



The **Opportunity** Agenda

*Building the National Will
to Expand Opportunity in America*

Realizing the Promise:

How to Affirmatively
Further Fair Housing

Acknowledgments

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About The Opportunity Agenda

The Opportunity Agenda was founded in 2004 with the mission of building the national will to expand opportunity in America. Focused on moving hearts, minds, and policy over time, the organization works with social justice groups, leaders, and movements to advance solutions that expand opportunity for everyone. Through active partnerships, The Opportunity Agenda synthesizes and translates research on barriers to opportunity and corresponding solutions; uses communications and media to understand and influence public opinion; and identifies and advocates for policies that improve people's lives. To learn more about The Opportunity Agenda, go to www.opportunityagenda.org.

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Executive Summary

This report highlights best practices, lessons learned, and recommendations for affirmatively furthering fair housing. It offers guidance to states and municipalities that receive federal funds on fulfilling their obligation to prevent discrimination, foster integrated and inclusive communities, and ensure equal access to community assets, which include housing, education, employment, transportation, health, and sustainability. The report also provides insight to community members and advocates seeking to implement fair housing principles, as well as to the U.S. Department of Housing and Urban Development (HUD) and other enforcement bodies.

Protecting fair housing across the nation, and particularly where federal funds are used for development, is central to our national value of equal opportunity for all, and to the reality that diverse, thriving communities are crucial to America's future.

With a final regulation expected from HUD, states and municipalities will soon have clearer direction and informational support, as well as greater scrutiny, in fulfilling their fair housing obligations. This is a particularly important time to analyze lessons from the field, and to customize effective practices to fit the needs of local communities.

Case studies described in the report include:

- ▶ Gautreaux in Chicago
- ▶ Federal experiment of Moving to Mobility
- ▶ Baltimore Housing Mobility Program
- ▶ Engaging the housing market in Oak Park, Illinois
- ▶ Defiance of civil rights law in Westchester County, New York
- ▶ Fair share in Mount Laurel, New Jersey
- ▶ Inclusionary zoning in Montgomery County, Maryland
- ▶ Regional planning in Portland, Oregon
- ▶ Expanding fair housing coverage in Seattle, Washington
- ▶ Sustainable Communities Initiative

Lessons learned include:

- ▶ Successful voucher programs expand opportunity
- ▶ Communities must be ready for change
- ▶ Inclusive development is possible
- ▶ Fair housing coverage must be expanded
- ▶ Affirmatively furthering fair housing should be targeted

Recommendations derived from these and other initiatives include:

- ▶ Inclusionary zoning
- ▶ Housing and other opportunities
- ▶ Community land trusts
- ▶ Fair housing coverage
- ▶ More sensible policies relating to drug use
- ▶ Quality of affordable housing
- ▶ Equitable distribution of natural disaster relief
- ▶ Anti-displacement measures

Affirmatively furthering fair housing requires an array of efforts to meet localized needs, as well as participation by historically excluded groups and a diversity of community stakeholders. The examples and lessons described in this report offer important resources for meeting that challenge in ways that expand opportunity for all.

Introduction

Fair housing is critical to realizing the national principle of equal opportunity. This report discusses the legal obligation of the federal government, as well as state and municipal recipients of federal funds, to affirmatively further fair housing. This obligation, if fulfilled, would ensure that programs receiving federal funds prevent discrimination, foster inclusion, and expand opportunity. After decades of widespread failure to comply with civil rights law, the U.S. Department of Housing and Urban Development (HUD) has proposed a regulation that would affirm and strengthen the affirmative obligation. There have also been multiple successes in affirmatively furthering fair housing. These experiences provide us with foundational lessons on what municipalities can do to comply with fair housing law and expand opportunity for all.

I. Why We Need Opportunity

Fair housing has played a critical role in addressing racial inequalities and moving forward as a nation. Despite previous failures, we are currently in a historical moment where it is possible to realize our national value of equal opportunity by affirmatively furthering fair housing.

1. The Need for Fair Housing

Congress passed the Fair Housing Act (“the Act”) in response to the grave harms of discrimination, segregation, and concentrated poverty, providing the legislative scaffolding to prevent and redress them for individual families and the nation as a whole. The Act was signed into law in 1968, during a historical moment when the nation and its government were beginning to come to grips with the gravity of segregation and concentrated poverty. A 1966 White House conference warned that “slums and ghettos have grown larger, overcrowding has intensified, and the alienation of the ghetto dweller has become a national crisis.”¹ The Kerner Commission, a presidential task force created in response to riots throughout the country, advised taking decisive action toward federal civil rights protections, providing affordable housing outside of segregated and impoverished areas, and expanding decent housing for low- and moderate-income families, in order to “end the destruction and the violence, not only in the streets of the ghetto but in the lives of the people.”² In April 1968, the same month that Dr. Martin Luther King Jr. was assassinated, Congress passed the Act and President Lyndon B. Johnson signed it.³

The purpose of the Act is to create a policy of “fair housing throughout the United States.”⁴ The Act does so by prohibiting discrimination in the sale or rental of housing.⁵ It also goes further. The Act requires that HUD, as well as other federal departments and agencies, administer all of their programs and activities “in a manner affirmatively to further the policies of [the Act].”⁶ Thus, not only is discrimination illegal, but the federal government has an affirmative obligation to create “open, integrated residential housing patterns” and to combat segregation;⁷ act regionally where necessary;⁸ and ensure that recipients of federal funds comply with these policies.⁹ The comprehensive reach of the Act, through the affirmative obligation that it places on HUD and recipients of federal funds, is the result of a national understanding that the problem of segregation and concentrated poverty is a pervasive one. The problem’s consequences go well beyond housing and negatively impact communities’ access to jobs, schools, transportation, health, and sustainability.¹⁰ Ultimately, Congress concluded, these trends hold

us back as a nation, hampering economic prosperity and the principle of equal opportunity. Congress not only understood this reality, but sought to eliminate housing discrimination in all its forms, and to enable people of all backgrounds to live in communities of their choice.

2. How We Benefit from Fair Housing

Giving all families the choice to live in inclusive, high-opportunity neighborhoods can improve the lives of families, and particularly their children, by giving them access to high quality schools, youth programs, health services, more positive peer-group influences, reduced violence, and—due to reduced stress and greater employment—supporting more effective parenting.¹¹ Research shows, for example, that lower-income students attending middle-class schools perform higher than middle-class students in low-income schools, and students of all racial groups perform better academically when they are attending racially integrated schools.¹²

Affirmatively furthering fair housing expands access to job opportunities that would not otherwise be available.¹³ It can also reduce families' proximity to hazardous and radioactive materials, childhood asthma, lead and pesticide poisoning, and poor air quality and other health risks.¹⁴ Expanding housing opportunity can improve families' mental wellbeing by giving them access to neighborhoods with lower crime rates, more park space, safer pedestrian routes, and more and healthier grocery stores.¹⁵

Affirmatively furthering fair housing affects not only families, but also benefits entire communities, and the nation as a whole. For example, research shows that residents who live in more diverse neighborhoods express less prejudice based on race and ethnicity; that students who attended more integrated schools are more culturally sensitive, adapt more easily to diverse work environments, and are less likely to use racial stereotypes; and that living in integrated communities allows people of all backgrounds to broaden their social networks and creates significant opportunities for interaction among different races and ethnicities.¹⁶ Furthermore, as the congressionally-appointed Bipartisan Millennial Housing Commission confirmed in 2002, expanding housing opportunities “supports overall economic growth.”¹⁷ Affirmatively furthering fair housing has numerous societal and economic benefits critical for the nation and our communities.

3. How We Failed

Where implemented, affirmatively furthering fair housing has yielded positive results, as will be shown in Section II of this report (“How We’ve Affirmatively Furthered Fair Housing”). However, the “affirmatively further” provision of the Act has never been fully or consistently implemented or enforced, with the result that HUD has thus far failed to achieve the provision’s critical legislative objectives. HUD regulations require a state that receives federal funds to “certify to the satisfaction of HUD that it will affirmatively further fair housing” by (1) conducting an analysis of impediments to fair housing; (2) taking action to overcome the impediments identified in the analysis; (3) documenting the analysis and action; and (4) ensuring that local governments comply with the state’s certification to affirmatively further fair housing.¹⁸ Similarly, a local government receiving federal funds must certify that it will analyze impediments to fair housing, take action to overcome those impediments, and document the analysis and action that it takes.¹⁹

Our nation is moving toward two societies, one black, one white – separate and unequal.

