

Affirmatively Furthering Fair Housing: Creating Stability and Opportunities

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Outline

1. History of discrimination post WWII
2. The Fair Housing Act
3. Racial and Ethnic Disparities in Housing
4. VAWA and Criminal Background
5. Affirmatively Furthering Fair Housing
6. FHIC and the AI Addendum



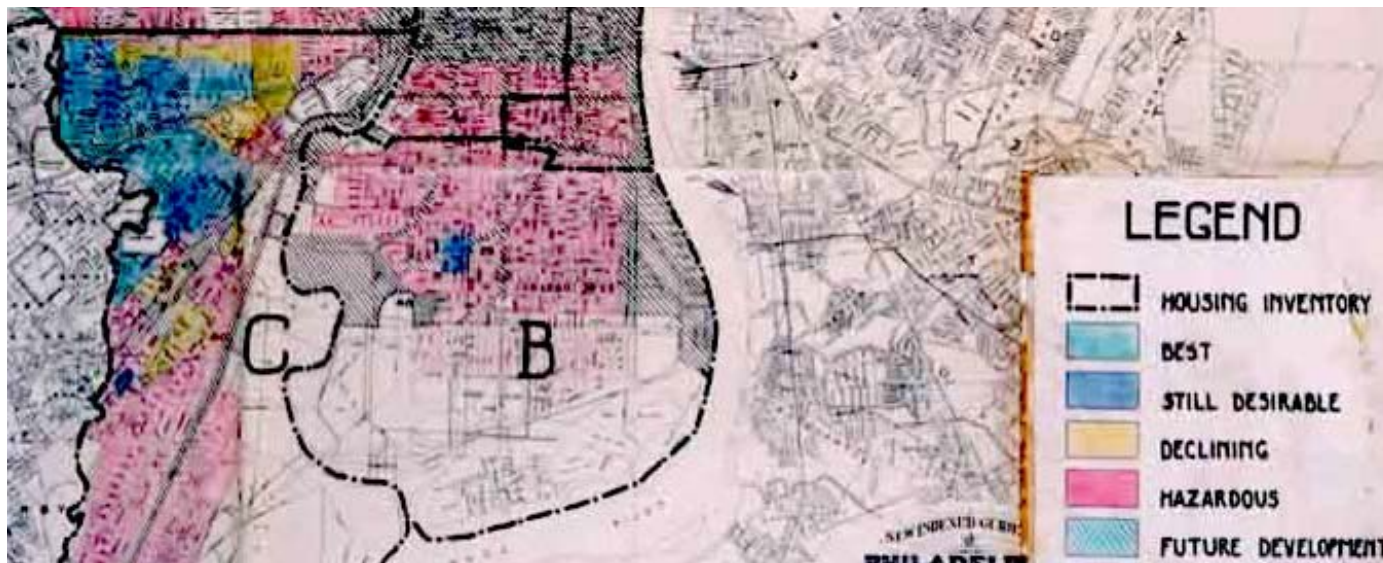
Government Discriminatory Investments in Development

1. After World War II, Eisenhower emphasized a national highway system.
2. Federal Housing Administration provided funding to developers to build suburban developments.
3. FHA loans only provided to new construction
Freeways to connect suburbs to city
4. Mortgage was cheaper than rent

