

Final Report

2011 Analysis of Impediments to Fair Housing Choice



City of Morgantown,
West Virginia



Final Report

June 10, 2011

**Analysis of Impediments
to Fair Housing Choice**

Prepared for

City of Morgantown
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Table of Contents

I.	Introduction	
	Lead and Participating Agencies	I-1
	Analysis of Impediments Background	I-1
	Methodology	I-3
II.	Community Profile	
	Summary	II-1
	Demographic Analysis	II-2
	Employment Analysis	II-13
	Housing Market Analysis	II-16
	Transportation.....	II-19
III.	Public Policies and Practices	
	Morgantown/Fairmont Housing Authority Policies, Procedures and Programs	III-1
	Land Use Policy Review	III-5
	Other Public Sector Programs and Services.....	III-13
IV.	Fair Housing Complaints and Fair Lending Analysis	
	Fair Housing Complaints	IV-1
	Legal Cases.....	IV-5
	Fair Housing Testing.....	IV-6
	Fair Lending Analysis	IV-7
V.	Public Outreach	
	Public Outreach Methodology.....	V-1
	Input from Residents	V-2
	Input from Stakeholders.....	V-5
	Input from Housing Professionals.....	V-6
VI.	Identification of Impediments to Fair Housing Choice and Fair Housing Action Plan	
	Summary of Fair Housing Research.....	VI-1
	Fair Housing Challenges	VI-4
	Positive Fair Housing Activities	VI-5
	Summary of Impediments to Fair Housing Choice.....	VI-6
	Fair Housing Action Plan.....	VI-7
	Structure for Oversight Responsibilities, Monitoring and Evaluation	VI-17
	Appendices	
	A. Legal Cases.....	A-1

SECTION I.
Introduction

SECTION I.

Introduction

This document is the 2011 Analysis of Impediments to Fair Housing Choice (AI) for the City of Morgantown (city).

Lead and Participating Agencies

The City of Morgantown Department of Development Services Community Development Division is responsible for overseeing the coordination and development of this AI. The city retained BBC Research & Consulting, Inc. (BBC), an economic research and consulting firm specializing in housing research, to assist in the preparation of the AI.

Analysis of Impediments Background

An Analysis of Impediments to Fair Housing Choice, or AI, is a U.S. Department of Housing and Urban Development (HUD) mandated review of impediments to fair housing choice in the public and private sectors. The AI is required for the City of Morgantown to receive federal housing and community development block grant funding.¹ Currently, Morgantown is a recipient of the Community Development Block Grant (CDBG).

The AI involves:

- A review of a city's laws, regulations and administrative policies, procedures and practices;
- An assessment of how those laws, policies and practices affect the location, availability and accessibility of housing; and
- An assessment of public and private sector conditions affecting fair housing choice.

According to HUD, impediments to fair housing choice are:

- Any actions, omissions or decisions *taken because of* race, color, religion, sex, disability, familial status or national origin that restrict housing choices or the availability of housing choices.
- Any actions, omissions or decisions that have the effect of restricting housing choices or the availability of housing choices *on the basis of* race, color, religion, sex, disability, familial status or national origin.

Recently, HUD has emphasized that AIs should focus on building “sustainable and inclusive communities that are free from discrimination.” An AI should be a forward-thinking document and concentrate on furthering fair housing choice.

¹ The city is also required to submit a Consolidated Plan for Housing and Community Development and an annual performance report to receive funding each year. These reports were prepared separately from the AI and are available from the city.

Fair Housing Act. The federal Fair Housing Act, passed in 1968 and amended in 1988, prohibits discrimination in housing on the basis of race, color, national origin, religion, sex, familial status and disability. The Fair Housing Act covers most types of housing including rental housing, home sales, mortgage and home improvement lending, land use and zoning. Excluded from the Act are owner-occupied buildings with no more than four units, single family housing sold or rented without the use of a real estate agent or broker, housing operated by organizations and private clubs that limit occupancy to members, and housing for older persons.²

HUD has the primary authority for enforcing the Fair Housing Act. HUD must first try to reach a conciliation or settlement between the parties involved in the complaint. If the complaint is not successfully conciliated, HUD investigates the complaint and determines if there is a “reasonable cause” to believe that discrimination occurred. If reasonable cause is established, HUD brings the complaint before an Administrative Law Judge. Parties to the action can also elect to have the trial held in a federal court (in which case the Department of Justice brings the claim on behalf of the plaintiff).³

State fair housing law. The West Virginia Fair Housing Act carries the same protections as the federal Fair Housing Act. In addition to prohibiting housing discrimination based on race, color, national origin, religion, sex, familial status and disability, state law also prohibits housing discrimination on the basis of ancestry and blindness. The West Virginia Human Rights Commission investigates and resolves housing discrimination complaints as well as provides education on fair housing.

The City of Morgantown does not have a fair housing ordinance that is being enforced by a local entity, as the Morgantown Human Rights Commission is currently inactive. However, the West Virginia Fair Housing Action Network (FHAN), which is led by the Northern West Virginia Center for Independent Living (NWVCIL), is located in Morgantown and is active in education, outreach, policy and advocacy in the Morgantown community.⁴ NWVCIL is a two-time Fair Housing Initiatives Program (FHIP) grant recipient.

HUD guidance. HUD has recently released brief guidance to communities about the department’s expectations of AIs. In this guidance, HUD clarifies that “affordable housing, in and of itself, is not an impediment to fair housing unless it creates an impediment to housing choice because of membership in a protected class.”

HUD further defines fair housing choice as “the ability of persons of similar incomes to have available to them the same housing choices regardless of race, color, religion, sex, disability, familial status or national origin. Policies, practices or procedures that appear neutral on their face but operate to deny or adversely affect the provisions of housing to persons (in any particular protected class) may constitute such impediments.”

² This is a very general description of the Fair Housing Act and the actions and properties covered by the Act. For more detailed information on the Fair Housing Act, please see the full text, which can be found on the U.S. Department of Justice’s website, www.usdoj.gov/crt/housing/title8.htm.

³ “How Much Do We Know? Public Awareness of the Nation’s Fair Housing Laws,” The U.S. Department of Housing and Urban Development, Office of Policy and Research, April 2002.

⁴ The FHAN is comprised of the Northern West Virginia Center for Independent Living (NWVCIL), the West Virginia Assistive Technology System (WATS/CED/WVU) and the Community Living Initiatives Corporation (CLIC).

Methodology

BBC's approach to the City of Morgantown's AI was based on the methodologies recommended in HUD's Fair Housing Planning Guide, Vol. I, our experience conducting AIs for other cities, and the specific needs of the city according to city staff and stakeholders. The broad workscope consisted of the following:

- **Community and housing profile.** BBC prepared a community and housing profile to provide background data for the AI using current data on population and households from appropriate and recently completed studies; the 2010 Census, where available; the U.S. Census' American Community Survey (ACS); Claritas projections on population and household characteristics; and other state and local data sources. This section also contains racial and ethnic concentration maps required by HUD.
- **Private market, fair housing activities and complaint data review.** In this task, data on mortgage lending approvals, subprime mortgages (from Home Mortgage Disclosure Act or HMDA data), compliance with the Community Reinvestment Act (CRA), recent legal cases and fair housing complaints were analyzed to detect potential discriminatory patterns. BBC also reviewed Morgantown's current and previous fair housing activities.
- **Policy review and analysis.** BBC reviewed Morgantown's city zoning, land use, planning and housing policies pertaining to residential housing for barriers to fair housing and fair housing concerns.
- **Community input.** Resident and stakeholder input into the AI was received through key person interviews, three online and mail surveys of real estate professionals, social service stakeholders and residents, and two stakeholder focus groups.
- **Identification of impediments.** In this task, BBC compiled the fair housing concerns identified through public participation, data analysis and review of land use policies into impediments to fair housing choice.
- **Actions to address past and current impediments.** In this final task, BBC developed a recommended Fair Housing Action Plan (FHAP) for Morgantown to use to address impediments identified in the current AI.

SECTION II.
Community Profile

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Community Profile

This section provides a community and housing profile for the City of Morgantown. It includes the racial/ethnicity and income concentration maps required by HUD for AIs.

The U.S. Census began a limited release of information collected as part of the 2010 Census in the spring of 2011; 2010 Census data are referenced when possible in this report. Additional data sources include the following: 2000 Census; Census American Community Survey 2007-2009 3-year estimate (ACS); Claritas; unemployment rates and Quarterly Census of Employment and Wage (QCEW) data from the Bureau of Labor Statistics (BLS); and the Morgantown Area Economic Partnership.

Summary

The 2010 Census estimates Morgantown's population to be nearly 30,000 residents. Since the 2000 Census, the city grew modestly, adding approximately 3,000 new residents in the last 10 years. Given its locale in a region plagued by declining populations, Morgantown's stable population is a rarity.

Morgantown is the home of West Virginia University (WVU). The city's socioeconomic profile is heavily influenced by the student population, which reached nearly 30,000 during the 2010-2011 school year. As such, incomes in the city appear low, poverty rates are high, the household composition is dominated by non-family households, and the proportion of residents with disabilities trails the state average. In other words, aggregate statistics likely do not accurately reflect the characteristics of non-student residents in Morgantown. This makes identifying the needs of local residents challenging.

Nonetheless, much of the stability in the city is attributed to its strong local economy rooted in WVU. In December 2009, the Morgantown Metropolitan Statistical Area (MSA) boasted the lowest unemployment rate in the U.S. In the last five years, unemployment rates have trailed state and national unemployment rates by notable margins. The city's diverse economy contains many jobs in industries that are considered recession-resilient, such as education and government.

Although WVU provides a stabilizing force in the city, it also creates challenges for residents not associated with the university. The city's housing market has developed almost solely to accommodate the demands of college students. Rental rates are high and apartment units contain amenities attractive to college students (e.g., gym, pools), rather than to families or permanent residents looking for long-term rental opportunities. Furthermore, new development has given little attention to overall accessibility and transit accessibility for seniors and persons with disabilities. Although not intentional, WVU has created housing challenges for Morgantown's permanent residents.

Demographic Analysis

This demographic analysis includes a look at the city’s population, as well as the income, racial/ethnic, household composition, disability and educational characteristics of its population.

Population. The 2010 U.S. Census reports that Morgantown has a population of 29,660 residents. The city has experienced modest population growth in the last 10 years, adding approximately 3,000 new residents from its 2000 population of 26,809 residents. The city grew faster between 2000 and 2010 (11 percent total growth) than between 1990 and 2000 (4 percent total growth). Figures II-1 and II-2 display the city’s population growth over the last 20 years.

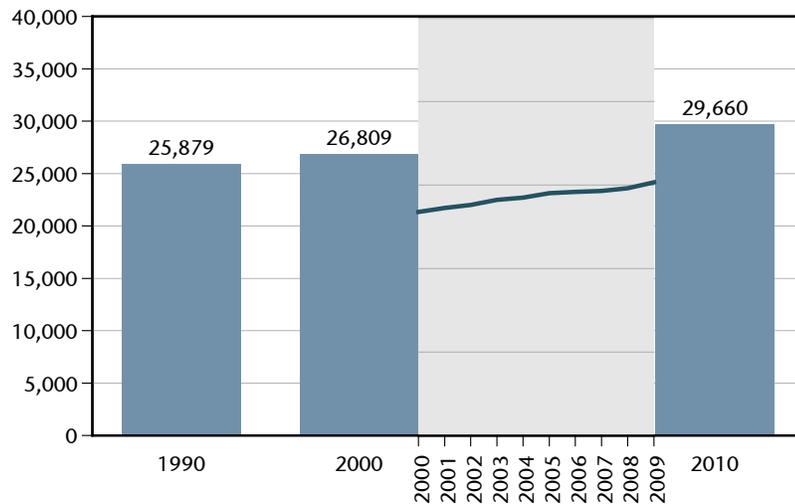
Figure II-1.
Total Population, City of Morgantown, 1990, 2000, 2010

Source:
1990, 2000 and 2010 U.S. Census.

	Population	Percent Total Growth from Previous Decade	Compound Annual Growth Rate from Previous Decade
1990	25,879		
2000	26,809	3.6%	0.4%
2010	29,660	10.6%	1.0%

Figure II-2.
Total Population, City of Morgantown, 1990, 2000, 2010

Source:
1990, 2000 and 2010 U.S. Census and Census Population Estimates.

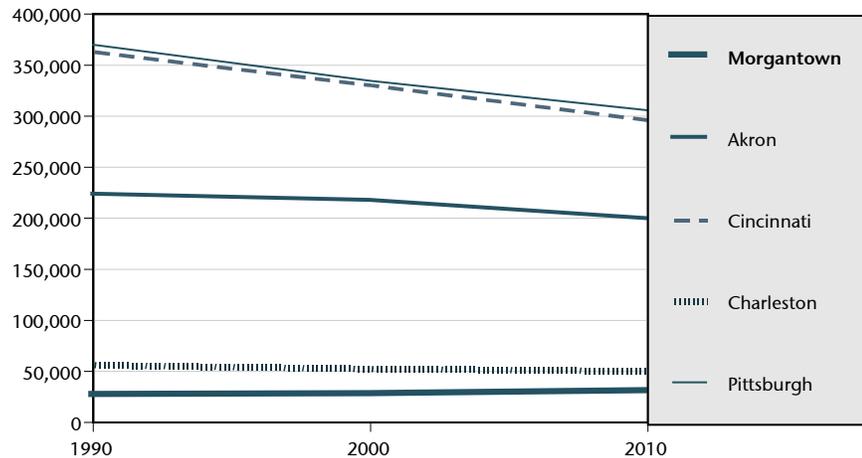


In the last 20 years, Morgantown has grown more quickly than the State of West Virginia overall. The release of the 2010 Census revealed the state’s population increased by 2.5 percent since 2000, compared to a 10.6 percent increase in Morgantown. WVU and its accompanying research and medical facilities have likely been a stabilizing presence in the city, particularly since Morgantown lies in a larger region that has suffered substantial population loss.¹ For example, West Virginia’s capital, Charleston, lost 10 percent of its population since 1990. Despite being much larger than Morgantown, Pittsburgh, Cincinnati and Akron all demonstrate the general population loss of the region.

¹ Morgantown lies adjacent to both the designated “Rust Belt”, as well as the “Coal Belt.”

Figure II-3.
Total Population,
Cities of
Morgantown,
Akron, OH,
Cincinnati, OH,
Charleston, WV and
Pittsburgh, PA 1990
to 2010

Source:
 1990, 2000 and 2010 U.S.
 Census.



WVU cites a student enrollment of approximately 29,306 students.² A little more than half (56 percent) of students are residents at WVU, and the remaining students are non-resident. The day-time population of Morgantown likely doubles when the university is in session, given the city’s population of approximately 30,000 residents.

Race and ethnicity. The U.S. Census Bureau treats race and ethnicity separately: the Bureau does not classify Hispanic/Latino as a race, but rather as an identification of origin and ethnicity. Figure II-4 shows the racial and ethnic distribution of Morgantown’s residents in 2000 and 2010.

Figure II-4.
Race and Ethnicity, City
of Morgantown, 2010

Source:
 2000 and 2010 U.S. Census.

	2000		2010	
	Total	Percent	Total	Percent
Race				
African American	1,113	4.2%	1,205	4.1%
American Indian	45	0.2%	39	0.1%
Asian	1,113	4.2%	1,021	3.4%
Native Hawaiian	13	0.0%	26	0.1%
White	23,990	89.5%	26,597	89.7%
Some other race	138	0.5%	166	0.6%
Two or more races	397	1.5%	606	2.0%
Ethnicity				
Hispanic	412	1.5%	765	2.6%
Non-Hispanic	26,397	98.5%	28,895	97.4%

The racial and ethnic composition of the city’s population changed very little between 2000 and 2010. Ninety percent of Morgantown’s population consider themselves racially white, compared to 89 percent in 2000. African Americans are the largest racial minority group, and they currently comprise 4 percent of the city’s population. Although the city has experienced some growth in its Hispanic population since 2000, Hispanic residents comprise only 3 percent of the current population.

² <http://wvutoday.wvu.edu/n/2010/10/20/minority-overall-enrollment-increases-at-wvu>.

One of the key components of fair housing analysis is an examination of the concentration of racial and ethnic minorities within a jurisdiction to detect evidence of segregation. In some cases, minority concentrations are a reflection of preferences—e.g., minorities may choose to live where they have access to grocery stores or restaurants that cater to them. In other cases, minority populations are intentionally steered away or discouraged from living in certain areas. Housing prices can also heavily influence where minorities live.

The following maps display the geographic distribution of residents by race and ethnicity for each jurisdiction in the study. Maps display the distribution of the city’s largest minority groups—African American, Asian and Hispanic—and highlight areas of racial and ethnic concentrations. For the purposes of this study, concentrations represent areas where persons of a particular race or ethnicity comprise a larger proportion of the population than the community overall. To align with HUD’s definition of “disproportionate need,” concentrations occur when the percentage of residents of a particular racial or ethnic group is 10 percent or more than the community-wide average. For example, if 20 percent of residents in a particular Census tract are African American and African Americans comprise 10 percent of a community’s population overall, that Census tract contains a concentration of African American residents.

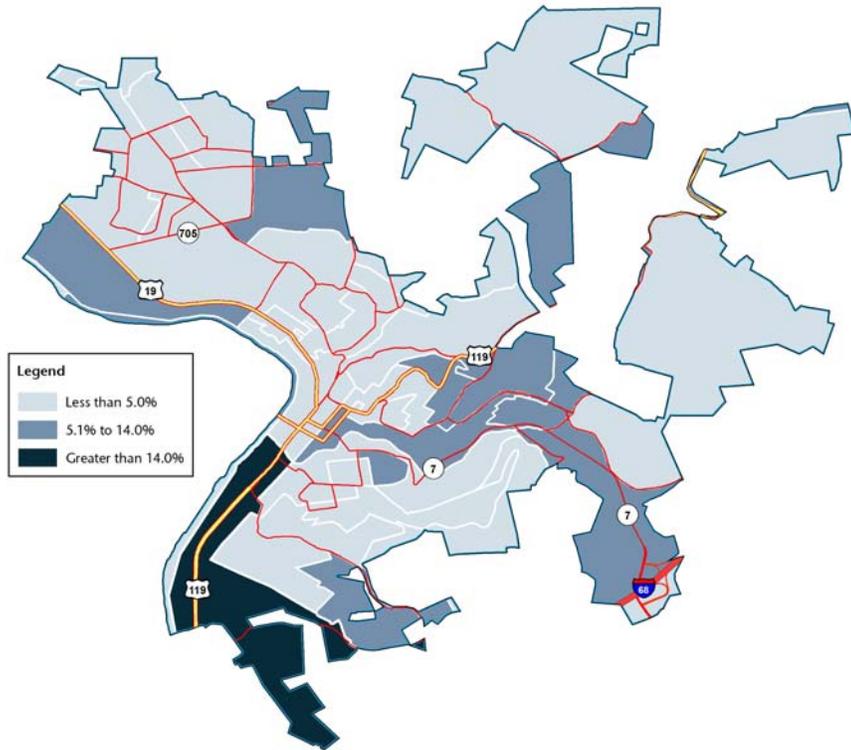
Using the above definition of concentration, block groups in Morgantown have a concentration if the following exists:

- An African American population proportion of 14 percent;
- An Asian population proportion of 13 percent or more; and
- A Hispanic population proportion of 13 percent or more.

Racial and ethnic data are displayed by Census block group. The following figures show both: 1) The overall racial composition of each Census block group; and 2) How the three distinct racial categories of persons are distributed throughout the city.

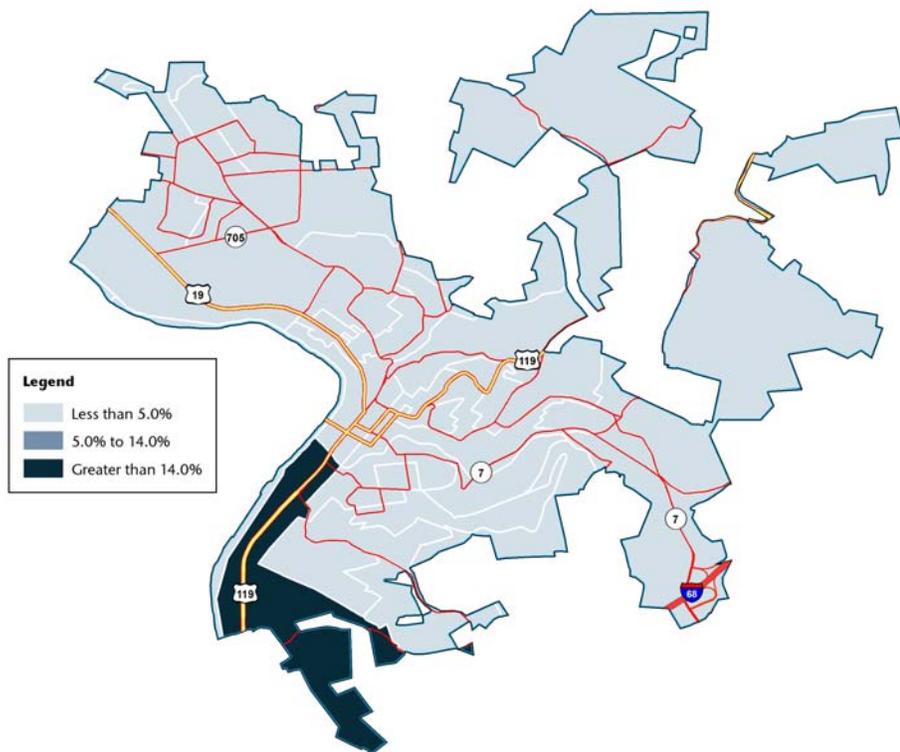
**Figure II-5.
Percent of
Block Group
Population
that is African
American by
Block Group,
City of
Morgantown,
2010**

Source:
2010 U.S. Census.



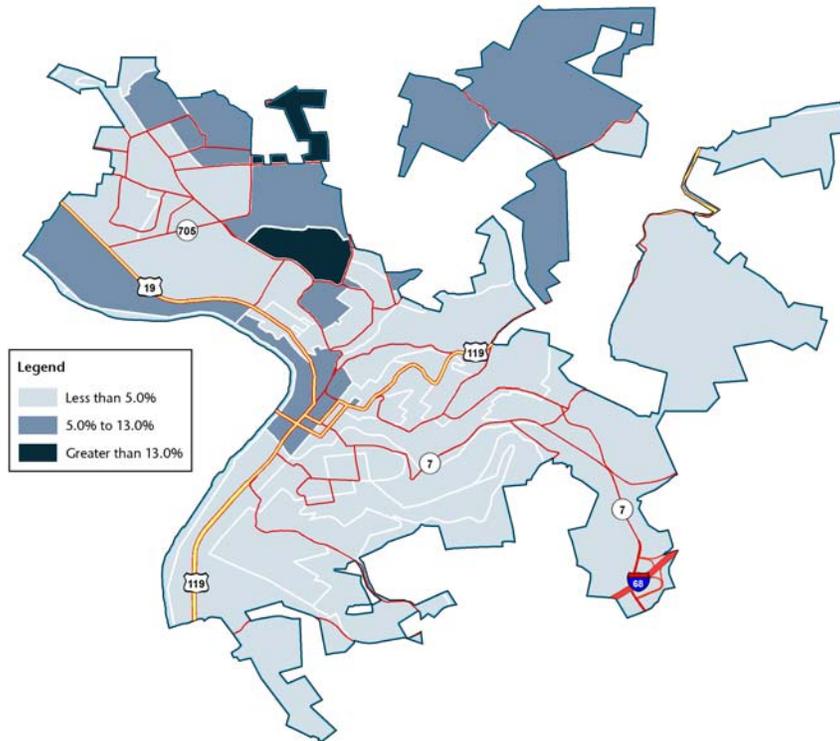
**Figure II-6.
Distribution
of Population
that is African
American by
Block Group,
City of
Morgantown,
2010**

Source:
2010 U.S. Census.



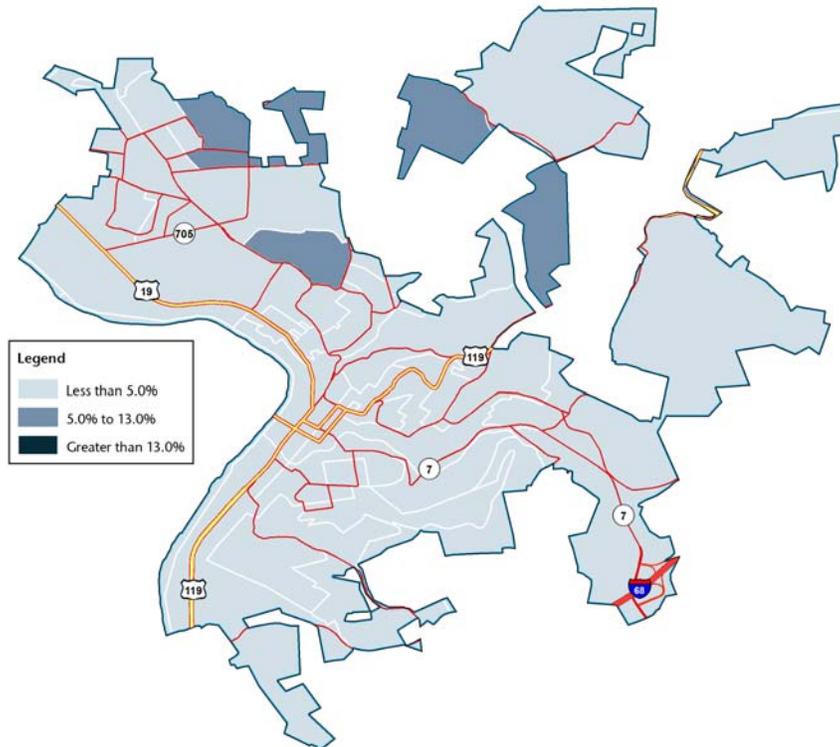
**Figure II-7.
Percent of Block Group Population
that is Asian by
Block Group, City of
Morgantown,
2010**

Source:
2010 U.S. Census.



