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# **New Frontiers in Affirmatively Furthering Fair Housing**

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# Affirmatively Furthering Fair Housing

- Fair Housing Act
  - 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.” 42 U.S.C. § 3608(d).
- Affirmative obligation
  - AFFH requires *more than merely prohibiting discrimination*; instead, there exists an obligation to “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.

# Affirmatively Furthering Fair Housing

- AFFH obligation applies to:
  - HUD and other federal agencies that administer housing & urban development activities and programs
  - Federal funding recipients and subrecipients

A jurisdiction that receives Community Development Block Grant (CDBG) funds must certify that the jurisdiction will affirmatively further fair housing. *See* 42 U.S.C § 5304(b)(2).

# HUD's 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 where members of protected classes live 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 Implementation Halted

- HUD has taken a series of steps to stop implementation of the AFFH Rule.
  - Grantees will now revert to the analysis of impediments (AI), a process that has significant shortcomings that the AFFH Rule was created to address.
  - However, statutory obligation to AFFH still in effect. 42 U.S.C. § 3608(e)(5).
- HUD is planning changes to the AFFH Rule through rulemaking.
  - *See Advance notice of proposed rulemaking (August 2018)*
    - 83 Fed. Reg. 40,713

# California's Response

- California officials generally supportive of AFFH
  - “I think what I can safely say here is that—with or without the federal fair housing rule—the State of California will continue not only to implement our ongoing reporting obligations for HUD block grants and programs, but we will approach this work through the lens of the AFFH rule’s construct.” – CHPC, HCD Director says California will further fair housing despite Trump (Jan. 2017), quoting Ben Metcalf
- In the wake of the election, CA advocates began working to push for a state AFFH law, anticipating rollbacks at the federal level.

# California's Response (cont.)

- Assembly Bill 686 (Santiago)
  - Creates a state-level obligation to affirmatively further fair housing in state programs and activities related to housing and community development
  - Adds affirmatively furthering fair housing considerations into the Housing Element planning process, starting in 2021
  - Text of the bill in conference materials
- Comparison/contrast with federal law
- Coalition building
- Challenges
- Passage!
- Implementation so far

# Contact Information

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