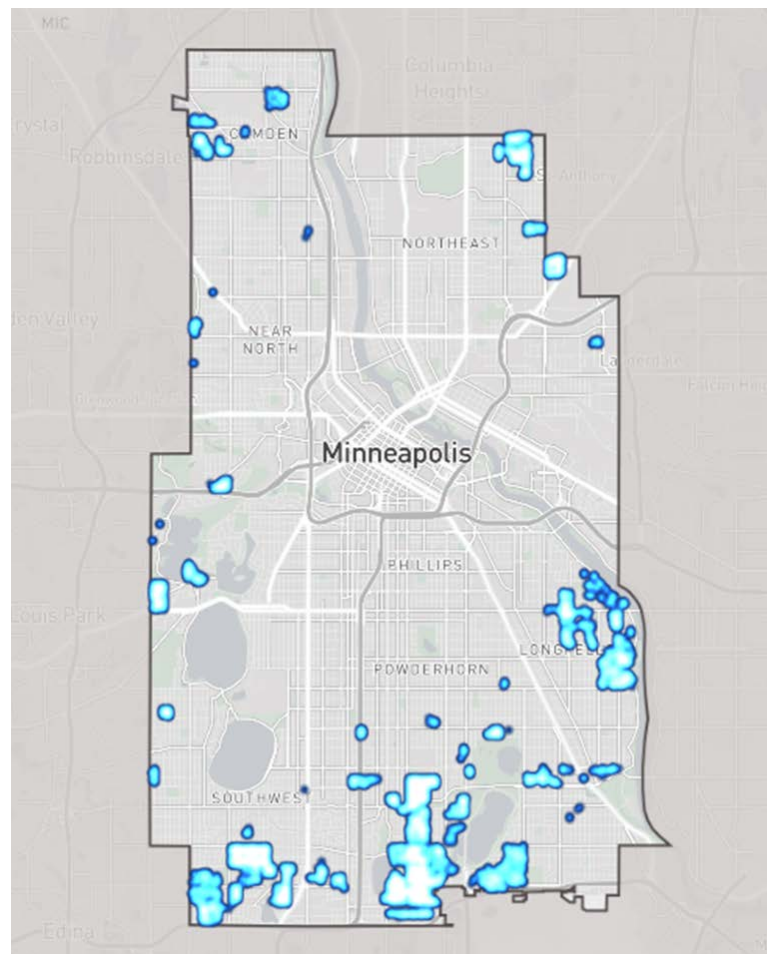
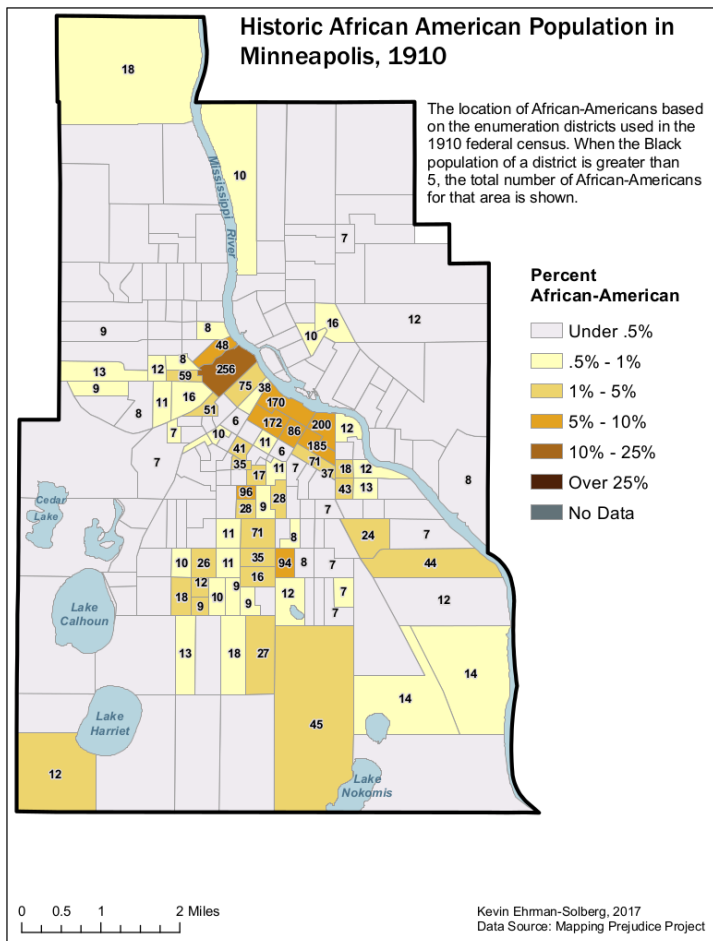
Source: Rothstein Richard, *Color of Law*, New York: Liveright Publishing Corp., 2017.

Government Discriminatory Lending

Banks followed FHA guidelines and generally refusing to provide loans to older homes – mostly in the City



Racially Restrictive Covenants by 1954



Source: <https://www.mappingprejudice.org/>



Human Rights & Equal Economic Opportunity

History of the Fair Housing Act

Civil Rights Act passed in 1964

1. Prohibited discrimination in public accommodations, employment, voting, desegregated schools
2. Did not address housing discrimination
3. Attempts to pass fair housing legislation failed in 1966 and 1967

History of the Fair Housing Act

Passage of the Fair Housing Act

Key Events:

1. Vietnam War: Returning African American Veterans testify before Congress they are denied housing because of race
2. Dr. Martin Luther King, Jr. was assassinated on April 4, 1968
3. On April 11, 1968, President Lyndon Johnson signed the Civil Rights Act of 1968, Title VIII –“Fair Housing Act”

Applicable Laws

Federal Laws

1. Fair Housing Act (Title VIII of the Civil Rights Act State Laws)
2. Minnesota Human Rights Act

Local City Ordinances

1. Saint Paul Human Rights Ordinance
2. Minneapolis Civil Rights Ordinance



Protected Classes

SPHR, MDHR, MDCR

1. **Age** – SPHR Only
2. **Ancestry** - SPHR Only
3. Creed
4. Marital Status
5. Sexual or Affectional Orientation
6. Public Assistance Status

ALL:

1. Race
2. Color
3. National Origin
4. Religion
5. Sex (includes Sexual Harassment, Pregnancy, & Gender Identity)
6. Disability
7. Familial Status



What is discrimination?

