

The Fight for Fair Housing

Causes, Consequences, and Future
Implications of the 1968 Federal
Fair Housing Act

Edited by Gregory D. Squires

With an Afterword by the
Honorable Walter F. Mondale

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The Mandate to End Segregation

Raphael W. Bostic and Arthur Acolin

Title VIII of the Civil Rights Act of 1968, referred to as the Fair Housing Act (FHA), gave HUD two main mandates: (1) to stamp out illegal discrimination in real estate transactions (including the rental, purchase, or financing of housing) and (2) to affirmatively further fair housing (AFFH). Further acts, including the Equal Credit Opportunity Act of 1974 and the Community Reinvestment Act of 1977 reinforced these mandates, further prohibiting discrimination in issuing mortgages and against minority neighborhoods.

Much energy has been devoted to the first mandate, which requires the Department of Housing and Urban Development (HUD) to respond to complaints of discrimination based on race, color, national origin, religion, sex, familial status, or handicap that are prohibited by the FHA.¹ HUD can respond by investigating the complaint, and, if it determines there is reasonable cause to believe the FHA has been violated, attempts a conciliation with the person the complaint was filed against or, if conciliation fails, recommend that the attorney general file suit. If HUD determines that a state or local agency has similar fair housing powers, the complaint will be referred to that agency for investigation.

A substantive institutional ecosystem has evolved to investigate and address claims of housing discriminatory activities, whether they are actions taken as a result of a discriminatory intent or with a discriminatory impact. At HUD, the Office of Fair Housing and Equal Opportunity (FHEO) and its ten regional offices focus on enforcing the response to complaints of housing discrimination. Following the 1988 amendments to the Fair Housing Act, HUD has had a more direct role in imposing fines and in supporting fair housing organizations in their actions against discrimination (Patterson and Silverman 2011). Through the Fair Housing Assistance Program (FHAP), FHEO provides state and local agencies with training, technical assistance, and grants to support their enforcement of fair housing laws.

Similarly, the Fair Housing Initiatives Program (FHIP) provides support to fair housing organizations and other non-profits that assist individuals who feel they have been discriminated against by helping them navigate the legal system and by implementing testing to establish the presence of discrimination. Over 100 organizations receive support from HUD through the FHIP.

This network of federal, state, and local agencies along with specialized nonprofit organizations has obtained results in establishing discrimination and obtaining settlements and judgments against perpetrators of discrimination, although levels of measured discrimination in audit studies remain high (Oh and Yinger 2015).

From an institutional perspective, the mandate to affirmatively further fair housing has been far less invested in. Section 808(e)(5) of the Fair Housing Act mandates HUD to “administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies” of the act (Fair Housing Act 1968). The AFFH mandate aims to overcome the effect of historical patterns of segregation and prevent the continuation of segregated communities. The implementation of the AFFH mandate also falls within FHEO, but even at HUD, attention to AFFH has been lax. HUD staff generally neither collected nor monitored the analyses of impediments (AI) that detail local plans to affirmatively further fair housing and have since the 1980s been “required” of grantees of key HUD grant programs such as CDBG and HOME (HUD 2015a). Finally, there are a few non-governmental organizations for which affirmatively furthering is a primary objective.

The one-sided approach to the FHA’s mandates has been unfortunate, as each mandate carries a different message about the value of fair housing. The enforcement mandate makes it clear that complying with fair housing is not optional, and that fair housing laws must be obeyed regardless of whether a person, organization, or jurisdiction agrees with them. I call this the “stick” aspect of fair housing. By contrast, the affirmatively furthering mandate places emphasis on the notion that pursuit of fair housing can potentially reduce disparities in access to opportunity—disparities that have kept individual potential locked up and thereby constrained the ability of communities and regions to prosper and grow. Through this lens, fair housing is a tool that can promote economic development function and thus aligns with the objectives of policymakers. In this sense, fair housing is a “carrot” that should appeal to communities.

This one-sided approach has caused many communities and public officials to see fair housing as something that *only* carries risks, and as a consequence many places have been reluctant to seriously grapple with the issues it raises. Indeed, the adversarial perception of fair housing has made even having conversations difficult. The vitriolic debate on fair housing in the Twin Cities of Minneapolis and St. Paul, which is considered a fairly progressive metropolitan area, is a clear example of this (Goetz and Orfield 2011; Goetz 2014; Orfield 2014).² Thus, even those sympathetic to the issues are collectively more timid in pursuing AFFH goals than they might otherwise be. Further, the exclusive focus on enforcement has resulted in a dearth of effort to identify and understand policies that have successfully advanced fair housing goals. We know far less than we should about what works.

