily housing.

Impediments and barriers related to this finding include:

- ***Impediment 4-1.*** Limited credit alternatives for households in rural areas who seek homeownership.

- ***Impediment 4-1.*** Discriminatory lending practices persist for person of color.

- ***Barrier 4-2***. Lack of capital to develop multifamily housing in rural areas.

Recommended **Action Items** to address impediments and barriers:

- ***Action items 4-1.***

a. Explore enhancements to the single family bond program. *Moderate priority, Long term effort*

b. Continue to provide down payment assistance for low income homebuyers; provide focus on home buyers of color. *High priority, Long term effort*

c. Continue to support funding homebuyer education and counseling, and financial education and counseling for low income homebuyers. *High priority, Long term effort*

d. Partner with banking and mortgage industry and existing community development financial institutions to increase lending opportunities in rural communities. *High priority, Moderate term effort*

e. Continue the Oregon Individual Development Account (IDA) Initiative to increase opportunities for low income Oregonians to access home ownership. *High priority, Short term effort*

f. Convene lenders to better understand the challenges—and solutions—to addressing limited capital in rural areas. *Moderate priority, Moderate term effort*

- ***Action items 4-2.***

a. Continue discussions with the Oregon Affordable Housing Tax Credit workgroup and partners regarding the Tax Credit, and how this program can be used to provide additional opportunities in rural communities. *High priority, Short term effort*

b. Partner with banking and mortgage industry and existing community development financial institutions to increase lending opportunities in rural communities. *Moderate priority, Long term effort*

Research Finding #5. Condition of affordable housing is generally poor in rural areas.

In addition to the actions outlined in 2.1 the state should consider the following:

Action items 5.

a. Consider ways to partner with local jurisdictions to improve housing code enforcement. *Moderate priority, Long term effort*

b. Require that all grantees/developers of funded rental housing projects that have high risk of compliance violations, or are poor performing, will annually inspect the condition and habitability of the units funded. *High priority, Short term effort*

Research Finding #6. Oregon's state laws <u>may</u> limit the ability of cities and counties to employ programs that are known to create a significant amount of affordable units in many other jurisdictions.

- ***Barrier 6-1.*** The state's ban on the use of inclusionary zoning limits municipalities' ability to employ flexible tools and incentives to increase the number of affordable units built.

- ***Impediment 6-2.*** The lack of affordable units significantly limits housing choice for persons of color and low income persons.

Action items 6.

a. Work with Department of Land Conservation and Development to examine Oregon's land use laws and planning and zoning systems and seek ways to help local jurisdictions meet their statutory housing obligations. *Low priority, Long term effort*

b. Conduct deeper research into how Oregon's current land use system could accommodate creation of integrated neighborhoods and increased inventory of affordable units. *Moderate priority, Long term effort*

c. Strengthen technical planning assistance for cities around creating housing choice. *Low priority, Long term effort*

d. Encourage use of local incentives to encourage affordable housing development. *Low priority, Long term effort*

Research Finding #7. State laws and local practices, coupled with lack of housing in rural areas, create impediments to housing choice for persons with criminal backgrounds.

- ***Impediment 7.1*.** To the extent that certain residents are disproportionately likely to be incarcerated, the residency requirement may disproportionately impact housing choice for protected classes. Persons with criminal backgrounds have few, if any housing options.

Action items 7.

a. Reduce barriers for persons under post-prison supervision and probation to find and maintain affordable housing. *Moderate priority, Long term effort*

b. Consider funding second chance tenant training programs and landlord guarantee programs (e.g., similar to the Housing Choice Landlord Guarantee program). *Moderate priority, Short term effort*

c. Examine the effectiveness of reentry programs in housing environment and support best practices. *Moderate priority, Moderate term effort*

d. Provide funding opportunities for programs focused on reentry and supportive housing. *Moderate priority, Short term effort*

2016-2020 FAIR HOUSING ACTION PLAN (FHAP) - STATE OF OREGON

For purposes of this plan, the distinction between an impediment and a barrier, is that

ROW #	FAIR HOUSING BARRIER	PRIORITIZATION	ACTION ITEMS TO ADDRESS IMPEDIMENTS	FAIR HOUSING PARTNERS	TIMELINE *Short Term 1-2 Years; Moderate Term 2-3 Years; Long Term 3-4 Years*	PROGRESS, DELIVERABLES AND OUTCOMES
1	**Impediment 1-1.** Lack of affordable, accessible housing, including housing available for persons with disabilities who wish to leave nursing homes or other institutional settings.	High	**Action Item 1-1a.** Determine the specific housing needs for persons with disabilities and develop proactive strategies to address the need.	OHCS/OHA	Long Term	
2		High	**Action Item 1-1b.** Determine how to better match persons with disabilities with accessible units, including if persons with disabilities have access to units as they become available.	OHCS/FHCO	Moderate Term	
3		High	**Action Item 1-1c.** Examine how the state can increase the number of accessible units in publicly funded multifamily developments while complying with all relevant regulations and constraints.	OHCS/OHA	Moderate Term	
4		Low	**Action Item 1-1d.** Support the efforts of Public Housing Authorities to implement adaptive modification programs.	Public Housing Authorities	Moderate Term	
5		High	**Action Item 1-1e.** Promote polices that support aging in place and funding for retrofitting of senior housing. Support the continued dissemination of information on how communities can provide opportunities for residents to age in place and how to improve community access for persons with disabilities living in independent settings.	OHCS	Moderate Term	
6	**Impediment 1-2.** Refusal of some landlords to make reasonable accommodations for persons with disabilities.	Moderate	**Action Item 1-2.** Identify resources and provide opportunities for education and training on the requirements to provide reasonable accommodations.	OHCS/FHCO/OBDD-IFA	Short Term	
7	**Impediment 1-3.** Persons with disabilities who desire to transition out of institutional settings are limited by the lack of affordable, accessible and supportive services housing, in addition to financial and emotional support to assist them in their transitions.	High	**Action Item 1-3.** Convene service providers and persons with disabilities to prioritize the needs to transition persons with disabilities into the community from medical or other systems of care.	OHCS/FHCO/OHA/DHS	Moderate Term	
8	**Impediment 1-4.** Housing choices for persons with disabilities are severely limited by lack of sidewalks, paved roads and reliable and sufficient public transportation.	Moderate	**Action Item 1-4.** Prioritize accessibility improvements in publicly funded community development projects, to promote housing choice for persons with disabilities.	OHCS/OBDD-IFA/OHA/DHS	Long Term	
9	**Impediment 1-5.** Local zoning and land use regulations and/or inexact application of state law may impede the siting and approval of group homes.	Moderate	**Action Item 1-5.** Review and support best practices to further housing choice for persons with disabilities, including potential modifications to state statutes to further fair housing protections for persons with disabilities residing in group home settings.	OHCS/FHCO/OHA/DHS	Long Term	
10	**Impediment 2-1.** Lack of enforcement of fair housing violations persists statewide.	High	**Action Item 2-1a.** Continue to fund efforts of Fair Housing Council of Oregon (FHCO) to provide fair housing education and training services. Continue to fund the fair housing complaint line and provide broader assistance with landlord/tenant disputes. Promote increasing the language accessibility of these services.	OHCS/OBDD-IFA	Long Term	
11		Moderate	**Action Item 2-1b.** Strengthen the certification that all publicly funded grantees comply with all federal, state and local nondiscrimination laws. Provide educational materials to ensure grantees understand fair housing obligations.	OHCS/FHCO	Short Term	
12	**Impediment 2-2.** Limited housing options for persons most vulnerable to housing discrimination: non-English speakers, persons of Hispanic descent, Native Americans, African Americans, large families and, as discussed above, persons with disabilities.	High	**Action Item 2-2a.** Continue to fund and expand fair housing audit testing to inform educational, outreach and enforcement efforts. Incorporate retesting and verification in efforts.	OHCS/FHCO	Long Term	

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13		High	**Action Item 2-2b.** Promote housing alternatives for persons reentering community from incarceration.	OHCS/Re entry Council/Gov Task Force on DV	Long Term	
14		Moderate	**Action Item 2-2c.** Provide stakeholder education and training on fair housing laws and requirements.	OHCS/OBDD-IFA	Long Term	
15		High	**Action Item 2-2d.** Fund complaint intake process at FHCO as well as technical assistance for federal funding recipients.	OHCS/OBDD-IFA	Long Term	
16		Moderate	**Action Item 2-2e.** Fund pilot program to review Post Acknowledgement Plan Amendments submitted to DLCD to identify land use proposals with a potentially discriminatory impact.	OHCS/OBDD-IFA	Short Term	
17		Moderate	**Action Item 2-2f.** Continue to staff the Housing Choice Advisory Committee and monitor implementation of HB 2639 (2013).	OHCS	Long Term	
18		High	**Action Item 2-2g.** Continue efforts to expand housing choices in rural areas.	OHCS	Long Term	
19		High	**Action Item 2-2h.** Promote access to mediation services for neighbor on neighbor harassment in manufactured home parks. These services are also available for landlord tenant disputes.	OHCS	Long Term	
20		Moderate	**Action Item 2-2i.** Promote tools and education for housing providers to understand fair housing requirements—e.g., working with apartment associations to distribute model lease agreements in English and Spanish and reasonable accommodations policies.	OHCS/FHCO	Long Term	
21		High	**Action Item 2-2j.** Continue to fund advocacy services to persons living with HIV/AIDS through locally based housing case managers.	OHA	Long Term	
		High	**Action Item 2-2k.** Promote housing alternatives for persons surviving domestic violence.	OHCS/ DHS	Moderate Term	
22	**Impediment 3-1.** Local fair housing resources statewide are limited. This is particularly true in rural communities.	High	**Action Item 3-1a.** Ensure that fair housing resources are provided statewide. Ensure that rural communities are able to effectively access services and resources. To the extent possible, prioritize long-term support for fair housing activities.	OHCS/OBDD-IFA/FHCO	Long Term	
23		High	**Action Item 3-1b.** Provide culturally specific fair housing education and outreach for tribal communities, Spanish speaking communities, new immigrants and persons with limited English proficiency.	OHCS/FHCO	Long Term	
24		High	**Action Item 3-1c.** Ensure persons living with HIV/AIDS have access to Fair Housing information and resources.	OHCS/OHA/FHCO	Long Term	
25	**Impediment 4-1.** Limited credit alternatives for households in rural areas who seek homeownership.	Moderate	**Action Items 4-1a.** Explore enhancements to the single family bond program.	OHCS	Long Term	
26	**Impediment 4-1.** Discriminatory lending practices persist for persons of color.	High	**Action Items 4-1b.** Continue to provide down payment assistance for low income homebuyers; provide focus on home buyers of color.	OHCS	Long Term	

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27		High	**Action Items 4-1c.** Continue to support funding homebuyer education and counseling, and financial education and counseling for low income homebuyers.	OHCS	Long Term	
28		High	**Action Items 4-1d.** Partner with banking and mortgage industry and existing community development financial institutions to increase lending opportunities in rural communities.	OHCS	Moderate Term	
29		High	**Action Items 4-1e.** Continue the Oregon Individual Development Account (IDA) Initiative to increase opportunities for low income Oregonians to access home ownership.	OHCS	Short Term	
30		Moderate	**Action Items 4-1f.** Convene lenders to better understand the challenges—and solutions—to addressing limited capital in rural areas.	OHCS	Moderate Term	
31	**Barrier 4-2.** Lack of capital to develop multifamily housing in rural areas.	High	**Action Item 4-2a.** Continue discussions with the Oregon Affordable Housing Tax Credit workgroup and partners regarding the Tax Credit, and how this program can be used to provide additional opportunities in rural communities.	OHCS	Short Term	
32		Moderate	**Action Item 4-2b.** Partner with banking and mortgage industry and existing community development financial institutions to increase lending opportunities in rural communities.	OHCS	Long Term	
33	**Barrier 5.** Condition of affordable housing is generally poor in rural areas.	Moderate	**Action Item 5a.** Consider ways to partner with local jurisdictions to improve housing code enforcement.	OHCS/FHCO	Long Term	
34		High	**Action Item 5b.** Require that all grantees/developers of funded rental housing projects that have high risk of compliance violations, or are poor performing, will annually inspect the condition and habitability of the units funded.	OHCS	Short Term	
35	**Barrier 6-1.** The state's ban on the use of inclusionary zoning limits municipalities' ability to employ flexible tools and incentives to increase the number of affordable units built.	Low	**Action Item 6a.** Work with Department of Land Conservation and Development to examine Oregon's land use laws and planning and zoning systems and seek ways to help local jurisdictions meet their statutory housing obligations.	OHCS/DLCD	Long Term	
36	**Impediment 6-2.** The lack of affordable units significantly limits housing choice for persons of color and low income persons.	Moderate	**Action Item 6b.** Conduct deeper research into how Oregon's current land use system could accommodate creation of integrated neighborhoods and increased inventory of affordable units.	OHCS/DLCD	Long Term	
37		Low	**Action Item 6c.** Strengthen technical planning assistance for cities around creating housing choice.	OHCS/DLCD	Long Term	
38		Low	**Action Item 6d.** Encourage use of local incentives to encourage affordable housing development.	OHCS/DLCD	Long Term	
39	**Impediment 7.** Persons with criminal backgrounds have few, if any housing options.	Moderate	**Action Item 7a.** Reduce barriers for persons under post-prison supervision and probation to find and maintain affordable housing.	OHCS/ DOC/Re entry Council	Long Term	
40		Moderate	**Action Item 7b.** Consider funding second chance tenant training programs and landlord guarantee programs (e.g., similar to the Housing Choice Landlord Guarantee program).	OHCS/DOC	Short Term	

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41		Moderate	**Action Item 7c.** Examine the effectiveness of reentry programs in housing environment and support best practices.	OHCS/DOC	Moderate Term	
42		Moderate	**Action Item 7d.** Provide funding opportunities for programs focused on reentry and supportive housing.	OHCS/DOC	Short Term	

APPENDIX A.
Review of State Level Public Sector Barriers to Fair Housing in Oregon

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1. Introduction

This section reviews whether Oregon state-level laws have the effect of making housing unavailable for groups of citizens protected by the Fair Housing Act Amendments of 1988 (the "FHAA" as later amended and interpreted by the courts). This regulatory review was guided by HUD's Fair Housing Planning Guide, Volume 1, and subsequent HUD rule-making activity.

The FHAA create obligations that private individuals and entities and all levels of government not "make unavailable" housing to serve certain protected groups of U.S. citizens. When governments "make unavailable" housing for these citizens it is usually through errors of omission, either by not extending fair housing protections to the full range of citizens protected by federal law, or by failing to consider how facially neutral and well-intentioned requirements could have unintentional discriminatory impacts.

It is important on the outset to define exactly what this review covers — and what it did not cover.

- **State Level.** Most importantly, our review focused at the state level and not at the local level. Oregon, like most states in the western and southern U.S., delegates a great deal of land use and housing authority to its cities and counties. Unlike many states, however, Oregon's unique statewide planning system imposes several constraints on how local governments use their powers. The primary question addressed in this review is whether Oregon's land use and subdivision enabling authorities, taken in conjunction with the statewide planning system that constrains the use of those authorities, creates barriers to the provision of fair housing. The fact that a city or county could decide to use state-granted, facially-neutral land use authority that complies with the statewide planning systems in ways that would violate the FHAA is not considered a *state-created* barrier to fair housing.

- **Fair Housing — not Affordable Housing.** The FHAA prohibits housing discrimination based on race, color, religion, sex, national origin, age, familial status (which includes pregnant women) or disability (which includes the frail, persons with AIDS, physically and developmentally disabled, mentally ill, and recovering alcoholics and drug addicts, but not current abusers who are not "recovering"). We refer to those groups as the "FHAA-protected citizens." That list does not include low income persons, and we did not specifically review impacts of state regulations on housing affordability. However, where there is a probable overlap between the FHAA protected classes (such as persons with disabilities) and lower income populations, this review sometimes mentions potential impacts of decreased affordability on the supply of housing for FHAA-protected citizens. Following HUD's convention in many recent AIs, these are noted as "observations", but not "impediments," as facially neutral and otherwise legal impacts on housing affordability do not constitute barriers to fair housing under the FHAA.

This review covered relevant sections of the following Oregon Statutes and Regulations:

- OAR 660-015 (Statewide Planning Goals)
- Chapter 90 (Residential Landlord and Tenant)
- Chapter 91 (Tenancy)
- Chapter 197 (Comprehensive Land Use Planning)
- Chapter 215 (County Planning and Zoning; Housing Codes)

- Chapter 227 (City Planning and Zoning)
- Chapter 427 (Persons with Intellectual or Developmental Disabilities)
- Chapter 443 (Residential Care; Adult Foster Homes; Hospice)
- Chapter 446 (Manufactured Dwellings and Structures)
- Chapter 447 (Plumbing; Architectural Barriers)
- Chapter 456 (Housing)
- Chapter 659A (Unlawful Discrimination in Employment, Public Accommodations, and Real Estate Transactions)

This review is organized into the following topics:

- Land Use Planning
- Zoning and Subdivision Platting
- Farmworker Housing
- Accessibility to Housing Units
- Regulation of Housing Prices
- Urban Growth Boundaries / Needed Housing
- Manufactured Homes
- Assisted Living Facilities
- Building Occupancy
- Inclusionary Zoning

Consistent with recent revisions to CFR Part 24.100 et. seq., we did not limit the review to regulations that appear to be based on discriminatory intent, but also included those that could have discriminatory impacts on FHAA protected groups or households. Although some Oregon cities and counties use the terms "ordinance" and "regulation" differently, we use the term "regulations" to refer to zoning, subdivision, land use, and other development controls adopted by both cities and counties.

2. Background

The ability of private real estate markets to meet the housing needs of any community is strongly affected by zoning, subdivision, and land development regulations adopted by local governments. Those local actions are, in turn, affected by the powers granted by state governments that allow local land use regulations. Unfortunately many FHAA-protected citizens are disproportionately represented in lower income groups. For that reason, facially neutral local regulations that have the effect of increasing housing prices may reduce both affordability in general and the supply of housing available to FHAA-protected citizens. In many cases, local regulations that are intentionally or unintentionally exclusionary of different types of housing can offset the impact of affordable housing subsidies or increase the amount of subsidies necessary for the market to meet housing needs. This indirect connection between the affordability of housing and its impact on fair housing is discussed in the paragraphs below – but not in the regulation-by-regulation review that follows, because facially neutral authority to regulate – as well as facially neutral local exercises of that authority – whose only impact is on the affordability of housing to the general population have not been held to be violations of the FHAA. Nevertheless, both state and local governments should be aware that regulations that tend to increase housing prices may have a disproportionate impact on FHAA-protected citizens.

There are many ways in which local land use regulations may raise the price of housing, and where state grants of authority to local governments could be tailored to reduce those impacts. In Zoned Out, analyst Jonathan Levine recently documented the impact of zoning regulations on the supply of affordable housing, and his findings confirm the conclusions of several earlier studies.[1] For example, a 1998 study of regulatory barriers to affordable housing in Colorado identified five separate types of barriers, including zoning and subdivision controls.[2] The other areas were development processing and permitting, infrastructure financing mechanisms, building codes, and environmental and cultural resource protection tools. In the area of zoning and subdivision, the Colorado study identified four specific types of barriers:

- Minimum house size, lot size, or yard size requirements;
- Prohibitions on accessory dwelling units;
- Limited land zoned and available for multifamily and manufactured housing; and
- Excessive subdivision improvement standards.

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[1] Levine, Jonathan, Zoned Out (RFF Press, Washington, D.C., 2006).

[2] Colorado Deportment of Local Affairs, *Reducing Housing Costs through Regulatory Reform* (Denver: Colorado Department of Local Affairs, 1998).

Similarly, in 2007, a nationwide study prepared by the National Association of Home Builders for the U.S. Department of Housing and Urban Development documented which types of subdivision regulations have the greatest impacts on housing costs.[3] After establishing benchmark standards representing their estimates of the minimums necessary to protect public health and safety, the study compared the cost of building single family housing under those benchmark standards with actual costs of home construction. The study concluded that:

- 65 percent of the added costs were caused by minimum lot size requirements; and
- 9 percent of the added costs were caused by lot width requirements.

A third contributor was minimum house size requirements. Although only eight percent of local governments impose those controls, they were responsible for 17 percent of the added costs in those cities and counties that use them. Using 2004 data, the study concluded that subdivision regulations exceeding baselines for public health and safety added an average of $11,910 (4.8%) to the price of a new home.

In addition, in U.S. ex. rel. Anti-discrimination Center v. Westchester County[4], a U.S. District Court confirmed that local government eligibility for federal Community Development Block Grant Funds requires certification that the city or county is in compliance with the federal Fair Housing Act Amendments of 1988. That, in turn, requires that the local government (a) conduct an analysis of impediments to fair housing, (b) take actions to address the effects of those impediments, and (c) maintain records of the analysis and the steps taken. The fundamental lesson from the Westchester County case is that local efforts to address issues of housing affordability cannot – in the process – create barriers to fair housing choice. Affordable housing programs cannot have the effect of creating or perpetuating segregation based on race, disability, or other categories of FHAA-protected citizens.

For all of these reasons, it is important that state governments review their zoning, subdivision and land development authorizing legislation to ensure that they do not create unnecessary barriers to private production of affordable housing. It is also important that states take reasonable steps to ensure that state grants of power to regulate housing or to address affordable housing needs do not unintentionally create barriers to fair housing choice.

Because the character, development patterns, and future plans of each city and county are different, their zoning, subdivision, and development controls will also differ. No two community land use codes read alike. However, there are several land use practices that can help reduce barriers to housing choice, and states should review their authorizing legislation to ensure that those authorities allow and encourage local governments to minimize and remove barriers to housing choice. More specifically, state level grants of power to regulate land use should enable local governments to include as many of the following tools as possible.

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[3] Study of Subdivision Requirements as a Regulatory Barrier. EcoNorthwest, for National Association of Homebuilders Research Center, 2007.

[4] 495 F.Supp.2nd 375 (S.D.N.Y. 2007).

- **Small Lots.** Local land use regulations should be encouraged or required to include at least one zone district (or overlay district, or permit system) that allows small lots for single family detached housing in some locations. While the appropriate minimum lot size will vary with the character of the county, a zone allowing minimum lot sizes in the 3,000-4,000 square foot range often have a significant impact on housing affordability. In addition, lot width requirements should be reasonable and consistent with minimum lot sizes; while some codes require minimum lot widths of 70 feet or more, small homes can be constructed on lots as narrow as 25 feet (or even less). Minimum lot size requirements are the type of regulation most responsible for increasing housing costs.

- **Multi-family Parcels.** Local land use regulations should include at least one zone district that allows the construction of multi-family housing, and should map enough land into this district(s) to allow a reasonable chance that some multi-family housing will be developed. Maximum heights should be reasonable and consistent with the maximum density permitted; avoid mapping areas for multi-family densities and then imposing height restrictions that prohibit efficient development at those densities. Failure to provide opportunities for multi-family development has been identified as one of the four leading regulatory causes of increased housing costs.

- **Manufactured Homes.** Manufactured housing meeting HUD safety standards should be allowed in at least one zoning district where single-family "stick-built" housing is permitted. While restricting these homes to manufactured home parks is common, the better practice is to allow them in at least one residential zone where the size and configuration matches the scale and character of the area. ORS 197.307 has already addressed this issue for areas within urban growth boundaries.

- **Minimum House Sizes.** The zoning and subdivision regulations should not establish minimum house or dwelling unit sizes (beyond those in the building code). Minimum house size requirements have also been identified as a significant cause of increased housing price in those communities where they are in place.

- **Group Housing.** The local land use regulations should clarify that housing for groups protected by the Fair Housing Act Amendments of 1988 are treated as residential uses, and should generally allow those group housing uses in at least one residential district (preferably all districts) where equivalently sized single-family homes are permitted. Special permit requirements should be avoided, and spacing requirements between group housing is discouraged, since there is very little medical evidence to support the need for distance between these facilities as long as a large number are not located in a small area. Failure to provide for these uses in the code could subject the county to a developer's request for "reasonable accommodation" under the Act, and failure to provide "reasonable accommodation" could be a violation of federal law. In light of the aging of the American population, and the fact that age is a category of FHAA-protected citizens, the regulations should also provide areas where congregate care, nursing home, and assisted living facilities may be constructed.

- **Accessory Dwelling Units.** Local land use regulations should allow accessory dwelling units in at least one zone district – either as an additional unit within an existing home

structure or in an accessory building on the same lot. While some communities require a special permit for these uses, others find that they can be allowed by right provided that they comply with standards limiting scale, character, and parking.

- **Cottage-style Infill Development.** Unused infill lots, which are often irregularly shaped or have constrained geography (e.g. hillsides, ditches) are increasingly seen as opportunities to promote creative forms of development that can accommodate smaller housing units on smaller private streets. An increasing number of cities are including provisions allowing small parcels of land to be developed with small cottage-type housing (often limited to less than 1,000 sq. ft. of gross floor area) on unplatted lots, or as "site condominiums", or to otherwise ignore the minimum lot size and width requirements of the zone district where they are located. The added flexibility makes a previously unusable lot usable, and allows the creation of smaller, more innovative housing units on scattered sites that do not undermine the overall character of the area.

- **Co-housing Developments.** Co-housing developments involve smaller residential units with small or partial kitchens but also include a larger community kitchen and activity facility. Residents of the smaller housing units are members of the co-housing association and agree to share some of their meals and other community duties. Generally, the individual residential units are not platted and the ground beneath them cannot be sold, so the development is operated as a condominium or cooperative. Local land use regulations should include this option, which may be particularly useful for groups of FHAA-protected citizens who can live independently for many purposes but who require assistance or communal services in specific areas.

- **Mixed Use.** In order to promote affordability, housing should be allowed near businesses that employ workers, particularly moderate and lower income employees. To do that the land use regulations should permit residential units in at least one commercial zone district or should map some lands for multi-family development in close proximity to commercial districts.

- **Lower Parking Standards.** Although the traditional standard of two parking spaces per dwelling unit may be reasonable in some areas, many communities find that lower requirements (or no requirements in urbanized areas) can be used generally should be used for affordable housing, multi-family housing, group housing, and special needs housing. Excessive parking requirements can lead to the platting of larger lots, or can limit the size of multi-family projects to accommodate both housing and parking, both of which drive up housing costs.

- **Flexibility on Nonconforming Structures.** Although zoning codes generally require that nonconforming structures damaged or destroyed through fire or natural causes can only be rebuilt in compliance with the current zoning regulations, an increasing number of codes are exempting affordable housing (and in some cases all housing) from this requirement. Often the most affordable housing in a community is located on lots that are too small or narrow for the district where they are located, or in converted single-family structures or multi-family buildings that sometimes have too many units for the district where they are located. If forced to replat with larger lots or to reduce density

following a disaster, those affordable units may be lost, and allowing rebuilding with the same number of units as before may be the most efficient way to preserve these units in the housing stock.

- **Incentives.** In order to encourage the development of affordable housing, land use regulations should recognize the difficult economics involved and should offer incentives. Common incentives include smaller lots, increased density or building height in multi-family areas, reduced parking requirements, or waivers or reductions of application fees or development impact fees. Some communities provide additional incentives for housing that is restricted for occupancy at lower percentages of the Area Median Income (AMI). For example, developments restricted for households earning less than 50% of AMI could receive more generous incentives than those for households earning less than 80% of AMI. While zoning and subdivision incentives alone are often not enough to make development for lower levels of AMI economically feasible, they can be part of a broader package of incentives (for example, including financial incentives or land contributions) that make those project feasible. Any incentives offered should be updated as new housing studies are completed and new information about specific affordable housing needs is obtained.

- **Building Permit Rationing Exemptions.** Most communities that operate a growth management system based on annual or periodic rationing of building permits exempt affordable housing or allow it to compete for a separate pool of development rights in order to encourage this type of housing.

3. Review of Oregon's State Level Land Use Statutes and Regulations

A. Land Use Planning

Oregon's state and local level land use authorities and regulations are grounded in the Statewide Planning Goals and Guidelines set forth in ORS Chapter 197 and OAR 660. In fact, the state's zoning and subdivision local government enabling are unusually short (and have more limited coverage than other states) because so much of the content as to what must or may or cannot be done through local zoning and subdivision is contained in the statewide planning system. Goals 2 (Land Use Planning) and 10 (Housing) are particularly relevant to our review, and are set forth in the gray box below.[5]

GOAL 2: LAND USE PLANNING. OAR 660-015-0000(2)

PART I—PLANNING

To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.

City, county, state and federal agency and special district plans and actions related to land use shall be consistent with the comprehensive plans of cities and counties and regional plans adopted under ORS Chapter 268.

All land use plans shall include identification of issues and problems, inventories and other factual information for each applicable statewide planning goal, evaluation of alternative courses of action and ultimate policy choices, taking into consideration social, economic, energy and environmental needs. The required information shall be contained in the plan document or in supporting documents. The plans, supporting documents and implementation ordinances shall be filed in a public office or other place easily accessible to the public. The plans shall be the basis for specific implementation measures. These measures shall be consistent with and adequate to carry out the plans. Each plan and related implementation measure shall be coordinated with the plans of affected governmental units.

All land-use plans and implementation ordinances shall be adopted by the governing body after public hearing and shall be reviewed and, as needed, revised on a periodic cycle to take into account changing public policies and circumstances, in accord with a schedule set forth in the plan. Opportunities shall be provided for review and comment by citizens and affected governmental units during preparation, review and revision of plans and implementation ordinances.

Affected Governmental Units – are those local governments, state and federal agencies and special districts which have programs, land ownerships, or responsibilities within the area included in the plan.

Comprehensive Plan – as defined in ORS 197.015(5).

Coordinated – as defined in ORS 197.015(5). Note: It is included in the definition of comprehensive plan.

Implementation Measures – are the means used to carry out the plan. These are of two general types: (1) management implementation measures such as ordinances, regulations or project plans, and (2) site or area specific implementation measures such as permits and grants for construction, construction of public facilities or provision of services.

Plans – as used here encompass all plans which guide land-use decisions, including both comprehensive and single-purpose plans of cities, counties, state and federal agencies and special districts.

PART II—EXCEPTIONS

A local government may adopt an exception to a goal when:

- **a.** The land subject to the exception is physically developed to the extent that it is no longer available for uses allowed by the applicable goal;
- **b.** The land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable; or
- **c.** The following standards are met:
  - **1.** Reasons justify why the state policy embodied in the applicable goals should not apply;
  - **2.** Areas which do not require a new exception cannot reasonably accommodate the use;
  - **3.** The long-term environmental, economic, social and energy consequences resulting from the use of the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; and
  - **4.** The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts

Compatible, as used in subparagraph (4) is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses. A local government approving or denying a proposed exception shall set forth findings of fact and a statement of reasons which demonstrate that the standards for an exception have or have not been met. Each notice of a public hearing on a proposed exception shall specifically note that a goal exception is proposed and shall summarize the issues in an understandable manner. Upon review of a decision approving or denying an exception:

- **a.** The commission shall be bound by any finding of fact for which there is substantial evidence in the record of the local government proceedings resulting in approval or denial of the exception;
- **b.** The commission shall determine whether the local government's findings and reasons demonstrate that the standards for an exception have or have not been met; and
- **c.** The commission shall adopt a clear statement of reasons which sets forth the basis for the determination that the standards for an exception have or have not been met.

Exception means a comprehensive plan provision, including an amendment to an acknowledged comprehensive plan, that;

- **a.** Is applicable to specific properties or situations and does not establish a planning or zoning policy of general applicability;
- **b.** Does not comply with some or all goal requirements applicable to the subject properties or situations; and
- **c.** Complies with standards for an exception.

PART III—USE OF GUIDELINES

Governmental units shall review the guidelines set forth for the goals and either utilize the guidelines or develop alternative means that will achieve the 3 goals. All land-use plans shall state how the guidelines or alternative means utilized achieve the goals.

Guidelines – are suggested directions that would aid local governments in activating the mandated goals. They are intended to be instructive, directional and positive, not limiting local government to a single course of action when some other course would achieve the same result. Above all, guidelines are not intended to be a grant of power to the state to carry out zoning from the state level under the guise of guidelines. (Guidelines or the alternative means selected by governmental bodies will be part of the Land Conservation and Development Commission's process of evaluating plans for compliance with goals.)

GUIDELINES

A. PREPARATION OF PLANS AND IMPLEMENTATION MEASURES

Preparation of plans and implementation measures should be based on a series of broad phases, proceeding from the very general identification of problems and issues to the specific provisions for dealing with these issues and for interrelating the various elements of the plan. During each phase opportunities should be provided for review and comment by citizens and affected governmental units. The various implementation measures which will be used to carry out the plan should be considered during each of the planning phases. The number of phases needed will vary with the complexity and size of the area, number of people involved, other governmental units to be consulted, and availability of the necessary information. Sufficient time should be allotted for:

1. collection of the necessary factual information
2. gradual refinement of the problems and issues and the alternative solutions and strategies for development
3. incorporation of citizen needs and desires and development of broad citizen support
4. identification and resolution of possible conflicts with plans of affected governmental units

B. REGIONAL, STATE AND FEDERAL PLAN CONFORMANCE

It is expected that regional, state and federal agency plans will conform to the comprehensive plans of cities and counties. Cities and counties are expected to take into account the regional, state and national needs. Regional, state and federal agencies are expected to make their needs known during the preparation and revision of city and county comprehensive plans. During the preparation of their plans, federal, state and regional agencies are expected to create opportunities for review and comment by cities

and counties. In the event existing plans are in conflict or an agreement cannot be reached during the plan preparation process, then the Land Conservation and Development Commission expects the affected government units to take steps to resolve the issues. If an agreement cannot be reached, the appeals procedures in ORS Chapter 197 may be used.

C. PLAN CONTENT

1. Factual Basis for the Plan

Inventories and other forms of data are needed as the basis for the policies and other decisions set forth in the plan. This factual base should include data on the following as they relate to the goals and other provisions of the plan:

a. Natural resources, their capabilities and limitations

b. Man-made structures and utilities, their location and condition

c. Population and economic characteristics of the area

d. Roles and responsibilities of governmental units.

2. Elements of the Plan

The following elements should be included in the plan:

a. Applicable statewide planning goals

b. Any critical geographic area designated by the Legislature

c. Elements that address any special needs or desires of the people in the area

d. Time periods of the plan, reflecting the anticipated situation at appropriate future intervals.

All of the elements should fit together and relate to one another to form a consistent whole at all times.

D. FILING OF PLANS (not repeated here)

E. MAJOR REVISIONS AND MINOR CHANGES IN THE PLAN AND IMPLEMENTATION MEAURES (not repeated here)

F. IMPLEMENTATION MEASURES

The following types of measure should be considered for carrying out plans:

1. Management Implementation Measures

a. Ordinances controlling the use and construction on the land, such as building codes, sign ordinances, subdivision and zoning ordinances. ORS Chapter 197 requires that the provisions of the zoning and subdivision ordinances conform to the comprehensive plan.

b. Plans for public facilities that are more specific than those included in the comprehensive plan. They show the size, location, and capacity serving each property but are not as detailed as construction drawings.

c. Capital improvement budgets which set out the projects to be constructed during the budget period.

d. State and federal regulations affecting land use.

e. Annexations, consolidations, mergers and other reorganization measures.

2. Site and Area Specific Implementation Measures

a. Building permits, septic tank permits, driveway permits, etc.; the review of subdivisions and land partitioning applications; the changing of zones and granting of conditional uses, etc.

b. The construction of public facilities (schools, roads, water lines, etc.).

c. The provision of land-related public services such as fire and police.

d. The awarding of state and federal grants to local governments to provide these facilities and services.

e. Leasing of public lands.

G. USE OF GUIDELINES FOR THE STATEWIDE PLANNING GOALS

Guidelines for most statewide planning goals are found in two sections-planning and implementation. Planning guidelines relate primarily to the process of developing plans that incorporate the provisions of the goals. Implementation guidelines should relate primarily to the process of carrying out the goals once they have been incorporated into the plans. Techniques to carry out the goals and plans should be considered during the preparation of the plan.

GOAL 10: HOUSING. OAR 660-015-0000(10)

To provide for the housing needs of citizens of the state.

Buildable lands for residential use shall be inventoried and plans shall encourage the availability of adequate numbers of needed housing units at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location, type and density.

Buildable Lands – refers to lands in urban and urbanizable areas that are suitable, available and necessary for residential use.

Government-Assisted Housing – means housing that is financed in whole or part by either a federal or state housing agency or a local housing authority as defined in ORS 456.005 to 456.720, or housing that is occupied by a tenant or tenants who benefit from rent supplements or housing vouchers provided by either a federal or state housing agency or a local housing authority.

Household – refers to one or more persons occupying a single housing unit.

Manufactured Homes – means structures with a Department of Housing and Urban Development (HUD) label certifying that the structure is constructed in accordance with the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 USC 5401 et seq.), as amended on August 22, 1981.

Needed Housing Units – means housing types determined to meet the need shown for housing within an urban growth boundary at particular price ranges and rent levels. On and after the beginning of the first periodic review of a local government's acknowledged comprehensive plan, "needed housing units" also includes government-assisted housing. For cities having populations larger than 2,500 people and counties having populations larger than 15,000 people,

"needed housing units" also includes (but is not limited to) attached and detached single-family housing, multiple-family housing, and manufactured homes, whether occupied by owners or renters.

GUIDELINES

A. PLANNING

1. In addition to inventories of buildable lands, housing elements of a comprehensive plan should, at a minimum, include: (1) a comparison of the distribution of the existing population by income with the distribution of available housing units by cost; (2) a determination of vacancy rates, both overall and at varying rent ranges and cost levels; (3) a determination of expected housing demand at varying rent ranges and cost levels; (4) allowance for a variety of densities and types of residences in each community; and (5) an inventory of sound housing in urban areas including units capable of being rehabilitated.
2. Plans should be developed in a manner that insures the provision of appropriate types and amounts of land within urban growth boundaries. Such land should be necessary and suitable for housing that meets the housing needs of households of all income levels.
3. Plans should provide for the appropriate type, location and phasing of public facilities and services sufficient to support housing development in areas presently developed or undergoing development or redevelopment.
4. Plans providing for housing needs should consider as a major determinant the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources.

B. IMPLEMENTATION

1. Plans should provide for a continuing review of housing need projections and should establish a process for accommodating needed revisions.
2. Plans should take into account the effects of utilizing financial incentives and resources to (a) stimulate the rehabilitation of substandard housing without regard to the financial capacity of the owner so long as benefits accrue to the occupants; and (b) bring into compliance with codes adopted to assure safe and sanitary housing the dwellings of individuals who cannot on their own afford to meet such codes.
3. Decisions on housing development proposals should be expedited when such proposals are in accordance with zoning ordinances and with provisions of comprehensive plans.
4. Ordinances and incentives should be used to increase population densities in urban areas taking into consideration (1) key facilities, (2) the economic, environmental, social and energy consequences of the proposed densities and (3) the optimal use of existing urban land particularly in sections containing significant amounts of unsound substandard structures.
5. Additional methods and devices for achieving this goal should, after consideration of the impact on lower income households, include, but not be limited to: (1) tax incentives and disincentives; (2) building and construction code revision; (3) zoning and land use

controls; (4) subsidies and loans; (5) fee and less-than-fee acquisition techniques; (6) enforcement of local health and safety codes; and (7) coordination of the development of urban facilities and services to disperse low income housing throughout the planning area.

6. Plans should provide for a detailed management program to assign respective implementation roles and responsibilities to those governmental bodies operating in the planning area and having interests in carrying out the goal.

The text from Goals 2 and 10 above creates a sound state-level basis for requiring local governments to plan for housing to meet the expected needs of the population, and then to implement those plans through zoning, subdivision, and other powers. The housing goal explicitly recognizes the need to plan for housing affordable to the local community, which may have an indirect benefit to FHAA-protected citizens. While statewide planning goal 10 does not explicitly mention fair housing or FHAA-protected citizens, it is not required to do so, and its facial neutrality on these issues does not create a barrier to fair housing.

In addition, Oregon's statutes set forth fairly objective criteria for local governments to obtain an "exception" to a statewide planning goal. While it is technically possible that the exception process could be used to undermine affordability or to use local land use powers to avoid building needed housing for FHAA-protected citizens, the exception process itself is facially neutral with respect to both affordable housing and fair housing, and does not create a barrier to fair housing.

B. Urban Growth Boundaries and Needed Housing

In addition to its statewide planning system, Oregon has established a system of mandatory urban growth boundaries and has established, and repeatedly amended, provisions requiring that "needed housing" be accommodated within those boundaries. These provisions appear in ORS Sections 295-314, and relevant text appears in the gray box below.

ORS 197.295 Definitions As used in ORS 197.295 to 197.314 and 197.475 to 197.490:

(1) "Buildable lands" means lands in urban and urbanizable areas that are suitable, available and necessary for residential uses. "Buildable lands" includes both vacant land and developed land likely to be redeveloped.

(2) "Manufactured dwelling park" has the meaning given that term in ORS 446.003.

(3) "Government assisted housing" means housing that is financed in whole or part by either a federal or state housing agency or a housing authority as defined in ORS 456.005, or housing that is occupied by a tenant or tenants who benefit from rent supplements or housing vouchers provided by either a federal or state housing agency or a local housing authority.

(4) "Manufactured homes" has the meaning given that term in ORS 446.003.

(5) "Mobile home park" has the meaning given that term in ORS 446.003.

(6) "Periodic review" means the process and procedures as set forth in ORS 197.628 to 197.651.

(7) "Urban growth boundary" means an urban growth boundary included or referenced in a comprehensive plan.

ORS 197.296 Factors to establish sufficiency of buildable lands within urban growth boundary; analysis and determination of residential housing patterns

(1)(a) The provisions of this section apply to metropolitan service district regional framework plans and local government comprehensive plans for lands within the urban growth boundary of a city that is located outside of a metropolitan service district and has a population of 25,000 or more.

(b) The Land Conservation and Development Commission may establish a set of factors under which additional cities are subject to the provisions of this section. In establishing the set of factors required under this paragraph, the commission shall consider the size of the city, the rate of population growth of the city or the proximity of the city to another city with a population of 25,000 or more or to a metropolitan service district.

(2) At periodic review pursuant to ORS 197.628 to 197.651 or at any other legislative review of the comprehensive plan or regional plan that concerns the urban growth boundary and requires the application of a statewide planning goal relating to buildable lands for residential use, a local government shall demonstrate that its comprehensive plan or regional plan provides sufficient buildable lands within the urban growth boundary established pursuant to statewide planning goals to accommodate estimated housing needs for 20 years. The 20-year period shall commence on the date initially scheduled for completion of the periodic or legislative review.

(3) In performing the duties under subsection (2) of this section, a local government shall:

(a) Inventory the supply of buildable lands within the urban growth boundary and determine the housing capacity of the buildable lands; and

(b) Conduct an analysis of housing need by type and density range, in accordance with ORS 197.303 and statewide planning goals and rules relating to housing, to determine the number of units and amount of land needed for each needed housing type for the next 20 years.

(4)(a) For the purpose of the inventory described in subsection (3)(a) of this section, "buildable lands" includes:

(A) Vacant lands planned or zoned for residential use;

(B) Partially vacant lands planned or zoned for residential use;

(C) Lands that may be used for a mix of residential and employment uses under the existing planning or zoning; and

(D) Lands that may be used for residential infill or redevelopment.

(b) For the purpose of the inventory and determination of housing capacity described in subsection (3)(a) of this section, the local government must demonstrate consideration of:

(A) The extent that residential development is prohibited or restricted by local regulation and ordinance, state law and rule or federal statute and regulation;

(B) A written long term contract or easement for radio, telecommunications or electrical facilities, if the written contract or easement is provided to the local government; and

(C) The presence of a single family dwelling or other structure on a lot or parcel.

(c) Except for land that may be used for residential infill or redevelopment, a local government shall create a map or document that may be used to verify and identify specific lots or parcels that have been determined to be buildable lands.

(5)(a) Except as provided in paragraphs (b) and (c) of this subsection, the determination of housing capacity and need pursuant to subsection (3) of this section must be based on data relating to land within the urban growth boundary that has been collected since the last periodic review or five years, whichever is greater. The data shall include:

(A) The number, density and average mix of housing types of urban residential development that have actually occurred;

(B) Trends in density and average mix of housing types of urban residential development;

(C) Demographic and population trends;

(D) Economic trends and cycles; and

(E) The number, density and average mix of housing types that have occurred on the buildable lands described in subsection (4)(a) of this section.

(b) A local government shall make the determination described in paragraph (a) of this subsection using a shorter time period than the time period described in paragraph (a) of this subsection if the local government finds that the shorter time period will provide more accurate and reliable data related to housing capacity and need. The shorter time period may not be less than three years.

(c) A local government shall use data from a wider geographic area or use a time period for economic cycles and trends longer than the time period described in paragraph (a) of this subsection if the analysis of a wider geographic area or the use of a longer time period will provide more accurate, complete and reliable data relating to trends affecting housing need than an analysis performed pursuant to paragraph (a) of this subsection. The local government must clearly describe the geographic area, time frame and source of data used in a determination performed under this paragraph.

(6) If the housing need determined pursuant to subsection (3)(b) of this section is greater than the housing capacity determined pursuant to subsection (3)(a) of this section, the local government shall take one or more of the following actions to accommodate the additional housing need:

(a) Amend its urban growth boundary to include sufficient buildable lands to accommodate housing needs for the next 20 years. As part of this process, the local government shall consider the effects of measures taken pursuant to paragraph (b) of this subsection. The amendment shall include sufficient land reasonably necessary to accommodate the siting of new public school facilities. The need and inclusion of lands for new public school facilities shall be a coordinated process between the affected public school districts and the local government that has the authority to approve the urban growth boundary;

(b) Amend its comprehensive plan, regional plan, functional plan or land use regulations to include new measures that demonstrably increase the likelihood that residential development will occur at densities sufficient to accommodate housing needs for the next 20 years without expansion of the urban growth boundary. A local government or metropolitan service district

that takes this action shall monitor and record the level of development activity and development density by housing type following the date of the adoption of the new measures; or

(c) Adopt a combination of the actions described in paragraphs (a) and (b) of this subsection.

(7) Using the analysis conducted under subsection (3)(b) of this section, the local government shall determine the overall average density and overall mix of housing types at which residential development of needed housing types must occur in order to meet housing needs over the next 20 years. If that density is greater than the actual density of development determined under subsection (5)(a)(A) of this section, or if that mix is different from the actual mix of housing types determined under subsection (5)(a)(A) of this section, the local government, as part of its periodic review, shall adopt measures that demonstrably increase the likelihood that residential development will occur at the housing types and density and at the mix of housing types required to meet housing needs over the next 20 years.

(8)(a) A local government outside a metropolitan service district that takes any actions under subsection (6) or (7) of this section shall demonstrate that the comprehensive plan and land use regulations comply with goals and rules adopted by the commission and implement ORS 197.295 to 197.314.

(b) The local government shall determine the density and mix of housing types anticipated as a result of actions taken under subsections (6) and (7) of this section and monitor and record the actual density and mix of housing types achieved. The local government shall compare actual and anticipated density and mix. The local government shall submit its comparison to the commission at the next periodic review or at the next legislative review of its urban growth boundary, whichever comes first.

(9) In establishing that actions and measures adopted under subsections (6) or (7) of this section demonstrably increase the likelihood of higher density residential development, the local government shall at a minimum ensure that land zoned for needed housing is in locations appropriate for the housing types identified under subsection (3) of this section and is zoned at density ranges that are likely to be achieved by the housing market using the analysis in subsection (3) of this section. Actions or measures, or both, may include but are not limited to:

(a) Increases in the permitted density on existing residential land;

(b) Financial incentives for higher density housing;

(c) Provisions permitting additional density beyond that generally allowed in the zoning district in exchange for amenities and features provided by the developer;

(d) Removal or easing of approval standards or procedures;

(e) Minimum density ranges;

(f) Redevelopment and infill strategies;

(g) Authorization of housing types not previously allowed by the plan or regulations;

(h) Adoption of an average residential density standard; and

(i) Rezoning or redesignation of nonresidential land.

ORS 197-298 through 197-302 contain specific provisions for estimating housing needs for the Metro area (not included here).

ORS 197.303 "Needed housing" defined

(1) As used in ORS 197.307, "needed housing" means housing types determined to meet the need shown for housing within an urban growth boundary at particular price ranges and rent levels, including at least the following housing types:

(a) Attached and detached single-family housing and multiple family housing for both owner and renter occupancy;

(b) Government assisted housing;

(c) Mobile home or manufactured dwelling parks as provided in ORS 197.475 to 197.490;

(d) Manufactured homes on individual lots planned and zoned for single-family residential use that are in addition to lots within designated manufactured dwelling subdivisions; and

(e) Housing for farmworkers.

(2) Subsection (1)(a) and (d) of this section shall not apply to:

(a) A city with a population of less than 2,500.

(b) A county with a population of less than 15,000.

(3) A local government may take an exception under ORS 197.732 to the definition of "needed housing" in subsection (1) of this section in the same manner that an exception may be taken under the goals.

ORS 197.304 contains specific provisions for Lane County (not included here).

ORS 197.307 Effect of need for certain housing in urban growth areas; approval standards for certain residential development; placement standards for approval of manufactured dwellings

1. The availability of affordable, decent, safe and sanitary housing opportunities for persons of lower, middle and fixed income, including housing for farmworkers, is a matter of statewide concern.
2. Many persons of lower, middle and fixed income depend on government assisted housing as a source of affordable, decent, safe and sanitary housing.
3. When a need has been shown for housing within an urban growth boundary at particular price ranges and rent levels, needed housing shall be permitted in one or more zoning districts or in zones described by some comprehensive plans as overlay zones with sufficient buildable land to satisfy that need.
4. Except as provided in subsection (6) of this section, a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of needed housing on buildable land described in subsection (3) of this section. The standards, conditions and procedures may not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.
5. The provisions of subsection (4) of this section do not apply to:

a. An application or permit for residential development in an area identified in a formally adopted central city plan, or a regional center as defined by Metro, in a city with a population of 500,000 or more.

b. An application or permit for residential development in historic areas designated for protection under a land use planning goal protecting historic areas.

6. In addition to an approval process for needed housing based on clear and objective standards, conditions and procedures as provided in subsection (4) of this section, a local government may adopt and apply an alternative approval process for applications and permits for residential development based on approval criteria regulating, in whole or in part, appearance or aesthetics that are not clear and objective if:

a. The applicant retains the option of proceeding under the approval process that meets the requirements of subsection (4) of this section;

b. The approval criteria for the alternative approval process comply with applicable statewide land use planning goals and rules; and

c. The approval criteria for the alternative approval process authorize a density at or above the density level authorized in the zone under the approval process provided in subsection (4) of this section.

7. Subject to subsection (4) of this section, this section does not infringe on a local governments prerogative to:

a. Set approval standards under which a particular housing type is permitted outright;

b. Impose special conditions upon approval of a specific development proposal; or

c. Establish approval procedures.

ORS 197.307(8) addresses manufactured housing, and is discussed later in this review.

Taken together, Subsections 4 through 7 contain what is known as the "clear and objective standards" requirement, which are intended to prevent local governments from enacting standards and procedures that tend to delay or make the development of housing more uncertain. By attempting to reduce the barriers to housing production in general, the clear and objective standards requirement probably helps increase the affordability of the overall housing stock, which in turn may increase the supply of housing for FHAA-protected citizens. However, the clear and objective standards requirement itself is content neutral, it does not aim at removing barriers to housing for any particular group of citizens.

To the extent that not all Oregon local governments have standards that comply with the "clear and objective" requirement, improved enforcement of compliance with this requirement could have the effect of increasing housing supply.

ORS 197.309 includes a prohibition regulating residential sales prices, and is discussed separately below.

ORS 197.312 Limitation on city and county authority to prohibit certain kinds of housing; zoning requirements for farmworker housing; real estate sales office.

(1) A city or county may not by charter prohibit from all residential zones attached or detached single-family housing, multifamily housing for both owner and renter occupancy or manufactured homes. A city or county may not by charter prohibit government assisted housing or impose additional approval standards on government assisted housing that are not applied to similar but unassisted housing.

ORS 197.312(2) and (3) address farmworker housing, and are discussed below.

ORS 197.313 Interpretation of ORS 197.312. Nothing in ORS 197.312 or in the amendments to ORS 197.295, 197.303, 197.307 by sections 1, 2 and 3, chapter 795, Oregon Laws 1983, shall be construed to require a city or county to contribute to the financing, administration or sponsorship of government assisted housing.

Consistent with statewide planning Goal 10 (Housing), these "needed housing" provisions requiring the creation of "clear and objective" standards for such housing focus on housing affordability and not on housing for FHAA-protected citizens. They are facially neutral with respect to the age, sex, race, nationality, familial status, or disability of residents to be benefitted by the application of clear and objective standards to help produce "needed housing".

ORS 197.309 prohibits local governments from adopting "a requirement that has the effect of establishing the sales price for a housing unit or residential building lot or parcel, or that requires a housing unit or residential building lot or parcel to be designated for sale to any particular class or group of purchasers." However, ORS 197.309 does allow negotiations, agreements, and incentives to produce housing that will be income restricted or available only to certain groups. Although ORS 197.309 does not permit local governments to require housing set-asides for FHAA-protected citizens, it does not create a barrier to fair housing availability or "make unavailable" housing for these groups, and FHAA does not require preferential treatment for FHAA-protected citizens within statewide regulatory schemes.

As a practical matter, ORS 197.309 probably has the effect of reducing the supply of housing for both low income groups and FHAA-protected citizens. However, the FHAA does not require preferential treatment for FHAA-protected citizens within statewide regulatory schemes, merely that they not "make unavailable" housing for these groups. Although the provisions of ORS 197.309 do not create a barrier to fair housing availability in Oregon, their repeal or modification would allow housing set-asides for FHAA-protected citizens.

In contrast, ORS 197.312(1) is an important regulation that promotes a diverse supply of housing and prevents discrimination based on source of income, and probably has the effect of increasing the supply of housing for low-income groups (and to the degree they are correlated, also to FHAA-protected citizens). ORS 197.313 clarifies that the intended effect of ORS 197.312 is not to require local government expenditures to build or subsidize housing, but to prevent the exclusion of certain types of housing that would otherwise be built by private or public builders to meet housing needs. This is consistent with the intent of the FHAA, which is to prohibit discrimination in housing provided by the public or private markets rather than to require public expenditures to build needed housing.

C. Zoning and Subdivision Platting

Zoning and subdivision platting are two of the most powerful tools that cities and counties can use to regulate the type, character, and location of housing development with their boundaries; however, almost all of those regulations are adopted at the local level. State level zoning and land use regulations can create barriers to fair housing choice if they require local governments to use zoning or subdivision standards or definitions that reduce the supply or availability of housing for FHAA-protected citizens but the mere fact that they do not prevent local governments from taking those actions does not constitute a state-level barrier to fair housing .

Cities

The State of Oregon—like every other state in the United States—grants municipalities zoning authority to divide land into districts and regulate things like building height, lot coverage, setbacks, and density.[6] Key provisions of ORS granting addressing these powers are set forth in the gray box below.

ORS 227.090 Powers and Duties of Commission

1. Except as otherwise provided by the city council, a city planning commission may:

a. Recommend and make suggestions to the council and to other public authorities concerning:

A. The laying out, widening, extending and locating of public thoroughfares, parking of vehicles, relief of traffic congestion;

B. Betterment of housing and sanitation conditions;

C. Establishment of districts for limiting the use, height, area, bulk and other characteristics of buildings and structures related to land development;

D. Protection and assurance of access to incident solar radiation; and

E. Protection and assurance of access to wind for potential future electrical generation or mechanical application.

b. Recommend to the council and other public authorities plans for regulating the future growth, development and beautification of the city in respect to its public and private buildings and works, streets, parks, grounds and vacant lots, and plans consistent with future growth and development of the city in order to secure to the city and its inhabitants sanitation, proper service of public utilities and telecommunications utilities, including appropriate public incentives for overall energy conservation and harbor, shipping and transportation facilities.

c. Recommend to the council and other public authorities plans for promotion, development and regulation of industrial and economic needs of the community in respect to industrial pursuits.

d. Advertise the industrial advantages and opportunities of the city and availability of real estate within the city for industrial settlement.

e. Encourage industrial settlement within the city.

f. Make economic surveys of present and potential industrial needs of the city.

g. Study needs of local industries with a view to strengthening and developing them and stabilizing employment conditions.

h. Do and perform all other acts and things necessary or proper to carry out the provisions of ORS 227.010 to 227.170, 227. and 227.180.

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6 Levine, Jonathan, Zoned Out, (Washington, RFF Press), 2006.

i. Study and propose such measures as are advisable for promotion of the public interest, health, morals, safety, comfort, convenience and welfare of the city and of the area within six miles thereof.

ORS 227.100 Submission of plats for subdivisions and plans for street alterations and public buildings to commission; report. All subdivision plats located within the city limits, and all plans or plats for vacating or laying out, widening, extending, parking and locating streets or plans for public buildings shall first be submitted to the commission by the city engineer or other proper municipal officer, and a report thereon from the commission secured in writing before approval is given by the proper municipal official.

ORS 227.110 City approval prior to recording of subdivision plats and plats or deeds dedicating land to public use within six miles of city; exception.

1. All subdivision plats and all plats or deeds dedicating land to public use in that portion of a county within six miles outside the limits of any city shall first be submitted to the city planning commission or, if no such commission exists, to the city engineer of the city and approved by the commission or engineer before they shall be recorded. However, unless otherwise provided in an urban growth area management agreement jointly adopted by a city and county to establish procedures for regulating land use outside the city limits and within an urban growth boundary acknowledged under ORS 197.251, if the county governing body has adopted ordinances or regulations for subdivisions and partitions under ORS 92.044, land within the six-mile limit shall be under the jurisdiction of the county for those purposes.

2. It shall be unlawful to receive or record such plat or replat or deed in any public office unless the same bears thereon the approval, by indorsement, of such commission or city engineer. However, the indorsement of the commission or city engineer of the city with boundaries nearest the land such document affects shall satisfy the requirements of this section in case the boundaries of more than one city are within six miles of the property so mapped or described. If the governing bodies of such cities mutually agree upon a boundary line establishing the limits of the jurisdiction of the cities other than the line equidistant between the cities and file the agreement with the recording officer of the county containing such boundary line, the boundary line mutually agreed upon shall become the limit of the jurisdiction of each city until superseded by a new agreement between the cities or until one of the cities files with such recording officer a written notification stating that the agreement shall no longer apply.

ORS 227.215 Regulation of Development.

1. As used in this section, "development" means a building or mining operation, making a material change in the use or appearance of a structure or land, dividing land into two or more parcels, including partitions and subdivisions as provided in ORS 92.010 to 92.285, and creating or terminating a right of access.

2. A city may plan and otherwise encourage and regulate the development of land. A city may adopt an ordinance requiring that whatever land development is undertaken in the

city comply with the requirements of the ordinance and be undertaken only in compliance with the terms of a development permit.

3. A development ordinance may provide for:
    a. Development for which a permit is granted as of right on compliance with the terms of the ordinance;
    b. Development for which a permit is granted discretionarily in accordance and consistent with the requirements of ORS 227.173;
    c. Development which need not be under a development permit but shall comply with the ordinance; and
    d. Development which is exempt from the ordinance.
4. The ordinance may divide the city into districts and apply to all or part of the city.

The text of ORS 227.215 is fairly typical of state enabling acts for city zoning and subdivision (in fact, it is more concise and clearer than the authority in many states). While not mentioning either affordable or fair housing, it is facially neutral on those issues. While the power to regulate land use and the density/intensity of development raises the possibility that individual cities could restrict density in ways that raise the costs of housing, the state Act does not create or encourage that result. These statutes do not require local governments to take any actions that would restrict access to housing for FHAA-protected citizens, and do not create state level barriers to fair housing for those groups. Taken in conjunction with the requirement that local implementation measures comply with Goal 10 (Housing) discussed above, ORS 227.215 does not create barriers to the availability of fair housing in Oregon.

Counties

Oregon's grant of authority allowing its county governments to engage in planning and to regulate land use through zoning and subdivision controls are contained in ORS Chapter 215, relevant sections of which are shown in the gray box below. These regulations must be read in light of the state's many restrictions on the use of rural lands for urbanized development, which could have two results. First, it tends to reduce the density and number of people living in unincorporated areas, which may also reduce the number of FHAA-protected citizens living in those areas. As a result, the need for county governments to allow the wide variety of creative housing options discussed in the Background section above is reduced; many of those types of housing are more appropriate in urban areas. Second, however, it may reduce the ability of Oregon counties to allow creative housing solutions for those FHAA-protected citizens that do live within its jurisdiction. As an example, Oregon's limits on zoning for multi-family development in rural areas outside of growth boundaries could indirectly make it more difficult for county governments to plan for or approve larger group home development even if needed to serve its existing FHAA-protected citizens.

ORS 215.050 Comprehensive Planning, Zoning and Subdivision Ordinances.

1. Except as provided in ORS 527.722, the county governing body shall adopt and may from time to time revise a comprehensive plan and zoning, subdivision and other ordinances applicable to all of the land in the county. The plan and related ordinances may be adopted and revised part by part or by geographic area.

2. Zoning, subdivision or other ordinances or regulations and any revisions or amendments thereof shall be designed to implement the adopted county comprehensive plan.

3. A county shall maintain copies of its comprehensive plan and land use regulations, as defined in ORS 197.015, for sale to the public at a charge not to exceed the cost of copying and assembling the material

ORS 215.283 Uses Permitted in Exclusive Farm Use Zones in Nonmarginal Lands

1. The following uses may be established in any area zoned for exclusive farm use:

   d) A dwelling on real property used for farm use if the dwelling is occupied by a relative of the farm operator or the farm operators spouse, which means a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm operator does or will require the assistance of the relative in the management of the farm use and the dwelling is located on the same lot or parcel as the dwelling of the farm operator. Notwithstanding ORS 92.010 (Definitions for ORS 92..010 to 92.192 or the minimum lot or parcel size requirements under ORS 215.780 (Minimum lot or parcel sizes) if the owner of a dwelling described in this paragraph obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the dwelling, the secured party may also foreclose on the homesite, as defined in ORS 308A.250 and the foreclosure shall operate as a partition of the homesite to create a new parcel.

ORS 215.284 Dwelling Not in Conjunction with Farm Use; Existing Lots or Parcels; New Lots or Parcels.

1. In the Willamette Valley, a single-family residential dwelling not provided in conjunction with farm use may be established, subject to approval of the governing body or its designee, in any area zoned for exclusive farm use upon a finding that:

   a. The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use;

   b. The dwelling will be sited on a lot or parcel that is predominantly composed of Class IV through Class VIII soils that would not, when irrigated, be classified as prime, unique, Class I or Class II soils;

   c. The dwelling will be sited on a lot or parcel created before January 1, 1993;

   d. The dwelling will not materially alter the stability of the overall land use pattern of the area; and

   e. The dwelling complies with such other conditions as the governing body or its designee considers necessary.

2. In counties not described in subsection (1) of this section, a single-family residential dwelling not provided in conjunction with farm use may be established, subject to approval of the governing body or its designee, in any area zoned for exclusive farm use upon a finding that:

a. The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use;

b. The dwelling is situated upon a lot or parcel or portion of a lot or parcel that is generally unsuitable land for the production of farm crops and livestock or merchantable tree species, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract. A lot or parcel or portion of a lot or parcel may not be considered unsuitable solely because of size or location if it can reasonably be put to farm or forest use in conjunction with other land;

c. The dwelling will be sited on a lot or parcel created before January 1, 1993;

d. The dwelling will not materially alter the stability of the overall land use pattern of the area; and

e. The dwelling complies with such other conditions as the governing body or its designee considers necessary.

3. In counties in western Oregon, as defined in ORS 321.257, not described in subsection (4) of this section, a single-family residential dwelling not provided in conjunction with farm use may be established, subject to approval of the governing body or its designee, in any area zoned for exclusive farm use upon a finding that:

a. The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use;

b. The dwelling is situated upon a lot or parcel or portion of a lot or parcel that is generally unsuitable land for the production of farm crops and livestock or merchantable tree species, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract. A lot or parcel or portion of a lot or parcel may not be considered unsuitable solely because of size or location if it can reasonably be put to farm or forest use in conjunction with other land;

c. The dwelling will be sited on a lot or parcel created after January 1, 1993, as allowed under ORS 215.263 (4);

d. The dwelling will not materially alter the stability of the overall land use pattern of the area; and

e. The dwelling complies with such other conditions as the governing body or its designee considers necessary.

4. a. In the Willamette Valley, a lot or parcel allowed under paragraph (b) of this subsection for a single-family residential dwelling not provided in conjunction with farm use may be established, subject to approval of the governing body or its designee, in any area zoned for exclusive farm use upon a finding that the originating lot or parcel is equal to or larger than the applicable minimum lot or parcel size and:

(A) Is not stocked to the requirements under ORS 527.610 to 527.770;

(B) Is composed of at least 95 percent Class VI through Class VIII soils; and

(C) Is composed of at least 95 percent soils not capable of producing 50 cubic feet per acre per year of wood fiber.

b. Any parcel to be created for a dwelling from the originating lot or parcel described in paragraph (a) of this subsection will not be smaller than 20 acres.

c. The dwelling or activities associated with the dwelling allowed under this subsection will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use.

d. The dwelling allowed under this subsection will not materially alter the stability of the overall land use pattern of the area.

e. The dwelling allowed under this subsection complies with such other conditions as the governing body or its designee considers necessary.

5. No final approval of a nonfarm use under this section shall be given unless any additional taxes imposed upon the change in use have been paid.

6. If a single-family dwelling is established on a lot or parcel as set forth in ORS 215.705 to 215.750, no additional dwelling may later be sited under subsection (1), (2), (3), (4) or (7) of this section.

7. In counties in eastern Oregon, as defined in ORS 321.805, a single-family residential dwelling not provided in conjunction with farm use may be established, subject to the approval of the county governing body or its designee, in any area zoned for exclusive farm use upon a finding that:

a. The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use;

b. The dwelling will be sited on a lot or parcel created after January 1, 1993, as allowed under ORS 215.263 (5);

c. The dwelling will not materially alter the stability of the overall land use pattern of the area; and

d. The dwelling complies with such other conditions as the governing body or its designee considers necessary.

ORS 215.293 Dwelling in Exclusive Farm Use or Forest Zone; Condition; Declaration; Recordation

The county governing body or its designate shall require as a condition of approval of a single-family dwelling under ORS 215.213, 215.283 or 215.284 or otherwise in a farm or forest zone, that the landowner for the dwelling sign and record in the deed records for the county a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.

ORS 215.705 dwellings in farm or forest zone

1. A governing body of a county or its designate may allow the establishment of a single-family dwelling on a lot or parcel located within a farm or forest zone as set forth in this section and ORS 215.710, 215.720, 215.740 and 215.750 after notifying the county assessor that the governing body intends to allow the dwelling. A dwelling under this section may be allowed if:

(a) The lot or parcel on which the dwelling will be sited was lawfully created and was acquired by the present owner:

(A) Prior to January 1, 1985; or

(B) By devise or by intestate succession from a person who acquired the lot or parcel prior to January 1, 1985.

(b) The tract on which the dwelling will be sited does not include a dwelling.

(c) The proposed dwelling is not prohibited by, and will comply with, the requirements of the acknowledged comprehensive plan and land use regulations and other provisions of law.

(d) The lot or parcel on which the dwelling will be sited, if zoned for farm use, is not on that high-value farmland described in ORS 215.710 except as provided in subsections (2) and (3) of this section.

(e) The lot or parcel on which the dwelling will be sited, if zoned for forest use, is described in ORS 215.720, 215.740 or 215.750.

(f) When the lot or parcel on which the dwelling will be sited lies within an area designated in an acknowledged comprehensive plan as habitat of big game, the siting of the dwelling is consistent with the limitations on density upon which the acknowledged comprehensive plan and land use regulations intended to protect the habitat are based.

(g) When the lot or parcel on which the dwelling will be sited is part of a tract, the remaining portions of the tract are consolidated into a single lot or parcel when the dwelling is allowed.

2. (a) Notwithstanding the requirements of subsection (1)(d) of this section, a single-family dwelling not in conjunction with farm use may be sited on high-value farmland if:

(A) It meets the other requirements of ORS 215.705 to 215.750;

(B) The lot or parcel is protected as high-value farmland as described under ORS 215.710 (1); and

(C) A hearings officer of a county determines that:

(i) The lot or parcel cannot practicably be managed for farm use, by itself or in conjunction with other land, due to extraordinary circumstances inherent in the land or its physical setting that do not apply generally to other land in the vicinity.

(ii) The dwelling will comply with the provisions of ORS 215.296 (1).

(iii) The dwelling will not materially alter the stability of the overall land use pattern in the area.

(b) A local government shall provide notice of all applications for dwellings allowed under this subsection to the State Department of Agriculture. Notice shall be provided in accordance

with the governing body's land use regulations but shall be mailed at least 20 calendar days prior to the public hearing before the hearings officer under paragraph (a) of this subsection.

3. Notwithstanding the requirements of subsection (1)(d) of this section, a single-family dwelling not in conjunction with farm use may be sited on high-value farmland if:

(a) It meets the other requirements of ORS 215.705 to 215.750.

(b) The tract on which the dwelling will be sited is:

(A) Identified in ORS 215.710 (3) or (4);

(B) Not protected under ORS 215.710 (1); and

(C) Twenty-one acres or less in size.

(c)(A) The tract is bordered on at least 67 percent of its perimeter by tracts that are smaller than 21 acres, and at least two such tracts had dwellings on them on January 1, 1993;

(B) The tract is not a flaglot and is bordered on at least 25 percent of its perimeter by tracts that are smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within one-quarter mile of the center of the subject tract. Up to two of the four dwellings may lie within the urban growth boundary, but only if the subject tract abuts an urban growth boundary; or

(C) The tract is a flaglot and is bordered on at least 25 percent of its perimeter by tracts that are smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within one-quarter mile of the center of the subject tract and on the same side of the public road that provides access to the subject tract. The governing body of a county must interpret the center of the subject tract as the geographic center of the flaglot if the applicant makes a written request for that interpretation and that interpretation does not cause the center to be located outside the flaglot. Up to two of the four dwellings may lie within the urban growth boundary, but only if the subject tract abuts an urban growth boundary. As used in this subparagraph:

(i) "Flaglot" means a tract containing a narrow strip or panhandle of land providing access from the public road to the rest of the tract.

(ii) "Geographic center of the flaglot" means the point of intersection of two perpendicular lines of which the first line crosses the midpoint of the longest side of a flaglot, at a 90-degree angle to that side, and the second line crosses the midpoint of the longest adjacent side of the flaglot.

4. If land is in a zone that allows both farm and forest uses, is acknowledged to be in compliance with goals relating to both agriculture and forestry and may qualify as an exclusive farm use zone under this chapter, the county may apply the standards for siting a dwelling under either subsection (1)(d) of this section or ORS 215.720, 215.740 and 215.750 as appropriate for the predominant use of the tract on January 1, 1993.

5. A county may, by application of criteria adopted by ordinance, deny approval of a dwelling allowed under this section in any area where the county determines that approval of the dwelling would:

(a) Exceed the facilities and service capabilities of the area;

(b) Materially alter the stability of the overall land use pattern in the area; or

(c) Create conditions or circumstances that the county determines would be contrary to the purposes or intent of its acknowledged comprehensive plan or land use regulations.

6. For purposes of subsection (1)(a) of this section, "owner" includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent or grandchild of the owner or a business entity owned by any one or combination of these family members.

7. When a local government approves an application for a single-family dwelling under the provisions of this section, the application may be transferred by a person who has qualified under this section to any other person after the effective date of the land use decision.

ORS 215.720 Criteria for Forestland Dwelling Under ORS 215.705

1. A dwelling authorized under ORS 215.705 may be allowed on land zoned for forest use under a goal protecting forestland only if:

(a) The tract on which the dwelling will be sited is in western Oregon, as defined in ORS 321.257, and is composed of soils not capable of producing 5,000 cubic feet per year of commercial tree species and is located within 1,500 feet of a public road as defined under ORS 368.001. The road shall be maintained and either paved or surfaced with rock and shall not be:

(A) A United States Bureau of Land Management road; or

(B) A United States Forest Service road unless the road is paved to a minimum width of 18 feet, there is at least one defined lane in each direction and a maintenance agreement exists between the United States Forest Service and landowners adjacent to the road, a local government or a state agency.

(b) The tract on which the dwelling will be sited is in eastern Oregon, as defined in ORS 321.805, and is composed of soils not capable of producing 4,000 cubic feet per year of commercial tree species and is located within 1,500 feet of a public road as defined under ORS 368.001. The road shall be maintained and either paved or surfaced with rock and shall not be:

(A) A United States Bureau of Land Management road; or

(B) A United States Forest Service road unless the road is paved to a minimum width of 18 feet, there is at least one defined lane in each direction and a maintenance agreement exists between the United States Forest Service and landowners adjacent to the road, a local government or a state agency.

2. For purposes of this section, "commercial tree species" means trees recognized under rules adopted under ORS 527.715 for commercial production.

3. No dwelling other than those described in this section and ORS 215.740, 215.750 and 215.755 may be sited on land zoned for forest use under a land use planning goal protecting forestland.

ORS 215.730 Additional Criteria for Forestland Dwellings Under ORS 215.705.

1. A local government shall require as a condition of approval of a single-family dwelling allowed under ORS 215.705 on lands zoned forestland that:

(a)(A) If the lot or parcel is more than 30 acres in eastern Oregon as defined in ORS 321.805, the property owner submits a stocking survey report to the assessor and the assessor verifies that the minimum stocking requirements adopted under ORS 527.610 to 527.770 have been met; or

(B) If the lot or parcel is more than 10 acres in western Oregon as defined in ORS 321.257, the property owner submits a stocking survey report to the assessor and the assessor verifies that the minimum stocking requirements adopted under ORS 527.610 to 527.770 have been met.

(b) The dwelling meets the following requirements:

(A) The dwelling has a fire retardant roof.

(B) The dwelling will not be sited on a slope of greater than 40 percent.

(C) Evidence is provided that the domestic water supply is from a source authorized by the Water Resources Department and not from a Class II stream as designated by the State Board of Forestry.

(D) The dwelling is located upon a parcel within a fire protection district or is provided with residential fire protection by contract.

(E) If the dwelling is not within a fire protection district, the applicant provides evidence that the applicant has asked to be included in the nearest such district.

(F) If the dwelling has a chimney or chimneys, each chimney has a spark arrester.

(G) The owner provides and maintains primary fuel-free break and secondary break areas on land surrounding the dwelling that is owned or controlled by the owner.

2. (a) If a governing body determines that meeting the requirement of subsection (1)(b)(D) of this section would be impracticable, the governing body may provide an alternative means for protecting the dwelling from fire hazards. The means selected may include a fire sprinkling system, on-site equipment and water storage or other methods that are reasonable, given the site conditions.

(b) If a water supply is required under this subsection, it shall be a swimming pool, pond, lake or similar body of water that at all times contains at least 4,000 gallons or a stream that has a minimum flow of at least one cubic foot per second. Road access shall be provided to within 15 feet of the water's edge for fire-fighting pumping units, and the road access shall accommodate a turnaround for fire-fighting equipment.

ORS 215.740 Large Tract Forestland Dwelling; Criteria; Rules.

1. If a dwelling is not allowed under ORS 215.720 (1), a dwelling may be allowed on land zoned for forest use under a goal protecting forestland if it complies with other provisions of law and is sited on a tract:

(a) In eastern Oregon of at least 240 contiguous acres except as provided in subsection (3) of this section; or

(b) In western Oregon of at least 160 contiguous acres except as provided in subsection (3) of this section.

2. For purposes of subsection (1) of this section, a tract shall not be considered to consist of less than 240 acres or 160 acres because it is crossed by a public road or a waterway.

3. (a) An owner of tracts that are not contiguous but are in the same county or adjacent counties and zoned for forest use may add together the acreage of two or more tracts to total 320 acres or more in eastern Oregon or 200 acres or more in western Oregon to qualify for a dwelling under subsection (1) of this section.

(b) If an owner totals 320 or 200 acres, as appropriate, under paragraph (a) of this subsection, the owner shall submit proof of nonrevocable deed restrictions recorded in the deed records for the tracts in the 320 or 200 acres, as appropriate. The deed restrictions shall preclude all future rights to construct a dwelling on the tracts or to use the tracts to total acreage for future siting of dwellings for present and any future owners unless the tract is no longer subject to protection under goals for agricultural lands or forestlands.

(c) The Land Conservation and Development Commission shall adopt rules that prescribe the language of the deed restriction, the procedures for recording, the procedures under which counties shall keep records of lots or parcels used to create the total, the mechanisms for providing notice to subsequent purchasers of the limitations under paragraph (b) of this subsection and other rules to implement this section. [1993 c.792 §4(2),(3),(5)]

ORS 215.750 Alternative Forestland Dwellings; Criteria.

1. In western Oregon, a governing body of a county or its designate may allow the establishment of a single-family dwelling on a lot or parcel located within a forest zone if the lot or parcel is predominantly composed of soils that are:

(a) Capable of producing 0 to 49 cubic feet per acre per year of wood fiber if:

(A) All or part of at least three other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and

(B) At least three dwellings existed on January 1, 1993, on the other lots or parcels;

(b) Capable of producing 50 to 85 cubic feet per acre per year of wood fiber if:

(A) All or part of at least seven other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and

(B) At least three dwellings existed on January 1, 1993, on the other lots or parcels; or

(c) Capable of producing more than 85 cubic feet per acre per year of wood fiber if:

(A) All or part of at least 11 other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and

(B) At least three dwellings existed on January 1, 1993, on the other lots or parcels.

2. In eastern Oregon, a governing body of a county or its designate may allow the establishment of a single-family dwelling on a lot or parcel located within a forest zone if the lot or parcel is predominantly composed of soils that are:

(a) Capable of producing 0 to 20 cubic feet per acre per year of wood fiber if:

(A) All or part of at least three other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and

(B) At least three dwellings existed on January 1, 1993, on the other lots or parcels;

(b) Capable of producing 21 to 50 cubic feet per acre per year of wood fiber if:

(A) All or part of at least seven other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and

(B) At least three dwellings existed on January 1, 1993, on the other lots or parcels; or

(c) Capable of producing more than 50 cubic feet per acre per year of wood fiber if:

(A) All or part of at least 11 other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and

(B) At least three dwellings existed on January 1, 1993, on the other lots or parcels.

3. Lots or parcels within urban growth boundaries shall not be used to satisfy the eligibility requirements under subsection (1) or (2) of this section.

4. A proposed dwelling under this section is not allowed:

(a) If it is prohibited by or will not comply with the requirements of an acknowledged comprehensive plan and acknowledged land use regulations or other provisions of law.

(b) Unless it complies with the requirements of ORS 215.730.

(c) Unless no dwellings are allowed on other lots or parcels that make up the tract and deed restrictions established under ORS 215.740 (3) for the other lots or parcels that make up the tract are met.

(d) If the tract on which the dwelling will be sited includes a dwelling.

5. Except as described in subsection (6) of this section, if the tract under subsection (1) or (2) of this section abuts a road that existed on January 1, 1993, the measurement may be made by creating a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center of the subject tract and that is to the maximum extent possible, aligned with the road.

6. (a) If a tract 60 acres or larger described under subsection (1) or (2) of this section abuts a road or perennial stream, the measurement shall be made in accordance with subsection (5) of this section. However, one of the three required dwellings shall be on the same side of the road or stream as the tract and:

(A) Be located within a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center of the subject tract and that is, to the maximum extent possible, aligned with the road or stream; or

(B) Be within one-quarter mile from the edge of the subject tract but not outside the length of the 160-acre rectangle, and on the same side of the road or stream as the tract.

(b) If a road crosses the tract on which the dwelling will be located, at least one of the three required dwellings shall be on the same side of the road as the proposed dwelling.

7. Notwithstanding subsection (4)(a) of this section, if the acknowledged comprehensive plan and land use regulations of a county require that a dwelling be located in a 160-acre square or rectangle described in subsection (1), (2), (5) or (6) of this section, a dwelling is in the 160-acre square or rectangle if any part of the dwelling is in the 160-acre square or rectangle. [1993 c.792 §4(6),(7),(8); 1999 c.59 §58; 2005 c.289 §1]

ORS 215.755 Other Forestland Dwellings; Criteria.

Subject to the approval of the governing body or its designee, the following dwellings may be established in any area zoned for forest use under a land use planning goal protecting forestland, provided that the requirements of the acknowledged comprehensive plan, land use regulations and other applicable provisions of law are met:

1. Alteration, restoration or replacement of a lawfully established dwelling that:

   (a) Has intact exterior walls and roof structure;

   (b) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;

   (c) Has interior wiring for interior lights;

   (d) Has a heating system; and

   (e) In the case of replacement, is removed, demolished or converted to an allowable nonresidential use within three months of completion of the replacement dwelling.

2. One manufactured dwelling or recreational vehicle, or the temporary use of an existing building, in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident. Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned to an allowed nonresidential use. The governing body or its designee shall provide for periodic review of the hardship claimed under this subsection. A temporary dwelling established under this section shall not qualify for replacement under the provisions of subsection (1) of this section.

3. Caretaker residences for public parks and public fish hatcheries.

ORS 215.780 Minimum Lot or Parcel Sizes; Land Division to Establish a Dwelling; Recordation.

1. Except as provided in subsection (2) of this section, the following minimum lot or parcel sizes apply to all counties:

   (a) For land zoned for exclusive farm use and not designated rangeland, at least 80 acres;

   (b) For land zoned for exclusive farm use and designated rangeland, at least 160 acres; and

   (c) For land designated forestland, at least 80 acres.

2. A county may adopt a lower minimum lot or parcel size than that described in subsection (1) of this section in any of the following circumstances:

   (a) When the county can demonstrate to the Land Conservation and Development Commission that the county can adopt a lower minimum lot or parcel size while continuing

to meet the requirements of ORS 215.243 and 527.630 and the land use planning goals adopted under ORS 197.230.

(b) To divide an area of land zoned for forest use to establish a parcel for a dwelling that has existed since before June 1, 1995, subject to the following requirements:

(A) The parcel established may not be larger than five acres, except as necessary to recognize physical factors such as roads or streams, in which case the parcel shall be no larger than 10 acres; and

(B) The parcel that does not contain the dwelling is not entitled to a dwelling unless subsequently authorized by law or goal and the parcel either:

(i) Meets the minimum land division standards of the zone; or

(ii) Is consolidated with another parcel, and together the parcels meet the minimum land division standards of the zone.

(c) To divide an area of land zoned for mixed farm and forest use to establish a parcel for a dwelling that has existed since before June 1, 1995, subject to the following requirements:

(A) The parcel established may not be larger than five acres, except as necessary to recognize physical factors such as roads or streams, in which case the parcel shall be no larger than 10 acres;

(B) The parcel that does not contain the dwelling is not entitled to a dwelling unless subsequently authorized by law or goal and the parcel either:

(i) Meets the minimum land division standards of the zone; or

(ii) Is consolidated with another parcel, and together the parcels meet the minimum land division standards of the zone;

(C) The minimum tract eligible under this paragraph is 40 acres;

(D) The tract shall be predominantly in forest use and that portion in forest use qualified for special assessment under a program under ORS chapter 321; and

(E) The remainder of the tract does not qualify for any uses allowed under ORS 215.213 and 215.283 that are not allowed on forestland.

(d) To allow a division of forestland to facilitate a forest practice as defined in ORS 527.620 that results in a parcel that does not meet the minimum area requirements of subsection (1)(c) of this section or paragraph (a) of this subsection. Parcels created pursuant to this subsection:

(A) Are not eligible for siting of a new dwelling;

(B) May not serve as the justification for the siting of a future dwelling on other lots or parcels;

(C) May not, as a result of the land division, be used to justify redesignation or rezoning of resource lands; and

(D) May not result in a parcel of less than 35 acres, unless the purpose of the land division is to:

(i) Facilitate an exchange of lands involving a governmental agency; or

(ii) Allow transactions in which at least one participant is a person with a cumulative ownership of at least 2,000 acres of forestland.

(e) To allow a division of a lot or parcel zoned for forest use or mixed farm and forest use under a statewide planning goal protecting forestland if:

(A) At least two dwellings lawfully existed on the lot or parcel prior to November 4, 1993;

(B) Each dwelling complies with the criteria for a replacement dwelling under ORS 215.213 (1)(q) or 215.283 (1)(p);

(C) Except for one lot or parcel, each lot or parcel created under this paragraph is between two and five acres in size;

(D) At least one dwelling is located on each lot or parcel created under this paragraph; and

(E) The landowner of a lot or parcel created under this paragraph provides evidence that a restriction prohibiting the landowner and the landowner's successors in interest from further dividing the lot or parcel has been recorded with the county clerk of the county in which the lot or parcel is located. A restriction imposed under this paragraph shall be irrevocable unless a statement of release is signed by the county planning director of the county in which the lot or parcel is located indicating that the comprehensive plan or land use regulations applicable to the lot or parcel have been changed so that the lot or parcel is no longer subject to statewide planning goals protecting forestland or unless the land division is subsequently authorized by law or by a change in a statewide planning goal for land zoned for forest use or mixed farm and forest use.

