

The Potential of the Fair Housing Act's Affirmative Mandate and HUD's AFFH Rule

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Abstract

The Fair Housing Act (FHA) is a powerful tool in the civil rights arsenal and has achieved a great deal, but its promise to address structural inequities that have undergirded the U.S. housing system has yet to be realized. HUD's Affirmatively Furthering Fair Housing (AFFH) rule is an important effort to do that, reflecting new learning and a refined approach to the core challenge of remedying ongoing barriers to fair housing that perpetuate disparities.

This article aims to provide details on how and why that rule was created, building on the experiences of two Obama-administration appointees involved in the rule's creation. After providing a brief background on the AFFH mandate of the FHA, this article explains the origins and theory behind the new rule and summarizes details of the rule and key initial critiques and experiences. It ends with some thoughts on how the approach embodied in HUD's rule could assist in ushering in a new era of equity planning.

Background: The Fair Housing Act's Power and Promise

The FHA is a robust and wide-ranging piece of civil rights legislation. As the courts have recognized, the act is designed and has been given broad application to fully achieve “the policy of the United States to provide, within constitutional limitation, for fair housing throughout the United States.”¹ Although the act did not define “fair housing,” it applies to any entity whose actions

¹ Fair Housing Act, 42 U.S.C. § 3601.

influence housing,² and is to be “generous[ly]” interpreted to allow all who might be conceivably harmed to seek its protection.”³

In creating the FHA, Congress recognized that simply combating future discrimination would not be enough to overcome the history of racialized policy and practices that led to dual housing markets and what the Kerner Commission (whose report was issued less than 2 months before the FHA’s passage) recognized as “two societies” (Kerner, 1968).⁴ To achieve that goal, the FHA went beyond antidiscrimination provisions and required the Federal government to take “affirmative” steps to overcome this legacy. Specifically, the FHA imposed on the federal government an obligation “affirmatively to further fair housing,” which we refer to as the AFFH mandate.⁵ This recognition of structural inequality and racism was visionary.

Realizing the potential of this aspiration in the 50 years since the FHA’s passage has been a halting process, with many fits, starts, and backtracking. Efforts to implement the AFFH provisions have met a host of political, programmatic, and other roadblocks that prevented significant advances and led to what some commentators have termed a “fundamental imbalance in [the act’s] statutory missions” (Davidson and Penalver, 2018).⁶ The problematic track record with the AFFH mandate stands in stark contrast to other areas of the FHA, where those charged with implementing and enforcing it have operated with great dexterity to adapt to changes in the housing field.⁷ One continuous question is whether the learning and adaption that have enabled the FHA to remain relevant in other domains can occur with AFFH.

One should examine the AFFH regulation against this backdrop in both ambition and approach.

2 The Fair Housing Act, 42 U.S.C. § 3604(a) defines discrimination to include “mak[ing] unavailable or deny[ing]” a dwelling based on a protected characteristic without limiting the entities who may be held responsible for such actions.

3 Another illustration of the strength of the FHA is that its mandates may be violated by actions that have a discriminatory effect (disparate impact), even without proof of discriminatory intent, as recently reaffirmed by the U.S. Supreme Court in *Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, 135 S. Ct. 2507 (United States Reports 576, 2015). Similarly, the act establishes an enforcement regime that authorizes both private parties and the government to bring suit; it also establishes an administrative enforcement procedure. See Fair Housing Act, 42 U.S.C. §3608-14.

4 The Kerner Commission stated that “fundamental to the Commission’s recommendations” was the need for “[f]ederal housing programs [to] be given a new thrust aimed at overcoming the prevailing patterns of racial segregation” (Kerner, 1968: 260).

5 The Fair Housing Act, 42 U.S.C §3608(d) states, “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.” (See also Fair Housing Act, 42 U.S.C. § 3608(e)(5).) Litigation has made clear that the AFFH mandate applies to all Federal investments, including the Low-Income Housing Tax Credit Program. See “In Re: Adoption of Uniform Housing Affordability Controls by the New Jersey Housing and Mortgage Finance Agency,” 848 A.2d 1 (N.J. Super. Ct. App. Div. 2004). <https://caselaw.findlaw.com/nj-superior-court-appellate-division/1084626.html>.

6 For a general discussion, see Smyth, Allen, and Schnaith (2015).

7 Following the addition of disability as a protected class under the FHA in 1988, HUD initiated regulatory guidance, technical assistance, targeted enforcement, and public engagement that have led to widespread refinements in housing construction and marketing and has markedly opened up housing to persons with disabilities.