Only by reintroducing a serious opportunity for communities to see fair housing as offering positive potential—reintroducing the “carrot” of fair housing—

will we see voluntary pursuit of strategies and investments at scales that hold the promise of creating integrated and stable neighborhoods, reducing the concentration of poor minority households, and creating real access to opportunity for all (Galster 1999). Given the enduring disparities that exist in American communities, the importance of AFFH has perhaps never been greater.

But there is reason to believe that the AFFH mandates are on the verge of a comeback. More than 20 years after the last update of the implementing regulations, HUD released a new regulatory approach to AFFH (HUD 2015b). This new regulation changes the scope of the mandate in important ways, and portends a different focus of community and compliance energy. This chapter discusses history and promise of AFFH. It starts with the initial conception, then turns to the longstanding regulatory implementation of it and its shortcomings, followed by a discussion of the new regulation—how it is different and improved—and its promise.

Backdrop

A major motivation for the passage and implementation of the Civil Rights Acts of 1964 and 1968, in response to long-fought civil society struggles, was to eliminate the race-based institutional, social, and structural barriers that resulted in significantly worse income, employment, and education outcomes for blacks relative to whites³ (Sugrue 1995), and move to stop what the Kerner Commission Report described as a “nation moving toward two societies, one black, one white—separate and unequal” (Kerner 1968). As of 1960, the median income for black families was \$21,730 (in 2016 dollars), less than half the \$43,870 earned by white families (IPUMS 2016). Also as of 1960, 56 percent of black families lived under the poverty threshold, compared to 26 percent of white families, and only 8 percent of black household heads had completed high school, compared with 22 percent for white household heads (IPUMS 2016). Similar trends existed for housing. Despite the post-World War II boom in housing production and a dramatic improvement in housing quality, black households saw only modest changes. By 1960, only 38 percent of black households owned their home, compared to 64 percent of white households. Perhaps of greater concern was the issue of housing quality: 41 percent of black households lived in housing that lacked complete plumbing, piped water, or access to exclusive bathroom and toilets, compared to 12 percent of white households who lived in these conditions. In addition, 17 percent of black households were living in dilapidated housing, compared to 3 percent of white households who lived in such poor conditions (IPUMS 2016).

These outcomes were reinforced by extremely high levels of segregation. Massey (2015) reviews findings on changes in segregation over time based on two common measures, the dissimilarity index and the isolation index, and both show a large increase in segregation in the decades leading up to the 1960s.⁴ Massey (2015) finds that the black-white dissimilarity index in

northern and southern cities was 36 in 1860 and that the average black isolation index in a sample of northern cities was 7. By 1900, these figures had climbed to 69 for the average dissimilarity index in 64 cities and 21 for the average isolation index. By 1960, before the adoption of the Fair Housing Act, the average black-white dissimilarity index was 78 and the average black isolation index 66. Such levels of extreme segregation resulted in the spatial isolation of black families and “marginalize[d] them socially, economically and politically” (Massey 2015: 2).

Deliberate actions at all levels of government by public and private actors drove the escalation of segregation and the resultant high levels of segregation that prevailed at the time the Fair Housing Act was adopted. At the local level, both public and private actions sought to create and reinforce racially segregated neighborhoods. An ordinance by the Baltimore City Council in 1910 was the first to designate certain neighborhoods for black residents, and similar ordinances were passed in a number of jurisdictions (Massey 2015). These were all ultimately struck down in 1917 by the Supreme Court’s *Buchanan vs. Warley* decision, which ruled that the ordinances improperly prevented owners from disposing of their properties as they wished. Notably, its race-based discrimination was not the justification for ruling against the ordinances (Massey 2015). Private organized actions at the community level, such as promoting racially restrictive covenants that prohibited individuals of a given racial group from owning, renting, or occupying a property, were adopted starting in the 1920s. These covenants, once adopted by a majority of a community’s owners, prevented black households from moving into many communities as either owners or renters. The covenants remained in place, particularly in developing suburban communities, until a 1948 Supreme Court decision, *Shelly v. Kramer*, declared them unenforceable (Jackson 1985). Zoning codes were another vehicle that local jurisdictions used (and still use) to exclude minority families. While generally not explicitly racial in nature, exclusionary zoning provisions at the municipal level continue to make it difficult or expensive to build multifamily and affordable units in certain communities. These have had a disparate impact on minority households (Zasloff 2017).