Kerner Commission

The current structure falls short of realizing the Act's affirmative obligation. Regulations fail to provide specific guidance on what is minimally necessary for a recipient of federal funds to affirmatively further fair housing.²⁰ The regulations do not require recipients to submit their analyses of impediments (AI) to HUD, nor must HUD approve their adequacy.²¹ With HUD passive in the matter, the effectiveness of an AI is often completely dependent on the degree to which a local government is dedicated to combating segregation, poverty, and inequality. Furthermore, localities have not been uniform in analyzing housing patterns and impediments related to race and other characteristics protected by the Act.²² As a result, there is a wide disparity between what many recipients of federal funds are required by law to do and what they actually do in the context of a lack of sufficient standards and scrutiny.²³ The current regulations also apply the requirement to affirmatively further fair housing to a jurisdiction as a whole, as opposed to applying the requirement to each federally funded project within the jurisdiction, and they also fail to coordinate HUD's fair housing enforcement with other equal opportunity enforcement.²⁴ This leads to a scenario in which HUD fails to challenge an AI when the submitting locality has identified and proposed action on discrimination while its federally subsidized housing policies perpetuate segregation and concentrated poverty.²⁵ Thus, a locality can evade HUD scrutiny despite its unlawful failure to affirmatively further fair housing.

As two experts have noted:

[A] variety of factors has impeded residential racial integration over time. One of the most important contributing factors on a structural level has been that, for the past four decades, most municipal recipients of federal housing funds—abetted by successive HUD administrations of both political parties—simply ignored their obligations to affirmatively further fair housing without sanction. That federal collaboration subverted Congress' intent that recipients would lose those funds if they did not comply with those obligations.²⁶

For example, the National Fair Housing Alliance discovered in 2008 that less than ten percent of jurisdictions that received federal funds through the Community Development Block Grant actually addressed fair housing concerns.²⁷ These concerns included a lack of access to housing for people with disabilities; persistent racial and ethnic segregation; a lack of communication services for people with limited English proficiency; lending discrimination targeting communities of color; discrimination against families with children; and other fair housing barriers.²⁸

Localities, using subsidies from the Low Income Housing Tax Credit (LIHTC) program, the largest source of affordable housing in the nation, disproportionately concentrate their housing units in high-poverty neighborhoods that have high numbers of people of color.²⁹ In 2013, the Fair Housing Justice Center surveyed 52,000 low-income rental units created by LIHTC in New York City and seven surrounding counties between 1998 and 2007.³⁰ It found that 71 percent of the LIHTC units are in neighborhoods of high or extreme poverty and 77 percent are in neighborhoods of color.³¹

The patterns of racial segregation, concentrated poverty, and inequality of access to community assets that the Fair Housing Act seeks to address are not natural. Rather, they are the legacies of historical decisions and policies within the private housing market and federal, state, and local governments.³² Until the Act was passed by Congress, restrictive covenants and deed restrictions were commonly utilized by white communities to exclude people of color from housing and other opportunities.³³ Discrimination was institutionalized through the real estate industry.³⁴ Redlining, a widespread practice through which banks and lending institutions systematically refused loans to African Americans, disinvested and led to the deterioration of many African-American communities

during the 1950s and 1960s.³⁵

The government contributed to this racial divide. Beginning in 1934, the Federal Housing Administration (FHA), through its mortgage insurance programs, transformed the national housing market by making homeownership accessible to a large number of whites but excluded African Americans from assistance.³⁶ The Veterans Administration, which administered the GI Bill loan programs, guaranteed mortgages for five million homes but excluded African Americans as well.³⁷ Both agencies endorsed the use of racially restrictive covenants until 1950 and refused to underwrite loans that would enable people of color to move into white neighborhoods.³⁸ FHA's Underwriting Manual prohibited realtors from underwriting loans to "incompatible" racial groups, explaining that "if a neighborhood is to retain stability, it is necessary that properties shall continue to be occupied by the same social and racial classes."³⁹ Although FHA removed explicit racial rules from its manuals in the late 1940s, both agencies continued to exclude African Americans from homeownership well into the 1960s.⁴⁰ By then, local governments, with HUD funds, used "slum clearance" or "urban renewal" policies to thwart integration and concentrate African Americans in public housing.⁴¹ The racial and class inequalities created by past policies are now perpetuated by the practices of states and municipalities that concentrate low-income families in low-opportunity neighborhoods and exclusionary zoning.⁴²

In light of this history, the lack of compliance with the affirmative obligation to further fair housing is particularly egregious and destructive for the nation. Forty years after Congress passed the Act, "most major cities across the country remain highly racially segregated, particularly for African Americans."⁴³ Segregation is not only a trademark of cities, but remains a part of the national fabric. In general, African Americans, Latinos, and Asian Americans want to live in diverse, integrated neighborhoods provided that they have racial tolerance.⁴⁴ Yet, according to 2010 census data, the average white resident lives in a census tract that is 79 percent white (despite the fact that whites are only 64 percent of the population), the average African-American resident lives in a tract that is 46 percent African-American (despite African Americans being only 13 percent of the population), and the average Latino resident lives in a tract that is 45 percent Latino (despite being only 16 percent of the population).⁴⁵

Concentrated poverty remains as well. Overall, 27.2 percent of African Americans and 23.5 percent of Latinos live in poverty, compared to a poverty rate of 9.6 percent for whites.⁴⁶ The poverty rate for children under 18 years old is 38.3 percent for African Americans and 30.4 percent for Latinos, compared to 10.7 percent for whites.⁴⁷ For children under 5, the poverty rate is 43.7 percent for African Americans and 33 percent for Latinos, compared to 11 percent for whites.⁴⁸

The combination of segregation and concentrated poverty, as Congress feared, contributes to the racial divide in virtually all aspects of this nation by closing off the access of communities of color to employment, education, transportation, health, and sustainability. Subsequently, the unemployment rate for African Americans is double the rate for whites and has remained so for the last 40 years.⁴⁹ Inequalities in income and wealth have widened, as has the gap in educational attainment rates.⁵⁰ African Americans have much less access to supermarkets and healthy food, are subject to disparate exposure to commercial hazardous waste facilities, and African-American children are five times more likely than white children to suffer from lead poisoning.⁵¹ Beyond hindering one racial group, segregation and concentrated poverty prevent critical opportunities for individuals, communities, and the nation as a whole.

4. How We Move Forward

In July 2013, HUD proposed a regulation seeking to “provide HUD program participants with more effective means to affirmatively further the purposes and policies of the Fair Housing Act.”⁵² The proposed rule attempts to effect this in several different ways.

First, the rule defines affirmatively furthering fair housing as:

[T]aking proactive steps beyond simply combating discrimination to foster more inclusive communities and access to community assets for all persons protected by the Fair Housing Act. More specifically, it means taking steps proactively to address significant disparities in access to community assets, to overcome segregated living patterns and support and promote integrated communities, to end racially and ethnically concentrated areas of poverty, and to foster and maintain compliance with civil rights and fair housing laws.⁵³

The rule also replaces the inefficient analysis of impediments to fair housing with a more effective Assessment of Fair Housing (AFH).⁵⁴ An AFH, which will be developed with data that HUD provides, as well as local or regional information gained through community participation, must be performed by any state, local government, or public housing authority that receives HUD funds.⁵⁵ The uniform local and regional data supplied by HUD will identify: patterns of integration and segregation; concentrated areas of poverty; access to education, employment, transportation, and environmental health; disproportionate housing needs; and representation of people with disabilities and families with children.⁵⁶ Under the proposed rule, the AFH must identify determinants of segregation, concentrated poverty, and disparities in access to community assets; identify fair housing priorities and goals and justify them; and set one or more goals for addressing the determinants.⁵⁷ An AFH must also be submitted to HUD, which has the authority to reject it unless 60 calendar days pass, in which case, the AFH is deemed accepted under the proposed rule.⁵⁸

Furthermore, when it develops its AFH, a recipient of federal funds will have to consult with fair housing, community, and/or other organizations that represent historically excluded groups.⁵⁹ A recipient must also revise its AFH if there is a “significant material change,” such as a natural disaster, major demographic shift, or a substantial policy change or civil rights violation.⁶⁰ A recipient must incorporate its AFH into its consolidated plan and/or public housing agency plan and the AFH should guide how a recipient will use its resources.⁶¹ Ultimately, a recipient must stipulate how it will affirmatively further fair housing, not only with its HUD funding, but with all of its housing and community development resources.⁶²

HUD can and should strengthen the proposed regulation, as many fair housing and civil rights groups have recommended, and its effectiveness will depend on how it is implemented and enforced. Nevertheless, the release of the proposed rule represents a critical and positive step in a long history of struggles to affirmatively further fair housing.⁶³

II. How We've Affirmatively Furthered Fair Housing

Over the last several decades, there have been many efforts to affirmatively further fair housing. These efforts have ranged from collaborations between the federal government and cities to create subsidized housing vouchers for low-income families to inclusionary zoning, the practice under which a municipality requires or creates incentives for developers to allocate a share of their housing units as affordable for people with low or moderate incomes. Many of these endeavors have met with significant success, including enabling low-income families to move to higher-opportunity neighborhoods and seeing their children reap the benefits; keeping cities affordable for working-class households; and passing laws that bring more people, such as Section 8 voucher holders or transgender persons, under civil rights protections. The limitations and failings of these efforts are also instructive. Taken together, they hold important lessons for affirmatively furthering fair housing.