The AFFH Rule's History and Theory of Change

Perhaps HUD's boldest effort to implement the AFFH mandate occurred immediately after the FHA was passed. HUD Secretary George Romney used the AFFH requirement as the basis for withholding water, sewer, and parkland grants from jurisdictions with exclusionary practices, including exclusionary zoning ordinances. Romney's "Open Communities" program put him in opposition to the Nixon administration and was eventually shut down.⁸ Only in 1995 did HUD again take serious steps to enforce the AFFH obligations through its grants programs, issuing the Fair Housing Planning Guide and introducing its Analysis of Impediments (AI) requirement. As discussed later, that process has been widely criticized as ineffective. In 1998, HUD issued a Proposed AFFH Rule, which included establishing AFFH performance standards for participants in the Community Development Block Grant (CDBG) program,⁹ but HUD received extensive public comments and chose not to issue a final rule.

With the 2008 election of President Barack Obama and his appointment of Shaun Donovan as HUD Secretary, the new administration revisited the AFFH mandate to determine how it could be revitalized as part of the administration's broad commitment to furthering equity. To do so, Secretary Donovan initiated what became a multiyear process to review and translate the AFFH mandate into policy and practice.

The crises the new administration faced as it began its work influenced its eventual focus and approach. At the end of 2008, the country was deep in the throes of the Great Recession, triggered by fundamental failures in housing finance oversight and regulation. Foreclosures were at a record high. The Gulf Region was still beset by failed recovery efforts following Hurricane Katrina. Also, the administration sought to respond to the growing challenge of climate change by incorporating resiliency measures into housing and community development resources and initiatives. Those and other pressing challenges had a deep and widely recognized racial dimension, as the foreclosure crisis destroyed Black and Latino wealth, the recession exacerbated preexisting disparities, and the post-Katrina failures fell particularly hard on minority communities (Faber, 2013; Squires and Hartman, 2006).

Given those dynamics, the new secretary and his team started with several premises that shaped their overall agenda and informed their approach to the AFFH mandate. First, HUD recognized that major challenges, ranging from climate change to ongoing racial disparities along numerous measures of well-being, required approaches that transcended public sector silos and would best be achieved by coordinated planning and integrated resource allocation. Applied to the AFFH effort, that suggested that previous approaches—which had been primarily driven by and focused on the agency's fair housing office—needed to be broadened and would require the full participation of and buy-in by the components of HUD responsible for community development and public and assisted housing. The goal was to ensure that HUD's annual distribution of more than \$40 billion to state and local governments, public housing authorities, and Native American tribes were part of AFFH implementation. In fact, the ideal approach to the AFFH mandate would move beyond

⁸ For a complete summary of HUD's efforts, see Schwartz (2014).

⁹ CDBG is HUD's largest block grant program, providing more than \$3 billion in grants to local jurisdictions annually. See https://www.hud.gov/program_offices/comm_planning/communitydevelopment/programs.

HUD programs and incorporate transportation, education, and other key elements that addressed barriers to achieving fully equal opportunities, such as with the cross-HUD-DOT-EPA Sustainable Communities Initiative.¹⁰

Second, HUD aspired to revisit how best to define the respective roles of the Federal government and state and local actors in operationalizing the AFFH mandate. Pursuant to the FHA's AFFH provisions, HUD had a legal obligation to further fair housing affirmatively and the legal authority to take enforcement action when its grantees failed to do so.¹¹ Beyond that starting point, myriad ways of using Federal authority to harness state and local housing and community-development capacity existed. Decades of poor experience with top-down, one-size-fits-all approaches to community development had inspired more locally driven and locally tailored comprehensive efforts, and state and local governments, private entities, and nonprofit groups had developed new capacities as a result.¹² In the AFFH context, that suggested focusing on the Federal government's ability to set overall direction, articulate policy and program options, incentivize participation, and provide resources for enhancing local capacity, including through data and technical assistance. Similarly, those efforts and increased capacities led to a desire to facilitate partnership and investment from state and local actors—especially critical given the awareness of the lack of a singular policy or approach to advance AFFH and the need to tailor actions to local circumstances in each geographic area.