At the federal level, segregation was a policy norm. Among public housing developments built before World War II as part of the New Deal, 236 of the 261 projects subsidized by the U.S. Housing Authority were completely segregated racially, as were 43 of the 49 projects built through the Public Works Administration (Popkin et al. 2003: 181). In addition, the mortgage programs administered by the Federal Housing Administration (created in 1937) and the Veterans Administration after World War II were important factors in the expansion of homeownership and access to new single-family housing in suburban locations (Fetter 2013). It also contributed to disinvestment in minority communities by using a neighborhood’s racial composition as a criterion to evaluate creditworthiness (Wachter and Acolin 2015). Loans originated in neighborhoods identified as being risky were not eligible for Federal Housing Administration and Veteran Administration programs. This practice,

referred to as “redlining,” restricted access to credit for entire minority neighborhoods. Further these programs supported racially homogenous neighborhoods and recommended the implementation of racially restrictive covenants (Jackson 1985). The civil rights movement and the civil rights acts implemented in the 1960s and 1970s were aimed at eliminating institutional racism. Enforcement targeted actions by state and local governments as well as individual actors.

Repairing the existing levels of inequality and segregation requires not only ending discriminatory practices but also taking proactive actions to address the outcomes of past discrimination. As shown in Roithmayr (2014), among others, the legacies of discrimination and racism are state-sponsored disparities in wealth, health, employment, and opportunity that will be locked in unless purposeful steps are taken to counteract the effects of decades of mistreatment. It is this realization that drove the structure of the Fair Housing Act and its “affirmatively furthering” mandate.

How Does One Affirmatively Further Fair Housing?

A question that lies at the crux of the regulation is how exactly does one go about affirmatively furthering fair housing. If fair housing means that a person’s housing choice should not determine their access to opportunity and amenities, then AFFH means taking steps to eliminate or reduce existing disparities in income, housing, and other areas. While there are many possible approaches, including, for example, reparations to families who have been harmed by past discriminatory actions, in the case of the Fair Housing Act, the question is more specific in that it looks to housing-related policies to create incentives and make resources available to address existing disparities.

The response to this question has been driven by a recognition that housing ties individuals to specific places. If those places work well and offer high-quality amenities, then residents can leverage them to advance economically and socially. Unfortunately, the segregated communities in which black households were forced to live did not offer them comparable opportunities to the opportunities afforded to white households. Thus, AFFH strategies must increase the access of people from protected classes living in segregated and disadvantaged communities to the opportunities that our society can provide.

There are two basic ways to increase access to opportunity with the goal of reducing disparities in income, housing, and other areas. One approach involves moving the disadvantaged out of the environments in which their disadvantage arose and was exacerbated. A number of current programs embody this approach, which is often referred to as the “mobility” strategy. The most prominent of these is the housing choice voucher (HCV) program created by the Housing and Community Development Act of 1974. Also known colloquially as the Section 8 program, it provides subsidies to low-income families so they don’t pay more than 30 percent of their incomes for housing. Families who receive an HCV can choose to rent units where the landlord has agreed

to participate in the program and where the rent does not exceed the fair market rent (FMR).⁵ The key feature of the program is that voucher holders pay 30 percent of their income on rent and the government makes up the difference between this amount and the unit's rent.

In contrast to public housing, where all the residents are located in a single site (or small number of sites), the voucher program features a portfolio of available units that is dispersed more broadly across a metropolitan area (Reeder 1985; Olsen 2003). Compared with residents of public housing, voucher holders live in neighborhoods that feature lower poverty rates, higher median incomes, more amenities, and fewer disamenities such as crime (Horn, Ellen and Schwartz 2014; Lens, Ellen and O'Regan 2013). Despite the improved access to better neighborhoods, however, voucher program units still tend to be located in neighborhoods that are less affluent than the average neighborhood in the region (Collinson and Ganong 2013).

This fact was an important impetus for the implementation of several demonstration projects to see if the geographic distribution of people receiving rental assistance could be broadened. Known as the Moving to Opportunity experiment, it was initiated in 1992 and provided a setup to evaluate the effects of housing vouchers on household outcomes. The results of the randomized experiment implemented in 5 public housing authorities (Baltimore, Boston, Chicago, Los Angeles, and New York City) point to the potential of moving to higher quality neighborhoods on economic, educational, and health outcomes, particularly for younger children (Ludwig et al. 2008; Chetty, Hendren and Katz 2016). More recently, experiments with facilitating increased access of voucher holders to more expensive neighborhoods by setting the maximum fair market rent at the zip code level have provided encouraging results (Collinson and Ganong 2013). HUD is in the process of generalizing these experiments through the implementation of the Small Area Fair Market Rents.

