

THE HUD FAIR HOUSING RULE... AND WHAT'S NEXT

**MA Association of Community Development Corporations
Annual Meeting
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Presenter: Jennifer Raitt, Town of Arlington, MA

TODAY'S SESSION

- Provide an introduction to fair housing law and responsibilities
- Learn about the HUD Affirmatively Furthering Fair Housing Rule
- Consider the intersection of local planning and community engagement efforts with fair housing
- Share strategies for CDCs, community-based organizations, and municipalities to affirmatively further fair housing



WHY ARE WE HERE TODAY?

"If a neighborhood is to retain stability, it is necessary that properties shall continue to be occupied by the same social and racial classes."

1939 FHA Underwriting Manual



WHAT IS FAIR HOUSING?

- Federal, state, and local laws that protect individuals based from individual or systemic discrimination
- Case law and HUD regulations relative to the Fair Housing Act and other laws that require proactively removing barriers to access and stability in housing
- Proactive elimination of segregation and promotion of equal opportunity access to housing

FAIR HOUSING LAWS: PROTECTED CLASSES

Federal Fair Housing Act (1968, 88)

- Race
- Color
- National Origin
- Religion
- Sex (Gender)
- Familial Status
(children under 18)
- Disability (broadly
defined)

MA General Law c151B

- Ancestry
- Age
- Gender Identity
- Genetic Information
- Marital Status
- Sexual Orientation
- Source of Income/
Public Assistance
- Veteran History/ Military
History



MA ANTI-DISCRIMINATION LAW

Massachusetts law prohibits discrimination in:

- Employment
- Places of Public Accommodation
- **Housing**
- Credit
- Services

The law prohibits discrimination by those engaged in most aspects of the housing business (for-profit and nonprofit): listing; buying; selling; renting; or financing



FEDERAL FAIR HOUSING LAW DISCRIMINATORY EFFECT RULE

Three Part Burden Shifting Test - before adopting policy or practice, must determine:

- 1. Is it likely that policy or practice will negatively impact on members of a protected class compared to the general population?*
- 2. Is the policy or practice necessary to achieve substantial, legitimate, non-discriminatory interests?*
- 3. Is there a less discriminatory alternative that would meet the same interest?*



AFFIRMATIVELY FURTHERING FAIR HOUSING/ NEW RULE: SAME LAW

“ [AFFH] means **taking proactive steps** beyond simply combating discrimination to foster more inclusive communities...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.**”

AFFH VS. FAIR HOUSING

	Fair Housing in General		Affirmatively Furthering
Applicable...	Regardless of any subsidy		When using certain federal subsidies
Meaning for owners and managers...	Cannot intentionally discriminate or	Use policies/practices which have a disparate impact	Must actively market housing to those in protected classes who are the least likely to apply for occupancy
Meaning for agencies/ authorities...	Cannot intentionally discriminate or	Use policies/practices which have a disparate impact	Jurisdictions receiving HUD and pass-through funding must use resources to advance desegregation
How enforced:	Either HUD administrative complaints or in federal court		Same as the other column, plus HUD review of agencies' plans



AFFH AND THE COMMONWEALTH

- DHCD's Analysis of Impediments to Fair Housing Choice contains action steps for:
 - improving housing choice for families with children
 - responding to development patterns that create a disparate impact
 - ensuring a diversity of bedroom sizes in development
- Incorporated 3-bedroom requirement into state housing funding programs
 - Generally, 10% 3-bedroom units required

WHO MUST AFFIRMATIVELY FURTHER FAIR HOUSING?

- Recipients of Federal Funds – Specifically CDBG, HOME, HOPWA, ESG recipients, PHAs, recipients of federal funds (including pass-through funding) from any of 22 other federal agencies
- EO 11063 – requires executive agencies to fairly administer federal assistance programs
- EO 12892 – requires federal agencies to AFFH in their programs and activities

WHO HAS A STAKE IN FAIR HOUSING PLANNING?