(f) To allow a proposed division of land in a forest zone or a mixed farm and forest zone as provided in ORS 215.783.

3. A county planning director shall maintain a record of lots and parcels that do not qualify for division under the restrictions imposed under subsections (2)(e) and (4) of this section. The record shall be readily available to the public.

4. A lot or parcel may not be divided under subsection (2)(e) of this section if an existing dwelling on the lot or parcel was approved under:

(a) A statute, an administrative rule or a land use regulation as defined in ORS 197.015 that required removal of the dwelling or that prohibited subsequent division of the lot or parcel; or

(b) A farm use zone provision that allowed both farm and forest uses in a mixed farm and forest use zone under a statewide planning goal protecting forestland.

5. A county with a minimum lot or parcel size acknowledged by the commission pursuant to ORS 197.251 after January 1, 1987, or acknowledged pursuant to periodic review requirements under ORS 197.628 to 197.651 that is smaller than those prescribed in subsection (1) of this section need not comply with subsection (2) of this section.

6. (a) An applicant for the creation of a parcel pursuant to subsection (2)(b) and (c) of this section shall provide evidence that a restriction on the remaining parcel, not containing the dwelling, has been recorded with the county clerk of the county where the property is located. An applicant for the creation of a parcel pursuant to subsection (2)(d) of this section

shall provide evidence that a restriction on the newly created parcel has been recorded with the county clerk of the county where the property is located. The restriction shall allow no dwellings unless authorized by law or goal on land zoned for forest use except as permitted under subsection (2) of this section.

(b) A restriction imposed under this subsection shall be irrevocable unless a statement of release is signed by the county planning director of the county where the property is located indicating that the comprehensive plan or land use regulations applicable to the property have been changed in such a manner that the parcel is no longer subject to statewide planning goals pertaining to agricultural land or forestland.

(c) The county planning director shall maintain a record of parcels that do not qualify for the siting of a new dwelling under restrictions imposed by this subsection. The record shall be readily available to the public.

7. A landowner allowed a land division under subsection (2) of this section shall sign a statement that shall be recorded with the county clerk of the county in which the property is located, declaring that the landowner and the landowner's successors in interest will not in the future complain about accepted farming or forest practices on nearby lands devoted to farm or forest use.

While facially neutral with respect to both fair and affordable housing, the provisions above shows that the Oregon legislature has historically been willing to create exceptions to its strict controls on rural subdivision and development and its strong policies to protect farmland and timberland to achieve other state goals (in this case, the economic viability of the rural land use, or simply to reduce the burdens on rural property owners in situations that would not have major impacts on the state's overall planning system). By analogy, it could have created an exception for housing needed to meet the needs of FHAA-protected citizens in rural areas, but the absence of such an exception does not create a state-level barrier to affordable housing.

D. Manufactured Homes

Manufactured homes are a potential source of affordable housing that could accommodate FHAA-protected citizens, but the availability of manufactured homes is often restricted by local zoning and subdivision ordinances. State level regulations governing individual manufactured homes are addressed in the Oregon Revised Statues, Chapters 197, 307, and 446, relevant portions of which are shown in the gray box below.

ORS197.475 Policy

The Legislative Assembly declares that it is the policy of this state to provide for mobile home or manufactured dwelling parks within all urban growth boundaries to allow persons and families a choice of residential settings.

ORS 446.003 Definitions

22. (a)Manufactured dwelling means a residential trailer, mobile home or manufactured home.

(b) Manufactured dwelling does not include any building or structure constructed to conform to the State of Oregon Structural Specialty Code or the Low-Rise Residential

Dwelling Code adopted pursuant to ORS 455.100 to 455.450 and 455.610 to 455.630 or any unit identified as a recreational vehicle by the manufacturer.

23. Manufactured dwelling park means any place where four or more manufactured dwellings are located within 500 feet of one another on a lot, tract or parcel of land under the same ownership, the primary purpose of which is to rent or lease space or keep space for rent or lease to any person for a charge or fee paid or to be paid for the rental or lease or use of facilities or to offer space free in connection with securing the trade or patronage of such person. Manufactured dwelling park does not include a lot or lots located within a subdivision being rented or leased for occupancy by no more than one manufactured dwelling per lot if the subdivision was approved by the local government unit having jurisdiction under an ordinance adopted pursuant to ORS 92.010 to 92.192.

24. (a) Manufactured home, except as provided in paragraph (b) of this subsection, means a structure constructed for movement on the public highways that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, that is being used for residential purposes and that was constructed in accordance with federal manufactured housing construction and safety standards and regulations in effect at the time of construction.

(b)For purposes of implementing any contract pertaining to manufactured homes between the department and the federal government, manufactured home has the meaning given the term in the contract.

25. (a) Manufactured structure means a recreational vehicle, manufactured dwelling or recreational structure.

(b) Manufactured structure does not include any building or structure regulated under the State of Oregon Structural Specialty Code or the Low-Rise Residential Dwelling Code.

29. Mobile home means a structure constructed for movement on the public highways that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, that is being used for residential purposes and that was constructed between January 1, 1962, and June 15, 1976, and met the construction requirements of Oregon mobile home law in effect at the time of construction.

30. Mobile home park means any place where four or more manufactured structures are located within 500 feet of one another on a lot, tract or parcel of land under the same ownership, the primary purpose of which is to rent space or keep space for rent to any person for a charge or fee paid or to be paid for the rental or use of facilities or to offer space free in connection with securing the trade or patronage of such person. Mobile home park does not include a lot or lots located within a subdivision being rented or leased for occupancy by no more than one manufactured dwelling per lot if the subdivision was approved by the municipality unit having jurisdiction under an ordinance adopted pursuant to ORS 92.010 to 92.192

ORS 197.314 Required Siting of Manufactured Homes; Minimum Lot Size; Approval Standards

1. Notwithstanding ORS 197.296 197.296, 197.298, 197.299, 197.301, 197.302, 197.303, 197.307, 197.312 and 197.313, within urban growth boundaries each city and county shall amend its comprehensive plan and land use regulations for all land zoned for single-family residential uses to allow for siting of manufactured homes as defined in ORS 446.003. A local

government may only subject the siting of a manufactured home allowed under this section to regulation as set forth in ORS 197.307.

2. Cities and counties shall adopt and amend comprehensive plans and land use regulations under subsection (1) of this section according to the provisions of ORS 197.610.

3. Subsection (1) of this section does not apply to any area designated in an acknowledged comprehensive plan or land use regulation as a historic district or residential land immediately adjacent to a historic landmark.

4. Manufactured homes on individual lots zoned for single-family residential use in subsection (1) of this section shall be in addition to manufactured homes on lots within designated manufactured dwelling subdivisions.

5. Within any residential zone inside an urban growth boundary where a manufactured dwelling park is otherwise allowed, a city or county shall not adopt, by charter or ordinance, a minimum lot size for a manufactured dwelling park that is larger than one acre.

6. A city or county may adopt the following standards for the approval of manufactured homes located in manufactured dwelling parks that are smaller than three acres:

    a. The manufactured home shall have a pitched roof, except that no standard shall require a slope of greater than a nominal three feet in height for each 12 feet in width.

    b. The manufactured home shall have exterior siding and roofing that, in color, material and appearance, is similar to the exterior siding and roofing material commonly used on residential dwellings within the community or that is comparable to the predominant materials used on surrounding dwellings as determined by the local permit approval authority.

7. This section shall not be construed as abrogating a recorded restrictive covenant.

ORS 197.307 Effect of Need for Certain Housing in Urban Growth Areas

Subsections 1-7 are discussed earlier in this review.

8. In accordance with subsection (4) of this section and ORS 197.314 (Required siting of manufactured homes), a jurisdiction may adopt any or all of the following placement standards, or any less restrictive standard, for the approval of manufactured homes located outside mobile home parks:

    a. The manufactured home shall be multisectional and enclose a space of not less than 1,000 square feet.

    b. The manufactured home shall be placed on an excavated and back-filled foundation and enclosed at the perimeter such that the manufactured home is located not more than 12 inches above grade.

    c. The manufactured home shall have a pitched roof, except that no standard shall require a slope of greater than a nominal three feet in height for each 12 feet in width.

    d. The manufactured home shall have exterior siding and roofing which in color, material and appearance is similar to the exterior siding and roofing material commonly used on residential dwellings within the community or which is comparable to the predominant

materials used on surrounding dwellings as determined by the local permit approval authority.

e. The manufactured home shall be certified by the manufacturer to have an exterior thermal envelope meeting performance standards which reduce levels equivalent to the performance standards required of single-family dwellings constructed under the state building code as defined in ORS 455.

f. The manufactured home shall have a garage or carport constructed of like materials. A jurisdiction may require an attached or detached garage in lieu of a carport where such is consistent with the predominant construction of immediately surrounding dwellings.

g. In addition to the provisions in paragraphs (a) to (f) of this subsection, a city or county may subject a manufactured home and the lot upon which it is sited to any development standard, architectural requirement and minimum size requirement to which a conventional single-family residential dwelling on the same lot would be subject.

ORS 197.480 Planning for Parks, Procedures, Inventory.

1. Each city and county governing body shall provide, in accordance with urban growth management agreements, for mobile home or manufactured dwelling parks as an allowed use, by July 1, 1990, or by the next periodic review after January 1, 1988, whichever comes first:

a. By zoning ordinance and by comprehensive plan designation on buildable lands within urban growth boundaries; and

b. In areas planned and zoned for a residential density of six to 12 units per acre sufficient to accommodate the need established pursuant to subsections (2) and (3) of this section.

2. A city or county shall establish a projection of need for mobile home or manufactured dwelling parks based on:

a. Population projections;

b. Household income levels;

c. Housing market trends of the region; and

d. An inventory of mobile home or manufactured dwelling parks sited in areas planned and zoned or generally used for commercial, industrial or high density residential development.

3. The inventory required by subsection (2)(d) and subsection (4) of this section shall establish the need for areas to be planned and zoned to accommodate the potential displacement of the inventoried mobile home or manufactured dwelling parks.

4. Notwithstanding the provisions of subsection (1) of this section, a city or county within a metropolitan service district, established pursuant to ORS chapter 268, shall inventory the mobile home or manufactured dwelling parks sited in areas planned and zoned or generally used for commercial, industrial or high density residential development no later than two years from September 27, 1987.

a. A city or county may establish clear and objective criteria and standards for the placement and design of mobile home or manufactured dwelling parks.

b. If a city or county requires a hearing before approval of a mobile home or manufactured dwelling park, application of the criteria and standards adopted pursuant to paragraph (a) of this subsection shall be the sole issue to be determined at the hearing

c. No criteria or standards established under paragraph (a) of this subsection shall be adopted which would preclude the development of mobile home or manufactured dwelling parks within the intent of ORS 197.295 and 197.475 to 197.490.

ORS 197.485 Prohibition on restrictions of manufactured dwelling

(1) A jurisdiction may not prohibit placement of a manufactured dwelling, due solely to its age, in a mobile home or manufactured dwelling park in a zone with a residential density of eight to 12 units per acre.

(2) A jurisdiction may not prohibit placement of a manufactured dwelling, due solely to its age, on a buildable lot or parcel located outside urban growth boundaries or on a space in a mobile home or manufactured dwelling park, if the manufactured dwelling is being relocated due to the closure of a mobile home or manufactured dwelling park or a portion of a mobile home or manufactured dwelling park.

(3) A jurisdiction may impose reasonable safety and inspection requirements for homes that were not constructed in conformance with the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5403).

ORS 197.490 Restriction on establishment of park

(1) Except as provided by ORS 446.105, a mobile home or manufactured dwelling park shall not be established on land, within an urban growth boundary, which is planned or zoned for commercial or industrial use.

(2) Notwithstanding the provisions of subsection (1) of this section, if no other access is available, access to a mobile home or manufactured dwelling park may be provided through a commercial or industrial zone.

Although a number of states have passed state legislation encouraging or requiring the accommodation of manufactured homes in both parks and on individual residential lots, the Oregon provisions cited above are very strong. By requiring the accommodation of manufactured homes in all single-family zone district on terms no stricter than those applied to "stick-built" homes, and by requiring that each housing needs analysis specifically consider the needs for new or expanded manufactured home parks, the Oregon statutes make clear that this type of housing is not to be restricted or discouraged. The legislation promotes housing affordability and does not create a barrier to fair housing choice in Oregon.

E. Farmworker Housing

Oregon statutes also address the need to protect farmworker housing in some detail. Although farmworkers are not a group specifically included in the FHAA-protected citizens, it is likely that a disproportionate share of farmworkers may have national origins outside the U.S. In addition, Oregon statutes acknowledge the need to provide adequate housing conditions for farmworker families and children. Because both national origin and familial status are categories for which the FHAA prohibits housing discrimination, we review the farmworker housing statutes below.

ORS 197.312 Limitation on City and County Authority to Prohibit Certain Kinds of Housing

2. (a) A single-family dwelling for a farmworker and the farmworkers immediate family is a permitted use in any residential or commercial zone that allows single-family dwellings as a permitted use.

(b) A city or county may not impose a zoning requirement on the establishment and maintenance of a single-family dwelling for a farmworker and the farmworkers

immediate family in a residential or commercial zone described in paragraph (a) of this subsection that is more restrictive than a zoning requirement imposed on other single-family dwellings in the same zone.

3. (a) Multifamily housing for farmworkers and farmworkers immediate families is a permitted use in any residential or commercial zone that allows multifamily housing generally as a permitted use.

   (b) A city or county may not impose a zoning requirement on the establishment and maintenance of multifamily housing for farmworkers and farmworkers immediate families in a residential or commercial zone described in paragraph (a) of this subsection that is more restrictive than a zoning requirement imposed on other multifamily housing in the same zone.

To the degree that farmworkers may be disproportionately of non-U.S. national original, these requirements ensure that farmworker housing is treated like other forms of single-family residential development. By reducing opportunities for exclusion of this type of housing, the statute removes a potential barrier to fair housing choice.

ORS 197.667 Policy

In that the agricultural workers in this state benefit the social and economic welfare of all of the people in Oregon by their unceasing efforts to bring a bountiful crop to market, the Legislative Assembly declares that it is the policy of this state to insure adequate agricultural labor accommodations commensurate with the housing needs of Oregon's workers that meet decent health, safety and welfare standards. To accomplish this objective in the interest of all of the people in this state, it is necessary that:

1. Every state and local government agency that has powers, functions or duties with respect to housing, land use or enforcing health, safety or welfare standards, under this or any other law, shall exercise its powers, functions or duties consistently with the state policy declared by ORS 197.307, 197.312, 197.677 to 197.685, 215.213, 215.277, 215.283, 215.284 and 455.380 and in such manner as will facilitate sustained progress in attaining the objectives established;
2. Every state and local government agency that finds farmworker activities within the scope of its jurisdiction must make every effort to alleviate insanitary, unsafe and overcrowded accommodations;
3. Special efforts should be directed toward mitigating hazards to families and children; and
4. All accommodations must provide for the rights of free association to farmworkers in their places of accommodation.

ORS 197.680 Legislative Findings

The Legislative Assembly finds that:

1. This state has a large stock of existing farmworker housing that does not meet minimum health and safety standards and is in need of rehabilitation;

2. It is not feasible to rehabilitate much of the existing farmworker housing stock to meet building code standards;
3. In order to assure that minimum standards are met in all farmworker housing in this state, certain interim measures must be taken; and
4. Limited rehabilitation, outside city boundaries, must be allowed to a lesser standard than that set forth in the existing building codes.

ORS 197.685 Location of Farmworker Housing

1. The availability of decent, safe and sanitary housing opportunities for farmworkers is a matter of statewide concern.
2. Farmworker housing within the rural area of a county shall be permitted in a zone or zones in rural centers and areas committed to nonresource uses
3. Any approval standards, special conditions and procedures for approval adopted by a local government shall be clear and objective and shall not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.

Like the provisions of ORS 197.312(2) and (3) above, the intent of these statutes is to maintain and increase the supply of farmworker housing, and to allow local governments to approve rehabilitation construction projects that do not meet the requirements of the state building code. By permitting housing maintenance and improvement to lower standards, ORS 197.667-197.685 will tend maintain (and potentially improve) a stock of housing that might otherwise fall into disrepair, which tends to improve housing choice. While the adoption of a lower standard of quality for farmworker housing may result in lower housing quality, that reduction in quality must be weighed against the probable increase in quantity of farmworker housing available. Since the thrust of the FHAA is that actions not "make unavailable" housing to FHAA-protected citizens, and the FHAA does not address the quality of housing (except as necessary to accommodate the disabilities or special needs of the occupants), the provisions of ORS 197.667-197.685 do not create a barrier to fair housing choice.

F. Assisted Living Facilities (Residential Homes and Residential Facilities)

The definition of FHAA-protected citizens includes the frail, persons with HIV/AIDS, physically and developmentally disabled, mentally ill, and recovering alcoholics and drug addicts, and many of those individuals will require supportive services in order to have a housing environment on a par with other citizens, it is important that state legislation authorize (and if possible encourage) local governments to allow a wide variety of assisted living facilities through their zoning and subdivision regulations.

There has been significant litigation over the years over whether group homes must be treated as residential (rather than commercial) uses — and therefore permitted in residential areas — under certain circumstances. In general, the courts have required that group homes that have the characteristics of single family homes, most notably in the size and number of people residing in the facility, must be treated as a residential use. That means that they should be

allowed in at least one residential district either by right or through a permit system.[7] Oregon statutes meet and exceed this basic requirement.

Some of the key Oregon statutes addressing these types of facilities are shown in the gray box below.

ORS 197.660 Definitions. As used in ORS 197.660 to 197.670, 215.213, 215.263, 215.283, 215.284 and 443.422:

(1) "Residential facility" means a residential care, residential training or residential treatment facility, as those terms are defined in ORS 443.400, that provides residential care alone or in conjunction with treatment or training or a combination thereof for six to fifteen individuals who need not be related. Staff persons required to meet licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential facility.

(2) "Residential home" means a residential treatment or training home, as defined in ORS 443.400, a residential facility registered under ORS 443.480 to 443.500 or an adult foster home licensed under ORS 443.705 to 443.825 that provides residential care alone or in conjunction with treatment or training or a combination thereof for five or fewer individuals who need not be related. Staff persons required to meet licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential home.

(3) "Zoning requirement" means any standard, criteria, condition, review procedure, permit requirement or other requirement adopted by a city or county under the authority of ORS chapter 215 or 227 that applies to the approval or siting of a residential facility or residential home. A zoning requirement does not include a state or local health, safety, building, occupancy or fire code requirement.

ORS197.663 Legislative Findings

The Legislative Assembly finds and declares that:

(1) It is the policy of this state that persons with disabilities and elderly persons are entitled to live as normally as possible within communities and should not be excluded from communities because their disability or age requires them to live in groups;

(2) There is a growing need for residential homes and residential facilities to provide quality care and protection for persons with disabilities and elderly persons and to prevent inappropriate placement of such persons in state institutions and nursing homes;

(3) It is often difficult to site and establish residential homes and residential facilities in the communities of this state;

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[7] See for example: Rhodes v. Palmetto Pathway Homes, Inc., 400 S.E.2d 484 (S.C. 1991); Dornbach v. Holley, 854 S.O.2d 211 (2002 FL); Evergreen Meadows Homeowners Association, 773 P.2d 1046 (Colo. 1989); and Baltimore Neighborhoods Inc., v. Rommel Builders, 40 F.Supp.2d 700 (1999).

(4) To meet the growing need for residential homes and residential facilities, it is the policy of this state that residential homes and residential facilities shall be considered a residential use of property for zoning purposes; and

(5) It is the policy of this state to integrate residential facilities into the communities of this state. The objective of integration cannot be accomplished if residential facilities are concentrated in any one area.

ORS Sec.197.665 Location of Residential Homes

(1) Residential homes shall be a permitted use in:

(a) Any residential zone, including a residential zone which allows a single-family dwelling; and

(b) Any commercial zone which allows a single-family dwelling.

(2) A city or county may not impose any zoning requirement on the establishment and maintenance of a residential home in a zone described in subsection (1) of this section that is more restrictive than a zoning requirement imposed on a single-family dwelling in the same zone.

(3) A city or county may:

(a) Allow a residential home in an existing dwelling in any area zoned for farm use, including an exclusive farm use zone established under ORS 215.203.

(b) Impose zoning requirements on the establishment of a residential home in areas described in paragraph (a) of this subsection, provided that these requirements are no more restrictive than those imposed on other nonfarm single-family dwellings in the same zone; and

(c) Allow a division of land for a residential home in an exclusive farm use zone only as described in ORS 215.263.

ORS Sec. 197.667 Location of Residential Facility; Application and Supporting Documentation

(1) A residential facility shall be a permitted use in any zone where multifamily residential uses are a permitted use.

(2) A residential facility shall be a conditional use in any zone where multifamily residential uses are a conditional use.

(3) A city or county may allow a residential facility in a residential zone other than those zones described in subsections (1) and (2) of this section, including a zone where a single-family dwelling is allowed.

(4) A city or county may require an applicant proposing to site a residential facility within its jurisdiction to supply the city or county with a copy of the entire application and supporting documentation for state licensing of the facility, except for information which is exempt from public disclosure under ORS 192.410 to 192.505. However, cities and counties shall not require independent proof of the same conditions that have been required by the

Department of Human Services under ORS 418.205 to 418.327 for licensing of a residential facility.

ORS 197.670 Zoning Requirements and Prohibitions for Residential Homes and Residential Facilities

(1) As of October 3, 1989, no city or county shall:

(a) Deny an application for the siting of a residential home in a residential or commercial zone described in ORS 197.665.

(b) Deny an application for the siting of a residential facility in a zone where multifamily residential uses are allowed, unless the city or county has adopted a siting procedure which implements the requirements of ORS 197.667.

(2) Every city and county shall amend its zoning ordinance to comply with ORS 197.660 to 197.667 as part of periodic land use plan review occurring after January 1, 1990. Nothing in this section prohibits a city or county from amending its zoning ordinance prior to periodic review.

The cross-referenced definitions are set forth below.

ORS 443.400 Definitions for ORS 443.400 to 443.455. As used in ORS 443.400 to 443.455 and 443.991, unless the context requires otherwise

(5) "Residential care facility" means a facility that provides, for six or more socially dependent individuals or individuals with physical disabilities, residential care in one or more buildings on contiguous properties.

(6) "Residential facility" means a residential care facility, residential training facility, residential treatment facility, residential training home or residential treatment home.

(7) "Residential training facility" means a facility that provides, for six or more individuals with mental retardation or other developmental disabilities, residential care and training in one or more buildings on contiguous properties.

(8) "Residential training home" means a facility that provides, for five or fewer individuals with mental retardation or other developmental disabilities, residential care and training in one or more buildings on contiguous properties, when so certified and funded by the Department of Human Services.

(9) "Residential treatment facility" means a facility that provides, for six or more individuals with mental, emotional or behavioral disturbances or alcohol or drug dependence, residential care and treatment in one or more buildings on contiguous properties.

(10) "Residential treatment home" means a facility that provides for five or fewer individuals with mental, emotional or behavioral disturbances or alcohol or drug dependence, residential care and treatment in one or more buildings on contiguous properties.

ORS 443.705 Definitions for ORS 443.705 to 443.825

As used in ORS 443.705 to 443.825:

(1) "Adult foster home" means any family home or facility in which residential care is provided in a homelike environment for five or fewer adults who are not related to the provider by blood or marriage

These definitions are clear and concise compared to those used in some other states, and appear to cover the full range of FHAA-protected citizens. More specifically, these definitions cover "socially dependent individuals", "physically disabled," "individuals with mental retardation or other developmental disabilities," "and individuals with mental, emotional or behavioral disturbances or alcohol or drug dependence." The legislation requires that each city and county permit each of these types of facilities in neighborhoods where the scale of the facility matches the general scale or occupancy of residential dwellings in that area (i.e. "homes" providing services to five or fewer individuals must be permitted in areas permitting single-family homes, and larger "facilities" must be allowed in areas where larger multi-family dwelling are permitted.) These regulations meet the intent of the FHAA regarding FHAA-protected citizens and do not create a barrier to fair housing choice for those citizens.[8]

Recommended amendments. Although the text of ORS 197.665 and 197.667 likely comply with the FHAA, there is a potential gap in the coverage of FHAA protected citizens that could be addressed through minor amendments. These two statutes define the terms "residential home" and "residential facility" through cross-references with the text of ORS 443.400, defining the types of facilities included in those terms for purposes of state licensing (and thereby requiring that they be licensed facilities). However, there may be some residential land uses of similar size and character that are not required to be licensed by the State of Oregon because they provide lower levels of supportive services or skilled care than those required to be licensed. In order to cover that gap and ensure that unlicensed facilities must be treated similarly to licensed facilities of the same size and character, ORS 197.665 and 197.667 could be amended as shown in the amended text below.

ORS Sec.197.665 Location of Residential Homes

(2) Residential homes, and a residential land use that would meet the definition of a residential home if it provided supportive services for which the Department of Human Services or the Oregon Health Authority requires a license, shall be a permitted use in:

(a) Any residential zone, including a residential zone which allows a single-family dwelling; and

(b) Any commercial zone which allows a single-family dwelling.

(2) A city or county may not impose any zoning requirement on the establishment and maintenance of a residential home, or a residential land use that would meet the definition of a residential home if it provided supportive services for which the Department of Human Services or the Oregon Health Authority requires a license, in a zone described in subsection (1) of this

[8] The cited statutes do not mention mixed use districts, but since that type of district involves residential as well as commercial uses, we assume they are included in the state's definition of a residential zone district.

section that is more restrictive than a zoning requirement imposed on a single-family dwelling in the same zone.

(3) A city or county may:

(a) Allow a residential home, or a residential land use that would meet the definition of a residential home if it provided services for which the Department of Human Services or the Oregon Health Authority requires a license, in an existing dwelling in any area zoned for farm use, including an exclusive farm use zone established under ORS 215.203.

(b) Impose zoning requirements on the establishment of a residential home, or a residential land use that would meet the definition of a residential home if it provided services for which the Department of Human Services or Oregon Health Authority requires a license, in areas described in paragraph (a) of this subsection, provided that these requirements are no more restrictive than those imposed on other nonfarm single-family dwellings in the same zone; and

(c) Allow a division of land for a residential home, or a residential land use that would meet the definition of a residential home if it provided services for which the Department of Human Services or the Oregon health Authority requires a license, in an exclusive farm use zone only as described in ORS 215.263.

ORS Sec. 197.667 Location of Residential Facility; Application and Supporting Documentation

(5) A residential facility, and a residential land use that would meet the definition of a residential facility if it provided services for which the Department of Human Services or the Oregon Health Authority requires a license, shall be a permitted use in any zone where multifamily residential uses are a permitted use.

(6) A residential facility, and a residential land use that would meet the definition of a residential facility if it provided services for which the Department of Human Services or the Oregon Health Authority requires a license, shall be a conditional use in any zone where multifamily residential uses are a conditional use.

(7) A city or county may allow a residential facility, and a residential land use that would meet the definition of a residential facility if it provided services for which the Department of Human Services or the Oregon Health Authority requires a license, in a residential zone other than those zones described in subsections (1) and (2) of this section, including a zone where a single-family dwelling is allowed.

(8) A city or county may require an applicant proposing to site a residential facility within its jurisdiction to supply the city or county with a copy of the entire application and supporting documentation for state licensing of the facility, except for information which is exempt from public disclosure under ORS 192.410 to 192.505. However, cities and counties shall not require independent proof of the same conditions that have been required by the Department of Human Services under ORS 418.205 to 418.327 for licensing of a residential facility.

Unlike some other states, the Oregon land use statutes reviewed above do not authorize local governments to adopt minimum spacing requirements between assisted living facilities. In fact, the provisions of ORS 197.665(2) appear to prevent spacing standards for residential homes by

requiring that they be treated like single family homes. Interestingly, the same restriction against special standards does not appear in ORS 197.667 and apparently does not apply to larger residential facilities. Including such a provision for residential facilities would remove a potential barrier to fair housing choice for FHAA-protected citizens in those larger residential facilities.

Although not prohibited by most court decisions, spacing requirements can create barriers to fair housing if the state authorizes (or local governments adopt) excessive requirements. Under the FHAA, the only legitimate reason to require minimum distances between group home facilities is for the benefit of those residing in those facilities. Since the goal of most smaller assisted living facilities is to allow their residents to receive treatment or assistance in a typical neighborhood environment, it is possible that the grouping of several assisted living facilities close together would defeat this purpose, since the neighborhood might no longer appear or function as a typical residential neighborhood.

To prevent that result, a spacing requirement could help distribute assisted living facilities in a way that is beneficial to their residents – i.e. in a way that is helping FHAA-protected citizens to achieve the type of housing they need. However, court decisions interpreting the legality of assisted living facility spacing requirements have not been helpful in determining how much spacing between smaller assisted living facilities is required to avoid "overcrowding" or how large a separation distance might be excessive or exclusionary under the FHAA. Unfortunately, in our experience, most conversations about spacing focus on the desires of the residential neighborhoods to limit the number of assisted living facilities in the area rather than the needs or rights of FHAA-protected citizens to live in a typical residential environment. For those reasons, assisted living facility spacing requirements can become barriers to fair housing choice. While the Oregon statutes cited above do not authorize spacing requirements, neither do they explicitly prohibit them. While an explicit prohibition on spacing requirements would remove a potential barrier to fair housing, the Oregon statutes are facially neutral on this issue, and that neutrality does not create a barrier to fair housing.

While assisted living facility spacing requirements are not addressed in Oregon's statewide planning or city and county zoning enabling statutes, the issue is indirectly addressed in the state's licensing statutes – as shown below.

ORS 443.422 Siting of Licensed Residential Facilities

To prevent the perpetuation of segregated housing patterns, the Department of Human Services, in consultation with the Oregon Health Authority, shall determine the location and type of licensed residential facilities and the location of facilities subject to the provisions of ORS 169.690. Before a license is issued for a residential facility as defined in ORS 443.400, the issuing agency shall determine the number and type of any other licensed residential facilities and the number and type of facilities subject to the provisions of ORS 169.690 within a 1,200 foot radius. None of the data collected under this section shall be used in a manner that violates the Fair Housing Amendments Act of 1988.

The text above suggests that Oregon intends to consider the possibility of overcrowding (i.e. "segregated housing patterns" in which assisted living facilities are concentrated some areas) during statewide licensing rather than during land use permitting. This approach is preferable

because the decision is more likely to be based on to professional opinions related to the housing needs of assisted living facility residents and less likely to be driven by neighborhood desires to limit the number of these facilities.

In addition, ORS Chapter 427 (Persons with Intellectual or Developmental Disabilities) addresses "community housing". ORS 427.335 addresses the state's authority to "purchase, receive, hold, exchange, operate, demolish, construct, lease, maintain, repair, replace, improve and equip community housing" for "individuals with intellectual disabilities or developmental disabilities, to provide financial assistance to community housing facilities, and to sell those facilities "upon such terms and conditions as the department considers advisable to increase the quality and quantity of community housing for individuals with intellectual disabilities or other developmental disabilities." While "individuals with intellectual disabilities or other developmental disabilities" is not as broad as the range of citizens protected by the FHAA (for example, it does not include people with HIV/AIDS or persons recovering from drug and alcohol addiction), this chapter does address state or local powers to exclude housing, it simply authorizes the state to spend public funds in certain ways. As noted above, the thrust of the FHAA is to prevent discrimination and not to require public expenditures for housing. The fact that Oregon statutes contain explicit authority to spend public funds on housing that benefits some – but not all – FHAA-protected citizens, is not a barrier to fair housing choice.

Finally, Oregon statutes address residential treatment, training, or care facilities as part of a larger category of "domiciliary care facilities. Key portions of the statutory provisions are shown below.

ORS 443.205 Definitions

As used in ORS 443.215 443.225, domiciliary care facilities means facilities providing residential care to adults, including adult foster homes, group care facilities or residential treatment, training or care facilities, established, contracted for or operated by the Department of Human Services or the Oregon Health Authority.

ORS 443.214 Policy

1. The Legislative Assembly recognizes the importance of providing a high quality of domiciliary care facilities throughout the State of Oregon.
2. It is the intent of ORS 443.205 to 443.225 to distribute domiciliary care facility capacity on the basis of population and the regional origin of institutionalized persons.

ORS 443.225 Location and Capacity of Domiciliary Care Facilities

1. Except as otherwise provided by subsections (3) and (4) of this section, the capacity of all domiciliary care facilities must be located throughout the state based on the relationship of the population of the county in which the additional capacity is proposed to be located to the number of persons originating from the county who are determined to be in need of domiciliary care. However, nothing in this subsection is intended to prevent the placement of a person who is or was not a resident of the county in a domiciliary care facility in the county.

2. The Department of Human Services shall determine the number of persons originating from a county who are in need of domiciliary care if the domiciliary care facility is an adult foster home as defined in ORS 443.705, a residential care facility or residential training facility as those terms are defined in ORS 443.400 or other group care facility.
3. The Oregon Health Authority shall determine the number of persons originating from a county who are in need of domiciliary care if the domiciliary care facility is a residential treatment facility as defined in ORS 443.400.
4. When a county is too sparsely populated to produce a meaningful ratio of county population to population in need, or a county is lacking necessary support services, the population of two or more counties may be combined. The area of the combined counties may be considered a county for purposes of subsection (1) of this section.
5. The computation required by subsection (1) of this section does not require reduction in any domiciliary care facility capacity existing on October 4, 1977.
6. Subject to the appropriate licensing requirements, the governing body of a county may authorize a domiciliary care facility located in the county to exceed the capacity limit imposed by subsection (1) of this section upon:
    a. Request of an individual or organization operating or proposing to operate a domiciliary care facility;
    b. Consultation with an advisory committee appointed by the governing body and consisting of persons who are particularly interested in the type of domiciliary care facility contemplated; and
    c. Finding of good cause following notice and public hearing.

The above text appears establishes a system in which domiciliary care facilities are distributed throughout the State or Oregon based on the population of persons needing those services. Since those facilities "must" be located throughout the state, this appears to be information that must be taken into account in city and county planning related to Goal 10 (Housing), which must in turn be implemented through local land use regulations. Since FHAA-protected citizens are among those to be served by domiciliary care facilities, this requirement for rational distribution of those facilities reduces the likelihood of local exclusion or limitation of domiciliary care facilities and helps remove a potential barrier to fair housing choice.[9]

G. Accessibility of Housing Units

The Fair Housing Act offers protection to persons with disabilities (broadly defined) to ensure they have equal access to safe and affordable housing options. However, that right will be impaired if none of the available housing is accessible to disabled persons (i.e. doors are too narrow to accommodate wheelchairs, or building entries are located above or below grade level with no means for a wheelchair to accommodate that change in grade). Oregon statutory text related to housing design and accessibility are shown below.

Permitting persons with disabilities to make modifications to a dwelling unit in order to live safely in that unit is an important aspect of providing housing choice for this class of FHAA-protected citizens. 42 U.S.C. 3604(f)(3)(A) and (B) provide that "discrimination includes:

> **(A)** a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.
>
> **(B)** a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling . . .

Oregon implements this portion of the FHAA in part through the provisions of Chapter 659A, relevant portions of which are shown below.

ORS 659A. Unlawful Discrimination Against Persons with Disabilities

ORS659A.103 Policy

1. It is declared to be the public policy of Oregon to guarantee individuals the fullest possible participation in the social and economic life of the state, to engage in remunerative employment, to use and enjoy places of public accommodation, resort or amusement, to participate in and receive the benefits of the services, programs and activities of state government and to secure housing accommodations of their choice, without discrimination on the basis of disability.
2. The guarantees expressed in subsection (1) of this section are hereby declared to be the policy of the State of Oregon to protect, and ORS 659A.103 to 659A.145 shall be construed to effectuate such policy.

ORS 659A.104. Description of Disability for the Purposes of ORS 659A.103 to 659A.145

1. An individual has a disability for the purposes of ORS 659A.103 to 659A.145 if the individual meets any one of the following criteria:

a. The individual has a physical or mental impairment that substantially limits one or more major life activities of the individual.

b. The individual has a record of having a physical or mental impairment that substantially limits one or more major life activities of the individual. For the purposes of this paragraph, an individual has a record of having a physical or mental impairment if the individual has a history of, or has been misclassified as having, a physical or mental impairment that substantially limits one or more major life activities of the individual.

c. The individual is regarded as having a physical or mental impairment that substantially limits one or more major life activities of the individual. For the purposes of this paragraph:

A. An individual is regarded as having a physical or mental impairment if the individual has been subjected to an action prohibited under ORS 659A.112 to 659A.139 because of an actual or perceived physical or mental impairment, whether or not the impairment limits or is perceived to limit a major life activity of the individual.

B. An individual is not regarded as having a physical or mental impairment if the individual has an impairment that is minor and that has an actual or expected duration of six months or less.

2. Activities and functions that are considered major life activities for the purpose of determining if an individual has a disability include but are not limited to:

a. Caring for oneself;

b. Performing manual tasks;

c. Seeing;

d. Hearing;

e. Eating;

f. Sleeping;

g. Walking;

h. Standing;

i. Lifting;

j. Bending;

k. Speaking;

l. Breathing;

m. Learning;

n. Reading;

o. Concentrating;

p. Thinking;

q. Communicating;

r. Working;

s. Socializing;

t. Sitting;

u. Reaching;

v. Interacting with others;

w. Employment;

x. Ambulation;

y. Transportation;

z. Operation of a major bodily function, including but not limited to:

A. Functions of the immune system;

B. Normal cell growth; and

C. Digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions; and

aa. Ability to acquire, rent or maintain property.

3. An individual is substantially limited in a major life activity if the individual has an impairment, had an impairment or is perceived as having an impairment that restricts one or more major life activities of the individual as compared to most people in the general population. An impairment need not prevent, or significantly or severely restrict, the individual from performing a major life activity in order to be considered substantially limiting. An impairment that substantially limits one major life activity of the individual need not limit other major life activities of the individual. An impairment that is episodic or in remission is considered to substantially limit a major life activity of the individual if the impairment would substantially limit a major life activity of the individual when the impairment is active. Nonetheless, not every impairment will constitute a disability within the meaning of this section.

4. When determining whether an impairment substantially limits a major life activity of an individual, the determination shall be made without regard to the ameliorative effects of mitigating measures, including:

a. Medication;

b. Medical supplies, equipment or appliances;

c. Low vision devices or other devices that magnify, enhance or otherwise augment a visual image, except that ordinary eyeglasses or contact lenses or other similar lenses that are intended to fully correct visual acuity or eliminate refractive error may be considered when determining whether an impairment substantially limits a major life activity of an individual;

d. Prosthetics, including limbs and devices;

e. Hearing aids, cochlear implants or other implantable hearing devices;

f. Mobility devices;

g. Oxygen therapy equipment or supplies;

h. Assistive technology;

i. Reasonable accommodations or auxiliary aids or services; or

j. Learned behavioral or adaptive neurological modifications.

5. Nothing in subsection (4)(c) of this section authorizes an employer to use qualification standards, employment tests or other selection criteria based on an individuals uncorrected vision unless the standard, test or other selection criteria, as used by the employer, are shown to be job-related for the position in question and is consistent with business necessity.

ORS 659A.145 Discrimination Against Individual with Disability in Real Property Transactions Prohibited

1. As used in this section:
    a. Dwelling has the meaning given that term in ORS 659A.421.
    b. Purchaser has the meaning given that term in ORS 659A.421.
2. A person may not discriminate because of a disability of a purchaser, a disability of an individual residing in or intending to reside in a dwelling after it is sold, rented or made available or a disability of any individual associated with a purchaser by doing any of the following:
    a. Refusing to sell, lease, rent or otherwise make available any real property to a purchaser.
    b. Expelling a purchaser.
    c. Making any distinction or restriction against a purchaser in the price, terms, conditions or privileges relating to the sale, rental, lease or occupancy of real property or the furnishing of any facilities or services in connection with the real property.
    d. Attempting to discourage the sale, rental or lease of any real property.
    e. Representing that a dwelling is not available for inspection, sale, rental or lease when the dwelling is in fact available for inspection, sale, rental or lease.
    f. Refusing to permit, at the expense of the individual with a disability, reasonable modifications of existing premises occupied or to be occupied by the individual if the modifications may be necessary to afford the individual full enjoyment of the premises. However, in the case of a rental, the landlord may, when it is reasonable to do so, condition permission for a reasonable modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.
    g. Refusing to make reasonable accommodations in rules, policies, practices or services when the accommodations may be necessary to afford the individual with a disability equal opportunity to use and enjoy a dwelling.
    h. Failing to design and construct a covered multifamily dwelling as required by the Fair Housing Act.

Subsections f, g, and h above reflect similar language in the FHAA requiring that modifications necessary to make a housing unit usable by a disabled tenant be permitted, at the tenant's expense. Because they closely parallel the language of the FHAA and reiterate it as the state's policy, they help remove barriers to fair housing choice.

In addition, ORS 447.210 through 447.280 address accessibility in multiple family dwellings and other areas of public accommodation in language that attempts to integrate relevant provisions of the FHAA and the Americans with Disabilities Act.

ORS 447.210-280 Standards and Specifications for Access by Persons with Disabilities

ORS 447.210 Definitions for ORS 447.210 to 447.280. As used in ORS 447.210 to 447.280, unless the context requires otherwise:

(1) "Affected buildings" includes any place of public accommodations and commercial facilities designed, constructed and altered in compliance with the accessibility standards established by the Americans with Disabilities Act. "Affected buildings" also includes any government building that is subject to Title II of the Americans with Disabilities Act. "Affected buildings" also includes private entities, private membership clubs and churches that have more than one floor level and more than 4,000 square feet in ground area or that are more than 20 feet in height, measured from the top surface of the lowest flooring to the highest interior overhead finish of the building.

. . .

(3) "Architectural barriers" are physical design features that restrict the full use of affected buildings and their related facilities by persons with disabilities.

. . .

(5) "Covered multifamily dwellings" means buildings consisting of four or more dwelling units if such buildings have one or more elevators, and ground floor dwelling units in other buildings consisting of four or more dwelling units. Dwelling units within a single structure separated by firewalls do not constitute separate buildings.

. . .

(11) "Public accommodations" means a facility whose operations affect commerce and fall within at least one of the following categories:

(a) Places of lodging not including owner-occupied establishments renting fewer than six rooms;

(b) Establishments serving food or drink;

(c) Places of exhibition or entertainment;

(d) Places of public gathering;

(e) Sales or rental establishments;

(f) Service establishments;

(g) Public transportation terminals, depots or stations;

(h) Places of public display or collection;

(i) Places of recreation;

(j) Places of education;

(k) Social service center establishments; and

(l) Places of exercise or recreation.

(12) "Related facilities" means building site improvements including, but not limited to, parking lots, passageways, roads, clustered mailboxes located either on the site or in an adjacent public right of way or any other real or personal property located on the site.

ORS 447.220 Purpose

It is the purpose of ORS 447.210 to 447.280 to make affected buildings, including but not limited to commercial facilities, public accommodations, private entities, private membership clubs and churches, in the state accessible to and usable by persons with disabilities, as provided in the Americans with Disabilities Act, and to make covered multifamily dwellings in the state accessible to and usable by all persons with disabilities, as provided in the Fair Housing Act. In requiring that buildings and facilities be usable by persons with disabilities, it is not the intention of the Legislative Assembly to require that items of personal convenience such as rest rooms, telephones and drinking fountains be provided for members of the public who have disabilities if they are not otherwise provided for members of the public who do not have disabilities. However, pursuant to the Americans with Disabilities Act, the Director of the Department of Consumer and Business Services may provide greater protection to individuals with disabilities by adopting more stringent standards than prescribed by the Americans with Disabilities Act.

ORS. 447.230 through 447.280 carry out this intent by directing state agencies to align their rules with the Americans with Disabilities Act. The Oregon state building code, in particular, is to be aligned with the ADA, including both standards for buildings and for accessible parking spaces. In addition, ORS 447.241 addresses required modifications to existing buildings in some detail, as shown below.

ORS 447.241 Standards for renovating, altering or modifying certain buildings; barrier removal improvement plan. (1) Every project for renovation, alteration or modification to affected buildings and related facilities that affects or could affect the usability of or access to an area containing a primary function shall be made to insure that, to the maximum extent feasible, the paths of travel to the altered area and the rest rooms, telephones and drinking fountains serving the altered area are readily accessible to and usable by individuals with disabilities, unless such alterations are disproportionate to the overall alterations in terms of cost and scope.

(2) Alterations made to the path of travel to an altered area may be deemed disproportionate to the overall alteration when the cost exceeds 25 percent of the alteration to the primary function area.

(3) If the cost of alterations to make the paths of travel to the altered area fully accessible is disproportionate to the cost of the overall alteration, the paths of travel shall be made accessible to the extent that it can be made accessible without incurring disproportionate costs.

(4) In choosing which accessible elements to provide under this section, priority shall be given to those elements that will provide the greatest access. Elements shall be provided in the following order:

(a) Parking;

(b) An accessible entrance;

(c) An accessible route to the altered area;

(d) At least one accessible rest room for each sex or a single unisex rest room;

(e) Accessible telephones;

(f) Accessible drinking fountains; and

(g) When possible, additional accessible elements such as storage and alarms.

(5) A series of small alterations to an area served by a single path of travel does not satisfy the obligation to provide an accessible path of travel created under subsection (1) of this section.

(6) If an area containing a primary function has been altered without providing an accessible path of travel to the area and subsequent alterations affecting the same path of travel are undertaken within three years of the original alteration, the total cost of the alterations to the primary function area on the path of travel during the preceding three-year period shall be considered in determining whether the cost of making the path of travel accessible is disproportionate.

(7)(a) A barrier removal improvement plan may satisfy the requirements of subsection (1) of this section. The plan shall require an equivalent or greater level of barrier removal than required by subsection (1) of this section.

(b) The barrier removal improvement plan shall include:

(A) A letter of participation from the building owner;

(B) A building survey that identifies existing architectural barriers;

(C) An improvement plan and time schedule for removal of architectural barriers; and

(D) An implementation agreement.

(c) The barrier removal improvement plan may be reviewed and accepted through the waiver process under ORS 447.250. The plan shall be reviewed upon completion or every three years for compliance with the requirements of this section.

(8) For purposes of this section, "primary function" is a major activity for which the facility is intended.

Not only is the intent of these provisions to expand the accessibility of multi-family dwellings to persons with disabilities, but its language is aligned with the requirements of both the FHAA and the ADA.

In addition, ORS 456.506-456.514 provide accessibility requirements for buildings that receive state subsidies or tax credits linked to federal laws of funding. This appears to be based on federal requirements in the 1973 Rehabilitation Act. Key portions of the statute are shown below.

ORS456.506 Subsidized Development Visitablity

The Legislative Assembly finds and declares that:

1. People with disabilities and senior citizens over 85 years of age are the fastest growing population in Oregon. The second fastest growing population in Oregon are the members of the massive baby boom generation, who will, as they age, demand services and accommodations at an unprecedented rate.
2. The policy of this state is to encourage the design and construction of dwellings that enable easy access by individuals with mobility impairments and that are adaptable to allow continued use by aging occupants.

ORS 456.508 Definitions

As used in ORS 456.510 and 456.513.

1. Accessible means that housing complies with federal accessibility guidelines implementing the Fair Housing Amendments Act of 1988, 42 U.S.C. 3601 et seq., as amended and in effect on January 1, 2004.
2. Common living space means a living room, family room, dining room or kitchen.
3. Contiguous units means units that are on the same tax lot or on contiguous tax lots that have a common boundary. Tax lots that are separated by a public road are contiguous tax lots for purposes of this subsection.
4. New means that the housing being constructed did not previously exist in residential or nonresidential form. New does not include the acquisition, alteration, renovation or remodeling of an existing structure.
5. Powder room means a room containing at least a toilet and sink.
6. Rental housing means a dwelling unit designed for nonowner occupancy under a tenancy typically lasting six months or longer.
7. Subsidized development means housing that receives one or more of the following development subsidies from the Housing and Community Services Department:
    a. The federal low-income housing tax credit under 26 U.S.C. 42(a), if no part of the eligible basis prior to the application of 26 U.S.C. 42(i)(2)(B) was financed with an obligation described in 26 U.S.C. 42(h)(4)(A), all as amended and in effect on January 1, 2004;
    b. An agriculture workforce housing tax credit, as described in ORS 315.164.
    c. A loan that qualifies the lending institution for a subsidized housing loan tax credit, as described in ORS 317.097.
    d. Funding under the federal HOME Investment Partnerships Act, 42 U.S.C. 12721 to 12839, as amended and in effect on January 1, 2004;
    e. Moneys from the Oregon Housing Fund created under ORS 458.620; or
    f. Moneys from other grant or tax incentive programs administered by the Housing and Community Services Department under ORS 456.559.
8. Visitable means capable of being approached, entered and used by individuals with mobility impairments, including but not limited to individuals using wheelchairs.

ORS 456.510 Visitability Requirements

1. Except as provided in this section and ORS 456.513, the Housing and Community Services Department may not provide funding for the development of new rental housing that is a subsidized development unless:
    a. Each dwelling unit of the housing meets the following requirements:
        A. At least one visitable exterior route leading to a dwelling unit entrance that is stepless and has a minimum clearance of 32 inches.

B. One or more visitable routes between the visitable dwelling unit entrance and a visitable common living space.

C. At least one visitable common living space.

D. One or more visitable routes between the dwelling unit entrance and a powder room.

E. A powder room doorway that is stepless and has a minimum clearance of 32 inches.

F. A powder room with walls that are reinforced in a manner suitable for handrail installation.

G. Light switches, electrical outlets and environmental controls that are at a reachable height.

b. For a development that has a shared community room or that has 20 or more contiguous units, there is at least one powder room available for all tenants and guests that is accessible.

2. For a multistory structure without an elevator, this section applies only to dwelling units on the ground floor of the structure.

3. This section does not apply to agriculture workforce housing as defined in ORS 315.163 that is located on a farm.

ORS 456.513 Exemption From Visitability Requirements

The Housing and Community Services Department shall exempt new rental housing that is a subsidized development from compliance with the requirements of ORS 456.510 if the department determines that the exemption is warranted by:

1. The topography at the construction site;

2. Community and design standards;

3. Undue costs or constraints; or

4. Conflicting funding requirements of another government agency if the agency contributes a significant amount of financial aid for the housing.

Again, the statute cited above attempts to align both in purpose and in text with the requirements of federal law, in this case the Rehabilitation Act of 1973. It tends to reduce barriers to free housing choice among persons with disabilities.

Finally, Oregon's statutes regulating construction contractors provides that contractors "may" provide potential buyers with information that could make a housing unit more accessible, but does not obligate them to do so or require them to actually make the listed features available.

ORS 701.545 Provision of Accessible Features List to Purchaser

1. As used in this section and ORS 701.547:

a. Developer means a person who contracts to construct, or arrange for the construction of, new residential housing on behalf of, or for the purpose of selling the residential housing to, a specific individual the person knows is the purchaser of the residential housing.

b. Residential housing:

A. Means a structure designed for use as a residence and containing dwelling units for three or fewer families.

B. Means a structure that is a condominium as defined in ORS 100.005.

C. Does not mean a manufactured structure as defined in ORS 446.003.

2. A developer who enters into a contract to construct or arrange for the construction of new residential housing may, at the time of providing a purchaser with a written contract, also provide the purchaser with a list of features that may make residential housing more accessible to a person with a disability. The list may include the features identified in the model list of features adopted by the Construction Contractors Board by rule under ORS 701.547.

3. The inclusion of a feature on the list supplied by the developer under subsection (2) of this section does not obligate the developer to make the feature available to a purchaser. The list supplied by the developer may specify for each feature whether the feature is standard, optional, available on a limited basis or unavailable from the developer. If a listed feature is available from the developer as an option or on a limited basis, the list of features may specify the stage of construction by which the purchaser must submit to the developer any request that the residential housing be constructed with that feature.

4. This section, or the inclusion of a feature on the model list developed under ORS 701.547, does not affect the requirement that installation of a feature comply with the state building code or be approved under ORS 455.060.

ORS 701.547 Model List of Accessibility Features

The Construction Contractors Board shall adopt by rule a model list of features recommended for inclusion in a list of features that a developer supplies to a purchaser of residential housing under ORS 701.545. In developing the model list of features, the board shall solicit the comments of advocacy groups and other organizations serving persons with disabilities.

H. Building Occupancy

Restrictions on building occupancy in residential dwelling units help preserve health and safety and prevent overcrowding in dwelling units. Over time, however, some municipalities have used this tool to restrict the number of unrelated persons living together in one dwelling unit to restrict rental housing, group homes and other affordable housing options.

Most building occupancy restrictions in zoning codes allow any number of related individuals to occupy a dwelling unit in order to avoid challenges based on due process or equal protection.[10] In contrast, many building occupancy codes simply establish a standard for overcrowding — a number of people per room, or per square foot — that cannot be exceeded regardless of whether the occupants are related or not. Building occupancy regulations that are too stringent can serve as a barrier to housing choice for lower income households and for large families. However occupancy codes — like manufactured home safety codes and building codes — are considered a public health and safety protection in which the government's desire to ensure that all housing is safe and sanitary implicitly outweighs its impact on making some sizes or types or qualities of housing unavailable for the general public. Because occupancy laws rarely mention any group of occupants by name, they are seldom implicated in FHAA analysis. At worst, their impact is to make small housing units unavailable to large households, which is not a restriction based on familial status because it would have the same impact on a household of seven members as it would on a group of seven unrelated individuals living together.

Regardless of how well-accepted they currently are, it is important to acknowledge that occupancy codes may have a disproportionate impact on FHAA-protected households in two situations. First, many assisted living facilities for FHAA-protected households have more residents than an average family (6 or 7 persons, when care providers are included, compared to the less than 4 in an average family), so an occupancy limit anywhere below the average occupancy of small assisted living facility may have a disproportionate impact on group home occupants. Second, if households (family or not) of a particular racial group are likely to be larger than average, an occupancy limit anywhere below the average household size for that racial group may have a disproportionate impact on that group.

Oregon addresses the issue of unit occupancy in part through ORS 90.262.

ORS 90.262 Use and Occupancy Rules and Regulations

1. A landlord, from time to time, may adopt a rule or regulation, however described, concerning the tenants use and occupancy of the premises. It is enforceable against the tenant only if:

a. Its purpose is to promote the convenience, safety or welfare of the tenants in the premises, preserve the landlords property from abusive use, or make a fair distribution of services and facilities held out for the tenants generally;

b. It is reasonably related to the purpose for which it is adopted;

c. It applies to all tenants in the premises in a fair manner;

d. It is sufficiently explicit in its prohibition, direction or limitation of the tenants conduct to fairly inform the tenant of what the tenant must or must not do to comply;

e. It is not for the purpose of evading the obligations of the landlord; and

f. The tenant has written notice of it at the time the tenant enters into the rental agreement, or when it is adopted.

[10] Moore v City of East Cleveland, 431 U.S. 494 (1977).

2. If a rule or regulation adopted after the tenant enters into the rental agreement works a substantial modification of the bargain, it is not valid unless the tenant consents to it in writing.

3. If adopted, an occupancy guideline for a dwelling unit shall not be more restrictive than two people per bedroom and shall be reasonable. Reasonableness shall be determined on a case-by-case basis. Factors to be considered in determining reasonableness include, but are not limited to:

    a. The size of the bedrooms;

    b. The overall size of the dwelling unit; and

    c. Any discriminatory impact on those identified in ORS 659A.421.

4. As used in this section:

    a. Bedroom means a habitable room that

        A. Is intended to be used primarily for sleeping purposes;

        B. Contains at least 70 square feet; and

        C. Is configured so as to take the need for a fire exit into account.

    b. Habitable room means a space in a structure for living, sleeping, eating or cooking. Bathrooms, toilet compartments, closets, halls, storage or utility space and similar areas are not included.

Because the power to establish occupancy limits is limited by the requirements that they not be lower than two persons per bedroom, the statute includes criteria for determining reasonable standards above that level, and the rules must be applied to all residents in a fair manner, these documents do not constitute a barrier to fair housing choice under the FHAA.

I. Regulation of Housing Prices

Oregon statutes provide that a local government cannot regulate housing rents or sales prices, but can create and implement incentives and development agreements to encourage the production of moderate or lower-cost housing.

ORS 91.225 Local Rent Control Prohibited

1. The Legislative Assembly finds that there is a social and economic need to insure an adequate supply of affordable housing for Oregonians. The Legislative Assembly also finds that the imposition of general restrictions on housing rents will disrupt an orderly housing market, increase deferred maintenance of existing housing stock, lead to abandonment of existing rental units and create a property tax shift from rental-owned to owner-occupied housing. Therefore, the Legislative Assembly declares that the imposition of rent control on housing in the State of Oregon is a matter of statewide concern.
2. Except as provided in subsections (3) to (5) of this section, a city or county shall not enact any ordinance or resolution which controls the rent that may be charged for the rental of any dwelling unit.

3. This section does not impair the right of any state agency, city, county or urban renewal agency as defined by ORS 457.035 to reserve to itself the right to approve rent increases, establish base rents or establish limitations on rents on any residential property for which it has entered into a contract under which certain benefits are applied to the property for the expressed purpose of providing reduced rents for low income tenants. Such benefits include, but are not limited to, property tax exemptions, long-term financing, rent subsidies, code enforcement procedures and zoning density bonuses.
4. Cities and counties are not prohibited from including in condominium conversion ordinances a requirement that, during the notification period specified in ORS 100.305, the owner or developer may not raise the rents of any affected tenant except by an amount established by ordinance that does not exceed the limit imposed by ORS 90.493.
5. Cities, counties and state agencies may impose temporary rent controls when a natural or man-made disaster that materially eliminates a significant portion of the rental housing supply occurs, but must remove the controls when the rental housing supply is restored to substantially normal levels.
6. As used in this section, dwelling unit and rent have the meaning given those terms in ORS 90.100.
7. This section is applicable throughout this state and in all cities and counties therein. The electors or the governing body of a city or county shall not enact, and the governing body shall not enforce, any ordinance, resolution or other regulation that is inconsistent with this section.

As noted above, individuals with low income are not a protected class under the FHAA, but there is likely a correlation between FHAA-protected citizens and lower-than-average incomes. The inability of Oregon's local governments to impose rent controls likely results in a smaller pool of housing available to lower income groups, and to the degree they are correlated, to FHAA-protected citizens. However, the state's prohibition on rent control is facially neutral with respect to each form of discrimination prohibited by the FHAA; it prohibits rent control regardless of the identity of potential renters and owners who might have been able to afford a housing unit at rent-controlled levels. While ORS 91.225 may create a barrier to affordable housing for low income groups, it does not create a barrier to fair housing choice recognized by the FHAA.

J. Inclusionary Zoning

In addition to prohibiting rent control, Oregon state statutes prohibit local governments from requiring that housing be sold at a certain price, or that housing only be sold (or not sold) to purchasers from a specific group.

ORS197.309 Local Ordinances or Approval Conditions May Not Effectively Establish Housing Sale Price or Designate Class of Purchasers

1. Except as provided in subsection (2) of this section, a city, county or metropolitan service district may not adopt a land use regulation or functional plan provision, or impose as a condition for approving a permit under ORS 215.427 (Final action on permit or zone change application) or 227.178 (Final action on certain applications required within 120 days), a requirement that has the effect of establishing the sales price for a housing unit or

residential building lot or parcel, or that requires a housing unit or residential building lot or parcel to be designated for sale to any particular class or group of purchasers.

2. This section does not limit the authority of a city, county or metropolitan service district to:
    a. Adopt or enforce a land use regulation, functional plan provision or condition of approval creating or implementing an incentive, contract commitment, density bonus or other voluntary regulation, provision or condition designed to increase the supply of moderate or lower cost housing units; or
    b. Enter into an affordable housing covenant as provided in ORS 456.270 to 456.295.

This statute effectively prohibits local governments from enacting "inclusionary housing" ordinances – that is, ordinances that require some private builders to set aside some portion of their newly constructed units (generally multifamily units) for sale or rent to persons within a defined income spectrum. Inclusionary housing ordinances in effect require the housing developer to cross-subsidize rental rates of sales prices within the development (or a group of housing assets). In order to rent or sell some units at below-market rates, the rents or sales prices on the remaining units generally have to be increased. As with rent control, however, the impacts of Oregon's anti-inclusionary-housing statute on FHAA-protected groups should be neutral. The statute will have the same impact on reducing the supply of lower cost housing for FHAA-protected citizens and for individuals not covered by the provisions of the FHAA. Although creating a barrier to affordable housing, these statues do not directly create a barrier to fair housing choice recognized under the FHAA.

8. Conclusion

Not surprisingly, this review of state-level statutes, regulations and programs related to fair housing, needed, housing, and housing in general, shows that Oregon has a multi-faceted regulatory framework in place. Oregon statutes include a fairly detailed system to evaluate demands for various types of housing (mostly based on income levels), to prepare plans based on those evaluations of need, and to adopt local land use regulations to implement the adopted plans. Perhaps most notably, the state has put in place numerous statutes that reflect the language of the FHAA, the ADA, and the Rehabilitation Act of 1973.

More specifically, Oregon statutes:

- Require that local governments provide for "needed housing" through both single-family and multi-family housing for both owner and renter occupancy, government assisted housing, mobile or manufactured home parks, manufactured homes on individual lots, and housing for farmworkers, and that manufactured homes and farmworker housing be treated as substantially the equivalent of other single-family and multi-family housing, through statutes that are facially neutral with respect to FHAA-protected citizens;
- Prohibit local governments from barring government assisted housing that is similar to unassisted housing;
- Grant cities and counties relatively standard zoning and subdivision powers, with the important qualification that their need be consistent with adopted comprehensive plans created through the statewide land use planning system, through statutes that are facially neutral with respect to FHAA-protected citizens.

- Create some exceptions to its strict limits on residential development on forest, agriculture, and other resource lands in order to promote economically viable rural land uses or to reduce burdens on rural property owners in ways that would not have major impacts on the overall statewide planning system. Although the state could have made additional exceptions to allow the construction of housing needed for FHAA-protected citizens (such as assisted living facilities) in rural areas, it has no legal duty to do so, and failure to do so does not constitute a barrier to fair housing choice.
- Allow rehabilitation of farmworker housing stock in areas outside cities to standards that do not meet the statewide building code. While this may have an effect on the resulting quality of farmworker housing, it appears to have been adopted in order to expand the supply that type of housing, and is facially neutral with respect to FHAA-protected citizens. The adoption of this differential standard does not constitute a barrier to fair housing choice.
- Require that residential home (for up to 5 residents, including but not limited to FHAA-protected citizens, plus caregivers) be permitted in each residential and commercial district that permits single-family homes, and that the standards for approval for a residential home be no stricter than those applied to a single family dwelling. In addition, the statutes allow residential homes to occupy existing dwelling structures in farm use zones without the imposition of requirements different than occupancy of the structure by a single-family home. These provisions are more favorable to the accommodation of assisted housing than those of many other states.
- Require that residential facilities (for 6 to 15 residents, including but not limited to FHAA-protected citizens, plus caregivers,) be permitted wherever multifamily residential uses are a permitted use, and a conditional use in any zone where multifamily residential uses are a conditional use. These strong provisions could be further strengthened by imposing a standard similar to that for residential homes prohibiting the adoption for residential facilities that are stricter than those for multifamily housing.
- Require local governments to provide reasonable modifications to housing (particularly for the disabled), as well as reasonable accommodation in housing rules and policies.
- Include key language related to housing accessibility from the Americans with Disabilities Act, the FHAA, and the Rehabilitation Act of 1973, including the FHAA's broad definition of "disability," the ADA's definition of places of "public accommodation", and requirements that renovations of "affected buildings" include improvements to accessibility.
- Prohibit discrimination on the basis of disability in the selling, renting, or making available of housing units.
- Establish building features to promote accessibility that must be included in housing development projects that include state or federal subsidies.
- Include standards to allow reasonable landlord limits on building occupancy based on health and safety concerns, and taking into account the size of the rooms and the nature of the dwelling unit, provided those standards are applied equitably.

In general, these standards are stronger, and remove barriers to fair housing choice more effectively, than those in the statutes of several other states. They are also well aligned with the requirements of the FHAA, ADA, and Rehabilitation act of 1973, which should reduce the inadvertent gaps in coverage between state and federal definitions that occur in some states.

These statutes could be made even more effective with the following:

- Making additional exceptions to allow the construction of housing needed for FHAA-protected citizens (such as assisted living facilities) in rural areas.
- Imposing a standard similar to that for residential homes prohibiting the adoption for residential facilities that are stricter than those for multifamily housing.
- We understand that not all Oregon local governments have standards that comply with the "clear and objective" requirement regulating the development of needed housing on buildable land. Improved enforcement of compliance with this requirement could have the effect of further increasing housing supply.
- While ORS 443.400 requires that all residential facilities providing care for six or more residents be licensed by the state, ORS 197.660 and 197.665 only require that residential facilities with between six and 15 residents are required to be licensed by the state—but are not required to be permitted in multifamily and commercial zone districts. If Oregon wanted to strengthen its fair housing protections, it could extend coverage of ORS 197.665 to require that the state's local governments treat residential facilities licensed by the state the same way it treats multifamily apartment buildings or condominiums of the same size. The result would be that Oregon cities and counties would need to permit a licensed residential facility of 25 or 30 residents in the same zone districts where it would allow an unlicensed multifamily dwelling structure of the same size.

Fair Housing Analysis of Transportation and Growth Management Program's Model Development Code

I Introduction: The Interplay Between Fair Housing and Model Development Codes

Land use plans and codes can play an important role in promoting fair access to decent housing for all. While public and private investment may ultimately determine what gets built, planners and other public officials help create and manage the community blueprint through publicly approved plans and codes.

The tools of planning, such as comprehensive plans, zoning maps, zoning and development codes and practices, are used to help shape the range of housing opportunities in a community. These tools affect the land available for needed housing, the cost of development, the processes that applicants must follow (including notice requirements and public hearings) and the overall complexity of the development process. All of these things have a direct impact on the cost, design and supply of housing for people of varying backgrounds and abilities. The location of various housing types—whether in asset-rich or environmentally poor areas— has significant implications for residents.

While fair housing law does not pre-empt the ability of local government to regulate land use and zoning, local governments must exercise their authority consistent with federal fair housing law. In other words, local laws cannot overtly or otherwise have the effect of discriminating against individuals in housing on the basis of protected class.

II What is the Purpose of *TGM Model Development Code*?

In response to numerous requests for planning assistance from communities throughout Oregon, the State's Transportation and Growth Management (TGM) Program developed the *Model Development Code and User's Guide for Small Cities* (*Model Code*), originally published in 1999 with the third edition issued in October 2012. The TGM Program is a partnership between the Department of Land Conservation and Development and the Oregon Department of Transportation and supports community efforts to expand transportation choices for people by linking land use and transportation planning. To support this goal, the TGM program developed a model code, hereinafter the *TGM Model Code.* The TGM Program reports that the *Model Code* has been used widely around Oregon, particularly in small cities that often lack the necessary planning resources to perform such a large-scale effort on their own. In this way, the *Model Code* provides these cities with consistent guidance and technical expertise in zoning, development standards, review procedures, and implementation of state planning rules and statutes. The *Model Code* is intended to help these cities integrate land use and transportation planning, meet new legal requirements and provide a user-friendly, flexible model code.

Limitations of the *Model Code* to affect Fair Housing
Development codes are adopted by ordinance to implement a city or county comprehensive plan – in Oregon, municipalities are required to ensure the development (or zoning) code complies with the adopted comprehensive plan. Specific elements of a comprehensive plan outline policies on needed housing and housing choice and form the basis by which zoning and development standards are applied. To allow for flexibility between municipalities, many relevant fair housing provisions of the *Model Code* are placeholders, dependent on the findings and policies adopted in each comprehensive plan.

Additionally, the content of any development code is limited by its application on the accompanying zoning map. A zoning map describes how the code is applied to a geographic area, defining which residential uses are allowed and where.

While the *Model Code* plays an important role in furthering fair housing, it must be combined with comprehensive plan policies and zoning map designations that also support and affirmatively further fair housing in order to affect meaningful change.

III How was the *Model Code* Analyzed?

In 2014, as part of a larger effort to develop their *Inclusive Communities Toolkit*[1], the Fair Housing Council of Oregon created a Land Use and Fair Housing Evaluation Tool to help planners evaluate their own local land use codes and practices, and identify potential barriers to affirmatively furthering fair housing. Alongside this effort, and in light of HUD's proposed rule, the Council commissioned a high-level assessment of the *Model Code,* using the Evaluation Tool to identify areas that could help cities further their obligation to affirmatively furthering fair housing. Working in cooperation with the Council's attorneys, the assessors tested the practical application and, ultimately, provided feedback for further revisions to the Evaluation Tool.

The goal of this preliminary scan of the *Model Code* was to highlight the zoning and/or development provisions that potentially support, or may be in conflict with, affirmatively furthering fair housing in Oregon's communities and to determine if further discussions are warranted.

The following are high-level findings and recommended next steps.

IV Summary of Analysis and Recommendations

The analysis of the *Model Code* identified issues that could be considered potential barriers to affirmatively furthering fair housing. It also found opportunities to better align the *Model Code* with the suggested requirements and best practices found in the *Inclusive Communities Toolkit's* Land Use and Fair Housing Evaluation Tool.

[1] In 2014, the Fair Housing Council of Oregon published *Inclusive Communities Toolkit* to provide additional information, resources and guidance regarding fair housing to elected officials, public sector planners and administrators, housing developers, and neighbors around the state.

The *Model Code* is organized into five articles:

Article 1 - Introduction. Article 1 describes the title, purpose, authority, organization and general administration of the *Model Code*. Article 1 also explains how city officials interpret and enforce code requirements.

Article 2 – Zoning Regulations. Zones are designated by individual city Zoning Maps, consistent with that city's Comprehensive Plan. Article 2 outlines general recommendations for zoning regulations, specifying allowed land uses, and lot and development standards that are specific to particular land uses or zones.

Article 3 – Community Design Standards. Article 3 contains model development design standards, including requirements for street access; pedestrian and vehicle circulation; parking; landscaping, screening, fences and walls; outdoor lighting; adequate transportation, water, sanitary sewer, and storm drainage facilities; and utility requirements. In practice, Article 3 would be supported by a city's more detailed engineering design standards in their Public Works Design Manual or Engineering Design Standards Manual.

Article 4 – Application Review Procedures and Approval Criteria. Article 4 contains recommended application requirements and review procedures for land use and development decisions, including but not limited to procedures for conditional use permits, site design review, land divisions, property line adjustments, master planned developments, and variances.

Article 5 – Definitions. Article 5 contains model zoning definitions and other exhibits that cities can use in interpreting and administering the code.

Overall, the *Model Code* is on solid ground, providing current thinking on land uses and development regulations. There are many provisions in the code that affirmatively further fair housing. Nevertheless, there are opportunities to strengthen connections between development standards and fair housing. The *Model Code* contains a few minor issues that could be barriers to affirmatively furthering fair housing, such as language "used to describe structures as 'single-family dwellings' rather than the more current standard of "single-dwelling unit." There are also potential issues with how local communities incorporate and/or implement the state's land use statutes regarding licensed residential care homes and facilities.

Zoning Regulations

Issues and opportunities to strengthen the language in support of housing choice and fair housing in the zoning regulations of the *Model Code*, Article 2:

1. **Special Use Standards: Residential Care Homes and Facilities.** The *Model Code* contains review procedures for licensed Residential Care Homes and Facilities that may not be in the spirit of affirmatively furthering fair housing. The Model Code repeats and follows the provisions contained in Oregon Revised Statutes (ORS), Chapter 443 Residential Care and Chapter 197 Comprehensive Land Use Planning, which define Residential Care Homes and Facilities in terms of who is living there, and how many people are occupying a structure. There

are no other uses in the *Model Code* that define living configurations in the same manner, drawing concerns that people with disabilities would (1) have to navigate a different level of development review than is necessary for other residential development, and (2) is a more restrictive regulation for people with disabilities. The standards also call for a noticing and review procedure that is different than would be required of other single-dwelling or multi-dwelling development.

Recommendations:

a. Additional review and discussion is warranted to further investigate whether or not the ORS provisions, by which local jurisdictions' land use plans must comply, places an additional burden on people with disabilities. This is a potential issue with the state law regulations, which the *Model Code* seeks to carry out.
b. Best practice: Apply the same guidelines to all structures that have the size and physical characteristics of other single-unit dwellings or multi-unit dwellings, and involve a scale of activity similar to that of dwellings occupied by non-protected classes, regardless of whether they are licensed care housing.
c. Use the Land Use and Fair Housing Evaluation Tool to guide revisions.

2. **Conditional Use: Rooming / Boarding Housing.** In the *Model Code*, Rooming / Boarding Housing is the only residential use recommended to apply Conditional Use restrictions. It may be appropriate in some contexts to regulate this type of housing differently than other housing, but the *Model Code* does not make any distinctions or guidance as to when the impacts of a boarding housing are different. There is concern with any code provision that defines development standards by the presumed households and people that will occupy the structure.

   Recommendation:

   a. Review the standard and add guidance in the *Model Code* as to when boarding housing may be different than other types of residential structures, for the purposes of applying development standards. See related comments regarding Conditional Use procedures and definitions.

3. **Special Use Standards: Housing Types**. The Land Use and Fair Housing Evaluation Tool proposes a number of land use options to increase housing choice that could be expanded upon in the *Model Code's* Special Use section. Examples of housing types in the Evaluation Tool include allowing residential development on substandard legal lots of record and alley-accessed lots. While not a major impediment, revisions to the *Model Code* provide an opportunity to introduce residential forms not typically found in small cities along with appropriate code provisions.

   Recommendation:

   a. Use the Land Use and Fair Housing Evaluation Tool to guide revisions in expanding housing choice options in the *Model Code's* Special Use section.

Design Standards

Issues and opportunities to strengthen the language in support of housing choice and fair housing in the design standards of the *Model Code*, Article 3:

1. **Building Orientation and Design: Design context.** There are opportunities to clarify the *Model Code* language as it relates to architectural and community character or context. Character and context are important concepts for design, but unless the meanings are explicit, these terms are easily misinterpreted by those of us who are not designers and can inadvertently create pathways for neighbors to legally appeal development of needed housing or housing to be occupied by people in protected classes.

   Recommendation:
   a. Review and revise *Model Code* to clarify language relating to community character or context.

2. **Minimum parking standards.** The parking standards contained in the *Model Code* are adequate. However, there is an opportunity to provide guidance regarding parking minimums for residential uses and potential impacts those minimums have on affordability and housing choice.

   Recommendations:
   a. Review the user's guide text within Automobile Parking Standards A. Minimum Number of Off-Street Automobile Parking Spaces and B. Exceptions and Reductions to Off-Street Parking.
      i. Insert language where appropriate to highlight the direct connection between parking minimums for residential uses and potential impacts on affordability and housing choice.
      ii. Explore other possible ways to get exemptions for multi-dwelling residential uses outside of main streets. Note: very small cities aren't likely to have a broad array of mixed use or multi dwelling housing outside of their downtown, so it may not be applicable.
   b. Review the *Model Code's* approach for adjustments to parking standards to ensure that certain housing types are not more burdened by the minimum standards than others (e.g. housing for mobility-challenged or elderly adults, who tend to have fewer cars to park.) *Note: Because small cities have a difficult time supporting transit and downtown areas are often the best locations to accommodate and serve multi-dwelling housing for the majority of small cities, this may not pose a barrier to fair housing.*

Application Procedures and Approval Criteria

Issues and opportunities to strengthen the language in support of fair housing in the procedures and approval criteria of the *Model Code*, Article 4:

1. **Conditional Use Permits**. There is inadequate guidance regarding potential impacts that Conditional Use standards could have on a city's ability to affirmatively further fair housing. The *Model Code* and its user's guide present an important opportunity to inform and educate planners on Conditional Use

approval, where fair housing issues are most likely to occur in development processes. It can suggest appropriate standards to regulate uses with potential impacts to neighboring properties, while still affirmatively furthering fair housing. It is also an opportunity to express the resources available to planners and planning commissioners who are making difficult Conditional Use decisions, often under community pressure.

Recommendations:

a. Use the *Model Code* and its user's guide to inform and educate planners on where issues in development processes arise related to Conditional Use permitting and how cities can address uses with potential impacts to neighboring properties and still affirmatively further fair housing.
    i. Expand on the resources and support available to planners and planning commissioners making difficult Conditional Use decisions.
    ii. Add an additional user's guide text box with special mention of the Fair Housing Act and guidance that could be expressed to the planning commission when making Conditional Use decisions.
    iii. Review the Land Use and Fair Housing Evaluation Tool for additional recommendations on types of housing and contexts that may warrant a Conditional Use process.

Definitions

1. **Residential definitions.** Most of the residential definitions are comprehensive and current. However, in a few instances the *Model Code* contains outdated and insufficient language that may limit the spirit of affirmatively furthering fair housing and carries on a standard that defines buildings by who and how many people are anticipated to live in the structure at the time a development permit is issued. Buildings' uses and occupants change over time.

   The Model Code uses "family" to describe certain housing types. If taken literally, "single-family" and "multi-family" dwelling units refer to a specific relationship between the people who live in the units, a "family." However, the term is not applicable or relevant to all household arrangements and is now often replaced with a more general term such as "unit."

   The *Model Code's* Group Living definition references "Household Living" and "average size of a household," neither of which are defined. The lack of clarity could be applied or misunderstood in such a manner to discriminate against a protected class. Placing a development review process with planners in a position to allow or disallow certain group living arrangements, poses an unnecessary risk of a discriminatory process.

   Recommendation:

   a. Review and revise the *Model Code* definitions for: Dwelling (including all applicable subsections), and Group Living. Unbundle development regulations from the various arrangements people choose to live. Ideally, these definitions would separate the concepts of occupancy (number and relations of people who do or will reside within a unit) from concepts of

physical development (number of rooms/kitchens/bathrooms, size of structure, relationship of units to lots, etc.).

Proposed concept for a fair housing approach to Residential Definitions

GENERAL DWELLING DEFINITIONS

Dwelling Structure. A structure conforming to the definition of a dwelling under applicable building codes and providing living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.

Dwelling Unit. A structure or a portion of a structure, that has independent living facilities including provisions for sleeping, cooking, and sanitation, and that is designed for residential occupancy by one or more persons.

1. MULTI-UNIT DWELLINGS

Multi-Unit Dwelling Structure. A Dwelling Structure containing three (3) or more Dwelling Units. The land underneath the structure is not divided into separate lots. Example: An apartment building or condo with three or more units in a single structure on a single lot.

Multi-Unit Dwelling Development. A single Multi-Unit Dwelling Structure or grouping of Multi-Unit Dwelling Structures on the same lot. Example: An apartment or condo complex consisting of one or more buildings on a single lot.

2. SHARED LIVING DWELLINGS

Shared Living Structures: A Single Dwelling Structure on a single lot containing *[insert metric – consider measuring by structural elements relevant to development permitting like number of kitchens, rather than number of unrelated people]* and in which occupants share common complete kitchens and interior recreational space(s). Any Shared Living Structure or Development that is occupied by licensed Residential Facilities, as defined by ORS 197.665, may also include provisions for accessory onsite residential care and treatment facilities.

Small Shared Living Development. A single Shared Living Dwelling Structure on a single lot that includes *[possible metric: no more than 3 rooms for independent sleeping].* Example: Any dwelling structure that meets the metric or licensed Residential Home (ORS 197.665).

Medium Shared Living Development. A single Shared Living Structure or group of Shared Living Structures that share a single complete common kitchen, in addition to common recreational space(s) and that includes *[possible metric: no more than 5 rooms for independent sleeping].* Example: A small Residential Care Facility or small rooming house.

Large Shared Living Development. A single Shared Living Structure or group of Shared Living Structures that contains more than one complete common kitchen(s) and recreational space(s) and that includes *[possible*

metric: 5 or more rooms for independent sleeping]. Example: A large Residential Care Facility or nursing home.

3. SINGLE UNIT DWELLINGS

Single Unit Dwelling Structure. A single Dwelling Unit located on a single lot. Single Unit Dwelling Structures include licensed Residential Homes and accessory care or treatment uses, as defined by ORS 197.665.

Single Unit, Detached. A detached Dwelling Unit located on its own lot. Example: A so-called "single family home."

Single Unit, Attached. A Dwelling Unit located on its own lot that shares one or more common or abutting walls with one or more Dwelling Units on adjacent lot(s). Example: townhouse or rowhouse.

Duplex Dwelling Structure. A Dwelling Structure that contains two Dwelling Units on one lot and that share a common wall or common floor/ceiling.

Accessory Dwelling Unit. A secondary Dwelling Unit on a lot where the primary use is a Single Unit Dwelling Structure.

APPENDIX C.
Resident Survey Methodology

This section describes the resident telephone survey methodology in detail and provides a summary of respondent demographic characteristics. The telephone survey data collection was conducted by Davis Research. The survey was fielded in both English and Spanish.

Survey Sample Size and Sample Management

The survey sample source for the statewide telephone survey is a combination of Oregon landline and cell phone numbers.[1] The sampling is designed to be representative of the households living in Oregon's nonentitlement communities. In addition, subsamples were drawn of target populations for the study: nonwhite residents and persons with disabilities. The disability sample is drawn from an opt-in sample derived from four ongoing national health studies. Each working number is called a minimum of five times on varying days of the week and times of day to ensure that hard to reach respondents are included in the study.

Sample sources. Sample for the statewide sample and nonwhite oversample was purchased from Marketing Systems Group, a leading provider of sample for marketing research. The sample for the disabled oversample was purchased from Survey Sampling International's LITe sample database. Both landline and cell phone numbers were included in all sample.

A note about determining sample size. A formula for calculating sample size is shown below:

$$n = \frac{Z^2 * p * (1-p)}{C^2}$$

Where:

Z = Z value, here 1.96 for the 95 percent confidence level (degree of confidence)

p = percentage of respondents making a choice, here 50 percent for the most conservative estimate

C = confidence limit, here 5 percentage points

For populations greater than 4,000, there is no need to include a finite population correction factor in the determination of sample size.

The confidence level (Z value), is "an interval for which one can assert with a given probability 1-α, called the degree of confidence, or the confidence coefficient, that it will contain the parameter it is intended to estimate."[2] Less formally, if the survey was repeated, 95 out of 100 times we would expect to observe the same results. For each question in the survey, we will estimate the

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[1] Within the general market sample, 59 percent of respondents were reached on a cell phone and 41 percent were reached on a landline. In the nonwhite oversample, 69 percent of respondents were reached on a cell phone.

[2] Dictionary/Outline of Basic Statistics, p.20, Freund and Williams, 1966.

"true" population proportion that would be expected if we conducted a census. The confidence limit refers to the endpoints of a confidence interval within which the "true" population proportion is expected to be found. More commonly, this is the margin of error around the estimate. For the purposes of sample determination, we choose 5 percentage points.

Sample Implementation Results

The survey was in the field from February 10, 2015 through March 6, 2015. Each valid number was dialed up to five times on different days of the week and different times of day. If the time reached was not convenient, interviewers attempted to schedule callback times. On average, the survey took 14.2 minutes to complete. A total of 400 residents responded to the statewide survey, and an additional 200 respondents comprised the oversampling for special populations.

Using the American Association for Public Opinion Research's (AAPOR) response rate calculator developed by AAPOR's Standard Definitions Committee, the response rate for the statewide telephone survey was 12 percent. AAPOR defines the response rate as the number of complete interviews with reporting units divided by the number of eligible reporting units in the sample.[3]

Margin of Error

Figure C-1 presents the margin of error calculations for proportions estimated in the telephone resident survey for the general market sample and the three over-samples.

Figure C-1.
Margin of Error of Survey Estimates at the 95 Percent Confidence Level

	General Market	Nonwhite	Disability
Sample Size	**400**	**156**	**218**
Response Percent:			
10% or 90%	2.9%	4.7%	4.0%
20% or 80%	3.9%	6.3%	5.3%
30% or 70%	4.5%	7.2%	6.1%
40% or 60%	4.8%	7.7%	6.5%
50%	4.9%	7.8%	6.6%

Source: BBC Research & Consulting

[3] AAPOR, Standard Definitions: Final Dispositions of Case Codes and Outcome Rates for Surveys, Revised 2011. http://www.aapor.org/AM/Template.cfm?Section=Standard_Definitions2&Template=/CM/ContentDisplay.cfm&ContentID=3156

Survey Instrument Design

BBC designed the telephone survey instrument with review from Oregon Analysis of Impediments team. Many of the questions had been validated in previous surveys conducted by BBC in fair housing studies across the country. Demographic questions align with the 2010 U.S. Census or the American Community Surveys. New questions and attributes were specifically designed to address HUD's Planning Guide Volume 1 and most current focus on fair housing topics, primarily drawn from the proposed AFFH rule and draft template for the Assessment of Fair Housing. Questions types include binary choice, multiple choice, Likert scales, and open-ended responses. For the open-ended responses, interviewers recorded respondents' comments verbatim.