1. Protected Class
2. Met the minimum qualifications
3. Adverse Action
4. Someone outside of the protected class treated better, or other circumstances giving rise to inference of discrimination.



Types of Discrimination

1. Failure to Rent (incl. availability)
2. Different Terms and Condition (maintenance, lease terms, quality)
3. Discriminatory advertising



Familial Status Discrimination

1. Special rules targeting children
 - Requiring adult supervision for safety reasons is allowed
 - Refusal to rent to avoid compliance with lead regulations
 - Noise policies targeting children, not noise generally
2. Grouping families in one part of a building
3. Occupancy Standards
 - Following city occupancy rules is okay
 - If a tenant becomes pregnant, you can't terminate their lease or refuse to rent

Disability Discrimination

1. Differential Treatment

- Having a disability
- History of disability (e.g. you had cancer and are now in remission)
- Perceived to have a disability (e.g. a speech impediment, facial disfigurement)
- Being associated with someone with a disability

2. Failure to Accommodate



Disability Accommodations

Accommodation

1. Allow modifications to rules, policies, practices, services to allow full enjoyment of the property (including common areas).
 - a. Assistance animals (accommodation to no pet policy)
 - b. Parking: Closer parking spot, curb cuts, painting lines (at owner's expense)
 - c. Permitting a live-in Personal Care Attendant who needs 24 hour care assistance – waive guest rule
2. Cannot charge extra fees or deposits for accommodations
3. Have a written policy and train your staff



Disability Accommodations

Modifications – Interior & Exterior

1. Structural changes necessary to allow full enjoyment of the dwelling
 - a. Interior: Wider doorways, grab bars, lower countertops, lever door handles
 - b. Exterior: Adding a ramp to the entrance
2. Who Pays?
 - a. Tenant pays (unless Landlord wants to keep the modification)
 - Landlords pay if building constructed for first occupancy after March 13, 1991 and don't meet accessible design codes
 - b. Can require the work is performed by a licensed contractor
 - c. Tenant sets aside funds to restore the interior to its original condition. Exterior modifications stay.



Disability Accommodations

Medical Inquiry

1. May request information to evaluate whether accommodation is necessary for the disability
2. May not request additional info if disability is obvious, already known to you, or the need for accommodation is obvious
3. Medical records or detailed medical information usually not necessary
4. Medical professional, non-medical service agency, reliable third party, or peer support group can provide verification of disability



Disability Accommodations

Assistance Animal

1. Any animal that provides assistance, emotional support, or performs a task.
2. Examples:
 - a. Providing protection or rescue assistance
 - b. Fetching items
 - c. Alerting persons to impending seizures
 - d. Emotional support for the disability
3. Does not need to be individually trained or certified
4. Must be house-trained and in the handler's control



Disability Accommodations

Refusing an Accommodation

1. Person does not have a disability
2. No disability-related need for the accommodation
3. Requested Accommodation is Unreasonable
 - a. Undue financial or administrative burden
 - b. BUT consider alternative accommodations



Harassment

1. Unwanted conduct
2. Subjectively and objectively offensive
3. Severe or pervasive
4. Because of protected class
5. Interferes with use or enjoyment of the premises

Harassment Liability

When are Property Owners and Managers Liable?

1. Their own actions
2. Agents, employees, and contractors
 - Owner/Manager knew or should have known of the harassment and failed to stop it OR
 - Acted within scope of agency relationship
(example: A maintenance worker sexually harassed tenant while in the tenant's home to make a repair. A caretaker repeatedly used racial epithets, threats, false police calls, leaving trash by door, etc.))

Harassment Liability

Property owner/manager liability (cont.)

3. Other tenants

- *Neudecker v. Boisclar Corp.* Case: Tenant had OCD, other tenants mocked him constantly. He reported it to management and they did nothing. He moved out.

