

FINAL INVESTIGATIVE REPORT

SECTION 109, TITLE VI AND SECTION 504 COMPLIANCE REVIEW

COUNTY OF MARIN, CALIFORNIA CDBG PROGRAM

Compliance Review Identification

- I. Case Numbers
 - 09-09-R003-9 (Section 109)
 - 09-09-R008-6 (Title VI)
 - 09-09-R009-4 (Section 504)

- II. Recipient
 - County of Marin
 - Brian Crawford, Director
 - Community Development Agency
 - 3501 Civic Center Drive
 - San Rafael, CA 94903

 - Staff Contacts: Roy Bateman, Community Development Coordinator
 - Reid Thaler, Planner, CDBG Capital and Public Service Projects

- III. Compliance Review Team
 - Sharon Chan, Team Leader
 - Celia Bobisud (Headquarters-FHEO)
 - Jeff Jackson
 - Patricia Miskovich
 - Donald Roby

- IV. Date of On-site Review: June 29 – July 2, 2009

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PART I - - INTRODUCTION/BACKGROUND

SECTION I-A – JURISDICTION, PURPOSE OF REVIEW, AND ISSUES INVESTIGATED

This compliance review is being conducted pursuant to the following legal authorities and civil rights statutes.

Section 109 of the Housing and Community Development Act of 1974, as amended (Section 109). Section 109 prohibits discrimination on the basis of race, color, religion, sex or national origin in any program or activity funded in whole or in part with community development funds from HUD. 24 CFR 6.11(b) of the Department’s regulations implementing Section 109 provide for the period conduct of such reviews as are necessary to determine compliance with the act. Equal Opportunity review criteria for the Entitlement program are contained at 24 CFR 570.904.

Title VI of the Civil Rights Act of 1964, as amended (Title VI). Title VI prohibits discrimination on the basis of race, color, and national origin in programs or activities that receive Federal financial assistance. 24 CFR 1.7(a) of the Department’s regulations implementing Title VI provides for the periodic review of the practices of HUD recipients to determine whether they are in compliance with Title VI.

Section 504 of the Rehabilitation Act of 1973, as amended (Section 504). Section 504 prohibits discrimination on the basis of disability in programs or activities that receive Federal financial assistance. 24 CFR 8.56(a) of the Department’s regulations implementing Section 504 provides for the conduct of period reviews of the practices of HUD recipients to ascertain their compliance with Section 504.

The primary purpose of conducting the review was to determine whether the County of Marin is administering its HUD funded and assisted Community Development Block Grant programs and activities free from the effects of discrimination based on race, color, national origin, religion, gender, and disability. The review focused on the following issues:

Issue 1 – Citizen Participation. Whether the recipient administers a community-wide citizen participation process that assures that all members of the community, including racial and ethnic minorities, persons with limited English proficiency, female-headed households, and people with disabilities, are encouraged to participate in the planning process.

Issue 2 – Benefits, Services, and Methods of Administration. Whether the recipient and its sub-recipients have affirmatively furthered fair housing choice through policies, practices, procedures and methods of administration which promote effective participation in funded programs, and promote integrated communities, regardless of race, color, national origin, gender or disability.

Issue 3 – **Section 504 Program Requirements.** Whether the recipient has fulfilled General Program Requirements regarding communications, designation of a Section 504 Coordinator, public non-discrimination notice, grievance procedures, self-evaluation and needs assessment and transition plan.

Issue 4 – **Limited Site Accessibility Analysis.** Based on a limited assessment of the recipient and sub-recipient facilities, whether they were generally accessible to people with disabilities.

SECTION I-B – BACKGROUND

The County of Marin is located to the north San Francisco Bay Area. The population size in 2007 was 248,096. The county has a total area of 828 square miles of which 520 square miles is land and 308 square miles is water. Most of the county’s population resides on the eastern side. A few communities are found along San Francisco Bay such as Sausalito, Tiburon, Corte Madera and San Rafael. The interior part of the county contains large areas of agriculture and open space. West Marin is alongside the California coastline, where small incorporated communities that depend on agriculture and tourism are found. According to the Bureau of Economic Analysis, Marin County has the 5th highest per capita income in the United States at \$91,483. It is governed by local cities and the Marin County Board of Supervisors. The county seat is in the city of San Rafael.

Subsection I-B-1 – Federal Financial Assistance

The County of Marin administers a CDBG Entitlement program governed by its current 5-Year Consolidated Plan for program years 2005-2010. The recipient is currently receiving \$1,587,000 in its Entitlement grant. The recipient receives other community development funding (HOME) directly from the Department and its share of HOPWA from the San Francisco Redevelopment Agency. The review focused on the recipient’s administration of its CDBG program during program years 2006-2008. The recipient’s program year runs from July 1st to June 30th. The following table shows the amounts of CDBG funding received during each of the program years being analyzed for this compliance review.

**Table I-B-1 -CDBG Funding
Program Years 2006, 2007 and 2008**

Program Year	2006	2007	2008
CDBG	\$1,654,624	\$1,647,402	\$1,587,000

Subsection I-B-2 – Demographic Characteristics

The following table reflects the racial, ethnic, and disability characteristics of the population in the County of Marin and six cities with the largest population size in the county's six geographical regions or Planning Areas (Novato, San Rafael, Lower Ross Valley, Upper Ross Valley, Richardson Bay, and West Marin). To encourage citizen participation in the CDBG planning process and promote a more manageable planning process, each Planning Area holds a public meeting annually to solicit public input on the housing and community development needs and to make recommendations on using an allotted a portion of CDBG funding.

The city of San Rafael is significantly more diverse than the county, overall, having a notably larger representation of Hispanics. The representation of racial and ethnic minorities in the city of Novato is reasonably consistent with the County demographic characteristics. Whereas, the cities in the other four Planning Areas are significantly less diverse than the county.

Within the county's boundary are 51 full or partial Census Tracts. According to the County's 5-year Consolidated Plan (Con Plan), there are three Census Tracts with areas of low-income concentration. Census Tracts 1110 (downtown San Rafael), 1122 (Canal area of San Rafael), and 1290 (Marin City) have the highest concentration of low income households. Two of these census tracts with low-income concentration area also identified in the county's 2005-2009 Consolidated Plan as being areas of minority concentration (the census tract that contains the federal penitentiary at San Quentin is excluded from discussion here): Tract 1122 has a high concentration of Hispanics (70.1%) and slight concentration of Asians (8.3%); tract 1290 has a high concentration of Blacks (45.9%). The U.S. Census reveals that tract 1041.02 (south/central Novato) has a high concentration of Hispanics (22.4%) and there are 15 tracts with a significant representation of White/Non-Hispanics. Note: For purposes of FHCO's findings and concerns in this report, a minority concentrated neighborhood within a metropolitan area is one in which the overall representation of racial and ethnic minorities exceeds 50% of the neighborhood's population or one in which the representation of any one racial or ethnic minority group is at least 10% greater than the representation of that respective group in the area's population overall.

**Table I-B-2- Six Planning Areas' Most Populated Cities and County of Marin
General Demographic and Disability Characteristics¹**

Race/Ethnicity/Disability	City of Novato (Novato P.A.)	City of San Rafael (San Rafael P.A.)	City of Larkspur (Lower Ross Valley P.A.)	City of San Anselmo (Upper Ross Valley P.A.)	City of Mill Valley (Richardson Bay P.A.)	City of Bolinas (West Marin P.A.)	County of Marin
Race							
Total Population	47,630 (100%)	56,053 (100%)	12,014 (100%)	12,378 (100%)	13,600 (100%)	1,246 (100%)	247,289 (100%)
White	82.8%	75.8%	91.3%	91.6%	91.4%	90.5%	84.5%
Black	2.0%	2.2%	0.8%	1.1%	1.0%	1.8%	2.9%
Asian	5.2%	5.6%	3.9%	2.9%	4.1%	1.8%	4.5%
Am. Ind./AK Nat.	0.5%	0.6%	0.2%	0.4%	0.3%	0.3%	0.4%
Native HI/Other Pac. Is.	0.2%	0.2%	0.1%	0.1%	0.2%	0.4%	0.2%
Other ²	9.3%	15.7%	3.7%	3.9%	3.0%	5.1%	8.0%
Hispanic/Latino							
Total Population	47,630 (100%)	56,063 (100%)	12,014 (100%)	12,378 (100%)	13,600 (100%)	1,246 (100%)	247,289 (100%)
Hispanic or Latino	13.1%	23.3%	4.3%	4.1%	3.5%	5.1%	11.1%
Not Hispanic or Latino	86.9%	76.7%	95.7%	95.9%	96.5%	94.9%	88.9%
Disabled (5 years+)	16.8%	20.1%	14.2%	11.0%	12.2%	15.2%	15.4%

¹ 2000 U.S. Census, SF-3, P7 (Race/Ethnicity) & PCT26 (Disability)

² Includes some other race and two or more races.

The following tables display the household type, tenure type, and racial and ethnic demographics of owner and renter occupied housing units in the six Planning Areas most populated cities and the County of Marin.

Table I-B-3 - Six Planning Areas' Most Populated Cities and County of Marin Household Type Characteristics³

Household Type	City of Novato	City of San Rafael	City of Larkspur	City of San Anselmo	City of Mill Valley	City of Bolinas	County of Marin
Total Households	46,810 (100%)	54,041 (100%)	11,840 (100%)	12,268 (100%)	13,469 (100%)	1,147 (100%)	235,786 (100%)
Male Headed Households	85.6%	82.6%	76.6%	81.9%	79.8%	80.6%	83.1%
Female Headed Households	14.4%	17.4%	23.4%	18.1%	20.2%	19.4%	16.9%

Table I-B-4 -Six Planning Areas' Most Populated Cities and County of Marin Tenure Type Characteristics⁴

Cities and County of Marin/Total Housing Units	Owner Occupied Units	Renter Occupied Units
Novato (18,526)	12,512 (67.5%)	6,014 (32.5%)
San Rafael (22,401)	12,009 (53.6%)	10,392 (46.4%)
Larkspur (6,178)	3,117 (50.5%)	3,061 (49.5%)
San Anselmo (5,322)	3,554 (66.8%)	1,768 (33.2%)
Mill Valley (6,137)	4,017 (65.5%)	2,120 (34.5%)
Bolinas (500)	324 (64.8%)	176 (35.2%)
Marin County (100,650)	64,018 (63.6%)	36,632 (36.4%)

³ 2000 U.S. Census, SF-3, P9 (family and non-family households)

⁴ 2000 U.S. Census, SF-3, Table H7

**Table I-B-5 - Six Planning Areas Most Populated Cities and County of Marin
Race/Ethnicity of Owner and Renter Occupied Housing Units⁵**

Race/Ethnicity	City of Novato (Novato P.A.)	City of San Rafael (San Rafael P.A.)	City of Larkspur (Lower Ross Valley P.A.)	City of San Anselmo (Upper Ross Valley P.A.)	City of Mill Valley (Richardson Bay P.A.)	City of Bolinas (West Marin P.A.)	County of Marin
Race							
Total Owner Occupied Units	12,512 (100%)	12,009 (100%)	3,117 (100%)	5,322 (100%)	4,017 (100%)	324 (100%)	64,018 (100%)
White	91.3%	92.1%	95.1%	96.0%	96.1%	96.3%	93.4%
Black	0.9%	0.7%	0.1%	0.1%	0.0%	0.0%	0.8%
Asian	4.4%	4.6%	2.8%	1.3%	2.5%	1.2%	3.5%
Am. Ind./AK Nat.	0.4%	0.04%	0.0%	0.0%	0.1%	0.0%	0.1%
Other ⁶	2.9%	2.6%	1.9%	1.2%	1.2%	2.5%	2.3%
Hispanic/Latino							
Total Owner Occupied Units	12,512 (100%)	12,009 (100%)	3,117 (100%)	5,322 (100%)	4,017 (100%)	324 (100%)	64,018 (100%)
Hispanic or Latino	4.0%	2.7%	2.9%	1.7%	2.9%	.9%	2.8%
Not Hispanic or Latino	96.0%	97.3%	97.1%	98.3%	97.1%	99.1%	97.2%
Race							
Total Renter Occupied Units	6,014 (100%)	10,392 (100%)	3,061 (100%)	1,768 (100%)	2,120 (100%)	176 (100%)	36,632 (100%)
White	79.1%	73.2%	92.1%	89.4%	2.7%	94.3%	93.4%
Black	3.7%	3.6%	0.8%	1.8%	2.5%	0.0%	0.8%
Asian	5.0%	5.5%	3.1%	2.7%	3.5%	0.0%	3.5%
Am. Ind./AK Nat.	0.4%	0.8%	0.0%	0.5%	0.0%	0.0%	0.1%
Other ⁷	11.8%	16.9%	4.0%	5.7%	2.5%	5.7%	2.3%
Hispanic/Latino							
Total Renter Occupied Units	6,014 (100%)	10,392 (100%)	3,061 (100%)	1,768 (100%)	2,120 (100%)	176 (100%)	36,632 (100%)
Hispanic or Latino	16.2%	23.9%	4.1%	3.2%	4.1%	2.8%	12.2%
Not Hispanic or Latino	83.8%	76.1%	95.9%	96.8%	95.9%	97.2%	87.8%

⁵ 2000 U.S. Census, SF-3, H11 and H12

⁶ Includes Native Hawaiian/Pacific Islander, other race and two or more races.

⁷ Includes Native Hawaiian/Pacific Islander, other race and two or more races.

The tables assembled from the 2000 U.S. Census data reveal that household type characteristics for each of the most populated cities in the Planning Areas are generally consistent with the county. The city of Larkspur has a slightly higher percentage of female-headed households. The tenure type characteristics are consistent for all cities with that of the county except for the cities of San Rafael and Larkspur, which have significantly fewer owner-occupied units or in the converse, significantly more renter-occupied units. In addition, racial/ethnic characteristics of owner-occupied housing, as is true for characteristics of the general population, reflect notably lower representations of racial/ethnic minorities. There are slightly higher percentages of Asian owner-occupied units in the cities of Novato and San Rafael. The percentage of Hispanic owners is slightly higher in the city of Novato as well. Among renters, the percentage of racial/ethnic minorities range from slightly to significantly higher in the larger cities of San Rafael and Novato in comparison to their representation in the county's population. The percentage of Black renters in the cities of San Anselmo and Mill Valley are also slightly higher compared to their representation in the county's population.

Inasmuch as the recipient funds a majority of its programs to benefit the public and not homeowners (see Section III, Benefits, Services and Methods of Administration, below). Hispanics represent the largest share (11.1%) of racial and ethnic minorities in Marin County, which is significant in assessing their representation among beneficiaries. According to Summary File 3, Table H12, there are 6,252 Hispanic households in Marin County. Of these, 4,478 are renter occupied units or in essence, 12.2% of the renter occupied units are Hispanic households.

The following table reflects limited English proficiency for the population in the most populated cities in the county's six Planning Areas and the County's overall population, age 18 and over.

Table I-B-6 -Limited English Proficiency⁸
Six Planning Areas Most Populated Cities and County of Marin

	Total Population, Age 18 and Over	Total Population, Age 18 and Over and Speak English "not well" or "not at all"	
		Speak Spanish	Speak Asian/Pacific Islander Languages
County of Marin	197,281 (100%)	7,085(3.6%)	987 (0.5%)
Novato	36,593 (100%)	1,293 (3.5%)	267 (0.7%)
San Rafael	45,277 (100%)	4,892 (10.8%)	353 (0.8%)
Larkspur	10,171 (100%)	115 (1.1%)	9 (0.1%)
San Anselmo	9,772 (100%)	64 (0.7%)	55 (5.6%)

⁸ 2000 U.S. Census, SF-3, Table P19

Mill Valley	10,660 (100%)	48 (0.5%)	24 (0.2%)
Bolinas	970 (100%)	12 (1.2%)	0 (0.0%)

The predominant share of the LEP population in the recipient's jurisdiction is composed of persons who speak Spanish and Asian/Pacific Islander languages not well or not at all. There are significant percentages of the Spanish speaking population who do not speak English well or not at all residing in the cities of Novato and San Rafael. Of the Asian/Pacific Islander languages, Chinese, Japanese and Korean are the most common languages spoken at home for the population age 5 and over. The review included an assessment as to whether the recipient or its sub-recipients undertook efforts to assure equitable participation by Hispanic applicants and beneficiaries who are limited English proficient.

Subsection I-B-3- Compliance Background and Litigation/Fair Housing Complaints

There was no documentation found to indicate that this recipient has been the subject of a routine monitoring review, nor any Section 109, Title VI, or Section 504 Compliance Review, within the past ten years, or more. The Department did conduct a compliance review of the Marin Housing Authority in the 2001-2002 timeframe. According to records available in TEAPOTS, there were no housing discrimination complaints filed against the recipient or any sub-recipient housing providers, such as homeless assistance providers, during the three year period under review.

PART II – ISSUES, EVIDENCE, AND CONCLUSIONS

SECTION II-A – CITIZEN PARTICIPATION

Issue: Whether the CDBG recipient administers a community-wide citizen participation process that assures that all members of the community, including racial and ethnic minorities, persons with limited English proficiency, female-headed households, and people with disabilities, are encouraged to participate in that process and have equitable access to participate.

Community Development Block Grant (CDBG) Entitlement recipients are required to develop a Citizen Participation Plan (Con Plan) that assures that all members of the community, including racial and ethnic minorities, persons with limited English proficiency, and people with disabilities, are encouraged to participate in the consolidated planning and performance review process; this requirement is set forth at 24 CFR 91.105(a) (2) (ii).

Subsection II-A-1- Policy Citizen Participation Plan

The recipient's Citizen Participation Plan (CPP) is its written policy providing for and encouraging citizen participation in the development of its application to HUD for federal housing programs (CDBG and HOME) and the Con Plan, amending the Con Plan, in reprogramming funds, and in evaluating program performance. The CPP is not dated and was incorporated into the 2005-2009 (plan years) County of Marin Con Plan under the Citizen Participation section (Con Plan/pp. 3-13). Additionally, actions taken during program years 2007/08, 2008/09, 2009-10 to ensure compliance with CDBG planning and funding requirements were reported in the County of Marin Con Plan Amendments (or Annual Action Plan) for each of the respective plan years (pp. 1-2) and the Consolidated Annual Performance and Evaluation Report (CAPER) for program year (PY) 07/08 (pg. 21).

The CPP specifically requires that the county staff will encourage the participation of low and moderate income persons, residents of areas near where federal funds are proposed to be used, residents of predominantly low and moderate income neighborhoods, individuals and organizations serving the needs of lower income persons, people with special needs, persons with disabilities including those with mobility, visual or hearing impairments. Further, county staff members will take steps to encourage the participation of non-English speaking residents and to identify how their needs can be met. To encourage the participation of Marin County Housing Authority (MCHA) program participants, county staff will provide information on Con Plan projects related to housing developments in the surrounding communities for distribution at the MCHA's annual public hearing.

To encourage citizen participation and promote community interest, the recipient has divided the county into six Planning Areas, which include incorporated cities and unincorporated areas. The six Planning Areas are Novato, San Rafael, Upper Ross Valley, Lower Ross Valley, Richardson Bay, and West Marin. Each Planning Area has a Local Area Committee (LAC) consisting of a city council appointee from the city or town in the planning area and a county supervisor whose supervisorial district most closely reflects the boundaries of the planning area. The LAC is responsible for conducting an annual public hearing to obtain citizen comments on housing and community development needs, development of proposed needs and review program performance. Each LAC reviews the amount of funds available, considers proposals for housing, capital and public service projects to benefit residents in its area, recommends reallocation of funds from activities lacking progress to new activities, and ensures that projects are consistent with HUD guidelines and meeting identified needs.

In addition, a Countywide Priority Setting Committee (CPSC) was established to hold an annual public hearing to obtain comments on housing and community needs, develop proposed programs and review program performance. The CPSC consists of one representative from the council of each participating city or town and a member from the county's Board of Supervisors. The CPSC is responsible for reviewing funds available to the county (as a whole), assessing needs and determining goals, coordinating projects and funding priorities, considering proposals for housing on a countywide basis, evaluating competing proposals for funding, recommending reallocation of funds to new activities, recommending approval or modification of the method used for project selection and the CPP, setting annual funding and policy local housing assistance program and monitoring program progress and performance.

The Board of Supervisors has an individual involved at each Planning Area hearing and will be represented on the CPSC. The Board conducts a minimum of one public hearing annually on the proposed use of CDBG funds and whenever the policies vary from previously approved policies.

The county staff works with city staff, the LAC, and the Board of Supervisors to establish meeting agendas, dates and locations.

The Con Plan process involves conducting an informational workshop for citizens, public agencies and other interested parties to solicit public input prior to adopting the Con Plan. The workshop will review the amount of funding available to each planning area, activities previously funded and the proposed schedule of upcoming meetings and hearings; assess housing and community development needs; determine goals and strategies; propose community development projects; recommend priorities; review program requirements; establish needs for new and existing assisted housing; and identify potential target areas for housing rehabilitation and other community development assistance. A public hearing will be held in each LAC, by the CPSC and by the Board of Supervisors on the proposed Con Plan.

The recipient's internal guidelines require that all public hearings will be noticed at least two weeks in advance of the hearing with notices indicating the date, time, location and topics to be considered. Each hearing will provide a forum for public input, questions, and project requests as well as program information and status. In addition, news media will be informed of all meetings. The county will provide the public with a 30-day advance notice of the availability of the Con Plan for viewing and will publish notices in the Marin Independent Journal, a local newspaper of general circulation which is published solely in the English language. For the CAPER, the county will publish a notice in the Marin Independent Journal providing for a 15-day review and comment period. HUD's Section 109 implementing regulations at 24 CFR 6.6 require the recipient to maintain records that demonstrate compliance with citizen participation requirements in 24 CFR Part 91. 24 CFR 91.105(c) (2) requires the county to provide citizens with reasonable notice and an opportunity to comment on substantial amendments. The CPP must provide a period not less than 30 days to receive comments on the substantial amendment before the amendment is implemented. ***As written, the policy does not provide a period of 30 days to receive comments on any substantial amendment and will be reflected as a Concern, below, in Subsection II-A-3.***

The CPP, Con Plan, Annual Action Plan (AAP), Substantial Amendments, CAPERs, records of hearings, prior applications, letters of approval and grant agreement are available for citizen review at the Marin County Community Development Agency (CDA) office during normal working hours. Upon request, copies of the CPP, Con Plan, AAP, Substantial Amendments, and CAPERs will be made available to the public. If requested, copies will also be made available in a format accessible to persons with disabilities.

Public hearings will be held at times and locations convenient to potential or actual beneficiaries as well as at locations accessible to persons with disabilities. Reasonable accommodations will be provided to persons with disabilities. When a significant number of non-English speaking residents are anticipated to participate in a public hearing, arrangements will be made to ensure their full participation including provision of translators.

Written complaints from the public will be responded to by county staff in writing within 15 days of receipt. If the complaint is not resolved by county staff level, then the CPSC will serve as a first level of appeal. If the grievance remains unresolved, a final appeal can be made to the Board of Supervisors and the decision thereafter will be final. Persons will be notified of the opportunity to submit views and criticisms to the HUD Regional Office.

In FHEO's review of the CPP, there were no other issues cited in regards to the race, color, national origin, religion, sex or disability of potential or actual beneficiaries, except for the publication of notice for the public planning process solely in the English language. However, we will make findings regarding LEP outreach in the sections below. With exception of the LEP outreach issues, FHEO's review of the recipient's CPP with respect to the planning processes did not disclose issues that violate Title VI, Section 109, Section 504 or their respective implementing regulations at 24 CFR Parts 1, 6, and 8.

Subsection II-A-2 - Summary and Analysis

Our analysis is based on reports, records, policies and other information submitted in response to the data request letter as well as a review of recipient records, staff interviews, documents and other information gathered during the on-site portion of the review.

Interviews were conducted with two county employees, Roy Bateman, CDBG Coordinator and Reid Thaler, Planner for CDBG Public Service and Capital Projects, and with county staff from the county's Community Development Agency, regarding the CDBG planning process and efforts to encourage citizen participation. The planning process was described to include ten public meetings as follows: One hearing is held in each of the four planning areas to discuss and recommend proposed projects for funding; two hearings are held in each of the two planning areas, Novato and San Rafael, to assess proposed capital and housing projects and to review public services projects; one countywide hearing is held to review public service projects; and one Board of Supervisors meeting is conducted for final approval of project funding. The county's CDBG Coordinator and Planner are present at all meetings to respond to any questions. The county issues a Schedule of Public Hearings that identifies the planning area, date, time and location of all public meetings. The Schedule of Public Hearings is sent to all agencies and organizations who applied for funding. The county advertises the availability of the AAP and CAPERs for public examination and comment in the Marin Independent Journal. The county also posts meeting notices at the CDA office. The Coordinator commented that most attendees are project applicants and county staff members and rarely are there any community members attending who are not affiliated with an organization. Mr. Thaler is identified as the person to contact in the public meeting notices if anyone wishes to comment and cannot attend a meeting. Mr. Thaler described receiving requests to read written statements at public meetings from staff members who work for non-profit community agencies and cannot attend meetings. Neither Bateman nor Thaler recalls receiving comments from the public. ***The recipient's lack of affirmative outreach to encourage the participation of persons who are racial and ethnic minorities including those who are Limited English Proficient, female headed households, and persons with disabilities, in the planning process, especially at public hearings held in the local planning areas, as required in the Citizen Participation Plan, results in FHEO's issuance of a Preliminary Finding of Non-compliance with Title VI, Section 109 and Section 504 in Subsection II-A-3, below.***

There have been no requests for reasonable accommodations and no requests for language interpretation. If reasonable accommodations are requested, Mr. Thaler would contact the Disability Access Coordinator to inquire about what services the county can provide. Mr. Bateman stated that the Department of Health and Human Services maintains a list of staff members who can provide language interpretation, if interpreters are requested. (It was noted that during a visit to the Board of Supervisors Chambers, where public hearings are held, the receptionist stated that she has never received a request for language interpreter services or seen an oral interpreter provide services at *any* meeting.)

The compliance review consisted of reviewing public notices and notices used to inform citizens and/or applicant agencies of the review and comment period and of upcoming public hearings.

The county submitted four copies of its English language advertisements placed in the Marin Independent Journal. The advertisements invited the public to attend hearings and make comments on the Annual Action Plans for PY 07/08, PY 08/09, and PY 09/10 and the CAPER PY 0708. The following is a summary of the information submitted:

1. Public Notice of Availability of Draft Consolidated Annual Performance and Evaluation Report (CAPER) and Notice of Public Hearing to Request Comments on the Housing and Non-Housing Community Development Needs of Low-Income Persons in Marin County

8/15/08 notice states that the draft CAPER is available for public examination at the CDA office Monday through Friday between 8:00 a.m. to 5:00 p.m. Written comments could be submitted through 9/3/08 to Reid Thaler and the address and phone number is displayed. The CDA staff will hold a hearing at its office on 9/8/08 from 10:00 a.m. to 12:00 noon to hear comments from interested parties. The hearing location is accessible by wheelchair and public transportation. People with speech or hearing impairments could contact the office through the TDD device, California Relay Service, or nationwide Telecommunications Relay Service. All phone numbers were advertised. The California Relay Service could be reached in Spanish and the phone number is listed. Sign language interpretation, translation in languages other than English and interpretation for persons with visual impairments services are available by contacting Reid Thaler at least one week before the hearing date. Anyone who could not attend the hearing but wished to comment could contact Reid Thaler at the address or number provided.

2. Announcement of Proposed Fiscal Year 2007 Amendments to the 2005-09 Marin County Consolidated Plan and Notice of Public Hearing to Request Comments on the Housing and Non-Housing Community Development Needs of Low-Income Persons in Marin County

The 4/5/07 notice states the public is invited to comment on the proposed budgets for PY 07/08 CDBG funds, which were presented as an amendment to the Action Plan section of the Con Plan. Written comments could be submitted through 5/7/07 to Reid Thaler at the address or phone number provided. Paper copies of the Action Plan would be available at the CDA office between the hours of 9:30 a.m. to 5:00 p.m. as well as records regarding the use of past CDBG funds. A copy of the draft amended Con Plan would be sent upon request. The draft amendments are posted on the internet at www.marincdbg.com. To receive comments on the revised Con Plan and on past program performance, the county will hold a public hearing during the Board of Supervisors regular meeting on 5/8/07 at 9 a.m. or thereafter at the Board of Supervisors Chambers. For the precise time, anyone could call the phone number provided after 5/4/07. The hearing location is accessible by wheelchair and public transportation. People with speech or hearing impairments could contact the CDA office through the TDD device, California Relay Service, or nationwide Telecommunications Relay Service. All phone numbers are

provided. The California Relay Service could be reached in Spanish and the phone number was listed. Sign language interpretation, translation in languages other than English and interpretation for persons with visual impairments services are available by contacting the CDA office at least one week before the hearing. Anyone who could not attend the hearing but wished to comment could contact Reid Thaler at the address or phone number provided.

The Notice of Nondiscrimination Policy is advertised stating that the county does not discriminate on the basis of handicap in violation of 24 CFR Part 8 in its federally assisted programs. Anyone with questions about the policy or activities of the program is advised to contact Roy Bateman at the address or phone number listed. The person designated to process grievances under the policy is identified as Rocky Burks with an address and phone number provided. The public was informed that the relay services could be used to reach all county offices including the Section 504 Compliance Office and the CDA office.