Respondent Demographics

Respondents' demographic characteristics are detailed below. The general market sample is designed to be representative of Oregon's nonentitlement area households. Subsamples consist of oversample respondents and general market respondents that meet the subsample criteria and are not intended for comparison to Oregon's demographic characteristics overall.

It should also be noted that the disability question in the survey asked if any member of the household has a disability whereas the Census data reflects the percent of the population that has a disability. As such, the survey response and the Census data are not directly comparable.

Figure C-2.
Demographic Characteristics of Telephone Survey Respondents

	General Market Sample (n=400)	Nonwhite Subsample (n=156)	Disability Subsample (n=218)
Race and Ethnicity			
African American or Black	1%	5%	1%
Asian or Asian Indian	1%	5%	1%
Hispanic	5%	52%	6%
Multi-racial	2%	10%	2%
Native American	3%	21%	10%
Native Hawaiian or other Pacific Islander	0%	2%	1%
White	86%	0%	75%
Other	0%	6%	1%
Refused	2%	0%	3%
Total	**100%**	**100%**	**100%**
Age			
Under 65 years		81%	52%
65 years or older		19%	48%
Total	**100%**	**100%**	**100%**

Gender Disability		General Market Sample (n=400)	Nonwhite Subsample (n=156)	Disability Subsample (n=218)
With a disability*		17%	31%	100%
Without a disability*		83%	69%	0%
	Total	**100%**	**100%**	**100%**

Note: *BBC survey question is "do you or any member of your household have a disability?" Census reports percent of population with a disability.

Source: BBC Research & Consulting from the 2015 Oregon Resident Telephone Survey.

Figure C-5 displays the household characteristics of survey respondents.

Figure C-5.
Household Characteristics of Telephone Survey Respondents

	General Market Sample (n=400)	Nonwhite Subsample (n=156)	Disability Subsample (n=218)
Household Size			
One	9%	8%	9%
Two	30%	24%	32%
Three	20%	23%	26%
Four	22%	17%	8%
Five or more	19%	28%	15%
Total	**100%**	**100%**	**100%**
Household Composition			
Single living alone	7%	8%	9%
Single living with children	6%	9%	6%
Single living with roommates/friends	2%	3%	2%
Single living with children and roommates/friends	1%	1%	0%
Single living with other adult family members	7%	8%	8%
Single living with children and other adult family members	3%	5%	4%
Living with spouse/partner	27%	19%	26%
Living with spouse/partner and roommates/friends	1%	2%	3%
Living with spouse/partner and other adult family members	2%	3%	3%
Living with spouse/partner and children	40%	37%	33%
Living with spouse/partner, children and roommates/friends	1%	0%	0%
Living with spouse/partner, children and other adult family members	3%	6%	5%
Total	**100%**	**100%**	**100%**
n=	396	155	215

Tenure				
Homeowner		71%	59%	69%
Renter		22%	31%	25%
Living with others but not paying rent		6%	9%	6%
Other		2%	1%	0%
	Total	**100%**	**100%**	**100%**
Household Income				
Less than $10,000		3%	8%	9%
$10,000 up to $25,000		12%	23%	26%
$25,000 up to $35,000		17%	19%	14%
$35,000 up to $50,000		18%	17%	23%
$50,000 up to $75,000		18%	17%	18%
$75,000 up to $100,000		14%	7%	6%
$100,000 or more		17%	8%	6%
	Total	**100%**	**100%**	**100%**
	n=	353	144	200

Source: BBC Research & Consulting from the 2015 Oregon Resident Telephone Survey.

APPENDIX D.
Entitlement Review of Impediments to Fair Housing Choice

The State of Oregon 2015 Analysis of Impediments, Sections I through VIII, focus on rural, or "nonentitlement" communities. This is because urban areas, determined by HUD as "entitlement" communities, receive federal block grants directly from HUD and complete their own Analysis of Impediments. Population size and/or designation as a metropolitan statistical area (MSA), in addition to other socioeconomic and housing market factors (poverty, affordability of housing), determine a community's eligibility to receive HUD block grant funds directly.

This section supplements the state's nonentitlement Analysis of Impediments by discussing fair housing barriers in entitlement communities. The purpose of this section is threefold:

- To provide a statewide view of impediments to fair housing choice by introducing entitlement fair housing barriers;
- To draw distinctions between urban and rural impediments; and
- To identify opportunities for state agencies and local governments to work together to most efficiently and effectively address fair housing barriers.

The primary source of information for this review was the Analysis of Impediments most recently completed by entitlement communities. This review was supplemented by a review of entitlement Analysis of Impediments conducted by the Fair Housing Council of Oregon (FHCO) in 2014 and early 2015. Data and information from the state Analysis of Impediments related to entitlement area barriers are included where relevant.

The Analysis of Impediments reviewed and year completed include the following:

Figure D-1.
Analyses of Impediments to Fair Housing Choice Reviewed

Entitlement Community	Year AI Completed
City of Albany	2014
City of Ashland	2009
City of Bend	2010
Clackamas County	2012
Corvallis	2012
City of Eugene and City of Springfield	2010
City of Medford	2010
City of Portland, City of Gresham and Multnomah County	2011
City of Salem and Keizer Consortium	2007
Washington County	2012

Redmond and Grants Pass, new entitlement jurisdictions, do not currently have Analysis of Impediments.

Methodology

The fair housing barriers in jurisdictional Analysis of Impediments were examined using the criteria listed below. These criteria address the most current topics in fair housing. It is important to note that when this review was being conducted, a new Analysis of Impediments template, the Assessment of Fair Housing (AFH), had been proposed by HUD and was open for public comment. Some of the proposed content in the AFH differs from past requirements and, as such, was not considered in the entitlement community Analysis of Impediments evaluation.

Concentrated areas and impact on housing choice

- Where do areas of racial or ethnic concentrations exist?
- What are the characteristics of concentrated areas?
- What reasons does the Analysis of Impediments give for the concentrations?

Private sector

- Was NIMBYism identified as a challenge?
- Do lending disparities exist between minorities and non-minorities?
- Was testing conducted and analyzed? What were the results?
- What were the results of fair housing complaint and legal cases?

Public policies

- What are the primary land use and zoning regulatory barriers to housing choice?
- Were fair housing resources and capacity examined? What are the primary needs?

Affordable housing

- Does lack of affordable housing cause barriers to fair housing choice? Are there protected classes that are affected more than others?

Impediments and Action Plan. What were the main impediments to fair housing choice and how are these impediments addressed through the Fair Housing Action Plan? Are there opportunities for collaboration with the state in fulfilling both jurisdictional and state action plans?

Primary Findings

The primary findings from the jurisdictional Analysis of Impediments review follow, organized by criteria examined.

Minority and poverty concentrated areas. Maps and tables showing areas with racial and ethnic minority concentrations appeared in most of the entitlement jurisdictions' Analysis of

Impediments. There was not a review of minority concentrated areas in the Analysis of Impediments of Bend, Medford or Salem.

Jurisdictions that undertook this analysis used varying definitions of concentration. Some used quartile percentages determined by mapping software; some used HUD's disproportionate needs definition (10 percentage points higher than city/county proportion overall); some did not define concentrations. Washington County used HUD's most recent definition of concentration of minorities, which is consistent with the state Analysis of Impediments: a Census tract in which the proportion of a protected class is 20 percentage points higher than that in the county overall, or in Census tracts that are more than 50 percent minority, are considered concentrated. The Portland/Gresham/Multnomah Analysis of Impediments defined concentrated areas as those having twice the county average racial/ethnic population.

The majority of jurisdictions that conducted this analysis found some Census tracts with concentrations of Hispanic, African American, Asian and/or American Indian or Alaska Native residents. Since different definitions were used in the concentration analysis, some of the entitlement Analysis of Impediments demonstrated concentrations where the state Analysis of Impediments did not. The state Analysis of Impediments found the following entitlement area concentrations:

Hispanic concentrations

- Thirty-three Hispanic concentrated Census tracts exist statewide. Hispanic concentrated Census tracts exist in the urban locations of greater Portland area, Hillsboro, Salem and Medford.

African American concentrations

- Three African American concentrated Census tracts exist in Oregon and all three Census tracts are in close proximity (two are adjacent) and are in the north Portland area.

Asian concentrations

- Three Asian concentrated Census tracts exist in the state. Two are located in the Hillsboro area, while the third is west of Portland near the intersection of I-205 and US 26.

Native American concentrations

- No Native American concentrations exist in entitlement areas. There are two Native American concentrated Census tracts in Oregon and both are Census tracts located within an American Indian Reservation (Warm Springs Reservation and Umatilla Reservation).

Racially and ethnically concentrated areas of poverty. A new component of fair housing studies is an analysis of "racially or ethnically concentrated areas of poverty," also called Racially/Ethnically Concentrated Area of Poverty. A Racially/Ethnically Concentrated Area of Poverty is a neighborhood with significant concentrations of high poverty and is majority-minority.

HUD's definition of a Racially/Ethnically Concentrated Area of Poverty is:

- A Census tract that has a non-white population of 50 percent or more (majority-minority) AND a poverty rate of 40 percent or more; OR

- A Census tract that has a non-white population of 50 percent or more (majority-minority) AND the poverty rate is three times the average tract poverty rate for the county, whichever is lower.

The state Analysis of Impediments located five Racially/Ethnically Concentrated Areas of Poverty in Oregon. All but one Racially/Ethnically Concentrated Areas of Poverty are in entitlement areas: Two are in the greater Portland Area (Hillsboro and east Portland), one is in northeast Salem, and one lies in a relatively remote area of eastern Clackamas County.

Figure D-2 presents associated characteristics for each Racially/Ethnically Concentrated Area of Poverty Census tract. All Census tracts contain Limited English Proficiency persons greatly above the state average of three percent.

The analysis of the households within Racially/Ethnically Concentrated Areas of Poverty Census tracts supports the findings of the socioeconomic analyses of concentrated areas conducted for jurisdictional Analysis of Impediments. Racially/Ethnically Concentrated Area of Poverty households are often some of the most disadvantaged households within a community and often face a multitude of housing challenges. By definition, a significant number of Racially/Ethnically Concentrated Area of Poverty households are financially burdened, which severely limits housing choice and mobility. The added possibility of racial or ethnic discrimination creates a situation where Racially/Ethnically Concentrated Area of Poverty households are likely more susceptible to discriminatory practices in the housing market. Additionally, due to financial constraints and/or lack of knowledge (i.e. limited non-English information and materials), Racially/Ethnically Concentrated Area of Poverty households encountering discrimination may believe they have little or no recourse, further exacerbating the situation.

Figure D-2.
Racially/Ethnically Concentrated Areas of Poverty Census Tract Characteristics

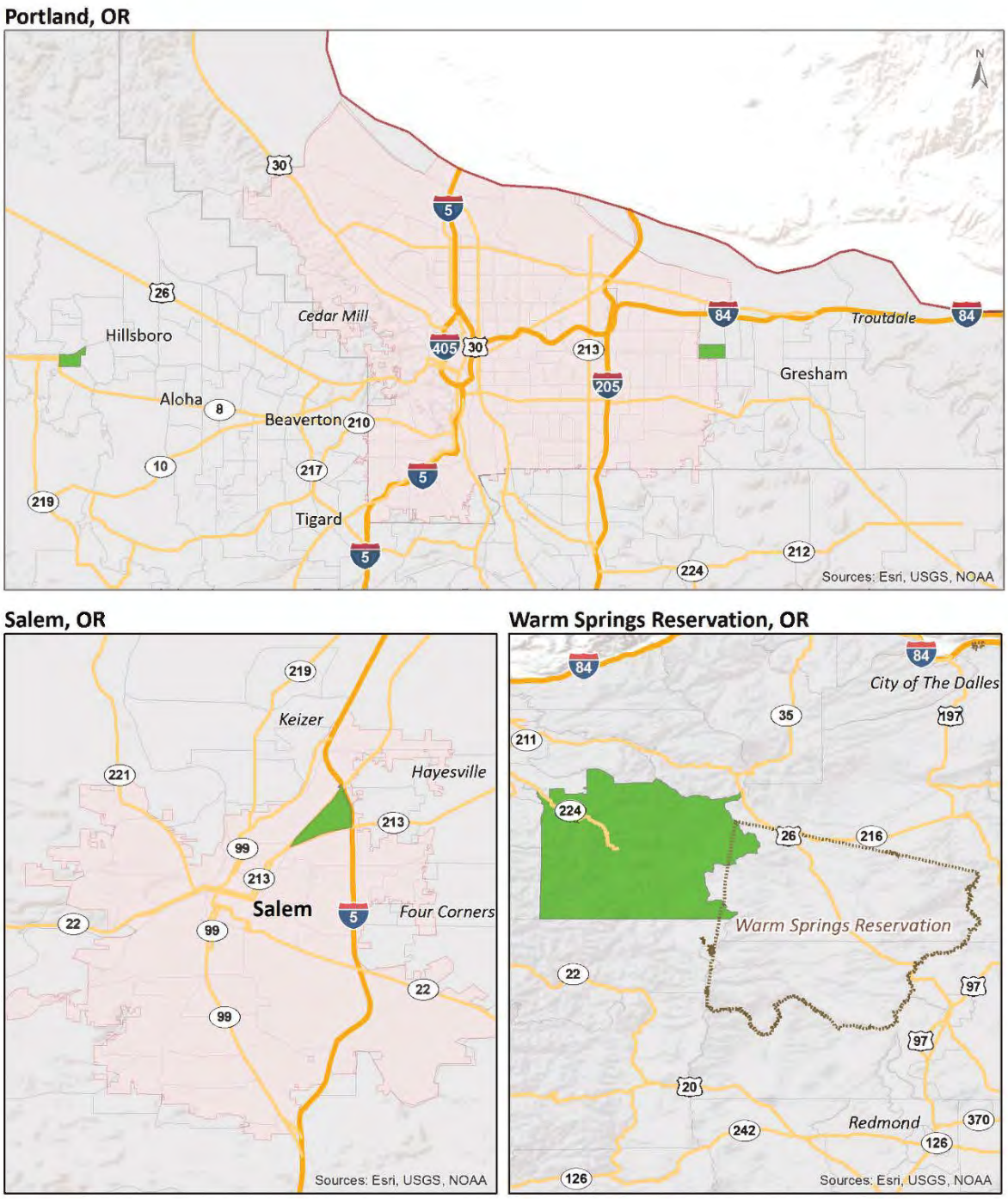
Census Tract	County	% Minority	% Hispanic	% Individual Poverty Rate	% Family Households w/ Children	% Single Mother Households	% LEP
41005980000*	Clackamas	52.2%	39.3%	39.3%	0.0%	0.0%	37.8%
41047000502	Marion	61.5%	45.9%	52.6%	47.4%	18.2%	20.5%
41051009606	Multnomah	54.1%	35.9%	42.3%	39.8%	12.6%	34.5%
41067032409	Washington	75.2%	72.2%	44.7%	55.0%	24.2%	41.5%

Note: *This Census tract has a population of only 201 residents, and given that the statistics are based on sampling data, the reported 0% for percentage of family households with children and percentage of single mother households may be underestimated. However, the Census tract is in a remote location of Clackamas County and family households is likely to be small.

Source: 2009-2013 ACS; BBC Research & Consulting.

Figure D-3 shows the visual location of Racially/Ethnically Concentrated Areas of Poverty.

Figure D-3.
Racially or Ethnically Concentrated Areas of Poverty



Source: 2009-2013 ACS; BBC Research & Consulting.

Dissimilarity index. The statewide Analysis of Impediments also used the dissimilarity index to measure segregation**.** The dissimilarity index is a metric used by researchers to measure racial and ethnic integration. The index is measured between 0 and 1. An index of 0 indicates perfect distribution of racial and ethnic groups across all Census tracts in a region; conversely, an index of 1 indicates complete segregation of racial groups across the region. HUD's ratings of dissimilarity are determined by the following score ranges: "Low Dissimilarity"—below 0.40; "Moderate"—between 0.40 and 0.54; and "High"—above 0.54. The U.S. cities found to be the most segregated using the dissimilarity index (Milwaukee, New York and Chicago) have indices approaching 0.8.

Figure D-4 presents the dissimilarity index for Oregon counties. As demonstrated in the figure, African Americans are the racial group most likely to experience segregation according to the index. This segregation is generally highest in rural, rather than urban, counties.

Figure D-4.
Dissimilarity Index by County, State of Oregon, 2013

County	Minority/NHW Dissimilarity Index		Hispanic/NHW Dissimilarity Index		African American/NHW Dissimilarity Index		Asian/NHW Dissimilarity Index		Native American/NHW Dissimilarity Index	
	Index	Rating	Index	Rating	Index	Rating	Index	Rating	Index	Rating
Baker	0.32	Low	0.37	Low	0.47	Moderate	0.37	Low	0.49	Moderate
Benton	0.21	Low	0.36	Low	0.48	Moderate	0.35	Low	0.40	Moderate
Clackamas	0.24	Low	0.33	Low	0.50	Moderate	0.44	Moderate	0.51	Moderate
Clatsop	0.21	Low	0.28	Low	0.38	Low	0.41	Moderate	0.33	Low
Columbia	0.20	Low	0.26	Low	0.72	High	0.25	Low	0.38	Low
Coos	0.23	Low	0.31	Low	0.56	High	0.28	Low	0.29	Low
Crook	0.17	Low	0.26	Low	0.41	Moderate	0.30	Low	0.21	Low
Curry	0.11	Low	0.14	Low	0.73	High	0.49	Moderate	0.31	Low
Deschutes	0.19	Low	0.26	Low	0.44	Moderate	0.35	Low	0.36	Low
Douglas	0.18	Low	0.20	Low	0.60	High	0.34	Low	0.29	Low
Gilliam	N/A - only 1 CT		N/A - only 1 CT		N/A - only 1 CT		N/A - only 1 CT		N/A - only 1 CT	
Grant	0.07	Low	0.13	Low	0.22	Low	0.34	Low	0.12	Low
Harney	0.13	Low	0.11	Low	0.21	Low	0.44	Moderate	0.32	Low
Hood River	0.24	Low	0.26	Low	0.42	Moderate	0.24	Low	0.74	High
Jackson	0.29	Low	0.39	Low	0.52	Moderate	0.39	Low	0.37	Low
Jefferson	0.50	Moderate	0.37	Low	0.32	Low	0.56	High	0.77	High
Josephine	0.16	Low	0.22	Low	0.47	Moderate	0.35	Low	0.30	Low
Klamath	0.22	Low	0.31	Low	0.37	Low	0.40	Low	0.39	Low
Lake	0.06	Low	0.17	Low	0.28	Low	0.23	Low	0.04	Low
Lane	0.18	Low	0.31	Low	0.51	Moderate	0.40	Moderate	0.42	Moderate
Lincoln	0.22	Low	0.30	Low	0.60	High	0.41	Moderate	0.39	Low
Linn	0.25	Low	0.35	Low	0.38	Low	0.36	Low	0.33	Low
Malheur	0.26	Low	0.29	Low	0.46	Moderate	0.31	Low	0.37	Low
Marion	0.35	Low	0.40	Low	0.51	Moderate	0.37	Low	0.37	Low
Morrow	0.38	Low	0.40	Moderate	0.43	Moderate	0.07	Low	0.32	Low
Multnomah	0.27	Low	0.35	Low	0.47	Moderate	0.34	Low	0.45	Moderate
Polk	0.23	Low	0.32	Low	0.33	Low	0.34	Low	0.46	Moderate
Sherman	N/A - only 1 CT		N/A - only 1 CT		N/A - only 1 CT		N/A - only 1 CT		N/A - only 1 CT	
Tillamook	0.26	Low	0.31	Low	0.40	Moderate	0.44	Moderate	0.42	Moderate
Umatilla	0.31	Low	0.38	Low	0.46	Moderate	0.38	Low	0.69	High
Union	0.17	Low	0.27	Low	0.58	High	0.28	Low	0.27	Low
Wallowa	0.16	Low	0.14	Low	0.28	Low	0.27	Low	0.47	Moderate
Wasco	0.22	Low	0.25	Low	0.31	Low	0.45	Moderate	0.55	High
Washington	0.24	Low	0.35	Low	0.41	Moderate	0.35	Low	0.57	High
Wheeler	N/A - only 1 CT		N/A - only 1 CT		N/A - only 1 CT		N/A - only 1 CT		N/A - only 1 CT	
Yamhill	0.23	Low	0.27	Low	0.58	High	0.35	Low	0.44	Moderate

Note: NHW is non-Hispanic white. Some dissimilarity index scores and ratings may not align in the table due to score rounding.

Source: 2009-2013 ACS; BBC Research & Consulting.

Reasons for concentrations. To better understand the reasons behind existence of concentrated areas, half of the jurisdictions analyzed the socioeconomic conditions of the areas. Concentrated areas in these jurisdictions commonly had a high share of households with Limited English Proficiency and with persons living with disabilities, a high share of female-headed households and households living in poverty and a low median family income.

Some of the findings specified by jurisdictions included:

- Census tracts with high minority concentrations in Bend had higher unemployment rates and a higher share of the population living below the poverty level than the other Census tracts in the city;

- This was also true of Ashland: the Census tract with the highest minority population in Ashland had a median family income of $17,083 compared to $49,647 citywide;

- Twenty-eight percent of the population in Eugene and Springfield's most concentrated minority Census blocks were Limited English Proficieny;

- Portland, Gresham and Multnomah County felt that concentrations could be a factor of locations of subsidized housing projects.

In all jurisdictions, low income among minority households was identified as a likely key impediment to fair housing choice.

Some jurisdictions made a connection between minority concentrations and gentrification in urban areas. The Analysis of Impediments for Portland, Gresham and Multnomah County pointed specifically to the unintended consequence of gentrification resulting from urban renewal initiatives that effectively price-out low-income and often minority and/or disabled residents. Similarly, Clackamas County and the Portland, Gresham and Multnomah County noted Not-In-My-Backyard issues may be playing a role in restricting affordable or special needs housing from locating in moderate and high-income neighborhoods. Many other jurisdictions referenced this challenge indirectly.

The City of Ashland and the City of Bend both noted concern about the possible link between concentrated neighborhoods and discriminatory lending practices, such as steering. The Analysis of Impediments reported that the presence of minority concentrations may lead to increased steering, which perpetuates areas of concentration.

In some of the Analysis of Impediments, the public input process further investigated the reasons for concentrated areas and desire of residents to relocate:

- In Washington County, 18 of 22 Hispanic interview respondents living in ethnic enclaves in Washington County indicated they would choose neighborhoods with better schools and access to opportunities over a neighborhood close to family and others who spoke Spanish. The Analysis of Impediments noted these findings were indicative of potential financial barriers to housing choice.

- In Portland, Gresham and Multnomah County, low income and instability were identified by survey respondents as the primary impediments to fair housing choice in minority concentrated areas.

- Similarly, in Corvallis, survey respondents agreed housing affordability was a key consideration in housing choice among minority households, along with a sense of community and familiar social networks.

Access to opportunity analyses, which consider the location of minority concentrated areas and/or affordable housing units in relation to schools, parks, public transportation options and other services, were conducted in Washington County, the City of Portland, Gresham and Multnomah County and Clackamas County. When Washington County was developing its most recent Analysis of Impediments, HUD began placing more emphasis on this type of analysis. As such, Washington County included a thorough geography of opportunity analysis of the distribution of minority populations and subsidized housing and Housing Choice Voucher holders in proximity to identified areas of opportunity.

Key findings from Washington County's analysis included:

- Racial and ethnic minority populations were distributed fairly evenly and similarly to Whites across all areas of opportunity;

- Subsidized housing units were located in areas with higher minority populations than the county-wide proportion; however 90 percent of subsidized housing units were located in average to high opportunity areas;

- Considerable variability was found in access to schools with high test scores and public transportation among subsidized housing residents across the county, suggesting impediments may be more pronounced in some locations; and

- Ninety percent of voucher holders across the county lived in areas with average or higher access to opportunity and there were opportunities for voucher holders to live close to good schools and access to transportation.

The City of Portland, Gresham and Multnomah County's analysis focused on areas of reduced access to opportunity that commonly include a disproportionate number of persons from protected classes. The Analysis of Impediments also found that many subsidized housing units were located in proximity to potential environmental health hazards identified by the Environmental Protection Agency and accessible housing is limited near public transit.

Private sector policies. This section discusses the private sector policies that were examined through entitlement Analysis of Impediments. Topics include Not-In-My-Backyard (NIMBYism), mortgage lending disparities, and discriminatory behavior revealed in testing and complaints.

NIMBYism—the term used to describe resistance by neighbors to certain types of housing in their neighborhoods—was discussed generally in the entitlement Analysis of Impediments as a contributor limited affordable housing in certain neighborhoods.

The state Analysis of Impediments tested aspects of NIMBYism among residents through a statistically significant survey. Most residents expressed acceptance of all types of residents; sexual orientation received the highest NIMBYism rating. Yet between 15 and 20 percent of

residents felt that certain groups are not treated equally in their communities and many attributed this to their status as immigrants, non-English speakers and/or race and ethnicity.

When asked if they would support different housing types, residents said their communities would be least supportive of apartments and residential homes for persons recovering from substance abuse.

Lending disparities. Mortgage lending disparities were analyzed in almost all of the Analysis of Impediments through analysis of Home Mortgage Disclosure Act (HMDA) data. The potential for mortgage lending barriers was of particular interest for many jurisdictions given the potential limits to fair housing choice that could result. Some jurisdictions compared lending patterns between racial and ethnic groups. Others went one step further by comparing these patterns by Census tract.

The jurisdictions that conducted HMDA analyses commonly found:

- Lower levels of overall lending activity among minority populations and in minority-concentrated areas.

- Lower loan approval rates, higher loan denial rates and higher rates of subprime loans among minority populations and in minority-concentrated areas.

Stakeholder and resident consultations in a few jurisdictions supported these trends. As one example, public input in Medford revealed residents believed discriminatory lending was occurring in their jurisdiction and potentially impeding fair housing choice.

Jurisdictions were careful to note that lending disparities do not prove direct discriminatory lending practices. For example, the Eugene and Springfield Analysis of Impediments noted there was no direct evidence of lending discrimination based on race or ethnicity because the lower activity was found in areas with a high share of low-income rental housing. Despite the recognition that lending disparities do not translate to discriminatory lending based on race or ethnicity, all of the Analysis of Impediments recommended continued monitoring of lending practices.

Other potential discriminatory behaviors. Beyond lending disparities, a few jurisdictions identified other potential discriminatory private sector practices, for example:

- The Ashland Analysis of Impediments reported that the lack of real estate agents of color in some neighborhoods may be dissuading minority communities from locating there;

- Resident survey respondents in Albany believed refusal to make reasonable accommodation, refusal to rent, steering and discriminatory advertising were occurring in their communities; and

- Some resident interview respondents in Ashland believed that landlords and Homeowners' Associations were discriminating against families with children by arbitrarily applying strict rules not applied to others.

- Landlords appear to be "actively" disinvesting in housing because they plan to sell their apartment complexes.

Testing, complaints and legal case review. The Analysis of Impediments all reviewed fair housing complaint data—mostly a cursory review—and some supplemented this with a review of legal cases and fair housing testing.

Disability (most prevalent in all Analysis of Impediments), large families and race/ethnicity were the top reasons complaints were filed.

AIs that contained multi-year complaint analysis and/or comparisons with audit findings revealed several notable trends:

- In Ashland, audit tests found high levels of race-based discrimination in rental transactions (67% of the tests found preferential treatment towards the white applicant)—yet only one complaint had been filed for race-based discrimination.

- Portland/Gresham/Multnomah County had a similar rate of discrimination in audit testing for racial and ethnic biases in rental transactions: the tests found discrimination in 64 percent of cases.

- Washington County, which found an increase in complaint filings over the three years examined, concluded that investment of resources in fair housing information and support may have resulted in more households availing themselves of the recourse available to them under federal and state law.

Public sector policies. Eight out of ten entitlement jurisdictions identified impediments within existing zoning codes and policies that may be limiting the supply of affordable and accessible housing and contributing to minority concentrated areas.

Examples of impediments found in jurisdictions' zoning codes and policies include:

- Costly development fees and lengthy permitting processes (Clackamas County, Eugene and Springfield, Medford, Salem and Keizer Consortium and Washington County). Although little detail was provided about the nature of these barriers, the Analysis of Impediments recommended considering fast-tracked permitting and reduced or waived developer fees for affordable housing development;

- Restrictive parking requirements in zoning codes (Eugene and Springfield, Washington and Clackamas counties):

    - Eugene and Springfield's requirement for one parking space per unit was considered an impediment to affordable housing development because it requires more land. Eugene's bicycle parking requirements impacted the ability to develop multifamily housing on smaller sites.

- Washington County discussed a reduced parking requirement for specialized housing, for example for persons with disabilities who are less likely to have vehicles.

- The density bonus policy in Albany was not successfully resulting in new development of housing for very low-income households;

- Single-family zoning in some school catchment areas in Portland, Gresham and Multnomah County was limiting access for low-income families seeking multifamily housing in those areas; and

- A few Analysis of Impediments' noted a possible disincentive for the development of large units due to multifamily density requirements in zoning codes, which may be limiting housing choice for large or multi-generational families common among racial and ethnic minority groups.

At the state level, Washington County and the City of Medford suggested the illegality of mandatory inclusionary zoning in the State of Oregon was a key impediment to fair housing. The Analysis of Impediments stated the lack of mandatory inclusionary zoning limited the likelihood that low-income housing can be located in low-poverty areas and integrated within higher income developments. As a result, housing choice and access to opportunities among low-income residents who are more likely to be minority households and persons with disabilities is negatively impacted.

Affordable and accessible housing. All entitlement jurisdictions stated the lack of affordable housing was a key impediment to fair housing. The majority of jurisdictions referred to feedback from stakeholders and residents who said the lack of affordable housing was a growing challenge. The poor condition of existing affordable housing stock was also a recurring theme.

The unmet meets specified by jurisdictions included:

- Limited supply of affordable housing less than 50 percent of area median income (AMI) households (Clackamas and Albany Counties);

- Lack of affordable housing products that can accommodate multi-generational households, common among racial and minority ethnic groups (Eugene and Springfield); and

- Limited supply of housing for low-income persons with accessibility needs (Ashland, Eugene and Springfield, Portland, Gresham and Multnomah County and Washington County).

Beyond the zoning and policy related barriers to affordable housing development discussed above, declining federal funding and constrained state and local funds for the acquisition of land, development and ongoing operation of affordable housing projects were recurring themes in the Analysis of Impediments. The City of Bend referenced the limited availability of land for affordable housing due to the urban growth boundary, which is required by the State of Oregon of all cities and metropolitan areas to control urban expansion onto farm and forest lands.

The state Analysis of Impediments examined how well beneficiaries of subsidized housing in every county of the state match the eligible population (adjusting for income). Significant gaps were found for African Americans in Multnomah County only: African Americans make up 27 percent of low income households living subsidized housing in the county compared to just 8 percent of residents overall. That is, African Americans in Multnomah County are much more likely to participate in HUD programs than might be expected given their income profile. This large gap is suggestive of discrimination in the housing market.

Fair housing education and awareness. Nine out of ten entitlement jurisdictions discussed the lack of adequate education about Fair Housing laws.

The Analysis of Impediments concluded that low education and awareness was related to linguistic and cultural barriers among residents in their jurisdictions. Many of the entitlement jurisdictions are becoming increasingly diverse with growing Hispanic and racial minority populations. With this in mind, Analysis of Impediments frequently noted English educational material and training sessions may not be meeting the needs of households with Limited English Proficiency.

Public input through resident and stakeholder surveys and interviews revealed limited awareness of fair housing rights among residents and real estate professionals. For example:

- The majority of survey respondents in Albany did not know who to contact if they experienced or saw discrimination. Hispanic families that attended a fair housing training sessions indicated they did not know how to file a complaint and were hesitant to file complaints for fear of reprisal;

- Consultations with Hispanic and Islamic residents, Limited English Proficiency persons and residents with mental health challenges in Washington County revealed a low level of familiarity with fair housing laws and resources to support them in the case of discrimination; and

- Some city staff and housing providers stated they were not sure where to refer people with complaints or where to get information about their fair housing responsibilities.

A few Analysis of Impediments noted strained resources among public and nonprofit fair housing organizations limited their ability to provide sufficient and culturally and linguistically appropriate education and training opportunities. In addition, evidence of discriminatory advertising among real estate agents and discrimination in landlord testing were occasionally found and may indicate limited knowledge about fair housing laws.

Impediments and Action Plan. Figure D-5 summarizes the impediments and action items across the entitlement community Analysis of Impediments.

Figure D-5.
Commonalities in Impediments in Entitlement Jurisdictions

Entitlement Communities	Segregation of racial and ethnic minorities	Challenges with NIMBYism	Discriminatory marketing and lack of diverse staff	Possible discriminatory lending practices, e.g., steering	Other private sector and housing market impediments	Fair Housing complaints and legal issues	Limitations of land use regulations, policies and zoning	Public sector program limitations, lack of resources and staff training and capacity	Lack of education and awareness of Fair Housing	Language and cultural barriers to Fair Housing education	Lack of affordable housing	Lack of accessible and special needs housing	Data limitations	Other impediments
City of Albany	x			x			x		x	x	x			
City of Ashland	x		x	x	x	x	x	x	x		x	x		x
City of Bend	x			x							x			x
Clackamas County	x	x				x	x		x		x			
Corvallis						x			x		x		x	
City of Eugene/Springfield				x	x		x		x	x	x	x		x
City of Medford				x			x		x		x			
City of Portland, Gresham, Multnomah County	x	x		x	x		x		x	x	x	x	x	
Salem-Keizer				x		x	x	x	x	x	x			
Washington County				x	x	x	x	x	x	x	x	x	x	

Source: BBC Research & Consulting and entitlement community Analysis of Impediments.

Comparison of Urban and Rural Fair Housing Barriers

This section compares the primary findings of the entitlement and nonentitlement Analysis of Impediments by the primary areas of analysis with the Analysis of Impediments.

Concentrated areas. Minority-concentrated Census tracts are mostly located in urban areas. The exceptions are Native American concentrations, which are located on Reservations, and Hispanic concentrations, which occur in both urban and rural areas. In addition, African Americans in rural areas tend to be more heavily clustered in certain neighborhoods than in urban areas.

Urban areas attribute concentrations to low incomes of minority residents, concentrations of affordable housing and gentrification reducing the dispersion of affordable housing. In rural areas, low incomes and lack of affordable housing are the primary reasons for concentrations.

Poverty concentrations mostly occur in urban or semi-urban areas with high Hispanic and Limited English Proficiency residents, generally new immigrants. These residents not only face challenges in finding affordable housing but may be more vulnerable than other residents to fair housing discrimination due to lack of awareness of fair housing rights and reluctance to report discrimination for fear of losing their housing.

Limited affordability of housing. All entitlement jurisdictions stated the lack of affordable housing was a key impediment to fair housing. The majority of jurisdictions referred to feedback from stakeholders and residents who said the lack of affordable housing was a growing challenge.

The high proportion of households with extended family members is suggestive of lack of housing opportunities, limited affordability and the need to "double up" to live in the community.

Condition of housing. The poor condition of existing affordable housing stock was a stronger theme in rural Analysis of Impediments. Housing in poor condition appears to be a community-wide issue in rural areas. Yet in both rural and urban areas, condition may be a larger factor in housing certain types of residents (lower income, minority, Limited English Proficiency residents).

Public sector barriers. Most entitlement area Analysis of Impediments focused on a review of local land use and zoning codes; in some Analysis of Impediments, these reviews were quite detailed. Washington County and Portland/Gresham/Multnomah County's Analysis of Impediments contained a review of relevant state regulations, the conclusions of which were consistent with the state Analysis of Impediments regulatory review.

Private sector barriers. Much of the review of private sector barriers in the entitlement Analysis of Impediments focused on mortgage lending trends. In general, the Analysis of Impediments found that some minority groups have higher rates of loan denials than non-Hispanic whites and these findings were consistent with the state analysis (gaps are generally within 10 percentage points). Several entitlement Analysis of Impediments noted that minority-

concentrated areas had lower levels of lending activity than non-concentrated areas. Few of the Analysis of Impediments provide analysis of why the disparities exist; of those that do, they attribute the differences to lower property values in minority concentrated areas (e.g., areas with light or heavy industrial uses), lack/poor credit histories of minority applicants and the impact of the subprime market and foreclosures on minority applicants.

Limited fair housing resources. City staff, nonprofit organizations and public housing authorities (PHAs) generally report high levels of fair housing knowledge and feel they have adequate fair housing resources overall.

The exception is fair housing information for certain residents, particularly new immigrants and Limited English Proficiency populations. Improving fair housing education and awareness was part of every Fair Housing Action Plan.

In rural areas, stakeholders described needs beyond fair housing education. Lack of capacity for fair housing investigation and enforcement, which is thought to contribute to non-compliance of housing providers and reluctance of residents to report discrimination, is a primary barrier to housing choice.

Commonalities in fair housing impediments

- Disability is the most common reason for fair housing complaints. It is unclear if this is related to disproportionate discrimination in this area or greater awareness of fair housing rights by persons with disabilities.

- Low incomes of minority residents, lack of affordable housing and clustering of Limited English Proficiency residents into certain neighborhoods are the most significant trends affecting fair housing choice.

- The need for affordable housing to serve a variety of household types was prevalent statewide. Despite sometimes serving very different markets, the urban and rural Analysis of Impediments were in agreement about the types of households that are most likely to be negatively affected by limited affordable housing: 1) Large households, often minority and multi-generational households; 2) Persons with accessibility needs; and 3) Households earning less than 50 percent AMI.

- Limited English Proficiency populations in all areas of the state—and residents and landlords in rural areas in general—have lower levels of awareness of their fair housing rights.

- Fair housing resources are lacking and could be enhanced in both urban and rural areas. Awareness is thought to be lowest for Limited English Proficiency populations and new immigrants. In rural areas, particularly where housing options are limited, reluctance to report fair housing violations for fear of eviction or retaliation is a concern.

Differences in fair housing impediments

- Lack of capacity for fair housing investigation and enforcement in general, which is thought to contribute to non-compliance of housing providers and reluctance of residents to report

discrimination, is a larger problem in rural areas, particularly those furthest from the state's major cities.

- In rural areas, capital for residential purchases and development is reportedly difficult to obtain in general; it is not isolated to mortgage lending for certain borrower types.

Opportunities for Collaboration in Fair Housing Action Plans

The above analysis revealed four opportunities where the state and entitlement jurisdictions can collaborate to achieve mutual fair housing goals:

1. Increasing fair housing knowledge and awareness, particularly among Limited English Proficiency populations and new immigrants. Fair housing education in a wide variety of languages is needed in both urban and rural areas.

2. Financial education and counseling for residents who want to become homeowners but have poor/lack credit history.

3. Knowledge of the shortage of accessible housing and best practices and policies to address accessible housing needs.

4. Expanded resources for accessibility improvements to residential housing and public infrastructure to address the growing population of persons with disabilities who have limited housing opportunities.

APPENDIX E.
State Resources to Support Fair Housing Choice

This section describes the resources that state has in place to promote and encourage development of affordable housing and a wide variety of housing choices. This section also discusses collaborative efforts or opportunities to advance fair housing enforcement or outreach. "Collaborative efforts" defined by HUD include co-sponsored fair housing training or fair housing education/enforcement activities, or work with real estate companies, lenders, developers or others to identify or address discrimination issues.

Fair Housing Programs and Activities to Address 2011-2015 Impediments

The 2011-2015 Analysis of Impediments for the State of Oregon identified the following impediments to Fair Housing Choice:

Impediments:

1. Organizational/political constraints
    a. Lack of strategic communication regarding fair housing, further hampered by language and cultural differences
    b. Local zoning constraints and NIMBYism restrict inclusive housing production policies; existence of such policies or administrative actions that may not be in the spirit of affirmatively furthering fair housing.
2. Structural barriers
    a. Lack of coordinated fair housing outreach and methods, particularly in the nonentitlement areas
    b. Lack of understanding of fair housing laws and complaint system
    c. Lack of effective referral system
    d. Lack of sufficient enforcement capacity
3. Rental markets
    a. Refusal to allow reasonable accommodations
    b. Discrimination against Section 8 voucher holders
    c. Discriminatory terms and conditions exist in marketplace
    d. Discriminatory refusal to rent
4. Home purchase markets
    a. Disproportionately high denial rates for racial and ethnic minorities, controlling for income level
    b. Disproportionately high share of high annual percentage rate loans held by racial and ethnic minorities
    c. Concentration of denials and high annual percentage rate in areas of western Oregon

Within the state, the responsibility for identifying and coordinating the implementation of actions to address these impediments is shared by OBDD/IFA and OCHS. Jointly, they adopted a seven-element 2011-2015 Fair Housing Action Plan which included actions, a schedule, desired outcomes and measurements. The actions and related 2011-15 Analysis of Impediments (shown in brackets) are as follows:

Fair Housing Actions:

1. Renew efforts to have a broad-based active, involved Fair Housing Collaborative to coordinate implementation of actions to affirmatively further fair housing. [2 a-d]
2. Continue contracting for retail activities such as educational outreach, informative brochures, etc. [2a & b]
3. Develop a means of measuring the results of outreach efforts and, in response, consider developing new approaches. [2a]
4. Continue distribution of the Fair Housing Referral Guide. [2c]
5. Initiate and maintain better communications with Oregon's fair housing enforcement arm, the Bureau of Labor and Industries (BOLI). [2c]
6. Review non-English speaking public participation requirements and make changes where needed. [1a]
7. Conduct audit testing specific to reasonable accommodation. [3a]

In addition to taking actions directly, OBDD-IFA and OHCS contracted with the Fair Housing Council of Oregon (FHCO) and Greater Eastern Oregon Economic District to assist with implementation of selected items, especially those related to fair housing outreach and education in the nonentitlement areas of the state.

On an annual basis, OBDD-IFA and OCHS report on actions taken in the Consolidated Annual Performance and Evaluation Reports (CAPERs). OHCS typically organizes its report around the actions identified in the 2011-2015 Fair Housing Action Plan, while OBDD-IFA organizes its report around the impediments identified in the Analysis of Impediments. Both reports are detailed and cite measurable outputs, such as brochures distributed, workshops conducted and meetings held, produced by the reporting agencies or their contractors. The reports typically do not include actions taken by other entities.

The summary below draws on those detailed reports, as well as information about actions taken by other entities, to paint a picture of efforts to affirmatively further fair housing in Oregon's smaller cities and rural areas during the 2011-2015 time period. The below summary is not exhaustive; instead, it is intended to convey a broad sense of the progress made to address the impediments identified in the 2011-15 Analysis of Impediments.

Coordination [Impediment 1, Fair Housing Action 1]

OBDD-IFA and OHCS revived the Fair Housing Collaborative first created to implement the 2005 Analysis of Impediments. Members included other state agencies, the Fair Housing Council of Oregon (FHCO) and other participants. Accomplishments include the development of the 2011-2015 Fair Housing Action Plan and the solicitation of a consultant to produce the next five year Analysis of Impediments to Fair Housing Choice and Action Plan.

NIMBYism and Local Zoning Constraints [Impediment 1]
FHCO produced and distributed an Inclusive Communities Toolkit, which included publications addressing NIMBYism and fair housing for three distinct audiences: public officials, neighbors and housing developers. The toolkit also included a detailed matrix that cities and counties could use to audit their land use ordinances and practices and adopt changes that affirmatively further fair housing, which was developed in consultation with the Department of Land Conservation and Development.

The publication is available at no cost from the Fair Housing Council of Oregon. It can be downloaded from their website at: http://www.fhco.org/pdfs/Checklist-August-2014.pdf

FHCO distributed these materials, along with an educational video that explained the basic concepts of affirmatively furthering fair housing, through targeted e-mails, conferences for elected officials, planners and advocates and extensive regional road trips to Oregon's small cities and rural communities. As a result of what was learned during this initial effort to develop local tools on land use and NIMBYism, additional analysis of Oregon's land use laws and model development code for small cities was incorporated into the scope of work for this 2016-20 Analysis of Impediments.

Language and Culture [Impediment 1, Fair Housing Actions 2 & 6]
Efforts to bridge language and cultural barriers included both contracted activities and the adoption and implementation of Language Access Plans by OBDD-IFA and OHCS.

To better understand the issues, FHCO conducted listening sessions with agencies serving Limited English Proficiency and culturally distinct populations in the rural areas of the state, such as Head Start agencies serving migrant and seasonal farm worker families. To reach consumers, FHCO developed culturally-specific activities with new partners, utilized non-English media outlets to disseminate information and distributed printed materials in Spanish and other languages. For example, FHCO conducted day-long outreach activities in partnership with the Mexican Consulate that attracted approximately 300 people in southern Oregon and 120 people in The Dalles, and they participated in a Mexican Independence Day event attended by 500 people in Ontario. FHCO also initiated an ongoing program to create a network of trained local partners in rural areas capable of communicating effectively about fair housing. Nineteen partners have been trained thus far, many of which serve Limited English Proficiency populations. Through these efforts, FHCO continues to build new ongoing relationships with community partners in rural areas that serve people from different cultures or for who English is not a primary language.

New printed materials created during this period by FHCO included a simple handout using pictographs to provide information about fair housing and where to turn to get help to help. FHCO's basic fair housing brochure is available in twelve languages.

During this time period, OHCS and OBDD-IFA adopted Language Access Plans that addressed whether the agencies' services needed to be provided in languages other than English to meet the needs of Limited English Proficiency populations. The agencies followed the Four Factor Analysis prescribed by the Department of Justice for agencies receiving federal funds. The agencies' analyses concluded that, although most OHCS and OBDD-IFA program staff does not

have direct contact with Limited English Proficiency persons, most of their federal funding recipients do. While none of the state's Limited English Proficiency populations exceed the 5 percent federal threshold for Limited English Proficiency assistance, the Limited English Proficiency Spanish-speaking population was very close to that standard, at 4.3 percent of the state's population. Thus, the agencies elected to take measures to ensure that this population (as well as others) could access information in their primary language. The practices included the use of Language Line, identification and utilization of bi-lingual staff, provision of selected translated program materials on the agency's website if they were available from HUD and staff training.

Audit Testing [Impediment 3, Fair Housing Action 7]

To preliminarily explore issues around discrimination in applying for rental housing in the balance of the state, OHCS contracted with FHCO to undertake audit testing in 2013. FHCO completed 16 tests in 2013, which appears to be scaled to the size of a pilot project intended to develop and test protocols and train new testers. The tests had the following outcomes:

Audit Testing Results for Balance of State 2013				
	Positive*	Negative	Inconclusive	Total
Race	2	1	1	4
National Origin	1	4	0	5
Disability	1	3	0	4
Sexual Orientation	0	1	2	3
Total	4	9	3	16

*Positive results indicate tests in which differences were found between the treatment of the protected class tester and the treatment of the control tester.

The most thorough approach to addressing potential infractions is to contact the landlords whose properties were tested, provide information on the testing protocols and results, conduct training about fair housing, then follow up with a new round of testing to see if changes have occurred. If a pattern of discrimination appears in the retesting results, then a solid, defensible case for enforcement action has been built.

In 2015, FHCO followed up with the sites tested, discussed the results and provided training and information. Currently, through contracts with BOLI and OHCS, FHCO is also undertaking additional audit testing for the protected classes of source of income (compliance with new law prohibiting landlords from refusing to rent to tenants solely because their sources of income for housing includes a Section 8 voucher), national origin and sexual orientation.

Fair Housing Outreach and Education [Impediments 2 & 3, Fair Housing Action 2 & 3]

In 2011-2012, FHCO undertook a complete review of its educational and outreach strategies and made two key changes to reach remote audiences more effectively:

Utilization of more web-based materials, including live webinars, videos and podcasts of past forums and seminars

Expanded outreach through strategic partnerships with local partners serving housing consumers

Currently, FHCO's website is a major source of information on fair housing. In 2014 alone, the FHCO website received nearly 1.5 million hits. In 2015, FHCO completed a major revision of its website to a simpler design to allow stakeholders to find information more easily.

FHCO did develop collaborations with key organizations statewide, including community action agencies and community based advocacy organizations working with protected class communities. These collaborations led to the creation of new outreach events, trainings, radio programs and other activities. However, FHCO encountered two principal challenges in trying to maintain collaborations over the long term: its own capacity to sustain so many relationships throughout the state, and staff turnover in smaller organizations, which typically meant starting over with introductions and relationship-building.

FHCO's outreach and educational activities from 2011 through 2015 include:

- More than 125 onsite training events in small cities and rural areas throughout the state. The trainings were customized to meet the needs of specific audiences, which included groups such as social service providers, housing authorities, Realtors, associations of rental owners, legal services employees, inmates, foster home providers, nonprofit and subsidized housing providers, farm workers, tenants, family drug court workers, Oxford House members and retirement community staff.
- Major statewide seminars/conferences about Re-Entry Housing, Affirmatively Furthering Fair Housing and Adult Foster Care (web-based)
- Presentations at existing industry conferences, such as the Oregon chapter of the American Planning Association, Oregon League of Cities, Oregon Association of Public Housing Directors, Rural Oregon Coordinating Council, Northwest Association of Community Development Managers, Public Employees Diversity Conference, Neighborhoods USA Conference and the Real Estate and Land Use Section of the Oregon Bar Association.
- Public service announcements and interviews on local radio stations in rural and small cities throughout the state, some in Spanish.
- Ongoing educational and awareness activities, including promotion and programming for Fair Housing Month, annual youth fair housing poster contest, publication of a quarterly electronic newsletter and circulation of the traveling display *Anywhere But Here: The History of Housing Discrimination in Oregon* to public venues.
- Development of new printed materials and distribution of new and existing printed materials, including guides for housing consumers (available in 12 languages and pictograph formats), new landlords, Realtors, homeowner associations, non-profit and subsidized housing providers, senior communities, shelter and transitional housing providers, social services providers and students, as well as the new in-depth Inclusive Communities Toolkit and video.

FHCO is exploring the use of mapping software to track the location of calls and intakes as one way to measure the outcomes of training and outreach activities.

Referral System [Impediment 2, Fair Housing Action 5]

Two primary steps were taken to strengthen the system of fair housing complaint referrals. The first, described above, involved developing stronger ties with local partners that can provide information about fair housing and refer potential issues to FHCO for intake and counseling through their hotline.

The second involved developing a stronger link between FHCO and BOLI, the state agency with which HUD contracted to investigate and adjudicate consumer-driven fair housing complaints in the state. The delegation of the investigation of complaints to BOLI is said to have significantly reduced the length of time to resolve complaints. BOLI's processes conformed to the standard of Substantial Equivalency, which meant that HUD was able to delegate nearly all fair housing complaints to BOLI. To strengthen this link within the referral system, FHCO and BOLI met quarterly in 2013.

Section 8 Vouchers [Impediment 3]

The 2013 Oregon Legislative Assembly approved HB 2639, which made it illegal to refuse to rent to applicants or to treat applicants or tenants differently solely because one of their sources of income for housing was a Section 8 Housing Choice voucher. Landlords were still able to screen and reject any applicant, including those with a Section 8 voucher, for past conduct and inability to pay rent.

The new law also created the Housing Choice Landlord Guarantee Program to help compensate landlords for damages incurred as a result of tenancies by Section 8 voucher holders. The effective date of the new law was July 1, 2014. Currently, BOLI has contracted with FHCO to undertake audit testing to examine whether discrimination against Section 8 voucher holders occurs.

Responding to this action by the state legislature, in fall 2014 Meyer Memorial Trust, one of Oregon's largest foundations, awarded nine grants totaling $308,471 to increase access to private market housing units through Housing Choice Vouchers. Three of the grants were awarded to entities to develop statewide educational materials about House Bill 2639. One was awarded to the Oregon Law Center to create standardized educational materials and conduct outreach to Housing Choice Voucher holders and tenant advocates. The second was awarded to the Oregon Housing Authority to create a toolkit and training series for public housing authorities statewide. The third was awarded to Multifamily NW, the principal state property managers association, to conduct statewide landlord education. In addition, grants were awarded to Community Action Agencies and housing authorities serving rural areas of Malheur (Ontario), Lane (Eugene), Jackson (Medford) and Wasco (The Dalles) Counties to support programs that aid Housing Choice Voucher program applicants and participants with accessing and maintaining decent housing.

Home Purchase Markets [Impediment 4]

Although direct steps were not taken by the state to further investigate the disproportionate share of high annual percentage rate loans and loan denials of racial and ethnic minorities, Oregon was one of 49 states that signed on to a multistate agreement. The agreement penalized

the nation's five largest banks for wrongful conduct in lending and provided roughly $25 billion in relief for affected distressed homeowners and former homeowners who had gone through the foreclosure process.

The state also put in place several programs to assist affected homeowners and tenants. Through Senate Bill 558, enacted by the 2013 legislature, the state provided access to qualified, trained neutral mediators and facilitators for conducting face-to-face meetings between a homeowner who is in foreclosure and their lender with the goal of avoiding the loss of the home. The state also provided referrals to HUD-approved foreclosure counselors, some of which provide low cost services to homeowners and renters with low incomes.

Additional Activities that Support Fair Housing Choice

Additional activities that may not always directly address fair housing impediments but which do have the effect of expanding housing choice are discussed in this section.

Grants for housing creation and preservation. OHCS makes federal and state resources available for the development of affordable housing through competitive and non-competitive application processes. The resources include loans, grants, credit enhancements and tax credits. Multifamily state programs available on a first-come, first-served basis include Conduit Bonds, Elderly/Disabled Loan Program, Loan and Lease Guarantee Programs, Oregon Rural Rehabilitation Program for farmworker housing, Vertical Housing Program and manufactured dwelling park preservation and predevelopment loan programs.

Resources awarded competitively through a Notice of Funding Availability include the following:

- **Low Income Housing Tax Credit (LIHTC) Program**. The LIHTC Program provides federal income tax credits to developers who construct, rehabilitate, or acquire and rehabilitate qualified low-income rental housing. The state has elected to set aside a share of funds (currently 35%) for preservation projects and public housing undergoing a preservation transaction.

- **Home Investment Partnership Program (HOME).** The HOME Program provides federal funds for the development of affordable housing for low- and very low-income households. The state is responsible for administering the HOME Program for nonentitlement jurisdictions and rural Oregon. OHCS requires standard HUD forms for affirmatively furthering fair housing choice of developers who receive HOME.

Resources awarded on a rolling, first come, first served basis include the following:

- Conduit Bonds
- Elderly/Disabled Loan Program,
- Loan and Lease Guarantee Programs,
- Oregon Rural Rehabilitation Program for farmworker housing,
- Agricultural Housing Tax Credits,

- Vertical Housing Program and
- Manufactured Dwelling Park Preservation and Predevelopment Loan Program

The following resources are used to address gaps in needed resources for projects

- **Oregon Affordable Housing Tax Credit Program (OAHTC**). Through the use of Oregon tax credits, lending institutions are able to lower the cost of financing by as much as four percent (4%) for housing projects. Benefit must be used to reduce rents.
- **General Housing Account Program (GHAP).** Added in 2009, GHAP is an Oregon-generated resource designed to provide grants and loans to construct new housing, to acquire and/or rehabilitate existing structures, or to operate housing for Low or Very-Low Income households. Funding comes from the Document Recording Fee collected by county clerks. The maximum award per application of GHAP if combined with Low Income Housing Tax Credits (LIHTCs) is $200,000. The maximum award per Application of GHAP if not combined with LIHTCs is $500,000.
- **Low Income Weatherization Program (LIWP).** LIWP Funds support energy conservation measures in affordable housing projects. Applicants may apply to LIWP Funds to upgrade existing eligible areas of rehabilitation projects or to exceed energy codes on new construction. The purpose of the LIWP funds is to reduce energy use and heating costs for low and lower-income (60% of area median income and below) Oregonians through energy conservation measures. Applies to PGE & PPL service areas only.
- **Financing Adjustment Factor Savings Fund (HELP**). HELP funds provided by the Department are used for the construction, acquisition and/or rehabilitation of rental housing to be occupied by households with very low incomes. The Department has set aside HELP funds for three populations: Homeless, including victims of domestic violence, group homes for persons with developmental disabilities and group homes for persons with chronic mental illness.

Competitive funds and scoring. On an annual basis, OHCS issues a Notice of Funding Availability (NOFA) to solicit applications for competitive funding sources. The NOFA bundles available funding sources and applicants submit a single application that includes general sections and sections that responsive to specific funding sources and the rules and priorities that apply to them.

OHCS has experimented with different configurations of applicant pools to help ensure that funds reach all areas of the state and that competitive applications compete against others serving areas with similar needs, development capacities, and outside resources. Since 2014, the state has utilized three applicant pools:

- Metro Region, which consists of the three-county Portland area
- Non-Metro Participating Jurisdictions, which consists of all PJs outside Multnomah, Washington and Clackamas Counties
- Balance of State Region, which consists of Oregon's rural areas and small nonentitlement jurisdictions.

Public and private sector applicants compete for funding within a specific pool. The allocation of resources to the pools is based on two factors: the percentage of households who earn less than 60 percent of area median income, and the percentage of households who are extremely rent burdened (expend more than 50% of their income on housing). The table below shows that applications serving the Balance of the State have been targeted to receive than a third of available funding:

Figure E-1. Allocation of Competitive Multifamily Rental Housing Resources through NOFA

Regional Pool	Counties	2014	2015
Metro	Clackamas, Multnomah & Washington	45%	46%
Non-Metro Participating Jurisdiction	Corvallis, Eugene/Springfield and Salem/Keiser	18%	17%
Balance of State	All other cities and counties not included in a region listed above	37%	37%

Source: Oregon Housing and Community Services handout, April 2015

Within each region, funds are divided between new construction on one hand and acquisition and acquisition/rehabilitation on the other, with different rating criteria for each.

The state has experimented with primarily objective and primarily subjective rating factors. Beginning in 2014, awards were made using a combination of objective and subjective factors. Rating teams for each region included a combination of state staff and outside reviewers familiar with the geographic regions.

State policies governing the use of funds are principally found in 1) a General Manual that applies to all projects, regardless of funding sources; 2) source-specific Program Manuals (e.g., LIHTC, HOME, OAHTC, GHAP, etc.); 3) NOFA documents, and 4) for some sources, relevant Oregon Revised Statutes (ORS) and Oregon Administrative Codes (OAC). Within these documents, items particularly relevant to Fair Housing issues include:

- **Federal Fair Housing and other civil rights law.** The General Manual alerts applicants to the relevant Fair Housing requirements that apply to housing projects.
- **Visitability**. Since the Oregon legislature adopted ORS 456.510 in 2003, the state has formally encouraged the design and construction of apartments that are visitable, which means that units are capable of being approached, entered and used by individuals with mobility impairments. Visitability is mandatory for subsidized new construction of rental housing and encouraged for subsidized rehabilitation. For multistory structures without an elevator, it applies only to units on the ground floor. Elements include an accessible route and stepless entry with at least a 32 inch clearance, a visible common space, and a stepless entry to a visitable powder room with walls reinforced so that handrails can be added. Visitability is addressed in the General Manual, and OHCS staff review project plans to ensure compliance. Exemptions exist for state bond and non-competitive tax credit projects, farmworker housing on a farm, and if sufficient hardship exists.

Community development grants. IFA administers the state's pass-through Community Development Block Grant (CDBG), which provides funds for a wide range of community development activities in nonentitlement areas.

Recipients of CDBG funding must satisfy requirements to affirmatively further fair housing (AFFH) choice by completing the following:

- Optional review of a "Resource Packet" available from FHCO;
- Adopt and publish a Fair Housing Resolution;
- Distribute and post the Fair Housing Poster and Brochures at City Hall and/or the County Court House and other locations within the community;
- Undertake and complete at least one an additional fair housing activity for each grant prior to the final draw for grant funds;
- Collect and maintain racial, ethnic and gender characteristics of the applicants to, participants in, or beneficiaries of any CDBG funded activity/program for low and moderate income - direct benefit (LMH), presumed benefit (LMC), family size and date (LMC) and job creation/retention project (LMJ);
- Maintain the race and ethnicity data of all persons living within the service area of any low and moderate-income area wide benefit project.;
- Complete forms demonstrating how low income and minority and women owned businesses will be utilized in the project;
- Submit an Limited English Proficiency plan;
- Self-evaluate compliance with Section 504 requirements, as applicable;
- Non-housing public works projects, for new construction, must, to the maximum extent feasible, design and construct the improvements in accordance with the Uniform Federal Accessibility Standards (UFAS);
- Community facility projects, for new construction, must design and construct improvements in accordance with the Uniform Federal Accessibility Standards (UFAS);
- Refer fair housing complaints to HUD, BOLI and/or FHCO.

The full compliance checklist can be found at http://www.orinfrastructure.org/assets/docs/IFA/CDBGhandbook/ch07.pdf.

APPENDIX F.
Fair Housing Planning Guide Crosswalk

HUD's Fair Housing Planning Guide gives jurisdictions and states guidance for the content of Analysis of Impediments. The figure that appears on the following page helps guide the reader through the State of Oregon Analysis of Impediments by showing where items from HUD's *Planning Guide, Volume 1 Chapter 4, Section 4.3 AI Subject Areas* appear in the document.

Figure F-1.
HUD Crosswalk to Analysis of Impediments Subject Areas

AI Topical Areas	Location in 2015 State of Oregon AI
Public sector	
• State building, occupancy, health and safety codes	– Section IV
• State policies affecting…construction of assisted and private housing	– Section IV
• Statewide policies concerning:	
➢ *Equalization of municipal services*	– Section IV. Also gathered in surveys.
➢ *State tax policy*	– Section IV
➢ *Demolition and displacement decisions*	– Section IV. Also gathered in surveys.
➢ *Multifamily rehabilitation*	– Gathered through stakeholder interviews and surveys
➢ *Site and neighborhood standards for new construction*	– Section IV
➢ *Accessibility standards for new construction*	– Section IV
• Statewide policies…restricting provision…of resources to areas of minority concentration	– Gathered through stakeholder interviews and surveys. Minority concentration maps in Section I
• Statewide policies that inhibit employment of minority persons and persons with disabilities	– Gathered through stakeholder interviews and surveys. Sections VI and VI contain findings.
• Public policies the restrict interdepartmental coordination…in providing resources to areas of minority concentration or to persons with disabilities	– Gathered through stakeholder interviews and surveys. Sections VI and VI contain findings.
• Statewide policies…related to the provision and siting of public transportation and social services	– Gathered through stakeholder interviews and surveys. Sections VI and VI contain findings.
• Policies and practices affecting [diverse] representation on boards, commissions and committees	– Gathered through stakeholder interviews and surveys. Sections VI and VI contain findings.
Private sector	
• Banking and insurance laws and regulations…HMDA data analysis	– Section III
• State laws and practices that may allow or promote…steering, blockbusting, deed restrictions, discriminatory brokerage services	– Section IV. Also gathered through stakeholder interviews and surveys. Sections VI and VI contain findings.
• State laws covering housing rentals, trust/lease provisions, conversions of apartments	– Section IV
• State law conflicts with federal accessibility requirements	– Section IV
• State laws…restricting housing choices for persons with disabilities	– Section IV
• Availability and dissemination of information on financial assistance programs for accessibility modifications	– Gathered through stakeholder interviews and surveys. Sections VI and VI contain findings.

Source: BBC Research & Consulting and Section 3.6 of the Fair Housing Planning Guide, Volume 1.

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Figure F-1. (*continued*)
HUD Crosswalk to Analysis of Impediments Subject Areas

AI Topical Areas	Location in 2015 State of Oregon AI
Public and Private sector	
• Housing discrimination complaints, violations, lawsuits	– Section III
• Contract conditions related to fair housing placed by HUD	– Reviewed for Section III; n/a
• Evidence of segregated housing conditions	– Section I
• Delivery systems of statewide programs providing social services to families with children and persons with disabilities	– Gathered through stakeholder interviews and surveys. Sections VI and VI contain findings.
• Other state laws, policies, practices affecting the location, cost and availability of housing	– Section IV

Source: BBC Research & Consulting and Section 3.6 of the Fair Housing Planning Guide, Volume 1.

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APPENDIX G

2016-2020 Analysis of Impediments to Fair Housing Choice
PUBLIC REVIEW PERIOD COMMENTS

COMMENT	COMMENTOR OR AGENCY	STATE RESPONSE
Excellent information. How does this impact those who would purchase a home based on their credit? A common complaint I have from vets is. I have never been kicked out of an apartment nor have I ever missed my rent but since I don't have good credit I cannot buy a house. Now I personally believe that the right to have one's basic needs met for themselves and their family is a right especially in a nation such as America especially when one is willing to provide for themself and has the basic means to meet said obligation. IS this something that might declaw credit predators who would use such an opportunity to discriminate or financially capitalize by exacting an unfair interest rate upon the would be customer. Most realtors will work with a vet due to the home loan guarantee attached to the VA home loan but that often times does not stop them from using the situation for a short term gain by making the vet house poor and destined to fail so they can cash in and re-sell or so I am told. I am no expert in this and going on some hear-say and horror stories. Please educate me a bit.	Nathan Rogers Westcare Tillamook County Rural Veteran's Advocate	Making information about barriers to fair housing public and available is a key developing strategies on reducing opportunities to discriminate and unfairly treat individuals. The state will use the analysis and the Fair Housing Action Plan to chart a course to reduce impediments and barriers to housing choice and opportunity. Oregon currently supports Homeownership Centers that provides credit counseling, financial education services and homebuyer education.
Make following changes to the fair housing action plan: A) Provide capital sources to address the lack of affordable accessible housing, including housing available for persons with disabilities who wish to leave nursing homes or other institutions (Action Item 1-1c). B) Include polices and financial commitments to the support provided to Public Housing Authorities to implement adaptive modification programs as well as the continue efforts to expand housing choices in rural areas (Action Items 1-1d and 2-2g). C) Clarify the need to provide down payment assistance for low income home buyers in rural areas (Action Item 4-1b) D) Preservation and renovation is equally important as annual inspections of conditions and habitability (Action Item 5b). Action Items 6b, 6c and 6d should higher priority as the lack of affordable units is significant in rural areas where there may be more limited local capacity for aligning land use and housing affordability development.	Joel Madsen Executive Director Mid-Columbia Housing Authority *and* Columbia Cascade Housing Corporation	The State is committed to promoting access to fair housing choice and has increased funding for housing for low income persons and persons suffering from mental illness. The action plan charts a course for the State to take to reduce barriers for persons seeking housing free from discrimination. The Fair Housing Action Plan is a living document where priorities can shift over time as resources become available or opportunities arise. Access to affordable housing free from discrimination and increasing the availability of affordable housing, including accessible housing are urgent priorities for Oregon.
The findings and action plans seem to lack adequate consideration for education and outreach to landlords. Surely there is as great a need for education and outreach to the individuals providing housing as to housing consumers. I would note that Action Item 2.2 – "Provide stakeholder education and training on fair housing laws and requirements" – in particular could more specifically call out the need for landlord education and outreach. I believe we need to increase the available outreach to both housing providers and consumers in order to begin addressing solutions to the findings included in this report.	Jim Straub Oregon Rental Housing Association	Landlord training is one of the Oregon's strategies for ensuring access to fair housing opportunities. Landlords and property managers are key stakeholders in our efforts. Oregon is committed to exploring the use of landlord guarantee funds to ensure increased access to affordable housing.

I would also like to call out Action Item # 7 – "Consider funding second chance tenant training programs and landlord guarantee programs (e.g., similar to the Housing Choice Landlord Guarantee program)." This item would be absolutely vital to the successfully responding to Research Finding #7 regarding persons with criminal backgrounds. I would like to reiterate what I've said in earlier discussions, that the Housing Choice Landlord Guarantee program was the linchpin in assuring landlord support of the Housing Choice Act. Any efforts to respond to Research Finding #7 would almost certainly need to include a similar landlord guarantee program, and I most strongly recommend including such a program in any discussions relating to improving housing availability for persons with criminal backgrounds.		
Today, group homes are not a desired setting for many people living in them or at risk of moving into them for lack of affordable accessible housing. In short, people with IDD - especially younger generations - want to live in typical community housing similar to their peers without disabilities. They want control of every aspect of their lives like you and I - in short, they want a regular life. Having a home with your name on the lease or deed is a key accomplishment to achieving this. I recommend removing impediment 1-5. *Local zoning and land use regulations and/or inexact application of state law may impede the siting and approval of group homes*. I do not want to promote the idea that a solution to lack of accessible and affordable housing would be to build more group homes!	Jaime Daignault Executive Director Oregon Council on Developmental Disabilities	Oregon is committed to providing a range of housing options for person with disabilities. Access to affordable housing free from discrimination and increasing the availability of affordable housing, including accessible housing are urgent priorities for Oregon.
Action Item 5b. seeks to address the poor condition of affordable housing in rural areas. The action states: Require that all grantees/developers of funded rental housing projects annually inspect the condition and habitability of the units funded. OHCS has a risk based inspection program. OHCS currently uses a risk based inspection criteria, which allows the agency to focus inspection and compliance resources on the properties that have lower performance levels. The action should be revised to state "all grantees/developers of funded rental housing projects that have high risk of compliance violations or are poor performing to annually inspect the condition and habitability of the units funded."	OHCS	Accept comment.
Action item 2-2b seeks to address limited housing options for persons vulnerable for housing discrimination. It states ***Promote housing alternatives for persons reentering community from incarceration and persons surviving domestic violence.*** Because these populations, persons reentering community and persons surviving domestic violence, have different needs and require different services, they should be separated out into two separate action items. It is recommended to remove persons surviving domestic violence from 2-2-b and to add Action item to state Promote housing alternatives for persons surviving domestic violence.	OHCS	Accept comment.
Revise action items related to housing resources for persons with disabilities to include access to community based supported housing. The AI incorrectly limits the rent subsidy programs protected from discrimination. The sources covered by the protections in ORS 659A.421(d)(A) include: federal rent subsidy payments, any other local state or federal housing assistance. Revise AI to include the additional barrier individuals found guilty except for insanity, which is not a criminal conviction, experience when seeking housing. Landlords often deny housing because they mistakenly believe guilty except for	Darcy Strahan Residential Programs and Services Manager Addictions and Mental Health Division, Department of Human Services	Oregon is committed to providing a range of housing options for person with disabilities. Access to affordable housing free from discrimination and increasing the availability of affordable housing, including accessible housing are urgent priorities for Oregon. The AI will be revised to correctly state the protections of ORS 659A.421 (d)(A). The comment about additional barrier individuals found guilty

insanity is a conviction		except for insanity experience when seeking housing is accepted and will be discussed with stakeholders, including OHA.
DHS/Aging and People with Disabilities (APD) currently is serving most of these populations using current DHS/APD resources. Within APD these populations, if eligible, would be provided services and supports using Medicaid/Oregon Health Plan (OHP), other state plans (like Community First Choice – K Plan) or available Medicaid waivers. Persons with substance disorders, mental health disabilities and/or persons with HIV/AIDS would most likely be receiving services and supports from OHA [specifically Addictions and Mental Health (AMH), Medical Assistance Plan (MAP) or Public Health (PH)]. Affordable housing and/or supportive housing resources/supply/stock is large issue within Oregon and across the country. HB2547 is a bill currently being discussed by the Oregon Legislature for further discussion and planning. *Need for public facilities for the following: Senior centers, handicapped centers, Homeless facilities, Youth centers, Childcare centers, Neighborhood facilities (Community facilities), Health facilities, Facilities for special needs populations* The list above may be potential resources for use by the populations listed previously, but I don't believe any of the facilities at this time are a specific or targeted development for DHS/APD.	Jeff Putterbaugh, APD Advocacy and Development DHS	Comment received. HB 2547 (2015) has been passed into law and a task force addressing these issues will start work shortly.
Slides 7 and 8 (of the power point presentation to the Stakeholders) both state that the lack of affordable housing "limits housing choice for persons of color and low income persons." This sentence makes the incorrect assumption that all people of color are poor. It is more accurate to say that *the lack of affordable housing limits housing choice for low income persons*. While persons of color may suffer illegal housing discrimination (which is a different issue), lack of affordable housing would not impact an individual of one race any more than an individual another race, given the same income and family circumstances.	Laura Buhl, Transportation & Growth Management Oregon Department of Land Conservation and Development	Comment was received.
Regarding the rest of the document, I have a serious concern about sections that advocate repeal of ORS 91.225, which prohibits local governments in Oregon from enacting rent control ordinances. It is near universally accepted among economists and housing market experts that rent control is ineffective in providing for affordable housing opportunities and actually exacerbates problems in housing markets that impede the provision of affordable housing. The best comprehensive economic study of the negative effects of rent control is this 1981 compilation: http://www.walterblock.com/wp-content/uploads/publications/RentControlMythsRealities.pdf. A 1989 academic study of the long-term impacts of rent control in New York City, http://www.socsci.uci.edu/~jkbrueck/course%20readings/gyourko%20and%20linneman2.pdf, concluded that "rent control in New York City had little if any distributional impact due to the ineffective targeting of benefits. Thus, while many poor families were aided by rent controls, the same was true for middle and upper income families." (Pg. 73) A more recent article in the New York Times, http://www.nytimes.com/2012/02/17/us/san-francisco-rent-control-and-unintended-consequences.html?_r=1, discusses the perverse consequences of rent control in San Francisco. I would recommend that the document be edited to remove recommendations to repeal ORS 91.225	Gordon Howard, Urban Planning Specialist Community Services Division DLCD	Comment was received.

APPENDIX G - CONTINUED

2016 CDBG Method of Distribution
And
2016 – 2020 Analysis of Impediments
PUBLIC COMMENTS

COMMENT SUMMARY	COMMENTOR OR AGENCY	STATE RESPONSE
Regarding your distillation of my entire paragraph on the matter of CIP homes, the central issue that needs to be clearly stated in the plan comment line, is that when contracts between the 501c3 CIP Housing Management Corporations and DHS expire, many low income special needs population people may be suddenly without housing. Specifically, unless successive new agreements are executed, that continue existing terms between the State of Oregon and CIP Housing Brokers, those units may be sold or used to serve other low income groups than the DD special needs population, or at the very least rent per DD resident may be increased to commercial levels and lease agreements may become a source of conflict between DD Providers and Landlords due to new K-Plan HCBS rules. In order to salvage and retain current Terms, there must be a stream of funds to do ongoing: Remodel work, Repairs, Maintenance, ADA modifications as needed for clients' conditions, and to support ongoing Physical Plant Inspections. That funding stream was part of the Legislative Commitment inherent in the CIP Program, in response to the Settlement Agreement between Federal DOJ and Oregon AJ on the matter on continued use of Institutions to house DD Eligible Persons. Unless new legislation action is introduced and adopted in 2017 that funds these expenses, the CIP Program is in jeopardy.	Lynn Boos Community Services Inc.	Oregon acknowledges the need to develop strategies to preserve CIP homes.
Current restrictions on administrative allowances for CDBG grant administration, especially for environmental and labor standards compliance, are too low and should be raised.	Tillman Carr GEODC	Oregon acknowledges the concern and will evaluate the impact of shifting the allocation balance between program and administrative funds.
Current restrictions on administrative allowances Micro-enterprise grant are too low and should be raised.	Susan Roberts Wallowa County	Oregon acknowledges the concern and will evaluate the impact of shifting the allocation balance between program and administrative funds.
<u>Grant Administration Allowance – 10% up to max $25,000</u> CCD would like to see this allowance be increased – to read "10% up to max $35,000". CCD does CDBG Grant Management for projects, and has for over a decade. We feel that it is time to increase this maximum amount. CCD is	Tracy Loomis CCD	Oregon acknowledges the concern and will evaluate the impact of shifting the allocation balance between program and administrative funds.

committed to travel to project sites for necessary meetings, attend CDBG training when possible, etc., and these costs have increased over the past several years.		
"Under rare circumstances….biological assessments, arch "surveys….allow the recipient to use a portion of the grant administration allowance…" CCD would like this to be eliminated. As Grant Administrator, we are not involved in these assessments/studies – that is decided between the engineer and project owner. It is impossible to budget for CDBG Grant Administration with these unknowns – these assessments/studies are quite expensive. These costs need to come from a different Line Item, whether it be Engineering or something different.	Tracy Loomis CCD	Oregon acknowledges the concern but prefers to leave the language intact for those rare circumstances under which these conditions exist.
Regarding the decrease in funding allocation received from HUD, which decreases the maximum grant awards – CCD would, of course, prefer that there would be no decreases, even if temporary.	Tracy Loomis CCD	Oregon acknowledges the concern and will continue to annually evaluate the balance between increasing demand for CDBG dollars and the decreasing allocation.
Environmental Report: - Review the amount available to complete the report. Possible increase as the amount of work required to complete the reports has increased over the years. - Review if the project/all potential funding source requirements can be included. If not-what is the CFR citation that prohibits this.	Becky Bryant IFA	Oregon acknowledges the concern and will continue to annually evaluate the balance between increasing demand for CDBG dollars and the decreasing allocation.
Grant Administration-I believe it is time to look at the amount of funds that can be used for grant administration	Becky Bryant IFA	Oregon acknowledges the concern and will continue to annually evaluate the balance between increasing demand for CDBG dollars and the decreasing allocation.
In our review of the draft Analysis of Impediments (AI) we appreciate seeing the inclusion of points made in Darcy Strahan's letter dated August 3, 2015 to OHCS in the compilation of public review period comments. While noted in the "comments" section, based on Darcy's letter, that supported housing resources need to be a part of the action plan, it should also note, also in Darcy's letter, that the report misrepresents group homes as the sole option for persons with disabilities (Action item 1-5). We were pleased to read Jaime Daignault's comment that "group homes are not a desired setting for many people living in them or at risk of moving into them for lack of affordable accessible housing." We look forward to the final AI as an important resource in our efforts to provide housing and to further fair housing for the populations we serve.	Susan Lind OHA	Oregon is committed to providing a range of housing options for person with disabilities. Access to affordable housing free from discrimination and increasing the availability of affordable housing, including accessible housing are urgent priorities for Oregon.
Supportive of the analysis and the recommended plan. Oregon On believes that Oregon's laws limit housing opportunity across the state by limiting local jurisdictions ability to use policy and resource tools commonly in use across the	Jon Miller, Oregon ON	There is ongoing discussion about inclusionary zoning in the legislature. OHCS will track the legislation.

US. Oregonians in protected classes are directly impacted by statewide pre-emptions that result in impediments to housing opportunity. Copy of full letter is available at the end of this section.		
CAT provided extensive comments about the AI including several recommendations on how to make the AI stronger. The theme of these comments are that OHCS needs to examine how the state laws banning rent control, permitting no cause evictions, and substandard housing impact housing choice and encourage housing discrimination. Copy of the full letter is available at the end of this section. CAT also suggested there is a need to track displacement and increase both tenant education and legal resources for tenants.	Justin Buri, Community Alliance of Tenants	Oregon will consider the comments submitted by CAT and revise the AI if necessary.

Housing Land Advocates

June 1, 2015

BY E-MAIL AND U.S. MAIL

Lynn Nagasako
DOJ GC Tax & Finance
1162 Court St NE
Salem, OR 97301

RE: State laws that may be in violation of federal fair housing laws

Dear Ms. Nagasako,

Housing Land Advocates is a non-profit organization dedicated to advancing the cause of fair and affordable housing through intelligent land use planning. We understand you have made inquiries as to what Oregon Statutes, if any, might be in violation of federal fair housing laws. We suggest the following:

1. ORS 197.660-.670, relating to "special residences." These statutes were first enacted in 1989, before the enactment by Congress of the Americans with Disabilities Act (ADA). The Oregon statutes were a notable advance and may have been a legislative response to *Mental Health Division v. Lake County*, 17 Or. LUBA 1165 (1989), which was then pending. As good as they were, these statutes were insufficient under the ADA and other similar legislation of that same period:

   Title II of the ADA (42 U.S.C. §23131-12161) provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." Accordingly, zoning as a governmental process, falls within the purview of the ADA.

   The ADA does not stand alone in protecting people with disabilities from discriminatory zoning decisions. The Fair Housing Amendments Act of 1988 (42 U.S.C. §3601) prohibits discrimination against the providers and clients of residential treatment programs. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794) prohibits discrimination by all services that receive federal financial assistance. The ADA expands the protection of the Rehabilitation and Fair Housing acts to include non-residential programs that are privately funded.

   See Local Government Insurance Trust: Discriminatory Zoning at http://www.lgit.org/DocumentCenter/Home/View/303

2. ORS 197.309, prohibiting "inclusionary zoning." Oregon, along with Texas, remains the only two states that prohibit local governments from the use of "inclusionary zoning" in administering land use regulations. This means that local governments may not require developers to set aside a certain number of units or lots for low and moderate-income people. Because of this prohibition, significant tools for housing this income sector (which contains a disproportionately large percentage of minorities, disabled persons, and single-parent families) are precluded from access to housing. We note that there is proposed legislation (HB 2564) that could partly remedy this situation. The state's prohibition against rent control under ORS 91.225 is also being used as a shield against the applicability of inclusionary zoning in new rental housing developments. However, the proposal in HB 2564 that would apply to development of new for sale housing has not yet been enacted.

3. Periodic Review. Periodic Review was once the tool by which local governments were required to keep their plans consistent with the Oregon State-Wide Planning Goals, including the Goal for Housing, which provides:

"To provide for the housing needs of citizens of the state.
Buildable lands for residential use shall be inventoried and plans shall encourage the availability of adequate numbers of needed housing units at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location, type and density."

According to the state's Land Conservation and Development Commission, these statutes are largely a dead letter:

"In 2007, the Oregon Legislature enacted a bill that revised the scope of Periodic Review to include only those cities with a population greater than 10,000. While Statewide Planning Goal 2, Land Use Planning, requires that all local governments' comprehensive plans be maintained and updated, counties and smaller cities are no longer legally obligated to complete the formal statutory requirements for Periodic Review. As part of the 2007 legislative amendments, the scope of Periodic Review was also scaled back to include only the fundamental building blocks of local planning: housing, economic development, transportation, public facilities and services, and urban land supply."

http://www.oregon.gov/lcd/pages/urbanrural.aspx

Aside from the Portland Metro Area, little attention and few resources have been placed into periodic review. As a result, local plans have not kept pace with housing trends nor fulfilled the regulations of a mandatory statewide system for providing housing. Moreover, the failure of the state to enforce periodic review even in those cities required to undertake the process, leaves many cities behind

when it comes to fair housing compliance. Once again, the burden of this indifference and negligence has fallen on those of lower income, the disabled and single-parent families.

We hope this information is useful and provides an understanding of the connection between state regulation and fair housing. Thank you for your consideration.

Sincerely,

Jennifer Bragar
President

GSB:7106017.2 [13046.00117]

Community Alliance of Tenants

2710 NE 14th Avenue, Portland, Oregon 97212

November 9, 2015

Loren Shultz
Infrastructure Financial Authority
Oregon Business Development Department
775 Summer Street, Suite 200
Salem, Oregon 97301

Submitted via email: Loren.Shultz@oregon.gov

To Lauren Shultz:

On behalf of the Community Alliance of Tenants ("CAT") please accept these comments on the State of Oregon's proposed 2016-2020 Analysis of Impediments to Fair Housing Choice ("AI"). CAT's mission is to educate and empower tenants to demand safe, stable and affordable rental homes. We believe that housing is the basis of a strong community, so we bring tenants together to organize and collectively advocate for fair and equal protections in housing practices and policies.

By publishing this proposed AI for comment, the State of Oregon has taken a very important step towards achieving Congress' vision about how the Fair Housing Act should be a tool for creating equal opportunity in our country. The Act requires that federal housing and community development programs be administered in ways that help overcome the problems associated with racial segregation and expand the housing choices available to families in America, regardless of race, color, religion, sex, national origin, familial status or disability. CAT commends the State of Oregon for its research findings, including that persons with disabilities face barriers to housing choice and that discrimination against protected classes persists statewide.

The AI rightfully acknowledges discrimination against group homes, impacting people with disabilities, and the uneven enforcement or occupancy limits, which impact immigrants and refugees. Fair Housing Council of Oregon's recent BOLI cases are listed in the case examples, including some big wins for disabled residents. We commend the recommendation of strong funding of fair housing enforcement and education throughout the state.

CAT applauds the state for including discriminatory screening practices and the statutory ban on inclusionary zoning (IZ). CAT has advocated around these two issues from a fair-housing perspective, and has been working with partners to overturn the statewide preemption on IZ since 2011. In 2012 and '13, CAT advocated for more fair screening practices related to criminal history through the landlord-tenant coalition. We thank you for including these issues in the AI. CAT urges the State to include additional issues that are so far not addressed in the current AI.

In our view, the AI can be made stronger and more effective by addressing the following impediments to fair housing:

- The ban on rent control
- No-cause evictions
- Substandard housing in the private market, especially in rural areas
- Lack of data around displacement and substandard housing
- Lack of tenant education, and legal resources for low-income tenants

Below we explain why these points belong in a complete analysis of impediments.

