

MEMORANDUM

TO: Working Group on Compensation for Illegal Property Tax Assessments

FROM: Coalition to End Unconstitutional Tax Foreclosures

DATE: July 29, 2019

SUBJECT: Determining Eligibility for Compensation

Background:

A working group comprised of City Council representatives, city officials, and the Coalition to End Unconstitutional Tax Foreclosures has formed to research, discuss, and evaluate potential compensation options for Detroit residents impacted by the epidemic of unconstitutional property tax assessments and the resulting tax foreclosure crisis. The end goal of this group is to create a proposal for how to repair the harm caused by overassessments, and subsequent mass foreclosures between 2009-2017. This memo builds upon the “Qualification” discussion in the “Compensation Memorandum” dated May 6, 2019, which provides pertinent background information.

The purpose of this memo is to propose and discuss several options for determining who would be eligible to receive compensation benefits as a result of illegal tax foreclosure practices and what administrative processes claimants could follow. A key portion of this memo will involve options for the administering agencies to identify and engage those eligible as well as for people who believe they are eligible to self-identify and apply for compensation.

Determining Eligibility

Potential claimants could fall within several groups based on various conditions they may have experienced during the tax foreclosure crisis. This list provides details of these conditions and starts from the least restrictive/severe, to the most. The task force will need to decide which conditions should determine eligibility, as well as what the different levels of compensation should be. Of note, all of these groups require the house to be owner-occupied at the time of over-assessment and/or foreclosure.

Group 1: Unconstitutionally assessed, no foreclosure

1. This is the minimum condition under consideration. For this potential claimant, we would need to verify that their house was assessed for property taxes at more than 50% of its market value between 2008-2017.
2. Group 1 could be considered for prioritization in the 0% interest home loan, as they would still be the owners of the over-assessed home.
3. Estimated number of potential claimants: According to research, 55%-85% of residential properties were assessed at more than 50% of their market value. Since

there are 123,400 residential properties, then the estimated number of over-assessed properties in Detroit during this time frame is **67,870-104,890**.¹ As these numbers are so high and there was no subsequent forfeiture of the property, the recommendation is that this group either be excluded from eligibility or given the lowest level of compensation benefits.

Group 2: Unconstitutionally assessed with foreclosure

1. This group would consist of any owner-occupied household who the Detroit Assessment Division assessed in violation of the Michigan constitution and who the Wayne County Treasurer forfeited their home for nonpayment of property taxes between 2008-2017.
2. Estimated number of potential claimants:
 - a. 175,681: Number of homes foreclosed upon between 2002-2018
 - b. 86,664: Number of these homes that had a PRE, indicating they were owner occupied
 - c. **47,665-73,664**: Number of these homes which were assessed in violation of the Michigan Constitution (55%-85% of total residential properties, according to research)

Group 3: Unconstitutionally assessed, while eligible for HPTAP, no foreclosure

1. This group consists of anyone who was assessed in violation of the Michigan Constitution and was also eligible for but did not receive the PTE/HPTAP, though avoided foreclosure.
2. Similar to Group 1, these homeowners did not experience the trauma of foreclosure, and so a decision will need to be made regarding whether they are eligible for compensation and if they should receive a different “level” of benefits than those who also lost their homes.
3. Compensation for this group could be conceptualized as expanding the efforts the City is already taking to make amends for the past administration of the PTE. Note: this group does not receive any benefits from the Morningside vs. Sabree settlement because they are not facing foreclosure.
4. Estimated number of claimants: If 67,870-104,890 residential properties in Detroit are estimated to have been unconstitutionally assessed and 37.9% of Detroit’s population lives below the poverty line, then we can estimate that of the over-assessed properties, **25,722- 39,753** homeowners were also eligible for HPTAP².

Group 4: Unconstitutionally assessed, while eligible for HPTAP, with foreclosure

1. This group has experienced the most severe harm due to unconstitutional tax assessments and the property tax foreclosure crisis in Detroit. It is the same as Group 3,

¹ Atuahene, B. & Hodge, T. (2018). Stategraft. *Southern California Law Review*, 91(2), 263-302.