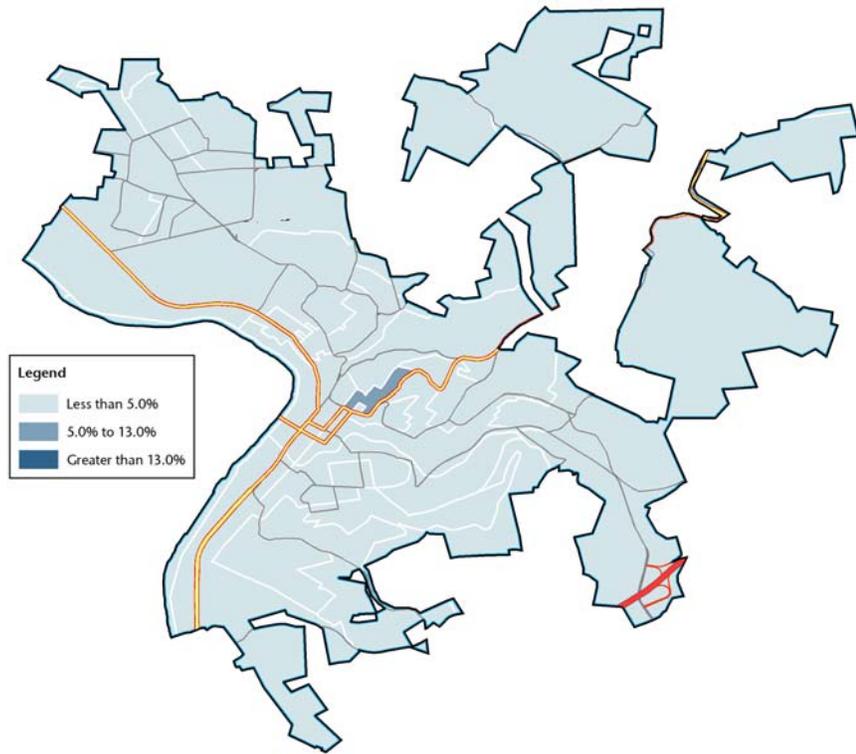
**Figure II-8.
Distribution of
Population that is
Asian by Block
Group, City of
Morgantown, 2010**

Source:
2010 U.S. Census.



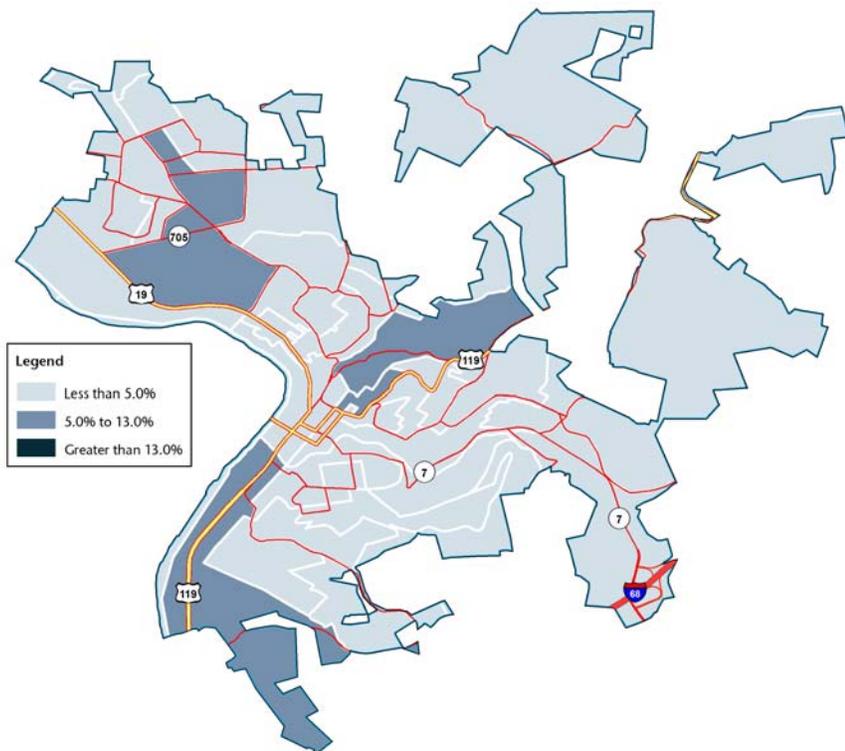
**Figure II-9.
Percent of Block Group Population
that is Hispanic
by Block Group, City
of Morgantown,
2010**

Source:
2010 U.S. Census.



**Figure II-10.
Distribution of
Population that
is Hispanic by
Block Group, City
of Morgantown,
2010**

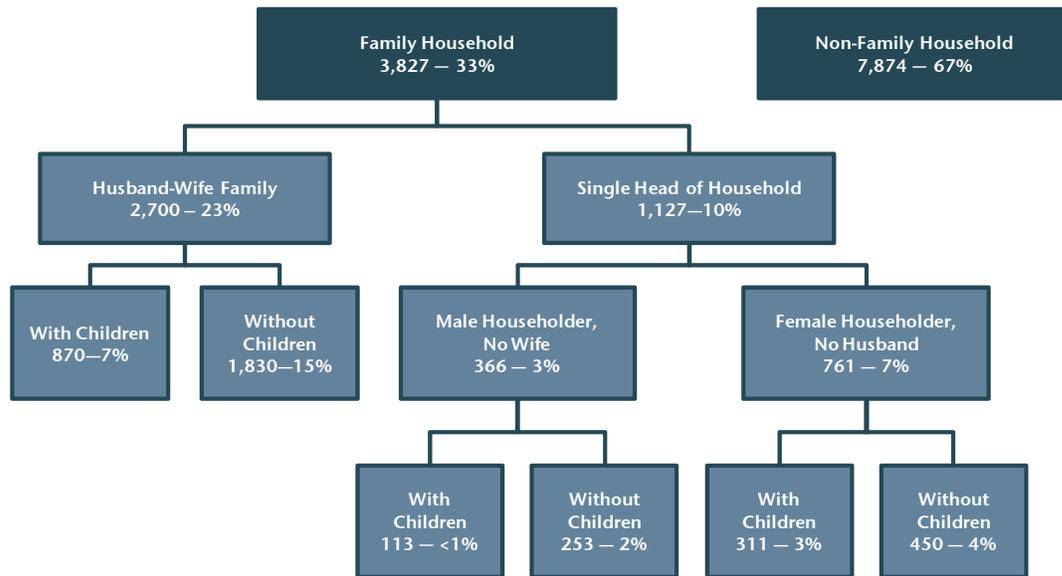
Source:
2010 U.S. Census.



As demonstrated in the maps, African Americans are concentrated in the southern portion of the city, primarily in Census Tract 110, Block Group 3. It should be noted that this block group does extend outside the city boundaries, and some African Americans not living within Morgantown may be captured in this analysis. The Greenmont neighborhood, which was historically the city's segregated neighborhood, contains between 5 and 14 percent African American residents, which does not qualify as a concentration. Anecdotally, this neighborhood has begun to gentrify and has seen an increase in college students. Two block groups in the northern portion of the city contain concentrations of Asian residents.

Household composition. According to the 2010 Census, there are approximately 11,700 households in Morgantown. Two-thirds of those households are non-family households, which includes unrelated persons living together or individuals living alone. The remaining 33 percent of households are family households. Figure II-11 displays the city's 2010 household composition.

Figure II-11.
Household Composition, City of Morgantown, 2010



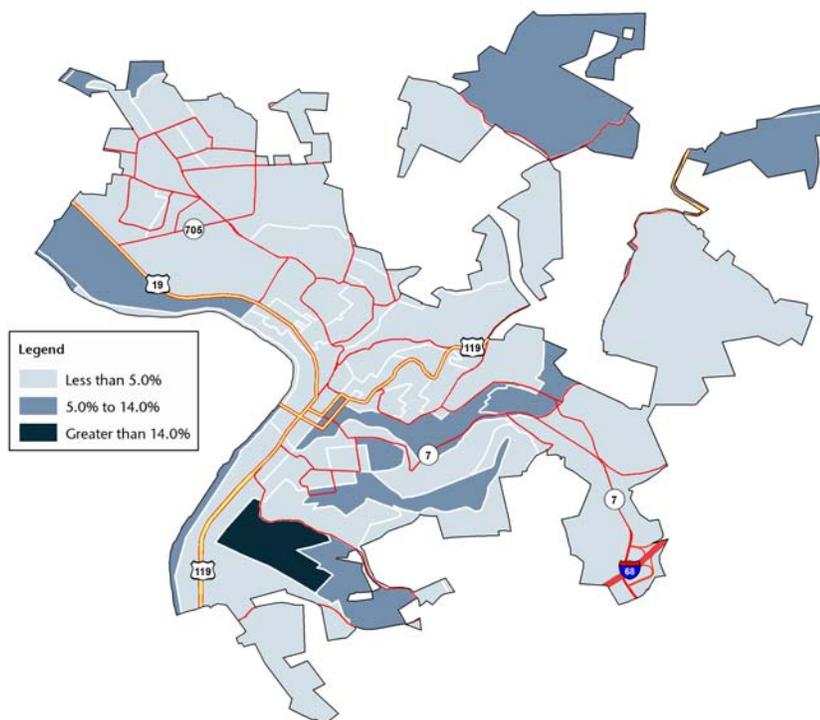
Note: Due to rounding, percentages may not appear to aggregate correctly.

Source: 2010 U.S. Census.

Because familial status is a protected class under fair housing law, it is important to examine whether concentrations of single parent households with children exist in a community. Approximately 4 percent of households in Morgantown are comprised of single parent households with children. Using the same definition of concentration as in the race and ethnicity maps above, Figure II-12 maps concentrations of single-parent households in Morgantown. A concentration of single parent households lies in the southern portion of the city.

Figure II-12.
Distribution of
Single Parent
Households, City of
Morgantown, 2010

Source:
 Claritas 2010.



Income and poverty. The ACS provides the most recent income information on Morgantown’s households and families.³ By definition, households include “all persons who occupy a housing unit,” which includes “any group of related or unrelated persons who share living arrangements.”⁴ In communities housing universities, such as Morgantown, households include students living together. As such, it is not surprising that a large discrepancy exists between the city’s median household income of \$26,641 and the median family income of \$67,949.

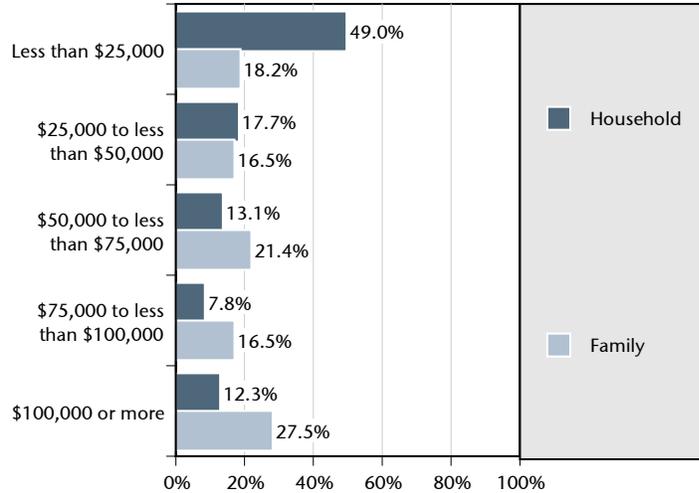
Figure II-13 displays the household and family income distributions in the city. Nearly half of all households in the city earn less than \$25,000 per year. The largest proportion of families in the city earns greater than \$100,000 annually (28 percent).

³ At the time the report was written, information about housing and family income for Morgantown residents was not available in the 2010 U.S. Census.

⁴ Definition borrowed from the U.S. Census Quickfacts.

Figure II-13.
Household and Family
Income Distribution, City
of Morgantown, 2009

Source:
 American Community Survey
 2007-2009 3-year estimate.



Median Family Income (MFI) is used by HUD and state and local policy makers to qualify households for various housing programs. According to HUD, the MFI for Morgantown in 2010 was \$53,900. The following classifications utilize MFI to define income levels according to HUD’s categorization:

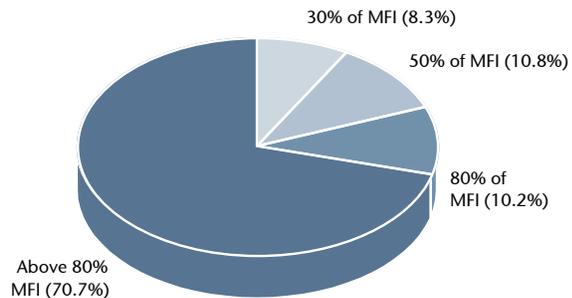
- Extremely low—30 percent and less of MFI (\$16,170 and less);
- Very low—31 to 50 percent of MFI (\$16,171 to \$26,950);
- Low and moderate—51 to 80 percent (\$26,951 to \$43,120);
- Above low and moderate—80 percent and above of MFI (more than \$43,120);

Figure II-14 shows the percentage of Morgantown families within each MFI category. The largest proportion of families in Morgantown—71 percent—were considered “above low and moderate income,” earning more than \$43,120. These families would likely not qualify for HUD-funded programs. The remaining 29 percent of families were evenly split among the remaining HUD categories.

Figure II-14.
Family Income Distribution
by HUD MFI, City of
Morgantown, 2010

Note:
 Assumes family income distribution has not
 changed since 2009.

Source:
 American Community Survey 2007-2009
 3-year estimate.



According to the ACS, 34 percent of Morgantown residents live in poverty. This is much higher than both the state (17 percent) and national (14 percent) averages because of the large student population in the city. For example, as seen in Figure II-15, 18 to 24 year olds account for 83 percent of impoverished residents. When examining poverty by age group, other than college-aged residents, school-aged residents (aged between 5 and 17) had the highest poverty rate (14 percent), followed by 25 to 44 year olds (13 percent).

Figure II-16 geographically displays where low income households reside in Morgantown using 2010 data from Claritas. In the absence of updated Census data on poverty, households earning \$25,000 or less represent low income households. Low income households are heavily correlated with proximity to WVU.

**Figure II-15.
Poverty by Age,
City of Morgantown, 2009**

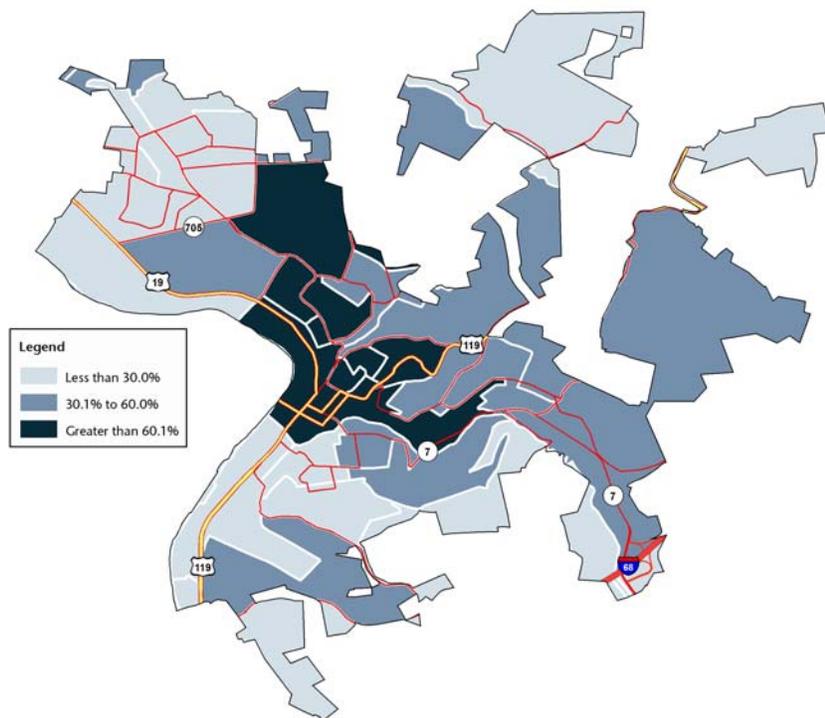
	Percent of Total In Poverty	Percent of Age Group
Less than 5	0.8%	9.0%
5 to 17	3.5%	14.3%
18 to 24	83.0%	72.5%
25 to 44	6.9%	12.6%
45 to 64	3.5%	5.9%
65 and older	2.4%	7.8%

Source: American Community Survey 2007-2009 3-year estimate.

**Figure II-16.
Low Income Households
by Block Group, City of
Morgantown, 2010**

Note:
2010 Census data not available for income. Annual household income less than \$25,000 used as a proxy for low income.

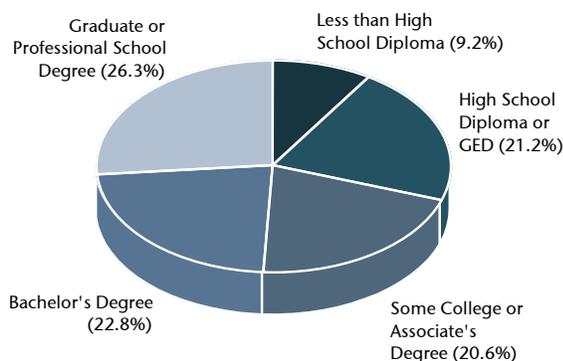
Source:
Claritas 2010.



Education. The ACS estimates that as many as 60 percent of Morgantown’s residents are enrolled in school. More specifically, 47 percent are enrolled in college. Residents over the age of 25 are well educated; 50 percent of the population holds a college degree or higher.

Figure II-17.
Education Attainment for the
Population 25 Years Old or More,
City of Morgantown, 2009

Source:
 American Community Survey 2007-2009
 3-year estimate.



Disability. The Census defines a person with a disability as having a “long-lasting physical, mental or emotional condition, which can make it difficult for a person to do activities such as walking, climbing stairs, dressing, bathing, learning or remembering.” Moreover, “this condition can also impede a person from being able to go outside the home alone or to work at a job or business.”⁵

Persons with disabilities may require housing that has accessibility features, is near public transit and supportive services and is affordable, if their ability to work is limited. Persons with disabilities are also at greater risk of experiencing housing discrimination, oftentimes due to a lack of knowledge about laws governing accommodations for persons who are disabled.

Information on persons with disability is not available in the ACS 3-year estimates, nor has it been released from the 2010 Census at the time this report was written. As such, the most recent disability data available for Morgantown is from the 2000 Census.

According to West Virginia House Resolution No. 163, “West Virginia has a higher percent of the population with disabilities than other state in the nation,” as nearly 410,000 residents in the state cite a disability.⁶ Per the 2000 Census, 15 percent of Morgantown residents reported being disabled compared with 24 percent statewide. According to Figure II-18, which displays the types of disabilities reported by residents, sensory disabilities were the most common type of disability cited by residents. Please note that residents may report having more than one type of disability.

⁵ Definition taken from the Census glossary.

⁶ http://www.legis.state.wv.us/Bill_Text_HTML/2011_SESSIONS/RS/Bills/hcr163%20intr.html

Figure II-18.
Disability Status for the Population 5 Years Old or More, City of Morgantown, 2000

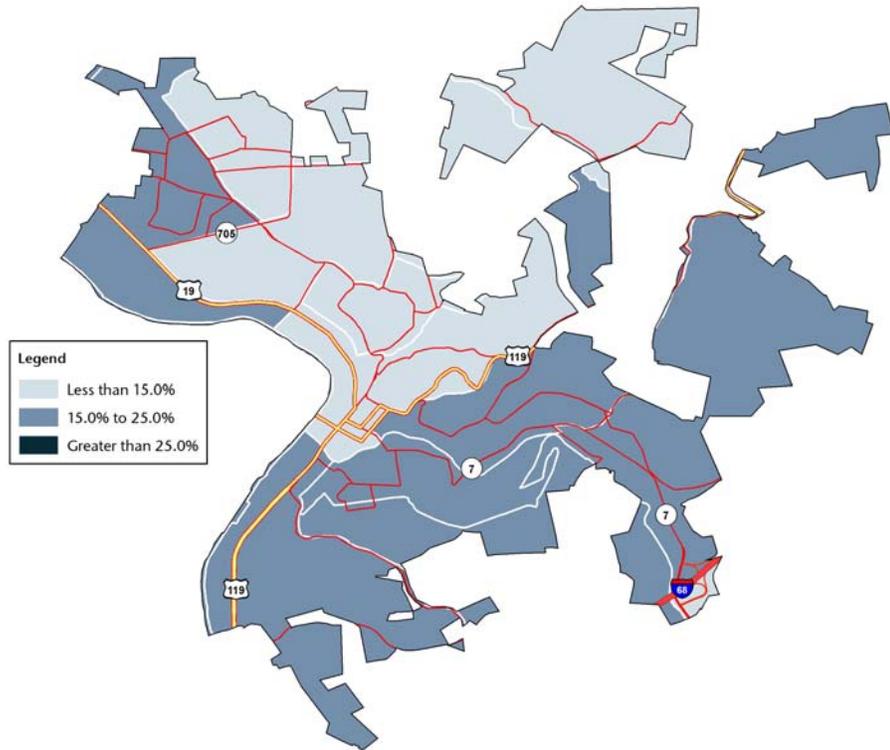
	Total	Percent of Age Group	Total	Percent of Age Group	Total	Percent of Age Group		
Aged 5 to 15	211	11.6%	Aged 16 to 64	3,929	18.1%	Aged 65 or older	1,275	44.9%
Sensory	42	2.3%	Sensory	424	2.0%	Sensory	2,650	93.3%
Physical	17	0.9%	Physical	774	3.6%	Physical	431	15.2%
Mental	145	8.0%	Mental	820	3.8%	Mental	868	30.6%
Self-care	7	0.4%	Self-care	178	0.8%	Self-care	371	13.1%
			Go-outside-home	458	2.1%	Go-outside-home	340	12.0%
			Employment	1,275	5.9%	Employment	640	22.5%

Source: 2000 U.S. Census.

Figure II-19 uses 2000 Census data at the Census tract level to examine geographic concentrations of persons with disabilities in the city.⁷ Concentrations are defined as areas where 25 percent or more of the total population of a Census tract reported having a disability. There was no concentration of persons with disabilities in the city in 2000.

Figure II-19.
Distribution of Residents with Disabilities, City of Morgantown, 2000

Source:
 2000 U.S. Census.



Employment Analysis

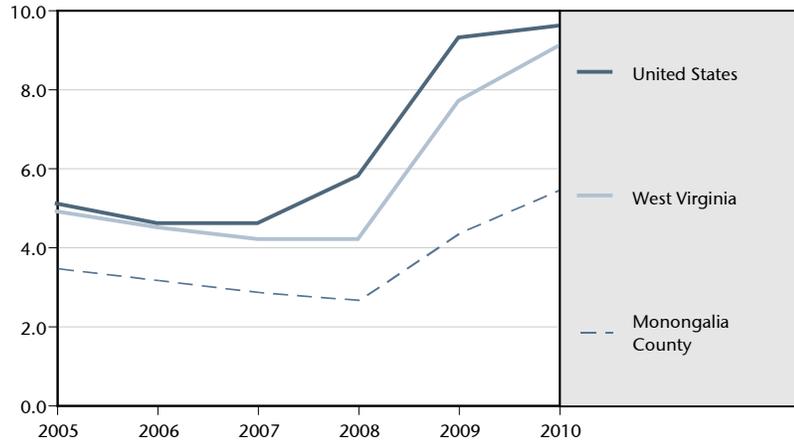
WVU has provided stable employment opportunities in Morgantown. The university has helped keep unemployment rates in the city below state-wide and national levels.

⁷ Data by Census block group were not available for all block groups in the city.

Unemployment rates. Since 2005, unemployment rates in Monongalia County, and presumably Morgantown, have consistently been lower than the state and the country. In 2010, when the unemployment rate in the U.S. averaged nearly 10 percent, Monongalia County’s unemployment rate remained at a healthy 5.5 percent. Furthermore, in December 2009, the Morgantown MSA reported the lowest unemployment rate in the U.S. at 2.9 percent.⁸

Figure II-20. Unemployment Rates, Monongalia County, West Virginia and the U.S., 2005 to 2010

Source:
Bureau of Labor Statistics.



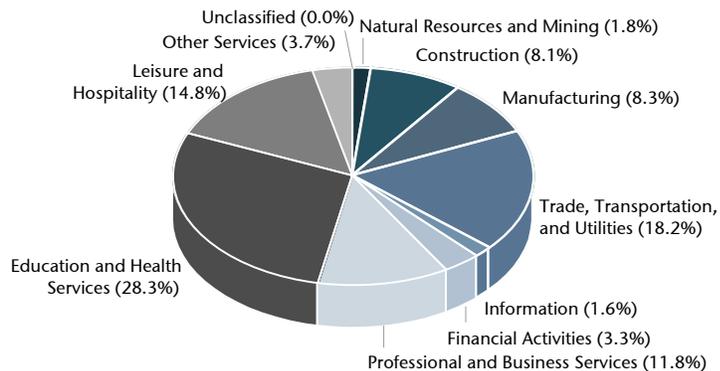
The area’s low unemployment rates have been attributed to the diversified local economy of recession-resilient employment sectors associated with health care services and education.

Jobs. According to the Bureau of Labor Statistics and its Quarterly Census of Employment and Wages (QCEW), Monongalia County had 51,778 jobs as of the 2nd Quarter of 2010. Seventy-eight percent of those jobs (40,522) were in the private sector, and the remaining jobs were in the government sector. QCEW data is not available for Morgantown.⁹

Figure II-21 displays the private sector employment distribution for Monongalia County. The county’s employment distribution is largely influenced by Morgantown and WVU; 28 percent of jobs fall within the Education and Health Services industry.

Figure II-21. Private Sector Employment Distribution, Monongalia County, 2010

Source:
Bureau of Labor Statistics QCEW.



⁸ <http://www.npr.org/templates/story/story.php?storyId=100890701>

⁹ QCEW data is only produced for counties, MSAs, states and the U.S. overall.

The county's largest industry—Education and Health Services—pays an average of \$40,248 annually.¹⁰ Manufacturing and construction jobs pay the largest wages in the county at more than \$60,000 per year.

Figure II-22.
Private Sector Average Employment and Average Wages, Monongalia County, 2010

	Quarterly Average	Percent of Total Employment	Average Weekly ¹ Wage	Average Annual Wage
Natural Resources and Mining	\$ 728	1.8%	\$ 1,132	\$ 58,864
Construction	\$ 3,276	8.1%	\$ 1,180	\$ 61,360
Manufacturing	\$ 3,369	8.3%	\$ 1,215	\$ 63,180
Trade, Transportation, and Utilities	\$ 7,382	18.2%	\$ 569	\$ 29,588
Information	\$ 636	1.6%	\$ 800	\$ 41,600
Financial Activities	\$ 1,352	3.3%	\$ 798	\$ 41,496
Professional and Business Services	\$ 4,784	11.8%	\$ 808	\$ 42,016
Education and Health Services	\$ 11,473	28.3%	\$ 774	\$ 40,248
Leisure and Hospitality	\$ 6,009	14.8%	\$ 241	\$ 12,532
Other Services	\$ 1,496	3.7%	\$ 547	\$ 28,444
Unclassified	\$ 16	0.0%	\$ 339	\$ 17,628

Note: Average annual wages assume full-time employment and a 52-week work year.

