



HUD at 50

CREATING PATHWAYS TO OPPORTUNITY



PD&R



Visit PD&R's website

huduser.gov

to find this report and others sponsored by HUD's Office of Policy Development and Research (PD&R). Other services of HUD User, PD&R's research information service, include listservs, special interest reports, bimonthly publications (best practices, significant studies from other sources), access to public use databases, and a hotline (800-245-2691) for help accessing the information you need.

Contents

Introduction.....	1
-------------------	---

Julián Castro

Chapter 1

The Founding and Evolution of HUD: 50 Years, 1965–2015.....	5
---	---

Jill Khadduri

Chapter 2

Race, Poverty, and Federal Rental Housing Policy.....	103
---	-----

Ingrid Gould Ellen and Jessica Yager

Chapter 3

Urban Development and Place	133
-----------------------------------	-----

Raphael W. Bostic

Chapter 4

Housing Finance in Retrospect	157
-------------------------------------	-----

Susan Wachter and Arthur Acolin

Chapter 5

Poverty and Vulnerable Populations.....	185
---	-----

Margery Austin Turner, Mary K. Cunningham, and Susan J. Popkin

Chapter 6

Housing Policy and Demographic Change.....	219
--	-----

Erika Poethig, Pamela Blumenthal, and Rolf Pendall

Conclusion

Places as Platforms for Opportunity: Where We Are and Where We Should Go.....	251
---	-----

Katherine M. O'Regan

Chapter 2

Race, Poverty, and Federal Rental Housing Policy

Ingrid Gould Ellen and Jessica Yager

For the last 50 years, HUD has been tasked with the complex, at times contradictory, goals of creating and preserving high-quality affordable rental housing, spurring community development, facilitating access to opportunity, combating racial discrimination, and furthering integration through federal housing and urban development policy. This chapter shows that, over HUD's first 5 decades, statutes and rules related to rental housing (for example, rules governing which tenants get priority to live in assisted housing and where assisted housing should be developed) have vacillated, reflecting shifting views about the relative benefits of these sometimes-competing objectives and the best approach to addressing racial and economic disparities. Also, HUD's mixed success in fair housing enforcement—another core part of its mission—likely reflects a range of challenges including the limits of the legal tools available to the agency, resource limitations, and the difficulty of balancing the agency's multiple roles in the housing market. This exploration of HUD's history in these areas uncovers five key tensions that run through HUD's work.

The first tension emerges from the fact that housing markets are local in nature. HUD has to balance this variation, and the need for local jurisdictions to tailor programs and policies to address their particular market conditions, with the need to establish and enforce consistent rules with respect to fair housing and the use of federal subsidy dollars.

The second tension is between serving the neediest households and achieving economic integration. In the case of place-based housing, if local housing authorities choose to serve

*Ingrid Gould Ellen is the Paulette Goddard Professor of Urban Policy and Planning at NYU's Robert F. Wagner Graduate School of Public Service and Faculty Director of the NYU Furman Center. Ellen is author of *Sharing America's Neighborhoods: The Prospects for Stable Racial Integration* (Harvard University Press, 2000) and has published numerous articles in academic journals related to housing, residential segregation, and urban policy.*

Jessica Yager is the Deputy Director of the NYU Furman Center. Before joining the Furman Center, she was the founding director of the Foreclosure Prevention Project at Queens Legal Services, focusing on fair housing and foreclosure prevention litigation. She has also worked as an appellate public defender in New York City and as a faculty fellow in the civil rights clinics at Seton Hall Law School.

the very poorest households in their developments, then those developments risk becoming islands of concentrated poverty. Further, by serving only the poorest households, HUD likely narrows political support for its programs.

The third tension is between serving as many households as possible and supporting housing in high-opportunity neighborhoods. Unfortunately, in many metropolitan areas, land—and consequently housing construction—is significantly more expensive in the higher-income neighborhoods that typically offer safer streets, more extensive job networks and opportunities, and higher-performing schools (Norman, 2014). As a result, a given level of resources can typically house fewer families in higher-income areas than in lower-income ones.

The fourth tension is between revitalizing communities and facilitating access to high-opportunity neighborhoods. Research shows that, in some circumstances, investments in subsidized housing can help revitalize distressed communities and attract private investment. Yet, in other circumstances, such investments do not trigger broader revitalization and instead may simply constrain families and children in subsidized housing to live in areas that offer limited opportunities.

The final apparent tension is between facilitating integration and combating racial discrimination. Despite the Fair Housing Act's (FHA's) integration goal, legal decisions, which are discussed further in this chapter, have determined that the act's prohibition on discrimination limits the use of some race-conscious approaches to maintaining integrated neighborhoods.

To be sure, these tensions are not always insurmountable. But addressing all of them at once requires a careful balancing act. The bulk of this chapter reviews how HUD programs and policies have struck this balance in the area of rental housing during the agency's first 50 years. The chapter ends with a look to the challenges HUD is likely to face in its next 50 years.

I. Overview of HUD's Role in the Rental Housing Market

As the central federal agency charged with creating “strong, sustainable, inclusive communities and quality housing for all Americans,” HUD fundamentally shapes the nation's rental housing market—both by providing subsidies to low-income households and by enforcing the national commitment to fair housing principles (HUDa). The key elements of HUD's programs can be divided into three main groups: public housing; privately owned, subsidized housing; and tenant-based vouchers. The features of these programs and a discussion of HUD's enforcement of the FHA with respect to rental housing follow.

Public Housing

Established by the Housing Act of 1937, public housing was the federal government's first major low-income housing program. The federal government provided funding to construct public housing developments and later contributed to operating support. Although largely financed by federal funds, developments are owned and operated by local housing authorities, which have control (subject to limits set in federal law and regulation) over siting, design, and tenant selection. Public housing currently serves 1.1 million households, virtually all of whom are very low-income. Forty-five percent of household heads are black and 24 percent are Hispanic (HUD, 2014).

Privately Owned Subsidized Housing

The federal government has created numerous programs to subsidize the construction of privately owned, low-income rental housing through a combination of low-interest loans, tax benefits, and rent subsidies. Congress ended support for HUD's multifamily construction programs in 1983, but HUD continues to oversee the portfolio, which amounts to approximately 1.4 million assisted housing units. HUD also provides support to the owners of existing buildings to maintain affordable rents after the expiration of initial financing contracts and affordability requirements (HUDb). The vast majority of these units are supported through the Section 8 project-based rental assistance programs. The incomes of residents living in these developments are very close to those of public housing residents, but residents are somewhat more likely to be white (Collinson, Ellen, and Ludwig, 2015).

With the defunding of HUD's major production programs, the largest government subsidy for affordable housing production by far is the Low-Income Housing Tax Credit (LIHTC) Program, which is operated by the U.S. Department of the Treasury instead of HUD. Established by the Tax Reform Act of 1986, the LIHTC Program is administered by state allocating agencies that receive tax credits from the IRS and then award them to developers who construct or rehabilitate low-income, rental housing. Developers typically sell credits to equity investors, and the proceeds of those sales reduce the amount of debt their projects must support. Projects can be mixed-income and are eligible for tax credits if at least 20 percent of their tenants have incomes below 50 percent of the area median income (AMI) or at least 40 percent have incomes below 60 percent of AMI. In practice, the vast majority of LIHTC projects contain only low-income units.