The second approach involves investing in those adverse environments to improve them such that they offer their residents increased access to opportunity. The urban renewal programs of the 1950s and 1960s represent an early effort at this, though many of the projects that were implemented via this program were more detrimental than beneficial for minority communities (Bostic forthcoming). More recently, the Community Development Block Grant (CDBG) and HOPE VI programs in addition to the administration's Neighborhood Revitalization Initiative (NRI) have been major federal initiatives pursued with the goal of redevelopment of disadvantaged communities. The CDBG program is a formula block grant program where federal money is given to local governments to be used for projects that affect lower-income communities. Local policymakers have touted the importance of the CDBG program for redevelopment efforts, due in part to the flexibility jurisdictions have in using the funds, though there have been few empirical assessments of its effectiveness (Briggs 2014; Brooks and Sinitsyn 2014).

The HOPE VI program, and its successor, the Choice Neighborhood program, provides funding that facilitates the demolition of large public housing

projects and the redevelopment of those sites into mixed-income developments that are typically less dense than the original projects. Evaluations of the HOPE VI program have largely been positive regarding neighborhood improvement, while the evidence on changes in resident well-being has been more mixed, with advocates and researchers raising serious questions about the displacement effects of the program (Popkin 2004; Goetz 2010; Tach and Emory 2015; Reid 2016; Manzo, Kleit and Couch 2008). The Choice Neighborhood program and the NRI build on the experiences of HOPE VI by seeking to promote investments in neighborhoods across multiple domains (housing, health, education, etc.), with the goal of accelerating progress by coordination across those domains.⁶

While it may seem obvious that both strategies have merits and warrant some degree of support, this has not been how the policy discussions have progressed. Instead, no consensus has emerged regarding the best way to affirmatively further fair housing, and there have been and continue to be heated debates between academics, policy makers, and others in the two strategic camps about how resources devoted to economic development should be allocated (Goetz and Orfield 2011; Newburger, Birch and Wachter 2011; Squires 2015). This is in large part because there is a scarcity of resources. Since there are not enough resources to fully pursue either strategy, any dollars spent on one represents dollars that are not spent fully implementing a person's preferred strategy. This zero-sum construct is quite important and posed serious challenges during the AFFH revision process and, as will be discussed, it will continue to play an important role in the implementation of the rule.

Moving Towards Affirmatively Furthering Fair Housing

The Affirmatively Furthering Fair Housing mandate is part of the focus on mobilizing federal programs implemented by state and local governments to address existing disparities and create what Galster (1999: 123) refers to as "stable, racially diverse neighborhoods." Actions to implement that goal of furthering integration were limited during the decades following the adoption of the FHA. Upon becoming HUD secretary in 1969, George Romney initiated "Open Communities," a program that would have linked HUD funding to the acceptance of affordable housing in order to increase the production of affordable units in areas of opportunity and advance desegregation by race and income (Roisman 2007; Massey 2015). This plan was implemented in trial form in a few selected suburban municipalities, but following local resistance, Romney lost support from the Nixon White House and the initiative was abandoned by September 1970 (Massey 2015).

After this early retreat in implementing the AFFH mandate, HUD made limited attempts to act on it in the following decades. It even supported local housing authorities that were being sued for furthering segregation in public housing projects through the 1970s and 1980s. In 1976, for instance, in *Hills v. Gautreaux*, the Supreme Court considered HUD complicit with the Chicago

Housing Authority for having supported the housing authority in fighting against a lower court decision finding it guilty of promoting racial segregation. A number of other cases across the country followed similar patterns, with HUD supporting local authorities that were accused of practices furthering segregation or even being directly held responsible for implementing policies furthering segregation (Massey 2015).

In the 1980s, new regulations and legal decisions reaffirmed the principle of the AFFH mandate. Starting in 1983, the CDBG statute required grantees to certify that they would affirmatively further fair housing. In 1986, the active nature of HUD's affirmative mandate was reaffirmed in *NAACP v. HUD* as a requirement to "assist in ending discrimination and segregation, to the point where the supply of genuinely open housing increases" (Collins 2010: 2144). In 1988, HUD developed its Fair Housing Review Criteria that defined the requirements to be met by CDBG grantees to meet the AFFH mandate.

HUD moved away from contesting lawsuits against local housing authorities in 1992 and more openly recognized its role in creating and maintaining segregation and discrimination in public housing.⁷ Instead of fighting the claims that housing authorities contributed to further segregation, HUD began "settling the cases by supporting consent decrees intended to ensure fair treatment of all people in its programs" (Galster: 126).⁸ The consent decrees have included provisions consistent with affirmatively furthering fair housing principles, including providing vouchers and counseling to residents of segregated public housing to allow them to choose their neighborhood, developing scattered-site public housing, and managing public housing waiting lists so as to decrease segregation (Galster 1999; Roisman 1999; Popkin et al. 2003).⁹

This shift was coupled with a new effort to implement the AFFH mandate. In particular, in 1992, the Fair Housing Review Criteria that had been created for CDBG grantees in 1988 were clarified and expanded to all grantees of HUD's community planning and development programs as a condition of receiving funding (HUD 1996).¹⁰ And in 1995, HUD implemented a new measure that combined the existing certification requirements for HUD's different programs into one single document: the Consolidated Plan.