Finally, many in the administration deeply believed in the importance and potential for robust community engagement to improve both process and outcome. They had an increased appreciation that although community participation had a long and mixed history in housing and civil rights practice and policymaking, engagement of community groups and the broader public could be the difference-maker between a paper exercise and meaningful action. Enabling meaningful and effective community engagement in the AFFH context had clear-cut challenges, however. The capacity of local communities, especially low-income communities of color, to use, access, and deploy information to influence public resource allocation was highly uneven across those communities. Further, what data would be most useful and how it might be shared to enable community groups to participate effectively was uncertain. Also, what would incentivize local groups to engage actively, especially if there were not a clear-cut link between participation and subsequent resource decisions and policy outcomes, was unclear. HUD's longstanding investments

10 HUD led this cross-agency initiative to support local and regional integrative planning efforts. See <https://www.hudexchange.info/programs/sci/>.

11 The importance of the AFFH legal obligation had been reinforced in 2007 when a federal court found that Westchester County had violated the False Claims Act by falsely certifying its compliance with the AFFH mandate. See *United States of America ex rel. Anti-Discrimination Center of Metro New York, Inc. v. Westchester County, New York*, 495 F.Supp.2d 375 (S.D.N.Y., 2007). <http://www.relmanlaw.com/docs/ADCvWestchesterMotiontoDismiss.pdf>. In the aftermath of this decision, HUD engaged with the plaintiff fair housing group and the county and entered into a consent order that set forth actions to place the county in AFFH compliance. That consent order became hotly contested and, following judicial findings that the county had violated the order, led HUD to suspend distribution of HUD funds to the county.

12 HUD's Choice Neighborhoods and the Department of Education's Promise Neighborhoods exemplify this newer orientation. See https://www.huduser.gov/portal/pdredge/pdr_edge_frm_asst_sec_101911.html and <https://innovation.ed.gov/what-we-do/parental-options/promise-neighborhoods-pn/>.

in local fair housing groups offered a starting point,¹³ but experience with the Home Mortgage Disclosure Act (HMDA) and how the data it made available to promote equitable lending practices highlighted that the provision of data was just that: a starting point.

Each of those priorities had particular resonance given the existing state of the AFFH process.

Before HUD's AFFH final rule in 2015, recipients of HUD formula grants mainly complied with their “affirmatively furthering” obligation through the Analysis of Impediments (AI) process.¹⁴ Jurisdictions were required to conduct an AI to fair housing in their jurisdictions and take appropriate action to address those impediments. The AI process, however, was widely recognized as highly flawed.

In 2009, HUD conducted a review of AIs gathered from program participants and found that about one-half of the AIs collected were outdated, incomplete, or otherwise inadequate (HUD, 2009). The Government Accounting Office (GAO) then conducted a more extensive review in 2010, collecting 441 AIs and comparing them to HUD guidance (GAO, 2010). Similar to HUD's own assessment, GAO found that a large share of jurisdictions did not have current AIs, and GAO questioned the usefulness of many of the AIs that did exist. GAO noted that HUD's regulations did not require a timeline for updating AIs, specific content or form of AIs, or even that AIs be submitted to HUD for review. GAO noted that most AIs were written by external consultants, and many did not seem to be signed by elected officials, suggesting that the AIs were not integral and were possibly irrelevant to any local decisionmaking process. Indeed, the content of the AIs did not feed into any other HUD process or funding requirement. GAO concluded that “[a]bsent any changes in the AI process, they will likely continue to add limited value going forward in terms of eliminating potential impediments to fair housing that may exist across the country” (GAO, 2010: 31).

HUD's Final Rule: From Theory to Implementation

In 2015, after nearly 7 years of internal and public debate, HUD moved past its aspirational theory and issued its final AFFH rule. The rule sought to operationalize the administration's new approach, while addressing many flaws GAO (2010) and others had identified. It delineated substantive objectives in a new way and articulated a new process that redefined the roles of the Federal government and state and local actors. In doing so, it reworked how fair housing issues are to be incorporated into participants' planning processes and into how HUD (and potentially other) resources would be allocated. Collectively, those modifications represent a significant shift in approach.

13 The Fair Housing Initiatives Program (FHIP) and the Fair Housing Assistance Program (FHAP) provide Federal resources to nonprofit groups, in the case of FHIP, and state and local agencies, in the case of FHAP, to pursue fair-housing-related activities. See https://www.hud.gov/program_offices/fair_housing_equal_opp/partners/FHIP and https://www.hud.gov/program_offices/fair_housing_equal_opp/partners/FHAP. In FY 2018, Congress' annualized appropriation was roughly \$65 million for those programs. See https://www.hud.gov/sites/documents/FY_18_CJS_COMBINED.PDF.

