

WORKING WITH PHAS TO AFFIRMATIVELY FURTHER FAIR HOUSING

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TODAY'S WEBINAR

- Brief introduction to the duty to affirmatively further fair housing under federal and California law
- PHAs' obligation to affirmatively further fair housing
- Examples of how PHAs can advance fair housing aims in practice
- Preview of forthcoming resources from PRRAC & NHLP for advocates and PHAs
- Q&A

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AFFIRMATIVELY FURTHERING FAIR HOUSING

- Originated in the federal Fair Housing Act (1968)
 - HUD must “administer the programs and activities relating to housing and urban development in a manner affirmatively to further” FHA’s policies.
 - 42 U.S.C. § 3608(e)(5).
 - Obligation also applies to all “executive departments and agencies,” not just HUD.
 - 42 U.S.C. § 3608(d).

WHAT DOES “AFFH” REALLY MEAN, THOUGH?

- To do *more* than:
 - Just refraining from discriminating
 - Just prohibiting discrimination
- Affirmative obligation
 - Federal funding recipients must “take the types of actions that undo historic patterns of segregation and other types of discrimination and afford access to opportunity that has long been denied.” 80 Fed. Reg. at 42,274.
 - AFFH is about **proactively addressing** existing patterns of segregation and disparities in access to opportunity.
 - What it means to AFFH is **context-specific** and depends on local and regional history and current needs.

HUD'S 2015 AFFH RULE

- Issued in July 2015
 - 80 Fed. Reg. 42,272 (July 16, 2015)
- Created a new fair housing analysis framework, called the Assessment of Fair Housing (AFH)
 - Requires HUD grantees and PHAs to examine the relationship between housing opportunities for members of protected classes and how that impacts access to opportunities such as jobs, transit, and education.
 - Requires HUD grantees to devise goals to address those factors that perpetuate segregation and entrench disparities.
- AFFH Rule was never fully implemented for PHAs, although some PHAs did join entitlement jurisdictions to do a joint or regional AFH.

CURRENT FEDERAL LANDSCAPE

- Rule issued in 2015 accompanied by guidance and technical assistance; Assessment of Fair Housing templates & HUD review/passback process.
- Assessment Tool withdrawn and rule suspended in 2018 - subject of litigation by civil rights groups
- Data Tool still available but issues with updates
- Advance Notice of Proposed Rulemaking/listening sessions – summer 2018
- Proposed Rule pending OMB review/public release (this month?)
- In the meantime: Analyses of Impediments (lack specific requirements or tie to Con Plan/PHA Plan)

ASSESSMENTS OF FAIR HOUSING: USING THE 2015 HUD RULE & GUIDANCE

- Data analysis; “contributing factors” (policy analysis and public input); goals
- HUD-supplied data shows: the location of publicly supported housing by category in the jurisdiction and the region, overlaid on maps showing demographics and access to opportunity (eg, race/ethnicity dot map); tables on the number of units by number of bedrooms and children, households by protected class, and the demographics of publicly supported housing development by category.
- Tool prompts PHAs to supply and assess occupancy data by development.
- Federal publicly-supported housing types included in HUD data: 1) public housing; 2) project-based Section 8; 3) other HUD multifamily housing (including Section 202 and Section 811 housing); 4) LIHTC housing; and 5) housing choice vouchers

ASSESSMENTS OF FAIR HOUSING: USING THE 2015 HUD RULE & GUIDANCE

The HUD tool and data provide information on questions such as:

- Are publicly supported housing units concentrated in certain neighborhoods?
- Are there different siting patterns for different categories of publicly supported housing?
- How many publicly supported housing units are located in R/ECAPs?
- How many publicly supported housing units are located in areas of opportunity, with access to quality schools, jobs, and transportation?
- Do certain categories of publicly supported housing serve more residents of certain protected classes than others?
- Are subsidized households of certain protected classes more likely than other groups to reside in areas of concentrated poverty?
- Are there enough family-sized units to serve residents with children?
- How many units are accessible to persons with disabilities? Where are these units located?

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ASSESSMENTS OF FAIR HOUSING: USING THE 2015 HUD RULE & GUIDANCE

- HUD “Contributing Factors” explicitly prompt analysis of many PHA Policies - not comprehensive
- EG: impediments to mobility; informational services; language access; source of income discrimination; siting policies; tenant selection & waitlist management

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CALIFORNIA'S AFFH OBLIGATION, AB 686 (2018)

- AB 686 established an AFFH obligation under state law.
- Requires “public agencies,” including PHAs, to affirmatively further fair housing, and to refrain from taking actions that are materially inconsistent with AFFH obligation.
 - Public agencies also include cities and counties.
- Law creates requirement that cities and counties incorporate analysis of the HUD 2015 Rule’s Assessment of Fair Housing into the Housing Element.
 - Even though PHAs do not have to complete a Housing Element, PHAs will be an important source of information and data for cities and counties conducting this assessment of fair housing.



