



Advancing research and debate  
on housing, neighborhoods,  
and urban policy

School of Law  
Wagner School of Public Service

March 6, 2018

Regulations Division  
Office of the General Counsel  
Department of Housing and Urban Development  
451 7th Street SW, Room 10276  
Washington, DC 20410-0500

**Re: Docket No. FR-5173-N-15: Affirmatively Furthering Fair Housing: Extension of Deadline for Submission of Assessment of Fair Housing for Consolidated Plan Participants; solicitations of comment**

To Whom It May Concern:

New York University's Furman Center for Real Estate and Urban Policy appreciates the opportunity to submit comments on HUD's extension of deadline for submission of consolidated plan participants' Assessment of Fair Housing (AFH).<sup>1</sup> The NYU Furman Center advances research and debate on housing, neighborhoods, and urban policy by providing academic and empirical research, promoting frank and productive discussions among stakeholders, and providing essential data and analysis to practitioners and policy makers.<sup>2</sup>

The Furman Center has conducted considerable research on residential segregation and the connection between housing and neighborhood conditions, or 'opportunities.' [For a summary of our recent research related to residential segregation, see Appendix A.] We also have researched the relationship between various land use and housing policies and economic and racial segregation. [Again, a list and links to relevant projects are available in Appendix A.] During the 2013-2014 academic year, the NYU Furman Center oversaw the NYU Straus Institute for the Advanced Study of Law and Justice fellowship program. This program brought together eleven scholars from around the world to spend the year at NYU focusing their research on residential segregation and inequality. In September 2013, we convened 60 leading researchers, practitioners, and policymakers for a two-day roundtable to assess the current state of research and policy analysis regarding racial and economic segregation and integration in neighborhoods and schools. On Martin Luther King Day in 2014, the Furman Center launched *The*

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<sup>1</sup> 83 Fed. Reg. 683 (Jan. 5, 2018).

<sup>2</sup> These comments do not represent the institutional views (if any) of NYU, NYU School of Law, or the NYU Wagner Graduate School of Public Service. The Furman Center is grateful for the conscientious research assistance provided by students at NYU School of Law: Nelson Castano, Alexandra Hohausser, Dylan Lonergan, Keith Pulling, and Ian Swenson.

*Dream Revisited*, an on-line platform to bring together leading academics, researchers, practitioners, advocates, and government officials for thoughtful debates about the challenges associated with segregation and to generate the new thinking needed to help address those challenges. Discussion 16 of *The Dream Revisited* specifically focused on HUD's Affirmatively Furthering Fair Housing final rule.<sup>3</sup> On November 29, 2018, the Furman Center hosted a policy breakfast, "New York City's Upcoming Assessment of Fair Housing: Lessons from Other Cities," which featured a moderated panel of experts who have participated in the Assessments of Fair Housing for those early submitters.<sup>4</sup>

In brief, based upon a comparison of 19 of the AIs and AFHs filed by the 28 jurisdictions who were first to file under the new AFH requirements, we find that the public engagement processes used under the AFH requirement were much more robust, along five distinct dimensions: the number of opportunities for public engagement; the inclusiveness of those opportunities; the provision of data for assessing public engagement; documentation and consideration of the public input; and existence of cross-jurisdictional or cross-sector engagement.

HUD should consider the cost to the public of jurisdictions returning to a less robust public engagement process during HUD's AFH delay.

### **The Cost of Delay: Analysis of Impediments versus Assessment of Fair Housing**

In delaying the requirement that consolidated plan participants conduct an Assessment of Fair Housing (AFH), HUD noted that affected jurisdictions must continue to comply with obligations to affirmatively further fair housing, including conducting an Analysis of Impediments (AI) to fair housing choice, the process used prior to HUD's final AFFH rule.<sup>5</sup> The AI process differs substantially from an AFH, and these comments will focus on what is known about a few key differences between the two processes, including some original research conducted by the Furman Center.

#### **Prior studies**

The Government Accounting Office (GAO) conducted a review of the AI process in [2010](#), after collecting 441 AIs and comparing them to HUD guidance, and after meeting with HUD staff across headquarters and 10 field offices.<sup>6</sup> The GAO reported that only 64 percent of program participants appeared to have AIs that were current, and GAO questioned the usefulness

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<sup>3</sup> *A New Approach to Affirmatively Furthering Fair Housing*, Sept. 28, 2015, available at <http://furmancenter.org/thestoop/entry/a-new-approach-to-affirmatively-furthering-fair-housing>, and attached as Exhibit B.

<sup>4</sup> NYU Furman Center. *New York City's Upcoming Assessment of Fair Housing: Lessons from Other Cities*, Nov. 28, 2017, available at <http://furmancenter.org/thestoop/entry/watch-live-new-york-citys-upcoming-assessment-of-fair-housing-lessons-from>

<sup>5</sup> 80 Fed. Reg. 136 (July 16, 2015). Henceforth Final Rule.

<sup>6</sup> U.S. Gov't Accountability Office, GAO-10-905, *Housing and Community Grants: HUD Needs to Enhance Its Requirements and Oversight of Jurisdictions' Fair Housing Plans 4-5* (2010) [hereinafter GAO Report], available at <http://www.gao.gov/new.items/d10905.pdf>.

of many of the AIs that did exist. It concluded that “[a]bsent any changes in the AI process, they will likely continue to add limited value going forward in terms of eliminating potential impediments to fair housing that may exist across the country.” HUD’s own internal analysis in 2009 came to the same conclusion, finding that about half of the AIs it collected for the study were outdated, incomplete or otherwise of unacceptable quality.<sup>7</sup>

The GAO noted that HUD’s regulations do not specify a timeline for updating AIs, detail the content or form of AIs, or even require that AIs be submitted to HUD for review. To address those concerns, HUD’s final AFFH rule requires that AFHs be conducted with a standardized assessment tool and that jurisdictions provide measurable goals with a timeline for achieving them. As part of its justification for postponing the AFH deadline, HUD noted that 35 percent of the first AFHs submitted to HUD were initially not accepted. It failed to note, however, that the GAO and internal HUD studies of AIs had found a similar *or higher* rate of unacceptable AIs, even after the AI requirement had been in effect for many years.

Further, the AFH process requires that HUD give feedback on AFHs that are not accepted. HUD provided such feedback and worked with jurisdictions to resolve deficiencies in their submissions. Ultimately, almost all of the 49 first submissions were accepted. In contrast, with AIs, there is no review or feedback from HUD. Notably, HUD’s 2009 internal report found no evidence that jurisdictions were improving their AIs over time.

The combination of more precise standards, a better assessment tool, and a feedback loop seems to have produced stronger plans, according to MIT’s Justin Steil and Nicholas Kelly who compared the first 28 AFH’s (as modified in response to HUD’s comments on initial submissions) to the AI’s previously conducted by those same jurisdictions.<sup>8</sup> They found that compared to the earlier AIs, the final AFHs included more quantifiable goals as well as more specific policies and programs meant to achieve those goals. Such results, they noted, suggest the rule is working. They concluded, “[T]he non-acceptances provided participants with the opportunity to respond to HUD feedback and to strengthen their final AFHs so as to meet their fair housing obligations. In short, the non-acceptances should be seen as a strength of the new rule not a failure.”<sup>9</sup>

## Public Engagement

An additional distinction between the AI and AFH processes is public engagement: both the extent to which the public is provided avenues for participation throughout the development of the draft analysis, and the extent to which jurisdictions may be held accountable for their engagement with the public, are much clearer for the AFH process than for the AI process. The public engagement required of jurisdictions completing an AI has never been well-understood.