3. Notice of Request for Comments and Public Hearing to Amend Marin County's Consolidated Plan, Announcement of the Proposed Fiscal Year 2008 Amendments to the 2005-09 Marin County Consolidated Plan, and Notice of Public Hearing to Request Comments on the Housing and Non-Housing Community Development Needs of Low-Income Persons in Marin County

The **4/2/08** notice states that the public is invited to comment through **4/7/08** on the budget amendment to the Con Plan. The amendment will reprogram \$100,000 in CDBG funds from the Gate Cooperative to The Next Key project and will allocate \$44,863.17 from program income from the sale of the Full Circle Elm Group Home to the Next Key. A public hearing to receive comments will be held on **4/8/08** during the regular meeting of the Board of Supervisors at 9:00 a.m. or thereafter at their Chambers. Services such as interpreters for sign language, persons with visual impairments, and for languages other than English will be available for anyone calling at least one week in advance of the hearing. ***The public notice did not provide citizens with a thirty-day review and comment period for a substantial amendment prior to implementing the amendment. This is reflected as a Concern, below.***

The public is invited to comment through 5/5/08 on the proposed budget for PY 08/09 CDBG funds, which was presented as an amendment to the Action Plan section of the Con Plan. Paper copies of the Action Plan are available at the CDA office between the hours of 9:30 a.m. to 5:00 p.m. as well as records regarding the use of past CDBG funds. A copy of the draft amended Con Plan would be sent to anyone upon request. Written comments could be submitted to Reid Thaler at the address provided. A report assessing the county's Con Plan performance is also available at the CDA office.

The county will hold a public hearing during the Board of Supervisors' regular meeting on 5/06/08 at 9:00 a.m. or thereafter to receive comments on the revised Action Plan section of the Con Plan. For the precise time, anyone could call the phone number provided after 5/2/08.

The hearing location is accessible by wheelchair and public transportation. People with speech or hearing impairments could contact the CDA office through the TDD device, California Relay Service, or nationwide Telecommunications Relay Service. All phone numbers are

provided. The California Relay Service could be reached in Spanish and the phone number is listed. Sign language interpretation, translation in languages other than English and interpretation for persons with visual impairments services are available by contacting the CDA office phone number at least one week before the hearing. Anyone who wishes to comment and cannot attend the hearing could contact Reid Thaler at the phone number provided.

The Notice of Nondiscrimination Policy is advertised stating that the county does not discriminate on the basis of handicap in violation of 24 CFR Part 8 in its federally assisted programs. Anyone with questions about the policy or activities of the program could contact Roy Bateman at the address or phone number listed.

4. Notice of Request for Comments and Public Hearing to Amend Marin County's Consolidated Plan, Announcement of the Proposed 2008 and 2009 Amendments to the 2005-09 Marin County Consolidated Plan, and Notice of Public Hearing to Request Comments on the Housing and Non-Housing Community Development Needs of Low-Income Persons in Marin County

The 4/1/09 notice states the public is invited to comment through 5/4/09 on the proposed budget for PY 08/09 CDBG funds and the use of Homelessness Prevention and rapid Re-Housing Program funds, which are presented as an amendment to the Action Plan section of the Con Plan. Paper copies of the Action Plan are available at the CDA office between the hours of 9:30 a.m. to 5:00 p.m. as well as records regarding the use of past CDBG funds. A copy of the draft amended Con Plan will be sent to anyone upon request. Written comments could be submitted to Reid Thaler at the address provided. A report assessing the county's Con Plan performance is available also at the CDA office.

The county will hold a public hearing during the Board of Supervisors' regular meeting on 5/05/09 at 9:00 a.m. or thereafter to receive comments on the revised Action Plan section of the Con Plan. For the precise time, anyone could call the phone number provided after 5/2/09. The hearing location is accessible by wheelchair and public transportation. People with speech or hearing impairments could contact the CDA office through the TDD device, California Relay Service, or nationwide Telecommunications Relay Service. All phone numbers are provided. The California Relay Service could be reached in Spanish and the phone number is listed. Sign language interpretation, translation in languages other than English and interpretation for persons with visual impairments services are available by contacting the CDA office phone number at least one week before the hearing. Anyone who wishes to comment and cannot attend the hearing could contact Reid Thaler at the phone number provided.

The Notice of Nondiscrimination Policy is advertised stating that the county does not discriminate on the basis of handicap in violation of 24 CFR Part 8 in its federally assisted programs. Anyone with questions about the policy or activities of the program could contact Roy Bateman at the address or phone number listed. The person designated to process grievances under the policy is identified as William Campagna, the Disability Access Manager and his address and phone number was provided. The public is advised that the relay services could be used to reach all county offices including the Section 504 Compliance Office and the CDA office.

In addition, the county submitted copies of the CDBG and HOME programs' Schedule of Public Hearings for PY 07/08, 08/09, and 09/10 in the English language. The Schedule displays dates, times, and location of public hearings for each of the six Planning Areas, the CPSC, and the Board of Supervisors. The following is a summary of the information submitted:

1. CDBG and HOME Program/Schedule of Public Hearings For Program Year 2007-2008 Funds

The schedule contains the following information:

- a. Two San Rafael planning area meetings of which one is to discuss public service funds and the other is to discuss capital and housing funds. Each meeting was held on a weekday in the evening at the San Rafael City Hall Council Chambers.
- b. One meeting for each of the Ross Valley planning areas. Both were held at 7:30 p.m. on Mondays and at the Corte Madera Town Hall Council Chambers.
- c. One meeting for Richardson Bay planning area at 7:30 p.m. on a weekday in Marin City.
- d. One meeting for the West Marin planning area on a weekday at 7:30 p.m. in Point Reyes.
- e. One meeting for the Novato planning area at 7:30 p.m. on a weekday in Novato.
- f. One meeting for the CPSC at the San Rafael City Hall Council Chambers on a weekday at 7:30 p.m.
- g. One Board of Supervisors meeting on a weekday at 9:00 a.m. in San Rafael at the Board of Supervisors Chambers.

The schedule includes the TDD and California Relay Service phone numbers to reach the CDA office. Persons attending are requested to not wear perfume or fragrances in consideration of persons with environmental sensitivities. Interpretation for sign language and languages other than English are available by calling the Roy Bateman one week in advance of the public hearing date. The schedule identifies a phone number and TDD number to call for transit information. Copies of documents in accessible formats could be requested. Various symbols of accessibility are displayed. Anyone requesting ASL interpreters and assistive listening devices could contact the CDA at least 72 hours in advance of the hearing date. ***A Concern is issued, below, for the inconsistent information provided to persons with hearing impairments with respect to requesting reasonable accommodations.***

2. CDBG and HOME Program/Schedule of Public Hearings For Program Year 2008-2009 Funds

The schedule contains the following information:

- a. Two San Rafael planning area meetings of which one is to discuss public service funds and the other is to discuss capital and housing funds. Each meeting was held on a weekday in the evening at the San Rafael City Hall Council Chambers.

- b. Two Novato planning area meetings of which one is to discuss public service funds and the other is to discuss capital and housing funds. Each meeting was held on a weekday in the evening.
- c. One meeting for each of the Ross Valley planning areas. Both were held at 7:30 p.m. on a weekday. The Lower Ross and Upper Ross hearings were held at the Library in Corte Madera and at a community center in San Anselmo respectively.
- d. One meeting for Richardson Bay planning area at 7:30 p.m. on a weekday in Marin City.
- e. One meeting for the West Marin planning area on a weekday at 7:30 p.m. in Point Reyes.
- f. One meeting for the CPSC at the Board of Supervisors Chambers in San Rafael on a weekday at 7:30 p.m.
- g. One Board of Supervisors meeting on a weekday at 9:00 a.m. in San Rafael at the Board of Supervisors Chambers.

The schedule includes the TDD and California Relay Service phone numbers to reach the CDA. Persons attending are requested to not wear perfume or fragrances in consideration of persons with environmental sensitivities. Interpretation for sign language and languages other than English are available by calling the Roy Bateman one week in advance of the public hearing date. The schedule identifies a phone number and TDD number to call for transit information. Copies of documents in accessible formats could be requested. Various symbols of accessibility are displayed. Anyone requesting ASL interpreters and assistive listening devices could contact the CDA at least 72 hours in advance of the hearing date. ***A Concern will be issued, below, as stated above for the inconsistent information provided to persons with hearing impairments with respect to requesting reasonable accommodations.***

3. CDBG and HOME Program/Schedule of Public Hearings For Program Year 2009-2010 Funds

The schedule contains the following information:

- a. Two San Rafael planning area meetings of which one is to discuss public service funds and the other is to discuss capital and housing funds. Each meeting was held on a Monday in the evening at the San Rafael City Hall Council Chambers.
- b. Two Novato planning area meetings of which one is to discuss public service funds and the other is to discuss capital and housing funds. Each meeting was held on a weekday in the evening.
- c. One meeting for each of the Ross Valley planning areas. Both were held in the evening on a weekday at the Corte Madera Town Hall.
- d. One meeting for Richardson Bay planning area at 7:00 p.m. on a weekday in Marin City.
- e. One meeting for the West Marin planning area on a weekday at 7:00 p.m. in Point Reyes.
- f. One meeting for the CPSC at the San Rafael City Hall Council Chambers on a weekday at 7:00 p.m.
- g. One Board of Supervisors meeting on a weekday at 9:00 a.m. in San Rafael at the Board of Supervisors Chambers.

The schedule includes the TDD and California Relay Service phone numbers to reach the CDA. Persons attending are requested to not wear perfume or fragrances in consideration of

persons with environmental sensitivities. Interpretation for sign language and languages other than English are available by calling the Roy Bateman one week in advance of the public hearing date. The schedule offers a phone number and TDD number to call for transit information. Copies of documents in accessible formats could be requested. Various symbols of accessibility are displayed. Anyone requesting ASL interpreters and assistive listening devices could contact the CDA at least 72 hours in advance of the hearing date. ***As stated, above, a Concern is issued, below, for the inconsistent information provided to persons with hearing impairments with respect to requesting reasonable accommodations.***

A review of the county's public notices was conducted to determine whether it took reasonable steps to encourage all citizens to participate in the Con Plan, Action Plan, and CAPER processes regardless of race, national origin (ethnicity), sex (gender), religion or disability. FHEO determined that the county's advertisements failed to encourage participation in the process by the general public as well as limited-English proficient (LEP) and individuals who are disabled with speech or hearing impairments.

As written in the CPP, citizens will be encouraged to participate in all phases of the project selection process, articulate needs, assist in establishing goals and strategies, express preferences on proposed activities, assist in selection of priorities, evaluate program and project performance, participate in the development of program applications and amendments. Citizens will have reasonable and timely access to local meetings. In addition, the CPP states that county staff will encourage participation of lower income residents and those in lower income neighborhoods, residents in areas where funds are proposed to be used, persons with special needs, persons with disabilities including mobility, visual or hearing impairments, and non-English speaking residents.

During interviews county staff confirmed that public hearings for the Con Plan, AAP and CAPER processes were advertised via the local newspaper and notices were posted outside the CDA office and on the internet. The advertisements invited the public to comment and attend Board of Supervisors hearings held in San Rafael at the Board of Supervisors Chambers starting at 9:00 a.m. One advertisement invited citizens to a meeting held at the CDA office on the CAPER at 10:00 a.m. The Schedule of Public Hearings displaying dates, times and locations of meetings as well as those held in local planning areas was distributed solely to applicants for funding. Public hearings for the local planning areas and the CPSC were held at 7:30 p.m. or later. The county did not present any other documentation of efforts to encourage public participation at public hearings held in local planning areas throughout the county. The schedule of hearings was not otherwise advertised or distributed in any manner to encourage public participation. There was no mention of efforts to use the news media to publicize upcoming public hearings as stated in the CPP. County staff stated that rarely does anyone from the community, who is not affiliated with an agency or organization, attend the hearings. ***As previously stated, above, the recipient's lack of affirmative outreach to encourage the participation of persons, who are racial and ethnic minorities, female headed households, and persons with disabilities, in the planning process, especially at public meetings held in the local planning areas, as required in the Citizen Participation Plan, results in issuing a Preliminary Finding of Non-compliance with Title VI, Section 109 and Section 504 in Subsection II-A-3, below.***

The CPP policy states that citizens will be encouraged to participate in all phases of the project selection process and have reasonable and timely access to local meetings held at cities located in each of the six planning areas. Although planning area and CPSC meetings were held in the evenings, as mentioned previously, citizens were not notified through public notices. Whereas, meetings in the city of San Rafael at the CDA office and Board of Supervisor Chambers were advertised but were held on weekdays at 9 a.m. or thereafter, which may not be considered convenient in time or location to citizens working and residing throughout the county who may be potential or actual program beneficiaries. Specifically for the residents in San Rafael and Marin City, where there are high concentrations of low-income Hispanic and Black households respectively, the county's practice of advertising public hearings that were held only during morning or normal working hours and only in the city of San Rafael has the discriminatory effect of limiting the participation of potential and actual beneficiaries of the program based on race and national origin. ***The recipient's failure to conduct hearings at times and locations convenient to potential and actual beneficiaries is reflected, below, in Subsection II-A-3 as a Preliminary Finding of Non-compliance with Title VI, Section 504 and Section 109.***

Further, the county's Con Plan identified three census tracts (#1110 Downtown San Rafael, #1122 Canal Area of San Rafael, and #1290 Marin City) with the highest concentration of low-income households and two of those census tracts, #1122 and #1290, have the highest concentration of Hispanics and Blacks respectively. The 2000 U.S. Census also reveals a high concentration of Hispanics in census tract #1041.02, the south/central Novato area. The Con Plan placed the highest priority need on extremely low and very low income individuals and families. More specifically, segments of the population who need the most services are renters who, for instance, are single parent households and the disabled. The county did not demonstrate efforts to encourage the participation of low-income residents, including those who are disabled, racial and ethnic minorities or single family households, with the most critical needs and living in areas where federal funds are most likely to be spent. ***As previously stated, the review revealed that the county's lack of affirmative outreach to encourage citizen participation, especially those who are members of protected classes, results in the issuance of a Preliminary Finding of Non-compliance with Title VI, Section 109 and Section 504 in Subsection II-A-3, below.***

HUD regulations at 24 CFR 91.105(c)(2) require the county to provide citizens with reasonable notice and an opportunity to comment on substantial amendments and that the CPP must provide a period not less than 30 days to receive comments on the substantial amendment before the amendment is implemented. The review of the notices found that the county in one instance did not provide the public with two weeks advance notice of a public hearing as stated in the CPP. The CPP policy states that citizens shall have reasonable and timely access to local meetings and information and records relating to the proposed use of housing and community development funds. The 4/2/08 notice proposing amendments to the 2005-09 Con Plan for PY 08/09 for the reprogramming of CDBG funds invited the public to comment through 4/7/08 for a public hearing held on 4/8/08. The time period is in actuality allowing four working days for anyone to review the documents. Further, the reprogramming of funds from a project in the Richardson Bay planning area (Gates Cooperative) to the Next Key project, which is in the Novato planning area. Although in this instance these particular activities were not located in

areas with high concentrations of low-income minority groups, the county is required to provide a period of not less than 30 days for citizens to review and comment. If the policy and procedure is not corrected and the projects assist, benefit or serve members of protected classes, the result may have a disparate impact based on race, color, national origin, sex, and/or disability and non-compliance with Section 109 and its implementing regulations. ***As previously stated, this policy and practice of not providing citizens with a period of not less than 30 days to comment on any substantial amendment prior to its implementation is reflected as Concern in Subsection II-A-3, below.***

The review of the Schedule of Public Hearings found that the county did not notify and offer to provide citizens, public agencies and other interested parties with the opportunity to access information and records related to the Con Plan and use of assistance under the CDBG programs. The Schedule states that documents are available in accessible formats upon request without referring to what documents and it is assumed that the statement is intended for persons with disabilities. Also, in one instance, the 4/2/08 notice proposing amendments to the 2005-09 Con Plan for PY 08/09 for the reprogramming of CDBG funds did not clearly stated how the public can access documents or paper copies pertaining to the planning process for review and comment. Information is buried in the text below after a paragraph on the substantial amendments (AAP). ***A Concern is reflected below in Subsection II-A-3, below.***

Furthermore, the 2000 US Census Bureau indicates that Hispanics represent 11.1% of the county's population and 7,085 people over the age 18 (3.6% of the county's population) speak Spanish and English "not well" or "not at all" or would be considered limited-English-proficient (LEP). On 1/22/07, HUD published the Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons.⁹ In order to provide LEP persons with meaningful access to the Con Plan processes according to the Guidance, the county shall provide "oral interpretation services" as well as "written translation of vital documents" in Spanish since the county's LEP population exceeds 1,000 persons. Vital documents in the Con Plan process include Public Notices, Con Plans, AAPs, and CAPERs.

The U.S. Census 2000 data indicates that the county has 7,085 persons (3.6%) who speak Spanish and speak English "not well" or "not at all", thus significantly exceeding the Department's threshold, as established in the aforementioned LEP Guidance, as the lesser of 5% of the population, or 1,000 persons. The county is expected to provide written translation of vital documents. The translation and publication of notices in Spanish is critical to encouraging those who are low-income, Spanish speaking and LEP to participate in the CDBG planning processes. The review of the public notices found that the county had not translated and published them in the Spanish language. The public notices did not inform LEP individuals of the availability of amendments to the Con Plan and CAPER in Spanish. As previously stated, the county's Con Plan identified three census tracts (#1110, #1122, and #1290) with the highest concentration of low-income households and two census tracts (#1122 and #1290) with a high concentration of minorities. With census tract #1122 having the highest concentration (70.1%) of Hispanics and low-income households in the county and with 18.8% of the population in census tract #1110 is

⁹ This Guidance is available via HUD's website at <http://www.hud.gov/offices/fheo/promotingfh/lep-faq.cfm>

Hispanic, the county has not taken affirmative steps to reach Hispanic households, who are LEP and are low-income residents in areas where federal funds are most likely proposed to be used, to participate in the planning process and to identify their needs and how they can be met. ***This is reflected as a Concern, in Subsection II-A-3, below.***

The review disclosed that the public notices did not advertise information to encourage the participation of persons with vision impairments. The public notices advertised in the local newspaper did not inform disabled persons of the availability of the amendments to the Con Plan and CAPER in alternative formats for the blind (i.e. Braille, audiotapes, larger print, etc.), upon request. Although the county did include information on making documents available in accessible formats upon request in the Schedule of Public Hearings, which was not advertised to the public, the Schedule did not specify what documents, i.e. the Con Plan, AAPs, and CAPERs. As previously stated the Con Plan places the highest priority for services and activities on extremely low and very low income renters including persons with disabilities. The county did not take consistent steps to provide meaningful participation in the planning processes for persons with vision impairments as required under Section 109 and Section 504. ***A Concern is issued in Subsection II-A-3, below.***

Lastly, the Schedule of Public Hearings for PY 07/08, 08/09 and 09/10 displayed conflicting information for persons with hearing impairments who needed assistance. In one paragraph on the schedule, it was requested that anyone who needed sign language interpretation should call a CDA office phone number *one week in advance* of the hearing. Whereas, at the end of the schedule, anyone needing an ASL interpreter and assistive listening devices should contact a phone number, which was for the county's Office of Waste Management, *72 hours in advance of the hearing*. ***As previously mentioned, above, a Concern is issued in Subsection II-A-3, below.***

Subsection II-A-3 – Conclusions and Findings

Based on the above analysis, the Department has determined that the county is administering its citizen participation process in non-compliance with Title VI of the Civil Rights Act of 1964, Section 109 of the Housing and Community Development Act of 1974, Section 504 of the Rehabilitation Act of 1973, and its implementing regulations at 24 CFR Part 1, 6 and 8. As a result, we have observed two regulatory findings of non-compliance and four concerns as follows:

- A. Preliminary Finding of Non-compliance #1.** Title VI, Section 504, and Section 109 implementing regulations at 24 CFR 1.4, 24 CFR 8.4, and 24 CFR 6.4 prohibit discrimination on the basis of race, color or national origin, disability and sex respectively in any program or activity funded in whole or in part with Federal financial assistance. The Department's Section 109 implementing regulations at 24 CFR 6.6 require recipients of federal financial assistance to maintain records and data demonstrating compliance with citizen participation requirements at 24 CFR 570.506 and 24 CFR 91.105. 24 CFR 91.105(a)(2)(ii) requires the county to encourage the participation of citizens and residents of low and moderate income persons, particularly those living in areas where CDBG funds are proposed to be used, in the development of the Con Plan, and substantial amendments and the performance report. The county is expected to take actions to encourage the participation of all citizens including minorities as well as persons with disabilities.

The county's advertising was limited to publicizing notices in a local newspaper for the CDA meeting or Board of Supervisor hearings on the adopting the final version of the amendments to the Con Plan (AAPs) and the performance report (CAPER). In those advertisements, citizens were invited to comment or attend the hearing on the amendments and/or reports to be *finalized* at the upcoming meetings. All publicized hearings were held in San Rafael. The county did not publicize local planning area and CPSC public hearings which were intended to involve the local community in identifying needs and prioritizing funding for proposed projects *during* the planning process. The county took steps to notify only those applicants for funding of these hearings.

Further, the county's Con Plan identified three census tracts (#1110 downtown San Rafael, #1122 Canal area San Rafael, and #1290 Marin City) with the highest concentration of low-income households and two of those census tracts, #1122 and #1290, have the highest concentration of Hispanics and Blacks respectively. The 2000 U.S. Census also reveals a high concentration of Hispanics in census tract #1041.02, the south/central Novato area. The Con Plan placed the highest priority need on extremely low and very low income individuals and families. More specifically, segments of the population who need the most services are renters who, for instance, are single parent households and the disabled. During the planning process, the county did not otherwise encourage the participation of the public or low-income residents, especially those who are disabled, racial and ethnic minorities or single family households or members of the

protected classes, with the most critical needs, living in areas where federal funds are most likely to be spent, and may be potential or actual beneficiaries.

Required Corrective Action. The county shall adhere to its CPP and take steps to encourage the participation of the public or low-income residents, especially those who are disabled, racial and ethnic minorities or single family households or members of the protected classes living in areas where federal funds are most likely to be spent and may be potential or actual beneficiaries. The county shall encourage the general public to participate by ensuring that public notices are advertised for *all* public hearing held during the planning process.

- B. Preliminary Finding of Non-compliance #1 (Combined with above #1).** Title VI, Section 504, and Section 109 implementing regulations at 24 CFR 1.4, 24 CFR 8.4, and 24 CFR 6.4 prohibit discrimination on the basis of race, color or national origin, disability and sex respectively in any program or activity funded in whole or in part with Federal financial assistance. The Department's Section 109 implementing regulations at 24 CFR 6.6 require recipients of federal financial assistance to maintain records and data demonstrating compliance with citizen participation requirements at 24 CFR 570.506 and 24 CFR 91.105. 24 CFR 91.105(e) (3) requires that public hearings be held at times and locations convenient to potential and actual beneficiaries.

The review revealed that the planning area and countywide area public hearings were held at *7:30 p.m. or later* and not advertised to the public. Publicized hearings in San Rafael at the CDA office and Board of Supervisor Chambers were held routinely at 9:00 a.m. or later, but always during daytime hours. Although these meetings were advertised, the times and locations were not convenient for potential and actual beneficiaries living and working during daytime hours throughout the county. For the residents in San Rafael and Marin City, where there are high concentrations of low-income Hispanic and Black households respectively, the county's practice of advertising public hearings that were held only during morning or normal working hours and only in the city of San Rafael has the discriminatory effect of limiting the participation of potential and actual beneficiaries of the program based on race and national origin. The county's practices are also in non-compliance with the CPP policy, specifically to provide reasonable access to local meetings and information on the proposed and actual use of housing and community development funds.

Required Corrective Action. The county shall be required to adhere to its CPP and hold public hearings at reasonable times and locations convenient to potential and actual beneficiaries.

- C. Concern #A.** Section 109 regulations at 24 CFR 6.6 require recipients of federal financial assistance to maintain records and data in accordance with 24 CFR 91.105. 24 CFR 91.105(c) (2) requires the county to provide citizens with reasonable notice and an opportunity to comment on substantial amendments. The CPP must provide a period not less than 30 days to receive comments on the substantial amendment before the amendment is implemented.

Review of the public notices found one instance of inviting the public to comment on a substantial amendment to the Con Plan (reprogramming of funds) and making the document available for review and comment six days or four working days in advance of the public hearing. The period of time is less than thirty days, as required by HUD regulations, to notify citizens of an opportunity to comment before an amendment is implemented. The CPP provides for a period of at least two weeks in advance of the hearing, which, in turn does not give citizens at least thirty days to review and comment on an amendment. Although in this instance the review found that the activities affected by the reprogramming of funds were not located in areas with high concentrations of low-income minority groups or members of protected classes, the county should provide for at least a 30 day advance notice to give citizens an opportunity to review and comment. If the policy and procedure is not corrected and the projects assist, benefit or serve members of protected classes, such a practice may result in a disparate impact based on race, color, national origin, sex, and/or disability and non-compliance with Title VI, Section 109 and HUD's implementing regulations. _

Recommended Action. The recipient should amend its CPP to include how reasonable notice and opportunity to comment will be given with respect to substantial amendments to the Con Plan. The CPP shall provide a period not less than 30 days to receive comments before implementing the amendment.

- D. Concern #B.** Title VI, Section 504, and Section 109 implementing regulations at 24 CFR 1.4, 24 CFR 8.4, and 24 CFR 6.4 prohibit discrimination on the basis of race, color or national origin, disability and sex respectively in any program or activity funded in whole or in part with Federal financial assistance. The Department's Section 109 implementing regulations at 24 CFR 6.6 require recipients of federal financial assistance to maintain records and data demonstrating compliance with citizen participation requirements at 24 CFR 570.506 and 24 CFR 91.105. 24 CFR 91.105(h) requires the county to make available to citizens, public agencies and other interested persons information and records related to the Con Plan and use of Federal funds during the preceding five years.

The county's Schedule of Public Hearings did not notify and offer to provide citizens, public agencies and other interested parties with the opportunity to access information and records related to the Con Plan and use of assistance under the CDBG programs during the preceding five years. (Note: The Schedule does state that documents are available in accessible formats upon request without referring to what documents and it is assumed that the statement is intended for persons with disabilities and not the general public.) It is not clearly stated how the general public can access documents pertaining to the planning process.

In a public notice advertised for two subject matters, the reprogramming of funds as a substantial amendment to the Con Plan and the substantial amendments to the Con Plan, information on how to obtain or view paper copies of documents for the reprogramming

of funds during the comment period was not apparent. The notice displayed information concerning the reprogramming of funds at or near the top of the public notice. The next section of the notice discusses the substantial amendments (AAP) to the Con Plan. Thereafter, instructions on how to obtain copies of documents were located near the bottom of the notice. Because of the length of the notice and the order in which the topics were presented, it is difficult to locate the instructions for requesting or viewing copies.

Recommended Action. On every public notice and notification of a public hearing, it is recommended the county include information and clearly state for each subject matter on the notice as to how citizens can access documents pertaining to the planning process.

- E. Concern #C.** Section 109 implementing regulations at 24 CFR 6.1 require that no person shall, on the ground of . . . national origin . . . be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with federal financial assistance. 24 CFR 91.105 (a)(2) require the encouragement of citizens, including non-English speaking persons, to participate in the development of the Con Plan, any substantial amendment to the Con Plan and the performance report.

Title VI regulations, at 24 CFR 1.4(b) require that no person shall, on the ground of . . . race, color or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with federal financial assistance. Additionally, HUD's 1/22/07 Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient (LEP) Persons reads in pertinent part, "In certain situations, failure to ensure that LEP persons can effectively participate in, or benefit from, federally assisted programs may violate the Title VI prohibition against national origin discrimination." The Guidance indicates that recipients of federal financial assistance are expected to conduct a four-factor analysis, develop a language assistance plan (or address specific LEP language needs in the Con Plan), provide "oral interpretation" services, and provide "written translation" of vital documents if the LEP population in the market area (city) exceeds 1,000 persons. Vital documents include Public Notices, Con Plan, AAPs and CAPERs.

The 2000 US Census Bureau data indicates that the county has 7,085 persons (3.6%) who speak Spanish and speak English "not well" or "not at all". The county is expected to provide written translation of vital documents. In public notices, the county did not offer to provide written translations of Con Plan, AAPs and CAPERs in the Spanish language. The county did not advertise or post its public notices announcing the availability of Con Plan documents or its amendments or the performance report and public hearings in Spanish. The county's Con Plan identified three census tracts (#1110, #1122, and #1290) with the highest concentration of low-income households and two census tracts (#1122 and #1290) with a high concentration of minorities. With census tract #1122 having the highest concentration (70.1%) of Hispanics and low-income households in the county and with 18.8% of the population in census tract #1110 is Hispanic, the county has not taken

affirmative steps to reach Hispanic households, who are LEP and are low-income residents in areas where federal funds are most likely proposed to be used, to encourage them to participate in the planning process and to identify their needs and how they can be met through CDBG-funded activities. The county did not in any manner proactively encourage the participation of Spanish-speaking persons who are LEP in the public participation planning process and the review did not disclose any disparate impact to any particular racial or ethnic group. If uncorrected, such a practice could violate Title VI and Section 109.

Recommended Action. It is recommended that the county take reasonable steps to ensure meaningful participation of LEP persons in the planning process by advertising the period for public review and comment and hearings in Spanish and in Spanish publications and by making available the Con Plan, AAPs and CAPERs into Spanish.

- F. Concern #D.** Title VI, Section 504, and Section 109 implementing regulations at 24 CFR 1.4, 24 CFR 8.4, and 24 CFR 6.4 prohibit discrimination on the basis of race, color or national origin, disability and sex respectively in any program or activity funded in whole or in part with Federal financial assistance. The Department's Section 109 implementing regulations at 24 CFR 6.6 require recipients of federal financial assistance to maintain records and data demonstrating compliance with citizen participation requirements at 24 CFR 91.105. 24 CFR 91.105 (g) require that the county make available to the public the Con Plan, substantial amendments and the performance report including the availability of materials in a form accessible to persons with disabilities, upon request.

Section 504 regulations at 24 CFR 8.54(c) require recipients of federal financial assistance to ensure that individuals with visual or hearing impairments are provided with the information necessary to understand and participate in the program. Methods for ensuring participation include but are not limited to, the use of taped and Braille materials and qualified sign and oral interpreters.