In order to obtain the AFFH certification, the Consolidated Plan required local communities to perform an Analysis of Impediments (AI) and identify actions to AFFH (HUD 1996). This requirement was further clarified by the Fair Housing Planning Guide, issued in 1996, which defined the terms of the AI. The requirements included an analysis of the barriers to effective access to housing (both public and private) in communities of opportunity for protected classes as well as strategies and actions to overcome these barriers. Localities were expected to update their AIs at least every 5 years.

The approach depended on local housing agencies developing their own assessment of barriers to fair housing and identifying actions to overcome them. The stated goal of the AI and its associated guidelines was to incentivize local governments to actively implement the AFFH mandate. In a context in which HUD's major policies operated mainly by providing funding to local

grantees who decided how to allocate these resources, requiring local grantees to make commitments to affirmatively further fair housing seemed to be a natural extension of existing policy.

Housing advocacy groups and reports by government agencies raised concerns over the efficiency of this approach. Their concerns were later validated, as a number of serious flaws rendered largely ineffective the implementation of the AFFH mandate through the AI included in the Consolidated Plan. In a 2010 report, the GAO surveyed 441 AIs. It found that 29 percent had been prepared before 2004 and 11 percent before 2000, suggesting that a substantial number of localities were not following HUD's guidelines. It also found that many AIs identified impediments and possible actions to overcome them in a format following HUD's guidelines but that most did not include time frames to implement these actions. In addition, the GAO report found that HUD's lack of review of the AIs and monitoring of actions taken to implement the recommendations contributed to their ineffectiveness by limiting the accountability of grantees. These flaws sparked calls from many circles to overhaul the regulations (Government Accountability Office 2010; Opportunity Agenda 2010).

The 2015 Revised AFFH Regulation

Spurred on in part by the GAO report, the Obama administration decided to revisit the regulations that implement the AFFH mandate. Over a multi-year process led by HUD Secretary Shaun Donovan, the department crafted a new regulation that reflects a new commitment to encouraging positive action by state and local institutions that receive federal funds. The focus of the new regulation returns to the original context of the Fair Housing Act, namely the lack of access to opportunity for minorities and other underrepresented groups. The preamble to the revised regulation calls for three "community performance metrics" by which the success of local fair housing efforts should be judged. The first is whether segregated communities persist over time. In this regard, the preamble specifically points to racially and ethnically concentrated areas of poverty as being of special concern, owing to the considerable evidence showing that residents living in such communities fare far worse than others and that problems in these communities impose significant costs that are borne by the broader society. The second metric is whether there are disparities in access to opportunity due to the absence of important amenities from communities that have significant representation of families in protected classes. The third metric is whether there are acute shortfalls in meeting the housing needs of people in protected classes and if they are increasing, stable, or declining.

The defining feature of the new regulation is the Assessment of Fair Housing (AFH), which is a report that entities covered by the AFFH requirement must complete every 5 years in order to remain compliant with the rule.¹¹ A replacement for the AIs that were ineffective in the prior iteration of the regulation,

the AFH provides a structure that is designed to focus jurisdictions on the metrics of successful furthering of fair housing and access to opportunity and the process that should be followed. The AFH has six elements.

1. *The summary of fair housing issues and institutional capacity* provides an overview of how the jurisdiction has fared in terms of compliance and enforcement. In this section, the jurisdiction documents whether it has violated or not complied with civil rights laws or regulations. It also summarizes the local resources available for enforcing fair housing laws and regulations.
2. *The analysis of data reports on how the jurisdiction fares regarding the key "community performance metrics."* HUD has developed a data tool that allows jurisdictions to create maps and tables that quantify the extent to which their communities experience segregation, racial and ethnic concentrated areas of poverty, disparities in access to opportunity, and disproportionate targeted housing needs.
3. *The assessment of fair housing issues* uses the information that emerges from the data analysis to diagnose the reasons why segregation or any disparities exist. These reasons could range from historic patterns of overt discrimination to poorly performing schools in targeted neighborhoods to a flight of businesses from those neighborhoods, and the jurisdiction's answers are intended to be specific to the local context.
4. *In the identification of local fair housing priorities and goals*, jurisdictions consider the issues that emerged from the data analysis and assessment and develop goals and strategies for addressing the them. Jurisdictions must articulate at least one goal, though they are encouraged to identify multiple goals, and for each goal must discuss the factors that helped cause the fair housing issue and the metric for defining success. In this way, they move toward a theory of change that can shape future investments.
5. *Because of a long history of communities of protected classes not having a voice in planning and investment decisions in many jurisdictions*, the AFH requires that jurisdictions *summarize the efforts directed towards ensuring broad community participation*.
6. *The final section of the AFH calls for jurisdictions to review the progress that has been achieved since submission of the prior AFH.* This section examines the previously articulated goals and strategies and assesses changes in the key performance metrics. Jurisdictions are instructed to identify important macro trends that may have made achievement of the stated goals more or less difficult.