1. **The ban on rent control.**
    a. While the proposed AI recognizes state law and local practices that create barriers for persons with criminal backgrounds, it does not address other statutory barriers to housing choice for protected classes. ORS 91.225 prohibits rent control. The AI does address the issue of rent control, though it is buried in Appendix A, page 65-66. The prohibition is referred to as "facially neutral" and therefore "it does not create a barrier to fair housing choice recognized by FHAA."
    b. There is authority to respond to this crisis. The City of Portland recently passed an ordinance to deal with the emergency situation for tenants that includes a 90-day notice period for no-cause evictions and on rent increases above 5%. The Portland City Attorney cited the ban on rent control as a barrier for enacting stricter protections around rent increases, beyond this 90-day notice period. This preemption was cited, even though ban is silent on the authority of Oregon jurisdictions to enact their own regulations of longer notice periods for substantial rent increases, beyond the statutory 30-days, in ORS 90.220(7).
    c. Using the test in Section III, page 5, the ban on rent control is a barrier to fair housing. First, the practice results in or would predictably result in, a discriminator effect on the basis of a protected characteristic. We know that households of color and households with disabled persons have median incomes lower than their white counter parts and we encourage the inclusion of this data in AI. We also know that according to the 2013 ACS data that 53.8% of Oregonian renters are rent burdened in that they pay more than 30% of their income towards rent. Persons of color are more likely to be renters than white residents. In Portland, for example, 60.7% of black households, 62.9% of Pacific Islander and 73.3% of Latino households are renters compared to 42.2 % of white (not Hispanic) households. Therefore, barriers in the rental market have a disparate impact on communities of color. According to the survey within the AI, non-white tenants and disabled tenants are reporting that their incomes cannot keep up with the rent at higher rates than white residents who were surveyed. See Section V, page 5 & 19. Throughout the AI, all stakeholders

list the lack of affordable housing as a barrier, some noting that they are seeing more and more households “double up” in order to stay in their desired communities. Unfettered increases in rent have a disparate impact on protected classes, especially race & disability. The current ban on rent control removes one tool to address this problem.

d. “Similar to inclusionary zoning, a ban on rent control affect members of protected classes to the extent that they have a greater need for affordable housing. […] At the very least, Oregon’s state law prohibiting rent control limits the ability of cities and counties in the state to employ policies that can retain affordable housing and prevent displacement.” (Section III, Page 4). As the AI notes, bills have been proposed, such as SB 452, which would have addressed inappropriate rent increases to manufactured home owners (Section III, Page 5). Non-manufactured-housing renters in private-market residential rental housing face similar and often worse rent increases, as they have fewer protections under state law, and already pay a higher portion of their total housing costs to rent.
e. If the practice is necessary to achieve one or more of its substantial, legitimate, nondiscriminatory interests, the interest could be served by practice that has a less discriminatory effect. Here, there is an interest served by less restrictive discriminatory effect. The landlord interest is in profits through raising rents. Removing the rent control prohibition does not in and of itself create rent control. Instead, a rent control statute or local ordinance could take into account inflation and normal increases in cost, while still providing tenants protections from rapid, destabilizing rent increases, which can price out tenants of protected classes, so that they can no longer afford to live in their communities.

2. **No-Cause Evictions.**
   a. Under 90.427, the landlord retains the right to end a periodic tenancy without stated cause. This means that the landlord can terminate a month-to-month rental agreement, or refuse the renew a fixed-term lease, even if the tenant is current on rent and has not violated the lease or Oregon landlord-tenant law. The tenant is often given a 30- or 60-day notice, depending on the length of tenancy. These types of terminations are commonly referred to as a “no-cause eviction.”
   b. CAT is concerned about the proliferation of no-cause evictions and potential FHA violations stemming therefrom. When evictions have disparate impact on protected classes or are pretext for intentional discrimination, they adversely impact housing choices for protected classes.
   c. As with the ban on rent control, local jurisdictions are limited to enact their own protections from no-cause evictions. As with substantial rent increases, the Portland City Attorney recently cited the right of landlord to

evict for no cause as a barrier for enacting stricter protections around no-cause evictions, beyond the new 90-day notice period. This “implicit” preemption was cited, even though the statue is silent on the authority of Oregon jurisdictions to enact their own regulations around evictions protections.

d. Many of the examples cited by Oregon landlord association groups, as to why landlords need to retain this right, is to protect other tenants’ health and safety, which are threatened by criminal activity or lease violations by a neighboring tenant. Examples cited by landlords often include gang activity, violence and threats, prostitution, domestic violence, and illegal drug sales or manufacturing. Although all of these activities are either illegal or lease violations, landlord argue that the inability to prove these violations is a barrier to properly removing the tenant by issuing a “for-cause” termination notice. With a no-cause eviction, the landlord does not have to prove or state a cause, and the tenant has no legal ability to remedy the supposed violation. However, the examples above bear an uncomfortable resemblance to instances of racial profiling that we often hear of on CAT’s Renters Rights Hotline. People of color, especially African Americans and Latinos, are often falsely accused of these activities, or accused of inviting criminal bad actors onto the premises, even when no such activities can be proven or attributed to one particular tenant. Giving landlords full discretion and little accountability in issuing no-cause evictions can have a discriminatory effect, given these circumstances.

b. In the AI, the practice of no-cause evictions is briefly mentioned as a barrier, Section II, page 17, “lower income households are more likely to be adversely affected by shorter-term leases and practices of no cause lease terminations because landlords have a greater incentive to raise prices on low rent properties… This could disproportionately affect protected classes who are more likely to be low income.” CAT has seen in our membership the problem of no cause evictions all too often. A recent building-wide eviction in North Portland forced many long-time tenants of color out of a neighborhood that has already experienced the historical displacement of African Americans and people of color. One of the Latino families who was displaced was not able to secure housing within the 60-day notice period, even with a Housing Choice Voucher (Section 8), and was forced to dispose of their belongings and furniture, to move in with a family member while their search continued.

c. Due to the often-subtle nature of discrimination, this practice deprives tenants of their ability to contest the reason for losing their home and allows discrimination to perpetuate. We have seen the only black tenants receive a no cause notice of termination. No other tenant received a notice but the landlord also never said anything overtly racist. In these situations, the tenants often move and do not report the discrimination because they

feel as though they cannot prove that is why they lost their home. Requiring for-cause evictions would allow the state to better determine and separate the terminations that are based on a just cause versus discrimination.

d. Perhaps the most troubling aspect of no-cause evictions is the threat or fear of a retaliatory eviction by the landlord, when a tenant defends, or expresses intent, to defend his or her rights under Fair Housing and/or Oregon Landlord-Tenant Law. Although technically illegal under 90.385, retaliation is very difficult to prove, and threats of retaliation can take many subtle forms, such as "if you don't like it leave," which is a common example we hear from tenants on the Renters Rights Hotline. Such threats and fears of retaliation can prevent tenants from addressing important issues related to the tenancy, such as repairs and maintenance issues that can have an impact on the tenants' health.

e. CAT recently collaborated with Multnomah County Health Department and through some preliminary data analysis, found that Native Americans, African Americans and people with disabilities were more likely to receive a no-cause eviction[1]. Other research by Matthew Desmond found that in the City of Milwaukee WI, African American women were disproportionately affected by evictions, citing low wages and children as primary reasons for the evictions[2]. However, due to the legal process by which no-cause evictions are issued in Oregon, and a general lack of attention by both academia and government institutions, very little data exists of both the prevalence and potential disparate impact of no-cause evictions.

3. **Substandard housing in the private market**

   a. While the proposed AI recognizes that the condition of subsidized, affordable housing is generally poor in rural areas, the private market provides affordable housing to low-income tenants in low quantities and bad quality in both urban and rural areas. Again, the lack of data around substandard housing is troubling. Data collection is difficult, because it requires the participation of low-income renters, and access to the interior of the rental units, both of which are costly and time intensive. National research that does exist states that "nearly six percent of all rural housing

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[1] Multnomah County Health Department.*Health Effects of End of Tenancy Notice*. Issue brief. Portland: Public Health, 2013. Print.

[2] Desmond, Matthew. *Poor Black Women Are Evicted at Alarming Rates, Setting Off a Chain of Hardship*. Research brief. Chicago: MacArthur Foundation, 2014. How Housing Matters to Families and Communities Research Initiative. *How Housing Matters*. Print. In disadvantaged neighborhoods, eviction is to women what incarceration is to men: incarceration locks men up, while evictions lock women out.

is either moderately or severely substandard. Rural minorities, - who tend to have lower incomes and higher poverty rates – are almost three times more likely to live in substandard housing that white rural residents."[3] While some jurisdictions throughout the Oregon have a rental housing code and enforcement through inspections, most non-entitlement jurisdictions no not, and an inspections program is often the only public resource that would be available to tenants to ensure the health and habitability of their rental housing.

b. CAT organizes private-market apartment buildings in substandard conditions, under the Safe Housing Project, and with Oregon Public Health Institute and other partners, published a Health Impact Assessment (HIA) of Portland's Rental Housing Inspections program. The HIA found that "groups at higher risk of various health problems – particularly communities of color and low-income households – are more likely to live in substandard housing."[4] One of the most significant problems that we find with the issue of private-market substandard housing among low-income tenants, whether rural or urban, is its relative invisibility among affordable housing providers, public agencies and policy makers. Adequate data collection could go along way to address these disparities, and help the state to identify whether or not it is a fair housing issue.

4. Lack of data about displacement and substandard housing

a. Failure to track displacement of protected classes and the number of protected classes living in substandard housing is a barrier to fair housing choice. In Portland, the historically black neighborhoods are being decimated, resulting in a diaspora of the black community. They have landed in lower opportunity communities with poorer housing. Communities of color and people with disabilities in rural areas, and their unique challenges to maintaining housing stability, are often not adequately represented in outreach and data-collection efforts. Further research should focus on this issue, including targeted data collection and analysis of Oregon's protected classes' experiences with housing. Based on CAT's experience, through organizing and our Renters Rights Hotline, members of protected classes have higher levels of vulnerability to displacement – through rent increases, evictions, foreclosure, etc. We cannot adequately identify whether or not displacement is a barrier to

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[3] National Rural Housing Coalition. *Rural America's Rental Housing Crisis*. Washington D.C. 2014. Print. Federal Strategies to Preserve Access to Affordable Rental Housing in Rural Areas

[4] Oregon Public Health Institute, Steve White, Moriah McSherry McGrath Multnomah County Health Department, Community Alliance of Tenants, Metro Multifamily Housing Association, Rental Housing Association of Greater Portland, City of Portland Bureau of Development Services, and City of Portland Housing Bureau. *Rental Housing and Health Equity in Portland, Oregon*. Portland: Oregon Public Health Institute, 2012. Print. A Health Impact Assessment of the City's Rental Housing Inspections Program

affirmatively furthering fair housing, if we don't adequately collect and analyze the data.

5. L**ack of tenant education, and legal resources for low-income tenants.**
    a. Given the large number of tenants and the growing rental market in Oregon, the number of tenants in need of information and legal resources has grown. The Fair Hosing Council of Oregon provides excellent and important information and education throughout the state, through its Hotline and other programs. However, the services that FHCO provides are specific to fair housing law, and not Oregon landlord-tenant law.
    b. Information and education on issues such as repairs, deposits, retaliation, access, and screening practices, often intersect with fair housing violations or issues. Through our Hotline, CAT often flags a potential fair housing issue or violation, and works with the caller to refer the tenant to the right agency or information. Tenants are often unaware that their fair housing rights have been violated, especially if the violation is hidden within a landlord-tenant law issue. Additionally, tenant education can have a great impact in reducing patterns of displacement, substandard housing, and evictions, which, as stated above, all may be barriers to fair housing choice.
    c. When low-income tenants have had their rights violated, they often lack the financial resources to afford a lawyer, and many private lawyers cannot make an adequate living representing low-income tenants, due to the imbalance of Oregon's landlord-tenant law. Legal Aid Services of Oregon, Oregon Law Center, the Oregon Bar Association, and other non-profit legal clinics do exemplary work providing access to legal resources for low-income tenants, but the need is simply too great. More public funds should be invested in legal resources and representation for low-income Oregon tenants, many of which are members of protected classes. The AI should include the lack of adequate tenant education and legal resources as an impediment to housing choice for protected classes.

Thank you for the opportunity to comment on this important document. We look forward to seeing the final Analysis of Impediments published soon, and to working with the State of Oregon to affirmatively further fair housing.

Sincerely,

Justin Buri
Executive Director
Community Alliance of Tenants

OREGON OPPORTUNITY NETWORK

Proven Partners • Thriving Communities • Lasting Value

November 9, 2015

Loren Shultz, Regional Coordinator
775 Summer St. NE, Suite 200
Salem, OR 97301

Dear Loren,

Thank you very much for the opportunity to comment on the State of Oregon 2016-2020 Analysis of Impediments to Fair Housing Choice (AI). On behalf of Oregon Opportunity Network, I applaud the entire team for this excellent and important analysis of the barriers to fair housing across our state.

As always, Oregon ON and our members are eager to assist as partners with the State to provide equitable housing opportunity to vulnerable Oregonians. The AI rightly calls out that discrimination against protected classes persists statewide and that too many Oregonians do not have a safe, decent, affordable place to call home. With over 20,000 children homeless statewide, we are truly facing a crisis.

We are strongly supportive of your analysis and recommended action plan. In particular we'd like to highlight our support for the following recommendations:

- Action item 1-1 (a): *Determine the specific housing needs for persons with disabilities and develop proactive strategies to address the need.* We are eager to help with this important work.
- Action item 3-1 (b): *Provide culturally specific fair housing education and outreach for tribal communities, Spanish speaking communities, new immigrants and persons with limited English proficiency.*

  We greatly admire the work of our friends at the Fair Housing Council of Oregon and the Community Alliance of Tenants; we hope that these and other community-based organizations will continue to be funded and given a central role in education and outreach.
- Action items 4-1 (a-c): *Explore enhancements to the single family bond program; Continue to provide down payment assistance for low income homebuyers; provide focus on home buyers of color; Continue to support funding for Homeownership Centers across Oregon to provide homebuyer education and counseling, and financial education and counseling for low income homebuyers.*

  These are all vital strategies to increase homeownership opportunities in rural areas. We appreciate the Homeownership Workgroup that OHCS has convened, and urge the State to give homeownership additional resources as it looks to support opportunity across the housing continuum.

- *Action item 4-2 (a): Continue discussions with the Oregon Affordable Housing Tax Credit workgroup and partners regarding the Tax Credit, and how this program can be used to provide additional opportunities in rural communities.*

  Oregon ON members have appreciated being part of the workgroup and stand ready to continue to assist with these efforts.

- Action item 5-a: *Consider ways to partner with local jurisdictions to improve housing code enforcement.*

  Substandard, unhealthy and often dangerous housing is a huge issue in the private market. Successful code enforcement programs like the one in Gresham should be replicated statewide.

- Action item 7 (a-d): *Reduce barriers for persons under post-prison supervision and probation to find and maintain affordable housing; Consider funding second chance tenant training programs and landlord guarantee programs; Examine the effectiveness of reentry programs, etc.*

  As part of the gradual shift to inter-agency alignment and coordination between OHCS and other state agencies like Corrections, Oregon ON would welcome any opportunities to participate in conversations and solutions around re-entry housing.

Finally, regarding Research Finding #6, *Oregon's state laws <u>may</u> limit the ability of cities and counties to employ programs that are known to create a significant amount of affordable units in many other jurisdictions*:

We believe that Oregon's laws **absolutely do** limit housing opportunity across the state by limiting local jurisdictions' ability to use policy and resource tools commonly in use across the United States. Oregonians in protected classes are directly impacted by statewide pre-emptions that result in impediments to housing opportunity – not just Inclusionary Zoning, but also the ban on rent control and the constitutional ban on real estate transfer taxes. In addition, no-cause evictions are unfairly creating havoc for vulnerable tenants not just in Portland but across the state.

Thank you very much for your consideration of these comments, for all the excellent work in putting this massive document together, and most of all the State's urgency and call to action for housing opportunity.

Sincerely,

John Miller
Executive Director

FEDERAL REGISTER

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Part IV

Department of Housing and Urban Development

24 CFR Part 100

Implementation of the Fair Housing Act's Discriminatory Effects Standard; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 100

[Docket No. FR–5508–F–02]

RIN 2529–AA96

Implementation of the Fair Housing Act's Discriminatory Effects Standard

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Final rule.

SUMMARY: Title VIII of the Civil Rights Act of 1968, as amended (Fair Housing Act or Act), prohibits discrimination in the sale, rental, or financing of dwellings and in other housing-related activities on the basis of race, color, religion, sex, disability, familial status, or national origin.[1] HUD, which is statutorily charged with the authority and responsibility for interpreting and enforcing the Fair Housing Act and with the power to make rules implementing the Act, has long interpreted the Act to prohibit practices with an unjustified discriminatory effect, regardless of whether there was an intent to discriminate. The eleven federal courts of appeals that have ruled on this issue agree with this interpretation. While HUD and every federal appellate court to have ruled on the issue have determined that liability under the Act may be established through proof of discriminatory effects, the statute itself does not specify a standard for proving a discriminatory effects violation. As a result, although HUD and courts are in agreement that practices with discriminatory effects may violate the Fair Housing Act, there has been some minor variation in the application of the discriminatory effects standard.

Through this final rule, HUD formalizes its long-held recognition of discriminatory effects liability under the Act and, for purposes of providing consistency nationwide, formalizes a burden-shifting test for determining whether a given practice has an unjustified discriminatory effect, leading to liability under the Act. This final rule also adds to, and revises, illustrations of discriminatory housing practices found in HUD's Fair Housing Act regulations. This final rule follows a November 16, 2011, proposed rule and takes into consideration comments received on that proposed rule.

[1] This preamble uses the term ''disability'' to refer to what the Act and its implementing regulations term a ''handicap.'' Both terms have the same legal meaning. *See Bragdon* v. *Abbott,* 524 U.S. 624, 631 (1998).

DATES: *Effective Date:* March 18, 2013.

FOR FURTHER INFORMATION CONTACT: Jeanine Worden, Associate General Counsel for Fair Housing, Office of General Counsel, U.S. Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410–0500, telephone number 202–402–5188. Persons who are deaf, are hard of hearing, or have speech impairments may contact this phone number via TTY by calling the Federal Relay Service at 800–877–8399.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of Regulatory Action

Need for the Regulation. This regulation is needed to formalize HUD's long-held interpretation of the availability of ''discriminatory effects'' liability under the Fair Housing Act, 42 U.S.C. 3601 *et seq.,* and to provide nationwide consistency in the application of that form of liability. HUD, through its longstanding interpretation of the Act, and the eleven federal courts of appeals that have addressed the issue agree that liability under the Fair Housing Act may arise from a facially neutral practice that has a discriminatory effect. The twelfth court of appeals has assumed that the Fair Housing Act includes discriminatory effects liability, but has not decided the issue. Through four decades of case-by-case application of the Fair Housing Act's discriminatory effects standard by HUD and the courts, a small degree of variation has developed in the methodology of proving a claim of discriminatory effects liability. This inconsistency threatens to create uncertainty as to how parties' conduct will be evaluated. This rule formally establishes a three-part burden-shifting test currently used by HUD and most federal courts, thereby providing greater clarity and predictability for all parties engaged in housing transactions as to how the discriminatory effects standard applies.

How the Rule Meets the Need. This rule serves the need described above by establishing a consistent standard for assessing claims that a facially neutral practice violates the Fair Housing Act and by incorporating that standard in HUD's existing Fair Housing Act regulations at 24 CFR 100.500. By formalizing the three-part burden-shifting test for proving such liability under the Fair Housing Act, the rule provides for consistent and predictable application of the test on a national basis. It also offers clarity to persons seeking housing and persons engaged in housing transactions as to how to assess potential claims involving discriminatory effects.

Legal Authority for the Regulation. The legal authority for the regulation is found in the Fair Housing Act. Specifically, section 808(a) of the Act gives the Secretary of HUD the ''authority and responsibility for administering this Act.'' (42 U.S.C. 3608(a)). In addition, section 815 of the Act provides that ''[t]he Secretary may make rules (including rules for the collection, maintenance, and analysis of appropriate data) to carry out this title. The Secretary shall give public notice and opportunity for comment with respect to all rules made under this section.'' (42 U.S.C. 3614a.) HUD also has general rulemaking authority, under the Department of Housing and Urban Development Act, to make such rules and regulations as may be necessary to carry out its functions, powers, and duties. (See 42 U.S.C. 3535(d).)

B. Summary of the Major Provisions

This rule formally establishes the three-part burden-shifting test for determining when a practice with a discriminatory effect violates the Fair Housing Act. Under this test, the charging party or plaintiff first bears the burden of proving its prima facie case that a practice results in, or would predictably result in, a discriminatory effect on the basis of a protected characteristic. If the charging party or plaintiff proves a prima facie case, the burden of proof shifts to the respondent or defendant to prove that the challenged practice is necessary to achieve one or more of its substantial, legitimate, nondiscriminatory interests. If the respondent or defendant satisfies this burden, then the charging party or plaintiff may still establish liability by proving that the substantial, legitimate, nondiscriminatory interest could be served by a practice that has a less discriminatory effect.

This rule also adds and revises illustrations of practices that violate the Act through intentional discrimination or through a discriminatory effect under the standards outlined in § 100.500.

C. Costs and Benefits

Because the rule does not change decades-old substantive law articulated by HUD and the courts, but rather formalizes a clear, consistent, nationwide standard for litigating discriminatory effects cases under the Fair Housing Act,[2] it adds no additional costs to housing providers and others engaged in housing transactions. Rather,

[2] *See* nn. 12, 28, *supra,* discussing HUD administrative decisions and federal court rulings.

the rule will simplify compliance with the Fair Housing Act's discriminatory effects standard and decrease litigation associated with such claims by clearly allocating the burdens of proof and how such burdens are to be met.

II. Background

The Fair Housing Act was enacted in 1968 (Pub. L. 90–284, codified at 42 U.S.C. 3601–3619, 3631) to combat and prevent segregation and discrimination in housing, including in the sale or rental of housing and the provision of advertising, lending, and brokerage services related to housing. The Fair Housing Act's ''Declaration of Policy'' specifies that ''[i]t is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.'' [3] Congress considered the realization of this policy ''to be of the highest priority.'' [4] The Fair Housing Act's language prohibiting discrimination in housing is ''broad and inclusive;'' [5] the purpose of its reach is to replace segregated neighborhoods with ''truly integrated and balanced living patterns.'' [6] In commemorating the 40th anniversary of the Fair Housing Act and the 20th anniversary of the Fair Housing Amendments Act, the House of Representatives reiterated that ''the intent of Congress in passing the Fair Housing Act was broad and inclusive, to advance equal opportunity in housing and achieve racial integration for the benefit of all people in the United States.'' [7] (See the preamble to the November 16, 2011, proposed rule at 76 FR 70922.)

The Fair Housing Act gives HUD the authority and responsibility for administering and enforcing the Act,[8] including the authority to conduct formal adjudications of Fair Housing Act complaints [9] and the power to promulgate rules to interpret and carry out the Act.[10] In keeping with the Act's ''broad remedial intent,'' [11] HUD, as the following discussion reflects, has long interpreted the Act to prohibit practices that have an unjustified discriminatory effect, regardless of intent. (See also the preamble to the November 16, 2011, proposed rule at 76 FR 70922–23.)

In formal adjudications of charges of discrimination under the Fair Housing Act over the past 20 years, HUD has consistently concluded that the Act is violated by facially neutral practices that have an unjustified discriminatory effect on the basis of a protected characteristic, regardless of intent.[12] In one such formal adjudication, the Secretary of HUD reviewed the initial decision of a HUD administrative law judge and issued a final order stating that practices with an unjustified discriminatory effect violate the Act. In that case, the Secretary found that a mobile home community's occupancy limit of three persons per dwelling had a discriminatory effect on families with children.[13] When the housing provider appealed the Secretary's order to the United States Court of Appeals for the Tenth Circuit, the Secretary of HUD defended his order, arguing that statistics showed that the housing policy, while neutral on its face, had a discriminatory effect on families with children because it served to exclude them at more than four times the rate of families without children.[14] Similarly, on appeal of another final agency decision holding that a housing policy had a disparate impact on families with children,[15] the Secretary of HUD, in his brief defending the decision before the United States Court of Appeals for the Ninth Circuit, discussed in detail the text and legislative history of the Act, as well as prior pronouncements by HUD that proof of discriminatory intent is not required to establish liability under the Act.[16]

HUD has interpreted the Act to include discriminatory effects liability not only in formal adjudications, but through various other means as well. In 1980, for example, Senator Charles Mathias read into the Congressional Record a letter that the Senator had received from the HUD Secretary describing discriminatory effects liability under the Act and explaining that such liability is ''imperative to the success of civil rights law enforcement.'' [17] In 1994, HUD joined with the Department of Justice and nine other federal regulatory and enforcement agencies in approving and adopting a policy statement that, among other things, recognized that disparate impact is among the ''methods of proof of lending discrimination under the * * * [Fair Housing] Act.'' [18] In this Policy Statement on Discrimination in Lending (Joint Policy Statement), HUD and the other regulatory and enforcement agencies recognized that ''[p]olicies and practices that are neutral on their face and that are applied equally may still, on a prohibited basis, disproportionately and adversely affect a person's access to credit,'' and provided guidance on how to prove a disparate impact fair lending claim.[19]

Additionally, HUD's interpretation of the Act is further confirmed by regulations implementing the Federal Housing Enterprises Financial Safety and Soundness Act (FHEFSSA), in which HUD prohibited Fannie Mae and Freddie Mac from engaging in mortgage purchase activities that have a discriminatory effect in violation of FHEFSSA.[20] In addressing a concern for how the impact theory might operate under FHEFFSA, HUD explained that ''the disparate impact (or discriminatory effect) theory is firmly established by Fair Housing Act case law'' and concluded that this Fair Housing Act disparate impact law ''is applicable to all segments of the housing marketplace, including the GSEs'' (government-sponsored enterprises).[21] In

[3] 42 U.S.C. 3601.

[4] *Trafficante* v. *Metro. Life Ins. Co.,* 409 U.S. 205, 211 (1972) (internal citation omitted).

[5] Id. at 209.

[6] Id. at 211.

[7] H. Res. 1095, 110th Cong., 2d Sess., 154 Cong. Rec. H2280–01 (April 15, 2008) (2008 WL 1733432).

[8] *See* 42 U.S.C. 3608(a).

[9] *See* 42 U.S.C. 3610, 3612.

[10] *See* 42 U.S.C. 3614a.

[11] *Havens Realty Corp.* v. *Coleman,* 455 U.S. 363, 380 (1982).

[12] *See, e.g., HUD* v. *Twinbrook Village Apts.,* No. 02–00025600–0256–8, 2001 WL 1632533, at *17 (HUD ALJ Nov. 9, 2001) (''A violation of the [Act] may be premised on a theory of disparate impact.''); *HUD* v. *Carlson,* No. 08–91–0077–1, 1995 WL 365009 (HUD ALJ June 12, 1995) (''A policy or practice that is neutral on its face may be found to be violative of the Act if the record establishes a prima facie case that the policy or practice has a disparate impact on members of a protected class, and the Respondent cannot prove that the policy is justified by business necessity.''); *HUD* v. *Ross,* No. 01–92–0466–18, 1994 WL 326437, at *5 (HUD ALJ July 7, 1994) (''Absent a showing of business necessity, facially neutral policies which have a discriminatory impact on a protected class violate the Act.''); *HUD* v. *Carter,* No. 03–90–0058–1, 1992 WL 406520, at *5 (HUD ALJ May 1, 1992) (''The application of the discriminatory effects standard in cases under the Fair Housing Act is well established.'').

[13] *HUD* v. *Mountain Side Mobile Estates P'ship,* No. 08–92–0010–1, 1993 WL 307069 (HUD Sec'y July 19, 1993), aff'd in relevant part, 56 F.3d 1243 (10th Cir. 1995).

[14] Brief for HUD Secretary as Respondent, *Mountain Side Mobile Estates P'ship* v. *HUD,* No. 94–9509 (10th Cir. 1994).

[15] *HUD* v. *Pfaff,* No. 10–93–0084–8, 1994 WL 592199, at *17 (HUD ALJ Oct. 27, 1994), rev'd on other grounds, 88 F.3d 739 (9th Cir. 1996).

[16] Brief for HUD Secretary as Respondent, *Pfaff* v. *HUD,* No. 94–70898 (9th Cir. 1996).

[17] 126 Cong. Rec. 31,166–31,167 (1980) (statement of Sen. Mathias reading into the record letter of HUD Secretary).

[18] Policy Statement on Discrimination in Lending, 59 FR 18266, 18269 (Apr. 15, 1994) (''Joint Policy Statement'').

[19] *Id.*

[20] *See* 24 CFR 81.42 (2012).

[21] The Secretary of HUD's Regulation of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), 60 FR 61846, 61867 (Dec. 1, 1995).

promulgating this regulation, HUD also emphasized the importance of the Joint Policy Statement, explaining that ''[a]ll the Federal financial regulatory and enforcement agencies recognize the role that disparate impact analysis plays in scrutiny of mortgage lending'' and have ''jointly recognized the disparate impact standard as a means of proving lending discrimination under the Fair Housing Act.'' [22]

Consistent with its longstanding interpretation of the Act, over the past two decades, HUD has regularly issued guidance to its staff that recognizes the discriminatory effects theory of liability under the Act. For instance, HUD's Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) issued a memorandum in 1993 instructing HUD investigators to be sure to analyze complaints under the disparate impact theory of liability.[23] HUD's 1995 Title VIII Complaint Intake, Investigation and Conciliation Handbook (Enforcement Handbook), which set forth guidelines for investigating and resolving Fair Housing Act complaints, emphasized to HUD's enforcement staff that disparate impact is one of ''the principal theories of discrimination'' under the Fair Housing Act and required HUD investigators to apply it when appropriate.[24] HUD's 1998 version of the Enforcement Handbook, which is currently in effect, also recognizes the discriminatory effects theory of liability and requires HUD investigators to apply it in appropriate cases nationwide.[25]

In 1998, at Congress's direction, HUD published in the **Federal Register** previously-internal guidance from 1991 explaining when occupancy limits may violate the Act's prohibition of discrimination because of familial status, premised on the application of disparate impact liability.[26] More recently, HUD posted on its Web site guidance to its staff and others discussing how facially neutral housing policies addressing domestic violence can have a disparate impact on women in violation of the Act.[27]

Although several of the HUD administrative decisions, federal court holdings, and HUD and other federal agency public pronouncements on the discriminatory effects standard just noted were discussed in the preamble to HUD's November 16, 2011, proposed rule, HUD has described these events in the preamble to this final rule to underscore that this rule is not establishing new substantive law. Rather, this final rule embodies law that has been in place for almost four decades and that has consistently been applied, with minor variations, by HUD, the Justice Department and nine other federal agencies, and federal courts. In this regard, HUD emphasizes that the title of this rulemaking, ''Implementation of the Fair Housing Act's Discriminatory Effects Standard,'' indicates that HUD is not proposing new law in this area.

As discussed in the preamble to the proposed rule (76 FR 70921, 70923), all federal courts of appeals to have addressed the question agree that liability under the Act may be established based on a showing that a neutral policy or practice has a discriminatory effect even if such a policy or practice was not adopted for a discriminatory purpose.[28] There is minor variation, however, in how evidence has been analyzed pursuant to this theory. For example, in adjudications, HUD has always used a three-step burden-shifting approach,[29] as do many federal courts of appeals.[30] One federal court of appeals applies a multi-factor balancing test,[31] other courts of appeals apply a hybrid between the two,[32] and one court of appeals applies a different test for public and private defendants.[33]

Another source of variation in existing law is in the application of the burden-shifting test. Under the three-step burden-shifting approach applied by HUD and the courts, the plaintiff (or, in administrative adjudications, the charging party) first must make a prima facie showing of either a disparate impact or a segregative effect. If the discriminatory effect is shown, the burden of proof shifts to the defendant (or respondent) to justify its actions. If the defendant (or respondent) satisfies its burden, the third step comes into play. There has been a difference of approach among the various appellate courts and HUD adjudicators as to which party bears the burden of proof at this third step, which requires proof as to whether or not a less discriminatory alternative to the challenged practice exists. All but one of the federal courts of appeals that use a burden-shifting approach place the ultimate burden of proving that a less discriminatory alternative exists on the plaintiff,[34] with some courts analogizing to the burden-shifting framework established for Title VII of the Civil Rights Act of 1964 (Title VII), which addresses employment discrimination.[35] The remaining court of appeals places the burden on the

[22] *Id.*

[23] Memorandum from the HUD Assistant Secretary for Fair Housing & Equal Opportunity, The Applicability of Disparate Impact Analysis to Fair Housing Cases (Dec. 17, 1993).

[24] HUD, No. 8024.1, *Title VIII Complaint Intake, Investigation & Conciliation Handbook* at 7–12 (1995).

[25] HUD, No. 8024.1, *Title VIII Complaint Intake, Investigation & Conciliation Handbook* at 2–27 (1998) (''a respondent may be held liable for violating the Fair Housing Act even if his action against the complainant was not even partly motivated by illegal considerations''); *id.* at 2–27 to 2–45 (HUD guidelines for investigating a disparate impact claim and establishing its elements).

[26] *See* 63 FR 70256 (Dec. 18, 1998) (publishing ''Keating Memo'' regarding reasonable occupancy standards); Quality Housing and Work Responsibility Act of 1998, Public Law 105–276, 112 Stat. 2461, § 589 (Oct. 21, 1998) (requiring publication of Keating Memo).

[27] Memorandum from HUD Office of Fair Housing & Equal Opportunity, Assessing Claims of Housing Discrimination Under the Fair Housing Act & the Violence Against Women Act 5–6 (Feb. 9, 2011). *http://www.hud.gov/offices/fheo/library/11-domestic-violence-memo-with-attachment.pdf.*

[28] *See, e.g., Graoch Assocs. #33, L.P.* v. *Louisville/Jefferson Cnty. Metro Human Relations Comm'n,* 508 F.3d 366, 374–78 (6th Cir. 2007); *Reinhart* v. *Lincoln Cnty.,* 482 F.3d 1225, 1229 (10th Cir. 2007); *Hallmark Developers, Inc.* v. *Fulton County, Ga.,* 466 F.3d 1276, 1286 (11th Cir. 2006); *Charleston Hous. Auth.* v. *U.S. Dep't of Agric.,* 419 F.3d 729, 740–41 (8th Cir. 2005); *Langlois* v. *Abington Hous. Auth.,* 207 F.3d 43, 49–50 (1st Cir. 2000); *Simms* v. *First Gibraltar Bank,* 83 F.3d 1546, 1555 (5th Cir. 1996); *Jackson* v. *Okaloosa Cnty., Fla.,* 21 F.3d 1531, 1543 (11th Cir. 1994); *Keith* v. *Volpe,* 858 F.2d 467, 484 (9th Cir. 1988); *Huntington Branch, NAACP* v. *Town of Huntington,* 844 F.2d 926, 937–38 (2d Cir. 1988), aff'd, 488 U.S. 15 (1988) (per curiam); *Resident Advisory Bd.* v. *Rizzo,* 564 F.2d 126, 148 (3d Cir. 1977); *Betsey* v. *Turtle Creek Assocs.,* 736 F.2d 983, 987–89 & n.3 (4th Cir. 1984); *Metro. Hous. Dev. Corp.* v. *Vill. of Arlington Heights,* 558 F.2d 1283, 1290–91 (7th Cir. 1977); *United States.* v. *City of Black Jack,* 508 F.2d 1179, 1184–86 (8th Cir. 1974).

[29] *See, e.g., HUD* v. *Twinbrook Village Apts.,* No. 02–00025600–0256–8, 2001 WL 1632533, at *17 (HUD ALJ Nov. 9, 2001); *HUD* v. *Pfaff,* 1994 WL 592199, at *8 (HUD ALJ Oct. 27, 1994) rev'd on other grounds, 88 F.3d 739 (9th Cir. 1996); *HUD* v. *Mountain Side Mobile Estates P'ship,* 1993 WL 367102, at *6 (HUD ALJ Sept. 20, 1993); *HUD* v. *Carter,* 1992 WL 406520, at *6 (HUD ALJ May 1, 1992); *see also* Joint Policy Statement, 59 FR 18269.

[30] *See, e.g., Charleston,* 419 F.3d at 740–42; *Langlois,* 207 F.3d at 49–50; *Huntington Branch,* 844 F.2d at 939.

[31] *See, e.g., Metro. Hous. Dev. Corp.,* 558 F.2d at 1290 (applying a four-factor balancing test).

[32] *See, e.g., Graoch,* 508 F.3d at 373 (balancing test incorporated as elements of proof after second step of burden-shifting framework); *Mountain Side Mobile Estates* v. *Sec'y HUD,* 56 F.3d 1243, 1252, 1254 (10th Cir. 1995) (incorporating a three-factor balancing test into the burden-shifting framework to weigh defendant's justification);.

[33] The Fourth Circuit has applied a four-factor balancing test to public defendants and a burden-shifting approach to private defendants. *See, e.g., Betsey* v. *Turtle Creek Assocs.,* 736 F.2d 983, 989 n.5 (4th Cir. 1984).

[34] *Compare Mt. Holly Gardens Citizens in Action, Inc.* v. *Twp. of Mount Holly,* 658 F.3d 375, 382 (3d Cir. 2011) (burden of proving less discriminatory alternative ultimately on plaintiff), *and Gallagher* v. *Magner,* 619 F.3d 823, 834 (8th Cir. 2010) (same), *and Graoch,* 508 F.3d at 373–74 (same), *and Mountain Side Mobile Estates,* 56 F.3d at 1254 (same), *with Huntington Branch,* 844 F.2d at 939 (burden of proving no less discriminatory alternative exists on defendant).

[35] *See, e.g., Graoch,* 508 F.3d at 373 (''[C]laims under Title VII and the [Fair Housing Act] generally should receive similar treatment'').

defendant to show that no less discriminatory alternative to the challenged practice exists.[36] HUD's administrative law judges have, at times, placed this burden of proof concerning a less discriminatory alternative on the respondent and, at other times, on the charging party.[37]

Through this rulemaking and interpretative authority under the Act, HUD formalizes its longstanding view that discriminatory effects liability is available under the Act and establishes uniform standards for determining when a practice with a discriminatory effect violates the Fair Housing Act.

III. The November 16, 2011, Proposed Rule

On November 16, 2011, HUD published a proposed rule in the **Federal Register** (76 FR 70921) addressing the discriminatory effects theory of liability under the Act. Specifically, HUD proposed adding a new subpart G to 24 CFR part 100, which would formalize the longstanding position held by HUD and the federal courts that the Fair Housing Act may be violated by a housing practice that has a discriminatory effect, regardless of whether the practice was adopted for a discriminatory purpose, and would establish uniform standards for determining when such a practice violates the Act.

In the proposed rule, HUD defined a housing practice with a ''discriminatory effect'' as one that ''actually or predictably: (1) Results in a disparate impact on a group of persons on the basis of race, color, religion, sex, handicap, familial status, or national origin; or (2) Has the effect of creating, perpetuating, or increasing segregated housing patterns on the basis of race, color, religion, sex, handicap, familial status, or national origin.''

A housing practice with a discriminatory effect would still be lawful if supported by a ''legally sufficient justification.'' HUD proposed that a ''legally sufficient justification'' exists where the challenged housing practice: (1) Has a necessary and manifest relationship to one or more legitimate, nondiscriminatory interests of the respondent or defendant; and (2) those interests cannot be served by another practice that has a less discriminatory effect.

Consistent with its own past practice and that of many federal courts, HUD proposed a burden-shifting framework for determining whether liability exists under a discriminatory effects theory. Under the proposed burden-shifting approach, the charging party or plaintiff in an adjudication first bears the burden of proving that a challenged practice causes a discriminatory effect. If the charging party or plaintiff meets this burden, the burden of proof shifts to the respondent or defendant to prove that the challenged practice has a necessary and manifest relationship to one or more of its legitimate, nondiscriminatory interests. If the respondent or defendant satisfies this burden, the charging party or plaintiff may still establish liability by demonstrating that the legitimate, nondiscriminatory interest can be served by another practice that has a less discriminatory effect.

In the proposed rule, HUD explained that violations of various provisions of the Act may be established by proof of discriminatory effects, including 42 U.S.C. 3604(a), 3604(b), 3604(f)(1), 3604(f)(2), 3605, and 3606 (see 76 FR 70923 n.20), and that discriminatory effects liability applies to both public and private entities (see 76 FR 70924 n.40).

HUD also proposed to revise 24 CFR part 100 to add examples of practices that may violate the Act under the discriminatory effects theory.

IV. Changes Made at the Final Rule Stage

In response to public comment, a discussion of which is presented in the following section, and in further consideration of issues addressed at the proposed rule stage, HUD is making the following changes at this final rule stage:

A. Changes to Subpart G

The final rule makes several minor revisions to subpart G in the proposed rule for clarity. The final rule changes ''housing practice'' to ''practice'' throughout proposed subpart G to make clear that the standards set forth in subpart G are not limited to the practices addressed in subpart B, which is titled ''Discriminatory Housing Practices.'' The final rule replaces ''under this subpart'' with ''under the Fair Housing Act'' because subpart G outlines evidentiary standards for proving liability under the Fair Housing Act. The final rule also replaces the general phrase ''prohibited intent'' with the more specific ''discriminatory intent.''

The final rule slightly revises the definition of discriminatory effect found in proposed § 100.500(a), without changing its meaning, to condense the definition and make it more consistent with terminology used in case law. Proposed § 100.500(a) provided that ''[a] housing practice has a discriminatory effect where it actually or predictably: (1) Results in a disparate impact on a group of persons on the basis of race, color, religion, sex, handicap, familial status, or national origin; or (2) Has the effect of creating, perpetuating, or increasing segregated housing patterns on the basis of race, color, religion, sex, handicap, familial status, or national origin.'' Final § 100.500(a) provides that ''[a] practice has a discriminatory effect where it actually or predictably results in a disparate impact on a group of persons or creates, increases, reinforces, or perpetuates segregated housing patterns because of race, color, religion, sex, handicap, familial status, or national origin.''

To clarify ''legally sufficient justification'' and in particular, what HUD meant in the proposed rule by ''a necessary and manifest relationship to one or more legitimate, nondiscriminatory interests,'' HUD is revising the definition found in proposed § 100.500(b) to read as follows: ''(1) A legally sufficient justification exists where the challenged practice:

(i) Is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests of the respondent, with respect to claims brought under 42 U.S.C. 3612, or defendant, with respect to claims brought under 42 U.S.C. 3613 or 3614; and (ii) Those interests could not be served by another practice that has a less discriminatory effect. (2) A legally sufficient justification must be supported by evidence and may not be hypothetical or speculative * * *.'' This revision to the definition of ''legally sufficient justification'' includes changing ''cannot be served,'' the phrasing used in the proposed rule, to ''could not be served.''

This revised definition of ''legally sufficient justification'' also appears in § 100.500(c)(2) and, in essentially the same form, in § 100.500(c)(3). The final rule also replaces the word ''demonstrating'' with ''proving'' in § 100.500(c)(3) in order to make clear that the burden found in that section is one of proof, not production.

In addition to these changes, the final rule makes several minor corrections to § 100.500. The final rule substitutes ''42

[36] *Huntington Branch,* 844 F.2d at 939.

[37] *Compare, e.g., HUD* v. *Carter,* 1992 WL 406520, at *6 (HUD ALJ May 1, 1992) (respondent bears the burden of showing that no less discriminatory alternative exists), *and HUD* v. *Twinbrook Village Apts.,* 2001 WL 1632533, at *17 (HUD ALJ Nov. 9, 2001) (same), *with HUD* v. *Mountain Side Mobile Estates P'ship,* 1993 WL 367102, at *6 (charging party bears the burden of showing that a less discriminatory alternative exists), *and HUD* v. *Pfaff,* 1994 WL 592199, at *8 (HUD ALJ Oct. 27, 1994) (same).

U.S.C. 3610'' with ''42 U.S.C. 3612'' in § 100.500(c)(1) because the procedures for a formal adjudication under the Act are found in 42 U.S.C. 3612. Also in § 100.500(c)(1), the final rule changes ''proving that a challenged practice causes a discriminatory effect'' to ''proving that a challenged practice caused or predictably will cause a discriminatory effect.'' This edit is required for consistency with the Fair Housing Act and § 100.500(a), which prohibit actions that predictably result in discrimination.

The final rule further corrects proposed § 100.500(c)(1) and (2) to replace ''complainant'' with ''charging party'' because in cases tried before HUD administrative law judges, the charging party—and not the complainant—has the same burden of proof as a plaintiff in court. Under the provisions of the Act governing adjudication of administrative complaints, an aggrieved person may file a complaint with the Secretary alleging a discriminatory housing practice, or the Secretary may file such a complaint,[38] but it is the Secretary who issues the charge of discrimination and prosecutes the case before the Administrative Law Judge, on behalf of the aggrieved person.[39] Any aggrieved person may intervene as a party in the proceeding,[40] in which case the intervener would bear the same burden of proof as the charging party or a plaintiff in a judicial action.

B. Changes to Illustrations

The illustrations added in this rule, as well as the existing illustrations in part 100, represent HUD's interpretation of conduct that is illegal housing discrimination under the Fair Housing Act. Liability can be established for the conduct illustrated in part 100 through evidence of intentional discrimination, or based on discriminatory effects pursuant to the standards set forth in subpart G, depending on the nature of the potential violation.

In order to make clear that the Fair Housing Act violations illustrated in part 100 may be proven through evidence of intentional discrimination or discriminatory effects, as the evidence permits, and that any potential discriminatory effects violation must be assessed pursuant to the standards set forth in § 100.500, the final rule amends paragraph (b) of § 100.5 to add at the end the following sentence: ''The illustrations of unlawful housing discrimination in this part may be established by a practice's discriminatory effect, even if not motivated by discriminatory intent, consistent with the standards outlined in § 100.500.''

The final rule revises the illustrations of discriminatory housing practices in the proposed rule, rephrasing them in more general terms. The language of the added illustrations, which in the proposed rule included paraphrasing the definition of discriminatory effect from subpart G, is revised to eliminate the paraphrasing, which is unnecessary after the addition to paragraph (b) of § 100.5. This revision is also intended to eliminate any potential negative implication from the proposed rule that the existing illustrations in part 100 could not be proven through an effects theory. In addition to this general streamlining of the illustrations in the proposed rule, the final rule makes the following specific revisions to the illustrations.

In order to avoid redundancy in HUD's Fair Housing Act regulations, this final rule eliminates proposed § 100.65(b)(6). The substance of proposed § 100.65(b)(6), which covers ''Providing different, limited, or no governmental services such as water, sewer, or garbage collection'' is already captured by existing § 100.65(b)(4), which prohibits ''Limiting the use of privileges, services, or facilities associated with a dwelling,'' and existing § 100.70(d)(4), which prohibits ''Refusing to provide municipal services * * * for dwellings or providing such services differently.''

In response to public comment, the final rule adds ''enacting'' and ''ordinance'' to § 100.70(d)(5). These changes confirm that an ordinance is one type of land-use decision that is covered by the Act, under a theory of intentional discrimination or discriminatory effect, and that land-use decisions may discriminate from the moment of enactment. This final rule therefore revises proposed § 100.70(d)(5) to give the following as an illustration of a prohibited practice: ''Enacting or implementing land-use rules, ordinances, policies, or procedures that restrict or deny housing opportunities or otherwise make unavailable or deny dwellings to persons because of race, color, religion, sex, handicap, familial status, or national origin.'' The final rule removes ''cost'' and ''terms or conditions'' from proposed § 100.120(b)(2) and adds them to § 100.130. This revision is not intended to make any substantive changes to HUD's interpretation of the Act's coverage, but rather is for organizational purposes only: § 100.120 addresses discrimination in the making and provision of loans and other financial assistance, while § 100.130 addresses discriminatory terms or conditions. Other minor streamlining changes are made to existing § 100.120(b). Accordingly, this final rule revises § 100.120(b) to read as set forth in the regulatory text of the rule.

The final rule amends existing § 100.130(b)(2) to add ''or conditions'' and the term ''cost'' to the list of potentially discriminatory terms or conditions of loans or other financial assistance. It also adds new § 100.130(b)(3), which, in response to a public comment, illustrates that servicing is a condition of loans or other financial assistance covered by section 805.[41] Because, as noted above, at the final rule stage ''terms and conditions'' is removed from proposed § 100.120(b)(2), new § 100.130(b)(3) also addresses the provision of loans or other financial assistance with terms or conditions that have a discriminatory intent or effect. As a result of these changes, new § 100.130(b)(3) reads as follows: ''Servicing of loans or other financial assistance with respect to dwellings in a manner that discriminates, or servicing of loans or other financial assistance which are secured by residential real estate in a manner that discriminates, or providing such loans or financial assistance with other terms or conditions that discriminate, because of race, color, religion, sex, handicap, familial status, or national origin.''

V. The Public Comments

The public comment period for the November 16, 2011, proposed rule closed on January 17, 2012. Ninety-six public comments were received in response to the proposed rule. Comments were submitted by a wide variety of interested entities, including individuals, fair housing and legal aid organizations, state and local fair housing agencies, Attorneys General from several States, state housing finance agencies, public housing agencies, public housing trade associations, insurance companies, mortgage lenders, credit unions, banking trade associations, real estate agents, and law firms.[42] This section of the preamble, which addresses significant issues raised in the public

[38] 42 U.S.C. 3610(a)(1)(A).

[39] 42 U.S.C. 3610(g)(2)(A), 3612.

[40] 42 U.S.C. 3612(c).

[41] 42 U.S.C. 3605. Discrimination in residential mortgage servicing may also violate section 804 of the Act, 42 U.S.C. 3604.

[42] All public comments on this rule can be found at *www.regulations.gov,* specifically at *http://www.regulations.gov/#!searchResults;rpp=50;po=0;dktid=HUD-2011-0138.*

comments, organizes the comments by subject category, with a brief description of the issue (or set of related issues) followed by HUD's response.

Many comments were received in support of the rule generally and in support of the proposed discriminatory effects standard in particular. This summary does not provide a response to comments that expressed support for the proposed rule. Supportive comments included statements asserting that the rule: advances the goals of the Fair Housing Act; offers a well-reasoned standard for analyzing discriminatory effects claims; provides a national standard for courts, housing providers, municipalities and the financial and insurance industries; provides clarity to housing providers, housing seekers, and others; will decrease litigation by clarifying the burdens of proof; and will help address a lack of adequate housing for older persons even though age is not a protected characteristic under the Act because older persons may be affected by practices with a discriminatory effect based on disability. Commenters stated that the rule is particularly necessary to maintain protections against discriminatory and abusive practices in the mortgage industry, as the Fair Housing Act covers activities in residential real estate-related transactions that may not be covered by the Equal Credit Opportunity Act (ECOA).[43] A commenter stated that the rule's flexible standard is appropriate, as no rigid formula fits the variety of practices that exist in a rapidly evolving housing market.

Several commenters supported discriminatory effects liability under the Act in general, stating that it is widely agreed that discriminatory effects analysis is critically important to vigorous enforcement of the Fair Housing Act, and that the rule is consistent with HUD's longstanding interpretation and the interpretation of the federal courts of appeals. Commenters in support of the importance of the effects test proffered the following: if the effects approach were no longer available, ''the proverbial door to equal housing opportunity will be slammed in the face of many victims''; the effects analysis is particularly important with respect to the protection of persons with disabilities and in familial status cases; municipal land use decisions are more likely to have a discriminatory effect on minorities when they unreasonably attempt to restrict affordable housing; the effects analysis is important to environmental justice investigations; the discriminatory effects standard encourages housing providers to develop creative ways to achieve their economic objectives while promoting diversity; the effects standard gives HUD and fair housing advocates the tools to reveal the effects of racism, poverty, disability discrimination, and adverse environmental conditions on the health and well-being of individuals protected by the law; the rule provides practical administrative guidance for HUD attorneys and administrative law judges, as well as for the state and local fair housing agencies that share responsibility with HUD for adjudicating fair housing complaints; and the disparate impact standard is important in addressing discrimination in lending and denial of access to credit, which are often the results of neutral policies that have a disparate impact on protected groups.

Some commenters supported the proposed rule's allocation of the burden of proof, stating that the rule is practical and supported by longstanding precedent, and that it provides clear guidance to housing providers and government agencies in adopting rules and policies and an objective method for courts to evaluate discriminatory effect claims. A commenter stated that the perpetuation of segregation theory of effects liability is supported by the legislative history of Title VIII and the obligation to affirmatively further fair housing found in 42 U.S.C. 3608(d).

Following are the remaining issues raised by the public comments and HUD's responses.

A. Validity of Discriminatory Effects Liability Under the Act

Issue: Some commenters opposed the rule because, in their view, the Act's text cannot be interpreted to include liability under a discriminatory effects theory. Commenters stated that the Fair Housing Act does not include an effects standard because it does not use the phrase ''adversely affect,'' as in Title VII, the Age Discrimination in Employment Act (ADEA), or the Americans with Disabilities Act. One of these commenters stated that the Fair Housing Act does not include any of the words in other statutes that have been interpreted as giving rise to disparate impact claims, such as ''affect'' and ''tend to.'' A commenter found the ''otherwise make unavailable or deny'' language in the Fair Housing Act unpersuasive evidence that Congress intended the Act to include an effects test because it is a catchall phrase at the end of a list of prohibited conduct, and it must be read as having a similar meaning as the specific items on the list.

Some commenters stated that the Act's prohibition of certain practices ''because of,'' ''on account of,'' or ''based on'' a protected classification necessitates a showing of discriminatory intent. A commenter stated that ''because of'' and ''on account of,'' as used in every provision of the Act, require evidence of intent because the same phrases are used in two provisions of the Act that cannot plausibly be interpreted to employ discriminatory effects liability. In this regard, this commenter pointed to 42 U.S.C. 3631, which uses the phrase ''because of'' to create criminal liability for specific fair housing violations, and 42 U.S.C. 3617, which uses the phrase ''on account of'' to ban coercion and intimidation of those exercising fair-housing rights.

Other commenters expressed support for a rule setting out the discriminatory effects theory of liability. Some of these commenters stated that Congress intended that such liability exist and that the text of the Act readily supports this position. Commenters stated that discriminatory effects liability best effectuates Congress's broad, remedial intent in passing the Fair Housing Act and the Act's stated purpose of providing for fair housing, within constitutional limitations, throughout the country. Commenters pointed out, through examples of neutral practices with discriminatory results that they have encountered, that an effects theory of liability continues to be vital in achieving the Act's broad goal. Commenters stated that, consistent with HUD's interpretation of the Act, federal courts have unanimously held that liability may be established by proof of discriminatory effects.

HUD Response: As the preamble to the proposed rule and this final rule make clear, both HUD and the federal courts have long interpreted the Fair Housing Act to prohibit actions that have an unjustified discriminatory effect, regardless of whether the action was motivated by a discriminatory intent. Section 804(a) of the Act makes it unlawful ''[t]o 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,

[43] ECOA prohibits any creditor from discriminating in credit transactions on the basis of race, color, national origin, religion, age, sex, marital status, or public assistance program participation. *See* 15 U.S.C. 1691(a). By comparison, Section 805 of the Fair Housing Act prohibits any person whose business includes engaging in residential-related transactions from discriminating in such transactions on the basis of race, color, religion, sex, disability, familial status, or national origin. *See* 42 U.S.C. 3605.

familial status, or national origin.''[44] Similarly, section 804(f)(1) makes it unlawful ''[t]o discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap.''[45] This ''otherwise make unavailable or deny'' formulation in the text of the Act focuses on the effects of a challenged action rather than the motivation of the actor. In this way, the provisions are similar to the ''otherwise adversely affect'' formulation that the Supreme Court found to support disparate impact liability under Title VII and the ADEA.[46] And, indeed, the federal courts have drawn the analogy between Title VII and the Fair Housing Act in interpreting the Act to prohibit actions that have an unjustified discriminatory effect, regardless of intent.[47]

In addition, many of the Fair Housing Act's provisions make it unlawful ''to discriminate'' in certain housing-related transactions based on a protected characteristic.[48] ''Discriminate'' is a term that may encompass actions that have a discriminatory effect but not a discriminatory intent.[49] HUD's extensive experience in administering the Fair Housing Act and in investigating and adjudicating claims arising under the Act, which is discussed in this preamble and that of the proposed rule,[50] informs its conclusion that not only can the term ''discriminate'' be interpreted to encompass discriminatory effects liability, but it must be so interpreted in order to achieve the Act's stated purpose to provide for fair housing to the extent the Constitution allows.[51] Indeed, as far back as 1980, the HUD Secretary explained to Congress why discriminatory effects liability under the Fair Housing Act is ''imperative to the success of civil rights enforcement.''[52] Only by eliminating practices with an unnecessary disparate impact or that unnecessarily create, perpetuate, increase, or reinforce segregated housing patterns, can the Act's intended goal to advance equal housing opportunity and achieve integration be realized.[53] In keeping with the broad remedial goals of the Fair Housing Act,[54] HUD interprets the term ''discriminate,'' as well as the language in sections 804(a) and 804(f)(1) of the Act, to encompass liability based on the results of a practice, as well as any intended effect.

The ''because of'' phrase found in sections 804 and 805 of the Act[55] and similar language such as ''on account of'' or ''based on'' does not signal that Congress intended to limit the Act's coverage to intentional discrimination. Both section 703(a)(2) of Title VII[56] and section 4(a)(2) of the ADEA[57] prohibit certain actions ''because of'' a protected characteristic, yet neither provision requires a finding of discriminatory intent.[58] Moreover, the fact that the phrases ''on account of'' and ''because of'' appear in sections 817 and 831 of the Fair Housing Act[59] does not preclude finding discriminatory effects liability under the Act's other substantive provisions using the same language because, as discussed above, HUD bases its interpretation of those other provisions on other language not found in sections 817 and 831, such as the phrase ''otherwise make unavailable or deny a dwelling'' and the term ''discriminate.''

HUD's interpretation is confirmed by the fact that the Act's text contains three exemptions that presuppose that the Act encompasses an effects theory of liability. For one, section 805(c) of the Act allows ''a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, national origin, sex, handicap, or familial status.''[60] If the Act prohibited only intentional discrimination, it would not be unlawful to ''take into consideration factors other than'' protected characteristics in the first instance, and this exemption would be superfluous. Second, section 807(b)(1) of the Act states that ''[n]othing in this title limits the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.''[61] Since ''the number of occupants permitted to occupy a dwelling'' is not a protected classification under the Act, this provision makes sense only as authorizing occupancy limits that would otherwise violate the Act based on an effects theory.[62] Indeed, in 1991, HUD issued a memorandum to its staff explaining when occupancy limits would violate the Act based on disparate impact liability, and Congress later directed HUD to publish these guidelines in the **Federal Register**.[63] Third, section 807(b)(4) of the Act states that ''[n]othing in this title prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance.''[64] As with the two exemptions discussed above, this provision would be wholly unnecessary if the Act prohibited only intentional discrimination.

[44] 42 U.S.C. 3604(a).

[45] 42 U.S.C. 3604(f)(1).

[46] *See Griggs* v. *Duke Power Co.,* 401 U.S. 424, 431 (1971) (holding that Title VII includes a disparate impact standard); *Smith* v. *City of Jackson, Miss.,* 544 U.S. 228, 235 (2005) (affirming that the holding in *Griggs* represented the best reading of Title VII's text); *id.* at 240 (holding that section 4(a)(2) of the ADEA includes a disparate impact standard); *see also Nat'l Cmty. Reinvestment Coalition* v. *Accredited Home Lenders Holding Co.,* 573 F. Supp. 2d 70, 78 (D.DC 2008) (holding that the Fair Housing Act encompasses disparate impact liability because, among other reasons, language in the Act is analogous to language in the ADEA found by the Supreme Court to include disparate impact).

[47] *See Resident Advisory Bd.* v. *Rizzo,* 564 F.2d 126, 146 (3d Cir. 1977) (''[I]n Title VIII cases, by analogy to Title VII cases, unrebutted proof of discriminatory effect alone may justify a federal equitable response.''); *Graoch,* 508 F.3d at 374 (quoting *Griggs,* 401 U.S. at 431) (''The Supreme Court held that Title VII, which uses similar language [to Title VIII], 'proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation.' The same analysis justifies the existence of disparate-impact liability under the FHA.'').

[48] *See* 42 U.S.C. 3604(b), 3604(f)(1), 3604(f)(2), 3605, and 3606.

[49] *See, e.g., Alexander* v. *Choate,* 469 U.S. 287, 299 (1985) (assuming without deciding that section 504 of the Rehabilitation Act of 1973, which prohibits ''subject[ing] to discrimination'' otherwise qualified handicapped individuals, ''reaches at least some conduct that has an unjustifiable disparate impact upon the handicapped''); *Board. of Ed.* v. *Harris,* 444 U.S. 130, 140–41 (1979) (concluding that the term ''discrimination,'' as used in the 1972 Emergency School Aid Act, was ambiguous and proscribed actions that had a disparate impact).

[50] *See supra* nn. 12–27; preamble to the November 16, 2011, proposed rule at 76 FR 70922–23.

[51] In enacting the Fair Housing Act, Congress expressed its desire to provide, within constitutional limitations, for fair housing throughout the United States. *See* 42 U.S.C. 3601.

[52] *See* 126 Cong. Rec. 31,166–31,167 (1980) (statement of Sen. Mathias) (reading into the record letter of HUD Secretary).

[53] *See supra* nn. 3–7; *infra* nn. 65–69.

[54] *See supra* note 11.

[55] 42 U.S.C. 3604 and 3605.

[56] 42 U.S.C. 2000e–2(a)(2).

[57] 29 U.S.C. 623(a)(2).

[58] *See Meacham* v. *Knolls Atomic Power Lab.,* 554 U.S. 84, 96 (2008) (explaining that, ''in the typical disparate-impact case'' under the ADEA, ''the employer's practice is 'without respect to age' and its adverse impact (though 'because of age') is 'attributable to a nonage factor' ''); *Resident Advisory Bd.* v. *Rizzo,* 564 F.2d 126, 147 (3d Cir. 1977) (''[T]he 'because of race' language is not unique to § 3604(a): that same language appears in Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e–2(h), yet a prima facie case of Title VII liability is made out when a showing of discriminatory effect (as distinct from intent) is established.'').

[59] 42 U.S.C. 3617 and 3631.

[60] 42 U.S.C. 3605(c).

[61] 42 U.S.C. 3607(b)(1).

[62] *See City of Jackson,* 544 U.S. at 238–39 (explaining that the ADEA's provision that allows an employer ''to take any action otherwise prohibited * * * where the differentiation is based on reasonable factors other than age discrimination'' would be ''simply unnecessary'' if the ADEA prohibited only intentional discrimination).

[63] *See supra* note 26.

[64] 42 U.S.C. 3607(b)(4).

The legislative history of the Act informs HUD's interpretation. The Fair Housing Act was enacted after a report by the National Advisory Commission on Civil Disorders, which President Johnson had convened in response to major riots taking place throughout the country, warned that ''[o]ur Nation is moving toward two societies, one black, one white—separate and unequal.'' [65] The Act's lead sponsor, Senator Walter Mondale, explained in the Senate debates that the broad purpose of the Act was to replace segregated neighborhoods with ''truly integrated and balanced living patterns.'' [66] Senator Mondale recognized that segregation was caused not only by ''overt racial discrimination'' but also by ''[o]ld habits'' which became ''frozen rules,'' [67] and he pointed to one such facially neutral practice—the ''refusal by suburbs and other communities to accept low-income housing.'' [68] He further explained some of the ways in which federal, state, and local policies had formerly operated to require segregation and argued that ''Congress should now pass a fair housing act to undo the effects of these past'' discriminatory actions.[69]

Moreover, in the approximately 20 years between the Act's enactment in 1968 and its amendment in 1988, the nine federal courts of appeals to address the issue held that the Act prohibited actions with a discriminatory effect.[70] Congress was aware of this widespread judicial agreement when it significantly amended the Act in 1988.[71] At that time, the House Committee on the Judiciary specifically rejected an amendment that would have provided that ''a zoning decision is not a violation of the Fair Housing Act unless the decision was made with the intent to discriminate.'' [72] Instead of adding this intent requirement to the Act, Congress chose to maintain the Act's operative text barring discrimination and making unavailable or denying housing, to extend those prohibitions to disability and familial status, and to establish the exemptions discussed above that presuppose the availability of a discriminatory effects theory of liability.[73] The failed attempt in 1988 to impose an intent requirement on the Act followed five other failed attempts, in 1980,[74] 1981,[75] 1983,[76] 1985,[77] and 1987.[78]

Issue: Two commenters stated that, when promulgating regulations implementing the Fair Housing Amendments Act of 1988, HUD stated in the preamble that the ''regulations are not designed to resolve the question of whether intent is or is not required to show a violation'' of the Act.[79] A commenter faulted HUD for failing to explain what the commenter perceived as a change in its official interpretation of the Act, and urged HUD to eliminate disparate impact liability from the rule. Some commenters stated that President Reagan, when signing the Fair Housing Amendments Act of 1988, expressed his opinion that the amendment ''does not represent any congressional or executive branch endorsement of the notion, expressed in some judicial opinions, that [Fair Housing Act] violations may be established by a showing of disparate impact or discriminatory effects of a practice that is taken without discriminatory intent.'' [80] Some commenters also stated that, in 1988, the United States Solicitor General submitted an amicus brief to the U.S. Supreme Court in *Huntington Branch, NAACP* v. *Town of Huntington* asserting that a violation of the Fair Housing Act requires a finding of intentional discrimination.[81]

HUD Response: While HUD chose not to use the regulations implementing the Fair Housing Amendments Act of 1988 to opine formally on whether a violation under the Act may be established absent discriminatory intent, it has never taken the position that the Act requires a finding of intentional discrimination. On the contrary, through formal adjudications and various other means, including other regulations, interpretive guidance, and statements to Congress, HUD has consistently construed the Act as encompassing discriminatory effects liability.[82] HUD's prior interpretations of the Act regarding the discriminatory effects standard are entitled to judicial deference.[83] Neither President Reagan's signing statement nor the Solicitor General's amicus brief in *Huntington Branch* affects or overrides the longstanding, consistent construction of the Act by HUD, the agency with delegated authority to administer the Act and to promulgate rules interpreting it. Moreover, the Department of Justice both before and after *Huntington Branch* has taken the position that the Fair Housing Act includes discriminatory effects liability.[84]

B. Definition of Discriminatory Effect, § 100.500(a)

In order to make it more concise and more consistent with terminology used in case law without changing its substance, this final rule slightly revises the definition of ''discriminatory effect.''

Proposed § 100.500(a) provided that ''A housing practice has a discriminatory effect where it actually or predictably: (1) Results in a disparate impact on a group of persons on the basis of race, color, religion, sex, handicap, familial status, or national origin; or (2) Has the effect of creating, perpetuating, or increasing segregated housing patterns on the basis of race, color, religion, sex, handicap, familial status, or national origin.''

Final § 100.500(a) provides that ''[a] practice has a discriminatory effect where it actually or predictably results in a disparate impact on a group of

[65] Report of the National Advisory Commission on Civil Disorders 1 (1968).

[66] 90 Cong. Rec. 3422 (1968).

[67] 114 Cong. Rec. 3421 (1968).

[68] *Id.* at 2277.

[69] *Id.* at 2669.

[70] *See, e.g., Huntington Branch, NAACP* v. *Town of Huntington,* 844 F.2d 926, 935–36 (2d Cir.), aff'd, 488 U.S. 15 (1988); *Hanson* v. *Veterans Admin.,* 800 F.2d 1381, 1386 (5th Cir. 1986); *Arthur* v. *City of Toledo,* 782 F.2d 565, 574–75 (6th Cir. 1986); *United States* v. *Marengo Cnty. Comm'n,* 731 F.2d 1546, 1559 n.20 (11th Cir. 1984); *Smith* v. *Clarkton,* 682 F.2d 1055, 1065 (4th Cir. 1982); *Halet* v. *Wend Inv. Co.,* 672 F.2d 1305, 1311 (9th Cir. 1982); *Resident Advisory Bd.* v. *Rizzo,* 564 F.2d 126, 146 (3d Cir. 1977); *Metro. Hous. Dev. Corp.* v. *Vill. of Arlington Heights,* 558 F.2d 1283, 1290 (7th Cir. 1977), cert. denied, 434 U.S. 1025 (1978); *United States* v. *City of Black Jack,* 508 F.2d 1179, 1184–85 (8th Cir. 1974).

[71] *See, e.g.,* H.R. Rep. No. 100–711, at 2182 (1988) (citing courts of appeals decisions in discussing a policy that could have a ''discriminatory effect'' on minority households ''[b]ecause minority households tend to be larger''); 134 Cong. Rec. 23711–12 (1988) (Statement of Sen. Kennedy) (noting unanimity of courts of appeals as to the disparate impact test); Fair Housing Amendments Act of 1987: Hearings Before the Subcomm. on the Constitution of the S. Comm. on the Judiciary, 100th Cong., 1st Sess. 529–557 (1987) (testimony of Prof. Robert Schwemm, Univ. of Ky. Law Sch.) (discussing ''strong consensus'' in federal courts of appeals that the Fair Housing Act prohibited disparate impact discrimination).

[72] *See* H.R. Rep. No. 100–711, at 89–91 (1988) (dissenting views of Rep. Swindall).

[73] *See* Fair Housing Amendments Act of 1988, Pub. L. 100–430, 102 Stat. 1619 (1988).

[74] H.R. Rep. No. 96–865, at 2 (1980) (The Act ''effectively proscribed housing practices with the intent or effect of discriminating on account of race, color, national origin, or religion.''); 126 Cong. Rec. 31,164 (1980) (explaining that the addition of an intent requirement ''would make a radical change in the standard of proof in title VIII cases'') (statement of Sen. Bayh).

[75] 127 Cong. Rec. 22,156 (1981).

[76] 129 Cong. Rec. 808 (1983).

[77] S. 139, 99th Cong. § 6(e) (1985).

[78] 133 Cong. Rec. 7180 (1987).

[79] 54 FR 3232, 3235 (Jan. 23, 1989).

[80] Remarks on Signing the Fair Housing Amendments Act of 1988, 24 Weekly Comp. Pres. Doc. 1140, 1141 (Sept. 13, 1988).

[81] *See* Brief for United States as Amicus Curiae, *Town of Huntington* v. *Huntington Branch, NAACP,* 488 U.S. 15 (1988) (No. 97–1961).

[82] *See, e.g.,* nn. 12–27, *supra.*

[83] *See, e.g., United States* v. *Mead Corp.,* 533 U.S. 218, 230 & n.12 (2001) (*Chevron* deference is warranted for formal adjudications).

[84] *See United States.* v. *City of Black Jack,* 508 F.2d 1179, 1184–86 (8th Cir. 1974); *see also* Brief for the United States as Amicus Curiae, *Magner* v. *Gallagher,* 132 S. Ct. 1306 (2012) (No. 10–1032).

persons or creates, increases, reinforces, or perpetuates segregated housing patterns because of race, color, religion, sex, handicap, familial status, or national origin.''

Commenters raised a number of issues with respect to the definition of ''discriminatory effect.''

Issue: Two commenters requested that HUD expand the definition of ''housing practice'' to include the language from the preamble to the proposed rule that provided examples of facially neutral actions that may result in a discriminatory effect, ''e.g. laws, rules, decisions, standards, policies, practices, or procedures, including those that allow for discretion or the use of subjective criteria,'' to make clear that the Act does not apply only to housing ''practices.''

HUD Response: The Act and HUD regulations define ''discriminatory housing practice'' broadly as ''an act that is unlawful under section 804, 805, 806, or 818.'' [85] As HUD explained in the preamble to the proposed rule, any facially neutral actions, 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. Given the breadth of the definition of ''discriminatory housing practice,'' and the examples provided in the preamble to the proposed rule, HUD does not agree that it is necessary to provide those examples in the text of the regulation. The final rule does, however, replace ''housing practice'' with ''practice'' in order to make clear it applies to the full range of actions that may violate the Fair Housing Act under an effects theory.

Issue: A commenter stated that, in light of the Supreme Court's decision in *Wal-Mart Stores, Inc.* v. *Dukes,*[86] HUD should ''remove those aspects of the proposed rule that would give rise to disparate impact liability based on the exercise of discretion.''

HUD Response: HUD does not agree that the Supreme Court's decision in *Wal-Mart* means that policies permitting discretion may not give rise to discriminatory effects liability under the Fair Housing Act. The opinion in *Wal-Mart* did not address the substantive standards under the Fair Housing Act but instead addressed the issue of class certification under Title VII. Moreover, even in that context, the opinion in *Wal-Mart* does not shield policies that allow for discretion from liability under Title VII. On the contrary, the Supreme Court confirmed that an employer who permits his managers to exercise discretion may be liable under Title VII pursuant to a disparate impact theory, ''since an employer's undisciplined system of subjective decision-making can have precisely the same effects as a system pervaded by impermissible intentional discrimination.'' [87]

Issue: Some commenters asked HUD to remove the word ''predictably'' from the proposed definition. One commenter made this request out of concern that such a definition would make good faith compliance with the Act difficult, and another because claims based on a predictable impact are too speculative. Another commenter expressed support for the inclusion of ''predictably'' in the definition because discrimination cases often involve members of a protected class who predictably would be impacted by the challenged practice. As an example, the commenter stated that a challenge to a zoning or land use ordinance might focus on persons who would be excluded from residency by application of the ordinance.

HUD Response: HUD agrees with the latter commenter that the Act is best interpreted as prohibiting actions that predictably result in an unjustified discriminatory effect. HUD's interpretation is supported by the plain language of the Fair Housing Act, which defines ''aggrieved person'' as any person who ''believes that such person will be injured by a discriminatory housing practice that is about to occur,'' [88] and which specifically authorizes HUD to take enforcement action and ALJs and courts to order relief with respect to discrimination that ''is about to occur.'' [89] Moreover, courts interpreting the Fair Housing Act have agreed that predictable discriminatory effects may violate the Act.[90]

Issue: A commenter requested that the preamble or the text of the final rule make clear that reasonable data, such as data from the U.S. Census Bureau, data required by the Home Mortgage Disclosure Act (HMDA), and HUD data on the occupancy of subsidized housing units, can be used to demonstrate that a practice predictably results in a discriminatory effect.

HUD Response: The purpose of the rule, as identified in the November 16, 2011, proposed rule, is to formalize a long-recognized legal interpretation and establish a uniform legal standard, rather than to describe how data and statistics may be used in the application of the standard. The appropriate use of such data is discussed in other federal sources, including the Joint Policy Statement.

Issue: Several commenters expressed concern that the proposed rule did not explain the degree to which a practice must disproportionately impact one group over another. A few commenters expressed the opinion that, in order for a practice to violate the Act, the practice must result in a significant or non-trivial discriminatory effect. A commenter wrote that members of a protected class must be impacted in a manner that is ''meaningfully different'' from any impact on other individuals. Another commenter suggested defining a disparate impact as a 20 percent difference between the relevant groups. Another stated that the impact should be ''qualitatively different.'' A commenter wrote that, in the lending context, a disparate impact should not exist where statistics only show that a protected class, on an aggregate basis, has not received as many loans as the general population. Another commenter stated concern that the rule would allow small statistical differences in the pricing of loans to be actionable.

HUD Response: As stated in the response to the preceding issue, this rule concerns the formalization of a long-recognized legal interpretation and burden-shifting framework, rather than a codification of how data and statistics may be used in the application of the standard. To establish a prima facie case of discriminatory effects liability under the rule, the charging party or plaintiff must show that members of a protected class are disproportionately burdened by the challenged action, or that the practice has a segregative effect. Whether a particular practice results in a discriminatory effect is a fact-specific inquiry. Given the numerous and varied practices and wide variety of private and governmental entities covered by the Act, it would be impossible to specify in the rule the showing that would be required to demonstrate a discriminatory effect in each of these contexts. HUD's decision not to codify a significance requirement for pleading purposes is consistent with the Joint

[85] 42 U.S.C. 3602(f); 24 CFR 100.20.

[86] 131 S. Ct. 2541 (2011).

[87] Id. at 2554 (internal brackets and quotation omitted).

[88] 42 U.S.C. 3602(i).

[89] *See* 42 U.S.C. 3610(g)(2)(A); 3612(g)(3); 3613(c)(1); 3614(d)(1)(A).

[90] *See, e.g., Pfaff* v. *HUD,* 88 F.3d at 745 (''Discriminatory effect' describes conduct that actually or predictably resulted in discrimination.''); *United States.* v. *City of Black Jack,* 508 F.2d at 1184 (''To establish a prima facie case of racial discrimination, the plaintiff need prove no more than that the conduct of the defendant actually or predictably results in racial discrimination; in other words, that it has a discriminatory effect.'').

Policy Statement,[91] the statutory codification of the disparate impact standard under Title VII,[92] and the Consumer Financial Protection Bureau's interpretation of the disparate impact standard under ECOA.[93]

Issue: Two commenters stated that, in order to establish a prima facie case of discriminatory effect liability, a charging party or plaintiff should have to identify a specific practice and show that the alleged discriminatory effect is caused by that specific practice, with a commenter referring to *Wards Cove Packing Co.* v. *Atonio,* 490 U.S. 642 (1989), in support of this position.

HUD Response: HUD addressed this issue at the proposed rule stage, and its analysis is not changed in this final rule. Under this rule, the charging party or plaintiff has the burden of proving that a challenged practice causes a discriminatory effect.[94] In HUD's experience, identifying the specific practice that caused the alleged discriminatory effect will depend on the facts of a particular situation and therefore must be determined on a case-by-case basis. Moreover, as recognized in the employment context under Title VII, the elements of a decision-making process may not be capable of separation for analysis,[95] in which case it may be appropriate to challenge the decision-making process as a whole. For example, in a reverse redlining case, there may be multiple acts or policies which together result in a discriminatory effect.[96]

Issue: Commenters expressed concern with the definition of ''discriminatory effect'' because it included a practice that has ''the effect of creating, perpetuating, or increasing segregated housing patterns'' based on protected class. A commenter asked that ''segregation'' be removed from the proposed definition. Another commenter expressed concern that this portion of the definition would extend liability beyond the factual circumstances of the cases HUD cited as examples in the proposed rule's preamble because, according to the commenter, most of those cases raised at least a suggestion of intentional discrimination. A commenter stated that ''perpetuating'' should be more clearly defined so that the rule states, for example, whether the term requires an attempt to segregate further, or merely a practice that continues existing patterns of segregation. Another commenter expressed the related opinion that ''not explicitly fostering integration'' should never form the basis for liability under the Act.

HUD Response: As discussed in the preambles to both the proposed rule and this final rule, the elimination of segregation is central to why the Fair Housing Act was enacted.[97] HUD therefore declines to remove from the rule's definition of ''discriminatory effects'' ''creating, perpetuating, or increasing segregated housing patterns.'' [98] The Fair Housing Act was enacted to replace segregated neighborhoods with ''truly integrated and balanced living patterns.'' [99] It was structured to address discriminatory housing practices that affect ''the whole community'' as well as particular segments of the community,[100] with the goal of advancing equal opportunity in housing and also to ''achieve racial integration for the benefit of all people in the United States.'' [101] Accordingly, the Act prohibits two kinds of unjustified discriminatory effects: (1) harm to a particular group of persons by a disparate impact; and (2) harm to the community generally by creating, increasing, reinforcing, or perpetuating segregated housing patterns.[102] Recognizing liability for actions that impermissibly create, increase, reinforce, or perpetuate segregated housing patterns directly addresses the purpose of the Act to replace segregated neighborhoods with ''truly integrated and balanced living patterns.'' For example, the perpetuation of segregation theory of liability has been utilized by private developers and others to challenge practices that frustrated affordable housing development in nearly all-white communities and thus has aided attempts to promote integration.[103]

Moreover, every federal court of appeals to have addressed the issue has agreed with HUD's interpretation that the Act prohibits practices with the unjustified effect of perpetuating segregation.[104] In one such case, for example, the court of appeals held that a zoning ordinance that prevents the construction of multifamily housing in areas that are primarily white may violate the Act by ''reinforcing racial

[91] *See* Joint Policy Statement, 59 FR 18,266, 18,269 (Apr. 15, 1994) (defining ''disparate impact'' as ''a disproportionate adverse impact'' on applicants from a protected group).

[92] *See* 42 U.S.C. 2000e-2(k)(1)(A)(i) (complaining party must demonstrate ''that a respondent uses a particular employment practice that causes a disparate impact'').

[93] *See* 12 CFR part 1002, Supp. I, Official Staff Commentary, Comment 6(a)-2 (discriminatory effect may exist when a creditor practice ''has a disproportionately negative impact on a prohibited basis'').

[94] *See* 24 CFR 100.500(c); *see also* 76 FR 70925.

[95] *See* 42 U.S.C. 2000e–2(k)(1)(B)(i) (''[T]he complaining party shall demonstrate that each particular challenged employment practice causes a disparate impact, except that if the complaining party can demonstrate to the court that the elements of a respondent's decisionmaking process are not capable of separation for analysis, the decisionmaking process may be analyzed as one employment practice'').

[96] *See, e.g., Hargraves* v. *Capital City Mortg. Corp,* 140 F. Supp. 2d 7, 20–22 (D.D.C. 2000) (finding that ''predatory lending'' in African American neighborhoods, which included exorbitant interest rates, lending based on the value of the asset rather than a borrower's ability to repay, profiting by acquiring the property through default, repeated foreclosures, and loan servicing procedures with excessive fees, could disparately impact African Americans).

[97] *See* nn. 6–7, 65–69 and accompanying text, *supra;* 76 FR 70922.

[98] As discussed in the ''Definition of Discriminatory Effect'' section, the final rule amends the definition of ''discriminatory effect'' to make it more concise and more consistent with terminology used in case law, but its substance is unchanged.

[99] *Trafficante,* 409 U.S. at 211 (citing 114 Cong. Rec. 3422 (Feb. 20, 1968) (statement of Senator Mondale)).

[100] *Trafficante,* 409 U.S. at 211 (citing 114 Cong. Rec. 2706 (1968) (Statement of Senator Javits)).

[101] H.R. Res. 1095, 110th Cong., 154 Cong. Rec. H2280–01 (April 15, 2008).

[102] *See, e.g., Graoch,* 508 F.3d at 378 (there are ''two types of discriminatory effects which a facially neutral housing decision can have: The first occurs when that decision has a greater adverse impact on one racial group than on another. The second is the effect which the decision has on the community involved; if it perpetuates segregation and thereby prevents interracial association it will be considered invidious under the Fair Housing Act independently of the extent to which it produces a disparate effect on different racial groups.''); *Huntington Branch,* 844 F.2d at 937 (''the discriminatory effect of a rule arises in two contexts: adverse impact on a particular minority group and harm to the community generally by the perpetuation of segregation * * * recognizing this second form of effect advances the principal purpose of Title VIII to promote, open, integrated residential housing patterns.'') (internal citations and quotation marks omitted); *Metro. Housing Dev. Corp.* v. *Village of Arlington Heights,* 558 F.2d at 1290 (''There are two kinds of racially discriminatory effects which a facially neutral decision about housing can produce. The first occurs when that decision has a greater adverse impact on one racial group than on another. The second is the effect which the decision has on the community involved; if it perpetuates segregation and thereby prevents interracial association it will be considered invidious under the Fair Housing Act independently of the extent to which it produces a disparate effect on different racial groups.'') (internal citations omitted); *Hallmark Developers, Inc.* v. *Fulton County,* 386 F. Supp. 2d 1369, 1383 (N.D. Ga. 2005) (''Of course there are two kinds of racially discriminatory effect which can be produced by a facially neutral decision. If the decision or action perpetuates segregation and thereby prevents interracial association it will be considered invidious under the Fair Housing Act independently of the extent to which it produces a disparate effect on different racial groups.'') (internal citations omitted).

[103] *See, e.g., Huntington Branch,* 844 F.2d at 937; *Arlington Heights,* 558 F.2d at 1291; *Black Jack,* 508 F.2d at 1184–86; *Summerchase Ltd. Pshp. I, et al.* v. *City of Gonzales, et al.,* 970 F. Supp. 522, 527–28 (M.D. La. 1997); *Dews,* 109 F. Supp. 2d at 567–68.

[104] *See supra* note 28.

segregation in housing.'' [105] For consistency with the terminology used in this case law, the final rule adds the term ''reinforces'' to the definition of ''discriminatory effect.''

In response to the comment regarding the facts of the cases HUD cited as examples in the proposed rule's preamble, HUD notes that those cases [106] are not exhaustive and therefore should not be viewed as the only ways that a violation of the Act may be established based on a discriminatory effects theory. Moreover, even if the facts of a particular case suggest intentional discrimination, in many instances both an intent to discriminate and a discriminatory effect may exist, and a charging party or plaintiff may bring a claim alleging either or both intent and effect as alternative theories of liability. Regardless, as explained throughout this preamble, and in case law, discriminatory intent is not required for a violation of the Act under an effects theory.