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<sup>7</sup> See Nikole Hannah-Jones, *Living Apart: How the Government Betrayed a Landmark Civil Rights Law*, ProPublica, June 25, 2018, available at <https://www.propublica.org/article/living-apart-how-the-government-betrayed-a-landmark-civil-rights-law>

<sup>8</sup> Justin Steil and Nicholas Kelly, “*Survival of the Fairest? An Analysis of Affirmatively Furthering Fair Housing Compliance*”, *forthcoming*, Housing Policy Debate

<sup>9</sup> Justin Steil and Nicholas Kelly, Snatching Defeat from the Jaws of Victory: HUD suspends AFFH Rule that was Delivering Meaningful Civil Rights Progress, Poverty & Race Research Action Council 26(4) 2017, available at <http://prrac.org/newsletters/octnovdec2017.pdf>

The *Fair Housing Planning Guide*, HUD’s primary resource for jurisdictions compiling an AI, notes, “the Consolidated Plan’s certification to affirmatively further fair housing requires...jurisdictions to undertake FHP [fair housing planning -- the process resulting in an AI]. Since FHP is a component of the Consolidated Plan, the citizen participation requirement for the Consolidated Plan (24 CFR 91) applies.”<sup>10</sup> However, the *Guidance* goes on to note that “HUD does not expect the jurisdiction to follow the strict citizen participation requirements for their **first** [AI]...[but] HUD does expect the jurisdiction to develop an AI that involves and addresses concerns of the entire community.”<sup>11</sup>

This suggests that the Consolidated Plan’s citizen participation requirements would apply to all AIs completed after the first cycle. However, in discussing citizen participation plans for State and Entitlement jurisdictions, the *Fair Housing Planning Guide* “**encourages**...jurisdictions to follow the citizen participation and procedures identified in Subpart B of the Consolidated Plan.”<sup>12</sup> Further, the Guide was only precatory, so jurisdictions did not always follow its suggestions.

Indeed, in describing changes codified in the final AFFH rule, HUD stated:

“By applying the longstanding citizen participation requirements of the consolidated plan and the PHA plan to the AFH, which were not applied to the AI, HUD submits that any serious deficiencies that may be in a proposed AFH or other concerns that members of the public may have about an AFH will be addressed in the citizen participation processes.”<sup>13</sup>

Further, in spelling out the key differences between the AFH and AI processes, HUD noted the specific requirement that “[t]he AFH is subject to the same community participation requirements applicable to the Consolidated Plan or PHA Plan, though updated to incorporate requirements related to the AFH, and that community participation process must occur during the development of the program participant’s AFH.”<sup>14</sup> This includes the requirement that the AFH contain a summary of the public comments and a summary of the comments or views not accepted.<sup>15</sup> In addition to making clear that the citizen participation requirements for the Consolidated Plan apply independently to the AFH process,<sup>16</sup> the final AFFH rule requires jurisdictions to provide a summary of the community participation process specifically for the AFH, and requires that jurisdictions target activity towards the broadest possible audience.<sup>17</sup> In

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<sup>10</sup> U.S. Dep’t Hous. & Urban Dev., FAIR HOUSING PLANNING GUIDE 2-5 (1996), <https://www.hud.gov/sites/documents/FHPG.PDF>.

<sup>11</sup> *Id.*

<sup>12</sup> Final Rule, *supra* note 6, at 2-14.

<sup>13</sup> Affirmatively Furthering Fair Housing, 80 Fed. Reg. 42272, 42315 (July 16, 2015) (codified at 24 C.F.R. Pts. 5, 91, 92, *et al.*).

<sup>14</sup> HUD Exchange, *How does the Assessment of Fair Housing (AFH) compare to the Analysis of Impediments (AI)?*, September 2016, <https://www.hudexchange.info/faqs/2985/how-does-the-assessment-of-fair-housing-afh-compare-to-the-analysis-of/>.

<sup>15</sup> *Id.* at 42315.

<sup>16</sup> Memorandum from Harriet Tregoning, Principal Deputy Asst. Sec. for Comm. Plan. & Dev., U.S. Dept. Hous. & Urban Dev. (Mar. 14, 2016), <https://www.hudexchange.info/resources/documents/CPD-Memo-Incorporating-24-CFR-Part-5-AFFH-into-the-Consolidated-Program-Year-and-Citizen-Participation-Plan.pdf>.

<sup>17</sup> 24 CFR § 5.156 (2018).

addition, the final rule requires that the data used to compile the AFH must be made public, and specifies that at least one public hearing on the AFH must be held before the draft AFH is published for comments.<sup>18</sup> Like HUD, experts in the AI processes also interpreted the final AFFH rule to impose much more specific public engagement requirements than the AI process required.<sup>19</sup>

The proof that the AFH process requires or encourages a more robust public engagement process, however, lies in the actual implementation. To better assess whether the AFH requirements resulted in differences in the quality, quantity, and breadth of the public engagement, we build from the work of Steil and Kelly, who compared the 28 early AFHs submitted to HUD to the previous AI submitted by the same jurisdiction.

Following Steil and Kelly, we have analyzed 19 of the 28 AFHs that were submitted between October 2016 (the first submission date) and July of 2017, as well as the most recent AI each of those jurisdictions filed before the AFFH rule came into effect, to examine the public engagement processes the jurisdictions used for each.<sup>20</sup>

We assess differences in the public engagement processes between AIs and AFHs along five dimensions: the number of opportunities for public engagement; the inclusiveness of those opportunities; the provision of data for assessing public engagement; documentation and consideration of the public input; and existence of cross-jurisdictional or cross-sector engagement.<sup>21</sup>

*Number of opportunities for public engagement:*

Although both the AI and AFH public engagement processes often included public forums or hearings, some more targeted “stakeholder” or “focus” group meetings, as well as surveys, the AFH process provided many more opportunities for the general public and specific community, public housing, or non-profit housing organizations to participate. Table 1 provides an overview of the differences in both the number of opportunities for input, and the number of people participating in those opportunities:

Table 1: Number of opportunities for public engagement and number of people participating in those opportunities:

Jurisdiction	# of Public Forums, Community Meetings or Focus Groups		# of People Participating in Forums, Focus Groups or Surveys	
	AI	AFH	AI	AFH

<sup>18</sup> *Id.* § 91.105 (b)(1)(i); (e)(1)(iii).

<sup>19</sup> See, e.g., Ed Gramlich, AFFIRMATIVELY FURTHERING FAIR HOUSING (Nat’l Low-Income Housing Coalition, 2014), <http://nlihc.org/sites/default/files/2014AG-2014.pdf>.

<sup>20</sup> As Steil and Kelly note, the 28 jurisdictions that were the first required to submit AFHs were essentially a random sample of all HUD grant recipients, because the submission dates for the AFHs are determined by the five-year cycle of the municipalities’ Consolidated Plan submissions, a schedule in place before the AFFH rule was issued. Steil and Kelly, *supra* n. 9, at 12.

<sup>21</sup> Links to each jurisdictions AI and AFH can be found at: <https://steil.mit.edu/civil-rights-and-fair-housing-city>.

Anchorage, Alaska	Not detailed	22	Not detailed	545
Apple Valley & Victorville, CA	5	6	91	>=121
Chester County, PA	Not detailed	14	Not detailed	171
Clackamas County, OR	6	10	429	505
El Paso County, CO	1	4	Not detailed	>=33
Kansas City, KS & MO	4	23	164	217
Lewisville, TX	2	4	Not detailed	138
Long Beach, CA	6	31	Not detailed	684
Manatee County, Fla	2	5	18	277
Nashville, TN	3	27	173	300
New Orleans, LA	Not detailed	17	Not detailed	>=350
New Rochelle, NY	Not detailed	14	44 (but includes government officials)	56
Philadelphia, PA (City & PHA)	1	11	Not detailed	5500
Richland County, SC	5	23	148	450
Savannah, GA	Not detailed	2 public hearings	Not detailed	=>355
Seattle (City & PHA)	Not detailed	11	Not detailed	>2500
Springdale, AR	3	2	Not detailed	329
Temecula, CA	2	5	206	104
Wilmington, NC	1	6	202	205

Note: links to AI/AFHs can be found at <https://steil.mit.edu/civil-rights-and-fair-housing-city>

Where data exist to permit comparison, in all but one case, the AFH process provided a greater number of opportunities for public engagement than the AI. More than half of the 13 jurisdictions that detailed the number of public opportunities under both processes experienced at least a fourfold increase when shifting to the AFH. These opportunities also included a larger number of participants.

