

Expanding Opportunity

Talking about HUD's Affirmatively Furthering Fair Housing Regulations

Background:

This year, the United States Department of Housing and Urban Development (HUD) will issue regulations¹ to better enforce and apply the Fair Housing Act (“the Act”) across our nation. This fair housing rule is an important tool for addressing America’s growing racial and ethnic inequality, an alarming trend rooted in our history of segregation, and one that threatens our national prosperity. In a country where zip code matters more than genetic code in determining life expectancy², this rule will help communities understand the importance of *place* in promoting or prohibiting opportunity. It provides jurisdictions with the tools they need to address barriers to fair housing and expand opportunity.

Where you live determines a lot about how you live: the schools your children attend, the jobs you have access to, the transportation system you rely on, the quality of your physical environment, your access to grocery stores and other businesses, the level of violent crime in your community, and a host of other factors. Where you live has a big impact on how your life unfolds, and that varies tremendously by neighborhood. The Fair Housing Act helps ensure that all people – regardless of race, ethnicity, family status or disability – have a range of choices about where to live, and that all neighborhoods are good places to live, regardless of the demographics of their residents.

Congress, when it passed the Fair Housing Act, recognized that government policies, along with private practices, had locked many people of color into poor, racially isolated communities. To overcome this enduring legacy of government-sponsored segregation, the Fair Housing Act included a requirement that HUD and state and local governments that choose to receive federal funds must administer their programs and activities in a way that expands access to opportunity for all.

This provision of the Act—known as “affirmatively furthering fair housing”—aimed to undo discriminatory housing policies and remedy the harm they caused, but it has been largely unenforced. The forthcoming fair housing rule will clarify this existing mandate and provide a robust toolkit for jurisdictions to use to identify and address barriers to fair housing in their communities.

This memo offers communications guidance for talking about the new regulations, and fair housing generally, with a range of audiences. It draws on available opinion research, practical experience, and communications principles.³

Themes to Emphasize

- **An Important Step in Expanding Opportunity for All**
- **A Tool to Combat Growing Inequality**
- **Making Sure No Communities are Left Behind**
- **Diversity and the Common Good**
- **Topple Barriers**
- **Accountability and the Public Trust**

¹ www.federalregister.gov/articles/2013/07/19/2013-16751/affirmatively-furthering-fair-housing; www.regulations.gov/#!docketDetail;D=HUD-2013-0066

² Marks, James, "Why Your ZIP Code May Be More Important to Your Health Than Your Genetic Code", April 23, 2009, available at <http://www.rwjf.org/en/library/research/2009/04/why-your-zip-code-may-be-more-important-to-your-health-than-your.html>

³ For a summary of public opinion research on housing, homeownership, and the American Dream, see Public Opinion on Opportunity and the American Dream, Homeownership, and Housing, opportunityagenda.org/public_opinion_opportunity_and_american_dream_homeownership_and_housing_0.

Themes to Emphasize:

We recommend that communications on HUD's AFFH regulations emphasize the following themes:

An Important Step in Expanding Opportunity for All: Access to a safe and affordable home near quality schools, transportation, and jobs is basic to the American Dream and to our nation's future. Unequal access to vital community resources results in unequal access to opportunity, and undermines our prosperity and success as a nation. Segregation and racially concentrated poverty conflict with long-established public policy as well as our shared national values for access to opportunity. This proposed rule is an important step forward in America's pursuit of greater and more equal opportunity for all.

A Tool to Combat Growing Inequality: The economic gulf between rich and poor has grown at an unprecedented rate over the past several decades. Although productivity has grown steadily since the 1980s, wage growth has been stagnant and the racial wealth gap has grown tremendously. These trends, coupled with the economic damage wrought during the housing crisis and the Great Recession that resulted, have made our society less equal and have threatened our collective prosperity. The AFFH rule provides a framework that will help decision-makers plan for using their housing and community development resources in a way that ensures fairness and equity for all. This, in turn, will help stem the growing trend of inequality.

Making Sure No Communities are Left Behind: The AFFH Rule will advance opportunity in America by shaping investments in housing, transportation, environment, health, education, infrastructure, and economic development. Implementation of this rule will help all our communities make progress toward the goals of achieving housing opportunity, overcoming historic patterns of racial and other segregation, and increasing public investment in areas of highly concentrated poverty.