Three features of the new framework deserve specific mention. First, the regulation covers a broader set of institutions than its predecessor. Housing authorities, and even private organizations and private landlords who accept rental assistance, are considered relevant in assessing community activity.¹²

The broader reach of the new regulation increases the potential that a broader set of strategies to advance program goals will ensue.

Second, and along similar lines, the new regulation includes incentives designed to promote local collaboration and an increased attention to more regional solutions. This is noteworthy in two regards. First, it sets a clear signal that the institutions in local communities should be exploring opportunities to work together to maximize their collective efficacy and improve the local quality of life for everyone, but particularly for those who have not historically enjoyed such benefits. In addition, the collaborative approach will acknowledge the regional nature of economic activity, which should result in strategies that are better aligned with the prevailing regional economic strengths.

Third, the revised framework establishes a new review regime. AFH reports must be reviewed by HUD on a strict timeline, and failure by HUD to meet the prescribed deadlines will result in a report being deemed acceptable. This is a marked departure from the past, when jurisdictions whose AIs were not explicitly approved were at perpetual risk of legal action for noncompliance and HUD bore no accountability if they failed to perform. Now HUD, and FHEO in particular, are clearly accountable if the process breaks down at certain points. This new balance in accountability should give jurisdictions some comfort and a willingness to more actively engage in the complete process.

The Promise of the New Regulation

The new AFFH framework, if it works, will mark a new era of community development and inclusion. It is designed to empower groups that have often been left out of the conversation and should generate new types of conversations that produce new solutions in communities across the country. I believe this new approach can work. But success will be achieved only if government, advocates, and citizens capitalize on the opportunities of the framework and overcome its challenges.

Perhaps the most important aspect of the new regulation is its renewed emphasis on access to opportunity. This is important for at least two reasons. First, it returns the focus of affirmatively furthering fair housing to the notion of opportunity and the idea of the investments needed to reduce the disparities in access to opportunity. This is central and should serve as a reminder that the initial objective of the act was to make the American ideal a reality for all lives in the country. Second, it highlights the fact that access to opportunity is about more than just housing. It involves schooling, access to jobs, investment opportunities, recreation, and other aspects of life. This suggests clearly that strategies to increase access to opportunity are likely to require resources beyond those just focused on housing. These include resources for transportation, public safety, education, and other social services. To the extent that communities begin to see these resources in that light, the new regulation will be a success.

A second important innovation that could potentially drive significant improvements for members of protected classes is the new rule's outcome

orientation. The previous framework was limited to process, such that regulators largely verified the process rather than focusing on whether that process produced outcomes that were or were not an improvement. The result was that HUD gave only cursory attention regarding the quality of that process and we saw relatively little improvement on the ground. By contrast, the new AFFH explicitly requires communities to explore whether outcomes are changing. This should spark conversations about the effectiveness of investment strategies in the past, and make it more likely that jurisdictions will change their strategies if they see that outcomes are not improving.

Another important way that the new AFFH regulation will change the conversation at a local level is through the democratizing of information. HUD's new data tool is designed to make it possible for people who do not have technical backgrounds to manipulate data and gain a clear understanding of the issues and difficulties that exist in their communities. This has not been true in the past, which has meant that some members of the community have been at a disadvantage in terms of the discussions about the nature of the problems facing a community and which problems the community should address. The data tool should change this and thereby empower those who have typically not been able to weigh in on the planning process.

The data tool also represents an opportunity for advocates. Armed with the information provided by the maps and data tables, advocates can press communities to not ignore or overlook important challenges that exist for minorities, the poor, and others who have not had a voice—precisely the populations the Fair Housing Act was enacted to protect. In this way, the AFFH regulation can be for housing and community development what the home mortgage disclosure act (HMDA) has been for mortgage lending. HMDA changed the dialogue between banking institutions and community members and customers—advocates armed with data are now able to force a more direct acknowledgment of the existence of disparities in lending that required different policies and actions on the part of banks. Along the same lines, the AFFH data tool may be a vehicle for bringing communities to a different understanding about disparities that results in new policies and actions.