² U.S. Census Bureau Quick Facts (2018). Retrieved from:
<https://www.census.gov/quickfacts/fact/table/detroitcitymichigan,US/PST045218>

but with the added condition that the homeowner lost their home to foreclosure between 2008-2018.

2. This group currently receives some benefits from the Morningside settlement in that people who meet the above conditions and are facing foreclosure in 2018, 2019, and 2020 have the opportunity to purchase back their home for \$1,000 prior to auction through the “Make it Home” program at UCHC. People who fall into this group but faced foreclosure prior to 2018 are not included in the settlement and currently have no compensation options.
3. Estimated number of claimants: If we can estimate that 47,665-73,664 owner occupied homes were both foreclosed upon and assessed in violation of the Michigan Constitution, and we know that Detroit has a 37.9% poverty rate, then we can estimate that **18,065- 27,918** people would meet the condition of Group 4.

Group 5: People who fall into any of the above groups, but without current Detroit residency

1. This group consists of anyone who meets the conditions of the above groups but who do not currently live in Detroit. The task force should consider the following factors regarding this group:
 - a. Foreclosure causes displacement, which could have resulted in families leaving the city for a variety of reasons as they tried to locate a new housing situation.
 - b. At the time of foreclosure, people in this group were city residents, likely long-term, so restoring their relationship with the city may still be advantageous.
 - c. As many of the compensation options discussed thus far utilize existing city programs and services, people in this group may not be eligible for these options and thus would not likely benefit from prioritization in them.

Summary Table of Over-assessed Properties

Year	Total Excess Taxes	Avg Excess Taxes	# Over-taxed properties
2009	\$31,300,000.00	\$1,803.00	17,337
2010	\$92,300,000.00	\$1,732.00	53,287
2011	\$6,900,403.00	\$1,938.00	3,561
2012	\$23,700,000.00	\$1,711.00	13,833
2013	\$37,300,000.00	\$1,618.00	23,040
2014	\$21,100,000.00	\$1,738.00	12,171
2015	\$8,660,520.00	\$2,233.00	3,879
Total	\$221,000,000.00	\$1,740.00	127,108

Administrative Processes for Identifying Eligible Claimants

As unconstitutional assessments and the corresponding tax foreclosure crisis constitute a form of dignity taking, or “involuntary property loss accompanied by dehumanization or infantilization,” then compensation must work to restore more than just the property that was lost.³ Dignity restoration is required as it entails compensating property loss in a way that honors the agency and worth of each person and aims to make people and the city whole again.

A central question for this task force is who will have the final authority in determining eligibility and administering compensation benefits? This section of the memo will go over several options the city could adopt for this process. The essential goal is to ensure that eligibility is determined in a fair and transparent manner and that benefits are made accessible to those who qualify, therefore encouraging dignity restoration in addition to tangible compensation.

Option 1: Eligibility determined after application by an existing city department

- a. Description:** This option entails the city providing outreach and education about compensation eligibility, the application process, and the context. It then would require people who think they are eligible to initiate an application through the city. An existing city department would be tasked with facilitating the application, either through adding tax foreclosure compensation to their existing system or creating a new process.
- b. Methods:** The city would be tasked with educating the public about the institutional malfeasance of the tax foreclosure crisis (i.e. over-assessments, PTE/HPTAP barriers) and alerting them to the compensation options/eligibility. Then, people who believe they are eligible to receive benefits under one of the groups would apply for compensation through the designated agency. All correspondence regarding their applications and facilitation of benefits would be administered through this existing agency’s processes (i.e. online portal, in-person office hours, etc.). This agency could either funnel the information of accepted claimants through to the departments in charge of the specific compensation benefit they are interested in OR they can create and administer a separate streamlined portal, where all claimants apply and select from the compensation menu.
- c. Pros:**
 - i.** Because an administrative agency already has an established structure, funding streams, and staffers, this solution could be relatively quick to implement.
 - ii.** Leveraging pre-existing systems for the application, approval, and appeals processes means that individual applicants would not have to re-learn how to interact with their municipal agencies, and the agency itself would not have to develop all new institutional processes.