*Inclusiveness of opportunities for public engagement:*

The breadth of public participation depends in part upon the strategies used to reach out to different communities and people, and to make participation as easy as possible for them. The jurisdictions' outreach in the AFH process often involved distributing materials in multiple languages, and some held meetings in languages other than English, while only a few jurisdictions described outreach tailored to people whose native language is not English in their discussion of public engagement during their AI process. Jurisdictions used a much more robust set of communication channels to solicit participation in their AFH process than in their AI process. Further, the jurisdictions often structured their AFH processes to make participation opportunities available at more times and places, and in formats that would better facilitate broad participation, than the processes used to prepare their AIs.

For example:

- Nashville, Tennessee, used newspaper and radio ads, social media, publicly posted flyers, and email distribution lists to solicit engagement in the AFH, while it appears to have used only email lists in the AI process.
- Philadelphia, Pennsylvania, which had held only one public hearing during its AI process, held eight community meetings and three stakeholder meetings in its AFH process. It also deliberately scheduled the meetings in the evening, although at the request of advocates for people with disabilities, one meeting was held in the late afternoon to better match public transportation schedules. Each meeting was held in a well-known community-based location, easily accessible to public transportation. The City engaged consultants to reach out to Latino communities and held one of the meetings in Spanish.
- Long Beach, California, held 31 meetings during its AFH process, five times the number it held in preparing its AI, and used a survey available in English, Spanish, Khmer, and Tagalog to solicit information about experiences with housing discrimination. The survey was distributed through social media, outreach to 45 groups, and a door-to-door campaign in racially or ethnically concentrated areas of poverty. Meetings with community residents were held on Saturdays in different neighborhoods.

In addition, many jurisdictions chose to bring the AFH discussion to different populations in their own communities or places in which those populations tend to be, rather than expecting the public to attend stand-alone AFH meetings organized by the jurisdiction. Some jurisdictions also chose not to lead the discussions, but rather to use trusted non-profits to facilitate the discussions. For example:

- Anchorage, Alaska, adopted a strategy of going to existing meetings and events of organizations serving various racial and ethnic groups, rather than requiring those communities to attend separate public hearings in order to participate. The jurisdiction also disseminated fair housing materials to nonprofit organizations serving Anchorage's culturally diverse population, and offered language interpreters to clients with limited English proficiency (LEP) at the DHHS Public Health Services (PHS) and Women Infants & Children (WIC) offices, including the WIC office located on the Alaska Native health campus.<sup>22</sup> In contrast, the AI Anchorage submitted just two years earlier makes no mention of any outreach to the public.

*Data to allow assessment of the quality of the public engagement:*

The final AFHs consistently provided more comprehensive documentation of the engagement process and the extent of participation actually achieved. Although AIs sometimes mentioned interviews with stakeholders and other community members, they only rarely detailed the exact number of opportunities provided or the number of people participating, so there was

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<sup>22</sup> Anchorage, AK: <https://www.muni.org/Departments/health/PHIP/CSD/Documents/MOAAFHPlanFinal2017.pdf> at 7.

little information HUD or other reviewers could use to assess the success of the engagement process. The AFH's, on the other hand, typically provided quantitative metrics. The following jurisdictions, for example, provided little detail in their AIs about outreach strategies, who participated in public engagement activities, what those participants contributed, or how the jurisdiction took contributions into account: Anchorage, AL; Chester, PA; El Paso, CO; Lewisville, TX; Long Beach, CA; New Orleans, LA; Philadelphia, PA; Rochelle, NY; Savannah, GA; Seattle, WA; and Springdale, AR. Each of those jurisdictions provided significant detail about their efforts to encourage public participation in their AFH processes, however.

For example,

- Nashville provided considerable detail about its processes in its AFH, but little description of its methods in the AI. Nashville's AFH documents the social media posts it used (noting the number of people who saw the post and the number of those who clicked on the link, shared a post, etc.); the advertisements of the public hearings used; and lists of the non-profit groups and government agencies that were consulted. The AI, on the other hand, notes only that the public "meetings were advertised via flyers distributed by the MDHA using its various email distribution lists. Nonprofits receiving the posters were asked to print and post or distribute them as appropriate."

The AFH assessment tool asks jurisdictions to describe the general success of their outreach activities, which prompted jurisdictions to reflect on steps they could have taken to improve their outreach process. Many noted the need to allow more time for participation;<sup>23</sup> others noted the need for more outreach to people whose first language was not English or Spanish.<sup>24</sup> These observations, combined with the quantitative metrics about public engagement that the AFHs provided, should help HUD and local stakeholders hold the jurisdiction accountable for improving outreach efforts in the future.

#### *Documentation and consideration of public's input:*

As previously noted, HUD's final AFFH rule clarified that, similar to Consolidated Plans and PHA Plans, AFHs must provide a summary of public comments and a summary of comments or views not accepted and the reasons for non-acceptance. While the AFHs provided documentation of comments received, jurisdictions generally did not provide detail, other than summaries of survey responses, in their AIs.

For example,

- In Nashville, the AI devoted a total of nine pages to public engagement, including details about the jurisdictions' responses. The AFH, on the other hand, devotes a total of 107 pages to detailing the comments offered in public meetings, and the jurisdiction's

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<sup>23</sup> See, e.g. Anchorage, AL: <https://www.muni.org/Departments/health/PHIP/CSD/Documents/MOAAFHPlanFinal2017.pdf> at 10.

<sup>24</sup> See, e.g., Philadelphia, PA: <http://ohcdphila.org/wp-content/uploads/2017/01/afh-2016-for-web.pdf>.

responses to those comments.

Surely the practice of documenting both the public's suggestions and the jurisdiction's responses makes it more likely both that the jurisdiction thinks through the comments, and that others sympathetic to the comment will be able to hold the jurisdiction accountable for addressing the concern in the next round of the assessment. Knowing that one's comments will be included in the AFH may well increase the likelihood of submitting a comment in the first place.

*Engagement with other agencies to work across jurisdictional and subject-matter silos:*

An additional way to measure the breadth of the engagement process is to consider involvement by agencies other than the consolidated plan participant, both within a jurisdiction and beyond. A stated goal of HUD's final AFFH rule is to "[e]ncourage and facilitate regional approaches to address fair housing issues, including collaboration across jurisdictions and PHAs."<sup>25</sup> In addition, "[b]ecause housing units are part of a community and do not exist in a vacuum... HUD's Assessment Tool, which includes a section on community assets and exposure to adverse community factors, is meant to aid program participants in determining if and where conditions exist that may restrict fair housing choice and access to opportunity."<sup>26</sup>

In response to comments on the scope of HUD's proposed rule, HUD also clarified that non-housing goals and actions are within the AFH purview. Specifically,

"Once fair housing issues and contributing factors have been identified, the scope of actions that program participants may decide to take, and are capable of taking, to address these fair housing issues and contributing factors may often be broader than the scope of the program participants' activities receiving the HUD or Federal assistance that trigger the obligation to affirmatively further fair housing."<sup>27</sup>

While assessing such regional or non-housing goals was beyond the scope of Steil and Kelly's research, they did include information on whether such goals were included in jurisdictions' AIs and AFHs. They found that, on average, AFHs were more likely than AIs to contain: goals of regional cooperation or coordination; improvements to transportation; economic development goals such as increased workforce training or job creation; and environmental goals, such as improvements in air and water quality or parks.<sup>28</sup>

We might expect that participation by regional or 'non-housing' stakeholders in the AFH process could increase the likelihood of a jurisdiction's AFH including regional or community-asset goals, or the likelihood that such goals might be achieved. For the 19 jurisdictions we assessed, the AFH process often involved agencies with a wide range of subject-matter mandates, while the AIs did not mention or detail outreach beyond the usual housing-related agencies. For

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<sup>25</sup> Final Rule at 42273.