Source: Bureau of Labor Statistics QCEW.

Monongalia County's wages have recently trailed the U.S. as a whole, but are higher than average wages in the state of West Virginia. Per QCEW data from the 3rd Quarter of 2010, the average annual wage in Monongalia County was \$42,692, compared with \$45,240 in the U.S. and \$36,504 in West Virginia.¹¹ Disaggregated employment and wage data by industry was not available for Monongalia County at the time this report was written.

¹⁰ Average annual wage assumes full-time employment and 52 week work year.

¹¹ Average annual wages applies a full-time, 52 week work year to average weekly wage statistics provided by the Bureau of Labor Statistics.

Largest employers. The largest employers in Monongalia County include a mix of educational, medical, construction and retail services organizations and companies. According to the Morgantown Area Economic Partnership, the largest employers in the county include the following:

- West Virginia University;
- West Virginia University Hospitals;
- Mylan Pharmaceuticals, Inc.;
- Monongalia County Board of Education;
- West Virginia University Medical Corp.;
- University Health Associates;
- Monongalia General Hospital;
- Aker Construction, Inc.;
- Wal-Mart Associates, Inc.;
- Teletech Customer Care Management, Inc.;

Housing Market Analysis

The Fairmont/Morgantown Housing Authority (FMHA) is currently completing a housing market study that will include Morgantown. This housing market study will provide a more targeted analysis of housing issues related to fair housing.

Development trends. Multifamily development has dominated residential development in Morgantown since 2000. In 2010, when many communities were still recovering from the housing market downturn beginning a few years prior, Morgantown permitted 273 multifamily units in buildings with five units or more. Construction is either occurring or beginning on a number of large multifamily projects in the city, which will continue to grow the apartment market.

Figure II-23.
Building Permits by Unit Type, City of Morgantown, 2000 to 2010

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Single family	11	22	19	18	19	22	32	24	24	28	16
2 to 5 Units	0	10	2	8	5	14	6	0	3	0	2
5 units or more	60	45	39	52	85	52	0	70	212	12	273
Total	71	77	60	78	109	88	38	94	239	40	291
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Single family	15.5%	28.6%	31.7%	23.1%	17.4%	25.0%	84.2%	25.5%	10.0%	70.0%	5.5%
2 to 5 Units	0.0%	13.0%	3.3%	10.3%	4.6%	15.9%	15.8%	0.0%	1.3%	0.0%	0.7%
5 units or more	84.5%	58.4%	65.0%	66.7%	78.0%	59.1%	0.0%	74.5%	88.7%	30.0%	93.8%
Total	100%										

Source: U.S. Census Building Permit Estimates.

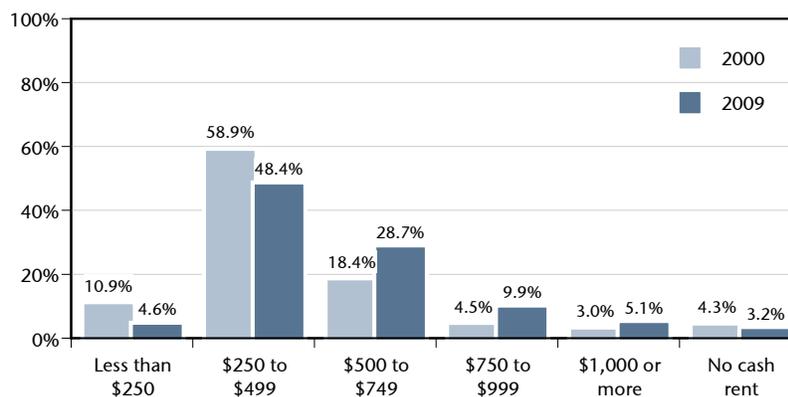
According to a number of housing stakeholders in the city, the apartment market in Morgantown is developed with students in mind, as demonstrated by the price, product type and location of new units. More development is occurring around WVU's main campus and 2 or 3 bedroom units are often leased by bedroom. Limited land and units in close proximity to the main campus has driven up the cost of some of units. Furthermore, some buildings are offering amenities attractive to students, such as workout facilities and pools, which can lead to higher rents.¹²

Tenure. According to the 2010 Census, 11,701 of the city's 12,664 housing units are occupied. Sixty-three percent of the city's occupied units are occupied by renters, indicating a 37 percent homeownership rate. This is low compared to many cities in the country, but is not unexpected given the city's student population.

Rental market. According to the ACS, the median contract rent for all apartments in the city is \$473 per month. This is a 25 percent increase from the median rent in 2000 of \$379. Figure II-24 compares the 2000 and 2009 contract rent distribution in the city.

Figure II-24.
Distribution of Contract Rents for Apartments, City of Morgantown, 2000 and 2009

Source:
2000 U.S. Census and 2007-2009 American Community Survey 3-year estimate.



Since 2000, rental units have become gradually more expensive. More units now require rents between \$500 and \$1,000. Anecdotally, new rental products currently being constructed in the city require rents of \$750 or more.

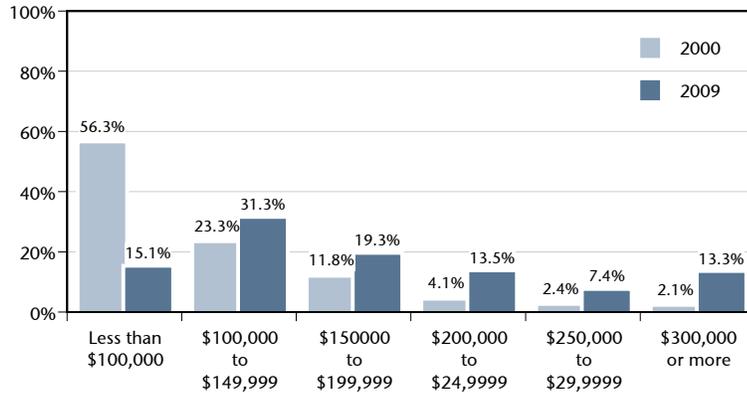
Seventy-five renters participated in the resident survey administered as part of this study. The survey will be discussed in greater detail in Section V of this report. Of those renters surveyed, 57 percent reported “having trouble finding a place to live in the last five years that you could afford because the rent was too expensive.”¹³ Furthermore, 37 percent of renters participating in the survey “had trouble finding a place to live in the last five years because of limited availability” of rental units in Morgantown. Nearly one in four renters (23 percent) had a disability or lived with a person with a disability and cited challenges with finding affordable and accessible units.

¹² Information gathered from stakeholder focus group with housing professionals and through an interview with WVU housing office.

¹³ Question 9 of the resident survey.

For-sale market. Since 2000, Morgantown’s for sale housing market has seen a dramatic shift in home prices. The median home value in 2000 was \$95,000. According to the ACS, the median home value is now approximately \$164,000, which equates to a 73 percent increase in home values in less than 10 years.

Figure II-25.
Distribution of
Home Values, City
of Morgantown,
2000 and 2009



Source:
 2000 U.S. Census and 2007-2009
 American Community Survey 3-year
 estimate.

Anecdotally, a number of factors have impacted home values in Morgantown. Local housing professionals and city staff noted the recent increase in parents buying housing for their children enrolled at WVU. In fact, this phenomenon has become so prevalent that the city recently updated their formal definition of “family” in response to parents buying homes for students in traditionally non-student neighborhoods—this will be discussed in greater detail in Section III. Housing professionals speculated that parents from more expensive regions in the U.S. were willing to pay historically higher housing prices for homes in Morgantown, thereby driving up real estate prices in the city. Additionally, WVU’s enrollment has recently increased, which has impacted demand not only for rental properties, but also for home purchases. Given Morgantown’s land constraints, the price for existing housing stock in the city has increased.

Overcrowding and condition. Overcrowding in housing can threaten public health, strain public infrastructure, and points to the need for affordable housing. The ACS was unable to provide updated information on overcrowding in Morgantown. However, given the city’s rather stringent definitions on occupancy standards, primarily driven by the city’s large student population, overcrowding is likely not an issue in Morgantown.

The ACS reported that approximately 69 housing units in the city are considered severely substandard because they lacked either complete plumbing facilities¹⁴ or complete kitchens.¹⁵ Together, assuming no overlap, these units represented less than 1 percent of the city’s total housing units in existence in 2009.

¹⁴ The data on plumbing facilities were obtained from both occupied and vacant housing units. Complete plumbing facilities include: (1) hot and cold piped water; (2) a flush toilet; and (3) a bathtub or shower. All three facilities must be located in the housing unit.

¹⁵ A unit has complete kitchen facilities when it has all of the following: (1) a sink with piped water; (2) a range, or cook top and oven; and (3) a refrigerator. All kitchen facilities must be located in the house, apartment, or mobile home, but they need not be in the same room. A housing unit having only a microwave or portable heating equipment, such as a hot plate or camping stove, should not be considered as having complete kitchen facilities. An icebox is not considered to be a refrigerator.

Transportation

Mountain Line Transit Authority is the primary transit provider in the city, offering approximately 20 bus lines around the city. Individual fares are \$0.75, with an additional \$0.50 charged for deviations from the scheduled bus line. Discounts are offered to seniors and Medicare cardholders. WVU students and faculty ride for free.

A representative from Mountain Line Transit Authority participated in a stakeholder focus group conducted to gather qualitative information for this study. The primary barriers to providing transportation to the city's residents are terrain and poor infrastructure. In many parts of the city, infrastructure is out of sync, meaning that bus stops may not be properly served by sidewalks or necessary curb cuts for persons using wheelchairs. Narrow streets that become heavily congested during rush hour make stopping the bus challenging and turnarounds nearly impossible. It was also suggested that new developments may not have fully considered large vehicle access in their designs. For example, the Transit Authority does allow for deviations from the fixed bus route up to three-quarters of a mile to pick up patrons at a location of their choosing; however, this service is limited by the ability to access the desired location.¹⁶

¹⁶ <http://www.busroute.org/>.

SECTION III.
Public Policies and Practices

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Public Policies and Practices

This section contains an analysis of public sector barriers to fair housing choice in the context of housing policies and procedures and land use policies in Morgantown.

Morgantown/Fairmont Housing Authority Policies, Procedures and Programs

As part of the AI, the policies and procedures of the Fairmont/Morgantown Housing Authority (FMHA) were reviewed. Housing Authority management was interviewed to discuss policies and procedures of distributing Section 8 Housing Choice Vouchers, as well as to discuss the Housing Authority's partnership with the city in administering a variety of housing programs.

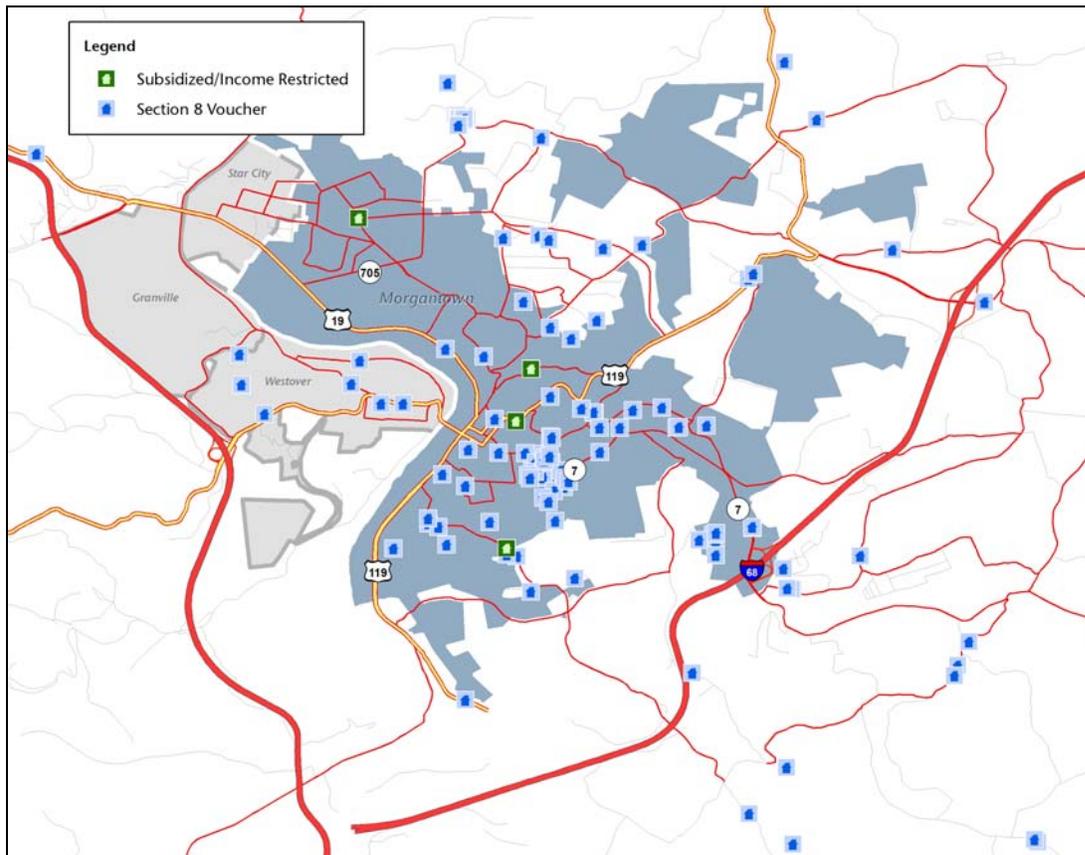
Morgantown's lowest income renters are served by the FMHA through the Section 8 Housing Choice Voucher program. The FMHA owns no public housing units in Morgantown. The FMHA does own 136 apartments in seven separate developments in nearby Fairmont. There are subsidized/income restricted units in Morgantown, which are funded by a variety of subsidies, such as through HUD's Section 202 program. Figure III-1 lists those residential units and Figure III-2 locates these units on a map. Section 8 Vouchers and subsidized/income restricted housing units are presented together to comprehensively analyze affordable housing opportunities in the city.

Figure III-1.
Subsidized/Income Restricted Housing Units, City of Morgantown, 2011

Name	Number of Subsidized Units	Current Year to Expire	Type of Subsidy
Section 8 Housing Choice Vouchers	503		Housing Choice Vouchers
Green Acres Apartments	16	2011	HFDA/8 NC
Oak Hill Apartments	40	2014	LMSA
Oak Valley Apartments	24	2015	HFDA/8 NC
Marjorie Gardens	126	2012	HFDA/8 NC
Unity Housing, LP (Morgantown Unity)	121	2011	202/8 NC
Unity House Apartments, Inc.	35	2020	PRAC/811

Source: Fairmont/Morgantown Housing Authority and HUD Expiring Use Database.

Figure III-2.
Location of Subsidized/Income Restricted Units, City of Morgantown, 2011



Source: Fairmont/Morgantown Housing Authority and HUD Expiring Use Database.

As shown in Figure III-2, Section 8 Voucher holders are heavily concentrated in certain portions of the city. This is due in part to some apartment complexes in the city housing many Section 8 Voucher holders. In addition to concentrations in Morgantown, Voucher holders are finding units far outside of Morgantown's boundaries.

FMHA policies and procedures. This section examines the FMHA's Section 8 Voucher program, as well as the other programs administered by the FMHA.

Section 8 Voucher Program. The FMHA follows standard HUD rules in administering its Section 8 Voucher program. For a family to qualify, their gross income must be considered "very low income" by HUD standards for the Morgantown area. Applicants must obtain and submit an application to one of the FMHA offices. The FMHA office in Morgantown has operated with limited hours: Wednesday through Friday from 9:30 a.m. to 12:00 p.m. and 1 p.m. to 3:30 (5 hours per day). As of June 2011, the FMHA will close the Morgantown office. Once the application has been submitted, applicants are put on a waitlist for one of the FMHA's 503 Vouchers. The waitlist has 167 families; however, as of May 16, 2011, the FMHA is no longer accepting Section 8 applications. According to the FMHA's website, preference is given to families who have a disabled family member and families in federally declared disaster situations. Once an applicant has cleared the waitlist, their eligibility is verified with the FMHA and eligibility recipients are provided an orientation to further explain the program. The orientation is only offered in Fairmont. According to the FMHA, upon receipt of a

Section 8 Voucher, Voucher holders have 60 days to find a rental unit. If recipients have not located a unit within the 60 days, they may file for one 60 day extension. This extension must be filed before the initial 60 day period has expired.¹ Families with a Voucher are responsible for finding their own rental unit. The FMHA maintains a list of landlords who have expressed interested in providing units to Section 8 recipients.

Figure III-3 displays the demographic characteristics of current Section 8 Voucher holders, as well as persons currently on the waitlist in Morgantown.

**Figure III-3.
Characteristics of Fairmont/Morgantown Housing Authority
Section 8 Voucher Holders and Persons on the Waiting List,
City of Morgantown, May 2011**

	Current Voucher Holders		Waiting List	
	Households	Percent	Households	Percent
Total Households	503	100.0%	167	100.0%
Race and Ethnicity				
White	438	87.1%	126	75.4%
Black/African American	64	12.7%	36	21.6%
American Indian/Alaska Native	4	0.8%	2	1.2%
Asian	1	0.2%	0	0.0%
Hispanic	0	0.0%	0	0.0%
Non-Hispanic	503	100.0%	137	82.0%
Head of Households				
Male	112	22.3%	37	22.2%
Female	391	77.7%	130	77.8%
Other characteristics				
Disabled	158	31.4%	27	16.2%
Elderly	47	9.3%	3	1.8%
Families with children	286	56.9%	N/A	N/A

Note Information taken directly from report provided by Fairmont/Morgantown Housing Authority. Residents could report more than one racial category.

Source: Fairmont/Morgantown Housing Authority.

According to the 2010 Census, 4 percent of the city’s residents are African American; 13 percent of Voucher holders and 22 percent of waitlisted households are African American, indicating high participation in the Section 8 program by the city’s African American residents. Thirty-one percent of Voucher holders have disabilities, and more than half are families with children (57 percent).

¹ Information received from discussion with Section 8 eligibility coordinator at the FMHA on June 2, 2011.

FMHA programs. The Fairmont/Morgantown Housing Authority administers a number of other programs in the city, some in partnership with the City of Morgantown.

- ***Home improvement and rehabilitation loans.*** With funding from the City of Morgantown’s CDBG allocation, the FMHA administers a variety of housing rehabilitation programs to improve the quality of the city’s housing stock. Since these programs use CDBG funds, participants must meet income requirements. All programs must be administered to homeowners and landlords within the City of Morgantown. The following summarizes the programs offered in the city:²
 - The Home Improvement Program provides loans to homeowners of up to \$20,000 at 2 percent interest for 10 years for substantial repairs and improvements. The loan is deferred for elderly and residents with disabilities.
 - The Barrier Free Program provides a one-time grant to homeowners and landlords for up to \$5,000 for renovations that would enable an elderly person or a person with a disability to remain in the home.
 - The Emergency Repair Program is a one-time grant for homeowners to make up to \$2,500 in emergency repairs.
 - The Rental Rehabilitation Program provides a loan of up to \$10,000 at 1 percent interest for 10 years with an incentive of up to \$2,500 to improve the exterior appearance of a structure.
- ***Morgantown Homecoming.*** The mission of the Morgantown Homecoming program is to “promote homeownership and housing choice in Morgantown’s neighborhoods, including Greenmont, Wiles Hill, Woodburn and First Ward.”³ Homeownership opportunities are primarily created through the purchase and rehabilitation of single family homes, which are then sold on the open market. Unlike other FMHA programs, Morgantown Homecoming does not place income restrictions on homebuyers. All homes included in the program have an owner-occupied deed restriction, which mandates that homebuyers occupy the home as their primary residence. Morgantown Homecoming is privately funded through donations and money made on the transactions of homes. Morgantown Homecoming began in 2005 as a direct response to a 2002 comprehensive housing market study, which noted high rental rates in some of Morgantown’s neighborhoods, as well as a limited supply of available, developable land within the city limits for new development.

Additionally, the FMHA provides a variety of counseling and homebuyer education programs to local residents to ensure their understanding of the responsibilities of homeownership.

² <http://www.fmhousing.com/rehab.htm>

³ <http://www.morgantownhomecomingwv.com/AboutUs.html>.

Public input. Public input gathered to support this study, discussed in greater detail in Section V, provided the following feedback on the FMHA and its administration of the Section 8 Voucher program:

- The FMHA has historically maintained an office in Morgantown, which has operated with limited hours. However, the Housing Authority will close the Morgantown office in June of 2011. This creates difficulties for individuals with disabilities and others with limited transportation living in Morgantown.
- Holding program orientations in the Fairmont office creates difficulties for individuals with disabilities and others with limited transportation living in Morgantown.
- The FMHA maintains a list of landlords accepting Section 8 Vouchers. This list is outdated and stakeholders were told by the FMHA that “it is not their responsibility” to maintain the landlord list.
- Residents and stakeholders said finding quality apartments which accept Vouchers is challenging. Stakeholders recommend lengthening the amount of time individuals have to locate units, particularly since they are not given the list of landlords accepting Section 8 Vouchers until after orientation.

Land Use Policy Review

BBC reviewed the City of Morgantown’s codes, Comprehensive Plan, planning fees and other city programs and policies to assess potential fair housing concerns or opportunities resulting from the development regulatory process, as well as policies that encourage or discourage the development of affordable housing.

Planning Commission structure. The residents of Morgantown elect seven City Council members, who represent one of seven wards in the city. City Council members are elected every two years. There are several boards, authorities and commissions to assist in city management. The Planning Commission consists of nine Council appointed city residents; one resident from each of the seven city wards, one member of City Council, and one member representing the Office of the City Manager. The Planning Commission is responsible for, with citizen input and the assistance and technical support of the Planning Division, recommending to City Council the adoption of the Comprehensive Plan, updates thereto, and special studies relating to neighborhoods, downtown, etc.; recommendations concerning amendments to the Planning and Zoning Code and to the Official Zoning Map; and, reviewing and approving minor and major subdivision petitions and site plans for Developments of Significant Impact, which include 12 or more residential units, more than 15,000 square feet of commercial, office, and/or institutional uses, and all industrial uses.⁴

⁴ Description of the Planning Commission provided by Morgantown city staff.

Board of Zoning Appeals structure. The Board of Zoning Appeals (BZA) consists of five Council appointed city residents. The BZA is responsible for, with citizen input and the assistance and technical support of the Planning Division, reviewing and approving all variance and conditional use petitions and hearing appeals of administrative determinations relating to the Planning and Zoning Code.⁵

Department of Development Services. The Department of Development Services recently reorganized and now not only fulfills planning, zoning, building code enforcement, building permitting and rental housing registration responsibilities, but also responsibilities related to the Community Development Block Grant. With the exception of Fire Code and Engineering reviews, all land-use, building and housing activities in the city are planned and approved within the same department.

The primary responsibilities of the Department include completion of the city's Comprehensive Plan, compliance with the city's Planning and Zoning Code and Building Code, approving development in the city and administering the CDBG program. The Department of Development Services is also responsible for enforcing Fair Housing design and construction.

Comprehensive Plan. Morgantown's current Comprehensive Plan was last updated in 1999. The city is currently partnering with the Morgantown Monongalia Metropolitan Planning Organization (MMMPO) and the Town of Star City to update the Comprehensive Plans for the two partnering municipalities, as well as the 30-year regional transportation and growth plan. As a result, the city's 13 year old Comprehensive Plan will be given only a brief review below.

It should be noted that the City's 1999 Comprehensive Plan was adopted under WV State Code Chapter 8-24. In 2004, the State passed a major re-write of its Planning Enabling Law striking 8-24 entirely and replacing it with Chapter 8A. The 2004 requirements for comprehensive planning were significantly strengthened requiring local government jurisdictions to conduct more thorough analysis, projections and policy development for 13 core components including land use, housing, transportation, infrastructure, public services, rural, recreation, economic development, community design, preferred development areas, redevelopment, financing and historic preservation.

⁵ Description of the Board of Zoning Appeals provided by Morgantown city staff.

The 1999 Comprehensive Plan is organized in 11 elements, which include:

- regional context and demographic profile;
- land use;
- transportation;
- economic development;
- environment, open space and recreation;
- community facilities;
- historic preservation;
- housing;
- social services;
- community relations; and
- implementation.

Housing Element (1999). The city’s Housing Element is part of the Comprehensive Plan. It “identifies the key issues facing newcomers looking for a place to live, and for residents who are dealing with the changes taking place in the community.”⁶ Overall, the city’s Housing Element acknowledges the important impact WVU has in driving the city’s housing market. The Housing Element also recognizes the needs of residents not affiliated with the university. As such, non-student housing needs are identified as “low to moderate income households which cannot effectively compete with students for housing that would normally be available at a reasonable cost.”⁷

Key issues identified as part of the Housing Element include:

- Zoning variances and conditional uses that have long-term negative impacts on neighborhoods can be avoided when neighborhood residents have an opportunity to review development proposals;
- Rental housing in the larger area is apparently overbuilt in relation to demand, and the vacancy ratio is over 15 percent;
- Litter and abandoned buildings pose hazards and negatively affects property values and quality of life;
- Unsightly trash storage and wrecked, non-running and abandoned vehicles detract from neighborhood quality; and
- Sidewalks and curbs that need repair and residents who do not remove snow from or clean sidewalks have negative impacts on property values and aesthetics.

A number of housing deficiencies were identified as part of the 1999 Comprehensive Plan. The city acknowledges its lack of vacant and developable land. Furthermore, rehabilitation of existing housing structures is complicated by the age and quality of the housing stock, which makes rehabilitation often not economically viable. The city also understands that much of its rental housing supply is utilized by college students. Areas of student concentrations are often undesirable for residents not affiliated with WVU. However, rental supply attractive to these residents is in limited supply.

⁶ <http://www.morgantown.com/plan/housing.htm>.

⁷ <http://www.morgantown.com/plan/housing.htm>.

Recommendations made in the Comprehensive Plan include the following:⁸

- Inspections of rental housing should be more strictly applied to property maintenance aspects, resulting in both safety and aesthetic enhancement of neighborhoods;
- Encourage the Monongalia County Commission to adopt building and development codes, particularly in relation to urban development close to the city's neighborhoods, to improve the quality of development; and,
- Seek cooperation and coordination with adjacent municipalities in endeavors to improve residential neighborhoods in the Morgantown area.