³ Atuahene, B. (2016). Dignity takings and dignity restoration: Creating a new theoretical framework for understanding involuntary property loss and the remedies required. *Law & Social Inquiry*, 41(4): 796-823. <https://doi.org/10.1111/lsi.12249>.

- iii. People that could potentially be missed through pre-determined eligibility process could self-identify and apply for compensation.

d. Cons:

- i. Many of the people who lost their homes remain under-informed about administrative relief and that their homes may have been unconstitutionally assessed prior to foreclosure, so this would require a massive outreach effort to ensure that those eligible are aware of why and how to apply, which will of course mandate requisite resource and labor costs.
- ii. People might need help navigating this process, which would also require resources.
- iii. Self-selecting and going through a bureaucratic application process could add an additional burden and limit the dignity-restoration process.
- iv. Without community oversight, the dispossessed could continue to doubt the veracity of the City's efforts to make things right, undermining the dignity restoration process.

Option 2: Pre-determined eligibility

e. Through a Government Appointed Commission

- i. **Description:** This would entail utilizing an existing department or agency within the city or county government for the implementation of compensation benefits. For example, the Civil Liberties Act of 1988 addressed the injustices of Japanese internment during World War II by providing compensation for any Japanese-American who was confined, relocated, or “otherwise deprived of property” as a result of Executive Order 9066.⁴ The Attorney General was charged with “identifying, locating, and authorizing payment to all eligible individuals.”⁵ The City of Detroit could adopt this model, tasking a Commission composed of government and community members with identifying those former property owners who are eligible to receive compensation, and then allowing those individuals to choose which form of compensation is best for them.
- ii. **Methods:** The commission could either be appointed through a general election, such as with the Charter Commission, or it could be formed through a combination of government appointees, community nominations, and volunteers. A similar model to the Resident Advisory Council with the Community Benefits Agreements could be an example to follow. This might look like a “Tax Foreclosure Compensation Commission” formed through each city council member appointing 1

⁴ William J. Aceves, *The Civil Redress and Historical Memory Act of 2029: A Legislative Proposal*, 51 MICH. J. L. REFORM 163, 196 (2017).

⁵ Civil Liberties Act of 1988, 50 U.S.C.A. § 4215 (West).

community member from their district, the executive branch appointing a few representatives of the city, and a set amount of community representatives elected through a self-nomination and voting process throughout a series of community meetings. Once formed, this commission would have the responsibility and authority to identify people eligible for compensation benefits, engage them in deciding which they would like to receive, and coordinating the administration of these benefits with the appropriate agencies.

iii. Pros:

1. This model has the benefit of requiring the perpetrator to be chiefly responsible for making things right, rather than further burdening the victimized population.
2. Additionally, it engages community members as well in the leadership and administration process, thus ensuring more transparency and the potential to repair some of the trust that has been lost.
3. It also does not require active pursuit of compensation by the victims of illegal tax foreclosures themselves, meaning that people are unlikely to self-select out of the process, and the City can save money on communications and application assistance. Instead, those costs would be funneled toward identifying and contacting people eligible for compensation directly.

iv. Cons:

1. Unlike the existing agency option, this process would require additional staffing and development of institutional processes to fulfill the tasks of identifying, contacting, and compensating eligible Detroiters.
2. It is also important to note that illegal tax foreclosures exacerbated mistrust between city government and its citizens, so there are likely to be those unwilling to rely on the City's determination and those who will want to individually apply or appeal a negative eligibility determination.
3. Hence, the Commission could identify people who qualify while also establishing a process for people to self-identify. Another potential issue with this option is that the time taken for forming, training, and developing processes for this commission may delay compensation further.