The fourth way that the AFFH process could spur fair housing progress is through its focus on regionalism. Access to opportunity often means having access to an economic engine, but economies do not recognize jurisdictional boundaries. Rather, economies draw upon the labor and capital that is locally available regardless of whether it is in one city or a neighboring community. Because of this, solutions that are based on jurisdictions are less likely to effectively link members of protected classes to the broader economic infrastructure. The main appeal of producing a regional AFFH for jurisdictions is the prospect that the costs of producing the report will be distributed across multiple bodies, thereby lowering the fiscal burden of the AFFH process. The hope is that this prospect will spark regions to adopt a regional approach to thinking about access to opportunity, which would represent an opportunity to better align access to opportunity strategies with the realities of economic

production. This improved alignment should theoretically produce stronger linkages between target populations and economic possibilities.

The regulation's success will depend in large degree on how well HUD plays its part. There are several aspects to this. First, HUD must act as a true partner with jurisdictions as they go through this planning process. This means HUD will have to place its role in encouraging actions to advance fair housing at least on par with its efforts to enforce fair housing laws. As jurisdictions study and assess the state of their communities, there will necessarily be some subjectivity that informs views about what priorities should be and which strategies are most likely to achieve the goals. For HUD to be a true partner, it will have to learn to become comfortable with this flexibility, as well as with the reality that differences of opinion regarding the setting of priorities and the establishment of strategies might be in good faith and not due to discriminatory motives. This tension is most likely to arise when there are debates about whether mobility strategies or redevelopment approaches are most appropriate for a particular context. As we've noted above, this has been a very sensitive issue and emotions can become intense. HUD will need to work hard to maintain balance when considering these issues.

In this context, a concern often raised by fair housing advocates is that communities will see the problems that exist, but then will choose to prioritize solving problems that are less significant or important. While this is a legitimate concern, the magnitude of this problem is likely to be relatively low. In designing the regulation, many communities were visited to probe their willingness to honestly engage in these issues. The response was remarkably positive, with most concerns not focused on the substance but rather on whether HUD could reasonably deliver what it needed to.

Second, HUD must responsibly carry out its role as regulator. A primary responsibility for any government entity with regulatory authority is ensuring compliance. This becomes more difficult as the number of acceptable actions grows, and so there is an impulse to limit the range of acceptable activities to make oversight simpler. HUD must rebuff this instinct. Doing so will go a long way towards building enduring trust with jurisdictions.

Closely related to this is the question of technical assistance. Many jurisdictions will not have a good sense about the policy options they should consider when developing strategies to achieve their goals, and they will undoubtedly turn to HUD for direction. HUD's capacity in this regard is a concern. HUD must ensure that it has sufficient staff to conduct the most basic reviews and rule administration. This requires that enough resources in HUD's budget be allocated to the enforcement of the new AFFH guidelines. Moreover, it is an open question whether HUD currently has the staff-level expertise to provide high-quality support when these questions arise. Many smaller communities do not have the staff and financial resources to develop and implement substantial AFFH plans on their own, nor should they be expected to. These communities will be largely dependent on HUD's ability to support them through the AFFH process and provide them with implementable examples of

best practices in assessing and overcoming barriers to fair housing. HUD will need to purposefully build that capacity in the coming years so it can be a true resource for communities as they go through the AFFH process.¹³

If HUD can succeed along all of these dimensions, it will be a true partner with its jurisdictions and will build ever-deeper trust. If that occurs, we may see some truly creative approaches that reduce disparities in measurable ways.

Conclusion

Despite claims that we are seeing the end of the ghetto (Glaeser and Vigdor 2012), racial and ethnic segregation remains stubbornly high. By 2010, the black-white dissimilarity index was 60 and the isolation index was 45 for blacks, a substantial decline from the 78 and 66 levels measured in 1960 but still stunningly high (Massey 2015). In addition, for Hispanics, the dissimilarity index had increased slightly to 50 (from 46 in 1970) and the isolation index had increased to 47 (from 27 in 1970). The dissimilarity index was stable at 40 for Asians while the isolation index had risen to 20 (from 9 in 1970). At the same time, very large disparities in homeownership, wealth, and educational outcomes continue to persist. For example, in 2011 the median white household had 16 times more wealth than the median black household and 14 times more wealth than the median Latino household (Sullivan et al. 2015).