4. Association Board

Retaliation

1. Engage in protected activity
 - a. Filing a discrimination complaint
 - b. Opposing discrimination
 - c. Participating in investigation
2. Adverse Action
3. Connection between the adverse action and the protected activity

Discrimination Still Occurs Broadly

HUD study finds decline in blatant discrimination while unequal treatment persists.

Key findings: renters and homebuyers of color are told about and shown fewer homes and apartments

- African American renters: learn about 11% fewer available units and are shown roughly 4% fewer units.
- Asian renters: learn about 10% fewer available units and are shown nearly 7% fewer units.
- Latino renters: learn about 12% fewer available units and are shown roughly 7% fewer units.



Disparate Impact

“Disparate Impact Claims are cognizable in the Fair Housing Act.”

Texas Department of Housing and Community Affairs et al v. Inclusive Communities Project, Inc., et al., 576 U.S. (2015)

Disparate Impact Analysis

1. Plaintiff: Policy/Practice discriminatory effect on a protected class – Statistical Analysis
2. Defendant: Policy/Practice necessary to achieve substantial, legitimate, non-discriminatory interests
3. Plaintiff: Interests could be served by a practice with a less discriminatory effect



Disparate Impact

Examples

1. Rental history
 - a) Disparate impact on national origin
2. Occupancy limits
 - a) Familial status
 - b) National Origin/Race

HUD Criminal Background Guidance

Racial/Ethnic Disparities in Arrests, Convictions, Imprisonment

1. Approximately 100 million U.S. adults (1/3 population) have a criminal record.
2. U.S. has the largest prison population in the world: 2.2 million adults
3. African Americans and Latinos are arrested, convicted and incarcerated at rates disproportionate to their share of the general population.



Evaluate Discriminatory Effect of Policy

National Statistics (consider local stats as well)

1. African Americans: 12.4% of US Population
 - a) 36% of total prison population
 - b) 24% of total arrests
 - c) 1:3
2. Latinos: 17% of US Population
 - a) 22% of prison population
3. White: 62% of US Population
 - a) 34% of population
 - b) 1:17



Justification of Policy or Practice

1. Housing provider must *provide evidence* it is necessary to achieve a substantial, legitimate, non-discriminatory interest
2. Resident safety and Property protection is legitimate
3. Avoid stereotypes/generalizations



Tailor the policy

1. Distinguish between criminal conduct with a demonstrable risk to resident safety and/or property
2. Consider nature and severity of conviction
3. Time since offense
4. Opportunity to mitigate



Arrest and Conviction Records

1. Do not deny based on arrest history alone
2. No Blanket Prohibition for all convictions



Consider

1. Recidivism research:

- 6-7 years after the offense, risk of committing a crime is similar to a person with no record

2. Mitigation – Less Discriminatory Effect

- a) Age at time of conduct
- b) Facts or circumstances of conduct
- c) Evidence of good tenant history
- d) Evidence of rehabilitation
- e) Criminal record due to abuse (police arrest both abuser and survivor in a domestic violence call)



Be Consistent and Follow Policy

1. Includes:
 - Handling of inquiries
 - Assisting with application
2. Policy on accepting application fee knowing the applicant will not be accepted

Violence Against Women Act Protections

1. HUD-covered programs: Not deny rental assistance due to being a victim
2. Emergency Transfers: Allow to move to a safe and available unit if fear for life and safety (HUD provides model plan)
3. Bad credit history due to abuse (take out credit cards in survivor's name)
4. Negative rental History: Damage to property caused by abuser
5. Police calls due to abuse



Housing Demographics by Race

Householder Race and Ethnicity	Single Family Units	Small Multifamily (2-19 units)	Large Multifamily (20+ units)	Mobile Home Units
White, non-Latino	75.9%	8.9%	14.0%	1.2%
Black	38.6%	25.1%	35.9%	0.4%
Asian	60.9%	14.6%	23.3%	1.2%
American Indian	54.1%	25.9%	17.0%	3.0%
Other or multiple races	48.1%	24.2%	23.8%	3.9%
Latino	46.5%	24.7%	24.2%	4.5%
All people of color	48.6%	21.3%	28.3%	1.7%

Source: U.S. Census Bureau, American Community Survey Five-Year Estimates, 2010-2014