CALIFORNIA'S AFFH OBLIGATION, AB 686 (2018)

Definition of “affirmatively furthering fair housing”

“[T]aking 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. 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 public agency’s activities and programs relating to housing and community development.” – Cal. Gov. Code § 8899.50(a)(1)

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CALIFORNIA'S AFFH OBLIGATION, AB 686 (2018)

Assessment of Fair Housing, Cal. Gov. Code § 65583(c)(9)(A)

Cities and counties, as part of their Housing Element, will have to conduct an AFH containing:

- A “summary of fair housing issues in the jurisdiction and an assessment of the jurisdiction’s fair housing enforcement and fair housing outreach capacity”;
- An “analysis of available federal, state, and local data and knowledge to identify integration and segregation patterns and trends, racially or ethnically concentrated areas of poverty, disparities in access to opportunity, and disproportionate housing needs within the jurisdiction, including displacement risk”;
- An assessment of contributing factors;
- An identification “of the jurisdiction’s fair housing priorities and goals, giving highest priority to those factors ... that limit or deny fair housing choice or access to opportunity, or negatively impact fair housing or civil rights compliance, and identifying the metrics and milestones for determining what fair housing results will be achieved”; and
- Strategies and actions to implement identified goals.

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PHAS AND THE AFFH OBLIGATION

- Statutory obligation
 - 42 U.S.C. § 3608(e)
 - 42 U.S.C. § 1437c-1(d)(16) (PHA AFFH certification in Annual Plan)
- Regulatory obligation
 - 24 C.F.R. § 903.15(d)

PHAS AND AFFIRMATIVELY FURTHER FAIR HOUSING

24 C.F.R. § 903.15(d)

- PHAs must affirmatively further fair housing in:
 - Operating policies
 - Procedures
 - Capital activities
- Admissions and occupancy policies for public housing and Section 8 tenant-based assistance programs **must comply with fair housing and civil rights requirements**, including AFFH duty.
- No race or specific income quotas for developments.

PHAS AND AFFIRMATIVELY FURTHER FAIR HOUSING

- Public Housing Occupancy Guidebook (PHOG) (page 13):
 - PHAs must determine whether PHA programs reach all eligible population groups.
 - If not, PHA “should take actions to increase housing opportunities for underserved households”
 - Under AFFH duty, PHAs must “engage in affirmative marketing to groups least likely to apply for the PHA’s housing”
 - PHAs must also “maintain demographic data in connection with their programs and take ‘affirmative action to overcome the effects of prior discrimination’”
- PHOG (page 21)
 - Duty of PHAs to conduct an analysis of impediments

HOW CAN PHAS AFFIRMATIVELY FURTHER FAIR HOUSING?

24 C.F.R. § 903.15(d)(2)

- PHA policies “should include **affirmative steps to overcome the effects of discrimination** and the effects of conditions that resulted in **limiting participation of persons because of their race, national origin, disability, or other protected class**” (emphasis added)
- Such steps may include (but are not limited to):
 - Marketing efforts
 - Nondiscriminatory tenant selection and assignment policies that result in desegregation
 - Providing additional supportive services
 - Engaging with state/local disability agencies to provide community-based housing options for persons with disabilities

EXAMPLES OF POLICIES THAT CAN IMPACT FAIR HOUSING CHOICE

Lessons from the AFFH rule

Non-exhaustive list of policies, practices, and conditions that may perpetuate or create fair housing issues (called “contributing factors”) included in HUD’s PHA Assessment Tool (pp. 5, 11-12):

- Impediments to mobility
- Admissions and occupancy policies and procedures, including preferences in publicly supported housing
- Displacement of and/or lack of housing support for victims of domestic violence, dating violence, sexual assault, and stalking
- Lack of meaningful language access
- Loss of affordable housing
- Policies related to payment standards, FMR, and rent subsidies
- Quality of affordable housing information programs
- Source of income discrimination
- Land use and zoning laws

AFFH IN PRACTICE: RENTAL ASSISTANCE DEMONSTRATION

- Fair housing issues include: choice-mobility, relocation rights, site selection/transfers, impact of unit changes, disability compliance, other tenant rights
- RAD has additional protections – see 2016 HUD guidance on RAD and fair housing
- Choice-mobility: tenants may opt to receive tenant-based HCVs. Does the PHA have a plan in place for notification and counseling?
- Front-end fair housing review for site selection and unit conversions; PHA is still ultimately responsible for AFFH and civil rights compliance regardless of HUD approval; must certify in PHA or MTW plan