<sup>26</sup> Final Rule at 42282.

<sup>27</sup> Final Rule at 42286.

<sup>28</sup> Justin Steil and Nicholas Kelly, "Survival of the Fairest? An Analysis of Affirmatively Furthering Fair Housing Compliance", *forthcoming*, Housing Policy Debate. See Table 4.

example,

- In its AFH process, Seattle, Washington, formed a Technical Advisory Group, consisting of representatives of the agencies concerned with Human Services, Planning, Economic Development, Civil Rights, Sustainability and the Environment, Education and Early Learning, Construction, Neighborhoods, Transportation, and Financial Services.
- In Chester County, Pennsylvania, the AFH process, unlike the AI process, involved the Health Department., Human Services agencies (Aging; Children, Youth and Families; Drug & Alcohol; Managed Behavioral Healthcare; Mental Health/Intellectual & Developmental Disabilities), Education, the County Opportunities Industrialization Center (Employment), Veterans Affairs, the Workforce Development Board, and the County's Transportation Management Association

In terms of cross-agency or cross-jurisdiction collaboration, 13 of the 19 AFHs were joint submissions with a public housing agency, other consolidate plan participant, or both.

### **Conclusion:**

Based upon a comparison of 19 of the AIs and AFHs filed by the 28 jurisdictions who were first to file under the new AFH requirements, we find that the public engagement processes used under the AFH requirement were much more robust: the number of opportunities for participation were much higher; many more people participated; the jurisdictions used a far broader array of communication channels in an effort to reach a wide range of communities within the jurisdiction; and jurisdictions were more likely to provide opportunities for participation at times and places more accessible to members of different communities. Under the AFHs, jurisdictions used communications channels to reach people for whom English is not their first language, and were generally better at providing materials and meetings in languages other than English.

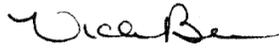
Further, jurisdictions documented their outreach efforts and participation rates in much more detail under the AFH processes than they had in their AIs. Jurisdictions summarized comments received in their AFHs, while few had done so in their AIs.

Finally, under the AFHs, most jurisdictions collaborated either with their public housing authority or another jurisdiction (or both). Jurisdictions documented considerable interaction across subject-matter siloes – with housing officials reaching out to their counterparts in agencies devoted to education, transportation, health, workforce development, and many other subjects. Such cross-agency consultation was rarely discussed in AIs.

A significant cost of HUD's decision to postpone the deadline for jurisdictions to submit their AFHs is that the improvements already seen in the opportunities for public participation, and the extent of the public's take-up of those opportunities, under the AFH requirements, will be delayed. HUD should consider this sacrifice in the quantity and quality of public engagement

likely to result from postponing the AFH deadline.

Sincerely,



Vicki Been  
Faculty Director



Katherine O'Regan  
Faculty Director

# **APPENDIX A**

**1) Racial/Ethnic Segregation and Concentrated Poverty**

NEW YORK CITY

State of New York City's Housing and Neighborhoods **2016 Focus: Poverty in New York City**

Date: June 2017

[http://furmancenter.org/files/sotc/SOC\\_2016\\_FOCUS\\_Poverty\\_in\\_NYC.pdf](http://furmancenter.org/files/sotc/SOC_2016_FOCUS_Poverty_in_NYC.pdf)

**Does Preservation Accelerate Neighborhood Change? Examining the Impact of Historic Preservation in New York City.**

Authors: Ingrid Gould Ellen and Brian McCabe

Date: January 2016

*Journal of the American Planning Association* 82 (2016): 134-146.

<http://www.tandfonline.com/doi/abs/10.1080/01944363.2015.1126195>

**The Changing Racial and Ethnic Makeup of NYC Neighborhoods**

Date: May 2012

[http://furmancenter.org/files/publications/The\\_Changing\\_Racial\\_and\\_Ethnic\\_Makeup\\_of\\_New\\_York\\_City\\_Neighborhoods\\_11.pdf](http://furmancenter.org/files/publications/The_Changing_Racial_and_Ethnic_Makeup_of_New_York_City_Neighborhoods_11.pdf)

**Immigration and Urban Schools: The Dynamics of Demographic Change in the Nation's Largest School District**

Author(s): Ingrid Gould Ellen; Katherine O'Regan

Date: December 2008

<http://eus.sagepub.com/cgi/reprint/41/3/295>

**Racial Segregation in Multiethnic Schools: Adding Immigrants to the Analysis**

Author(s): Ingrid Gould Ellen; Katherine O'Regan

Date: July 2012

Publication: *Research on Schools, Neighborhoods and Communities: Toward Civic Responsibility* (Rowman and Littlefield Publishing)

[\(link\)](#)

**The Changing Racial and Ethnic Makeup of NYC Neighborhoods**

Date: May 2012

[http://furmancenter.org/files/publications/The\\_Changing\\_Racial\\_and\\_Ethnic\\_Makeup\\_of\\_New\\_York\\_City\\_Neighborhoods\\_11.pdf](http://furmancenter.org/files/publications/The_Changing_Racial_and_Ethnic_Makeup_of_New_York_City_Neighborhoods_11.pdf)

**Do Economically Integrated Neighborhoods Have Economically Integrated Schools?**

Authors: Ingrid Gould Ellen, Amy Ellen Schwartz and Leanna Stiefel

Date: February 2012

In Howard Wial, Hal Wolman, and Margery Austin Turner, Eds, *Urban and Regional Policy and Its Effects*. Washington, DC: Urban Institute Press, 2008, pp. 181-205.

<https://www.brookings.edu/book/urban-and-regional-policy-and-its-effects-2/>

**Immigrant Children and Urban Schools: Evidence from NYC on Segregation and its Consequences**

Author(s): Ingrid Gould Ellen; Katherine O'Regan; Amy Ellen Schwartz  
Date: January 2002  
Publication: Brookings-Wharton Papers on Urban Affairs  
<https://eric.ed.gov/?id=ED474009>

NATIONAL

**Can Gentrification Be Inclusive?**

Author: Ingrid Gould Ellen  
Publication: Harvard Joint Center for Housing Studies book, forthcoming

**Gateway to Opportunity? Disparities in Neighborhood Conditions Among Low Income Housing Tax Credit Residents.**

Author(s): Ingrid Gould Ellen; Keren Horn, Xavier Kuai  
Date: August 2017

**Does Segregation Matter for Latinos?**

Author(s): Ingrid Gould Ellen; Jorge De la Roca; Justin Steil  
Date: August 2017

**Poverty Concentration and the Low-Income Housing Tax Credit Program: Effects of Siting and Tenant Composition.**

Authors: Ingrid Gould Ellen; Keren Horn and Katherine O'Regan  
Date: December 2016  
Publication: *Journal of Housing Economics* 34(2016): 49-59.  
<http://www.sciencedirect.com/science/article/pii/S1051137716300183>

**The Significance of Segregation in the 21<sup>st</sup> Century**

Authors: Ingrid Gould Ellen, Jorge De la Roca and Justin Steil  
Date: March 2016  
Publication: *City and Community*. Published online March 29, 2016.  
<http://onlinelibrary.wiley.com/doi/10.1111/cico.12146/abstract>

**Black and Latino Segregation and Socioeconomic Outcomes**

Author(s): Ingrid Gould Ellen; Jorge De la Roca; Justin Steil  
Date: September 2015  
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**Desvinculado y Desigual: Is Segregation Harmful to Latinos?**

Author(s): Justin Steil; Jorge De la Roca; Ingrid Gould Ellen  
Date: July 2015  
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**Race and Neighborhoods in the 21st Century: What Does Segregation Mean Today?**

Author(s): Jorge De la Roca; Ingrid Gould Ellen; Katherine O'Regan  
Date: January 2015  
Publication: *Regional Science and Urban Economics*

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Author(s): Ingrid Gould Ellen; Jorge De la Roca; Katherine O'Regan

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Author(s): Ingrid Gould Ellen; Keren Mertens Horn; Katherine O'Regan

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Author(s): Ingrid Gould Ellen; Keren Mertens Horn; Katherine O'Regan

Date: May 2012

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Author(s): Ingrid Gould Ellen; Katherine O'Regan

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Author(s): Keren Mertens Horn; Katherine O'Regan

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Author(s): Ingrid Gould Ellen; Katherine O'Regan

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Publication: Regional Science and Urban Economics

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Author(s): Ingrid Gould Ellen

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Date: March 1998  
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**2) Disparities in Access to Opportunity**

NEW YORK CITY

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Author(s): Ingrid Gould Ellen; Johanna Laco; Amy Ellen Schwartz  
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Author(s): Sewin Chan; Michael Gedal; Vicki Been

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Author(s): Ingrid Gould Ellen; Amy Ellen Schwartz; Leanna Stiefel

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Date: July 1998

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Author: Ingrid Gould Ellen, Keren Horn.