Voucher to Opportunity

1. Gautreaux: Expanding Opportunity in Chicago

In 1966, a group of African-American tenants and applicants in public housing filed a class action lawsuit against the Chicago Housing Authority (CHA) and HUD.⁶⁴ The plaintiffs asserted that, as public housing residents and voucher holders, CHA and HUD were placing them in low-opportunity, segregated African-American communities to “avoid the placement of Negro families in white neighborhoods.”⁶⁵ The federal courts agreed that the practice violated African Americans’ constitutional rights, and ordered CHA to build its next 700 family units, and thereafter at least 75 percent of new family public housing, in predominantly white areas.⁶⁶ Federal courts also: ordered CHA to change its tenant assignment and site selection procedures; found that HUD violated civil rights law by assisting CHA’s racially discriminatory housing program; and ordered both CHA and HUD to make efforts to increase the supply of housing units, consistent with the courts’ rulings; and create a comprehensive plan to remedy past effects of unconstitutional housing practices.⁶⁷ The case, which the parties ultimately settled, resulted in the Gautreaux mobility program that provided vouchers and counseling, and between 1976 and 1999, helped more than 7,000 families move to less segregated and more affluent areas.⁶⁸

The Gautreaux mobility program was relatively successful. According to a sample of over 1,500 families more than 15 years after the program was implemented, two-thirds of the families who moved to the suburbs were still living there.⁶⁹ In addition, the program was successful from an intergenerational perspective. The children who moved to suburbs with their parents as part of the program, and were old enough to live on their own by the late 1990s, continued to live in neighborhoods with low poverty rates, lived in more integrated communities than those in which they originally lived, and had higher educational attainment rates.⁷⁰ A study of children who moved to suburbs through Gautreaux finds that they were more likely than children who moved to cities through Gautreaux to graduate from high school, attend college, and attend better colleges.⁷¹ Amongst the children who moved to suburbs, those who did not attend college were more likely than city-movers to have a job with higher pay and benefits.⁷² On average, families in the program moved from neighborhoods with a census tract poverty rate of 40 percent, and by the late 1990s, were living in neighborhoods with a poverty rate of 17 percent—less than half of the poverty rate of their original tract.⁷³ On average, families moved from neighborhoods that were 87 percent

African-American to ones that were 30 percent African-American.⁷⁴

Gautreaux's successes were incomplete, however. The program placed one-fifth of the families in high-poverty and highly segregated neighborhoods.⁷⁵ Also, a second version of Gautreaux moved hundreds of families from lower-poverty areas in 2002, but by 2006, roughly half of the families had already moved out of those higher-opportunity neighborhoods and into areas averaging a 27 percent poverty rate.⁷⁶ The Chicago Area Fair Housing Alliance credited Gautreaux with improving the opportunities of families while acknowledging that Chicago still concentrated affordable housing in low-opportunity neighborhoods.⁷⁷ Despite its shortcomings, Gautreaux is a successful model for expanding housing and other opportunities and has been utilized as such.⁷⁸

2. Moving to Mobility Across the Nation

The relative success of Gautreaux inspired the creation of the Moving to Opportunity for Fair Housing (MTO) demonstration program.⁷⁹ Congress authorized MTO in 1993 to reduce the concentration of poor families in inner cities, address racial segregation in public housing, and utilize social experimentation to evaluate the effects of housing policy.⁸⁰ MTO was a “10-year research demonstration that combined rental assistance with housing counseling to help very low-income families move from poverty-stricken urban areas to low-poverty neighborhoods.”⁸¹ The program targeted over 5,300 very low-income families in some of the nation's most distressed public housing in Baltimore, Boston, Chicago, Los Angeles, and New York.⁸² Unlike Gautreaux, which integrated based on race and income, MTO integrated only on income.⁸³ Still, as one expert noted, the program was successful in demonstrating that “it is possible for HUD and local public housing authorities to successfully operate an economic and racial desegregation program using Section 8 rental assistance in metropolitan housing markets.”⁸⁴

*I love where I'm from
I hate where I'm from
And that's exactly why
I can't escape where I'm from*
The Peace Poets – “Barrio Libre (Intro)”

Initial research on MTO showed improvements in families' lives during the first five years of their participation, most notably for children; improvements in mental and physical health; and job improvements in certain localities.⁸⁵ For example, families in Los Angeles moved to neighborhoods with significantly less crime (23 percent less); in Baltimore and Boston, children's math and reading scores or pass rates improved substantially; and in Baltimore, MTO lowered teenagers' arrest rates for violent crimes.⁸⁶ However, longer-term research shows mixed results. Of the 1,820 families in an experimental group of MTO, almost half found an apartment and moved into a neighborhood with less than 10 percent poverty.⁸⁷ However, half of these neighborhoods became poorer by the time the program was over.⁸⁸ Over two-thirds of the experimental group and Section 8 group moved from one to three times after being part of the MTO program.⁸⁹ By the conclusion of the program, in 2002, the share of experimental group families living in low-poverty neighborhoods had fallen dramatically, from 39 percent to 25 percent.⁹⁰ The main reasons for families moving after their original lease in MTO included problems with the lease (such as units being sold, rented above the voucher program ceiling price, or units being removed from the program altogether); conflicts with the landlord; wanting a bigger or better-quality apartment; safety issues; and substandard physical conditions.⁹¹ In New York, families were particularly impacted by landlords raising rents or selling units; in Los Angeles, one-third of families reported that their neighborhoods were unsafe or undesirable; and in Boston, families were more likely to report issues with the size or quality of their housing unit.⁹²

MTO was successful in placing families in low-poverty neighborhoods but the success was not consistent.⁹³ For 75 percent of the families, MTO did not in the long-term keep families in low-poverty neighborhoods, or did not place them in low-poverty neighborhoods that would remain that way. Still, despite its failure to consider race and the multiple reasons for families moving, MTO confirmed that voucher programs can expand opportunities for low-income families.

3. Baltimore Does it Right

In 1992, Congress created HOPE VI, a housing program created to improve the environments of residents in severely distressed public housing, including through the demolition of public housing.⁹⁴ However, the program was a disappointment in many ways. Housing and community advocates criticized the program because it displaced many low-income families and did not provide them with the choice of moving to high-opportunity neighborhoods.⁹⁵ Critics also noted that the original residents did not always benefit from the intended redevelopment effects, including mixed-income developments; HOPE VI greatly reduced the amount of affordable housing in many cities; and the program has left many in the same, if not a worse, position.⁹⁶

In 1995, a group of African-American public housing residents in Baltimore responded to the demolition of high-rise public housing developments, under HOPE VI and otherwise, and to decades of racial discrimination in public housing.⁹⁷ The residents alleged that, since at least 1954, HUD and successive city administrations, including the public housing authority, engaged in a pattern or practice of discriminating against African Americans in public housing and failed to take the required action to ameliorate the effects of past racial discrimination.⁹⁸ The federal district court concluded that HUD, but not the Housing Authority of Baltimore City, violated the Fair Housing Act of 1968 and its affirmative obligation to further fair housing by failing to take a regional approach to the desegregation of public housing in Baltimore.⁹⁹ A subsequent settlement created the Baltimore Housing Mobility Program (BHMP).¹⁰⁰



Photo courtesy of Diego Iñiguez-Lopez

BHMP was created to enable families to move to racially and economically integrated communities in Baltimore and its surrounding counties. The program provides vouchers that help residents enter the private rental market and live in areas with a less than 10 percent poverty rate, where less than 30 percent of residents are African American, and where no more than 5 percent of residents receive subsidized housing. The program includes elements typical in housing voucher programs, such as providing housing search counseling; requiring the resident to remain in the new unit for at least one year in order to sustain the move to opportunity; and providing housing quality inspection. Critical to its success, however, BHMP requires residents to remain in eligible areas for at least two years; offers services including post-move counseling, second-move counseling, and financial literacy counseling; and provides that the voucher can be used in the entire metropolitan area.¹⁰¹

Since 2003, BHMP has helped over 2,000 families move from high-poverty, highly segregated neighborhoods to low-poverty and racially diverse communities outside of Baltimore City. In addition, over two-thirds of these families have remained in low-poverty and racially diverse neighborhoods.¹⁰² To be sure, while that still leaves one-third of those families in higher-poverty, more segregated communities, BHMP does show that a few additional services can go a long way toward achieving a housing voucher program that addresses racial segregation and concentrated poverty.