Many LIHTC developments also receive other sources of funding to cover construction costs, including HUD subsidies like the HOME Investment Partnerships Program (HOME) and HUD rental assistance payments for very low-income tenants. A recent HUD analysis estimates that slightly more than one-half of LIHTC tenants either receive tenant-based rental assistance or reside in a unit receiving project-based rental assistance (Hollar, 2015).

Housing Choice Vouchers

Congress created the Section 8 Existing Housing Program in 1974 to provide vouchers for low-income households to use to rent apartments on the private market. Over the years, several different tenant-based programs have emerged, but the basic structure has remained the same. Tenants pay 30 percent of their income for rent, and the government pays the difference between the tenant contribution and the rent, up to the payment standard calculated as 90 to 110 percent of the fair market rent, which is in turn set at the 40th or 50th percentile of rents in the metropolitan area. Landlords are not required to participate in the voucher program, though 12 states, the District of Columbia, and several localities have enacted laws that prohibit landlords from refusing to rent to voucher holders. (Owners of LIHTC developments also are prohibited from discriminating against voucher holders.)

HUD's current program, the Housing Choice Voucher Program, is now the largest subsidy program, serving 2.2 million households, most of whom are very low-income. HUD estimates that, in 2013, 48 percent of voucher holders were black and 15 percent were Hispanic (HUDe). Up to 20 percent of these vouchers can be "project-based," meaning they are tied to particular housing developments and can help pay for construction or rehabilitation. While these hybrid vouchers are tied to particular developments for a set period of time, households with project-based vouchers are given priority for tenant-based vouchers or other forms of rental assistance if they decide to move to a new housing unit.

Enforcement of the Fair Housing Act

HUD plays an important role in the nation's housing market as the administrator and one of the enforcers of the federal Fair Housing Act. While other provisions of federal law have been used to address discrimination in housing (including Title VI of the Civil Rights Act of 1964, the Equal Protection Clause of the U.S. Constitution, and the Civil Rights Act of 1866), the FHA, Title VIII of the Civil Rights Act of 1968, contains the strongest fair housing mandate found in federal law. One of the legislative enactments brought into existence in response to the Civil Rights Movement of the post-Brown v. Board of Education era, the act prohibits discrimination in the sale, rental, or financing of housing on the basis of race, religion, national origin, gender, disability, or family status (42 U.S.C. §§ 3604-3606). The act also imposes upon HUD and its grantees a duty to affirmatively further fair housing in the administration of its programs (42 U.S.C. § 3608(d), (e)(5)).¹

¹ For a detailed timeline of fair housing advances, both legal opinions and the evolution of laws, rules, and HUD programs, see Poverty and Race Research Action Council. (n.d.). *Fifty Years of "The People v. HUD": A HUD 50th Anniversary Timeline of Significant Civil Rights Lawsuits and HUD Fair Housing Advances*.

II. Looking to the Past: Shifting Rules at HUD

Since the establishment of HUD in 1965, Congress has passed many laws, and the agency has issued many rules that govern who can live in subsidized rental housing and where that housing should be located. This section reviews the history, with an eye towards analyzing implications for poverty concentration and racial segregation.

a. Public Housing

Despite providing affordable housing for millions of Americans for close to 80 years, public housing is considered a failure by many. The program is faulted for concentrating poverty; exacerbating racial segregation; and creating large, institutionalized, low-quality developments that clash with the scale and character of surrounding neighborhoods. In reality, a relatively small number of public housing developments are high-rises, and many developments continue to provide sound, affordable housing to residents in need. But the residents of public housing are disproportionately poor and minority, and the developments have been disproportionately located in areas with large shares of poor and minority residents. The fluctuating rules governing public housing, and in particular the rules about tenant selection and siting, reveal underlying tensions and disagreements about the objectives of the program.

i. *Tenant Eligibility and Preferences*

A key area of dispute has been eligibility standards for tenants. The central tension here is between the desire for public housing to serve the neediest applicants on the one hand and the objective of economic integration and minimizing the concentration of poverty on the other.

When the public housing program was first developed, the law did not specify a particular income eligibility level. Rather, it simply stated that public housing tenants could earn no more than five times the rent that they paid for their homes (Collinson, Ellen, and Ludwig, 2015). Many public housing authorities appear to have used this flexibility to house working-poor families whom they expected to be more reliable than other poor households (Schwartz, 2014; Vale, 2000). By the time HUD was established in 1965, the median income of public housing tenants had fallen dramatically, due in part to the aging of the housing stock and the availability of subsidies for homeownership. Schwartz (2014) reports that in 1970, the median income of public housing tenants had fallen to 29 percent of the national median income. Many public housing developments had become occupied almost exclusively by poor residents.

In 1974, apparently motivated by a concern about the growing concentration of poverty in public housing, Congress required housing authorities to set out tenant selection criteria that allow for “families with a broad range of incomes and will avoid concentrations of low-income and deprived families with serious social problems” (Housing and Community Development Act, 1974).

Just 7 years later, in 1981, Congress reversed course and mandated that 90 percent of occupants in existing public housing and 95 percent in newly constructed buildings have incomes below 50 percent of the AMI (Schill, 1993). In addition to these income requirements, in 1979, Congress established selection preferences for families who were involuntarily displaced or living in substandard housing, and HUD interpreted this to include giving priority to families living in homeless shelters. A few years later, Congress extended the preferences to households paying more than half of their income on rent (Spence, 1993).

During these years, the goal of serving the neediest clearly trumped any concern about poverty concentration. Not surprisingly, incomes of public housing residents fell further in the wake of these new provisions. During the 1980s, the proportion of public housing tenants with incomes below 10 percent of AMI surged from under 3 percent to nearly 20 percent (Spence, 1993).

In 1998, Congress shifted course once again with the passage of the Quality Housing and Work Responsibility Act, which reasserted the importance of poverty deconcentration. While the law mandated that public housing authorities (PHAs) reserve at least 40 percent of public housing units for households with incomes below 30 percent of AMI, it allowed the lowering of that threshold to 30 percent of units for developments located in high-poverty neighborhoods in some circumstances.² The law also explicitly prohibited PHAs from concentrating the poorest families in certain developments and required each housing authority to submit an annual admissions plan to encourage income mixing and minimize concentrations of poverty in developments. In implementing this law, HUD suggested that local agencies might adopt a preference for admission of working families in developments that have an average income of less than 85 percent of the PHA-wide average. The rules even allowed a PHA to skip a family on the waiting list to reach another family if admitting that family would enhance the mixing of incomes in a very low-income development.

During the 1990s, Congress also relaxed the rules governing the use of federal selection preferences for the neediest tenants that were originally established in 1979. HUD issued a rule in 1994 implementing the Housing Community Development Act of 1992, explaining that the aim was to open “the admissions process to more flexibility for local choice” (59 Fed. Reg. 136). The rule also removed a previous prohibition on using employment as a selection criterion, reasoning that agencies “must have the flexibility to give preference to working families to assure diversity in the residency of projects and to include families who can serve as role models for other families.” In 1998, Congress eliminated the use of federal selection preferences entirely, leaving local agencies to determine their own preferences for tenant selection.