Publication: Housing Policy Debate, forthcoming.

**Gateway to Opportunity? Disparities in Neighborhood Conditions Among Low Income Housing Tax Credit Residents.**

Author: Ingrid Gould Ellen, Keren Horn and Yiwen Kuai.

Publication: Housing Policy Debate, forthcoming.

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Author(s): Ingrid Gould Ellen; Katherine O'Regan; Mike Lens

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Author(s): Amy Armstrong; Vicki Been; Ingrid Gould Ellen; Josiah Madar

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Author(s): Ingrid Gould Ellen

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**2) Disproportionate Housing Needs**

NEW YORK CITY

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**Renting In America's Largest Metropolitan Areas**

Author(s): Ingrid Gould Ellen; Brian Karfunkel

Date: March 2016

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**Renting in America's Largest Cities: NYU Furman Center/Capital One National Affordable Rental Housing Landscape**

Author(s): Sean Capperis; Ingrid Gould Ellen; Brian Karfunkel

Date: May 2015

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NEW YORK CITY

**Linking Residents to Opportunity: Gentrification and Public Housing.**

Authors: Ingrid Gould Ellen and Samuel Dastrup

Date: 2016

Publication: *Cityscape: A Journal of Policy Development and Research* 18(2016): 87-107.

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Author(s): Jaclene Begley; Jaclene Begley; Vincent Reina

Date: June 2014

Publication: *Journal of Housing Economics*

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Author(s): Amy Ellen Schwartz; Brian McCabe; Ingrid Gould Ellen

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Author(s): Amy Armstrong; Vicki Been; Ingrid Gould Ellen; Michael Gedal; Ioan Voicu

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Author(s): Ingrid Gould Ellen; Amy Ellen Schwartz; Ioan Voicu

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Author(s): Ingrid Gould Ellen; Ioan Voicu

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Publication: Housing Policy Debate, 13(3), pp. 529-566

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**Building Homes, Reviving Neighborhoods: Spillovers from Subsidized Construction of Owner-Occupied Housing in New York City**

Author(s): Ingrid Gould Ellen; Amy Ellen Schwartz

Date: July 2001

Publication: Journal of Housing Research, 12 (2), pp. 185-216

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**Gateway to Opportunity? Disparities in Neighborhood Conditions Among Low Income Housing Tax Credit Residents.**

Author(s): Ingrid Gould Ellen; Keren Horn, Xavier Kuai

Date: August 2017

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Authors: Ingrid Gould Ellen, Michael Suher and Gerard Torrats-Espinosa  
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Author(s): Ingrid Gould Ellen; Keren Mertens Horn; Amy Ellen Schwartz

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Authors: Ingrid Gould Ellen; Keren Horn and Katherine O'Regan

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Author(s): Ingrid Gould Ellen; Yiwen (Xavier) Kuai; Roman Pazuniak

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**Investigating the Relationship Between Housing Voucher Use and Crime**

Author(s): Ingrid Gould Ellen; Katherine O'Regan

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Author(s): Ingrid Gould Ellen; Keren Mertens Horn

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Author(s): Ingrid Gould Ellen; Mike Lens; Katherine O'Regan

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Publication: Housing Policy Debate

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Date: May 2012

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Author(s): Ingrid Gould Ellen; Brian McCabe; Amy Ellen Schwartz; Leanna Stiefel

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Author(s): Ingrid Gould Ellen; Ioan Voicu

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**5) Disability and Access Analysis (housing accessibility, integration of persons with disabilities, disparities in access to opportunity)**

NATIONAL

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Author(s): Luke Bo'sher; Sewin Chan; Ingrid Gould Ellen; Brian Karfunkel

Date: March 2015

Publication: U.S. Department of Housing and Urban Development Office of Policy Development and Research

<https://www.huduser.gov/portal/sites/default/files/pdf/accessibility-america-housingStock.pdf>

## **6) Fair Housing Enforcement, Outreach Capacity, and Resources**

NATIONAL

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Author(s): John Infranca

Date: April 2011

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## **7) Fair Housing Goals, Priorities, and Strategies**

NEW YORK CITY

### **21st Century SROs: Can Small Housing Units Help Meet the Need for Affordable Housing in New York City?**

Author(s): Eric Stern and Jessica Yager

Date: January 2018

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Author(s): Vicky Chau and Jessica Yager

Date: May 2017

Publication: New York University Environmental Law Journal

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Author(s): Jessica Yager

Date: June 2015

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### **Inclusionary Housing Policy in New York City: Assessing New Opportunities, Constraints, and Trade-offs**

Author(s): Josiah Madar

Date: March 2015

[http://furmancenter.org/files/NYUFurmanCenter\\_InclusionaryZoningNYC\\_March2015.pdf](http://furmancenter.org/files/NYUFurmanCenter_InclusionaryZoningNYC_March2015.pdf)

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Date: June 2014

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Date: August 2013

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Date: August 2013

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Date: August 2013

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Date: August 2013

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Date: August 2013

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Author(s): Ingrid Gould Ellen

Date: January 2013

Publication: New York and Los Angeles: The Uncertain Future (Oxford University Press)

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Date: January 2004

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**NATIONAL**

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Author: Vicki Been

Publication: Harvard Joint Center for Housing Studies book, forthcoming

**Gentrification, Displacement and Fair Housing: Tensions and Opportunities**

Author: Vicki Been

Publication, Justin Steil, ed., [book title to be determined]

**Gentrification Responses: A Survey of Strategies to Maintain Neighborhood Economic Diversity**

Author(s): Jessica Yager; Luke Herrine; Nadia Mian

Date: October 2016

[http://furmancenter.org/files/NYUFurmanCenter\\_GentrificationResponse\\_26OCT2016.pdf](http://furmancenter.org/files/NYUFurmanCenter_GentrificationResponse_26OCT2016.pdf)

### **Housing, Neighborhoods, and Children's Health**

Author(s): Ingrid Gould Ellen

Date: April 2015

Publication: The Future of Children

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### **Crime and Community Development**

Author(s): Ingrid Gould Ellen

Date: June 2012

Publication: Investing in What Works for America's Communities: Essays on People, Places, and Purpose (Federal Reserve Bank of San Francisco)

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### **Overview of Affirmative Marketing and Implications for the Westchester Fair Housing Settlement**

Author(s): John Infranca

Date: April 2011

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### **How to House the Homeless**

Author(s): Ingrid Gould Ellen

Date: July 2010

<http://www.russellsage.org/publications/how-to-house-homeless>

### **Silver Bullet or Trojan Horse? The Effects of Inclusionary Zoning on Local Housing Markets in the United States**

Author(s): Jenny Schuetz; Vicki Been; Rachel Meltzer

Date: June 2010

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### **Building Environmentally Sustainable Communities: A Framework for Inclusivity**

Author(s): Vicki Been; Ingrid Gould Ellen; Adam Gordon; Aaron Yowell

Date: May 2010

<http://furmancenter.org/files/publications/White-Paper-Environmentally-Sustainable-Communities.pdf>