Getting the Community Ready for Change

4. A New Kind of Community in Oak Park

In addition to ensuring that low-income families make it to high-opportunity neighborhoods, fair housing advocates have created innovative ways to ensure that high-opportunity communities are ready for and welcoming of the beneficial changes that come with integration. One strategic approach, developed by the Village of Oak Park, Illinois, and the Oak Park Regional Housing Center (OPRHC), promotes a market-based model of racial integration.¹⁰³ The Oak Park model has had great success in an otherwise segregated Chicago region.¹⁰⁴

In this model, the Village and OPRHC (1) proactively promote Oak Park to a diverse population that reflects the Chicago region, including communities of color and low- and moderate-income households, with a series of services to families that are seeking housing, and (2) work with property owners in order to ensure compliance with fair housing laws and to create incentives for the owners to “affirmatively market” their units.¹⁰⁵

The first element involves OPRHC providing counseling to prospective residents: rental advisors connect them to available housing, explain the benefits of living in Oak Park, and discuss prospective residents’ reluctance to live in a neighborhood that is not predominantly made up of their own racial group.¹⁰⁶ Prospective renters can also visit OPRHC and receive a listing of units that fit their budgets and criteria.¹⁰⁷ The second element has the Village simultaneously matching grants for the improvement of rental units to landlords who agree to affirmatively market their buildings, which is, in part, providing a listing of available units to OPRHC.¹⁰⁸ OPRHC also provides marketing and technical advice for landlords on how to comply with fair housing laws and basic property management.¹⁰⁹

This dual approach, which gives tangible benefits to tenants and landlords, has been highly successful in creating an integrated community in Oak Park. For example, according to the index of dissimilarity, which compares the distribution of a selected group with all other groups in the area on a range from 0 to 1 (0 being no segregation and 1 being total segregation), Oak Park has a black-white dissimilarity index of .38, which is a radical contrast to the Chicago metropolitan rate of .75.¹¹⁰ Whereas, in 1970, African Americans made up just one percent of Oak

Park's population, in 2009, they were an estimated 20.7 percent.¹¹¹ More work is necessary to achieve the vision of a fully integrated Oak Park: Latinos are underrepresented in the Village and the higher-than-average cost of living poses a challenge.¹¹² Nevertheless, the Oak Park experience of attracting African Americans to a high-opportunity neighborhood, and working with that neighborhood and its housing market to develop a diverse community, has proven to be a model for integration.

5. Ground Zero in Westchester

Westchester County, New York, by contrast, shows that local resistance, if unchecked, can derail fair housing efforts. In Westchester, the Anti-Discrimination Center (ADC) challenged the county's history of failing to affirmatively further fair housing.¹¹³ ADC brought suit under the False Claims Act, alleging that Westchester falsely certified that it was in compliance with its obligation to affirmatively further fair housing, in order to receive Community Development Block Grants and other federal funds.¹¹⁴ Not only did the county fail to conduct an appropriate analysis of impediments to fair housing, but it also failed to ensure that sub-recipients of federal funds—participating municipalities—were taking steps to affirmatively further fair housing.¹¹⁵ Therefore, ADC argued, Westchester improperly received over \$45 million in federal funds.¹¹⁶

In February 2009, three years after the suit was originally filed, a federal judge agreed with ADC and found that Westchester made “false or fraudulent” certifications and failed to comply with its affirmative obligation under fair housing law.¹¹⁷ That summer, the court entered a consent decree that was designed to end residential segregation in Westchester.¹¹⁸ The consent decree stipulated that Westchester had to fund the construction of 750 affordable housing units in a manner that affirmatively furthers fair housing; facilitate the construction of affordable housing; and overcome barriers, such as exclusionary zoning, that municipalities put up to keep affordable housing and integration out of their neighborhoods.¹¹⁹

Unfortunately, a May 2014 analysis by ADC found numerous problems: Westchester failed to develop an implementation plan complying with the consent decree; most of the sites it picked for affordable housing are isolated; the county was far behind the development obligations it had for 2013; Westchester failed to address exclusionary zoning by municipalities; also failed to include ending de facto segregation as a goal in its housing policies and programs; the county rallied opposition to the federal court order; and Westchester never submitted an analysis of impediments that was satisfactory to HUD.¹²⁰

According to ADC, the county used a variety of deceptive methods to avoid compliance with the federal court order. It places affordable housing sites in areas that: are isolated, are not integrated into existing communities, do not affirmatively further fair housing, and the selected housing sites allow the county to avoid addressing the restrictive single-family zoning that perpetuates segregation.¹²¹ Instead of removing barriers, Westchester represented that it chose sites for affordable housing, and counted them as such, when those sites' barriers were already removed by previous litigation. Westchester represented those sites as being ones that it was developing in order to comply with the consent decree. In reality, this tactic limited the sites where affordable housing could be built.¹²² In addition, ADC found that the county used old census data, from 2000, to determine the neighborhoods in which it should build affordable housing; however, using 2010 census data would have been more accurate and would have required building

A child's course in life should be determined not by the zip code she's born in, but by the strength of her work ethic and the scope of her dreams.

Barack Obama

affordable housing elsewhere, in neighborhoods where communities of color, particularly Latinos, had grown in presence.¹²³ This has allowed a situation in which, according to the monitor of the settlement, seven municipalities in Westchester have exclusionary zoning and another nine municipalities have insufficient affordable housing provisions.¹²⁴

Still, despite flagrant evasions of a federal court's consent decree and Westchester's explicit disinterest in complying with federal fair housing law, neither the monitor nor the federal government have sought the court's intervention or sought to hold the county in contempt.¹²⁵ Unfortunately, Westchester shows that not-in-my-backyard attitudes still exist and that it will require vigilance and persistent enforcement to affirmatively further fair housing.

Inclusive Development

6. A Breakthrough in Mount Laurel

The struggle for affordable housing in high-opportunity communities is by no means a new one. In 1972, a group of African Americans and Latinos challenged the land use regulations of New Jersey's Mount Laurel Township.¹²⁶ As with Westchester, many New Jersey municipalities, including Mt. Laurel, have a history of preventing local affordable housing by enacting zoning laws, including provisions that require one-family detached homes, minimum lot sizes, and maximum building size.¹²⁷ In a landmark decision, the New Jersey Supreme Court ruled that municipalities had an affirmative obligation to ensure the construction of affordable housing and that the amount was to be determined by a regional "fair share."¹²⁸ The decision was difficult to enforce, as the state supreme court acknowledged eight years later in Mt. Laurel II.¹²⁹ Still, the decisions led the state legislature to pass the New Jersey Fair Housing Act (NJFHA).¹³⁰

The Mt. Laurel doctrine led to the creation of approximately 60,000 homes for low- and moderate-income families between 1985 and 2010.¹³¹ Those who moved into high-opportunity neighborhoods have had higher employment rates, family income, and educational performance rates among children; parents have been more involved in their children's education; there has been less use of welfare; property values have not fallen nor have taxes risen; and developments have blended in so well that many people did not even know they existed.¹³²

Nevertheless, the NJFHA contained counter-effective features. The act included provisions that allowed wealthy municipalities, through regional contribution agreements (RCA), to transfer their obligation or allocation of affordable housing to municipalities with higher concentrations of poverty, and reduced incentives for mixed-income housing. The state legislature eventually determined that RCAs were undermining its objectives of integration and expanding affordable housing, and eliminated the practice in 2008.¹³⁴ In doing so, the state legislature mandated that every town allocate 13 percent of its affordable housing to people with very low incomes (30 percent of median income, or approximately \$20,290 annually).¹³⁵ Mt. Laurel shows that affordable housing, despite the possibility of evasion, can expand opportunities for low-income communities.

