

Affirmatively Furthering Fair Housing

Docket No. FR-5173-P-01

Regulatory Impact Analysis

1 Summary of Analysis

This rule proposes a “fair housing assessment” and planning process that would provide HUD program participants with more effective means to affirmatively further the purposes and policies of the Fair Housing Act, which is Title VIII of the Civil Rights Act of 1968. The Fair Housing Act not only prohibits discrimination but, in conjunction with other statutes, also directs HUD to promote proactive steps to overcome historic patterns of segregation, promote fair housing choice, and foster inclusive communities for all. As proposed in this rule, HUD would provide States, local governments, public housing agencies, and the communities they serve with local and regional data on patterns of integration; racially and ethnically concentrated areas of poverty; access to education, employment, low-poverty neighborhoods, transportation, and environmental health, among other critical assets; and disproportionate housing needs based on protected class. From these data, grantees would evaluate their present environment to assess fair housing issues, identify the primary determinants that account for those issues, and set forth fair housing priorities and goals and document these activities in an Assessment of Fair Housing report. The rule also proposes new procedures within HUD for evaluating grantees’ fulfillment of their obligation to affirmatively further fair housing.

The proposed rule might result in a potential increase in compliance costs for some program participants, although some features of the proposed rule could lead to a reduction in costs for other program participants. On balance, using some assumptions, HUD estimates annual aggregate incremental compliance costs to fall between \$3 million to \$9 million. Implementing the proposed rule would require more HUD staff resources, as staff would have additional work requirements associated with reviewing and approving the Assessment of Fair Housing reports as well as assisting program participants.

There are several key benefits associated with the proposed rule. First, it offers more clarity regarding the goals of affirmatively furthering fair housing, which will help focus program participant attention and decision-making. Second, it establishes HUD’s provision of key data elements to inform assessments to identify key fair housing issues, understand their drivers, and establish fair housing

priorities, which lowers logistical barriers of conducting such analyses and can potentially increase analytical rigor and broad-based engagement. Third, the proposed rule creates more explicit linkages between this process and subsequent planning activities by program participants, thereby increasing the prominence of fair housing issues for program participants as they consider their planning and resource allocation priorities. Taken together, these benefits can help improve fair housing outcomes and thus the welfare of the protected classes.

The rule covers program participants that are subject to a great diversity of local preferences and economic and social contexts across American communities and regions. For these reasons, HUD recognizes there is significant uncertainty associated with quantifying outcomes of the process, proposed by this rule, to identify barriers to fair housing, the priorities of program participants in deciding which barriers to address, the types of policies designed to address those barriers, and the effects of those policies on protected classes. In brief, because of diversity of communities and regions across the nation and the resulting uncertainty of precise outcomes of the proposed AFFH planning process, HUD cannot quantify the benefits and costs of policies influenced by the rule. HUD is confident, however, that the rule will create a process that allows for each jurisdiction to not only undertake meaningful fair housing planning, but also to have capacity and a well-considered strategy to implement actions to affirmatively further fair housing.

The next section describes the need for the rule. Section 3 of the analysis describes the costs of implementing the processes proposed by the new rule. The fourth section discusses the new decisions and potential community benefits that might result from the introduction of new information provided by the rule. The fifth section reviews some of these possible future decisions to provide a picture of how the rule can potentially influence behavior. A concluding section summarizes.

2 Need for the Rule

Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601-3619 (the Fair Housing Act), enacted into law on April 11, 1968, declares it to be “the policy of the United States to provide, within constitutional limitations for fair housing throughout the United States.” 42 U.S.C. 3601. Section 808(e)(5) of the Fair Housing Act, 42 U.S.C. 3608(e)(5), obligates the Secretary of Housing and Urban Development (the Secretary) to “administer HUD’s programs and activities in a manner

affirmatively to further” the policies of the Fair Housing Act. Through this rule, HUD proposes to provide recipients of HUD funds with more information to assist them to fulfill the charge to affirmatively further fair housing. This proposed rule is needed for two reasons: to overcome barriers to fair housing choice and to encourage improvements in the current planning process.

2.1 Existence of communities with barriers to fair housing choice

Communities in which fair housing goals could be more fully realized still exist. There are communities across the country that remain segregated by characteristics covered by the Fair Housing Act. Racially-concentrated areas of poverty exist in virtually every metropolitan area. Disparities in access to important community assets prevail in many instances.

The existence of these communities is costly. Consider, for example, the case of a family looking for a home. On average, minorities are treated differently at every stage, from searching for a home to closing on a loan. Differential treatment of minorities could lead to them paying a premium for housing whether in the form of rent, the purchase price of housing, or the terms of a mortgage loan.¹ The indirect implication of having to pay a premium is that a member of a protected class will not have equal access to the same locations as others. Thus, any public policy that responds to discrimination and its historical legacy has the potential to create significant social benefits not just in housing consumption but in the choice of neighborhood.

Ondrich et al. (2003) use data from 1989 Housing Discrimination Study to examine the decisions of real estate agents. The researchers find that the marketing effort of agents increase with the price of a home for white customers but not for black customers. Black customers are more likely to be shown houses in integrated neighborhoods (steering). The houses that agents show are more likely to deviate from the initial request when the customer is black than when the customer is white. These findings are consistent with discrimination on the part of real estate agents and such behavior on the supply side will result in restricted housing choice for minorities.

The most recent (2000) Housing Discrimination Study finds that housing discrimination still exists, although there has been a decrease since the previous study in 1989.² According to

¹ A study of closing costs (Woodward, 2008) provides evidence that African Americans pay \$415 more for their mortgage loans and that Hispanics pay \$365 more (after taking into account borrowers' differences, such as credit score and loan amount) than Whites do.

² See Urban Institute (November 2002) for a detailed description of the Housing Discrimination Study.

the research, which was based on 4,600 paired tests, the greatest share of discrimination for Hispanic and African American home seekers can be attributed to (1) being told units are unavailable when they are available to non-Hispanic whites and (2) being shown fewer units than non-minorities. The study detected three upward trends in housing discrimination: 1) Hispanic renters were more likely in 2000 than in 1989 to be quoted a higher rent than a white counterpart for the same property; 2) a decline in the amount of help agents provided to Hispanic homebuyers to obtain financing both overall and relative to white counterparts; and 3) a greater incidence of “geographic steering” of African American homebuyers.³ A more recent study (Hanson and Hawley, 2011) using matched-pair audits of discrimination in the U.S. rental market finds that African-Americans experience discrimination and that discrimination increases as neighborhoods reach a “tipping point” (from 5 to 20 percent minority share).⁴ Restricting the choices of minorities during the search process will lead to minorities achieving less than the optimal housing outcome. It is reasonable to suspect that this reduced choice set will be manifested in minorities paying a higher price for similar quality housing.⁵

Supposing the process envisioned by the proposed rule highlights these issues and their attendant costs in ways that were not previously appreciated, one might expect policy-makers to craft a response. They could potentially create a task force charged with increasing local enforcement activities to root out such discrimination. Alternatively, they could expand informational programs which alert both tenants and landlords of the illegality of discriminatory practices, which could deter those considering acting in discriminatory ways. Other policies are possible as well.

While efforts to combat ongoing discrimination are important, they are also at the core of HUD's existing fair housing efforts. This proposal would support and help facilitate those efforts, but would go further and address other significant barriers to fair housing choice that have been largely absent from HUD's fair housing policy initiatives. Specifically, this proposal

³ The change in the net measures of steering of Hispanics was not statistically significant.

⁴ Tipping points in the range of 5 and 20 percent of the minority share were identified by Card, Mas, and Rothstein (2008) using a variety of estimation methods. Tipping points have been found to vary across cities, due in part to differences in local preferences.

⁵ Myers (2004) finds a positive and statistically significant relationship between race and the value of owner occupied housing. The finding is a powerful one because the researcher does a careful job of controlling for structure and neighborhood characteristics. The same study, however, does not provide evidence that minorities pay a premium in the rental market. The author concludes that the lack of a rental premium may be explained by either the absence of discrimination in the rental market or the use of rental subsidies.

would help address the legacy of segregation and factors related to locational choice that have been influenced by race, national origin, disability, and other protected classes, but typically do not rise to the level of discriminatory actions that violate other sections of the Fair Housing Act.

There are additional costs to restricting housing choice. These costs include reducing employment, education, and homeownership opportunities as well as the benefits of living in a safer and healthier environment. For example, Card and Rothstein (2007) study educational outcomes, and controlling for student background, find that residential segregation during high school is associated with lower test scores for black students relative to whites. Beyond these issues of fairness to individual households, there is evidence that fair housing policy improves economic welfare for an entire metropolitan area. Cutler and Glaeser (1997) analyze the metropolitan-wide impacts of segregation and find that a one standard deviation decrease in segregation explains one-third of the black-white difference in measured outcomes (schooling, earnings, and single parenthood).⁶ The authors conclude that housing policy which reduced spatial segregation could be as effective as education, labor, or social policies in achieving equal outcomes. Another researcher (Ananat, 2011) controls for omitted variable bias and confirms the Cutler-Glaeser result: segregation is correlated with higher black poverty and lower white poverty, compared to places that are less segregated. We know that segregation exists; that segregation is often involuntary; the impacts of involuntary segregation are malicious; and that local policy can play a role in ameliorating those adverse impacts on protected classes.