### **Supporting Integrative Choices**

Author(s): Ingrid Gould Ellen

Date: September 2008

Publication: Poverty and Research Race Action Council Newsletter

[http://www.prrac.org/full\\_text.php?text\\_id=1191&item\\_id=11273&newsletter\\_id=101&header=September/October+2008+Newsletter](http://www.prrac.org/full_text.php?text_id=1191&item_id=11273&newsletter_id=101&header=September/October+2008+Newsletter)

### **The Effects of Inclusionary Zoning on Local Housing Markets**

Author(s): Amy Armstrong; Vicki Been; Rachel Meltzer; Jenny Schuetz

Date: March 2008

<http://furmancenter.org/files/publications/IZPolicyBrief.pdf>

# **APPENDIX B**



# THE DREAM REVISITED

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## HUD's New AFFH Rule: The Importance of the Ground Game

by Michael Allen | September 2015

On July 13, 2015, the U.S. Department of Housing and Urban Development (HUD) promulgated a Final Rule on Affirmatively Furthering Fair Housing. (2) Coming nearly six years after the ground-breaking Westchester litigation, (3) which exposed the county's flagrant violations of its civil rights obligations, many advocates expected HUD to adopt a "law enforcement" approach that would require State and local governments and public housing authorities to strictly comply with those obligations, on pain of losing their federal funds (which, in FY 2015 amounted to more than \$38 billion). (4)

What HUD produced is a Final Rule long on "carrots," but painfully short on "sticks." To compound that problem, HUD does not currently have—and is very unlikely to acquire—sufficient resources to police the compliance of 1200 block grant recipients and 3400 public housing agencies. As a consequence, the promise of the Affirmatively Furthering Fair Housing (AFFH) mandate is likely to be realized only in communities where grassroots and legal advocates mobilize and create their own enforcement strategies. The success of the Final Rule will depend on this grassroots mobilization, on a community-by-community basis, all over the country. That means advocates, collectively, need to step up to the plate and provide the tools and resources for a sustained "ground game."

When Congress passed the Fair Housing Act of 1968, it gave HUD the power to withhold, condition, or terminate federal funding to recipient state and local governments that engaged in discrimination or failed to "affirmatively further fair housing." (5) In its role as funder and regulator, HUD has what some federal courts have termed "immense leverage" to secure compliance with civil rights objectives. (6) This power is critical, because the Fair Housing Act does not give private litigants a right to enforce this obligation in court. As then-Judge Stephen Breyer

noted nearly 30 years ago, this AFFH mandate “imposes ... an obligation to do more than simply refrain from discriminating ... 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.” (7)

In part because HUD was a defendant in a number of AFFH cases early on, (8) and in part because of a general agency queasiness about withholding federal funds from local governments, HUD did not promulgate regulations until 1995. (9) Since then, as an explicit regulatory precondition to their eligibility for federal funds, recipients have been required to certify that they will comply with AFFH and other federal civil right laws. (10) Many have done so without a full understanding of what is required by these certifications and knowing that HUD would not challenge their validity. Many recipients simply ignored their civil rights certifications, and continued to receive and spend billions of dollars in federal funds to build affordable housing in disadvantaged neighborhoods where they faced less resistance and where families were often consigned to another generation of poverty, crime and failing schools. We have made precious little progress in ending discrimination and segregation over the past five decades, in part because HUD has generally refrained from using its “immense leverage” to secure those objectives. (11)

While HUD's Final Rule plows some new ground, it does not revolutionize the field. The Final Rule sharpens a recipient's obligations to identify and overcome segregation-based impediments, but its overall tenor is one of collaboration, rather than enforcement. In fact, while the Final Rule leaves in place HUD's powers to withdraw funding in the face of non-compliance, (12) HUD's media roll-out of the Final Rule repeatedly emphasized that “enforcement is a last resort.” (13)

On the positive side, the Final Rule makes explicit—for the first time—that every State and local government (and every public housing authority) that receives HUD funds must take “meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics.” (14) Those actions must “address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws.” (15) Now, theoretically at least, every community that receives federal grants for housing and community development will be required to have an honest conversation about segregation and devise a local plan to dismantle it.

The Final Rule replaces the long-ignored Analysis of Impediments with a new framework—the Assessment of Fair Housing, or AFH—through which Recipients must identify, analyze and overcome barriers to fair housing choice, and ties it to other planning processes through which federal, state and local resources are allocated. In other words, it creates a fair housing lens for all of a participant's decisions about housing and community development needs. Beginning in April 2016, HUD grant recipients must submit AFHs to HUD, which can reject noncompliant AFHs, and impose a range of sanctions for noncompliance, up to and including withholding federal funds. As my firm has found since the Westchester decision, the prospect of losing federal funds because of civil rights noncompliance tends to bring recalcitrant recipients to the table, often more effectively than conventional civil rights litigation. (16)

The new framework requires greater reliance on data (which will be supplied by HUD), greater transparency and public participation in the development of the AFH, and greater accountability with respect to expanding housing choice. Most importantly, it will require recipients to initiate and follow through on jurisdiction-specific community conversations about race, segregation and access to opportunity areas.

While the Final Rule is not what many of us had hoped for, it does provide a foundation on which civil rights advocates can build anti-segregation campaigns at the local level. Local capacity-building will require community

education and organizing by the national fair housing advocacy organization; financial support from the philanthropic sector; and lawyers prepared to bring enforcement actions.

My firm stands ready to do its part. Anyone else with me?

## Endnotes

(1) Michael Allen is a partner in the civil rights firm Relman, Dane & Colfax, PLLC. He was co-counsel in the Westchester case and lead counsel in nearly a dozen other AFFH cases brought in federal courts or as HUD administrative complaints. Extensive AFFH enforcement and compliance materials are available at <http://www.relmanlaw.com/affh/index.php>

(2) See Final Rule on Affirmatively Furthering Fair Housing, 80 Fed. Reg. 42272-42371, July 16, 2015 (Final Rule), codified at 24 C.F.R. §§5.150 – 5.168, and amending 24 C.F.R. Parts 91, 92, 570, 574, 576 and 903.

(3) U.S. ex rel. Anti-Discrimination Center v. Westchester County, New York, 495 F.Supp.2d 375, 387-88 (S.D.N.Y. 2007)(“In the face of the clear legislative purpose of the Fair Housing Act, enacted pursuant to Congress's power under the Thirteenth Amendment as Title VIII of the Civil Rights Act of 1968, to combat racial segregation and discrimination in housing, an interpretation of ‘affirmatively further fair housing’ that excludes consideration of race would be an absurd result.”); U.S. ex rel. Anti-Discrimination Center v. Westchester County, New York, 668 F.Supp.2d 548, 564 (S.D.N.Y. 2009)(holding that “the central goal of the obligation to AFFH [is] to end housing discrimination and segregation.”). The author was co-counsel for the plaintiff-relator in the Westchester litigation.

(4) HUD’s final appropriations for Fiscal Year 2015 provide for approximately \$4.5 billion in HUD block grant funding for State and local governments and \$33.5 billion in public housing and rental assistance funding to public housing authorities and similar agencies.

(5) See 42 U.S.C. §3608(e)(5). See also 42 U.S.C. §§5304(b)(2), 5306(d)(7)(B)(Housing and Community Development Act of 1974, as amended); 42 U.S.C. §12705(b)(15) (consolidated planning); 42 U.S.C. §1437C-1(d)(16) (public housing). HUD has promulgated regulations implementing the AFFH requirements for entities receiving block grant and public housing funds. See 24 C.F.R. §§570.602; 91.225, 91.325, 91.425, 903.7(o).

(6) NAACP v. Sec’y of Housing and Urban Development, 817 F.2d 149, 156 (1st Cir. 1987).

(7) *Id.* at 155.

(8) See, e.g., NAACP v. Sec’y of Housing and Urban Development, 817 F.2d 149, 155 (1st Cir. 1987).

(9) 60 Fed. Reg. 1896 ff. (January 5, 1995).