7. Local Innovation in Montgomery County

Efforts to use inclusionary zoning as a means of addressing segregation and concentrated poverty have not been limited to New Jersey. A year after the Mt. Laurel litigation began, in 1973, Montgomery County, Maryland, passed an ordinance requiring that a percentage of new housing units be developed for low- and moderate-income families.¹³⁶ Under the ordinance, 12.5 to 15 percent of dwelling units, in developments of 50 or more units, must

be “moderately priced,” and 40 percent of these units must be offered to the local public housing authority or nonprofit sponsors.¹³⁷ By doing this, in exchange, developers are allowed to develop more units than zoning laws would otherwise permit.¹³⁸

Montgomery County’s inclusionary zoning has produced over 12,500 affordable housing units and made those units well-integrated with market-rate housing.¹³⁹ Almost ten percent (1,200) of the public housing units were for very low-income households, 55 percent of the moderately priced apartments between 1991 and 1998 were purchased by people of color, and people of color occupied 80 percent of the units purchased by the public housing authority.¹⁴⁰ The program has had successes that policymakers have been unable to replicate in other parts of the country. For example, Massachusetts’ Comprehensive Permit Law, a statewide legislative mandate for inclusionary zoning,¹⁴¹ has failed to provide affordable housing for families in the lowest ranges of eligibility for moderate-income households, or for significant numbers of people of color.¹⁴² The statute created no subsidies, allowed the majority of communities to evade their requirement to allocate affordable housing, and failed to provide affordable housing for communities of color.¹⁴³ Montgomery County, on the other hand, “suggests that more attention to the details of these programs may produce racial integration.”¹⁴⁴



Photo by Andrea Carolina Zamudio Galvis

The production of dwelling units for moderate-income households has decreased as Montgomery County reaches capacity for development. Nevertheless, inclusionary zoning remains one tool, of many, for affordable, integrated housing. Today, over 400 cities, towns, and counties have followed Montgomery County’s lead and are utilizing this tool.¹⁴⁵ When applied correctly, inclusionary zoning successfully integrated affordable housing.¹⁴⁶

8. An Imperfect Ideal in Portland

Inclusionary zoning has been a prominent part of the struggle for housing opportunity in Oregon. In 1973, the Oregon legislature created a land use planning board in order to achieve its planning goals, which included providing for “the housing needs of citizens of the state . . . at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households and allow for the flexibility of housing location, type, and density.”¹⁴⁷ Some, including the Housing Land Advocates, consider the state’s land use planning system to be one of the most well-developed and progressive of the nation.¹⁴⁸ In 1999, however, the Oregon legislature prohibited jurisdictions from using mandatory inclusionary zoning.¹⁴⁹ Since then, cities in Oregon have lacked a tool critical for creating racially and economically integrated housing, as they have been unable to require that housing units be designated for low- or moderate-income residents.¹⁵⁰

Despite this setback, Portland has still had successes in its housing policies. Through regional planning, the city has encouraged all neighborhoods undergoing development to create their fair share of affordable housing.¹⁵¹ A regional planning agency, Portland Metro, enforces a regional growth boundary, or a land use planning line, to focus new development in urban areas and prevent urban sprawl.¹⁵² This type of land use planning, combined with strong land use and transportation policies, has allowed Portland to mitigate the degree of racial segregation that has come from local exclusionary zoning practices.¹⁵³ As a result, Portland was able to rapidly decrease segregation among African Americans and whites, and is now one of the least class-segregated metropolitan areas in the nation.¹⁵⁴ For example, according to the index of dissimilarity, which compares the distribution of a selected group with all other groups in the area on a range from 0 to 1 (0 being no segregation and 1 being total segregation), Portland has a class dissimilarity index of .29, or almost half the rate of the country’s most segregated metro areas for the poor.¹⁵⁵

However, as former Portland mayor Sam Adams stated, the city has received “high praise on a low standard.”¹⁵⁶ The decline of segregation has been, in part, due to gentrification that has displaced African Americans from the historically African-American communities of Northeast Portland.¹⁵⁷ From 2001 to 2011, Portland’s housing authority increased its Section 8 vouchers but, because of how the vouchers were administered, the distribution actually tripled the number of African Americans in the low-income neighborhoods of East Portland and West Gresham.¹⁵⁸ In a federal tax credit program administered by Oregon, of the 17,000 housing units funded in Portland since 1991, 55 percent are in poverty census tracts and 20 percent are in tracts that are predominantly people of color.¹⁵⁹ Similarly, of 4,700 housing units created by a state-administered rental program, approximately two-thirds contain African-American and Latino residents living in poverty tracts.¹⁶⁰ African Americans and Latinos in the Portland metro area are twice as likely as whites to live in tracts that are predominantly people of color. Portland’s approach to segregation, concentrated poverty, and inequality of access to community assets has fallen short in a number of ways. Nevertheless, its model has proven to be a successful one for integration.

Fair Housing for All

9. The Long Road in Seattle

Nearby, in Seattle, Washington, fair housing advocates know that their cause will be a long-term struggle. Long before Congress passed the nation’s Fair Housing Act of 1968, civil rights activists were pushing for a local ordinance that prohibited discrimination in housing. That local advocacy caused the City Council to hold a public hearing on the issue in 1961. The Citizen’s Advisory Committee recommended that Seattle enact a fair housing ordinance

in December 1962, but the mayor and City Council refused, resulting in a protest march and sit-in at the mayor's office. In response to the pressure, the city created the Seattle Human Rights Commission, which drafted a fair housing ordinance and referred it to the City Council. The City Council again refused to pass the ordinance but placed it on the ballot, where voters rejected it in 1964. Less than four years later, on April 19, 1968, two weeks after the assassination of Martin Luther King Jr., Seattle passed its fair housing ordinance, with an emergency clause making it effective immediately.¹⁶²

Since the 1968 passage of the ordinance banning racial discrimination, Seattle has broadened the types of discrimination that are prohibited by fair housing law. The City Council has done this by making it illegal to discriminate based on sex, marital status, age, parental status, political ideology, creed, or disability.¹⁶³ Seattle also prohibited discrimination based on sexual orientation, as have the state of Washington, 20 other states, the District of Columbia, and numerous localities.¹⁶⁴ In addition, Seattle has banned discrimination based on gender identity, as have Washington state, 15 other states, the District of Columbia, and a multitude of localities.¹⁶⁵ Discrimination based on source of income, such as housing assistance (including but not limited to Section 8), Social Security, or child support, is prohibited in Washington, as well as in 12 other states, the District of Columbia, and cities in 11 other states.¹⁶⁶ Additionally, Seattle conducts periodic inspections of housing units and levies high penalties as a means of ensuring health, safety, and a minimum level of housing quality.¹⁶⁷

Unfortunately, these protections have not achieved fair housing goals. In the Central Puget Sound region of Washington, which includes Seattle, over half of voucher holders live in areas with low or very low opportunity, as defined by access to education, economic health, housing and neighborhood quality, mobility and transportation, and health and environment.¹⁶⁸ This is reflective of the national average: over half of the voucher holders living in the 50 largest metropolitan areas live in neighborhoods with poverty rates over 20 percent (close to half of whom live in neighborhoods with poverty rates of over 30 percent).¹⁶⁹ In Seattle, households that are in poverty or receiving public assistance are more concentrated in low-opportunity areas than the regional average.¹⁷⁰ Furthermore, whites are more likely to live in high-opportunity areas, while African Americans, Latinos, and indigenous people are more likely to live in low-opportunity areas.¹⁷¹ Even whites who live in poverty are more likely to live in high-opportunity areas than people of color who live in poverty.¹⁷² Nevertheless, Seattle's expansive fair housing protections make sure that its residents will continue to benefit from successes in affirmatively furthering fair housing.