To achieve these recommendations, the city established a series of goals, objectives and strategies.

- Goal A: Neighborhoods that are safe and aesthetically pleasing to visit and reside in.
- Goal B: A supply of housing that meets the needs of persons and households seeking to reside in the city, with costs that are affordable to the wide range of personal incomes.
- Goal C: Neighborhoods that are safe and which have a healthy living environment.

It should be noted that there is no discussion of disability or the need for accessible housing in the Housing Element. It should also be noted here that the State Planning Enabling Law (Chapter 8-24) in effect at the time of the city's 1999 Comprehensive Plan Update did not mandate consideration of affordable and accessible housing needs.

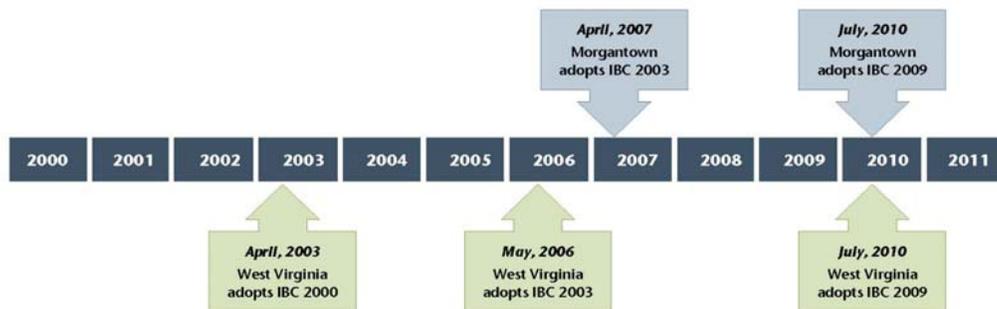
The city's current efforts to complete a Comprehensive Plan Update will comply with significant changes in the State's current Planning Enabling Law (Chapter 8A) that now mandates the analysis of affordable housing and universally designed housing accessible to persons with disabilities.

Building Code. A building code is a set of rules that identify minimum construction standards to ensure public safety upon occupancy of a building. The International Building Code (IBC) is a model building code that is widely used throughout the United States. The intent of the IBC is to provide uniformity in building codes regardless of geography. More specifically, IBC "provides minimum standards for public safety, health, and welfare as they are affected by building construction."⁹ The 2009 IBC currently guides construction in both Morgantown and West Virginia. Figure III-4 displays historical IBC adoption in the city and the state.

⁸ <http://www.morgantown.com/plan/housing.htm>.

⁹ http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_14780.pdf.

**Figure III-4.
Historical Adoption of International Building Code,
City of Morgantown and State of West Virginia, 2000 to 2011**



Note: Information received from Judy Cooper of the West Virginia Secretary of State.

Source: West Virginia Secretary of State and Morgantown Code Enforcement Office.

The design and construction requirements of the Fair Housing Act include the following:¹⁰

- **Requirement 1. An accessible building entrance on an accessible route.** All covered multifamily dwellings must have at least one accessible building entrance on an accessible route unless it is impractical to do so because of the terrain or unusual characteristics of the site.
- **Requirement 2. Accessible public and common use areas.** Covered housing must have accessible and usable public and common-use areas. Public and common-use areas cover all parts of the housing outside individual units. They include, for example, building-wide fire alarms, parking lots, storage areas, indoor and outdoor recreational areas, lobbies, mailrooms and mailboxes, and laundry areas.
- **Requirement 3. Usable doors (usable by a person in a wheelchair).** All doors that allow passage into and within all premises must be wide enough to allow passage by persons using wheelchairs.
- **Requirement 4. Accessible route into and through the dwelling unit.** There must be an accessible route into and through each covered unit.
- **Requirement 5. Light switches, electrical outlets, thermostats and other environmental controls in accessible locations.** Light switches, electrical outlets, thermostats and other environmental controls must be in accessible locations.
- **Requirement 6. Reinforced walls in bathrooms for later installations of grab bars.** Reinforcements in bathroom walls must be installed, so that grab bars can be added when needed. The law does not require installation of grab bars in bathrooms.
- **Requirement 7. Usable kitchens and bathrooms.** Kitchens and bathrooms must be usable and designed and constructed so an individual in a wheelchair can maneuver in the space provided.

¹⁰ Provided by Fair Housing Accessibility First, which is supported by HUD.
<http://www.fairhousingfirst.org/fairhousing/requirements.html>.

Design and construction requirements apply to all covered multifamily dwellings designed and constructed for first occupancy after March 13, 1991. Covered multifamily dwellings are defined as “all dwelling units in buildings containing four or more dwelling units if the buildings have one or more elevators,” as well as “all ground floor units in other buildings containing four or more units without an elevator.” Furthermore, “condominiums and apartment buildings are required to adhere to the Fair Housing Act’s design and construction requirements, as are time-shares, dormitories, traditional housing, homeless shelters that are used as a residence, student housing, assisted living housing and others.”¹¹

HUD gives “safe harbor” designation to certain building guidelines and codes if they comply with the Fair Housing Act’s design and construction requirements. HUD currently recognizes ten safe harbors. The IBC 2000 is considered safe harbor, but only if amended with the 2001 Supplement to the International Building Code. The IBC 2003 received safe harbor from HUD, with one condition:

Effective February 28, 2005 HUD determined that the IBC 2003 is a safe harbor, conditioned upon ICC publishing and distributing a statement to jurisdictions and past and future purchasers of the 2003 IBC stating, "ICC interprets Section 1104.1, and specifically, the exception to Section 1104.1, to be read together with Section 1107.4, and that the Code requires an accessible pedestrian route from site arrival points to accessible building entrances, unless site impracticality applies. Exception 1 to Section 1107.4 is not applicable to site arrival points for any Type B dwelling units because site impracticality is addressed under Section 1107.7."¹²

Although neither the state nor the city adopted the IBC 2006, it received safe harbor designation with the “2007 erratum (to correct the text missing from Section 1107.7.5), and interpreted in accordance with relevant 2006 IBC Commentary.”¹³

At this time, the IBC 2009 has not yet received safe harbor designation from HUD.

¹¹ Provided by Fair Housing Accessibility First, which is supported by HUD.
<http://www.fairhousingfirst.org/fairhousing/requirements.html>.

¹² <http://www.fairhousingfirst.org/faq/safeharbors.html>.

¹³ http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_14780.pdf.

HUD provides the following explanation as to how the adoption of a safe harbor document applies to local compliance with the federal Fair Housing Act:

If a state or locality has “adopted a safe harbor document without modification to the provisions that address the Act’s design and construction requirements, a building that is subject to these requirements will be deemed compliant provided the building is designed and constructed in accordance with construction documents approved during the building permitting process and the building code official does not waive, incorrectly interpret, or misapply one or more of those requirements.” However, neither the fact that a jurisdiction has adopted a code that conforms with the accessibility requirements of the Act, nor that construction of a building subject to the Act was approved under such a code, changes HUD’s statutory responsibility to conduct an investigation, following receipt of a complaint from an aggrieved person, to determine whether the requirements of the Act have been met. Nor does either fact prohibit the Department of Justice from investigating whether violations of the Act’s design and construction provisions may have occurred.¹⁴

In summary, if the city has adopted and enforced IBC 2000 and IBC 2003 and acknowledged the conditions stipulated by HUD to qualify as safe harbor, they have met the requirements of the federal Fair Housing Act. If they have not actively enforced IBC, then they have not been in compliance with the federal Fair Housing Act.

Morgantown Planning and Land Use Code. The City of Morgantown Planning and Land Use Code guides planning and land use decisions in the city, guided by the city’s Comprehensive Plan.

To evaluate potential fair housing concerns within the city’s zoning code, BBC Research & Consulting utilized a “Review of Public Policies and Practices (Zoning and Planning Codes)” form recently circulated by the Los Angeles Fair Housing Office of HUD. This section poses the questions from this checklist, along with responses about the city’s code. The section also addresses additional zoning laws and policies (e.g., minimum lot size requirements, dispersal requirements of group homes in single family zones and restrictions on the number of unrelated persons in dwelling units) commonly reviewed when completing AIs.

Zoning Regulation Impediment: Does the code definition of “family” have the effect of discriminating against unrelated individuals with disabilities who reside together in a congregate or group living arrangement? No. Family is defined in the city’s code as the following:

“...one or more persons occupying a single dwelling unit, provided that unless all members are related by blood, marriage or legal adoption, no such family shall contain over three unrelated persons. However, where disability requires that more than three unrelated persons reside together; in such cases, there shall be no requirement for persons with disabilities to petition, apply or experience a process to obtain approval to live in any zoning district in the city.”

¹⁴ http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_14780.pdf.

The city recently added a definition for “functional family,” which was primarily in response to an increasing trend of college students purchasing homes in traditionally non-student neighborhoods. Functional family units include people who are:

- Living together as a single nonprofit housekeeping unit whose relationship is of a permanent and distinct domestic character;
- Have a demonstrable and recognizable bond where each party is responsible for the basic material needs of the other; and
- Living as a single housekeeping unit consistent with the purposes of zoning restrictions in the R-1 or R-1A District.

A group of three or more individuals living together are not considered a functional family if their association is “temporary or seasonal in character or nature,” or they live together out of convenience or economic viability.¹⁵

Zoning Regulation Impediment: Is the Code definition of “disability” the same as the Fair Housing Act?
The Zoning Code does not provide a definition of “disability,” “disabled” or “handicap.”

Practice Impediment: Does the zoning ordinance restrict housing opportunities for individuals with disabilities and mischaracterize such housing as a “boarding or rooming house” or “hotel”? The city does include boarding houses in their list of definitions within the Code, but no formal definition for boarding house is provided. Instead, readers are referred to a definition of lodging or rooming house. Lodging or rooming houses are defined as a “building or portion thereof that does not qualify as a one or two family dwelling that provides sleeping accommodations for no more than 16 people on a transient or permanent basis without personal care services, with or without meals, but without separate cooking facilities for individual occupants.”

Housing opportunities for persons with disabilities are encompassed by the city’s definitions for group residential facilities and group residential homes:

- **Group Residential Care Facility.** A facility which is owned or leased by a behavioral health service provider and which: (1) provides residential services and supervision for individuals who are developmentally disabled or behaviorally disabled; (2) is occupied as a residence by not more than eight individuals who are developmentally disabled and not more than three supervisors, or is occupied as a residence by not more than twelve individuals who are behaviorally disabled and not more than three supervisors; (3) is licensed by the West Virginia Department of Health or the Division of Human Services; (4) complies with the West Virginia State Fire Commission for residential facilities; and (5) complies with the provisions of the Code of the State of West Virginia, Chapter 27, Article 17, et seq., as amended.

¹⁵ Application for Functional Family Unit Determination.

- **Group Residential Home.** A building owned or leased by developmentally disabled or behaviorally disabled persons for purposes of establishing a personal residence. A behavioral health service provider may not lease a building to such persons if the provider is providing services to the persons without a license as provided for in the Code of the State of West Virginia, Chapter 27, Article 17, et seq., as amended.¹⁶

Practice Impediment: Does the zoning ordinance deny housing opportunities for disabled individuals with on-site housing supporting services? No. The definitions for group homes recognize the need for supervisors, which is linked to on-site support services.

Does the jurisdiction policy allow any number of unrelated persons to reside together, but restrict such occupancy, if the residents are disabled? No. The city has a definition of functional family (see above), which does limit the number of unrelated people not functioning as a family unit to less than three. Occupancy limits are higher for group homes.

Does the jurisdiction policy not allow persons with disabilities to make reasonable modifications or provide reasonable accommodation for people with disabilities who live in municipal-supplied or managed residential housing? No. The city supports reasonable modification improvements.

Does the jurisdiction require a public hearing to obtain public input for specific exceptions to zoning and land-use rules for applicants with disabilities, and is the hearing only for applicants with disabilities rather than for all applicants? No. Public hearings are required if a conditional use permit or variance is required for major modifications. However, the hearing is not specific to persons with disabilities.

Does the zoning ordinance address mixed uses? How are the residential land uses discussed? What standards apply? The city's residential and business zoning districts are highlighted in Figure III-5. Minimum lot sizes and maximum building heights are included in the exhibit.

**Figure III-5.
Residential
and Business
Zoning
Districts, City of
Morgantown,
2011**

Source:
City of Morgantown.

Abbreviation	Description	Minimum Lot Size (square feet)	Maximum Building Height (feet)
R-1	Single Family Residence	7,200	35
R-1A	Single Family Residence	3,500	35
R-2	Single and Two Family Residences	5,000	35
R-3	Multifamily Residences	4,000	55
PRO	Professional, Residential and Office	7,000	35
B-1	Neighborhood Business	3,000	40
B-2	Service Business	6,000	72
B-4	General Business	1,500	120
B-5	Shopping Center	0.5 (acres)	75
OI	Office and Institutional	6,000	72

Depending on the land availability within each zoning district, the relatively large lot size in R-1 could create a barrier to affordable housing development.

¹⁶ Person first language is not used because definition taken directly from Code of the State of West Virginia.

Mixed-use developments are defined as a “single development of more than one building and use where the different types of land uses are in close proximity, planned as a unified complementary whole and functionally integrated to the use of shared vehicular and pedestrian access and parking areas.” Mixed-used dwellings are permitted in the R-3, B-1, B-2, B-4, B-5 and OI districts.

According to the Code, mixed-use dwelling units shall comply with the following:

- Shall be buildings that are primarily residential with a subordinate amount of commercial or office space located on the ground floor and in the front of the building facing the primary street frontage. The commercial or office space shall not be less than 20 percent and not more than 60 percent of the ground floor area.
- Residential units may be on the ground floor, but shall not access the building from the front facade located on the primary street.
- Parking shall be at least one parking space for each residential unit, plus 25 percent of the usual non-residential parking requirement.

Does the zoning ordinance describe any areas in this jurisdiction as exclusive? No.

Are there exclusions or discussions of limiting housing to any of the following groups: race, color, sex, religion, age, disability, marital status or familial status and/or creed of national origin? No.

Are there any restrictions for Senior Housing in the zoning ordinance? If yes, do the restrictions comply with federal law on housing for older persons (i.e., solely occupied by persons 62 years of age or older or at least one person 55 years of age and has significant facilities or services to meet the physical or social needs of older people)? No. Senior housing is not specifically mentioned in the Code.

Does the zoning ordinance contain any special provisions for making housing accessible to persons with disabilities? The city has adopted and now enforces the IBC 2009.

Does the zoning ordinance establish occupancy standards or maximum occupancy limits? Do the restrictions exceed those imposed by state law? Occupancy standards are established in the R-1 and R-1A districts under the definition of “functional family.” Otherwise, occupancy standards adhere to state law and follow building code requirements.

Does the zoning ordinance include a discussion of fair housing? How does the jurisdiction propose to further fair housing? No. However, the city has adopted the IBC 2009. Although the IBC 2009 has not yet received safe harbor designation from HUD, it likely will in the future. Additionally, the city is considering requiring all development applications to include a code declaration signed by a design professional licensed in the State of West Virginia verifying that their development plans are in compliance with, among others, federal Americans with Disabilities Act (ADA) and Fair Housing Act standards where applicable.

Describe the minimum standards and amenities required by the ordinance for a multifamily project with respect to accessible parking. According to the Code, the city “encourages all development within the city which serves the public to comply with the accessibility standards of the Americans with Disabilities Act of 1990.” Furthermore, “the city requires conformance with the accessibility standards contained within the West Virginia State Building Code and the Morgantown City Code.” As such, the city adheres to the accessible parking standards required within the state Building Code.

For example, a parking lot with one to 25 spaces requires a minimum of one accessible parking space. A parking lot with 26 to 50 parking spaces requires a minimum of two accessible parking spaces. The number of accessible spaces increases incrementally with the size of the parking lot.

Does the zoning code distinguish senior citizen housing from other single family residential and multifamily residential uses by the application of a conditional use permit (cup)? No.

Does the zoning code distinguish handicapped housing from other single family residential and multifamily residential uses by the application of a conditional use permit (cup)? No. Housing for persons with disabilities (group residential care facilities and group residential homes) are permitted in all residential zones.

How are “special group residential housing” defined in the jurisdiction zoning code? Group home definitions are provided below:

- **Group Residential Care Facility.** A facility which is owned or leased by a behavioral health service provider and which: (1) provides residential services and supervision for individuals who are developmentally disabled or behaviorally disabled; (2) is occupied as a residence by not more than eight individuals who are developmentally disabled and not more than three supervisors, or is occupied as a residence by not more than twelve individuals who are behaviorally disabled and not more than three supervisors; (3) is licensed by the West Virginia Department of Health or the Division of Human Services; (4) complies with the West Virginia State Fire Commission for residential facilities; and (5) complies with the provisions of the Code of the State of West Virginia, Chapter 27, Article 17, et seq., as amended.
- **Group Residential Home.** A building owned or leased by developmentally disabled or behaviorally disabled persons for purposes of establishing a personal residence. A behavioral health service provider may not lease a building to such persons if the provider is providing services to the persons without a license as provided for in the Code of the State of West Virginia, Chapter 27, Article 17, et seq., as amended.

Does the jurisdiction’s planning and building codes presently make specific reference to the accessibility requirements contained in the 1988 amendment to the Fair Housing Act? No. However, the city adopted the IBC 2009, which will likely receive HUD likely safe harbor designation soon.

Additional zoning concerns. Zoning codes should ideally include zoning regulations and minimum lot requirements that are feasible for all types of developments. The city’s zoning regulations allow for a wide range of development types and specifically address mixed-use developments. However, one potential barrier is the relatively large lot size requirements. More specifically, the city has a minimum lot square footage requirement for single family housing that ranges from 3,500 to 7,200 square feet, depending on the dwelling district. Overly large lot requirements may discourage or hinder affordable housing development.

It should be noted that the city reduced the minimum lot size within the R-1A District from 4,000 to 3,500 sq. ft. in 2006 to provide more affordable in-fill housing development opportunities.

Planning, development and building fees.

As part of the land use review for the AI, the level of fees for zoning changes, variance requests and the development of residential housing were reviewed.

Figure III-6 displays common planning fees, as well as building permit fees associated with residential development.

Anecdotally, the city’s development review fees are very low and are not a barrier to development in the city. The city’s Development Services staff stated that plan review fees and building permit fees are not high enough to recover costs associated with the development review process. As such, the city may commission an independent third-party cost of service analysis to better understand the costs associated with development review and permitting processes and current fee schedules.

Other Public Sector Programs and Services

This section discusses the city’s Rental Registration Program, fair housing outreach and activities, the city’s CDBG program, the city’s interactions with the regional Metropolitan Planning Organization (MPO) and other public infrastructure and facility improvements.

Rental Registration Program. The City of Morgantown adopted a Housing Code in 1979 with the purpose of “establishing minimum health and safety standards for rental housing in the city.” The safety standards relate to the “condition, maintenance and occupancy of rental dwellings and are intended to ensure that rental housing is safe, sanitary and suitable.”¹⁷ To be in compliance with the Housing Code, all rental units in Morgantown must be registered with the city. Registered properties are subject to inspections every three years and must make corrections to any code violations within 20 days of the inspection. There are currently more than 3,000 properties and nearly 7,700 rental units currently registered with the city. City Code Enforcement staff, who are responsible for administering the program, cited drastic improvements in the city’s rental stock since the Housing Code was adopted.

Fair housing outreach and education. The city has relied heavily on the Northern West Virginia Center for Independent Living for fair housing education and outreach. The NWVCIL was a HUD FHIP grant recipient; however, the grant was not renewed for the upcoming fiscal year. Despite losing its FHIP grant, the NWVCIL will continue providing fair housing education and outreach in Morgantown.

The city did not allocate any CDBG for FY2011-2012 to fair housing activities.

Figure III-6. Common Planning Fees, City of Morgantown, 2011

Common Planning Fees	Cost
Administrative Appeals	\$ 35
Conditional Use	\$ 75
Minor Subdivision	\$ 35
Plan Reviews (Up to \$200,000; \$10 each additional \$100,000)	\$ 75
Rezoning	\$ 75
Variances	\$ 75
Test Amendments	\$ 75
Building Permit Fees	Cost (per sq. ft.)
1 or 2 dwellings	\$ 68
3+ dwellings	\$ 64
Additions	\$ 54
Finished basement	\$ 34
Unfinished basement, porch, carport	\$ 14
Attached garage, unfinished interior	\$ 28
Detached garage, unfinished interior	\$ 20

Source: City of Morgantown.

¹⁷ <http://www.morgantown.com/documents/rental-material/Housing-code-Chapter7.pdf>

Community Development Block Grant program. Morgantown became a HUD entitlement community on July 1, 2004. At that time, they became a direct recipient of CDBG funding and became responsible for enforcing the requirements of the Fair Housing Act (see above). As an entitlement community, Morgantown is also responsible for abiding by Section 504 of the 1973 Rehabilitation Act when the design and construction of a project is federally funded. Section 504 states the following:¹⁸

Section 504 of the Rehabilitation Act bars recipients of federal funds from discriminating on the basis of disability. Specifically, Section 504, which is enforced by HUD, prohibits recipients of federal funds from discriminating based on disability. For recipients of funding from HUD, this includes the requirement that in new construction and substantial alterations at least 5 percent of the housing units are accessible to people with mobility impairments and at least 2 percent of the housing units are accessible to people with vision or hearing impairments. In addition, Section 504 requires recipients to make reasonable accommodations, including structural changes, so that people with disabilities can use and enjoy housing. Section 504 covers all of the programs and activities of a recipient of federal financial assistance, and has additional requirements beyond those described here.

The city's CDBG program provides funding for housing rehabilitation assistance and other programs that assist neighborhood revitalization and provide supportive services to populations in need. These activities help the city remove obstacles to meeting underserved needs; foster and maintain affordable housing; and improve quality of life.

Per the city's 2011 HUD Action Plan, which identifies how the city will allocate its HUD grant dollars in the upcoming year, Morgantown anticipates a HUD FY 2011-2012 allocation of approximately \$485,000. The city will spend its CDBG funds in the upcoming year in the following ways:

- The city will use the maximum 20 percent for administration;
- The city will use the maximum 15 percent for public service grants;
- \$142,000 (29 percent) will be used for housing programs, including home rehabilitation, rental rehabilitation, emergency repair, accessibility improvements, lead-based paint testing and down payment assistance;
- \$162,000 (33 percent) will be used for infrastructure improvements, including sidewalk reconstruction and ADA accessibility for the Morgantown Marketplace on Spruce Street, as well as other ADA and accessibility improvements throughout the city; and
- \$24,000 will be used for non-profit facility rehabilitation.

¹⁸ http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/disabilities/sect504.

Morgantown Monongalia Metropolitan Planning Organization. The Morgantown Monongalia Metropolitan Planning Organization (MMMPO) serves as the Morgantown region’s designated Metropolitan Planning Organization. MPOs are charged with maintaining a long-range regional transportation plan which covers a planning horizon of at least 20 years and developing a Transportation Improvement Program (TIP), which funds transportation projects in accordance with the regional plan.

The City of Morgantown and the MMMPO are concurrently completing Morgantown’s Comprehensive Plan update and the 2035 regional transportation plan. This opportunity will allow both the city and the region to consider all aspects of regional planning, including housing, transportation and infrastructure, in planning for the future of the city and the region.

Public infrastructure, facilities and services.

Infrastructure. The city established two infrastructure goals as part of its recent Consolidated Plan update. These goals include the following:

- **Goal 1:** Provide sidewalk/infrastructure improvements or new sidewalks each year in targeted low income areas. Support sidewalk improvements by providing funding each year on neighborhood and downtown sidewalk improvements and infrastructure changes that would make accessibility possible. Areas that can be included to improve accessibility and quality of life are downtown sidewalk improvements, Woodburn, Sunnyside, Wiles Hill, Jerome Park, and Greenmont Neighborhoods, to improve accessibility and quality of life.
- **Goal 2:** The city is committed to removing barriers at all public facilities in order to make all city facilities (including all parks and recreation sites) ADA compliant. This does not only include removing physical barriers for people with mobility handicaps, but to support removing barriers from public facilities for sight and hearing disabilities.

As shown above, the city is allocating \$162,000 of its CDBG allocation in the upcoming year to infrastructure improvements. The city is funding the following projects:

- The City of Morgantown intends to build the Morgantown Marketplace on Spruce Street; as part of this venture, the city needs to reconstruct the sidewalk along the intended site to make it ADA accessible. This includes adding ramps and new curbs to a section of sidewalk that is 9 feet wide by 80 feet long.
- Monongalia County Habitat for Humanity strives to build decent, affordable housing for low income families. With CDBG entitlement funds, the organization will begin infrastructure work for the development of five single family homes on Jersey Avenue in Jerome Park.
- BOPARC will use CDBG funds to address ADA compliance issues in the Marilla Park picnic areas. Ramps will be constructed along with sidewalks throughout the picnic sites, including the upper Marilla baseball field and the Marilla pavilion.
- The CDBG will provide \$85,861 for ADA infrastructure work for a pedestrian sidewalk project. These improvements will reduce the number of pedestrian incidents and improve visibility and movement. CDBG funds will be leveraging Department of Transportation and local funding.

The city also recently invested \$290,000 in paving and road improvements. These improvements occurred throughout the city including:

- Tyson St., between Jerome St. and Knob St.
- Simpson St., between Wilson St. and South High St.
- Prospect St., between Willey St. and North High St.
- Union Ave., Marion St. to Concrete
- Union Ave., Mario St. to Concrete
- Clinton Ave., Snider St. to Dayton Ave.
- Jefferson St., Wilson Ave. to Jackson Ave.
- Southpoint Circle
- Parkview Dr., Lauren St. to Fairlawns Ave.
- South High St., Prairie Ave. to Dorsey Ave.

Blight. The Sunnyside Up Project is a “collaborative partnership between the City of Morgantown and West Virginia University that is working with Environmental Planning and Design to develop a revitalization plan for the Sunnyside neighborhood.”¹⁹ Poor housing stock and deteriorating infrastructure led to Sunnyside being designated as a blight district in 2003. As such, a comprehensive revitalization plan was created to help spur development with “a diversity of housing types, mixed-use development, infrastructure improvements and civic amenities.”²⁰ The Sunnyside neighborhood offers a number of amenities, including access to the city’s Personal Rapid Transit system, riverfront, proximity to WVU and density. However, there are also a number of challenges in revitalizing Sunnyside, including a lack of off-street parking, missing pedestrian connections, zoning constraints, poor housing quality and a captive real estate market.