The county's public notices advertised in the local newspaper did not inform disabled persons of the availability of the amendments to the Con Plan and CAPER in alternative formats for the blind (i.e. Braille, audiotapes, larger print, etc.), upon request. Although the county did include information on making documents available in accessible formats upon request in the Schedule of Public Hearings, which was not advertised to the public, the Schedule did not specify what documents, i.e. the Con Plan, AAPs, and CAPERs. The Con Plan places the highest priority for services and activities on extremely low and very low income renters including persons with disabilities. The county did not consistently take steps to provide meaningful access to participate in the planning processes for persons with vision impairments.

The Schedule of Public Hearings presented conflicting information as to how far in advance before a scheduled hearing should a person make a request for sign language interpreters or assistive devices. In one paragraph, the request must be made within one week of the public hearing by calling a telephone number for the CDA office. Elsewhere on the notice, it states that the request shall be made at least 72 hours in advance of the

hearing and the contact phone number is for the county's Office of Waste Management. The instructions are inconsistent for persons with hearing impairments that may need a reasonable accommodation in order to meaningfully participate in the planning process.

Recommended Action. It is recommended that in the recipient's public notices or any notifications of public hearings, the county state that documents pertaining to the planning processes (the Con Plan, AAPs, and CAPERs) are available in alternative formats for the blind (i.e. Braille, audiotapes, etc.), upon request. The county should review all its notifications of public hearings to ensure that clear and consistent instructions are displayed for persons with hearing impairments who need reasonable accommodations and that the contact telephone number for requesting reasonable accommodations is accurate.

SECTION II-B - BENEFITS, SERVICES AND METHODS OF ADMINISTRATION

Issue: Whether the recipient and its sub-recipients have affirmatively furthered fair housing choice through policies, practices, procedures and methods of administration which promote effective participation in funded programs, and promote integrated communities, regardless of race, color, national origin, gender or disability.

CDBG entitlement recipients are required to administer their programs in such a manner that assures that they will affirmatively further fair housing choice and do not limit, deny or exclude participation on the basis of race, color, national origin, sex and disability. Recipients are required to maintain data and information on the race, color, national origin, and gender of applicants for and participants in its programs and activities. Recipients are also required to gather and maintain data and information on the extent to which people with disabilities are beneficiaries of their programs and activities.

Subsection II-B-1 – Demographic Characteristics

Although the following table presenting racial and ethnic characteristics for the six most populated cities in each of the Planning Areas and the County of Marin was displayed, above, it is replicated here to facilitate referencing demographic and participant characteristics. The table also includes the percentage of persons with a disability and the percentage of female headed households.

Table II-B-1 – Six Planning Areas’ Most Populated Cities and County of Marin

Race/Ethnicity/Disability	City of Novato (Novato P.A.)	City of San Rafael (San Rafael P.A.)	City of Larkspur (Lower Ross Valley P.A.)	City of San Anselmo (Upper Ross Valley P.A.)	City of Mill Valley (Richardson Bay P.A.)	City of Bolinas (West Marin P.A.)	County of Marin
Race							
Total Population	47,630 (100%)	56,053 (100%)	12,014 (100%)	12,378 (100%)	13,600 (100%)	1,246 (100%)	247,289 (100%)
White	82.8%	75.8%	91.3%	91.6%	91.4%	90.5%	84.5%
Black	2.0%	2.2%	0.8%	1.1%	1.0%	1.8%	2.9%
Asian	5.2%	5.6%	3.9%	2.9%	4.1%	1.8%	4.5%
Am. Ind./AK Nat.	0.5%	0.6%	0.2%	0.4%	0.3%	0.3%	0.4%
Native HI/Other Pac. Is.	0.2%	0.2%	0.1%	0.1%	0.2%	0.4%	0.2%
Other ¹⁰	9.3%	15.7%	3.7%	3.9%	3.0%	5.1%	8.0%
Hispanic/Latino							
Total Population	47,630 (100%)	56,063 (100%)	12,014 (100%)	12,378 (100%)	13,600 (100%)	1,246 (100%)	247,289 (100%)
Hispanic or Latino	13.1%	23.3%	4.3%	4.1%	3.5%	5.1%	11.1%
Not Hispanic or Latino	86.9%	76.7%	95.7%	95.9%	96.5%	94.9%	88.9%
Disabled (5 years+)	16.8%	20.1%	14.2%	11.0%	12.2%	15.2%	15.4%
Female Headed Households	14.4%	17.4%	23.4%	18.1%	20.2%	19.4%	16.9%

General Demographic and Disability Characteristics¹¹**Subsection II-B-2 -
Sub-recipient Application, Selection, and Funding Processes**

Interviews were conducted with two county employees, Roy Bateman, CDBG Coordinator and Reid Thaler, Planner for CDBG Public Service and Capital Projects, county staff from the CDA, regarding the county’s sub-recipient application, selection, and funding processes.

The planning process begins in early December of each year when the county accepts applications for CDBG funding in connection with the AAP process. In November, the county sends out a mailing of informational material to 834 names on the county’s mailing list. The mailing list is assembled from years past and from callers inquiring with the CDA office about

¹⁰ Includes some other race and two or more races.

¹¹ 2000 U.S. Census, SF-3, P7 (Race/Ethnicity) & PCT26 (Disability)

federal grants. The materials include an announcement of a workshop to provide general information on how to apply for grant funds. In years past, the county hosted eight workshops, but now there is one workshop since there appear to be fewer attendees. Most of the attendees are representatives from agencies new to the applications process or are new employees or staff members at agencies who have applied in the past and need a refresher course.

Applications are due at the beginning of December. From January through March, planning area and CPSC hearings are held. The Coordinator and Planner prepares and issues staff reports recommending sponsors of proposed activities and services for funding to committee members at the public hearings. There are few sponsors applying for funding from outside the county other than organizations that develop affordable housing. The application is available on the county's website and the application can be submitted by e-mail. The county does not announce the availability of CDBG funding and to request proposals from interested agencies in advertisements or through any other media sources. The review did not disclose that the method of marketing to reach interested organizations in applying for funding resulted in any discriminatory effect based on race, color, national origin, religion, sex or disability.

The Coordinator and Planner both screen the applications upon receipt. The Coordinator stated that the applications are not ranked and there is no system for grading the applications. The Coordinator assesses the applications based on his familiarity with the area and demographics for a particular planning area. The assessment of the applications includes whether the proposed activity or service addresses the need; the likelihood that the project will serve the targeted population; and the ability of the project sponsor to complete the activity or service with the funding requested. Each application is reviewed independently. When asked about documentation, i.e. the Analysis of Impediments, U.S. Census Bureau data, etc., used to identify the critical needs of a particular area or segment of the population, i.e. families with children, the elderly, etc., aside from the staff members' knowledge, it was stated that no reference sources or written materials were used to support the assessment made for each application under review. Both staff members believe their recommendations for proposed projects carry substantial weight with members of the LAC, CPSC and Board of Supervisors. For the periods under review, staff members do not recall receiving any public comments on the AAP or funding determinations. ***The lack of reference materials, especially planning documents that prioritize and identify critical needs of members of protected classes residing in the county, used to determine whether proposed projects and activities will effectively benefit, assist and serve members of the protected classes and persons with disabilities results in issuing a Concern, below.***

A review of the CDBG public service application, selection, and funding process, as described in interviews and in the informational materials distributed to those on the county's mailing list was conducted to determine whether all applicant agencies were afforded an equal opportunity to apply for and receive funding regardless of race, national origin (ethnicity), sex (gender), or disability.

The information materials include the form, Information About CDBG and HOME Program Applications, for PY 06/07, 07/08, 08/09, and 09/10. There is a description of the CDBG program, the funding levels in each planning area, notification that there is a workshop to

assist those interested in applying for grant funds, the planning process, and information on how to obtain brochures and application forms. The information sheet includes an offer for an individual consultation by phone or in person if anyone cannot attend a workshop. Both the phone numbers for the CDBG Coordinator and Planner are displayed as well as the numbers for the TDD and California Relay Service. Anyone who needs sign language interpretation and interpretation into languages other than English could contact the CDBG Coordinator one week in advance of the workshop. Those attending are requested not to wear perfume or fragrances in consideration of persons with environmental sensitivities. The phone number to obtain transit information is listed along TDD number. ASL interpreters and assistive listening devices are available by calling the number listed at least 72 hours in advance. Copies of documents are available in accessible formats upon request. Various symbols of accessibility are displayed.

A review of the materials distributed to interested persons and organizations in applying for CDBG funding revealed that the information provided for persons with hearing impairments to request ASL and assistive listening devices is confusing. In one paragraph, anyone needing interpretation for sign language should make the request one week in advance of the public hearing date. Elsewhere on the same page, anyone needing ASL interpreters and assistive listening devices should request them at least 72 hours in advance of the hearing date by calling a phone number that is for the county's Office of Waste Management. ***This was previously described, above, and will be reflected as a Concern in Subsection II-A-4, above.***

A review of the application form, Marin County Community Development Block Grant (CDBG) Proposal, was performed. Under the Project Location section of the form, it requests that the age of the building be disclosed for housing and capital projects, which can be used to determine to what extent the projects must comply with the physical accessibility requirements of Section 504. In addition, the Need for the Project section addresses accessibility by asking, "What steps are you taking to make this project (and your overall program) accessible to people with physical and other disabilities?" Applicant agencies responded by describing the provision of reasonable accommodations to intake applications to the program; the location and accessibility features of their offices, how the housing or capital improvement activity will include accessibility features as part of the rehabilitation or minor modification projects; how the activity will benefit persons with disabilities; how the project is designed to meet accessibility requirements; and how the project will improve accessibility. The review found that questions posed on the application form assist in assessing a future sub-recipient's compliance with Section 504, specifically whether an applicant has procedures in place to ensure program accessibility, whether the applicant's facilities are physically accessible and whether the applicants has considered including physical accessibility components as part of the proposed project. The review of the form did not disclose any civil rights related issues.

An analysis was conducted by comparing projects (indirect and direct benefit activities) approved for funding and rejected activities to determine if the rejections resulted in any disparate impact to any members of protected classes.

The county provided the data for approved and rejected applications for capital improvement projects in PY 2007-08 and PY 2008-09 as displayed in the table, below.

**Table II-B-2 – Capital Improvement Project Applicants
Program Years 2007-2008 & 2008-2009**

APPROVED PROJECTS – PY 2007-2008					
Activity	Planning Area	Beneficiaries	Census Tract	Proposed Funded Amount	
Bolinas Comm. Firehouse & Clinic: Electrical Equipment Enclosure	West Marin	Public	1321	\$11,760	
San Anselmo Children's Ctr.: Parking Lot Lighting	Upper Ross	Families w/Children	1141	\$15,000	
North Bay Children's Ctr.: Replace Carpet/Tile	Novato	Families w/Children	1050	\$19,700	
Rocky Graham Park: Parking Lot/Landscaping	Richardson Bay	Public	1290	\$44,900	
REJECTED PROJECTS					
Activity	Planning Area	Beneficiaries	Census Tract	Proposed Funded Amount	Reason For Rejection
Marin City Comm. Services Center/Manzanita Center: New Roof	Richardson Bay	Public	1290		Rocky Graham Park provides greater community benefit
Marin Adult Dev. Ctr./Janet Pomeroy Ctr.: Replace Carpet	Novato & Upper Ross	Dev. Disabled	1060.01		North Bay Children Center has more urgent health/safety issues & higher priority
Bolinas Comm. Ctr.: Pave Driveway	West Marin	Public	1321		Funding of Firehouse & Clinic has greater community need
Mesa Park: Parking Lot & Park Accessibility	West Marin	Public & Disabled	1321		New funding not needed: funding remains from prior year's project & unallocated funds to resurface basketball court

APPROVED PROJECTS - PY 2008-2009					
Activity	Planning Area	Beneficiaries	Census Tract	Proposed Funded Amount	
San Anselmo Children's Ctr.: Parking Lot Lighting	Upper Ross	Families W/Children	1141	\$7,000	
Gailee Harbor: Install Ramp & Other	Countywide & Richardson Bay	Disabled, Public & Homeowners	1302	\$30,000	
Marin Learning Ctr.-Play Structure	Richardson Bay	Families w/Children	1290	\$23,001	
Tomales Town Hall ADA Improvements & Other	West Marin	Public	1330	\$17,200	
REJECTED PROJECTS					
Activity	Planning Area	Beneficiaries	Census Tract	Proposed Funded Amount	Reason For Rejection

Marin Ventures: Develop outdoor rec area	Lower & Upper Ross	Dev. Disabled	1082		Triggers Davis Bacon; will increase costs greater than CDBG contribution
Cedars of Marin: Planning Funds for Textile Art Center	Upper Ross	Dev. Disabled	1141		Planning funds part of Admin funds; Admin funds max set by CDBG
Bolinas Comm. Ctr.: Rehab Kitchen	West Marin	Public	1321		Tomaes Town project meets greater community need
Marin City Comm. Services: Rehab Manzanita Center	Richardson Bay	Public	1290		Sponsor working on Rocky Graham Park/wait before funding new project

The analysis disclosed that the rejected applicant projects did not result in any disparate impact or raise any civil rights issues. For example, the review found that in each of the program years, the county rejected the same activity, the rehabilitation of Manzanita Center, in a minority impacted census tract (#1290), even though it would have benefitted the general public. However, in each of those same years, the county did fund other projects in the same impacted census tract, which benefitted the public and families with children. In the West Marin planning area, all projects, approved and rejected, were intended to benefit the public; the county appears to have selected projects based upon which project met a greater community-wide need. In the Upper Ross, Lower Ross and Novato planning areas, rejected projects were intended to benefit persons with developmental disabilities. The county rejected those projects in favor of projects benefitting families with children, which a group that has a high priority need in those particular communities. Overall, the reasons for approval and rejection appear to be reasonable, and non-discriminatory, attempting to balance projects affecting individual protected classes to determine which were most-critical to the specific population in the area where the project was located.

For direct benefit projects, the county did not provide a list of programs rejected for funding in PY06/07. In PY07/08, the county (via its six local area committees¹²) rejected the programs noted below:

Upper Ross Valley Local Area Committee- Homeless Prevention Program

Lower Ross Valley Local Area Committee- Homeless Prevention Program

Novato Local Area Committee- Homeless Prevention Program, Women's Initiative for Self-Employment

San Rafael Local Area Committee- Homeless Prevention Program, Women's Initiative for Self-Employment

Richardson Bay Local Area Committee- Homeless Prevention Program, Women's Initiative for Self-Employment

West Marin Local Area Committee- Homeless Prevention Program, Family Law Legal Services

As noted, all planning areas rejected the Homeless Prevention Program. Additionally, Novato, San Rafael, and Richardson Bay rejected Women's Initiative for Self-Employment and West Marin rejected Family Law Legal Services.

The various committees explained that the Homeless Prevention Program and Women's Initiative for Self-Employment were rejected because they are new programs and, due to budget limitations, priority was given to funding programs that had proven successful in the past.

¹² Source: Recommendations for funding PY07/08, CDBG Proposals: Upper Ross Valley, Lower Ross Valley, Novato, San Rafael, Richardson Bay, West Marin

Additionally, West Marin explained that it rejected Family Law Legal Services because it uses its small CDBG allocation to support locally-based agencies that serve the greatest number of West Marin residents. It should be noted that Family Law Legal Services was funded by one or more of the other committees.

FHEO reviewed the funded versus rejected direct benefit and found that the majority of programs funded in PY07/08 had been funded in PY06/07 or prior years and all funded programs met the Con Plan's "high-priority" needs. Further, many of the funded programs were specifically referred to by name in the Con Plan (i.e. Performing Stars, Marin Learning Center, and Marin Clinic). In summary, FHEO found no violations of Title VI, Section 109, or Section 504 in the county's public service program selection process.

Subsection II-B-3 – Summary and Analysis Indirect and Direct Benefit Activities

Our analysis of the funded activities is based on reports, records, policies and other information submitted prior to the on-site review. The analysis is further based on a review of recipient, sub-recipient and participant records, staff interviews, documents and other information gathered during the on-site portion of the review. The compliance review revealed that CDBG funds were allocated for a variety of indirect and direct benefit activities during the period under review (Program Years 2006-07, 2007-08 and 2008-09).

Indirect benefit activities were funded and implemented during each of the program years under review. In PY 06/07, the recipient funded ten projects with at least one in each planning year, which included rehabilitation of child care centers, the San Quentin's visitor center, a community center, a clinic and a park and making ADA improvements in San Rafael. In the 2007-2008 program year, seven activities were funded for projects associated with the rehabilitation of a firehouse/clinic, a harbor, child care centers, the San Quentin's visitor center, and two community parks and enhancement of accessibility at public facilities in San Rafael. For PY 08/09, the Lower Ross planning area did not recommend any capital improvement activities for funding. Seven projects were funded for rehabilitating child care centers, a harbor, and a community center and adding curb cuts in San Rafael.

The recipient funded a variety of *direct* benefit activities during each of the program years under review. These activities included providing funding to public service providers (e.g. food bank program, legal and medical care services, youth, child care and after school services, fair housing activities, senior scholarship program), single- and multi-family housing rehabilitation programs, an accessibility retrofitting program, and funding of a housing specialist position to assist Section 8 voucher holders with locating housing. None of the direct benefit activities were administered by the recipient or its staff; rather funding was provided to local agencies and non-profit service providers.

Indirect Benefit Activities

The following table reflects indirect benefit activities funded during the two program years under review.

Table II-B-3 – Capital Improvement Activities*

Program Year	Activity	Planning Area	Census Tract	Proposed Funded Amount	Comments If Not Completed	
2006-07	Big Brothers Big Sisters Rehabilitation	San Rafael	1110	\$19,093		
	San Anselmo Children's Ctr.: Parking Lot Lighting	Upper Ross	1141	\$21,000		
	Lynwood School: Develop Play Area	Novato	1041	\$30,000		
	Gailee Harbor: Install Ramp & Other	Countywide & Richardson Bay	1302	\$40,000		
	House at San Quentin: Bathroom Remodeling	Lower Ross	1220	\$10,000		
	Manzanita Child Dev. Ctr. Rehab.	Richardson Bay	1290	\$24,976	Reprogrammed Funds to Marin Comm. Learning Ctr.	
	Marin Comm. Clinic Rehab.	Novato	1041.02	\$5,043.37		
	Mesa Park: Accessible Parking Lot/Routes	West Marin	1321	\$9,500		
	ADA San Rafael: Accessibility	San Rafael		\$300,000		
	Tomales Town Hall ADA Improvements	West Marin	1330	\$21,000		
	2007-08	Bolinas Comm. Firehouse & Clinic: Electrical Equipment Enclosure	West Marin	1321	\$11,760	
		San Anselmo Children's Ctr.: Parking Lot Lighting	Upper Ross	1141	\$15,000	
		House at San Quentin: Bathroom Remodel	Lower Ross	1220	\$12,000	
		North Bay Children's Ctr.: Replace Carpet/Tile	Novato	1050	\$19,700	
Pickleweed Comm. Park: Expand Center/Accessibility Improvements		San Rafael	1122	\$359,998	Reprogrammed Funds Received from ADA San Rafael Project PY 2006	
ADA San Rafael: Accessibility		San Rafael		\$300,000		
Rocky Graham Park: Parking Lot/Landscaping		Richardson Bay	1290	\$44,900	Reprogrammed in PY 2009 to Iniece Bailey & Gailee Harbor Projects	
2008-09	San Anselmo Children's Ctr.: Parking Lot Lighting	Upper Ross	1141	\$7,000		
	Gailee Harbor: Install Ramp & Other	Countywide & Richardson Bay	1302	\$30,000		
	Hamilton Child Care Ctr. Rehab.	Novato	1050	\$25,000		
	Marin Learning Ctr.-Play Structure	Richardson Bay	1290	\$23,001		
	North Bay Children's Ctr.: Replace Carpet/Tile	Novato	1050	\$22,000		
	ADA San Rafael: Curb Cuts	San Rafael	1081	\$300,000		

	Tomales Town Hall ADA Improvements & Other	West Marin	1330	\$17,200	
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*Information based upon Annual Action Plans and other information submitted by the recipient.

The review of the recipient's CDBG funded indirect benefit activities discloses that there were projects funded and completed throughout the county in each program year under review. The analysis of the indirect benefit activities also found that there was some correlation between the beneficiaries of the project or those assisted by the services and the planning area in which the project or activity was located. In the program years under review, capital improvements projects in the Upper Ross and Novato planning areas primarily served families with children. Activities funded in the San Rafael and West Marin planning areas either were intended to enhance accessibility for persons with disabilities or accessibility improvements were part of the overall project. The Richardson Bay planning area undertook activities that would benefit the public, persons with disabilities and families. Overall, the county has funded and completed capital improvement activities that benefit the community as a whole as well as members of protected classes.

As previously mentioned, the county has two census tracts with high concentrations of low-income minorities (#1290 Blacks and #1122 Hispanics) and one census tract impacted with Hispanics, #1041.02. The table, above, revealed that in each of the program years under review, the county has funded at least one project for capital improvements in one of the impacted census tracts. Although not included in our analysis, it is noted that in two of the program years, the county funded a project to improve the visitor's center at San Quentin prison, which is located in a census tract with a high concentration of Blacks and Hispanics.

Further, there were two projects proposed in census tract #1290 that were incomplete and in which reprogramming of funds was executed. The first activity, the Manzanita Child Development rehabilitation project, did not proceed as planned and in order to avoid exceeding the HUD-CDBG deadline for non-expenditure of funds (which could have resulted in HUD's recovery, and loss of the funding from the recipient's use), the funds were reallocated to the Marin Learning Center (MLC), which is also located in the same census tract. Both the project in which fund were reprogrammed to and from provide public services to benefit families with children. The MLC receives CDBG public service funding, as well, and has reportedly served a high percentage of Hispanics.

The second activity, the Rocky Graham Park rehabilitation project, lacked sufficient funds to start the project. Funds were reallocated to Iniece Bailey Infant-Toddler Center (Center), a child care center, and Gailee Harbor projects; both are located in tract #1302, which is not impacted with racial or ethnic minorities. The Center serves families with children and the Gailee Harbor project is part of a larger activity funded in part by CDBG countywide housing funds to complete renovations to the marina and pier including accessibility improvements and the rehabilitation of houseboats. Community members as well as persons with disabilities and houseboat (home) owners will benefit from the harbor improvements. Although the activity that was initially funded could have benefitted a higher percentage of racial/ethnic minorities in its respective neighborhood, the project receiving reprogrammed funds will benefit persons with disabilities.

To increase accessibility to public facilities for persons with physical impairments, the recipient has funded projects to remediate architectural barriers in the West Marin, Richardson Bay and San Rafael planning areas. During the on-site, files were reviewed for the following projects: Tomales Town Hall (West Marin), Gailee Harbor (Richardson Bay), San Rafael ADA improvements and Pickleweed Park (San Rafael).

The files revealed that the Tomales Town Hall project involved renovating the bathroom for accessibility and the Mesa Park project created accessible parking spaces and routes. The Gailee Harbor project included installation of a ramp to the restroom/shower building and a ramp to reach all docks regardless of tide changes.

In the city of San Rafael, \$300,000 was funded in each program year for ADA improvements. For each of the program years, the recipient's records for the San Rafael ADA project did not indicate what was proposed to be done and where the location of the activity was. In accordance with a settlement agreement executed in 2004 with the Department of Justice, the city of San Rafael committed to devoting \$300,000 each year for the next ten years for ADA compliance. Accessibility improvements to public facilities included places like the library, city hall, and city parking lots and streets. According to the AAP for PY 07/08, on 4/17/2007, the Board of Supervisors approved the reprogramming of \$300,000 from PY 2006 funds originally granted to the city's accessibility improvements project to the Pickleweed Park project for expansion of its community center. According to county staff, the city of San Rafael was unsuccessful in locating a low bidder to construct the city's curb cuts, which resulted in a delay to expend the funds. Pickleweed Park is located in an impacted census tract in San Rafael and the expansion of the center included making the facility accessible to persons with physical disabilities.

Also, the San Rafael ADA improvements file contained a monitoring report dated 4/16/2008 indicating that a desk monitoring was performed for funds granted in PY 2007. The project was on hold because the bids received were too high. When the sub-recipient was asked to compare the actual and the budget proposed for the program, the report indicated that the "project done for budgeted amount." The monitoring report provides no response to the question related to whether the project is progressing as planned. County staff stated that there were no curb cuts completed in PY 2007.

Furthermore, in the monitoring report, county staff noted that in response to "Are you serving as many clients as you anticipated?" the notation stated that it was "hard to track number of clients using ramps". Per the 2004 settlement agreement, the city of San Rafael was required to solicit and receive input from persons with disabilities regarding the accessibility of its sidewalks and the need to add curb cuts at particular locations within one-year of signing the agreement. When asked about the city of San Rafael's selection process in identifying locations where curb cuts would be made, county staff believed the locations selected were identified in the settlement agreement and those locations were areas where the city did not meet accessibility standards. Upon further inquiry, the city of San Rafael stated to the county that locations were selected (targeted) based on where previous street paving contracts that were recently completed. The county's file does not include the Settlement Agreement or any documentation supporting how the city of San Rafael has prioritized its selection of locations for making curb cuts and

street improvements. The county has not taken any reasonable steps to ensure that persons with physical impairments with the greatest needs for accessibility improvements in their neighborhoods have benefitted from completed projects. With the county's limited information contained in the file and gathered for the monitoring report, the county cannot effectively assess whether the most critical needs of persons with physical impairments have been met. The review did not reveal any discriminatory effect on persons with disabilities. ***An Observation is noted in Subsection II-D, Program and Site Accessibility, below, for the inconsistent information provided anecdotally and in the file on the status of the project.***

For PY 2008, a list of completed San Rafael curb cuts was provided by the recipient. During the on-site portion of the review, a limited accessibility survey of those curb cuts and of the new building wing of the Pickleweed Park Community Center was conducted. ***A summary of those results is found in Subsection II-D, below.***

Although the limited accessibility survey discussed below in Subsection II-D found that not all San Rafael curb cuts were completed as planned for PY 08, this indirect benefit activity along with the projects in the West Marin and Richardson Bay planning areas provide significant assistance to the entire community of persons who have physical impairments. There were justifiable financial-related reasons for the reprogramming of funds from projects that were located in areas with high concentrations of low-income minorities and were not progressing to new activities. The files reviewed did not reveal any other delays in program progress other than those mentioned, above.

Overall, the review found that there were no discernible difference in program progress between activities assisting people with disabilities or racial and ethnic minorities and all other indirect benefit activities.

The review of the administration of indirect benefit and capital improvement activities did not disclose that the recipient is acting in non-compliance with Section 109, Title VI, Section 504 or their respective implementing regulations at 24 CFR Parts 6, 1, and 8.

Direct Benefit Activities

The direct benefit activities are carried out by the private organizations as sub-recipients of the CDBG program. The County is responsible for the implementation and monitoring of these programs. Sub-recipients are required to enter into a contract for services, submit quarterly progress reports, and undergo an annual monitoring review by county staff.

The compliance review of direct benefit activities focused on programs administered by public service providers. The following tables identify the direct benefit activities funded during the 2006 and 2007 program years and overall participation by race and ethnicity. Participation by people with disabilities and female headed households was not compiled for all activities by the recipient. Data and information is drawn from the 2006-2007 and 2007-2008 annual statistical reports (Integrated Disbursement and Information System -- IDIS) submitted with the recipient's CAPER.

The table below identifies the overall public service activities funded during PY 06/07 and 07/08 and the overall participation by ethnicity, race, and gender of the head-of-household. The programs funded during PY08/09 were not included in this analysis as the compliance review was conducted prior to the end of the program year and the county had not yet compiled participant demographic data.

Table II-B-4 - Service Beneficiaries¹³

<u>Activity</u>	Total # assisted	H/L any race	NH/L White	NH/L Black	NH/L Asian	NH/L AI/AN	NH/L NH/PI	Two or more races	Other	FHH
Public Services PY06/07	30429	1975	10634	5119	1627	348	868	0	9858	402
Public Services PY07/08	29870	11440	10968	4763	1492	310	801	42	54	1382
Totals	60299 100%	13415 22.2%	21602 35.8%	9882 16.4%	3119 5.2%	658 1.1%	1669 2.8%	42	9912 16.4%	1784 3.0%
Demographics										
+County of Marin	247,289 100%	11.1%	78.6%	2.8%	4.5%	.3%	.1%	2.4%	.3%	16.9%

Abbreviations: H/L- Hispanic/Latino; NH/L- Non-Hispanic/Latino; AI/AN- American Indian/AK Native; NH/PI Native Hawaiian/Pacific Islander; FHH- Female-headed household

+Source: US Census Bureau, Census 2000 Redistricting Data Summary File, Table QT-PL (Note: this table was used for comparative purposes as the county's report form gathered demographic data in a similar manner.)

The table reveals that White/Non-Hispanic participants were *significantly*¹⁴ underrepresented by 43% during the years under review as compared to their representation in the county. On the other hand, Hispanic/Latino and Black/Non-Hispanic participant representation significantly exceeded each group's representation in the county by 11% and 14% respectively. The representation of the remaining racial and ethnic groups is in general parity with that of the county.

Female-headed-households (FHH) were significantly underrepresented but this is attributed to lack of data reporting as opposed to lack of program participation. Finally, it is unknown to what extent the disabled benefitted from CDBG programs as participation by this group was either not reported or was reported inaccurately. Individual program demographics and data reporting errors are analyzed in Section II-B-3-A below.

Document Analysis

FHEO analyzed applicable sections of the standard "Agreement" form, "CDBG Demographic Report" form, "Consolidated Plan FY2005-2009" (Monitoring Procedures), and the "Monitoring Report" form for compliance with Title VI, Section 109, Section 504 and their respective implementing regulations. The results are below:

¹³ Source: PY06/07 demographic and IDIS reports; PY07/08 demographic reports

¹⁴ "Significant" is defined as +/- 10% as compared to the demographics of the housing market area (county).