The factors underlying these realities are many and varied. HUD's *Fair Housing Planning Guide* defines (see p. 2-17) impediments to fair housing choice as:

- Any actions, omissions, or decisions taken because of race, color, religion, sex, disability, familial status, or national origin that restrict housing choices or the availability of housing choice; or
- Any actions, omissions, or decisions that have this effect.

Impediments to fair housing choice include actions or omissions in the State or Entitlement jurisdiction that constitute violations, or potential violations, of the Fair Housing Act that are counterproductive to fair housing choice, such as:

⁶ The authors present a theoretical analysis that is ambiguous concerning the net impact of segregation. The statistical analysis is statistically rigorous and controls for endogeneity of location choice by individual households. However, Durlauf (2004) points out that underlying discrimination may be the root cause of both spatial segregation and less lower outcomes.

- Community resistance when minorities, persons with disabilities and/or low-income persons first move into white and/or moderate- to high-income areas
- Community resistance to the siting of housing facilities for persons with disabilities because of the persons who will occupy the housing
- Other actions that have the effect of restricting housing opportunities on the basis of race, color, religion, sex, disability, familial status, or national origin.

There are literally dozens of impediments to fair housing choice. A GAO analysis of 30 Analyses of Impediments highlighted the most common impediments to fair housing, which are shown in the table below.

Table 1. Most Commonly Cited Impediments to Fair Housing in Selected Analyses of Impediments

Impediments	Description of impediments
Zoning and site selection	Building and zoning codes, which may contain lot requirements such as minimum street frontage and front yard setbacks, and amenities (e.g., landscaping), that can affect the feasibility of developing low- and moderate-income housing. Placement of new or rehabilitated housing for low-and moderate-income groups in areas that already have high concentrations of this type of housing or have zoning requirements that encourage such concentrations.
Neighborhood revitalization, municipal and other services, employment-housing transportation linkage	Inadequate public services in low-and moderate-income areas, where many African-American, Hispanics, and people with disabilities may live, including schools, recreational facilities, social service programs, parks, roads, transportation, street lighting, trash collection, and police protection.
Lending policies and practices	Less favorable mortgage lending terms from private lenders, such as higher interest rates, for African-Americans or other minority borrowers than are generally available for nonminority borrowers with similar risk characteristics.
Informational programs	Lack of access to information about the rights and responsibilities associated with fair housing, potentially creating an environment favorable to discriminatory practices.

Source: GAO, 2010, Analysis of 30 AIs

With so many specific barriers, it is perhaps useful to categorize them according to how they limit housing choice. One set of issues pertains to barriers that prevent people from moving out of segregated neighborhoods, racially-concentrated areas of poverty, and neighborhoods that perpetuate disparities in access to important community assets. A second set of issues involves realities that prevent these neighborhoods from attracting a sufficiently broad distribution of people such that segregation and racial concentration of poverty dissipate over time. Included among these barriers are characteristics these neighborhoods lack that would help ameliorate observed disparities in access to community assets.

2.1.1 Barriers that prevent mobility

The ability of families located in segregated neighborhoods, racially-concentrated areas

of poverty, and locations that perpetuate disparities in access to community assets to move to locations where these issues are less acute is hampered by a number of barriers. One potential barrier in this regard is a lack of affordable housing in other, potential target areas. Others might include an inability of residents of protected classes to use existing housing subsidies in potential target communities and a lack of awareness about housing options in those places, and a lack of support, such as child care, needed to enable people to live in areas that they can affordably access.

Further, in some instances, government policies and practices have not aggressively promoted integration, the elimination of racially-concentrated poverty, and the reduction of disparities in access to community assets. One historical example of this is the race-based restriction on Federal Housing Administration activities in the 1940s. As a second example, more contemporary evidence indicates that HUD assisted-housing is often concentrated in areas of high degrees of segregation (and poverty). Finally, housing discrimination has the potential to limit housing choice and perpetuate the existence of segregation, racially-concentrated areas of poverty, and disparities in access to community assets.

2.1.2 Barriers that prevent a broader appeal

An alternative strategy for advancing the fair housing goals of reducing segregation and promoting integration, eliminating racially-concentrated areas of poverty, and narrowing disparities in access to community assets and housing needs is to transform neighborhoods with these characteristics to increase their appeal to families with different income and ethnic profiles. This can result in an influx of such people, with the result being a more diversified population and reduced isolation.

More families find neighborhoods that have particular assets to be attractive, and the lack of these assets can limit the number of families that will consider living in a particular place. These assets include good schools, safe streets, access to quality jobs, a good health infrastructure, available services such as child care, parks and open space, diverse and healthy food choices, and a range of transportation options (including accommodations for disabilities), among other items. In each case, the absence or lower incidence of the asset serves as a barrier to effectively transforming segregated neighborhoods, racially-concentrated areas of poverty, and locations that contribute to disparities in access to community assets into communities where these features are less pronounced.

In transforming neighborhoods and promoting integrated and integrating communities, a key challenge is preserving their affordability and highlighting their appeal without radically changing their character. Transformation, particularly of those neighborhoods inhabited by lower-income families, can induce gentrification. Gentrification can help advance fair housing goals and integration, but it can also result in a wholesale change in the ethnic mix such that the minorities that originally populated the neighborhood exit and no longer are present. Such tipping is not a desired outcome of fair housing goals, as displacement can negate any progress made regarding the fair housing goals. Consequently, care is needed to make sure that investments and policies are established to guard against this.

2.2 Potential to improve existing process

A second reason that the proposed rule is needed is because some of the traditional means of fair housing planning have not been as effective as they could be and can be updated with currently available information and approaches. In the past, HUD did not require review of grantees' assessments, failed to specify or provide information to grantees to inform the process, and did not clearly link grantee assessments to community planning efforts, such as the consolidated plan and PHA Plan. Recipients of HUD grant funding can be assisted with better tools to understand the nature of patterns of segregation, racial and ethnic concentrations of poverty, disparities in access to community assets by protected class, and disproportionate housing needs based on protected class so that such program participants can better develop strategies, plans, and actions to address these fair housing concerns.

The need for a revision of the current planning process in order to "better ensure that grantees' AIs serve as an effective tool for grantees to identify and address impediments to fair housing" has been affirmed by the GAO (2010). A GAO report (2010) recommends the establishment of rigorous standards for analyses of impediments (AIs), a regular submission of AIs, checking and verifying the AIs, and measuring grantees' progress in addressing identified impediments to fair housing.

In considering the economic impacts of the proposed AFFH rule, one must first recognize that there are both impacts on program participants and impacts on communities. Impacts on program participants represent those impacts associated with formally executing the planning process envisioned by the new rule. This involves estimating the extent to which changes embodied in the new process require different levels of effort and cost as compared with the

current process. Importantly, HUD program participants are already required to develop plans for effective uses of HUD funds consistent with the statutory requirements and goals to further fair housing.

Impacts on communities represent those associated with any changes in decisions induced by having the broader information set that becomes available as a result of conducting the assessment of fair housing. Though the purpose of proposed rule is to ensure that the challenges faced by persons in protected classes are fully considered by program participants when they make resource allocation and other policy decisions, the proposed rule does not mandate any particular policy decision. Given competing priorities and resource constraints, the additional information might not change decisions at all in some instances. However, to the extent that the additional information causes decision-makers to have insights they might not otherwise have, they might pursue different policies and actions.

3 Economic Impact of the Rule: Execution of the Process

The Department does not expect a large change in compliance cost as a result of the rule. There are some elements of the rule that would increase compliance costs and others that would decrease compliance costs. A range of assumptions concerning the direction and size of the incremental impact yields estimates of marginal implementation costs ranging from \$3 million to \$9 million.

3.1 Costs to Program Participants

The new regulation envisions a process that is structurally incorporated into the Consolidated Plan and the PHA planning process, building upon what is already familiar to HUD's program participants, thus reducing unneeded burden and integrating currently disparate planning processes. HUD anticipates only marginal additional impact of this rule on document preparation time. States, local governments, and PHAs are already required to prepare written AFFH plans, undertake activities to overcome barriers to fair housing choice, and maintain records of the activities and their impact. The principal differences would be imposed by the proposed rule are that: program participants would submit the plan to HUD for review and feedback; the contents of the plan would be more precisely defined; HUD would provide data for further analysis; and there would be a more precisely defined community participation process.