- Municipal officials: planning, zoning, housing;
- Nonprofits: Civil rights organizations; immigrant advocacy organizations; faith based networks
- Service providers: independent living centers; area shelters, Community Action Program agencies; housing service providers, CDCs
- Private sector: chambers of commerce; realtors associations



AFFH RULE

- Provides direction, guidance and procedures for program participants to promote fair housing choice
- Replaces AI with an Assessment of Fair Housing
- Provides uniform datasets
- Incorporates fair housing planning into existing planning processes
- Encourages regional approaches
- Emphasizes public participation in these planning processes



AFFH RULE

AFFH adds a 4th step in the Discriminatory Effects test: before adopting any policy or practice, it is necessary to determine:

- 1. Is it likely that policy or practice will negatively impact on members of a protected class compared to the general population?*
- 2. Is the policy or practice necessary to achieve substantial, legitimate, non-discriminatory interests?*
- 3. Is there a less discriminatory alternative that would meet the same interest?*
- 4. Is there a policy or practice that not only does not discriminate, but increases opportunities for protected class members?**

ASSESSMENT OF FAIR HOUSING

- Staggered submission deadlines for HUD program participants
- First AFH submission completed 270 days prior to the start of the program year or fiscal year for which a new Consolidated Plan is due
- Additional time will be provided to participants receiving less than \$500k CDBG grant in FY16

<https://www.hudexchange.info/resources/documents/AFFH-Rule-Guidebook.pdf>

ASSESSMENT OF FAIR HOUSING

ASSESS

- Analyzing core data, demographics (results of analysis and trends), segregation/ integration/ racial and ethnic concentrations of poverty analysis

ANALYZE

- Identifying housing needs by protected classes, disparities in access to opportunity and adverse community factors, disability access

INTEGRATE

- Supporting local efforts, fair housing compliance and infrastructure

ENSURE

- Developing fair housing goals and strategies

PRIORITIZE

- Partnering with other local government agencies, public housing agencies, garnering public participation

ASSESSMENT OF FAIR HOUSING

Assess policies and practices for disparate impact:

- Access to community assets
- Multifamily limits or prohibitions
- Development size limits
- Lot size restrictions or density requirements
- Direct or indirect restrictions on bedrooms
- Household preferences
- Housing type preferences or criteria
- Local preferences
- Plans that encourage housing for seniors only

ASSESSMENT OF FAIR HOUSING

Replicate policies, procedures, services that promote inclusivity. Revise those that don't.

- Housing preservation
- Redevelopment plans
- Site selection
- Permitting and review process
- Variances and reasonable accommodations
- Incorporate fair housing goals and objectives into master planning and community development planning



ASSESSMENT OF FAIR HOUSING

Review municipal policies, procedures and services

- for disparate impact
- for opportunities to AFFH

AFFH AND MEANINGFUL ACTION

Meaningful actions are “significant actions that are designed and can be reasonably expected to achieve a material positive change that affirmatively furthers fair housing by, for example, increasing fair housing choice or decreasing disparities in access to opportunity.”
[24 CFR 5.152]

AFFH AND MEANINGFUL ACTION

- Address significant disparities in housing needs and in access to community opportunity;
- Replace segregated living patterns with truly integrated and balanced living patterns;
- Transform racially and ethnically concentrated areas of poverty into areas of opportunity;
- Foster and maintain compliance with civil rights and fair housing laws. [24 CFR 5.152]

HUD ASSESSMENT TOOL

- HUD Affirmatively Furthering Fair Housing Assessment Tool: data tool, mapping and baseline data:

<http://egis.hud.gov/affht/>

(still begin finalized)

- User Guide:

<https://www.hudexchange.info/resources/documents/AFFH-Data-Mapping-Tool-User-Manual.pdf>

ADDITIONAL DATA RESOURCES

- www.mapc.org/fairhousingtoolkit
- Fair Housing Centers
- Housing Consumer Education Centers
- Regional Nonprofit Organizations
- Independent Living Centers
- Commissions on Disability

SUMMARY/ TAKEAWAYS

Place-based strategies may include:

- Investments in segregated, high poverty neighborhoods that improve conditions and eliminate disparities in access to opportunity between residents of those neighborhoods and the rest of the jurisdiction and region.
- Maintaining and preserving existing affordable rental housing stock to reduce disproportionate housing needs.
- **Different strategies are relevant in different contexts**

