Housing and Racial Bias
Part II: Government Intervention in Housing Discrimination

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Addressing Housing Discrimination

• Primary legal means of addressing housing discrimination is the Federal Fair Housing Act and state-law equivalents

• The FHA:
  – Prohibits discrimination on the basis of seven protected classes
  – Prohibits discrimination in the acquisition and maintenance of housing
  – Requires reasonable accommodations and modifications to ensure equal housing opportunity for people with disabilities
  – Establishes enforcement mechanisms to combat discrimination

• So what’s the problem?
Protected Classes

Who’s Protected?
• Race
• Color
• Religion
• Sex
• Familial status
• National origin
• Handicap

Who’s Not?
• Age
• Marital status
• Sexual orientation
• Income
• Source of income
• Past incarceration
• Homelessness
Covered Dwellings

- FHA protections apply to dwellings:

  “Dwelling’ means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.”

- Dwellings may not include all types of shelter

Source: http://myemail.constantcontact.com/Shelter-from-the-Cold.html?soid=1103391372388&aid=SOqwdsMxsTc
Key Prohibitions

• “To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of” a protected characteristic

• “To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of” a protected characteristic

• Failure to make reasonable accommodations for people with disabilities
Who Must Comply?

- Private landowners (with some exceptions)
- Real estate brokers
- Mortgage lenders
- Local governments

Source: WCPO.com
Affirmatively Furthering Fair Housing

“All executive departments and agencies shall administer their programs and activities relating to housing and urban development (including any Federal agency having regulatory or supervisory authority over financial institutions) in a manner affirmatively to further the purposes of this subchapter and shall cooperate with the Secretary to further such purposes.”
Two Basic Types of FHA Violations

Disparate Treatment Examples:
- Landlord refuses to rent to tenant because she is Jewish
- Local government refuses to zone property for multi-family development because it thinks African-Americans will live there
- Zoning code prohibits group homes for recovering alcoholics

Disparate Impact Examples:
- Mortgage lender refuses to lend in area with high crime rate, which happens to be occupied by predominantly non-White population
- Local government’s preference for large-lot, single-family zoning precludes non-White families from living in the community
Disparate Treatment

- Two forms of disparate treatment
  - Facial discrimination
  - Discriminatory intent

  - Actual discriminatory effect
  - Historical background of decision
  - Sequence of events leading to the decision
  - Substantive departures from normal procedural sequences
  - Legislative history
Disparate Impact

- Look purely at the impact of a policy, but offer an opportunity for the defendant to identify a legitimate objective for it
- *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, 135 S. Ct. 2507 (2015)* upheld disparate impact with limitations:
  - Disparate impact claims cannot be based on one-time actions
  - Claimants must objectively demonstrate causation between alleged policies and outcomes *at the pleading stage*
  - Legitimate governmental purpose for policy can defeat claims of discrimination
Where Are We Now?

• FHA has been effective in addressing outright discrimination on the basis of the seven protected classes
  - Disparate treatment is generally eas(ier) to prove
  - Broad standing rules under FHA have fostered creation and involvement of fair housing organizations
  - HUD enforcement of FHA in private transactions

• FHA has been far less effective in addressing structural, less direct forms of discrimination
  - Disparate treatment is difficult to root out, enforce
  - Affirmatively furthering provision does not provide clear guidance, has been a political lightning rod
  - FHA has never been about creating housing—it’s about eliminating barriers
Plugging the Gap

• Gap exists between the type of housing discrimination that the FHA was designed to address and structural discrimination in the housing system

• Attempts to use FHA to address that gap have not been successful

• Where do we go from here?
Agenda

- What are “public housing subsidies?”
- Who needs this type of assistance? Are their demographics unique?
- Which solutions best address the needs of very low income households?
- Bonus! What’s all this news about low income housing and the suburbs?
What are public housing subsidies?
## Income Thresholds & Target Housing Solutions

<table>
<thead>
<tr>
<th>Income Level</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>“extremely” low income</strong>&lt;br&gt;≤ $30,000 per year, poverty level</td>
<td>Public housing, Section 8, tenant-based rental assistance, transitional housing, other deeply subsidized rentals.</td>
</tr>
<tr>
<td><strong>30-50% MFI</strong></td>
<td><strong>“very” low income</strong>&lt;br&gt;$30,000-$50,000 per year</td>
</tr>
<tr>
<td><strong>50-80% MFI</strong></td>
<td><strong>“low” income</strong>&lt;br&gt;$50,000-$80,000 per year</td>
</tr>
<tr>
<td><strong>80-120% MFI</strong></td>
<td><strong>“median” to “moderate” income</strong>&lt;br&gt;$80,000-$120,000 per year</td>
</tr>
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</table>
Who needs this type of assistance?
...the people who have been denied housing choice for decades. And old people