Diversity and the Common Good: The AFFH rule is a necessary step towards clarifying and strengthening the federal government's obligation to further fair housing. Housing choice – especially for low-income communities and communities of color -- is a critical component of equitable and economically prosperous regions. When it comes to building strong communities, we're all in it together.

Topple Barriers: When localities seek federal taxpayers' funds to strengthen their communities, it's only right that they must take specific steps to protect fair housing. That means addressing discrimination and toppling barriers to opportunity for all their residents.

Accountability and the Public Trust: Entities that choose to seek federal taxpayers' funds for housing and community development projects have an obligation to protect fair housing and expand opportunity for all. This rule holds recipients of HUD funding accountable to that promise, while giving them the tools and information to do so.

The Fair Housing Narrative:

Like other fair housing matters, these regulations should be framed in terms of America's interest in **protecting equal opportunity** and **freedom from discrimination** for everyone, a responsibility that **benefits all of us** and is crucial to **a prosperous future in an increasingly diverse nation and world**. We should describe as **common sense** the notion that public investment in our communities should be consonant with our values – inclusion, equal access to opportunity, and diversity as a national strength.

Our communication on this issue can make clear the connection between ensuring objective and effective approaches to community development that expand opportunity for everyone and creating concrete benefits

for the entire community. For example, research has shown that diverse regions have economies that are more robust.⁴ In addition to the cultural, educational, and employment benefits of diversity to community members, the overall community reaps economic and business benefits by fostering inclusion.⁵

Moreover, we should make visible the ongoing structural and institutional barriers to fair housing—like unreasonable zoning restrictions, inadequate affordable housing, and the legacy of residential segregation,—that limit the options of all Americans while especially burdening people of color, people with disabilities, and families with children.

Sample Messages:

General Messaging

- Where you live has a big impact on how your life unfolds, and that varies tremendously by neighborhood. This rule helps ensure that all people – regardless of race, ethnicity, family status or disability – have a range of choices about where to live, and that all neighborhoods are good places to live, regardless of the demographics of their residents.
- It's been the law for more than 40 years that anyone who utilizes federal funds must do so in a way that considers barriers to fair housing. This rule provides a flexible framework and the necessary data to comply with this existing mandate.
- This rule gives jurisdictions the tools to identify barriers to fair housing and come up with their own solutions to the unique problems they face.

Theme 1: An Important Step in Expanding Opportunity for All

- Access to a safe and affordable home near quality schools, transportation, and jobs is basic to the American Dream and to our nation's future.
- This rule provides a framework to help local jurisdictions use their federal funds in a way that creates opportunity for everyone, including communities of color, families with children, and people with disabilities.
- The AFFH rule provides a framework that will help decision-makers plan for using their housing and community development resources in a way that ensures fairness and equity for all.

Theme 2: A Tool to Combat Growing Inequality

- This new fair housing rule is an important tool for addressing America's growing racial and ethnic inequality, an alarming trend rooted in our history of segregation.

⁴ In a recent analysis of 118 US metropolitan areas, researchers found that regions with a higher degree of racial inclusion have higher regional economic growth (2006, 42). In two follow up reports, which analyzed 136 metropolitan areas, the "racial inclusion and income equality" indicator was the only one used that was associated with expansion in all four measures of economic growth. - Dashboard Indicators for the NorthEast Ohio Economy (Eberts, Erickcek, Kleinhenz 2006) www.clevelandfed.org/Research/Workpaper/2006/wp06-05.pdf; An Update of the Regional Growth Model for Large and Mid-Size U.S. Metropolitan Areas: Northeast Ohio Dashboard Indicators (Austrian, Lendel, Yamoah 2007)

urban.csuohio.edu/publications/center/center_for_economic_development/dashboard_report_final_0807.pdf; Regional Dashboard of Economic Indicators 2008: Comparative Performance of Midwest and Northeast Ohio Metropolitan Areas (Austrian, Lendel, Yamoah 2008) engagedscholarship.csuohio.edu/cgi/viewcontent.cgi?article=1130&context=urban_facpub

⁵ Racial diversity is associated with increased sales revenue, more customers, greater market share, and greater relative profits. Herring, Cedric. "Does Diversity Pay?: Race, Gender, and the Business Case for Diversity." *American Sociological Review* 74.2 (2009): 208-24. *JStor*.