Because the fair housing planning process is tied to the existing Consolidated and PHA Plans, local governments, States, and PHAs would not have to establish wholly new procedures. Further, since HUD will be providing uniform data and clear expectations about AFFH requirements, the burden of developing the data for, and implementing, the Assessment of Fair Housing (AFH), as the successor to the Analysis of Impediments (AI), should be reduced.

We expect there to be new costs from extending community participation/consultation, for example, but also reduced costs from the Department's provision of data and the guidance tool. There may also be costs associated with program participants becoming familiar with the proposed web-based data interface. The net change in burden for specific local entities will depend on the extent to which they have been complying with the planning process already in place. The local entities that have been diligent in completing rigorous AIs will likely experience a net decrease in administrative burden as a result of the revised process. Many grantees spend considerable time and funds trying in good faith to comply with the existing AI requirements, for all of their lack of clarity, and for those grantees, the new process should be easier and cheaper. However, the demands of the new process may result in a net increase of administrative burden for those non-compliant entities that have not conducted regular and careful AIs.

Examining the current costs of completing an Analysis of Impediments (AI) would provide insight as to the potential scale of cost changes the newly proposed rule might suggest. The results of an informal survey by the Department of its program participants concerning the costs of performing an AI are presented below. Most of the respondents paid consultants for the preparation of the AI so that the cost identified is the contract cost.

Table 2. Cost of Analysis of Impediment Preparation			
Jurisdiction	Cost of AI Preparation	Year of Preparation	Cost in 2011 \$*
<i>LOCAL GOVERNMENTS</i>			
Boston, MA	\$140,000	currently being prepared	\$140,000
Jacksonville, FL	\$75,000	2004	\$89,055
Ft. Wayne, IN	\$70,000	2006	\$77,882
Rockland County, NY	\$57,240	2009	\$59,855
South Bend, IN	\$50,000	within past 5 years	\$55,630
Canton, OH	\$28,500	2010	\$29,324
Cedar Rapids, IA	\$27,000	within past 5 years	\$30,040
Dallas, TX	\$26,500	2007	\$28,673
Lexington-Fayette County, KY	\$19,000	2008	\$19,794
Lee County, FL	\$19,000	2005	\$21,821
Evansville, IN	\$15,000	2006	\$16,689
Pittsburgh, PA	\$12,000	within past 5 years	\$13,351
Winston-Salem, NC	\$10,000	2003-2004	\$11,874
Durham, NC	\$9,999	2008	\$10,417
Louisville, KY	\$9,999	within past 5 years	\$11,125
<i>STATE GOVERNMENTS</i>			
Iowa (not including entitlement cities)	\$34,000	within past 5 years	\$37,828
Vermont	\$25,000	2005	\$28,712

* for AIs completely “within the last five years,” we assume that the year of completion is 2006 for the purpose of converting to 2011 \$

The average total expenditure across the identified governments is \$40,000 (2011 \$). An AFH is required once every five years. Assuming a 10 percent increase in costs, additional compliance costs would be approximately \$4,000. On average, 840 program participants will produce an AFH annually, since there are approximately 1,100 entitlement jurisdictions and 3,100 PHAs (for a total of 4,200 program participants) and an AFH is required only every 5 years. At this level of increase, the marginal impact is \$3.36M. A 25 percent increase in costs would represent an \$8.4M incremental increase in costs above those associated with preparation of Analyses of Impediments.

3.1.1 Disparate Impact on Small Entities

The cost of the planning process will contain some fixed costs that do not vary by city size. HUD is sensitive to the fact that the uniform application of requirements on entities of differing sizes often places a disproportionate burden on small businesses. HUD, therefore, is soliciting alternatives for compliance from small entities as to how these small entities might comply in a manner that is less burdensome to them.

3.2 Costs to the Federal Government

The regulation would place additional burden on HUD staff. HUD must not only review and

approve the AFH, but assist program participants in identifying and analyzing elements and factors that drive or maintain disparity in fair housing choice, and in developing strategies to overcome such disparity. Much of the additional effort on the part of HUD staff is likely to be the result of increasing review activity that is not currently performed. However, it is the Department's hope and belief that the increased cost of up-front review will be balanced by a reduction of costly back-end review, compliance, and enforcement. A single case, such as Westchester County case, can occupy a significant amount of staff time, let alone court resources.⁷ Thus, it is not clear whether there will be a net increase in effort. However, if there is an increase in effort, much of the net additional effort of federal workers can be viewed as a transfer from the staff of States, local governments, and PHAs if HUD's assistance lessens the burden on these program participants of the planning process.

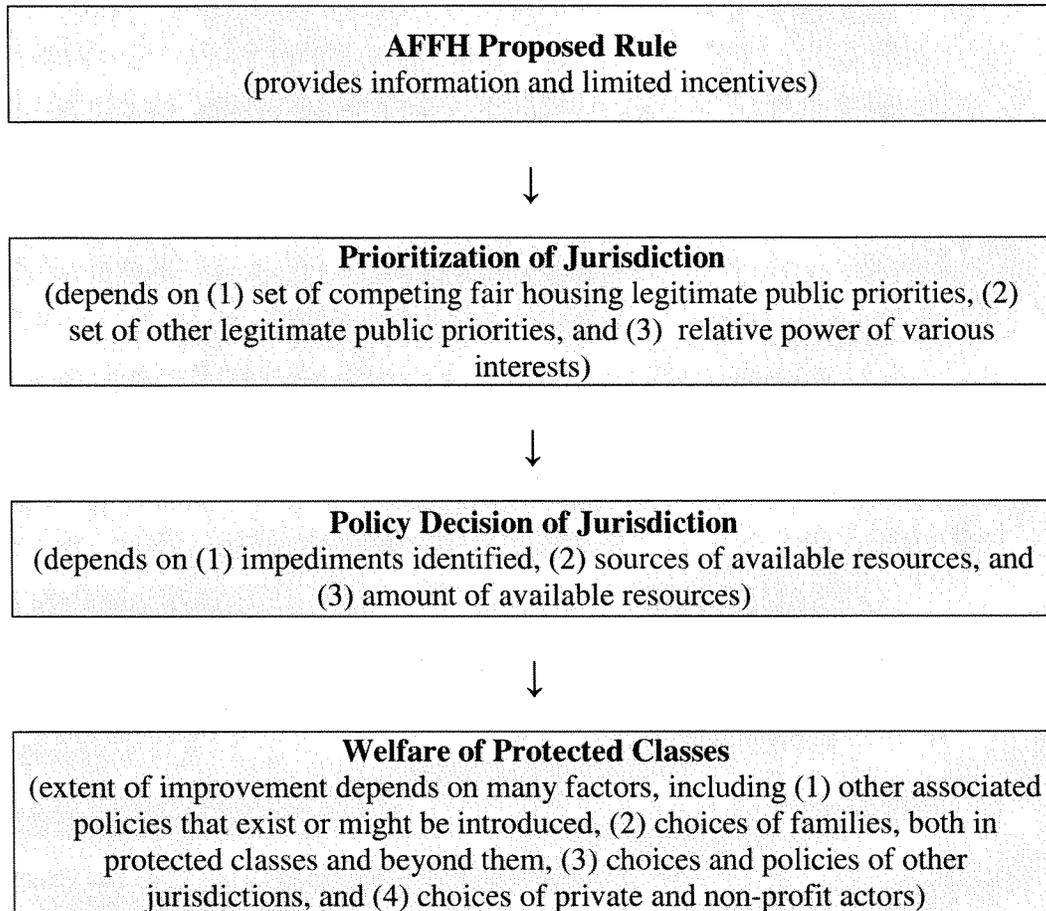
Suppose, for example, that there are five HUD employees devoted full-time to reviewing AFHs. At an \$89,000 salary (GS 13-1 in Washington DC) and a load rate of 40 percent, this would translate to a total HUD-internal transfer of \$578,400.⁸

4 Economic Impact of the Rule: Potential Community Benefits

The AFFH proposed rule is designed to help provide information and perspectives on fair housing issues to jurisdictions in a manner that is clearer and easier to elucidate. The goal is that the information, standards concerning the formulation of the AFH, and improved accountability would improve fair housing outcomes and thus the welfare of the protected classes. However, it is difficult to predict how a jurisdiction would use the information, what decisions they would reach, and precisely how those decisions would affect the protected classes. As shown in the diagram below, the AFFH process is only one factor that determines what actions are pursued and what impacts are ultimately achieved. At every step in this process there are a great number of uncertainties both in terms of the size and types of effects that the proposal may have.

⁷ For a recent review of the Westchester case, see Applebome, 2012.

⁸ The total value of the assistance provided to all entities is likely to be larger than the sum of HUD staff salaries. There are significant fixed costs in producing data sets regardless of the number of observations. If HUD bears those fixed costs, then the local entities would not need to.