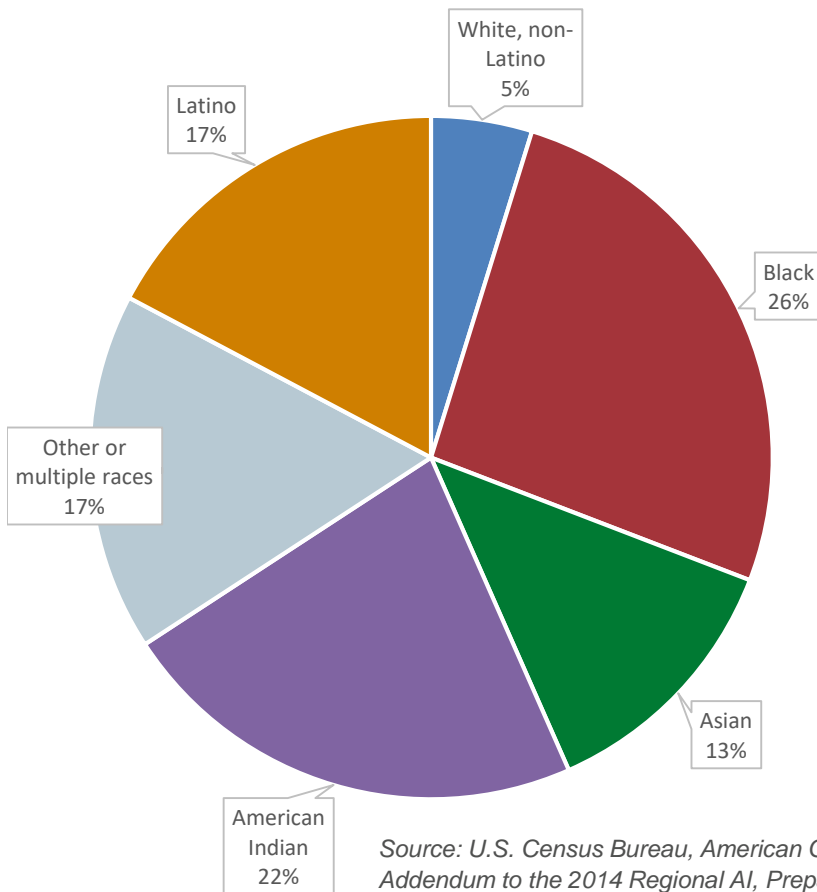
Addendum to the 2014 Regional AI, Prepared by Mosaic Community Planning for the FHIC



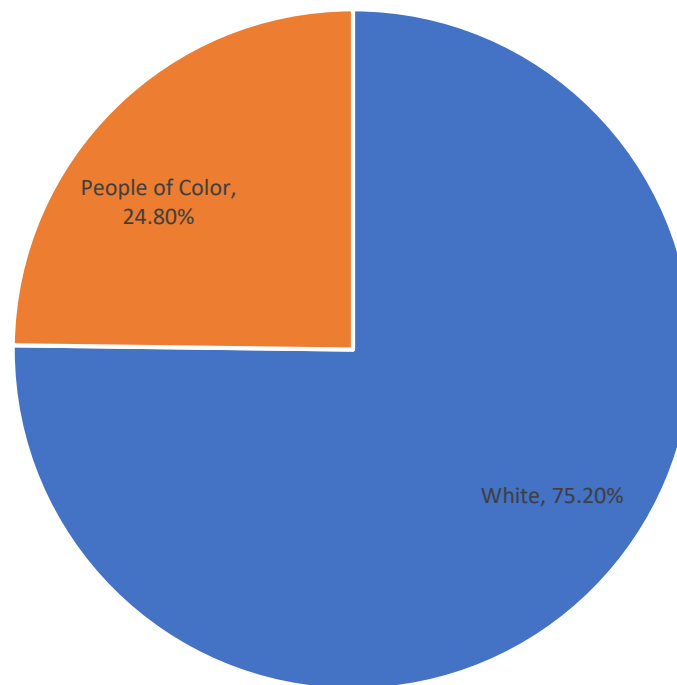
Human Rights & Equal Economic Opportunity