- Recent events in Ferguson, New York, and Baltimore underscore the need for policies that take into account the long legacy of segregation and unequal treatment in this country.
- AFFH helps decision-makers understand segregated living patterns and create local solutions that address local issues.

Theme 3: Making Sure No Communities are Left Behind

- The AFFH Rule will advance opportunity in America by shaping investments in housing, transportation, environment, health, education, infrastructure, and economic development.
- AFFH will help all communities make progress toward the goals of achieving housing opportunity, overcoming historic patterns of racial and other segregation, and increasing public investment in areas of highly concentrated poverty.
- In a country where zip code matters more than genetic code in determining life expectancy, this rule will help communities understand the importance of place in promoting or prohibiting opportunity.

Theme 4: Diversity and the Common Good

- Housing choice – especially for low-income communities and communities of color -- is a critical component of equitable and economically prosperous regions.
- As our population becomes more diverse, we all have a stake in making sure that each of us has a fair chance to flourish and prosper. Policymakers must take proactive steps to ensure that this happens.
- The more equitable access to opportunity that the rule creates will help ensure that our country's increasing diversity is a source of strength and position us to be more competitive in the global economy.

Theme 5: Topple Barriers

- The Fair Housing Act was intended to remove all barriers to fair housing, whether from intentional bigotry or bad practices and policies.
- The AFFH rule will provide valuable data to inform the decisions of policy-makers, including demographic trends for cities, towns, regions and states; where concentrated poverty exists; and where segregation persists or is growing.
- When localities seek federal taxpayers' funds to strengthen their communities, it's only right that they must take specific steps to protect fair housing. That means addressing discrimination and toppling barriers to opportunity for all their residents.

Theme 6: Accountability and the Public Trust

- Entities that choose to seek federal taxpayer funds for housing and community development projects have an obligation to protect fair housing and expand opportunity for all. This rule holds recipients of HUD funding accountable to that promise, while giving them the tools and information to do so.
- This rule is an important step forward for equal opportunity. It makes clear that states, cities, towns, and counties that seek federal taxpayer funds for public initiatives must consider fair housing in development to ensure that you can choose where to live—no matter what you look like, what accent you have, or whether you have children or a disability.

- AFFH has served the country well by addressing biased mortgage lending practices, insurance redlining, discriminatory zoning ordinances, and other obstacles to equity. However, HUD has never set out the rules for applying AFFH through regulation, which is the clearest statement that an agency makes of its understanding of the law. It's important that HUD is now providing that level of clarity for individuals, businesses, and public institutions.

Countering the Opposition:

Opponents have described the proposed AFFH rules as “social engineering,”⁶ “big government,”⁷ and “forced racial integration.”⁸ With the public and the media, it is important to *avoid* arguing within those frames, but rather, to describe the responsibility to affirmatively further fair housing and the resulting benefits to the entire community using our own. For example:

- “It’s common sense that when we can topple unnecessary obstacles to equal opportunity, we should do that. That’s core to who we are as Americans, and it strengthens all communities.”
- “We’ve made a lot of progress as a nation toward equal opportunity for all. But we still have a distance to go. Removing unnecessary barriers to equal opportunity like antiquated zoning rules or concentrating residents in segregated neighborhoods is the smart thing to do, as well as the right thing to do.”
- “This is a matter of basic government accountability to the law. Cities and towns don’t have to seek HUD or federal funds for their projects, but when they do, they have to further fair housing.”

Possible Answers to Frequently Asked Questions

Q: Why do we need another regulation?

A: It’s been the law for more than four decades that when a locality chooses to receive HUD funds, it has an obligation to further fair housing proactively. However, many state and local governments historically have not lived up to that promise. Examples include St. Bernard Parish, Louisiana; the State of Texas; Joliet, IL; Westchester County, NY; the State of New Jersey; and Sussex County, DE, among others. All of these jurisdictions sought and received millions in taxpayer dollars, but failed to take the necessary action to foster fair housing. Some other local governments have wanted to comply, but felt they lacked the specific information and guidance to do so. This regulation addresses both types of problems by providing clear rules and also new information and guidance.