AFFH IN PRACTICE: RENTAL ASSISTANCE DEMONSTRATION

- Site selection and unit conversions: Title VI, Title VIII; additional RAD requirements – fair housing reviews
- Does redevelopment plan address fair housing impacts? Is it detailed, transparent, publicly-informed?
- What is the locality's process for reviews?
- Unit conversion: what is the impact on protected classes? On overall locational distribution?
- Site selection: perpetuation of segregation

AFFH IN PRACTICE: RENTAL ASSISTANCE DEMONSTRATION

Even independent of HUD approval, a PHA should ensure that RAD redevelopment plans meet the obligation to further fair housing. PHAs should provide a detailed plan (subject to public review) that considers the following, for example:

- Services that will be provided for residents, including counseling on relocation and right to return (note that relocation rights under RAD are broader than those provided by the Uniform Relocation Act). Availability of a written relocation plan and monitoring of protocols for rights to return.
- For new construction, very limited exceptions allowing construction in areas of minority concentration. This includes if there is an overriding housing need and the site is part of a robust, documented overall strategy for neighborhood development. This will entail work with other local agencies, such as the planning department.
- Impact on overall number of units and unit composition (for example, adequate number of units with families); this may be an issue of particular concern in higher-cost areas with a lack of available housing and a risk of displacement.
- The obligation to construct and/or preserve units outside areas of minority concentration.
- Plan for consultation with legal services and tenant groups.



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AFFH IN PRACTICE: SECTION 8 VOUCHER POLICIES

Which families have access to your PHA's voucher program?

Applicant pool → Waitlist → Residents

Is the racial/ethnic makeup or family status of eligible applicants in your housing market substantially different than your waitlist? If so, why? Is the balance of types of families participating in each program substantially different from the composition of the waitlist? If so, why?

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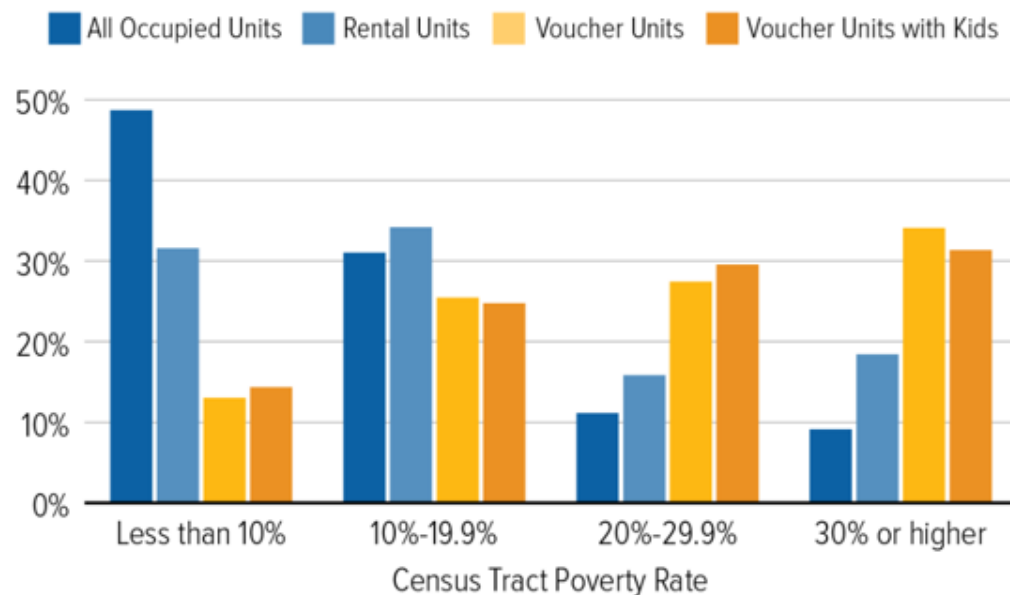
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AFFH IN PRACTICE: SECTION 8 VOUCHER POLICIES

Where do families with vouchers live? Is there access to all neighborhoods?