Agreement Form

The CDBG standard “Agreement” between the County of Marin and each sub-recipient contains the following applicable terms:

Term 8.A. The Operating Agency agrees to submit program status reports to the County on at least an annual basis or more frequently if requested.

Term 8.B. The Operating Agency agrees to maintain racial, ethnic, gender, head of household . . . data showing the extent to which these categories of persons have participated in, or benefited from the project, *and to submit this information to the County within 30 days of a request from the County (emphasis added).*

Term 8.H. The Operating Agency, if its program involves housing, agrees to affirmatively further fair housing.

Term 8.L. The Operating Agency hereby certifies that, in the implementation of projects funded by this Agreement and in all of its other operations, it will comply with all requirements of Section 504 of the Rehabilitation Act of 1973 (29 USC 794) and the implementing regulations at 24 CFR 8 . . . and all state and local laws requiring physical and program accessibility to people with disabilities.

Term 10.B. Under the terms of Section 109 of the Housing and Community Development Act of 1974, and in conformance with . . . regulations of HUD . . . issued pursuant to Section 109, no person in the United States shall on the ground of race, color, . . . religion, sex, . . . handicap, disability, . . . national origin, . . . familial status, . . . be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with CDBG funds.

Term 10.D. The Operating Agency will comply with Title VI of the Civil Rights Act of 1964.

The conflicting language between the Agreement and the Demographic Report form, discussed below, resulted in the failure of at least two sub-recipients to submit demographic reports. A Preliminary Finding of Non-compliance is cited, below, in Subsection II-B-4, below.

CDBG Demographic Report Form

The county sends the “Marin County CDBG Demographic Report for Direct Benefit Projects” form to its sub-recipients to collect the following applicable data from each sub-recipient per program year: name of project sponsor/activity, number of persons assisted by the CDBG-funded project, race and ethnicity of each person (tabulated format includes the five single races and four most common multiple-race combinations and an “Others” category), non-homeless seniors (65+) or non-homeless persons with disabilities, female-headed households, and source of data. The form contains date and signature lines and a notice stating, “Submission

of this report by August 2x, 200x is mandatory! Failure to submit this report by the deadline could jeopardize your funding.”

The demographic report form’s “Others, Balance/Other” category is not a category recognized by OMB Standards/HUD Guidelines. OMB approves of a “balance” category for reporting responses that are not included in any of the approved single or four most common multiple-race combinations. Any aggregate count of a multiple-race combination reported in the “balance” section that exceeds 1% of the population must include a narrative explanation with the specific count and the percentages of each multiple-race. ***The demographic report form fails to collect and report race and ethnicity data in the format prescribed by OMB Standards/HUD Policy Statement. This failure resulted in violations of Title VI and Section 109 and is cited as a Preliminary Finding of Non-compliance under Subsection II-B-4, below.***

Additionally, the form instructs the sub-recipients to report the combined total of non-homeless seniors (65+) or non-homeless persons with disabilities. The form fails to collect data on disabled persons under age 65 and homeless disabled persons. Section 504 requires collection of data showing the extent to which the disabled of all ages and housing types benefited from the program. ***The demographic report form fails to collect accurate data indicating the extent to which the disabled have benefited from the program. This failure is a violation of Section 504 and is cited as a Preliminary Finding of Non-compliance under Subsection II-B-4, below.***

The county is required to maintain timely, complete, and accurate demographic records in order to allow FHEO to determine compliance with Title IV and Section 109. The county’s Agreement, Term 8B, delegates the maintenance of demographic records to the sub-recipient (Operating Agency) and does not require record submission to the county unless requested. Therefore, the county does not maintain the data in the manner prescribed by the statutes. ***The Agreement’s failure to require submission of demographic records to the county resulted in violations of Title VI and Section 109 and is cited as Preliminary Findings of Non-Compliance in Subsection II-B-4, below.***

Public Service Activities

The county funded thirteen (13) public service programs during PY 06/07 and nineteen (19) programs during PY07/08. The programs funded during PY08/09 were not included in this analysis as the compliance review was conducted prior to the end of the program year and the county had not yet compiled participant demographic data.

Tables II-B-4 and II-B-5 reflect the representation of program participants by ethnicity, race, and gender of head-of-household. The data was obtained from the demographic reports compiled by each sub-recipient, except as noted (*).

Table II-B-5 - PY 06/07 Public Service Beneficiaries¹⁵

¹⁵ Source: PY06/07 demographic reports submitted by sub-recipients to the county (5 programs) and IDIS reports submitted by county to HUD (8 programs). Note- IDIS reports were used because the county failed to submit demographic reports in response to the data request letter.

Activity	Total # assisted	H/L any race	NH/L White	NH/L Black	NH/L Asian	NH/L AI/AN	NH/L NH/PI	Two or more races ¹⁶	Other	FHH
Senior Access ADC Scholarship	16 people	1 6.3%	15 93.8%	0	0	0	0	0	N/A	10 62.5%
*San Geronimo Comm Svcs.	4,177 people	795 19%	2,947 70.6%	218 5.2%	137 3.3%	66 1.6%	14 .3%	0	N/A	N/R
Fair Housing of Marin	958 people	187 19.5%	671 70%	84 8.8%	13 1.4%	1 .1%	2 .2%	0	N/A	128 13.4%
*Marin Food Bank	22,950 people	0	5,981 26.1%	4,607 20.1%	1,423 6.2%	229 .9%	852 3.7%	0	9,858 43%	N/R
West Marin Senior Services	367 people	2 .5%	358 97.5%	2 .5%	1 .3%	4 1.1%	0	0	0	210 57.2%
Novato Youth Scholarship	8 people	4 50%	3 37.5%	1 12.5%	0	0	0	0	0	6 75%
*North Bay Children's Scholarship	N/R	N/R	N/R	N/R	N/R	N/R	N/R	N/R	N/R	N/R
*Family Legal Svcs.	1,095 people	356 32.5%	569 52%	95 8.7%	32 2.9%	43 3.9%	0	0	0	N/R
*Marin BI Network	36 people	1 2.8%	31 86.1%	2 5.6%	0	2 5.6%	0	0	0	N/R
*After School Safe Tutorial	60 people	0	0	60 100%	0	0	0	0	0	N/R
*Quality Care for Kids	8 people	6 75%	2 25%	0	0	0	0	0	0	N/R
*Fairfax/San Anselmo After School Transport.	45 people	16 35.6%	22 48.9%	4 8.9%	3 6.7%	0	0	0	0	N/R
Marin Head-Start Family Outreach	709 people	607 85.6%	35 4.9%	46 6.5%	18 2.5%	3 .5%	0	0	0	48 6.8%
Totals	30429 100%	1975 6.5%	10634 34.9%	5119 16.8%	1627 5.3%	348 1.1%	868 2.9%	0	9858 32.4%	402 1.3%
Demographics										
+County of Marin	247,289 100%	11.1%	78.6%	2.8%	4.5%	.3%	.1%	2.4%	.3%	16.9%

Abbreviations: H/L- Hispanic/Latino; NH/L- Not-Hispanic/Latino; AI/AN- American Indian/AK Native; NH/PI Native Hawaiian/Pacific Islander; FHH- Female-headed household; N/R-No Report.

+Source: US Census Bureau, Census 2000 Redistricting Data Summary File, Table QT-PL (Note: this table was used for comparative purposes as the county's report form gathered demographic data in a similar manner.)

¹⁶ For purposes of this analysis, responses that combine one minority race and White were assigned to the minority; multiple-minority race data was not reassigned (See OMB Standards/HUD Policy Statement dated 8/13/02).

Table II-B-6- PY 07/08 Public Service Beneficiaries¹⁷

<u>Activity</u>	Total # assisted	H/L any race	NH/L White	NH/L Black	NH/L Asian	NH/L AI/AN	NH/L NH/PI	Two or more races ¹⁸	Other	FHH
Senior Access ADC Scholarship	N/R	N/R	N/R	N/R	N/R	N/R	N/R	N/R	N/R	N/R
San Geronimo Comm. Svcs.	4616 people	805 17.4%	3298 71.5%	257 5.6%	121 2.6%	72 1.6%	23 .5%	40 .9%	0	746 16.2%
Fair Housing of Marin	1245 people	211 16.9%	884 71.0%	112 9%	35 2.8%	0	0	0	3 .2%	313 25.1%
Marin Food Bank	20,976 people	9,011 42.9%	5,466 26.1%	4,210 20.1%	1,301 6.2%	210 1.0%	778 3.7%	0	0	N/R
West Marin Senior Svcs.	384 people	0	381 99.2%	0	1 .3%	2 .5%	0	0	0	149 38.8%
Novato Youth Scholarship	4 People	1 25%	3 75%	0	0	0	0	0	0	1 25%
North Bay Children's Scholar	11 people	1 9.1%	8 72.7%	2 18.2%	0	0	0	0	0	5 45.5%
Family Legal Svcs.	946 people	479 50.6%	401 42.4%	42 4.4%	3 .3%	21 2.2%	0	0	0	N/R
Marin BI Network	18 people	1 5.6%	15 83.3%	0	2 11.1%	0	0	0	0	9 50%
After School Safe House Tutorial	60 people	7 11.7%	2 3.3%	51 85%	0	0	0	0	0	40 66.7%
Quality Care for Kids	N/R	N/R	N/R	N/R	N/R	N/R	N/R	N/R	N/R	N/R
Fairfax/San Anselmo After school Transport	115 people	76 66.1%	34 29.6%	5 4.3%	0	0	0	0	0	N/R
Pickleweed Center staff	20 people	16 80%	0	0	4 20%	0	0	0	0	7 35%
Marin Clinic	1197 people	742 62%	373 31.2%	18 1.5%	18 1.5%	5 .4%	0	0	41 3.4%	N/R
Legal Aid of Marin	196 people	33 16.8%	102 52%	49 25%	5 2.6%	0	0	0	7 3.6%	112 57.1%
Canal Alliance, Child Svcs.	23 people	18 78.3%	0	3 13.1%	0	0	0	0	2 8.7%	N/R

¹⁷ Source: PY07/08 demographic reports submitted by sub-recipients to the county.

¹⁸ For purposes of this analysis, responses that combine one minority race and White were assigned to the minority; multiple-minority race data was not reassigned (See OMB Standards/HUD Policy Statement dated 8/13/02).

Marin Learning – therapeutic classroom	59 people	39 66.1%	1 1.7%	14 23.7%	2 3.4%	0	0	2	1	N/R
MCIL- Hsg. Access	N/R	N/R	N/R	N/R	N/R	N/R	N/R	N/R	N/R	N/R
Perform. Stars	N/R	N/R	N/R	N/R	N/R	N/R	N/R	N/R	N/R	N/R
Totals	29870 100%	11440 38.3%	10968 36.7%	4763 15.9%	1492 5.0%	310 1.0%	801 2.7%	42 .2%	54 .2%	1382 4.6%
Demographics										
+County of Marin	247,289 100%	11.1%	78.6%	2.8%	4.5%	.3%	.1%	2.4%	.3%	16.9%

Abbreviations: H/L- Hispanic/Latino; NH/L- Not-Hispanic/Latino; AI/AN- American Indian/AK Native; NH/PI Native Hawaiian/Pacific Islander; FHH- Female-headed household; N/R- No report.

+Source: US Census Bureau, Census 2000 Redistricting Data Summary File, Table QT-PL (Note: this table was used for comparative purposes as the county's report form gathered demographic data in a similar manner.)

The tables above reveal that White/Non-Hispanics were significantly underrepresented in seven programs (58.3% of 12 programs reporting data) in PY 06/07. The funding of six¹⁹ of the seven programs was renewed in PY 07/08 and four programs (Marin Food Bank, After School Safe House Tutorial, Family Legal Services, and Fairfax/After School Transport) continued to report significant underrepresentation of this group, along with five additional programs. By PY07/08 White/Non-Hispanics were significantly under-represented in nine programs (60% of 15 programs reporting data). However, the county renewed funding for seven of the nine programs again in PY08/09, including the After School Safe House Tutorial, Family Legal Services, and Fairfax/After School Transport. ***The significant under-representation of White/Non-Hispanics in the majority of the county's funded programs, particularly After School Safe House Tutorial, Family Legal Services, and Fairfax/After School Transport, may lead to violations of Title VI and Section 109 and is noted as a Preliminary Finding of Non-compliance in Subsection II-B-4, below.***

Additionally, Hispanics were significantly underrepresented in three programs (25% of 12 programs reporting data) in PY06/07. The funding of all three²⁰ programs was renewed in PY07/08 and only West Marin Senior Services continued to report significant underrepresentation of this group. However, the county renewed the program's funding again in PY08/09. ***The significant under-representation of Hispanics in West Marin Senior Services may lead to violations of Title VI and Section 109 and is noted as a Preliminary Finding of Non-compliance under Subsection II-B-4, below.***

The representation of the remaining races and ethnicities either exceeded or was in parity with that of the county. However, it should be noted that the representation of Black participants in the After School Safe House Tutorial (conducted in CT 1290-Marine City, where Blacks comprise 46% of the population making this an impacted census tract) far exceeded that of the county by 97% in PY06/07 and 81% in PY07/08.

¹⁹ In PY07/08 White/Non-Hispanic representation in Novato Youth Scholarships was in parity with the county; Quality Care for Kids did not submit a demographic report.

²⁰ In PY07/08 Hispanic representation in the Marin Food Bank, North Bay Children's Scholarship, and After School Safe House Tutorial either exceeded or was in parity with the county.

The tables further reveal that 17 sub-recipients did not provide beneficiary data on sex (i.e. female-headed-households) in PY06/07 and PY07/08. However, of those that did, only Marin Head Start Family Outreach reported FHH under-representation. ***The failure to collect beneficiary sex data is a violation of Section 109 and is cited as a Preliminary Finding of Non-compliance in Subsection II-B-4, below.***

Additionally, participation by the disabled was either not reported or was reported inaccurately (See demographic report analysis above). ***The failure to accurately collect data on the extent to which the disabled participated in funded programs is a violation of Section 504 and is cited as a Preliminary Finding of Non-compliance under Subsection II-B-4, below.***

Further, FHEO noted that the following programs did not submit demographic reports in one of the years under review: North Bay Children's Scholarship, Senior Access, Quality Care for Kids, MCIL, and Performing Stars²¹. ***The failure to report race, ethnicity, and sex data is a violation of Title VI and Section 109 and is cited as Preliminary Findings of Non-compliance under Subsection II-B-4, below.***

Lastly, the county has not collected the race, ethnicity, gender or disability characteristics of residents of any housing (including single-family) developed, constructed, and/or assisted with CDBG monies in the programs for the years under review or in the current 5-year Consolidated Plan (Con Plan) cycle. ***The failure results in issuing a Preliminary Finding of Non-compliance, below, in Subsection II-B-4.***

Monitoring/Risk Assessment

The Con Plan's "Monitoring Standards and Procedures," are outlined in Section 91.230, pages 104-105. The standards monitored are: (1) whether the project met its stated objectives *and the requirements of its grant contract* (emphasis added) and; (2) whether the project had sufficient impact on high-priority needs of low-income people compared with the outcome of other grant-funded projects.

Applicable questions used to determine whether a project meets the basic standards include: (1) is the information being supplied by the project sponsor correct and complete? (2) Did the project contribute to . . . racial integration? (3) Is the activity conducted in a manner that respects the rights of people with disabilities for equal access? (4) How responsive is the project sponsor to emerging community needs and the special needs of minorities? (5) Has the project sponsor made appropriate outreach to show a commitment to providing culturally sensitive services to all people?

The standards indicate that monitoring is conducted through on-site visits. The monitoring goal is to evaluate each project every two years but high-risk sub-recipients are targeted for "more frequent onsite and programmatic monitoring." The standards contain criteria used to identify high-risk sub-recipients including: projects that are not meeting contract goals

²¹ MCIL did not submit a demographic report in 07/08 but it provided FHEO with a spreadsheet of beneficiaries during the onsite review.

(i.e. projects serving a smaller number of clients than projected); projects who fail to submit demographic reporting data on a timely basis or who submit data that appears questionable.

Monitoring Report Form

The CDBG monitoring questionnaire collects the project name, sponsor, type (housing, capital, public service), name and signature of county monitor (Reid Thaler or Roy Bateman), and date. The monitoring form indicates that monitoring is conducted via telephone. The monitoring report form contains a list of twelve questions that focus on project goals, accomplishments, funding, and verification of participant income. ***The county's monitoring form fails to evaluate compliance with the civil rights requirements of the Grant Agreement and the Con Plan Standards. This failure may lead to violations of Title VI, Section 109, and Section 504 and is noted as a Concern under Subsection II-B-4, below.***

The Con Plan Monitoring Standards identify high risk sub-recipients as projects that are not meeting contract goals (i.e. projects serving a smaller number of clients than projected); projects that fail to submit demographic reporting data on a timely basis; or projects that submit data that appears questionable.

FHEO reviewed the "Consolidated Plan Amendments" for fiscal years 2006 and 2007 (equivalent to PY06/07 and PY07/08) and compared a sample of proposed beneficiaries listed in the amendments to actual beneficiaries reported in demographic reports. FHEO then compared actual beneficiaries from the demographic reports to actual beneficiaries reported to HUD/IDIS. The results are illustrated in the table below:

Table II-B-7- Proposed v Actual Beneficiaries

Program	Program Year	Funding Amount	Con Plan Proposed (P) Beneficiaries	Demographic Report Actual (A) Beneficiaries	Deviation P&A 20%+ (Y/N)	IDIS Beneficiaries
After School Tutorial	06/07	\$8,600	35	Unknown	Y (IDIS)	60
	07/08	\$8,500	40	60	Y	60
Family Legal Svcs.	06/07	\$18,450	1,000	Unknown	N (IDIS)	1,095
	07/08	\$19,100	50	946	Y	946
Fairfax After School Transport	06/07	\$3,985	35	Unknown	Y (IDIS)	45
	07/08	\$4,350	60	115	Y	115
West Marin Senior Services	06/07	\$5,461	100	367	Y	Unreported
	07/08	\$5,440	10	384	Y	384
FHOM	06/07	\$41,400	350	958	Y	771
	07/08	\$41,400	350	1245	Y	Unreported
Senior Access	06/07	\$20,976	24	16	Y	16
	07/08	\$20,364	10	Unreported	Unknown	Unreported
MCIL	06/07	Not funded	N/A	N/A	N/A	N/A

	07/08	\$25,000	5	Unreported	Unknown	Unreported
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The table reveals that the majority of sampled projects served significantly more clients than projected in PY06/07 and 07/08, Senior Access served significantly less than projected in PY06/07, and the remainder failed to submit demographic reports in one of the years under review. The data submitted from projects serving more clients than projected is questionable as it may indicate that these projects are reporting participant count/demographic data from other funding sources in addition to CDBG. Additionally, the data reported by Senior Access in 06/07 is questionable as it may indicate that the project did not spend all its funds. In summary, all of the sampled projects meet the criteria for “high-risk” and the requisite monitoring at least annually.

FHEO interviewed Community Development Coordinator Roy Bateman concerning the county’s monitoring of sub-recipients. Bateman stated that none of the sub-recipients were considered high-risk. Although Monitoring Reports revealed that some of the sampled projects were monitored annually by contacting sub-recipients telephonically, the telephonic “monitoring” failed to evaluate compliance with the civil rights terms of the Agreement and was therefore deficient, regardless of frequency. ***The failure to adhere to the Con Plan’s risk assessment and risk-based monitoring procedures may lead to violations of Title VI, Section 109, and Section 504 and is noted as a Concern in Subsection II-B-4, below.***

IDIS Reporting

FHEO compared the demographic reports in the sample to the HUD/IDIS reports to determine the accuracy of the county’s data reporting. FHEO found that the county failed to report FHH beneficiaries in all instances. Additionally, the county failed to report beneficiaries of West Marin Senior Services in PY06/07 and FHOM in PY07/08. Further, the IDIS data did not match FHOM’s demographic report data in PY06/07. FHEO compared the reports and found that the county altered the data on the demographic report by subtracting Hispanic ethnicity beneficiaries from their respective races, reducing the beneficiary count, and reporting the new count/demographics in IDIS. However, the demographic report had already captured participation by race and ethnicity and the county’s manipulation further tainted the data. ***The failure to report accurate race, ethnicity data in HUD/IDIS is a violation of Title VI and Section 109 and is noted as Preliminary Finding of Non-compliance in Subsection II-B-4, below.***

Additionally, FHEO found that the county failed to report FHH beneficiaries on all programs in the sample. Further review of all 32 funded programs revealed that the county failed to report FHH beneficiaries to IDIS in all instances. ***The failure to report accurate sex data in HUD/IDIS is a violation of Section 109 and is reflected as a Preliminary Finding of Non-compliance in Subsection II-B-4, below.***

On-Site Visits

FHEO conducted onsite reviews of three sub-recipients.

Fair Housing of Marin (FHOM)

Nancy Kenyon, Executive Director, has been employed with FHOM for 25 years and most of the staff has worked at the agency for over 15 years. Kenyon stated that FHOM has received CDBG funding for many years and it received \$41,400 in each of the program years under review. Kenyon stated that FHOM also receives funding via HUD/FHIP and various local agencies. Kenyon indicated that FHOM's primary functions are: assisting victims of housing discrimination through counseling and support; providing fair housing training for landlords primarily in Marin, Sonoma County, and the City of Richmond; conducting school presentations on fair housing; and advocating for affordable housing.

Caroline Peattie, Housing Director, stated that FHOM generally serves clients from Marin County. However, it will serve people from outside the county if there is not a fair housing agency in their area. Peattie stated that FHOM conducts general outreach via Social Security offices, transitional housing, domestic violence shelters, and Head Start programs.

Peattie stated that the county's largest minority group is Hispanic and is centered in San Rafael's "canal district." Peattie indicated that FHOM conducts special outreach to Hispanics through the Canal Alliance. Peattie indicated that FHOM encountered 98 limited English proficient (LEP) Spanish persons in FY 06-07 and 96 LEP Spanish persons in FY 07-08. In order to communicate with these individuals, FHOM employs one bilingual Outreach Director and one bilingual counselor. Peattie indicated that Spanish fair housing information appears on FHOM's web site, various outreach and educational materials have been translated into Spanish, and the agency is in the process of creating a Spanish DVD.

Peattie stated that the county's largest low-income group is Asian, mostly Vietnamese, and this group is centered in San Rafael. Peattie indicated that FHOM has not encountered an LEP Asian during her tenure. However, FHOM networks with the Asian Alliance to ensure the availability of interpretation services if needed. Additionally, FHOM has translated various fair housing materials into Vietnamese and Chinese. Further, Peattie stated that FHOM conducts outreach in Marin City, a predominantly Black part of the county.

Peattie stated that FHOM is accessible to the disabled and it served 140 disabled households in PY06/07 and 199 disabled households in PY07/08. Peattie stated that FHOM provides reasonable accommodations to the disabled through home visits and telephone interviews. Additionally, when FHOM conducts public workshops and activities, it ensures that the public site is accessible and it advertises the availability of reasonable accommodations. Peattie indicated that FHOM communicates with the deaf via its TDD device, the CA Relay Service, and in writing. Peattie stated that FHOM is in the process of including its TDD number on all documents.

Peattie stated that FHOM's participant files are computerized and the agency collects demographic data on each complainant via its "Daily Log" (intake screen). Peattie explained that all complainants are asked to identify race, ethnicity, gender, and disability data. Peattie explained that the Race category has two fields and, if the complainant claims Hispanic ethnicity, "Hispanic" is entered in the second (Other race) race field. However, if the complainant claims Not-Hispanic ethnicity, no data is entered in the second field.

Peattie reiterated that FHOM's funding comes from various sources, including CDBG, HUD/FHIP, and local agencies. Peattie stated that FHOM compiles participant numerical and demographic data from all its funding sources and submits this data annually to the county on a CDBG demographic report form. Peattie explained that FHOM has not developed a mechanism for identifying beneficiaries of its various funding sources so it reports ALL participants as CDBG beneficiaries. ***FHOM's pattern of reporting inaccurate race, ethnicity, and sex data on its CDBG participants is a violation of Title VI and Section 109 and is cited as Preliminary Findings of Non-compliance in Subsection II-B-4, below.***

Peattie stated that all allegations of discrimination involving federally protected classes are referred to HUD and cases involving protected classes unique to the State of CA are referred to DFEH. However, if a complainant does not want to engage in the administrative process, FHOM suggests mediation through DFEH or refers the complainant to a private attorney.

Document Review

FHEO reviewed the Daily Log (intake screen) from 1 participant's computerized file and found that it contained the following fields/data: Race (Caucasian), Other race (Blank), Gender (Female), Type of Parent (Single). (Note: According to FHOM, the "Other race" field is used if a participant is Hispanic. If the participant is Non-Hispanic, then the field is left blank.) The log also contained a box to indicate, via check mark, if the participant was disabled. The file review revealed that FHOM's data collection methods did not comply with OBM Standards/HUD Guidelines for the following reasons: (1) "Caucasian" is not a federally recognized race and (2) ethnicity data was not collected on Non-Hispanic participants. ***FHOM's failure to collect race and ethnicity data in the format and categories prescribed by OMB/HUD is cited as a Preliminary Finding of Non-compliance under Subsection II-B-4, below.***

FHEO examined outreach and education materials in English, Spanish, Vietnamese, and Chinese, business cards, and stationery and found that all documents posted a telephone number and email address but only the stationery posted the TDD number. ***FHOM's failure to include an effective communication method for the deaf on documents that post a telephone number is a violation of Section 504 and is cited as a Preliminary Finding of Non-compliance in Subsection II-B-4, below.***

Senior Access

Jen Tripathy, Program Director, has been employed with Senior Access for three years. Also participating in the interview were Mimi Schreiber, Marketing and Outreach Director, an 18 month employee, and Andrea Goldfein, Development Director. Goldfein stated that Senior Access has been funded by CDBG for its Adult Day Care (ADC) scholarship program for the past three or four years. Goldfein stated that the ADC scholarship program provides financial assistance for low-income disabled elders, primarily those diagnosed with dementia. Goldfein explained that CDBG funds a portion of the scholarship for each eligible person. Goldfein did not know the amount of CDBG funding the agency received in PY06/07, but it received approximately \$24,000 in PY07/08 and \$17,710 in PY08/09.

Goldfein explained that persons interested in the program complete an application form and submit financial information to determine eligibility during the intake process. She stated that the agency collects demographic data during intake on its “intake form” and “personal information form.” However, the agency did not submit a PY07/08 demographic report to the county because it was not requested nor could Goldfein produce a report for FHEO. ***Senior Access’ failure to collect and report race, ethnicity, and sex data on its PY07/08 beneficiaries is a violation of Title VI and Section 109 and is cited as Preliminary Findings of Non-compliance in Subsection II-B-4, below.***

Ms. Goldfein stated that the market-rate fee for the ADC program is \$95/day. The scholarship reduces the fee to \$75 for clients with an adjusted gross monthly income (AGMI) of \$1,100-\$2,199 and \$50 per day for clients with an AGMI of \$0-\$1,099. Clients with an AGMI of \$2,200+ do not qualify for the scholarship.

Senior Access networks with various agencies such as the Alzheimer’s Association, Community Agencies Serving Seniors, Family Caregiver Alliance, Jewish Family and Children’s Services, Marin Center for Independent Living (MCIL), churches, community and faith-based organizations, and hospitals. Goldfein explained that the agency’s scholarship recipients are primarily from Marin County. Tripathy stated that clients are referred to the agency from the Alzheimer’s Association, word of mouth, and newspaper articles.

Schreiber stated that the agency has advertised its program in the Marin Independent Journal and she provided a binder with a host of newspaper articles concerning agency fundraising events. Schreiber indicated that she has conducted outreach in Marin City and Pickleweed Park. Tripathy stated that she speaks Spanish and other staff members speak French and German. She indicated that the Intake Coordinator may have a list of foreign language interpreters but Tripathy could not produce it. Tripathy stated that On Lok, a partner agency, could provide Asian interpretation services if necessary but she had not utilized the services. Tripathy further stated that some documents had been translated into Spanish but she could not produce them.

Schreiber stated that Senior Access is accessible to the disabled and it has clients who are wheelchair users. Tripathy stated that the agency does not have a TDD. She explained that most clients communicate through their caregiver and/or via email.

Document Review

FHEO reviewed Senior Access’ “intake form” and “personal information form.” The intake form requests the following pertinent data: sex and marital status. The personal information form requests the client’s ethnicity and primary language and the caregiver’s ethnicity, primary language, and identification of minor children in the household. The form requires a client or caregiver to select one of the following five “ethnicities:” African American, Asian/Pacific Islander, Caucasian, Hispanic/Latino, or Other. The form does not allow persons to select more than one of the options. Additionally, neither form collects disability data but, according to Goldfein’s interview statement, all program participants are disabled. The form review revealed that the data collection methods did not comply with OBM/HUD Policy for the following reasons: (1) only one of the selections (Hispanic/Latino) is an ethnicity, the remainder

are races;(2) Asian/Pac. Islander are two separate and distinct races; (3) Am. Indian/AK Native is not listed as a race; (3) Other is not an approved category; (4) data is not collected on Non-Hispanic participants. FHEO reviewed seven scholarship recipients' personal information forms and found that the "ethnicity" of one beneficiary (Kathleen Holladay) was not identified. ***Senior Access' failure to collect race and ethnicity data in the format and categories prescribed by OMB/HUD is cited as a Preliminary Finding of Non-compliance under Subsection II-B-4, below.***

FHEO reviewed a sample of Senior Access's brochures and other marketing materials in the English language and found that all documents posted a telephone number but they did not include an equally effective communication method the deaf. ***Senior Access' failure to include an effective communication method for the deaf on documents that post a telephone number is a violation of Section 504 and is being cited as a Preliminary Finding of Non-compliance in Subsection II-B-4, below.***

Marin Center for Independent Living (MCIL)

Roland Rouda, Assistive Technology Advocate for the Marin Center for Independent Living (MCIL) has administered the Housing Accessibility Modification Program for six and one-half years. The modification program is funded solely through CDBG. Rouda explained that MCIL did not apply for CDBG funding in PY06/07 but the agency received \$25,000 in both PY07/08 and PY08/09.