Q: Why are fair housing regulations important?

A: Overcoming unnecessary and unequal barriers to housing is crucial to ensuring equal opportunity for all and to building strong communities. Thanks to HUD’s action, we can be much more confident that our national progress will continue.

Q: How does the obligation to affirmatively further fair housing matter benefit all of us?

A: The chance to affirmatively further fair housing connects all communities to greater opportunity, which benefits both individuals and their communities. Individuals receive specific cultural, educational, and employment opportunities from more inclusive and diverse communities, and those communities benefit as well. Diverse and vibrant communities experience economic benefits, as do the businesses within

⁶ Townhall.com, “*In the Name of Diversity, Social Engineering Coming to Communities Everywhere,*” <http://townhall.com/tipsheet/katiepavlich/2013/07/23/in-the-name-of-diversity-social-engineering-coming-to-your-community-n1647121>

⁷ Ibid

⁸ Investor’s Business Daily editorial, “*HUD Launches Scheme To Racially Diversify Suburbs,*” <http://news.investors.com/ibd-editorials/072213-664703-hud-maps-suburbs-in-new-diversity-project.htm>

those communities. Furthermore, your zip code should not determine your chances in life. Creating opportunities of choice where everyone has a fair shot upholds our most deeply-held national values.

Q: Times are tough. What if our county/locality can't afford to comply with these new requirements?

A: These regulations don't impose new obligations, they just explain in greater detail the options that localities have for living up to the commitment that they've already made. Moreover, by providing new sources of data and guidance, they should make it easier and often less costly to comply. In the end, though, it's important to remember that governments that choose to receive HUD funds have to be accountable for advancing fair housing in their activities.

Q: Isn't this just unwanted social engineering and forced political correctness?

A: This rule says that if a locality chooses to seek federal taxpayer funds, it has to uphold the basic American principle of equal opportunity through specific actions and accountability. Fair housing is a widely-held value in our nation, and it's been the law of the land for over 45 years.

Q: This sounds like a huge bureaucratic burden for understaffed local governments:

A: This rule clarifies a longstanding obligation to foster fair housing. Moreover, it significantly eases the burden on localities by providing the data and guidance that local governments need to fulfill their responsibilities.

Q: Won't this rule overburden small public housing authorities (PHAs) that have small staffs?

A: The rule, and the tools that accompany it, will actually make it easier for PHAs to fulfill their existing fair housing obligations. HUD has estimated that, for PHAs and other agencies covered by the rule, it will take one person one week per year to carry out their responsibilities. The rule also encourages small PHAs to work together with other entities to do joint fair housing planning. PHAs that take this path will likely have to spend even less staff time on this important job.

Q: How will the forced rezoning of our communities impact us?

A: Affirmatively furthering fair housing is not "forced rezoning," it is a clarification of the longstanding obligation to proactively further fair housing when a locality chooses to receive HUD funds.

Q: Why is the current administration using executive action to force the AFFH regulation on communities?

A: The affirmatively furthering fair housing obligation is a long-standing requirement for all jurisdictions receiving federal housing and/or community development funding. It is also a requirement of all public housing authorities. With this regulation, HUD is simply using its existing authority under the Fair Housing Act to fulfill its responsibility to implement the law. The current system is vague and ineffective, as GAO pointed out in its 2010 report. The new rule provides greater clarity and guidance and sets up a more straightforward process for compliance.

Q: Does the AFFH regulation have hidden costs, and hurt homeowners in unanticipated ways, like increasing property taxes?

A: The AFFH regulation does not have any hidden costs and does not call for any type of tax hike. The regulation does not represent any new obligations for cities or jurisdictions. It simply gives jurisdictions the clear guidance they need in order to fulfill their existing fair housing obligations. If your city never had to increase property taxes in the past to receive federal funds from HUD, it is unlikely that your city will need to do so now to continue receiving federal dollars.

Q: Aren't there other ways to increase affordable or fair housing, like through job creation?

A: First, let's make clear that affordable housing and fair housing are two completely different concepts. Affordable housing involves expanding housing choices for persons who are low income. Fair housing involves removing barriers to housing access irrespective of income or housing costs. While there may

be some overlap, they are not one and the same. That being said, there are many ways to expand fair housing and access to opportunity. Job creation may be one, and there are many others, as well. When communities perform a thorough assessment of fair housing barriers, they will undoubtedly find the need for a variety of solutions that will expand opportunities and make the community more viable. This rule helps communities identify local solutions to local problems.

