



Fair Housing & A “Both/And” Approach

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Fair Housing

“Residential segregation by race was declared unconstitutional almost a century ago, but its vestiges remain today, intertwined with the country’s economic and social life.”

– Justice Anthony Kennedy, June 25, 2015

Fair Housing

Fair Housing Act of 1968 prohibits discrimination in the sale, rental and financing of dwellings based on race, color, religion, sex or national origin, and was later expanded to protect against discrimination based on disability or on familial status.

Fair Housing

FHA establishes legal protections against racial segregation that can broadly be described as two types of obligations:

- 1) The **prohibition of discrimination**; and
- 2) A requirement to **advance desegregation**, aka “duty to affirmatively further fair housing.”

Prohibition of housing discrimination.

This includes:

- 1) “Both **differential treatment** regarding availability or terms and conditions in the advertisement, sale or rental, financing, or insurance of housing,
- 2) And **disparate impact** of apparently neutral practices or policies in restricting housing choice and opportunity according to any basis prohibited by law.”

Prohibition of housing discrimination.

Disparate Impact is a legal doctrine under the Fair Housing Act which states that a policy may be considered discriminatory if it has a disproportionate “adverse impact” against any group based on race, national origin, color, religion, sex, familial status, or disability when there is no legitimate, non-discriminatory business need for the policy. In a disparate impact case, a person can challenge practices that have a “disproportionately adverse effect” on those protected by the Fair Housing Act and are “otherwise unjustified by a legitimate rationale.”

Fair Housing

Advance desegregation.

FHA directs “all executive departments and agencies” to further the purposes of the act through their programs and activities, in other words to “affirmatively further fair housing.”

“Cooperation of Secretary and executive departments and agencies in administration of housing and urban development programs and activities to further fair housing purposes... All executive departments and agencies shall administer their programs and activities relating to housing and urban development (including any Federal agency having regulatory or supervisory authority over financial institutions) in a manner affirmatively to further the purposes of this subchapter and shall cooperate with the Secretary to further such purposes.” Sec. 808. [42 U.S.C. 3608]

Advance desegregation.

Duty to affirmatively further fair housing can be interpreted as a duty to advance desegregation.

Affirmatively furthering fair housing: “where law meets policy” – Betsy Julian, ICP

Why is this important?

- Past housing policies explicitly created and upheld segregated housing patterns.
- Low-income households tend to be concentrated in high-poverty areas—largely by policy design.
- Contemporary policies might be failing to promote equitable geographic distribution of low-income housing opportunities & creating a disparate impact.

Richard Rothstein, *The Color of Law*

- ***De facto*** segregation: occurs because of personal decisions or private prejudice/discrimination
- ***De jure*** segregation: by public policy, government law, or regulation—explicit, consistent systematic public policy

Fair Housing

Richard Rothstein, *The Color of Law*

- History of government policies that segregated
 - State constitutions
 - Jim Crow laws
 - Racial zoning
 - Racially restrictive covenants in deeds
 - Redlining
 - Segregated public housing
 - Segregation requirements for building suburban housing
 - Blockbusting
 - Steering
 - Discriminatory advertising

Fair Housing

Concentrated poverty getting worse in California

Large increases since 2000 (10 largest metro areas)

- 49% increase in # poor Californians living in “extremely poor” neighborhoods (40%+ poverty)
- 40% increase in “extremely poor” census tracts

People of color disproportionately shoulder this burden

- 2/3 of poor Hispanics and blacks live in “high-poverty” neighborhoods (20%+ poverty), but only 1/4 of poor whites
- Poor Hispanics and blacks in cities 3 times more likely to live in “extremely poor” neighborhoods (40%+ poverty) than poor whites

Where do we build new affordable housing for low-income families in California?

Analysis of new construction, large family, 9% Low-Income Housing Tax Credit (LIHTC) units placed in service from 2000 to 2016, based on TCAC/HCD Opportunity Maps

Fair Housing

- In California, **40%** of new construction, large family, 9% LIHTC units placed in service from 2000 to 2016 were **located in highly segregated and poverty concentrated tracts** (captured by the filter), which comprise approximately 12% of tracts statewide.

Fair Housing

- In California, **40%** of new construction, large family, 9% LIHTC units placed in service from 2000 to 2016 were **located in highly segregated and poverty concentrated tracts** (captured by the filter), which comprise approximately 12% of tracts statewide.
- By contrast, **only 6% of units were located in the highest resource neighborhoods**, which comprise approximately 20% of tracts statewide.

Fair Housing

- In other words, **for every one housing unit affordable to a low-income family located in the highest resource neighborhoods, there are eight units in the most racially segregated and poverty concentrated neighborhoods.**

Fair Housing

New research from the Urban Displacement Project at UC Berkeley and CHPC:

- Large increases in the number of low-income people of color living in areas that became newly segregated and high-poverty between 2000 and 2015 are evidence that **rising housing costs and migration patterns have contributed to new concentrations of segregation and poverty in the region.**

HUD's AFFH Rule

- HUD released highly anticipated final rule on Affirmatively Furthering Fair Housing (AFFH) on July 16, 2015.
- The purpose of AFFH rule is to provide “an effective planning approach to aid program participants” in fulfilling FHA obligation to affirmatively further fair housing.
- HUD complying with AFFH duty.

Fair Housing

“As provided in the rule, AFFH means "taking 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...”