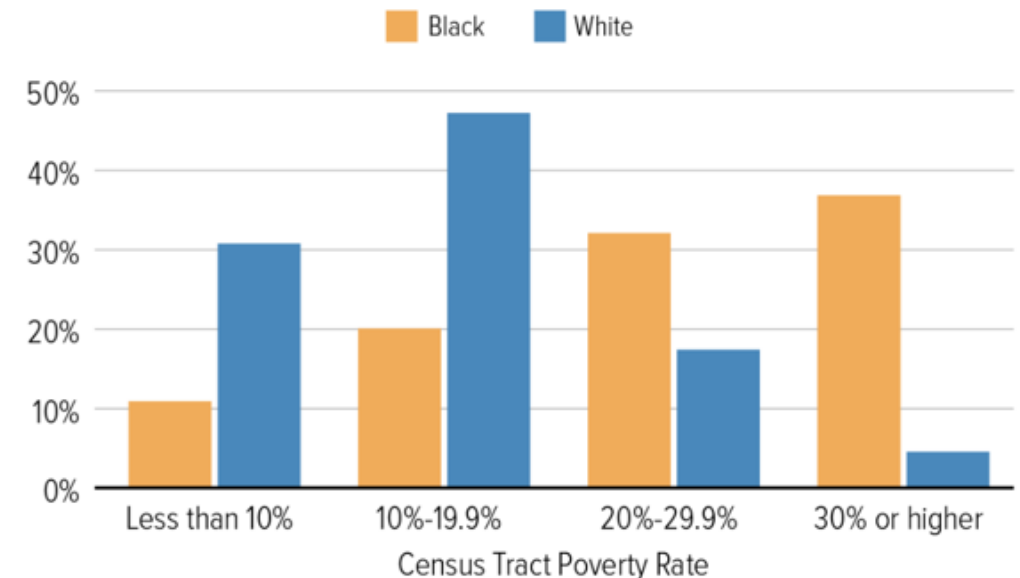
Housing Units in the St. Louis Metro Area by Neighborhood Poverty Rate

Share of total units by unit type



Neighborhood Poverty Rates for Voucher Families with Children in the St. Louis Metro Area

Share of total voucher families with children by race



(Tables by
CBPP for
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AFFH IN PRACTICE: SECTION 8 VOUCHER POLICIES

Key elements of housing mobility practice:

- Tenant education and balanced rental listings (portability rule)
- Landlord outreach and strong customer service (HUD landlord study)
- Housing mobility counselling and search assistance
- Tenant support and landlord incentives
- Source of income discrimination protections
- Small Area Fair Market Rents

AFFH IN PRACTICE: SECTION 8 VOUCHER POLICIES

Source of income discrimination protections

- Discrimination against families with Housing Choice Vouchers now prohibited in 12 states (+ DC) and over 90 cities and counties – protecting ~ 50% of HCV families.
- SOI laws reduce discrimination (HUD voucher study), improve voucher success rates, and are essential part of an overall AFFH housing mobility strategy
- Elements of a strong SOI ordinance: explicit coverage of vouchers; private right of action; full range of damages and attorneys fees
- PHA obligations to educate tenants on their SOI rights, provide referrals to tenants discriminated against, and work collaboratively with legal services and fair housing organizations to advance tenants' fair housing rights

AFFH IN PRACTICE: SMALL AREA FAIR MARKET RENTS

Background

What is SAFMR?

- FMR for Zip Codes
- Mandatory use in 24 Jurisdictions
 - Used to set payment standard
 - Zip Code Grouping
- Voluntary Adoption
 - For all or part of a PHA's jurisdiction
 - Can be used to set exception payment standards
 - Can be applied to Project-Based Vouchers

AFFH IN PRACTICE: SMALL AREA FAIR MARKET RENTS

Deconcentration of Voucher Use

Increasing Housing Options for Families

- More reflective of “real” rent
- Notice to Voucher Families
 - Potential Decrease in Assistance
 - New Voucher Families
- Determining Opportunity Areas
- Grouping of Zip codes
- Percentile of payment standard in higher opportunity communities
- TTP of rent *could* decrease
 - Annual Limits on SAFMR Reduction
 - Holding Families Harmless
- Porting into SAFMR Jurisdiction
- Coordination between neighboring PHAs
- Data Collection

PREVIEW OF RESOURCES FOR ADVOCATES

- Advocacy manual and Toolkit
- Manual topics include
 - AFFH obligation under federal and California law
 - PHA's AFFH obligation
 - PHA planning documents
- Toolkit includes a series of checklists for advocates wishing to review and comment on PHA ACOPs and Administrative Plans



PREVIEW OF RESOURCES FOR PHAS

- PHA self-assessment manual
- Overview of how to use HUD data and how to assess key policy areas
- Issues include voucher management, RAD, redevelopment, MTW, housing acquisition and siting policies (including LIHTC), etc
- Guide to PHA-locality collaboration

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Q & A



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THANK YOU!

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