Q: What if we don't want our suburban communities to "urbanize"?

A: The AFFH regulation does not force suburban communities to "urbanize", rather it asks jurisdictions to identify barriers to fair housing and to develop remedies that will enhance and strengthen the community by promoting access to equal housing opportunities.

Q: Why should the government decide who should live where?

A: It was government decisions made over many years at the federal, state and local levels that led to segregation to begin with. For example, early policies of the Federal Housing Administration (FHA), which fostered suburban development across the country, ensured that those developments would be open to white residents only, and denied people of color access to safe, affordable, government-insured mortgage loans. This set in motion a tremendous disparity in wealth accumulation that is still evident today, and limits the ability of people of color to buy a home, afford a college education, start a business, weather economic crises, and fund retirement. Government policies also influence the location of subsidized housing, much of which is concentrated in poor communities of color with struggling schools, few jobs, exposure to environmental hazards, limited access to healthy food, high levels of violent crime and other detrimental characteristics. This rule sets us on a path for government to make decisions that provide more equitable access to opportunity and benefit us all.

Challenges and Opportunities Related to This Rule

Challenges the rule addresses

- **Persistent segregation.** Although we have made some progress, we remain a highly segregated society. In 1980, the average white person lived in a neighborhood that was 88% white. By 2010, that number had declined, but was still very high at 77%. In 1980, the average black person lived in a neighborhood that was 62% black and 31% white. By 2010, the average black person's neighborhood was 48% black and 34% white. Averages don't always tell the whole story, and maps of most of our major cities illustrate how segregated our society remains.
 - Concentrated poverty is increasing, as well, and disproportionately affects people of color. The number of high-poverty census tracts – tracts with poverty rates of 40% or more – increased by 50% between 2000 and 2011. These 3,764 tracts are home to more than 11 million people, nearly four percent of the US population. And the residents of these neighborhoods are disproportionately of people of color. Nationwide, the population of these high-poverty areas is 26% White, 37.4% Black, and 30.2% Hispanic.⁹
 - People with disabilities also face segregation and often have a limited set of housing choices available to them, particularly housing that is both affordable and accessible. Many people with disabilities live in segregated settings - such as institutions, adult care homes, large group homes, assisted living facilities, and homeless shelters - that leave them isolated from others in their communities and limit their access to opportunity. Approximately 2 million non-elderly adults

⁹ Jargowsky, Paul A., "Concentration of Poverty in the New Millenium: Changes in Prevalence, Composition and Location of High Poverty Neighborhoods." Report by the Century Foundation and Rutgers Center for Urban Research and Education, December 17, 2013.

- with disabilities are either living in institutions or other facility-based congregate settings.¹⁰ This runs counter to the vision of Congress in passing both the Fair Housing Act, which prohibits discrimination against people with disabilities, and the Americans with Disabilities Act (ADA), which establishes community integration for people with disabilities as our national policy.
- Segregation is not the result of self-selection, but rather the legacy of actions and policies taken by federal, state and local governments (as well as private individuals and institutions) over many decades. It will take a different set of actions and policies to undo its effects.¹¹
- **Growing inequality.** People of color are falling behind according to many measures: educational attainment, employment, health, income, homeownership and others.
 - The racial wealth gap is also growing. According to the Urban Institute, “In 1963, the average wealth of white families was \$117,000 higher than the average wealth of nonwhite families. By 2013, the average wealth of white families was over \$500,000 higher than the average wealth of African American families (\$95,000) and of Hispanic families (\$112,000). Put another way, white families on average had seven times the wealth of African American families and six times the wealth of Hispanic families in 2013.”¹²
 - **Place matters.** All of this is related, in part, to where people live. For example, recent research has found that over the last decade, the number of jobs within commuting distance of people in poor communities and communities of color has decreased, especially in suburban communities which are seeing increasing poverty and growing numbers of people of color.¹³
 - As our population becomes more diverse, we all have a stake in making sure that each of us has a fair chance to flourish and prosper. Although jurisdictions receiving federal housing and community development dollars should spend those funds in ways that promote greater opportunity and prosperity, this does not always happen.
 - **Change is needed.** HUD’s approach to fair housing has not worked to solve these problems. This was highlighted in a 2010 report from the Government Accountability Office, which raised questions about the effectiveness of the current fair housing planning process for helping jurisdictions identify and address barriers to fair housing. GAO suggested that this problem was caused by HUD’s limited regulatory requirements and oversight in this area.¹⁴

