

RHNA State Audit and Potential Lawsuit Information Sheet

Why should our city get involved? How does RHNA affect us?

It is clear that California has serious housing issues, with housing becoming less affordable for even the average, moderate income family. The short- and long-term solutions are complex, but it involves participation and funding from all levels including communities, cities, counties, and the State. Unfortunately, the State is trying to implement solutions that ignore unique factors within each community and does not account for the local government’s ability to provide meaningful solutions to these housing issues. The State is also ignoring the fact that affordable housing solutions require subsidies.

The prime example is the State’s RHNA numbers generated by HCD (Dept of Housing and Community Development), which significantly over-projected future housing needs in the State. In some cases, the State ignored housing projections of the Dept of Finance or wrongly calculated them, and failed to consider factors outlined by statute. The State is now forcing local communities to dramatically change many of its neighborhoods without proper justification that their RHNA numbers are accurate. Local governments are being strong-armed into planning for hundreds of thousands of additional housing units without the State’s help to address the lack of infrastructure, water, public safety, and utilities in many of these neighborhoods to accommodate such growth. This puts public health and safety at risk.

Local governments want to work with the State to address these housing issues. HCD’s flawed RHNA determinations have caused the public to lose confidence in the overall RHNA process. Additionally, if the State continues to dismiss the realities that communities have to deal with, the State will only create more problems, exacerbate housing issues and inequities, and cause irreversible damage.

On March 17, Michael S. Tilden, the Acting California State Auditor, [issued a blistering critique of the Department of Housing and Community Development \(HCD\)](#) and its Regional Housing Needs Assessments (RHNA). The Auditor found problems in the HCD methodology that inflated RHNA requirements potentially by hundreds of thousands of housing units out of the State’s total of 2.3 million units, overshadowing the smaller cases of undercounting in the report. The only remedy that cities have is through the courts to sue HCD to down-project the proven inaccurate RHNA numbers.

<p>HCD violated Government Code § 65584.01(b)(1)</p>	<p>HCD was required to “meet and consult with the council of governments regarding the assumptions and methodology to be used...”</p> <p>But HCD did not review or verify much of its data with the councils of governments.</p>
<p>HCD failed to consider several of the factors listed in Government Code § 65584.01(b)(1)</p>	<p>The law requires HCD to review data and assumptions that councils of governments submit for the factors considered in housing needs assessments, and it allows HCD to make adjustments to the needs assessments after this consideration.</p> <p>Again, HCD did not specifically request such information in order to determine those needs assessments.</p> <p>HCD did not adequately consider the jobs/housing balance factor or the housing lost during emergencies factor.</p>

RHNA State Audit and Potential Lawsuit Information Sheet

	The result is an underassessment of housing needs in certain regions, while other regions have an overassessment of housing needs.
HCD's use of a 5% total vacancy rate ins wholly unsupported by any data and completely unreasonable.	<p>HCD did not provide adequate support for a critical determination it made about the healthy housing vacancy rate that it used.</p> <p>HCD utilized unreasonable comparison points to evaluate healthy market vacancy, in that it utilized a 5% total vacancy rate, rather than a 5% rate for the rental housing market and a more realistic standard for the for-sale housing vacancy rate. HCD's 5% total vacancy rate contradicts Government Code section 65584.01(b)(1)(E), which specifically states that "the vacancy rate for a healthy <i>rental housing market</i> shall be considered no less than 5 percent." (Emphasis added.) In addition, a 5% vacancy rate for owner-occupied homes is an unhealthy rate, as homeowner vacancy in the U.S. has been around 1.5% since the 1970s. Thus, HCD's use of a 5% total vacancy rate is both contrary to the law and unreasonable.</p>
HCD failed to consider appropriate comparable regions.	HCD did not sufficiently review the regions that councils of governments compared themselves to as part of the needs assessment process. HCD's reviews of comparable regions selected by councils of government have been inconsistent, causing inconsistent, overlapping, and undercounted data to be used, resulting in errors that are inaccurate to account for future housing needs.
HCD's failure to re-assess the RHNA determinations and make corrections will impact the current and potentially all future housing cycles.	If HCD does not correct its RHNA determinations, as recommended by the State Audit, then the current housing cycle will contain inaccurate housing needs within each region. The failure to correct the process will compound the inaccuracies in future housing cycles, as future RHNA determinations will be based on not only inaccurate data, but also improper methodology from the current housing cycle.

Important Note: A lawsuit to challenge the RHNA determinations, based on the findings of the State Audit, may cost between \$200,000-\$235,000 through the end of trial. If 6 cities join the lawsuit, the costs will be approximately \$33,000-\$40,000 per city for the entirety of trial. If 10 cities join, the costs will be approximately \$20,000-\$23,500 per city. Having more cities join will dramatically reduce costs per city.

**Please contact Attorney Pam Lee at Aleshire & Wynder for
Closed Session memo to present to your City Council**

plee@awattorneys.com

From Aleshire & Wynder, LLP, 7/24/2022