²The act allowed PHAs to reserve just 30 percent of public housing units for households with incomes below 30 percent of AMI, if more than 75 percent of vouchers administered by the PHA were distributed to households with incomes below 30 percent of AMI.

ii. Site Selection

A second key area of contention has been the selection of sites for public housing. In issuing site selection rules, HUD has to balance a number of competing objectives: improving the quality of the housing stock in low-income and largely minority areas; providing a wide range of neighborhood choices to low-income and minority tenants; and fostering economic and racial integration.

Before HUD was established in 1965, the federal government had wielded little control over site selection. The local control built into the public housing program had allowed many, typically suburban jurisdictions to opt out of participating in the program altogether, and allowed those that did participate to choose where to build developments. The result was public housing developments were overwhelmingly built in central city neighborhoods occupied by poor, typically minority, residents, deepening poverty concentration and racial segregation (Schill and Wachter, 1995).

In response to these geographic patterns, HUD issued site selection rules in 1967, which required housing authorities to ensure a balanced distribution of public housing developments within their jurisdictions (Lev, 1981). In 1972, HUD issued revised rules to address both the Fair Housing Act and the 1970 *Shannon v. HUD* decision, which ruled that HUD could only approve proposals for new assisted housing that would increase the racial concentration of an integrated or largely minority neighborhood if the local agency argued persuasively that the development would help to spur revitalization (Lev, 1981). The new rules prohibited the construction of new assisted housing developments in areas of minority concentration unless “comparable opportunities” for federally subsidized housing existed outside of largely minority areas, or HUD deemed the project necessary to address an “overriding” need for affordable housing in the local area (24 C.F.R. § 880.206).

The passage of the Housing and Community Development Act of 1974 led HUD to issue new site and neighborhood standards that applied to Section 8 New Construction projects. The act weighed in on the broader conditions of the neighborhoods appropriate for assisted housing. Congress instructed HUD to simultaneously pursue community revitalization and access to opportunity by requiring that annual PHA plans indicate general locations for assisted housing that would: (a) further neighborhood revitalization; (b) promote greater choice of locations and avoid “undue concentration of assisted persons in areas containing a high proportion of low-income persons;” and (c) ensure residents had access to adequate services.

When implementing the 1974 act, HUD largely maintained the same set of rules regarding the construction of assisted housing in areas of minority concentration, but the new rules stated that proposed developments “shall promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of lower-income persons” (24 C.F.R. § 1273.103 (1974) (available on WestlawNext as 39 FR 45169-01). In addition, the rules also stated that development must not be in a neighborhood “which is

seriously detrimental to family life; and substandard dwellings or other undesirable elements should not predominate unless there is actively in progress a concerted program intended to upgrade the neighborhood" (39 Fed. Reg. 14301, 14310 (Apr. 22, 1974) (codified at 24 C.F.R. pt. 1272)). Further, the rules stated that the housing should be accessible to facilities and services that are equivalent to those typically enjoyed by unsubsidized, standard housing of similar rents and convenient to employment centers that provide a range of jobs for low-income workers (39 Fed. Reg. 14301, 14310 (Apr. 22, 1974) (codified at 24 C.F.R. pt. 1272)). Here, HUD highlighted the importance of access to opportunity for assisted tenants.

In 1980, Congress weighed in again on neighborhood standards, apparently to address concerns that HUD was approving too few assisted housing developments in minority areas (Lev, 1981; Vernarelli, 1986). The new statute specified that HUD should not reject a proposed development simply because of its location in a largely minority area. In response, HUD loosened its site regulations and recommended giving more consideration to local conditions (Lev, 1981; Vernarelli, 1986).

In 1996, HUD updated its site and neighborhood standards once again to incorporate the new HOPE VI program. The rules permitted the construction of new public housing units after demolition if the number of new public housing units being constructed on the site is "significantly fewer" than the number of units demolished on the site (24 C.F.R. 941.202 (1996)).

Fair housing advocates have criticized these siting rules, which have not been updated since 1996, for being too weak, and perhaps more importantly, too weakly enforced. While the language of the rules affirms a commitment to furthering integration through siting, many in the civil rights community charge that HUD officials too often draw on waivers and exceptions to allow development to go forward (PRRAC, 2011). Meanwhile, others, typically from the community development world, have voiced concerns that the rules are too strict and may discourage development that would help to revitalize low-income, predominantly minority areas (PRRAC, 2011).

The repeated revisions of the site selection standards since 1967 highlight the competing objectives of revitalizing urban communities through new housing investments and promoting poverty and racial deconcentration. On the one hand, community development practitioners point to evidence showing that, at least in some circumstances, creating subsidized housing in blighted areas can help to revitalize neighborhoods and attract private investment (Schwartz et al., 2006). On the other hand, building subsidized housing in low-income and largely minority areas without other investments does not always trigger revitalization; rather it may simply sustain segregation and constrain subsidized families and children to live in areas that offer limited opportunities. A further tension is that the lower land prices that often characterize blighted areas can allow local housing authorities to create more affordable units than they could if they chose to subsidize units in higher-income areas. (Although Orfield et al. (2014) point out that, despite lower land prices, affordable housing development in central cities can be more expensive than development in more affluent suburbs in some cases.)

The key for HUD—and for the housing authorities it monitors—is to come up with an approach (including clear standards and oversight mechanisms) that allows for subsidized housing investments in distressed areas when part of a promising plan for revitalization. Such a plan would balance subsidized housing investments with efforts to create housing opportunities in areas that already deliver safe streets, high-performing schools, and rich job networks.

iii. Reconceiving Public Housing

Starting in the 1990s, HUD introduced several programmatic efforts that aimed to deconcentrate poverty in public housing. Congress launched the first, HOPE VI, in 1993 in response to a report issued by the Commission on Severely Distressed Public Housing, which estimated that 86,000 of the nation's 1.3 million public housing units were severely distressed. Between 1993 and 2010, HOPE VI supported the demolition and redevelopment of public housing developments comprising more than 150,000 units. When enacted, the HOPE VI program provided funds for rehabilitation, management improvements, and supportive services. It aimed to replace severely distressed public housing developments with redesigned, mixed-income housing. One of the explicit goals of the program was to provide housing that would “avoid or decrease the concentration of very low-income families.”³

Views about the success of the HOPE VI program vary widely. On the one hand, the program has replaced hundreds of deeply distressed developments with high-quality, mixed-income housing, which may have helped to revitalize surrounding communities. On the other hand, the program may not have done as much to improve the lives of the original residents, many of whom were forced to move and did not return to public housing or to the new development after the projects were completed. (The program did not include a one-for-one replacement rule, and only about 55 percent of the demolished units have been replaced with public housing (Schwartz, 2014).)⁴ Of the residents who moved to private homes, many have reported problems paying rent and utility bills (Popkin et al., 2004).

As the HOPE VI program was phased out in the late 2000s, the Obama Administration introduced the Choice Neighborhoods Program. The purpose of this new program was to demolish and redevelop distressed public housing. Like HOPE VI, the program aims to replace distressed public housing with high-quality, well-managed, mixed-income housing. But unlike HOPE VI, it includes a one-for-one replacement rule; affords the right to return to a redeveloped unit; requires the collaboration of a broader range of local partners, with an eye towards improving the surrounding community; and supports the redevelopment of privately owned, subsidized housing developments as well as public housing.