Fair Housing

“... Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, **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.**

The duty to affirmatively further fair housing extends to all of a program participant's activities and programs relating to housing and urban development.”

HUD's AFFH Rule

- HUD “grantees” will need to submit an “Assessment of Fair Housing” (AFH) that examines fair housing issues in their communities. Specifically:
 - Patterns of integration & segregation
 - Racially or ethnically concentrated areas of poverty (RECAPs)
 - Disparities in access to opportunity
 - Disproportionate housing needs
- 2019: San Francisco, Oakland San Mateo, Santa Clara, Alameda, Richmond, State of California...

Fair Housing

AFFH rule was working very well in helping jurisdictions analyze patterns of segregation and neighborhood disparities, and set fair housing goals.

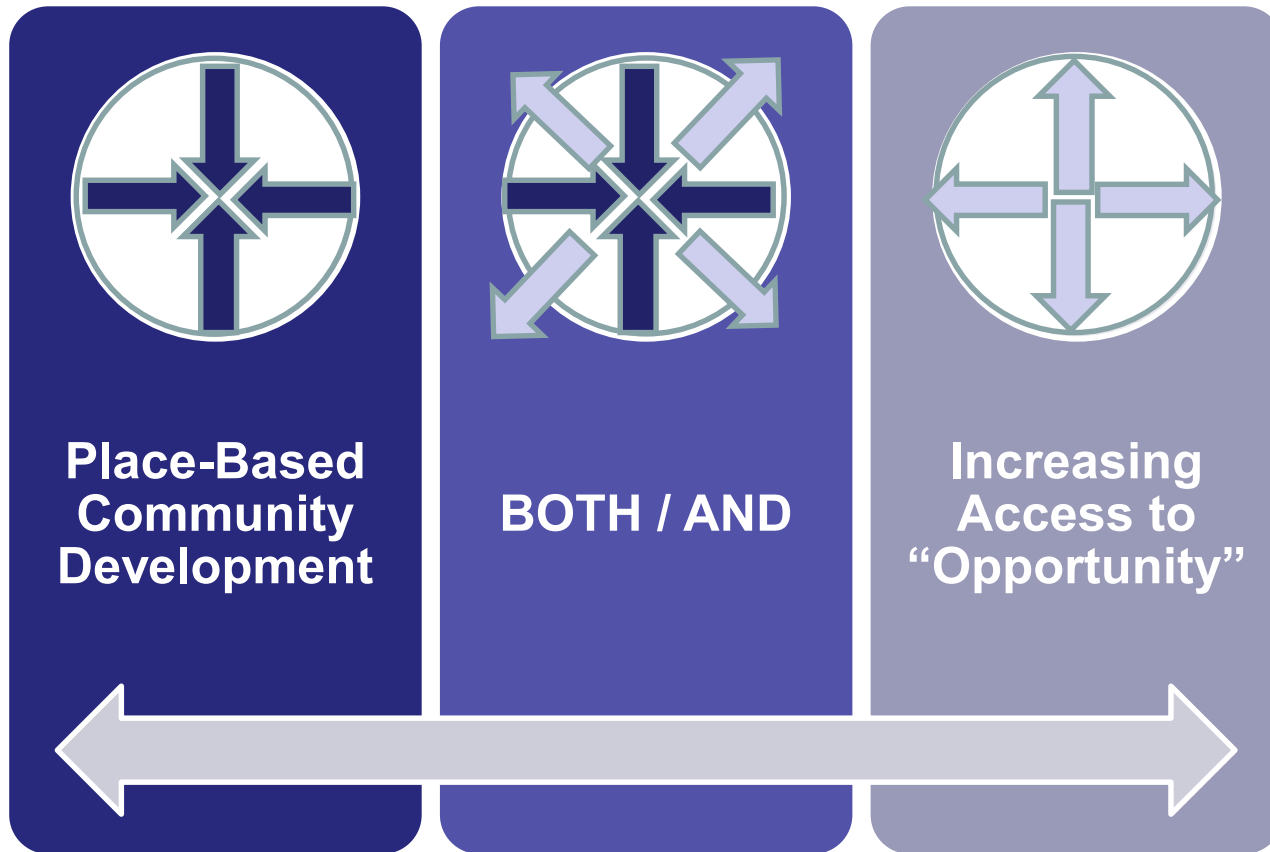
HUD suspended rule this past January.



State & Local Policy:
**Taking a
“Both/And” Approach**



“Both/And” Approach



“Both/And” Approach

“Fair housing is essential to creating inclusive communities of opportunity, and federal **[and state and local]** resources should be distributed in a way that **allows low-income people to make housing choices that are best for themselves and their families...**

“Both/And” Approach

... This means:

- **Producing and preserving** affordable housing where it exists today,
- **revitalizing** distressed communities,
- **building affordable homes in neighborhoods of opportunity**, and
- **creating and promoting options for mobility...**

“Both/And” Approach

... And for communities that are in transition, including gentrifying neighborhoods where housing costs are rapidly rising, we must preserve affordable housing options so that current residents are not displaced.

These strategies, of course, are not mutually exclusive; they must be pursued in tandem.”

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“Both/And” Approach

“Both/And”, Balanced Policy Goals:

- **Avoid further segregation**
- **Increase access to opportunity**
- **Protect low-income households from displacement so they can stay in place as new investments come to their neighborhood**

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