Praxis

10. Sustainable Communities

The data confirming the racial and economic divide in the Puget Sound region of Washington came from the Sustainable Communities Initiative (SCI).¹⁷³ SCI is a HUD program that seeks to “better coordinate regional planning for housing and transportation while supporting more sustainable and equitable decisions on land use, infrastructure, and zoning.”¹⁷⁴ Through regional consortia, SCI plans and grants federal funds to “revitalize some of the nation's most distressed neighborhoods, support healthy, livable communities, and broaden access to opportunity-rich areas for all residents in a region.”¹⁷⁵

Working with its regional partners in Washington, SCI collected specific and localized data on indicators of inequality.¹⁷⁶ See Figure 1 on page 17. The data, on geographic access to good schools, good jobs, quality housing, transportation, health, and sustainability, identify racial and economic inequalities and illustrate those divisions

on a map of the region.¹⁷⁷ The map shows that in the Puget Sound region of Washington, as in many other parts of the nation, African Americans, Latinos, and indigenous groups live disproportionately in low-opportunity neighborhoods, as opposed to whites who are more likely to live in high-opportunity neighborhoods.¹⁷⁸ This information can be used by policymakers and invested stakeholders to work toward overcoming barriers to equal housing opportunity.

This data can inform how cities should proceed with housing and development plans. For example, SCI’s research suggests that Puget Sound can and should find ways to leverage its relatively high rate of HUD site-based affordable housing in high-opportunity areas to increase mobility; develop housing counseling programs to lower the concentration of voucher holders in low-opportunity neighborhoods; use its public transit to link residents in low-opportunity neighborhoods to jobs and other regional resources; and target inequalities, on a regional level, when making investments and collaborations.¹⁷⁹

In the case of the Seattle area, as of 2012, the Puget Sound Regional Council planned to incorporate the data and regional opportunity maps into a Fair Housing and Equity Assessment; encourage affordable housing developers and providers to utilize the results so that subsidized housing and housing vouchers are equitably distributed across the region; ensure that investments in the public transit system give low-opportunity residents access to high-opportunity resources; and let the results inform philanthropic efforts.¹⁸⁰

Figure 1: The Opportunity Index

The following is a suggested set of indicators for neighborhood opportunity as suggested by The Kirwan Institute and Puget Sound Regional Council.¹⁸¹



Research results coming out of the SCI in Austin, Texas, show similar patterns of racial segregation and concentrated poverty.¹⁸² The data, as well as opportunity maps created by the Kirwan Institute at Ohio State University, show that: (1) Latinos are located primarily in low-opportunity neighborhoods; (2) because this is the fastest-growing population in Austin, it is critical to expand Latinos' access to opportunity, particularly educational opportunities, if the region hopes to grow and keep a productive workforce; (3) gentrification is threatening to displace African Americans and Latinos who would therefore not benefit proportionately from the growth in opportunities; (4) the vast majority of affordable housing is located in low- or very low-opportunity areas, with a paucity in higher-opportunity neighborhoods; and (5) in addition to expanding choice in high-opportunity areas, Austin needs to invest in lower-opportunity areas to help create additional opportunity there.¹⁸³

Based on their findings and due to the significant concentration of subsidized affordable housing—85 percent of units funded by the Low Income Housing Tax Credit program are in low-opportunity neighborhoods—the SCI's regional partners in Austin have recommended that there should be a focus on creating housing mobility options in high-opportunity neighborhoods that are trending upward.¹⁸⁴ In high-opportunity neighborhoods that are trending downward due to economic decline, Austin should discourage housing mobility options, but only after determining the cause of the downward trend.¹⁸⁵ In low-opportunity neighborhoods that are trending upward, Austin should preserve housing affordability as markets rise, including through lease-to-own programs for qualified income groups and a reservoir of affordable housing.¹⁸⁶ Ultimately, in low-opportunity neighborhoods that are trending downward, Austin needs to make strategic investments.¹⁸⁷ Adding affordable housing should be done only after a careful consideration of the potential impacts on education, environment, employment, public safety, and transportation.¹⁸⁸ Improving transportation and housing mobility are possible solutions, but should be done in conjunction with improving opportunity in low-income neighborhoods, such as improving schools and affordable childcare.¹⁸⁹ The SCI data provides a way for municipalities to understand the extent of segregation, concentrated poverty, and inequality, and guide their efforts to affirmatively further fair housing.

III. What are the Lessons of Fair Housing?

Previous federal initiatives, state and local innovations, and data on today's racial and class divide tell the story of a nation that is still struggling to affirmatively further fair housing. While the efforts from Section II of this report ("How We've Affirmatively Furthered Fair Housing"), both contemporary and historical, show a multitude of shortcomings, they also show the potential for effective policies and innovation. They lay the groundwork for states, regions, and municipalities, poised to pursue renewed and clarified fair housing obligations as recipients of federal funds. What follow are some of the primary lessons that emerge from research and experience.

1. Voucher to Opportunity

One traditional and effective way of affirmatively furthering fair housing is through the use of voucher programs that give people of color and low- and moderate-income families the choice of moving to high-opportunity neighborhoods. As Gautreaux and MTO show, families that choose to exercise this option benefit from greater economic opportunities, and for their children, greater educational achievements and mental and physical health, and less exposure to crime.¹⁹⁰ Still, despite their objectives of expanding opportunity, the Gautreaux and MTO programs were flawed in that they concentrated African Americans and low-income families in high-poverty and segregated neighborhoods.¹⁹¹ This effectively stripped many participants in the housing voucher programs of the opportunities that could have come with moves to high-opportunity communities. It does not have to be this way, as the Baltimore Housing Mobility Program indicates. BHMP proves that, in addition to services like housing search counseling and housing quality inspection, other services such as post-move counseling, second-move counseling, and financial literacy counseling go a long way toward combating segregation and expanding opportunities.¹⁹² Municipalities can and should replicate these additional measures to ensure that their housing voucher programs affirmatively further fair housing.

2. Getting the Community Ready for Change

In addition to giving communities of color and low-income families the choice to move out of impoverished and segregated neighborhoods, municipalities should ensure that high-opportunity neighborhoods are knowledgeable and open to the benefits of integration and expanded opportunity for all. Westchester County's resistance to its affirmative fair housing obligations is a clear demonstration of the need for this proactive approach, as well as the need for vigilant enforcement. Oak Park, Illinois, on the other hand, is carrying out a proactive strategy that has achieved substantial integration within a region that greatly needs it.¹⁹³ In doing so, Oak Park is showing that a community dedicated to expanding housing and other opportunities can make exclusionary zoning and not-in-my-backyard attitudes a thing of the past. The dual tactics of promoting Oak Park to communities of color and low- and moderate-income families, while at the same time providing incentives to property owners serve as a role model for municipalities dedicated to affirmatively furthering fair housing.¹⁹⁴

3. Inclusive Development

Mt. Laurel, Montgomery County, and Portland show the nation that municipalities can develop economically without excluding people of color and low- and moderate-income families. By creating affordable housing, municipalities can create development while expanding opportunities in education, employment, and family income, among other benefits.¹⁹⁵ Exceptions and loopholes can undermine legislative objectives, but when applied correctly, fair share and inclusionary zoning policies work to effect racial integration, expand opportunities for people of color and low- and moderate-income families, and benefit the entire region.¹⁹⁶ In addition, as Portland teaches us, inclusionary zoning is not the exclusive strategy for progress: regional growth boundaries can guide development in a manner that makes communities inclusive.¹⁹⁷

4. Fair Housing for All

Advances by Seattle, Washington, and numerous states and localities show that municipalities can expand anti-discrimination protections despite the absence of federal coverage on the issue.¹⁹⁸ While the expansion of civil rights protections is not a cure-all, it is an important tool in ensuring that efforts to affirmatively further fair housing include all.

5. Praxis

The data and findings of the Sustainable Communities Initiative in the Puget Sound region of Washington and Austin, Texas, show that collection and analysis of data are critical in addressing the fair housing needs of communities throughout the nation. The proposed HUD regulation on affirmatively furthering fair housing correctly recognizes that localized data are necessary to combat segregation, concentrated poverty, and inequality in access to community assets on a local level.¹⁹⁹ This kind of data permits municipalities to better understand, address, and overcome inequalities in housing, education, employment, transportation, health, and sustainability.²⁰⁰

IV: How to Affirmatively Further Fair Housing

In addition to the case studies described in Section II of this report (“How We’ve Affirmatively Furthered Fair Housing”), additional examples from around the country offer a deep reservoir of policy solutions that municipalities can pursue to uphold their obligation and benefit all of their residents. These recommendations, long heralded by policy experts and academics, are now being advanced by fair housing and community organizations across the nation. They include inclusionary zoning, ensuring housing and other opportunities, community land trusts, expanding fair housing coverage, adopting more sensible policies relating to drug use, improving the quality of affordable housing, equitable distribution of natural disaster relief, and anti-displacement measures.