³ See Purpose 3 of the Quality Housing and Work Responsibility Act of 1998 (QHWRA).

⁴ The percentage of occupied public housing units that were replaced is higher, as many of the original units were vacant and uninhabitable at the time of demolition (Schwartz, 2014).

b. Subsidized Private Housing

Although not as commonly singled out as contributing to segregation as public housing, HUD's other project-based assisted housing programs house a similarly disadvantaged population and also tend to be concentrated in high-poverty areas (Collinson, Ellen, and Ludwig, 2015). The rules that have governed tenant eligibility and siting standards in Section 8 project-based assistance and most other HUD-assisted new construction are similar, or in some cases identical, to the rules that apply to public housing.⁵

To some extent these rules are moot, as no new housing has been built for years through HUD's project-based Section 8 program (its largest program supporting private development of affordable housing).⁶ But HUD continues to subsidize the new construction of affordable units through HOME program block grants.⁷ Since its enactment in 1990 as part of the Cranston-Gonzales Affordable Housing Act, the HOME program has helped support the production of nearly 450,000 units, largely through providing gap financing for LIHTC developments, as the equity raised from selling tax credits is not always sufficient to cover all the capital required by a project. Although HUD's site and neighborhood standards apply to HOME-supported new construction, the use of HOME and Community Development Block Grant program funds for rehabilitation are not subject to HUD site and neighborhood standards.⁸ Still, HOME-supported units are more likely to be located in low-poverty neighborhoods than public housing units and rental units subsidized through other HUD production programs.⁹

In crafting HOME rules, HUD had to adjudicate among competing claims about whether block grants should be subject to federal rules about siting. Block grant programs are designed to provide wide flexibility for localities to craft initiatives that address their particular needs and market conditions. That said, HUD should not and cannot give localities complete flexibility. The agency is still responsible for ensuring that local governments do not violate fair housing laws, and HUD must affirmatively further fair housing through its programs.

The agency also had to weigh whether site and neighborhood standards should be less stringent in the case of renovating and preserving existing housing. These are clearly

⁵For rules, see 59 Fed. Reg. 136: 36616 (tenant selection for public housing and some other assisted housing programs); Lev, 1981: 213 and n. 52 (site selection for Section 8); 24 C.F.R. § 92.202 (citing 24 C.F.R. 983.57(e) (2) and (3)) (site selection for HOME)). One point of departure is the HOME rules for tenant selection, which are less detailed than the public housing rules (24 C.F.R. § 92.253(d)).

⁶The rules about site selection in the Section 8 program were officially taken off the books in 1995 in an effort to clear the regulations of rules pertaining to obsolete programs. 60 Fed. Reg. 47,262 (Sept. 11, 1995).

⁷HUD also provides partial support for creating and rehabilitating subsidized housing through the use of project-based vouchers. While the project-based voucher rules include standards for the acquisition of existing housing, the regulations do not reference racial composition of the neighborhood (PRRAC, 2013a).

⁸The rehabilitation of vacant buildings supported by HOME funds is only required to "promote greater choice of housing opportunities" (Tegele, 2005: 207).

⁹See Gayles and Mathema (2014) for HOME-supported units; and Schwartz (2014) for neighborhood distribution of other federally assisted rental housing. Note tenants living in HOME-supported units also tend to have slightly higher incomes than the tenants living in HUD's other rental assistance programs (Schwartz, 2014).

investments of federal dollars into neighborhoods, and in that sense, they should be subject to fair housing laws. Yet applying site and neighborhood standards to preservation may undermine other HUD goals, such as maintaining high-quality, affordable housing. Also, it would be unfair to offer less rehabilitation and preservation assistance to families already living in subsidized developments in higher-poverty or largely minority areas. In general, HUD has opted to exempt preservation efforts from siting rules. For example, no neighborhood rules govern the use of HUD funds to extend the affordability of project-based Section 8 units when those subsidies expire (PRRAC, 2011).

As noted, the largest federally assisted housing production program is now the Low-Income Housing Tax Credit Program. The FHA requirement that all federal agencies affirmatively further fair housing in the administration of their programs related to housing and urban development (see Section II.d) applies as much to the Treasury Department as to HUD. However, the LIHTC statute is largely silent on the obligation, and the Treasury Department has not provided fair housing guidance to state housing finance agencies. In fact, to the chagrin of many fair housing advocates, the LIHTC statute requires that states give preference to low-income housing development in “qualified census tracts.” These tracts have a poverty rate of at least 25 percent or at least half of the households have incomes of less than 60 percent of the AMI.¹⁰ They also are much more likely than other tracts to be predominantly minority (Horn and O'Regan, 2011). Other than this requirement, state administering agencies have leeway to decide on criteria to use for allocating credits across proposed developments, consistent with antidiscrimination laws.

c. Housing Choice Vouchers

The voucher program was developed, in part, to expand the choices of assisted households and allow them to live in neighborhoods that offer greater opportunities for economic mobility. As compared to the shifting goals of HUD's place-based programs, HUD and Congress have been somewhat steadier in this commitment. HUD has recently adopted or considered a set of voucher program reforms that aim to further assist voucher holders in moving to higher-opportunity neighborhoods. These policies seem to emerge from a growing recognition that while vouchers deliver free choice in principle, in practice they are not sufficient to overcome the many barriers that low-income families face in renting homes in lower-poverty and less racially concentrated neighborhoods.

Research reveals that while most voucher holders still live in highly disadvantaged neighborhoods, on average, they live in neighborhoods that are less disadvantaged than those lived in by public housing residents (Hartung and Henig, 1997; Kingsley, Johnson, and Petit, 2003; Pendall, 2000; Devine et al., 2003; Schwartz, 2014). Their neighborhoods look very similar to those lived in by the average poor household (Wood, Turnham, and Mills, 2008; Galvez, 2010), and they are only very slightly less disadvantaged than those

¹⁰ While the favored developments are supposed to be part of a community revitalization plan, no federal agency has provided guidance on what constitutes such a revitalization plan (Ellen et al., 2015).

lived in by residents of privately owned, subsidized housing (Schwartz, 2014). Further, voucher holders with children appear to live near schools that are lower performing than the schools near LIHTC tenants and unassisted poor households (Ellen, Horn, and Schwartz, 2014). That said, while vouchers appear to be doing little to help poor white families reach low-poverty neighborhoods, they appear to be doing more to help minority families reach such neighborhoods. Black and Hispanic voucher households live in lower-poverty-rate neighborhoods than similarly poor residents of their same race (Galvez, 2010; Sard and Rice, 2014).

As for access to racially integrated communities, voucher holders, who are disproportionately minority, are no more likely to live outside of racially concentrated areas than other poor households. In 2004, the average voucher holder lived in a neighborhood with a minority proportion that was very similar to that of the average neighborhood lived in by poor residents within the same metropolitan area (Galvez, 2010).