14 For a description of the AI process, see HUD's 1996 Fair Housing Planning Guide at <https://www.hud.gov/sites/documents/FHFG.PDF>.

The Final Rule's Explanation of Core AFFH Objectives

To provide clarity of purpose, HUD's rule defined the duty to affirmatively further fair housing for the first time. Specifically, the AFFH mandate required "meaningful" actions to—

“overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics.”¹⁵

The rule articulated four objectives for the AFFH effort: (1) to address significant disparities in housing needs and in access to opportunity, (2) to replace segregated living patterns with truly integrated and balanced living patterns, (3) to transform racially or ethnically concentrated areas of poverty into areas of opportunity, and (4) to foster and maintain compliance with civil rights and fair housing laws. By setting those four objectives, the rule made clear that furthering fair housing can entail both in-place investments and steps to promote mobility, thus addressing perhaps the preeminent fair housing tension. Further, it clarified that nonhousing disparities are relevant to AFFH objectives and that the specific actions to be taken by state and local actors would be determined locally rather than being dictated by HUD.

The Updated AFFH Process

The AFFH rule also sought to more clearly guide jurisdictions in identifying meaningful actions by introducing a new process with specific tools and clarifying the roles of the various participants. First, the rule clarified how states and participants should assess current conditions in their communities, replacing the much-criticized AI process with a standardized and very detailed Assessment of Fair Housing (AFH). Provided by HUD, the assessment tool included specific questions to be answered in five main topic areas.¹⁶ The analysis sought to push jurisdictions to go beyond describing patterns of segregation and to consider disparities in opportunity that accompany segregation. For example, participants must assess racial and ethnic disparities in the quality of neighborhood-based services, such as schools, employment, and transportation. Along a similar vein, the AFH contained a section focusing specifically on areas of racial or ethnic concentration of poverty. Those analyses seek to help localities assess residential segregation through a lens that focuses on the link between racial separateness and inequality.

Consistent with a shift in HUD's role in the process, HUD provides detailed data publicly on all jurisdictions and their surrounding regions, including data on segregation, location of subsidized housing, and disparities in measures of opportunity to facilitate that analysis. In doing so, HUD seeks to serve as a partner to state and local actors, which is especially helpful to entities without significant data capability, and to “democratize” the inputs relevant to the process. The rule also

15 The AFFH mandate is 24 C.F.R. § 5.152. The rule explains that “meaningful actions” means “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.”

16 Specifically, those topic areas are (1) a demographic summary; (2) a collection of analyses of segregation, racially or ethnically concentrated areas of poverty, disparities in access to opportunity, and disproportionate housing needs; (3) an analysis of publicly supported housing; (4) an analysis of disability and access; and (5) fair housing enforcement efforts.

required a robust community engagement process, specifying several steps designed to ensure that community input is incorporated into the final outcomes.¹⁷

An important consideration is that, unlike AIs, AFHs must be submitted to HUD. Within 60 days, HUD needs to determine whether the AFH is accepted, and if it is not accepted, provide reasons for the nonacceptance and guidance on how participants should revise the AFH so that it can be accepted.¹⁸ Jurisdictions must reference their AFH priorities and goals in their next administrative plan that is required for HUD funding (for example, consolidated plans),¹⁹ and they need to have an AFH accepted by HUD before receiving that funding. In theory, strategies proposed in the AFH and the spending of resources, at least HUD resources, are directly linked, although the AFH may include goals for non-HUD resources as well. A “learning-loop” is also built into the process, which begins with the submission of an AFH to HUD, with possible feedback before acceptance; continues as a jurisdiction translates its AFH goals and strategies into the jurisdiction’s consolidated plan; and culminates as that jurisdiction develops its next AFH (approximately 5 years later), in which progress on those goals is assessed. Another avenue of learning could occur if HUD, researchers, nonprofit intermediaries, and national affiliates of jurisdictions collect and disseminate lessons that can strengthen the process and further the desired goals of the rule.