1. Inclusionary Zoning

Inclusionary zoning is one way that a municipality can encourage or require developers to allocate a certain percentage of new housing units as affordable for low- and moderate-income households.²⁰¹ Such policies have been used in Massachusetts, New Jersey, California, Colorado, Washington, D.C., and hundreds of other jurisdictions.²⁰² Mandatory inclusionary zoning policies, although often more politically challenging to achieve initially, have created more affordable housing than voluntary programs.²⁰³ It should be noted, however, that different municipalities have different market dynamics and as such, applicable strategies will be needed.

The details are extremely important here. On May 5, 2014, New York City Mayor Bill de Blasio announced an inclusionary zoning policy for the next ten years, under which developers must include a certain percentage of housing units for low- and moderate-income households in buildings that benefit from zoning changes that lifted previous height restrictions.²⁰⁴ Under the plan, which will build 80,000 new units of “affordable” housing and maintain 120,000 existing units, 30 percent of new apartments will be allocated for “moderate-income” households earning \$67,121 to \$100,680; and 20 percent will be allocated for “low-income” households earning \$25,151 to \$41,950.²⁰⁵

The Real Affordability for All Coalition, an alliance of tenants’ groups and community organizations, has called this “50/50” plan an improvement of the city’s previous “80/20” split, or as they called it, “a policy of subsidized housing for the city’s wealthiest residents.”²⁰⁶ Housing advocates argue, however, that in high cost areas such as Manhattan, half of new housing units should be allocated for low-income households that earn between \$24,000 and \$48,000; and that in Upper Manhattan and the outer boroughs, new apartment units should be split 50/50 between low-income households and households making up to approximately \$80,000.²⁰⁷ The mandatory inclusionary zoning plan, advocates contend, should also cover households making less than \$24,000, including the city’s working poor and minimum-wage workers.²⁰⁸



Photo courtesy of Diego Iñiguez-Lopez

The Greater New Orleans Fair Housing Action Center (GNOFHAC), which also advocates for inclusionary zoning, recommends policies under which at least one-third of housing units must be affordable for families earning 50 percent, 60 percent, and 80 percent of the area median income (AMI).²⁰⁹ GNOFHAC suggests including housing for families making below 50 percent of the AMI.²¹⁰ It also recommends that New Orleans allocate 5 to 15 percent of market-rate units as affordable. By doing so, the city would not only equitably distribute affordable housing, but it would also create and improve opportunities for communities of color and low- and moderate-income residents.²¹¹

In short, municipalities should develop inclusionary zoning policies while ensuring that they are allocating housing units for low-income households and that the housing is truly affordable for low-income communities, including in high-opportunity neighborhoods.

2. Ensuring Housing and Other Opportunities

There are multiple ways for municipalities to ensure that low-income voucher holders move toward opportunity.

The Baltimore Housing Mobility Program has shown that voucher programs can help families from high-poverty areas move to and remain in low-poverty and racially diverse neighborhoods by providing additional resources, such as post-move counseling, second-move counseling, and financial literacy counseling; and allowing vouchers to be used in entire metropolitan areas.²¹² In Dallas, the Inclusive Communities Project's Mobility Assistance Program has been successful by providing mobility counseling, including information about areas that have less racial segregation and concentrated poverty; locating available housing units; and providing financial assistance with landlord deposits, security and utility deposits, and other moving expenses.²¹³

The Poverty & Race Research Action Council (PRRAC) recommends multiple ways of linking voucher programs to health, education, and employment.²¹⁴ It recommends that programs: ensure the healthfulness of apartments beyond current standards;²¹⁵ use health as a criterion for determining high-opportunity neighborhoods; and incorporate health into life skills workshops, which are already offered by some voucher programs.²¹⁶ PRRAC also recommends that programs: use the quality of schools to help determine high-opportunity neighborhoods; inform

parents and students about the resources of their new schools; connect families with academic opportunities; bridge cultural divides between families and their new schools; help with college preparation and placement; and promote parental involvement.²¹⁷ For employment, PRRAC recommends that voucher programs: assess their clients' needs and provide responsive resources (for example, asking what training, transportation, or childcare services are needed to sustain employment); determine the best route to self-sustainability for each household (by comparing what educational or vocational options will create opportunity); target neighborhoods with job opportunities; consider linking transportation assistance with vouchers; extend counseling beyond a year; and connect families with services and institutions in their new neighborhood.²¹⁸

In addition to improving housing mobility programs, the Chicago Fair Housing Alliance recommends "affirmative marketing strategies."²¹⁹ Affirmative marketing strategies promote an area to groups that are currently underrepresented, and counselors work with them to show that the community is inclusive and tolerant, and to address negative preconceptions that underrepresented groups may have.²²⁰ Affirmative marketing also ensures that an area's current residents understand fair housing laws, the benefits of fair housing, and the rights that they provide to people seeking housing.²²¹ The affirmative marketing strategies include promotional materials in all forms of media, targeted marketing to underrepresented groups, and addressing "not-in-my-backyard" attitudes that are hostile toward diversity.²²² Oak Park Regional Housing Center has implemented affirmative marketing by engaging and providing tangible benefits, including matching grants to improve the rental units belonging to private landlords who receive trainings and market to underrepresented groups.²²³ PRRAC recommends incorporating affirmative marketing into Low Income Housing Tax Credit and other housing programs.²²⁴

These strategies can attract people of color and lower-income households to high-opportunity neighborhoods while developing a more welcoming environment in those communities.

3. Community Land Trusts

Another promising approach worth considering that uses fair housing policies as a means of community development is community land trusts. Community land trusts are nonprofit, community-based organizations that enable community ownership of land and are used primarily for long-term affordable housing and sometimes commercial and retail development.²²⁵ Their benefits include participatory decision-making regarding local land use; affordable housing for low-income residents through renewable leases of land, with the possibility of homeownership; resident control, even in the face of land speculation, economic downturns, and gentrification; and a strong base for community action.²²⁶ Today, there are approximately 250 community land trusts operating throughout the nation.²²⁷

One of those community land trusts is the Dudley Street Neighborhood Initiative (DSNI), which operates in Roxbury/North Dorchester, one of the poorest neighborhoods in Boston, Massachusetts. Roxbury/North Dorchester's diverse community of residents is nearly three-quarters African-American and Cape Verdean (72 percent), almost one-quarter Latino (24 percent), and 4 percent are white. DSNI, a nonprofit community-based organization similar to a traditional community development corporation, has, through its community land trust, established the only permanently affordable housing in the City of Boston. DSNI has also obtained the eminent domain authority to acquire abandoned parcels of land. As a result of the DSNI and its community land trust, Roxbury/North Dorchester has converted over half of its 1,300 abandoned parcels into parcels that support 400 affordable houses, community centers, a community greenhouse, schools, gardens, parks, playgrounds, a town

common, and other public places.²²⁸ Instead of moving people to high-opportunity neighborhoods, this strategy seeks to anchor resources in low-income communities and use them to expand housing and other opportunities.

The success of DSNI and other community land trusts provide a strong tool for municipalities interested in incorporating community development into its strategy to affirmatively further fair housing.

4. Expanding Fair Housing Coverage

Municipalities should expand the types of discrimination that are prohibited under their own local laws. While the Fair Housing Act does not cover important types of discrimination, HUD does require that recipients of its funds comply with state and local anti-discrimination laws.²²⁹

Municipalities can therefore further fair housing within their jurisdictions by passing legislation that prohibits housing discrimination based on source of income, sexual orientation, or gender identity, among other categories. Twelve states, the District of Columbia, and cities in eleven other states have prohibited discrimination based on source of income, including housing assistance or Social Security.²³⁰ In addition, 21 states and the District of Columbia have prohibited discrimination based on sexual orientation, and 16 states and the District of Columbia have banned discrimination based on gender identity.²³¹

I sometimes wonder whether Section 8 and vouchers have become code words for something else.

Maria Saldaña, Executive Director,
Oak Park Residence Corporation

Furthermore, the Right to the City Alliance recommends that cities add immigration status and former incarceration as protected classes under fair housing law.²³² By expanding protected classes, cities can provide more people, including communities of color and persons with low-income, with legal protections when faced with housing discrimination.