Poverty and Race

Poverty Rate by Race and Ethnicity,
2010 - 2014

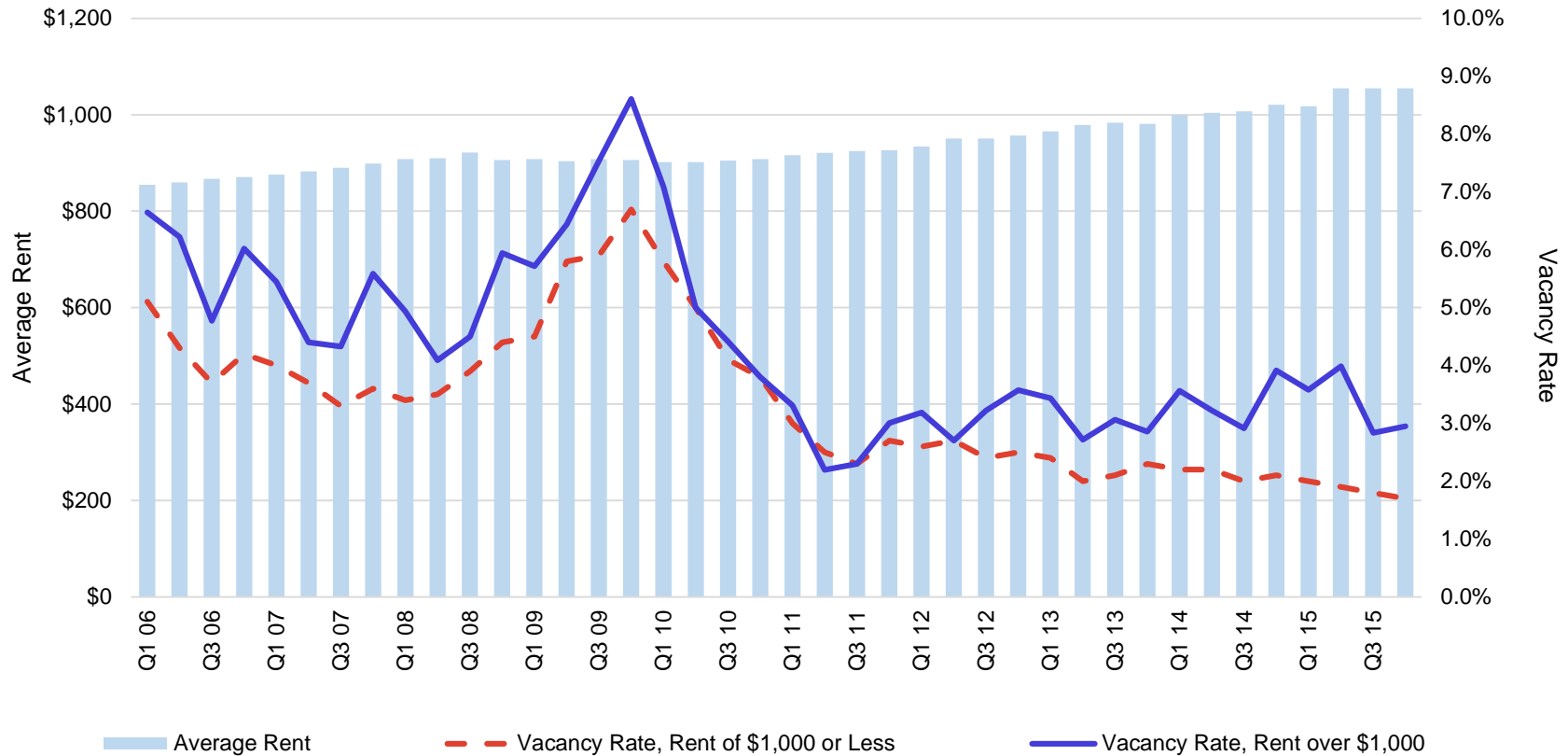


Race and Ethnicity as Percent of Total
Population, 2010-2014



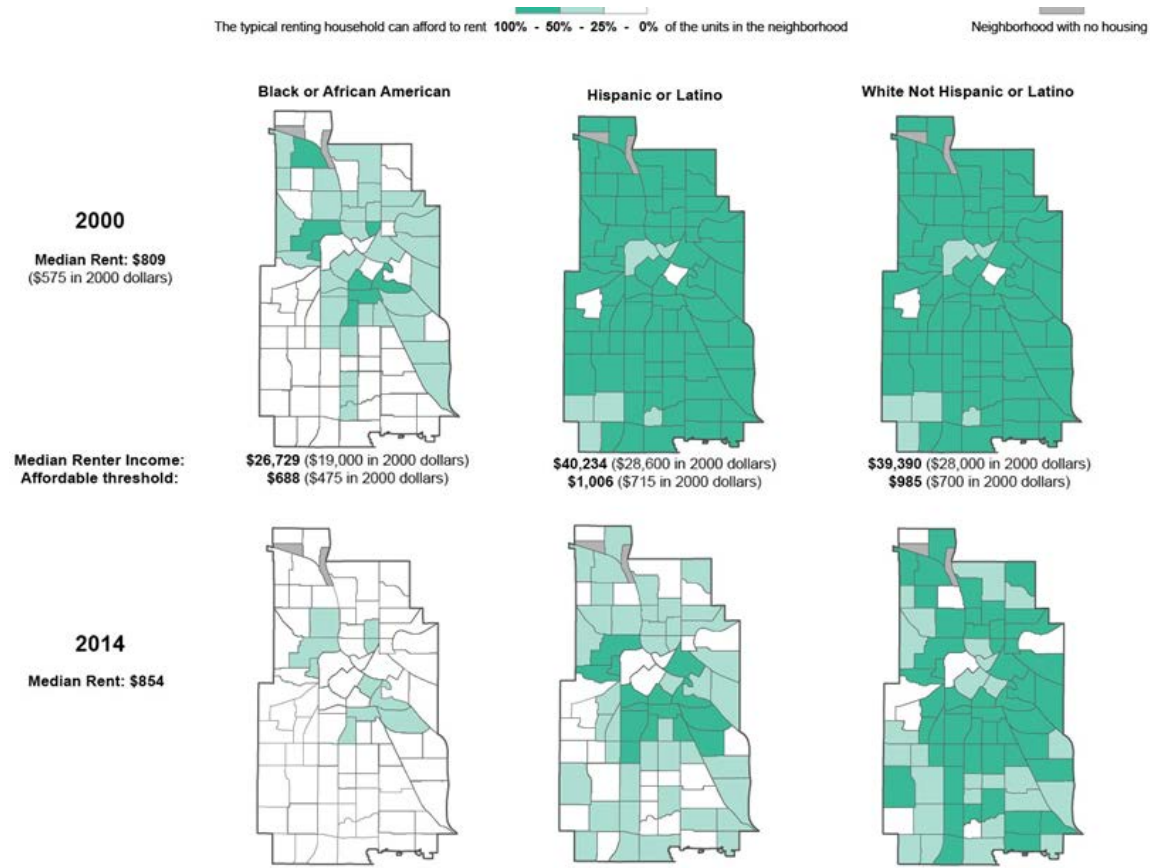
Source: U.S. Census Bureau, American Community Survey Five-Year Estimates, 2010-2014
Addendum to the 2014 Regional AI, Prepared by Mosaic Community Planning for the FHIC

Vacancy Rate



Source: Minnesota Housing Partnership analysis of GVA Marquette data. Addendum to the 2014 Regional AI, Prepared by Mosaic Community Planning for the FHIC

Change in Rental Affordability by Race/Ethnicity



Source: Center for Urban and Regional Affairs (CURA) *Gentrification Analysis of Minneapolis and St. Paul, 2010-2015 Preliminary Results* (January 14, 2017), University of Minnesota.

Affirmatively Further Fair Housing