C. Legally Sufficient Justification, § 100.500(b)(1)

In response to comments, this final rule slightly revises the first prong of ''legally sufficient justification,'' as provided in the November 16, 2011, proposed rule, which is required to sustain a practice with a discriminatory effect under the Act.

Proposed § 100.500(b)(1) provided: ''A legally sufficient justification exists where the challenged housing practice: (1) Has a necessary and manifest relationship to one or more legitimate, nondiscriminatory interests of the respondent * * * or defendant.''

Final § 100.500(b)(1) provides: ''A legally sufficient justification exists where the challenged practice: (1) Is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests of the respondent * * * or defendant * * * A legally sufficient justification must be supported by evidence and may not be hypothetical or speculative.''

Comments were received with respect to proposed § 100.500(b)(1), some agreeing with the standard as stated; some recommending that § 100.500(b)(1) set either a higher or lower standard of proof for defendants and respondents; and some suggesting that HUD provide definitions for certain terms or use slightly different terms to make the regulatory provision easier to understand and apply.

1. Substantial, Legitimate, Nondiscriminatory Interests, § 100.500(b)(1)

Issue: Although some commenters supported the use of the phrase ''legitimate, nondiscriminatory interest,'' a commenter asked that the final rule provide a definition of the phrase to ensure that the standard is applied uniformly. Commenters stated that the word ''substantial'' or ''clearly'' should modify the phrase ''nondiscriminatory interests,'' reasoning that justifying discrimination with an interest that may be of little or no importance to the defendant or respondent would run contrary to Congress's goal of providing for fair housing within constitutional limitations.

HUD Response: HUD agrees that, in order to effectuate the Fair Housing Act's broad, remedial goal, practices with discriminatory effects cannot be justified based on interests of an insubstantial nature. Accordingly, HUD is making clear in this final rule that any interest justifying a practice with a discriminatory effect must be ''substantial.'' A ''substantial'' interest is a core interest of the organization that has a direct relationship to the function of that organization. The requirement that an entity's interest be substantial is analogous to the Title VII requirement that an employer's interest in an employment practice with a disparate impact be job related.[107] HUD uses the more general standard of substantiality because there is no single objective, such as job-relatedness, against which every practice covered by the Fair Housing Act could be measured. The determination of whether goals, objectives, and activities are of substantial interest to a respondent or defendant such that they can justify actions with a discriminatory effect requires a case-specific, fact-based inquiry.

The word ''legitimate,'' used in its ordinary meaning, is intended to ensure that a justification is genuine and not false,[108] while the word ''nondiscriminatory'' is intended to ensure that the justification for a challenged practice does not itself discriminate based on a protected characteristic. HUD and federal courts interpreting the Fair Housing Act have been applying these concepts without incident.[109]

Issue: Commenters requested that ''legitimate, nondiscriminatory interests'' be replaced or equated with ''business necessity.'' This would, in their view, be consistent with judicial interpretations of the Fair Housing Act, with HUD's regulations governing Fannie Mae and Freddie Mac, and with the Joint Policy Statement. Commenters stated that the Joint Policy Statement is well established and provides a clear, predictable standard to covered entities. Several commenters expressed concern that the proposed standard requiring a ''legitimate'' justification was weaker than, and would be interpreted as requiring less than, the ''business necessity'' standard.

HUD Response: In its adjudications under the Fair Housing Act, HUD has required respondents to prove that their challenged practices are justified by business necessity.[110] The other federal regulatory and enforcement agencies involved in the investigation of lending discrimination have taken the same approach.[111] The ''substantial, legitimate, nondiscriminatory interest'' standard found in § 100.500(b)(1) is equivalent to the ''business necessity'' standard found in the Joint Policy Statement. The standard set forth in this rule is not to be interpreted as a more lenient standard than ''business necessity.'' HUD chooses not to use the phrase ''business necessity'' in the rule because the phrase may not be easily understood to cover the full scope of practices covered by the Fair Housing Act, which applies to individuals, businesses, nonprofit organizations, and public entities. Using the phrase ''business necessity'' might confuse litigating parties and the courts as to how the term might apply, for example, to a nonprofit organization that provides housing or housing-related services, or to a branch of state or local government carrying out its functions. The standards in § 100.500 apply equally to individuals, public entities, and for-

[105] *Huntington Branch,* 844 F.2d at 937–38.

[106] *See* 76 FR 70925.

[107] *See* 42 U.S.C. 2000e-2(k)(1)(A)(i).

[108] *See, e.g.,* Legitimate Definition, Merriam-Webster's Dictionary, *http://www.merriam-webster.com/dictionary/necessary* (last visited Mar. 15, 2012) (defining ''legitimate'' as ''neither spurious nor false'').

[109] *See, e.g., Darst-Webbe Tenant Ass'n Bd.* v. *St. Louis Hous. Auth.,* 417 F.3d 898, 902 (8th Cir. 2005) (defendant must prove that challenged action is necessary to achieve ''legitimate, non-discriminatory policy objectives''); *Charleston Hous. Auth.* v. *U.S. Dept. of Agric.* 419 F.3d 729 (same).

[110] *See, e.g.,* 1998 Enforcement Handbook at 2–30 (instructing HUD investigators that a respondent's policy must be justified by a ''business necessity''); *HUD* v. *Carlson,* 1995 WL 365009, at *14 (HUD ALJ June 12, 1995) (''The Respondent has the burden to overcome the prima facie case by establishing a business necessity for the policy.''); Joint Policy Statement, 59 FR at 18269 (requiring a challenged policy or practice to be ''justified by 'business necessity' '').

[111] *See* Joint Policy Statement, 59 FR at 18269.

profit and nonprofit private entities because, as discussed below, neither the text of the Act nor its legislative history supports drawing a distinction among them. Accordingly, HUD has chosen terminology that, while equivalent to its previous guidance in the Joint Policy Statement, applies readily to all covered entities and all covered activities.

Issue: Some commenters expressed concern that the term ''legitimate'' allows for subjective review of a proffered justification.

HUD Response: HUD and courts have reviewed justifications proffered by covered entities for many years. While the review is very fact intensive, it is not subjective. Whether an interest is ''legitimate'' is judged on the basis of objective facts establishing that the proffered justification is genuine, and not fabricated or pretextual.[112] HUD and courts have engaged in this inquiry for decades without encountering issues related to the subjectivity of the inquiry. HUD therefore believes that concerns about subjective reviews of proffered justifications are not warranted.

Issue: A commenter requested that the final rule expressly state that increasing profits, minimizing costs, and increasing market share qualify as legitimate, nondiscriminatory interests. Similarly, another commenter asked that the final rule codify examples of tenant screening criteria such as rental history, credit checks, income verification, and court records that would be presumed to qualify as legally sufficient justifications.

HUD Response: HUD is not adopting these suggestions because the Fair Housing Act covers many different types of entities and practices, and a determination of what qualifies as a substantial, legitimate, nondiscriminatory interest for a given entity is fact-specific and must be determined on a case-by-case basis. Accordingly, the final rule does not provide examples of interests that would always qualify as substantial, legitimate, nondiscriminatory interests for every respondent or defendant in any context.

2. Relationship Between Challenged Practice and Asserted Interest, § 100.500(b)(1)

Issue: Several commenters expressed concern with HUD's use of the term ''manifest'' in the proposed requirement that the challenged practice have a ''necessary and manifest relationship'' to one or more legitimate, nondiscriminatory interests of the respondent or defendant. Commenters expressed uncertainty about what the term was intended to mean and how it would be interpreted by HUD or by federal courts. Two commenters expressed concern that the term ''manifest'' may involve a subjective evaluation and others did not understand the evidentiary concept embodied in the term. A commenter urged HUD to make clear in the language of the final rule, in addition to the preamble, that a justification may not be hypothetical or speculative.

HUD Response: In the proposed rule, the term ''manifest'' was used to convey defendants' and respondents' obligation to provide evidence of the actual need for the challenged practices, instead of relying on speculation, hypothesis, generalization, stereotype, or fear. HUD recognizes that some commenters were confused by the term ''manifest.'' In response to these concerns, HUD is replacing the term ''manifest'' in the final rule with the requirement, added in § 100.500(b)(2), that ''a legally sufficient justification must be supported by evidence and may not be hypothetical or speculative.'' This language is intended to convey that defendants and respondents, relying on a defense under § 100.500(b)(1), must be able to prove with evidence the substantial, legitimate, nondiscriminatory interest supporting the challenged practice and the necessity of the challenged practice to achieve that interest. This language is consistent with HUD's longstanding application of effects liability under the Fair Housing Act, is easy to understand, can be uniformly applied by federal and state courts and administrative agencies, and is unlikely to cause confusion or unnecessary litigation about its meaning. HUD notes that this language is also consistent with the application of the standard by other federal regulatory and enforcement agencies under both the Fair Housing Act and ECOA,[113] with the approach taken under Title VII,[114] and with the approach taken by a number of federal courts interpreting the Fair Housing Act.[115]

Issue: A commenter suggested that the phrase ''necessary and manifest'' should be defined.

HUD Response: As discussed above, HUD has removed the word ''manifest'' in the final rule in order to avoid any potential confusion. Thus, § 100.500(b)(1) is slightly revised at this final rule stage to state that a respondent or defendant seeking to defend a challenged practice with a discriminatory effect must prove that the practice ''is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests'' of the respondent or defendant. In the proposed rule, as well as this final rule, HUD uses ''necessary'' in its ordinary, most commonly used sense.

Issue: Some commenters suggested that HUD remove the word ''necessary'' to make the standard found in § 100.500(b)(1) consistent with the Title VII standard set out in the Supreme Court's opinion in *Wards Cove Packing Co.* v. *Atonio,* 490 U.S. 642 (1989). Commenters suggested various standards without the word ''necessary,'' including requiring that the challenged practice have ''a legitimate business purpose,'' that the challenged practice have ''a legitimate nondiscriminatory purpose,'' or that the challenged practice be ''rationally related to a legitimate, nondiscriminatory goal.''

HUD Response: HUD declines to adopt the commenters' suggestion to remove ''necessary'' from the rule. HUD's substantial experience in administering the Fair Housing Act confirms that requiring a challenged practice with a discriminatory effect to be necessary best effectuates the broad, remedial goal of the Act. Indeed, in 1994 HUD and ten other federal agencies notified lenders of the requirement to justify the discriminatory effect of a challenged lending practice under the Fair Housing Act and ECOA by showing that the practice is necessary to their business.[116] Moreover, in 1997, HUD

[112] *See* note 109, *supra.*

[113] *See* Joint Policy Statement, 59 FR at 18269 (''The justification must be manifest and may not be hypothetical or speculative.'')

[114] *See* 42 U.S.C. 2000e–2(k)(1)(A)(i) (the respondent must ''*demonstrate* that the challenged practice is job related for the position in question and consistent with business necessity'') (emphasis added).

[115] *See, e.g., Charleston Hous. Auth.* v. *U.S. Dep't of Agric.,* 419 F.3d 729, 741 (8th Cir. 2005) (the challenged housing practice must have a ''manifest relationship'' to the defendant's objectives); *Resident Advisory Bd.* v. *Rizzo,* 564 F.2d at 149 (''a justification must serve, in theory and practice, a legitimate, bona fide interest of the Title VIII defendant'') (emphasis added); *Huntington Branch, NAACP* v. *Town of Huntington,* 844 F.2d at 938, aff'd, 488 U.S. 15 (1988) (per curiam) (same).

[116] *See* Joint Policy Statement, 59 FR 18,269 (the second step of a disparate impact analysis under the Fair Housing Act and ECOA is to ''determine whether the policy or practice is justified by 'business necessity.' '') id. (giving an example of a policy that may violate the Fair Housing Act and ECOA since ''the lender is unlikely to be able to show that the policy is compelled by business necessity''); *see also* Office of the Comptroller of the Currency, Federal Depository Insurance Corporation, Federal Reserve Board, Office of Thrift Supervision, National Credit Union Administration, The Interagency Fair Lending Examination Procedures app. at 28, August 2009, available at *http://www.ffiec.gov/pdf/fairappx.pdf.*

promulgated a regulation recognizing that section 805 of the Act [117] does not prevent consideration, in the purchasing of loans, of factors that are necessary to a business.[118] In addition, in 1988 the House Committee on the Judiciary, in advancing a bill amending the Fair Housing Act, recognized that liability should not attach when a justification is necessary to the covered entity's business.[119] HUD's view is also consistent with Congress's 1991 enactment of legislation codifying that, in the employment context, a practice that has a disparate impact must be consistent with ''business necessity'' and must also be ''job related.'' [120] HUD also notes that a similar necessity requirement is found in ECOA, which requires that a challenged practice ''meets a legitimate business need.'' [121] HUD's final rule therefore uses language that is consistent with its longstanding interpretation of the Fair Housing Act, comparable to the protections afforded under Title VII and ECOA, and fairly balances the interests of all parties.

Issue: A commenter expressed concern that requiring a ''necessary'' relationship may interfere with loss mitigation efforts, including those under the Home Affordable Modification Program (HAMP) and Home Affordable Refinance Program (HARP)—federal programs that encourage mortgage servicers to offer modifications of loans or refinances—because such efforts are voluntary and participation in them may not be perceived as ''necessary.''

HUD Response: Since at least the date of issuance of the Joint Policy Statement in 1994, lenders have been on notice that they must prove the necessity of a challenged practice to their business under both the Fair Housing Act and ECOA. This requirement has not prevented lenders or servicers from engaging in effective loss mitigation efforts. The mere fact that a policy is voluntarily adopted does not preclude it from being necessary to achieve a substantial, legitimate, nondiscriminatory interest. By formalizing the process of proving business necessity in a rule that clearly allocates the burdens of proof among the parties, HUD is not changing substantive law, but merely clarifying the contours of an available defense so that lenders may rely upon it with greater clarity as to how it applies.

Issue: A commenter expressed the concern that requiring a respondent or defendant to prove necessity would subject the respondent or defendant to unnecessary and possibly frivolous investigations and litigation. Another commenter took the opposite position, stating that the rule would not create excessive litigation exposure for respondents or defendants because numerous procedural mechanisms exist to dispose of meritless cases. A commenter stated that, at the second stage of the burden-shifting analysis, a defendant should have the opportunity to demonstrate not only a legally sufficient justification, but also that the charging party or plaintiff did not satisfy its prima facie case because the challenged practice did not result in a discriminatory effect.

HUD Response: Given how the discriminatory effects framework has been applied to date by HUD and by the courts, HUD does not believe that the rule will lead to frivolous investigations or create excessive litigation exposure for respondents or defendants. As discussed above, since at least 1994, when the Joint Policy Statement was issued, lenders have known that they must prove the necessity of a challenged practice to their business. Moreover, HUD believes that promulgation of this rule—with its clear allocation of burdens and clarification of the showings each party must make—has the potential to decrease or simplify this type of litigation. For example, with a clear, uniform standard, covered entities can conduct consistent self-testing and compliance reviews, document their substantial, legitimate nondiscriminatory interests, and resolve potential issues so as to prevent future litigation. A uniform standard is also a benefit to entities operating in multiple jurisdictions. To the extent that the rule results in more plaintiffs being aware of potential effects liability under the Fair Housing Act, it should have the same impact on covered entities, resulting in greater awareness and compliance with the Fair Housing Act. Additionally, as a commenter noted, the Federal Rules of Civil Procedure provide various means to dispose of meritless claims, including Rules 11, 12, and 56. Moreover, a respondent or defendant may avoid liability by rebutting the charging party's or plaintiff's proof of discriminatory effect.[122] If the fact-finder decides that the charging party or plaintiff has not proven that the challenged practice resulted in a discriminatory effect, liability will not attach.

Issue: A commenter expressed concern that, under the proposed rule, a legally sufficient justification under § 100.500(b)(1) may not be hypothetical or speculative but a discriminatory effect under § 100.500(a) may be, creating an imbalance in the burden of proof in favor of the charging party or plaintiff.

HUD Response: This comment indicates a misunderstanding of what § 100.500 requires. Requiring the respondent or defendant to introduce evidence (instead of speculation) proving that a challenged practice is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests in order to benefit from the defense to liability is not different in kind from requiring the charging party or plaintiff to introduce evidence (not speculation) proving that a challenged practice caused or will predictably cause a discriminatory effect. As discussed in this preamble, the language of the Act makes clear that it is intended to address discrimination that has occurred or is about to occur, and not hypothetical or speculative discrimination.

D. Less Discriminatory Alternative, § 100.500(b)(2)

Some comments were received with respect to § 100.500(b)(2) of the proposed rule. With that provision, HUD proposed that a practice with a discriminatory effect may be justified only if the respondent's or defendant's interests cannot be served by another practice with a less discriminatory effect. In response to these comments, the final rule makes one slight revision to the proposed provision by substituting ''could not be served'' for ''cannot be served.''

Issue: A commenter requested that HUD replace ''cannot be served'' with ''would not be served'' because, under the Supreme Court's analysis in *Wards Cove,* a plaintiff cannot prevail by showing that a less discriminatory alternative could in theory serve the defendant's business interest. This commenter also stated that, in order for liability to attach, a less discriminatory alternative must have been known to and rejected by the respondent or

[117] 42 U.S.C. 3605.

[118] *See* 24 CFR 100.125(c); *cf. Darst-Webbe Tenant Ass'n Bd.* v. *St. Louis Hous. Auth.,* 417 F.3d, at 902 (the challenged practice must be ''necessary to the attainment of'' the defendant's objectives) (internal citation omitted); *see also Affordable Hous. Dev. Corp.* v. *City of Fresno,* 433 F.3d 1182, 1195 (9th Cir. 2006) (describing the Eighth Circuit's approach as ''sound'').

[119] H.R. Rep. No. 100–711, at 2191 (1988) (''The Committee does not intend that those purchasing mortgage loans be precluded from taking into consideration factors justified by business necessity.'').

[120] *See* 42 U.S.C. 2000e–2(k)(1)(A).

[121] 12 CFR part 1002, Supp. I, Official Staff Commentary, Comment 6(a)(2).

[122] *See, e.g., Dothard* v. *Rawlinson,* 433 U.S. 321, 331 (1977) (Title VII case explaining that a defendant is ''free to adduce countervailing evidence of his own'' in order to discredit a plaintiff's evidence of disparate impact).

defendant. Other commenters stated that, in order for liability to attach, the alternative practice must be equally effective as the challenged practice, or at least as effective as the challenged practice, with some of these commenters pointing to *Wards Cove* in support of this position. A number of other commenters, on the other hand, cited to Fair Housing Act case law for the proposition that liability should attach unless the less discriminatory alternative would impose an undue hardship on the respondent or defendant under the circumstances of the particular case.

HUD Response: HUD agrees that a less discriminatory alternative must serve the respondent's or defendant's substantial, legitimate nondiscriminatory interests, must be supported by evidence, and may not be hypothetical or speculative. For greater consistency with the terminology used in HUD's (and other federal regulatory agencies') previous guidance in the Joint Policy Statement,[123] the final rule replaces ''cannot be served'' with ''could not be served.'' A corresponding change of ''can'' to ''could'' is also made in § 100.500(c)(3) of the final rule. HUD does not believe the rule's language needs to be further revised to state that the less discriminatory alternative must be ''equally effective,'' or ''at least as effective,'' in serving the respondent's or defendant's interests; the current language already states that the less discriminatory alternative must serve the respondent's or defendant's interests, and the current language is consistent with the Joint Policy Statement, with Congress's codification of the disparate impact standard in the employment context,[124] and with judicial interpretations of the Fair Housing Act.[125] The additional modifier ''equally effective,'' borrowed from the superseded *Wards Cove* case, is even less appropriate in the housing context than in the employment area in light of the wider range and variety of practices covered by the Act that are not readily quantifiable. For a similar reason, HUD does not adopt the suggestion that the less discriminatory alternative proffered by the charging party or plaintiff must be accepted unless it creates an ''undue hardship'' on the respondent or defendant. The ''undue hardship'' standard, which is borrowed from the reasonable accommodation doctrine in disability law, would place too heavy a burden on the respondent or defendant.

In addition, HUD does not agree with the commenter who stated that *Wards Cove* requires the charging party or plaintiff to show that, prior to litigation, a respondent or defendant knew of and rejected a less discriminatory alternative,[126] or that *Wards Cove* even governs Fair Housing Act claims. HUD believes that adopting this requirement in the housing context would be unjustified because it would create an incentive not to consider possible ways to produce a less discriminatory result. Encouraging covered entities not to consider alternatives would be inconsistent with Congress's goal of providing for fair housing throughout the country.

Issue: Two commenters expressed concern that, under the proposed rule's language, the discriminatory effect of an alternative would be considered but a lender's concerns such as credit risk would be irrelevant.

HUD Response: HUD believes these commenters' concerns will not be realized in practice because a less discriminatory alternative need not be adopted unless it could serve the substantial, legitimate, nondiscriminatory interest at issue. The final rule specifically provides that the interests supporting a challenged practice are relevant to the consideration of whether a less discriminatory alternative exists. As stated in § 100.500(c)(3), the charging party or plaintiff must show that the less discriminatory alternative could serve the ''interests supporting the challenged practice.'' Thus, if the lender's interest in imposing the challenged practice relates to credit risk, the alternative would also need to effectively address the lender's concerns about credit risk.

E. Allocations of Burdens of Proof in § 100.500(c)

In the proposed rule, HUD set forth a burden-shifting framework in which the plaintiff or charging party would bear the burden of proving a prima facie case of discriminatory effect, the defendant or respondent would bear the burden of proving a legitimate, nondiscriminatory interest for the challenged practice, and the plaintiff or charging party would bear the burden of proving that a less discriminatory alternative exists.

Issue: Some commenters stated that the plaintiff or charging party should bear the burden of proof at all stages of the proceedings, either citing *Wards Cove* in support of this position or reasoning that, in our legal system, the plaintiff normally carries the burden of proving each element of his claim. Other commenters asked HUD to modify § 100.500(c)(3) in order to place the burden of proving no less discriminatory alternative on the defendant or respondent. Those recommending that the burden allocation be modified in this way reasoned that the respondent or defendant is in a better position to bear this burden because of greater knowledge of, and access to, information concerning the respondent's or defendant's interests and whether a less discriminatory alternative could serve them. Several commenters stated that this is particularly true in the context of government decisions, as complainants and plaintiffs will generally be outside the political decision-making process, and in the context of insurance and lending decisions, where proprietary information and formulas used in the decision making process may be vigorously protected.

Commenters stated that complainants and plaintiffs may not have the capacity to evaluate possible less discriminatory alternatives. Some commenters also pointed out that assigning this burden to the respondent or defendant may avoid intrusive and expensive discovery into a respondent's or defendant's decision-making process, and would incentivize entities subject to the Act to consider less discriminatory options when making decisions. Commenters also stated that courts have placed this burden of proof on the defendant, others have placed it on the party for whom proof is easiest, and reliance on Title VII is inappropriate because of the unique nature of less discriminatory alternatives in Fair Housing Act cases.

HUD Response: HUD believes that the burden of proof allocation in § 100.500(c) is the fairest and most

[123] *See* Joint Policy Statement, 59 FR at 18269 (''Even if a policy or practice that has a disparate impact on a prohibited basis can be justified by business necessity, it still may be found to be discriminatory if an alternative policy or practice could serve the same purpose with less discriminatory effect.'')

[124] *See* 42 U.S.C. 2000e–2(k)(1)(A)(i) (''the concept of 'alternative employment practice' '' under Title VII ''shall be in accordance with the law as it existed on June 4, 1989''); *Albemarle Paper Co.* v. *Moody,* 422 U.S. 405, 425 (1975) (''[I]t remains open to the complaining party to show that other tests or selection devises, without a similarly undesirable racial effect, would also serve the employer's legitimate interest.'').

[125] *See, e.g., Darst-Webbe,* 417 F.3d at 906 (''plaintiffs must offer a viable alternative that satisfies the Housing Authority's legitimate policy objectives while reducing the [challenged practice's] discriminatory impact''); *Huntington,* 844 F.2d at 939 (analyzing whether the ''[t]own's goal * * * can be achieved by less discriminatory means''); *Rizzo,* 564 F.2d at 159 (it must be analyzed whether an alternative ''could be adopted that would enable [the defendant's] interest to be served with less discriminatory impact.'').

[126] *See Wards Cove Packing Co., Inc.* v. *Atonio,* 490 U.S. 642, 660–61 (1989).

reasonable approach to resolving the claims. As the proposed rule stated, this framework makes the most sense because it does not require either party to prove a negative. Moreover, this approach will ensure consistency in applying the discriminatory effects standard while creating the least disruption because, as discussed earlier in this preamble, HUD and most courts utilize a burden-shifting framework,[127] and most federal courts using a burden-shifting framework allocate the burdens of proof in this way.[128] In addition, HUD notes that this burden-shifting scheme is consistent with the Title VII discriminatory effects standard codified by Congress in 1991.[129] It is also consistent with the discriminatory effects standard under ECOA,[130] which borrows from Title VII's burden-shifting framework.[131] There is significant overlap in coverage between ECOA, which prohibits discrimination in credit, and the Fair Housing Act, which prohibits discrimination in residential real estate-related transactions.[132] Thus, under the rule's framework, in litigation involving claims brought under both the Fair Housing Act and ECOA, the parties and the court will not face the burden of applying inconsistent methods of proof to factually indistinguishable claims. Having the same allocation of burdens under the Fair Housing Act and ECOA will also provide for less confusion and more consistent decision making by the fact finder in jury trials.

With respect to expressed concerns about the ability of plaintiffs or complainants to demonstrate a less discriminatory alternative, plaintiffs in litigation in federal courts may rely on Rule 26(b)(1) of the Federal Rules of Civil Procedure for the discovery of information ''that is relevant to any party's claim or defense,'' [133] and parties in an administrative proceeding may rely on Rule 26(b)(1) and a similar provision in HUD's regulations.[134] The application of those standards would plainly provide for the discovery of information regarding the alternatives that exist to achieve an asserted interest, the extent to which such alternatives were considered, the reasons why such alternatives were rejected, and the data that a plaintiff or plaintiff's expert could use to show that the defendant did not select the least discriminatory alternative. An appropriately tailored protective order can be issued by the court to provide access to proprietary information in the context of cases involving confidential business information, such as those involving insurance or lending, while providing to respondents and defendants adequate protection from disclosure of this information. Moreover, as noted above, in administrative adjudications, it is the charging party, not non-intervening complainants, who bear this burden of proof.

F. Application of Discriminatory Effects Liability

Comments were received with respect to how the discriminatory effects standard would be applied and how it might impact covered entities. These comments expressed varying concerns, including the retroactivity of the rule, its application to the insurance and lending industries, and its impact on developing affordable housing.

Issue: A commenter stated that each of the cases listed in the proposed rule as examples of practices with a segregative effect involved a government actor, while another commenter asked HUD to clarify whether liability may attach to private parties.

HUD Response: Liability for a practice that has an unjustified discriminatory effect may attach to either public or private parties according to the standards in § 100.500, because there is nothing in the text of the Act or its legislative history to indicate that Congress intended to distinguish the manner in which the Act applies to public versus private entities.[135]

Issue: A commenter expressed the opinion that the Fair Housing Act does not grant HUD the power to promulgate retroactive rules, and therefore HUD should make clear that the final rule applies prospectively only.

HUD Response: This final rule embodying HUD's and the federal courts' longstanding interpretation of the Act to include a discriminatory effects standard will apply to pending and future cases. HUD has long recognized, as have the courts, that the Act supports an effects theory of liability. This rule is not a change in HUD's position but rather a formal interpretation of the Act that clarifies the appropriate standards for proving a violation under an effects theory. As such, it ''is no more retroactive in its operation than is a judicial determination construing and applying a statute to a case in hand.'' [136]

Issue: A commenter stated that the most appropriate remedy for a violation of the Act under an effects theory is declaratory or injunctive relief. This commenter expressed the opinion that the use of penalties or punitive damages generally does not serve the underlying purpose of the Fair Housing Act to remedy housing discrimination.

HUD Response: HUD disagrees with the commenter. The Fair Housing Act specifically provides for the award of damages—both actual and punitive—and penalties.[137]

Issue: Commenters from the insurance industry expressed a number of concerns about the application of the proposed rule to insurance practices. Some commenters stated that application of the disparate impact standard would interfere with state regulation of insurance in violation of the McCarran-Ferguson Act (15 U.S.C. 1011–1015) or the common law ''filed rate doctrine.'' Some commenters stated that HUD's use of *Ojo* v. *Farmers Group, Inc.,* 600 F.3d 1205 (9th Cir. 2010), in the preamble of the proposed rule was not appropriate.

[127] *See supra* notes 29–33.

[128] *See supra* notes 34, 35.

[129] *See* 42 U.S.C. 2000e–2(k).

[130] ECOA prohibits discrimination in credit on the basis of race and other enumerated criteria. *See* 15 U.S.C. 1691.

[131] *See* S. Rep. No. 94–589, at 4–5 (1976) (''[J]udicial constructions of antidiscrimination legislation in the employment field, in cases such as *Griggs* v. *Duke Power Company,* 401 U.S. 424 (1971), and *Albemarle Paper Co.* v. *Mood,* [422 U.S. 405 (1975)], are intended to serve as guides in the application of [ECOA], especially with respect to the allocations of burdens of proof.''); 12 CFR 1002.6(a) (''The legislative history of [ECOA] indicates that the Congress intended an 'effects test' concept, as outlined in the employment field by the Supreme Court in the cases of *Griggs* v. *Duke Power Co.,* 401 U.S. 424 (1971) and *Albemarle Paper Co.* v. *Moody,* 422 U.S. 405 (1975), to be applicable to a creditor's determination of creditworthiness.''); 12 CFR part 1002, Supp. I, Official Staff Commentary, Comment 6(a)–2 (''Effects test. The effects test is a judicial doctrine that was developed in a series of employment cases decided by the Supreme Court under Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*), and the burdens of proof for such employment cases were codified by Congress in the Civil Rights Act of 1991 (42 U.S.C. 2000e–2).'').

[132] *See* Joint Policy Statement, 59 FR 18266. Indeed, the Joint Policy Statement analyzed the standard for proving disparate impact discrimination in lending under the Fair Housing Act and under ECOA without any differentiation. *See* 59 FR 18269.

[133] Fed. R. Civ. P. 26(b)(1).

[134] *See* 24 CFR 180.500(b) (''parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the proceeding'').

[135] *See* 42 U.S.C. 3602(f) (defining ''discriminatory housing practice'' as ''an act that is unlawful under section 804, 805, 806, or 818,'' none of which distinguish between public and private entities); *see also Nat'l Fair Hous. Alliance, Inc.* v. *Prudential Ins. Co. of Am.,* 208 F. Supp. 2d 46, 59–60 & n.7 (D.D.C. 2002) (applying the same impact analysis to a private entity as to public entities, and noting that a ''distinction between governmental and non-governmental bodies finds no support in the language of the [Act] or in [its] legislative history'').

[136] *Pope* v. *Shalala,* 998 F.2d 473, 483 (7th Cir. 1993) (quoting *Manhattan General Equip. Co.* v. *Comm'r,* 297 U.S. 129, 135 (1936)).

[137] *See* 42 U.S.C. 3612–14.

HUD Response: HUD has long interpreted the Fair Housing Act to prohibit discriminatory practices in connection with homeowner's insurance,[138] and courts have agreed with HUD, including in *Ojo* v. *Farmers Group.*[139] Moreover, as discussed above, HUD has consistently interpreted the Act to permit violations to be established by proof of discriminatory effect. By formalizing the discriminatory effects standard, the rule will not, as one commenter suggested, ''undermine the states' regulation of insurance.'' The McCarran-Ferguson Act provides that ''[n]o Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance * * * unless such Act specifically relates to the business of insurance.'' McCarran-Ferguson does not preclude HUD from issuing regulations that may apply to insurance policies. Rather, McCarran-Ferguson instructs courts on how to construe federal statutes, including the Act. How the Act should be construed in light of McCarran-Ferguson depends on the facts at issue and the language of the relevant State law ''relat[ing] to the business of insurance.'' Because this final rule does not alter the instruction of McCarran-Ferguson or its application as described in *Ojo* v. *Farmers Group,* it will not interfere with any State regulation of the insurance industry.

Issue: Some commenters stated that liability for insurance practices based on a disparate impact standard of proof is inappropriate because insurance is risk-based and often based on a multivariate analysis. A commenter wrote that ''to avoid creating a disparate impact, an insurer would have to charge everyone the same rate, regardless of risk,'' or might be forced to violate state laws that require insurance rates to be actuarially sound estimates of the expected value of all future costs associated with an individual risk transfer.

HUD Response: HUD believes that these concerns are misplaced. First, they presume that once a discriminatory effect is shown, the policy at issue is *per se* illegal. This is incorrect. Rather, as § 100.500 makes clear, the respondent or defendant has a full opportunity to defend the business justifications for its policies. This ''burden-shifting framework'' distinguishes ''unnecessary barriers proscribed by the [Act] from valid policies and practices crafted to advance legitimate interests.'' [140] Thus, even if a policy has a discriminatory effect, it may still be legal if supported by a legally sufficient justification.

Issue: Some commenters asked HUD to exempt insurance pricing from the rule, exempt state Fair Access to Insurance Requirements (''FAIR'') plans, or establish safe harbors for certain risk-related factors.

HUD Response: Creating exemptions or safe harbors related to insurance is unnecessary because, as discussed above, insurance practices with a legally sufficient justification will not violate the Act. Moreover, creating exemptions beyond those found in the Act would run contrary to Congressional intent.[141]

Issue: Another commenter stated that the ''burden of proof issues'' are difficult for insurers because they do not collect data on race and ethnicity and state insurance laws may prohibit the collection of such data.

HUD Response: The burden of proof is not more difficult for insurers than for a charging party or plaintiff alleging that an insurance practice creates a discriminatory effect. The charging party or plaintiff must initially show the discriminatory effect of the challenged practice using appropriate evidence that demonstrates the effect. If the charging party or plaintiff makes that showing, the burden shifts to the insurer to show that the challenged practice is necessary to achieve one or more of its substantial, legitimate, nondiscriminatory interests.

Issue: A commenter expressed concern that the rule may create strict liability for entities complying with contractual obligations set by third parties, including the federal government.

HUD Response: The commenter misconstrues the discriminatory effects standard, which permits a defendant or respondent to defend against a claim of discriminatory effect by establishing a legally sufficient justification, as specified in § 100.500.

Issue: Another commenter expressed concern that the citation to *Miller* v. *Countrywide Bank, N.A.,* 571 F. Supp. 2d 251 (D. Mass. 2008), in the preamble to the proposed rule suggested that liability could exist under the Act for the neutral actions of third parties and that such liability would be inconsistent with the Supreme Court's decision in *Meyer* v. *Holley,* 537 U.S. 280 (2003). This commenter requested that HUD revise the proposed rule to articulate the standard set forth in *Meyer.*

HUD Response: HUD does not agree with the commenter's suggestion. HUD recognizes that pursuant to *Meyer,* liability under the Act for corporate officers is determined by agency law. The proposed rule cited *Miller* as an example of how a lender's facially neutral policy allowing employees and mortgage brokers the discretion to price loans may be actionable under the Fair Housing Act. The decision in *Miller* is not inconsistent with the Supreme Court's ruling on agency in *Meyer,* and therefore HUD does not believe that the final rule needs to be revised in response to this comment.

Issue: Several commenters expressed concern that adoption of the proposed discriminatory effects standard would lead to lawsuits challenging lenders' use of credit scores, other credit assessment standards, or automated underwriting. A commenter stated that a lender's consideration of credit score or other credit assessment standards such as a borrower's debt-to-income ratio may have a disparate impact because of demographic differences. This commenter cited studies which indicate that borrowers who live in zip codes with a higher concentration of minorities are more likely to have lower credit scores and fewer savings. A commenter stated that credit scores are often used as the determining factor in a lender's origination practices and that certain underwriting software and investor securitization standards require a minimum credit score. The commenter further stated that HUD's Federal Housing Administration (FHA) program has recognized the value of credit scores in setting underwriting standards for FHA insured loans. According to the commenter, lenders have little ability or desire to override credit score standards, because manual underwriting is time consuming and staff-intensive. Another commenter expressed concern that, even if a lender was successful in defending its credit risk assessment practices under the burden-shifting approach, the lender would have to defend an expensive lawsuit and suffer harm to its reputation.

[138] *See, e.g.,* 24 CFR 100.70(d)(4) (Mar. 15, 1989) (defining ''other prohibited sale and rental conduct'' to include ''refusing to provide * * * property or hazard insurance for dwellings or providing such * * * insurance differently'' because of a protected class); 53 FR 44,992, 44,997 (Nov. 7, 1988) (preamble to proposed regulations stating that ''discriminatory refusals to provide * * * adequate property or hazard insurance * * * has been interpreted by the Department and by courts to render dwellings unavailable'').

[139] *See Ojo* v. *Farmers Group, Inc.,* 600 F.3d at 1208; *NAACP* v. *American Family Mut. Ins. Co.,* 978 F.2d 287, 297–301 (7th Cir. 1993); *Nationwide Mut. Ins. Co.* v. *Cisneros,* 52 F.3d 1351, 1355–1360 (6th Cir. 1995). *But see Mackey* v. *Nationwide Ins. Cos.,* 724 F.2d 419, 423–25 (4th Cir. 1984) (pre-Fair Housing Amendments Act and regulations pursuant thereto holding that Act does not cover insurance).

[140] *Graoch,* 508 F.3d at 374–75.

[141] *See Graoch,* 508 F.3d at 375 (''we cannot create categorical exemptions from [the Act] without a statutory basis'' and ''[n]othing in the text of the FHA instructs us to create practice-specific exceptions'').

Commenters from the lending industry also stated that the rule may have a chilling effect on lending in lower income communities. A commenter stated that the rule will create uncertainty in a skittish market, so lenders will be cautious about lending in lower income communities for fear of a legal challenge. Some of these commenters reasoned that underwriting requirements and risk requirements pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act (Pub. L. 111–203, approved July 21, 2010)), such as ability to repay, down payment requirements, and qualified residential mortgages, may result in a disparate impact because of demographic differences. Another commenter explained that the rule would eliminate in-portfolio mortgage loans at community banks, which provide mortgage credit to borrowers who may not qualify for a secondary market transaction.

HUD Response: HUD does not believe that the rule will have a chilling effect on lending in lower income communities or that it will encourage lawsuits challenging credit scores, other credit assessment standards, or the requirements of the Dodd-Frank Act. As discussed above, the rule does not change the substantive law; eleven federal courts of appeals have recognized discriminatory effects liability under the Act and over the years courts have evaluated both meritorious and non-meritorious discriminatory effects claims challenging lending practices.[142] As HUD has reiterated, the rule formalizes a substantive legal standard that is well recognized by both courts and participants in the lending industry for assessing claims of discriminatory effects. Indeed, in the lending context, at least since the issuance of the Joint Policy Statement nearly 18 years ago, non-depository lenders, banks, thrifts, and credit unions have been on notice that federal regulatory and enforcement agencies, including HUD and the Department of Justice, may apply a disparate impact analysis in their examinations and investigations under both the Fair Housing Act and ECOA. The regulations and Staff Commentary implementing ECOA also explicitly prohibit unjustified discriminatory effects.[143] Thus, neither a chilling effect nor a wealth of new lawsuits can be expected as a result of this rule. Rather, HUD anticipates that this rule will encourage the many lenders and other entities that already conduct internal discriminatory effects analyses of their policies to review those analyses in light of the now uniform standard for a legally sufficient justification found in § 100.500. Indeed, lender compliance should become somewhat easier due to the rule's clear and nationally uniform allocation of burdens and clarification of the showings each party must make.

Issue: Some commenters expressed concern that faced with the threat of disparate impact liability, lenders might extend credit to members of minority groups who do not qualify for the credit.

HUD Response: The Fair Housing Act does not require lenders to extend credit to persons not otherwise qualified for a loan. As discussed previously, the final rule formalizes a standard of liability under the Act that has been in effect for decades. HUD is unaware of any lender found liable under the discriminatory effects standard for failing to make a loan to a member of a minority group who did not meet legitimate nondiscriminatory credit qualifications.

Issue: Several other commenters expressed a concern that discriminatory effects liability might have a chilling effect on efforts designed to preserve or develop affordable housing, including pursuant to HUD's own programs, because much of the existing affordable housing stock is located in areas of minority concentration. A commenter stated that resources designed to support the development of affordable housing will be ''deflect[ed]'' away so as to respond to claims of disparate impact discrimination. Another commenter requested that HUD issue guidance to the affordable housing industry as they administer HUD programs.

Other commenters expressed concern about potential liability for administrators of the federal Low Income Housing Tax Credit (LIHTC) program. These commenters reasoned that the concentration of affordable housing stock in low-income areas, combined with federal requirements and incentives which encourage the deployment of tax credits in low-income communities, may result in discriminatory effects liability for agencies administering the LIHTC program. Several commenters asked HUD to specify in the final rule that the mere approval of LIHTC projects in minority areas alone does not establish a prima facie case of disparate impact under the Act or that locating LIHTC projects in low-income areas is a legally sufficient justification to claims of disparate impact discrimination. A commenter requested that HUD provide guidance to such agencies.

HUD Response: HUD does not expect the final rule to have a chilling effect on the development and preservation of affordable housing because, as discussed above, the rule does not establish a new form of liability, but instead serves to formalize by regulation a standard that has been applied by HUD and the courts for decades, while providing nationwide uniformity of application. The rule does not mandate that affordable housing be located in neighborhoods with any particular characteristic, but requires, as the Fair Housing Act already does, only that housing development activities not have an unjustified discriminatory effect.

Concerns of a chilling effect on affordable housing activities are belied by the prevalence of cases where the discriminatory effects method of proof has been used by plaintiffs seeking to develop such housing[144] and even by the less frequent instances where

[142] *Compare Ramirez* v. *GreenPoint Mortg. Funding, Inc.,* 633 F. Supp. 2d 922, 927–28 (N.D. Cal. 2008) (holding that the Act permits disparate impact claims and finding that plaintiffs adequately pled a specific and actionable policy that had a disparate impact on members of a protected class); *Miller* v. *Countrywide Bank, N.A.,* 571 F. Supp. 2d 251, 258 (D. Mass. 2008) (denying defendants motion to dismiss and finding that plaintiffs adequately pled a specific and actionable policy, a disparate impact, and facts raising a sufficient inference of causation); and *Hoffman* v. *Option One Mortg. Corp.,* 589 F. Supp. 2d 1009, 1011–12 (N.D. Ill. 2008) (holding that the Actpermits disparate impact claims and finding that plaintiffs adequately pled a specific and actionable policy, a disparate impact, and facts raising a sufficient inference of causation), *with Ng* v. *HSBC Mortgage Corp.,* No. 07–CV–5434, 2010 WL 889256, *12 (E.D.N.Y. Mar. 10, 2010) (dismissing plaintiff's claim of disparate impact discrimination and finding that the claim was ''alleged with little more than buzzwords and conclusory labels'').

[143] *See* 12 CFR 1002.6(a); 12 CFR part 1002, Supp. I, Official Staff Commentary, Comment 6(a)–2 ; *see also* Consumer Financial Protection Bureau Bulletin 2012–04 (Apr. 18, 2012) (''CFPB reaffirms that the legal doctrine of disparate impact remains applicable as the Bureau exercises its supervision and enforcement authority to enforce compliance with the ECOA.'').

[144] *See, e.g., Huntington Branch,* 844 F.2d at 926 (reversing district court and finding Fair Housing Act violations based on discriminatory effect of town's refusal to rezone site for affordable housing); *Greater New Orleans Fair Hous. Action Ctr.* v. *St. Bernard Parish,* 648 F. Supp. 2d 805 (E.D. La. 2009) (finding parish's subversion of attempts to develop affordable housing had a discriminatory effect in violation of the Fair Housing Act); *Dews* v. *Town of Sunnyvale,* 109 F. Supp. 2d 526 (N.D. Tex. 2000) (finding that developer established Fair Housing Act violation based on Town's rejection of development application under discriminatory effects method); *Sunrise Dev.* v. *Town of Huntington,* 62 F. Supp. 2d 762 (E.D.N.Y. 1999) (finding the plaintiff had established prima facie case of discriminatory effect and granting preliminary injunction requiring town to consider plaintiff's zoning application); *Summerchase Ltd. Pshp. I* v. *City of Gonzales,* 970 F. Supp. 522 (M.D. La. 1997) (denying defendant's motion for summary judgment on developer's claim that parish's denial of building permits for affordable housing development had a discriminatory effect in violation of the Fair Housing Act).

agencies administering affordable housing programs have been defendants.[145] Rather than indicating a chilling effect, existing case law shows that use of the discriminatory effects framework has promoted the development of affordable housing, while allowing due consideration for substantial, legitimate, nondiscriminatory interests involved in providing such housing. Moreover, recipients of HUD funds already must comply with a variety of civil rights requirements. This includes the obligation under Title VI of the Civil Rights Act of 1964 and its applicable regulations to refrain from discrimination, either by intent or effect, on the basis of race, color, or national origin; the obligation under the Fair Housing Act to affirmatively further fair housing in carrying out HUD programs; and HUD program rules designed to foster compliance with the Fair Housing Act and other civil rights laws. As discussed throughout this preamble, allegations of discriminatory effects discrimination must be analyzed on a case-by-case basis using the standards set out in § 100.500. HUD will issue guidance addressing the application of the discriminatory effects standard with respect to HUD programs.

Issue: Like commenters who requested ''safe harbors'' or exemptions for the insurance and lending industries, some commenters requested that the proposed rule be revised to provide ''safe harbors'' or exemptions from liability for programs designed to preserve affordable housing or revitalize existing communities. A commenter requested that the final rule provide safe harbors for state and local programs that have legitimate policy and safety goals such as protecting water resources, promoting transit orientated development, and revitalizing communities. Other commenters requested safe harbors or exemptions for entities that are meeting requirements or standards established by federal or state law or regulation, such as the Federal Credit Union Act, the Dodd-Frank Act, HAMP and HARP, or by government-sponsored enterprises or investors.

HUD Response: HUD does not believe that the suggested safe harbors or exemptions from discriminatory effects liability are appropriate or necessary. HUD notes that, in seeking these exemptions, the commenters appear to misconstrue the discriminatory effects standard, which permits practices with discriminatory effects if they are supported by a legally sufficient justification. The standard thus recognizes that a practice may be lawful even if it has a discriminatory effect. HUD notes further that Congress created various exemptions from liability in the text of the Act,[146] and that in light of this and the Act's important remedial purposes, additional exemptions would be contrary to Congressional intent.

Issue: Several commenters expressed concern that in complying with the new Dodd-Frank Act mortgage reforms, including in determining that consumers have an ability to repay, a lender necessarily ''will face liability under the Proposed Rule.''

HUD Response: HUD reiterates that the lender is free to defend any allegations of illegal discriminatory effects by meeting its burden of proof at § 100.500. Moreover, if instances were to arise in which a lender's efforts to comply with the Dodd-Frank Act were challenged under the Fair Housing Act's discriminatory effects standard of liability, those same activities most likely would be subject to a similar challenge under ECOA and Regulation B, which also prohibit lending practices that have a discriminatory effect based on numerous protected characteristics.[147] The Dodd-Frank Act created the Consumer Financial Protection Bureau to combat both unfair and deceptive practices and discriminatory practices in the consumer financial industry, and it gave the Consumer Financial Protection Bureau authority to enforce ECOA.[148] *See* Dodd-Frank Act sections 1402–1403 (enacting section 129B of the Truth in Lending Act ''to assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive or abusive,'' and, as part of that section, requiring the Consumer Financial Protection Bureau to create regulations that prohibit ''abusive or unfair lending practices that promote disparities among consumers of equal credit worthiness but of different race, ethnicity, gender, or age''); *see also* Dodd-Frank Act section 1013(c) (establishing the Consumer Financial Protection Bureau's Office of Fair Lending and Equal Opportunity to provide enforcement of fair lending laws, including ECOA, and coordinate fair lending efforts within the Bureau and with other federal and state agencies); *id.* section 1085 (transferring regulatory authority for ECOA to the Consumer Financial Protection Bureau).

G. Illustrations of Practices With Discriminatory Effects

Consistent with HUD's existing Fair Housing Act regulations, which contain illustrations of practices that violate the Act, the proposed rule specified additional illustrations of such practices. The November 16, 2011, rule proposed to add illustrations to 24 CFR 100.65, 100.70 and 100.120. The final rule revises these illustrations in the manner described below.

Because the illustrations in HUD's existing regulations include practices that may violate the Act based on an intent or effects theory, and proposed § 100.65(b)(6) describes conduct that is already prohibited in § 100.65(b)(4)—the provision of housing-related services—and § 100.70(d)(4)—the provision of municipal services—this final rule eliminates proposed § 100.65(b)(6). This will avoid redundancy in HUD's Fair Housing Act regulations, and its elimination from the proposed rule is not intended as a substantive change.

Commenters raised the following issues with respect to the proposed rule's illustrations of discriminatory practices.

Issue: A commenter stated that the examples specified by the proposed rule describe the types of actions that the commenter's ''clients encounter regularly.'' Examples of potentially discriminatory laws or ordinances cited by commenters include ordinances in largely white communities that establish local residency requirements, limit the use of vouchers under HUD's Housing Choice Voucher program, or set large-lot density requirements. Commenters suggested that language should be added to proposed § 100.70(d)(5), which provides, as an example, ''[i]mplementing land-use rules, policies or procedures that restrict or deny housing opportunities in a manner that has a disparate impact or has the effect of creating, perpetuating, or increasing segregated housing patterns'' based on a protected class. Commenters stated that this example should include not just the word ''implementing,'' but also the words ''enacting'' ''maintaining,'' and/or ''applying'' because the discriminatory effect of a land-use decision may occur from the moment of enactment. A commenter suggested that the word ''ordinances'' should be added to the example to make clear that the Act applies to all types of exclusionary land-use actions.

[145] *Compare, e.g., In re Adoption of 2003 Low Income Housing Tax Credit Qualified Allocation Plan,* 369 N.J. Super. 2 (N.J. Sup. Ct. App. Div. 2004) *with Inclusive Cmtys. Project, Inc.* v. *Tex. Dep't of Hous. & Cmty. Affairs,* 749 F. Supp. 2d 48 (N.D. Tex. 2010).

[146] *See, e.g.,* 42 U.S.C. 3603(b)(1) (exempting from most of section 804 of the Act an owner's sale or rental of his single-family house if certain conditions are met).

[147] *See* 15 U.S.C. 1691 *et seq;* 12 CFR part 1002.

[148] *See* 12 U.S.C. 5491 *et seq.*

HUD Response: HUD reiterates that the illustrations contained in HUD's regulations are merely examples. The scope and variety of practices that may violate the Act make it impossible to list all examples in a rule. Nevertheless, HUD finds it appropriate to revise proposed § 100.70(d)(5) in this final rule in order to confirm that a land-use ordinance may be discriminatory from the moment of enactment. The final rule therefore changes ''[i]mplementing land-use rules, policies, or procedures * * * '' to ''[e]nacting or implementing land-use rules, ordinances, policies, or procedures * * * .'' It is not necessary to add ''maintaining'' or ''applying'' to § 100.70(d)(5) because the meaning of these words in this context is indistinguishable from the meaning of ''implementing.''

Because the illustrated conduct may violate the Act under either an intent theory, an effects theory, or both, HUD also finds it appropriate to replace ''in a manner that has a disparate impact or has the effect of creating, perpetuating, or increasing segregated housing patterns'' because of a protected characteristic with ''otherwise make unavailable or deny dwellings because of'' a protected characteristic. As discussed in the ''Validity of Discriminatory Effects Liability under the Act'' section above, the phrase ''otherwise make unavailable or deny'' encompasses discriminatory effects liability. This revised language, therefore, is broader because it describes land-use decisions that violate the Act because of either a prohibited intent or an unjustified discriminatory effect. The final rule makes a similar revision to each of the illustrations so they may cover violations based on intentional discrimination or discriminatory effects.

Issue: A commenter requested that HUD add as an example the practice of prohibiting from housing individuals with records of arrests or convictions. This commenter reasoned that such blanket prohibitions have a discriminatory effect because of the disproportionate numbers of minorities with such records. The commenter stated further that HUD should issue guidance on this topic similar to guidance issued by the Equal Employment Opportunity Commission. Another commenter expressed concern that the rule would restrict housing providers from screening tenants based on criminal arrest and conviction records. This commenter also asked HUD to issue guidance to housing providers on appropriate background screening.

HUD Response: Whether any discriminatory effect resulting from a housing provider's or operator's use of criminal arrest or conviction records to exclude persons from housing is supported by a legally sufficient justification depends on the facts of the situation. HUD believes it may be appropriate to explore the issue more fully and will consider issuing guidance for housing providers and operators.

Issue: Several commenters suggested revisions to proposed § 100.120(b)(2), which specifies as an example ''[p]roviding loans or other financial assistance in a manner that results in disparities in their cost, rate of denial, or terms or conditions, or that has the effect of denying or discouraging their receipt on the basis of race, color, religion, sex, handicap, familial status, or national origin.'' These commenters stated that proposed § 100.120(b)(2) does not contain language concerning the second type of discriminatory effect, i.e., creating, perpetuating or increasing segregation. They urged HUD to add language making clear that the provision of loans or other financial assistance may result in either type of discriminatory effect.

In addition, several commenters asked HUD to clarify that mortgage servicing with a discriminatory effect based on a protected characteristic may violate the Act.

HUD Response: As discussed above, proposed § 100.120(b)(2) is revised in the final rule to cover both intentional discrimination and discriminatory effects. HUD also agrees that residential mortgage servicing is covered by the Act. It is a term or condition of a loan or other financial assistance, covered by section 805 of the Act.[149] Accordingly, the final rule adds a § 100.130(b)(3), which provides an illustration of discrimination in the terms or conditions for making available loans or financial assistance, in order to show that discriminatory loan servicing (and other discriminatory terms or conditions of loans and other financial assistance) violate the Act's proscription on ''discriminat[ing] * * * in the terms or conditions of [a residential real estate-related transaction].''

Issue: A commenter expressed concern that the language in proposed § 100.120(b)(2) would allow for lawsuits based only on statistical data produced under HMDA.

HUD Response: HUD and courts have recognized that analysis of loan level data identified though HMDA may indicate a disparate impact.[150] Such a showing, however, does not end the inquiry. The lender would have the opportunity to refute the existence of the alleged impact and establish a substantial, legitimate, nondiscriminatory interest for the challenged practice, and the charging party or plaintiff would have the opportunity to demonstrate that a less discriminatory alternative is available to the lender.

Issue: A commenter stated that HUD should not add any of the new examples unless the final rule makes clear that the specified practices are not *per se* violations of the Act, but rather must be assessed pursuant to the standards set forth in § 100.500. According to the commenter, the new examples may be misconstrued because they state only the initial finding described in § 100.500.

HUD Response: HUD agrees that, when a practice is challenged under a discriminatory effects theory, the practice must be reviewed under the standards specified in § 100.500. The final rule therefore adds a sentence to the end of § 100.5(b), which makes clear that discriminatory effects claims are assessed pursuant to the standards stated in § 100.500.

H. Other Issues

Issue: A commenter requested that HUD examine the overall compliance burden of the regulation on small businesses, noting that Executive Order 13563 requires a cost-benefit analysis.

HUD Response: In examining the compliance burden on small institutions, the governing authority is the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* which provides, among other things, that the requirements to do an initial and final regulatory flexibility analysis ''shall not apply to any proposed or final rule if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' Thus, the focus is on whether the rule—and not the underlying statute or preexisting administrative practice and case law—will have a significant economic impact. For this rule, the impact primarily arises from the Fair Housing Act itself, not only as interpreted by HUD, but also as interpreted by federal courts. Because this final rule provides a uniform burden-shifting test for determining

[149] 42 U.S.C. 3605. Discrimination in residential mortgage servicing may also violate § 804 of the Act. 42 U.S.C. 3604.

[150] *See City of Memphis and Shelby Cnty.* v. *Wells Fargo, N.A.,* No. 09–2857–STA, 2011 U.S. Dist. LEXIS 48522 at *45 (W.D. Tenn. May 4, 2011); *Mayor and City Council of Baltimore* v. *Wells Fargo Bank, N.A.,* No. JFM–08–62, 2011 U.S. Dist. LEXIS 44013 (D. Md. April 22, 2011); *Steele* v. *GE Money Bank,* No. 08–C–1880, 2009 U.S. Dist. LEXIS 11536 (N.D. Ill. Feb. 17, 2009); *Taylor* v. *Accredited Home Lenders, Inc.,* 580 F. Supp. 2d 1062 (S.D. Cal. 2008).

whether a given action or policy has an unjustified discriminatory effect, the rule serves to reduce regulatory burden for all entities, large or small, by establishing certainty and clarity with respect to how a determination of unjustified discriminatory effect is to be made.

The requirement under the Fair Housing Act not to discriminate in the provision of housing and related services is the law of the nation. We presume that the vast majority of entities both large and small are in compliance with the Fair Housing Act. Furthermore, for the minority of entities that have, in the over 40 years of the Fair Housing Act's existence, failed to institutionalize methods to avoid engaging in illegal housing discrimination and plan to come into compliance as a result of this rulemaking, the costs will simply be the costs of compliance with a preexisting statute, administrative practice, and case law. Compliance with the Fair Housing Act has for almost 40 years included the requirement to refrain from undertaking actions that have an unjustified discriminatory effect. The rule does not change that substantive obligation; it merely formalizes it in regulation, along with the applicable burden-shifting framework.

Variations in the well-established discriminatory effects theory of liability under the Fair Housing Act, discussed earlier in the preamble, are minor and making them uniform will not have a significant economic impact. The allocation of the burdens of proof among the parties, described in the rule, are methods of proof that only come into play if a complaint has been filed with HUD, a state or local agency or a federal or state court; that is, once an entity has been charged with discriminating under the Fair Housing Act. The only economic impact discernible from this rule is the cost of the difference, if any, between defense of litigation under the burden-shifting test on the one hand, and defense of litigation under the balancing or hybrid test on the other. In all the tests, the elements of proof are similar. Likewise, the costs to develop and defend such proof under either the burden-shifting or balancing tests are similar. The only difference is at which stage of the test particular evidence must be produced. There would not, however, be a significant economic impact on a substantial number of small entities as a result of this rule.

Executive Order 13563 (Improving Regulations and Regulatory Review) reaffirms Executive Order 12866, which requires that agencies conduct a benefit/cost assessment for rules that ''have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities.'' As stated in Section VII of this preamble below, this rule is not ''economically significant'' within the meaning in Executive 12866, and therefore a full benefit/cost assessment is not required. This final rule does not alter the established law that facially neutral actions that have an unjustified discriminatory effect are violations of the Fair Housing Act. What this rule does is formalize that well-settled interpretation of the Act and provide consistency in how such discriminatory effects claims are to be analyzed.

VI. This Final Rule

For the reasons presented in this preamble, this final rule formalizes the longstanding interpretation of the Fair Housing Act to include discriminatory effects liability and establishes a uniform standard of liability for facially neutral practices that have a discriminatory effect. Under this rule, liability is determined by a burden-shifting approach. The charging party or plaintiff in an adjudication first must bear the burden of proving its prima facie case of either disparate impact or perpetuation of segregation, after which the burden shifts to the defendant or respondent to prove that the challenged practice is necessary to achieve one or more of the defendant's or respondent's substantial, legitimate, nondiscriminatory interests. If the defendant or respondent satisfies its burden, the charging party or plaintiff may still establish liability by demonstrating that these substantial, legitimate, nondiscriminatory interests could be served by a practice that has a less discriminatory effect.

A. Discriminatory Effect—Subpart G

1. Scope

This final rule adds a new sentence to the end of paragraph (b) in § 100.5, which states: ''The illustrations of unlawful housing discrimination in this part may be established by a practice's discriminatory effect, even if not motivated by discriminatory intent, consistent with the standards outlined in § 100.500.''

2. Discriminatory Effect Prohibited (§ 100.500)

Consistent with HUD's November 16, 2011, proposed rule, this final rule adds a new subpart G, entitled ''Discriminatory Effect,'' to its Fair Housing Act regulations in 24 CFR part 100. Section 100.500 provides that the Fair Housing Act may be violated by a practice that has a discriminatory effect, as defined in § 100.500(a), regardless of whether the practice was adopted for a discriminatory purpose. The practice may still be lawful if supported by a legally sufficient justification, as defined in § 100.500(b). The respective burdens of proof for establishing or refuting an effects claim are set forth in § 100.500(c). Section 100.500(d) clarifies that a legally sufficient justification may not be used as a defense against a claim of intentional discrimination. It should be noted that it is possible to bring a claim alleging both discriminatory effect and discriminatory intent as alternative theories of liability. In addition, the discriminatory effect of a challenged practice may provide evidence of the discriminatory intent behind the practice. This final rule applies to both public and private entities because the definition of ''discriminatory housing practice'' under the Act makes no distinction between the two.

3. Discriminatory Effect Defined (§ 100.500(a))

Section 100.500(a) provides that a ''discriminatory effect'' occurs where a facially neutral practice actually or predictably results in a discriminatory effect on a group of persons protected by the Act (that is, has a disparate impact), or on the community as a whole on the basis of a protected characteristic (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. For examples of court decisions regarding policies or practices that may have a discriminatory effect, please see the preamble to the proposed rule at 76 FR 70924–25.

4. Legally Sufficient Justification (§ 100.500(b))

Section 100.500(b), as set forth in the regulatory text of this final rule, provides that a practice or policy found to have a discriminatory effect may still be lawful if it has a ''legally sufficient justification.''

5. Burden of Proof (§ 100.500(c))

Under § 100.500(c), the charging party or plaintiff first bears the burden of proving its prima facie case: that is, that a practice caused, causes, or predictably will cause a discriminatory effect on a

group of persons or a community on the basis of race, color, religion, sex, disability, familial status, or national origin. Once the charging party or the plaintiff has made its prima facie case, the burden of proof shifts to the respondent or defendant to prove that the practice is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests of the respondent or defendant. If the respondent or defendant satisfies its burden, the charging party or plaintiff may still establish liability by proving that these substantial, legitimate, nondiscriminatory interests could be served by another practice that has a less discriminatory effect.

B. Illustrations of Practices With Discriminatory Effects

This final rule adds or revises the following illustrations of discriminatory housing practices:

The final rule adds to § 100.70 new paragraph (d)(5), which provides as an illustration of other prohibited conduct ''[e]nacting or implementing land-use rules, ordinances, policies, or procedures that restrict or deny housing opportunities or otherwise make unavailable or deny dwellings because of race, color, religion, sex, handicap, familial status, or national origin.''

Section 100.120, which gives illustrations of discrimination in the making of loans and in the provision of other financial assistance, is streamlined, and paragraph (b)(2) now reads as set forth in the regulatory text of this final rule

In § 100.130, the final rule also amends paragraph (b)(2) and adds new paragraph (b)(3). The words ''or conditions'' is added after ''terms,'' and ''cost'' is added to the list of terms or conditions in existing paragraph (b)(2). New paragraph (b)(3) includes servicing as an illustration of terms or conditions of loans or other financial assistance covered by section 805 of the Act: ''Servicing of loans or other financial assistance with respect to dwellings in a manner that discriminates, or servicing of loans or other financial assistance which are secured by residential real estate in a manner that discriminates, or providing such loans or financial assistance with other terms or conditions that discriminate, because of race, color, religion, sex, handicap, familial status, or national origin.''

VII. Findings and Certifications

Regulatory Review—Executive Orders 13563 and 12866

Executive Order 13563 (''Improving Regulation and Regulatory Review'') directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs, emphasizes the importance of quantifying both costs and benefits, of harmonizing rules, of promoting flexibility, and of periodically reviewing existing rules to determine if they can be made more effective or less burdensome in achieving their objectives. Under Executive Order 12866 (''Regulatory Planning and Review''), a determination must be made whether a regulatory action is significant and therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. This rule was determined to be a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866 (although not an economically significant regulatory action, as provided under section 3(f)(1) of the Executive Order).

This rule formalizes the longstanding interpretation of the Fair Housing Act to include discriminatory effects liability, and establishes uniform, clear standards for determining whether a practice that has a discriminatory effect is in violation of the Fair Housing Act, regardless of whether the practice was adopted with intent to discriminate. As stated in the Executive Summary, the need for this rule arises because, although all federal courts of appeals that have considered the issue agree that Fair Housing Act liability may be based solely on discriminatory effects, there is a small degree of variation in the methodology of proof for a claim of effects liability. As has been discussed in the preamble to this rule, in establishing such standards HUD is exercising its rulemaking authority to bring uniformity, clarity, and certainty to an area of the law that has been approached by HUD and federal courts across the nation in generally the same way, but with minor variations in the allocation of the burdens of proof.[151] A uniform rule would simplify compliance with the Fair Housing Act's discriminatory effects standard, and decrease litigation associated with such claims. By providing certainty in this area to housing providers, lenders, municipalities, realtors, individuals engaged in housing transactions, and courts, this rule would reduce the burden associated with litigating discriminatory effect cases under the Fair Housing Act by clearly establishing which party has the burden of proof, and how such burdens are to be met. Additionally, HUD believes the rule may even help to minimize litigation in this area by establishing uniform standards. With a uniform standard, entities are more likely to conduct self-testing and check that their practices comply with the Fair Housing Act, thus reducing their liability and the risk of litigation. A uniform standard is also a benefit for entities operating in multiple jurisdictions. Also, legal and regulatory clarity generally serves to reduce litigation because it is clearer what each party's rights and responsibilities are, whereas lack of consistency and clarity generally serves to increase litigation. For example, once disputes around the court-defined standards are eliminated by this rule, non-meritorious cases that cannot meet the burden under § 100.500(c)(1) are likely not to be brought in the first place, and a respondent or defendant that cannot meet the burden under § 100.500(c)(2) may be more inclined to settle at the pre-litigation stage.

Accordingly, while this rule is a significant regulatory action under Executive Order 12866 in that it establishes, for the first time in regulation, uniform standards for determining whether a housing action or policy has a discriminatory effect on a protected group, it is not an economically significant regulatory action. The burden reduction that HUD believes will be achieved through uniform standards will not reach an annual impact on the economy of $100 million or more, because HUD's approach is not a significant departure from HUD's interpretation to date or that of the majority of federal courts. Although the burden reduction provided by this rule will not result in economically significant impact on the economy, it nevertheless provides some burden reduction through the uniformity and clarity presented by HUD's standards promulgated through this final rule and is therefore consistent with Executive Order 13563.

The docket file is available for public inspection in the Regulations Division, Office of the General Counsel, Room 10276, 451 7th Street SW., Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires

[151] *See, e.g.,* the extensive discussion of the various options in *Graoch,* 508 F.3d at 371–375.

an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. For the reasons stated earlier in this preamble in response to public comment on the issue of undue burden on small entities, and discussed here, HUD certifies that this rule will not have significant economic impact on a substantial number of small entities.

It has long been the position of HUD, confirmed by federal courts, that practices with discriminatory effects may violate the Fair Housing Act. As noted in the preamble to the proposed rule (76 FR 70921) and this preamble to the final rule, this long-standing interpretation has been supported by HUD policy documents issued over the last decades, is consistent with the position of other Executive Branch agencies, and has been adopted and applied by every federal court of appeals to have reached the question. Given, however, the variation in how the courts and even HUD's own ALJs have applied that standard, this final rule provides for consistency and uniformity in this area, and hence predictability, and will therefore reduce the burden for all seeking to comply with the Fair Housing Act. Furthermore, HUD presumes that given the over 40-year history of the Fair Housing Act, the majority of entities, large or small, currently comply and will remain in compliance with the Fair Housing Act. For the minority of entities that have, in the over 40 years of the Fair Housing Act's existence, failed to institutionalize methods to avoid engaging in illegal housing discrimination and plan to come into compliance as a result of this rulemaking, the costs will simply be the costs of compliance with a preexisting statute. The rule does not change that substantive obligation; it merely sets it forth in a regulation. While this rule provides uniformity as to specifics such as burden of proof, HUD's rule does not alter the substantive prohibitions against discrimination in fair housing law, which were established by statute and developed over time by administrative and federal court case law. Any burden on small entities is simply incidental to the pre-existing requirements to comply with this body of law. Accordingly, the undersigned certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

This final rule sets forth nondiscrimination standards. Accordingly, under 24 CFR 50.19(c)(3), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either: (i) Imposes substantial direct compliance costs on state and local governments and is not required by statute, or (ii) preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This final rule does not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

List of Subjects in 24 CFR Part 100

Civil rights, Fair housing, Individuals with disabilities, Mortgages, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, HUD amends 24 CFR part 100 as follows:

PART 100—DISCRIMINATORY CONDUCT UNDER THE FAIR HOUSING ACT

■ 1. The authority citation for 24 CFR part 100 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3600–3620.

Subpart A—General

■ 2. In § 100.5, add the following sentence at the end of paragraph (b):

§ 100.5 Scope.

* * * * *

(b) * * * The illustrations of unlawful housing discrimination in this part may be established by a practice's discriminatory effect, even if not motivated by discriminatory intent, consistent with the standards outlined in § 100.500.

* * * * *

Subpart B—Discriminatory Housing Practices

■ 3. In § 100.70, add new paragraph (d)(5) to read as follows:

§ 100.70 Other prohibited conduct.

* * * * *

(d) * * *

(5) Enacting or implementing land-use rules, ordinances, policies, or procedures that restrict or deny housing opportunities or otherwise make unavailable or deny dwellings to persons because of race, color, religion, sex, handicap, familial status, or national origin.

Subpart C—Discrimination in Residential Real Estate-Related Transactions

■ 4. In § 100.120, revise paragraph (b) to read as follows:

§ 100.120 Discrimination in the making of loans and in the provision of other financial assistance.

* * * * *

(b) Practices prohibited under this section in connection with a residential real estate-related transaction include, but are not limited to:

(1) Failing or refusing to provide to any person information regarding the availability of loans or other financial assistance, application requirements, procedures or standards for the review and approval of loans or financial assistance, or providing information which is inaccurate or different from that provided others, because of race, color, religion, sex, handicap, familial status, or national origin.

(2) Providing, failing to provide, or discouraging the receipt of loans or other financial assistance in a manner that discriminates in their denial rate or otherwise discriminates in their availability because of race, color, religion, sex, handicap, familial status, or national origin.

■ 5. In § 100.130, revise paragraph (b)(2) and add new paragraph (b)(3) to read as follows:

§ 100.130 Discrimination in the terms and conditions for making available loans or other financial assistance.

* * * * *

(b) * * *

(2) Determining the type of loan or other financial assistance to be provided with respect to a dwelling, or fixing the amount, interest rate, cost, duration or other terms or conditions for a loan or

other financial assistance for a dwelling or which is secured by residential real estate, because of race, color, religion, sex, handicap, familial status, or national origin.

(3) Servicing of loans or other financial assistance with respect to dwellings in a manner that discriminates, or servicing of loans or other financial assistance which are secured by residential real estate in a manner that discriminates, or providing such loans or financial assistance with other terms or conditions that discriminate, because of race, color, religion, sex, handicap, familial status, or national origin.

■ 6. In part 100, add a new subpart G to read as follows:

Subpart G—Discriminatory Effect

§ 100.500 Discriminatory effect prohibited.

Liability may be established under the Fair Housing Act based on a practice's discriminatory effect, as defined in paragraph (a) of this section, even if the practice was not motivated by a discriminatory intent. The practice may still be lawful if supported by a legally sufficient justification, as defined in paragraph (b) of this section. The burdens of proof for establishing a violation under this subpart are set forth in paragraph (c) of this section.

(a) *Discriminatory effect.* A practice has a discriminatory effect where it actually or predictably results in a disparate impact on a group of persons or creates, increases, reinforces, or perpetuates segregated housing patterns because of race, color, religion, sex, handicap, familial status, or national origin.

(b) *Legally sufficient justification.* (1) A legally sufficient justification exists where the challenged practice:

(i) Is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests of the respondent, with respect to claims brought under 42 U.S.C. 3612, or defendant, with respect to claims brought under 42 U.S.C. 3613 or 3614; and

(ii) Those interests could not be served by another practice that has a less discriminatory effect.

(2) A legally sufficient justification must be supported by evidence and may not be hypothetical or speculative. The burdens of proof for establishing each of the two elements of a legally sufficient justification are set forth in paragraphs (c)(2) and (c)(3) of this section.

(c) *Burdens of proof in discriminatory effects cases.* (1) The charging party, with respect to a claim brought under 42 U.S.C. 3612, or the plaintiff, with respect to a claim brought under 42 U.S.C. 3613 or 3614, has the burden of proving that a challenged practice caused or predictably will cause a discriminatory effect.

(2) Once the charging party or plaintiff satisfies the burden of proof set forth in paragraph (c)(1) of this section, the respondent or defendant has the burden of proving that the challenged practice is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests of the respondent or defendant.

(3) If the respondent or defendant satisfies the burden of proof set forth in paragraph (c)(2) of this section, the charging party or plaintiff may still prevail upon proving that the substantial, legitimate, nondiscriminatory interests supporting the challenged practice could be served by another practice that has a less discriminatory effect.

(d) *Relationship to discriminatory intent.* A demonstration that a practice is supported by a legally sufficient justification, as defined in paragraph (b) of this section, may not be used as a defense against a claim of intentional discrimination.

Dated: February 8, 2013.

John Trasviña,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 2013–03375 Filed 2–14–13; 8:45 am]

BILLING CODE 4210–67–P

Housing Land Advocates

BY EMAIL

December 4, 2018

President Tom Hughes and Metro Councilors
600 NE Grand Avenue
Portland, OR 97232

Re: UGB Expansion Proposals

Dear President Hughes and Metro Councilors,

As Metro considers proposals to expand the urban growth boundary, Housing Land Advocates ("HLA") believes that it is imperative that Metro recommit to providing present and future urban Clackamas, Washington, and Multnomah County residents with greater access to affordable housing. By Metro's authority within Oregon's statewide land use system, and pursuant to state and federal requirements as set forth below, HLA believes the time for Metro to integrate these obligations into any plans to expand the urban growth boundary is now. Please include this letter in the record.

I. Federal Case Law

As the elected body to represent and govern regional planning for more than 1.5 million Oregonians, Metro sets policies that profoundly affect local governments that are federal funding recipients. To support local entities in efforts to obtain funding for affordable housing endeavors and sustain grants, Metro must undertake all necessary measures to ensure that zoning ordinances and policies do not impede access to affordable housing.

Under the federal Fair Housing Act ("FHA"), it is unlawful to "otherwise make unavailable … a dwelling to any person because of race, color, religion, sex familial status, or national origin."[1] Pursuant to the decision in *Metropolitan Housing Development Corp. v. Arlington Heights* (*"Arlington Heights"*)[2] effect, rather than motivation, has long been the

[1] 42 USC §3601.

[2] 616 F.2d 1006 (7th Cir. 1980). The procedural background in *Arlington Heights* included the Supreme Court' consideration of whether the zoning decision at issue could be construed as violating the Equal Protection Clause. *Arlington Heights v. Metropolitan Housing Development Corporation*, 429 U.S. 252 (1977). The Supreme Court ruled that no federal constitutional violation occurred because under its then-recent decision in *Washington v. Davis,* 426 U.S. 229, 240-242 (1976), as no intent to discriminate was shown. The Supreme Court remanded the case to the 7th Circuit to consider whether discriminatory effect violates the FHA. The case was subsequently settled; however, the Seventh Circuit set out four factors to analyze the effects of housing discrimination that could not be shown to be intentional. These factors were effectively adopted by the Supreme Court in *Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. ___ , 135 S.Ct. 2507, 192 L.Ed.2d 514 (2015).

touchstone in determining whether a government entity has denied individuals housing on the basis of race or interfered with the right to equal housing opportunities under the FHA.[3]

In *Arlington Heights*, the defendant city's zoning ordinance prohibited the Metropolitan Housing Development Corp. from building new low-cost housing that would be available to racial minorities. On remand the 7th Circuit held that if the challenged zoning ordinance had the ultimate effect of keeping members of protected classes out of the predominantly white suburban city, the defendant city was obligated under the FHA to refrain from implementing the zoning ordinance. As the City of Portland similarly noted in its June 17, 2011, Fair Housing Plan Analysis of Impediments, zoning that excludes or deters multi-family housing might result in the concentration of protected classes in particular areas of a city,[4] and as *Arlington Heights* indicated, such zoning ordinances might result in an FHA violation. Therefore, Metro's obligation does not end with simple policy choices. Rather, Metro unquestionably has an affirmative duty to alleviate discriminatory effects of its member jurisdiction's historic zoning decisions as they move forward to create modern plans.

Further, under Executive Order No. 12892, recipients of federal funding for "all programs and activities related to fair housing and development" have an affirmative duty to further fair housing.[5] The U.S. Department of Housing and Urban Development ("HUD") has defined three elements that certify a recipient in affirmatively furthering fair housing ("AFFH") and therefore in compliance with criteria crucial for maintaining or receiving such funds. The three elements to obtain certification are: (i) an Analysis of Impediments ("AI") to Fair Housing Choice; (ii) actions to overcome the effects of any impediments identified through the analysis; and (iii) records reflecting the actions taken in response to the analysis. As a recipient of federal transportation dollars, Metro must ensure that these three elements are being met, at least to the extent that Metro is responsible for reviewing and approving transportation and land use plans of member jurisdictions, and allocation of federal transportation funding throughout the region.

More recently, in *United States Anti-Discrimination Center of Metro New York v. Westchester County* ("*Westchester County*"), the county was found liable because its AI failed to

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[3] *See also U.S. v City of Black Jack, Missouri*, 508 F2d 1179, 1181 (8th Cir. 1974) (holding that a local ordinance that was shown to have racially discriminatory effect, and was not justified by a compelling government interest, violated the FHA).

[4] "*Fair Housing Plan 2011: An Analysis of Implements to Fair Housing Choice and the Strategies to Address Them.*" City of Portland, Gresham, and Multnomah County. Available at https://www.portlandoregon.gov/phb/article/653184 (Accessed November 29, 2018).

[5] Executive Order 12892, LEADERSHIP AND COORDINATION FOR FAIR HOUSING IN FEDERAL PROGRAMS: AFFIRMATIVELY FURTHERING FAIR HOUSING.

> "...[A]ll executive departments and agencies shall administer their programs and activities relating to housing and urban development (including any Federal agency having regulatory or supervisory authority over financial institutions) in a manner affirmatively to further the purposes of the [Fair Housing Act] … the phrase programs and activities shall include programs and activities operated, administered, or undertaken by the Federal Government; grants; loans; contracts; insurance; guarantees; and Federal supervision or exercise of regulatory responsibility (including regulatory or supervisory authority over financial institutions)."

See also 24 CFR Parts 5, 91, 92, 570, 575, 576, and 903.

include any mention or analysis of impediments to fair housing by race and ethnicity.[6] In December 2010, HUD rejected the county's revised AI for failure to "make any material link between those impediments [to fair housing choice] and the actions the County will take to overcome them."[7] As a result, in addition to identifying impediments to fair housing choice in their AIs, counties must show a "material link" between the impediments and their proposed recommendations to ameliorate the impediments. Although the second and third AFFH requirements were not at issue in the *Westchester County* case, Metro must take affirmative and concrete steps to overcome impediments, and to keep records reflecting the actions taken. Metro should remember this instruction when undertaking its planning and coordination functions.[8]

II. Metro Authority – Oregon Statutory Obligations

Metro has an affirmative duty to ensure that the comprehensive plans of cities and counties within its jurisdiction address their respective affordable housing needs.[9] Existing law gives Metro the authority to conduct reviews of local jurisdictions' comprehensive plans and to propose changes to bring these plans into compliance with Statewide Planning Goals, including Goal 10,[10] which requires a local jurisdiction to conduct a housing needs analysis ("HNA") and adopt a plan to accommodate current and future housing needs.[11]

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[6] *United States Anti-Discrimination Center of Metro New York v. Westchester County,* 668 F.Supp.2d 548, 562–65 (S.D.N.Y.2009).

[7] HUD Priv. Lrt. Rule (Dec. 21, 2010) Available at https://prrac.org/pdf/12-21-2010_HUD_Response_to_Westchester_AI.pdf (Accessed November 29, 2018).

[8] HUD's Fair Housing Planning Guide defines an AI as "a comprehensive review of a jurisdiction's laws, regulations, and administrative policies, procedures, and practices affecting the location, availability, and accessibility of housing, as well as an assessment of conditions, both public and private, affecting fair housing choice." "Impediments to fair housing choice are any actions, omissions, or decisions taken because of race, color, religion, sex, disability, familial status, or national origin that restrict housing choices or the availability of housing choices, or any actions, omissions, or decisions that have [such an] effect." Fair Housing Planning Guide at 4-4. Available at https://prrac.org/pdf/12-21-2010_HUD_Response_to_Westchester_AI.pdf (Accessed December 4, 2018).

[9] Metro Code (Or.) §3.07.730. Cities and counties within the Metro region shall ensure that their comprehensive plans and implementing ordinances:

A. Include strategies to ensure a diverse range of housing types within their jurisdictional boundaries.
B. Include in their plans actions and implementation *measures designed to maintain the existing supply of affordable housing as well as increase the opportunities for new dispersed affordable housing within their boundaries.*
C. Include in their plans actions and implementation measures aimed at increasing opportunities for households of all income levels within individual jurisdictions in *affordable housing*. (emphasis added).

[10] Goal 10 provides for "[b]uildable lands for residential use shall be inventoried and plans shall encourage the availability of adequate numbers of needed housing units at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location, type and density."

[11] In 2010, Ordinance No. 10-1233B and Ordinance No. 11-1252A demonstrated Metro's acknowledgement of its responsibilities and prescribed Metro's compliance procedures and Regional framework plan.

For the greater Portland metropolitan area, Metro manages the shared urban growth boundary for the 24 cities in the area, which includes Beaverton, Hillsboro, King City, and Wilsonville. Prior to any Urban Growth Boundary ("UGB") expansion, a local jurisdiction needs to demonstrate its current compliance with that HNA and how it will continue to comply with that HNA and with the proposed UGB expansion. Metro must use its authority to require cities and counties to change their comprehensive plans and land use regulations to comply with the FHA.[12]

Goal 14 also requires Metro to demonstrate how the region's housing needs under Goal 10 are being met within the current UGB and how they will continue to be met if the UGB is expanded.[13] This includes housing "at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location, type, and density."[14]

Metro's own studies in preparation for its January 2010 urban growth report confirmed that these affordable housing needs were not being met. To meet demand, Metro's Regional Framework Plan called for the establishment of affordable housing production goals to be adopted by local governments.[15] Metro and local governments are required to issue a biennial affordable housing inventory to demonstrate their continued dedication to reaching affordable housing goals. This report must include not only the number and types of affordable housing units preserved during the reporting time, but also the number of new units built and the county resources committed to the development of these affordable housing units.

Metro also has the power to create and enforce Functional Plans[16] and direct changes in city or county plans and land use regulations as needed to bring them into compliance with such

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[12] Metro's authority under ORS 268.390 is greater than the authority of individual counties under ORS 195, allowing them to recommend them to "recommend or *require cities and counties, as it considers necessary, to make changes in any plan and any actions taken under the plan substantially comply with the district's functional plans* adopted under subsection (2) of this section and its urban growth boundary adopted under subsection (3) of this section …" (emphasis added).

[13] Goal 14 requires that "[p]rior to expanding an urban growth boundary, local governments shall demonstrate that needs cannot reasonably be accommodated on land already inside the urban growth boundary."

[14] In addition, the "Statement of Purpose" for OAR 660-007-0000 states, "OAR 660- 007-0030 through 660-007-0037 are intended to establish by rule regional residential density and mix standards to measure Goal 10 Housing compliance for cities and counties within the Metro urban growth boundary, and to ensure the efficient use of residential land within the regional UGB consistent with Goal 14 Urbanization."

[15] Metro Code (Or.) §3.07.740 (2011).

[16] Metro Code (Or.) §3.07.850.

A. The Metro Council may initiate enforcement if a city or county has failed to meet a deadline for compliance with a functional plan requirement of if the Council has good cause to believe that a city or county is engaged in a pattern or a practice of decision-making that is inconsistent with the functional plan.

Functional Plans.[17] In addition to the existing Regional Solid Waste Management Plan and Urban Growth Management Functional Plan, of which voluntary affordable housing production goals are a subsection, Metro should implement, compel and enforce a separate affordable housing functional plan on a uniform level. HLA continues to believe that a distinct Functional Plan addressing regional shortfalls in needed housing would establish clear expectations and elicit more robust compliance with needed housing goals.