5. Adopting More Sensible Policies Relating to Drug Use

Public housing authorities have significant discretion regarding the handling of drug issues. Too many, however, have adopted extreme policies that evict entire families for events as minor as a teenage son or daughter possessing marijuana. Even though there is no evidence that these rigid policies promote public safety, tens of thousands of families have been evicted under them. Indeed, these policies are counterproductive, expensive, and often discriminatory in their implementation.²³³

Groups like the New Orleans Workers' Center for Racial Justice and Voice of the Ex-Offender have advocated for less punitive public housing policies.²³⁴ Public housing authorities should take heed, and at the very least, as the Center for Popular Democracy recommends, mandate the consideration of mitigating circumstances; re-evaluate evidentiary standards; make more transparent their rules regarding eviction and eligibility; offer time-limited stipulations, as opposed to permanent exclusion; and evict only as a last resort.²³⁵

6. Improving the Quality of Affordable Housing

In addition to improving equitable access to housing, municipalities should also implement policies that improve the quality of affordable housing. This is a way of affirmatively furthering fair housing through maintaining

affordable housing for low- and moderate-income communities, where many are at risk of displacement during development.²³⁶

Make the Road New York recommends expanding the Alternate Enforcement Program, which targets the most substandard housing conditions of New Yorkers, so that it can have a greater citywide impact; informing residents living in such substandard conditions of their rights through the city's Department of Housing Preservation and Development (HPD); overhauling the city's Housing Maintenance Code enforcement regime and replacing it with an administrative board to increase code compliance and the collection of fines; and expanding local law so that the HPD can issue orders to correct underlying conditions.²³⁷ The Right to the City Alliance recommends implementing a proactive inspection policy to identify and address code violations in rental housing, while the Chicago Area Fair Housing Alliance recommends inspection of rental units for code violations on a regular basis.²³⁸

Municipalities' fair housing policies should include maintaining habitable housing and effective enforcement mechanisms, and ensuring that communities know their rights.

7. Equitable Distribution of Natural Disaster Relief

States and municipalities should also ensure an equitable distribution of natural disaster relief, based on actual impact and restoration costs. This need is confirmed by the Fair Share Housing Center's lawsuit and subsequent settlement with New Jersey over how the state disproportionately and improperly denied African Americans and Latinos relief funds after Superstorm Sandy.²³⁹ Similar racial disparities occurred during Louisiana's distribution of Hurricane Katrina relief.²⁴⁰ Texas Appleseed's settlement with the state of Texas in 2010 after hurricanes Ike and Dolly also shows the unmet need for natural disaster relief to reach communities of color and low- and moderate-income families.²⁴¹

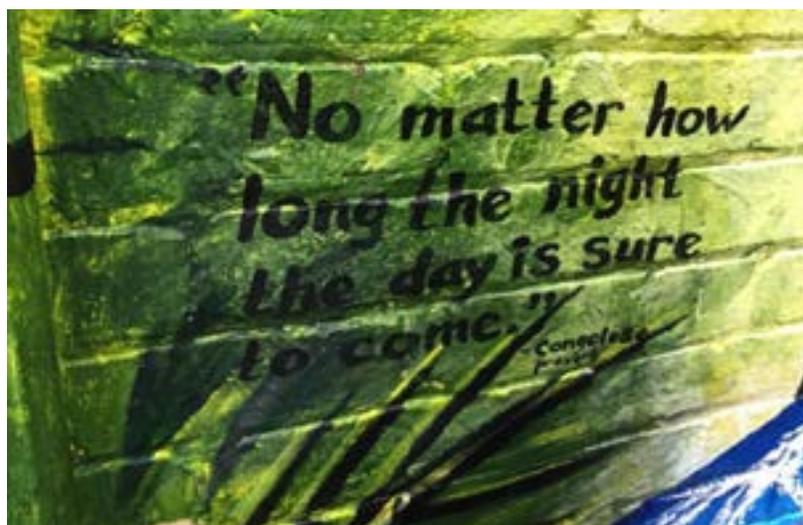


Photo courtesy of Andrea Carolina Zamudio Galvis

In March 2014, ERASE Racism, based in Long Island, wrote to the New York Governor's Office of Storm Recovery, encouraging the state to ensure that its municipalities were complying with their fair housing obligations during the distribution of relief funds. Among its recommendations were that sub-recipients of federal funds comply with their obligation to affirmatively further fair housing, including considering changed circumstances and particular vulnerabilities of protected classes. ERASE Racism recommended that cities consider a remedy for the lack of

rental housing for lower-income families of color, and ways in which relief programs could further integration. It went on to recommend building supplemental affordable rental housing, as well as preserving the current stock of affordable housing. It also recommended outreach and providing information in a multilingual format and increasing awareness regarding available assistance among African Americans and Latinos.²⁴²

Similarly, Make the Road New York recommended expanding and improving outreach to immigrants and limited-English-proficient communities; comprehensive mental health services for immigrants and those without health insurance; mold remediation services for disaster victims; rent assistance for those ineligible for FEMA temporary assistance; and participatory decision-making in the recovery and rebuilding process.²⁴³

Especially as natural disasters increase in frequency, cities should take proactive steps to ensure that their natural disaster relief efforts do not perpetuate past inequalities, but instead, effect reconstruction in a manner that affirmatively furthers fair housing.

8. Anti-Displacement Measures

Many municipalities face the critical issue of gentrification, the process through which revitalization and reinvestment cause a sharp increase in rents and home prices in low- and moderate-income urban neighborhoods, resulting in the actual or imminent displacement of residents.²⁴⁴ Because of this threat, some communities have begun to focus on how to avoid displacement, offering solutions such as ordinances requiring that evictions be with “just cause,” as well as homeowner and renter protection programs that help low-income, long-time, or elderly residents stay in their homes.²⁴⁵

In 2002, Oakland, California, enacted by ballot initiative a “just cause eviction” ordinance that limited a legal eviction to causes such as the tenant: failing to pay rent; violating the lease after written notice was sent to the tenant; refusing to sign a new lease despite it being identical to the old one; or substantially damaging the unit and refusing, after written notice, to cease or repair.²⁴⁶ In New York City, community coalitions have attempted with varying degrees of success to negotiate with developers by forming legally enforceable “community benefits agreements” that, in exchange for community support of the development project, incorporate improvements such as affordable housing or living wage jobs.²⁴⁷ Municipalities can and should take action to avoid the displacement of their low- and moderate-income residents.

The 6 Big Wins for Social Equity Network, an alliance of social justice, faith, public health, and environmental organizations in the Bay Area of California, places its anti-gentrification, or “investment without displacement,” objective within the context of five other objectives: affordable housing, a robust and affordable local transit service, healthy and safe communities, economic opportunity, and community empowerment.²⁴⁸ This is important, because it suggests that any anti-gentrification effort cannot be isolated, but rather, must be part of a larger regional and comprehensive approach toward housing and community.



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The Bay Area Agenda for Investment without Displacement promotes “investments and incentives to strengthen and stabilize communities vulnerable to gentrification and displacement” and recognizes that this will need coordinated regional and local action.²⁴⁹ It recommends that local and regional governments work toward meaningful resident leadership and influence in planning processes, so that: the vulnerable communities, particularly low-income residents, immigrants, and people of color, directly influence outcomes; the process is linguistically accessible and understandable to them; the city can demonstrate how resident priorities and recommendations are incorporated into the planning outcomes; and the process includes an environmental review.²⁵⁰ It recommends investing in community assets to meet low-income families’ needs, such as development that “promotes cultural and community cohesion, recognizes and strengthens existing community assets, and privileges localized needs, community benefits, and priorities.”²⁵¹ It also recommends creating “complete communities” through access to healthy foods, banks, pharmacies, streetlights, bus shelters, playgrounds, or other needs identified by the community (as opposed to top-down planning).²⁵²

The Bay Area Agenda for Investment without Displacement also recommends tenant protections and preserving affordable housing, through deed restricted housing; acquisition and rehab of market-rate units; enforcing health and building codes; enacting just cause/fair rent laws; strong relocation assistance; protecting tenants in foreclosed properties; right of first refusal for current tenants; a policy against relocation due to development; and tenant and foreclosure counseling. Ultimately, the Bay Area Agenda recommends creating more affordable housing to meet current and future needs; tailoring economic investments to local workforce and community needs; and improving transportation access for those who depend on it the most.²⁵³

Conclusion

Despite a historical failure to comply with fair housing law and its affirmative obligation, previous experiences provide us with successes and innovative groundwork to address racial segregation, concentrated poverty, and inequalities in community assets. The proposed regulation on affirmatively furthering fair housing advances and strengthens the legal obligation for municipalities to act,²⁵⁴ and there are multiple policy recommendations that municipalities can utilize in order to expand opportunity for all.

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