An implementation plan was developed to help with Sunnyside’s revitalization. The following are some actions items included in the implementation plan:

- Determine mechanisms for funding parking garage construction;
- Upgrade city building codes and subdivision standards;
- Designate Sunnyside as a Tax Increment Financing district; and
- Revise the city’s Zoning Ordinance and revisit issues such as building setbacks and building heights.

Facilities and services. As part of the focus groups and surveys administered in this AI, social service stakeholders and housing professionals were asked whether the delivery of public services and amenities was equal throughout all portions of the city. If services are not equally delivered, this is considered a barrier to fair housing.

¹⁹ <http://www.morgantown.com/sunnyside.htm>

²⁰ <http://www.morgantown.com/sunnyside/Sunnyside%20Executive%20Summary.pdf>

Stakeholders participating in the social service provider stakeholder survey suggested that most city services and infrastructure were delivered equitably throughout the city. For example, all survey participants felt that water and sewer infrastructure, school quality, trash pick-up and fire services were delivered either very equitably or equitably in the city. Stakeholders did express some concern with the equitable delivery of street infrastructure, public transportation and code enforcement.

**Figure III-7.
Stakeholder Response to Public Service Barriers to Fair Housing**

	Very Equitable	Equitable	Inequitable	Very Inequitable
City Services and Infrastructure				
Street Infrastructure	0.0%	40.0%	40.0%	20.0%
Water and sewer infrastructure	0.0%	100.0%	0.0%	0.0%
Quality schools	0.0%	100.0%	0.0%	0.0%
Trash pick-up	0.0%	100.0%	0.0%	0.0%
Parks and recreation	60.0%	20.0%	20.0%	0.0%
Police services	0.0%	100.0%	0.0%	0.0%
Fire services	40.0%	60.0%	0.0%	0.0%
Public transportation	20.0%	40.0%	40.0%	0.0%
Code enforcement	0.0%	40.0%	40.0%	20.0%

Source: 2010 Morgantown AI Stakeholder Survey.

SECTION IV.
Fair Housing Complaints
and Fair Lending Analysis

SECTION IV.

Fair Housing Complaints and Fair Lending Analysis

This section examines private barriers to fair housing choice, as well as violations of the federal Fair Housing Act. It analyzes the fair housing complaints received by the U.S. Department of Housing and Urban Development (HUD), discusses legal cases concerning fair housing issues, and ends with a quantitative evaluation of lending practices in the City of Morgantown.

Fair Housing Complaints

Citizens of Morgantown who believe they have experienced discrimination in violation of the federal Fair Housing Act or state and local fair housing laws may report their complaints to the following entities:

- HUD's Office of Fair Housing and Equal Opportunity (FHEO); and
- The West Virginia Human Rights Commission (WVHRC).

The federal Fair Housing Act prohibits discrimination because of a person's race, color, religion, sex, handicap (or disability), familial status (familial status means households with children under 18 years of age living with their parents or guardians, pregnant women or people securing the custody of children under 18 years of age) or national origin. The West Virginia Fair Housing Act also prohibits discrimination based on ancestry and blindness. Discrimination includes denial of housing or intimidation of people in their apartments, condominiums and nearly all housing transactions.

Persons have one year from the date of the alleged discrimination in housing and real estate related transactions to file a complaint with FHEO and WVHRC.

In addition to contacting HUD and the WVHRC directly, persons with fair housing concerns are able to contact the city, the West Virginia Fair Housing Action Network (FHAN), or one of the three organizations that comprises the FHAN, which include the Community Living Initiatives Corporation (CLIC), the Northern West Virginia Center for Independent Living (NWVCIL) and the West Virginia Assistive Technology System (WVATS). These entities will direct residents to HUD or the WVHRC to file a complaint.

HUD complaint procedures. Housing discrimination complaints filed with HUD may be done online (<http://www.hud.gov/complaints/housediscrim.cfm>), by calling 1-800-669-9777 or by contacting the HUD Regional Office of Fair Housing and Equal Opportunity in Philadelphia (<http://www.hud.gov/local/shared/working/r3/fheo/index.cfm?state=pa>).

When HUD receives a complaint, the department will notify the person who filed the complaint, then notify the alleged violator and allow that person to submit a response. The complaint will be investigated to determine whether there has been a violation of the Fair Housing Act.

A complaint may be resolved in a number of ways. First, HUD will try to reach an agreement between the two parties involved. A “conciliation agreement” must protect the filer of the complaint and public interest. If an agreement is signed, HUD will take no further action unless the agreement has been breached. HUD will then recommend that the Attorney General file a suit, if applicable.

If a person needs immediate help to stop a serious problem that is being caused by a Fair Housing Act violation, HUD may be able to assist as soon as a complaint is filed. HUD may authorize the U.S. Attorney General to go to court to seek temporary or preliminary relief, pending the outcome of the complaint, if irreparable harm is likely to occur without HUD's intervention and there is substantial evidence that a violation of the Fair Housing Act occurred.

West Virginia Human Rights Commission complaint procedures. The WVHRC is the Fair Housing Assistance Program (FHAP) grantee from HUD. FHAP grants are awarded annually on a noncompetitive basis to state and local fair housing enforcement agencies once they demonstrate a fair housing law that is substantially equivalent to the federal Fair Housing Act.

According to the WVHRC’s website, there are five steps to the complaint process:

- Complaints must be filed within 365 days of the date of the most recent act of discrimination;
- An investigation will occur and the WVHRC will either find that there is (probable cause) or there is not (no probable cause) enough evidence to support discrimination;
- If probable cause is determined, conciliation is attempted through a settlement;
- If a settlement is not reached, a public hearing is held and a judge on behalf of the WVHRC issues a decision; and
- The judge’s decision may be appealed to the WVHRC, which is comprised of nine Governor-appointed commissioners.

Local/regional organizations and complaint procedures. The following is a summary of several organizations who work with fair housing in the Morgantown area.

City of Morgantown. The City of Morgantown has a Human Rights Commission, which has been inactive for some time. The city did receive one fair housing complaint in May of 2011. Prior to that complaint, the city had not received any fair housing complaints from residents in some time. The city refers complaints to the NWVCIL.

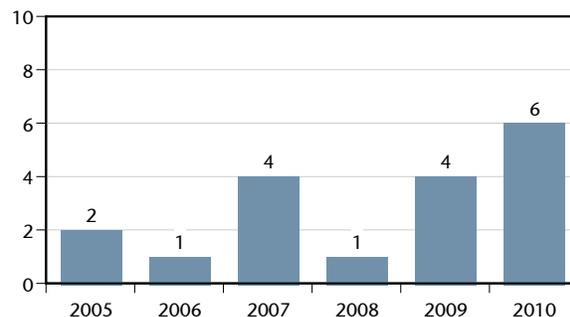
West Virginia Fair Housing Action Network. The FHAN is a collaborative effort among three local organizations committed to “targeted education, outreach, policy and advocacy towards all housing stakeholders.”¹ On its website, FHAN provides information on how to file a complaint, which links directly to HUD. The three organizations that comprise the FHAN include the following:

- **Northern West Virginia Center for Independent Living.** The Northern West Virginia Center for Independent Living is “an advocacy resource center for persons with disabilities and the communities in which they live.”² The NWVCIL has been funded through the HUD Fair Housing Initiatives Program (FHIP); however, funding was not renewed for next year. Organizations funded through FHIP are expected to “help people identify government agencies that handle complaints of housing discrimination,” as well as to conduct education and outreach on fair housing.³ NWVCIL assists clients in filing complaints with the WVHRC.
- **West Virginia Assistive Technology System/Center for Excellence in Disabilities/WVU.** This collaboration “helps to improve access to and acquisition of assistive technology (any device used to perform tasks that would otherwise be difficult or impossible) in the areas of employment, education, information technology/telecommunications and community living.”⁴
- **Community Living Initiatives Corporation.** The mission of the Community Living Initiatives Corporation is to “provide leadership for identifying and addressing issues which will improve the lifestyles of older adults and attract and retain retirees and their families to the Greater Morgantown Area.”⁵

Complaints filed. Between 2005 and 2010, a total of 18 complaints were filed by Morgantown residents with HUD or WVHRC. Four cases filed in 2010 are still open. Figure IV-1 displays the number of complaints filed by Morgantown residents each calendar year.

Figure IV-1.
Number of Fair Housing Complaints Filed, City of Morgantown, 2005 through 2010

Source:
 U.S. Department of Housing & Urban Development, Office of Fair Housing and Equal Opportunity, Philadelphia Region.



¹ <http://wvfairhousing.org/about.html>.

² <http://www.nwvcil.org/>.

³ http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/partners/FHIP/fhip.

⁴ <http://wvats.cedwvu.org/>.

⁵ <http://www.volunteermatch.org/search/org24522.jsp>.

The most common reason for discrimination identified in HUD records was disability; 44 percent of the filed complaints between 2005 and 2010 included the basis of disability discrimination. The second most common reason for discrimination was race (17 percent of complaints).

**Figure IV-2.
Protected Class Basis of Housing
Discrimination Complaints Filed,
City of Morgantown, 2005 through 2010**

Source:
U.S. Department of Housing & Urban Development, Office of Fair
Housing and Equal Opportunity, Philadelphia Region.

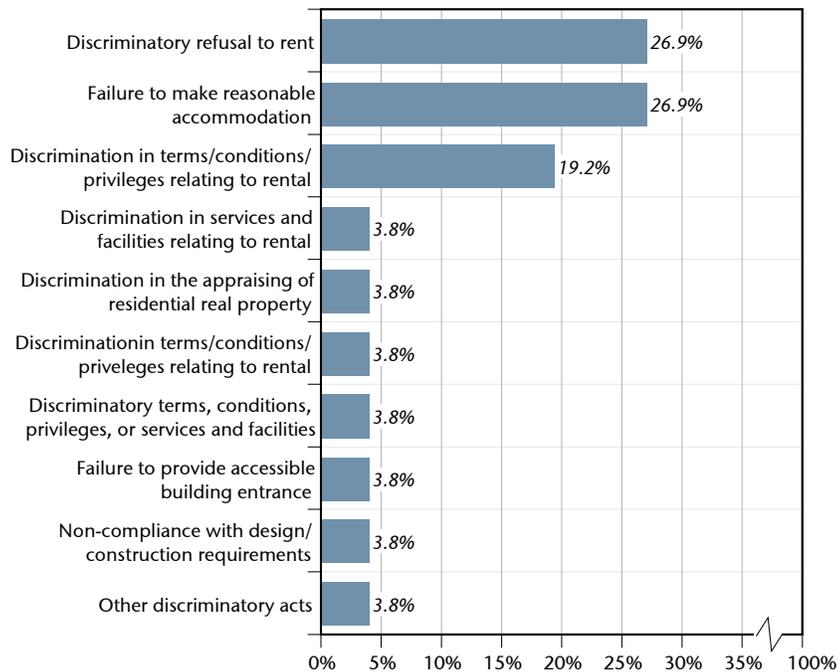
Basis	Complaints	
	Number of	Percent of Total
Disability	8	44.4%
Race	4	16.7%
Family status	3	11.1%
Harassment	2	5.6%
Origin	1	22.2%
Total	18	100.0%

The above data are consistent with national data compiled by the National Fair Housing Alliance, which have shown that complaint volumes are highest on the basis of disability, race and family status (families with children).

In total, 26 discriminatory activities were cited as part of the 18 complaints filed by Morgantown residents between 2005 and 2010. The most commonly cited issues in those fair housing complaints involved “discriminatory refuse to rent” and “failure to make reasonable accommodation.”

**Figure IV-3.
Reasons for Fair
Housing Complaints,
City of Morgantown,
2005 through 2010**

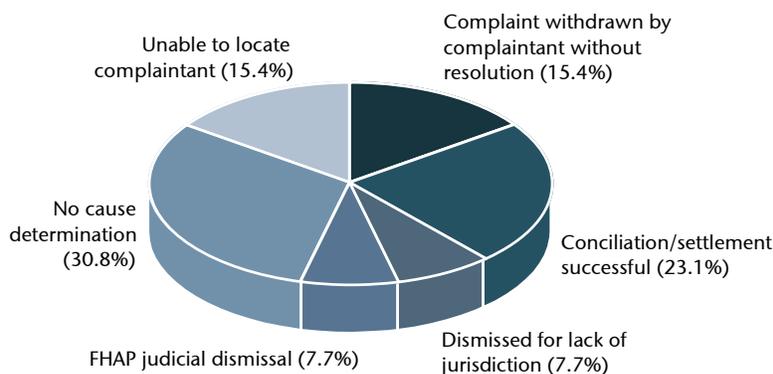
Source:
U.S. Department of Housing & Urban
Development, Office of Fair Housing
and Equal Opportunity, Philadelphia
region.



Fourteen of the 18 complaints filed between 2005 and 2010 are closed. Nearly one-third of complaints were found to have no probable cause. It should be noted that “no cause determination” does not necessarily mean that fair housing problems did not exist in the case; rather, it indicates that the case did not contain enough evidence to move forward. An additional 23 percent of complaints were closed after a successful conciliation/settlement was reached.

**Figure IV-4.
Outcome of Housing
Discrimination Complaints
Filed within the City of
Morgantown, 2000
through October 2010**

Source:
U.S. Department of Housing & Urban
Development, Office of Fair Housing and
Equal Opportunity, Philadelphia Region.



Legal Cases

As part of the fair housing analysis, recent legal cases were reviewed to determine significant fair housing issues and trends in Morgantown and the surrounding region. Searches of the Department of Justice and the National Fair Housing Advocate case databases found a limited number of cases that occurred in Morgantown or West Virginia; as such, cases were pulled from neighboring states (e.g., Pennsylvania and Virginia) to serve as examples of the types of fair housing violations that are occurring in the United States. Case descriptions are taken directly from their sources to ensure the content of the cases is retained.

Discrimination by race.

Alexander v. Riga. A federal court jury in Pittsburgh, Pennsylvania found that the defendants had discriminated against an African American couple by lying about the availability of a rental unit. However, the jury declined to award the couple any compensatory damages, even a nominal amount. The judge then refused to let the jury consider whether to grant punitive damages.

The plaintiffs appealed to the United States Court of Appeals for the Third Circuit, and the Civil Rights Division filed an amicus brief arguing that the judge should have allowed the jury to decide whether to award punitive damages. On March 22, 2000, the appellate court reversed the district court’s judgment for the defendants by holding that “in a case alleging discrimination under the Fair Housing Act the discrimination itself is the harm,” and directed the district court to enter judgment for the plaintiffs and to hold a new jury trial on whether the plaintiffs should be awarded punitive damages. The Supreme Court denied certiorari on January 8, 2001.

United States v. Wheeling Housing Authority. On January 14, 2011, the United States filed a complaint in *United States v. Wheeling Housing Authority* (N.D. W. Va.), a Fair Housing Act election referral from HUD. The complaint alleges that the Wheeling Housing Authority discriminated against the complainants, an African American family, on the basis of race, by failing to respond when the complainants became the target of racial harassment by a neighboring family.

Discrimination by familial status.

United States v. Henry. Virginia Beach landlord Dr. John Crockett Henry and Henry LLC, have agreed in a consent decree to pay up to \$361,000 to settle a lawsuit alleging violations of the Fair Housing Act. The consent decree entered on May 13, 2008, calls for training, a nondiscrimination policy, record keeping and monitoring. In addition, the defendants will pay \$84,000 to compensate three former tenants of the defendants, and will establish a \$235,000 fund to compensate any additional victims subsequently identified by the United States. The defendants will also pay \$42,000 in a civil penalty to the United States. Five other individual victims intervened in the lawsuit, and have reached a separate monetary settlement of their claims against the defendants.

The initial lawsuit, filed in July 2007, alleged that Dr. Henry and Henry LLC, violated the Fair Housing Act by refusing to rent apartments to families with three or more children. The defendants imposed more restrictive rules and regulations on African American tenants than other tenants; verbally harassed African American tenants with racial slurs and epithets; and evicted tenants by enforcing a limit of two children per family at the premises.

Discrimination by disability.

United States v. Summerland Heights GP, L.L.C., et al. On August 3, 2009, the Court entered a consent decree in *United States v. Summerland Heights GP, L.L.C., et al.* (E.D. Va.) resolving allegations that those involved in the design and construction of the Summerland Heights Apartments, an apartment complex in Woodbridge, Va., discriminated on the basis of disability in the design and construction of the project. The complaint, which was filed on July 31, 2009, alleges that the defendants violated the federal Fair Housing Act. It cites a failure to design and construct the Summerland Heights Apartments so that ground floor units contain features of accessible design and the public use and common use areas are readily accessible to and usable by individuals with disabilities. Under the settlement the defendants will pay all costs related to retrofitting the apartment complex to make it accessible to persons with disabilities. The defendants must also establish a \$40,000 fund which will be used to compensate individuals harmed by the inaccessible housing. The settlement also requires the defendants to undergo training on the requirements of the Fair Housing Act. The defendants are: Summerland Heights GP LLC, Summerland Heights II GP LLC, Summerland Heights L.P., Summerland Heights II L.P., Charles P. Johnson & Associates Inc. and the Marlyn Development Corp.

Fair Housing Testing

The Fair Housing Partnership of Greater Pittsburgh (FHP), in conjunction with the WVFHAN, completed fair housing testing in 2010 to determine whether persons with disabilities experienced housing discrimination when looking for housing in West Virginia. FHP completed ten tests statewide; seven of the tests were conducted in Morgantown. Four of the seven tests (57 percent) in Morgantown showed evidence of discrimination.

Testing was primarily completed around the willingness to accommodate for a service animal. For example, landlords were requiring non-refundable pet deposits to be made for service animals, while other landlords simply refused animals in their facilities, despite being made aware that the request was being made for a service animal.

Fair Lending Analysis

This section contains an analysis of home loan and community reinvestment data. Community Reinvestment Act (CRA) ratings and Home Mortgage Disclosure Act (HMDA) data are two data sources used to examine fair lending practices within a jurisdiction. As of 2004, HMDA data contain interest rates of high cost loans, which allows an analysis of high cost lending patterns.

The Federal Financial Institutions Examination Council (FFIEC)⁶ is responsible to facilitate public access to data that depository institutions must disclose under the Home Mortgage Disclosure Act of 1975 and the aggregation of annual HMDA data, by Census tract, for each metropolitan statistical area (MSA). Community Reinvestment Act (CRA) ratings and HMDA data are commonly used in AIs to examine fair lending practices within a jurisdiction or county. Used in conjunction, these data can identify potential or existing lending discrimination or community disinvestment. Each dataset is reviewed in turn below.

Community Reinvestment Act (CRA) review. The federal CRA requires that financial institutions progressively seek to enhance community development within the area they serve. On a regular basis, financial institutions submit information about mortgage loan applications as well as materials documenting their community development activity. The records are reviewed as part of CRA examinations to determine if the institution satisfied CRA requirements. The assessment includes a review of records related to the following:

- Commitment to evaluating and servicing community credit needs;
- Offering and marketing various credit programs;
- Record of opening and closing of offices;
- Discrimination and other illegal credit practices; and
- Community development initiatives.

The data are evaluated and a rating for each institution is determined. Ratings for institutions range from “substantial noncompliance” in meeting credit needs to an “outstanding” record of meeting community needs.

There were seven Morgantown-based banks that received 13 CRA ratings from 1990 to 2010. Two banks were rated “outstanding” and four banks were rated “satisfactory.” Only one Morgantown bank received a “needs to improve” rating, which occurred in 1990.

⁶ The Council is a formal interagency body empowered to prescribe uniform principles, standards and report forms for the federal examination of financial institutions by the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS) and to make recommendation to promote uniformity in the supervision of financial institutions.

**Figure IV-5.
CRA Bank Ratings,
City of Morgantown, 2010**

Source:
FFIEC Community Reinvestment Act ratings.

Bank Name	Most Recent CRA Rating	Exam Date
Centra Bank	Satisfactory	2008
Central National Bank	Satisfactory	1991
Citizens Bank of Morgantown	Satisfactory	2010
First FS & LA	Needs to Improve	1990
National Bank of WV	Satisfactory	1994
One Valley Bank of Morgantown	Outstanding	1994
One Valley Bank, Inc.	Outstanding	1999

Home Mortgage Disclosure Act (HMDA) data analysis. The best source of analysis of mortgage lending discrimination is the Home Mortgage Disclosure Act data. HMDA data consist of information about mortgage loan applications for financial institutions, savings banks, credit unions, and some mortgage companies.⁷ The data contains information about the location, dollar amount, and types of loans made, as well as racial and ethnic information, income, and credit characteristics of all loan applicants. The data is available for home purchases, loan refinances and home improvement loans.

HMDA data can provide a picture of how different applicant types fare in the mortgage lending process. The data can be used to identify areas of potential concern that may warrant further investigations. For example, by comparing loan approval rates of minority applicants with non-minorities who have similar income and credit characteristics, areas of potential discrimination may be detected.

The Federal Reserve is the primary regulator of compliance with fair lending regulations. When federal regulators examine financial institutions, they use HMDA data to determine if applicants of a certain gender, race, or ethnicity are rejected at statistically significant higher rates than applicants with other characteristics. The Federal Reserve uses a combination of sophisticated statistical modeling and loan file sampling and review to detect lending discrimination. Recently, the Federal Reserve began requiring banks to provide the rate spread above a certain annual percentage rate (APR) data for subprime loans. As such, HMDA data can now be used to examine differences in subprime pricing among borrowers of various races and ethnicities.

Loan application process. When a loan application is submitted by a borrower to a bank, a variety of actions can be taken by the banks, which are captured in the HMDA data:

- “Loan originated” indicates that the application was approved and the applicant accepted the loan;
- “Approved, not accepted” means that the application was approved, but the applicant chose not to accept the loan;

⁷ Financial institutions are required to report HMDA data if they have assets of more than \$32 million, have a branch office in a metropolitan area, and originated at least one home purchase or refinance loan in the reporting calendar year. Mortgage companies are required to report HMDA if they are for-profit institutions, had home purchase loan originations exceeding 10 percent of all loan obligations in the past year, are located in an MSA (or originated five or more home purchase loans in an MSA) and either had more than \$10 million in assets or made at least 100 home purchase or refinance loans in the calendar year.

- “Denied” signifies that the application was not approved;
- “Withdrawn” indicates that the applicant chose not to pursue the loan before an approval decision had been made; and
- “File closed, incomplete” means that the application was incomplete and the loan was not evaluated.

The most recent HMDA data available are for 2009. Approximately 1,578 loan applications were made representing residents and/or properties in Census tracts located in the City of Morgantown. For our analysis, we limited loan applications to include the following:

- Owner-occupied homes—i.e.; those homes intended for use as a borrower’s principal dwelling (not as a second home or investment property);
- Originated loans, loans that were denied, withdrawn, closed, purchased by another institution and approved but not accepted. Loans purchased by a financial institution and preapproval requests are excluded; and
- Loans made for home purchases, refinances and home improvements.

Loan type and purpose. An analysis of the loan application records included in the HMDA data for Morgantown showed that the majority of loan applications (82 percent) were for conventional loan products and the remaining 18 percent were for government guaranteed loan products.

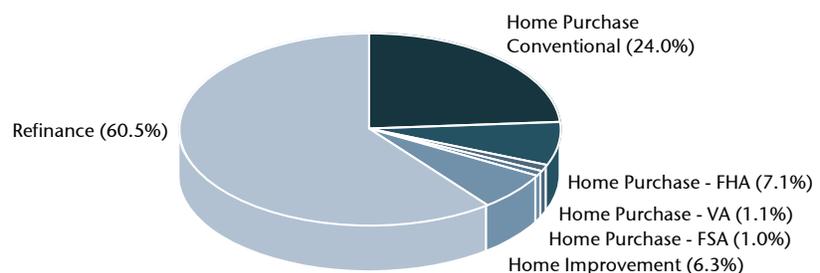
HMDA data report several types of loans. These include loans used to purchase homes, loans to make home improvements and refinancing of existing mortgage loans, as defined below.

- **Home purchase loan.** A home purchase loan is any loan secured by and made for the purpose of purchasing a housing unit.
- **Home improvement loan.** A home improvement loan is used, at least in part, for repairing, rehabilitating, remodeling, or improving a housing unit or the real property on which the unit is located.
- **Refinancing.** Refinancing is any dwelling-secured loan that replaces and satisfies another dwelling-secured loan to the same borrower. The purpose for which a loan is refinanced is not relevant for HMDA purposes.

Most of the loan applications in Morgantown were for refinancing existing home loans; these represented 61 percent of the applications. Thirty-two percent were for home purchases, and 6 percent were for home improvement loans.

**Figure IV-6.
Purpose and Type of
Loan Applications, City
of Morgantown, 2009**

Source:
FFIEC Home Mortgage Disclosure Act Raw
Data 2009 and BBC Research &
Consulting.



Disposition of loans. Figure IV-7 displays the number and percent of the action taken on the loan applications for Morgantown in 2009. Sixty-five percent of loans originated, while just less than 14 percent of applications were denied.

**Figure IV-7.
Action Taken on Loan Applications,
City of Morgantown, 2009**

Source:
FFIEC Home Mortgage Disclosure Act Raw Data 2009 and
BBC Research & Consulting.

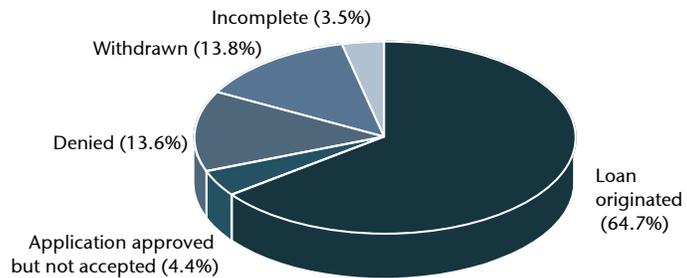


Figure IV-8 displays the outcome by loan purpose. Loan application for home improvement loans had the highest denial rates (28 percent), followed by applications for home refinance loans (15 percent). Nearly three out of every four applications submitted for a home purchase loan originated.

**Figure IV-8.
Loan Outcome by Purpose of Loan, City of Morgantown, 2009**

Loan Purpose	Loan Originated	Application Approved but not Accepted	Denied	Withdrawn	Incomplete
Home Purchase	73%	5%	8%	10%	4%
Home Improvement	55%	6%	28%	10%	1%
Refinancing	61%	4%	15%	16%	3%

Source: FFIEC Home Mortgage Disclosure Act Raw Data 2009 and BBC Research & Consulting.