1. Recipients of HUD Funds: Community Development Block Grants, HOME Funds, ESG and HOPWA must certify they will “Affirmatively Further Fair Housing”
2. Incentive to Comply: False Certification = False Claims Act and treble damages
3. Westchester County: \$52 Million Settlement
 - 7 False Certification Findings, 1000 Implied
 - < 3% African American residents, No Analysis of Race in its fair housing analysis
 - *U.S ex rel. Anti-Discrimination Center v. Westchester County*, 2009 WL 455269 (S.D.N.Y. Feb. 24, 2009).



Affirmatively Furthering Fair Housing

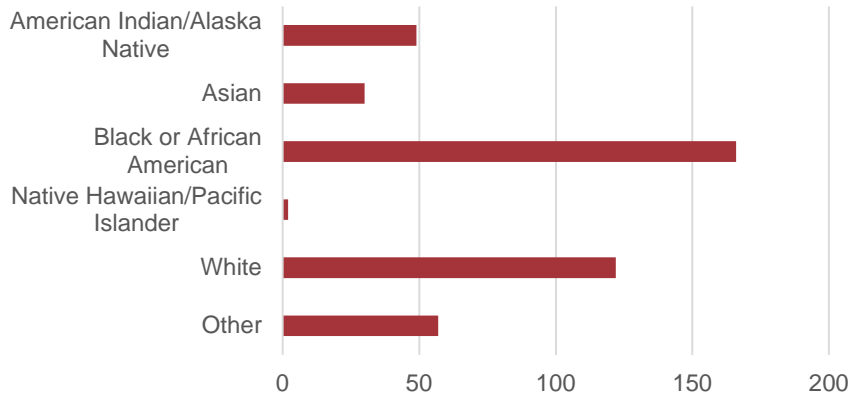
1. Meaningful Actions
2. Address significant disparities in housing needs
3. Overcoming historic patterns of segregation
4. Foster inclusive communities free from barriers that restrict access to opportunity
Responding to disproportionate housing needs by the protected class