¹⁰ Cooper, Emily, Ann O’Hara, Nikki Singer, and Andrew Zovistoski, “Priced Out in 2012: the Housing Crisis for People with Disabilities.” Technical Assistance Collaborative and Consortium for Citizens with Disabilities, Housing Task Force. May, 2013.

¹¹ Richard Rothstein, of the Economic Policy Institute (EPI), has written extensively about the government actions that led to our current patterns of segregation. See, for example, “Modern Segregation,” “The Making of Ferguson: Public Policies at the Root of its Troubles,” and “From Ferguson to Baltimore: The Fruits of Government-Sponsored Segregation.” All are available on the EPI website at www.epi.org.

¹² Urban Institute, “Nine Charts about Wealth Inequality in America,” February, 2015. Available at <http://datatools.urban.org/Features/wealth-inequality-charts/>.

¹³ Kneebone, Elizabeth and Natalie Holmes, “The growing distance between people and jobs in metropolitan America.” The Brookings Institution, March, 2015. Available at file:///S:/Public%20Policy/AFFH/AFFH-Related%20Reports/The%20Growing%20Distance%20Between%20People%20&%20Jobs%20(Brookings%20March%202015).pdf.

¹⁴ GAO 10-905, “HUD Needs to Enhance its Requirements and Oversight of Jurisdictions’ Fair Housing Plans.” Washington, DC, September, 2010.

Opportunities the rule presents

- **Deeper understanding.** The new rule will help jurisdictions better understand the segregation-related challenges they face by giving them a framework for analyzing local conditions, including who lives where and how different neighborhoods fare in terms of access to schools, jobs, transportation, a healthy environment and other factors.
- **Better coordination.** The rule encourages jurisdictions to consider their housing and community development planning and expenditures in the broader context of their planning for other important community elements, including transportation, education, infrastructure, economic development and the like. It also encourages them to look at the trends inside their jurisdictional borders in the context of what's happening in the broader region.
- **Less burden.** HUD will reduce the burden jurisdictions bear in conducting this type of analysis by providing them with data, analytical tools (including mapping capacity) and technical support. Jurisdictions will be encouraged to use any additional data they may have that will help clarify their assessment of what is and isn't working in their communities.
- **Clearer expectations.** The rule clarifies HUD's expectation that expanding access to opportunity includes *both* directing needed investments into communities that have been left behind *and* creating new affordable housing options in higher income areas where they may be lacking.
- **Community involvement.** The rule emphasizes the importance of community engagement in the fair housing planning process and calls for jurisdictions to work with community partners to identify barriers to fair housing as well as solutions to expand opportunities.
- **Local flexibility.** While sharpening the analytical framework and highlighting the issues to be examined, the rule allows jurisdictions tremendous flexibility in setting priorities, developing strategies for tackling their top problems, and setting benchmarks for progress.
- **Connecting plans with spending decisions.** The rule creates a direct link between the priorities a jurisdiction identifies as part of the fair housing planning process (the Assessment of Fair Housing or AFH) and its plans for utilizing all of its housing and community development resources (the Consolidated Plan, or ConPlan).
- **More accountability.** It increases accountability by setting the expectation that spending plans spelled out in the ConPlan will reflect the top priorities in the AFH and letting jurisdictions know that HUD will be looking at the progress they make toward meeting the benchmarks they establish.
- **Strength in diversity.** The more equitable access to opportunity that the rule creates will help ensure that our country's increasing diversity is a source of strength and position us to be more competitive in the global economy.

For additional communications advice or information on Affirmatively Furthering Fair Housing, go to:

- <http://www.opportunityagenda.org>
- <http://www.nationalfairhousing.org/PublicPolicy/AffirmativelyFurtheringFairHousing/tabid/4261/Default.aspx>