Race/ethnicity of loan applicants. Eighty percent of the Morgantown loan applications were from applicants who reported their primary race to be White, and 87 percent of city applicants were non-Hispanic. Twelve percent of applicants provided neither racial nor ethnic information in their application, as it is not required.

Applications submitted by African Americans were few; however, those that were submitted had a 31 percent denial rate. Asian applicants had the lowest denial rate (9 percent) by race. Applications submitted by Hispanic residents only accounted for 1 percent of all applications. Denial rates for Hispanic applicants mirrored denial rates for applications submitted by non-Hispanic residents.

Figure IV-9.
Loan Outcome by Race and Ethnicity, City of Morgantown, 2009

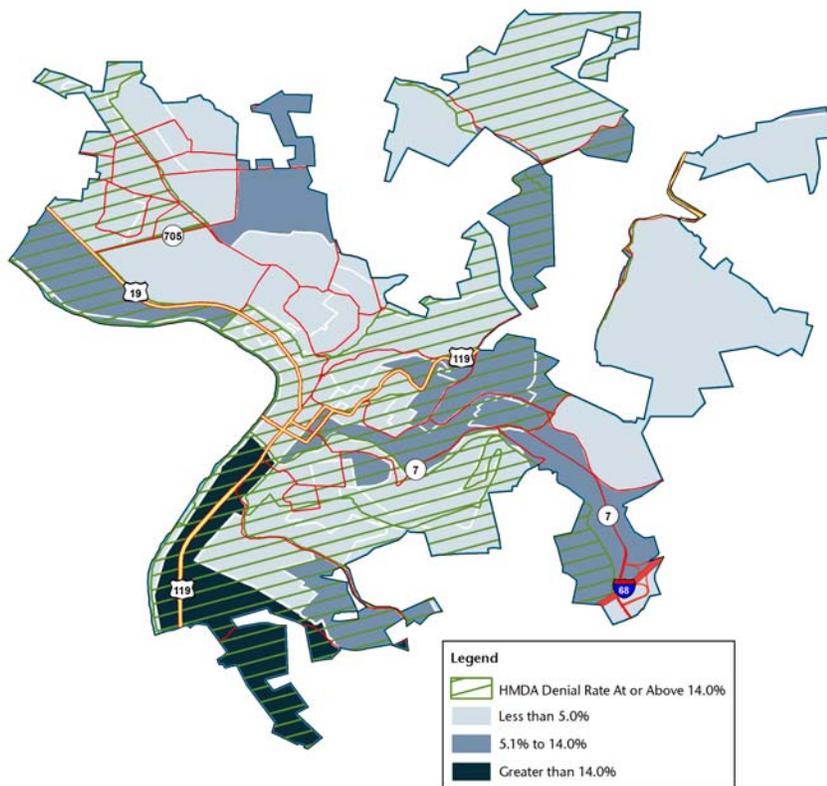
Loan Purpose	Loan Originated	Application Approved but not Accepted	Denied	Withdrawn	Incomplete	Percent Submitted
Race						
Asian	60%	9%	9%	16%	5%	5%
African American	50%	4%	31%	12%	4%	4%
Native Hawaiian	50%	0%	25%	25%	0%	0%
White	67%	4%	14%	12%	3%	3%
Not Provided	55%	3%	13%	22%	7%	7%
Ethnicity						
Hispanic	63%	0%	16%	21%	0%	0%
Not Hispanic	66%	5%	14%	13%	3%	3%
Not Provided	56%	3%	14%	21%	6%	6%

Source: FFIEC Home Mortgage Disclosure Act Raw Data 2009..

Denial rates by Census tract and African American concentrations. Figure IV-10 overlays the areas where HMDA denials for home loans are higher than the citywide average (14 percent) on the African American concentration map in Section II. Census tracts with higher than average loan denial rates are located throughout the city and are not specifically tied to race. Census tracts not crosshatched have denial rates lower than the city overall. Some Census tracts had very low denial rates; Tract 106 had a denial rate of 9 percent, and 108 had a denial rate of 6 percent.

Figure IV-10.
Percent of Loan Denials by Census Tract and Distribution of African Americans by Block Group, City of Morgantown, 2009

Source:
 FFIEC Home Mortgage Disclosure Act
 Raw Data 2009 and 2010 Census.



A higher denial rate for African Americans does not necessarily indicate fair housing problems. It can be explained, in part, by this population having lower incomes than Whites and the city overall. It is also possible that credit histories vary among applicants with different racial/ethnic characteristics. Without a detailed analysis of each applicant (such data are unavailable in the HMDA records due to confidentiality), it is unclear if the reason for the difference is due to variables other than income that are considered in making the lending decision (e.g., credit history, debt-to-income ratios) or if discrimination in lending could be occurring.

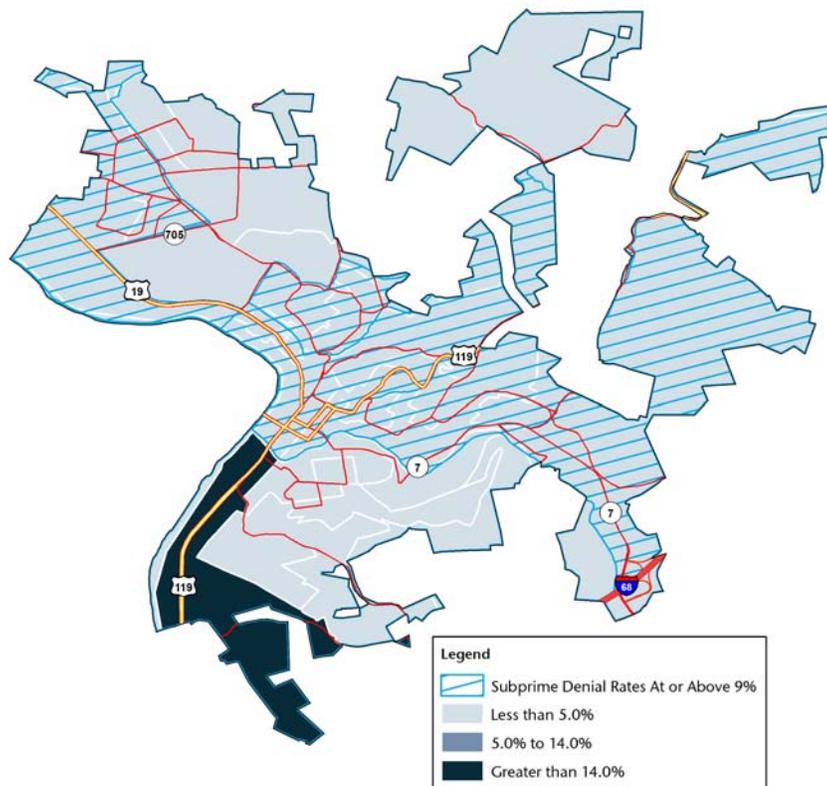
Subprime analysis. This section examines subprime lending in Morgantown. For the purposes of this section, we define “subprime” as a loan with an APR greater than the comparable Treasuries. This is consistent with the intent of the Federal Reserve in defining “subprime” in the HMDA data.

Of the 1,021 home loans that originated (out of a total 1,578 loan applications) in Morgantown in 2009, 9 percent were considered subprime by our definition (i.e., these loans met or surpassed the pricing reporting threshold required by HMDA data). These loans were split between home purchases (42 percent) and refinance loans (49 percent). Nearly all subprime loans were issued to racially White applicants (91 percent).

Geographically, subprime loans are more prevalent in certain areas of the city than others. For example, in Census Tract 108, which encompasses a portion of the city’s eastern edge, 23 percent of originated loans had a subprime rate.

Figure IV-11.
Percent of Subprime
Loans of All
Originated Loans
by Census Tract and
Distribution of
African Americans
by Block Group,
City of Morgantown,
2009

Source:
 FFIEC Home Mortgage Disclosure
 Act Raw Data 2009 and 2010
 Census.



SECTION V.
Public Outreach

SECTION V.

Public Outreach

A public input process was conducted as part of the City of Morgantown AI to engage local residents, social service stakeholders and housing professionals. The public outreach methodology and major findings are presented in this section.

Public Outreach Methodology

The public outreach process included a combination of surveys, stakeholder focus groups and key person interviews. The following section describes how input was received from residents, social service providers and members of the real estate community.

Surveys. Three separate surveys were administered to residents, social service stakeholders and housing professionals. The surveys were available online and in paper format. The overall objectives of the surveys were to identify both public and private barriers to fair housing in Morgantown; gauge residents' knowledge of local fair housing resources and the complaint process; and determine the most common types of discriminatory activities taking place in Morgantown (if any). All surveys were available between March 16th and May 6th of 2011. Survey participation was voluntary; as such, survey results are not statistically representative of the city's population as a whole.

Resident survey. A total of 122 residents completed the survey. The survey was promoted in a number of ways:

- A link on the city's website;
- A flyer displayed throughout the city, including City Hall and local businesses;
- A flyer on Mountain Line Transit Authority's buses with a link to the survey;
- Distribution by stakeholders to clients; and
- The Northern West Virginia Center for Independent Living distributed the resident survey to a number of email lists, including ADAPT West Virginia, Center for Excellence in Disabilities/WVU, Morgantown's Community Coalition for Social Justice, as well as other social service agencies, neighborhood associations and contacts from fair housing training sessions. Additionally, NWVCIL staff provided assistance to residents interested in completing the survey at the following facilities: Barlett House, Unity Manor, Unity Apartments, Friendship Room, Monongalia County Senior Center and Marjorie Gardens.

Housing professional survey. Seventeen members of the housing community participated in the housing professional survey. The survey was promoted through a contact list compiled by the NWVCIL for fair housing training.

Social service provider survey. Nine social service stakeholders participated in the stakeholder survey. The survey was promoted through a list of social service providers provided to BBC from the city.

Stakeholder focus groups. BBC conducted two focus groups to support the completion of the AI. One focus group targeted housing professionals and one targeted social service providers. Both focus groups were held at the Marilla Parks and Recreation Center on April 28, 2011.

A total of three housing professionals attended the focus group. Participants represented the Realtor and landlord communities. Sixteen social service stakeholders attended the focus group, representing a number of organizations, including the West Virginia University Center for Excellence in Disabilities/WVU, NWVCIL, United Way, NAACP, Mountain Line Transit Authority, Caritas House, Unity House and West Virginia Advocates.

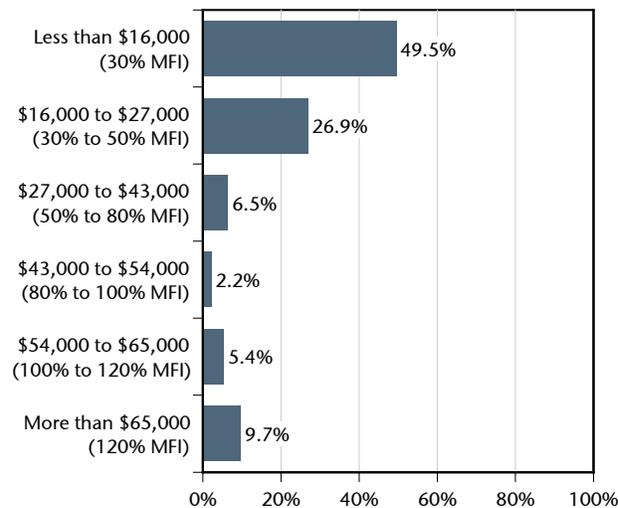
Key person interviews. Key person interviews were conducted to supplement findings from the surveys and focus groups. Organizations represented during the interview process included the NWVCIL, Fairmont/Morgantown Housing Authority, WVU’s Student Life Office, WVU’s Office of Disability Services, staff members of the city’s Development Services Department, local economic development representatives, and representatives of the Morgantown Monongalia Metropolitan Planning Organization.

Input from Residents

The resident survey served as the primary tool for resident input. Survey results are summarized below.

Survey participant demographics. Survey participants were primarily renters (87 percent) living in apartments (70 percent) or single family homes (22 percent). As seen in Figure V-1, most survey participants were considered “very low income” according to HUD standards, earning 30 percent or less of Morgantown’s 2010 MFI of \$53,900.

**Figure V-1.
Household Income Category
of Resident Survey Participants**



Source: 2010 Morgantown AI Resident Survey.

Persons with disabilities were well represented in the survey; 34 percent of respondents said they or someone in their household had a disability. Participants citing a disability were largely categorized as very low (62 percent) and low income (21 percent) using HUD income categories.¹

The survey also captured a number of long-term residents of Morgantown. Seventy-nine percent of residents providing their length of residency had lived in Morgantown for 3 years or more. Nearly half (46 percent) have lived in Morgantown for 10 years or more.

¹ Only 39 of 41 residents citing a disability reported their household income.

Experience with discrimination. Examples of housing discrimination among Morgantown residents were captured as part of the resident survey. Of the 122 residents that responded to the question, 13 percent felt that they had been the victim of discrimination when looking for housing in Morgantown. An additional 19 percent were unsure as to whether they had experienced discrimination. When asked why they felt they were discriminated against, respondents provided the following responses:

- “My disability was ignored.”
- “I have dwarfism and the apartment complex refused to give me a handicap-accessible unit.”
- “Apartment complex restricted families with children to certain buildings in the complex and away from the high rise apartment complex.”
- “I was not allowed to rent because I am a student with a family.”

In addition to disability and familial status, survey respondents also cited discrimination based on race. None of the 15 survey participants who felt that they had experienced housing discrimination filed a formal complaint with HUD.

Barriers to fair housing. Residents were asked to identify the greatest barriers to fair housing in Morgantown. The results are displayed in Figure V-2 on the following page.

The following barriers were identified as being the most serious barriers in Morgantown:

- Can only find affordable housing in certain areas;
- Lack of affordable housing to purchase;
- Lack of affordable housing to rent;
- Cannot find housing in good condition to rent;
- Morgantown residents do not know about fair housing rights; and
- Landlords/property managers do not understand fair housing rules.

**Figure V-2.
Resident
Response to
Barriers to Fair
Housing**

Note:
Not all survey participants
provided response to all
barriers.

Source:
2010 Morgantown AI
Resident Survey.

	Not a Problem	Minor Problem	Modest Problem	Serious Problem
Economic, Demographic and Housing Factors				
My income level	25.3%	21.1%	31.6%	22.1%
Can only find affordable housing in certain areas	13.0%	11.4%	26.8%	48.8%
Cannot get a loan because of poor credit	56.4%	10.6%	10.6%	22.3%
Cannot find a real estate professional of the race/ethnicity/disability/gender I prefer	68.8%	6.5%	14.0%	10.8%
Lack of affordable housing to purchase	30.1%	17.2%	17.2%	35.5%
Lack of affordable housing to rent	19.1%	14.9%	31.9%	34.0%
Lack of accessible housing for persons with disabilities	38.6%	11.4%	15.9%	34.1%
Cannot find housing in good condition to buy	39.3%	12.4%	21.3%	27.0%
Cannot find housing in good condition to rent	22.0%	20.9%	27.5%	29.7%
HOAs refuse to allow modifications to homes for persons with disabilities	56.5%	11.8%	16.5%	15.3%
Knowledge/Awareness Issues				
There is not a local organization devoted to fair housing investigation/testing	26.4%	27.5%	23.1%	23.1%
Morgantown residents do not know about fair housing rights	12.9%	17.2%	25.8%	44.1%
Landlords/property managers do not understand fair housing rules	16.5%	15.4%	26.4%	41.8%
Lending Activities				
Lender required a specific appraisal or hazard insurance company	49.4%	14.9%	17.2%	18.4%
Lender refused to give an appraisal of my home/property	57.6%	15.3%	14.1%	12.9%
Was offered a subprime loan	57.1%	3.6%	19.0%	20.2%
Real Estate Activities				
Landlord said that housing was not available when it was	35.2%	22.7%	20.5%	21.6%
Landlord placed certain tenants in the least desirable units in a development	41.7%	16.7%	23.8%	17.9%
Landlord refused to make reasonable accommodations for my disability	57.6%	12.9%	10.6%	18.8%
Landlords use discriminatory advertising	50.6%	15.3%	15.3%	18.8%
Landlord charged fee for service animal	55.4%	9.6%	15.7%	19.3%
Landlords prohibit children from playing outside	59.8%	13.4%	13.4%	13.4%
Landlords threatened evictions unless tenants pay additional fees and rents	42.5%	16.1%	17.2%	24.1%
Real estate agents only showed me housing in certain neighborhoods	62.7%	14.9%	3.0%	19.4%
Sellers of homes refused to show their home to me	65.5%	8.3%	15.5%	10.7%
Real estate office/leasing office was inaccessible	60.3%	12.8%	12.8%	14.1%

Knowledge of fair housing. Residents were asked what they would recommend as a course of action to someone who had been the victim of housing discrimination. The largest proportion of respondents (32 percent) would recommend that victims of housing discrimination file a complaint. Other respondents would recommend calling the Fairmont/Morgantown Housing Authority (13 percent), an attorney (12 percent) or HUD (10 percent).

Most residents (89 percent) who recommended filing a complaint were uncertain of where they should file a complaint. Although they knew the appropriate course of action, they were not familiar with the resources available.

Input from Stakeholders

Social service stakeholders convened for a focus group to discuss fair housing issues of their clients. Additionally, nine stakeholders participated in an online survey. The top findings from social service stakeholders include the following points:

- **Housing discrimination is occurring in Morgantown.** Stakeholders do feel that housing discrimination is occurring in Morgantown. Stakeholders believe that discrimination based on disability and familial status are likely the most common forms of discrimination. The most common discriminatory action occurring in the city is likely housing providers refusing to make reasonable accommodations for tenants with disabilities. Stakeholders also mentioned the overall failure of builders to follow the design and construction requirements of the Fair Housing Act, as well as the city’s unwillingness to enforce such requirements. Additionally, stakeholders suggested that “property owners and builders fail to provide meaningful accessible connections, such as sidewalks, exterior connecting ramps, etc.” Regarding familial status, stakeholders suggested that it is not uncommon for landlords to decline residents with children, or to only place them in certain portions of the complexes.
- **Most residents do not report discrimination for fear of retribution.** The primary reason stakeholders feel discrimination goes unreported is fear of retribution. Focus group participants solidified this survey finding. Because of the lack of affordable and accessible housing in the city, residents fear losing their apartment if they complain to their landlords about the overall quality of their unit or a potential fair housing violation, such as an accessibility improvement.
- **It is challenging for persons with disabilities to reside in Morgantown.** The overall housing market, terrain and existing infrastructure make Morgantown a challenging place for persons with disabilities to reside. Stakeholders suggested that the city’s infrastructure is out of sync. For example, curb cuts may not be located near a bus stop or accessible parking may not be located close to a curb cut to utilize an accessible entrance. One stakeholder stated that “most housing units are likely not accessible to meaningful pedestrian corridors making public transit use difficult or impossible.” Stakeholders also suggested that important public amenities, such as post offices, were often not accessible.

- **The primary barriers to fair housing in Morgantown include a lack of affordable and accessible housing.** Stakeholders felt there was an overall lack of affordable and accessible housing opportunities in the city. This makes residents susceptible to fair housing discrimination and also creates barriers to some residents residing in certain portions of the city, as well as potentially the city overall.
- **West Virginia Human Rights Commission (WVHRC) does not prioritize fair housing.** The WVHRC is a HUD Fair Housing Assistance Program (FHAP) grant recipient and investigates fair housing complaints filed within the state of West Virginia. Stakeholders were not happy with the level of service and interest the WVHRC gives to fair housing issues and felt that the lack of capacity of a local organization devoted to fair housing investigation and testing is a serious barrier to fair housing. Morgantown has an inactive Human Rights Commission; some stakeholders think the local HRC should be restored to help increase local interest and awareness in fair housing.
- **Difficult to use Section 8 Vouchers in Morgantown.** Stakeholders noted that it is difficult to use Section 8 Vouchers in Morgantown. Affordable and accessible units are in short supply, and it is difficult for residents to find units within the required 30 day time period allowed by the FMHA.

Input from Housing Professionals

Housing professionals participating in the online survey and focus group identified a number of inherent challenges in furthering fair housing in Morgantown.

- **Terrain.** The terrain in Morgantown makes development challenging and costly. The terrain can also make adhering to accessibility requirements difficult.
- **Weak state tenant rights laws.** Tenant rights laws in West Virginia are weak and have only recently begun to improve. For example, until 2011, there were no laws limiting the amount of time landlords had to return security deposits. Weak state laws make securing quality and affordable rental opportunities challenging.
- **Housing market developed with college students in mind.** Morgantown has limited land available for development. The small amount of land that has become available has primarily been used to develop student housing to accommodate WVU's growing student population. Rental units are often located near the college campus in congested areas where mobility is challenging for persons with disabilities. Furthermore, apartments are often leased on a per bedroom basis, which is not attractive for families.
- **City's enforcement of accessibility requirements in new construction has recently improved.** Housing professionals noted that the city has historically done a poor job of enforcing Fair Housing Act requirements on new multifamily construction. However, focus group participants felt that this has begun to improve. Housing professionals did note that the city should offer more flexibility in zoning when proposed projects offer accessible units.

Overall, housing professionals noted no serious private sector barriers to fair housing. Most real estate offices in the city provide fair housing training for Realtors and other real estate professionals. Trainings are helpful and have been modestly attended.

SECTION VI.
**Identification of Impediments to Fair
Housing Choice and Fair Housing Action Plan**

SECTION VI.

Identification of Impediments to Fair Housing Choice and Fair Housing Action Plan

This section summarizes the impediments to fair housing choice identified in the research conducted for the AI and recommends an Action Plan for the City of Morgantown.

Summary of Fair Housing Research

Socioeconomic analysis. The city's socioeconomic fabric is closely tied to WVU. Its population has been stable, despite its locale in a region that has suffered substantial population loss in recent years. Additionally, unemployment rates in Morgantown have been significantly lower than both state and national unemployment rates, due in large part to the stable employment sectors tied to the university. The large population of college students in Morgantown makes understanding its demographic characteristics challenging. For example, income statistics are greatly skewed by students who have lower incomes than permanent residents.

The city contains a concentration of African American residents, located in the southern portion of the city, primarily in Census Tract 110, Block Group 3. It should be noted that this block group does extend outside the city boundaries, and some African Americans not living within Morgantown may be captured in this analysis. Marjorie Gardens, an apartment complex that houses many of the city's Section 8 Voucher recipients is located in this neighborhood. The Greenmont neighborhood does not qualify as a concentration, but does contain a higher portion of African American residents than the city overall. Anecdotally, this neighborhood has begun to gentrify and has seen an increase in college students.

Housing market analysis. Morgantown's housing market has primarily developed to serve its large student population. Multifamily development has accounted for a large portion of the city's new growth, and according to local housing professionals and stakeholders, much of this new development has targeted college students. Since older development in the city lacks necessary accessibility features, new development provides opportunities for the city to capture accessible apartments. But, these new multifamily units have higher rents; are located in neighborhoods considered undesirable for individuals not associated with the university; and often contain larger units intended to house three to four college students.

Public outreach. A comprehensive public input process was completed as part of this AI to understand the needs of residents with regards to fair housing. A total of 122 residents participated in a resident survey, due in large part to the outreach efforts of the Northern West Virginia Center for Independent Living and the Mountain Line Transit Authority. Housing professionals and social service stakeholders were also engaged in the public input process.

Low income residents and persons with disabilities were well represented in the survey. Residents participating in the survey verified that housing discrimination is occurring in Morgantown, and although residents understand their right to file a fair housing complaint, many residents do not know where to file complaints. Residents identified a number of serious fair housing barriers in the city, including:

- Can only find affordable housing in certain areas;
- Lack of affordable housing to purchase;
- Lack of affordable housing to rent;
- Cannot find housing in good condition to rent;
- Morgantown residents do not know about fair housing rights; and
- Landlords/property managers do not understand fair housing rights.

Social service stakeholders verified that housing discrimination is occurring within the segments of the community they serve. However, most discrimination is not reported for fear of retribution. Stakeholders suggested that it is challenging for persons with disabilities to live in Morgantown. Affordable and accessible housing is in short supply and infrastructure is not in sync. Stakeholders also suggested that the West Virginia Human Rights Commission is doing a poor job in furthering fair housing within the state.

Housing professionals noted that many Section 8 Voucher holders may have to leave Morgantown to find available rental units. Figure III-2 verifies that this does occur. With regards to the for sale housing market, the city has become more expensive as parents buy housing for college students instead of renting.

Building code, zoning, land use and housing policy review. HUD gives “safe harbor” designation to certain guidelines and codes if they comply with the federal Fair Housing Act’s design and construction requirements. The design and construction requirements of the Fair Housing Act include the following:¹

- An accessible building entrance on an accessible route;
- Accessible public and common use areas;
- Usable doors (usable by a person in a wheelchair);
- Accessible route into and through the dwelling unit;
- Light switches, electrical outlets, thermostats and other environmental controls in accessible locations;
- Reinforced walls in bathrooms for later installations in grab bars; and
- Usable kitchens and bathrooms.

¹ Provided by Fair Housing Accessibility First, which is supported by HUD.
<http://www.fairhousingfirst.org/fairhousing/requirements.html>

Design and construction requirements apply to all covered multifamily dwellings designed and constructed for first occupancy after March 13, 1991. Covered multifamily dwellings are defined as “all dwelling units in buildings containing four or more dwelling units if the buildings have one or more elevators,” as well as “all ground floor units in other buildings containing four or more units without an elevator.” Furthermore, “condominiums and apartment buildings are required to adhere to the Fair Housing Act’s design and construction requirements, as are time-shares, dormitories, traditional housing, homeless shelters that are used as a residence, student housing, assisted living housing and others.”²

Morgantown and West Virginia have adopted the IBC 2000, IBC 2003 and, most recently, the IBC 2009. HUD currently recognizes ten safe harbors. The IBC 2000 is considered safe harbor, but only if amended with the 2001 Supplement to the International Building Code. The International Building Code 2003 received safe harbor from HUD, with the exception of one exception related to accessible pedestrian routes connecting arrival points to building entrances.

At this time, the IBC 2009 has not yet received safe harbor designation from HUD.