Further, the Metro Code sets out Metro's responsibility to oversee local compliance with statewide planning goals and Metro's power to enforce compliance by issuing orders in accordance with its own Functional Plan.[18] If the Land Conservation and Development Commission ("LCDC"), charged with overseeing statewide compliance with planning goals, so determines that compliance with planning goals is lacking, it may order a local government – a term that expressly includes Metro as well as the cities and counties within Metro's boundaries – to bring its plans and land use regulations in compliance.[19] Taken together, HLA believes that Metro's state-delegated authority and statutory obligations demonstrate that Metro has a duty to implement affordable housing initiatives, and that Metro's duty should not be taken lightly

III. Metro Authority – UGB Expansion

In addition to Metro's duty to oversee the compliance of cities and counties in conjunction with its regional framework plan, Metro itself must address local affordable housing concerns when it decides to expand the Urban Growth Boundary ("UGB"). Metro is subject to the mandates of ORS 197.296.[20] Consequently, Metro must take into account the region's housing needs when establishing buildable lands within the UGB.[21]

In 2010, Metro adopted two ordinances that each reflected Metro's responsibility to account for affordable housing during UGB expansion: Ordinance 10-1252A and Ordinance 10-1244B.[22] The Staff report for Ordinance 10-1252A stated that its purpose was to "[h]elp ensure opportunities for low-income housing types throughout the region so that families for modest means are not obligated to live concentrated in a few neighborhoods," because concentrating poverty is not desirable for the residents or the region.[23] Furthermore, Ordinance 10-1244B reinforced that goal and stated that "particular attention" will be given to affordable housing when expanding the UGB, and that Metro would seek agreement with local governments to

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[17] *Id.*
[18] ORS 268.390.
[19] ORS 197.320. The Land Conservation and Development Commission shall issue an order requiring a local government, state agency or special district to take action necessary to bring its comprehensive plan, land use regulation, limited land use decisions or other land use decisions into compliance with the goals, acknowledged comprehensive plan provisions or land use regulations if the commission has good cause to believe.
[20] *GMK Developments, LLC v. City of Madras*, 225 Or. App. 1 (2008).
[21] ORS 197.296
[22] *See* MC 3.07.1120 Planning for Areas Added to the UGB.
[23] Metro, Or., Staff Report for Ordin. 10-1252A (Dec. 29, 2010).

improve affordable housing.[24] Together, these ordinances plainly announced Metro's intention to implement affordable housing initiatives throughout Clackamas, Washington, and Multnomah counties.

A. *Housing Land Advocates v. City of Happy Valley*

In *Housing Land Advocates v. City of Happy Valley*,[25] the City of Happy Valley approved an application for the zoning reduction of a previously zoned Mixed Use Residential property to a 31-lot subdivision allowing development of detached single-family residential dwellings on individual lots.[26] HLA appealed the city's decision, arguing that the city failed to show how the 31 single-family homes would meet the housing needs of current and future Happy Valley and Portland-area residents of all income levels.[27] HLA specifically cited the city's responsibility under Title 1 of Metro's Urban Growth Management Functional Plan, specifically Metro Code Section 3.07.120(e), which requires a local government to "maintain or increase its housing capacity" in line with "a compact urban form and a 'fair share' approach to meeting housing needs."[28] Without an adequate housing analysis, the city, HLA claimed, failed to comply with statewide planning goals, namely Goal 10 and the Needed Housing Statutes at ORS 197.295 to .314.[29] In response to HLA's claims, the city argued that the zone change produced a reduction of "a mere .004 percent."[30] The city concluded that this reduction was "negligible," which the city argued conformed to the standard established under Metro Code Section 3.07.120(e).

While the Land Use Board of Appeals ("LUBA") agreed that this zone reduction "qualifies as negligible," LUBA determined that the comparison used by the city to calculate this reduction was not the comparison required under MC 3.07.120(e). The reason being the city's findings "neither identifies what the minimum zoned residential capacity of the subject property is nor how much that minimum zoned residential density is reduced by the challenged amendment."[31] LUBA concluded that the city would instead need to compare the reduction of the minimum zoned capacity of the property to the city's overall minimum zoned residential capacity.[32] Ultimately, LUBA upheld the standard under the acknowledged MC 3.07.120(e) that only "negligible" reductions were permitted when a city reduced the minimum zoned capacity of

[24] Metro, Or., Exhibit A to Ordin. 10-1244B Section 1.3.10 (Dec. 16, 2010).
[25] *Housing Land Advocates v. City of Happy Valley*, LUBA No. 2016-031-105 (Mar. 24, 2017).
[26] *Id.*, at 3.
[27] *Housing Land Advocates v. City of Happy Valley*, LUBA No. 2016-031-105 at 3, 6.
[28] MC §3.07.120 ("Housing Capacity").
[29] ORS 197.307(3) provides, "When a need has been shown for housing within an urban growth boundary at particular price ranges and rent levels, needed housing shall be permitted in one or more zoning districts or in zones described by some comprehensive plans as overlay zones with sufficient buildable land to satisfy that need." ORS 197.307(4) provides, "Except as provided in subsection (6) of this section, a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of needed housing on buildable land described in subsection (3) of this section. The standards, conditions and procedures may not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay."
[30] *Housing Land Advocates v. City of Happy Valley*, LUBA No. 2016-031-105 at fn.10.
[31] *Id.*, at 23-24.
[32] *Id.*, at 23.

a single lot or parcel.[33] As a result, LUBA remanded the case and ordered the city to include in its findings the "methodology and math" used to calculate the percent reduction in minimum zoned residential capacity.

Under the *Happy Valley* case, Metro needs to give the "negligible" loss standard means on a region-wide basis. Otherwise, we face the same battle and die the death of a thousand cuts. A 1% cumulative reduction could qualify as "negligible," as could 100 units (depending on the capacity of the jurisdiction). This should be a prerequisite Metro-wide prior to considering any boundary expansion, including the one proposed for the four cities involved in this round. Further, at this time, none of the four city proposals include findings that demonstrate that they meet the standard under the acknowledged MC 3.07.120(e) that only "negligible" reductions are permitted. That code section must be interpreted consistently with the Goals it implements, specifically Goals 10 and 14, under 197.829(1)(c) and (d). A new expansion of the UGB must show compliance and, particularly, demonstrate compliance with the "orderly and efficient" accommodation of land uses within a UGB under Goal 14. The mechanisms to assure compliance must be within the Metro Actions allowing for the boundary expansion. Moreover, we assert that the evaluation of the UGB amendments cannot be limited to the four candidate areas for the boundary expansion, but must include the entire UGB as amended in order to demonstrate compliance with the statewide planning goals. In addition, Goal 2 requires that the plans shall be the basis for specific implementation measures. These measures shall be consistent with and adequate to carry out the plans.

While HLA can point to the specific shortcomings of these proposals, these cities, not HLA, have a legal duty to show that they are in compliance with MC 3.07.120(e). Moreover, Metro also has a legal duty to hold these cities to the standard upheld by LUBA and the very codes that Metro adopted in its Functional Plan. Until then, Metro will continue to be in violation of its own code and state laws.

B. *Deumling v. City of Salem*

In 2016, the City of Salem enacted Ordinance No. 14-16, which amended the Salem/ Keizer regional urban growth boundary (UGB) to add approximately 35 acres of land located in Polk County and zoned for exclusive farm use (EFU) to the city's UGB.[34] The ordinance also adopted an exception to Statewide Planning Goal 15 (Willamette River Greenway),[35] in connection with a new bridge over the Willamette River.[36] The petitioners argued that the city's proposal violated OAR 660-004-0018(4)(a). Under OAR 660-004-0018(4)(a), when a local government adopts a reasons exception to a goal, "plan and zone designations must limit the uses, density, public facilities and services, and activities to only those that are justified in the exception." The land subject to the Goal 15 exception was entirely within the city's UGB as it

[33] *Id.*
[34] *Deumling v. City of Salem*, LUBA No. 2016-126, 5-6 (August 9, 2017).
[35] Goal 15 is "to protect, conserve, enhance and maintain the natural, scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River as the Willamette River Greenway."
[36] *Deumling v. City of Salem*, LUBA No. 2016-126, at 3.

existed prior to the ordinance adoption.[37] In response, the city claimed that the existing plan and zoning designations would be maintained for the land subject to the Goal 15 exception.[38]

LUBA determined that the city failed to explain why the existing plan and zoning designations limit the uses "public facilities and services, and activities" to only those justified in the exception.[39] For this reason, LUBA remanded the case and required the city to "more clearly explain" why the existing plan and zoning designations for the land subject to the Goal 15 exception satisfied those requirements in OAR 660-004-0018(4)(a).[40]

In addition to the reporting requirements under MC 3.07.120(e), the four cities proposing expansion to the UGB must also clearly explain how they will be in compliance with statewide planning goals, as discussed above. Should one of these local governments adopt a reasons exception to a statewide planning goal to expand the UGB, that city's plan and zone designations must limit the uses, density, public facilities and services, and activities to only those that are justified in that exception. For this reason, Metro must be remain cognizant of this case as it considers the four UGB expansion proposals.

IV. HLA Questions Whether Metro Will be able to Make Adequate Goal 10 Findings

The local government, Metro in this case, must demonstrate that its actions do not leave it with less than adequate residential land supplies in the types, locations, and affordability ranges affected. See *Burk v. Umatilla County*, 20 Or LUBA 54 (1990). The regional housing crisis is well-known. Yet, Metro has done little to proactively contribute to solving the problem. Instead, it attempts to make the decision here without any explanation of its compliance with Goal 10.

Goal 10 findings are not only required by the goal, but are necessary as a practical matter so a record of the ability to provide needed housing throughout the region is made under Goal 2, Land Use Planning. Already one of the most expensive suburbs in the region, Happy Valley, was let off the hook in complying with Goal 10 in the downzone case described above, and the need for affordable housing across the region grows. For example, see Exhibit 1, a letter submitted in the Happy Valley record showing that needed housing for all income levels was not provided within that city or urban Clackamas County. which are both within Metro's jurisdiction.

In Washington County, and the City of Sherwood, the story is very similar to the Clackamas County/Happy Valley situation where Sherwood is a less economically integrated suburb of Washington County. According to the Washington County Consolidated Plan, Sherwood residents make the highest income of all cities within the county limits, and has the highest median income levels. See Exhibit 2, page 1. Failure to analyze the impacts of this proposed urban growth expansion across the region calls into question Goal 10 compliance of a

[37] *Id.*, 30.
[38] *Id.*
[39] *Id.*
[40] *Id.*, at 31.

narrow UGB expansion that does not address the exclusive zoning in member cities like the cities of Happy Valley and Sherwood.

Metro has created its own problem to figure out how to make Goal 10 findings in this case. On November 28, 2007, Metro's Chief Operating Officer ("COO") issued a letter to member local jurisdictions suspending reporting requirements related to housing and employment accommodation (then 3.07.120(D)), and housing choice for the affordable housing supply under Metro Code 3.07.740(B). See November 28, 2007 COO Letter attached as Exhibit 3. HLA has no knowledge that the suspension described in the November 28, 2007 letter has been lifted, despite years of advocating for a lift of the suspension. So far as we are able to ascertain, there was no Metro Council action to undertake this suspension. Unfortunately for Metro and the cities seeking the expansion here, a 10-year "temporary suspension" may mean that making Goal 10 findings are more difficult.[41] If the member jurisdictions had submitted reports on meeting their fair share of affordable housing, then the public would be able to analyze whether expanding the UGB to include the proposals here makes sense in the context of the Statewide Planning Goals and regional compliance with Goal 10.

Metro must ensure that a decision to expand the boundaries in Beaverton, King City, Hillsboro, and Wilsonville does not, in effect, push off onto other cities within the region a housing responsibility it is required to assume. *Gresham v. Fairview*, 3 Or LUBA 219 (1981). Nowhere in the record is there any evidence concerning a reasoned analysis of Goal 10, Metro's regional buildable lands inventories, housing need projections, fair share allocations, housing and coordination policies, or of their application to this proposed UGB amendment. This is particularly concerning given that Sherwood had initially considered participating in the current expansion, but as soon as affordable housing was mentioned as part of the expansion goals, the city abandoned its plan to apply. Metro did not even take a step to insist that Sherwood needs to take steps to address affordability, thus, exclusionary zoning in Sherwood continues.

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[41] While Metro may try to avoid the direct application of the legislative UGB amendment criteria, by claiming its adoption of criteria in MC 3.07.1428 is the exclusive process for reviewing this expansion, nothing in the code states that the criteria under its own legislative decision making under 3.07.1525 do not apply (rather only direct compliance with Goal 14 is directly resolved). In any event, Metro's own code should provide context for the necessary evaluation that needs to take place in any UGB expansion, particularly MC 3.07.1425(c)(5) that requires Metro to consider, "**Equitable** and efficient distribution of housing and employment opportunities throughout the region." (emphasis added).

Above are the results of our research and show Metro's legal duty to require the cities of Beaverton, King City, Hillsboro, and Wilsonville to incorporate changes to their housing plans prior to the proposed land coming inside the UGB. We look forward to working with Metro to assure that it meets its obligations under the statewide planning goals. Please add Housing Land Advocates to the notice list, Housing Land Advocates, c/o Jennifer Bragar, 121 SW Morrison Street, Suite 1850, Portland, OR 97204.

Sincerely,

Jennifer Bragar
President, Housing Land Advocates

cc: (by e-mail)
Taylor Smiley-Wolfe
Anna Braun
Gordon Howard
Roger Alfred
Paulette Copperstone

City of Happy Valley
Planning Commission
16000 SE Misty Drive
Happy Valley, OR 97086

January 19, 2016

RE: "EAGLES LOFT ESTATES"
COMPREHENSIVE PLAN MAP/ZONING MAP AMENDMENT (CPA-14-15/LDC-15-15); 31-LOT SUBDIVISION (SUB-03-15); AND VARIANCE (VAR-08-15)

Dear Planning Commissioners:

This letter is jointly submitted by the Fair Housing Council of Oregon (FHCO) and Housing Land Advocates (HLA). Both FHCO and HLA are Oregon non-profit organizations that advocate for land use policies and practices that ensure an adequate and appropriate supply of affordable housing for all Oregonians.

For the reasons set forth below, we request that the proposed comprehensive plan and zoning amendments be denied, together with the subdivision and variance applications that depend on those amendments.

1. The proposed amendments do not comply with Oregon's Needed Housing Statutes, with Oregon's Statewide Housing Goal (Goal 10) and Planning Goal (Goal 2), or with LCDC's interpretive rules.

ORS 197.307(6) provides that local governments cannot adopt standards that have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.

ORS 197.303(3) provides that, when a need has been shown for housing of particular ranges and rent levels, such needed housing shall be permitted in one or more zoning districts or in zones described by some comprehensive plans as overlay zones with sufficient buildable land to satisfy that need.

The record lacks evidence sufficient to enable the city to determine, among other things, the city's current state of compliance or noncompliance with these statutes, such as the city's housing needs, the relevant buildable lands inventories, how the current designation addresses existing and projected needs, the city's fair share of regional housing needs and supplies, and other information necessary to establish that the proposed amendments will not have the effects proscribed by ORS 197.307(6) and that city will either remain in compliance or not slip further out of compliance as a result of the proposed amendments and variances.

The City's decision does not comply with Goal 10 requirements that land use regulations related to housing must be based on an inventory of buildable lands. Goal 10 requires the city:

> "To provide for the housing needs of citizens of the state. Buildable lands for residential use shall be inventoried and plans shall encourage the availability of adequate numbers of needed housing units at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location, type and density."

Goal 10 requires local governments to inventory their buildable land, identify needed housing, and designate and zone enough build able land to satisfy the identified housing need. *Burk v. Umatilla County*, 20 Or LUBA 54 (1990). *See also*, *McIntyre-Cooper Co. v. Board of Comm. Washington County*, 2 Or LUBA 126, 129 (1980), *aff'd*, 55 Or App 78, *rev den*, 292 Or 589 (1981). The burden of proving that housing needs are met by the land use regulation rests with the City. *Gann v. City of Portland*, 12 Or LUBA 1, 4 (1984).

When a city with an acknowledged comprehensive plan and implementing ordinances amends its implementing ordinances to downzone or impose other substantial restrictions on lands within its acknowledged Goal 10 land supplies, the city must demonstrate that its actions do not leave it with less than adequate supplies in the types, locations, and affordability ranges affected. *Opus Development v. City of Eugene*, 28 Or LUBA 670 (1995) (*Opus I*); 30 Or LUBA 360, 373(1996) (*Opus II*), *aff'd* 141 Or App 249, 918 P2d 116 (1996) (*Opus III*); *Volny v. City of Bend*, 37 Or LUBA at 510-11; *Mulford v. Town of Lakeview*, 36 Or LUBA 715, 731 (1999) (rezoning residential land for industrial uses); *Gresham v. Fairview*, 3 Or LUBA 219 (same); *Home Builders Assn. of Lane County v. City of Eugene*, 41 Or LUBA 370, 422 (2002) (subjecting Goal 10 inventories to tree and waterway protection zones of indefinite quantities and locations).

Further, OAR 660-008-0010 provides LCDC's interpretation of Goal 10 Housing specific to Portland Metro and its planning jurisdictions:

> "The mix and density of needed housing is determined in the housing needs projection. Sufficient buildable land shall be designated on the comprehensive plan map to satisfy housing needs by type and density range as determined in the housing needs projection. The local buildable lands inventory must document the amount of buildable land in each residential plan designation."

LCDC's generally-applicable housing interpretive rule defines "housing needs projection" as:

> "[a] local determination, justified in the plan, as to the housing types, amounts and densities that will be: (a) Commensurate with the financial capabilities of present and future area residents of all income levels during the planning period; (b) consistent with OAR 660-007-0010 through 660-007-0037 and any other adopted regional housing standards; and (c) consistent with Goal 14 requirements for the efficient provision of public facilities and services, and efficiency of land use." OAR 660-007-0005(5)

OAR 660-007-0005(6) defines "Multiple Family Housing" as "attached housing where each dwelling unit is not located on a separate lot."

OAR 660-007-0005(7) defines "Needed Housing" as follows:

> "'Needed Housing' means housing types determined to meet the need shown for housing within an urban growth boundary at particular price ranges and rent levels, including at least the following housing types:
>
> > (a) Attached and detached single-family housing and multiple family housing for both owner and renter occupancy; . . .'

Nowhere in the record is there any evidence concerning or reasoned analysis of these statutes, goals, and rules, of Happy Valley or Portland Metro's buildable land inventories, housing needs projections, fair share allocations, housing and coordination policies, or of their application to these proposed amendments and entitlements.

Such analysis and evidentiary support is essential. In one of its earliest affordable housing opinions, *Kneebone v. Ashland*, 3 LCDC 131 (1979), the LCDC remanded a City of Ashland ordinance downzoning needed residential lands because the city's record failed to demonstrate that the downzoning would not reduce Ashland's supply of lands for needed housing in violation of the statewide housing goal. In its opinion, LCDC reminded Oregon's local governments that

> "Planning decisions must meet the standards set by the goals. Insofar as compliance depends upon specific, ascertainable fact, compliance must be shown by substantial evidence in the record. Insofar as compliance depends upon value judgments and policy, compliance must be shown by a coherent and defensible statement of reasons relating the policies stated or implied in the goals to the policies of the planning jurisdiction." 3 LCDC at 124

LCDC's Metro Housing Rule, at OAR 660-008-0060, provides as follows:

> "(2) For plan and land use regulation amendments which are subject to OAR 660, Division 18 [Post-Acknowledgment Plan and Zoning Amendments, or PAPAs], the local jurisdiction shall either:
>
> > (a) Demonstrate through findings that the mix and density standards in this Division are met by the amendment; or
> >
> > (b) Make a commitment through the findings associated with the amendment that the jurisdiction will comply with provisions of this Division for mix or density through subsequent plan amendments."

The city has not made, and almost certainly cannot make, either the demonstration called for in subsection (a) or the commitment called for in subsection (b), both of which would require a

showing of surpluses in supplies over projected needs, supported by the kind of reasoned analysis and evidentiary support that LCDC required in *Kneebone*. Given the current shortage of buildable, available, affordable lands planned and zoned for multi-family housing in Happy Valley, its sub-region, and Portland Metro as a whole, FHCO and HLA do not believe that the requisite demonstrations can be made at this time or in the foreseeable future.

2. The proposed amendments do not comply with the intergovernmental coordination requirements of LCDC's statewide Goals 2 (Land Use Planning) and 10 (Housing) because the city failed to coordinate its actions with all other affected governmental units.

There is no evidence in the record of this proceeding that the Oregon Department of Land Conservation and Development, Portland Metro, as regional coordinator, or other nearby jurisdictions such as Gresham, Portland, Clackamas County, and Oregon City, have agreed to increase their share of comparably planned, zoned, serviced, and located land or that Happy Valley has made any efforts to coordinate with them concerning their ability and willingness to accommodate the reallocation of housing need effected by the proposed amendments. *See Creswell Court v. City of Creswell*, 35 Or LUBA 234 (1998); *1,000 Friends of Oregon v. North Plains*, 27 Or LUBA 371, *aff'd* 130 Or App 406, 991 P2d 1130 (1994).

3. The proposed amendments and variances are inconsistent with the City of Happy Valley's Comprehensive Plan.

Applicable Happy Valley Comprehensive Plan Policies that are not addressed adequately or at all to date include the following:

> **Policy 8:** To assume proportionate responsibility for development within the City of Happy Valley consistent with projected population for the City.
>
> **Policy 42:** To increase the supply of housing to allow for population growth and to provide for the housing needs of a variety of citizens of Happy Valley.
>
> **Policy 43:** To develop housing in areas in areas that reinforce and facilitate orderly and compatible community development.
>
> **Policy 44:** To provide a variety of lot sizes, a diversity of housing types including single family attached (townhouses) duplexes, senior housing and multiple family and range of prices to attract a variety of household sizes and incomes to Happy Valley.
>
> **Policy 45:** The City shall encourage the availability of adequate numbers of needed housing units at price ranges and rent levels that are commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location, type and density.
>
> **Policy 46:** The City shall provide a range of housing that includes land use districts that allow senior housing, assisted living and a range of multi-family housing products. This

range improves housing choice for the elderly, young professionals, single households, families with children, and other household types.

Before the city can approve the amendments and the related subdivision and variance entitlements, you must be able to find that the applicant has proven by a preponderance of the evidence that all of the above policies have been satisfied. HLA simply does not believe this is possible given the current state of affordable housing need and supply in Happy Valley, its sub-region of Portland Metro, and Portland Metro as a whole.

4. The proposed amendments and variances are inconsistent with Metro's Functional Plan.

The applicant has not demonstrated compliance with Title I of the Metro Urban Growth Management Functional Plan, which requires each city to maintain or increase its housing capacity. FHCO and HLA do not believe that the applicant can meet this requirement because the requested zone change would reduce the city's housing capacity with respect to scarce needed housing types, densities, location, and affordability ranges.

5. The proposed amendments risk violation of federal fair housing requirements.

HLA believes that any action by the City that results in a reduction in housing diversity and affordability could violate the city's obligation to affirmatively further fair housing under them Federal fair Housing Act, 42 U.S.C. §§ 5304(b)(2), 5306(d)(7)(B), 12705(b)(15), 1437C-1(d)(16).

The Fair Housing Act (the Act) declares that it is "the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States." It does so by prohibiting discrimination in the sale, rental, and financing of dwellings, and in other real estate-related transactions because of race, color, religion, sex, familial status, national origin, or disability. In addition, the Fair Housing Act requires that HUD administer programs and activities relating to housing and urban development in a manner that affirmatively furthers the policies of the Act.

Courts have examined the legislative history of the Fair Housing Act and related statutes. They have found that the purpose of the affirmatively furthering fair housing mandate is to ensure that recipients of Federal housing and urban development funds do more than simply not discriminate: recipients also must address segregation and related barriers for groups with characteristics protected by the Act, including segregation and related barriers in racially or ethnically concentrated areas of poverty. In the 1972 Supreme Court case, *Trafficante v. Metropolitan Life Insurance Company*, 409 U.S. 205, 211 (1972), the Court quoted the Act's co-sponsor, Senator Walter F. Mondale, in noting that the Fair Housing Act was enacted by Congress to replace the racially or ethnically concentrated areas that were once called "ghettos" with "truly integrated and balanced living patterns." In 2015, in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. ___ (2015), the Supreme Court again acknowledged the Fair Housing Act's continuing role in moving the Nation toward a more integrated society, holding that disparate impacts on protected classes, whether intended or not, can result in violations of the Act.

High concentrations of wealth appear to be a proxy for exclusionary zoning practices in Happy Valley. As reported on June 23, 2015, in the Oregonian, Happy Valley is the "richest town" in Oregon. See Exhibit A attached here. This raises concerns about the city's ability to comply with the Act. The Clackamas County Consolidated Plan ("Con Plan" available at http://www.clackamas.us/communitydevelopment/documents/conplan_final.pdf - pages referred to below are attached as Exhibit B) shows that Happy Valley's population growth between 2000-2010 was 208%, and in 2010, 76% of the population was white. See Con. Plan p. 26 and 31. Poverty has increased in the County by 10.4% between 2000 and 2010 and nearly half of female householders with young children under 5 (a protected class) lived in poverty. *Id.* at 53. Notwithstanding this crisis, Happy Valley's housing supply consists almost exclusively of single family units. *Id.* at 55. Downzoning the subject property will continue the trend of ignoring the need for affordable housing in areas of opportunity, such as Happy Valley.

Thank you for your consideration. Please provide written notice of your decision, to FHCO and HLA, c/o Louise Dix, at 1221 SW Yamhill Street, Portland, OR 97205.

Louise Dix
Fair Housing Council of Oregon

Jennifer Bragar, President
Housing Land Advocates

GSB:7496250.1 [30187.00129]

'Richest town in Oregon' may surprise you

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on June 23, 2015 at 10:41 AM, updated June 23, 2015 at 12:15 PM

The website 24/7 Wall St. recently pored through Census data to come up with a list of the richest towns in each state. For their list, the site's editors stuck to only incorporated towns with 25,000 or fewer residents. (Sorry, Lake Oswego and West Linn.)

Even so, **the town at the top [http://247wallst.com/special-report/2015/06/17/the-richest-town-in-each-state/9/]** will likely surprise a lot of people. Happy Valley has more often been in the news for its unprecedented over-development just before the Great Recession, and subsequent real estate collapse. Images of empty subdivisions are rooted in many Oregonians' minds when it comes to Happy Valley.

But 24/7 Wall St. found Happy Valley's median income of $92,773 to be tops in Oregon. **At the other end of the spectrum: Prineville [http://247wallst.com/special-report/2015/06/05/the-poorest-town-in-each-state/9/]**, long one of the areas with the highest unemployment in the state, and a median income of $29,959.

The gap between richest small town and poorest small town puts Oregon about in the middle of the pack nationally, the website said.

-- The Oregonian/Oregonlive.com

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EXHIBIT A

2012-2016 CONSOLIDATED PLAN FOR HOUSING AND COMMUNITY DEVELOPMENT

CLACKAMAS COUNTY
COMMUNITY DEVELOPMENT DIVISION

Health, Housing & Human Services
CLACKAMAS COUNTY

April 2012

EXHIBIT B

HOUSEHOLDS AND FAMILIES

According to the 2012 ACS data, there were 200,160 households in Washington County, of which approximately 134,176 (67.0%) were considered "family" households. The remainder (33.0%) was "non-family" households, consisting of individuals living alone or unrelated individuals living together. Of the 134,176 family households, 79.0% consisted of a male or female householder living with a spouse, including those with children or other related family members. The remaining families consisted of a male (6.0%) or female (15.0%) householder living with children or other family members but not with a spouse.

In 2012, the average household size for the county was 2.63 persons. There was a significant difference between the average household size for the county's Latino population (4.30 persons) and that of the non-Latino population (2.34 persons) in 2012. Table 3-99 in Chapter 3 provides information on the average household size for all cities in the county for 2012, the most recent year for which this information is available. This table shows that the average household sizes for the cities with all or a portion of their land within Washington County ranged from 3.57 persons (Cornelius) to 1.57 persons (King City). More current data on average household sizes (from the five year 2008-2012 American Community Survey) show the household sizes for the following cities: Banks, (3.26 persons), Sherwood (2.97 persons), Forest Grove (2.72 persons), Hillsboro (2.94 persons), Tualatin (2.65 persons), Tigard (2.50 persons), Beaverton (2.45 persons) and Durham (2.25 persons).

INCOME AND POVERTY

In 2012, the county's cost of living was among the highest in Oregon. The median household income in Washington County was $64,375. The standard for self-sufficiency in Washington County, as reported by Worksystems, is $65,800 for a four-person household, which is currently the highest self-sufficiency standard in Oregon. The cities in the county with the highest median income were Sherwood ($82,257), Durham ($65,313) and Banks ($65,000). The lowest median household incomes were in King City ($36,446), Forest Grove ($45,892) and Cornelius ($50,977). The per capita income in Washington County in 2012 was $31,476, with the highest in Durham ($41,490). The lowest per capita income was in Cornelius ($17,582).

Median household incomes in Washington County grew by $12,253 from 2000 to 2012, an increase of 23.5%.

In 2000, 7% of residents had incomes below the poverty rate; by 2012, the poverty rate had increased to 10.9%. All told, between 2000 and 2012, the number of people in poverty in Washington County grew by 76%. Poverty rates were lowest in Sherwood (4.6%) and Banks (5.1%). Poverty rate was highest in Cornelius (16.9%) and Forest Grove (19.6%). The poverty rate in Forest Grove grew by almost 4 percentage points since 2007.

County-wide, over half of the residents below the poverty level were White, although the percentage of all White residents who were below the poverty level was lower than any other ethnic group. The highest poverty rates in 2012 were found among residents who defined themselves as having some other race (25.8%), American Indian or Alaska Native residents (25.5%) and Black or African American (18.6%). The poverty rate for the Latino population was 24.1%. All of these ethnic and racial groups bear a disproportionate percentage of poverty. See Table 1-4 for a full description of the percentages of persons living in poverty in Washington County by race and ethnicity.

The demand for low-cost affordable housing far exceeds the supply. In addition to market-rate units that serve low- and moderate-income households, there were approximately 7,000 subsidized rental housing units and 2,700 households with rental housing vouchers in Washington County in 2011, based on information in the Regional Affordable Housing Inventory prepared by Metro and data related to Section 8 vouchers from the Washington County Department of Housing Services. Since some vouchers are used in subsidized units, there are an estimated 7,000 - 9,000 households living in subsidized rental housing in Washington County, which represents 3.6% - 4.6% of all housing units in the County. Based on the estimates of available housing for households with incomes below 50% of the area median, there is an estimated need for 14,000 - 23,000 units for households with incomes below 50% of median available through private market (unsubsidized) and subsidized housing units and/or vouchers for subsidized units. This represents approximately 7 to 11% of all households in Washington County.

Ethnic and racial minorities comprise a disproportionate percentage of lower income households and are concentrated in specific areas. For example, 38% of Latino households have extremely low- or low-incomes, in comparison to 17% of all households in the County. In addition, there are 9 Census Tracts in the County that have concentrations of racial or ethnic minorities or "Minority Concentrations". Minority Concentrations are defined as those Census Tracts that have a percentage of racial or ethnic minority households from the 2010 Census that is at least 20% higher than the percentage for that racial or ethnic minority population across the whole County overall. All but two of these Census Tracts represent a concentration of Latino residents.

A significant number of households in the County also have special needs, including older adults, people with substance abuse problems, survivors of domestic violence, people with AIDS, ex-offenders, people with physical and mental disabilities, farmworkers and the homeless. Data on these populations are presented later in this section. These needs are presented in tabular form in Table 3-12.

The following is a table showing the population and household growth in Washington County between 2000 to 2011 utilizing data from the 2000 Census and 2007-2011 ACS.

TABLE 3-3 **Housing Needs Assessment Demographics**

Demographics	Base Year: 2000	Most Recent Year: 2011	% Change
Population	443,906	520,562	17%
Households	168,543	197,364	17%
Median Income	$52,054	$63,814	23%

Source:: 2000 Census (Base Year), 2007-2011 ACS (Most Recent Year)

As noted in the regulation at 91.205(b)(2), a "disproportionately greater need" exists when the percentage of persons in a category of need who are members of this particular racial group is at least 10 percentage points higher than the percentage of low income persons in Washington County with one or more of the four housing problems: : lacks complete kitchen facilities; lacks complete plumbing facilities; more than one person per room; or housing cost burden is greater than 30% of household monthly income. Three racial or ethnic groups have disproportionately greater needs, as identified in Tables 13 – 16 across income levels ranging from 0% to 100% of the Area Median Income (AMI) derived from 2007-2011 CHAS data. Those racial or ethnic groups include: persons who are Black or African American, Pacific Islanders and persons who are of Asian descent.

As indicated in Table 3-17, 86% of persons in the 0-30% Area Median Income (AMI) range reported having one or more of four housing problems: lacks complete kitchen facilities; lacks complete plumbing facilities; more than one person per room; or housing cost burden is greater than 30% of household monthly income. Of the described racial and ethnic categories, Pacific Islanders showed a disproportionately greater need in that 100% of persons in this category of need (0-30%AMI) reported having one or more housing problems (14 percentage points higher than the County as a whole). While not quite exceeding the 10 percentage points higher than threshold to meet the regulatory definition of "disproportionately greater need", it should be noted that 93% of American Indian/Alaska Natives (7 percentage points higher than the County as a whole) and 95% of Hispanic or Latino persons (9 percentage points higher than the County as a whole) in the 0-30% AMI income range reported having housing problems.

As indicated in Table 3-18, 84% of all persons in the 30-50% AMI range reported having one or more of four housing problems. Of the described racial and ethnic categories, Pacific Islanders showed a disproportionately greater need in that 100% of persons in this category of need (0-50% AMI) reported having one or more housing problems (16 percentage points higher than the County as a whole). While not quite exceeding the 10 percentage points higher than threshold to meet the regulatory definition of "disproportionately greater need", it should be noted that 91% of Hispanic or Latino persons in the 0-50% AMI range reported having housing problems (9 percentage points higher than the County as a whole).

Table 3-19 shows that 53% of all persons in the 50-80% AMI range reported having one or more of the four housing problems. Of the described racial and ethnic categories in this category of need (50-80% AMI), Black or African Americans, Asians and Pacific Islanders all showed a disproportionately greater need. 82% of persons who are Black or African American reported having one or more of the four housing problems (29 percentage points higher than the County as a whole). 64% of persons who are Asian reported having one or more of the four housing problems (11 percentage points higher than the County as a whole). 80% of persons who are Pacific Islanders reported having one or more of the four housing problems (27 percentage points higher than the County as a whole).

Table 3-20 shows that 35% of all persons in the 80-100% AMI range reported having one or more of the four housing problems. Of the described racial and ethnic categories in this category of need (80-100% AMI), persons who are Asian showed a disproportionately greater need. 52% of persons who are Asian reported having one or more of the four housing problems (17 percentage points higher than the County as a whole). 64% of persons who are Asian reported having one or more of the four housing problems (11 percentage points higher than the County as a whole). 80% of persons who are Pacific Islanders reported having one or more of the four housing problems (27 percentage points higher than the County as a whole). 39% of Hispanic or Latino persons reported having one or more of the four housing problems (only 4 percentage points higher than the County as a whole, but the only other racial/ethnic category that indicates a greater percentage of need in the 80-100% AMI range.

Number of Housing Units

Total Housing Units

There were an estimated 212,386 housing units in Washington County in the year 2012. The number of housing units has grown approximately 19% from 2000 to 2012. (2000 figures were based on 2000 decennial Census data, 2012 figures were estimated based on 2008-12 ACS data).

TABLE 3-66 Total Housing Units, Washington County 2012

Name of Area	Housing units	% of housing units
Banks	576	0.3%
Beaverton	38,957	18.3%
Cornelius	3,474	1.6%
Durham	568	0.3%
Forest Grove	7,946	3.7%
Gaston	293	0.1%
Hillsboro	34,639	16.3%
King City	2,046	1.0%
Lake Oswego (part)	0	0.0%
North Plains	852	0.4%
Portland (part)	778	0.4%
Rivergrove (part)	15	0.0%
Sherwood	6,244	2.9%
Tigard	20,257	9.5%
Tualatin (part)	9,465	4.5%
Wilsonville (part)	297	0.1%
Subtotal Incorporated	126,407	59.5%
Unincorporated	85,979	40.5%
TOTAL	**212,386**	**100.0%**

Source: 2008-2012 ACS

- The largest cities in terms of number of housing units are Beaverton (18.3%), Hillsboro (16.3%) and Tigard (9.5%). Combined, the three cities contain 44.3% of all housing units in the County.
- Unincorporated areas contain 40.5% of all housing units.
- The remaining 15.4% of housing units are dispersed among the smaller communities.
- The City of Sherwood experienced the fastest growth rate in the area, with an increase in housing units of 40% (1,788 units) between 2000 and 2012.
- Hillsboro added the most absolute units, constructing an estimated 7,447 housing units between 2000 and 2012.

Table 3-69 Distribution of Subsidized Housing highlights where the 7,030 regulated and unregulated units are located in Washington County.

TABLE 3-69 Distribution of Subsidized Housing, Washington County (2011)

Jurisdiction	Number of sites	Unregulated units	Regulated units	Total units
Beaverton	34	11	501	512
Cornelius	10	0	10	10
Durham	1	0	210	210
Forest Grove	31	7	597	604
Hillsboro	62	4	2,196	2,200
North Plains	1	0	33	33
Sherwood	7	1	96	97
Tigard	18	10	632	642
Tualatin	3	0	604	604
Unincorporated County	89	7	2,096	2,118
Washington County	**256**	**40**	**6,975**	**7,030**

Source: 2011 Metro Affordable Housing Inventory Report

A significant percentage of the units (almost a third) are located in Hillsboro. Tigard, Tualatin, Forest Grove and Beaverton each include nearly 500 or more units. A substantial number of units in the inventory are also located in unincorporated portions of the County. In comparing these numbers to the proportion of the population living in these areas of the County, Hillsboro, Forest Grove and Tualatin appear to have higher concentrations of units compared to their share of County population.

The Washington County Department of Housing Services (DHS) manages public housing units owned by the County and administers the Section 8 vouchers. HUD directly administers the Section 811 and 202 housing assistance programs.

Altogether, there are 7,030 subsidized housing units and 2,784 households with housing vouchers in Washington County. Some households with housing vouchers live in subsidized housing units and some live in private market units. There are about 7,000 – 9,000 households living in subsidized housing in Washington County, which represents 3.6% - 4.6% of all housing units in the County. As discussed in the following section, this supply of subsidized housing does not necessarily meet the demand for it, particularly for those in Washington County who are earning less than 30% AMI, given that there are approximately 29,000 low- and moderate-income households in Washington County that are "cost-burdened" (spend more than 30% of their income on housing).

Rental Costs: Per the 2008-12 ACS data, the median gross rent countywide was $961. During that same time, the median contract rent was $839. The difference in amount can be attributed most likely to monthly utility costs. Gaston had the lowest median gross rent ($627) while Sherwood the highest ($1,212). The median gross rent in Washington County grew at an estimated 2.4% per year between 2000 and 2012. This is roughly the rate of inflation during that period. Median gross rents are lowest in some of the smaller outlying communities (e.g., Banks, Gaston and Forest Grove) and highest in Sherwood, Tualatin and King City.

TABLE 3-73 **Median Rents, Washington County (2012)**

Name of Area	Median Rent ($)
Banks	869
Beaverton	920
Cornelius	920
Durham	844
Forest Grove	756
Gaston	627
Hillsboro	1,023
King City	984
Lake Oswego (part)	0
North Plains	939
Portland (part)	684
Rivergrove (part)	0
Sherwood	1,212
Tigard	920
Tualatin (part)	972
Wilsonville (part)	1,195
Unincorporated	n/a
Washington County	**961**

Source: 2008-2012 ACS

TABLE 3-74 **2014 HOME Program Monthly Rent Limits for Washington County (inclusive of utilities)**

Monthly Rent ($)	Efficiency (no bedroom)	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
Fair Market Rent	659	766	912	1,344	1,615
High HOME Rent	666	774	922	1,200	1,319
Low HOME Rent	638	684	821	949	1,058

Source: HUD FMR and HOME Rents

TABLE 3-75 Housing Affordability

% Units affordable to Households earning	Renter	Owner
30% HAMFI	1,691	No Data
50% HAMFI	7,994	2,080
80% HAMFI	39,810	5,973
100% HAMFI	No Data	17,398
Total	49,495	25,451

Source: 2007-2011 CHAS

Home Ownership Costs: In 2012, median monthly homeownership costs (for homeowners with a mortgage) were $1,888 for Washington County. In 2000, the median costs were $1,358, which represents an increase of 3.2% per year. This increase outpaced inflation during that time.

TABLE 3-76 Median Homeownership Costs, Washington County (2012)

Name of Area	Median Selected Monthly Owner Costs With A Mortgage ($)
Banks	1,765
Beaverton	1,868
Cornelius	1,654
Durham	2,184
Forest Grove	1,562
Gaston	1,769
Hillsboro	1,820
King City	1,148
Lake Oswego (part)	0
North Plains	1,629
Portland (part)	2,756
Rivergrove (part)	3,250
Sherwood	2,083
Tigard	1,948
Tualatin (part)	1,909
Wilsonville (part)	0
Unincorporated	n/a
Washington County	**1,888**

Source: 2008-2012 ACS

In 2012, ownership costs (with a mortgage) were highest in Rivergrove (partial) at $2,076 and lowest in King City ($1,148). Similar to rental costs, owner costs were also relatively lower in several smaller outlying communities (e.g., North Plains, Gaston, Cornelius and Forest Grove).

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METRO

November 28, 2007

TO: Mayors and County Commission Chairs
City and County Administrators
Planning Directors

FROM: Michael Jordan, Chief Operating Officer

RE: Integrating Urban Growth Management Functional Plan Compliance and Performance Measures

The Urban Growth Management Functional Plan, originally adopted unanimously by the Metro Policy Advisory Committee and the Metro Council in 1996, regulates how local governments implement the 2040 Growth Concept. Local governments in the region are required to comply with the Plan's provisions and each year Metro is required to submit a compliance report to the Metro Council detailing each local government's compliance with the Functional Plan.

Elected officials and staff from throughout the region have identified several issues with the current approach to compliance.

- Compliance requirements tend to be focused more on reporting rather than a more substantive evaluation of whether and how 2040 is being implemented.
- Many of the requirements in the Functional Plan are prescriptive. Local governments want more flexibility to meet regional goals.
- Local governments in the region have limited staff resources.

With the New Look at Regional Choices/Making the Greatest Place and Performance Measures projects underway at Metro, now is an appropriate time to revisit how Metro approaches compliance. During the next two years, Metro will be working with you through the Metro Policy Advisory Committee and with your staff through the Metro Technical Advisory Committee to integrate compliance with performance standards. The goal of this endeavor is to develop and use performance standards to evaluate progress in implementing the 2040 Growth Concept.

As a result, Metro will suspend certain Functional Plan reporting requirements, revise Functional Plan titles as needed, continue current compliance requirements for the most recent changes including Title 4 (Industrial and Employment Areas) and Title 13 (Nature in Neighborhoods), and change the annual compliance report. These changes and what local jurisdictions need to do are detailed in the attached sheet.

I believe that integrating compliance with performance measures will result in a more meaningful evaluation and assessment of how the region as a whole is achieving the goals set out in the 2040 Growth Concept. I look forward to continuing our work together.

Attachment 1 – Urban Growth Management Functional Plan Compliance Changes

Functional Plan Title	Requirement	Action
Title 1 Housing and Employment Accommodation	Annual dwelling unit and job capacity report – Metro Code 3.07.120(D)	Temporarily suspend report – local governments do not need to send in annual report Local governments must continue to submit proposed zone changes to Metro for review
Title 1 Housing and Employment Accommodation	Biennial report on actual density of new residential density per net developed acre – Metro Code 3.07.140(D)	Temporarily suspend report – local governments do not need to send in biennial report
Title 2 Regional Parking Policy	Annual report on number and location of new parking spaces – Metro Code 3.07.220(D)	Temporarily suspend report – local governments do not need to send in annual report
Title 3 Water Quality and Flood Management		Metro staff will continue to work with the three jurisdictions that are not in compliance with the Water Quality Performance Standards
Title 4 Industrial and other Employment Areas	Protection of Regionally Significant Industrial Areas – limit size and location of retail commercial uses – Metro Code 3.07.420	Deadline for action was July 22, 2007 for jurisdictions that have Regionally Significant Industrial Areas. Those jurisdictions must either submit information showing they have met requirement or submit a request to extend the deadline to Metro
Title 4 Industrial and other Employment Areas	Protection of Industrial Areas – limit new buildings for retail commercial uses – Metro Code 3.07.430	Deadline for action was July 22, 2007 for jurisdictions that have Industrial Areas. Those jurisdictions must either submit information showing they have met requirement or submit a request to extend the deadline to Metro
Title 4 Industrial and other Employment Areas	Map Amendment Process – Metro Code 3.07.450	Continue requiring amendments to the Title 4 Employment and Industrial Areas map
Title 6 Central City, Regional Centers, Town Centers and Station Communities	Development strategy – Metro Code 3.07.620	Eliminate December 31, 2007 deadline – Metro staff will be working with local government staff to assist and evaluate development strategies
Title 6 Central City, Regional Centers, Town Centers and Station Communities	Biennial progress report – Metro Code 3.07.650	Suspend reporting requirement – Metro staff will be working with local government staff to evaluate centers progress
Title 7 Housing Choice	Affordable Housing Supply – Metro Code. 3.07.740(B)	Temporarily suspend reporting requirement
Title 11 Planning for New Urban Areas	Concept planning – Metro Code 3.07.1120	Continue concept planning for all areas brought into the UGB since 2002
Title 13 Nature in Neighborhoods	Application to Riparian Habitat and Upland Wildlife Areas and Comprehensive Plan Amendments – Metro Code 3.07.1330	Maintain compliance deadlines of March 13, 2007 for Tualatin Basin Natural Resources Coordinating Committee (TBNRCC) members and January 5, 2009 for non-TBNRCC members
Title 13 Nature in Neighborhoods	Report on progress in using voluntary and incentive based education, acquisition, and restoration habitat protection – 3.07.1360(C)	Move deadline to March 15, 2008 to correspond with DEQ TMDL deadline

BUILD SMALL COALITION

Accessory dwelling unit (ADU) zoning code audit report

September 2018

oregonmetro.gov/buildsmall

Acknowledgements

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Executive summary

Accessory Dwelling Units (ADUs) are self-contained homes located on the same property as a larger, principal home and can be detached, attached or internal to the primary home. ADUs have gained interest across the nation as an opportunity to diversify the housing market and use urban land more efficiently, increasing the number of new homes in an area while not changing the look or feel of the existing neighborhood.

They also provide options that can match peoples' needs at different life stages and income levels. For example, young homeowners may rent out their ADU to help pay their new mortgage; a retired senior may rent an ADU to supplement their pension; or an aging parent can live with their child, allowing families to stay connected while still enjoying a degree of independence.

Almost all cities and counties across greater Portland adopted regulations in 1997 to allow one ADU per single-family dwelling in single-family zones, subject to reasonable siting and design standards.

The construction of ADUs, however, has not been widespread. Nearly 2,700 ADUs have been permitted in the City of Portland alone since 1997; only about 250 units have been permitted in all other Metro-area jurisdictions combined. Simply allowing ADUs in the zoning code has not been enough to foster their widespread production.

Emerging best practices from across the country suggest that other factors such as regulations, building requirements, fees and other issues also play a significant role in supporting - or deterring - ADU development.

Photo credit: accessorydwellings.org

In 2018, Metro's Build Small Coalition conducted a code audit to better understand the regulatory conditions across the region and their relationship to ADU production.

This audit consisted of three primary efforts:

- a review of zoning codes and public documents related to ADU regulations;
- select stakeholder interviews to gain insight into how those regulations function in practice;
- and collection of data on the number of ADUs in the region.

Photo credit: accessorydwellings.org

While regulations and practices varied widely, the coalition found opportunities for every jurisdiction to reduce barriers to ADU production. The most significant regulatory barriers to ADUs identified through the audit were:

- owner-occupancy requirements;
- design standards;
- off-street parking requirements; and
- significant dimensional restrictions such as ADU height limits, size limits or property line setback requirements.
- System Development Charges (SDCs) were also identified as a significant financial barrier, though generally not the sole deterrent in places where ADU production was limited.

Based on these findings, the coalition recommended ADU code provisions and regulations that incorporate observed best practices in the greater Portland region, advice from ADU developers and best practices from across the country.

The findings of this audit and related techincal assistance are intended to support jurisdictions as they continue to innovate through subsequent code updates, with the ultimate goal of removing barriers to ADU development across the region.

The audit comes at a time of great opportunity for jurisdictions as many are working to update or have recently updated their regulations to meet specific SB 1051 state requirements.

Metro offered techincal assistance to local jurisdictions for reviewing or developing code language, navigating the adoption process and coordinating with the Department of Land Conservation and Development (DLCD).

These updates are an opportunity to set direction for the next 20 years of ADU regulations - and in doing so, to take a meaningful step in supporting housing choice and affordability for the region.

Introduction

The Accessory Dwelling Unit (ADU) code audit is an initiative of Metro's Build Small Coalition intended to understand ADU development trends and the regulatory environment, and to support greater ADU development throughout the greater Portland region.

The Build Small Coalition is a group of public, private and non-profit small home and housing affordability advocates who work together to increase development of and equitable access to smaller housing options across the region.

The coalition was previously led by the Oregon Department of Environmental Quality and was known as the Space-Efficient Housing Work Group. In general, the coalition is working to encourage a greater variety of housing to match people's needs at different life stages and income levels.

One of the focus areas in the coalition's work plan for the year is catalyzing ADU development beyond the city of Portland. By understanding existing development ADU regulations and development patterns, this report will support greater ADU development by providing distilled best practices and recommendations to reduce regulatory barriers in Metro jurisdictions.

The work also overlaps with existing Metro code requirements and the broader Equitable Housing Initiative, an effort to work with partners across the region to find opportunities for innovative approaches and policies that result in more people being able to find a home that meets their needs and income levels.

Since 1997, Metro has required jurisdictions to permit one ADU per single-family dwelling in single-family zones subject to reasonable siting and design standards. However, ADU development and interest has varied across the region over the past 20 years, with the majority of ADU activity centered in Portland and little ADU development in most other jurisdictions around the region.

ADU development supports two of the four Equitable Housing Initiative strategies: increasing and diversifying market-rate housing, and stabilizing homeowners and expanding access to home ownership.

ADU code audit project goals

- Summarize existing ADU regulations across all Metro cities and counties and compare against Metro code requirements, state SB 1051 requirements and emerging best practices.

- Understand how regulations are dynamically applied in practice through discussion with ADU developers, practitioners and regulators.

- Understand ADU development trends in all Metro cities and counties, and any correlations between regulations and development, particularly those that highlight potential regulatory barriers.

- Share regional trends, best practices, and recommendations with Metro jurisdictions to support code updates to catalyze ADU development beyond the City of Portland.

With existing interest and increasing conversations around ADUs and affordable housing, as evidenced by the Equitable Housing Initiative, the coalition wanted to better understand the existing scope of ADU regulations across the region, understand their relationship to resulting ADU production and feasibility and promote innovative practices emerging locally.

The audit scope includes review and analysis of ADU zoning regulations across all 27 Metro cities and counties.

The audit is intended to describe existing regulatory conditions for ADUs both as codified and as applied, in order to generate insight into aspects of ADU regulatory and practical approaches that best support ADU development.

Though zoning and regulatory approaches alone may not catalyze ADU development, understanding regulatory barriers is central to recommending updated regulatory approaches that better support ADU development.

The audit also comes at a time of great opportunity for jurisdictions as many are working to update or have recently updated their regulations to meet specific SB 1051 state requirements and to better support affordable housing development.

The findings and related technical assistance are intended to support jurisdictions as they continue to innovate through subsequent code updates, with the ultimate goal of removing barriers to ADU development across the region.

Photo credit: accessorydwellings.org

ADU background

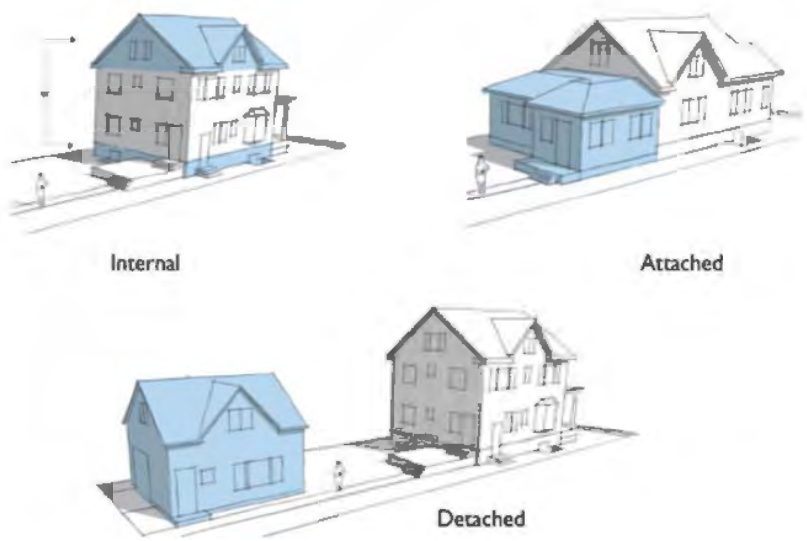
ADUs have existed historically in a variety of forms, dating back at least as far as the late 18th century. ADUs are smaller, secondary dwellings built in a variety of forms, including:

•Detached: New or converted detached structures such as garages.

•Attached: New or converted attached addition to the existing home.

•Internal: Conversion of existing space such as a basement or attic.

Figure 1: Example of ADUs, Source: City of Saint Paul, MN



ADUs are often built by the owners of the primary dwelling as a space for family, friends or caretakers, as a rental unit to generate income, or as a space for the homeowner to live while renting the primary dwelling. A common pattern is for ADU use to change over time, providing particular flexibility to support new homeowners, multigenerational households, and aging in place. For example, an older homeowner may construct an ADU initially for additional rental income to pay the mortgage, may use it to accommodate a live-in caretaker, or may subsequently move into the ADU to downsize while renting the primary house.

What is an ADU?

Accessory dwelling units (ADUs) are small, self-contained homes located on the same property as a larger, principal home with their own kitchen, bathroom and sleeping area.

ADUs can be attached or detached, can be converted from existing structures or new construction.

They are also known by other names that reflect their various potential uses, including granny flats, in-law units, studio apartments and secondary dwellings.

Photo credit: accessorydwellings.org

Since 1997, Metro has required jurisdictions to permit one ADU per single-family dwelling in single-family zones subject to reasonable siting and design standards. Almost all cities adopted ADU regulations immediately following, but interest among both jurisdictions and homeowners has varied over the past 20 years. Some codes have remained unchanged and unused, while others have undergone successive rounds of improvement as ADU development has expanded.

Portland is the most notable example in the region, where ADU growth has taken off concurrent with regulatory changes that expand ADU allowances and system development charge (SDC) waivers to reduce up-front costs for homeowner developers.

Other greater Portland cities have not seen similar rates of ADU construction despite adopting some measure of ADU regulations to meet Metro requirements. Since 2000, ADU development in jurisdictions outside of Portland ranges from 0 to 60 total ADUs (see Table 3).

Examples across the West Coast also add to the understanding of ADU regulations and development potential. Vancouver, BC is notable for allowing two ADUs per lot, with approximately 35 percent of existing single-family homes estimated to be ADUs. Research by Sightline Institute mapped ADU regulations across Washington, Oregon and Idaho, concluding that many cities allow ADUs but make it difficult for ADUs to be built at scale.

California passed a new statewide requirement for all cities to permit ADUs in an effort to jumpstart development and ease the housing crisis. These developments highlight increasing national interest in how ADUs can be integrated into communities to expand housing opportunities, strengthen neighborhoods, provide flexibility for homeowners and changing family dynamics and generate financial benefits for homeowners and renters.

In Oregon, Senate Bill (SB) 1051, which passed in 2017, is intended to support more affordable housing development across the state, and includes a requirement for virtually all cities and counties to allow ADUs with all single-family detached dwellings in single-family zones, subject to "reasonable local regulations relating to siting and design."

The statutory provisions also require that ADU regulations be "clear and objective." The Oregon Department of Land Conservation and Development (DLCD) has issued guidance on implementing SB 1051 requirements in local jurisdictions.

The DLCD guidance on ADUs supports a number of innovative practices, including permitting two ADUs per lot, removing off-street parking requirements and removing owner-occupancy requirements. This guidance goes beyond what many jurisdictions would have considered in the late 1990s when first drafting their ADU regulations.

Although the actual language of the SB 1051 ADU requirements is remarkably similar to the language from the 1997 Metro requirement, the requirement and deadline come at a time when there is increasing interest in ADUs and in affordable and varied housing options.

There is also 20 years of experience of ADU development to draw upon from the greater Portland region, the state and nationally, reflected in the DLCD implementation guidance and emerging recommendations about best practices for ADUs from think tanks such as Sightline Institute.

Meeting state requirements in 2018 is thus an opportunity for Metro jurisdictions to refresh existing regulations and innovate to better support ADU development.

Photo credit: accessorydwellings.org

ADU requirements timeline

1997: Portland allows ADUs by right

1997: Metro code requirement for all cities to permit one ADU per single-family dwelling in single-family residential zones

2000: Majority of Metro cities have adopted ADU regulations

2010: Portland SDC waiver for ADUs first passed, permits markedly increase

2017: State SB 1051 passes, requires majority of cities and counties to permit ADUs subject to "clear and objective" standards

July 1, 2018: SB 1051 effective date, deadline for cities to adopt or update ADU regulations

Project approach and methodology

The code audit combined several layers of analysis of ADU regulations and development patterns to understand regulations as written and as applied. Audit findings across key issue areas are summarized in the *Code Audit Findings* section, incorporating insights from the regulatory code review and stakeholder interviews.

The first step of the code audit examined the published zoning codes, supplemented with review of land use application forms, fee schedules, and any other documents publicly available related to ADUs and SDCs for the 24 Metro cities and three Metro counties.

The code audit is based on regulations current as of March 31, 2018 when the audit was completed, however, many codes were already under review at the time of the audit to meet the SB 1051 effective date of July 1, with rolling adoption of new codes over summer 2018. Rather than making the audit a moving target, the audit matrix reflects the ADU regulations as they existed at the time; future work will include monitoring and evaluating new codes as they are adopted.

The evaluation matrix describes existing regulations across multiple categories for easy comparison between cities, and is intended to be both descriptive of the existing regulations as well as evaluative of whether the regulations support or inhibit ADU development, based on emerging best practices. Audit review categories were based on the requirements of state and Metro ADU mandates, and emerging best regulatory practices to support ADU development.

Photo credit: accessorydwellings.org

Categories were derived from noted regulatory barriers to ADU development including off-street parking requirements, owner-occupancy requirements of the ADU or primary dwelling, total occupancy limits, restrictive dimensional standards including total square footage, and design compatibility requirements with the primary dwelling.

Additional review categories capture non-code related elements such as System Development Charges (SDCs) for ADUs, land use application materials, and availability of information materials for prospective ADU developers.

Basic demographic data including city size, average home price, and prevalence of single-family dwellings, from the 2016 American Community Survey, is provided for a quick snapshot of the conditions in which ADUs may or may not perform well.

The matrix incorporates both descriptive summaries of applicable regulations, as well as an evaluative component using a tri-color-coding system to evaluate the status of each aspect of the regulations, relative to emerging best practices and regulatory requirements, rather than attempting to score or rank jurisdictions. Green indicates compliance with a specific regulatory aspect, yellow indicates mostly in compliance with opportunities to reduce barriers, and orange indicates the greatest opportunities to remove barriers.

For example, any regulation that allows one ADU per lot rather than per single-family detached dwelling was flagged as orange, because of the SB 1051 legal requirement to permit ADUs on a per dwelling rather than per lot basis, but regulations that permit one ADU per dwelling rather than the recommended two per dwelling consistent with DLCD guidance were flagged as yellow to indicate additional opportunity rather than lack of compliance.

Given the emerging consensus that off-street parking and owner-occupancy requirements are significant barriers to ADU development, both types of regulations were flagged as orange, as were any design standards requiring "similar" materials and character as the primary dwelling, which is contrary to the state requirement for clear and objective standards.

Code audit matrix intended to be:

Descriptive: capture the extent of ADU regulations that exist as of March 31, 2018.

Evaluative: compare existing regulations against state and Metro ADU requirements, and emerging best practices, in order to highlight opportunities for code updates that better support future ADU development.

Photo credit: accessorydwellings.org

Stakeholder interviews were conducted with selected city and county planners and local ADU development professionals for additional insight into how the regulations function in practice.

The six representative jurisdictions were selected to include a variety of sizes, geographies, demographics, and ADU development trends; the six included City of Beaverton, City of Gresham, City of Lake Oswego, City of Wilsonville, Washington County, and City of Vancouver, WA.

ADU professionals interviewed were selected based on their experience developing or knowledge of ADU development around the greater Portland region beyond Portland, and included Dave Spitzer, with DMS Architects, Joe Robertson of Shelter Solutions, and Kol Peterson, author of "Backdoor Revolution: The Definitive Guide to ADU Development."

Interviews were used for insight and general understanding, rather than for verbatim quotes.

A quantitative element of the project includes gathering data on ADU construction trends and SDC levels across jurisdictions to better understand the ADU development context and outcomes. Data on permitted ADU construction, estimated unpermitted ADUs and estimated level of interest was collected from multiple sources.

Data compiled by Metro's Research Center as of February 27, 2018, was used as initial data for permitted ADUs built since 2000, and was supplemented with self-reported data from jurisdictions; individual jurisdictions relied on a range of permit data and other internal tracking metrics to provide estimates.

Results are shown in Table 3; in the event of conflicting totals, the higher figure was used provided it was deemed reliable. Jurisdictional estimates were also gathered for unpermitted ADUs and number of ADU inquiries to understand ADU interest beyond finalized permits; for example, a jurisdiction with a high level of interest but no or few final ADUs might indicate significant regulatory barriers. While anecdotal and impressionistic, the self-reported observations are summarized in Table 2.

Finally, SDC rates applied to ADUs were calculated based on published fee schedules where available, or through inquiries to jurisdictional staff in the planning or engineering departments. Because of the uneven availability of SDC rates, data is provided for a subset of Metro jurisdictions to illustrate the general range of SDC variation rather than fully catalogue SDC rates; see Table 1.

Given the relevance of the ADU code audit findings for jurisdictions currently amending their codes to address housing opportunities generally and the SB 1051 requirements specifically, the audit approach was also expanded midway through the project to incorporate outreach and technical assistance for Metro jurisdictions.

Representatives from nearly half of Metro cities and counties attended a workshop convened April 23, 2018, to share preliminary audit findings, and code audit advice from both the Metro and state perspective intended to inform code update efforts. Metro will offer continuing technical assistance with code amendment and implementation issues over the rest of the year, as detailed in Section 7 on next steps, and monitor ADU code updates to identify emerging trends and issues.

Code audit findings

Comprehensive ADU regulations have been adopted in nearly every Metro jurisdiction, with limited exceptions, and address a similar suite of issues including dimensional standards, design standards, occupancy standards and permitting requirements.

Adopted regulations and practices are less consistent in addressing infrastructure requirements, including SDCs, and in providing application and informational materials for would-be ADU builders.

The most significant regulatory barriers to ADUs identified through the audit were owner-occupancy requirements, off-street parking requirements, and significant dimensional restrictions such as 20-foot rear-yard setbacks, one-story ADU height limits, or ADU size limits below 600 SF.

SDCs for ADUs were reported to have an outsize effect on discouraging ADU construction, however, even cities with reduced or eliminated SDCs did not report a significant boost in ADU permits, except for Portland. Conditional use review requirements are generally considered a barrier to ADUs, but none were observed in the greater Portland region.

One overarching trend is that cities appear to be learning from and copying each other, with certain code provisions repeated among neighboring cities, or even across the larger metropolitan area. For example, Tigard and Tualatin have similar provisions limiting ADUs to internal and attached ADUs, as do Gresham and Troutdale.

Many cities have nearly identical code language on required design elements. There may be a feeling of "safety in numbers," with one city feeling more comfortable with certain provisions because they are already being used in a neighboring city with few apparent ill effects.

Photo credit: accessorydwellings.org

Another takeaway is the diversity of regulatory combinations and the resulting cumulative impact on ADU development feasibility. Codes generally fell along a spectrum from less supportive to more supportive depending on the exact mix of code provisions, rather than a dichotomy of prohibitive and permissive: jurisdictions do not seem to have taken an "all or nothing" approach but rather crafted codes to respond to local priorities.

Many codes excluded some of the most significant barriers but included one or more "poison pills" (such as those listed on page 12) that could nevertheless make it difficult to develop.

For example, West Linn has no owner-occupancy requirement but does have one minimum off-street parking space required and design compatibility standards. King City has no owner occupancy requirement and many sites are exempt from providing off-street parking, but the high minimum lot size to develop an ADU disqualifies many potential ADUs.

Significant ADU regulatory barriers

- Off-street parking requirements, particularly if separate access is required and tandem parking is not permitted.
- Owner-occupancy requirements.
- Significant dimensional restrictions such as 20-foot rear-yard setbacks, one-story ADU height limits, or ADU size limits below 600 SF.
- Limiting types of ADUs, such as prohibiting detached ADUs.
- Design comptability requirements with main dwelling.
- System development charges (SDCs).

Photo credit: accessorydwellings.org

Portland is unique for having removed all of the most significant barriers, coupled with the current SDC waiver.

Among the codes outside of Portland, fewer barriers generally seem to support ADU development, such as examples in West Linn, Hillsboro and Wilsonville, compared to jurisdictions with several significant barriers that have seen limited ADU development.

A. Existence of Regulations

The vast majority of jurisdictions have code provisions to permit some type of ADU development. Of the 27 jurisdictions audited, only two jurisdictions did not have ADU codes: Multnomah County and Johnson City, both of which have unique factors limiting ADU development potential.

Multnomah County staff reports only 600 homes in urban areas of the UGB that could be eligible for ADU development. However, to comply with SB 1051 requirements, the County adopted ADU regulations on June 7, 2018, after the audit was completed, to permit ADUs within those urban areas.

No records were found for ADU regulations in Johnson City, home to approximately 500 residents where 90 percent of dwellings are manufactured homes, which are less likely to have flexibility for addition of an ADU, particularly those within manufactured home parks.

The majority of ADU codes were initially developed around 2000, and many have not been updated since. It seems likely that the frequency of updates and the number of ADUs built are directly related.

That is, the more ADUs are built, the more the code is examined and revised, whereas jurisdictions with no ADU development leave the code unchanged, potentially perpetuating barriers to development.

B. Number and Type of ADUs

The prevailing code approach is to permit one ADU per residential lot, including all types of ADUs. The majority of codes audited permit one ADU per lot, rather than per single-family dwelling as required by SB 1051.

This likely has a limited impact on actual ADU feasibility, given that most single-family houses are built on individual lots, but such language does not comply with state requirements. Only three jurisdictions clearly permit ADUs on a per dwelling basis rather than per lot. No codes permit more than one ADU per dwelling or per lot, however, several cities, such as Tigard and Portland, are considering whether to permit two ADUs per dwelling.

Most codes permit detached, attached, and internal ADUs, but a notable minority limit detached ADUs, potentially to encourage retention of garages for off-street parking or to minimize impact of ADUs by confining them within the existing dwelling.

Gresham and Rivergrove do not allow any detached ADUs unless over a garage. Tigard does not permit new detached ADUs, and prohibits garage conversions unless the garage is replaced. Troutdale and Tualatin prohibit all new or converted detached ADUs, and Troutdale further prohibits conversion of an attached garage for use as an ADU.

Photo credit: accessorydwellings.org

C. Where Allowed

All codes allow ADUs in all or almost all single-family detached residential districts, and most allow ADUs in all zones where single-family detached residences are permitted even if it is not a primary use.

The limited exceptions tend to be zones with narrow applicability, such as overlay zones or subdistricts, or unique situations such as an overwater zone in Lake Oswego where homes are only allowed on pilings over water and ADUs are not permitted.

Additional borderline situations included ADU limitations in zones where existing homes are explicitly permitted but no new ones are allowed, in mixed-use zones where single-family detached dwellings are permitted as part of a larger mix of uses, and for lots with attached single-family dwellings.

The majority of jurisdictions prohibit ADUs in these situations, which fall outside of state and Metro requirements to allow ADUs in zones where single-family detached dwellings are permitted. A small minority of jurisdictions has explicitly permitted ADUs in such situations to expand ADU development potential.

Photo credit: accessorydwellings.org

For example, Wilsonville, Clackamas County and Hillsboro permit ADUs with attached single-family dwellings as well as detached dwellings. Washington County is unique in permitting ADUs as part of some cottage housing developments.

Caution: Some regulations intentionally or inadvertently disqualify many existing lots from developing ADUs, even if ADUs are a permitted use, through minimum lot size requirements or nonconforming lot limitations, and this may not be fully captured in the code audit matrix in Appendix A.

An example of the former is King City. ADUs are permitted in all zones where single-family detached dwellings are permitted, but ADUs are only permitted on lots 7,500 SF or larger while minimum lot sizes for the residential zones range from 2,400 to 5,000 SF. Thus, few existing lots are likely to meet the minimum lot size requirements for ADUs.

Codes were mostly silent on whether nonconforming lots, that is, legally created lots that are smaller than the minimum lot size under current zoning, could be developed with an ADU. Hillsboro directly addressed the issue by limiting ADUs to lots that meet the minimum lot size, and many other jurisdictions may interpret their nonconforming standards to similarly prohibit ADUs on nonconforming lots.

As a practical matter, smaller lots may not have room to add ADUs regardless of the zoning; Wilsonville noted that many new, master planned developments with intentionally smaller lots and higher lot coverage were not conducive to adding ADUs because of lack of available lot area.

D. Dimensional Standards

Dimensional standards apply to the size of the ADU and to where on the lot ADUs may be placed. ADU dimensional standards were evaluated for impacts to ADU development feasibility, and compared to dimensions for the primary dwelling and other accessory structures to understand the relative flexibility of ADU standards. Many codes default to the same dimensional standards as the primary dwelling, or to the standards for other detached accessory structures. Though using similar standards may seem reasonable, in practice they can be difficult to interpret or inappropriately scaled for ADU construction.

Setbacks

Setbacks generally default to those for the primary dwelling or for similarly sized accessory structures. A quarter of jurisdictions has an additional standard requiring detached ADUs to be set back relative to the primary dwelling, measured in a variety of ways including minimum setback from the front property line, from the rear of the primary dwelling, or from the front façade of the primary dwelling.

No jurisdictions differentiate rear and side setbacks for ADUs, instead using standards for primary dwelling or accessory structures. Base zone setbacks were not fully audited as part of this project, but merit further review by individual jurisdictions to ensure they are not overly restrictive for ADU development.

A limited survey of setbacks showed that 20 to 25-foot rear setbacks apply in many single-family dwelling zones, which ADU developers report can be a significant obstacle to fitting a detached ADU on a standard lot. Some cities tie detached ADU setbacks to those for accessory structures, which generally require a greater setback for larger and taller structures; ADUs are typically larger than garden sheds or greenhouses, however, and few would likely qualify for the reduced setbacks.

One unique approach to ensure adequate yard space without a uniform rear setback is a minimum outdoor space standard, used by Washington County and Portland, which requires a yard meeting a minimum total size and minimum dimensions, but with the flexibility to locate the yard anywhere in the side and rear setbacks which frees up portions of the remaining side and rear setbacks for siting an ADU.

Photo credit: accessorydwellings.org

Height

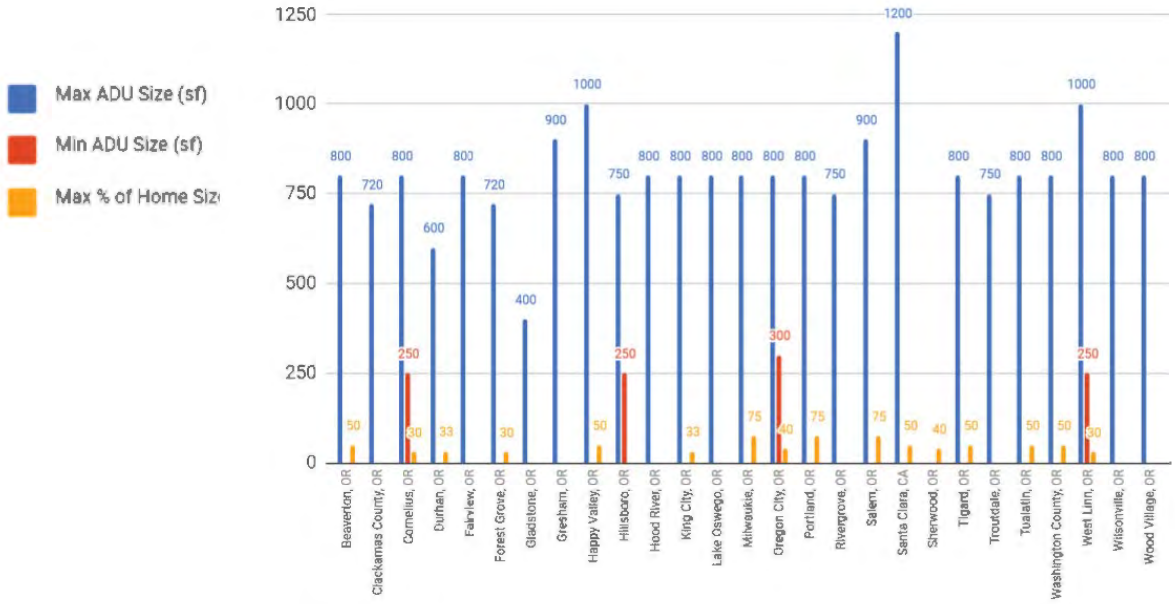
For detached ADUs, the most common height standard is 20 to 25 feet, in line with best practices to permit two-story and over-garage units. There are a few outliers limiting height to 12 to 15 feet or one story, which is not recommended. ADU developers report that two-story ADU construction is a desirable option for some lots in order to minimize the ADU footprint.

A few cities have tiered height standards, with taller heights allowed through a more detailed review process (Milwaukie) or outside of setbacks (Portland). Almost all codes limit height for attached and internal ADUs to the same height as the primary dwelling, typically meaning the maximum height permitted in the underlying zone but a few codes, such as West Linn's, specifically limit ADU height to the height of the existing primary dwelling.

Unit size

The large majority of jurisdictions uses a maximum building size limit of 720 to 1,000 square feet for ADUs, with 800 square feet the most common maximum size. About half of the jurisdictions also ties the maximum size to a percentage of the primary dwelling's size ranging from 30-75 percent; this is generally intended to keep ADUs in proportion to existing development.

Figure 2: ADU size regulations. Source: Multnomah County Department of Community Services Land Use Planning Division



In practice this limitation has equity implications because it disproportionately limits ADU development on lots with smaller dwellings, typically owned by lower-income households, with no impact on larger homes owned by higher-income households. A few codes included size restrictions by type of ADU (attached or detached) or zone where the ADU is built, or maximum number of bedrooms.

Lot Coverage

All cities default to the maximum lot coverage standards allowed in the base zones, to include the total coverage of the primary dwelling, ADU and any accessory structures, except Portland which specifically limits ADUs and all detached accessory structures to a combined 15 percent lot coverage.

A representative sample of base standards indicated that many jurisdictions limit lot coverage to 30-40 percent, which may be a tight fit for a home and ADU. For example, West Linn limits lots in the R-7 zone to combined 35 percent lot coverage and 0.45 FAR, which would translate to 2,450 SF lot coverage and 3,150 total SF for the primary dwelling and ADU. While not overly restrictive, some sites potentially near these limits could benefit from additional flexibility. For example, Milwaukie permits a 5 percent increase in lot coverage for detached ADUs.

E. Occupany Quotas

Over two-thirds of jurisdictions have no stated limit on ADU occupants and treat an ADU as a dwelling – similar to any other dwelling such as a house or apartment – that may be occupied by a 'family' or 'household', typically defined as any number of related individuals or up to five unrelated individuals. While most jurisdictions thus allow two 'families' to occupy the lot where the ADU is located, Portland, Sherwood and Wood Village limit occupancy to one family/household quota shared between the ADU and primary dwelling.

This limitation is likely intended to keep total site occupancy at a level comparable to other properties in the neighborhood developed with a single-family dwelling. The remaining handful of jurisdictions use a variety of regulations to limit occupancy, either an overall limit of two to three occupants or an allowed ratio of one occupant per 250 SF.

Unique ADU regulatons

- Yurts may be used as an ADU, exempt from design standards. (Milwaukie)

- 15 percent size bonus for ADA-accessible ADUs. (Washington County)

- Six total off-street parking spaces required to serve primary dwelling and ADU, including three covered, enclosed spaces. (Rivergrove)

- 7,500 SF minimum lot size to develop ADUs, when minimum lot sizes for affected zones range from 2,000 to 5,000 SF. (King City)

- Windows must be arranged above ground level when located within 20 feet of the property line. (Milwaukie)

These regulations may have a cascading impact, exemplified by West Linn: occupancy is limited to one person per 250 SF, and a maximum permitted ADU size of 1,000 SF could accommodate four occupants, except that detached ADUs are limited to 30 percent of the primary dwelling size, such that only a 3,333 SF primary dwelling would qualify for a 1,000-SF, four-person ADU. With a maximum of 0.45 FAR permitted, only lots close to 10,000 SF could accommodate the combined dwelling and ADU, and smaller lots would be effectively limited to fewer ADU occupants.

In practice, few cities actively enforce occupancy limits for any type of dwelling, including ADUs, and ADU occupancy rates are not likely to exceed occupancy limits due to their small size. There were no reported code enforcement concerns around occupancy limits among the jurisdictions interviewed.

F. Design

The large majority of codes require some degree of design compatibility between the ADU and the primary dwelling. Most of those list specific elements, from siding materials, eave depth, colors, roof form and materials to window treatments and proportions, that must be compatible; this specificity about elements helps make the code more objective, but many codes still use vague, discretionary language requiring those elements to be consistent with the primary dwelling.

Photo credit: accessorydwellings.org

Though the approach is similar, the precise code wording varies across jurisdictions: design elements are required to be "similar," "consistent," "same or similar," "the same or visually similar," "match," "generally match," "match or be the same as," "compatible," "same or visually match," "substantially the same," "conform to the degree reasonably feasible, "or be "architecturally consistent."

Only five jurisdictions have no design compatibility standards, and an additional three only apply compatibility standards to attached ADUs. One specific design element required by many codes is to restrict any new street-facing entrances for the ADU, presumably to preserve the single-family 'character' of homes.

While design compatibility is generally identified as important for maintaining neighborhood character, both ADU developers and regulators noted that it can limit design options, particularly in cases where the primary dwelling design may not be high quality, and it can be difficult to demonstrate whether a particular design does or does not satisfy the standard. Design standards will be under heightened scrutiny to meet new state requirements for "clear and objective" standards.

Photo credit: accessorydwellings.org

G. Comparison to ADU alternatives

To understand the relative complexity of standards and processes for ADUs, the audit reviewed requirements for similar projects including home additions, new detached accessory structures such as garages and guest houses. There is potential concern that non-ADU standards that are significantly more permissive than ADU standards may incentivize construction of illegal ADUs in accessory structures as an easier work-around.

The main points of comparison were dimensional standards, design requirements, permitting requirements, and SDCs. Dimensional standards for accessory structures are largely similar to those for ADUs of comparable size; many accessory structure standards include reduced setbacks proportionate to the size of the structure, such as a 3-foot setback for a 200-SF structure, but no relative reduction for larger accessory structures compared to ADUs.

In some instances the ADU standards are more generous, with ADU standards notably allowing detached structures closer to 800 SF and accessory structures often limited to 400-500 SF. However, there are almost no design standards for accessory structures compared to ADUs, and no land use permitting required, which could make the accessory structures relatively easier to construct.

SDCs associated with ADUs were reported as a primary deterrent to submitting a project as an ADU rather than an accessory structure or addition. In interviews, many jurisdictional staff were familiar with this type of project – one called such projects the "everything buts" meaning "everything but" a stove and oven, since adding a stove meets the definition of a permanent cooking facility, thus meeting the definition of a dwelling unit and an ADU. Other jurisdictional staff described a surprising number of homeowners submitting permits for pottery studios, complete with a 220V plug needed for the pottery kiln, which coincidently is the same plug needed for an oven.

Jurisdictions were asked to estimate the number or ratio of unpermitted ADUs to permitted ADUs to better understand the relative temptation of "everything buts." Nearly every jurisdiction had an example of one or two that were addressed through code enforcement, but no jurisdictions reported a wide-spread, prevalent trend of unpermitted ADUs masquerading as accessory structures or home additions.

Photo credit: accessorydwellings.org

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Several cities also permit guest houses, similar to ADUs but without permanent cooking facilities and sometimes with occupancy time limits. Of the five cities and counties that permit guest houses, the guest houses are typically allowed under similar situations as ADUs, but would be exempt from SDCs.

However, none of these jurisdictions reported significant numbers of known guest houses, either because they are less understood or less desirable without a kitchen. Guest house standards are evenly split on whether a guest house is permitted in addition to an ADU or not.

H. Occupancy limits

Just over half of jurisdictions require owner occupancy of either the primary dwelling or the ADU, and half of those jurisdictions require a recorded deed restriction to that effect. No owner-occupancy limits were identified for other types of dwellings.

A few jurisdictions permit minor permutations of the owner-occupancy requirements to permit a family member to occupy the owner unit, or to limit required residency to seven months of the year provided the owner-occupied unit is not rented out during the remainder of the year.

Washington County has a unique provision requiring owner occupancy unless the property is owned by a nonprofit serving persons with a developmental disability; staff explained that the provision was developed for a local nonprofit to facilitate a specific project that has since been built and is operating successfully.

Photo credit: accessorydwellings.org

Photo credit: buildinganadu.org

Photo credit: accessorydwellings.org

Owner-occupancy requirements are unique in that they create an ongoing use restriction rather than a standard that can be evaluated at a single point in time, requiring ongoing monitoring and potential code enforcement actions. Jurisdictions reported that owner occupancy enforcement rarely came up for ADUs, except in individual code enforcement cases.

Owner-occupancy regulations have a mix of potential impacts on ADU development feasibility. In the initial stage, many homeowners may not have any concerns about the owner-occupancy requirements because many do intend to continue living in their homes, though some express reservations or concerns about the limitations or the deed restriction requirements.

More significantly, however, the restrictions can reduce the assessed value of the ADU under many financing and assessment methodologies, making it more difficult to obtain financing for initial ADU construction and limiting property resale value in the long-term.

Owner-occupancy restrictions are often promoted as a tool to limit short-term rentals of ADUs. Only Portland and Milwaukie have developed specific short-term rental regulations to specifically address concerns around short-term rentals, and they regulate ADUs the same as other dwellings.

Concern about ADUs being used a short-term rentals, and desire for ADUs to be reserved for long-term housing, informed the recent Portland measure to permanently waive SDCs for ADUs—provided that homeowners sign a deed restriction prohibiting short-term rentals.

ADU developers report that some of their clients have in fact use their ADUs for short-term rentals for a limited time, primarily as a way to recoup some of costs associated with building the ADU, but that many then transition to long-term rentals or use by family members.

I. Off-street parking

The large majority of jurisdictions require off-street parking for ADUs, with additional parking locational standards that can significantly affect the overall impact of the off-street parking requirements.

The most common requirement is one off-street parking space for an ADU, reported in three-quarters of jurisdictions, though over one-third of those had an option to waive the off-street requirement if on-street parking was available adjacent to the site. Three jurisdictions had no off-street parking requirement for ADUs: Portland, Durham and King City.

When considering the total impact of off-street parking requirements for the site, just over half of jurisdictions require a total of two off-street parking spaces for the ADU and primary dwelling, while nearly a third of jurisdictions require more than two total off-street parking spaces. More than two spaces may have greater impacts on feasibility of ADU development because of the greater site area required for parking.

Rivergrove had the highest total parking requirement, six spaces total for a primary dwelling and for an ADU with one bedroom, including three covered, enclosed parking spaces, and even more parking for larger ADUs.

There is significant diversity and complexity of parking-related regulations, some that lessen and others than increase the impact of off-street requirements. Supportive regulations include allowing the portion of the driveway in the yard setbacks to count towards required parking spaces, allowing tandem parking to count multiple parking spaces in the driveway, and most significantly allowing adjacent on-street parking to fulfill ADU parking requirements, effectively eliminating the off-street parking requirements for many sites.

Problematic regulations include requiring covered, enclosed parking spaces, requiring replacement of any garages converted to an ADU, requiring separate driveway access for the ADU and primary dwelling parking, and prohibiting parking in the first 10 to 20 feet of the driveway. Parking standards that require a range of parking spaces for dwellings are also concerning as they create uncertainty and could be used to effectively block ADU development.