Rouda stated that MCIL's home modification program provides housing modifications to low-income seniors and the disabled MCIL does not require proof of the client's disability. The modification program serves both homeowners and renters living in single-family homes, multi-family units, and mobile homes. Typical modifications include bathroom makeovers, color coding stairs and other areas, installing medium-grade roll-in showers, installing wheelchair ramps, raising and lowering sinks, and widening doorways.

Rouda explained that all clients are from Marin County and most are referred by the Marin General Hospital, Kaiser Permanente, Kentfield Rehabilitation Hospital, Sutter Visiting Nurses Association, West Marin Senior Services, MCIL clients, and various occupational therapy services providers. Rouda explained that he refers callers from outside the county to an independent living center in their area.

Rouda stated that MCIL markets the modification program via the Aging in Place Forum, Assistive Technology Expo, Blind and Vision Impaired of Marin, Kaiser Permanente, Kentfield Rehabilitation Hospital, Marin County Senior Fair, Marin Human Race, Marin Orthopedics, MCIL Assistive Technology Fair, Parkinson's Support Group in Mill Valley, Rehab Without Walls, Senior Companion Program of Marin, and various licensed contractors. Rouda explained that MCIL advertises the home modification program in its informational brochure and quarterly newsletter which is distributed to approximately 4,000 agencies.

Rouda stated that prospective applicants may apply for the program in-person or via the telephone. Rouda indicated that he obtains applicant demographic data and explains the application process, including the income requirements and the bid process during the initial

intake. However, if initial contact is by telephone, Rouda acknowledged that he does not always obtain demographic data. Rouda stated that he did not submit a PY07/08 demographic report to the county because it was not requested.

Rouda stated that he provides each applicant with an information packet which includes instructions for submitting proof of income and contains two waivers for renters—one to be signed by the landlord allowing the modification and the second to be signed by the client agreeing to remove the modification at his/her own expense when he/she vacates the unit. Rouda stated that only about one-third of the prospective applicants return the application. He indicated that applicants drop out of the program for a variety of reasons, including changes in accessibility needs.

Rouda stated that he reviews all completed applications, verifies income, and ensures the waivers have been signed, if applicable. Rouda then obtains bids from 3-4 contractors in his network and submits a funding request to the county. County staff approves the project for funding and Rouda selects the specific contractor. Rouda explained that he rotates among the contractors in his network in order to divide the work equitably. Rouda stated that the average processing time for a modification is 4 months and the client is not reported as a beneficiary until the modification is complete.

Rouda recalled only three rejections during his tenure. He stated that one person was rejected due to being over-income and two others were rejected because the requested modifications were cost prohibitive.

Rouda stated that he occasionally receives calls from prospective applicants who are LEP Hispanic and/or Asian. Rouda indicated that MCIL has Spanish and Cantonese speaking staff. Additionally, the informational brochure has been translated into Spanish, but the housing modification information packet has not. Rouda acknowledged that the agency has not conducted any additional outreach to these groups.

Rouda stated that MCIL's office is accessible to the disabled. Rouda explained that he has not received any requests for reasonable accommodations and this is probably because a person with a disability does not need to come to the office to apply for the program. Rouda stated that he uses email to communicate with clients and he has a TTY but he has not received calls concerning the modification program on the device.

Document Review

FHEO reviewed MCIL's "intake form" and found that it collects disability and gender data. Additionally, the form collects race and ethnicity in the following format: White (non-Hispanic); Black/African American; American Indian/Alaska Native; Native Hawaiian/Pacific Islander; Asian; or Hispanic/Latino. The form does not allow the selection of more than one option. ***MCIL's failure to collect race and ethnicity data in the format prescribed by HUD is a violation of Title VI and Section 109 and is being cited as a Preliminary Finding of Non-compliance in Subsection II-B-4, below.***

Although MCIL did not submit its PY07/08 demographic report to the county, Rouda produced a spreadsheet listing the names of 4 beneficiaries during the program year. FHEO reviewed the intake forms of the 4 beneficiaries and found that race and ethnicity were not reported for one beneficiary (Joann Raddue) and gender was not reported for another (Rose Garden). ***MCIL's failure to collect and report race, ethnicity, and sex data on its beneficiaries is a violation of Title VI and Section 109 and is cited as Preliminary Findings of Non-compliance in Subsection II-B-4, below.***

FHEO reviewed MCIL's brochure and Rouda's business card and found the TTY number listed on both documents.

The county has not collected the race, ethnicity, gender or disability characteristics of residents of any housing (including single-family) developed, constructed, and/or assisted with CDBG monies in the programs for the years under review or in the current 5-year Consolidated Plan (Con Plan) cycle. ***This failure results in issuing a Preliminary Finding of Non-compliance below in/Subsection II-B-4.***

Subsection II-B-3 Affirmatively Furthering Fair Housing Choice

Issue: Whether the recipient took actions to analyze and develop an effective Analysis of Impediments to Fair Housing Choice document; implemented affirmative action to address impediments identified in its AI; and through policies, practices, procedures of administration, acted to identify areas of racial and minority segregation, and if identifying any, implemented policies and programs to address those by promoting an expanded range of housing choices into more integrated settings.

Regulatory Authority

Major regulatory authorities for review discussed within this segment:

- 24 CFR 1.4/Title VI: Recipients may not utilize criteria or methods of administration which have the effect of discriminating based upon race, color, or national origin.
- 24 CFR 6.4/Section 109: Recipients may not utilize criteria or methods of administration which have the effect of discrimination based upon race, color, national origin, religion or sex; recipients must take steps to overcome effects of conditions that resulted in limiting participation based upon race, color, national origin, religion or sex.
- 24 CFR 8.4/Section 504: Recipients may not utilize criteria or methods of administration the purpose or effect of which would subject qualified individuals with handicaps to discrimination; recipients shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

- 24 CFR 8.20, et seq./Section 504: When viewed in their entirety, funded programs must be accessible to persons with disabilities. A minimum of five percent of new-construction units must be accessible to persons with mobility impairments.
- 24 CFR 91.225, 92.351/Fair Housing Act, HOME Investment Partnership Act Programs: Each jurisdiction is required to submit a certification that it will affirmatively further fair housing, which means that it will conduct an analysis to identify impediments to fair housing choice within the jurisdiction, take appropriate actions to overcome the effects of any impediments, and to maintain records reflecting the analysis and actions taken. Each participating jurisdiction must adopt affirmative marketing procedures and requirements for rental and homebuyer projects containing 5 or more HOME-assisted housing units. Affirmative marketing steps consist of actions to provide information and other wise attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, sex, religion, familial status or disability.
- 24 CFR 570.601-602/Fair Housing Act, Executive Order 11063, Section 109 of Title I of HCD Act of 1974 (CDBG Programs): Each community receiving a CDBG grant will submit a certification that it will affirmatively further fair housing, and requires a grantee to assume the responsibility of fair housing planning by conducting an analysis to identify impediments to fair housing choice within its jurisdiction. Recipients shall ensure in administering its programs under this part that no person shall be excluded from participation in, or be denied benefits of, or otherwise be subjected to discrimination based upon race, color, national origin, religion, sex, age, or disability.
- 24 CFR 121/Title VI, Section 109, Fair Housing Act: Participants in the programs administered by the Department shall furnish to the Department such data concerning the race, color, religion, sex, national origin, age, handicap, and family characteristics of persons and households who are applicants for, participants in, or beneficiaries or potential beneficiaries.

Introduction, Overview, and Analysis of Demographic/income Patterns

California enacted in 1969 a Housing Element Law that recognized the vital role that local governments play in the supply and affordability of housing. It requires that each governing body (city council or board of supervisors) of a local government in the state to adopt a comprehensive, long-term general plan for the physical development of its jurisdiction, and mandates that local governments adequately plan to meet the existing and projected housing needs of all economic segments of the community. California's Housing Element Law acknowledges that, in order for the private market to adequately address housing needs and demand, local governments must adopt land use plans and regulatory systems which provide opportunities for, and do not unduly constrain, housing development. California's Housing Element Law is overseen by its state Department of Housing and Community Development. In 2007, Housing Element Law was amended to require local jurisdictions to strengthen provisions for addressing the housing needs of the homeless, including a zone or zones where emergency shelters would be allowed as a permitted use without conditional use permits.

More specifically, the California Housing Element Law requires the development of a Regional Housing Needs Allocation (RHNA) process to address the need for housing throughout the state. As part of the RHNA, the State requires each jurisdiction to plan for its share of the region's housing need, for people of all income categories. In northern California, the Association of Bay Area Governments (ABAG) functions to organize nine metropolitan counties of the San Francisco Bay Area and, through means of a joint planning process, to identify each county's apportioned share of the region's overall housing needs. Each jurisdiction must then plan for that need in their local housing elements, which are eventually certified by the California Department of Housing and Community Development.

The county of Marin is one of nine counties of the San Francisco Bay Area metropolitan area that is a member of ABAG. As the demographics drawn from year 2000 census data in the chart below depict, Marin is, overall, also the least racially- and ethnically-diverse of these nine counties.

Table II-B-8 – Bay Area County Demographics

	Alameda	Contra Costa	Marin	Napa	San Francisco	San Mateo	Santa Clara	Solano	Sonoma
Total population	1,418,988	999,046	236,269	125,255	739,993	693,639	1,687,387	394,512	452,253
White	48.8%	65.5%	84.0%	81.3%	49.7%	59.5%	53.8%	52.5%	79.3%
Black	14.9%	9.4%	2.9%	1.8%	7.8%	3.5%	2.8%	15.0%	1.4%
Asian	20.4%	11.0%	4.5%	5.5%	30.8%	20.0%	25.6%	14.0%	3.9%
Am Ind/ AK native	.6%	.6%	.4%	.9%	.4%	.4%	.7%	.8%	1.0%
Native HI/ Pac Isl	.6%	.4%	.2%	.3%	.5%	1.3%	.3%	.8%	.2%
Hispanic ethnicity	19.0%	17.7%	11.1%	28.6%	14.1%	21.9%	24.0%	14.7%	21.9%
Combined minority population*	55.0%	39.1%	19.1%	37.1%	53.6%	47.1%	53.4%	45.3%	28.4%
Land mass (sq miles)	738	720	520	754	47	449	1,291	828	1,576
Persons per square mile	1,922	1,387	454	166	15,744	1,544	1,307	476	286

Source of data: Note 3 (US Census, American Factfinder, Table QT-PL, year 2000 general population census data).

*"Combined minority population" derived by summing all racial and ethnic minorities. Persons of Hispanic ethnic may be double-counted in some cases.

Blue font is used in this chart to highlight the lowest percentage of any racial or ethnic group among the nine Bay Area counties.

Even among its relatively small minority population, persons of Black race and Hispanic ethnicity are largely clustered in two minority-impacted census tracts. Of the county's population of 7,142 Blacks, 16% of those live in the unincorporated area of southeast Marin known as Marin City (census tract 1290), where Blacks make up 1,150 or 46% of the total residents. The Marin Housing Authority's largest low income public housing developments are located in Marin City, as well as several other forms of HUD-subsidized housing. Of the county's population of 27,351 persons of Hispanic ethnicity, 13,070 or 48% of those live in the city of San

Rafael, primarily in an area of that city known as the canal zone (located within census tract 1122), its oldest section and the area of most concentrated poverty.

As the two tables below depict, Blacks and Hispanics living in Marin County have much lower median household incomes, and are much likelier to be living below the poverty level than other groups, particularly non-Hispanic Whites. The median household income of Blacks (\$37,314) is only 49% of the median income of non-Hispanic Whites (\$75,341); the median household income of Hispanics (\$50,221) is better than for Blacks, but still only 67% then that of non-Hispanic Whites (supra). Blacks (12.21%) and Hispanics (14.55%) are both over three times as likely to be living with incomes below the poverty level as non-Hispanic Whites (4.72%) are in Marin County. Although Asians are also significantly under-represented in Marin relative to adjacent counties (particularly San Francisco, just across the bay, where the percentage of Asian residents is over six times higher than in Marin County), Asian median household income is more comparable to that of White/non-Hispanic families, and thus their ability to achieve market-rate housing in Marin is better than that of Blacks or Hispanics. The median household income of Asians who are already living in Marin is only slightly lower than that of non-Hispanic Whites. Asians living in adjacent counties of San Francisco and Alameda do, however, have substantially lower median household incomes than that of non-Hispanic Whites. Also, the percentage of Asian families living below the poverty level in Marin (8.69%), while lower than the poverty rate for Blacks or Hispanics, is still nearly double the rate of non-Hispanic Whites.

Table II-B-9 – Marin County Median Income & Poverty Level By Race & Ethnicity

	Median Yearly Household Income (note 4)	Living Below Poverty Level (note 4)
Total population	\$83,732	15,061/247,289 = 6.31%
White/non-Hispanic	\$97,087	9,175/194,254 = 4.72%
Black	\$37,314	872/7,142 = 12.21%
Asian	\$70,815	974/11,203 = 8.69%
Hispanic ethnicity (any race)	\$50,221	3,979/27,351 = 14.55%

Source of data: US Census/American Community Survey 2005-2007 data.

Table II-B-10 – Comparative Bay Area County Median Yearly Household Income

Median Yearly Household income in:	Marin County	San Francisco County	Alameda County	San Mateo County	Contra Costa County
Total population	\$83,732	\$65,519	\$66,430	\$70,819	\$63,675
White	\$75,341	\$63,227	\$62,181	\$72,469	\$67,829
Black	\$37,314	\$29,640	\$35,909	\$51,870	\$44,270
Asian	\$70,815	\$49,596	\$62,450	\$78,263	\$69,600
Hispanic ethnicity	\$50,221	\$46,553	\$50,001	\$55,089	\$49,423

Source of data: US Census/American Factfinder (1999 income data taken from year 2000 census).

In Marin County, the median price of a home was reportedly \$710,000 as of July 2009 (down from \$846,000 in June 2008) (source: MDA DataQuick Information Systems, www.DQNews.com). Assuming a 20% down payment leaving a \$568,000 mortgage, an estimated monthly housing payment (principle and interest only, 30 year fixed rate at 5%, not including taxes or insurance) would be approximately \$3,049/month. Using the Fannie Mae/Freddie Mac suggested back-end ratio of total debt/income not-to-exceed 36%, this would require an annual household income of approximately \$109,000, significantly more if real estate taxes and homeowners' insurance are included, and assuming there are no other forms of debt other than this housing-related debt. *While even the median-income non-Hispanic White families living in Marin could not qualify for this mortgage of a median-priced house there, the income/homeownership gap is much further still for Black and Hispanic families living in Marin, or living in adjacent counties.*

Market rate rental housing is similarly expensive in Marin County. According to rental rate data derived from the Real Estate Research Council of Northern California, for large apartment buildings of 100 or more units, the average rental rate of a 2-bedroom apartment in Marin, as of the first quarter of 2009, was \$1,678/month. This source showed rental rates in Marin as third highest of the nine Bay Area counties (following behind only San Francisco county at \$2,323/month; and San Mateo county at \$1,741/month). Another source (RealData, Inc.) provided 2nd quarter 2009 average rental rates for Marin sorted by geographic area, for a 2BR/1BA unfurnished apartment, not including utility payments: North County (e.g., Novato area) \$1,295/month; Central County (e.g., San Rafael area) \$1,657/month; South County (e.g., Sausalito/Marin City area) \$1,335/month. Using a fairly common "three times the monthly rent" income standard, and an approximate rent (\$1,678 + \$1,295 + \$1,657 + \$1,375=\$6,005/4) averaging \$1,501/month would require a household income of \$4,503/month (\$54,036/year) to qualify. *Using this formula, far fewer than half of all Black families living in Marin or adjacent counties would qualify for an "average" market-rate rental rate for a 2BR apartment. And, only about half of Hispanic families living in Marin or any of the adjacent counties would qualify for a market-rate rent in a 2BR apartment. Finally, more than half of Asian families living in adjacent San Francisco county would qualify for the rent of an average 2BR apartment in Marin, though more Asians living in other counties would qualify.*

Apportioned shares of housing development pursuant to the state Housing Element Law/RHNA reflect goals adopted in May 2008. Marin's goal of 4,882 is comprised of 1,095 units of housing affordable in the very low (< 50% AMI) range; 754 units in the low (< 80% AMI) range; 977 units in the moderate (< 120% AMI) range; and 2,056 in the above moderate (> 120% AMI) range.

Table II-B-11 – Bay Area Counties Housing Element Goals

	Alameda	Contra Costa	Marin	Napa	San Francisco	San Mateo	Santa Clara	Solano	Sonoma
Housing Units	44,937	27,072	4,882	3,705	31,193	15,738	60,338	12,985	13,650

Marin is not unlike a number of other Bay Area counties in that primary residential and economic development is concentrated around major traffic arteries (in Marin, this is primarily

US 101 which traverses the county north-to-south), leaving other large sectors of these counties in a relatively rural, agricultural, or undeveloped state (in Marin, virtually the entire western half of the county's landmass). In the first chart at the top of this section, the bottom row shows that of the nine counties, only two (Napa and Sonoma) have lower population densities than Marin. The population density of Solano county is similar to Marin, but the remaining five counties have much higher population densities than Marin. *Considering median incomes by racial/ethnic group depicted in the tables above in this segment, one can readily see that Blacks and Hispanics, and to a lesser degree Asians, would have disproportionately greater need of affordable housing units in Marin than non-Hispanic White families, if these groups sought to live in Marin.*

Residential development in Marin County did not begin in earnest until completion of the Golden Gate Bridge in 1937. Prior to that time, the trip from San Francisco across the bay to Marin County was accomplished by auto/train/passenger ferry boats. Economic development of Marin was primarily logging and agricultural, with sparse residential development well into the 1940's. During World War II, the Marinship factory, located in the north end of the city of Sausalito, played an important role in the construction of liberty ships, as the Marinship factory employed a large number of Blacks, many of whom it housed in company housing adjacent to the factory. After World War II, with closure of the factory, the area surrounding and to the east of the former Marinship site became known as Marin City, where today the county's largest concentration of Blacks still lives.

Relatively rapid residential development occurred northward into other parts of Marin County in the 1950s and 1960s, with the county advocating a pro-growth posture and advertising to attract commuters from San Francisco to a suburban lifestyle. In the 1960's, the Richmond-San Rafael Bridge was completed, and created a much shorter, over-water link between Marin County and Alameda/Contra Costa counties, which are to the east. Both Alameda and Contra Costa Counties have, as noted in the chart at the top of this section, significantly higher minority populations than Marin. However, with emergence of ecological and land conservation movements in the 1970s, residential and economic development slowed, and has remained relatively slow in Marin County since then.

The last large scale development of housing in Marin came with the closure of Hamilton Air Force Base, through the Base Closures Act, and annexation of that large parcel of land to the Marin County city of Novato, in northeastern Marin, in the 1990s. Marin county's citizens and its politicians are well known in the bay area for their tenacity in preserving open space, and for actions to prevent urban sprawl into those open spaces. While such policies preserve the natural beauty of the county and minimize the ecological impact to it, they may also have played a role in limiting population growth by virtue of reserving a relatively small percentage of land within the county to be zoned for residential or economic development. Today, the county has among the highest per capita incomes of any county in the United States, along with some of the highest costs of housing. Several county government representatives whom HUD staff interviewed as a part of this compliance review also noted that the lack of housing affordability has also created in Marin one of the largest populations of elderly people among Bay Area counties, since younger families regardless of their race or ethnicity now have trouble achieving the household incomes necessary to purchase or rent a home in Marin, while the population that moved into Marin in the

more-affordable and growth-oriented 1950s and 1960s continues to age in-place, though perhaps with a changing set of needs.

In summary, if FHEO were analyzing the collective housing market of Marin County as it would an affirmative fair housing marketing plan, we would identify Blacks, Asians and Hispanics as the three racial and ethnic groups “least likely to apply” for housing in Marin without affirmative marketing and outreach to attract their interest. All three groups are significantly under-represented relative to their populations in adjacent counties, especially those counties to the south and east.

Further, as demonstrated above, Blacks and Hispanics living in Marin and adjacent counties have median family incomes significantly lower than those of White/non-Hispanic families or the general population, as do Asians living in San Francisco county (Asians living in other Bay Area counties have median incomes more comparable to those of White/non-Hispanic families, and thus are not so likely to be income-challenged). The lower median household incomes of Black and Hispanic families living in Marin and adjacent counties make them largely unable to achieve homeownership, or even rental housing, at prevailing market rates in Marin. Fewer than half of all Black or Hispanic families living in Marin or adjacent Bay Area counties have household incomes that would qualify them to purchase a single family home in Marin, or even to rent an average 2BR apartment in that county. Asian families, with the exception of those living in San Francisco, would be less likely to be income-challenged, though they remain significantly under-represented among households in Marin for perhaps other reasons.

Marin County’s Analysis of Impediments to Fair Housing Choice (AI): Old impediments/newly-identified Impediments

Marin County’s 1994 AI/impediments

Marin County’s “current” AI is still the one it originally wrote during the first Consolidated Planning cycle back in 1994; Marin has never updated its AI through either of the two successive (1999-2004, 2005-2009) planning cycles. As of the date of FHEO’s onsite (July 6-10, 2009), despite the fact that the county’s planning for its next (2010-2015) Consolidated Planning cycle is well underway, no firm plans have been announced by the county to update its 1994 AI. HUD staff was informed that Marin CDBG staff has informally contacted Fair Housing of Marin Director Nancy Kenyon about the possibility of her agency helping to develop a new, revised AI, but no meetings to discuss the particulars of that, nor allocation of funding, nor development of any contract had been undertaken to formalize that process as of July 2009.

FHEO will also note here that in several of its recent reviews of Marin’s CDBG Annual Action Plans, we have repeatedly communicated written concerns back to HUD’s Regional CPD Director and his staff regarding the outdated Marin AI, and the need to update it. FHEO believes those concerns have been communicated back to Marin County’s CDBG Program coordinator, Roy Bateman. In fact, Marin County’s failure to update its AI in response to these several recommendations by FHEO, coupled with the historically low minority population of the county, were factors of elevated risk that played a role in FHEO’s selection of this relatively small CDBG program for a compliance review this year.

In analyzing Marin County's 1994 AI for this review, and the need for updating that AI, FHEO conducted interviews with the following people in efforts to determine if new or additional impediments had arisen or come to attention, such as would merit a revision of the AI:

- Nancy Kenyon, Director, Fair Housing of Marin, and members of her staff (interview conducted on June 23, 2009);
- Roy Bateman and Reid Thaler, both are principal staff of Marin County CDBG program (primary interview conducted on June 29, 2009);
- LeeLee Thomas, Marin County Affordable Housing Strategist, Marin County Community Development Agency (interview conducted on June 30, 2009);
- Leslie Klor, Housing Advocate/Service Coordinator; and Sharon Miyaki, Supportive Housing Director, both of Marin County Housing Authority (interview conducted on July 1, 2009).

FHEO also considered documents submitted by Marin County in response to FHEO's notice of scheduling of this review, dated May 6, 2009, attached to which was a data request list. The County responded (in electronic format) to HUD's notice and data request list in June, 2009.

Marin's 1994 AI, like many others this office has reviewed that were conducted during that first cycle of Consolidated Plans which required an AI, was a skeletal document, and lacked the more sophisticated analysis that many subsequently-revised AIs have come to demonstrate. HUD's very useful, two-volume Fair Housing Planning was first published in 1996, and laid out the components of a thoughtful AI (Volume I), but also gave useful examples (Volume II). Marin County has not taken advantage of the Fair Housing Planning guide to update its AI, nor to improve the quality of analysis and findings that, if updated, it should by now contain.

A stylistic weakness of the 1994 Marin AI is that it lacks any kind of a concise summary of the county's impediments. FHEO believes that a well-written AI will contain a "bullet-ized" summary of impediments. Those concisely-stated impediments can then readily be associated with specific actions to remediate them identified in the companion Consolidated Plan.

The core analysis of the 1994 Marin AI is just 25 pages long, though the entire document containing appendices, maps, demographics charts, interview summaries and articles regarding housing discrimination studies conducted by Fair Housing of Marin grows the overall document to a total length of approximately 75 pages. It is believed, based upon interview comments of Kenyon and Bates, that Fair Housing of Marin was contracted under Marin CDBG funding in 1993/94 to give primary input (or perhaps, even to write) this AI. The AI's 25 pages of core narrative, though useful, is largely a recitation of the experience of Fair Housing of Marin as derived from its staff's processing of housing discrimination complaints in the several years preceding 1994, and its several audits of limited scope regarding the practices of rental housing providers in the county, during that same period. On the final pages of the AI, where FHEO

would normally expect to see a series of bullets summarizing the major impediments that had been identified with corresponding remedies (to be transferred later into the Consolidated Plan), there is only a two-paragraph narrative, which is quoted here in full:

“VI. Conclusions and recommendations...The County should continue to support the efforts of local fair housing programs and encourage dialogue between fair housing advocates and landlords. The data shown in (this report) demonstrates the success of (Fair Housing of Marin’s) Fair Housing Program (FHP) investigation, education, and advocacy efforts. The FHP should continue its education work and continue to investigate and publicize housing discrimination in the county.

“The county should continue to support the acquisition, rehabilitation, and construction of affordable housing. The high cost of housing is an impediment to housing choice for lower income minorities, families with children (especially single mothers), and the disabled. For this reason, fair housing activities should be directed towards rental housing, where the greatest potential for discrimination exists.”

In essence, this conclusion would appear to identify just two impediments and need for two related remedies, those being:

- That instances of housing discrimination continue to exist in Marin, particularly against minorities and female-headed families with children. Remedy: continue to fund Fair Housing of Marin in support of its enforcement and educational efforts to combat this ongoing discrimination.
- That lack of affordable housing is an impediment, particularly for minorities and female-headed families with children. Remedy: build more affordable housing.

However, in the preceding pages of analysis, the 1994 Marin AI narrative actually identifies at least 18 other important impediments, even if these do not find their way into the final conclusions, nor did the county perceive, for the most part, that they should justify mention of any specific remedies or actions by the county in its Consolidate Plan. These additional impediments “buried” within the AI’s narrative are cited and summarized here:

- a. That a shortage exists of larger, multiple-bedroom rental units which are likelier to be sought by Asian and Hispanic households with more children or multiple generations living within a single household (1994 AI, pages 2, 5, and 10);
- b. That a shortage of rental units within the county, which drives up demand and prices, and results in competition, can lead to housing providers employing discriminatory screening methods, and which may have particular negative consequences for minorities, families with children, and persons on fixed incomes such as elderly persons and those with disabilities (page 2);
- c. That the doubling of the county’s Hispanic population (from 4% in 1980, to 8% by 1990), while the county’s overall population grew by just 3.4% during this same period,

may have sparked anti-immigration sentiment in the county, and has possibly promoted the clustering or segregation of Hispanic and some Asian families to the Canal Area of San Rafael where concentrations of others like them may insulate them from forms of housing discrimination and anti-immigrant sentiment (pages 2, 4);

- d. That single-female headed households, and not just those with minor children, had a mean household income only half that of male-headed households, and only one-third that of married couples, and so single-female households are particularly impacted by the high cost of housing in Marin (page 4);
- e. That two census tracts within Marin (CT 1290 in Marin City; CT 1122 in the Canal Area of San Rafael) are severely impacted with Blacks comprising over 59% of residents of Marin City, and Hispanics comprising over 47% of the residents of the Canal Area. Further, that the segregation of the county's Black population in Marin City has perpetuated or even accelerated historic patterns of racial segregation in Marin City that date back to World War II (pages 5, 6, 17, 18) (note also related impediment "p", below);
- f. That the county's elderly population is increasing at a particularly rapid rate, by 23% between 1980 and 1990, seven times the rate of national increase of this age group. And, that those elderly persons, and persons with disabilities, who are likelier to subsist on fixed incomes, are disparately impacted by the high cost of housing in Marin, and are often made at risk of homelessness because of it (pages 6, 7, 22);
- g. That the county's transportation director stated that a lack public transportation is *not* a significant impediment in the county, because public transportation "is focused in the areas with multi-family housing that serves minorities, single mothers with children, and the disabled" (*HUD note*: this comment appears to fail to recognize the effects of perpetuating segregation and clustering that is implicit in the statement) (page 7);
- h. That persons of middle or lower income levels working in the county are likelier to live outside the county and commute into it each day for work, rather than living within Marin County itself, because of the lack of affordable housing, and that this pattern seems particularly to impact persons of racial and ethnic minorities (page 8);
- i. That the county had 1,500 non-profit sponsored units of affordable housing, and the Marin County Housing Authority administered 363 units of public housing and 1,680 Section 8 vouchers, all of which are subject to federal affirmative marketing requirements (*HUD note*: though failing to state or analyze the racial/ethnic participation rates, or conclude whether any affirmative marketing has been undertaken or resulted in promotion of housing choices outside of impacted areas) (page 8);
- j. That census statistics show that non-Hispanic White and Asians account for the vast majority of the county's homeowners, while Blacks and Hispanics collectively comprise fewer than 5% of the county's homeowners (page 10);

- k. That federal subsidy formulas and limits are insufficient to make viable the development of new units of subsidized housing units in Marin County owing to the extremely high cost of land and development in the county, with particular impact on minorities, families with children, elderly and disabled who have disparate need (pages 11, 22);
- l. That a 1993 fair housing audit conducted by Fair Housing of Marin using, for the most part, paired testers, revealed that racial and ethnic minorities were as much as 71% likelier to receive less favorable treatment or suffer housing discrimination relative to non-Hispanic Whites, suggesting that while the percentage increase of CDBG funding to fair housing enforcement and education to Fair Housing of Marin had increased from 1% to 2% of the CDBG grant in the past year (1993-1994), the funding provided by the county remained inadequate to allow Fair Housing of Marin to combat the significant problem of racial and ethnic discrimination that persists in the county (p 14);
- m. That interviews with persons of Black and Asian race and Hispanic ethnicity have revealed that these believe they will be subjected to instances of housing discrimination if moving outside of traditional areas of their residency in the county (Marin City for Blacks, Canal Area of San Rafael for Hispanics and Vietnamese), thus deterring them from searching in non-traditional areas even when the quality of comparably-priced housing might be better (pages 18, 19);
- n. That the then-Director of the Marin Housing Authority acknowledged that the exceedingly high cost of housing in Marin was an impediment to her agency's Section 8 voucher-holders, who often could not locate housing in Marin County within the rental ranges authorized by the program, and so were forced to return their unused vouchers, or to "port" the vouchers to other counties where housing was more affordable. Since MHA's programs have significantly elevated participation by Blacks and Hispanics as a result of MHA's affirmative marketing efforts, this nevertheless results in out-migration of these racial and ethnic groups who are already under-represented in Marin, to other counties, thus working against diversification within the county (pages 19, 20, 24, 25);
- o. That this same Director of MHA noted that the agency's inventory of just 30 Shelter-plus-Care supported units was massively inadequate to serve the needs of the county's large population of persons with disabilities (page 20);
- p. That this same Director of MHA has had trouble placing non-Black LIPH Program participants in the severely racially-impacted Marin City LIPH developments, because of perception that the predominate Black residents view the Marin City developments as "historically theirs", and have been unwelcoming of persons of other races or ethnicity into these developments (page 21);
- q. That the predominate zoning in the county is open-space or agricultural, or topographically unbuildable, leaving only a small percentage of land primarily centered around the major transportation corridors open to residential development (page 23);

- r. That anti-development sentiment within the county frequently results in, or produces fears of possible litigation which further drives up residential development costs and deters development. However, for its part, the county has worked to develop incentives to promote inclusionary or more units of affordable housing, such as in-lieu fees paid by developers who don't want to include affordable units within their (primarily upscale single family) developments, density bonuses, and pre-application consultation and expedited development processes for conversion of some single-family homes into two unit housing (pages 23, 24).