SUMMARY/ TAKEAWAYS

Change the paradigm

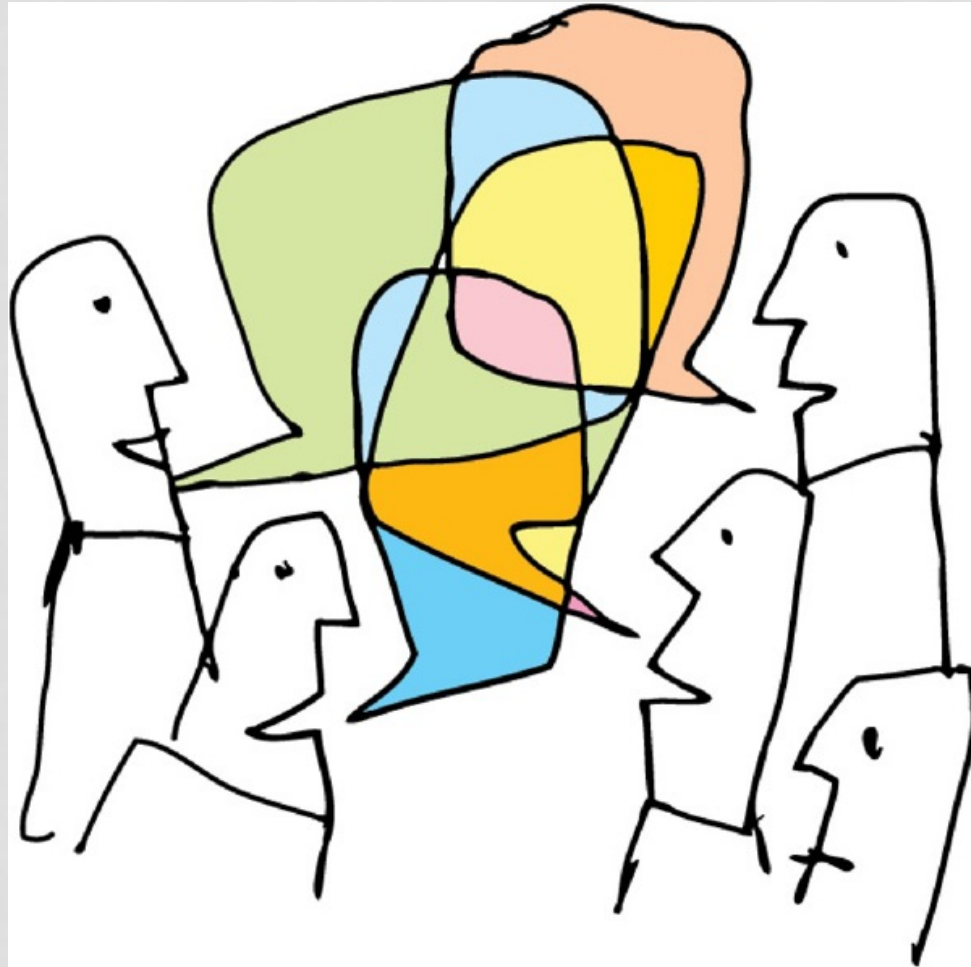
- Housing is part of a system that includes environment, transportation, education and addresses quality of life
- Partners from other municipal and state agencies advancing environmental, transportation, education, and quality of life issues should be required to consider how their policies impact housing opportunity
- Use AFFH as an opportunity to inform other plans and strategic local investments

WHAT IF?

The Trump Administration will likely have their own set of housing policies to advance.

- The Rule may be eliminated or implementation may be significantly stalled
- The Rule may be resurrected by States that choose to strengthen their state laws on fair housing
- Even in the absence of the Rule, grantees can and will need to affirmatively further fair housing

QUESTIONS?



LOCAL ENGAGEMENT: TWO PERSPECTIVES

1. Andrew DeFranza, Executive Director, Harborlight Community Partners
2. Jorge Colon, Program Manager, The Homebuying Mentors[®], Allston Brighton Community Development Corporation

SMALL GROUP DISCUSSION

Please form groups to discuss the following questions:

1. As community-based organizations, how can we provide a vehicle for our members to have a voice in a fair housing planning process?
2. How do we prioritize the potentially conflicting goals of improving places where LMI households reside while providing mobility opportunities for LMI households?

Thank you!

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Development
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