Part of the challenge of using vouchers to help households reach different neighborhoods (or to achieve HUD's fair housing goals) is the issue of landlord participation. A 1997 HUD study reported that only one in six owners of single-family rental properties was aware of the voucher program. The study found that while owners of multifamily buildings were much more likely to know about the program, many reported concerns about paperwork and worries about potential problems with tenants. Perhaps not surprisingly, owners of higher rent apartments were far more likely to voice such concerns and were less willing to house voucher holders (HUD, 2000). It is possible that these numbers have shifted today. This study was undertaken when the "take one, take all" provision was still operating, which required owners who participated in the program to take all voucher holders who wanted to rent from them, and which another HUD study found discouraged landlords from participating in the program. The "take one, take all" requirement also potentially concentrated poverty as it encouraged the concentration of voucher holders in a relatively small number of participating buildings (Daniel, 2010). Congress repealed the provision in 1998, making participation in the voucher program voluntary, but potentially encouraging a broader set of landlords to participate. Meanwhile, as of March 2015, 12 states, the District of Columbia, and several localities had passed source-of-income discrimination laws that prohibit landlords from discriminating against voucher holders (PRRAC, 2013b).¹¹

In recent years, HUD has taken a number of steps to address concern about the concentration of voucher holders. First, when the agency introduced its Section 8 Management Assessment Program in 1998, which monitors the performance of housing authorities administering housing choice voucher programs, it included expanding housing choice outside areas of poverty or minority concentration as one of 14 criteria on which housing authorities will be

¹¹ For a list of these states and localities and a description of the laws, see PRRAC, 2013b, Appendix B, updated 2015.

judged (HUDc). Specifically, HUD awards bonus performance points to housing authorities if at least half of the voucher families with children they have assisted in the last year live in low-poverty census tracts or if the share of voucher families with children moving into low-poverty census tracts in the last year is at least 2 percentage points higher than the percentage who had lived in such tracts in the previous year (HUD, 2000). But as of 2008, just 224 of the roughly 1,500 agencies operating in metropolitan areas had claimed these bonus points (Sard and Rice, 2014).

Second, working in collaboration with nonprofits and local governments, HUD has supported several programs to assist voucher holders in making moves to lower-poverty and less racially concentrated neighborhoods. In truth, these programs have generally not been voluntary; most have emerged from litigation that accused HUD or a local housing authority of discriminatory housing practices. The oldest of these programs is the one born from the *Gautreaux* litigation in Chicago, which was established in 1976 by a consent decree and in the subsequent 22 years helped over 7,000 low-income families find homes in predominantly white neighborhoods (Rosenbaum and DeLuca, 2008). Nonprofit organizations administer several other programs around the country, each of which receives a special allocation of vouchers from HUD as well as funding for housing search assistance (HUD, 2000).

Motivated by initial findings evaluating the effects of these litigation-born programs, HUD launched the Moving to Opportunity (MTO) Program in 1993, which aimed to test whether improved neighborhood opportunities can significantly improve the life-chances of low-income residents living in distressed public housing. The program was implemented in five sites around the country, each of which received a special allocation of vouchers and funding for housing search counseling. Families were randomly assigned into one of three groups:

- 1) Treatment group families received mobility counseling and vouchers that they could only use to move to low-poverty neighborhoods.
- 2) Comparison group families received conventional, unrestricted vouchers and no counseling.
- 3) Control group families received no vouchers but were able to continue to live in their public housing units.

Finally, HUD established the Regional Opportunity Counseling Program in 1997, which provides funds to assist current and new voucher recipients who wish to move to a different community. Unlike the earlier mobility programs, the Regional Opportunity Counseling Program allows participating families to live in any neighborhood (Schwartz, 2014).

Research has yielded mostly encouraging results about how these various efforts have affected family outcomes. While the *Gautreaux* program showed fairly dramatic impacts on children's long-run educational and employment outcomes, the MTO program appears to have delivered minimal improvements in education, employment, or income, at least after 10 years. The modest MTO effects may be explained by the considerable dislocation that families suffered in moving, which may have undermined any benefits from moving to lower-poverty

neighborhoods. Further, many families in the treatment group never moved or failed to stay in their originally assigned neighborhoods. That said, the MTO treatment group participants reported feeling significantly safer than those in the comparison and control groups and exhibited improvements in health and well-being. And recent research suggests that children whose families moved to low-poverty areas when they were young were more likely to attend college and enjoyed significantly higher earnings than children in control-group families (Chetty, Hendren, and Katz, 2015).

More recently, HUD has begun to experiment with several promising administrative reforms that could help voucher holders reach lower-poverty neighborhoods. First, the agency has supported a regional collaborative of housing authorities in the Chicago metropolitan area that work together to reduce portability barriers and to establish a regional project-based voucher program with a regional waiting list. Second, the agency has proposed a number of programmatic reforms that could make it easier for voucher holders to move across jurisdictions. Proposed reforms include requiring PHAs to obtain HUD approval before refusing a voucher holder from a neighboring jurisdiction and allowing voucher holders additional time to make such moves. Third, HUD recently partnered with Great Schools to provide local housing authorities with information about local schools to share with voucher holders. Finally, and perhaps most importantly, HUD recently launched a Small Area Fair Market Rent Demonstration program, which allows housing authorities to use separate fair market rents (FMRs) for each ZIP Code. The current voucher program relies on a single FMR for each metropolitan area, set at the 40th or 50th percentile of rents, which means that units rented under that threshold are generally located in the lowest-income neighborhoods within the metropolitan area. Collinson and Ganong (2014) evaluate the shift from a single metropolitan area-wide FMR to ZIP Code-specific FMRs in the Dallas metro area. They find that, relative to voucher holders in neighboring Fort-Worth, Dallas voucher holders reached neighborhoods that scored substantially higher on a composite measure of quality 3 years after the policy change, with little net cost to the government.

d. Enforcement of the Fair Housing Act

In addition to administering federal programs that create housing and foster urban development, HUD is also charged with enforcing the nation's Fair Housing Act (42 U.S.C. § 3601, *et seq.*). While there are a number of provisions of federal law that have been used to combat discrimination in the housing market, the FHA is the most detailed prohibition on discrimination in housing found in federal law. It expressly outlaws discrimination in renting, selling, or financing housing on the basis of race, color, religion, sex, familial status, national origin, and disability (42 U.S.C. §§ 3604-3606). It further mandates that the Secretary of HUD, as well as all federal departments and agencies, “shall administer their programs and activities relating to housing and urban development . . . in a manner affirmatively to further” fair housing (42 U.S.C. § 3608(d), (e)(5)).

Despite the commitment expressed in the FHA, and the almost 5 decades of litigation and enforcement activities that have followed, many believe that the law has failed to achieve its mandate. In 2008, the National Commission on Fair Housing and Opportunity found, “When the Fair Housing Act became law in 1968, high levels of residential segregation had already become entrenched. However, the [a]ct’s promise as a tool for deterring discrimination and dismantling segregation remains unfulfilled. During the 40 years since the [a]ct was passed, these segregated housing patterns have been maintained by a continuation of discriminatory governmental decisions and private actions that the Fair Housing Act has not stopped” (National Commission on Fair Housing and Equal Opportunity, 2008: 10).