4.1 Uncertainty in jurisdictional preferences

First, the effect of the rule would depend upon the nature of the jurisdiction: whether it is already favorably pre-disposed toward fair housing policy, the character of the local bureaucracy, and whether the limited incentives of the rule will affect the jurisdiction's behavior. This raises the question of how such local preferences and structures are established. Economic theory offers insights about these issues through the public choice literature. A review of the public choice literature is provided by Wildasin (1987), which outlines three theoretical approaches to public choice: Tiebout theory of local governments, median voter theory, and models of bureaucratic behavior.

The dominant approach in urban economics was spurred by Tiebout (1956), who hypothesized that the provision of local public goods would occur at an optimal level when residents are perfectly mobile. His theoretical result concerning optimality is contrary to the original conclusion of Samuelson (1954) that there would be an undersupply of all public goods.

However, according to Tiebout, if residents have a wide choice of jurisdictions that offer different tax-expenditure-regulatory environments, then they will choose the jurisdiction that best fits their preferences. A market for public goods is created and under certain conditions (many governments, perfect mobility), the allocation of public resources will be optimal. One important implication of the emphasis on perfect mobility is that if tax, expenditure, and amenity differences are capitalized into land prices, then local policy no longer matters to residents: any benefits are removed by higher land prices. Land owners do care, however, and have a significant incentive to participate in and influence the political process. Thus, according to this framework, the goal of the local government becomes the maximization of land values.

There are many realistic exceptions to the theory of Tiebout that may lead to inefficient outcomes. First, there exist both positive and negative spillovers between jurisdictions. Second, optimal public policy instruments such as head taxes to perfectly internalize the marginal costs of congestion may not exist. Third, mobility is not costless. Land owners may have the incentive to offer tax-expenditure combinations to attract new residents (for whom moving is costless) to the detriment of current residents for whom there is a cost of moving. Some established residents may be dissatisfied enough with the change in policy that they will move, creating deadweight loss in the form of moving costs. In this case, the final outcome is likely to be Pareto inferior to either one of the extreme cases (perfect mobility or immobility). Finally, many residents of a jurisdiction are likely to be landowners themselves. This may be the most important exception as decisions concerning public policy become both a consumption and wealth-maximizing decision for the resident landowners. There is no inherent reason that this situation should lead to an inefficient outcome. However, the formulation of zoning policy, which pits developers against resident homeowners, could easily lead to either under- or over-development of a locality. Eventually a conflict between the owners of developed land (homeowners) and undeveloped land (developers) might arise in a growing community. For example, if the developers could heavily influence of the political process, then they would be able to make the community more attractive to newcomers at the expense of existing residents (by lowering property taxes). Existing residents will want to exert a similar transfer perhaps by charging developers impact fees. The resulting outcome will depend upon the intensity of interests. "Over development" would occur when the interests of developers are not aligned with the community (through appropriate marginal cost pricing).

A second traditional approach to understanding public choice is the Bowen (1943) – Black (1948) median voter model. A local government will maximize the utility of the median voter, for whom there is an optimal level of a public good given a median voter characteristic, such as income. In order to achieve a majority-voting equilibrium, a self-interested government will provide the optimal level of public good. The basic model has been revised and tested by many researchers. However, the theory behind this has two fundamental flaws: households are assumed to be immobile and there only one public good is assumed.

Despite these weaknesses of the theoretical model, local land use regulation can be understood through the median voter model (Fischel, 2005). For many households, a large proportion of wealth consists of the asset value of a home, a large fraction of which is determined in part by the quality of public services and taxes. Because the median voter in many jurisdictions is a homeowner, issues related to house values and property taxes can have prominence. For example, voters care about their tax bill. Homeowners might accept new development if it lowers their property tax rate but resist changes that would raise their tax rate. Similarly, erecting regulatory barriers increases the price of housing by reducing the supply of housing. Homeowners might be inclined to pursue such policies, such as imposing regulations on new construction that exclude households, a practice sometimes referred to as “fiscal zoning.”

A third approach of understanding public choice is to focus on the institutions involved, especially the interest groups. One common focus is the government itself, analyzed through the lens of the theory of self-interested bureaucrats. Bureaucrats are generally assumed to be budget-maximizers, spending more than what is optimal. Bureaucrats are more informed than the average voter and can influence which issues are placed on the agenda (for example, see Niskanen, 1968). Fischel (2005) argues that land use regulation is not well justified by models of the budget-maximizing bureaucrat. If anything, regulation is an alternative to an expenditure that would accomplish the same public policy goal. Thus, the model of the budget-maximizing bureaucrat suggests less regulation and more public works projects.

Of course there are a multitude of perspectives that can drive resident and, by extension, jurisdictional preferences. Indeed, public opinion polls have indicated a broad diversity of factors that drive preferences. Beyond land values and taxes, including property taxes, that are the focus of much economic theory, religious, environmental, social justice, libertarian, international, economic, and a number of other considerations have been identified as important

for significant portions of the population. Thus, predicting how these factors interact to produce jurisdictional preferences is necessarily fraught with uncertainty. This is true regarding every issue, including those associated with civil rights and fair housing.

The implications of this uncertainty in the current context are considerable. For example, one study (Boustan, 2012) found that court-ordered desegregation of public schools led to a decline of housing prices by 6 percent relative to neighboring suburbs. If the median voter theory holds, if the median voter is a homeowner, and if that homeowner places greater attachment to house values, residents would collectively vote against a government that aggressively pursued desegregation policy, even if many homeowners believed that desegregation was a just policy. Alternatively, if the median voter placed greater attachment to desegregation, they might vote in support of a government that aggressively pursued desegregation policy, even if many homeowners cared deeply about house values. Tensions and trade offs such as these are not uncommon and outcomes will vary across communities according to the specific way these considerations interact. Indeed, we see such variation across communities today.

4.2 Uncertainty in Prioritization

Uncertainty also exists regarding whether the information that emerges from the assessment will change a jurisdiction's priorities. For example, there are a number of well known jurisdictions that have aggressively pursued proactive policies to advance civil rights and fair housing objectives. (e.g., Takoma Park, MD; Montgomery County, MD; Minneapolis, MN; Berkeley, CA; Cambridge, MA; Austin, TX) In such places, the information provided by HUD might not be new. In these places, there may be relatively little effect at all, either in terms of goal setting or policies pursued.

Alternatively, for those locales for which the information is new, there remain a number of possibilities. The new information might confirm what was already widely held to be true in a locality, in which case the resultant goals might not differ from what they would have been otherwise. The new information could also highlight new relationships that were previously not well understood, however. Even in this case, there is considerable uncertainty. It could be that the new relationships are deemed minor relative to the previously existing priorities, in which case no change in goals or strategizing would be expected.

It is also possible that the new information would shed light on an issue that had not previously been emphasized, but which through the AFH process would be understood to be

important. This could result in additional goals being highlighted or some goals being supplanted with new ones. Even here there is uncertainty, as the new goals could be of primary or secondary significance from a strategic perspective. This latter point is important because it will have implications for the policies that are considered later. This will be discussed more below.

4.3 Uncertainty in policy decisions

Once one knows whether a jurisdiction has decided to pursue a general course of action, it is still difficult to predict the exact policy choices that jurisdiction will make. The current Fair Housing Planning Guide offers hundreds of pages detailing policies and practices that can advance fair housing objectives. It makes clear that there are many policy options for addressing a particular concern. Consider the issue of integration. There are many public policies that can be adopted (or strengthened) to accomplish the goal. One approach might be to shift priorities in confronting the forces that cause segregation such as housing discrimination, lending discrimination and predatory lending, redlining of lending or insurance, weak enforcement of anti-discrimination laws, regulatory barriers, and “NIMBYism.”⁹ Other, perhaps more proactive, approaches involve improving access to neighborhoods or public services through housing mobility programs, housing counseling, inclusionary zoning, siting decisions of public and assisted housing, a more equitable distribution of public services (such as education and transportation), and accessible housing. Importantly, the proposed rule would not prescribe or enforce specific local policies. Instead, it allows for a flexible approach that is appropriate to the needs and housing market conditions and recognizes that available resources may represent a constraint. Which among the various policy options is selected by a jurisdiction will depend fundamentally on the local context and the particular circumstances that prevail when the issues are considered.

Moreover, an appropriate policy for one jurisdiction may be inappropriate for another. Whether an approach is a preferred method of advancing fair housing goals will depend upon the built environment, spatial distribution of the population and its characteristics, prevalence of discriminatory practices, and local economic conditions that prevail at the time. Thus, even for

⁹ “NIMBYism” refers to actions taken by residents of a neighborhood to oppose new policies or programs from being sited in that neighborhood. NIMBY stands for “not in my backyard”.

jurisdictions that face the same set of fair housing challenges, assuming that one could agree on the set of policies that should be considered, assigning probabilities to the likelihood that any particular policy would be implemented is a daunting, if not impossible, task.

