

## Affirmatively Furthering Fair Housing:

# The Good, The Bad, & The Ugly of the Proposed Rule and Draft Assessment Tool

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Ever since HUD's Proposed Rule regarding Affirmatively Furthering Fair Housing (the "Rule") was published on July 19, 2013, the housing industry and fair housing advocates have each drawn clear lines in the sand as to where they stand regarding the Rule. The advocacy community has hailed the Rule as potentially one of the best things to happen since the passage of

the Fair Housing Act of 1968 (the "Act"). The housing and development communities, on the other hand, often decry the Rule as "social engineering" and lament its anticipated impact on revitalization of blighted neighborhoods. The truth of the matter is likely somewhere in the middle.

**THE GOOD:** The Rule's four specifically articulated goals are noble, if not perhaps aspirational:

1. Improve integrated living patterns and overcome historic patterns of segregation;
2. Reduce or eliminate racially and ethnically concentrated areas of poverty;
3. Reduce disparities in access to community assets such as education, transit access, employment, as well as exposure to environmental health hazards and other stressors that harm a person's quality of life; and
4. Address disproportionate housing needs by protected classes.

The Rule is intended to encourage meaningful outcomes in the process of affirmatively furthering fair housing, and to provide a means to quantify and verify those efforts by Federal grantees (those who receive HOME, CDBG, ESG, and HOPWA funds, and public housing authorities). It is clear that there are communities with barriers to fair housing choice, including barriers that inhibit family mobility to areas of opportunity. The Rule laudably intends to better equip communities to fulfill their fair housing obligations and to plan in a manner that promotes fair housing choice.

**THE BAD:** Under the Rule, it is not enough for grantees to simply not discriminate. Instead, the Rule requires them to take proactive steps to address segregation and related barriers for those classes protected by the Act. While that concept may not be troubling on its face, grantees will be required to take affirmative steps to reduce racial and national origin concentrations. It remains to be seen how that goal can be accomplished in a way that does not have a corresponding discriminatory impact on another protected class. Additionally, enforcement methods are unknown, which is especially troublesome given that HUD states that a grantee whose Assessment of Fair Housing ("AFH") is "accepted" by HUD cannot then rely on that approval as evidence that they are complying with their fair housing obligations.

**THE UGLY:** With respect to housing and redevelopment agencies in particular, the Rule ignores the scarcity of resources and the probability that strict adherence to the Rule will divert much needed funds away from impacted neighborhoods. The reality is that land and development costs in non-impacted areas are often far in excess of those in areas ripe for revitalization. Additional dollars spent on acquisition and construction lead to lower unit counts and, in the end, less affordable housing overall. Moreover, if agencies are called upon to justify the expenditure of capital funds in distressed neighborhoods or are penalized for those expenditures, the task of addressing blight will be all the more difficult.

Finally, and perhaps most importantly, HUD's own estimate is that the reporting requirements related to the Rule will involve 200 hours of staff time related to the preparation of each AFH. Even assuming that HUD's own estimate is not understated, for grantees without the budget to hire consultants to perform the work, the impact of lost staff time may have a crippling effect on other operational efficiencies.

Meaningful fair housing planning is essential for communities to prosper and successfully evolve across time. It remains to be seen whether the final version of the Rule will truly facilitate that planning and lead to greater housing opportunity, mobility, and choice. The Rule's advocates and detractors alike each have valid arguments that merit our attention as HUD continues to seek out public comment during the rulemaking process.