Though not all of these 18 additional impediments above are meaningfully supported by cited facts or figures, FHEO believes that they remain thoughtful analyses of many more impediments than the two that are summarized at the end of the 1994 AI. And as noted above, the failure to prominently summarize these other impediments has apparently resulted in the fact that, by and large, they have not been translated into issues to be addressed with corresponding remedies or measurable goals in the county's 1994 or successive Consolidated Plans. Through interviews and documentary information collected during this compliance review, FHEO believes that most all of these impediments summarized as items a – r above remain valid as impediments even as of 2009. However, the current, 2005-2009 CDBG/HOME Consolidated Plan, and its related amendments for fiscal years 2006-2008, contains goals or remedies to address only a handful of them. This will be discussed in greater detail, below.

New impediments identified during HUD's compliance review:

When interviewed by FHEO staff, Marin County Community Development Coordinator Roy Bateman explained that the county had not updated its 1994 AI because "nothing much has changed in Marin" since the document was originally written, and thus the county had not perceived any need in the 15 intervening years to update or revise the original AI. FHEO examined during this review whether Bateman's contention that "nothing much has changed in Marin" was factually accurate.

Through its compliance review, primarily interviews with those individuals identified at the top of this part, FHEO believed that several new potential impediments came to be identified. These potential impediments follow:

(1) NIMBYism. Cited as examples was strong resident opposition of Tiburon residents to the development of four units of affordable housing by Habitat for Humanity. The housing was architect-designed, unique in character, and Habitat had gone to great lengths to make the housing consistent with other local development, yet the residents of Tiburon were still vocally opposed, and the issues drew media attention. Other examples of NIMBYism were cited in Strawberry and Marinwood. It was noted that at some point, when the number of units becomes too severely limited, development simply isn't profitable enough for a developer to proceed, and the county develops a reputation for being a place where development is next to impossible, and developers may shy away from projects in the county because of a perception that development obstacles are insurmountable.

(2) Locality preferences. Cited as an example was a proposed affordable housing development in Corte Madera which the residents opposed, and then its city council also came to oppose it. Richard Marcantonio, formerly with Legal Aid of Marin, filed a lawsuit against the city of Corte Madera until its city council finally backed down and agreed to allow the development to proceed. The development, called San Clemente, has been built and contains 79 units of affordable housing. It was developed by EAH (Ecumenical Association for Housing). Fair Housing of Marin's Director and several of its board members subsequently persuaded the City to not limit the new housing to Corte Madera residents (who are 90% Caucasian). Although the San Clemente development ultimately came to be embraced by the residents of Corte Madera, the city has since come to oppose the development of more units of affordable housing there because it believes it has already done its "fair share" by allowing San Clemente, and so doesn't want to allow more affordable housing to be constructed there. Other examples were cited. Fair Housing of Marin has sent all City Planning Directors information on how fair housing laws interact with affordable housing planning by cities and has worked on several compromises.

(3) The aging stock of existing affordable housing in Marin. Cited as an example Golden Gate Village, a public housing project of the Housing Authority of Marin, located in Marin City. Fair housing complaints have been filed regarding lack of physical accessibility and reasonable accommodation issues. The GGV development was built shortly after WWII, and that much of Marin City's Black population is related to the historic Marinship factory that built liberty ships in WWII, which employed many Black workers who, with their families, remained in the Marin City area after the war. None of the GGV units were accessible to wheelchair users at time of their development, and the buildings (multi-story) also lack elevators.

(4) Problems finding landlords willing to accept Section 8 vouchers: Although Marin Housing Authority has an advocate on their staff (FHEO note: this is Leslie Klor, interviewed by HUD during course of this review) whose job includes liaising with landlords and prospective landlords, there continue to be many landlords unwilling to participate in the program. Further, it continues to be a challenge to find rental units offered within the price range authorized by the voucher. Some of this resistance to accepting Section 8 voucher-holders could be a presumption that Section 8 voucher tenants would be like residents of public housing projects who are thought to not take care of their units, or who are associated with drug or gang activities, and attitudes may also be reflective of deeper prejudices against racial or ethnic minorities.

(5) Loss of existing affordable housing stock. Cited was the rapidly increasing price of housing in Marin in recent years, which resulted in the owners of some of affordable and/or subsidized housing stock electing to prematurely pay off mortgages from government agencies that contained affordability restrictions in them, and subsequent loss of those affordable housing units from the county's inventory. An example is the Highlands of Marin development owned/managed by United Dominion. Approximately 104 of the units at Highlands are BMR units, but the owners' plans are to redevelop the property as upscale housing, and there is no plan to preserve the BMR units in the

renovated property. All of the current residents living in the 104 BMR units are at risk of termination and relocation, unless able to pay market rate after renovation.

(6) Lack of new housing development/non-creation of new units with accessible features of design: With the county's historic opposition to new housing development, few new multifamily housing units that would incorporate the FHA's new construction design accessibility requirements (4/more units) are being constructed, making it difficult for people with mobility impairments to find suitable housing in Marin. Anecdotal evidence suggests that people seeking accessible housing most generally accomplish that by way of making modifications to existing structures. However, even if the tenant can secure permission from the landlord to undertake the modifications, these tenants often cannot afford to make the renovations themselves. Fair Housing of Marin has provided fair housing training to over 3,000 people within the past 10 years, and it is felt that the landlords who have participated are now fairly well aware of their obligation to permit reasonable modifications under the FHA.

(7) Unsuitability of older-construction housing for families with children: The majority of Marin's housing stock was constructed in the 1960s and 1970s. The construction is mostly wood frame, and there are minimal sound/noise isolation measures in the units. Families with minor children encounter many obstacles in finding suitable rental units, including lack of units with more than two bedrooms such as would be needed by larger families, lack of affordability. But a particular problem results when families secure housing in these modestly-constructed buildings, and then find that neighbors begin to complain about noise problems from the children's presence in the units. This can result in threats or actual evictions, with disproportionate impact on families with minor children. Further, a good number of multifamily complexes constructed during the 1960's/1970's were originally built as "adults only" complexes. Although discrimination against families with children was outlawed by state fair housing law even before passage of the FHA amendments in 1988, there is still some lingering discrimination against families with minor children in these historically-adults complexes, who may now know that law requires that they rent to families with children, but then look for justifications such as noise complaints as grounds to limit the number of families with children living in those complexes. (Source: Interviews with Fair Housing of Marin staff.)

(8) Anti-immigrant sentiments and tenants don't know or are fearful of exercising their fair housing and tenant-landlord rights: When Fair Housing of Marin recently expanded its public website to include a Spanish-language version and information about FH rights in the Spanish language, and conducted a public service outreach campaign in Spanish, it received angry comments from citizens expressing the attitude that taxpayer money should not be spent conducting outreach or advocating for the rights of people presumed to be, though in many cases not actually, living in the country illegally. Even among immigrant families that are living legally in this country, many of these families would prefer to avoid confrontations with landlords who would "threaten to call INS" if the tenants complain or try to advocate for their fair housing or other legal rights as a tenant. Some of these, if coming from countries where supportive services by government were

not common, may be reluctant or unfamiliar with the fair housing and tenant-landlord counseling services that are available to them in the US.

(9) Lack of workforce housing or preferences for persons commuting into the county for jobs, but who cannot afford to live within the county due to high cost of housing. Commute patterns across area bridges suggest that Marin County's high-income residents are somewhat likelier to commute out of the county for employment (primarily into San Francisco or Alameda counties, or south), than those who are employed in the county's lower-paying service area jobs which are more typically filled by people living outside the county (especially minorities), and who commute into Marin for employment. While each of the six Local Planning Areas would like to adopt residency preferences for the affordable housing development created within their respective jurisdictions, an alternative would be to adopt workforce preferences for people living outside the county but commuting in for work. Such a preference would tend to increase the eligibility of racial and ethnic minorities, who comprise a disproportionate share of the service sector jobs in the county, but who cannot afford to live in the county in which they are working.

Fair Housing-Related actions/remedies contained in the 2005-2009 Consolidated Plan:

The public participation process leading to the development of the 2005-2009 Consolidated Plan is discussed above in Subsection II-A Citizen Participation. FHEO has already concluded above in that section that racial and ethnic minorities and persons with disabilities, particularly those living in areas where CDBG funds were proposed to be used, coupled with the county's failure to advertise or publicize public hearings held at times and locations convenient and physically accessible to potential and actual beneficiaries, was having the effect of denying participation by these groups in violation of Title VI, Section 504, and Section 109.

As also noted above in this report, for planning purposes, Marin County has divided itself into six Planning Areas. According to the Consolidated Plan, each of these six Planning Areas is represented by a Local Area Committee consisting "of all the city council appointees to the Priority Setting Committee from the cities and towns in the Planning Area plus a County Supervisor whose supervisorial district most closely coincides with the Planning Area." The six areas are:

1. Novato (includes Novato, Ignacio, Bel Marin Keys, Black Point);
2. San Rafael (includes San Rafael, Los Ranchitos, Lucas Valley, Marinwood, Santa Venetia);
3. Upper Ross Valley (includes Fairfax, Ross, San Anselmo);
4. Lower Ross Valley (includes Corte Madera, Larkspur, Kentfield, Greenbrae, San Quentin);
5. Richardson Bay (includes Belvedere, Mill Valley, Sausalito, Tiburon, Marin City, Strawberry, Tam Valley, Waldo Point);
6. West Marin (includes the inland rural and coastal corridors).

The Consolidated Plan contains some affirmative provisions regarding the public planning process, including that “staff will encourage the participation of all persons including those with disabilities...”, “staff will encourage the participation of non-English speaking residents and identify how their needs can be met, and when a significant number of non-English speaking residents can reasonably be expected to participate in a public hearing, to make arrangements for their full participation, including provision of translators”, and “staff will encourage, in conjunction with the Marin County Housing Authority, the participation of residents of public and assisted housing developments in the process of developing and implementing the Consolidated Plan, along with other low income residents throughout the County” (Con Plan, page 11).

No attempt will be made here to summarize all of the objectives, priorities and goals identified in the 2005-2009 Consolidated Plan. However, we will note that the county made the following estimates of unmet housing need (Con Plan, page 20):

Table II-B-12 – Consolidated Plan Housing Needs

Housing Priority	Percent of median income		Unmet need (units)
Renter	0-30%	High	6,409
	31-50%	High	5,009
	51-80%	Medium	7,927
Owner	0-30%	Low	3,657
	31-50%	Low	4,316
	51-80%	Low	7,645
Special Populations	0-80%	High	3,200

The Consolidated Plan also listed as High Priority needs the development of neighborhood facilities, parks and recreation facilities, health facilities, handicapped services, transportation services, substance abuse services, employment services, health services, youth centers, child care centers, senior centers and services (Con Plan, pages 21-22). The county’s response to those needs was discussed above in this FIR, under the segment on indirect- and direct-benefit activities.

Marin County’s Consolidated Plan housing-related objectives are reviewed here:

Objective H-1: “Marin County will use federal funds to address the affordable housing needs of low income persons by funding an average of 3 projects per year, allocating an average of \$1,830,000 in CDBG and HOME funds.”

Objective C-1: “Marin County will use federal funds to acquire and or rehabilitate community facilities serving the needs of low income persons by funding an average of 6 capital improvement projects per year, allocating an average of \$600,000 funds annually.”

This FIR cites below a number of paragraphs from the 2005-2009 Con Plan as they relate to the challenges and special needs of racial and ethnic minorities, and persons with disabilities. These statements show sensitivity to the special needs of these groups, and would suggest that the county has acknowledged its obligation to help these groups overcome impediments and to address their special housing needs.

The narrative beneath these objectives identifies the certain groups that have special, unmet housing needs that this objective would address. The list includes disabled persons with need for living in group homes; severely overcrowded families; homeless; battered persons; those at risk of homelessness; elderly; persons with chemical sensitivities; supportive housing for persons with disabilities (p. 23).

In addressing impediments and special housing needs of racial and ethnic minorities, the Consolidated Plan narrative indicates that *“lower income Hispanic and Asian residents, particularly recent immigrants, live primarily in San Rafael and Novato. They experience a severe rent burden, and often live in overcrowded conditions to support the rent. More affordable housing is needed to alleviate overcrowding”* (Con Plan, p 26). *“(Data in attached tables) shows that Hispanic families have a disproportionate number of housing problems. The largest concentration of low income Hispanic families is in the Canal area of San Rafael, where the rental units tend to be moderately priced. The Canal area has a very high degree of overcrowding (defined as over one person per room). According to the 2000 Census, the Canal area (CT 1122), 11.7% of households were overcrowded, compared to only 1.2% of households in Marin County as a whole. Over the past decade, overcrowding in the Canal Area has increased dramatically as rental prices have skyrocketed. This data confirms anecdotal information that Hispanic families are more likely than the general population to live in overcrowded conditions.”* (Con Plan, p. 32). *“A significant proportion of the low income Black families in Marin County live in public housing in Marin City. For this reason, the county has fewer lower income Black families with housing problems than Hispanic families, since families in public housing live in standard quality of housing and they tend not to be rent burdened or live in overcrowded conditions. Although residents of Marin City public housing generally would not be considered to have “housing problems” as defined by the data set provided by HUD, this area has significant neighborhood-related social problems, particularly related to unemployment and substance abuse.”* (Con Plan, pps. 32-33). *“(Data tables provided show that residents of Marin who are White typically earn higher wages than persons of African-American, Hispanic, Native American, and Asian heritage. While the median income for Asian families is high (\$70,815 in 1999), anecdotal evidence suggests that the county has a significant population of lower income Southeast Asian families (estimated at 3,500), suggesting that Asians may have a wider income distribution than Whites, although both Whites and Asians have about the same median income. However, precise data on the number and housing situation of Asian families is not available. While a majority of Marin’s housing stock is in ownership housing and the majority of Marin’s residents are White, persons of Black or Hispanic heritage are disproportionately represented in rental housing. Blacks are also disproportionately represented as renters of lower cost units, units which cost less than the median gross rent. Blacks are disproportionately represented in the family public housing complex in Marin City. Based on anecdotal evidence, it appears that many Latino families are able to afford market rent because they live in overcrowded conditions, sometimes with two or more families sharing an*

apartment.” (Con Plan, p. 31).

Marin County reflected awareness of the existence of racial segregation and clustering in Marin City in a part of the Consolidated Plan that discussed income concentration. It notes that with new construction of 255 apartments and 85 townhouses in the Marin City USA development project, plus 30 additional units in adjacent Baum Court (also Marin City) between 1995 and 2000, the racial demographics of that area shifted, as was the county’s intention in promoting that development. *“The primary goals of the Marin City US project were to bring greater racial and economic integration to Marin City. Property management staff for the new apartments at Marin City USA estimated in 1999 that 40% of their residents were African American, 35% were White, 15% were Hispanic, 5% were Asian/Pacific Islander, and 5% were ‘other’.* More than half the homebuyers (in Marin City USA) were White, a quarter of them were African American, 14% were Asian, and the rest (11%) were Hispanic and Native American” (Con Plan, p 53). But despite the increased diversity, Marin City remained racially impacted by the time of the year 2000 census, with over 46% of its residents still being of a single race, Black, who otherwise account for less than 4% of the county’s overall population. FHEO will note here that Marin City apparently has become less impacted over the years; the county’s 1994 AI stated that Blacks comprised 59% of Marin City’s residents according to the 1990 census, whereas the 2000 census indicated that Blacks comprised 46% of residents. According to the 2005-2009 Consolidated Plan, of the Marin Housing Authority’s 500 units of public and assisted housing, 300 of them are located in Marin City, and 200 of these 300 are elderly/disabled housing (Con Plan, page 55).

In addressing needs of persons with disabilities, the Consolidated Plan discusses supportive services for persons with disabilities, including those with AIDS, those with mental or developmental disabilities in need of special supportive services, and the county’s New Beginnings Center, located at the former Hamilton AFB (Novato), which has over the first five years of operation transitioned 61% of its residents to complete a rehabilitation program and transition to permanent housing (Con Plan, p. 36). The narrative also describes residential, treatment-services programs provided by Marin Abused Women’s Services, in conjunction with other groups (Con Plan, p. 36), but also discusses unmet need for additional housing and supportive services for persons with mental illness, particularly those who are double- or triple-diagnosed, whose untreated conditions put them at risk of imprisonment (p. 39). The Consolidated Plan indicates that the Marin Housing Authority had completed retrofitting of accessible units among its 500 units of LIPH and project-based housing, and by end of 2005 expected to achieve the Section 504-required 5% accessible unit goal (Con Plan, pps. 55-56).

In addressing special housing needs of women, the Consolidated Plan notes that year 2000 Census data estimated that there were 5,115 families with a female head of household and at least one child under the age of 18, accounting for 7% of all families with children living in the county. The narrative cites the significant income challenges that exist among female-headed households, whose median household income is barely 33% that of married-couple families (Con Plan, p 45).

The 2005-2009 Consolidated Plan ultimately summarizes seven impediments, each with a corresponding estimated financial commitment as its proposed action. These are:

Table II-B-13 – 2005-09 Consolidated Plan Impediments and Planned Actions

Impediment/protected classes	Proposed Action	Estimated Annual Financial commitment
1. High cost of housing, with rising rental housing costs and a shortage of units threatening to very low income households, including a disproportionate number of minorities, families with children, and the disabled.	More affordable housing made available through acquisition, rehabilitation and construction of affordable housing; county should apply to HUD for additional Section 8 vouchers.	<ul style="list-style-type: none"> - \$1.9 million in CDBG/HOME funds - \$320,000 Shelter + Care funds - 54+ new vouchers - \$800,000 HOPWA funds - \$3.6 million in housing and community development funded by the Marin Community Foundation
2. High cost of housing has excluded most moderate-income families with children and people of color from homeownership market. Highly competitive rental housing market may induce housing providers to employ discriminatory screening techniques.	Direct fair housing activities primarily to rental housing market. Offer fair housing training to rental housing providers. Provide counseling and enforcement assistance to victims of alleged discrimination. Continue a county-sponsored housing mediation program.	- Funding to Fair Housing of Marin enforcement and outreach funding in annual amount of \$200,000 - \$275,000, depending upon grants.
3. Racial discrimination in rental housing market, as identified in FH of Marin's 1994 Fair Housing Audit report.	Ongoing action in form of public hearing by Marin County Human Rights Commission, FH of Marin, and Marin Community Foundation. Local government continues to provide opportunities for public discussion as a way of communicating value of diversity. County increase information to local governments about its housing and human rights policies.	- County grant of \$15,000 to local non-profit (FH of Marin) for further study of housing discrimination.
4. Disabled often paying more than 30% of income in rent results in severe restriction of housing choice for disabled.	County should apply for federal funds to be used for housing, rent subsidies and service contracts for persons with disabilities.	<ul style="list-style-type: none"> - \$320,000 Shelter + Care funds (supra) - \$800,000 HOPWA funds (supra) - Marin Community Foundation grants to providers of social services to disabled (unspecified amounts, presumably based on grants awarded)
5. Education for children encouraging appreciation of similarities and differences between people of different racial, ethnic, and national	County continue its fair housing month celebration; ensure display of fair housing posters in public libraries	- Ordinary county and library administration costs

backgrounds.		
6. Minorities should be recruited to live in affordable housing	Community Development Agency staff should monitor affirmative marketing activities of all housing projects receiving federal grants and county grants. CDA should work with Marin Community Foundation's consultant in the preparation of an affirmative marketing study and the CDA should support appropriate recommendations of this study.	- Ordinary CDBG and HOME program administration costs. - \$32,250 Marin Community Foundation Grant.
7. Public outreach and education on fair housing issues needed to combat existing and potential discrimination in housing.	FH of Marin should continue its education work, also continue to investigate and publicize instances of housing discrimination. CHRB should continue to support fair housing outreach, CDA staff continues to attend CHRB meetings.	- Portion of FH of Marin annual budget. (i.e., unspecified portion of \$48,000).

Minority Participation in Marin County's Affordable Housing Programs

FHEO's May 6, 2009 notification and data request letter to the Marin CDBG program requested, under item #6 a listing of the race and ethnicity of each unit of affordable housing created by the county, and under item #14 a listing of affordable units with features of accessible design created using CDBG, HOME, ESG or McKinney grants, for program years 2007-2009, inclusive. In response to HUD's request, Marin County provided only the following table, which is depicted in its entirety here below. *Of note, the county's table is unresponsive to either of the requests for information about accessible units, or about the race or ethnicity of the family to first occupy each of these units.* The chart does indicate the relevant (2005-2009, inclusive) timeframe, a total of 1,331 households were served, and 1,322 total housing units were created. Some of the projects were completed as of the date of the report, others remained under construction. *(Note: The county's failure to provide demographic data and the number of accessible units in projects constructed or modified with CDBG funding results in issuing a Preliminary Finding of Non-compliance and is discussed in Subsections II-B-2, above, and II-E, below.)*

Table II-B-14 – 2005-09 Consolidated Plan Impediments and Planned Actions

Estimated Housing Accomplishments Expected During the Five Year Period: 2005-2009	Type of Project*	Priority 1, 2 or 3**	Type of Client	Number of Households Served	Number of Units	PROJECT STATUS
Bolinas Garage Affordable Housing	A&R	1 and 2	Family	8	8	Completed

Buckelew CHDO Lincoln Avenue Apartments	A&R	1	Disabled	12	12	Underway
Canal Area Housing Improvement Program	A&R	1 and 2	Family	To be determined	To be determined	Cancelled
Canal Housing Alliance Apartments	A&R	1	Family	4	4	Cancelled
Drake's Way Apartments	C	1	Family; Disabled	24	24	Under construction
Fireside Affordable Housing	C	1	Family	50	50	Under construction
Galilee Harbor	C	1 and 2	Family	38	38	Under construction
Gates Cooperative	R	1 and 2	Family	41	41	Predevelopment
Hamilton Field Housing (Meadow Park)	C	1, 2, 3	Family	708	708	Completed
Hamilton Senior Housing	C	1	Senior	60	60	Cancelled
Hamilton Transitional Housing	C	1	Family	60	60	Completed
Homeward Bound's Next Key ("Building 829")	C	1	Individual	32	32	Under construction
Madera Bay Apartments	C	1,2	Family	75	75	Cancelled
Old Mill Commons	C	1,2	Family	10	10	Cancelled
Point Reyes Apartments and Homes	C	1, 2, 3	Family	34	34	Completed
Rehabilitation Loan Program	R	3	Family	100	100	Under construction
San Clemente Family Homes	C	1	Family; Disabled	79	79	Completed
Tam House II	C	1	Senior	10	1	Completed
West Marin Assisted Living Facility	C	1	Senior	6	6	Completed
Total				1,331	1,322	

Table provided by CDBG Program Coordinator Roy Bateman in response to HUD's 5/6/09 data request letter.

During FHEO's onsite for this review, interviews conducted with Roy Bateman and Reid Thaler confirmed that the county has monitored the CDBG and HOME grants used towards development of *some* of these developments identified in the table above, but those account for a relatively small portion of the total 1,322 units created. *For several of the largest developments, e.g., the Hamilton Field Housing (Meadow Park) and two other Hamilton Field developments collectively providing 828 affordable housing and senior housing units, accounting for over 76% of the 1,084 projects that were completed to first occupancy by time of the report, the county had no method for collecting information about the race, ethnicity or head-of-household sex of the families that first occupied those units, nor has it since developed any protocol for collecting this information. Furthermore, Bateman and Thaler were unaware if any of the units developed had features of accessible design making them suitable for persons with mobility impairments.*

For those several affordable housing developments that FHEO was able to review grant monitoring folders while onsite, FHEO found that the County had developed a format data collection form, entitled "Marin County Community Development Block Grant Program Demographic Report for Direct Benefit Projects", that it apparently utilized to collect racial, ethnic, female-headed-household (FHH), and in some cases disability data on program beneficiaries. FHEO believes these data collection forms, which Bateman and Thaler indicated were filled out during their periodic monitoring of recipients, were the source of participation

data later fed into the county's IDIS reports to HUD. Information on participation rates for the several programs that FHEO was able to review the monitoring folders for during the onsite are summarized in the table below.

Table II-B-15 – Race/Ethnicity, Disability Status, and Household Status of Beneficiaries-CDBG Housing Programs

	Marin County general population*	Bucklew Mission (San Rafael) (\$80,000 housing rehab loan under CDBG, 2008 data)	Lifehouse Laurel (San Rafael) (\$34,600 housing rehab loan under CDBG, 2008 data)	Galilee Harbor (Sausalito) (\$60,000 housing rehab loan under CDBG, 2008 data)	San Clemente family (Corte Madera) (2008 data)	Bolinas Garage (Bolinas) (\$74,123 housing rehab under CDBG, 2008 data)
White	84.0%	9 = 81.8%	6 = 100%	30 = 78.9%	Unknown	4 = 100%
Black	2.9%	2 = 18.2%	None	4 = 10.5%	Unknown	None
Asian	4.5%	None	None	2 = 5.3%	Unknown	None
Hispanic	11.1%	None	None	2 = 5.3%	Unknown	None
FHH		7 = 63.6%	6 = 100%	7 = 18.4%	Unknown	None
Disabled**		Unknown	6 = 100%**	Unknown	Unknown	None
Total participants		11	6	38	79	4

Note: Although the form provides for reporting data on participation by American Indian/Alaskan natives, and native Hawaiian/other Pacific Islanders, this information is omitted from the above chart due to fractional percentages which would not be valid for statistical purposes.

*Source: US Census/American factfinder, table QT-PL, census 2000 data.

**On some versions of the Marin data collection form, senior and disabled participants were lumped together under a single category, which makes it impossible for HUD to determine the exact participation levels by persons with disabilities apart from seniors.