An example is Gresham's requirement for one space for the ADU and two to three spaces for the primary dwelling, or "as many spaces deemed necessary by reviewer to accommodate the actual number of vehicles" for the ADU and primary dwelling.

Photo credit: buildinganadu.org

Photo credit: buildinganadu.org

Off-street parking requirements were identified by ADU developers as one of the top barriers to ADU site development feasibility, though jurisdictional staff had mixed reports about the perceived impact of parking requirements for homeowners in their jurisdictions depending on prevalent lot sizes and common expectations of car usage and parking availability.

J. Other zoning standards

There were a limited number of special concerns outside of the main categories and there was general convergence on the topics included in ADU regulations. The most common issue addressed is privacy and screening between an ADU and neighboring single-family properties, including either minimum 4 to 6-foot tall fencing or landscaping requirements or more discretionary standards for an "appropriate" level of screening, included in regulations in Happy Valley, Lake Oswego and Milwaukie. One-off regulations, addressed in only one or two jurisdictions, included:

- Limiting types of home occupations permitted with ADUs (Portland, Tigard)
- Explicitly permitting simultaneous construction of ADUs and primary dwellings (Sherwood)
- Prohibiting occupation of an ADU before the primary dwelling (Gresham)
- Limiting ADUs to 50 percent of the lots per block face (Fairview)
- Prohibiting land division or separate ownership of ADU and primary dwelling (Sherwood, Tualatin)

Few of these concepts emerged as either critical needs or concerns for jurisdictional staff or ADU developers, and were likely developed in response to specific local issues. ADU developers did identify permitting simultaneous construction and occupation of ADU prior to the primary dwelling as supportive practices, particularly in communities with significant new construction, but acknowledged these as "extra" rather than central requirements.

K. Application requirements

Three-quarters of jurisdictions require some type of land use review in addition to building permit review; a handful either have a combined land use and building permit review option or simply require building permit review.

Of those requiring land use review, jurisdictions are split nearly evenly between requiring Type I – an administrative review with no discretion applied by the staff reviewer – and Type II land use review, which requires the staff reviewer to apply limited discretion to interpret standards and allows for a written public comment period.

Slightly more than half of jurisdictions required a Type I review, with the other half requiring a Type II or higher level review for some or all ADUs. Some triggers for higher-level review include larger ADUs, taller ADUs, detached ADUs, or ADUs located in specific zoning districts. Cities requiring Type II review generally had more discretionary or onerous ADU regulations, such as design compatibility requirements.

No jurisdictions uniformly require conditional use review, the most onerous review type involving a public hearing and documentation of how the ADU would not impact neighboring properties, though Cornelius requires it in limited circumstances and Rivergrove requires Planning Commission review of all ADU applications.

L. Infrastructure requirements

The code audit examined jurisdictional regulations on infrastructure improvements required with ADUs including any separate water and sewer connection requirements, stormwater treatment requirements for additional impervious surface, or street improvements if lot frontage is currently substandard.

Over two-thirds of ADU regulations do not specifically address these infrastructure requirements, and those regulations that were identified generally state that infrastructure improvements are required on a case-by-case basis to ensure adequate capacity to serve the site.

Photo credit: buildinganadu.org

Photo credit: buildinganadu.org

In part this highlights the different regulatory approaches for land use and public works issues. Sewer and water capacity, stormwater treatment requirements, and street improvement requirements are generally site-specific, or may be addressed through more general policies rather than ADU-specific policies.

For example, Portland ADU standards include a cross-reference to stormwater treatment requirements for any development creating 500 SF or more of new impervious surface, for all development types not just ADUs.

More commonly, utility requirements and thresholds triggering improvements are included in separate code chapters and not explicitly referenced in ADU standards; those thresholds typically apply to total size or value of new construction, and as such are not ADU-specific, making it more difficult to identify such standards.

For example, Oregon City's code chapter on street and sidewalk improvements requires that new construction or additions to single-family homes that exceed 50 percent of the existing square footage trigger street and sidewalk improvements, if needed; ADUs will likely not trigger such improvements because ADU size is limited to 40 percent of the existing square footage, but the policy does not clearly exempt ADUs. Milwaukie staff noted that new frontage improvements can be triggered by ADU construction, and are a significant obstacle to ADU development.

Another complication in determining infrastructure requirements is that many jurisdictions, particularly smaller suburban districts, are served by a combination of city and district utility providers, such as Clean Water Services which provides sewer and stormwater services to many cities and unincorporated areas in Washington County, so district standards for utility improvements are not regulated at the local level.

Unfortunately, the application of non-ADU specific engineering standards, sometimes administered by utility providers unaware of ADU-specific issues, means that utility improvement requirements for ADUs generally boil down to "it depends," and could not be fully captured in this audit.

M. System development charges

SDCs are one-time fees assessed on new development intended to support expanded infrastructure capacity needed to serve said development. SDCs or similar one-time development fees for residential development including ADUs are typically assessed for water, sewer, transportation, parks, schools, and sometimes for stormwater. ADU developers and jurisdictional staff repeatedly identified high SDC rates as a barrier to ADU development, citing concern that adding $10-20,000 in fees to ADU projects overran many project budgets and homeowners' willingness to pay.

Table 1: Total SDCs applied to new ADUs for selected Metro jurisdictions

	SDCs	Notes
Hillsboro	$0	City practice is to not apply SDCs at this time
Portland	$0	Temporary waivers since 2010, made permanent in 2018 for ADUs not used as short-term rentals
Rivergrove	$0	No SDCs assessed for individual dwellings, only for subdivisions
Tigard	$0	City practice is to not apply SDCs at this time
Tualatin	$0	City practice is to not apply SDCs at this time
Wilsonville	$0	Permanent waiver since 2010
Wood Village	$0	For sole permitted ADU to date, a converted space above a garage. SDCs for single-family dwellings would be applied to ADUs in new structures.
Fairview	$2,417.43	Includes parks and stormwater.
Gresham	$4,729 - 7,823	Includes parks, transportation and stormwater. Higher fees associated with detached ADU
Happy Valley	$5,512	Includes transportation and parks.
Beaverton	$10,823 - 11,831	Higher fees associated with detached ADU
Oregon City	$14,547	Includes sewer, transportation, and parks. Water may be additional depending on meter size.
Forest Grove	$15,143 – 22,171	Higher fees assessed for detached ADUs.
Washington County	$15,600	Average, can range from $6,000 to 25,000. Estimate includes transportation, parks, and schools. Water and sewer possible but rarely triggered.
Lake Oswego	$21,324	Includes water, sewer, parks and transportation.

Source: Self-reported by jurisdictions in response to audit inquiry May 2018.

Photo credit: accessorydwellings.org

SDCs are typically due at the time a building permit is issued, meaning that would-be ADU developers must write a check for the full amount before even beginning the project. For infrastructure services, that can be difficult to appreciate, particularly in developed neighborhoods where fees are not immediately translated into additional infrastructure.

SDC price sensitivity is compounded by relative difficulty determining SDC rates. Almost no cities have developed ADU-specific SDC rates, and few offer clarification on which of the existing residential SDC rates apply to an ADU. SDC rates are typically found outside of land use standards, in master fee schedules, info sheets, or fee calculators.

ADU-specific rates or clear explanation of which SDC rates applied to ADUs were identified in the audit for a handful of cities, but the majority of cities did not have clear information available about which category of rates (single-family, multifamily, townhouse or other) to apply to ADUs without specific guidance from jurisdictional staff.

Often planning staff needed to refer to public works departments to provide estimates. There were many variables that may influence the total SDCs for a given ADU even within the same city. Similar to infrastructure improvements noted above, SDCs can be a combination of charges assessed by city and utility service providers, each using different methodologies and adding additional complexity to determining ADU rates.

A representative sample of SDC rates for ADUs reveals a wide range of rates applied to ADUs, from zero to over $20,000, and the details behind the totals capture a variety of methodologies used to develop those totals.

Only two cities, Portland and Wilsonville, explicitly offer an SDC waiver for ADUs, and an additional five cities reported assessing no SDCs for ADUs as a matter of practice. To add nuance to the common perception that SDCs are a significant barrier to ADU construction, ADU development trends in Portland and Wilsonville under similar SDC waivers have produced differing results. SDC waivers are largely credited with spurring ADU development in Portland: development increased from approximately 50 to 500 ADUs permitted annually after SDCs were waived in 2010.

However in Wilsonville, only seven total ADUs have been permitted since 2000 with no noticeable uptick in permits after the SDC waiver took effect in 2010. In addition to significant real estate market differences between the two cities, another difference that may relate to these divergent outcomes is that Portland's waiver was heavily publicized and was intended to be temporary – though was in fact extended multiple times – fueling a "beat the deadline" mentality.

In comparison, city practices to not assess SDCs in cities from Hillsboro to Tualatin have not been publicized and were only identified in audit research through discussion with cities, perhaps limiting their efficacy as an ADU development incentive.

N. Information and incentives

The availability of online information varied greatly between jurisdictions, but generally was minimal. All jurisdictions with adopted ADU regulations made those regulations available online, though some were harder to find than others and all required navigating through the municipal code to locate relevant sections. The audit specifically identified information written for prospective developers explaining the ADU regulations and permitting requirements.

ADU developers cited Portland's ADU website as the best local example, providing centralized, ADU-specific information including an overview of requirements, worksheets, application forms, and explanation of the permitting and inspection process.

Informational materials available online, specific to ADUs, were identified in slightly less than half of local jurisdictions; the breadth and depth varied widely from a one-page info sheet summarizing land use code requirements for accessory structures generally with a few lines about ADUs, to a comprehensive packet with diagrams and checklists.

Photo credit: accessorydwellings.org

The most comprehensive materials detailed site requirements, ADU regulations, permitting procedures including any necessary application forms, and fees including SDCs. Of the information available, nearly all was specific to land use regulations with little available on engineering or building-related requirements.

Related issue: CC&Rs' Impact on ADU Feasibility

Photo credit: accessorydwellings.org

Codes, covenants and restrictions (CC&Rs) are a set of rules and limits imposed on a residential development by the Homeowners Association (HOA), in which all homeowners agree to abide by certain standards for the neighborhood. CC&Rs are a private contract between homeowners and HOAs, separate from local zoning regulations, meaning that the jurisdiction cannot override CC&Rs nor can they enforce them. Generally CC&Rs can be more restrictive than local zoning regulations, but not less. Only HOAs have the power to amend CC&Rs.

Existing CC&Rs may prevent ADU development. A small sampling of Metro-area CC&Rs indicated that CC&Rs have moderate variation over time, depending on the era and place when they were recorded, and there was no single format. Generally the sampled CC&Rs included residential use and structure restrictions, which could be interpreted to restrict additional dwelling units such as an ADU, though none addressed ADUs explicitly.

Identified standards included:

- Properties limited to residential use only.
- Structures limited to one residential dwelling and accessory structures, restricted in the most limited version to "One single-family dwelling…designed for occupancy by not more than one family, together with a private garage." Even without the one family restriction, such structural restrictions would make it difficult to build a detached ADU.
- Garage use limited to vehicle parking only, or other restrictions on parking in driveways or on the street that would compel use of garages for vehicles and effectively prohibiting conversion into an ADU.
- Architectural review required for any site improvements, which is inherently discretionary and could be used by the review board to deny any ADUs. For example, review intended to "assume quality of workmanship and materials and harmony between exterior design and the existing improvements and landscaping."

There has been significant interest in whether CC&Rs generally prohibit ADUs, whether jurisdictions can override any such restrictions, and how widespread any such limitations on ADUs may be. Jurisdictions could consider an educational effort to engage interested homeowners to amend the CC&Rs for their neighborhood, but it would be an individual rather than comprehensive strategy outside of the jurisdiction's typical activities.

Jurisdictions may have the opportunity to limit any CC&Rs provisions for new development that interfere with ADU development. For example, the City of Medford requires that:

"A development's Conditions, Covenants, and Restrictions (CC&Rs) or similar legal instrument recorded subsequent to the effective date of this ordinance shall not prohibit or limit the construction and use of ADUs meeting the standards and requirements of the City of Medford." (MMC 10.821(9).)

There is no simple measurement of the effect of CC&Rs on potential ADU development feasibility. Generally suburban jurisdictions with high growth rates over the past 30 to 40 years fueled by greenfield development of large parcels are estimated to have a higher percentage of homes subject to CC&Rs that might inhibit ADU development compared to older, more urban communities with development limited to smaller infill sites, notably Portland.

The first challenge would be to determine how many single-family detached homes in a jurisdiction, or the Metro UGB more broadly, are subject to CC&Rs, which could be estimated based on the ratio of overall residential permit data and recorded subdivision plats, with the assumption that all subdivisions were subject to CC&Rs.

Photo credit: accessorydwellings.org

The second step would be to estimate how many of those CC&Rs might be interpreted to restrict ADUs, possibly by making assumptions about prevailing practices specific to the era in which the CC&Rs were recorded.

A related consideration should be whether there are significant differences between typically development patterns of CC&R-restricted communities, compared to those of non-CC&R-restricted communities that might make it less likely or feasible for an ADU to be built in those communities regardless of any CC&R restrictions.

For example, city staff in Wilsonville reported that they see most ADU permits in the Old Town area because homes were built on lots with enough remaining area capable of accommodating an ADU.

In contrast, many of the homes such as those in the recent 2,700-unit Villebois development, are built on smaller lots with reduced setbacks, such that an ADU could only be added by converting a portion of the existing home rather than adding a detached or attached structure.

Regional ADU development trends

A comparison of data on permitted ADUs, unpermitted ADUs, and inquiries around ADUs provides additional insight into the ADU development climate, and any potential impacts of ADU regulations to support or restrict development.

Table 2: Over-the-counter inquiries related to ADUs for selected jurisdictions

Jurisdiction	Estimated ADU Inquiries	Notes
Beaverton	One per week	Approximately one in 50 inquiries lead to permitted ADUs
Fairview	One per 1-2 months	
Forest Grove	A couple per month	Very few are permitted due to the required SDCs
Gresham	5% of counter inquiries related to ADUs	Approximately 10-20% of inquiries lead to permitted ADUs
Happy Valley	Unknown	One in 10 inquiries may lead to permitted ADUs
Hillsboro	10 inquiries per month	One in three inquiries may submit an ADU application
King City	No interest	
Lake Oswego	Unknown	7 out of 22 projects that completed pre-application conference have resulted in permitted ADUs since 2012.
Milwaukie	High level of interest	Many choose not construct ADUs due to SDCs, owner-occupancy requirements, frontage improvements.
Oregon City	A few per week	Vast majority do not go on to construct ADUs, often choose an accessory structure without a full kitchen instead.
Rivergrove	2-3 in the last year	
Troutdale	Greater interest in tiny homes than ADUs	
West Linn	Increase in the past year, but not a lot	
Wilsonville	Limited interest	
Wood Village	Increased interest over the past two years	
Washington County	1-2 inquiries per day	

Source: Self-reported by jurisdictions in response to audit inquiry May 2018; not all jurisdictions provided estimates.

Table 3: Total permitted ADUs by jurisdiction ranked by ADU adoption rates, approximately 2000 to 2018

Jurisdiction	Total Permitted ADUs	Adoption Rate (ADUs per 1,000 population)	Notes
Forest Grove, OR	0	0	Metro data; local permit data does not differentiate ADUs
Gladstone, OR	0	0	
Johnson City, OR	0	0	ADUs are not permitted
King City, OR	0	0	
Maywood Park, OR	0	0	
Rivergrove, OR	0	0	
Tualatin, OR	0	0	
Gresham, OR	7	0.06	
Troutdale, OR	1	0.06	
Cornelius, OR	1	0.08	
Lake Oswego, OR	7	0.18	From 2012-2017
Beaverton, OR	19	0.2	
Sherwood, OR	5	0.26	
Wilsonville, OR	7	0.32	
Milwaukie, OR	9	0.44	
Hillsboro, OR	47	0.47	
Wood Village, OR	2	0.5	
Tigard, OR	26	0.51	
Happy Valley, OR	10	0.57	
West Linn, OR	15	0.57	From 2012 to 2018
Oregon City, OR	23	0.66	
Durham, OR	1	0.71	
Fairview, OR	7	0.76	
Portland, OR	2,686	4.33	
Clackamas County	Not available	0	
Multnomah County	0	0	Not permitted
Washington County	60	Not available; population estimate of non-urban population within Metro limits not available.	Includes 6 guesthouses, similar to ADUs. May include ADUs outside of Metro UGB.

Source: Metro and self-reported by jurisdictions in response to audit inquiry May 2018; in the case of differing estimates, the higher was used. Population data from 2016 American Community Survey.

Photo credit: accessorydwellings.org

Photo credit: buildinganadu.org

Jurisdictions self-reported estimated levels of ADU interest described by many as relatively high, though with significant variation, and relatively low rates of permitted ADUs resulting from those inquiries.

Some of the reported interest levels are significantly higher than actual ADU production to date, as shown in Table 3, but should be understood as general estimates intended to capture broader trends.

Total permitted ADUs around the region remains relatively low outside of Portland. Portland ADUs total an estimated 2,686 permitted since 2000, with 247 permitted ADUs in all other Metro-area jurisdictions combined. Though total numbers would be expected to vary based on the different sizes of respective cities, ADU rates relative to population are also proportionally high for Portland compared to all other jurisdictions, with 4.33 ADUs per 1,000 residents in Portland compared to 0 to 0.76 ADUs per 1,000 residents outside of Portland.

Variation between cities is difficult to parse, and more difficult still to associate with ADU regulatory practices. Conclusions are further limited by potential limits of the self-reported data; though deemed the best available data source, quality varied widely from cities with spreadsheets tracking ADU permits to looser estimates, making significant comparisons between cities on the basis of ADU development rates less reliable.

One predominating trend is that one-third of cities have no permitted ADUs at all. It is unclear how much of the variation among non-Portland jurisdictions with at least one permitted ADU since 2000 can be attributed to presence of supporting ADU regulations, or absence of regulatory barriers.

Higher rates of ADU development might be expected for jurisdictions notably lacking in barriers, such as Wilsonville and Hillsboro that do not charge SDCs for ADUs. Both cities report middle-of-the-pack ADU permits and ADUs per 1,000 residents, lending some support to the theory, but the data is simply too limited to draw such conclusions.

West Linn has generally more restrictive ADU regulations on paper, but a higher ADU adoption rate than either city.

In several jurisdictions including Tigard and Oregon City, a relatively high percentage of the total ADUs are attributable to one new development that elected to construct ADUs simultaneously with new homes.

Research also explored the estimated number of unpermitted ADUs in each jurisdiction. Relatively low numbers of reported unpermitted ADUs – those that function as ADUs but were not permitted as such – may indicate limited regulatory barriers to legal ADU development, or lower levels of ADU interest.

Relatively high numbers of unpermitted ADUs might indicate a desire for ADU development but significant regulatory barriers to permitting them; until recently Los Angeles was the best-known example of this, estimated to have up to 50,000 unpermitted ADUs due to byzantine permitting restrictions. However, low numbers of unpermitted ADUs could indicate the permitting process is relatively free of barriers, there is little demand for ADUs, or both.

Jurisdictional estimates of unpermitted ADUs were relatively low, though that is data that jurisdictions explicitly do not track unless they receive a code enforcement complaint. Anecdotally, jurisdictions reported learning of one to two unpermitted ADUs through code enforcement complaints. Alternative data sources or investigation may be needed to fully answer this question, however, it is unlikely that local jurisdictions with such low numbers of permitted ADUs would have a large "black market" for unpermitted ADUs.

A more useful comparison might be to understand how many "everything buts" – that is, a home addition with all the same features as an ADU except for a stove triggering the definition of a "dwelling unit" and the related permitting and fees – are built in place of an ADU. Such home additions would be difficult to track with most cities' permitting records because they would be undifferentiated from home additions for other purposes, but anecdotal observations from Washington County, for example, estimated as many as three "everything buts" for every one ADU.

Generally, the observed rarity of unpermitted ADUs suggests that demand for ADUs is not yet strong enough in many Metro-area jurisdictions to incentivize such development. Future ADU demand may expose regulatory barriers, such as high SDC fees, that could drive more unpermitted ADU or alternative home expansion projects as a work-around.

Photo credit: accessorydwellings.org

Photo credit: accessorydwellings.org

Vancouver, WA Case Study

Vancouver, WA, right across the river from the audited Metro jurisdictions, recently completed a significant ADU regulatory update that provides a lens for understanding the possibilities for liberalizing ADU regulations and some lessons on how to get there.

Although operating outside of Metro and Oregon state requirements to permit ADUs, city planning staff, community advocates, and interested homeowners worked together to significantly overhaul the existing ADU regulations to respond to increasing community interest in ADUs.

The city was experiencing a lot of interest around ADUs, but off-street parking requirements and an ADU size limitation of 40 percent of the existing dwelling were significant deterrents. Simultaneously, a city-led affordable housing task force came out with a recommendation to update the ADU regulations.

Significant changes with the 2017 amendments included:

- Increasing allowed size from 40 percent to 50 percent of the main dwelling, or 800 SF, whichever was less. The 40 percent limitation had emerged as a concern for homeowners converting one story or a basement of a two-story house, and not being able to use the full floor for the ADU.
- Removing off-street parking requirements, which had emerged as a significant obstacle when trying to fit a parking space on a standard 50 by 100-foot lot.
- Removing owner-occupancy requirements for greater use flexibility, though this was the most debated provision among both staff and elected officials.
- Retaining SDC practices of not assessing impact fees or SDCs for ADUs.

The update process benefited from targeted public outreach and positive local stories that illustrated the benefits of ADUs, culminating in a close vote in favor of the update. Planning department staff drafted the updates in-house relying on local experience, comparative research and internal debate to shape the recommendations.

Public outreach included an early open house and presentations to local neighborhood groups.

Staff focused their messaging on familial ADU benefits, such as opportunities to house older relatives or kids returning home after college, as well as messages about how ADUs can add value to single-family homes and help with mortgage costs.

Staff also reported success framing the discussion in terms of the city's own ADU history, pointing at the modest trend of 60 ADUs permitted in the past decade and limited short-term rental usage across the city to calm any fears about future growth.

The mayor, while not the main proponent, was a literal poster child for the ADU update because she had built an ADU herself; a timely newspaper story about an ADU built for a homeowner's adult child with disabilities also helped make ADUs a personal, relatable issue. The vote was close at both the Planning Commission and the City Council, but the council narrowly voted in favor of all the provisions.

ADU development trends are just starting to respond to the regulatory changes. The city permitted a total of 60 ADUs in the previous decade, averaging six per year, and has now seen a modest increase of eight permits in the first nine months under the updated regulations, but it is still too soon to assess impacts of the new regulations or predict future trends with this limited data.

Staff reports a marked increase in interest around ADUs, as well as the number of inquiries that continue moving forward to ADU permitting and development; the most common concerns now voiced by potential ADU developers are problems outside of the city's control related to building costs and financing.

Photo credit: accessorydwellings.org

Recommended ADU regulatory practices

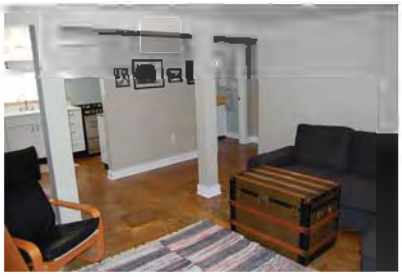

Photo credit: accessorydwellings.org

Photo credit: buildinganadu.org

These recommended ADU code provisions and regulations incorporate observed best practices in the greater Portland region, advice from ADU developers and best practices from across the country.

Recommendations are intended to fulfill state and Metro minimum requirements, with the caveat that the interpretation of "reasonable siting and design standards" for ADUs required under SB 1051 is still an open question. These recommendations deliberately avoid any regulations that could be seen as "unreasonable" as a cautionary approach.

Many recommendations are as simple as discouraging any regulation around a particular area, based on audit findings that such regulations were either a barrier to ADU development without a concurrent benefit, or over-regulation in anticipation of negative impacts that were not in fact observed. A code audit checklist incorporating these recommendations is included in Appendix B.

Type and number of ADUs: At a minimum, permit one ADU per detached single-family dwelling, not per lot, to meet specific SB 1051 requirements. Consider allowing two ADUs per dwelling, possibly one attached and one detached. Permit all types of ADUs: attached or detached, through new construction or conversion of an existing space or garage.

Where allowed: Permit ADUs in all zones where single-family detached dwellings are permitted, and consider whether to permit ADUs in special situations such as in mixed-use zones where single-family detached dwellings are allowed on a limited basis, zones where existing dwellings are permitted but new dwellings are not.

Consider whether to permit ADUs with attached dwellings for additional flexibility, even if they are not likely to be as popular given smaller average lots. Address nonconforming situations by allowing ADUs on nonconforming lots that may not meet dimensional standards such as minimum lot size, and in converted, existing nonconforming accessory structures such as a garage that is within setbacks, provided it does not increase the degree of nonconformity.

Consider whether to allow ADUs in nonconforming use situations, where the single-family detached dwelling is located in a zoning district that does not allow the use and is intended for future redevelopment, where the interface between residential and nonresidential uses may be a concern.

Dimensional standards: Make clear which dimensional standards apply to ADUs, whether they are ADU-specific standards, accessory structure standards, or primary dwelling standards.

Size: Approximately 800 SF size limit provides sufficient space for ADU development at a scale consistent with most single-family dwellings and surrounding neighborhoods.

Decouple size limit from the size of the primary dwelling in favor of a straight square footage limit for all dwellings, to avoid penalizing smaller dwellings that by definition already have a small footprint and visual presence.

Promote equity by utilizing a uniform size limit in lieu of a percentage to avoid disproportionately restricting ADU potential of smaller homes typically owned by lower-income and disadvantaged households. If a percentage limit is desired, allow ADUs to be at least 50 percent and preferably 75 percent of the size of the primary dwelling.

Setbacks: Reduce side and rear setbacks for detached ADUs to 5 to 10 feet, either by reducing standards specific for ADUs and accessory structures or reducing setbacks for the base zones.

Consider additional tools to minimize impacts of ADUs on adjoining properties if warranted, such as: height stepbacks that reduce height closer to the property line, landscape buffering within the setback, or minimum outdoor yard space to ensure open space somewhere in the side and rear yards, such as 400 SF minimum area with no dimension less than 10 feet, in lieu of a uniform 20-foot-wide backyard guaranteed by a rear setback.

Height: Allow at least 20 to 25-foot maximum height for detached ADUs depending on whether height is measured as the average or the top of a sloped roof, and up to 35 feet or the base zone maximum height for attached ADUs, to permit two-story ADUs for additional flexibility, such as ADUs over a garage.

Photo credit: buildinganadu.org

Photo credit: buildinganadu.org

Coverage: Allow 40 to 50 percent lot coverage, and at least 0.5 FAR if used, preferably higher, to provide greater flexibility for adding ADUs to existing developed lots. Alternatively, consider a small lot coverage and/or FAR bonus for ADUs such as 5-10 percent to mitigate concerns about large primary dwellings.

Design standards: Require no or minimal design standards for ADUs, and do not require design compatibility for ADUs and primary dwellings. Homeowners developing ADUs have a vested interest in the design and visual impact of the ADU, at least after accounting for matters of taste.

Standards about compatibility are vague and difficult to apply, many do not meet the state requirements for "clear and objective" standards, and may increase costs associated with custom designing an ADU to match a particular house. In some cases, the primary dwelling's design may be undesirable and not worthy of repeating.

Absence of discretionary design standards should also simplify the land use review process. If minimum design standards are desired, use clear and objective standards such as minimum window trim requirements, roof pitch, or eave projections.

Accessory structure standards: Align dimensional, design and required review standards for accessory structures and ADUs for parity and to reduce incentives for unpermitted residential use of accessory structures.

Focus particularly on dimensional standards for similarly sized structures, such as a detached garage and detached ADU. Review guest house standards, if they exist, to establish parity and to clarify whether both guest houses and ADUs are permitted on the same lot.

Consider the need for guest houses separate from ADUs, and potential to consolidate standards.

Owner occupancy: Avoid any owner-occupancy requirements for ADUs or primary dwellings, which limit the normalization of ADUs as a mainstream residential option and often create financing limitations for ADUs. Eliminating owner-occupancy requirements also minimizes code enforcement concerns about tenant residency status, which is not regulated for any other type of residence.

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Occupancy quotas: Define an ADU as a dwelling that may be occupied by a 'household' or 'family,' same as any other dwelling ranging from studio apartments to detached single-family dwellings, which provides maximum flexibility for ADU use and requires minimum ongoing oversight by code enforcement to monitor number of occupants.

Parking requirements: Avoid requirements for off-street parking for ADUs. If parking is a significant political or neighborhood concern, consider a low parking standard of one space per ADU that can be located on-street if available or off-street.

Provide flexible off-street configuration standards including allowing tandem parking in driveways, shared access to parking spaces for both dwellings, and allowing parking within the portion of driveway that crosses required yards.

Also review requirements for off-street parking for the primary dwelling to ensure that primary dwelling parking spaces or garage requirements are limited to one or two spaces maximum and do not take up a significant portion of the site and limit ADU development feasibility.

Additional regulations: Consider any community-specific concerns and address through tailored requirements as needed, but generally limit the scope of regulations as tightly as possible to avoid over-regulation.

- If privacy between ADUs and abutting properties is a concern, provide a menu of clear and objective options including window placement, fences or vegetative buffers.
- Consider explicitly permitting simultaneous construction of primary dwellings and ADUs, and permitting occupation of the ADU earlier than the primary dwelling to better support ADU development in communities with significant new construction.

Application requirements: Review ADUs through a Type I land use process either in advance of or combined with building permit review, or simply require a building permit application similar to most single-family dwellings.

Optimize internal coordination between planning and building departments to ensure that the permitting process is "one-stop shopping" for applicants.

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Photo credit: accessorydwellings.org

Photo credit: buildinganadu.org

Assuming that ADU standards are indeed "clear and objective" as required by state law, a nondiscretionary Type I review should be the appropriate review type and there should not be any need for a discretionary Type II process or conditional use review.

Infrastructure requirements: Coordinate with and cross-reference any existing engineering standards about thresholds for public works improvements, specifically separate sewer and water connections for ADUs, stormwater treatment triggered by new impervious surface or street improvements.

If policies can be set locally with buy-in from the Public Works department, specifically exempt ADUs from mandatory sewer and water connections, and from triggering street frontage improvements. Provide as much information on potential infrastructure improvement requirements, including resources translating engineering requirements to ADU projects and options for individualized consultation.

SDC rates: Make SDC rates for ADUs clear in a publicly available format, preferably online. List SDC-specific rates or explain which of the existing categories apply to ADUs. Provide a fee waiver or reduction for ADUs, or elect not to assess SDCs for new ADUs.

When developing any financial incentives, it is both the total amount of fee reduction and the messaging that matter: Promote any fee reductions, temporary or permanent, even if a full fee waiver is not possible. In future SDC calculations, promote alternative methodologies to calculate SDCs for ADUs that scale to ADU size and impacts.

Information: Provide clear supporting materials including info sheets, application forms, fee schedules, permitting procedures and procedural overview from project initiation through final occupancy, coordinating requirements for planning, engineering and building departments.

Consider developing educational materials such as local case studies, promotional videos and more. Ensure department staff can provide consistent information in an accessible manner to potential ADU developers.

Next Steps

ADU regulatory innovation is well underway around the region as this report is being completed, with jurisdictions around the greater Portland region and the state updating their regulations to meet state SB 1051 requirements and to generally support additional residential development opportunities in the midst of a housing crisis.

SB 1051 is effective as of July 1, 2018, though many jurisdictions are still in the process of updating their requirements. To date we are aware of updates completed, in process or under consideration in: Beaverton, Cornelius, Fairview, Gladstone, Gresham, Hillsboro, Lake Oswego, Maywood Park, Milwaukie, Oregon City, Portland, Sherwood, Tigard, Tualatin, Wilsonville, Multnomah County and Washington County, together nearly two-thirds of area jurisdictions.

Targeted technical assistance will be available through 2018 for jurisdictions interested to update their code, and to implement new code provisions. Assistance could include code audit suggestions, support during the adoption process, recommendations for educational materials to support implementation, or other expert ADU guidance. Please contact Metro staff about available services.

Metro will continue to monitor the outcomes of code update efforts through the end of 2018 to identify key updates, particularly efforts to remove significant barriers including off-street parking requirements, owner-occupancy requirements, significant dimensional limitations and SDC requirements.

Ongoing discussions with jurisdictions will also be valuable to understand the local opportunities and concerns raised around these issues, and early implementation experiences. We look forward to learning from our jurisdictional partners in this dynamic and evolving field, and sharing lessons learned through further workshops or updates as useful.

Photo credit: buildinganadu.org

Portland State
UNIVERSITY

An Analysis of Homelessness & Affordable Housing Multnomah County, 2018

Prepared for

Oregon Harbor of Hope

School of Business MBA Capstone Project

(Revised July 31, 2018)

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Executive Summary

The current homeless crisis has been in the making for decades.

Macroeconomic changes, deinstitutionalization, and massive cuts to public housing during the 1970s and 1980s laid the groundwork for growing numbers of homeless people. The housing crisis during the Great Recession worsened the situation significantly and in 2015 the City of Portland declared a state of emergency.

Homelessness affects entire communities.

Homelessness takes a huge toll on the health and wellbeing of individuals and families and can have a detrimental effect on neighborhoods and businesses. A full accounting of the cost of homelessness in dollars is unknown, affecting the community's ability to fully evaluate current investments and plan for the future.

The number of people experiencing homelessness is unknown.

The Point-in-Time Street Count provides a snapshot of homelessness on one night every other year, leaving out thousands of people who are doubled-up with family and friends or in hospitals or jails.

Multnomah County lacks 29,000 units of affordable housing.

Multnomah County has a shortfall of 29,000 units of affordable housing for households earning 50% or below of the area median income. These families are housing burdened, often spending more than half their income on rent.

Recommendations

- ***Reduce barriers to affordable housing development***
- ***Improve the accuracy of the homeless count***
- ***Conduct a cost of homelessness study for Multnomah County***
- ***Promote home-sharing among baby boomers and retirees***

Macroeconomic forces contributed to the current housing and homeless crisis.

Several factors have contributed to the affordable housing shortage starting with an influx of newcomers attracted to higher paying jobs as the economy recovered after the Great Recession. Limited housing units drove up home prices and rents, pricing many people out of their own neighborhoods. Stagnant wages did not keep up with the cost of living, forcing many to choose between paying for housing, food, and healthcare. Some populations have been disproportionately affected, including people of color, seniors, and people with disabilities. The situation could worsen as advances in technology potentially eliminate thousands of jobs that low-wage earners rely upon.

Structural barriers can impede the scaling of affordable housing construction.

Building affordable housing can be a juggling act as developers reconcile low revenues with high construction and maintenance costs, compliance issues, and limited land for development. Assembling a financing package can be difficult and time-consuming. A case study in this report shows how one private developer is navigating these challenges in Multnomah County.

Introduction

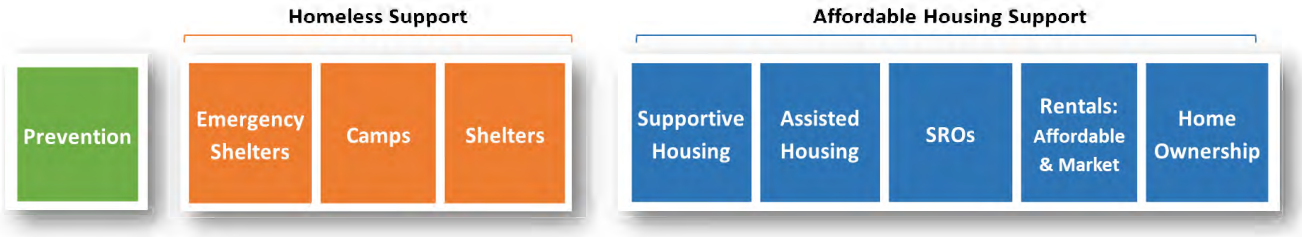
The community of Multnomah County is experiencing a homeless and housing crisis. Thousands of people live in temporary shelters or outside, and there is a deficit of more than 29,000 units of affordable housing. A confluence of factors has contributed to this situation, including a high influx of newcomers as the economy improved after the Great Recession, coupled with lagging home construction rates. As more people with higher wages competed for scarce housing units, rents rapidly increased and thousands of low-income residents became "housing burdened." Many people doubled-up with family and friends, and thousands asked for help from government and nonprofit service providers. However, resources were limited, and as evictions increased, some ended up homeless. The situation was so acute that in 2015 a "housing emergency" was declared in Portland. The declaration was renewed in 2016 and 2017 as community leaders continued to grapple with these issues.

Oregon Harbor of Hope, a nonprofit organization formed to "create safe harbors and a path to stability for Oregon's homeless population," approached the Portland State University (PSU) School of Business to research the issues and help articulate the challenges surrounding this crisis. Since this is one of the biggest problems the region has faced, many people and groups from the public, nonprofit, and private sectors are focused on it. This report is not intended to duplicate these efforts, but to contribute to the community conversation by highlighting a few key issues and drawing attention to demographic and economic changes that could exacerbate these problems if not addressed.

Research Design and Geographic Focus

Over the course of six months (Jan. – Jun. 2018), a PSU School of Business Capstone Team ("Team") reviewed a diversity of reports and articles and interviewed 20+ people to gain a broader understanding about homelessness and affordable housing needs in this region and elsewhere. The intent was to understand how the issues have emerged and changed over the years. The Team utilized the Stages of Homelessness and Housing Continuum Framework (see below) to help understand how and why people become homeless and to consider ideas for potential interventions.

Framework
Stages of Homelessness & Continuum of Housing



The geographic focus of this report is primarily Multnomah County. Data from the City of Portland and wider Metro Region were used when County data were unavailable or to further explain the issues.

Understanding the extent and nature of these problems is important for aligning efforts and cultivating the resources needed to address these issues on a much larger scale. Part I of this report provides a general overview of homelessness, how it is measured, who experiences it, and the cost to individuals and communities. Part II provides an overview of a few economic challenges as contributing factors. Part III describes how the issues have worsened over time and highlights several populations who are disproportionately impacted. Part IV delves into some of the challenges developers face when building affordable housing units and examines a case study. Appendix J provides an international perspective, examining how several countries are facing the same issues. Several recommendations are provided for consideration at the end of the report.

How did Homelessness get so Bad? A Brief History

Several macro factors contributed to the current homeless crisis[1] starting with deinstitutionalization efforts in the 1950s and 1960s. The goal was to treat people with mental health challenges more humanely and to reduce costs; however, it left many people with few options for housing. There were 558,000 people in mental health hospitals in 1955 but just 60,000 in 1998.[2] Community-based mental health centers were intended to take the place of institutions but did not materialize at the level needed. Without adequate care, thousands ended up homeless or in jail. Nationwide, an estimated 33% of homeless people and 16% of inmates have a severe mental illness.[3]

Prior to the 1960s, America had a thriving middle class when one parent could work full time as a teacher or manufacturer and earn a sufficient income that would cover household expenses. During the 1970s, the economy began to change in ways that gradually eroded middle-income employment and led to a growing number of low wage jobs, mainly in the service and retail industry.[4] [5] [6]

During the 1970s, public housing prevented many people from becoming homeless by helping them bridge the gap between low wages and the cost of living. However, political and ideological changes during the 1970s and 1980s led to the removal of 4.5 million affordable housing units through demolition or conversion.[7,8] Section 8 rental subsidies were designed to replace public housing projects but were not funded sufficiently to address the growing need. The efforts of local governments, nonprofits, and religious organizations have been insufficient in the face of such a large problem. As a result, homelessness has become ubiquitous in communities across the U.S.

The Great Recession and its Aftermath

Throughout the 1990s and early 2000s, homelessness was a growing problem; however, the Great Recession worsened the situation significantly. An estimated 3.2 million jobs were eliminated[9] and 1.2 million homes foreclosed upon[10] between 2007 – 2009; millions more were lost during the post-recessionary period. More homeowners became renters, driving vacancy rates downward. As the economy began to recover, housing affordability became a bigger concern as popular places like Portland, Seattle, and San Francisco attracted newcomers with high incomes. Competition heated up for scarce rental units, contributing to double-digit rent increases. Low wage workers struggled the most, spending well over 30% of their income on housing.

2015: Portland Declares a State of Emergency

In Portland, the crisis became acute after rents spiked with double-digit increases between 2011 and 2015. Evictions increased as apartment owners sold buildings to investors and landlords sought renters with higher incomes.[11] Those with few options or family supports became homeless. With more people living on the streets than in shelters, the City of Portland declared a State of Emergency in 2015. The declaration allowed the City to do several things: 1). expedite permitting and siting of homeless shelters and affordable housing units, 2). waive certain procurement processes, zoning, and building codes, and, 3) assess the barriers that might be preventing people from moving from homelessness into housing.[12] The Joint Office of Homeless Services was also created during this time to help coordinate homeless services in the City of Portland, Gresham, and Multnomah County.

New Challenges Contributing to Housing Instability

The U.S. has a substantial aging population with about 3.5 million people reaching age 65 per year. More than 40% have a household income of less than $14,000/year.[13] In 2017, the average monthly Social Security check in Oregon was about $1,300/mo.,[14] yet it is difficult to find a rental unit under $1,000/mo. in Multnomah County. Workers over 55 did not grow up with computer technology, putting many at a competitive disadvantage in today's tech-dependent economy. Many will need to work later in life due to low retirement savings and higher debt than previous generations. On a per capita basis, debt among retirees 65 and older increased by 48% between 2003 and 2015.[15]

Homelessness in Multnomah County

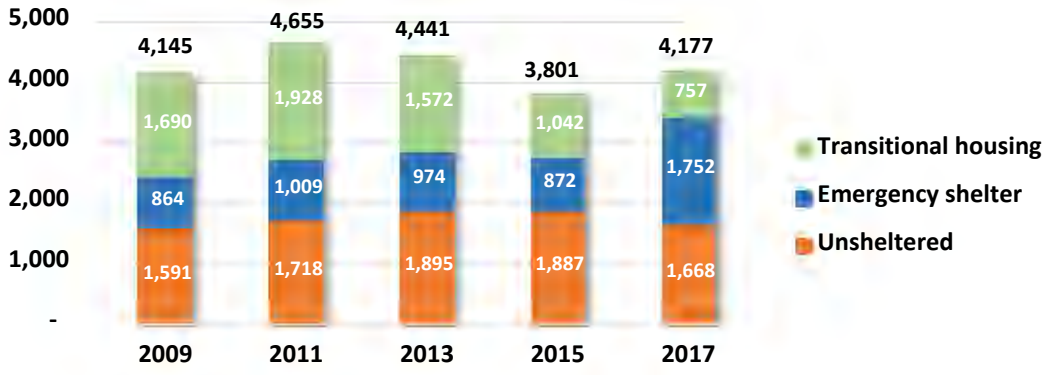
Addressing homelessness requires an understanding of how many people are experiencing it, their living situations and demographic characteristics. Knowing how the problem is emerging and changing over time allows communities to assess progress and plan for the future. The following section draws highlights from the Point in Time (PIT) Count of homeless people in Multnomah County. It includes those who were living in shelters, transitional housing, and outdoor spaces not intended for human habitation during one night in February 2017. The study is a snapshot; thus, is not a comprehensive measurement of homelessness in Multnomah County, although it does provide some insight into what some people are experiencing. The PIT methodology is considered in the next section.

An Overview of the Point in Time Count

The federal Housing and Urban Development (HUD) department operates the national Continuum of Care program (CoC)[16] that is designed to support communities in the goal of ending homelessness. HUD requires CoC participants to use a specific methodology that provides a snapshot of the number of homeless people who are staying in emergency shelters, transitional housing, and places not meant for human habitation, collectively known as the "HUD-Homeless." The PIT Count is conducted on a specific night in January and includes two types of counts during alternating years: On even-numbered years, the count includes homeless people who are residing in emergency shelters, transitional housing, and Safe Havens.[17] During odd-numbered years, a more comprehensive count is conducted to include unsheltered families and individuals, aka the "Street Count."[18]

PIT Count data serves several purposes: It allows communities in Oregon to maintain eligibility for state and federal funding[19] and is used by service providers to assess progress. Local governments use the data to inform policy and planning efforts, allocate resources, and increase awareness about homelessness. Nationwide, PIT Counts are compiled in the Annual Homeless Assessment Report (AHAR) to Congress.[20] The most recent PIT Count in Multnomah County that included both sheltered and unsheltered homeless people was conducted winter 2017.

Figure 1:
Number of Homeless People in Multnomah County
PIT Count 2009-2017



Source: PSU 2017 Point-In-Time Count of Homelessness in Portland/Gresham/Multnomah County

According to the 2017 Point-In-Time Count, there were 4,177 homeless people in Portland, Gresham, and Multnomah County, a 9.9% increase over the 2015 report. Figure 1 shows the number of homeless people increased after the Great Recession but declined as the economy improved. However, the numbers appear to be increasing again. Two notable improvements over the last report include the number of homeless people who were unsheltered decreased by 11.6% from 2015 to the lowest amount since 2009, and the number of homeless people accessing shelters increased by 31%.

People with disabilities: In 2017, nearly two out of three homeless people (60.5%) in Multnomah County had one or more disabling conditions such as a mental illness, chronic physical condition, or substance-use disorder. This represents a 16.1% increase over the 2015 report.[21] The percentage was higher among those who were unsheltered (71.6%) or living in transitional housing (67.1%) and lower among those staying in emergency shelters (47.0%).

Having a disability and being unsheltered can be particularly difficult. Table 1 shows the percentages and types of disabilities among those who were unsheltered in 2017.[22] Nearly half of those who were unsheltered had a serious mental illness and about one out of three had a physical disability. Another third had a substance use disorder. Percentages do not add up to 100% because some people had multiple disabilities. There is a relationship between mental illness and homelessness. Having a mental illness can contribute to homelessness such as when symptoms affect a person's ability to maintain employment. The experience of being homeless itself can be traumatic enough to cause mental illnesses such as PTSD and depression.[23]

Table 1
Disabling Conditions Among Unsheltered Homeless
Multnomah County, 2017

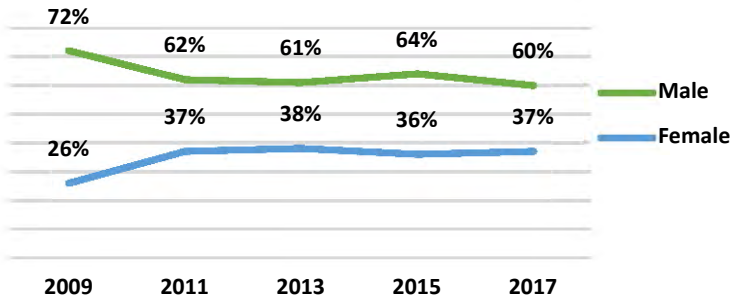
Unsheltered: Disabling Conditions	Percentage
Adults with serious mental illness	44.8%
Physical disability	38.0%
Adults with a substance use disorder	37.5%
Chronic health condition	26.3%
Developmental disability	7.8%
Adults with HIV/AIDS	1.4%

Source: PSU 2017 Point-In-Time Count of Homelessness in Portland/Gresham/Multnomah County

Domestic violence: Domestic violence (DV) survivors often turn to homeless service providers when fleeing a DV situation.[24] One out of three homeless people (33.7% or 1,261 people) who was 18 years or older reported experiencing domestic violence in a current or past relationship during the 2017 PIT Count in Multnomah County. Women reporting higher rates (54.8%).[25] Among the unsheltered population, the numbers were higher. Nearly half (46.6%) of adults reported experiencing domestic violence at some point and about one in five (21.0%) was fleeing a domestic violence situation on the night of the count.[26]

Gender: Gender differences among the homeless have been narrowing over the years. Figure 2 shows that about 37% of the homeless population in Multnomah County was female in 2017, up from 26% in 2009.

Figure 2
Gender Distribution Among Homeless Population
Multnomah County, 2009 - 2017



Source: Point-In-Time Count of Homelessness in Multnomah County, 2009 - 2017

The number of transgender people who are homeless has been increasing in Multnomah County. In 2017, 44 transgender people were homeless compared to 20 people in 2015. Although they represent a small fraction of the overall count (1.1%), the increase could be a trend. According to a survey conducted by the National

Center for Transgender Equality, one in ten transgender people who came out to immediate family members reported experiencing violence and 8% were kicked out. About one-third (30%) had been homeless at some point in their life with 12% being homeless during the year prior to taking the survey.[27]

Age: The average age of the homeless in Multnomah County was 40 years in 2017.[28] Those who were between 25-44 years made up the largest single group of the homeless population at 39.2%, followed by 45-54 years (22.9%). The 2017 Point in Time report revealed a 46.7% jump in homelessness among people 55 years and older between 2015 and 2017. Although it was a relatively small number (14 people) it could be a trend. The National Homeless Research Center estimated that homeless people over 62 would double between 2010-2050.[29] According to Dr. Margot Kushel at the University of California San Francisco, people who are homeless are aging faster than the general population, and those born during the second half of the baby boom (1955-1964) have an increased risk of homelessness when compared to other age groups.[30] See page 18 for more information about the housing burden among senior citizens and retirees.

Children under 18 decreased as a percentage of homeless people in the PIT Count in Multnomah County, which could be due to a concerted effort among local government and service providers to prioritize shelter beds for families with children.[31] In 2015, there were 374 (9.8%) children and youth under 18 years compared to 382 (9.1%) in 2017.[32]

People of color: People of color were disproportionately represented in the PIT Count: 36.5% of the homeless population was a person of color compared to 28.7% in Multnomah County. See page 17 for more information about disproportionality among people of color who are housing burdened.

Chronically homeless: About one out of three (31%) homeless people in Multnomah County were considered "chronically homeless" in 2017 (1,290 people). According to the HUD definition, a chronically homeless person has been living in a place not meant for human habitation, a Safe Haven, or emergency shelter for at least 1 year or on at least four separate occasions over the last 3 years that cumulatively add up to 1 year, and can be diagnosed with one or more of the following conditions: substance use disorder, serious mental illness, developmental disability, post-traumatic stress disorder, cognitive impairments resulting from brain injury, or chronic physical illness or disability.[33] See Appendix A for more details.

There was a 24.9% increase in the number of chronically homeless people in Multnomah County in 2017 compared to 2015 (257 additional people), and they represented slightly more than half (55.0%) of those who were unsheltered on the night of the count; however, a significantly higher percentage of them were staying in emergency shelters compared to 2015 (136.1% increase).

Point-In-Time Count Leaves Out Thousands of People

The PIT Count is helpful for providing a baseline that can be evaluated over time; however, it also has significant shortcomings. The homeless street count is a snapshot conducted on a specific night every other year, thus it is likely to miss some homeless people. The 2017 PIT report acknowledges the shortcomings of the HUD methodology by listing populations who were not be included, such as those who are sleeping in hard to reach or unknown locations, those with language barriers or who refuse to participate, those who may not be using mainstream homeless services, and people who are doubled-up with friends and family.[34]

Section 4 of the Multnomah County PIT report attempts to account for a portion of those who were not counted by including an estimate of the number people likely to be "doubled up" (i.e., living with friends and families for economic reasons).[35] In 2017, the estimated doubled-up population was 9,522 people. This number was derived by multiplying the number of homeless children enrolled in public school by the average family size in in their school districts. The combined total was 13,699 homeless people (4,177 + 9,522).[36] Children who were too young for school or not enrolled in public school were not included.

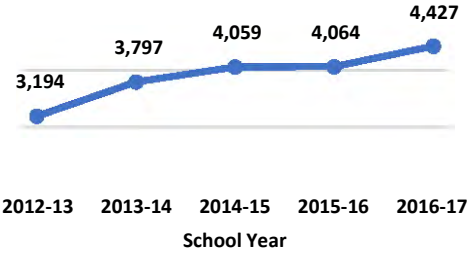
There is a large disparity in the numbers of children counted during the PIT report and those captured by the Oregon Department of Education. For example, the PIT report counted 382 homeless children in Multnomah County under 18 on one night in 2017; whereas, the Oregon Department of Education (ODE) counted 4,427 homeless children enrolled in classes in Multnomah County during the 2016-17 school year. These are different methodologies and there is likely to be some overlap within ODE; however, both measurements are attempting to account for the number of homeless children. This disparity points to the need for a more comprehensive accounting of the number of homeless people in Multnomah County.

The National Law Center on Homelessness and Poverty (NLC) analyzed the HUD PIT methodology and concluded "the count produces a significant undercount of the homeless population at a given point in time."[37] The NLC estimated the actual number of homeless individuals could be 2.5 to 10.2 times greater than official PIT results.[38] This is mainly based on HUD's narrow definition of homelessness that leaves out people living with friends or family due to economic hardship and those who were homeless before entering institutions such as jails or hospitals. Additionally, people who have transitioned in and out of homelessness between PIT counts would be omitted using a biennial snapshot approach. Other uncounted people include those who were unsheltered yet not visible during the count and homeless people who fear interactions with authorities and thus intentionally avoid being counted. Homeless people who travel for work to places such as the Amazon CamperForce Program[39] have been called "nomads" and "van-dwellers,"[40] and would be missed if they were outside Multnomah County during the night of the count.

Cost of Homelessness: Human Impact

The impact of homelessness can be severe, causing trauma that may linger for years. A range of support services using a trauma-informed care approach helps those who have been homeless maintain housing after being homeless. Homelessness is particularly hard on children and youth who move frequently and change schools more often. Each time they move, they lose connections with friends, teachers, and mentors, which could disrupt their ability to form attachments. Homeless children can also suffer from physical, psychological, and emotional issues. According to a survey from the Family Housing Fund, being poor and homeless may cause toxic stress[41] which interrupts normal brain development.[42] Figure 3 shows the number of homeless children increased 38.6% between 2012-2017 in Multnomah County. Many of them could be at risk for dropping out of school. According to the U.S. Department of Education, more than 40% of formerly homeless youth reported they had dropped out in middle and high school.[43]

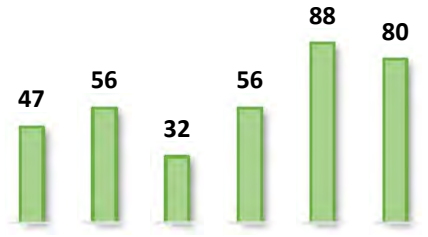
Figure 3
Number of Homeless Students (K-12) Multnomah County, 2012-2017



Source: Oregon Department of Education, Homeless Student Percentages by District

The impact of homelessness on adults can be significant, particularly if they have been unsheltered for a long period. It's difficult to eat nutritious food, get enough sleep, and access needed health care.[44] Maintaining a job is difficult without a regular shower and opportunity to wash clothes. It can be stressful to constantly move around, looking for a place to sit or sleep. Unsafe conditions can cause feelings of insecurity and some may start using drugs to help numb their feelings or help them cope. Research shows the longer a person is homeless the risk becomes higher they will remain homeless. The worst possible outcome of homelessness is death. Figure 4 shows that between 2011 and 2016, there were 359 homeless deaths recorded in Multnomah County.[45] In 2016, nearly half (40%) were found outdoors with the remaining dying in hospitals (15%), hotel/motel/shelters (14%), RV/campers/vehicles (11%) and other locations. Half the deaths involved a substance such as opioids or alcohol as a primary or contributing cause.[46]

Figure 4
Homeless Deaths in Multnomah County, 2011-2016



Source: Multnomah County Report: Domicile Unknown

Cost of Homelessness: For Communities

Homelessness has a considerable impact on neighborhoods and community livability. People who lack homes often travel with all their belongings and do not have regular access to bathrooms or garbage receptacles. In 2016, Buckman and Montavilla neighbors complained about human waste and garbage, and a petition was circulated to initiate cleanup efforts and increase law enforcement in Montavilla Park.[47] It can be challenging for leaders to balance the interests of all community members. People with homes want clean and safe environments, yet those without homes often have few places to go. Some advocates believe the visibility of the problem helps increase awareness, leading to additional action.[48] While difficult to put a dollar on livability, homelessness is costing local communities in many ways.

Business Climate: The homeless crisis is most conspicuous in the downtown Portland area. The Portland Business Alliance has responded by contracting with the Clean & Safe program to keep the downtown area clean for visitors, workers, and residents.[49] However, a 2016 survey by the city auditor revealed the percentage of Portlanders who felt safe walking alone at night downtown had decline from 2012.[50] [51] In November 2017, Columbia Sportswear considered closing its downtown office a year after it had opened. Employees reported aggressive panhandlers and complained about garbage and human waste near their office. Columbia Sportwear CEO Tim Boyle decided to remain downtown and support efforts to help address homelessness by donating $1.5 million for the construction of a "navigation center" expected to open fall 2018 under the Broadway Bridge.[52]

Cost of Homelessness: In Dollars

The Joint Office of Homeless Services (JOHS) administers contracts for homeless services in Portland, Gresham, and Multnomah County. In 2018, the joint office allocated $58 million to more than 20 service providers to prevent and address homelessness through housing assistance, shelters, employment training, DV assistance, and mental health support, among other services. See Appendix B, Figures 23, 24, and 25 for information on specific vendors and expenditures.

Communities in the U.S. and Canada have taken steps to quantify the full costs of homelessness to assess how much each homeless person costs to make effective investments in homeless services and prevention efforts, and to examine the trade-offs between different approaches. The JOHS budget is one source of funds that addresses homelessness. Other government expenditures include healthcare and law enforcement. Local nonprofit organizations that focus primarily on serving the homeless population such as Central City Concern, Transitions Projects Inc. and JOIN receive support through JOHS; however, they also collectively raise millions of dollars through grant-writing and donor development activities. Local businesses also contribute through efforts such as the Clean and Safe program and through other targeted donations.

People who experience homelessness are diverse and have unique needs. Arriving at cost per person can be a "broad brush" exercise. Table 2 shows a range of estimated costs per person, per year after aggregating different cost models in the U.S. and Canada. (See Appendix C for information on specific cost models). Estimates range from $10,000 to $150,000 per person, per year. The wide range primarily reflects various levels of service use. For example, a person who has been chronically homeless with severe medical needs may access the emergency room more often, thus costing more than someone who was briefly homeless. The cost of homelessness can be significant. A study conducted in the Puget Sound area in Washington estimated more than $1 billion was spent every year on homelessness; a study in Santa Clara County in California estimated more than $3 billion between 2007 and 2012. See Appendices D & E.

Table 2
Cost of Homelessness Models & Range of Costs Per Person, Per year

Cost Models	Range
• Phil Mangano "Homelessness Czar" • Santa Clara County, CA (2007-2012) • Washington County, OR (NERC, 2012) • State of Homelessness in Canada (2013) • Portland Nonprofit	LOW: $10,000 Per Person, Per Year HIGH: $150,000 Per Person, Per Year

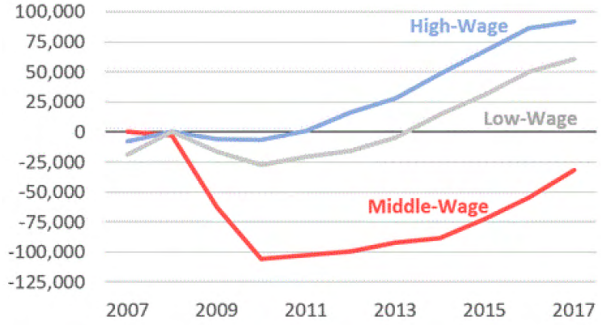
Homelessness is costly for both the individuals who experience it and the communities that must respond to it. Several economic forces are at work that may be contributing to the homeless problem in Multnomah County, raising the need for more attention on causal factors and preventive efforts.

Economic Forces at Work

Like other fast-growing metropolitan areas, Portland is experiencing what some economists call a "Housing Trilemma." A strong economy and high quality of life often arrive at the expense of housing affordability. According to Josh Lehner at the Oregon Office of Economic Development, "Every city wants to have a strong local economy, high quality of life and housing affordability"; however, most cities will find it hard to achieve all three.[53] Portland, Seattle, and San Francisco are experiencing similar challenges. See Appendix F.

Macroeconomics plays a key role in housing affordability. Many jobs in Multnomah County have not provided sufficient wages to cover high housing costs. According to Christian Kaylor, an Economist with the Oregon Economic Department "[i]t's a classic tale of economic divide."[54] Figure 5 shows after the Great Recession, there was an increase in job polarization in Oregon when many middle-wage jobs disappeared.[55]. High and low wage jobs quickly recovered, but the number of middle income jobs (paying roughly $35,000 - $50,000/year for a typical worker in 2017) were still not back to pre-recession levels nearly 10 years later.

Figure 5
Oregon Job Polarization
Number of Jobs Lost and Gained after Pre-Recession Peak

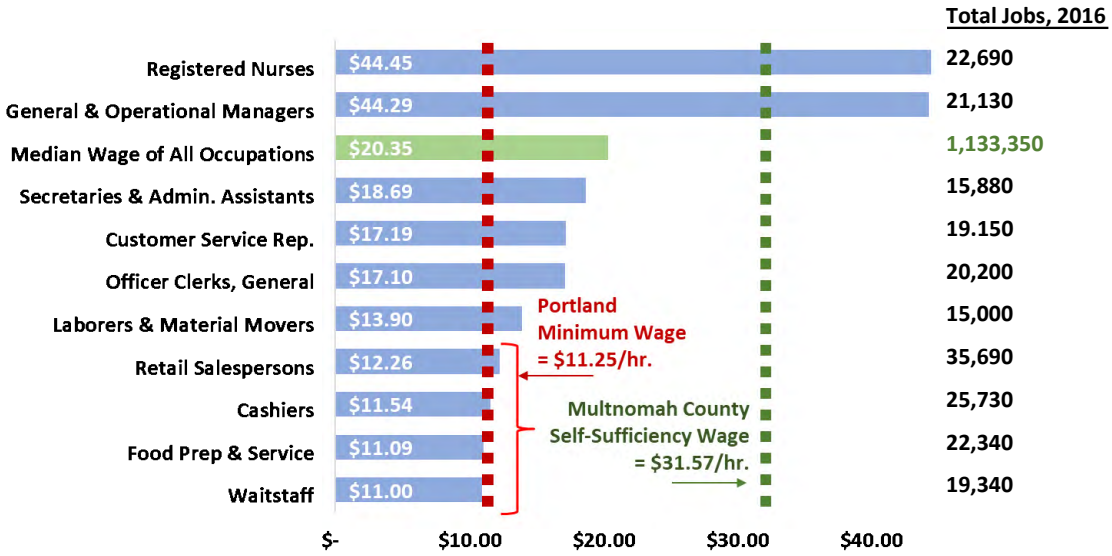


Source: BLS, Oregon Office of Economic Analysis. Occupational Data, Grouped Median Wages.

Poverty Rate vs. Self Sufficiency Standard

The poverty rate in Multnomah County was 14.2% in 2017, representing about 114,000 people;[56] however, the Federal Poverty Level has been criticized as an inadequate measurement of true need.[57] The cut-off is low, leaving out many people who struggle financially. In 2018, a family of three at 100% of the poverty level earned $20,780/year before taxes.[58] More communities are using the self-sufficiency standard to better understand what local households need to cover their basics needs.[59] Figure 6 shows the self-sufficiency wage in Multnomah County for a family of three (one adult, two children) was $31.57 in 2017.[60] A parent earning a minimum wage of $11.25 would need to work 95 hrs./week to cover the family's basic needs, a gap of more than $20/hr. Of the top 10 occupations in the Portland OR-WA MSA, just two of them (RNs and general/operational managers) offered a self-sufficiency wage for an adult with two children.

Figure 6
Hourly Wages of Top 10 Largest Occupations, Portland-Vancouver-Hillsboro, OR-WA MSA. 2017



Self-Sufficiency Wage: For One Adult, One Preschooler & One School-age Child: Multnomah County, OR 2017
Source: Portland Minimum Wage, 2017. The Self-Sufficiency Standard for Oregon, 2017

The federal minimum wage was created to provide a basic living wage for workers[61] but has not kept up with the cost of living. The minimum wage in Portland is $11.25/hr., one dollar higher than surrounding areas at $10.25/hr.,[62] yet many families still need help.

Requests for help: Without adequate wages, families are forced to make hard choices such as eating less, going without medication, or putting off important bills. Even though rent is often prioritized over other expenses, some families cannot keep up with household bills and lose their housing. 211info is a resource and referral network that provides information to people who need assistance with rent, food, childcare and other needs in Oregon and SW Washington. Figure 7 shows 10,733 requests for housing assistance in Multnomah County were logged between January-March 2018 (calls, texts, etc.).[63] The next requests by volume were utility assistance (2,652) and healthcare (1,646). (Note: some requests may have originated from the same person or household).

Figure 7
Requests for Housing Assistance in Multnomah County, 2016-2018

Source: Oregon 211info Quarterly Reports, Multnomah County 2016 – 2018.

Assistance Programs Help Prevent Homelessness

Without sufficient income, many people turn to government programs and local nonprofits for help. This support can mean the difference between being housed or homeless and can provide critical support for those coming out of homelessness. Below are a few government programs that help people stay housed:

Supplemental Nutrition Assistance Program (SNAP): SNAP is considered the most important anti-hunger safety net in the U.S.[64] In Multnomah County, an average of 75,000 households representing about 125,000 people received SNAP each month in 2017.[65] The average monthly SNAP benefit was $215.00 per household, providing an annual benefit of $2,580, about 11% of a household budget for a family working full time at minimum wage in Portland.

Employment Related Day Care (ERDC): According to a report prepared by *Child Care Aware*, the annual cost of child care in Oregon is $12,249/yr. and can be as high as $21,645 for an infant and 4-year old.[66] It can exceed the cost of monthly rent. The Employment Related Day Care program (ERDC)[67] helps low-income working families afford childcare. To be eligible, a family's income must be less than 185% of the Federal Poverty Level and payments are made directly to care providers. Families receiving ERDC in Portland can receive up to $595/mo. - $928/mo. for a toddler, depending on the type of childcare (home care vs. childcare centers),[68] a significant resource for low-wage working families.

Earned Income Tax Credit (EITC): The federal EITC helps low- to moderate-income working people reduce their taxes and have more disposable income. More than 27 million people received nearly $65 billion in federal EITC during 2017. The average federal EITC amount received per tax-filer in 2017 was $2,455.[69] This once-a-year boost allows low-wage workers to catch up on bills or purchase a car for work.[70]

Housing Choice Vouchers/Section 8: Housing subsidies are the federal government's primary avenue for helping low-income families, the elderly, and people with disabilities afford decent, safe, and sanitary housing in the private market. Household income may not exceed 50% of the area median income (AMI) and 75% of vouchers go to applicants with incomes at or below 30% AMI.[71] Qualified families are expected to pay a minimum of 28.5% of their income on rent; the remaining amount is subsidized unless the rent exceeds the

HUD payment standard in which case the tenant pays the additional amount (up to a limit).[72] In June 2018, 5,709 households in Multnomah County received an average $776/mo. in HCVs support.[73]

Even though government programs can make the difference between having a home or being homeless, several are at risk for cuts. Congress is currently proposing changes to SNAP that could reduce benefits for thousands of people[74] and HUD may reduce the HCV program.[75] Additionally, not all who are eligible receive assistance due to limited government resources. Without sufficient wages or an adequate safety net, more people could become homeless.

Economic changes also pose a risk for increasing housing instability. Advances such as automation could potentially eliminate thousands of low-wage jobs in Multnomah County, as discussed in the next section.

Future Trends & Economic Outlook

Advances in technology such as machine learning algorithms, big data, and artificial intelligence are changing the employment landscape. A 2017 report by the McKinsey Global Institute reported 60% of all occupations have at least 30% of constituent activities that could be automated. The activities most susceptible to automation represent $2.7 trillion in wages in the U.S.[76]

The Portland Business Alliance and ECONorthwest collected data showing the risk of automation in Oregon.[77] The 2017 report revealed that nearly all jobs in "Food preparation and Service Related" (93%) and "Sales and Related" (82%) industries were at high risk for automation. These jobs paid a median annual wage of between $22,830 and $27,980/year. Higher paying jobs ($47,860/year or more) were at the lower risk.[78] Figure 8 shows the number of jobs in Oregon (360,000) at high risk for automation.[79]

Figure 8
Jobs at High Risk for Automation in Oregon

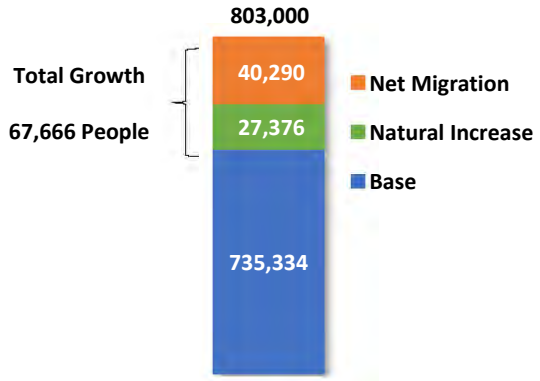
Source: Portland Business Alliance. Adapted from ECONorthwest analysis of Frey et. al. and Bureau of Labor Statistics data

Economic Outlook: The Northwest Economic Research Center (NERC) 2018 Population Outlook report forecasts a strong economy and high quality of life in the Portland Metro area, although job growth rates are beginning to slow (2.69% yoy in 2018 compared to 3.00+% in 2014-2016) as the economy reaches full employment.[80] After experiencing high-growth rates, Leisure and Hospitality is considered a slow-growth industry and Retail is settling into a medium-growth industry through 2027. This could present an issue with an additional 137,000 people projected in Multnomah County by 2035. As shown in the next section, population and economic growth together can have a significant impact on housing affordability.

Affordable Housing Crisis Worsens

Several factors have worsened the affordable housing crisis, starting with domestic in-migration. Metro areas with healthy economies attract younger people with higher incomes and education than out-migrants. Figure 9 shows Multnomah County grew by 67,666 people between 2010 - 2017, about 10,000 people per year. Two-thirds (40,290) was due to net in-migration.[81] In coastal areas such as Portland, Seattle, and San Francisco, new home construction was limited, fueling competition for scarce housing and driving up home prices.[82] Many chose to rent rather than own. The number of renter households in Portland increased by 9.6% between 2011-2015 while owners declined by 0.3%.[83] Housing developers responded by building high-end multi-unit apartment buildings to serve the influx of high-income renters but failed to keep up with the demand for *affordable* housing. Consequently, rental prices rose faster than incomes, worsening the crisis.

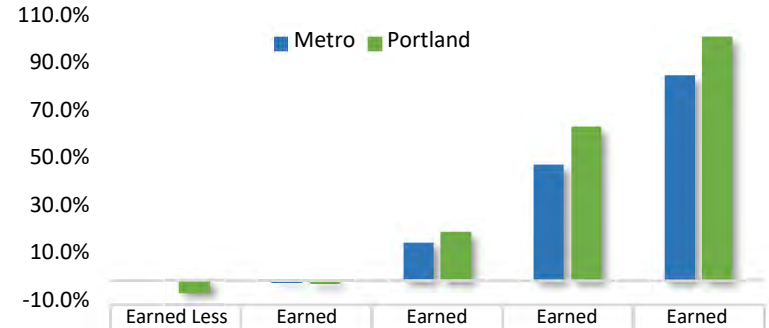
Figure 9
Multnomah County Population Change, 2010 - 2017



Source: PSU, Population Research Center, Oregon Annual Population Report, 2017

Figure 10 shows a dramatic change in incomes among new renter households between 2011 – 2015.[84] Portland renters earning $75,000 and above increased by 96%. These households could afford to pay more for housing than low-wage earners and landlords responded by raising rents. In contrast, renter households earning $49,999 and under decreased by about 6% (2,855 households).[85] Some of these households may have moved to areas surrounding Portland, such as Gresham, in search of more affordable options.

Figure 10
Change in Renter Households by Income, 2011-2015

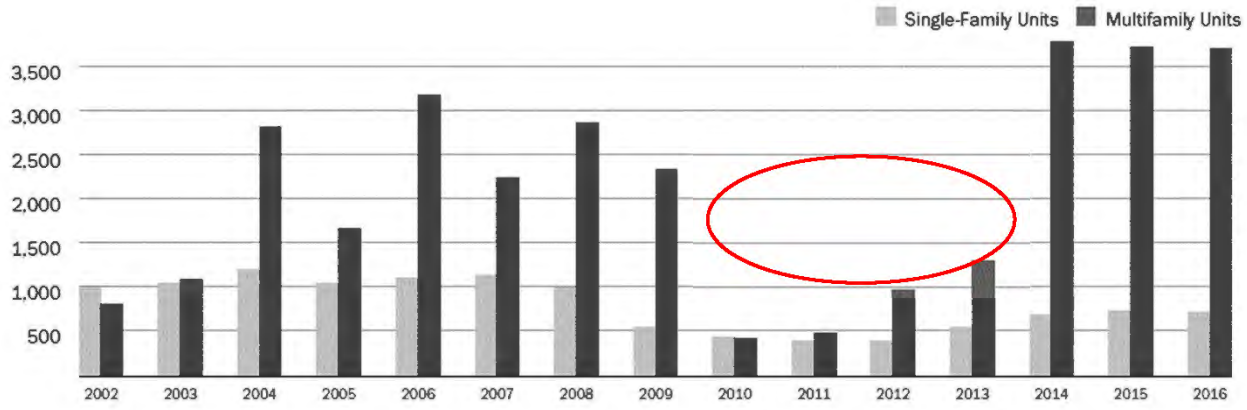


	Earned Less than $25,000	Earned $25,000 to $49,999	Earned $50,000 to $74,999	Earned $75,000 to $99,999	Earned More than $100,000
Metro	-0.1%	-0.6%	15.5%	48.2%	85.6%
Portland	-5.1%	-1.3%	19.9%	63.9%	101.8%

Source: Adapted from PSU Preserving Housing Choice and Opportunity Report, 2017, Figure 4

Figure 11 shows that housing construction slowed significantly after the Great Recession just as more people were moving into the community, compounding the scarcity of housing. Multi-unit construction rates began to rebound in 2014, but not fast enough to address the need.

Figure 11
Multi-Unit and Single-Family Unit Construction, Portland, 2002-2016

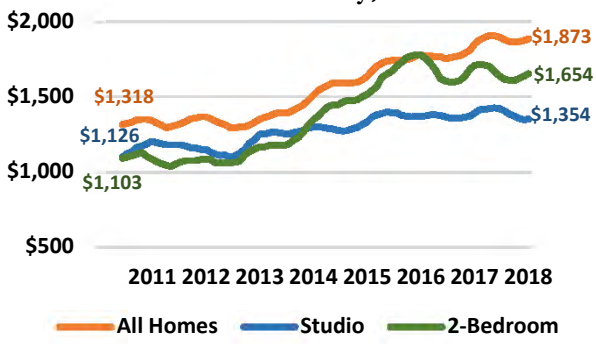


Source: State of Housing in Portland Report, 2017. Adapted from Multnomah County Tax Lot Data, 2016

Increasing Rents & Low Vacancy Rates

According to Zillow, median rental prices for vacant units rose rapidly in Multnomah County starting in 2011, particularly for 2-bedroom units, which increased 50% between 2011 and 2018. Median rental prices slowed in 2017; however, average rents in some neighborhoods continued to experience double-digit increases, particularly in East Portland; Parkrose-Argay and Pleasant Hill are notable examples.[86] This demonstrates that as affordable neighborhoods become more attractive, rents go up, and affordability declines.

Figure 12
Median Rental Prices for Vacant Units
Multnomah County, 2011-2018



Source: Data acquired by Zillow.com/data on July 22,2018

Figure 13
Metro Area Vacancy Rates
2009-2018

Source: MultiFamily Northwest

Figure 13 shows the inverse relationship between what the market is asking renters to pay for vacant units and vacancy rates, which were declining as rents were increasing. During this time, wages at the lower end remained largely stagnant, putting two out of seven people in Multnomah County at risk of paying more than 50% of their income on housing.[87]

Rents in Portland compared to the Area Median Income

Figure 14 shows that average rents in Portland in 2017 Q4 (blue bars) were out of reach for most households earning below 100% of the AMI ($67,230/year or $5,602/month).[88] Households earning 60% AMI and below could not afford any units without exceeding 30% of their income. An extremely low-income single

mother with two children at 30% AMI would have spent nearly all her monthly income ($1,680/mo.) to rent an average 1-bedroom apartment at $1,350/mo.

Figure 14
Average Rents in Portland vs. Average Median Income Percentages, 2017

Source: State of Housing in Portland Report, Fall 2017 (Avg. Rents)
AMI: HUD Monthly Maximum Rent at 30% Housing Burden, 2017

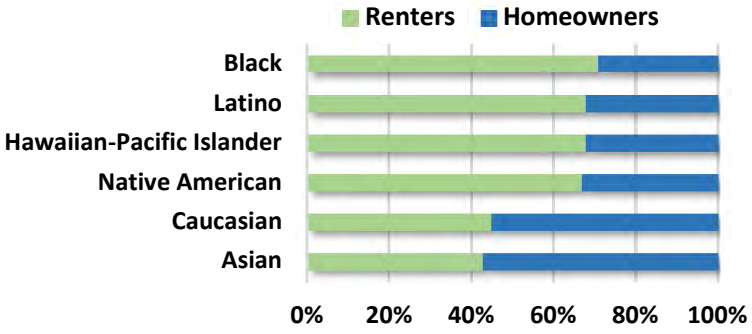
Populations Impacted by the Housing Crisis

Some populations have been disproportionately affected by the high cost of housing in Multnomah County. The next section provides information unique to people of color, senior citizens, and people with disabilities.

People of Color

Figure 15 shows people of color are more likely to be renters vs. home owners in Multnomah County. They are also more likely to have low wage jobs[89]; thus, have been disproportionately affected by the housing crisis.

Figure 15
Renters vs. Homeowners, Multnomah County, 2015

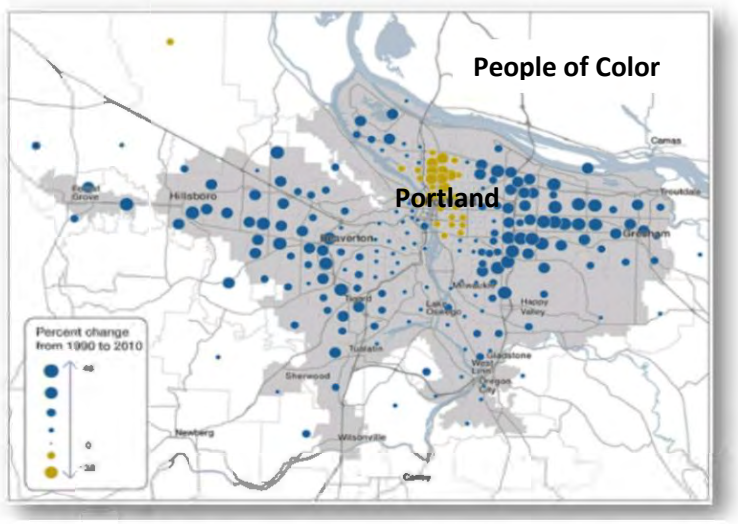


Source: Home Ownership Rates by Race & Ethnicity
US Census Bureau, 2011-2015 American Community Survey

Gentrification made the situation worse by displacing many people from traditional neighborhoods. As locations such as the Alberta district attracted more people with higher incomes, home prices and rents increased, driving people of color outward toward more affordable areas such as East Portland. However, rents in those areas have become less affordable as more people have moved eastward.

Figure 16 shows the displacement of people of color between 1990-2010. The gold circles indicate neighborhoods experiencing a net loss in people of color and the blue circles highlight areas where there has been a gain. High rents have contributed to this displacement. The *North/Northeast Affordable Housing Strategy* was developed to help households affected by gentrification remain in their neighborhoods or return if already displaced.[90] As more people of color moved to areas like East Portland and Gresham in search of more affordable options, poverty became more concentrated[91] and neighborhoods more segregated.

Figure 16
Displacement of People of Color 1990-2010

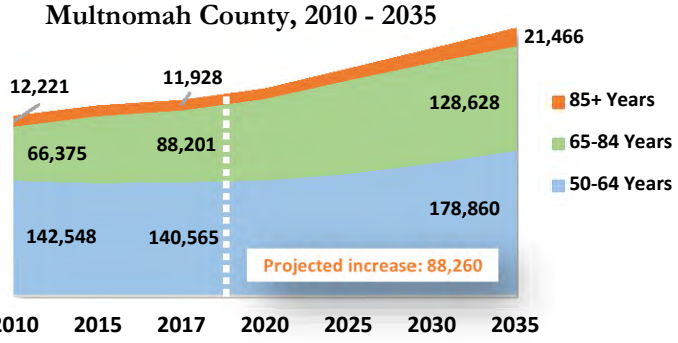


Source: Oregon Metro. You Are Here: A Snapshot of Portland-area Housing Costs, 2016

Baby Boomers & Retirees

Baby boomers aged 54-72 years (as of 2018) have been changing the demographic landscape since they began retiring in 2011. Every day, 10,000 reach age 65 in the U.S. Additionally, more people are living longer, contributing to an overall older population.[92] (See Appendix G). The average lifespan for baby boomers is 80 years; millennials will live an average 95 years and their children 104 years.[93] Figure 17 shows an additional 88,260 people aged 50 and above are expected in Multnomah County by 2035, a 37% increase over 2017.

Figure 17
Population Growth and Projections, Age 50 and Up
Multnomah County, 2010 - 2035



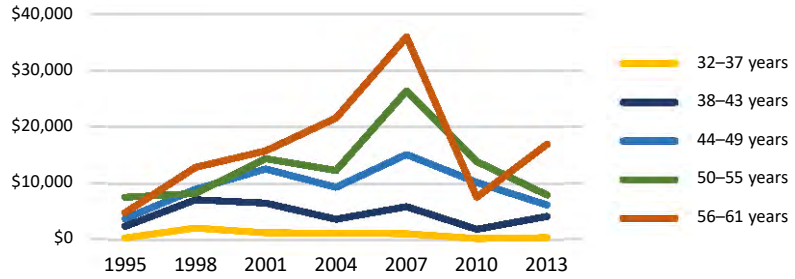
Source: Population Research Center, Portland State University, July 1, 2017

A larger population of older people means more of them will need assistance later in life, particularly since many will lack sufficient retirement income. Figure 18 shows median retirement savings amassed among different age groups before and after the Great Recession.[94] Nearly half of working-age households (45%) do not own any retirement account assets, including an employer-sponsored 401(k) or IRA. Half of those households are headed by someone between the age of 45 to 65 years.[95]

Today's seniors have fewer assets and children to rely upon than in the past.[96] With longer lives, they could outlive what savings they've accumulated. Some will choose to work while others will have no choice.[97] Without support, some may become homeless. In Portland, a senior earning a median income of $39,328 could afford $938/month in rent. However, according to the 2018 State of Housing Report in Portland, no neighborhoods were considered affordable for seniors at that level. The reality is that many seniors (61%) are relying on social

security for half their income with one third relying on it for 90% of their income.[98] Of those, about 70% spend more than 30% on housing.[99] Reliance upon social security increases as people get older.

Figure 18
Median Retirement Account Savings by Age, 1995-2013



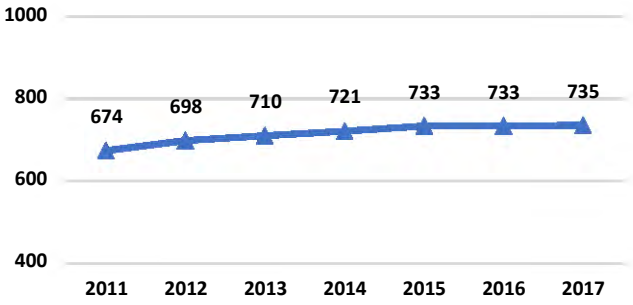
Source: Economic Policy Institute, 2016

People with Disabilities

According the National Coalition on Homelessness, having a disability can be both a cause and condition of homelessness. People with disabilities make up about 16% of the U.S. population (not institutionalized); however, more than 40% of the homeless are considered disabled.[100] According to the 2017 PIT Report in Multnomah County, two out of three people who were homeless had some type of disabling condition.

Supplemental Security Income (SSI) is an important resource for people with disabilities who are very low income but have not worked enough hours to quality for Social Security Disability Insurance (SSDI). Figure 19 shows that SSI provided a maximum monthly benefit of $735 in 2017 for an individual. This would not cover the rent for a studio apartment at median rent prices in Multnomah County. Housing Choice Vouchers can be a critical resource to combine with SSI to maintain stable housing; however, the waiting list in Multnomah County has been closed since 2016.[101] According the Center on Disability, about 29% of households who received a HCV voucher in Portland had a member who was disabled in 2017.[102]

Figure 19
Maximum Monthly SSI Benefits for Individuals



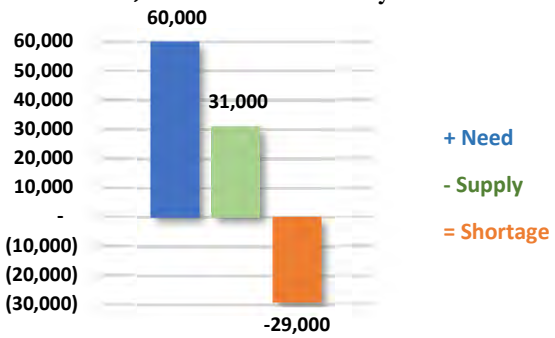
Source: Social Security Administration, SSI Federal Payment Amounts

Market Forces Alone Won't Solve this Problem

Affordable Housing Shortfall

Figure 20 shows that Multnomah County has a current shortage of 29,000 units for families that are earning 50% AMI ($53,000/year and below). Multnomah County has a current supply of 24,326 units of regulated affordable housing.[103] With so many people lacking affordable housing, the question of housing supply is raised. If the demand is so high, why is the supply so low?