Fair Housing Implementation Council

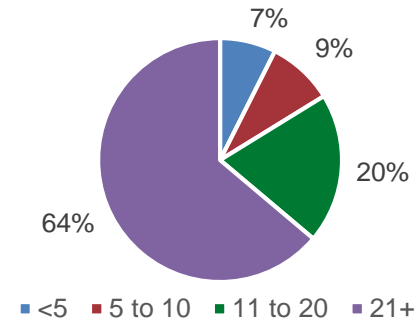
1. The FHIC made up of county and city governments that receive federal funds through HUD and are required to “affirmatively further fair housing.”
2. 2014 Analysis did not adequately consider race/national origin and segregation.
3. Minneapolis and Saint Paul entered into Voluntary Compliance Agreements with HUD and the complainants, agreeing to update the study.
4. Addendum to focus on race/national origin and segregation
5. HUD-appointed advisory committee
6. HUD provided technical assistance funds to support a new approach to community engagement

Community Engagement

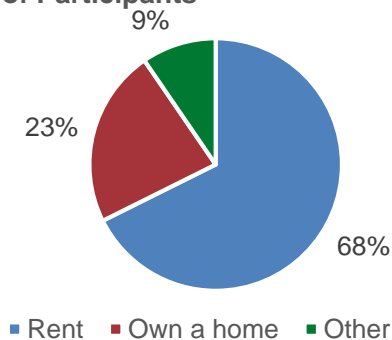
Racial Composition of Participants



Participants' Residency in the U.S.



Tenure of Participants



Household Income of Participants



Source: Addendum to the 2014 Regional AI, Prepared by Mosaic Community Planning for the FHIC

Key Learnings

1. Addressing disparities and preventing displacement is urgent
2. **Undoing Racism Workshop**
3. Do not make decisions without the people affected by them
4. Required qualifications: Existing relationships, experience organizing, representation, and understanding of institutional/historical racism
5. Recognize community experts and resource them
6. Reduce reliance on intermediaries
7. Don't underestimate your ability to be part of the solution
8. Embrace criticism
9. Change course



Fair Housing Issues Identified

1. There is a need for expanded distribution of affordable housing across the region
2. Areas of concentrated poverty require coordinated place-based investment to increase opportunity for residents
3. Displacement due to gentrification and neighborhood change causes a loss of affordable housing and limits fair housing choice

Displacement and Gentrification

1. Involuntary loss of housing as a fair housing issue = Adverse Action
2. Sale of Naturally Occurring Affordable Housing –Substantial rent increases and more restrictive screening
3. Rising rents: 2010-2014*:
 - 31% Increase in Frogtown, 45% in Willard-Hay, 30% in Uptown, Sections of Hamline-Midway - 84% between 2000 and 2014
4. Nuanced of place-based investments connected to displacement prevention

*Source: <http://www.cura.umn.edu/gentrification>



A Balanced Approach to Fair Housing

1. Investment in construction of new affordable housing should prioritize expanding affordability regionally and within jurisdictions,
 - Include in areas with access to opportunity, as defined through a community engagement process, that may include, but are not limited to, quality schools, transportation, economic opportunity, and other public resources.
2. Construction of new affordable units in areas of concentrated poverty where 50% or more of the residents are people of color, should be considered only as part of a comprehensive community investment strategy to address targeted community housing needs.
3. Preservation of existing affordable housing in these areas should be prioritized over new construction.



Recommendations

1. Improve Opportunities for Mobility within the Region
2. Reduce Resident Displacement
3. Increase Access to Homeownership
4. Expand Funding for Affordable Housing
5. Improve Fair and Affordable Housing Planning
6. Expand Locations of Affordable Housing
7. Institute Effective and Meaningful Community Engagement
8. Invest in Place-Based Community Improvements
9. Support Multicultural Housing Needs
10. Support Residents' Fair Housing Rights

Relevant Recommendations

1. Review and update tenant screening policies on criminal background (1F)
2. Work with a marketing firm and local stakeholders – awareness campaign about housing affordability (counter NIMBYism, build political will)(4a)
3. Preserve naturally occurring affordable housing, market funds to NOAH property owners who may sell. (4b)
4. Amplify community voices, Provide language access to Limited English Proficiency individuals, enhance engagement with communities of color (7 a, c, d)
5. Support multicultural housing needs (applications online, hard copy, work with cultural organizations to promote) (9b)
6. Review affirmative marketing plans and enact policies/provisions to ensure non-discrimination (10E)

QUESTIONS?