<table>
<thead>
<tr>
<th>Region</th>
<th>White</th>
<th>Black</th>
<th>Hispanic</th>
<th>Asian or Pacific Islander</th>
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<tbody>
<tr>
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<td>6%</td>
<td>93%</td>
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<td>1%</td>
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<tr>
<td>Project-Based Section 8</td>
<td>23%</td>
<td>72%</td>
<td>1%</td>
<td>4%</td>
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<tr>
<td>Other Multifamily</td>
<td>49%</td>
<td>47%</td>
<td>0%</td>
<td>3%</td>
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<tr>
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<td>82%</td>
<td>1%</td>
<td>0%</td>
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<td>94%</td>
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<td>87%</td>
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<td></td>
<td></td>
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</tr>
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<td>75%</td>
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<td>64%</td>
<td>12%</td>
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<td>46%</td>
<td>48%</td>
<td>3%</td>
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<td>38%</td>
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<tr>
<td>HCV Program</td>
<td>12%</td>
<td>85%</td>
<td>1%</td>
<td>1%</td>
</tr>
</tbody>
</table>
What solutions work?
Research consistently shows:

1. Housing stability raises household incomes
2. Housing stability improves mental and physical health
3. Housing stability produces positive outcomes for children

In sum, housing stability benefits public sector, although some of the benefits are very modest and will not be realized immediately

Evidence in Raj Chetty’s body of work. We also did a recent survey in Baltimore... see next slide
Housing and Neighborhood Challenges

- Struggle to pay my rent/mortgage
- Want to buy a house but can't afford down payment
- House/apartment not big enough for family members
- Worry about rent going up to amount I can't afford
- High crime in my neighborhood
- No safe places for kids to play outside
- Afraid to let my kids play outside
- Poor/low school quality in my neighborhood
- I am homeless/without permanent housing
- Can't pay my utilities
- Health problems because of home or neighborhood

Red bars indicate challenges that are more common among assisted individuals, while green bars indicate challenges that are more common among unassisted individuals.
CHANGING MARKETS: CONDO CONVERSIONS

NBER: Does condominium development change the socioeconomic makeup of neighborhoods in central cities?

- Research examined city-level ordinances meant to regulate conversion of rental buildings into condos
- Compared cities that passed ordinances with those that did not
- Found no causal impact of condo development on the income, education level or racial composition of city residents when using city regulations to instrument for condo density
But what about redevelopment and gentrification?

SHORTAGE OF RENTAL HOUSING

NYC and NBER Medicaid data study

- Tracked movements of low income children living in NYC between 2009 and 2015

- Found children born into gentrifying neighborhoods are *not* more likely to move than those who are not born into such neighborhoods...

- ...low income children move regardless of gentrification pressure: “Poor kids are not very residentially stable.”

- Those who do move find safer neighborhoods but worse housing condition. Those who stay are in lower performing schools

- Publicly supported housing stabilizes families—move rates were much lower than those living in marketplace housing
How to Best Address Needs

- Revise the federal CDBG regulations to allow housing activities, and prioritize cities that have been most harmed by past federal policies.

- Focus on anti-displacement policies and on expanding housing choice, everywhere. Outcomes of preference policies are mixed, face legal challenges, and recent research shows that low income renters move regardless of gentrifying pressures.

- Expect private sector help in the form of unit contributions.

- Reduce the stigma around Section 8 protections and enact source of income protections.
Bonus: Low Income Housing and the Suburbs
Low Income Housing in the Burbs

Donald J. Trump @realDonaldTrump · 21h
I am happy to inform all of the people living their Suburban Lifestyle Dream that you will no longer be bothered or financially hurt by having low income housing built in your neighborhood...

Donald J. Trump @realDonaldTrump · 21h
...Your housing prices will go up based on the market, and crime will go down. I have rescinded the Obama-Biden AFFH Rule. Enjoy!
Low Income Housing in the Burbs

• HUD cannot require the suburbs to build low income housing

• The Federal Fair Housing Act requires a commitment to further fair housing choice in exchange for federal funds. In the suburbs, this is most often achieved through subsidies to homeowners

• Private sector interests should worry about this “promise” fueling NIMBYism and reducing all types of housing development—at a time when we need it the most

• Fallout could disproportionately affect moderate income minority households who find the best opportunity for ownership in the suburbs
Questions?

Feel free to contact me: Heidi Aggeler, heidi@rootpolicy.com