Figure 20
Affordable Housing Needs among Households Earning 30-50% AMI, Multnomah County



Source: Oregon Metro Report, you Are Here, 2018
*50% AMI (based on 2011 – 2015 figures)

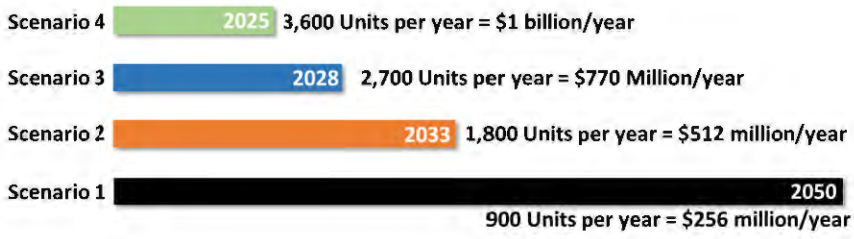
The market normally responds to such high demand. However, *affordable* housing will not scale up without significant government intervention due to many players with differing and sometimes conflicting interests:

- **Renters** want to earn a livable wage and pay affordable rent for a home in a safe and convenient location. However, many do not earn sufficient wages and are housing burdened.
- **Landlords** hope to maximize earning potential by asking for the highest rents possible.[104] They prefer low vacancy rates and tenants with good credit and rental histories. Low-income renters, particularly those receiving Section 8 vouchers, are often not the first choice for many landlords.
- **Nonprofit housing developers** are dedicated to their mission and aim to serve vulnerable renters but must also break even to stay afloat. They have limited capacity to serve those earning the lowest AMI.
- **For-profit developers** seek to maximize income potential. They want to do well and do good but find it hard to earn expected returns on affordable housing projects. They tend to target households earning 60% - 80% AMI; however, even those projects may not pencil out.
- **Governments** seek to balance different constituent interests. Public policies, regulations, and funding are used in combination to encourage, and, in some cases, require construction of new affordable housing; however, public resources are limited, and construction is both expensive and time-consuming. Less than 1,200 units of affordable housing are in the construction pipeline for 2018-2021 in Portland.

Addressing the Affordable Housing Shortfall

Real estate investment decisions boil down to considerations of time and money. Figure 21 provides four scenarios for addressing the 29,000 unit shortfall. (See Appendix H for more information about this model's assumptions and limitations).

Figure 21
Four Time Scenarios to Address the 29,000 Affordable Housing Shortfall



If Multnomah County built 900 units a year, it would take 32 years to eliminate the current 29,000 unit housing gap. Assuming an average cost per unit of $284,000, that would entail spending $256 million per year in current dollars. The gap could be closed in seven years by spending $1 billion per year. In order to scale development of affordable housing, we need to find a way to significantly reduce the average cost per unit or find a substantial amount of new dollars. Although that analysis is outside the scope of this study, it presents a critical opportunity for addressing the affordable housing crisis.

Affordable Housing Development Challenges

Affordable housing developers face significant challenges that can restrain the ability to scale production of affordable housing quickly or cheaply. The following factors play a key role:

Low revenues: When an affordable housing project receives public support, rental income is regulated to maintain affordability for renters. Table 3 shows the monthly income of a 2-bedroom unit at different percentages of the AMI. Rents can increase incrementally over the years but must adhere to the HUD schedule. This exposes owners to operating deficit risk when costs increase but cannot be passed on to tenants through rent increases.

Table 3
Average Market Rate Rent vs. Area Median Income Percentages
(Portland, 2-Bedroom Unit)

Market Rate Rent	$1,599
Regulated Rent	
80% AMI	$1,345
60% AMI	$1,009
50% AMI	$ 841
30% AMI	$ 504

Sources: 2017 HUD AMI for Portland MSA.
Market Rate Rent: State of Housing in Portland, 2017 Q4.

High construction costs: Construction costs are the largest expense for housing developers but have steadily increased since 2012. According to edzarenski.com this trend is expected to continue.[105] Since most affordable housing projects are built for 60 years, higher-quality construction materials can reduce maintenance costs in the out years. This can add to the cost of the project.

Land and SDC costs: Land is one of the biggest barriers to an affordable housing project moving forward. If developers are unable to secure a deal they must find a way to finance this cost. About 42 square miles of undeveloped land exists in the Portland Metropolitan Urban Growth Boundary (UGB). Between 2015 through 2017, about 3,500 new housing units were permitted in UGB expansion areas,[106] although not all were affordable housing. Building on undeveloped land means higher System Development Charges (SDC) to cover infrastructure investments such as water, sewer, and parks. SDC charges can be waived in full or in part for affordable housing developments. However, with such low margins and lengthy time commitments, it may not be an adequate incentive for private developers, particularly for units targeting households below 60% AMI. If waived, new infrastructure costs for sewers and water would still be incurred by government, thus reducing the amount of government resources for other services.

Public funding and financing challenges: Soft and hard costs can increase when accessing public funds (discussed further in the next section). Affordable housing developers must weigh the costs and benefits associated with private and public financing.

- **Debt financing**: Because rents are regulated, affordable housing developers can expect smaller bank loans. Additionally, interest rates have been rising, increasing the cost of debt.

- **Equity investments**: Limited revenue makes the rate of return relatively low. Therefore, it can be challenging to attract investors to affordable housing. The Low-Income Housing Tax Credit (LIHTC) is the largest and most frequently used federal public funding program for affordable housing.[1] However, recent tax reform efforts have softened corporate tax liabilities, diluting the value of LIHTC. According to Novogradic & Company, 235,000 units of affordable housing may not be developed over the next 10 years due to the impact of recent tax reform legislation.[107]
- **Public funding:** Other forms of government support are available such as grants, bonds, and tax waivers; however, these can add additional costs through compliance and reporting requirements:
  - **Application process:** Applying for public funds can be time-consuming, and labor intensive. Legal and financial expertise is usually needed. Non-housing social goals such as green building and on-site amenities support quality of life and can also increase costs. Competition for limited dollars can lead to what some call a "beauty contest" to attract the attention of funders.[108]
  - **Costs of compliance:** Requirements such as prevailing wage rates and minimum floor areas can add to construction costs, potentially discouraging some affordable housing projects. According to a Meyer Memorial Trust report, the hard costs of a project can increase by about 10% to meet Bureau of Labor and Industries (BOLI) prevailing wage requirements. In a mixed-use project commercial BOLI rates can add as much as 20% to construction costs.[109]
  - **Limitations of public funding:** Some public funds cannot be combined on the same project and most can only be applied to construction costs.

Case Study

For-Profit Affordable Housing Development

It is difficult for an affordable housing project to pencil out without government support.[110] However, some developers have found a way to generate positive cash flow while limiting the use of public funds. This case study provides a look at how one private developer pursued this strategy. This housing development was built in 2016.

Affordable housing development in NE Portland

Table 4 shows the average cost per unit was $88,979, significantly lower than typical affordable housing projects. The current housing pipeline in Portland (2018-2022) ranges from $116,905 to $435,626 per unit, for an average cost of $284,700/unit.[111] There are several reasons that this developer was able to achieve such low costs:

No land costs: The land was provided by the developer's client. In this case, the land was worth approximately $1,278,510,[112] about 10% of the total project cost.

SDC exemption: The developer received an SDC exemption by renting to households earning 60% AMI. In exchange, the developer agreed to maintain the units as affordable for 60 years. The SDC exemption was worth $2.3 million dollars, roughly 17% of total project costs.

No public financing: The developer avoided the costs of compliance attached to public funds such as prevailing wage requirements and minimum unit sizes.

[1]Investors in affordable housing can reduce their federal income tax burden by $1 for every dollar of LIHTC received. Investors receive the tax credits for 10 years while the property serves low income renter households for at least 15 years. The total amount of credits is determined by a state's population. The amount of LIHTC assigned to a project is decided by the total development cost, minus land and other costs. (Reference: Schwartz, A. (2015). Housing policy in the United States (3rd ed.). New York: Routledge)

Direct sourcing: Direct sourcing from manufacturers helped reduce the cost of materials.

Low mortgage rate: The developer was able to obtain a 4% interest rate with the help of the client; therefore, the cost of debt was low.

Wood construction: The units are no higher than four floors, avoiding construction costs associated with using materials needed for taller buildings. Additionally, the units are simple in design and have small rooms.

Profitability and return analysis: This project generated positive net operating income (NOI) in its first operating year and gross ROI increased steadily over time. To assess the investors' internal rate of return, a financial analysis was conducted with a hypothetical sale in the 10th year. Since this project was unsubsidized, it could be riskier, thus an 8% capitalization rate was used with a selling commission of 2.5%. In a 10-year horizon, the investor's internal rate of return would be 9.3%. Since the land was donated, it was added back and the rate of return recalculated, decreasing it to 5.96%. The property owner can only sell the project if SDCs are repaid to the government (with interest) dropping the internal rate of return to 0.59%.

Table 4
Case Study: Internal Rate of Return after Hypothetical Sale in the 10th year

Operating Year	0	1	10	10	10
Inflation Year		*0*	*9*	*9*	*9*
Gross Rent		$1,351,884	$1,763,902	$1,763,902	$1,763,902
Vacancy Factor @3%		(40,556.52)	-52917.05973	-52917.05973	-52917.05973
Net Rent		$1,311,327	$1,710,985	$1,710,985	$1,710,985
Operating Expenses		$518,000	$675,873	$675,873	$675,873
Net Operating Income		$793,327	$1,035,112	$1,035,112	$1,035,112
Less: Replacement Reserve		(44,400.00)	-57931.92936	-57931.92936	-57931.92936
Net Before Debt Service		$748,927	$977,180	$977,180	$977,180
Debt Service		-$678,291	-$678,291	-$678,291	-$678,291
Net Cash Flow		$70,636	$298,889	$298,889	$298,889
Initial Equity Investment	(3,950,656.20)				
Sales Price @ 8 % Cap Rate			$12,938,905	$12,938,905	$12,938,905
Loan Balance at Sale			-$5,501,549	-$5,501,549	-$5,501,549
Selling Commission @ 2.5 %			-$323,473	-$323,473	-$323,473
Net Sales Proceeds			$7,113,884	$7,113,884	$7,113,884
SDC refund					**-$3,404,562**
Land Cost				**-$1,278,510**	**-$1,278,510**
Net Cash Flow		**$70,636**	$7,412,773	$7,412,773	$4,008,211
Investor IRR			9.3%	5.96%	0.59%

The SDC refund includes 10 years of interest at 4% added to the original SDC amount ($2.3 million).
Land cost was assessed at https://www.portlandmaps.com

What if this project was a fair market project?

Even though this project was cost-effective due to its unique model, its rate of return may not meet the expectations of many investors who usually expect around 17%-20%. If this had been a fair market project, revenues from rent could increase significantly, bringing a 21.15% rate of return even when including land and SDC costs. (See Appendix I for an analysis of this project at fair market rents). However, at that point the units would no longer be affordable for many households

Recommendations

After reviewing the research, the Capstone Team arrived at four recommendations that apply to the *Stages of Homelessness and Housing Continuum* on page 3 (Housing support, Homeless support, and Prevention).

1. Reduce Barriers to Affordable Housing Development

a. For-profit developers focus more on 60-80% AMI

Based on the unique challenges of building affordable housing and the profit motive of private developers, it makes sense they primarily target households earning 60% to 80% AMI. This does not address the most pressing needs of households earning 50% AMI and below; however, it could take some of the pressure off the rental market in general by providing more options for households earning closer to the median wage.

b. Nonprofit and government developers focus more on 30% to 50% AMI

Nonprofit and government developers of affordable housing have greater access to resources such as land banking and government funds and may be able to better tolerate risks such as time delays. Focusing on households at 50% AMI and below will help address the 29,000 unit shortfall and ensure those who are most vulnerable have more housing options.

To incentivize more affordable housing development, the government could provide the following support:

- Simplify application procedures to reduce costs associated with applying for public funds.
- Balance project selection criteria to emphasize cost-efficiency along with non-housing social goals. The current process generates competition that may add costs, potentially limiting the number of units produced.
- Support for land purchases: Since land is one of the biggest cost drivers, selling land at a discount or creating additional resources for financing could help build more units.

2. Improve Accuracy of Homeless Count and Include Future Projections

The Point-In-Time count is the main source of information used by governments, nonprofits, and other organizations to assess the numbers of homeless people, their demographic characteristics, and living situations. The PIT Report could be more helpful if it was used as a supplement to other, more rigorous methods that provided a more accurate count on a regular basis.

Benefits of a more accurate count:

- Quantifying how many people experience homelessness on a regular basis.
- A more accurate demographic profile of who is experiencing homelessness and why.
- More targeted allocations of limited resources.
- More equitable and efficient service delivery.
- Better information about the types of approaches that are working.
- Forecasting how many people may become homeless, allowing for better planning.

Target: Joint Office of Homeless Services and the new Homeless Center for Excellence at Portland State University. JOHS would manage data gathered from new information sources. The Homeless Center for Excellence could help develop the methodology and assist with data collection efforts by tapping into the vast knowledge and resources available through local colleges and universities.

Customers: The main customers would be governments at all levels, homeless service providers, academic institutions, businesses, media, affordable housing developers, the public.

3. Develop a Model to Estimate the Full Cost of Homelessness

Quantifying homelessness in dollars allows community leaders and the public to better understand the full costs of homelessness and efficacy of different approaches. Developing a model for homelessness in Multnomah County could provide the following benefits:

- Analyzing the cost savings of prevention efforts.
- More conscious choices about how limited dollars are spent.
- Identifying who among the homeless population is costing the most and why.
- Understanding which organizations are carrying the largest financial burden.
- Examining how much is spent on services such as health care and law enforcement.
- Forecasting future expenses.

Target: Local governments, Joint Office of Homeless Services, and Homeless Center for Excellence. A private-public partnership could provide an opportunity to create a system that accounts for the full costs of homelessness and tracks them over time.

Customers: Governments, service providers, business community, academic institutions, media, the public.

4. Promote Home-Sharing among Baby Boomers and Retirees

Many baby boomers and retirees prefer to age in place, staying in their homes as long as possible. Additionally, there are a growing number of older people with few assets and limited incomes who need an affordable place to live. Home-sharing services can connect these two groups.

In 2017, Trulia conducted an analysis of major metropolitan areas to discover how many spare bedrooms were available for home sharing.[113] The analysis focused on multi-generational living (baby boomers and millennials); however, this information could be used to connect baby boomers and retirees with each other. The Trulia analysis revealed 42,511 spare bedrooms in the Portland Metro area potentially available for rent. Monthly rent was estimated at $664/month, providing a more affordable option than a market rate studio and an additional $7,568 in annual income for older homeowners.

Home-sharing provides the following benefits:

- Helps people who want to age in place remain in their homes.
- Gives low-income baby boomers and retirees additional options for affordable housing.
- Reduces isolation among older people who are living alone.
- Supports local government density priorities.

There are several local examples of home-sharing services (i.e., Let's Share Homes[114] and Metro HomeShare[115]); however, they do not appear to be well-known. Home-sharing services could be better promoted to raise awareness among target populations and technological support could be enhanced for recruitment, matching, and screening.

Conclusion

Oregon Harbor of Hope asked the Capstone Team to take a fresh look at the homeless and housing crisis to investigate what might be done to address these problems. Based on our research, the team identified several key factors that are likely to be exacerbating these issues in Multnomah County:

- Competition for limited rental units has driven up the cost of housing and thousands of households in Multnomah County have become housing burdened.
- Economic trends such as automation could eventually eliminate thousands of low-wage jobs, putting more low-income households at risk for homelessness.
- Some populations have been disproportionately impacted by the housing crisis, including seniors, people with disabilities, and people of color.
- Increasing numbers of retiring baby boomers lack sufficient retirement income and will need help paying for housing and other necessities.
- There is a shortfall of 29,000 units of affordable housing over the current inventory of 24,326 regulated units. At the current construction rate, it could take 30+ years to close the gap.
- Affordable housing is typically not affordable to build and operate due to low revenues, high construction costs, inadequate financing, and complex application procedures connected to public funds.
- Community expenses related to homelessness could be costing Multnomah County millions more than anticipated when accounting for the full range of services.
- Proposed cuts to government programs could put more households at risk for homelessness.
- An unknown number of people who experience homelessness in Multnomah County are left out of the official count. Inadequate information prevents a full understanding of the extent of problem and an appropriate response.

Government alone cannot solve these complex problems. Rather, it will require leadership from the private sector, nonprofit organizations, academic institutions, and the government to develop a multi-billion public-private partnership to close the existing 29,000 unit housing gap, ensure a future supply of affordable housing keeps pace with demand, and to provide services for those who need support to remain housed. Bold action is required if we expect to have meaningful impact. Oregon Harbor of Hope can play a key role by helping to orchestrate these efforts.

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Appendices

Appendix A
Definition of Chronically Homeless and Person with a Disability

According to the Housing and Urban Development Department, a **chronically homeless person is an individual who:**

> A. Is homeless and lives in a place not meant for human habitation, a safe haven, or in an emergency shelter; and
>
> B. Has been homeless and living or residing in a place not meant for human habitation, a safe haven, or in an emergency shelter continuously for at least 1 year or on at least four separate occasions in the last 3 years; and
>
> C. Can be diagnosed with one or more of the following conditions: substance use disorder, serious mental illness, developmental disability— (as defined in section 102 of the Developmental Disabilities Assistance Bill of Rights Act of 2000 (42 U.S.C. 15002), post-traumatic stress disorder, cognitive impairments resulting from brain injury, or chronic physical illness or disability

A chronically homeless family is A family with an adult head of household (or if there is no adult in the family, a minor head of household) who meets all of the criteria for a chronically homeless individual, including a family whose composition has fluctuated while the head of household has been homeless.

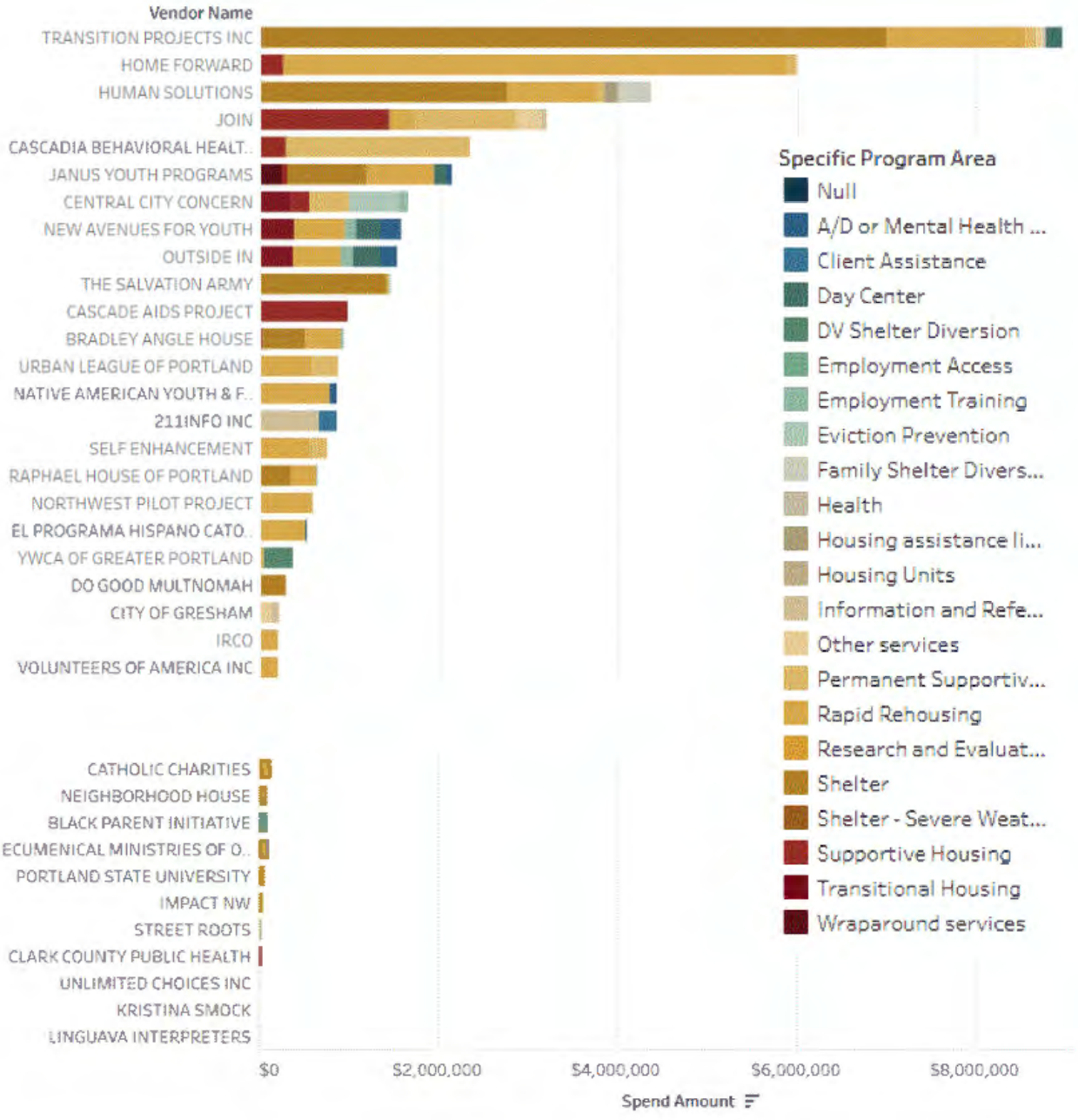
A Person with a disability is a person with a disability is an individual with one or more of the following conditions: Physical, mental, or emotional impairment, including an impairment caused by alcohol or drug abuse, post-traumatic stress disorder, or brain injury that:

> 1. Is expected to be long-continuing or of indefinite duration;
> 2. Substantially impedes the individual's ability to live independently; and
> 3. Could be improved by the provision of more suitable housing conditions.

Source: Portland State University Point in Time, 2017, page 121.

Appendix B
Joint Office of Homeless Services (JOHS)
Funding for Homeless Assistance Services FY2017

Figure B1
Funding by Provider and General Program Area



Source: Multnomah County, Joint Office of Homeless Services Audit, 2017
Figure: Provider Funding: Funding by Provider and General Program Area
Retrieved from https://multco.us/auditor/joint-office-homeless-services-audit#Objectives

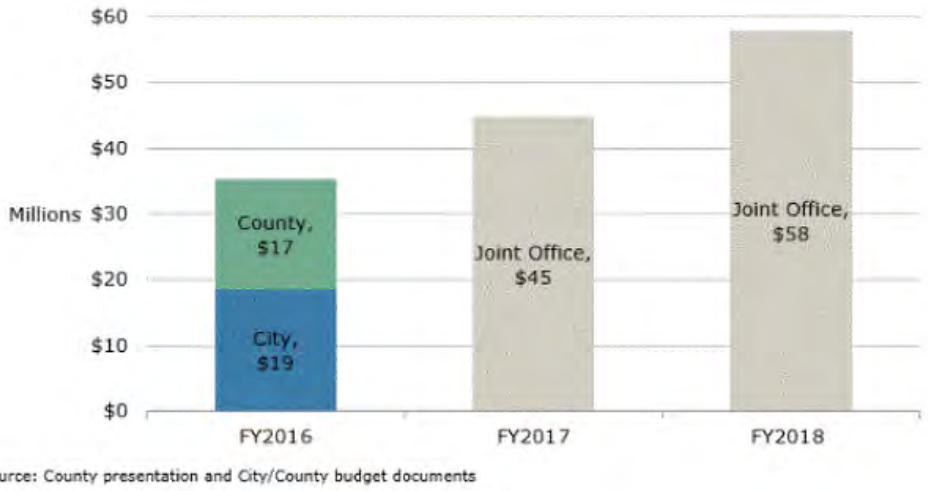
Table B1
Funding by Provider and General Program Area

General Program Areas	Specific Program Area	Vendor Name	
Diversion (homeless prevention)	Eviction Prevention	CENTRAL CITY CONCERN	$563,213
	Family Shelter Diversion	HUMAN SOLUTIONS	$370,000
	DV Shelter Diversion	YWCA OF GREATER PORTLAND	$334,041
	Client Assistance	211INFO INC	$197,263
Employment	Employment Training	CENTRAL CITY CONCERN	$104,967
		NEW AVENUES FOR YOUTH	$125,000
		OUTSIDE IN	$125,000
		THE SALVATION ARMY	$3,845
		BRADLEY ANGLE HOUSE	$36,405
		RAPHAEL HOUSE OF PORTLAND	$9,877
		EL PROGRAMA HISPANO CATOLICO	$7,291
	Employment Access	BLACK PARENT INITIATIVE	$110,000
Housing Placement and Retention	Rapid Rehousing	TRANSITION PROJECTS INC	$1,544,031
		HOME FORWARD	$5,637,665
		HUMAN SOLUTIONS	$1,007,436
		JOIN	$275,697
		JANUS YOUTH PROGRAMS	$748,569
		NEW AVENUES FOR YOUTH	$566,202
		OUTSIDE IN	$543,943
		THE SALVATION ARMY	$21,732
		BRADLEY ANGLE HOUSE	$390,679
		URBAN LEAGUE OF PORTLAND	$575,000
		NATIVE AMERICAN YOUTH & FAMILY CENTER	$784,702
		SELF ENHANCEMENT	$556,568
		RAPHAEL HOUSE OF PORTLAND	$265,146
		NORTHWEST PILOT PROJECT	$585,032
		EL PROGRAMA HISPANO CATOLICO	$498,326
		YWCA OF GREATER PORTLAND	$38,341
		IRCO	$206,359
		VOLUNTEERS OF AMERICA INC	$206,222
		CATHOLIC CHARITIES	$155,475
		NEIGHBORHOOD HOUSE	$112,770
		ECUMENICAL MINISTRIES OF OREGON	$104,729
		IMPACT NW	$57,426
	Permanent Supportive Housing	TRANSITION PROJECTS INC	$124,352
		HOME FORWARD	$94,485
		HUMAN SOLUTIONS	$73,048
		JOIN	$1,129,598
		CASCADIA BEHAVIORAL HEALTHCARE	$2,039,972
		CENTRAL CITY CONCERN	$438,919
		URBAN LEAGUE OF PORTLAND	$300,000
		SELF ENHANCEMENT	$187,785
	Supportive Housing	HOME FORWARD	$257,257
		JOIN	$1,447,023
		CASCADIA BEHAVIORAL HEALTHCARE	$292,000
		JANUS YOUTH PROGRAMS	$66,052
		CENTRAL CITY CONCERN	$191,874
		CASCADE AIDS PROJECT	$980,309
		BRADLEY ANGLE HOUSE	$30,577
		CLARK COUNTY PUBLIC HEALTH	$50,928
	Transitional Housing	CENTRAL CITY CONCERN	$356,245
		NEW AVENUES FOR YOUTH	$376,330
		OUTSIDE IN	$365,946
	Other services	JOIN	$281,141
	Housing assistance linked	HUMAN SOLUTIONS	$150,000
	Housing Units	UNLIMITED CHOICES INC	$20,000

Safety off the Streets (temporary shelter)	Shelter	TRANSITION PROJECTS INC	$6,979,657
		HUMAN SOLUTIONS	$2,763,173
		JANUS YOUTH PROGRAMS	$893,720
		THE SALVATION ARMY	$1,416,091
		BRADLEY ANGLE HOUSE	$479,444
		RAPHAEL HOUSE OF PORTLAND	$357,315
		DO GOOD MULTNOMAH	$295,000
	Day Center	TRANSITION PROJECTS INC	$187,609
		JANUS YOUTH PROGRAMS	$133,975
		NEW AVENUES FOR YOUTH	$281,309
		OUTSIDE IN	$316,855
	Shelter - Severe Weather	TRANSITION PROJECTS INC	$23,182
		JOIN	$7,790
		CASCADIA BEHAVIORAL HEALTHCARE	$5,104
		CENTRAL CITY CONCERN	$2,056
		DO GOOD MULTNOMAH	$918
Supportive Services (health and mental health)	A/D or Mental Health Services	JANUS YOUTH PROGRAMS	$64,000
		NEW AVENUES FOR YOUTH	$213,489
		OUTSIDE IN	$170,700
		NATIVE AMERICAN YOUTH & FAMILY CENTER	$78,100
	Wraparound services	JANUS YOUTH PROGRAMS	$240,608
	Health	TRANSITION PROJECTS INC	$26,356
System Support (information and referral, research and evaluation	Information and Referral	JOIN	$54,000
		211INFO INC	$654,876
		CITY OF GRESHAM	$90,000
		STREET ROOTS	$51,744
	Other services	TRANSITION PROJECTS INC	$70,000
		HOME FORWARD	$17,061
		NORTHWEST PILOT PROJECT	$6,144
		CITY OF GRESHAM	$130,000
	Research and Evaluation	PORTLAND STATE UNIVERSITY	$74,950
		KRISTINA SMOCK	$7,000
		LINGUAVA INTERPRETERS	$4,410
Grand Total			$42,219,429

Source: Multnomah County, Joint Office of Homeless Services Audit, 2017
Table: Provider Funding: Funding by General and Specific Funding Areas
Retrieved from https://multco.us/auditor/joint-office-homeless-services-audit#Objectives

Figure B2
Multnomah County and City Funding for Homeless Services Fy2016 – FY2018



Source: Multnomah County, Joint Office of Homeless Services Audit, 2017
Figure: City and County Funding for Homeless Services has Increased Significantly
Retrieved from https://multco.us/auditor/joint-office-homeless-services-audit#Objectives

Appendix C
Cost of Homelessness Models

Homelessness is often more expensive than anticipated due to costly and uncoordinated emergency services systems. By understanding the full realm of expenditures and by shifting the focus to permanent solutions, there is an opportunity to reduce the long-term costs of homelessness and make more efficient and effective use of public resources.

1. **Housing and Urban Development Department: $40,000 per person**

   Shaun Donovan, former Secretary of U.S. Department of Housing and Urban Development, stated in a 2012 interview[116] that a homeless person costs $40,000 a year in public dollars. This claim was based on a 2002 study[117] that estimated an average cost saving of $16,281 per housing unit each year as opposed to $40,451 spent in services. Figures are in 1999 dollars.

2. **Phil Mangano Range: $35,000 - $150,000 per person**

   Phil Managano, the former homelessness policy czar under President George W. Bush collected data from 65 cities of different sizes and demographics. According to this study, the cost of homelessness was between $35,000 and $150,000 per person, per year.

3. **Puget Sound Business Journal $1 billion per year on homeless services**

   The Puget Sound Business Journal[118] estimated the Puget Sound region of Washington State (Seattle, Tacoma, and Olympia) collectively spend over $1 billion per year on addressing homelessness. The infographic[119] in Appendix D shows that most costs were incurred by regional nonprofits that provide services to homeless people. Other major cost categories included healthcare and law enforcement.

4. **Portland non-profit organization Range: $40,000 - $150,000 per person**

   According to a local non-profit in Portland, a homeless person in Multnomah County can cost anywhere between $40,000 and $150,000 per year in Portland.

5. **Canadian Study $7 billion per year on homelessness**

   Canada released its first annual State of Homelessness report in 2013.[120] According to the report, 30,000 people in Canada are homeless on any given night with an additional 50,000 hidden homeless people. Homelessness costs the Canadian economy over $7 billion annually. This includes the costs of emergency shelters, healthcare and emergency care, social services, and corrections. Assuming a total homeless count of 80,000 people, this means one homeless person in Canada costs on an average $87,000 annually.

6. **Santa Clara County, CA $3 billion over 5-year period**

   See Santa Clara Study below.

Santa Clara County Study

Home Not Found: The Cost of Homelessness in Silicon Valley is a study based in Santa Clara County, California that aimed to estimate the full cost of homelessness.[121] It is the largest and most comprehensive body of information assembled in the U.S. that reviewed the public costs of homelessness. Diverse data streams were used to analyze people experiencing homelessness in Santa Clara County between 2007 and 2012. The study examined demographic and medical attributes, justice system history, and health and human services.

Findings from their study: Between 2007 and 2012, Santa Clara County spent more than $3 billion on services to homeless residents:

- Nearly two-thirds ($1.9 Billion) was spent on medical diagnoses and associated health care services.

- About $786 million was incurred by the criminal justice system.
- Five percent of the homeless population accounted for 47 percent of all public costs. Within this population, 2,800 individuals were categorized as "persistently homeless" with an average cost of $83,000 per year. By prioritizing housing opportunities for these individuals, it was possible to obtain savings exceeding the cost of housing.
- An average $62,473 per capita was spent on the most service-intensive group of people. Upon providing housing to these individuals, per capita costs dropped to $19,767, resulting in an annual cost reduction of $42,706 for those who remained housed.
- Many people experience short-term homelessness: About 20% of the homeless population examined in this longitudinal study experienced homelessness for only for a month. Females in Santa Clara county were overrepresented in the persistently homeless population, as compared to the national average.

Risk factors for higher public costs:

- Mental illness
- Substance abuse
- Incarceration history
- Chronic Homelessness

Healthcare services: Among a total of 104,206 individuals who experienced homelessness in Santa Clara County from 2007-2012, outpatient health care was the most frequently used service, supporting over half the homeless residents. Over a quarter used the emergency room; 17 percent used mental health services; 14 percent were hospital inpatients; 13 percent used drug and alcohol rehabilitation services; and 6 percent used emergency psychiatric services.

- Around 40 percent had a chronic health condition.
- Around 20 percent had substance abuse problems.

Cost Profile: Most costs for homeless residents were paid by the county, although these costs were partially offset by revenue transfers from state and federal government for health care, public assistance, and justice system agencies. Private hospitals also provided health care, paid for with public and private funds. Additional costs were paid by cities within the county, for example for police services. Homeless services provided by nonprofit agencies were underwritten by philanthropic grants and federal funding from HUD. The range of costs is one of the reasons that estimating a net cost of homelessness can be complicated and inexact.

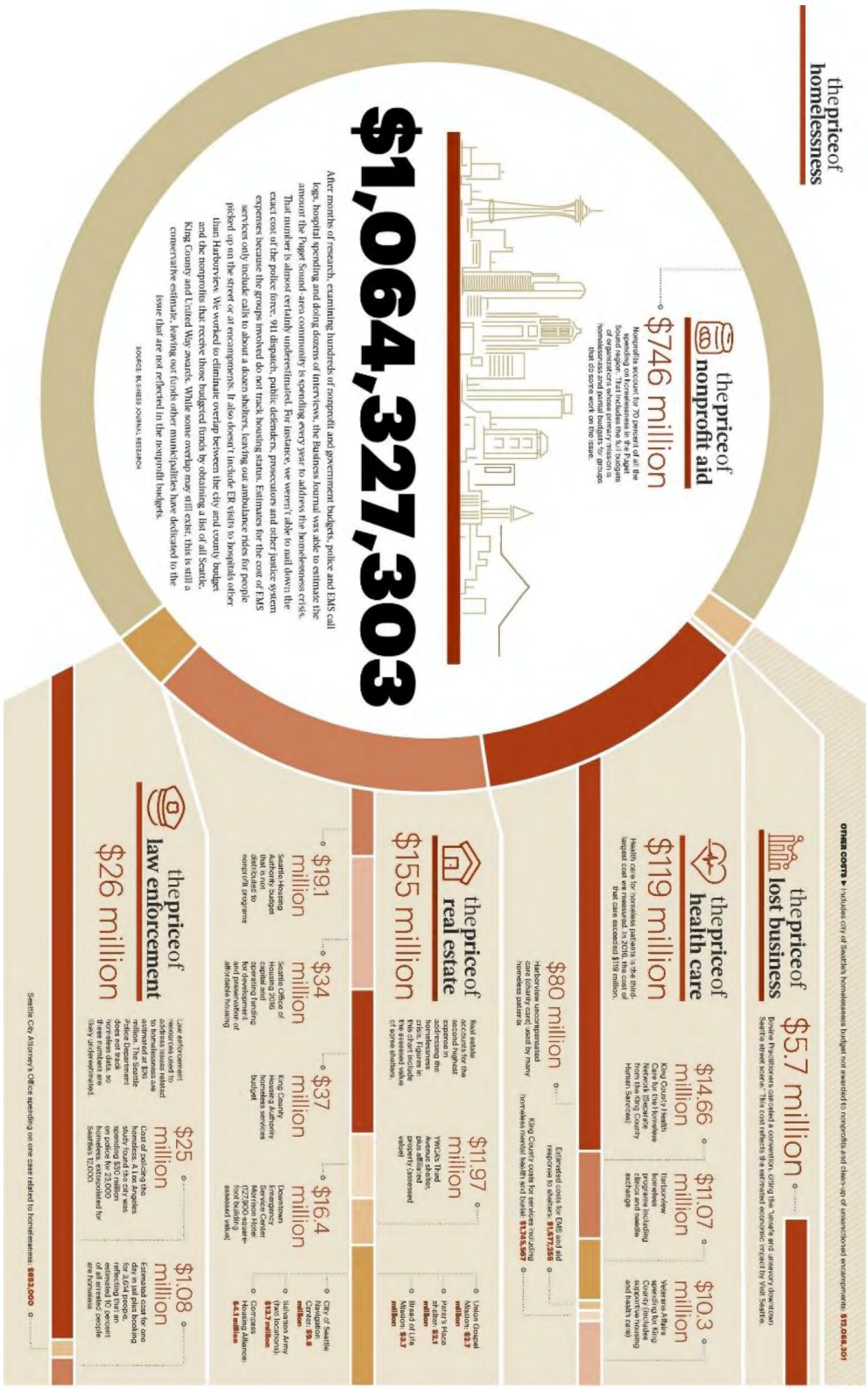
Northwest Economic Research Center (NERC) Study

A study by the Northwest Economic Research Center (NERC) and Washington County Vision Action Network examined the cost of homelessness in Washington County, Oregon beginning in 2012[122] across four service sectors (medical, law enforcement, mental health and emergency shelters). The study looked at 84 chronically homeless people: 20 individual adults, 27 adults in families and 37 children. An average chronically homeless person cost about $15,000 over the three-year period. Individual adults, or those without families, cost the most on a per capita basis across the time frame, running an average of $40,156 per person. Family adults cost an average $10,801 per person and children cost $4,073 per person.

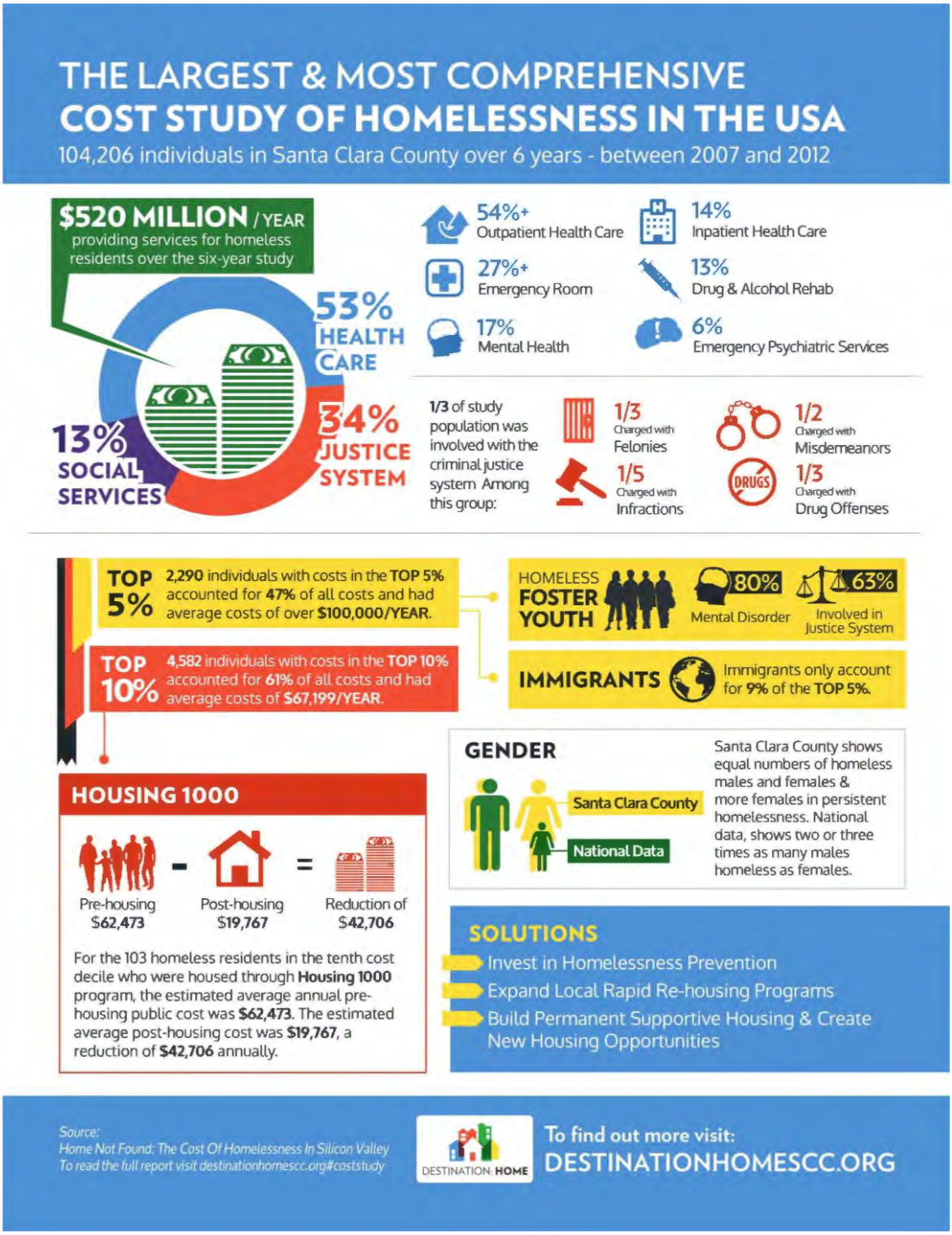
Costs for each type of service:

- Medical Services: $875,323
- Emergency Shelter: $195,544
- Mental Health: $146,585
- Law Enforcement: $29,021

Appendix D
The Price of Nonprofit Aid: Cost of Homelessness Study in Puget Sound

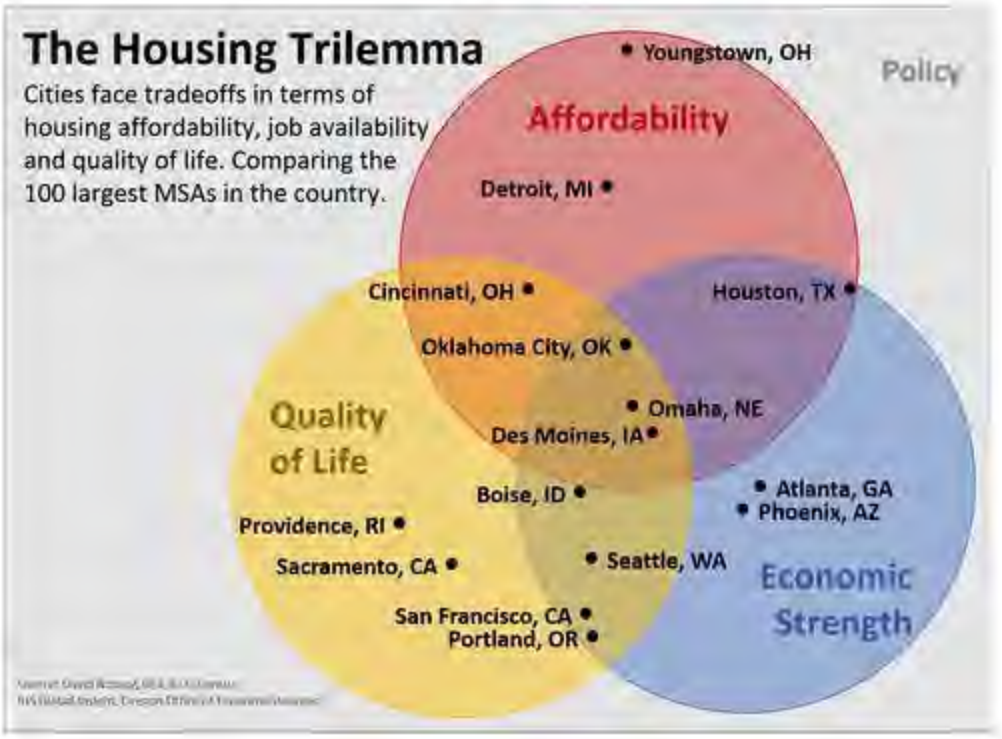


Appendix E
Santa Clara Cost of Homelessness Study



Appendix F

The Housing Trilemma

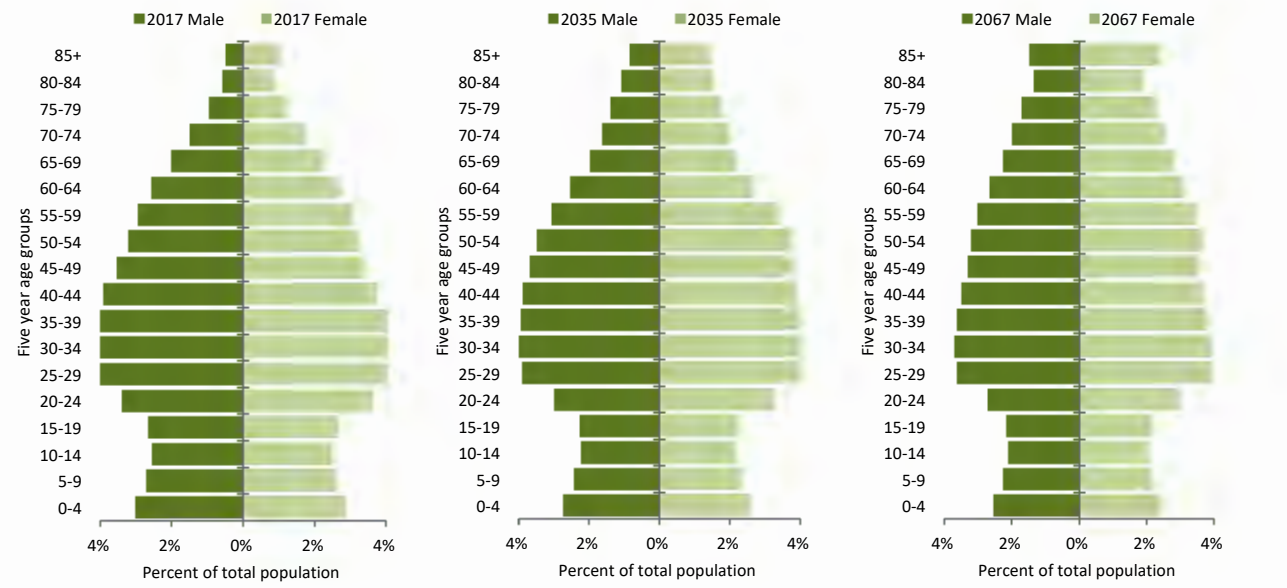


Source: Oregon Office of Economic Analysis
Figure: The Housing Trilemma
https://oregoneconomicanalysis.com/2016/06/08/the-housing-trilemma/

Appendix G

Forecasted Change in Age Distribution, by Gender

Multnomah County, 2017 - 2067



Source: Forecast by Population Research Center (PRC)

Source: PSU Population Research Center, July 1, 2017

Appendix H

Time Scenario Model Assumptions and Limitations

Assumption 1: The gap in affordable housing is most acute for households earning 30%-50% AMI.

Assumption 2: The base is 900 units. This number was derived from the amount of affordable housing units developed between 2015-2016 in Portland (actual = 984 regulated units).

Assumption 3: The average cost per unit is $284,700. This is the average cost per unit in the Portland Housing Bureau affordable housing pipeline (2018 – 2022).

Total cost: 900 x $284,700 = $8.3 Billion

Assumption 4: The timeline begins in year 2018.

Limitations: This model does not consider the need for additional units of affordable housing during the time period scenarios. Additionally, the unit cost is based on the average for 2018 which is likely to change from year to year. Finally, inflationary factors such as increases in the cost of construction and interest rates changes have not been included in this model.

Appendix I

Case Study: IRR after Increase in Gross Rents to Match Market Rates

Operating Year	*0*	*1*	*10*
Inflation Year		*0*	*9*
Gross Rent		**$2,253,140**	$2,939,837
Vacancy Factor@3%		-$67,594	-$88,195
Net Rent		$2,185,546	$2,851,642
Operating Expenses		$518,000	$675,873
Net Operating Income		$1,667,546	$2,175,769
Less: Replacement Reserve		-$44,400	-$57,932
Net Before Debt Service		$1,623,146	$2,117,837
Debt Service		-$678,291	-$678,291
Net Cash Flow		$944,855	$1,439,546
Initial Investment	-$3,950,656		
Sales Price @ 8 % Cap Rate			$27,197,113
Loan Balance at Sale			-$5,501,549
Selling Commission @ 2.5 %			-$679,928
Net Sales Proceeds			$21,015,637
SDC	-$2,300,000		
Land Cost	-$1,278,510		
Net Cash Flow	**-$7,529,166**	$944,855	$22,455,183
Investor IRR	**21.15%**		

Appendix J

International Research:

Singapore, China, Mongolia, India, Australia, United Kingdom

International Research: Singapore

Overview: Singapore is a republic located in SE Asia covering 721.5 km area with a population of 5.6 million people. Singapore is a country composed mainly of three ethnic groups: Chinese, Malay, and Indian. Singapore ranks 5th on the UN Human Development Index and 3rd highest GDP per capita. It is ranked highly for education, healthcare, life expectancy, quality of life, personal safety, and housing.[2] Its public housing policy is one of the best in the world, making it a zero-homelessness country.

Homelessness: Singapore has virtually no homeless people as 80% of its citizens live in government-built apartments. The homeownership rate is 90%.[3] Among the remaining 10%, low-income individuals and families can get rental support for an apartment at a very low price. The government developed its housing policy based on three pillars[4]:

1. Established in 1960s, the Housing & Development Board (HDB) is responsible for planning, developing, and administering Singapore's housing estates, and aims to build homes and transform towns to create a quality living environment for all Singaporeans.
2. The Land Acquisition Act enacted in 1966 ensures the availability of land.
3. Expansion of the role of the Central Provident Fund (CPF) to become a housing finance institution in 1968.

Singapore's housing policies are designed to promote ethnic integration. According to the Ethnic Integration Policy (EIP) introduced in 1989, there is a cap for each ethnic population in the government-built neighborhood: Chinese, Malay, Indian/Others are set at 84%, 22%, and 12%, respectively, which is basically in line with the ethnic composition of the population.

Singapore housing policy: Singapore's housing success is largely attributed to the government's devotion to affordable housing and the system it established to support its goals. By the 1970s, the HDB–CPF housing framework, representing an integrated land–housing supply and financing system, and was working effectively to channel resources into the housing sector.[5] Figure J1 shows how the system works.

Land: In most countries, access to land for affordable housing is a critical constraint. Singapore's Land Acquisition Act of 1967 empowered the government to acquire land at low cost for public use. Currently, about 90% of Singapore's territory is owned by the government. The government will lease part of its land to HDB for 99 years for public housing projects.

Public land is also leased for private sector development for 99 years for commercial use such as hotels and private residential development. The lease tenure for other purposes varies depending on the uses. Income from land leases are put into government reserves.[6]

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[2] https://en.wikipedia.org/wiki/Singapore

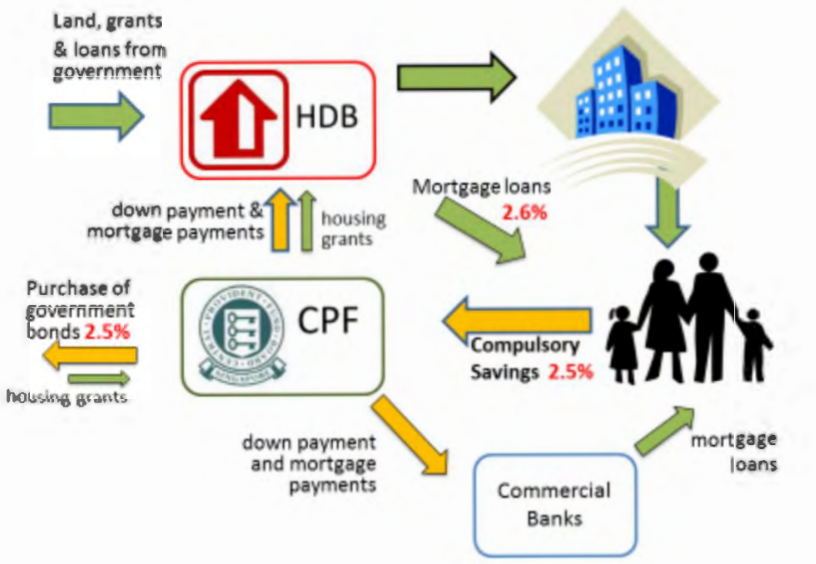
[3] https://www.economist.com/news/asia/21724856-subsidies-are-irresistiblebut-come-social-controls-why-80-singaporeans-live

[4] https://www.adb.org/sites/default/files/publication/181599/adbi-wp559.pdf

[5] https://www.adb.org/sites/default/files/publication/181599/adbi-wp559.pdf

[6] https://www.adb.org/sites/default/files/publication/181599/adbi-wp559.pdf

Figure J1 Singapore Housing System



Source: Housing Policies in Singapore

Funding: Both housing supply and demand get financial support from the government.[7]

- **Housing supply**: Singapore's Ministry of Finance channels HDB funds in terms of annual grants from the government's current budget offered to HDB to cover deficits incurred by development and maintenance of public housing, and through low-interest (2.5%) loans for mortgage lending and long-term development.
- **Housing demand**: The CPF provides Singaporeans with some cash to buy HDB properties. It is a mandatory national-savings scheme into which most citizens of working age are required to put 20% of their monthly salary while employers contribute 17% with a salary ceiling of $6,000. Citizens are entitled to draw down a portion of their savings to use as a deposit on an HDB apartment. Many are also entitled to cheap mortgages provided by HDB and to use their CPF contributions to meet some or all of their monthly payments. First-time home buyers are qualified for a certain amount of grants from CPF if they meet requirements.

Housing for low-income households: The HDB tries to meet everyone's housing needs, including the 10% of the population who do not own a house, some of whom live in poverty. Those who meet income requirements are allocated an HDB apartment and allowed to rent at a very low price. The median monthly gross income from work in 2017 was $9,023 including an employer's CPF contribution, according to data from the Department of Statistics. Table 6 shows the rent payments that households will make based on their income and status as first-time applicants.

[7] https://www.adb.org/sites/default/files/publication/181599/adbi-wp559.pdf

Table J1: HDB Apartment Rents for Low-Income Households

Monthly Household Income	Applicant Type	Monthly Rent	
		1-Room	2-Room
$800 or less	First-timer	$26 – $33	$44 – $75
	Second-timer	$90 – $123	$123 – $165
Between $801 and $1,500	First-timer	$90 – $123	$123 – $165
	Second-timer	$150 – $205	$205 – $275

Rents listed in the table are set according to HDB market rates and are subject to change.
Source: HDB official website (captured Mar. 17, 2017)

Take-aways: The Singapore housing policy was designed with citizens in mind and the government plays a key role through ownership of the land and control over how it is used. It could be hard to replicate this design in countries without this history. Its success is based on a unique political and historical experience. However, there are some key take-aways:

- The government's determination to house the whole nation communicates the value that housing is an essential element for community well-being
- Singapore began early and has continued to invest in housing: Singapore's public housing initiative started in the early 1900s and the government has continuously implemented policies and regulations to maintain a large supply of affordable public housing.
- Organization and efficiency: A well-organized system has allocated critical resources for public housing sectors and keeps public housing affordable and accessible to residents.

International Research: China

Overview of China: China is the most populous country in the world with 1.4 billion people. It covers about 9.6 million square kilometers area. It is a socialist republic run by a single party (Communist Party). There are a total of 23 provinces, five autonomous regions, four direct-controlled municipalities (Beijing, Tianjin, Shanghai, and Chongqing), and special administrative regions of Hong Kong and Macau under its jurisdiction. In mainland China, a household registration (hukou) system designates some of the residents' social benefits and public services that are accessed based on registered birthplace. In practice, this means a migrant worker from another province is not entitled to public services in Shanghai, despite working and living in the city. The government hasn't overhauled this system yet but takes some measures to reduce its impact on the lives of migrant workers. However, this system still exerts effects on both homelessness and housing affordability.

Homeless problem in China: There are no official statistics of the homeless population in China. However, according to a report from the Ministry of Civil Affairs, it is believed there were about 3 million homeless people in 2014.[8] Homeless people tend to be concentrated in big cities like Beijing and Shanghai after migrating with their families for better economic opportunities. However, many cannot afford the high rents

[8]http://www.slate.com/articles/news_and_politics/caixin/2015/11/china_s_local_governments_collaborate_with_ngos_to_better_homeless_care.html

of big cities. Based on the current household system in China, it is difficult to get housing support from the local government with an increasing number of local residents facing housing affordability issues.

The government addresses the homeless problem in the following ways:

- Homeless shelters: China has roughly 2,000 homeless shelters; however, people cannot stay more than ten days.[9]
- Leverage services provided by NGOs. The Chinese government offers financial support to NGOs to provide services to homeless people.
- Support for special populations. In 2016, aid agencies across China successfully brought 1,570 homeless people back to their families through DNA sampling and by posting search notices on the internet.[10] These included seniors, women, minors, and those with mental health challenges, some of whom couldn't provide accurate information about themselves.
- Balance the economic development of different areas in China. Migrant workers are the largest group of people experiencing homelessness. They left hometowns hoping for job opportunities in the city. The central government has been working on changing the imbalance of development between rural and urban areas, including incentivizing companies to invest in emerging areas to create more jobs in outlying areas.

Affordable housing issues in China. Housing affordability in China has been a hot issue for more than a decade, especially in big cities. Housing prices have increased significantly since 1998 when a market-oriented reform was initiated. The reasons prices kept rising are complicated, some of which are unique to China.

- Rapid Urbanization. In-migration to big cities fueled the demand for housing, which consequently pushed up housing prices.
- Limited alternative investments: The stock market and real estate are the primary types of investments accessible to citizens in China. However, the performance of the stock market fluctuates widely, and the return can be low for a long time. People tend to put their money in real estate where the return is more stable and satisfying; however, this boosts speculation in the real estate market.
- Land owned by the government. Selling land used to be a primary source of income for local governments when the local GDP was a most an important KPI for evaluating performance. Under this system, governments encouraged real estate development to boost their GDP, thus their performance. Local government was a barrier for taming the housing market.[11].

Housing affordability was so serious that it impacted social and political stability. The government began to take measures to cool it down in 2007 through the following strategies:

- Change the KPIs to evaluate local government performance. The central government has deemphasized the importance of GDP to reduce overreliance on land sales.
- Tackle land speculation. Some real estate developers were stockpiling land in hopes of selling it at a higher price later or waiting to construct homes when the market was more favorable. To address this issue, the government set a new policy that if the land was not used for two years, it reserved the right to take it back without compensation.[12].

[9]http://www.sixthtone.com/news/1000619/homeless-take-shelter-in-hefeis-24-hour-bookstore
[10]http://english.gov.cn/state_council/ministries/2016/07/05/content_281475386462742.htm
[11]http://www.businessinsider.com/the-uncomfortable-truth-in-chinas-property-market-2013-11
[12]http://www.npc.gov.cn/englishnpc/Law/2007-12/12/content_1383939.htm

Take-aways: There are significant differences between China and the U.S. in terms of size, political systems, and culture. However, there are a couple of takeaways.

- The Chinese government has used public policies to address structural issues that were making housing affordability problems worse.
- Reunification: The government has focused attention on helping people who are homeless reunite with family members by using a DNA matching service and posts on the Internet.

International Research: Mongolia

Overview of Mongolia: Mongolia is the country of blue sky and home of nomads where 3.1 million people live on 604,600 square miles of land. It is a landlocked country located between Russia and China with a semi-presidential representative democratic republic. The country has experienced rapid urbanization since the collapse of communism in the early 1990s. Many rural residents were nomadic farmers and migrated to the city in search of opportunity due to the economic challenges of the nomadic life style.

Mongolia is a developing country and its population is young. Children under age 15 make up 30.4% of the population. Youth and young adults between 15-24 years represent 15% of the population and working people between 25-49 years represent 39%.[13]

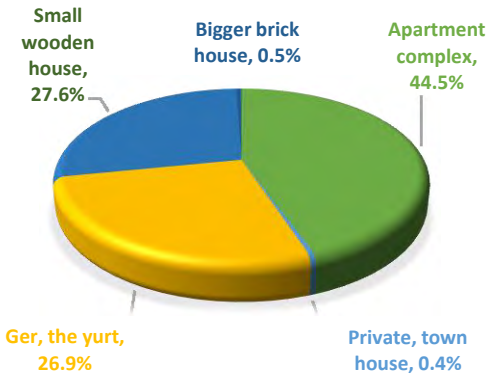
Almost half the population (46%) lives in the capital city of Ulaanbaatar.[14] When Russia helped build Ulaanbaatar during the communist years, they planned for a capacity of 500,000 people. The City is now three times as big. Due to overcrowding, there are issues with poverty, homelessness, food shortages, alcoholism, and increased crime rates, along with traffic, air pollution, and water pollution that is causing serious illnesses.

Homelessness in Ulaanbaatar, Mongolia: High in-migration in recent years has increased poverty and reduced the quality of life in the city. According to population count in 2017, there were 2,790 homeless people in the capital city Ulaanbaatar and 78% were male.[15] Most were working age people (85%). Small percentages were children under 17 years (4%) and elderly people over 55 years (6.5%). These numbers may not represent the full extent of the problem. A private research center reported there could be 10,000 people considered homeless due to the low quality of their living situation.[16] The main cause of homelessness is poverty caused by unemployment and lack of government support. The most vulnerable are children who run away from home due to family disruption such as domestic violence.

Affordable housing: In the capital city of Ulaanbaatar, there were 380,000 families of which 160,000 live in central heated apartment complexes.[17] The remainder live in a traditional home called a Ger, a small round yurt, or other small house. The areas where these homes are concentrated often lack basic infrastructure such as roads, running water, sanitation, and heating.

[13] http://www.en.nso.mn/
[14] http://www.themongolist.com/blog/society/89-rethinking-ulaanbaatar-s-population.html
[15] http://www.olloo.mn/n/14127.html
[16] http://factnews.mn/3kl
[17] https://ikon.mn/n/1b2l

Figure J2
Housing Types in Mongolia



Source: National Statistics Office of Mongolia 2017

Figure J2 shows the living situation of Ulaanbaatar households. Small wooden houses and traditional Gers are heated by inhouse fires. Most burn raw coal which is causing the city to become the most polluted in the world. In January 2018, sensors reported air pollution rates of pm2.5 (ultra-fine particles that are carcinogenic) to be 133 times the level deemed safe by the World Health Organization (WHO). Pneumonia has become the second leading cause of death for children under five years.[18]

Government housing programs:

Low-interest affordable mortgage program: The Mongolian government invested in national banks to offer 8% mortgage loans to increase the quality of life among city residents and to encourage residents to buy apartment houses to reduce air pollution. The down payment for a home is 30% for 30 years and a maximum 860 square feet. Since the 8% mortgage policy started in 2010, 50,000 families have been able to buy an apartment and by January 2018, there were 6,000 apartment units available for sale.[19]

Ulaanbaatar's redevelopment program: The Mongolian government provides free land of 75 square feet per person, which is highly valued by the population. Land closest to Ulaanbaatar has increased in value due to its proximity. Because of bad air quality the government is working with private developers to buy land close to city center to build 9-12-floor apartment complexes. The first phase of the program is to buy 210-hectare land from families and build 10,000 units for 45,000-50,000 residents by 2025.[20]

State rental housing program: The Mongolian government implemented a state-funded affordable rent program in 2013 with the goal of providing 1,000 families with affordable rental homes by 2016 and 2,000 families between 2017-2020.[21] As of 2018, the program had provided 2,200 families with a home. The next phase, the "Buyant-Ukhaa-2" project, is planned for 6,500 family units. Target segments of this program include young families, government workers, and older people on pensions.

[18] http://time.com/longform/ulan-bator-mongolia-most-polluted-capital/
[19] http://tosk.gov.mn/4878.html
[20] http://www.ulaanbaatar.mn/Home/newsdetail?dataID=28168
[21] http://tosk.gov.mn/4547.html

Key take-aways: Affordable housing and urbanization in general is a new concept for Mongolia. The cultural transition from nomadic to urban life has been challenging. However, the Mongolian government is now testing housing programs to help residents but indirectly on the homeless issue. Due to the nomadic life experience and family-oriented culture, small, traditional homes without heat and water are common, thus the standard for housing appears much lower compared to other counties.

There are a few things that Mongolia is doing that could inform efforts in the U.S.:

- Partnerships with the private sector: The government is working with private developers to help families living in traditional housing on the edges of the city move into apartments.
- The government has prioritized certain demographics, such as single parents with children, elderly people on pensions, and young couples with children to provide affordable rents and low rate mortgages to help prevent them from becoming homeless.
- The City of Ulaanbaatar is offering free land to citizens outside the city to help reduce air pollution and traffic congestion.

International Research: India

Overview of India: India is the seventh-largest country by area and second-most populous with over 1.2 billion people. The U.S. has roughly three times the area of India but only one quarter the population. Thus, India is a densely populated country.

Homelessness in India: India defines the homeless as those who do not live in Census houses, but rather stay on pavements, roadsides, railway platforms, staircases, temples, streets, in pipes, or other open spaces. There are 1.77 million homeless people in India, or 15% of the country's total population, according to the 2011 census. The homeless include single men, women, mothers with children, the elderly, people with disabilities, and those with mental health challenges. There are 18 million street children in India, the largest number of any country in the world. About 78 million people live in slums and tenements.

Causes of homelessness: Urbanization, massive in-migration from rural communities to big cities, and lack of affordable housing are the main causes of homelessness.

Situation: India is an emerging market and has experienced rapid urbanization over the last two decades. India's urban population has grown an average 2.1% per year since 2015. It is likely to reach 600 million by 2031 (up from 380 million in 2018). India currently has a housing deficit of close to 18 million units which is expected to grow to 30 million units by 2022. The economically weaker sections (EWSs) and lower-income groups (LIGs) account for 96% of the urban shortage. The drive to bring homes to the country's 1.3 billion people is expected to bring $1.3 trillion of investment to the housing sector over the next seven years.

Plan: The government has engaged in reforming both the demand and supply side of housing. The flagship scheme, *Housing for All by 2022 or the Pradhan Mantri Awas Yojana*, is a prominent supply-side measure taken by the government. It aims to construct 20 million units in India, in three phases, until 2022.

Supply Side Incentives:

- Cheaper borrowing rates: Developers can get loans at rates below 12% including external commercial borrowings (ECBs), and permission for FDI (Foreign Direct Investment)
- Project completion extensions: Eligibility for profit-linked income tax exemptions for affordable housing projects has increased from three to five years.

- Developers will get a year to pay tax on notional rental income on completed but unsold units. The tenure for long-term capital gains for affordable housing has been reduced from three to two years.
- Tax Exemption: 100% tax exemption on profits for the construction of homes of specific sizes.

Demand Side Incentives:

- Subsidized interest rates: Subsidized borrowing rates for loans up to 600,000 rupees has been increased to 1.2 million rupees, with 4% and 3% subsidies on interest for loan amounts of INR 900,000 and INR 1.2 million respectively.
- Tax incentives: A tax exemption of an additional INR 50,000 for first-time homeowners.

Challenge: According to estimates, new size requirements may require unlocking non-essential lands currently being held by large government bodies.

Take-aways:

- An emphasis on public-private partnerships. Table 7 lists the benefits of this approach.
- India competes on volume and density and can maximize small spaces.
- Cheaper and easier access to capital for tenants and developers boost the affordable housing model.

Table J2
Benefits of the Public-Private Model of Affordable Housing Development

Categories	Benefits
Land availability	• The government owns vast land banks that can be distributed to private developers through a transparent bidding process. This can, to an extent, mitigate woes related to the unavailability of land at reasonable costs. • The government can relax FSI norms as a means to provide cashless subsidy to developers, bringing down development costs.
Improved financing	• A joint pool of public and private funds is likely to be more effective and efficient in financing development projects. • The government can form development consortiums with private developers and guarantee bank loans borrowed by such consortiums, thereby reducing borrowing costs.
Lower costs	• Development companies formed through PPPs can obtain project approvals more easily, thereby reducing project cost and time overruns. • The government can indirectly lower costs by giving tax relief and reducing stamp duties.
Economies of scope	• A PPP model should be more beneficial in developing integrated affordable townships, where the infrastructure and utilities development activity can be taken care by the government, while private developers with expertise in residential development can build affordable homes.

Source: KPMG, Aranca Research

https://www.ibef.org/download/Affordable-Housing-in-India-24072012.pdf
http://www.ambitusrealtors.com/affordable-housing-in-india-a-game-changer/
https://www.thenational.ae/business/property/india-government-moves-to-boost-affordable-housing-1.34504
http://www.thehindu.com/real-estate/affordable-housing-a-game-changer/article19401953.ece
https://www2.deloitte.com/content/dam/Deloitte/in/Documents/public-sector/in-ps-affordable-housing-noexp.pdf
https://assets.kpmg.com/content/dam/kpmg/pdf/2014/09/Decoding-Housing-for-all-2022.pdf
https://www.worldatlas.com/articles/the-biggest-cities-in-india.html
Trend of Homeownership: According to the 2011 census, the national average for families owning their house is 86.6%.
https://en.wikipedia.org/wiki/India
Goel, Geetika; Ghosh, Piyali; Ojha, Mohit Kumar; Shukla, Akanksha. Urban homeless shelters in India: Miseries untold and promises unmet. Cities. 71: 88–96.
Jha, Somesh. 1.77 million people live without shelter, albeit the number decline over a decade. Business Standard.
Page, Jeremy (2007-05-18). Indian slum population doubles in two decades. The Times. London.
Roy, Sudipto. (2017) Urban homeless in India: Will the destitute in the Indian cities have a shelter by 2022?. MIG. Retrieved from https://mediaindia.eu/social-vibes/urban-homeless-in-india/

International Research: Australia

Overview: Australia is ranked the 6th largest country by land mass, although its population is relatively small at 24 million and most people are concentrated on the eastern portion of the continent. It has six states in its federation operating under a parliamentary government system. It is considered one of the most livable places in the world and provides a high quality of life for many residents.[22] Even so, like many countries around the world, it struggles with rising rates of homelessness and lack of affordable housing options for a growing portion of residents.

Homeless situation: As of Jan. 2016, there were 105,237 or one out of 200 people (0.5%) who were homeless. Australia uses the Australian Bureau of Statistics (ABS) statistical definition of homelessness which states that when a person does not have suitable accommodation alternatives they are considered homeless if their current living arrangement is in a dwelling that is inadequate or has no tenure, or if their initial tenure is short and not extendable; or does not allow them to have control of or access to space for social relations.[23]

Drivers of homelessness in Australia:

- Chronic shortage of affordable and available rental housing
- Domestic and family violence
- Intergenerational poverty
- Financial crisis
- Long-term unemployment
- Economic and social exclusion
- Severe and persistent mental illness and psychological distress
- Exiting state care
- Exiting prison
- Severe overcrowding/housing crisis.

[22] http://www.bbc.com/news/world-asia-15674831
[23] https://www.homelessnessaustralia.org.au/sites/homelessnessaus/files/2017-07/Homelessness%20in%20Australiav2.pdf

The National Affordable Housing Agreement (NAHA) provides approximately $250 million in funding to state governments to manage funds and achieve homelessness initiatives.

The National Partnership Agreement on Homelessness (NPAH) provides additional funding and requires state/territory implementation plans and joint funding from states/territories. The Commonwealth Government is currently undertaking a 'Reform of the Federation' to improve the way the Commonwealth, states, and territories work together. An outcome may be a change tin he way homelessness is funded.

Affordable Housing situation:

Housing affordability vs. affordable housing: The term "housing affordability" refers to the relationship between expenditures on housing (prices, mortgage payments or rents) and household incomes. Housing affordability refers to low-income or social housing.[24]

"Housing stress": A household is typically described as being in housing stress if it is paying more than 30% of income on housing costs. A ratio of 30/40 is used to define housing stress, i.e., if a household falls into the bottom 40% by spending more than 30% of their income on housing, they are in housing stress.

Housing stress and affordable housing shortage: In 2013–14, the ABS found 50.1% of low-income renter households had housing costs greater than 30% of gross household income. Rental costs are rising at a higher rate than CRA thresholds and a substantial and growing proportion of people renting in certain parts of Australia. Social housing is provided for low-income households in greatest need. However, the stock of social housing has not been increasing at a rate sufficient to keep up with demand, and waiting lists for social housing remain long. There were 199,133 households on social housing waiting lists in June 2015.

Australian response to homelessness and housing:
The Australian government plays a central role in addressing homelessness and housing needs:

- State and Territory housing authorities must maintain their current public housing stock.
- An affordable housing growth fund is needed to deliver a minimum of 20,000 new social and affordable housing dwellings each year in perpetuity.
- Renew funding for innovative homelessness services through NPAH.
- Ensuring funding for homelessness services are supported through adequate and planned indexation.
- Increase funding for prevention and early intervention programs with proven records of success.
- Restore funding for research to measure and maximize the effectiveness of homelessness spending.
- Non-pension allowance payments must be increased by a minimum of $50 per week.
- Re-allocate funding to the Department of Social Services grants program for Housing and Homelessness Service Improvement and Sector Support activities.

Homelessness Australia (HA) is one of several "Peak Bodies"[25] which provide a one-stop shop for government and other sectors to share information and experiences, conduct timely and cost-effective research and development for the sector, advocates for change together with its membership, and educate the community. HA represents 1,300 organizations working with people experiencing, or at risk of, homelessness, including domestic violence services.

[24]https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BriefingBook45p/HousingAffordability
[25] https://www.homelessnessaustralia.org.au/sites/homelessnessaus/files/2017-07/Peak_bodies_JAN16.pdf

Six key activities of HA:

1. Provide informed policy advice to government,
2. Facilitate sector wide training and development (front-line workers and service providers).
3. Community engagement and education to raise awareness about the issues of homelessness and how to support people experiencing it and creating links between services and their communities.
4. Open communication to share information between homeless sectors and government.
5. Increase sector capacity and develop key resources in partnerships with other organizations.
6. Conduct strategic research into homelessness and its relation to other issues.

Housing affordability/affordable housing:

An Affordable Housing Working Group was charged with identifying ways of increasing the supply of affordable housing for people living on low incomes and implement trials models. The Working Group released an issues paper and asked for ideas to boost the supply of affordable rental housing.

Institutional investments would be needed in residential markets. The main barrier was institutional investors who showed little interest in affordable housing due to perceptions of high risk and low returns. Incentives would help get them to the table.

Financing instruments could help increase the supply of affordable housing.

Key takeaways:
Australia seems to be dealing with many of the same issues as the U.S, i.e., high rates of homelessness and the need for 20,000 units of affordable housing. The goal of securing a new financing instrument for the construction of affordable housing units is a key takeaway. This issue has been discussed by developers in the Portland Metro region. There are a number of strings attached to public dollars.

The Australian government has prioritized homeless services that are evidence-based.

Training and development of front-line worker and service providers ensures good customer service.

International Research: United Kingdom

Overview: The United Kingdom is composed of Great Britain (England, Scotland, Wales) and Northern Ireland. It is a constitutional monarchy with a parliamentary democracy. It has 65 million people (2016) living on 93,628 square miles of land surrounded by water. It is predominantly white (87.1%) and Christian (59.5%).[26]

Homeless situation: Each country in the United Kingdom has adopted a policy requiring them to "secure accommodation" for certain populations of homeless people.

England: Each year England takes a snapshot of homelessness. About 4,800 people were estimated to be "sleeping rough" (unsheltered) in 2017. This number was 15% higher than 2016, although the methodology is believed to undercount the actual number of homeless people. In London, a more comprehensive system called CHAIN (Combined Homelessness and Information Network) is used to track people who are sleeping rough through a database of names collected by street outreach workers. CHAIN counted 8,100 homeless people in England in 2017, nearly twice as high as the snapshot figures. A Parliamentary committee has recommended the CHAIN system be the preferred system.

[26] https://en.wikipedia.org/wiki/United_Kingdom

Scotland: Scotland has a Code of Guidance that spells out the duty to serve homeless people. It emphasizes prevention services in general and services that prevent a reoccurrence of homelessness if the person has already become homeless.[27] Scotland had 34,100 applications for homeless assistance during 2016-2017. The total population in Scotland is 5.2 million people.

Scotland uses a three-stage process to assess whether a person is actually homeless and the types of benefits a person is entitled to receive. In the first stage, an application is made to a local council. The second stage is designed to assess whether the person has become homeless intentionally, and if there is a connection to a "Local Authority" in another area. If so, the person will be referred back to that Local Authority. The third stage is called the "Outcome stage" and determines the types of services the applicant will be entitled to, which is based upon the Local Authority's decision. Applicants are entitled to accommodation while waiting for a decision.[28]

Wales: Local government authorities in Wales have a statutory duty to prevent homelessness among those who are at risk. Applicants for homeless services are entitled to 56 days of accommodation called the "homelessness relief duty." Like Scotland, if a person is deemed homeless, s/he is entitled to receive assistance.[29]

Northern Ireland: The Northern Ireland Housing Executive (NIHE) refers people to accommodation for those at risk for homelessness and are unintentionally homeless and in priority need. This is also the position in England, although the duty lies with local authorities.[30]

Affordable Housing:

Affordable housing in the UK is called "Social housing" or "public housing" and is largely owned by the local government and is known historically as "council houses." Most social housing was built by the government in the 1940s in response to demands by labor to provide stability for working class residents. In 1979, much of the housing stock was sold off through "Right to Buy" legislation. About 17% of UK households currently live in council housing. In Scotland, housing councils are known as "schemes." About half the social housing stock is owned and managed by local authorities.[31]

New rules in the 1990s banned councils from borrowing money to build new council houses, leaving affordable housing construction up the independent landlords via private finance vehicles. Prime Minister (PM) Margaret Thatcher allowed tenants to buy social housing which spike home ownership rates. This peaked in 2003 when levels began to decline.[32]

In 2017, PM Theresa May stated that not enough homes had been built over the past 30 to 40 years, causing a housing crisis. Housing costs are reportedly costing UK households eight times their average earnings. The construction rate of affordable homes has been about 40,000 units/year, below the 50,000 units produced in 2011-2012. PM May pledged 2 Billion Pounds to boost government spending for affordable housing construction. However, this amount is anticipated to pay for about 25,000 units.[33]

Key Takeaways:

- Many countries in the developed world struggle with homelessness and a lack of affordable housing.

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- Government investment benefit individuals and whole communities. However, social goals must be maintained, lest they fall apart under different government administrations and shifting policy priorities.
- Allowing tenants to purchase affordable housing units could enhance stability among low-wage earners.

Endnotes

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[17] From HUD: "A Safe Haven, as defined in the Supportive Housing Program, is a form of supportive housing that serves hard-to-reach homeless persons with severe mental illness who come primarily from the streets and have been unable or unwilling to participate in housing or supportive services."
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From:	Jennifer Bragar
To:	DLCD PR-UGB
Cc:	roger.alfred@oregonmetro.gov; Howard, Gordon; Young, Kevin; REP Kotek; SMILEYWOLFE Taylor; Allan Lazo; Louise Dix; Ed Johnson
Subject:	HLA Objections to Metro UGB Part 1 of 4
Date:	Wednesday, January 30, 2019 4:08:30 PM
Attachments:	image002.png image004.png HLA Objections to Metro UGB Expansion 1-30-19 Letter.PDF Attachment 2 DISCRIMINATORYEFFECTRULE (labelled).PDF Attachment 3 HLA Comment Letter Metro UGB Expansion 12-4-18 (labelled).PDF Attachment 5 Analysis of Homelessness and Affordable Housing Mult Co 2018 (labelled).PDF

Dear Tabitha,

Please find attached Housing Land Advocates' objection to the Metro UGB Expansion. This e-mail is a portion of the transmittal. By three additional e-mails I will send Attachments 1 and 4 that were too large to include in this email.

Please confirm receipt of these emails. Thank you for your attention to this matter.

Jennifer Bragar | jbragar@tomasilegal.com
Tomasi Salyer Martin | 121 SW Morrison Street, Suite 1850 | Portland, Oregon 97204
Tel: 503-894-9900 | Fax: 971-544-7236 | http://www.tomasilegal.com

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From:	Jennifer Bragar
To:	DLCD PR-UGB
Cc:	roger.alfred@oregonmetro.gov; Howard, Gordon; Young, Kevin; REP Kotek; SMILEYWOLFE Taylor; Allan Lazo; Louise Dix; Ed Johnson
Subject:	HLA Objections to Metro UGB Expansion Part 3 of 4
Date:	Wednesday, January 30, 2019 4:08:49 PM
Attachments:	image005.png image006.png

Dear Tabitha,

Please find attached Part 3 of Housing Land Advocates' objection to the Metro UGB Expansion. This e-mail contains part 2 of Attachment 1 to HLA's Objections.

Please confirm receipt of these emails. Thank you for your attention to this matter.

Jennifer Bragar | jbragar@tomasilegal.com
Tomasi Salyer Martin | 121 SW Morrison Street, Suite 1850 | Portland, Oregon 97204
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From:	Jennifer Bragar
To:	DLCD PR-UGB
Cc:	roger.alfred@oregonmetro.gov; Howard, Gordon; Young, Kevin; REP Kotek; SMILEYWOLFE Taylor; Allan Lazo; Louise Dix; Ed Johnson
Subject:	HLA Objections to Metro UGB Expansion Part 2 of 4
Date:	Wednesday, January 30, 2019 4:09:24 PM
Attachments:	image005.png image006.png Attachment 1 2016-2020-Oregon-Analysis-of-Impediments-Fair-Housing-Choic....pdf

Dear Director Rue,

Please find attached Part 2 of Housing Land Advocates' objection to the Metro UGB Expansion. This e-mail contains part 1 of Attachment 1 to HLA's Objections.

Please confirm receipt of these emails. Thank you for your attention to this matter.

Jennifer Bragar | jbragar@tomasilegal.com
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From: Jennifer Bragar
To: DLCD PR-UGB
Cc: roger.alfred@oregonmetro.gov; Howard, Gordon; Young, Kevin; REP Kotek; SMILEYWOLFE Taylor; Allan Lazo; Louise Dix; Ed Johnson
Subject: RE: HLA Objections to Metro UGB Expansion Part 3 of 4
Date: Wednesday, January 30, 2019 4:10:12 PM
Attachments: image001.png
image002.png
image003.png
image004.png
Attachment 1 2016-2020-Oregon-Analysis-of-Impediments-Fair-Housing-Choic....pdf

Tabitha,

I sent this one too quickly, here it is with the attachment.

Jennifer Bragar | jbragar@tomasilegal.com
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From: Jennifer Bragar
Sent: Wednesday, January 30, 2019 4:07 PM
To: 'DLCD.PR-UGB@state.or.us'
Cc: 'roger.alfred@oregonmetro.gov'; 'Howard, Gordon'; Young, Kevin; 'Rep.TinaKotek@oregonlegislature.gov'; 'SmileyWolfe Taylor'; 'Allan Lazo'; 'Louise Dix'; Ed Johnson
Subject: HLA Objections to Metro UGB Expansion Part 3 of 4

Dear Tabitha,

Please find attached Part 3 of Housing Land Advocates' objection to the Metro UGB Expansion. This e-mail contains part 2 of Attachment 1 to HLA's Objections.

Please confirm receipt of these emails. Thank you for your attention to this matter.

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To:	DLCD PR-UGB
Cc:	roger.alfred@oregonmetro.gov; Howard, Gordon; Young, Kevin; REP Kotek; SMILEYWOLFE Taylor; Allan Lazo; Louise Dix; Ed Johnson
Subject:	HLA Objections to Metro UGB Expansion - Part 4 of 4
Date:	Wednesday, January 30, 2019 4:10:14 PM
Attachments:	image005.png image006.png Attachment 4 Build_Small_Coalition_2018_ADU_code_audit_report_final (lab....pdf

Dear Tabitha,

Please find attached Part 4 of Housing Land Advocates' objection to the Metro UGB Expansion. This e-mail contains Attachment 4 to HLA's Objections.

Please confirm receipt of these emails. Thank you for your attention to this matter.

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