f. Through City/Community Collaboration

- i. Description:** As an example, The City of Chicago established a \$5.5 million fund in 2015 to compensate victims of Jon Burge—a police officer

who oversaw the systematic torture of African-American suspects.⁶ To administer that fund, plaintiffs' attorneys were given 45 days to provide the city with a list of people they believe to be eligible for cash settlements. The City then had 45 days to contest any names on that list. Disagreements were settled by a third-party arbitrator. The arbitrator must be mutually agreed upon by both sides. Detroit could adopt a similar process where the city and community groups agree upon the list of who is eligible and utilize a third party to help settle any disagreements.

ii. Methods: Community groups, such as the Coalition, would put together an initial list of property owners who should qualify for compensation, and then the City of Detroit can review and either approve or dispute that list. A third-party arbitrator would help facilitate this process. Once the list is agreed upon, a task force could be formed of representatives from both the community group and the city to locate and engage the people eligible for compensation. This would require contacts in each agency that would be providing compensation benefits for the task force to help coordinate between the eligible recipients and the administering agency of the benefit they choose.

iii. Pros:

1. The benefit of this plan is that there are two parties working to create a list of those who should be compensated.
2. Victims will not be responsible for knowing about the compensation program and independently identifying themselves.
3. Additionally, government concerns around fraud and overcompensation can be addressed alongside community concerns of under-compensation through a neutral party.

iv. Cons:

1. This process could be flawed, however, in that the identification process takes a long time, especially if the City and the Coalition have widely divergent understandings of who should be compensated.
2. Additionally, according to the numbers discussed above, this list could be quite extensive and at a scale that will be difficult to navigate. Locating properties that have been over-assessed and illegally foreclosed upon is different from actually locating the people who experienced this trauma and have been displaced as a result. This would require a clear agreement on the eligibility qualifications as well as an allotment of time to both agree on the list and then to reach out to the potential recipients.

⁶ Fran Spielman, *City Council committee approves \$5.5 million in reparations for Burge torture victims*, CHICAGO SUN-TIMES, (May 5, 2015), <https://chicago.suntimes.com/news/city-council-committee-approves-5-5-million-in-reparations-for-burge-torture-victims/>.

Option 3: Community Review Board

- g. Description:** This option would likely exist in concurrence with Options 1 or 2, providing oversight and guidance through a community review board. The board would oversee government actors as they carry out eligibility determinations and compensation. Citizen review boards of police departments offer some models as to how this review process can occur.

These boards serve citizens dissatisfied with an investigation by independently reviewing the decision and making recommendations.⁷
- h. Methods:** They are typically appointed by the mayor or city council, but could also be partially elected at community meetings, such as with the Resident Advisory Councils. The review board should have equal participation throughout the city's districts and should also be composed of people who have experienced over-assessment, tax foreclosure, and/or are eligible for HPTAP. The administering body, be it an existing government agency or an appointed commission would have reporting requirements to the community review board at an agreed-upon level of frequency. There would need to be a process created for grievances or considerations for the community review board to bring their concerns or ideas to the administering body.
- i. Pros:**

 - i.** With community representatives integrated into the process, applicants should be assured that any of the administrative impulses that lead to illegal foreclosures in the first place will be monitored.
 - ii.** This could also be a healing and dignity restoration process for people impacted by illegal foreclosures to help repair not only their own loss but their community's as well.
 - iii.** This option should be seriously considered regardless of which administrative process is chosen, as it can be incorporated into the other options and helps restore democratic participation and power within the community.
- j. Cons:**

 - i.** Community review board members would have to be educated, which entails time and costs. Although bureaucrats hired to work on these issues would probably also require education, hopefully they carry some pre-existing knowledge or expertise that would keep those costs down compared to community members' needs.
 - ii.** The success of such a review board is also contingent on how much trust the community itself places in the board, which is closely related to the selection process.
 - iii.** The trust in the board will also have to do with the capacity given to them. They will need to have some sort of real authority over the decisions made

⁷ U.S. DEP'T OF JUSTICE, CITIZEN REVIEW OF POLICE: APPROACHES AND IMPLEMENTATION 7 (2001), <https://www.ncjrs.gov/pdffiles1/nij/184430.pdf>.

regarding tax foreclosure compensation in order for this to be a feasible and worthwhile undertaking.