(10) These include Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973 and Section 109 of the Housing and Community Development Act of 1974.

(11) To be fair, whether through the phenomenon of “industry capture” or because of a political reluctance to disrupt funding to State and local governments, most federal agencies have had a poor record of using funding leverage to secure. See, e.g., E. Pasachoff, Agency Enforcement of Spending Clause Statutes: A Defense of the Funding Cut-Off,

124 Yale. L.J. 248 (Nov. 2014); O. Johnson, Beyond the Private Attorney General: Equality Directives in American Law, 87 N.Y.U. Law Rev. 1339 (Nov. 2012). As this article was going to press, the Second Circuit affirmed HUD's authority, pursuant to the "old" AFFH regulations—24 C.F.R. § 91.500(b)—to withhold block grant funds because Westchester County's AFFH certification was "inaccurate" and without supporting evidence. County of Westchester v. U.S. Dep't of Hous. & Urban Dev., et al. U.S. Court of Appeals for the Second Circuit, Case No. 15-2294-cv (September 25, 2015)(slip op. at 48).

(12) See, e.g., 24 C.F.R. §§91.500(b)(HUD approval action); 570.304 (making of grants); 570.485(c)(making of grants); 570.601 and 570.602 (civil rights certification requirements); 570.904 (equal opportunity and fair housing review criteria); 570.910—570.913 (corrective and remedial actions).

(13) PBS NewsHour, July 9, 2015. Transcript available at <http://www.pbs.org/newshour/bb/new-rules-require-cities-fight-housing-segregation/> (last viewed August 20, 2015).

(14) 24 C.F.R. §5.152 (definition of "Affirmatively furthering fair housing").

(15) Id.

(16) See, e.g., Conciliation Agreement between Texas Low Income Housing Information Service, et al. and the State of Texas (May 25, 2010), available at <http://www.relmanlaw.com/docs/Texas-AFFH-Final-Conciliation-Agreement-signed-by-HUD.pdf> (resolution governing \$1.7 billion in disaster relief funding); Conciliation Agreement between Latino Action Fund, et al. and the State of New Jersey (May 30, 2014), available at <http://www.relmanlaw.com/docs/New-Jersey-Conciliation-Agreement-signed-5-30-2014.pdf>



*Michael Allen is a partner at the civil rights law firm Relman, Dane & Colfax.*

## More in Discussion 16: A New Approach to Affirmatively Furthering Fair Housing



**HUD's New AFFH Rule: The Importance of the Ground Game**  
by Michael Allen



**A Call to Action to Embrace and Enforce the AFFH Rule**  
by Angela Glover Blackwell



**The Right Target for Fair Housing Advocacy**  
by Edward Goetz



**The Need for a Balanced Approach to Fair Housing**  
by Michael Bodaken, Ellen Lurie Hoffman



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# A Call to Action to Embrace and Enforce the AFFH Rule

by Angela Glover Blackwell | September 2015

As a Black girl growing up in St. Louis in the 1950s and 1960s, I experienced segregation first-hand. Though segregation controlled where I could live, learn, play, and pray, I was fortunate enough to live in a mixed-income Black neighborhood, with a good school, safe streets, prospering Black-owned businesses, and civic engagement. Many other Black St. Louis residents were not as fortunate. Discrimination forced them into very poor segregated neighborhoods that were cut off from opportunity. My experience illustrates how, even in the face of adversity (in this case, the demoralizing, destructive policy of segregation), all communities have the potential to thrive if they have access to certain basic ingredients for opportunity.

Segregation has long been abandoned as official federal policy, but this has not been enough to create greater opportunity for most communities of color. Instead, the footprint of segregation—and the selective government disinvestment that persisted for decades—are painfully visible today. Most of the economically-integrated Black neighborhoods of my childhood have disappeared, becoming areas of concentrated poverty. Today a child born in primarily Black north St. Louis can expect to die 16 years earlier than a child born in an affluent predominantly White suburb just one zip code away. This startling disparity, though not uncommon in many American cities, is a testament to the depth of the problem, and the complexity of the solutions required to address it.

That is why the newly-released AFFH Rule is so important. It recognizes that successful housing policy cannot exist in a vacuum; it must be part of a larger vision for connecting residents to opportunity.

Overcoming decades of discriminatory policies and practices that created and perpetuated today's racial inequities requires housing policies that do more than seek to prevent ongoing segregation. We must also proactively counteract segregation's legacy by linking struggling communities to the basic resources—quality housing, good schools, healthy environments, living-wage jobs—that any community needs to thrive. The Fair Housing Act (FHA) of 1968 was written with this intention in mind, but has repeatedly fallen short. The arrival of the AFFH Rule injects new awareness, tools, and momentum into fair housing policy—and it is crucial that the Federal government use its full authority to embrace and enforce the Rule.

Michael Allen's main contention is that this Rule is “long on ‘carrots’, but painfully short on ‘sticks,’” necessitating grassroots mobilization on a community-by-community basis to police the rule locally where HUD will likely lack the resources to do so itself. As a result, the new rule, in Allen's words, leans towards “collaboration, rather than enforcement” and “plows new ground...but does not revolutionize the field.”

While Allen is undoubtedly right that HUD's willingness to enforce this new Rule will be crucial to its success, the power of the spirit of collaboration cannot be underestimated. The “stick”, while necessary, is not sufficient for enacting meaningful change if it is wielded without collaboration with local leaders and communities. Moreover, while the mere existence of the Rule alone may not revolutionize housing practice, the tools it provides to local leaders—the Assessment of Fair Housing and the local, disaggregated data—have immense potential to revolutionize those leaders' ability to push for equity in housing, transportation, education, and other areas of community life. Without HUD as a careful watchdog, the AFFH Rule may fail to reform housing practice among reticent grantees (and civil rights litigation will likely play a key role here), but for the rising generation of local leaders who are eager to address inequity in their jurisdictions, this Rule can be a game-changer.

I have seen firsthand the potential of a collaborative AFFH process play out in rural towns, mid-sized and large cities, and tribal reservations across the country. In the five years preceding the release of the AFFH Rule, my organization worked with HUD and 74 regions to test out the assessment and data tools that have now been incorporated into the final rule. As in the current Rule, local leaders and advocates were provided with tools to measure which neighborhoods lacked key resources (proximity to transit, good schools, job opportunities, and clean air, etc.), and a framework through which these findings could be incorporated into city planning processes. In Seattle, this translated into a new regional food distribution hub in the Rainier Valley to bring new jobs and healthy food access to neighborhoods where both were lacking. In New Orleans the framework resulted in public transit service hours that would better meet the needs of lower-income shift workers in the health care and hospitality industries.

In these and other jurisdictions, the AFFH pilot served as the catalyst that spurred the assessments, discussion, and convening of local stakeholders. But the outcomes were only possible because of ongoing collaboration between local government, community leaders, private sector partners, and intermediaries, such as non-profits, local universities, and infrastructure agencies. While the AFFH Rule requires that grantees take “meaningful actions...[to] foster inclusive communities,” it will always be these local partners, working in concert with HUD grantees, who help determine the nature of that meaningful action and provide the energy and dedication to put it in place.

Having watched these collaborations play out throughout the country, I am filled with hope that the next 50 years of the Fair Housing Act, fueled by this new Rule, will be revolutionary. Allen is not wrong to point out that the U.S. has made “precious little progress in ending discrimination” since 1968, but the AFFH rule is also being launched at a moment of great demographic, political, and economic change for America. In the 1960s, America was 15 percent people of color. Today it is 37 percent, and already children under five are majority of color. While the Fair Housing Act was born of a moral obligation to end discrimination, the AFFH Rule arrives at a time when the U.S. can no longer ignore the economic imperative that accompanies the moral one. So long as people of color grow as a share of

the workforce and population, America’s ability to build towns, cities, and regions where all children can reach their full potential will be a direct determinant of the success and prosperity of the entire nation. The AFFH Rule is a crucial lever that advocates, local government, philanthropists, and the private sector can pull to make that vision a reality. That is why my organization’s response to Allen’s call of “is anyone else with me?” is a resounding, enthusiastic, “Yes!”