In none of the monitoring files that FHEO reviewed while onsite was there evidence of any type of affirmative marketing for these developments. While this is not to say that the developments did not individually undertake an analysis of racial/ethnic/FHH/disability participation, or pursue forms of affirmative marketing to address potential under-participation, there is no record of any such study in the files, and there was no evidence that in its monitoring, any questions were asked by Marin County CDBG staff about participation rates or affirmative marketing. Where data is present (for some projects, there was no recorded data at all), it is merely recorded without apparent analysis. FHEO acknowledges that the number of units contained in the several projects noted above are really too small to allow for development of valid statistics (e.g., in a small project of 10 units, the addition of a single Black resident would push participation levels to 10%, or three times the representation of Blacks in Marin County). *However, it is the lack of analysis and affirmative marketing to overcome potential under-representation that FHEO wishes to observe here.*

Table II-B-16 – Race/Ethnicity demographics of census tracts in Marin county, also identifying location of affordable housing units created 2005-2009, inclusive

Census tract	Total population	White	Black	Asian	Hispanic ethnicity (any race)	Affordable housing developments (approximately 1,300 units planned for creation during period of 2005-2009, inclusive)
Marin county	247,289	84.0	2.9	4.5	11.1	
1011	2,539	91.6	.7	3.2	3.5	
1012	2,584	86.2	.6	6.6	8.7	
1021	2,347	86.3	1.7	4.7	6.9	
1022.01	9,189	81.4	2.6	5.6	14.6	
1031	7,682	90.9	.8	3.2	6.1	
1032	6,590	83.3	1.4	5.8	11.1	
1041.01	6,666	82.9	1.7	6.3	11.0	
1041.02 S. Novato	4,959	73.0	3.5	5.8	22.4	
1042	5,722	83.9	1.6	3.9	16.5	
1043	1,665	91.9	.5	2.9	4.9	
1050 SE Novato	3,771	80.8	3.0	4.7	15.7	828 units – family/senior/transitional – Hamilton Housing (3)
1060.01	3,826	81.3	3.3	7.0	6.9	
1060.02	5,745	78.3	3.1	6.8	15.2	
1070	6,400	88.8	.8	6.0	4.2	
1081	6,524	90.3	.8	5.0	4.4	
1082	6,120	82.1	2.5	7.1	8.6	
1090 San Rafael downtown	7,778	83.9	2.0	3.3	13.6	12 units – disabled – Buckelew Lincoln Apts
1101	5,643	87.3	1.7	4.1	10.9	
1102	5,642	91.9	.4	4.1	3.6	
1110	5,528	77.3	2.7	4.2	18.8	
1121	4,018	83.6	2.0	3.3	15.5	
1122 San Rafael canal	11,679	43.5	3.4	8.4	70.1	4 units – family – Canal Housing Alliance
1130	3,797	90.3	1.0	1.3	6.1	
1141	5,142	92.1	1.0	2.0	5.1	
1142	3,092	90.7	1.2	2.2	6.0	
1150	7,048	92.7	.6	2.7	3.8	
1160	3,031	93.4	.9	1.3	3.8	
1170 San Anselmo	4,655	89.5	1.5	4.2	4.1	1 unit – senior - Tam House II
1181	2,329	96.1	.1	1.4	2.3	
1182	319	90.3	.3	3.4	5.0	
1191	4,627	94.3	.3	2.2	2.4	
1192	6,538	92.0	.7	4.1	3.0	
1200	6,040	93.1	.5	2.9	3.7	
1211	4,958	89.1	.9	4.4	5.4	
1212 Larkspur	5,521	85.7	1.1	7.2	5.6	24 units – family/disabled – Drake’s Way Apts 79 units – family/disabled – San Clemente Homes
1220 San Quentin prison	6,362	50.8	37.7	1.8	20.8	
1230	2,106	96.9	.1	1.8	2.2	
1241	5,377	88.2	1.0	6.1	3.4	
1242	5,431	92.6	.9	3.3	4.1	
1250	3,931	83.0	2.2	10.1	4.4	
1261	5,527	94.1	.5	2.5	2.6	
1262	4,335	84.8	2.0	8.0	5.4	
1270	4,428	94.2	.4	21.4	3.0	

1281 Mill Valley	6,188	89.2	1.0	5.6	4.3	50 units – family – Fireside Affordable Housing
1282	4,513	91.0	1.0	4.2	3.3	
1290 Marin City	2,500	36.4	46.0	7.6	8.3	
1302 Sausalito	7,758	91.7	.7	4.0	3.3	38 units – family – Galilee Harbor
1310	648	89.8	.9	3.1	6.2	
1321	2,337	92.7	1.4	1.3	5.2	8 units – family – Bolinas Garage
1322	2,332	84.1	.7	1.4	18.7	
1330 Pt Reyes Station	3,220	87.9	.5	1.0	14.4	6 units – senior – West Marin Assisted Living 34 units – family – Pt Reyes Apts & Homes

Source of data: Census 2000, SF-1, table GCT-P6 general population + American Factfinder (for census tracts of developments)

*Affordable housing units are those identified in Exhibit E to 2005-2009 Marin ConPlan, provided to HUD IRT DRL.

Chart II-B-16 above displays the racial and ethnic demographics for each of the 51 census tracts that make up Marin county, and combines this with information about where the 1,084 units of affordable housing that were developed to completion within the county during the 2005-2009 period. The information regarding the affordable housing units completed was supplied to FHEO by Marin county in its response to HUD's May 6, 2009 notification/data request letter asking for such data (see DRL items 6, 13, and 14). Although the county's response to HUD indicated that its compliance with state Housing Element Law established a goal of completing some 1,332 units of affordable housing during this period, it appears that only about 1,084 of these were actually completed to stages of initial occupancy during the period of 2005-2009. Projects that were originally targeted for completion, but remained incomplete according to the county's response to HUD, are *not* reflected in the table above.

It is also important to note that of the 1,084 total housing units reflected in the table above, several of the largest of these developments do not appear to have received any direct funding from HUD in the form of CDBG or HOME funds. Included among these with no apparent HUD funding were the three Hamilton Field projects, which collectively comprise 828 housing units, or about 76% of all of the affordable housing created by the county during this period. For this review, regional FHEO takes the position that since the county's CDBG office falls within its county Community Development Agency, and that Agency is responsible for affordable housing development, and its two CDBG program representatives (Bateman and Thaler) have salaries paid out of CDBG administrative costs funds, *all* of these affordable housing units are covered under Title VI, Section 109, and Section 504, even in those cases such as Hamilton Field Housing where there may have been no CDBG funding directly applied specifically to that housing development.

Although HUD had requested that the county provide racial and ethnic participation data for all affordable housing units (DRL item 6), and for information about units containing features of accessible design and the degree of utilization of such units by persons with disabilities needing those features (DRL items 14), the county provided no racial/ethnic/female-headed or disability demographic information in response for any of the Hamilton Field units. During the onsite, the county presented to HUD its monitoring folders for all of the CDBG-funded housing units as discussed in the paragraphs above. However, Bateman and Thaler responded during the onsite interviews that they had no participation data for any of the Hamilton Field projects. Needless to say, without access to participation data, the county representatives were also unable

to monitor the degree to which racial and ethnic minorities, female-headed households, or persons with disabilities benefitted from the creation of these 828 units. And, without access to participation levels, there was no opportunity for the county to analyze potential under-participation by any protected group, nor to devise with the developer strategies for affirmatively marketing these affordable housing units to the groups least likely to apply.

As noted above in this FIR, there are three areas of racial or ethnic concentration within the county of Marin, which regional FHEO defines as meaning that the percentage of any single minority group within a census tract exceeds by ten percentage points or more the representation of that same group within the county. Those three census tracts are:

CT 1041.02: southern Novato city, with 22% Hispanic population;

CT 1122: San Rafael city canal area, with 70% Hispanic population;

CT 1290: Marin city, with 46% Black population.

It is worth noting that two of these census tracts (1122, 1290) are also the census tracts within the county that reflect the highest levels of persons living below the poverty level.

The largest-scale affordable housing development within the county during this period is the aforementioned Hamilton Field housing, with 828 units developed among three separate projects on what was formerly the site of Hamilton AFB, a strategic air defense site closed and turned over to the county of Marin in the early 1990's timeframe, as part of the Base Closures Act, and subsequently annexed to the city of Novato. Hamilton Field Housing is located within census tracts 1043/1050, adjacent tracts both located to the southeast of central part of the city of Novato, and also adjacent to census tract 1041.02 which as noted above is an Hispanic-impacted census tract. Although the county apparently failed to collect any racial/ethnic participation data for the housing created at Hamilton Field, even if Blacks, Asians or Hispanics had been affirmatively marketed to and were successful in gaining occupancy there, it would only have increased the concentration of minorities in that historically-impacted area of south Novato.

While only 16 units of affordable housing were created by the county in the San Rafael area (12 units within Buckelew-Lincoln Avenue housing; 4 units in the Canal Housing Alliance), those units are also within or immediately adjacent to CT1122, the San Rafael Canal neighborhood where Hispanics comprise 70% of all residents, another densely impacted area.

Lastly, the county has created a total of 88 affordable units (38 units Galilee Harbor in Sausalito CT1302, 50 units Fireside in Marin City/Mill Valley CT 1281), both of which developments lay within a 2-mile radius centered around Marin City, which according to 2000 census already had a population comprised 46% of a single race, Black. Marin City (CT 1290), an impoverished area, is already overwhelmed with affordable housing. The bulk of the LIPH operated by the Marin Housing Authority (approximately 300 units of its total, countywide inventory of 500 units) is located in Marin City. According to REMS, there are also 112 units of subsidized housing in this area (Ponderosa Estates, built in 1963). And according to anecdotal information provided to FHEO during interview with David Latina and Carmen Soruco, both of the Marin Housing Authority's Home Ownership program, Marin City has historically been the county's first choice of location for development of its affordable homeownership programs.

While FHEO can understand the business reasons for these site selections (the annexation of a large tract of land formerly a military base for new residential development, the relative affordability of land and development costs in central San Rafael or Marin City), selection of these sites for new affordable housing units tends only to perpetuate historic patterns of racial and ethnic impacting, thus denying minorities the benefit of an expanded range of housing choices. Crime is a recognized problem in both areas, and while the local schools serving the Marin City/Sausalito are reportedly higher-performing, those in central San Rafael are among the county's poorest performing schools. Thus, there are valid reasons why racial and ethnic minorities already living in these communities, or those living elsewhere in the county or outside of it but interested in moving into Marin for employment or educational opportunities, might prefer affordable housing in less-impacted areas.

FHEO's interviews with various sources repeatedly identified NIMBYism/community resistance as an impediment to new affordable housing development, especially in non-traditional areas. An attempt by Habitat for Humanity to develop a mere four architect-designed affordable homes near the upscale town of Tiburon brought outraged residents to national news attention in 2008, and ultimately caused Habitat to withdraw from the project. Although FHEO did not interview for this compliance review any representatives of Ecumenical Association for Housing, which organization had recently completed affordable rental housing in Larkspur, anecdotal information suggested that EAH had encountered such public resistance and delays to building the process that, as an organization, it has withdrawn from further affordable housing development in Marin and moved on into other bay area counties where less resistance is encountered.

A further impediment to development is that each of the six local planning areas, while perhaps open to *limited* affordable housing development within their boundaries, raise concerns about "fair share" development in other planning areas. Those cities with relatively affluent residents (e.g., Bell Marin Keys, Fairfax, Ross, San Anselmo, Kentfield, Greenbrae, Belvedere, Tiburon, Sausalito) are reportedly very resistant to affordable housing development within their boundaries, with possible exception of senior housing. Added to this attitude are impediments related to the county's desire to preserve open space, and the relatively small percentage of land left within the county that is currently zoned for residential development. Regional FHEO has become aware over the years of requests by individual local planning areas within Marin to impose resident preferences for those who already live or work within those specific planning areas, i.e., to adopt a residency preference not for the entire county, but solely for residents of their specific planning area (for a list of local planning areas, see above page 70). If resident preferences are imposed on affordable developments outside of impacted areas of the county, they would seem to further limit the range of housing choices for minorities looking to move into those non-impacted areas, thus *further perpetuating historic patterns of segregation*, and forming a barrier to the higher percentages of racial and ethnic minorities currently living outside of the county but who might wish to live in Marin for its educational, employment, or lifestyle reasons.

Summary and conclusion:

We find that the county is in non-compliance with Title VI, Section 504, and Section 109 regulations, as well as CDBG and HOME program regulations cited at the top of this segment, by not consistently undertaking the collection of relevant data regarding

participation levels, by not analyzing this data to determine if equal opportunity exists in funded programs as represented by relative participation levels, and where appropriate due to apparent under-participation by not undertaking affirmative marketing to racial and ethnic minorities, FHHs, and persons with disabilities (24 CFR 1.4, 6.4, 8.4, 121, 91.225, 570.601).

We also find that the county's development of approximately 1,084 units of affordable housing within the 2005-2009 period appears to site the majority of such housing in or immediately adjacent to areas of historic racial or ethnic segregation within the county, thus promoting these patterns of segregation of minorities and having the effect of denying protected classes, especially Blacks and Hispanics, the benefits of integration into the wider community, despite its successive annual certifications to HUD that it has undertaken actions to affirmatively further fair housing choice (24 CFR 1.4, 6.4, 8.4, 91.225, 570.601).

We also find that the county is in non-compliance with Section 504 regulations for failure to ensure that a minimum, threshold level of five percent of CDBG and HOME program funds allocated to development of affordable housing programs contains features of accessible design using UFAS as a standard of accessibility (24 CFR 8.20, et seq.) See Subsection II-D, below.

Other CDBG-funded Programs Promoting Housing Affordability

Housing Search Specialist

According to the CDBG Program Contract between the county and Marin Housing Authority, the “primary objective of this position is to assist extremely low-income individuals and families to overcome barriers to locating affordable rental housing in Marin County. Marin Housing Authority (MHA) has found that certain groups have more barriers to utilizing their Section 8 Vouchers and finding stable housing; we have identified them as *hard to house* and include individuals with disabilities, frail elderly, and households with a source of income other than employment, a language barrier or families with three or more children. These families and individuals have a significantly lower success rate in finding housing than the Voucher-holding population as a whole.”

Among the impediments discussed within the narrative of the 1994 AI which appear to relate to this program, even if not at that time featured for specific action by the county, were these five re-quoted here:

- i. That the county had 1,500 non-profit sponsored units of affordable housing, and the Marin County Housing Authority administered 363 units of public housing and 1,680 Section 8 vouchers, all of which are subject to federal affirmative marketing requirements (HUD note: though failing to state or analyze the racial/ethnic participation rates, or conclude whether any affirmative marketing has been undertaken or resulted in promotion of housing choices outside of impacted areas) (1994 AI, page 8);

- k. That federal subsidy formulas and limits are insufficient to make viable the development of new units of subsidized housing units in Marin County owing to the extremely high cost of land and development in the county, with particular impact on minorities, families with children, elderly and disabled who have disparate need (1994 AI, pages 11, 22);
- n. That the then-Director of the MHA acknowledged that the exceedingly high cost of housing in Marin was an impediment to her agency's Section 8 voucher-holders, who often could not locate housing in Marin county within the rental ranges authorized by the program, and so were forced to return their unused vouchers, or to "port" the vouchers to other counties where housing was more affordable. Since MHA's programs have significantly elevated participation by Blacks and Hispanics as a result of MHA's affirmative marketing efforts, this nevertheless results in out-migration of these racial and ethnic groups who are already under-represented in Marin, to other counties, thus working against diversification within the county (pages 19, 20, 24, 25);
- o. That this same Director of MHA noted that the agency's inventory of just 30 Shelter-plus-Care supported units was massively inadequate to serve the needs of the county's large disabled population (page 20);
- p. That this same Director of MHA has had trouble placing non-Black LIPH Program participants in the severely racially-impacted Marin City LIPH developments, because of perception that the predominate Black residents view the Marin City developments as "historically theirs", and have been unwelcoming of persons of other races or ethnicity into these developments (page 21).

FHEO interviewed during the onsite portion of this compliance review Leslie Klor, Housing Advocate Service Coordinator of the MHA. Klor's actual function as identified in the CDBG grant funds (\$15,000 in 2008) allocated is to assist recipients of Section 8 vouchers from the MHA to find landlords who are willing to rent to them as participants of the Section 8 program. In this capacity, Klor attends all Section 8 briefings for new recipients of vouchers, wherein she makes a presentation about her services. In furtherance of her activities, Klor also actively reminds MHA staff involved in the administration of the Section 8 voucher program that if they encounter clients, whether new to the program or transferring units/landlords, who are having difficulty finding landlords willing to rent, that they should refer them to Klor. Klor has also undertaken affirmative actions to solicit participation of prospective landlords, so that when these landlords have vacancies, they can be immediately listed on the MHA's Section 8 participating landlord referral list. Klor indicated that she has made an effort to find landlords with accessible units, and to ensure that these accessible units are annotated on the MHA referral list which is distributed to each new voucher-holder at their initial briefing session. Klor commented, regarding the number of accessible units typically found at any given time on the MHA referral list, that there are "probably not enough accessible units to meet the need, but that (she) has nevertheless been successful in finding suitable housing for anyone that has come to her for assistance" over the years.

Klor indicated that she has had particular challenges in finding the multiple-bedroom housing units that are needed by larger families, especially three- and four-bedroom units. Klor

also commented that some landlords are reluctant to participate in the Section 8 program because they fear that Section 8 voucher holders may be former LIPH tenants whom they generally regard as not likely to take proper care of their units, or to engage in criminal activity. Klor feels she can overcome these concerns in most cases by pointing out that landlords can use conventional tenant screening methods, such as conducting credit and landlord background checks, and criminal history checks. Klor emphasizes to these prospective landlords the importance of thorough tenant screening, including for Section 8 voucher holders, and to not make the assumption that MHA is conducting such background checks on their behalf. Klor states that it is important for landlords to do their own screening, because she wants them to rent to Section 8 voucher-holders who will be good tenants, and whose effective compliance with their leases will encourage the landlords to offer more units to Section 8 participants, not be a deterrent to their participation.

Klor also confirmed another impediment noted by others, that of Marin's large and expanding population of aged persons. Klor indicated that senior tenants may be particularly vulnerable to homelessness if losing housing, due to limited mobility enabling them to search for new places to live, and their potential susceptibility to landlord fraud, such as requesting "under the table" payments as a condition of renting. Klor has undertaken special advocacy for Section 8 program participants who are seniors, in efforts to guard against their being defrauded.

Klor described her program advocacy accomplishment over the years as "about 80% successfully housed, though (her) goal is 100% ". Statistics regarding relative participation levels, as recorded by Marin County's CDBG program coordinator, as noted in the chart below.

Summary and conclusion: In PY 2007 and 2008, we find that this program is effectively serving FHHs and disabled persons and in PY 2008, the program is serving the special needs of some racial and ethnic minorities. In PY 2007, the program did not present complete racial and ethnic data of its beneficiaries; the percentage of Hispanics served is unknown. As noted in the table below, there would appear to be under-participation by Hispanics and Asians in this program. Observing that these two racial/ethnic groups are likelier than the other minorities to have Limited English Proficiency, we believe that affirmative outreach should be conducted to the county's Hispanic and Asian populations, with the goal of increasing participation by those two groups in this valuable program. Therefore, the program is in compliance with Section 504 and in non-compliance with Title VI and Section 109.

Table II-B-17 – Demographics of Participants in Housing Search Specialist and Rehabilitation Loan Programs for PY 2007 and 2008

	Marin County general population*	MHA Housing Search Specialist Program (\$15,000 CDBG funds, 2008 data)	MHA Housing Search Specialist Program (\$15,000 CDBG funds, 2007 data)	Rehab Loan Program (\$190,000 in CDBG & program recovery funds, 2008 data)	Rehab Loan Program (\$190,000 in CDBG & program recovery funds, 2007 data)
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White	84.0%	232 = 64.8%	83 = 55.7%	27 = 96.4%	16 = 94.1%
Black	2.9%	73 = 20.4%	62 = 41.6%	1 = 3.6%	1 = 5.9%
Asian	4.5%	1 = .3%	4 = 2.6%	None	None
Hispanic	11.1%	24 = 6.7%	Unknown	None	None
FHH		163 = 45.5%	74 = 49.7%	14 = 50.0%	8 = 47.1%
Disabled**		98 = 27.4**	59 = 39.6%	28 = 100%**	17 = 100%**
Total participants		358	149	28	17

Note: Although the form provides for reporting data on participation by American Indian/Alaskan natives, and native Hawaiian/other Pacific Islanders, this information is omitted from the above chart due to fractional percentages which would not be valid for statistical purposes.

*Source: US Census/American factfinder, table QT-PL, census 2000 data.

**On some versions of the Marin data collection form, senior and disabled participants were lumped together under a single category, which makes it impossible for HUD to determine the exact participation levels by persons with disabilities apart from seniors.

Residential Rehabilitation Loan Program

According to the CDBG Program description of the activity as presented to the Board of Supervisors, the “Rehabilitation Loan Program offers low-interest property improvement loans of up to \$25,000 to qualified homeowners, and non-profit group home sponsors, to undertake necessary home repairs, correct substandard housing conditions and eliminate health and safety hazards. Eligible work includes the repair or upgrading of existing plumbing, heating and electrical systems, roof repair or replacement, correction of foundation, drainage, dry rot and termite-related problems, emergency and/or storm-related repairs, energy and water conservation measures, and improvements to provide wheelchair accessibility... The specific terms of each loan are tailored to the homeowner’s individual circumstances, providing affordable repayment schedules and, in some cases, deferred repayment... Over the past twenty-nine years, the Rehabilitation Loan Program has received 1,241 applications and has made 604 loans averaging \$16,600 and totaling over \$10 million.”

Among the impediments discussed within the narrative of the 1994 AI which appear to relate to this program, even if not at that time featured for specific action by the county, were these five re-quoted here:

Among the impediments discussed within the narrative of the 1994 AI which appear to relate to this program, even if not at that time featured for specific action by the county, were these five re-quoted here:

- i. That the county had 1,500 non-profit sponsored units of affordable housing, and the Marin County Housing Authority administered 363 units of public housing and 1,680 Section 8 vouchers, all of which are subject to federal affirmative marketing requirements (HUD note: though failing to state or analyze the racial/ethnic participation rates, or conclude whether any affirmative marketing has been undertaken or resulted in promotion of housing choices outside of impacted areas) (1994 AI, page 8);

- k. That federal subsidy formulas and limits are insufficient to make viable the development of new units of subsidized housing units in Marin county owing to the extremely high cost of land and development in the county, with particular impact on minorities, families with children, elderly and disabled who have disparate need (1994 AI, pages 11, 22);
- n. That the then-Director of the Marin Housing Authority acknowledged that the exceedingly high cost of housing in Marin was an impediment to her agency's Section 8 voucher-holders, who often could not locate housing in Marin county within the rental ranges authorized by the program, and so were forced to return their unused vouchers, or to "port" the vouchers to other counties where housing was more affordable. Since MHA's programs have significantly elevated participation by Blacks and Hispanics as a result of MHA's affirmative marketing efforts, this nevertheless results in out-migration of these racial and ethnic groups who are already under-represented in Marin, to other counties, thus working against diversification within the county (1994 AI, pages 19, 20, 24, 25);
- o. That this same Director of MHA noted that the agency's inventory of just 30 Shelter-plus-Care supported units was massively inadequate to serve the needs of the county's large disabled population (1994 AI, page 20);
- p. That this same Director of MHA has had trouble placing non-Black LIPH Program participants in the severely racially-impacted Marin City LIPH developments, because of perception that the predominate Black residents view the Marin City developments as "historically theirs", and have been unwelcoming of persons of other races or ethnicity into these developments (1994 AI, page 21).

Even if not directly tied to any specific impediment, it makes sense to help existing homeowners to preserve their existent housing in good repair, thus to preserve its affordability. Housing rehabilitation loan programs are common programs among the CDBG reviews that FHEO has conducted over the years. Most programs are long-running: a relatively small addition of funding from CDBG sources occurs each year over the course of many years, and as program participants repay their loans with interest, the repayment amounts are added back into the program fund, typically expanding the scope of the program and the number of participants each year.

During its onsite portion of this compliance review, FHEO staff interviewed David Latina, Director of Housing Development, and Carmen Hall Sorucco, Home Ownership Program Specialist, both employed by the MHA. Ms. Sorucco is bi-lingual in English/Spanish. They indicated that the Marin County Rehabilitation Loan Program "is in its 34th year of operation", and that its primary focus is on making rehabilitation loans to persons who are very low income, though it has authority to expand the loans also to persons who are in the low income group, as well. They indicated that about 90% of loans currently active in the program are deferred repayment loans with no monthly payments, or where the homeowner wants, interest-payment-only (deferral may be until death of the homeowner, when, through liens, funds are recovered upon sale or transfer of ownership of the house). Latina and Sorucco indicated that in recent years, the program has focused more heavily on loans to owners of group homes, on the basis that the loan dollars therefore have the effect of serving a greater number of people than they would if made only to owners of single-family homes.

Latina and Sorucco acknowledged the low percentage of minority homeownership in the county. However, they feel that through effective outreach the program has been highly effective in attracting applications and funding loans to racial and ethnic minorities, FHHs, and elderly and disabled homeowners or group homes serving these populations (notwithstanding, HUD's onsite review of the county's monitoring folders for the years 2006-2008 inclusive shows under participation by Asians and Hispanics; see table II-B-17, above). A particular benefit of the program to elderly and FHHs is that the program administration helps participants to secure reliable contractors to do the work, and carefully monitor the ongoing progress of the work to ensure timely and workmanship like results as a condition of disbursement of the loan funds to the contractors. Latina and Sorucco also state that they feel they have been effective in promoting accessibility of the homes of participants, by recommending modifications to promote that which the homeowners themselves had not been aware could be made. Such accessibility modifications, such as grab bars and adjustable features in kitchens and bathrooms and entry ramps, have allowed elderly/disabled program participants to age in place, rather than having to move sooner to more-expensive assisted living facilities.

Loans are made upon recommendation of a six-member loan committee, which currently includes two lenders, one low-income program participant, and two social workers with specific experience with elderly populations. Latina and Sorucco state that, over the years, the Housing Rehabilitation Loan Program has made rehabilitation loans to "about every group home in the county", which they estimate at 25 to 30 in total number. Latina and Sorucco state that the loan program has "been very active in the San Rafael Canal Area", and in Marin City where the "pole houses" constructed in the 1980s and which are largely minority-owned, are now at the age where they are starting to need repairs.

Statistics regarding relative participation levels in the Housing Rehabilitation Loan Program, as recorded by Marin County's CDBG program coordinators, are as noted in chart II-B-17 at the top of this section.

Summary and conclusion: We find that this program is effectively serving the special needs of FHHs and disabled persons but not the needs of most racial and ethnic minorities. The program is effective in affirmatively furthering fair housing choice, through its efforts to preserve existing forms of affordable housing, for female headed households. Rehabilitation loans made to persons with disabilities to expand the accessibility of their homes, and preserve them in their homes through that accessibility, is also effective in meeting the special needs of the elderly and disabled population of the county. However, as noted above with respect to the Housing Search Program, FHEO believes that the "zero participation rate" of Asians and Hispanics reflects some under-representation of these two groups in this very valuable program, and that additional forms of affirmative outreach are needed to promote increased participation by these groups. Acknowledging that Asians and Hispanics are likelier than the general population to have Limited English Proficiency, translation of outreach materials into the Spanish and predominately-spoken Asian languages should also be employed as a means to promote knowledge of this program and participation rates. Therefore, the program is in compliance with Section 504 and in non-compliance with Title VI and Section 109.

Fair Housing of Marin

Fair Housing of Marin's Outreach and Enforcement program is a component of Marin County's strategy to affirmatively further fair housing choice within the county. However, the operation of this program is discussed in detail, above, under Subsection II-B-2 of this FIR (see page 51) that deals with direct-benefit activities. Therefore, its effectiveness and relative rates of participation are not discussed again here.

Subsection II-B-4 Conclusions and Findings

Based on the above analysis, the Department has determined that the county is in non-compliance with Title VI of the Civil Rights Act of 1964, Section 109 of the Housing and Community Development Act of 1974, Section 504 of the Rehabilitation Act of 1973, and its implementing regulations at 24 CFR Part 1, 6 and 8. As a result, we have the following regulatory findings of non-compliance and concerns:

- A. Concern #E.** In processing and selecting sub-recipient applications for funding, the recipient does not use a system for grading or ranking the applications. An assessment is made based on county staff's familiarity with the area in which the project is located and the demographics and needs for a particular planning area. The assessment of the applications includes whether the proposed activity or service addresses the need; the likelihood that the project will serve the targeted population; and the ability of the project sponsor to complete the activity or service with the funding requested. Planning documents or reference materials or independent data such as the county's Analysis of Impediments or U.S. Census Bureau statistics are not referenced to identify the critical needs of a particular area or segment of the population, i.e. families with children, the elderly, etc., or to support the funding decisions. The Department is concerned with the lack of reference materials, especially planning documents that prioritize and identify critical needs of members of protected classes residing in the county, used to determine whether proposed projects and activities will effectively benefit, assist and serve members of the protected classes and persons with disabilities. If the practice remains unchanged, the county could violate Section 109, Title VI or Section 504.

Recommended Action. It is recommended that the county develop a consistent method to employ when evaluating sub-recipient applications for funding. As part of the criteria for assessing applications, the method should include referencing planning documents that have prioritized or identified the most critical housing, community, and service needs of the county's population.

- B. Preliminary Finding of Non-compliance #2 (Combined with #2, noted below).** The county failed to collect and report accurate data indicating the extent to which the disabled benefited from the program. This failure resulted in violations of Section 504(24 CFR 8.55).

Review of the CDBG Demographic Report revealed that the form requires sub-recipients to report “the number of persons . . . that are non-homeless seniors (65+) or non-homeless persons with disabilities.”

Onsite review of FHOM, Senior Access, and MCIL revealed that all three sub-recipients maintained accurate participant disability data in their internal files. However, they were unable to accurately report the data on the county’s demographic report form as the form combined seniors with the disabled and it omitted disabled homeless persons and disabled persons under age 65.

Required Corrective Action. The standard Agreement must require sub-recipients to maintain data showing the extent to which the disabled participated in CDBG programs. Additionally, the county must revise the instructions on its CDBG Demographic Report to ensure that data on disabled program beneficiaries of all ages and housing situations is requested from its sub-recipient. Finally, the county must monitor its sub-recipients to ensure accurate data submission and to establish procedures to ensure that this data is, in turn, reported in IDIS.

- C. **Preliminary Finding of Non-compliance #2 (Combined with #2, above).** The county failed to collect race and ethnicity data in the format prescribed by OMB Standards/HUD Policy Statement. This failure resulted in violations of Title VI (1.6) and Section 109 (6.10).

OMB Standards/HUD Policy Statement requires the collection of demographic data as follows: **Ethnicity:** Hispanic/Latino or Non-Hispanic/Latino AND **Race:** White; Black/African American; Asian; American Indian/AK Native; Native HI/Pac. Islander. Each person should be given the option of selecting one ethnicity AND one or more races. Additionally, “Other” is not an approved category.

Review of the CDBG Demographic Report revealed that the form contains an “Others, Balance/Other” category. Review of completed demographic reports revealed that several sub-recipients reported large numbers of “others,” particularly Marin Food Bank which reported almost 10,000 people in this category in PY06/07.

Onsite review of sub-recipient FHOM’s internal data revealed that ethnicity data is not collected on “Non-Hispanic” participants and “Caucasian” is listed as a race.

Onsite review of sub-recipient Senior Access’ internal data revealed the following: races are listed as “ethnicities;” Asian/Pac. Islander is listed as one “ethnicity;” Am. Indian/AK Native is not listed; Non-Hispanic is not listed as one of the two ethnicities; “Other” is listed as a category.

Onsite review of sub-recipient MCIL’s internal data revealed that race and ethnicity are collected as follows: White (Non-Hispanic); Black/African American; American Indian/Alaska Native; Native Hawaiian/Pacific Islander; Asian; or Hispanic or Latino. The form does not allow the selection of more than one race or ethnicity.