HUD's past experience with planning exercises such as the one envisioned by the proposed rule also demonstrates the inherent uncertainties that exist. Two examples highlight some dimensions of the sources of such uncertainty. First, in 1990, the National Affordable Housing Act required that State and local governments prepare a Comprehensive Housing Affordability Strategy (CHAS) in order to receive selected Federal housing assistance funds (for example, CDBG and HOME). The statute and the Department's accompanying rule required an identification of housing needs, setting of priorities and strategies, and 5-year action plans. A study of CHAS documents (Hoben and Richardson, 1992) found that the correspondence between needs identifiable from available data and proposed actions was less than perfect. For example, although only 40 percent of the jurisdictions examined found a need to assist first-time homebuyers, 70 percent selected first-time homebuyers for priority assistance. This might reflect the interaction of consideration of housing needs and other community priorities. Regardless of the reason, however, the uncertainty exists.

Second, there is inherent subjectivity regarding the conclusions that a jurisdiction will reach given available evidence. An internal report on AIs (HUD, 2009) found a substantial degree of subjective judgment throughout the process. For example, a number of AIs discussed impediments, or potential impediments, or sometimes even non-impediments, in connection with their recommendations in addition to those associated with supporting evidence. It is not possible to anticipate the set of factors that will be brought to bear in the prioritization and policy-setting processes for jurisdictions. There was also considerable variation regarding how to set priorities. The HUD internal report (2009) found, for example, that the type of primary author had an effect on the findings of the report. Although AIs averaged 3.8 impediments when the jurisdiction took a primary role, the total rose to 9.0 impediments when fair-housing groups had the lead.

We recognize that the existing process is designed to address some of the weaknesses these examples highlight. Notwithstanding this, the basic issue of uncertainty remains.

4.4 Uncertainty in welfare outcomes

A further degree of uncertainty appears when one considers potential impacts of whichever policy is selected by a jurisdiction. This can perhaps best be illustrated via an

example. Consider inclusionary zoning, a policy approach whereby developers are required to allocate a specific proportion of their development activity to “affordable” housing, often in return for zoning and other development waivers. As detailed below, there are many unanswered questions regarding the effectiveness of inclusionary zoning. Studies of IZ make clear that the impact of the IZ policy is uncertain, as the policy might not result in new affordable units, particularly in the longer term. However, there are market conditions and local circumstances IZ policies might result in new affordable units being produced in the long-term. Even in these areas, though, the marginal impact in the context of the fair housing goals remains unclear. The existence of additional affordable units does not guarantee that fair housing goals will be advanced. Indeed, these affordable units will be available to any resident who is eligible. So, it is conceivable that many of the affordable units produced through the new IZ policy might be occupied by families whose presence would not further fair housing goals, such as reduction of segregation.

Ultimately, the impact would depend on a complex interaction of a broad set of judgments and decisions by the jurisdiction, other jurisdictions, private and non-profit actors, and families, both in protected classes and not. In the example above, for example, the likelihood that the new units arising from the IZ policy helped advance fair housing goals could be enhanced by the jurisdiction also introducing other policies, such as affirmative marketing. The nature of these interactions would be different in every jurisdiction, thereby making predictions of impact for a single policy choice quite difficult. This challenge is amplified significantly given the large number of policies that could potentially be pursued.

5 Demonstrating the Potential Impact of Local Government Policies

The Assessment of Fair Housing (AFH) that is a focal point of the proposed rule provides program participants with data describing the existence and nature of fair housing issues and concerns and helps them establish fair housing goals to address them. If the proposed rule is effective, then this information and perspective that emerges from the AFH will play a role in decision making regarding planning practices, policy directions, and resource allocation. First-order success therefore means an expansion of the information set that decision-makers will avail themselves of when ruminating on a decision that comes before them.

As noted in the previous section, there is considerable uncertainty regarding whether the

expanded information that results from the AFH will translate into different decisions than would have been made if decision-makers did not have the additional information at their disposal. This makes predicting the influence of the proposed rule on local planning policy, the subsequent change in the spatial distribution of housing, people, and businesses, and the resulting measurable economic effects of the change in outcomes extremely difficult.

These realities suggest a more fruitful approach is to consider examples of potential impacts that might arise if the information that emerges from the new proposed process leads jurisdictions to make different decisions and actions than those that would arise if the current process remained in place. In considering the large number of types of decisions and actions that could be influenced, it is useful to group them according to what they seek to accomplish in the local jurisdiction. Four broad categories emerge:

- Modification of local regulations and codes.
- Construction of new developments;
- Creation of new assets; and
- Movement of people;

The ensuing sections provide examples of how decisions and actions might be impacted by the new information that emerges from the proposed process, to provide a flavor of the mechanisms that are potentially at play and also allow for some assessment of the types of impacts that might occur if these are realized.

5.1 Modification of Local Regulations and Codes

Local regulations and codes can be an important lever for advancing fair housing objectives. This is recognized in the current guidance that is provided to program participants producing their Analysis of Impediments.¹⁰ In thinking about how the information from the new Assessment of Fair Housing that is envisioned might result in different decisions and actions by local program participants, consider decisions regarding the disabled. In the proposed new process, HUD will provide program participants with more systematic information on the geographic distribution of disabled populations. Suppose that a jurisdiction's dissimilarity index

¹⁰ The Fair Housing Planning Guide encourages local governments to ask the following question: "What is the impact of the jurisdiction's zoning ordinance(s), building codes, and other land use or fiscal policies on the provision of low-income housing? (p. 5-7)"

for people with disabilities falls in a range suggesting relatively high levels of segregation, and a review of maps provided by HUD reveals that the disabled are concentrated in a small number of a jurisdiction's neighborhoods. This information could lead to increased awareness among local decision-makers regarding challenges faced by disabled populations. Additional research could indicate that there is a lack of accessible housing in particular neighborhoods, and that this is contributing to the observed segregation of disabled populations. Given such information, one might observe a change to the building code to maximize accessibility to units, perhaps by introducing a requirement that a fixed percentage of first-floor units adhere to ICC/ANSI guidelines. Alternatively, the jurisdiction could change the zoning code to provide density bonuses for proposed projects in neighborhoods where the disabled have limited representation if the project includes a number of ADA-compliant units that exceeds some threshold.

In both cases, these actions would be expected to increase the number of units attractive to disabled populations. Presumably, this would result in more applications from households including the disabled and, if these translated into successful leasing or purchase, greater proportions of the disabled in neighborhoods where they were previously less represented. Importantly, these are prospective benefits, because it is in practice generally permitted that an accessible unit will be occupied by the non-disabled as long as there is evidence of a good faith effort to find a disabled tenant.

While the new units would clearly offer additional benefits to the disabled households that would occupy them, there are other potential impacts from these new codes and regulations. In terms of economic impact, research makes clear that regulations such as these generally impact market outcomes. Quigley and Raphael (2005) find a positive and significant effect of regulations on the price of both rental and owner-occupied housing in California. Pollakowski and Wachter (1990) find that the price effects of regulations are amplified by the existence of regulations in neighboring jurisdictions. Glaeser and Gyourko (2002) find that measures of regulation explain high-cost housing better than many measures of demand pressure. One interpretation of all of these results is that regulation confers benefits, which are reflected in the higher price of housing. In the context of the example above, the disabled might face higher prices for the housing in the new neighborhoods. However, regulation does not always confer benefits. Rothwell and Massey (2010) find that metropolitan areas with suburbs that restrict the density of residential construction are more segregated on the basis of income than those with

more permissive density zoning regimes. Many argue that reducing the barriers to affordable housing by reducing regulation may be the best way of encouraging the construction of affordable housing (Glaeser and Gyourko, 2002).

Exclusionary zoning is a major barrier to unrestricted residential choice. Exclusionary zoning is any land-use practice, such as minimum lot-size zoning or a growth control that raises housing prices by restricting the supply of buildable land or the size of buildings that can be constructed on available land. Protecting the environmental assets of a locality is usually the primary stated motivation for such zoning practices. However, an unintended indirect effect, or even an explicit motivation for a zoning practice may be to make housing less affordable. There may be a fiscal motivation for exclusionary zoning, as lower-income households may cost a locality more in services than they contribute in tax revenue, or there may be a fundamental opposition to socio-economic integration. Whatever the rationale, raising the cost of housing is one means of excluding marginal renters and homeowners, which include lower-income populations. (Fischel, 1985). For this reason, one of the suggestions from the Fair Housing Planning Guide is to allow for a diverse membership on planning and zoning boards.

On balance, there are many factors that local governments must weigh regarding the impacts of regulations on the cost of housing and quantity supplied when making decisions about modifying local regulations and codes. There are both costs and benefits as well as significant transfers involved. Benefits include reducing the environmental impact of construction amenities whereas costs consist largely of a higher cost of housing. Zoning can also be used by local governments as a means to achieve a fiscal surplus when the primary tax is a property tax (a transfer). However, low-income residents will be excluded from affluent neighborhoods through fiscal zoning. An Assessment of Fair Housing would identify barriers to access that arise from zoning policy.