John Goering and others have argued that the nation’s fair housing enforcement mechanism should not be housed at HUD, an agency that has a concomitant obligation to provide housing for low-income households and to revitalize economically struggling urban areas (Goering, 2007; National Commission on Fair Housing and Equal Opportunity, 2008). Goering argues that the FHA’s imposition upon HUD to police both itself and its grantees puts the agency in a very difficult position. It also forces HUD to choose between conflicting goals (Goering, 2007). As Goering explains, “[t]he agency is preoccupied by issues of production, building conditions, and rents, so that the goal is often getting housing built no matter where it is located, segregated or not” (Goering, 2007: 258).

Efforts to enforce the FHA are also complicated by the tension that can sometimes exist between the act’s core mandates: to prohibit discrimination in housing and affirmatively further integration. The U.S. Court of Appeals for the Second Circuit’s *Starrett City* ruling highlights the complexity of attempting to achieve and maintain housing integration in a judicial context that also limits the ability to use some race-conscious methods to achieve this goal. Decided in 1988, *United States v. Starrett City Associates*, 840 F.2d 1096 (2d Cir. 1988), involved a challenge to the rental practices of Starrett City, the largest housing development in the nation at the time, consisting of 46 buildings and over 5,000 apartments in Brooklyn, New York. The developers sought to maintain a strict racial quota system in order to, they claimed, avoid white flight and maintain the integration of the development. The policy was supported by a number of pro-integration advocates (Schuck, 2003). The government brought suit alleging that Starrett City’s quota system violated the FHA’s antidiscrimination prohibition, and ultimately the Second Circuit agreed (*United States v. Starrett City Associates*, 1988). The *Starrett City* decision makes clear that, despite the FHA’s integration goal, the act places a limit on the use of race-conscious solutions to maintain integrated neighborhoods.

Despite the tensions inherent in the act’s design highlighted by Goering, Schuck, and others, HUD’s fair housing enforcement has had some notable successes (PRRAC, n.d.). In recent years, new obstacles to achieving the act’s goals have emerged; yet, at the same time, HUD appears to have reinvigorated its commitment and approach. A brief discussion of the evolution of the act and its enforcement follows, focusing first on the antidiscrimination provisions of the law and then examining the law’s affirmatively furthering fair housing mandate.

i. Enforcement of FHA's Antidiscrimination Mandate

When the FHA was initially passed, its enforcement mechanisms were weak. The Justice Department was able to sue in court where it found a defendant had a “pattern or practice of discriminat[ing]” (Schill, 2007: 145). However, HUD’s enforcement powers were limited to “conferences, conciliation, and persuasion” to eliminate discrimination (Ware, 1993; Schill, 2007). Where those efforts failed, complainants were on their own to pursue a claim in federal court. But the private right of action had a short statute of limitations and a low cap on punitive damages (Ware, 1993). In addition, the federal enforcement mechanisms were not available to complainants when local or state laws existed that “were deemed substantially equivalent to the procedures and remedies accorded by” the FHA (Ware, 1993: 75). Over the first 2 decades the FHA was in effect, discrimination in the housing market remained widespread, and the act was seen as doing little to address it (Schill, 2007). The act’s enforcement provisions came to be seen as its main limitation (Schill, 2007).

1. 1988 Amendments

Motivated to invigorate what Senator Edward Kennedy famously characterized as a “toothless tiger,” there was widespread support in Congress for FHA reform by the late 1980s (Schill, 2007). In 1988, Congress’ amendments to the law were intended to overhaul its enforcement mechanisms and expand HUD’s enforcement powers. A number of revisions strengthened the private right of action in the original law. The amendments removed the cap on punitive damages, authorized courts to award attorney fees and costs and appoint an attorney upon a showing of need, lengthened the statute of limitations, and made clear that complainants need not exhaust administrative remedies before filing in court (Ware, 1993; 42 U.S.C. § 3613). The amendments also created an administrative enforcement procedure, administered by HUD, through which civil penalties were available, with judicial review of final decisions (Ware, 1993; 42 U.S.C. § 3612). The other significant reform imposed by the law was the addition of familial status and disability to the list of protected classes under the act (Ware, 1993; 42 U.S.C. § 3604-3606).

2. Enforcement Since 1988

Despite the intention of Congress to bolster the efficacy of the act in 1988, post-amendment evaluations find that enforcement problems persisted (Schill, 2007; Johnson, 2011). A 2004 report by the U.S. General Accounting Office critiques HUD’s enforcement of the act, noting, among other things, that there were regional differences in investigation outcomes, and that new HUD staff often lacked skills needed to conduct investigations (Schill, 2007).

The addition of new protected classes (disability and family status) in the 1988 amendments led to many more complaints being filed, slowing down an already-long administrative process and resulting in failure to comply with the allotted timeframes of the statute (Schill, 2007;

Ware, 1993). Analyzing data on complaints filed with HUD¹² between 1989 and 2003, Schill (2007) finds that claims based on disability status steadily rose after 1988; and by 1999 they had become the most common basis of discrimination claims.

Schill (2007) systematically examined data on HUD's enforcement activities from 1989 through 2003 and found that HUD's enforcement since the 1988 amendments did little to improve the influence of the law. Only 3.3 percent of all complaints filed resulted in HUD bringing claims against the respondent; and the number of cases in which this occurred dropped over the course of the study period (Schill, 2007). In cases that settled between 1989 and 2003 (35.6 percent of complaints), the median settlement was less than \$2,000 (Schill, 2007). Claims that were adjudicated by HUD administrative law judges or in federal court had average awards of less than \$10,000 (Schill, 2007). Schill concludes that, in the current complaint-based system of regulation, fair housing enforcement is “destined to fail,” and penalties are too low to have the broad impact required to reduce discrimination significantly (Schill, 2007: 169). He argues that laws such as the Fair Housing Act can have a substantial deterrent effect only if one of two conditions holds true: (1) if penalties are not high, enforcement must be intensive so that most violators will face consequences; or (2) if widespread enforcement is not feasible, penalties must be high for violators who are caught (Schill, 2007). According to Schill, “[c]urrent enforcement of the Fair Housing Act shares neither of these characteristics—very few meritorious cases are actually brought (when measured against baseline estimates of the amount of discrimination in the housing market) and the average penalty is exceedingly low” (Schill, 2007: 169).

In recent years, HUD's efforts to enforce the antidiscrimination provisions of the act have been reinvigorated (PRRAC, 2013a). In 2013, HUD took an important step to safeguard one of the legal theories central to the enforcement of the act's antidiscrimination mandate. HUD issued, for the first time, an official rule acknowledging its long-held position that the FHA permits claims of discrimination based on intentional acts of discrimination but also on acts that have a disparate impact (24 C.F.R. Part 100.500 (2013); Lawyers' Committee for Civil Rights et al., 2013).