HUD provides the following explanation as to how the adoption of a safe harbor document applies to local compliance with the Fair Housing Act:

If a state or locality has “adopted a safe harbor document without modification to the provisions that address the Act’s design and construction requirements, a building that is subject to these requirements will be deemed compliant provided the building is designed and constructed in accordance with construction documents approved during the building permitting process and the building code official does not waive, incorrectly interpret, or misapply one or more of those requirements.” However, neither the fact that a jurisdiction has adopted a code that conforms with the accessibility requirements of the Act, nor that construction of a building subject to the Act was approved under such a code, changes HUD’s statutory responsibility to conduct an investigation, following receipt of a complaint from an aggrieved person, to determine whether the requirements of the Act have been met. Nor does either fact prohibit the Department of Justice from investigating whether violations of the Act’s design and construction provisions may have occurred.³

In summary, if the city properly abides by an IBC that has been given a safe harbor designation by HUD, then design and construction requirements of the Fair Housing Act are satisfied. However, HUD and the Department of Justice still retain the right to investigate whether a building meets Fair Housing Act requirements if a complaint is made against the building.

The city’s land use code creates no obvious barriers to fair housing. The city recently passed a definition of “functional family,” which was primarily in response to the recent trend of college students moving into traditionally non-student neighborhoods.

² Provided by Fair Housing Accessibility First, which is supported by HUD.

³ http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_14780.pdf.

Morgantown recently began the process of updating its Comprehensive Plan and corresponding Housing Element. The city is coordinating its planning efforts with the Town of Star City and the Morgantown Monongalia Metropolitan Planning Organization, which is completing its 2035 long-range transportation plan. The city's 1999 Comprehensive Plan is focused on the housing needs of the university community and provides no guidance on affordable and accessible housing development.

Affordable housing and public housing review. The FMHA has no public housing units in Morgantown. The FMHA administers 503 Section 8 Vouchers, which are concentrated in certain portions of the city, as well as used outside of Morgantown. Social service stakeholders, residents and housing professionals all suggested that it is difficult to use Section 8 Vouchers in Morgantown because of an overall lack of affordable and accessible rental units in the city. Furthermore, stakeholders suggested that the FMHA could do a better job of connecting voucher holders with interested landlords in Morgantown.

Until recently, the FMHA has maintained an office with limited operating hours in Morgantown. As of June 2011, the FMHA is closing its office in Morgantown. As of May 2011, the Section 8 Voucher waitlist is closed.

Fair lending analysis. Eighty-two percent of loan applications submitted by Morgantown residents in 2009 were for conventional loan products. Sixty-one percent of loan applications were submitted for home refinances. Overall, 65 percent of loan applications originated, while 14 percent were denied.

Loan applications were primarily submitted by racially White and ethnically non-Hispanic residents. This aligns with the city's overall demographic profile. Few African Americans applied for loans in Morgantown; however, when they did, they experienced higher denial rates.

Complaint and legal analysis. Between 2005 and 2010, a total of 18 fair housing complaints were filed by Morgantown residents. Nearly half of the complaints were filed for discrimination based on disability, and 17 percent were based on race. Refusal to rent and failure to make reasonable accommodations were the two most commonly cited discriminatory activities in those complaints.

Few legal cases have occurred in West Virginia in the last 10 years. Anecdotally, discrimination is occurring in Morgantown and surrounding counties, but is likely unreported for fear of retribution and an overall lack of affordable and accessible units.

Fair Housing Challenges

Morgantown has a number of inherent challenges in fulfilling its obligation to further fair housing for its residents.

Terrain. The hills and challenging terrain of Morgantown provide beauty and visual interest for residents, students and visitors alike, while also creating challenges associated with development and accessibility compliance. The city's Development Service's staff and members of the development community stated that the city's terrain make the construction of wheelchair ramps and accessible parking challenging. For example, it's not uncommon for wheelchair ramps to be extended to ensure a proper slope. Local stakeholders agree that the challenges related to the terrain must be considered

during the development of the project, as retrofitting ramps and other accessibility modifications can be very challenging and costly. However, the challenging terrain does not absolve the city and the developers of federal Fair Housing Act requirements.

Weak state tenant laws. State law offers little protection for renters. Until 2011, West Virginia was one of only four states not requiring a deadline for the return of security deposits. Only recently has the state improved its landlord and tenant law to better protect renters. Nonetheless, the laws continue to be weak, and historically pro-landlord attitudes still make renting in the state challenging.

Presence of a major university. Enrollment at WVU has grown in the last decade. According to the off-campus housing office, a shortage of on-campus housing has spurred multifamily development in the city and in several areas outside the City of Morgantown where planning, zoning, building, and fire codes have not been enacted by the county to accommodate the demand for student housing. Development in the city has occurred with the student housing market in mind, and has given little attention to both local residents not affiliated with the university and persons with disabilities. In an interview with WVU, it was suggested that WVU has not traditionally attracted students with disabilities because the terrain of the campus and the city are not seen as being accessible. On-campus housing was constructed prior to ADA and the federal Fair Housing Act, and only recently have housing renovations and limited new campus-housing construction brought student housing into compliance with accessibility requirements.⁴

Positive Fair Housing Activities

Morgantown has recently taken a number of positive steps in furthering fair housing.

Restructuring of the Department of Development Services. The city has been criticized for its lack of enforcement and prioritization of ensuring new multifamily development meets the requirements of the Fair Housing Act. According to the city, proactive enforcement of accessibility standards began in 2010 following the state's and city's adoption of the IBC 2009.

Morgantown should be commended for merging its planning, zoning, building code enforcement and CDBG divisions under one department. Under the restructure, all development in the city will not only receive coordinated oversight from multi-discipline plan review, but also from city staff responsible for administering CDBG and ensuring compliance with the Fair Housing Act. This reorganization is a positive step in demonstrating the city's commitment to enforcing accessibility requirements.

Fair housing training. The Northern West Virginia Center for Independent Living has been active in fair housing education and outreach in Morgantown. In the absence of a local enforcement agency, NWVCIL has done a good job of offering training to the local community and providing advocacy to local residents. The NWVCIL lost their FHIP funding for the upcoming year. However, the NWVCIL vows to continue offering fair housing training and education in the city. And, the city should support these efforts when possible.

⁴ Information summarized from interviews with the WVU Office of Disability Services and Office of Student Life Off-Campus Housing.

Summary of Impediments to Fair Housing Choice

Impediment 1: Lack of a strong organization dedicated to mitigating fair housing barriers and raising awareness of fair housing. Residents participating in the fair housing survey conducted for this study were uncertain of who handles fair housing complaints in the city. Stakeholders expressed frustration with the complaint process, particularly with regards to the length of time it takes to have a complaint processed through intake.

This study did not include an examination of the practices of the West Virginia Human Rights Commission, the organization that handles complaints in the state. However, many stakeholders told us that they feel the organization is ineffective, largely due to limited staff and resources. Our contact with the organization—a request for complaint data to use in this AI—was limited; however, the Human Rights Commission was unable to provide us with the information we needed.

Impediment 2: Inaccessible infrastructure. The city lacks necessary infrastructure for persons with mobility challenges. For example, one stakeholder stated that “most housing units are likely not accessible to meaningful pedestrian corridors making public transit use difficult or impossible.” Stakeholders also suggested that some important public amenities, such as the post office, were not accessible. In general, stakeholders suggested that the infrastructure was out of sync, meaning that parking, curb cuts, ramps and bus stops were not cohesively planned.

Impediment 3: Lack of accessible housing. Social service stakeholders and residents cited challenges in finding accessible units in the city, particularly within non-student apartment complexes and neighborhoods. New construction that does have accessible units is often in housing intended for college students and is not attractive for more permanent residents, older adults or families.

Impediment 4: Racial and Section 8 Voucher concentrations. Racial and Section 8 Voucher concentrations exist in certain portions of the city. Historical regulations and cultural preferences may be partially responsible for the concentrations. It is currently unclear how much a lack of affordable housing has contributed to these concentrations. A housing market study that is currently in process should provide additional information on this and recommend strategies to increase affordability as needed.

Impediment 5: Fair Housing Act design and construction requirements historically not enforced. Morgantown became a HUD entitlement community in 2004. As an entitlement community, the city must certify that it is “affirmatively furthering fair housing choice.” This includes enforcing the design and construction standards of the Fair Housing Act. However, city staff has felt they lacked a mechanism to enforce Fair Housing Act requirements until the recent adoption of the IBC 2009.

This AI did not examine whether structures covered by the Fair Housing Act and constructed since the city became an entitlement community meet the requirements of the Fair Housing Act. However, several stakeholders participating in the AI alleged that new multifamily construction did not meet Fair Housing Act design and construction requirements. Indeed, a 2007 HUD inspection of multifamily developments in Morgantown did identify some units not in compliance with the Fair Housing Act.

Impediment 6: Residents likely do nothing when they experience discrimination.

Stakeholders strongly believe that discrimination is occurring in Morgantown, but is largely going unreported. Similarly, no resident citing discrimination as part of the resident survey had filed a fair housing complaint. According to stakeholders, fear of retribution is likely the reason residents do not report discrimination. Given the lack of affordable and accessible units in the city, once a resident has secured one of these units, they are afraid to lose the unit by filing a fair housing complaint.

Impediment 7: Comprehensive Plan provides a weak vision for accessible and affordable housing goals. The city is currently operating under a 12 year old Comprehensive Plan and Housing Element. The Housing Element is focused on the housing needs of its university community and provides no housing goals or clear vision for providing affordable and accessible units for residents.

Impediment 8: FMHA provides limited resources in Morgantown. HUD requires that housing authorities allow residents 60 days to find a rental unit, with the option for an extension. HUD also requires that “if a family needs and requests an extension of the initial voucher term as a reasonable accommodation to make the program accessible to a family member who is a person with disabilities, the PHA must extend the voucher term up to the term reasonable required for that purpose.”⁵ The FMHA states that Section 8 participants are allowed 60 days to find a rental unit, and are allowed a 60-day extension. This information is presented to residents verbally at the Section 8 Voucher orientation and is included in documents distributed to residents at the orientation. However, stakeholders and recipients participating in the public input process cited that residents have received conflicting information about the number of days they have to find a rental unit and are often confused about the process.

The FMHA states on their website that they “maintain a list of landlords who have expressed interest in renting to persons on our program.”⁶ Participants in the public input process suggested that the list is outdated and does not provide enough assistance to residents looking for units accepting Section 8 Vouchers.

The FMHA has historically maintained an office in Morgantown. Although this office operated with limited hours, residents relied on this office to obtain and submit Section 8 Voucher applications. As of June 2011, the FMHA is closing its Morgantown office, and residents will be required to visit the FMHA’s office in Fairmont. The lack of a local FMHA office creates difficulties for individuals with disabilities and others with limited transportation living in Morgantown and could create a barrier to participating in the Section 8 Voucher program.

Fair Housing Action Plan

Based on the research for this AI, BBC recommends that the City of Morgantown implement the following Fair Housing Action Plan (FHAP) and activities for reducing fair housing impediments. HUD views the FHAP as a forward looking document that should focus on affirmatively furthering fair housing choice in the future. To this end, the city proposes to complete the following Fair

⁵ 24 CFR 982.303.

⁶ <http://www.fmhousing.com/section8.htm>.

Housing Action Plan to address existing fair housing barriers, as well as correct violations that have occurred in the past.

Action Item 1. Improve the enforcement, education/outreach and coordination of fair housing responsibilities in Morgantown. The fair housing process is generally comprised of the following components: education, outreach and complaint investigation and enforcement. There are currently a number of organizations involved in the fair housing process in Morgantown, but just one—the West Virginia Human Rights Commission—has the authority to enforce fair housing laws. The Commission is viewed as ineffective by stakeholders.

Residents would benefit from several changes to the structure and responsibilities of fair housing partners in Morgantown:

Coordinate fair housing message through websites and fair housing activities. The city’s website, which may be a resource for residents seeking information about housing and community development, currently lacks substantive fair housing content necessary for residents. The only fair housing content currently on the city’s website is a link which takes residents directly to HUD’s complaint form. The link is located on the bottom of the city’s CDBG website, in a location that could be hard to find by residents looking for basic fair housing information.

When the city updates its website to reflect the reorganization of the Department of Development Services, the city should improve the website’s fair housing content. We recommend the city improves its website by having a more comprehensive explanation of fair housing in a place that is visible to website browsers. At a minimum, the website should include:

- Simple explanation as to what fair housing is and who is protected;
- Direct instructions for filing a complaint;
- Staff member and organization contact information to offer guidance to residents needing assistance; and
- Link to West Virginia Fair Housing Action Network website.

The city should coordinate its fair housing content with content available on the NWVCIL website and the WVFHAN website to ensure the fair housing process is transparent for residents. Currently, the WVFHAN directs residents to HUD and the NWVCIL directs residents to the WVFHAN. The fair housing network in Morgantown, which includes the city, should agree upon the city’s fair housing message and make sure the message is transparent on all websites.

The Idaho Human Rights Commission has a good fair housing website that could not only be used as a model by Morgantown and its local fair housing partners, but also by the West Virginia Human Rights Commission. The website can be found here:

<http://humanrights.idaho.gov/discrimination/housing.html>

A coordinated effort should also be made in fair housing activities in the region. These activities include Fair Housing Month events, working with local organizations to publicize fair housing training opportunities; offering technical assistance to nonprofits whose clients have fair housing issues; and potentially conducting fair housing testing. The Northern West Virginia Center for

Independent Living has been responsible for these activities in the past, but they recently lost FHIP funding from HUD. Until HUD funding is restored, to continue to further fair housing in the city, an organization should be funded through annual contributions from CDBG or General Funds and potentially contributions by financial institutions to meet their CRA requirements.

Improve education through technical fair housing training for city staff, stakeholders and housing professionals. Within the next year, the city should sponsor a fair housing training that focuses on the technical components and requirements of the Fair Housing Act, which will be of value to all facets of the city's development and advocacy communities. The training should be conducted by an unbiased third party entity such as HUD.

In addition to serving as a fair housing education and outreach event, the training should also serve as an opportunity for city staff, local advocates and members of the housing community to begin a unified and cordial working relationship towards making the city more accessible to persons with disabilities.

Consider developing a FHAP. If the West Virginia Human Rights Commission continues to be perceived as an ineffective partner in addressing and resolving fair housing complaints, the region should consider establishing a local fair housing organization that can enforce fair housing law (Fair Housing Assistance Program). To be eligible for assistance through the FHAP, a state or local agency must demonstrate to HUD that it enforces a fair housing law that is "substantially equivalent" to the Fair Housing Act. HUD's website on the FHAP program states that in determining eligibility, HUD may also take into consideration whether the jurisdiction is already served by a FHAP agency. The existence of the West Virginia Human Rights Commission should not discourage the region from exploring the possibility of establishing a local FHAP; however, there are examples of regions (e.g., Kansas City) where state and local FHAPs exist.

Distribute fair housing materials during Rental Registration Program inspections. The city should develop a fair housing pamphlet to distribute as part of its Rental Registration Program inspections. The information in the material should be tailored to discuss common fair housing violations in Morgantown. Inspections are required every three years, so all landlords in the city should receive fair housing materials within three years from the time the city begins distributing the fair housing information as part of its program.

Action Item 2. Mediate retrofitting of properties not in compliance with Fair Housing Act. According to HUD, enforcement of the Fair Housing Act's design and construction guidelines became an obligation of the city's upon their entitlement status in 2004. Buildings constructed since 2004 should comply with the Fair Housing Act.

Legal precedence has shown that architects and developers are usually responsible for compliance with the Fair Housing Act. For example, a number of lawsuits were filed in the Las Vegas area against developers and architects for failure to comply with the Fair Housing Act. Some cases resulted in developers retrofitting existing developments. Appendix A of this report presents those legal cases.

The city should have been more proactive in examining its new multifamily developments for compliance. As such, in response to the potential lack of enforcement of Fair Housing Act requirements for qualifying new construction, the city should take the following actions:

- The city should adopt the recently composed building permit application code declaration requiring design professionals to confirm that the proposed development adheres to, among other standards, the Fair Housing Act. This code declaration will make the design professional more compliant and attentive to Fair Housing Act requirements.
- The city should convene a policy review committee, which would include members of the Development Services Division, city administration, the city's legal department and potentially outside council to review and create strategies for addressing the process of mediating and retrofitting development in the city that is not compliant with the Fair Housing Act. The committee should meet at least quarterly. A policy recommendation from the committee should be presented in the city's 2012 Action Plan. Potential recommendations could include, but are not limited to, the following:
 - Upon request, the city could provide contact information of developers to individuals or organizations interested in filing complaints for a lack of compliance with the Fair Housing Act.
 - The city could complete an audit of all eligible properties constructed after the date the city became a HUD entitlement community to determine what units are not in compliance with the Fair Housing Act. The audit would be available for public consumption.
 - The city could partner with individuals or organizations in filing complaints against developers of eligible buildings not compliant with the Fair Housing Act.

Action Item 3. Establish affordable and accessible housing goals. Local stakeholders have been disappointed by the perceived lack of Fair Housing Act enforcement in the city. However, with the recent departmental reorganization and renewed commitment to enforcing Fair Housing Act requirements, the city has a new opportunity to increase accessibility in the city. Stakeholders also suggested that affordable rental opportunities attractive to non-students were limited, and that Section 8 Voucher holders have a difficult time locating units in the city.

To further demonstrate its stance on ensuring all residents have access to housing, the city should establish development goals for affordable and accessible housing. In developing additional accessible housing, the city should be mindful of persons with both cognitive and sensory disabilities.

A housing market study is currently being completed for the city. This should provide the city with a better understanding of its specific needs and will hopefully quantify the housing needs of the city. The city should use this report to establish its development goals and should formally track its progress annually during the completion of its CAPER for HUD.

To begin developing an inventory of accessible units, the city should begin collecting information about accessibility during inspections conducted for the Rental Registration Program. Rental inspections are required every three years, so the city should have an inventory of accessible units within three years from the time they start collecting the information.

Action Item 4. Improve opportunities for African Americans and Section 8 Voucher holders to live elsewhere in the city. Both African American residents and Section 8 Voucher holders are concentrated in certain portions of the city. Upon the release of the city’s housing market study, the city should investigate whether housing affordability creates a barrier for African American and Section 8 Voucher holders to live in certain portions of the city. If it determined that affordability is a barrier to fair housing in the city, the city should create a plan for removing those barriers.

The city should also work with the FMHA to do more active identification and recruitment of landlords who accept Section 8 Vouchers. This process could be incorporated into the administration of the Rental Registration Program.

Action Item 5. Be creative in making the city more disability and senior friendly though existing infrastructure and funding sources. In the short-term, the city should investigate and implement a number of changes to improve the quality of life for persons with disabilities and seniors. These changes will help make the city not only attractive to college students, but also to its permanent residents.

- **Coordinate with the Mountain Line Transit Authority to use New Freedom funding for city accessibility improvements.** The Federal Transit Administration’s (FTA) New Freedom program “aims to provide tools to overcome existing barriers facing Americans with disabilities seeking integration into the work force and full participation in society.”⁷ New Freedom grants are administered from the FTA to state transportation departments, including the West Virginia Department of Transportation (WVDOT). Eligible activities include capital and operating expenses for new public transportation services or alternatives designed to assist individuals with disabilities. The Mountain Line Transit Authority is a recipient of New Freedom funds via the WVDOT. The city should coordinate with the Mountain Line Transit Authority to determine ways New Freedom funds could be used towards city infrastructure improvements, such as curb cuts or bus shelters. For example, Mountain Line Transit Authority suggested that the city construction staff would qualify as a local match to the grant and be used for construction of necessary transit infrastructure.
- **Provide flexibility in zoning.** New multifamily development has largely been constructed for college students. As such, the city should investigate opportunities for multifamily development that provides necessary accessibility and affordability in traditionally single family, non-student neighborhoods. If permit applications are submitted in areas where zoning does not align, the city should be open to zoning changes to ensure development occurs in the city.
- **Investigate stop light timing at intersections frequently used by seniors and persons with disabilities.** Cities across the country are investigating simple ways to make their communities more accessible to seniors and persons with disabilities. Stakeholders suggested that some intersections were dangerous to persons in manual and power chairs. Although lengthening the amount of time pedestrians have to cross the street can greatly impact traffic congestion, the city should investigate this as an option at interactions heavily accessed by seniors and persons with

⁷ http://www.fta.dot.gov/funding/grants/grants_financing_3549.html

disabilities. These intersections may connect senior housing to popular amenities such as post offices or grocery stores, or they may be located near a popular bus stop.

Action Item 6. Make affordable and accessible housing a priority in the

Comprehensive Plan update. The city has recently begun the process of updating its Comprehensive Plan. This provides the city with an ideal time to re-evaluate its housing and community development needs and to establish a housing vision for the city that will guide development in the coming years.

As part of this process, the city should make the housing needs for its permanent residents a priority. This includes considering both affordability and accessibility needs of Morgantown's residents. To accomplish this goal, a variety of housing types and choices must be available in the city. This will ensure that the city and its housing stock are visitable and that the city contains a diverse housing stock for persons with all disabilities. To ensure the provision of a variety of housing types to meet the needs of all residents, the city should investigate its housing and planning policies.

BBC and sub-consultant Clarion and Associates of Denver frequently work together on AIs to examine barriers to fair housing choice caused by land use and zoning policies. The following "best practices" have been developed by Clarion to guide cities in developing codes that provide a balanced housing stock. City land use regulations that promote housing choice should include as many of the following tools as is consistent with the city's future development plans. While it is not necessary that Morgantown include all of these types of provisions, including more of them will further reduce barriers to housing choice.

- **Purpose statement.** The code should reflect the city's purpose to provide housing choice for its residents and to comply with applicable federal and state law regarding housing choice.
- **Small lots.** At least one zone district (or overlay district, or permit system) that allows small lots for single family detached housing in some locations. While the appropriate minimum lot size will vary with the character of the city, a zone allowing minimum lot sizes in the 3,000-6,000 square foot range would be appropriate for more urbanized areas of many cities. In addition, lot width requirements should be reasonable and consistent with minimum lot sizes; while some codes require minimum lot widths of 70 feet or more, small homes can be constructed on lots as narrow as 40 feet (or even less). Minimum lot size requirements are the type of regulation most responsible for increasing housing costs.
- **Multifamily parcels.** At least one zone district (or overlay district, or permit system) that allows the construction of multifamily housing, and mapping enough land into this district to allow a reasonable chance that some multifamily housing will be developed. Maximum heights should be reasonable and consistent with the maximum density permitted; avoid mapping areas for multifamily densities and then imposing height restrictions that prohibit efficient development at those densities. Failure to provide opportunities for multifamily development has been identified as one of the four leading regulatory causes of increased housing costs.
- **Manufactured homes.** Manufactured housing meeting HUD safety standards should be allowed somewhere (per the federal Manufactured Housing Act of 1974). While restricting these homes to manufactured home parks is common, the better practice is to allow them in at least one residential zone where the size and configuration matches the scale and character of the area.

- **Minimum house sizes.** The zoning and subdivision regulations should not establish minimum house or dwelling unit sizes (beyond those in the building code). Minimum house size requirements have also been identified as a significant cause of increased housing price in those communities where they are in place.
- **Group housing.** The code should clarify that housing for groups protected by the Fair Housing Act Amendments of 1988 are treated as residential uses, and should generally allow those group housing uses in at least one residential district. While some communities require a special permit for these uses, others find that they can be allowed by right provided that they comply with standards limiting scale, character and parking. Failure to provide for these uses in the code could subject the community to a developer’s request for “reasonable accommodation” under the Act, and failure to provide “reasonable accommodation” could be a violation of federal law. In light of the aging of the American population, the code should also provide areas where congregate care, nursing home, and assisted living facilities may be constructed.
- **Accessory dwelling units.** The code should allow accessory dwelling units in at least one zone district – either as an additional unit within an existing home structure or in an accessory building on the same lot. While some communities require a special permit for these uses, others find that they can be allowed by right provided that they comply with standards limiting scale, character, and parking.
- **Mixed use.** In order to promote affordability, housing should be allowed near businesses that employ workers, particularly moderate and lower income employees. To do that the code should permit residential units in at least one commercial zone district or should map some lands for multifamily development in close proximity to commercial districts.
- **Lower parking standards.** Although the traditional standard of two parking spaces per dwelling unit may be reasonable for many areas of a community, a lower standard can and generally should be used for affordable housing, multifamily housing, group housing and special needs housing.
- **Flexibility on nonconforming structures.** Although zoning codes generally require that nonconforming structures damaged or destroyed through fire or natural causes can only be rebuilt in compliance with the zoning code, an increasing number of codes are exempting affordable housing from this requirement. Often the most affordable housing in a community is located on lots that are too small or narrow for the district where they are located, or in multifamily buildings that have too many units for the district where they are located. If forced to replat with larger lots or to reduce density following a disaster, those affordable units may be lost, and allowing rebuilding with the same number of units as before may be the most efficient way to preserve these units in the housing stock.
- **Incentives.** In order to encourage the development of affordable housing, the code should recognize the difficult economics involved and should offer incentives. Common incentives include smaller lots, increased density in multifamily areas, reduced parking requirements, or waivers or reductions of application fees. Some communities provide additional incentives for housing that is restricted for occupancy at lower percentages of the Area Median Income (AMI). For example, developments restricted for households earning less than 50 percent of AMI could receive more generous incentives than those for households earning less than 80 percent of AMI.

While zoning and subdivision incentives alone are often not enough to make development for lower levels of AMI economically feasible, they can be part of a broader package of incentives (for example, including financial incentives or land contributions) that make those projects feasible. Any incentives offered should be updated as new housing studies are completed and new information about specific affordable housing needs is obtained.

- **Growth management exemptions.** Most communities that operate a growth management system exempt affordable housing or allow it to compete for a separate pool of development rights in order to encourage this type of housing.

Action Item 7. Add a definition of disability or handicap to the city’s land use code.

The city should add a definition of “disability” or “handicap” to the land use code. The federal Fair Housing Act uses the term handicap (not disability) and defines handicap as:

Any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such impairment; or is regarded as having such an impairment.⁸

Defining the term disability in the land use code will provide clarity to the city’s definitions of Group Residential Care Facility and Group Residential Homes. The city should consult with the NWVCIL for assistance in defining disability in its land use code.

Action Item 8. Investigate a direct allocation of HUD HOME grant and allocate a greater proportion of CDBG to infrastructure and accessibility improvements. The city currently allocates 29 percent of its CDBG to housing programs and 33 percent to infrastructure improvements. Given the city’s widespread infrastructure needs, the city should consider using more of its direct CDBG allocation for infrastructure improvements. To ensure that the city’s housing rehabilitation needs are still being met, the city should explore the feasibility of becoming a direct recipient of HUD’s HOME dollars.