5.2 Construction of New Developments

A host of fair housing challenges arise due to the nature of the existing housing stock. In some cases, neighborhoods lack housing that is affordable to many people in protected classes. In other cases, existing housing might not be in configurations that accommodate the needs of households in protected classes. For example, Latino families are on average larger than other American families and so need units that feature more bedrooms. If the existing stock of housing does not include significant numbers of units at those larger sizes, then Latino families

will have fewer choices of where to live, with some neighborhoods being effectively out of reach. As a consequence, policies and actions associated with construction of housing are of particular interest where fair housing is concerned.

In considering the role that the new information associated with the proposed new process might play in this context, we turn to the example of inclusionary zoning. Inclusionary zoning (IZ) is a policy approach whereby developers are required to allocate a specific proportion of their development activity to “affordable” housing. Many programs are voluntary or allow significant exemptions. Most IZ programs offer developer incentives to compensate for the anticipated reduction in revenue. One of the most common incentives, the density bonus, allows developers to build beyond the density ceiling that would otherwise apply. Other incentives to participate consist of impact fee waivers, fast-tracking of permits, and construction subsidies.

In the context of the proposed rule, as program participants work on their assessment of fair housing and utilize the HUD-provided data, suppose the data for education indicates that the average Latino household lives in a neighborhood served by schools whose students’ test scores are significantly lower than the schools serving the neighborhood in which the average white household lives. Suppose that further analysis shows that this disparity in access to a quality education is due to a lack of affordable housing in the neighborhoods those schools serve. This conclusion might not be reached using the current process, which is less directive in guiding program participants through a fair housing assessment frame. In the face of this potentially new information, local policy makers might opt to establish development zones covering those neighborhoods in which IZ rules apply, with the goal increasing the availability of affordable units in the targeted areas. According to the Center for Housing Policy (2008), the first IZ programs were implemented in the Boston area in 1972, the San Francisco area in 1973, and the Washington DC area in 1974. It is difficult to identify the precise number of jurisdictions that have some type of IZ code today, but the estimate is approximately 300 local governments. Approximately half of the IZ programs have been adopted since the early 1990s. In the San Francisco area, the affordable units built under IZ represented 2.3 percent of new residential permits between 1980 and 2006 (Schuetz et al. 2008). In the Washington, D.C., area the share of production during the same period is 3 percent.

Despite the increasing popularity of inclusionary zoning in rapidly growing communities, there are many unanswered questions concerning its effectiveness. Three recent empirical studies provide intriguing evidence concerning the affordable units produced and spillover effects from inclusionary zoning. Schuetz et al. (2007) examine three areas: the Boston suburbs, San Francisco, and Washington D.C. They find that the effect of IZ varies by area and focus on two findings. First, in the San Francisco area, there is no evidence of any effects of IZ on either the price or production of single family homes. In the Boston suburbs, however, they find that IZ has led to a slight increase in the price and a decrease in the production of single-family homes. The authors attribute this difference to differences in the IZ policies themselves. Knapp et al. (2008) examine IZ in California and find that the measurable effects are: an increase in the supply of multifamily housing and an increase in the price of single-family homes. Means and Stringham (2008) found that California cities adopting IZ ordinances experienced a 20 percent increase in prices and a 10 percent decrease in the housing stock between 1990 and 2000. McFarlane (2009) investigates the incentives provided by inclusionary zoning to developers and finds that the primary impact is temporal: to encourage a short-run expansion of the housing stock, provide more units of affordable housing, but lower the long-run growth rate in the housing supply. His discussion, as well of Schuetz et al.'s (2007, 2008), emphasizes the diversity of inclusionary zoning instruments and the importance of market conditions in determining the final impact of inclusionary zoning.

These studies make clear that the impact of the IZ policy is uncertain, as the policy might not result in new affordable units, particularly in the longer term. However, if market conditions and local circumstances are such that new affordable units are produced, as in the case with the modifications of the accessibility elements of the local building code example above, then the existence of additional affordable units does not guarantee that fair housing goals will be advanced. Indeed, these affordable units will be available to any resident who is eligible. So, continuing with the example above, it is conceivable that many of the affordable units produced through the new IZ policy might be occupied by non-Latino families. This can be mitigated to some extent by other policies, such as affirmative marketing, but the general point remains the same. In this context, identifying the ultimate change in outcomes is exceedingly difficult because of the many factors involved that will determine an outcome. A potential cost of

inclusionary zoning to a community would be the reduction in supply of market-rate housing and a corresponding increase in average housing costs. The benefits consist primarily of transfers to the residents of IZ housing. A broad impact to the community may include providing housing for a diverse local workforce with the different skills required to support a community.

5.3 Creation of New Assets

The quality and array of public services varies dramatically among residential neighborhoods. Equal access to neighborhood assets that enhance the quality of life of low-income households are important elements in raising the welfare of protected classes. Thus, the Fair Housing Planning Guide suggests that jurisdictions consider the spatial distribution of municipal services when crafting a Fair Housing Plan. Improved street lighting and access to a dense transportation network are two examples of neighborhood assets provided by a local government. Proximity to site-specific services such as recreational facilities and public schools would confer to low-income households greater convenience and thus opportunities for use. Reducing stressors such as urban blight, crime, and hazardous waste sites could lead to improved mental and physical health.

In the context of the current rule, the analysis in the Assessment of Fair Housing might suggest that a particular fair housing issue has been driven by the absence of these assets. As one example, a program participant might infer from comparing the employment index numbers for African American and white households. Lower index values for African Americans might suggest to program participants that this population might be hampered because of a lack of access to important job centers. Further analysis might suggest that the lack of an effective transit system is an important determinant of the observed disparities. Policy makers could consider several different approaches, some more significant than others. For example, they could work with transit officials to consider adjustments to bus routes such that there were more stops closer to concentrations of people from protected classes. A different potential policy that could be considered might be the introduction of a new express bus rapid transit line that linked targeted neighborhoods with job centers throughout the region.

Regarding general economic impacts, an increase in the level of local of assets will also lead to an increase in the demand for housing in that area, and a resulting increase in housing prices. Thus, there is one caveat: to improve the lives of the low-income families, many of

whom are renters, the increase in rents must not erode the benefit from a higher quality of life. Otherwise, tenants may be displaced by housing market pressures from their current residence.¹¹ It is important to choose assets for which low-income households will benefit relative to high-income (characterized by an income-elasticity of demand of less than one). For example, one measure of the income-elasticity of demand of public transportation in the United States is -0.62 (Holmgren, 2007), which suggests an inferior good. Glaeser et al. (2008) show that low-income households live in central cities in order to take advantage of dense transportation networks. Given that low-income households appear to benefit from public transportation, extending railway lines would be an appealing strategy. Baum-Snow and Kahn (2005) find that the primary beneficiaries of expanding railway lines are former bus-riders. Provided that the bus lines' services are not eliminated as a result, the authors conclude that expanding rail service is a progressive policy.

The net effect on low-income households can only be known after considering the impact on the housing market. Bowes and Ihlandfeldt (2001) emphasize three effects of siting a transit site: a direct hedonic effect, value of increased attraction of commercial activities, and disamenity due to higher crime. The direct hedonic effect is determined by the value of increased access to transportation as well as undefined positive and negative externalities. The researchers find that the direct effect dominates and that increased commercial activities generally dominate the increased crime effect. The sum and mix of effects vary with neighborhood characteristics (income and distance to central business district). The largest positive hedonic effects are in locations within ½ mile from a station and 12 miles from the central business district. In almost all low-income neighborhoods, a price decline is estimated, except for those that are very near a transit stop (1/4 mile) but distant from the CBD (7 and 12 miles). It does not appear from this very detailed study that low-income households will be driven from their homes by the siting of a railway station.

We expect that local governments that pursue a public transit strategy would do so only when the benefits outweigh the costs, which would lead to an increase in aggregate land values when the net benefit is positive. Costs include the direct cost of construction and maintenance as

¹¹ Recent empirical literature on gentrification comes to an opposite conclusion: two studies show that low-income and minority residents do not leave gentrifying neighborhoods at higher rates than non-gentrifying neighborhoods. In fact, for high-school educated African-Americans, the probability of remaining increases in gentrifying neighborhoods (Kiviat, 2008).

well as the opportunity costs of diverting resources to transit and potential negative externalities such as crime. The benefits include fewer accidents, reduced air and noise pollution, and potentially shorter commutes for the users of transit. Additionally, protected households benefit from most transit strategies through increased mobility and access to other community assets.