Even though plaintiffs have successfully argued disparate impact theories of discrimination since soon after the FHA's inception, and a strong consensus among federal courts had emerged holding that the act permits disparate impact claims (Schwemm and Pratt, 2009), the issue was set to be decided by the Supreme Court for the first time during the 2014–2015 term. In June 2015, the U.S. Supreme Court put an end to any doubt about the validity of disparate impact claims under the FHA, holding that “disparate-impact claims are cognizable

¹² If a local or state government has a fair housing law that is substantially equivalent to the Fair Housing Act, agencies charged with enforcing that law can receive funding from HUD to address fair housing complaints (HUDd). Immediately after the 1988 amendments, HUD was handling more complaints than state and local fair housing agencies; but that balance shifted in the mid-1990s, as the number of complaints filed with HUD dramatically declined while the number filed with local and state agencies grew (Schill, 2007). By 2003, state and local fair housing agencies were handling over two-thirds of all housing discrimination complaints (Schill, 2007). The overall number of complaints peaked at over 10,000 in 1993, and then dipped later in the 1990s. Between 2000 and 2003, it inched back up, with a total of 8,570 fair housing complaints filed in 2003 (Schill, 2007).

under the Fair Housing Act” (*Inclusive Communities Project, Inc. v. Texas Dep’t of Hous. & Cmty. Affairs*, 2015: 23). Following the decision, HUD Secretary Julián Castro acknowledged the importance of this tool for furthering HUD’s mission: “Today is another important step in the long march toward fulfilling one of our nation’s founding ideals: equal opportunity for all Americans. The Supreme Court has made it clear that HUD can continue to use this critical tool to eliminate the unfair barriers that have deferred and derailed too many dreams” (HUD, 2015a).

ii. Enforcement of FHA’s Affirmatively Furthering Fair Housing Mandate

The Fair Housing Act requires the Secretary of HUD and all executive departments and agencies to administer their “programs and activities relating to housing and urban development in a manner affirmatively to further the policies of [fair housing]” (42 U.S.C. § 3608(e)(5) (2006)). While the statute itself is silent on what it means to further fair housing, its legislative history and subsequent case law make it clear the FHA is intended not only to eliminate housing discrimination, but also to foster integration (Schwemm, 2011–2012; Roisman, 2008). HUD regulation requires jurisdictions to implement this mandate by “conduct[ing] an analysis to identify impediments to fair housing choice within the jurisdiction, tak[ing] appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain[ing] records reflecting the analysis and actions in this regard” (24 C.F.R. § 91.225(a)(1)).

Housing experts, including former HUD officials, have criticized the lack of enforcement of the mandate to affirmatively further fair housing (The Opportunity Agenda, 2010; Pearl, 2014). HUD has historically relied on, and often deferred to, certifications of compliance with the mandate from its grantees (The Opportunity Agenda, 2010). In a 2010 report, the Government Accountability Office (GAO), reviewing a sample of the analysis of impediments, found that many were out of date and a number were missing altogether (GAO, 2010). The GAO concluded that “HUD’s [analysis of impediments] requirements and oversight and enforcement approaches have significant limitations that likely contribute to our findings that many such documents are outdated or contain other weaknesses” (GAO, 2010: 22).

Unlike the antidiscrimination provisions of the FHA, the mandate found in Section 3608 has been widely interpreted as having no private right of action (Rothstein and Whyte, 2012; Schwemm, 2014). In 2010, Congress considered and rejected an amendment to the law that would have added failure to comply with the affirmatively furthering fair housing mandate as one of the “discriminatory housing practices” actionable under the law by private plaintiffs (Schwemm, 2011–2012). As a result, private litigants must use other provisions of law to enforce the act’s affirmatively furthering fair housing mandate, namely the Administrative Procedures Act, the False Claims Act, and 42 U.S.C § 1983. These other mechanisms, however, are more limited than a private right of action would be (Rothstein and Whyte, 2012; Schwemm, 2014). Relying on HUD to enforce the affirmatively furthering fair housing requirement limits its reach, not only because of HUD’s resource limitations, but also because

individuals and experts on the ground are often better situated to identify instances of noncompliance (Rothstein and Whyte, 2012).

A landmark case filed in 2006 illustrated the impact that private litigation can have and created a model for both public and private enforcement of Section 3608's mandate. The Anti-Discrimination Center of Metro New York filed suit under the False Claims Act against Westchester County, New York, claiming that the county falsely certified that it had complied with HUD's affirmatively furthering fair housing mandate, as defined in regulation and applicable to the county because of its receipt of Community Development Block Grant funds (Schwemm, 2011–2012; Steil, 2011). Ultimately, the court held "that the county had made false certifications on seven annual AFFH certifications and more than a thousand implied certifications of compliance" (Pearl, 2014: 294). After the plaintiff won partial summary judgment, the parties entered into a "landmark consent decree, which was brokered by HUD" (Lawyers Committee for Civil Rights et al., 2013: 3). Pursuant to the settlement, the county is required to spend \$52 million in white municipalities to develop affordable housing, pay the plaintiff \$7.5 million, and pay attorney fees totaling \$2.5 million (Pearl, 2014).

Many experts have suggested that this case was a watershed moment for HUD, ushering in a new approach to fair housing enforcement with sharper teeth and much more serious consequences for violators. Johnson (2011: 1222) writes that the Westchester case "puts the state and local grantees regulated by HUD on notice to take more concrete and substantive action to enforce" the affirmatively furthering fair housing mandate. She argues that this coercive power of the law over federal grantees is a more promising mechanism for achieving lasting reform than the antidiscrimination enforcement, which has a number of practical impediments and "risks leaving out central institutional players—state actors—who contribute to interrelated problems of discrimination and segregation" (Johnson, 2011: 1214). Schwemm (2011–2012: 163) argues that the Westchester case was a "wake-up call to the federal government regarding the fact that its 1,200 CDBG grantees could be, and should be, required to do what for many years the law has mandated as a condition of receiving HUD funds."

Criticism of HUD's enforcement of the mandate to affirmatively further fair housing, and the high-profile Westchester case and settlement, ultimately resulted in a number of important shifts in HUD's approach to enforcing the affirmatively furthering mandate (Pearl, 2014).

A 2013 fair housing program review conducted by a trio of fair housing organizations acknowledged a significant improvement in the agency's efforts to enforce the affirmatively furthering fair housing mandate, listing four major indications of this commitment. First, HUD increased its affirmatively furthering fair housing enforcement through federal litigation against its grantees; second, it investigated complaints involving Section 3608 violations

filed by private individuals; third, it increased its scrutiny of analyses of impediments to fair housing submitted by grantees; and finally, it conducted compliance reviews of the Section 3608 mandate that have resulted in grantees entering into voluntary compliance agreements (Lawyers Committee for Civil Rights et al., 2013).

Also in 2013, HUD issued a far more extensive proposed rule for compliance with the affirmatively furthering requirement than has previously existed (Pearl, 2014). The final rule was signed by Secretary Castro in June 2015 (HUD, 2015b). In the Executive Summary accompanying the rule, HUD acknowledged the new rule was “[i]nformed by lessons learned in localities across the country, and with program participants, civil rights advocates, other stakeholders, and the U.S. Government Accountability Office all commenting to HUD that the [analysis of impediments] approach was not as effective as originally envisioned” (HUD, 2015b: 3).

III. Looking to the Future: Emerging Challenges

The previous sections summarized HUD’s efforts to balance its multiple and sometimes conflicting goals in the rental housing market in its first 50 years. In this section, we turn to the challenges HUD faces today and will face in the coming years as the nation’s legal, demographic, and fiscal landscapes evolve.

a. Demographic Change

When the Fair Housing Act was passed in 1968, Congress envisioned it as addressing black-white segregation and discrimination against African-Americans. Close to 50 years later, Latinos are the country’s largest minority group, Asians comprise nearly 6 percent of the population, and non-Hispanic whites make up just 63 percent. Further, the share of non-Hispanic whites is projected to fall to half by 2040. This greater diversity, generated through an increase in immigration subsequent to the passage of the Hart-Celler Immigration Act of 1965, has made the issues of racial and ethnic integration more complex for policymakers at HUD and elsewhere. Some of the policies adopted to address a world of only blacks and whites may need to be reconsidered.