Required Corrective Action. The county must remove the “Other” category from the Demographic Report form. OMB approves of a “balance” category for reporting responses that are not included in any of the approved single or four most common multiple-race combinations. Any aggregate count of a multiple-race combination reported in the “balance” section that exceeds 1% of the population must include a narrative explanation with the specific count and the percentages of each multiple-race. Additionally, the county must educate its sub-recipients on the demographic data collection and reporting format required by OMB._

- D. **Preliminary Finding of Non-compliance #2 (Combined with #2, above).** The county failed to collect and report accurate race and ethnicity data on program beneficiaries. This failure resulted in violations of Title VI (1.6) and Section 109 (6.10).

Review of the Agreement, Term 8B., revealed that demographic data must be “submit[ted] . . . to the County within 30 days of a request from the County.”

Review of the CDBG Demographic Report form revealed that “submission of the [demographic] report by August 2x [of each year] is mandatory!”

Review of demographic documents revealed that 32 public service programs were funded during PY06/07 and PY07/08. Of these, North Bay Children’s Scholarship failed to submit a demographic report in PY06/07 and Senior Access, MCIL, Quality Care for Kids and Performing Stars failed to submit demographic reports in PY07/08. Onsite interviews with staff from Senior Access and MCIL revealed that reports were not submitted because the county did not request them. Although Senior Access stated that demographic data was collected, the agency could not produce the data when asked.

Comparison of the projected versus actual beneficiaries in a sample of seven projects revealed that five (After School Tutorial, Family Legal, Fairfax After School Transport, West Marin Senior Services, FHOM) served significantly more people (30%-400% more) than projected in PY06/07 and/or PY07/08. The accuracy of the reported “actual” data is questionable and suggests that these projects may be reporting data on all participants from all funding sources on the CDBG demographic report.

During an interview with FHOM’s Housing Director, the director confirmed that the participant data reported on FHOM’s CDBG demographic reports was inaccurate. The Housing Director revealed that FHOM compiled the count/demographic data of all participants from all funding sources and reported them on the CDBG demographic report.

Further, the county has failed to collect racial and ethnic information and analyze participation levels of those “least likely” to apply or participate in housing development program activities. The analysis revealed under-represented Blacks and Hispanics in

some CDBG-funded, and virtually all HOME-funded, affordable housing projects undertaken by county in past three years.

Required Corrective Action. The county shall include in all future RFPs, contracts and funding instruments involving any use of CDBG, HOME, McKinney, HOPWA, or PIH funding for LIPH or Section 8 programs, a firm requirement that sub-recipients of such funding must collect and report data on applicants and beneficiaries of funded programs. The county must amend the terms of the Agreement to coincide with the CDBG Demographic Report's mandatory annual reporting requirements. Additionally, the county must ensure that all sub-recipients submit accurate demographic reports reflecting the beneficiaries of its CDBG funded programs. In order to accomplish this, the county must conduct risk assessments of its sub-recipients, determine risk levels, and engage in onsite risk-based monitoring as stipulated in the Con Plan on at least a semi-annual basis to ensure that the data is being accurately and consistently collected.

After collecting the data, the recipient and sub-recipient have an obligation to review and analyze the data for any under-representation of any racial/ethnic groups and if any under-representations exist, the recipient shall take steps to ensure that its sub-recipients modify its outreach strategy to attract those groups least likely to be served. The county shall establish a procedure to ensure all data is accurate reported inputted into CAPER and IDIS reports or other reports mandated by the Department pursuant to law or regulation. The county shall make a special report of this data to HUD-FHEO annually, for a period of three years.

- E. **Concern #F.** The county's monitoring process failed to evaluate compliance with the civil rights requirements of the Grant Agreement and the Consolidated Plan (Con Plan). This failure may lead to violations of Title VI, Section 109, and Section 504.

Review of the Agreement revealed that sub-recipients are required to maintain demographic data (race, ethnicity, sex), affirmatively further fair housing, and comply with Title VI, Section 109, and Section 504.

Review of the Con Plan Monitoring Procedure and Standards revealed that the county is required to monitor sub-recipients for compliance with the grant contract. The monitoring is conducted through on-site visits and sub-recipients will be asked the following pertinent questions: (1) is the [demographic] information being supplied by the project sponsor correct and complete? (2) Did the project contribute to . . . racial integration? (3) Is the activity conducted in a manner that respects the rights of people with disabilities for equal access? (4) How responsive is the project sponsor to emerging community needs and the special needs of minorities (5) Has the project sponsor made appropriate outreach to show a commitment to providing culturally sensitive services to all people? The monitoring goal is to evaluate each project every two years but "high-risk" sub-recipients are targeted for monitoring at least annually. High-risk sub-recipients include projects that are not meeting contract goals (i.e. projects serving a smaller number of

clients than projected); projects who fail to submit demographic reporting data on a timely basis or projects who submit data that appears questionable.

Review of the Monitoring Report form (questionnaire) revealed that monitoring is conducted telephonically. Additionally, the form does not contain questions designed to evaluate compliance with the civil rights requirements of the Grant Agreement nor does it ask any of the monitoring questions found in the Con Plan. The questions do not allow the county to assess whether the sub-recipient has met its obligation to affirmatively further fair housing, to collect and analyze race, ethnicity, sex, disability data, or to affirmatively market its program.

During an onsite interview with the Community Development Coordinator, the coordinator revealed that none of the funded programs had been identified as high-risk.

Comparison of the projected and actual beneficiaries in a sample of seven projects revealed that all seven (After School Tutorial, Family Legal, Fairfax After School Transport, West Marin Senior Services, MCIL, FHOM, and Senior Access) met the Con Plan's "high-risk" criteria. Specifically, After School Tutorial, Family Legal, Fairfax After School Transport, West Marin Senior Services, and FHOM submitted questionable data, Senior Access did not meet program goals in PY06/07, and Senior Access and MCIL did not submit demographic reports in PY07/08.

Recommended Action. The county is advised to monitor sub-recipients for compliance with the civil rights terms of the Grant Agreement and adhere to the Con Plan's monitoring procedure and standards. In order to accomplish this, the county should include the Con Plan's civil rights questions in its Monitoring Report questionnaire, conduct risk assessments of its sub-recipients, determine risk levels, and engage in onsite risk-based monitoring as stipulated in the Con Plan at least on a semi-annual basis.

- F. **Preliminary Finding of Non-compliance #3a (Combined with #3b, below).** The county failed to analyze and address patterns of significant White/Non-Hispanic under-representation in several funded programs. This failure may lead to violations of Title VI and Section 109 if left uncorrected.

Review and analysis of demographic reports revealed significant White/Non-Hispanic under-representation in 7 (58%) of 12 programs reporting data in PY 06/07 and 9 (60%) of 15 programs reporting data in PY07/08.

Review and analysis of demographic reports revealed patterns of significant White/Non-Hispanic under-representation (30%-79%) in the following programs in PY06/07 and PY07/08: Marin Food Bank, After School Tutorial, Family Legal Services, and Fairfax After School Transport). Additionally, the following programs reported significant White/Non-Hispanic under-representation (27% to 79%) in PY07/08: Pickleweed Center Staff; Marin Community Clinic; Legal Aid of Marin; Canal Alliance Child Services; and Marin Therapeutic Classroom. Aside from Marin Food Bank, funding for these programs was continued in PY08/09.

Recommended Action. The county is advised to identify the above sub-recipients as “high-risk” and engage in onsite monitoring as stipulated in the Con Plan. The monitoring should evaluate the accuracy of demographic data, the special outreach strategies employed to attract White/Non-Hispanics, and the effectiveness of the outreach in actually attracting this group. Effective outreach strategies may include advertising in general circulation newspapers and periodicals, distributing program materials to community organizations in the county with ties to White/Non-Hispanics, etc.

- G. **Preliminary Finding of Non-compliance #3a (Combined #3b, below).** The county failed to address patterns of significant Hispanic under-representation in West Marin Senior Services. This failure may lead to violations of Title VI and Section 109 if left uncorrected.

Review and analysis of demographic reports revealed significant Hispanic under-representation of 11% in West Marin Senior Services in PY06/07 and PY07/08. Funding for this program was continued in PY08/09.

Recommended Action. The county is advised to identify the above sub-recipient as “high-risk” and engage in onsite monitoring as stipulated in the Con Plan. The monitoring should evaluate the accuracy of demographic data, the special outreach strategies employed to attract Hispanics, and the effectiveness of the outreach in actually attracting this group. Effective outreach strategies may include translating program documents into Spanish, advertising in Spanish newspapers and periodicals, distributing program materials to community organizations in the county with ties to Hispanics, etc.

- H. **Preliminary Finding of Non-compliance #2 (Combined with #2 above).** The county failed to collect data and report accurate data indicating the sex of program beneficiaries. This failure resulted in violations of Section 109 (24 CFR 6.10).

Review of the Agreement, Term 8B., revealed that demographic data must be “submit[ted] . . . to the County within 30 days of a request from the County.”

Review of the CDBG Demographic Report form revealed that “submission of the [demographic] report by August 25x [of each year] is mandatory!”

Review of the demographic data (IDIS/documents reports) revealed that 17 sub-recipients did not report beneficiary sex data, including 5 sub-recipients that did not submit demographic reports during the years under review (North Bay Children’s Scholarship, Senior Access, MCIL, Quality Care for Kids, Performing Stars). Onsite interviews with staff from Senior Access and MCIL revealed that reports were not submitted because the county did not request them. Although Senior Access stated that the demographic data was collected, the agency could not produce the data when asked.

Additionally, during an interview with FHOM’s Housing Director, the director acknowledged that FHOM’s collection and reporting of CDBG beneficiary data was

inaccurate. The director explained that FHOM combined the count/demographic data of all participants from all funding sources and reported the total on the CDBG Demographic Report.

Review of the IDIS reports revealed that the county failed to report sex data on all funded programs.

Required Corrective Action. The county must ensure that its sub-recipients submit accurate demographic reports reflecting the sex of CDBG program beneficiaries. After collecting the data, the county shall analyze the data for any under-representation and if any, ensure sub-recipients strengthen their outreach accordingly. The county shall establish a procedure to ensure all information is inputted into IDIS.

- I. **Preliminary Finding of Non-compliance #4a.** The county failed to include an effective communication method for the deaf (TDD/TTY/CA Relay Service) on documents that post a telephone number. This failure resulted in violations of Section 504 (24 CFR 8.6).

Onsite review of FHOM 's outreach and education materials, business cards, and stationery revealed that all documents posted telephone numbers and email addresses but only the stationery posted the TDD number.

Onsite review of Senior Access' marketing materials and business cards revealed that all documents posted telephone numbers and email addresses but did not include an equally effective communication method for the deaf.

Required Corrective Action. The county must ensure that its sub-recipients include a TDD/TTY/CA Relay Service number on all documents that post a telephone number (i.e. stationery, business cards, program brochures, flyers, etc.).

- J. **Preliminary Finding of Non-Compliance #5.** Under Title VI and HUD's implementing regulations at 24 CFR 1.4, 24 CFR 91.225 and 24 CFR 570.601, the county has failed to revise 1994 Analysis of Impediments to Fair Housing Choice document, despite identification of numerous new impediments to fair housing choice that have developed during two successive Consolidated Planning cycles.

Required Corrective Action. Undertake preparation of a new AI, including more vigorous consultation with racial and ethnic minorities, and persons with disabilities throughout the public planning/consultation process, to develop a new AI in time for the 2010-2015 Consolidated Plan. A draft AI should be submitted to FHEO for review within 150 days of execution of a VCA. The county will provide FHEO a minimum of 30 days to review the draft AI, and respond to any concerns identified, before issuing it in final form.

- K. **Preliminary Finding of Non-compliance #3b (Combined with #3a, above).** With fewer than 20% combined minority households, Marin is by far the least racially and

ethnically diverse of the nine Bay Area counties. The median income of Black race households in Marin is only 44% that of all households, and the median income of Hispanic ethnicity households is 60% that of all households. Less than one-quarter of all Black and Hispanic households can afford to pay the average rent of a 2BR apartment, and an even smaller percentage could afford the mortgage payments on median-priced home. These facts were accurately collected and analyzed in the county's 1994 AI, with even more detail and analysis in its 2005-2009 Consolidated Plan, reflecting the county's awareness of the problem. Yet, the county demonstrated virtually no actions (other than funding to a fair housing agency) to analyze or address the historic patterns of segregation of Blacks in Marin City, or Hispanics and some Asian groups in the San Rafael Canal Area through affirmative marketing by its sub-recipients or partners in the development of affordable housing. Without meaningful access to racial and ethnic data on applicants and beneficiaries, the County was not in a position to analyze under-participation, or to identify and implement a strategy of affirmative marketing to overcome this impediment to fair housing choice. The Housing Search Specialist and Housing Rehabilitation Loan programs appear to be under-serving Hispanic and Asian populations of the county, possibly related to lack of translation of outreach and information about these programs to address the likelier incidence of Limited English Proficiency in these two groups, especially.

The county is therefore in non-compliance with Title VI and Section 109 and HUD's implementing regulations at 24 CFR 1.4 and 24 CFR 570.602 (Methods of Administration, Affirmatively Furthering Fair Housing)-

Required Corrective Action. The County should conduct ongoing analysis, on at least a semi-annual basis, of the rates of minority race and ethnicity participation in all of its affordable housing developments and programs. However, it is *compelled* by Title VI, Section 109, and Section 504 to do so for any affordable housing development activity or program involving federal funds from the Department. If identifying under-participation by any racial or ethnic group, the county's analysis should endeavor to identify the possible causes of that under-participation, and devise remedies to overcome that, specifically including affirmative outreach and marketing to those groups "least likely" to apply without it. Such analysis of participation rates should not be limited to existing residents of the county of Marin, but should be conducted on a regional basis and reflective especially of the workforce commuting into Marin from adjacent counties, or those who might seek work or residency in the county, but do not because of the paucity of affordable housing within Marin County. Written affirmative marketing plans for each individual housing development with affordable units contained in it, supported by demographics data, should be submitted to the Department on an annual basis for three years. The county should conduct a survey of the special needs of persons with Limited English Proficiency particularly among its Asian and Hispanic population, and from that develop a Language Assistance Plan to ensure viable and effective outreach and communication to these two groups, as a means of increasing participation by them.

SECTION II-C – SECTION 504 PROGRAM REQUIREMENTS

Issue: Whether the recipient has fulfilled General Program Requirements regarding communications, designation of a Section 504 Coordinator, public non-discrimination notice, grievance procedures, self-evaluation and needs assessment and transition plan.

Section 504 of the Rehabilitation Act of 1973, as amended, prohibits discrimination in any activity or program that receives Federal financial assistance. It provides that no otherwise qualified individual with disabilities shall, solely by reason of his or her disability, be excluded participation in, be denied the benefits of, or otherwise be subjected to discrimination under any activity or program receiving Federal financial assistance. Particular regulatory requirements are applicable solely to recipients who employ more than 15 persons. The County of Marin employs more than 15 persons and is, therefore, subject to all of the general program requirements. It is noted that Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 are discrete statutes, each with discrete regulatory requirements.

The following Section 504 program requirements are addressed below: Communications, Self-evaluation, Section 504 Coordinator, Grievance Procedures, and Non-Discrimination Notice.

Subsection II-C-1-Summary and Analysis

Communications

24 CFR 8.6 requires recipients to take appropriate steps to ensure effective communication with applicants, beneficiaries, and members of the public. Recipients shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in and enjoy the benefits of a program or activity receiving federal financial assistance. In determining what auxiliary aids are necessary, the recipient shall give primary consideration to the requests of the individual with handicaps. Where the recipient communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDDs) or equally effective communication systems shall be used.

FHEO interviewed William Campagna, Disability Access Manager (ADA/Section 504 Coordinator) and Laney Morgado, Disability Access Coordinator concerning the county's TDD or equally effective communication system for the deaf. Morgado pointed out the TTY machine in Campagna's office, revealed the phone number as 415/473-3232, and indicated that she had been trained in the use of the device. She stated that the office recently purchased a new TTY machine because the prior machine would not allow callers to leave a message.

Campagna stated that county employees and the public communicate with him via email; he has not received a call on the TTY machine or through the CA Relay Service during his tenure. Campagna provided his business card which posted his name, email address, and a telephone number. However, the card did not post the TTY number or an equally effective method of communication for the deaf

Review of the business cards provided by CDA staff members found that the TTY number or an equally effective method of communication for the hearing impaired was not displayed. The TDD number is displayed on the CDA's stationery and was found on publicized notices and informational handouts distributed to the public.

The failure to include an effective communication method for persons with hearing impairments on documents that indicate a voice telephone number is a violation of Section 504 and is being cited as a Preliminary Finding of Non-compliance in Subsection II-C-3, below. (Note: This combined with effective communication issues found in other areas of this review, as noted above, results in a Preliminary Finding of Non-compliance here..)

Self Evaluation

24 CFR 8.51 requires recipients to have taken the following actions within one year of July 11, 1988 (i.e., by 7/11/89), and after consultation with interested persons, including individuals with handicaps or organizations representing individuals with handicaps: (1) evaluation of current policies and practices to determine whether, in whole or in part, they do not or may not meet the requirements of Section 504; (2) modification of policies and practices that do not meet the requirements of Section 504 by virtue of forming programmatic or physical barriers to persons with disabilities; and (3) taking appropriate corrective steps to remedy the discrimination revealed by the self-evaluation.

FHEO interviewed William Campagna, Disability Access Manager (ADA/Section 504 Coordinator). Campagna stated that the county contracted with Mieg & Associates to update its "ADA Self-Evaluation and Transition Plan" (ADA Plan) in March 2008. Campagna indicated that the updated plan was developed with input from the Disability Access Advisory Group (DAAG). Additionally, Campagna stated that he rewrote various sections of the plan.

Campagna stated that he is responsible for coordinating the county's compliance with all aspects of the ADA Plan. In order to address programmatic compliance, Campagna explained that he designated Department Access Coordinators (DACs) in each of the twenty-five county departments to address program accessibility and reasonable accommodation requests, in addition to their regular job duties. He indicated that he trained the DACs, provided each department with a disability desk reference, and he delivers ongoing guidance via telephone and email. Although the DACs are responsible for addressing the majority of accommodation requests, Campagna revealed that the county's web site instructs the disabled to "report program or physical access barriers" to him. He explained that he received two accommodation requests during the review period; one was denied as the requestor was non-disabled and the other, a request for an assistive listening device during a county hearing, was approved.

In addition to overseeing the DACs, Campagna stated that he has a direct role in ensuring compliance with the ADA's physical accessibility requirements. He described physical accessibility as "an ongoing process" and indicated that he has 60-90 projects operating at any given time. Campagna indicated that the ADA sets priorities and he follows the federal guidelines by focusing on public buildings first, pedestrian right-of-way second and so forth. Campagna revealed that the county government office building now has at least one accessible

bathroom on each wing of each floor. Campagna provided FHEO with extensive lists of physical accessibility projects (barrier removal and curb cuts) completed during the review period. Campagna also provided protocols he created to ensure that he reviews every county project for disability access (i.e. review of new construction plans, survey of facilities prior to lease, etc.)

Section 504 Coordinator

24 CFR 8.53(a) requires recipients of federal financial assistance that employ fifteen or more persons to designate at least one person to coordinate efforts to comply with Section 504 requirements.

In its response to the data request letter, the county identified William Campagna as the Disability Access Manager (ADA/Section 504 Coordinator). The county provided copies of its “ADA Self-Evaluation and Transition Plan” and its ADA Non-Discrimination policy with grievance procedure and complaint form

FHEO interviewed Campagna and found that he has been employed with the County of Marin Department of Public Works (DPW) in the position of Disability Access Manager for three years. Campagna stated that his qualifications include a M.S. in Rehabilitation Counseling and thirty-eight years of experience working with the disabled as an activist, rehabilitation counselor, supervisor, district manager, and consultant. Laney Morgado, Disability Access Coordinator, assists Campagna in his duties and has been employed with DPW since prior to Campagna’s date of hire. Campagna stated that his job involves coordinating compliance with the ADA, including implementation of the self-evaluation/transition plan.

Campagna’s specific duties involving coordination of ADA/Section 504 activities, including disability communications, the Self-Evaluation plan, and the grievance process are discussed in the specific sections, above and below.

Grievance Procedures

24 CFR 8.53(b) requires recipients of federal financial assistance that employ fifteen or more persons to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504.

FHEO interviewed William Campagna, Disability Access Manager. Campagna stated that the English and Spanish versions of the ADA grievance procedure with non-discrimination notice are posted in the reception areas at the DPW and were distributed to all twenty-five county departments and the Marin County Community Development Agency (MCCDA). Campagna stated that he is the contact person for all grievances and his name and title, email address, and phone number are included on the procedure. Additionally, Campagna provided copies of the “Disability Accessibility or Discrimination Complaint Procedure” and the “ADA Disability Complaint Form.” Finally, Campagna accessed his computerized records and revealed that he received thirteen grievances during the review period. He summarized the grievances and stated that seven were denied due to lack of jurisdiction.

FHEO observed the English and Spanish “Americans with Disabilities Act” notice posted in the reception areas at the DPW and MCCDA. Additionally, FHEO reviewed the “Disability Accessibility or Discrimination Complaint Procedure” and found that the procedure specified grievance format, timeframes, and provided for due process rights of appeal to the County Administrator. Both the ADA notice and grievance procedure were found to contain Campagna’s name and title, email address, and a Voice/TDD number of 415/499-6065.

In addition, a review of the county’s notices used to advertise public hearings revealed that Campagna’s name, title, address, and phone number were displayed as the person who has been designated to process grievances.

Non-Discrimination Notice

24 CFR 8.54 requires recipients of federal financial assistance that employ fifteen or more persons to take appropriate initial and continuing steps to notify participants, beneficiaries, and applicants including those with impaired vision or hearing, and unions of professional organizations holding collective or professional agreements with the recipient that it does not discriminate on the basis of handicap in violation of Section 504. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its federally assisted programs and activities. The notification shall also include an identification of the responsible employee designated pursuant to 24 CFR 8.53. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipients’ publications, and distribution of memoranda or other written communications.

Campagna stated that the ADA includes a policy on non-discrimination and the county adheres to it. Campagna reiterated that English and Spanish versions of the “Americans with Disabilities Act” notice with non-discrimination statement are posted in the reception area at the DPW and distributed to all twenty-five departments and the MCCDA.

FHEO observed the English and Spanish “The Americans with Disabilities Act” notice posted in the reception areas at the DPW and MCCDA. The notice contained the non-discrimination statement and Campagna’s name and title, email address, and a Voice/TDD number of 415/499-6065.

In addition, the review found that publicized notices of upcoming hearings included the notice of non-discrimination policy.

Subsection III-C-3- Conclusion and Findings

- A. **Preliminary Finding of Non-compliance #4b.** The county failed to include an effective communication method for the deaf (TDD/TTY/CA Relay Service) on documents that post a telephone number. This failure resulted in a violation of Section 504 (24 CFR 8.6).

Onsite review of the Disability Access Manager's (ADA Coordinator) business card revealed that it posted a telephone number but did not include an equally effective communication method for the deaf.

Required Corrective Action. To ensure compliance with the communication requirements of Section 504, the county shall thoroughly review the public documents and employee business cards currently being utilized to ensure they include the appropriate TTY/TDD information to facilitate its ability to communicate with people with hearing and vision impairments.

SECTION II-D – PROGRAM AND SITE ACCESSIBILITY

Issue: Based on a limited assessment of the facilities where public meetings are held by the recipient, whether they are generally accessible to people with disabilities.

The County of Marin's Community Development Agency (CDA) administers the CDBG Entitlement program. During the on-site phase of the Compliance Review a limited physical accessibility assessment of the CDA's office located at 65 Mitchell Blvd. and the County's Board of Supervisors Chambers located at 3501 Civic Center Drive was conducted. Both are located in the city of San Rafael.

A limited accessibility survey was conducted on two indirect benefit (capital improvements) projects, the curb cuts in San Rafael and the expansion of Pickleweed Park Community Center in San Rafael. The curb cuts were completed as part of program year 2008 funding. The Pickleweed Park Community Center expansion project was funded in program year 2007.

A limited accessibility survey was not conducted on any of accessible units created or modernized through CDBG program funding.

Subsection II-D-2 Summary and Analysis

A limited site accessibility survey of two facilities associated with its administration of CDBG-funded activities (CDA office; and the Marin county Board of Supervisors Chambers, which is located in the Frank Lloyd Wright-designed Marin Civic Center Building, constructed in the 1960's) was conducted. Both facilities are where citizens were invited through public notices to participate in the CDBG planning process. The limited assessment of the CDA office and Board of Supervisors Chambers revealed barriers to physical accessibility, though in both cases the instances of non-compliance were *relatively minor in nature*. At both locations, designated accessible parking spaces and access aisles had slopes and/or cross slopes exceeding 2% and signage designating the parking spaces with the symbol of accessibility were mounted at heights which could be obscured by vehicles parked in the spaces. At the CDA office, the accessible route to the Mitchell Street accessible entrance included a ramp, which did not have handrails on both sides of the ramp segment.

A limited accessibility survey of curb cuts in San Rafael and of the new building wing of the Pickleweed Park Community Center was conducted. The survey disclosed areas of non-compliance with the Uniform Federal Accessibility Standards. At the Pickleweed Park Community Center, the cross slope of an accessible parking space and slope of a curb ramp were too high. The slope of one curb ramp at the intersection of Las Ovejas Ave./Montecillo Rd. was also too high. The review also found that not all curb cuts were completed; specifically, curb ramps located at Montecillo Rd./Butternut Dr. (SW) and at Montecillo Rd./Bamboo Terrace (NE). ***The non-compliance with UFAS will be reflected below as a Concern. An Observation will be noted in Subsection II-D, below, for the incomplete curb cuts and referred to HUD's Community Planning and Development Division.***

The limited accessibility report with all UFAS non-compliant elements is included as an attachment to this report.

As of June 30, 2008 for the current 5-year Con Plan cycle, the county reported creating or modernizing 187 units at 5 rental projects. The housing was intended to assist families, seniors, and the disabled. The county was not able to identify the number of accessible units for persons with mobility impairments or persons with visual or hearing impairments created by in whole or in part with any form of funding from HUD through the CDBG program and therefore, could not demonstrate promotion and preservation of new housing with features of accessibility for persons with disabilities. *A Concern is issued, below.*

II-D-3 Conclusions and Findings

- A. Preliminary Finding of Non-compliance #6.** Section 504 implementing regulations at 24 CFR 8.21(c) require that existing non-housing programs be operated in such a manner that when viewed in their entirety, they are readily accessible to and usable by individuals with disabilities. The recipient's CDA office and Board of Supervisors Chambers location presents barriers to physical accessibility that can restrict participation in the Citizen Participation process by persons who utilize wheelchairs. Therefore, the recipient is found in preliminary non-compliance with 24 CFR 8.21(c).

Required Corrective Action. The recipient shall conduct an accessibility survey of its CDA office and Board of Supervisors Chambers to identify all barriers to physical accessibility and develop a plan of action to remediate those barriers.

- B. Concern #G.** Section 504 implementing regulations at 24 CFR 8.21 and 8.32 provide that any new construction of or alterations to non--housing facilities (including roads, walks, and parking lots) shall be designed and constructed to be readily accessible to and usable by individuals with disabilities and in conformance with the Uniform Federal Accessibility Standards.

A limited accessibility survey of curb cuts completed in the city of San Rafael and of the new building wing of the Pickleweed Park Community Center was conducted. The survey disclosed areas of non-compliance with the Uniform Federal Accessibility Standards. At the Pickleweed Park Community Center, the cross slope of an accessible parking space and slope of a curb ramp were too high. The slope of one curb ramp at the intersection of Las Ovejas Ave./Montecillo Rd. was also too high.

Recommended Action. It is recommended that the county re-survey the curb cuts and the parking lot and accessible route at Pickleweed Park Community Center and make alterations, if necessary.

- C. Concern #H.** Section 504 implementing regulations at 24 CFR 8.20, et seq., that in development of new-construction projects built with federal assistance, a minimum of

five percent of the units must be configured with features of accessible design utilizing UFAS or ADAAG as the accessibility standard.

As of June 30, 2008 for the current 5-year Con Plan cycle, the county reported creating or modernizing 187 units at 5 rental projects. The housing was intended to assist families, seniors, and the disabled. The county was not able to identify the number of accessible units for persons with mobility impairments or persons with visual or hearing impairments created by in whole or in part with any form of funding from HUD through the CDBG program and therefore, could not demonstrate promotion and preservation of new housing with features of accessibility for persons with disabilities.

Recommended Corrective Action. It is recommended that the county should gather information as to the number of UFAS- or ADAAG-compliant accessible units created or modified by its CDBG sub-recipients in each program year for the current Con Plan and establish a procedure to track this information in the future.

- D. **Observation #a.** Records maintained for the city of San Rafael ADA improvements project did not clearly disclose what was proposed, where the activity was located, or what the project's status was for each program year. The county's records do not contain information to allow the recipient to assess whether persons with physical impairments with the greatest needs for accessibility improvements in their neighborhoods have benefitted from completed projects. Contrary to the documentation provided, the on-site survey of completed curb cuts for PY 2008 revealed that not all curb cuts were completed. Curb cuts were completed at Montecillo Rd./Butternut Dr. (SW) and at Montecillo Rd./Bamboo Terrace (NE). The review did not reveal any discriminatory effect on persons with disabilities and is referred to HUD's Community Planning and Development Division.

SIGNATURE PAGE**Final Investigative Report****Section 109 Compliance Review: 09-09-R003-9****Title VI Compliance Review: 09-09-R-R008-6****Section 504 Compliance Review: 09-09-R009-4****County of Marin, California,
Community Development Block Grant Program****Submitted:**

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Date

SC:sc J/Programs/Compliance Reviews 2009/Marin/Marin County FIR #2
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