5.4 Movement of People

We have discussed policies aimed at modifying regulations and codes (disability example), constructing new developments (inclusionary zoning example), and providing community assets, and used building codes targeting access for the disabled, inclusionary zoning, and transit lines as examples of policies that might potentially be affected by the new process. Each of these examples has demonstrated the difficulty in the potential impacts of the proposed rule, and has also highlighted an important issue, namely that implementation of a policy generally does not, and in many cases cannot, ensure that the policy will advance the fair housing goal to the extent envisioned. Because many of the subsequent projects and community assets are available to the general public, those outside of the protected class will use some resources that might be otherwise available. This should not be read to suggest that such policies and actions should not be pursued. Rather, it is intended to acknowledge the limits of policy.

A fourth set of policies and actions that might be pursued as a consequence of new information arising from the proposed process involves enhancing the mobility of residents so that they can access locations in ways that advance fair housing objectives. A fundamental motivation for mobility policy is to provide access to education, job centers, and social contacts that would lead to improved income opportunities for members of protected classes.¹² A key economic argument for mobility policy is that in order for a household to maximize its own welfare, a household's choice should not be constrained by discrimination or regulatory barriers.

There are a few ways to desegregate assisted housing: scattered site development, mixed-income development, or mobility policy, which combines housing vouchers with special efforts to redirect households. Goetz (2003) describes three approaches to mobility policy: 1) require

¹² Of direct relevance to mobility policy is evidence concerning the impact of the neighborhood on a household. Unfortunately, there is such a diversity of dependent variables studied, econometric methods used, and theoretical approaches that it is difficult to draw any definitive conclusions except that neighborhood effects exist (Durlauf, 2004).

tenants to move to deconcentrated neighborhoods¹³; 2) incorporate mobility counseling to encourage households to choose neighborhoods that they wouldn't have chosen otherwise; and 3) involve an active recruitment of landlords in areas not traditionally receptive to Section 8 tenants. Mobility policy is not the sole domain of the federal government and can be implemented at the local level. Alternatively, one might act within existing federal programs to enhance mobility. An individual PHA can create its own mobility program, or partner with a non-profit, city government, or even another PHA to provide greater options to households with Housing Choice Vouchers.

The proposed rule could have an impact in this context. As one example, it could be the case that the data that HUD provides program participants indicates disparities in access to community assets across a number of dimensions. Suppose further that supplemental analysis suggests that observed disparities are even more acute for public housing residents, many of whom are members of racial and ethnic minorities. Upon reflecting on this information, program participants could conclude that there may be opportunities to reduce disparities in access by providing affordable units in a variety of communities throughout the region. One potential policy response might be for a public housing authority to expand the services it offers tenants seeking units to use their housing choice vouchers for. They might choose to provide listings of potential units and emphasize options in those targeted neighborhoods where successful leasing would result in a reduction in the observed disparities in access to community assets.

Empirical evidence concerning the impacts of mobility programs exists from several sources. The first is from Gautreaux, which was established and funded as part of a settlement against the Chicago Housing Authority and the U.S. Department of Housing and Urban Development. One group of low-income minority households was placed in suburban communities and one group in other parts of the city. Rosenbaum (1995) showed that families living in the suburbs experienced better outcomes, particularly with respect to the educational outcomes of children.

HUD sponsored a ten-year long experimental study ("Moving to Opportunity") on the effects of residential mobility of participating households. The final report of the Moving to Opportunity experiment (US Department of Housing and Urban Development, October 2011)

¹³ As Goetz (2003) notes, requiring deconcentration is likely to dampen a household's enthusiasm concerning their new destination.

provides a detailed and more nuanced discussion of the impact of the MTO experiment on measures of well-being, such as employment, mental and physical health, housing outcomes, education, risky and criminal behavior, and safety. Whether there is an improvement in an outcome measure appears to depend on the outcome measure itself as well as the type of individual. The final report (Sanbonmatsu et al., 2011) does not provide the evidence of success, such as improved employment and educational outcomes, which many advocates had hoped for. However, there were improvements in other aspects such as mental health. The overwhelming majority of all movers (77.1 percent) reported their primary or secondary reason for moving as “To get away from drugs and gangs.” Correspondingly, there is a small but significant increase in the long-run mental health of participants in MTO. An exception is for male youth, who may have experienced a decline in mental health compared to those in the control group. In addition, male youth who went through MTO increased risky and criminal behavior while female youth had lessened risky behavior. There is one area where there was an unambiguous improvement: declining arrest rates for drug distribution. The results are large and statistically significant for male youth in the experimental group.

A speculative cost-benefit analysis of mobility programs (Johnson, et al., 2002) finds that the estimated benefits (approximately \$20,000) outweigh actual counseling costs (\$3,000) and the likely inefficiencies from providing in-kind housing subsidies (\$500 per year). The benefits are derived primarily from changes in teen delinquency and children’s educational outcomes that the researchers had observed using data from the Baltimore MTO site. The benefits do not include improvements in health status, reductions in welfare receipt (a transfer to the taxpayer), or the effects of short-run trauma from dislocation.

As with the other examples, the ultimate impact of the proposed policy is difficult to assess. Voucher holders have full discretion on which units they pursue, and the housing authority’s encouragement policy offered in the example may or may not influence the set of units that the voucher holder ultimately seeks out.¹⁴ By enabling low-income families to move from high- to low-poverty neighborhoods, housing choice vouchers have the potential to reduce segregation provide protected households the benefits associated with high-income neighborhoods. There

¹⁴ One study of Chicago’s mobility program) found that the movement to “opportunity neighborhoods” by voucher holders enrolled in the mobility program was only slightly higher than those voucher holders who were not enrolled (Cunningham and Sawyer, 2005).

are also costs in the form of the housing subsidy and the opportunity costs of forgoing any benefits associated with living in areas of racial or ethnic concentration.

6 Conclusion

The AFFH regulation would establish an improved process for carrying out a statutory mandate, resulting in the potential to improve the lives of protected classes who are denied fair housing choice by barriers to such choice. The best outcome of the rule would be for each jurisdiction to not only undertake meaningful fair housing planning, but also to have capacity and a well-considered strategy to implement actions to affirmatively further fair housing. However, the concrete actions of a local government that would generate benefits for protected classes are not prescribed, obligated, or enforced by the proposed rule. Instead, the rule encourages a more engaged and data-driven approach to assessing the state of fair housing and planning actions to affirmatively further fair housing than before.

Considering the overall impact of the proposed rule, estimates suggest the proposed rule would have relatively limited additional paperwork and planning costs. Program participants already are required to engage in outreach and collect data in order to satisfy existing obligations, and HUD is reducing significant data burdens. While some additional outreach costs are possible, they are expected to be relatively small. Thus, compliance costs of the proposed rule are expected to be comparable to those under the current regime.

Regarding community impacts, this analysis has highlighted the tremendous uncertainty that exists regarding how the new information that would be generated through the new AFH process would translate into different actions by program participants. In terms of estimating impact, this suggests that the probability that any particular outcome occurs would be small. Moreover, the analysis has identified significant uncertainty with respect to how much specific actions would advance fair housing goals.

However, any different actions that are taken by program participants may likely represent new local approaches to reducing segregation, eliminating racially-concentrated areas of poverty, and reducing disparities in access to community assets. HUD believes some of these new approaches would be more successful in achieving the goals of fair housing, meaning that communities would be more integrated, fewer people would live in neighborhoods with both high poverty rates and high racial concentrations, and there would be fewer and smaller

disparities in access to quality education, job opportunities, and other community assets.

7 References

- Ananat, Elizabeth Oltmans, The Wrong Side(s) of the Tracks: The Causal Effects of Racial Segregation on Urban Poverty and Inequality, *American Economic Journal: Applied Economics* 3 (April 2011): 34–66
- Applebome, Peter, 2012, “Despite 2009 Deal, Affordable Housing Roils Westchester” *The New York Times*, April 3
- Baum-Snow, N. and Kahn, M.: 2005, Effects of Urban Rail Transit Expansions: Evidence from Sixteen Cities, 1970-2000, *Brookings-Wharton Papers on Urban Affairs* (147-206).
- Bergstrom, Theodore, 1973, A Note on Efficient Taxation, *Journal of Political Economy*, Vol. 81, No. 1, pp. 187-191
- Besley, Timothy, 2004, “The New Political Economy,” based on the Keynes lecture delivered at the British Academy on October 13th 2004.
- Besley, Timothy, 2006, *Principled Agents? The Political Economy of Good Government*. Oxford University Press, Oxford.
- Black, Duncan, 1948,. "On the rationale of group decision-making". *Journal of Political Economy* 56: 23–34
- Boustan, Leah Platt, 2012, “School Desegregation and Urban Change: Evidence from City Boundaries,” *American Economic Journal: Applied Economics*, 4(1): 85–108
- Bowen, Howard R., “The Interpretation of Voting in the Allocation of Economic Resources,” *The Quarterly Journal of Economics* (1943) 58 (1): 27-48. doi: 10.2307/1885754
- Bowes, D. R. and Ihlanfeldt, K. R.: 2001, Identifying the Impacts of Rail Transit Stations on Residential Property Values, *Journal of Urban Economics* 50(1), 1-25.
- Card, David, and Jesse Rothstein. 2007. “Racial Segregation and the Black-White Test Score Gap.” *Journal of Public Economics*, 91(11–12): 2158–84.
- Card, David; Alexandre Mas and Jesse Rothstein. 2008. "Tipping and the Dynamics of Segregation," *Quarterly Journal of Economics*, 123(1): 177–218.
- Center for Housing Policy. 2008. *Housing Policy Brief: The Effects of Inclusionary Zoning on Local Housing markets: lessons from the San Francisco, Washington DC and Suburban Boston Areas*. <http://www.nhc.org/housing/iz>.
- Cunningham, Mary K. and Noah Sawyer, 2005, “Moving to Better Neighborhoods with Mobility Counseling,” Brief No. 8, Urban Institute.
- Cutler and Glaeser (1997), “Are Ghettos Good or Bad?” *Quarterly Journal of Economics*, August, pp. 827-872.