These data on segregation and opportunity tell a clear story: almost 50 years after the adoption of the FHA, the structural housing market mechanisms that led to residential segregation and disparities in opportunity are still active and operating (Zasloff 2017). Because of its broad reach into virtually every community in America, the AFFH regulation has the potential to be an important tool for making progress in reducing both segregation and existing disparities. May it succeed in realizing this potential.

Notes

- 1 Sex was added as a protected class through the 1974 Housing and Community Development Act and disabilities or familial situation were added as part of the 1988 Fair Housing Amendments Act.
- 2 On one side of the debate, Orfield argues in favor of policies that support mobility of minority and low income households to areas with good educational and employment opportunities and opposes the development of additional affordable housing in low income minority areas. On the other side, Goetz has rejected the approach of moving minorities to white neighborhoods; instead, he argues in favor of developing opportunity in minority areas and does not oppose building more affordable housing in distressed areas (Goetz and Orfield 2011).
- 3 Traditionally, the focus in the U.S. has been on black-white dissimilarity indices and black isolation indices since blacks were the main minority racial-ethnic group, representing 10.5 percent of the population in 1960, compared to 3.2 percent for Hispanics and 0.5 percent for Asians (IPUMS 2016).
- 4 A dissimilarity index captures to what extent the share of a group living in each neighborhood diverges from its share in the overall population. A dissimilarity

index of 0 indicates that the same share of a given group lives in each neighborhood, while a value of 100 indicates that the members of the group all live in one neighborhood and no individuals from other groups live in that neighborhood. It is often characterized as representing the percentage of that group that would need to move in order to achieve an equal distribution across neighborhoods. The isolation index measures the percentage of individuals from a given group living in the neighborhood of the average individual of that group. If individuals from a group are distributed evenly across neighborhoods, the isolation index would equal the share of the total population represented by that group. If the group resided exclusively in one neighborhood, the isolation index would equal 100.

- 5 The fair market rent is estimated as the 40th percentile of gross rent for a given Metropolitan Statistical Area. The amount is adjusted for the size of the property.
- 6 The Low Income Housing Tax Credit is an interesting hybrid program that advances both the mobility and redevelopment strategies. The distribution of tax credit projects is more dispersed across metropolitan areas than public housing, implying that it advances mobility objectives. But the program also features incentives to promote redevelopment of properties located in high-poverty neighborhoods.
- 7 Indeed, as of 1992, "60 percent of public housing developments had 80 percent or more tenants in one racial-ethnic group, and 15 percent had all tenants in one group" (Popkin et al. 2003: 181).
- 8 In cases in which the local housing authorities are particularly reluctant to implement the consent decrees, HUD can seize control, as happened in Vidor, Texas, in 1993 or in Beaumont, Texas, in 2000. This is costly, however, and often has required the protection of U.S. marshals to implement the forced integration and protect minority households. Perhaps not surprisingly, such actions have faced substantial political backlash and have been sparsely used. Local housing authorities have largely retained autonomy in pursuing desegregation strategies (Galster 1999).
- 9 Popkin et al. (2003) analyzed the implementation of 8 consent decrees adopted between 1992 and 1996 in different urban contexts throughout the country (Allegheny County, Buffalo, Dallas, east Texas, Minneapolis, New Haven, New York, and Omaha). They found that "housing authorities faced significant obstacles that impaired their ability to comply swiftly and fully with all of the elements in the consent decree" (Popkin et al. 2003: 180). Some of the obstacles to implementing the consent decrees were structural and difficult to address quickly. These included the racial composition of the public housing waiting list, community resistance to change, inadequate supplies of affordable housing in desirable neighborhoods and the lack of public transportation infrastructure in minority neighborhoods. Other obstacles associated with a lack of capacity could be overcome by improving the training of the housing authority's staff and increasing HUD monitoring of the efforts made by the housing authority to comply.
- 10 These include the Community Development Block Grant (CDBG), Home Investment Partnership (HOME), Emergency Shelter Grant (ESG), and Housing Opportunities for Persons with AIDS (HOPWA).
- 11 The timing for the production of an AFH is linked to the timing of the Consolidated Plan strategic plan or PHA plan deadline, with a requirement that an AFH must be prepared no less than once every 5 years. There is a possibility to amend the timetable via negotiation with HUD (U.S. Department of Housing and Urban Development 2015).
- 12 Landlords are currently not covered by the act, though there was discussion about whether there was a way to accomplish this.
- 13 At a September 2016 forum on the new AFFH regulation held at the MIT Department of Urban Studies and Planning, Jeff Lubell took this point even further by arguing that HUD should work to develop guidance on how to produce an AFH of the highest quality rather than one that meets the minimum standard of compliance.

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