Finally, in recognition that fair housing issues cross jurisdiction and agency boundaries, the final rule notes that HUD not only permits but encourages collaboration through jointly submitted AFHs. Collaboration can occur among multiple jurisdictions and between jurisdictions and public housing agencies (PHAs). PHAs were not previously required to conduct AIs, so they are conducting comprehensive AFHs for the first time.²⁰

Initial Critiques of the AFFH Rule

Although many commentators respected the substantial shifts HUD made in its approach to the AFFH implementation process, public comments were extensive and often quite heated, reflecting widely different perceptions about the purpose, value, and desired outcomes at issue. Criticism was not limited to those individuals expressing hostility or indifference to the FHA’s mandate; stakeholders supportive of fair housing goals also raised a range of concerns during the rule’s development and after its issuance.

The fair housing advocacy community raised significant concerns about the lack of enforcement tools and processes in the new rule, questioning whether HUD had struck the appropriate balance between support to state and local actors and accountability for those who did not respond

17 Community input is required before the drafting of the AFH; the draft AFH must be made available for public comment, and akin to the federal rulemaking process, jurisdictions must reference public comments in their AFH submission and explain their reason for not addressing specific comments in the content of the AFH.

18 Acceptance means that the plan is complete and consistent with fair housing and civil rights laws. Acceptance does not deem a jurisdiction necessarily successful in meeting all its fair housing obligations.

19 Consolidated plans are the planning and reporting requirements for CDBG recipients. Since 1995, CDBG recipients have been required to conduct AIs as part of their consolidated plans (although the AI itself was not included or referenced in those plans). See Bostic and Acolin (2017).

20 Before HUD’s final rule, PHAs self-certified that they were meeting their AFFH obligations as part of their HUD planning process.

meaningfully to the new process.²¹ Fair housing advocates noted the long history of segregated housing patterns sometimes reinforced by existing municipal boundaries and observed that even well-intentioned local jurisdictions frequently faced opposition if they sought to promote integration and to otherwise address fair housing challenges. Thus, fair housing critics questioned whether the rule included sufficient monitoring tools and assessment mechanisms to determine when local actors appropriately used the discretion they had been granted. The rule's "default approval" provision, by which HUD would deem an AFH accepted if HUD did not disapprove or raise concerns about it within 60 days, exacerbated that concern.²² Although the legal significance of acceptance was uncertain, fair housing advocates saw it as a step toward a safe harbor that might insulate from liability entities who failed to take meaningful action.

In tension with that concern, many state and local governments and other actors responsible for complying with the new rule were skeptical that HUD would be able to embrace a more collaborative role and meet its obligation to support communities with data and technical assistance. For some HUD grantees responsible for undertaking the new process, HUD's rhetoric outstripped the reality of the process that had been set up. For example, the rule strongly encouraged collaboration between different actors and joint submission but did not provide an assessment tool designed to be used for such collaborations nor incentives (financial or otherwise) to do so. Similarly, on the flip side of the concern raised by fair housing advocates, state and local actors wondered whether HUD would support their discretionary decisionmaking.

Finally, some people had questions about scale: whether the resources at issue were sufficient to meet the AFFH objectives through the process the AFFH rule set forth. In other words, some doubted that the rule could satisfy the AFFH mandate because it neither contributed significant new resources nor changed existing statutory or regulatory terms of HUD programs to expand the options from which state and local governments might choose. From a resource perspective, some noted the lack of new, available HUD funding and that other public resources, such as those involving transportation and education, which were larger and arguably more critical contributors to shaping ongoing development patterns, were not subject to the rule. Others questioned whether HUD needed to provide greater flexibility in the way its existing program funds, which are significant, could be used.

Early Indications

HUD issued its final rule in July of 2015, which made the first AFHs due to HUD in 2016.²³ The early stage of any new process entails considerable uncertainty, and AFFH was no exception. With no existing AFHs to serve as models, and an entirely new process, grantees and HUD staff were learning as they were doing. The rule happened to be passed when a particularly small number of grantees was up next in the consolidated planning cycle, permitting HUD (and philanthropy) to focus attention and technical assistance on "first submitters." The Ford Foundation and Open

21 For a good articulation, see Allen (2015).

22 See final rule, Office of Federal Register, 2015.

23 The timing of a jurisdiction's AFH depends on when their next consolidated plan is due, generally running on a 5-year cycle.

Society Foundations, in particular, provided funding for technical assistance on the ground in numerous jurisdictions.