*Angela Glover Blackwell is founder and CEO of PolicyLink (@policylink), an equity-focused advocacy organization.*

## More in Discussion 16: A New Approach to Affirmatively Furthering Fair Housing



**HUD’s New AFFH Rule: The Importance of the Ground Game**  
*by Michael Allen*



**A Call to Action to Embrace and Enforce the AFFH Rule**  
*by Angela Glover Blackwell*



**The Right Target for Fair Housing Advocacy**  
*by Edward Goetz*



**The Need for a Balanced Approach to Fair Housing**  
*by Michael Bodaken, Ellen Lurie Hoffman*

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## The Right Target for Fair Housing Advocacy

by Edward Goetz | September 2015

Michael Allen calls for a sustained “ground game” in which advocates across the country “mobilize and create their own enforcement strategies” to leverage HUD’s new rule on Affirmatively Furthering Fair Housing (AFFH). His own actions have led the way in showing what that ground game can look like. Those interested in racial equity in housing owe a debt of gratitude to Allen and his firm for the work they did in producing the Westchester County settlement. Jurisdictions that conspire through a combination of land use controls and investment decisions to exclude affordable housing and thereby exclude the populations dependent on that housing should, as Allen argues, find themselves in jeopardy of losing federal funding.

I, too, would like to see the fair housing movement incorporate more grassroots activism. It is important, however, to choose the right targets. Fair housing advocacy is best directed against intransigent communities that continue to exclude affordable housing or people of color, and pressing for greater housing opportunities where they do not currently exist.

Fair housing goals are ill-served by instead challenging central city revitalization efforts and community development activities. Some of Allen’s own advocacy has made this mistake, including his complaints against the cities of Minneapolis and Saint Paul (see, e.g., Metropolitan Interfaith Coalition on Affordable Housing (MICAH) v. City of Minneapolis, and MICAH v. City of St. Paul). Efforts that attempt to reduce the public resources going to poor and predominantly minority neighborhoods are counterproductive. Even if those challenges are successful on their own merits, they do nothing to get housing built in exclusionary communities where it is needed. Denying affordable housing in neighborhoods that are deemed to have “too much” of it already in no way compels exclusionary communities to change their practices. Some may think that they can find support for such an approach in HUD’s recent AFFH rule or in the Supreme Court’s recent decision in Texas Department of Housing and

Community Affairs v. The Inclusive Communities Project, Inc, 576 U.S. \_\_\_ (2015). But both of these acknowledge the legitimate place of community development initiatives that direct investment to low-income neighborhoods and to communities of color.

Segregation by income in this country is greatest at the high end of the income distribution, and racial isolation is greatest among whites. The grassroots activism Allen urges should be the sustained advocacy necessary to create opportunities for affordable housing in high-income, predominantly white exclusionary communities. Let’s hope that is where the movement focuses.



*Edward Goetz is a Professor in the Humphrey School of Public Affairs and Director of the Center for Urban and Regional Affairs at the University of Minnesota (@curaumn).*

## More in Discussion 16: A New Approach to Affirmatively Furthering Fair Housing



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## The Need for a Balanced Approach to Fair Housing

by Michael Bodaken, Ellen Lurie Hoffman | January 2016

We appreciate Michael Allen's thoughts on the need for local organizing, education, and capacity building to ensure that the U.S. Department of Housing and Urban Development's (HUD) Affirmatively Furthering Fair Housing (AFFH) rule is implemented and enforced appropriately. We agree that local communities should identify barriers to fair housing and devise strategies to ensure that all residents can choose the housing that is best for themselves and their families.

Like Michael, we welcomed the Supreme Court's milestone ruling upholding the use of disparate impact as a legal argument in fair housing cases and HUD's release of the AFFH rule to help communities meet fair housing obligations. The National Housing Trust (NHT) works in partnership with civil rights organizations to support and protect fair housing laws. This summer, we joined other advocates in opposing attempts in Congress to block funding necessary to implement the AFFH rule and we will continue to urge Congress to fully fund its implementation.

As we reflect upon Michael's comments about enforcing the AFFH rule, we urge careful consideration of precisely what we are enforcing. Many fair housing advocates promote mobility policies to help low-income minorities move out of inner cities and resettle in more affluent suburban communities. Mobility strategies are an indispensable tool for providing opportunity, but they are not sufficient to meet the needs of all residents of distressed urban communities. Not all of these families can be relocated to affluent communities and many would prefer not to leave their neighborhoods. We favor a "mobility plus" strategy, providing residents the choice to move while also working

with other residents to transform distressed urban neighborhoods into diverse, high-opportunity communities with access to transit and jobs.

We believe preserving affordable housing is the obvious first step to addressing our nation's affordable rental housing crisis. For every new affordable apartment created, two are lost due to deterioration, abandonment or conversion to more expensive housing. Without preserving existing affordable housing, we fall two steps back for every step we take forward. In distressed neighborhoods, preserving affordable housing can catalyze the revitalization of an entire community. Saving decent, affordable housing means saving a critical community asset. It also signals the reversal of years of neglect and disinvestment and can spark the public-private investment that is essential for community revitalization.

Both the Supreme Court decision and HUD's AFFH rule uphold a "balanced approach" to fair housing, which embraces both mobility strategies and housing preservation and community revitalization. Indeed, HUD's AFFH final rule specifically embraces "a balanced approach to fair housing." The rule specifically highlights the value of preserving affordable housing in "high poverty" neighborhoods: "HUD's rule recognizes the role of place-based strategies, including economic development to improve conditions in high poverty neighborhoods, as well as preservation of the existing affordable housing stock, including HUD-assisted housing, to help respond to the overwhelming need for affordable housing." The rule also provides, "A program participant's strategies and actions...may include various activities...including...targeted investment in neighborhood revitalization or stabilization; preservation or rehabilitation of existing affordable housing; promoting greater housing choice within or outside of areas of concentrated poverty and greater access to areas of high opportunity; and improving community assets such as quality schools, employment, and transportation."

NHT has worked for decades to renovate and preserve existing affordable rental homes so that low-income families can live in integrated neighborhoods with access to opportunities, wherever they reside. In wealthier suburbs or high cost cities, we protect affordable housing that is at risk of losing its affordability due to gentrification. Thus, in Washington, D.C., we worked with low-income tenants in an affluent area to preserve their homes near million dollar condos.

In other instances, we have engaged with residents, local governments, and community-based organizations to preserve affordable housing and invest in neighborhoods that have experienced disinvestment and neglect. Our investments have helped to maintain long-term affordability for affordable properties, improved the energy efficiency and safety of these buildings, and created a healthier environment for low-income residents. We have developed after school tutoring programs for resident children, built on-site computer labs to allow parents to improve their technological literacy and pursue education and job training, and planted gardens to allow residents to grow and enjoy healthy food.

Instead of abandoning the communities where low-income families live, we strive to transform them into areas of opportunity. These communities have value and as fair housing advocates, we cannot simply promote efforts to move people out. Many residents want to remain in their neighborhoods. NHT is dedicated to preserving their affordable homes and thereby helping to improve the communities in which they exist.

We strongly support distributing federal resources in a manner that allows low-income people to make housing choices that are best for themselves and their families, to increase their access to opportunity. Federal, state and local governments agree with this balanced approach to housing investment.

Let's create effective solutions together.



*Michael Bodaken is the President of the National Housing Trust. He tweets @michaelbodaken.*



*Ellen Lurie Hoffman is the Federal Policy Director of the National Housing Trust.*

## More in Discussion 16: A New Approach to Affirmatively Furthering Fair Housing



**HUD’s New AFFH Rule: The Importance of the Ground Game**  
*by Michael Allen*



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**The Right Target for Fair Housing Advocacy**  
*by Edward Goetz*



**The Need for a Balanced Approach to Fair Housing**  
*by Michael Bodaken, Ellen Lurie Hoffman*