Downs, Anthony, 1957, "An Economic Theory of Political Action in a Democracy." *Journal of Political Economy*, Vol. 65, No. 2, pp. 135-150

Durlauf, Steven N., 2004. "Neighborhood effects," *Handbook of Regional and Urban Economics*, in: J. V. Henderson & J. F. Thisse (ed.), *Handbook of Regional and Urban Economics*, edition 1, volume 4, chapter 50, pages 2173-2242 Elsevier.

Fair Housing Planning Guide, Volume 1, US Department of Housing and Urban Development, <http://www.hud.gov/offices/fheo/images/fhpg.pdf>, Office of Fair Housing and Equal Opportunity

Fischel, William, 1985, *The Economics of Zoning Laws*. Baltimore: Johns Hopkins University Press.

Fischel, William A., 2005, "Politics in a Dynamic View of Land-Use Regulations: Of Interest Groups and Homevoters," *The Journal of Real Estate Finance and Economics*, 31:4, 397-403

Glaeser, Edward and Joseph Gyourko 2002, *Zoning's Steep Price, Regulation*, Fall 2002, pages 24-30

Glaeser, E.L., Kahn, M.E., Rappaport, J., 2008. Why do the poor live in cities? The role of public transportation. *Journal of Urban Economics* 63, 1-24.

Goetz, Edward Glenn, 2003, *Clearing the way: Deconcentrating the Poor in Urban America*, Urban Institute Press, Washington, DC.

Hanson, Andrew and Zackary Hawley, "Do Landlords Discriminate in the Rental Housing Market? Evidence from an Internet Field Experiment in US Cities," *Journal of Urban Economics*, September-November 2011, v. 70, iss. 2-3, pp. 99-114, September-November 2011.

Hilber, Christian A. L. and Frédéric Robert-Nicoud, 2010, "On the Origins of Land Use Regulations: Theory and Evidence from US Metro Areas," *Spatial Economics Research Centre Discussion Paper* 38.

Hoben, James and Todd Richardson, 1992, *The Local CHAS: A Preliminary Assessment of First Year Submissions*, Office of Policy Development and Research, U.S. Department of Housing and Urban Development.

Holmgren, Johan (2007), "Meta-analysis of Public Transit Demand," *Transportation Research Part A: Policy and Practice*, Volume 41, Issue 10, Dec. 2007, pp. 1021-1035.

Kiviat, Barbara, 2008, "Gentrification: Not Ousting the Poor?" *TIME*, Sunday, June 29.

Johnson, Michael P.; Ladd, Helen F.; Ludwig, Jens, 2002, "The Benefits and Costs of Residential Mobility Programmes for the Poor" *Housing Studies*, January 2002, v. 17, issue 1, pp. 125-38.

Knapp, G., Bento, A., & Lowe, S. 2008. *Housing Market Impacts of Inclusionary Zoning*. College Park, MD: National Center for Smart Growth Research and Education.

McFarlane, Alastair (2009) "Inclusionary Zoning and the Development of Urban Land," http://www.huduser.org/portal/publications/pdf/awm_rep_0902.pdf

Means, Tom and Edward Stringham. 2008. *Measuring the Qualitative Effects of Mixed-Income Housing Mandates on California Housing Markets*. Paper presented at the 55th North American Meetings of the Regional Science Association International, Brooklyn, New York, November

21, 2008.

Myers, Caitlin K. 2004. Discrimination and neighborhood effects: understanding racial differentials in US housing prices. *Journal of Urban Economics*, vol. 56, pp. 279-302.

Niskanen, William A., 1968, The Peculiar Economics of Bureaucracy, *The American Economic Review*, Vol. 58, No. 2, Papers and Proceedings of the Eightieth Annual Meeting of the American Economic Association, pp. 293-305

Ondrich, Jan, Stephen Ross, and John Yinger, 2003, "Now You See It, Now You Don't: Why Do Real Estate Agents Withhold Available Houses from Black Customers?" *Review of Economics and Statistics*, Vol. 85, No. 4, Pages 854-873

Pollakowski, Henry O., and Susan M. Wachter. 1990. "The Effects of Land-Use Constraints on Housing Prices," *Land Economics* 66 (3): 315-324.

Quigley, John M. and Steven Raphael, 2005, Regulation and the High Cost of Housing in California, *AEA Papers and Proceedings*, Vol. 95, No 2., pp. 323-328.

Quigley, John M. and Larry A. Rosenthal, 2005, The Effects of Land Use Regulation on the Price of Housing: What Do We Know? What Can We Learn?, *Cityscape: A Journal of Policy Development and Research • Volume 8, Number 1*, pp. 69-137

Rosenbaum, James E., 1995, "Changing the geography of opportunity by expanding residential choice: Lessons from the Gautreaux program," *Housing Policy Debate*, Volume 6, Issue 1, pages 231-269

Rothwell¹, Jonathan T. and Douglas S. Massey, Density Zoning and Class Segregation in U.S. Metropolitan Areas, *Social Science Quarterly*, Volume 91, Number 5, December 2010.

Samuelson, Paul A., 1954, The Pure Theory of Public Expenditure, *The Review of Economics and Statistics*, Vol. 36, No. 4, pp. 387-389

Sanbonmatsu, Lisa, Jens Ludwig, Lawrence F. Katz, Lisa A. Gennetian, Greg J. Duncan, Ronald C. Kessler, Emma Adam, Thomas W. McDade, and Stacy Tessler Lindau, Moving to Opportunity for Fair Housing Demonstration Program Final Impacts Evaluation, 2011, Prepared for U.S. Department of Housing and Urban Development, Office of Policy Development & Research.

Schuetz, Jenny, Rachel Meltzer, and Vicki Been. 2007. The Effects of Inclusionary Zoning on Local Housing markets: Lessons from the San Francisco, Washington DC and Suburban Boston Areas. November 19, 2007. Furman Center for Real Estate and urban Policy, New York University.

Schuetz, Jenny, Rachel Meltzer, and Vicki Been. 2008. 31 Flavors of Inclusionary Zoning: Comparing policies from San Francisco, Washington, D.C. and Suburban Boston, Furman Center for Real Estate and Urban Policy, Last revised: September 9, 2008.

Tiebout, Charles M., 1956, A Pure Theory of Local Expenditures, *Journal of Political Economy*, Vol. 64, No. 5, pp. 416-424

U.S. Department of Housing and Urban Development, 1992, "Analysis of Impediments Study," internal report, Office of Policy Development and Research.

U.S. Department of Housing and Urban Development, Moving to Opportunity for Fair Housing

Demonstration Program - Final Impacts Evaluation Summary, October 2011, Available:
http://www.huduser.org/publications/pdf/MTOFHD_summaryreport.pdf

United States Government Accountability Office, HUD Needs to Enhance Its Requirements and Oversight of Jurisdictions' Fair Housing Plans, GAO-10-905, September 2010.

Urban Institute, Discrimination in Metropolitan Housing Markets: National Results from Phase I HDS 2000, Report prepared by the Urban Institute for the U.S. Department of Housing and Urban Development, November 2002.

Wildasin, David E. "Theoretical analysis of local public economics", Edwin S. Mills, ed. Handbook of Regional and Urban Economics, Volume II: Urban Economics, 1987, Elsevier Science Publishers.

Wilson. James Q. 1989. Bureaucracy: What Government Agencies Do and Why They do it. New York: Basic Books.

Woodward, Susan. 2008 (May). A Study of Closing Costs for FHA Mortgages. Report prepared with the Urban Institute for the U.S. Department of Housing and Urban Development, Office of Policy Development and Research. Washington, DC: U.S. Department of Housing and Urban Development, Office of Policy Development and Research.