By the end of 2016, 15 AFHs representing 26 program participants had been submitted to HUD and received an official notice regarding whether they were accepted. Eight of those submissions were accepted outright. The remainder received initial feedback from HUD about needed improvements. Of those, three were quickly resubmitted and formally accepted. The remaining four were formally not accepted, but subsequent, updated submissions from those participants were accepted. Although those 2016 submissions were quite early in the rule's implementation, we gained several insights from them.

First, HUD proactively provided feedback to submitters such that submissions could be corrected for minor omissions and be resubmitted for timely acceptance, evidence of a learning loop for both grantee and HUD. Although such a mechanism was intended by the rule, it required HUD staff to work much more in partnership with submitters toward a common goal (acceptance) than a pure "compliance stance" typically permits.

Second, to some HUD's rejection of a sizable number of AFHs was surprising. In the 50 years since the passage of the FHA, HUD has withheld funding on an AFFH basis only a handful of times (Schwartz, 2014). Those four nonacceptances initially put six jurisdictions and PHAs at risk of not receiving HUD funding.²⁴

Finally, more than one-half of the earliest AFH submissions were notably joint submissions, consistent with HUD's encouragement of collaboration and its emphasis on coordinated planning across jurisdictional or participant silos.

Further Observations for Equity Planning

Opportunities based on where one lives have profound and lifelong consequences. Understanding of that reality is growing²⁵ and as such, the effort to translate the AFFH mandate into operational reality is notable. As an innovation in equity planning and how it informs the use of Federal housing and community development resources to further fair housing, the new effort marks a significant departure from HUD's previous approach. It may also demonstrate the potential for equity planning in other realms.²⁶ Thus, the rule (and its implementation) is significant not only as it applies to the AFFH mandate but also more broadly as a potentially innovative mechanism that could herald experimentation and new approaches to realize equity concerns more broadly.

24 Most AFH submissions were collaborations, either between a jurisdiction and its PHA, or among multiple jurisdictions, itself a goal of the new AFFH rule. For access to early submitted AFFHs, see <https://steil.mit.edu/civil-rights-and-fair-housing-city>.

25 See, for example, Banks (2018); Chetty, Hendren, and Katz (2016).

26 A growing body of experience and literature about efforts to incorporate equity planning in public programs (at all levels of government) suggests potential value in broader investigation into common challenges and successes. See, for example, Corburn et al. (2015); Federal Highway Administration (2017); Oregon Education Investment Board (2018).

As such, the AFFH rule can be used to examine a key set of questions that ideally might be applied in policy domains beyond housing and community development. Critical questions that could be used to inform and strengthen equity-planning efforts more broadly include the following:

- How would one best integrate public- (and possibly private-) sector funding streams and planning processes across levels of government and agencies to further equity principles? Information from other Federal, state, and local efforts, such as the Sustainable Communities Initiative, could contribute to learning in this area (Chapple et al., 2017).
- What “carrots and sticks” for state and local governments and actors are most useful to enable and incentivize them to achieve desired equity outcomes? More specifically, which of the supports that HUD and philanthropy provided to state and local actors were most helpful, and in what ways can data, in particular, better lead to effective programs?
- Does such an approach allow Federal, state, and local agencies to hold bad actors accountable, while effectively supporting well-intentioned recipients? What mechanisms might be developed to enable agencies to successfully differentiate between the two?
- What lessons can be drawn about how best to develop meaningful community participation, especially in low-income communities and communities of color? Such participation presumably involves effective local capacity on a jurisdiction-by-jurisdiction basis and national entities or intermediaries that can help support them.²⁷
- How can one learn from such a process on an ongoing basis so that Federal, state, and local agencies can refine the process and so that recipients and community actors can improve decisionmaking and desired results? In particular, how can one build in, from the outset, meaningful opportunities for researchers and participants to provide feedback, and how can community actors be regularly informed and engaged about the effect of their involvement?

Finally, although the long-run effects of the rule cannot be assessed yet, lessons from the earliest submissions suggest some optimism that the rule embodies an important new approach that can and should be refined over time. We firmly believe it is possible to build on the rule and develop an approach to equity planning and fair housing programming consistent with the understanding that Congress set forth when it enacted the FHA and included the AFFH mandate as one of its two statutory goals.

Acknowledgments

We would like to thank Vincent J. Reina, Nestor Davidson and an anonymous reviewer for helpful comments.

²⁷ In an ideal world, one would plan over a multiyear period for what local and national capacities should be created. It is noteworthy, for example, that the manner in which community groups used and applied HMDA data evolved over time.

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