Action Item 9. Assist the FMHA in improving access to FMHA’s resources and programming to Morgantown residents. In response to the FMHA’s closure of the Morgantown office, the FMHA has established an as needed office space at Health Right in Morgantown. The West Virginia Assistive Technology System/Center for Excellence in Disabilities/WVU will also provide meeting space when FMHA staff meets with clients with disabilities. Furthermore, FMHA will also visit clients at their homes if requested. The city should also volunteer city-owned meeting space for FMHA staff and resident meetings when the city facilities offer the most convenience for residents.

As part of the Rental Registration Program, the city should begin collecting information about units’ accessibility features, and develop a city-wide database of accessible rental properties. This list should be shared with the FMHA to provide as a resource for Section 8 Voucher holders needing accessible units. The FMHA and the city should work together to encourage landlords of accessible units to accept Section 8 Vouchers.

⁸ http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/disabilities/inhousing

Lastly, the FMHA is compliant with HUD's requirements that Section 8 Voucher holders are allowed 60 days to find a unit and are also eligible for an extension if a unit is not located in the initial 60-day search period. However, the city should share the findings of its AI with the FMHA to ensure that this information is transparent to Section 8 Voucher holders. This information should be explicitly presented both verbally and in writing at FMHA orientations. Morgantown staff should attend one orientation meeting to ensure this message is clearly presented to Section 8 Voucher recipients.

FY2011-2012 to FY2015-2016 fair housing goals. The matrix on the following page summarizes the city's Fair Housing Action Plan to minimize impediments.

**Exhibit VI-1.
Fair Housing Action Plan Matrix, City of Morgantown, FY2011-2012 to FY2015-2016**

FHAP Action Item	Impediments Addressed	Activities	Goals				
			FY11-12	FY12-13	FY13-14	FY14-15	FY15-16
1. Improve the enforcement, education/outreach and coordination of fair housing responsibility in ..	<ul style="list-style-type: none"> Lack of a strong organization dedicated to mitigating fair housing barriers and raising awareness of fair housing Residents likely do nothing when they experience discrimination. 	<ul style="list-style-type: none"> Coordinate fair housing message through websites and fair housing activities. Improve education through technical fair housing training for city staff, stakeholders, and housing professionals. Consider developing a FHAP. Distribute fair housing materials during RRP inspections. 	X	X	X	X	X
2. Mediate retrofitting of properties not in compliance with the Fair Housing Act.	<ul style="list-style-type: none"> Fair Housing Act design and construction requirements historically not enforced. 	<ul style="list-style-type: none"> Adopt building permit application code declarations. Convene policy review committee and make recommendation for action in 2012 Action Plan. 	X	X	X	X	X
3. Establish affordable and accessible housing goals.	<ul style="list-style-type: none"> Lack of accessible housing. Racial and Section 8 Voucher concentrations. 	<ul style="list-style-type: none"> Develop affordable and accessible housing goals upon completion of housing market study. Collect accessible information as part of RRP inspections. 	X	X	X	X	X
4. Improve opportunities for African Americans and Section 8 Voucher holders to live elsewhere in the ..	<ul style="list-style-type: none"> Racial and Section 8 Voucher concentrations. 	<ul style="list-style-type: none"> Investigate affordability in the city upon completion of housing market study. Work with the FMHA to actively identify and recruit landlords for participation in Section 8 Voucher program. Collect accessible information as part of RRP inspections. 	X	X	X	X	X
5. Be creative in making the city more disability and senior friendly through existing infrastructure and ..	<ul style="list-style-type: none"> Inaccessible infrastructure. 	<ul style="list-style-type: none"> Coordinate with Mountain Line Transit Authority to use New Freedom funding for city accessibility improvements. Providing flexibility in zoning. Investigate stop light timing at intersections frequently used by seniors and persons with disabilities. 	X	X	X	X	X
6. Make affordable and accessible housing a priority in the Comprehensive Plan update.	<ul style="list-style-type: none"> Comprehensive Plan provides a weak vision for accessible and affordable housing goals. 	<ul style="list-style-type: none"> Consider best practices in developing affordable and accessible housing as part of Comprehensive Plan update. 	X	X	X	X	X
7. Add a definition of "disability" to the city's land use code	<ul style="list-style-type: none"> Lack of accessible housing. Fair Housing Act design and construction re 	<ul style="list-style-type: none"> Add definition to land use code. 	X	X	X	X	X
8. Investigate a direct allocation of HUD HOME grant and allocated a greater proportion of CDBG to infrastructure and accessibility improvements.	<ul style="list-style-type: none"> Inaccessible infrastructure. 	<ul style="list-style-type: none"> Contact HUD regarding HOME's qualification criteria. If meet criteria, apply for direct allocation of HOME. 	X	X	X	X	X
9. Assist the FMHA in improving access to FMHA's resources and programming to Morgantown ..	<ul style="list-style-type: none"> FMHA provides limited resources in Morgantown 	<ul style="list-style-type: none"> Make city office space available for FMHA and resident meetings. Collect accessible information as part of RRP inspections. Attend one FMHA Section 8 Voucher orientation meeting. 	X	X	X	X	X

Source: City of Morgantown.

Structure for Oversight Responsibilities, Monitoring & Evaluation

The completion of this AI was overseen by the City of Morgantown Department of Development Services Community Development Division.

Community Development will be ultimately responsible for carrying out the Fair Housing Action Plan. To ensure that each activity is carried out, Community Development will conduct an evaluation of each activity during each program year and identify additional areas that require study or analysis and how to address the additional areas. As part of the annual Consolidated Annual Performance and Evaluation Report (CAPER), Community Development will include a summary of the following:

- Actions taken to affirmatively further fair housing;
- A summary of impediments to fair housing choice in the AI; and
- Identify actions taken to overcome effects of impediments identified in the AI.

Per Section 2.14 in HUD's Fair Housing Planning Guide, Community Development will maintain the following data and information as documentation of the city's Fair Housing Action Plan:

- A copy of the AI and any updates.
- A list of actions taken each year as part of the Fair Housing Action Plan to eliminate the impediments identified in the AI.

At the end of each program year, the city will submit information to HUD about the actions taken to fulfill the Fair Housing Action Plan and an analysis of their impact.

APPENDIX A.

Legal Cases

APPENDIX A.

Legal Cases

State of California

United States v. Lytton IV Housing Corp (Disability). In September 2000, the Mid-Peninsula Citizens for Fair Housing (MCFH) filed a complaint with HUD alleging that the owners of Lytton Courtyard (a HUD Section 202 project for very low income seniors) located in Palo Alto, California discriminated against persons with disabilities or denied fair housing rights to a group of persons with disabilities by failing to design and construct the covered multifamily dwellings that complied with the FHA. Specifically, the Lytton IV Housing Corp (Lytton) failed to design and construct their units in a way that: (a) the public and common use portions of such dwellings are readily accessible to and usable by individuals with disabilities; (b) all doors are sufficiently wide to allow passage by handicapped persons in wheelchairs; and (c) all premises within such dwellings contain: (i) an accessible route into and through the dwelling; (ii) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations; (iii) reinforcements in bathroom walls to allow later installations of grab bars; and (iv) useable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space. Upon finding reason for discrimination, HUD referred the case to the Department of Justice.

In October, 2000 the court entered a consent decree in which Lytton denied liability for any alleged FHA violations, but agreed in order to avoid protracted and costly litigation, claims should be resolved without further proceedings or evidentiary hearing. The companies involved in the construction agreed to pay the following amounts to cover the costs of modifying Lytton Courtyard: Carrasco & Associates - \$390,000; Lytton IV Housing Corporation - \$200,000; Dolan Concrete - \$25,000; and American Steel - \$5,000. From the aforementioned amounts, \$87,500 was paid to MCFH for damages, attorneys' fees and costs. Lytton also established an interest bearing checking account for the specific use of maintaining the remaining \$532,500 (five hundred and thirty-two thousand and five hundred dollars) from which the costs of the modifications were paid.

National Fair Housing Alliance, Inc. v. Spanos, et al. (Disability). In September 2007, the National Fair Housing Alliance (NFHA) filed a complaint against A.G. Spanos Construction, Inc., one of the country's largest builders and designers of multifamily apartment complexes, and its related companies. Through careful investigation and testing, NFHA identified 34 apartment complexes in California, Arizona, Nevada, Texas, Kansas, Georgia and Florida, totaling more than 10,000 individual apartment dwelling units that failed to meet the accessibility requirements of the FHA. The case was assigned to the Northern District Court of California because (1) Spanos Construction's primary offices are registered in California and (2) some of the unlawful conduct that gave rise to these claims occurred in the Counties of Napa and Sonoma¹ as well as other locations in

¹ The tested property in Sonoma County was Mountain Shadows Apartments in Rohnert Park. FHA design violations were found at this property including: Interior thresholds and changes of level from one room to another are too high, bathroom clearances are insufficient to allow a person in a wheelchair to maneuver about the space, kitchen clearances are insufficient to allow a person in a wheelchair to maneuver about the space, doorways from kitchens to laundry rooms in the units are too narrow to allow passage by people in wheelchairs, environmental controls are placed at heights that are beyond the reach of a person in a wheelchair, parking access aisles are too narrow and therefore prevent a wheelchair user from parking and having sufficient room to set up and transfer to a wheelchair, common-use and public-use bathroom clearance is insufficient to allow a person in a wheelchair to approach and use the toilet facilities, and excessive opening pressure on mailroom door is required, rendering it inaccessible to some people with disabilities.

California. Through testing, the Spanos defendants were found to have failed to construct or design covered units and public areas in compliance with the Fair Housing Act (FHA). Although the Spanos properties were built over the course of several years and technically, the statute of limitations had run out on many of the properties, the NFHA argued that the violations were continuing, ongoing and demonstrated a pervasive pattern and practice of systematic and continuous FHA violations over several years. In October 2008, the court entered a stipulated judgment, in which NFHA and the Spanos defendants entered a settlement. As part of the settlement, Spanos did not admit guilt or claim any violations of the FHA, NFHA was barred from bringing any similar claims against Spanos in the future and several remediation measures were agreed upon to ensure that the alleged violations would not recur and completely eradicate the effects of the violations. In addition to physical improvements to its properties, Spanos was ordered, over the course of five years, to pay \$4,200,466 into the NFHA Housing Accessibility Fund and pay an additional \$750,000 to the NFHA for community accessibility contributions, \$100,000 for NFHA media campaigns for accessibility and \$40,000 to the NFHA to help with coalition building.

State of Idaho

United States v. Hallmark Homes, et al (2001). In August, 2001, the IFHC filed a complaint with HUD alleging that the Hallmark Homes constructed the Creekside Meadows Apartments, located in Coeur D'Alene, Idaho, in a manner that violates the Federal Fair Housing Act (FHA). Specifically, the complaint alleged that: (1) the public use and common use portions are not readily accessible to and usable by individuals with disabilities, (2) doorways to the bedrooms and the master bathrooms within the ground floor units are not sufficiently wide to allow passage by persons with disabilities who use wheelchairs and (3) the ground floor units have the following deficiencies of adaptive design.² IHFC filed a formal complaint with HUD that the defendants violated the FHA on the basis of disability. Upon finding reasonable cause for discrimination, HUD referred the case to DOJ for resolution.

In February, 2006, the court entered a consent decree resolving all claims in *United States v. Hallmark Homes, Architects West, and Kevin W. Jester*. The defendants were ordered to pay \$115,000 into a retrofit fund and the owner of the property was to oversee all necessary retrofits to the public and common use areas and to the covered units during the upcoming year. In addition, the defendants were ordered make a payment of \$2,000 to IFHC.

United States v. Taigen & Sons, Inc., et al (2001). In 2001, the United States filed a complaint alleging that the Taigen & Sons failed to comply with the FHA's requirement that new multifamily housing be accessible to persons with disabilities when they constructed the Centennial Trail Apartments, an apartment complex in Post Falls, Idaho. The DOJ alleged that the apartments are inaccessible in many respects, including that the rental office is on the second floor, all interior doors and patio doors are too narrow for a wheelchair to pass through, environmental controls cannot be reached by persons using wheelchairs, and bathrooms are too small for wheelchair access. The United States also alleged that the developer violated the Americans with Disabilities Act by placing the rental office on the second floor.

² Adaptive design includes: the entrance doorways are inaccessible in that there is a 3/4 inch, unbeveled threshold at the primary entrance door to each covered unit; the thermostats are mounted too high (61 inches above) the finished floor; the bathroom walls lack reinforcements to allow later installation of grab bars; and the bathrooms are not usable by persons with disabilities because the clear floor space at the lavatory in the hall bathroom is not centered at the centerline of the basin, and the lavatory is located in a vanity cabinet that is non-removable.

In January 2006, the court entered a consent decree mandating that Centennial Trail retrofit the units in violation within one year regardless of whether any current resident desires the repairs. Taigen & Sons was also ordered to pay per diem expenses to any displaced residents.

United States v. Allan Horsley and Horsley Construction (2001). In February, 2001, the United States filed a complaint against the owner of The Elms apartment complex in Pocatello, Idaho, alleging violations of the FHA's requirement that new multifamily housing be accessible to persons with disabilities. The complaint alleged that the defendants failed to include certain features in 12 ground-floor units which made them inaccessible to persons with disabilities, including: steps at apartment entrances, doors that are too narrow for a wheelchair to pass through, and kitchens and bathrooms that are too small for wheelchair access. This matter was referred to the DOJ by HUD after HUD's investigation of a complaint received from the IFHC alleging that the apartments did not meet the requirements of the FHA.

In January, 2002, the parties entered into a consent decree to resolve the case. The terms of the consent decree required defendants to: pay \$10,000 to compensate an individual using a wheelchair who sought to live at the Elms and was unable to do so; pay \$4,000 to IFHC; pay \$14,000 to compensate additional victims of discrimination at the Elms; pay \$10,000 to increase the availability of accessible housing in Idaho for people with disabilities; pay \$4,000 to the United States in civil penalties; and build sixteen units of accessible housing in Pocatello, Idaho.

United States v. Thomas Development Co., et al (2002). In February, 2002 the United States filed a complaint alleging that Thompson Development Co. and affiliated companies (defendants) engaged in a pattern or practice of discrimination on the basis of disability by failing to design and construct the ground floor units and public /common use areas in compliance with the accessibility requirements of the FHA. The defendants were alleged to commit these violations at 17 apartment complexes located throughout Southern Idaho in the cities of Boise, Meridian, Nampa, Shelly, Rexburg, Caldwell, Rigby, Lewiston and Jerome. The complaint also alleged that some of the defendants retaliated against a tenant family at one of the complexes by attempting to evict the family after one of the family members requested a reasonable accommodation for their disability.

In March, 2005, the court entered a consent order, which included injunctive relief and monetary payments totaling \$125,000. The consent order remained in effect for three years.

Garcia v. Brockway (2003). In May 2003, Noll Garcia (plaintiff) filed a complaint against the original owner/developer and designer of his apartment building in Boise, Idaho. The complaint alleged a failure to accommodate disabilities as mandated by the FHA. Mr. Garcia is disabled and uses a wheelchair for mobility and filed a complaint because the apartment complex he was living in lacked curb cuts from the parking lot to the sidewalk, didn't have a ramp to the front entrance door and the doorways were too narrow to allow clear passage of his wheelchair. Mr. Garcia requested that management make appropriate accessibility improvements, which were ignored, as was his request that management build a ramp to his door or that he be relocated to a more accessible unit. In addition, Mr. Garcia sued the original builder and architect (Brockway and Robert Stewart, respectively), and the current owners and management (the Zavoshy defendants).

The defendants (Brockway and Stewart) argued that because they no longer owned the building (which they sold in 1994), their liability was time-barred by the statute of limitations in the FHA. Thus, the plaintiff's complaint would have had to be filed within two years following construction

of the apartment building in 1993. The plaintiff countered, arguing that the failure to remodel the apartments constituted a continuing violation and that the statute of limitations take effect upon discovery of the alleged violations. Mr. Garcia also claimed that failure to make modifications constituted new violations.

The court ruled that the continuing accessibility issues were an effect of a prior discriminatory act but not a continuing violation. The argument that the two-year statute of limitations should begin at discovery of a violation was deemed unworkable as a developer would be liable for these violations indefinitely in spite of his or her ownership of the complex. Finally, the original developer was not found to be liable for refusal to make modifications while current management company was at fault. The defendant still had a remedy under the FHA with building owners, but his motion against the developers was dismissed. Claims against the current owners and management were settled out of court.

United States v. S-16 Limited Partnership, et al (2005). In April, 2003, the United States filed a complaint alleging that the owners and developers of the 254-unit Village at Columbia apartment complex in Boise, Idaho and the architects and engineering firm involved in its design-- failed to design and construct the complex in compliance with the accessibility requirements of the FHA. Specifically, the defendants failed to design the apartment complexes so that: the public and common areas are readily accessible to and usable by individuals with disabilities; all doors within the 76 ground floor units are sufficiently wide to allow passage by persons with disabilities who use wheelchairs; and the 76 ground floor units contain the features of adaptive design.³

In March, 2005, the court entered the consent order requiring the defendants to retrofit the common use areas of the complex and 76 ground-floor apartments. The order also required defendants to pay \$2,000 in damages to the IFHC, the original HUD complainant in the case, and to establish a fund of \$40,000 to compensate victims of defendants' discriminatory practices. In addition, the order included: a general injunction against future discrimination; requirement that defendants inform HUD of future development and design work in which they become involved and obtain statements that design plans comply with the FHA; mandated that defendants require all supervisory employees and agents to participate in fair housing training and certify that they have read the order; post signs describing their policy of nondiscrimination in housing; and meet reporting and record-keeping obligations. The consent order remained in effect for three years.

State of Nevada

United States v. Camden Property Trust. The complaint in this case alleged that two developers and an architect failed to design and construct several apartment complexes in Las Vegas with the features of accessible and adaptable design required by the Fair Housing Act. The violations include, steps into the individual units, inaccessible kitchens and bathrooms, no reinforcements in the bathroom walls for the installation of grab bars, and inaccessible public and common use areas. Under the terms of the consent decree, the defendants are required to pay nearly \$2 million to make retrofits to the apartment complexes, compensate aggrieved persons, and establish a retrofit fund. Specifically the defendants must: (1) pay approximately \$1.7 million to make retrofits to the public and common use areas and individual units at the apartment complexes; (2) pay \$25,000 to compensate aggrieved individuals; (3) pay \$247,500 to establish an accessibility fund which will be

³ See footnote 2 for qualifications of "adaptive design."

used to provide grants to persons with disabilities who live in Las Vegas to assist them in making retrofits to their homes. The architect who designed the apartment complexes is paying \$175,000 of the \$247,500 accessibility fund. Additionally, over the next five years, the architect is required to provide technical assistance to non-profit groups in the Las Vegas area which provide assistance in housing to persons with disabilities.

United States v. Torino Construction Corporation of Nevada, Inc., et al. (2004). This case was resolved by consent decree in January 2004. The complaint alleged that defendants, Torino Construction Corporation of Nevada, Inc., Sedona Corporation, Paradise Village F&B, and Canyon Willow II, LLC, failed to design and construct Canyon Willow Condominiums in Las Vegas in compliance with the design and construction provisions of the Act. Under the terms of the settlement, the defendants will pay \$1,500,000 to make the 360 covered ground-floor units as well as the public and common areas of the complex accessible to persons with disabilities. In addition, \$75,000 will be available to compensate individuals who may have been harmed as a result of defendants' conduct. The settlement also requires defendants to pay a civil penalty of \$5,000 to the United States. The consent decree will remain in effect for two and one-half years.

U.S. v. Tiberti-Blood, Inc., et al (2003). The United States entered into a Settlement Agreement with the developer, architect, site engineer, and homeowners association of Spanish Gardens Condominiums in Henderson, Nevada on April 1, 2003. The respondents were charged with failure to design and construct 112 ground-level apartments along with public and common use areas of the Spanish Gardens Condominiums to be accessible to persons with disabilities. The U.S. Department of Housing and Urban Development initiated the investigation and concluded the condominiums did not comply with the Fair Housing Act. The complaint was then referred to the Department of Justice.

Previous to the signing of the Agreement, the respondents had already retrofitted a portion of the common use and public areas. Following the Settlement Agreement, the respondents have 60 days to submit a plan for the completion of the remaining retrofits to the common areas, for approval by the Division. A fund will also be created for use by any homeowner to retrofit the interior of their apartment. After an initial notice, owners shall receive additional notices of the opportunity to retrofit their units, at no cost to them, on an annual basis for three years. The respondents shall also report information regarding future design or construction of multifamily housing and certify to the Department that such design or construction fully complies with the Act.

U.S. Department of Justice v. Wilmark Development Co., et al (2002). A lawsuit was filed against the owner, developer, architect, and site engineer of Green Valley Country Club Apartments in Henderson, Nevada. The suit alleges the defendants discriminated on the basis of disability by failing to construct the apartment complex in compliance with the Fair Housing Act that newly constructed multifamily housing contain certain features to make it accessible to persons with disabilities. The complaint alleges that 102 ground floor units of the complex's 204 units as well as the common and public area are inaccessible. The charges in the complaint are equivalent to those made in litigation concerning the same complex, *Nevada Fair Housing Center, Inc., et al. v. Green Valley Country Club Partnership, et al.*, that is also pending in the District of Nevada. The Division concurrently filed a motion to combine the two cases.

The case began when the Nevada Fair Housing Center, Inc., a fair housing rights organization, filed a complaint with HUD. HUD then referred the case to the Department of Justice who conducted an investigation and determined the property did not comply with the Fair Housing Act.

On November 29, 2004, the court entered a consent decree. The defendants have agreed to pay a total of \$718,000 to make the complex accessible to persons with disabilities.

U.S. Department of Justice v. Raintree Condominiums in Las Vegas (2002). This case was resolved by consent decree, in which the developer of Raintree Condominiums agreed to retrofit its condominium complex to make it accessible to persons with disabilities and to compensate persons who had been harmed by the lack of accessible features at the complex. The developer will pay \$280,000 to modify the condominium complex and \$70,000 to 8 households who were harmed by the lack of features in the complex.

U.S. Department of Justice v. Falcon Development Corp., et al (2002). The United States filed a complaint and consent decree on July 30, 2002, alleging that the defendants discriminated on the basis of disability by failing to design and construct units at Serenade Condominiums in Las Vegas to make them accessible to persons with disabilities. The defendants have agreed to pay \$390,000 to make the complex accessible to persons with disabilities and to compensate those who have been harmed by the lack of accessibility throughout the complex. The agreement also requires that defendants provide training to their employees on the requirements of the Act, notify the Justice Department of any future construction of multifamily dwellings, and ensure that such housing complies with the requirements of the Act.

This case began when the Disabled Rights Action Committee, a Utah-based disability rights organization, filed a complaint with HUD. HUD then referred the case to the Department of Justice, which conducted an investigation and determined the condominiums did not comply with the Fair Housing Act.

U.S. Department of Justice v. Pacific Properties, et al (2007 and 2001). The complaint, filed November 15, 2005, alleged that the designers and builders of Pacific Legends West, a condominium complex in Las Vegas with 92 ground floor units, violated the Fair Housing Act. Specifically, the complaint alleged that the defendants failed to design and construct the units and public and commons areas with features necessary to make them readily usable by and accessible to persons with disabilities. Under the terms of the consent decree, the defendants must retrofit the covered ground floor units upon the request of the homeowners; retrofit the public and common use areas; provide accessible pedestrian routes; pay \$100,000 in damages to nine aggrieved individuals; and undergo training on the requirements of the Fair Housing Act. The consent decree will remain in effect for two years and six months.

In the earlier case, the United States filed a complaint and consent decree alleging that the defendant discriminated on the basis of disability by failing to design and construct units at four complexes—two rental properties and two condominium complexes—in Las Vegas to make them accessible to persons with disabilities. Under the terms of the settlement, defendant has agreed to spend approximately \$208,000 to retrofit the public and common use areas, as well as the interior of the units at the four properties. Additionally, defendant will contribute \$30,000 to an organization in the Las Vegas

metropolitan area whose purpose is to serve the housing needs of persons with disabilities and pay \$1,200 to two residents at one of the complexes who were required to pay for modifications that would not have been necessary had defendants designed the unit to comply with the accessibility requirements of the Act.

U.S. Department of Justice v. Pulte Homes (2001). The United States signed a modification agreement with Pulte Home Corporation (Pulte) to supplement and amend a Settlement Agreement previously entered into with Pulte in July 1998. The 1998 settlement agreement resolved the United States' allegations that Pulte had failed to design and construct certain developments in Florida, Illinois, and Virginia to be accessible to persons with disabilities as required by the Fair Housing Act. The Modification Agreement covers three additional properties in Las Vegas and includes provisions requiring Pulte to annually notify current owners, for a period of three years, of their option to have Pulte retrofit their units at no expense to them in order to bring them in compliance with the Act, as well as to report to the United States the names and addresses of those persons who elect to have their units retrofitted.

State of New Mexico

JAMA Investments, LLC v. Incorporated County of Los Alamos (2004). JAMA Investments LLC (JAMA) owned and operated Bee Hive Homes in Los Alamos County (the county), NM. At the time of filing the complaint, in 2000, there were no elderly assisted group homes located in residential neighborhoods. In September, 2000 JAMA contacted the county representative about a proposed 14-unit elderly group home in a single family residential neighborhood, although county municipal code stated that areas zoned for single family residential prohibited more than five unrelated persons from living together. At that time, representatives of the county admitted that their municipal code did not comply with the provisions of FHA as applied to assisted living group homes for persons with handicaps.

In August, 2002 JAMA purchased a property for the proposed 14-unit elderly group home. The Los Alamos Community Development Division as well as the Planning and Zoning Commission worked with the County Council to revise the municipal code to comply with the FHA. The County Council adopted new text with regards to land zoned for single family residential which allowed for group homes, but limited the occupancy of those homes to 8. The 8 person limit made it economically unfeasible for JAMA or any other group home provider to build, maintain and operate an assisted living facility. In fact, a group home with 14 residents was the minimum number required to ensure economic viability. Over the course of the next two years the County Council heard proposals and recommended additional provisions to ensure that a 14 unit facility would still fit in aesthetically with a single family neighborhood (landscaping provisions, setbacks, driveway requirements, etc.). Eventually however, the council did not change the language of the municipal code to allow more than an 8-unit group home in areas zoned for single family residential.

In October 2004, JAMA filed a formal complaint with HUD alleging that the county did not make reasonable accommodations for individuals who are disabled and for violating the FHA's provisions regarding group homes. In 2006, a jury trial was held to resolve these issues. The jury found that the county did not discriminate against the handicapped and did not fail to provide a reasonable or necessary accommodation for the handicapped. No damages were awarded to JAMA and the case was resolved.