

The Challenge of Concentrated Poverty and Development in Areas of Opportunity



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Housing Credit Conference

Richmond, Virginia

September 22, 2016



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Fair Housing Act



- Prohibits Discrimination Because Of:
- Race, Color
- National Origin
- Religion
- Sex/Gender
- Handicap
- Familial Status



Discriminatory Housing Practices

- Overly restrictive codes including land-use and zoning ordinances
 - Spatial requirements
 - Definitions of “family”
 - Certification or hearing requirements
 - Neighbor notification requirements
 - Health and safety rules
 - Restrictive covenants
 - Special Use Permits



Segregation Puts a Target on the Backs of Communities of Color

- Poor Housing
- Failing Schools
- Disconnection from Employment
- Inadequate Transportation
- High Crime
- Poor Health Outcomes
- Diminished Social Capital
- Declining Home Equity



Segregation Permits Discriminators to be More Efficient

- Steering
- Blockbusting
- Redlining
- Predatory Lending
- Equity Stripping
- NIMBYism
- Where to disinvest
- Where to gentrify?
- Discriminatory zoning
- Discriminatory building standards
- Discriminatory refusal of municipal services
- Environmental racism





AFFH Statutory Authority

- FHA requires HUD to “administer [housing] programs...in a manner affirmatively to further the policies of [the Fair Housing Act],” including the general policy to “provide, within constitutional limits, for fair housing throughout the United States.”
 - 42 USC §3608(e)(5).



Refraining from Discrimination is Not Enough

- “...every court that has considered the question has held or stated that Title VIII imposes upon HUD an obligation to do more than simply refrain from discriminating (and from purposely aiding discrimination by others)...This broader goal [of truly open housing] ... reflects the desire to have HUD use its grant programs to assist in ending discrimination and segregation, to the point where the supply of genuinely open housing increases.”
 - *NAACP v. Sec’y of Housing and Urban Development*, 817 F.2d 149, 155 (1st Cir. 1987).



Final AFFH Rule

- The Fair Housing Act “directs HUD’s program participants to take significant actions to overcome historic patterns of segregation, **achieve truly balanced and integrated living patterns**, promote fair housing choice, and foster inclusive communities that are free from discrimination.” 80 Fed. Reg. 42272 (July 16, 2015)



Tax Credits and Other non-HUD Funds are Included in the Assessment

- Program participants, including States, will be required in the Assessment to analyze data on the location and occupancy of affordable LIHTC units and to consider the impact of a QAP on fair housing issues in their jurisdiction.
- Use of other funds for housing, transportation, infrastructure may play a role and should be considered



Both/And Solutions

- “A balanced approach would include, as appropriate, the removal of barriers that prevent people from accessing housing in areas of opportunity, the development of affordable housing in such areas, effective housing mobility programs and/or concerted housing preservation and community revitalization efforts.” 80 Fed. Reg. 42279.



Segregation

“Segregation” “means a condition, within the program participant’s geographic area of analysis.... in which there is a high concentration of persons of a particular race, color, religion, sex, familial status, national origin, or having a disability or a type of disability in a particular geographic area when compared to a broader geographic area.” 24 C.F.R. § 5.152



“Integration”

- “Integration” “means a condition, within the program participants geographic areas of analysis, as guided by the Assessment Tool, in which there is not a high concentration of persons of a particular race, color, religion, sex, familial status, national origin, or having a disability or a type of disability in a particular geographic area when compared to a broader geographic area.” 24 C.F.R. § 5.152



The Focus

- The rule identifies categories of analysis that contain fair housing issues that program participants will assess:
 - Patterns of integration and segregation
 - Racially or ethnically concentrated areas of poverty
 - Disparities in access to opportunity
 - Disproportionate housing needs
 - Publicly supported housing analysis
 - Disability and access analysis
 - Fair housing resources



Resources

- Relman, Dane & Colfax AFFH Page:
<http://www.relmanlaw.com/affh/index.php>
- Smyth, Allen & Schnaith, “The Fair Housing Act: the Evolving Regulatory Landscape for Federal Grant Recipients and Sub-Recipients,” 23 *Journal of Affordable Housing* 231 (Feb. 2015).



Resources

- Schwemm, “Overcoming Structural Barriers to Integrated Housing: A Back-to-the-Future Reflection on the Fair Housing Act’s ‘Affirmatively Further’ Mandate,” 100 KY. L.J. 125, 137–44 (2011–2012)
- Michael Allen’s AFFH Presentation for FHCO:
<https://vimeo.com/user25658681/review/100159910/2ec832ee0e>
- HUD AFFH page:
http://www.huduser.gov/portal/affht_pt.html#affh



Resources

- Allen, *No Certification, No Money: The Revival of Civil Rights Obligations in HUD Funding Programs*, in *Planning Commissioners Journal*: <http://www.relmanlaw.com/docs/WestchesterArticle.pdf>
- Allen and Gurian, *Making Real the Desegregating Promise of the Fair Housing Act: “Affirmatively Furthering Fair Housing” Comes of Age*, in *Clearinghouse Review*: [http://www.relmanlaw.com/docs/Clearinghouse Article on Westchester.pdf](http://www.relmanlaw.com/docs/Clearinghouse_Article_on_Westchester.pdf)