



## 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=SOqwsMxsTc>



# 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
- Factors that establish disparate treatment (*Metro. Hous. Dev. Corp. v. Vill. Of Arlington Heights*, 429 U.S. 252 (1977))
  - 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 easier 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?

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# Housing Access and Racial Bias: Part 2

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# 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

“extremely” low income  
=< \$30,000 per year, poverty level

< 30% MFI



Public housing, Section 8, tenant-based rental assistance, transitional housing, other deeply subsidized rentals.

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“very” low income  
\$30,000-\$50,000 per year

30-50% MFI



Public housing, Section 8, rental tax credit developments, other rental products. Shared equity and land trust for homeownership.

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“low” income  
\$50,000-\$80,000 per year

50-80% MFI



Generally live in privately provided rental housing. Ownership with shared equity, land trust, other deed-restricted products, attached homes, homes in affordable areas.

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“median” to “moderate” income  
\$80,000-\$120,000 per year

80-120% MFI



Privately provided rental housing. General target for homeownership programs, can buy without assistance in affordable areas.

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**Who needs this type of assistance?**

**...the people  
who have  
been denied  
housing  
choice for  
decades.  
And old  
people**

	White	Black	Hispanic	Asian or Pacific Islander
<b>Region</b>				
Public Housing	6%	93%	1%	1%
Project-Based Section 8	23%	72%	1%	4%
Other Multifamily	49%	47%	0%	3%
HCV Program	16%	82%	1%	0%
<b>Annapolis</b>				
Public Housing	4%	94%	2%	0%
Project-Based Section 8	5%	93%	2%	0%
Other Multifamily	N/a	0%	N/a	N/a
HCV Program	13%	87%	0%	0%
<b>Baltimore City</b>				
Public Housing	2%	97%	0%	1%
Project-Based Section 8	14%	84%	1%	1%
Other Multifamily	28%	71%	0%	1%
HCV Program	5%	95%	1%	0%
<b>Anne Arundel County</b>				
Public Housing	38%	58%	0%	4%
Project-Based Section 8	66%	31%	1%	1%
Other Multifamily	73%	21%	0%	6%
HCV Program	24%	71%	2%	2%
<b>Baltimore County</b>				
Public Housing	N/a	0%	N/a	N/a
Project-Based Section 8	47%	47%	1%	5%
Other Multifamily	54%	41%	1%	5%
HCV Program	24%	75%	1%	0%
<b>Harford County</b>				
Public Housing	22%	64%	12%	2%
Project-Based Section 8	46%	48%	3%	1%
Other Multifamily	83%	15%	0%	1%
HCV Program	48%	48%	3%	1%
<b>Howard County</b>				
Public Housing	N/a	0%	N/a	N/a
Project-Based Section 8	17%	48%	3%	32%
Other Multifamily	60%	38%	0%	2%
HCV Program	12%	85%	1%	1%



**What solutions work?**

## Truths about the Benefits of Housing Stability

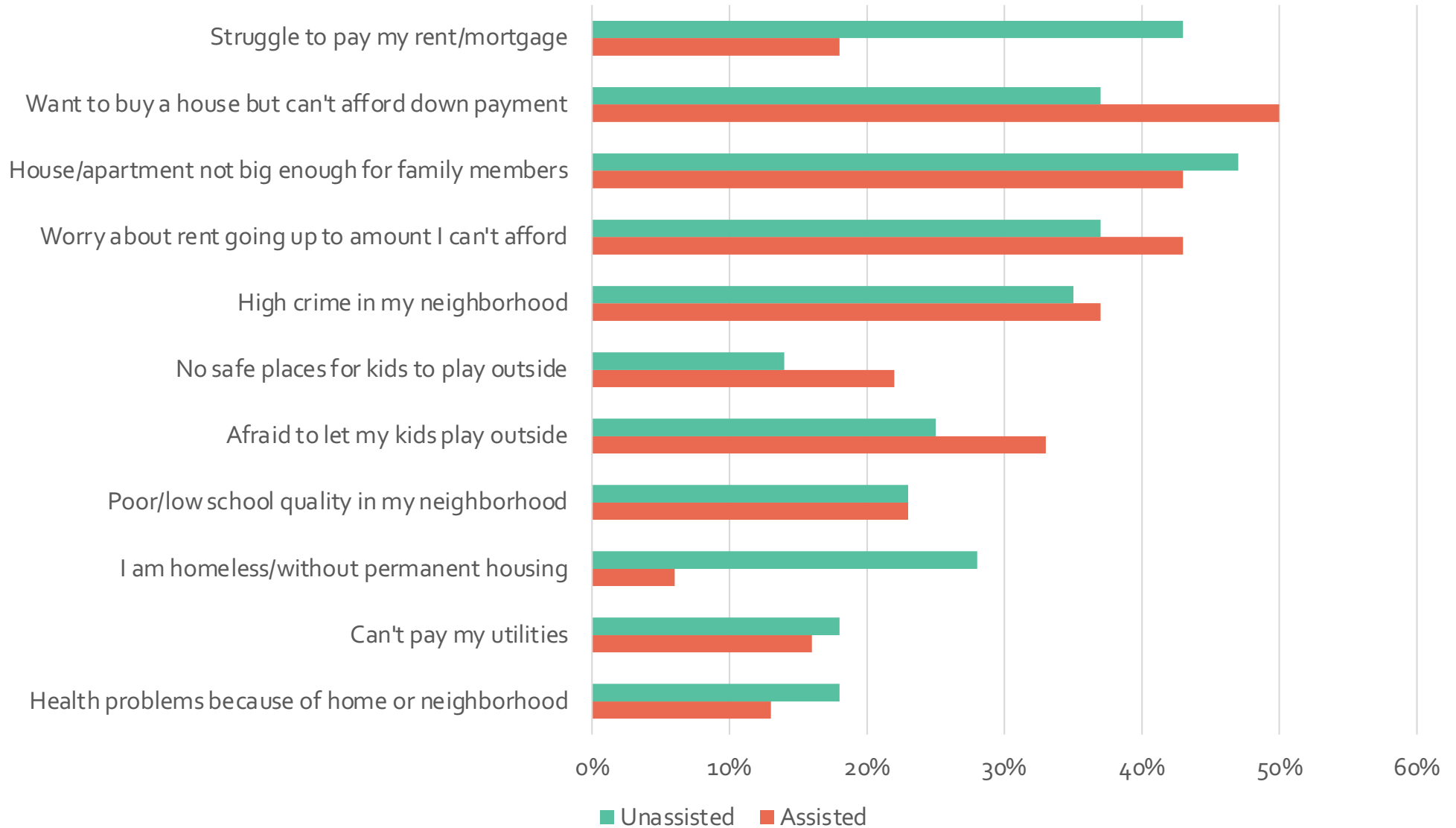
Research consistently shows:

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



## But what about redevelopment and gentrification?

### 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 find *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

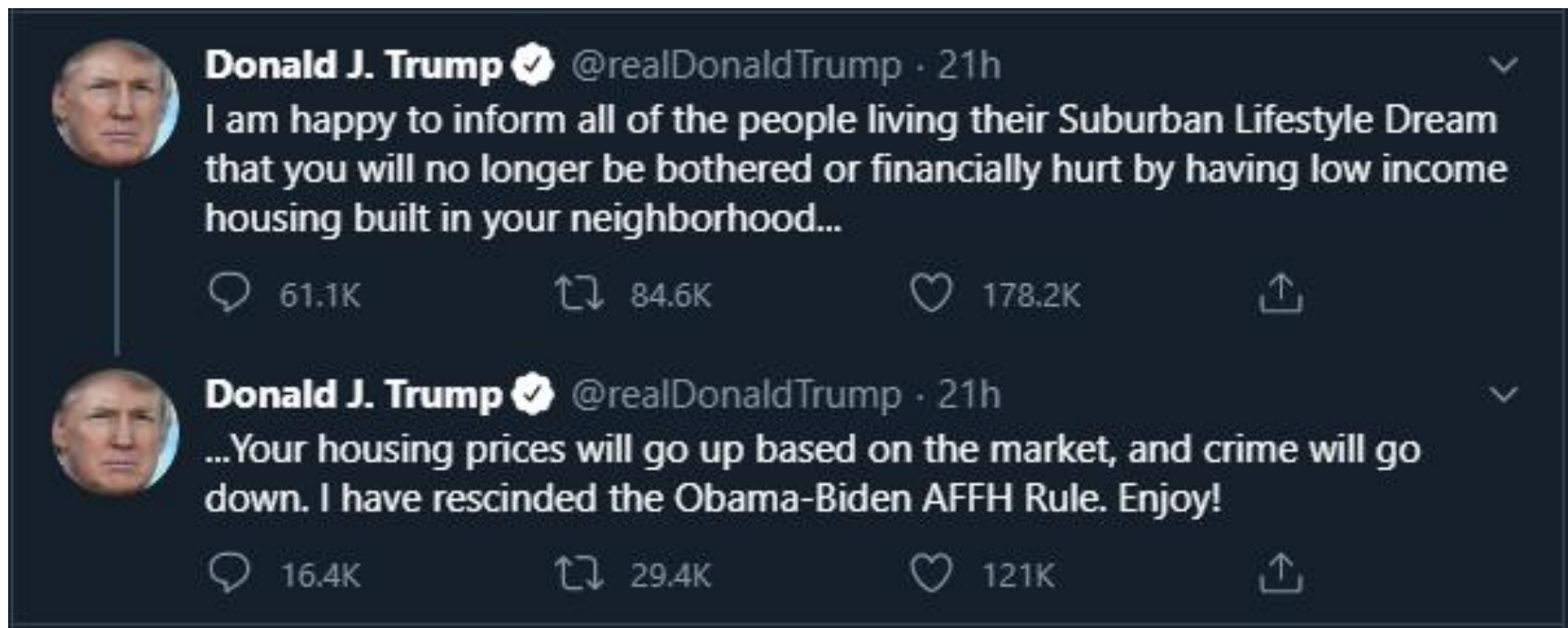


# How to Best Address Needs

- **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



# 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?

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