As for implications for segregation, it is possible that this growing diversity could make some white households anxious and deepen their resolve to live in all-white enclaves. Yet, as the country becomes more diverse, it is also possible that racial attitudes will soften as the traditional black-white divide is blurred. And though the causes are unclear, segregation between blacks and whites has fallen steadily since 1980 (De la Roca, Ellen, and O’Regan, 2014).

Meanwhile, the growing diversity may conceal persistent segregation. Asians and Latinos are less segregated from whites than blacks are, and some argue that the causes of their

segregation are more benign. As non-black minorities grow in number, calls to address segregation may thus be seen as less urgent. Recent research suggests, however, that segregation is undermining the economic advancement of Latinos to the same degree that it is undermining the progress of African-Americans (Steil, De la Roca, and Ellen, 2015).

b. Growing Income Inequality, Economic Segregation, and Rent Burdens

HUD's mandates to provide quality affordable housing and foster integrated, inclusive communities are becoming more daunting in light of the economic shifts in recent years that have exacerbated income inequality, economic segregation, and rent burdens.

Income inequality has risen steadily in the United States in the past few decades. In 1978, the richest 1 percent of households earned about 9 percent of all income in the United States; by 2012, that percentage had risen to 23 percent (Piketty and Saez, 2003).¹³ Social scientists are finding that income inequality has important implications for economic mobility and health. This growing inequality has likely had important implications for local housing markets as well.

For one thing, growing inequality has likely contributed to economic segregation (Watson, 2009). Although black-white segregation has been falling in the past few decades, and Latino-white and Asian-white segregation have remained fairly steady, income segregation has been growing. Between 1970 and 2010, the share of households in large metropolitan areas living in neighborhoods with median incomes close to that of the metropolitan area as a whole fell from two-thirds to just 42 percent (Reardon and Bischoff, 2014). Instead of being filled with middle-income or mixed-income neighborhoods, metropolitan areas are now populated by economically homogeneous neighborhoods that are either very poor or very rich. This polarization has likely widened disparities in access to neighborhood services and opportunities. And Chetty et al. (2014) find that economic mobility is higher in metropolitan areas with lower levels of economic and racial segregation.

In addition to fueling residential segregation, growing inequality may be exacerbating rent burdens. In many metropolitan areas, expansion of the very high-income population may be bidding up prices and rents, making it more difficult for those with lower incomes to afford homes. Since 2000, rent burdens have been increasing in most areas of the country and are climbing up the income ladder to reach moderate-income renters (Capperis, Ellen, and Karfunkel, 2015).

c. Budget Cuts

The fiscal environment is another significant challenge. Federal, state, and local governments are all facing budgetary shortfalls that may increase in the coming years, given the looming retirement of the baby boomers. HUD's Office of Fair Housing and Equal Opportunity is currently staffed at its lowest level since 1989. Housing programs have already faced

¹³ Updated table available at: <http://eml.berkeley.edu/~saez/TabFig2013prel.xls>.

cutbacks. While expenditures on housing assistance to low-income families were fairly stable throughout the 2000s and rose in 2010 and 2011, partly due to one-time spending authorized by the American Recovery and Reinvestment Act, they declined significantly as a result of budget sequestration. In response, local housing authorities cut back on the number of families that they serve. Between December 2012 and June 2014, the number of families receiving vouchers fell by 100,000 (Center on Budget and Policy Priorities, 2014). Meanwhile the public housing capital fund, which provides support for repairs and renovations, has eroded after a decade of funding cuts. In 1999, Congress authorized an amount equivalent to \$4.26 billion in 2014 dollars for the public housing capital fund. By 2015, that amount fell to under \$1.9 billion (Office of Management and Budget, 2015). And importantly, these shrinking resources are not the result of diminishing needs.

In such a tight fiscal environment, it will be difficult to introduce any new programs or even programmatic reforms that do not clearly save money. And the previously discussed debates about whom to serve and where to build will likely become more contested.



HUD will clearly face serious challenges in its next 50 years as it continues to support affordable housing, foster community redevelopment, and encourage inclusive communities. But despite these challenges, there is much HUD can do that will help to stretch resources as well as further economic and racial integration.

First, it can do more to encourage regional collaboration and pooling of resources among housing authorities. Most housing authorities around the country are quite small; however, economies of scale could be achieved if neighboring authorities shared some administrative functions. Such collaboration would also likely open up greater housing choice for assisted households if agencies shared waiting lists and marketing efforts.

Second, HUD—and Congress—might adjust laws and rules to take into account how assisted housing's siting and tenant composition interact. Currently, the rules about tenant composition and preferences treat developments like islands, paying no attention to the characteristics of the surrounding community. Yet, at least some assisted housing developments are surrounded by very affluent neighborhoods offering access to a robust set of services and opportunities (Dastrup et al., 2015). In such developments, especially when they are relatively small, concentrations of poor households are less concerning. By contrast, HUD might aim to serve households with a wider range of incomes in developments surrounded by high-poverty environments. Similarly, HUD may want to give local agencies greater leeway to site new assisted housing in low-income neighborhoods that are experiencing gentrification pressures to help ensure economic diversity over the longer run.

Third, HUD could adopt reforms to the voucher program that allow households to have a more meaningful choice of options and make it easier for them to find housing in safe, low-poverty neighborhoods with high-performing schools. As noted, research has already shown that moving to small area FMRs can expand housing choices without raising costs (Collinson and Ganong, 2014). HUD could also require housing authorities to provide more information about neighborhoods and schools to voucher holders (especially those with children) and broaden the lists of voucher-friendly housing units that they provide to voucher holders, as those lists currently include a disproportionate number of homes in high-poverty neighborhoods (DeLuca, 2014). Further, HUD could loosen its rules around portability to make it easier for voucher holders to move into other jurisdictions (Sard and Rice, 2014). Finally, HUD might ask housing authorities to think strategically about using project-based vouchers to lock in affordability in higher-opportunity neighborhoods (Norman, 2014).

In its 50-year history, HUD has grappled with complex often competing goals of providing affordable housing, improving neighborhoods, and ensuring access to inclusive communities. There are still vexing challenges facing the agency as it enters its second half-century, but there are also opportunities to continue to move forward on these critically important objectives.

Acknowledgments

We are grateful to Barbara Sard, Justin Steil, Philip Tegeler, and the editors at HUD for their very helpful comments on earlier drafts of this chapter. We also thank Adam Ezrapour, Jack Nelson, Mariana Oliver, and Roman Pazuniak for their excellent research assistance.

References

- Capperis, Sean, Ingrid Ellen, and Brian Karfunkel. 2015. *NYU Furman Center/Capital One National Affordable Rental Housing Landscape*. <http://furmancenter.org/NationalRentalLandscape>.
- Center on Budget and Policy Priorities, Budget and Appropriations. 2014. *Sequestration's Rising Toll: 100,000 Fewer Low-Income Families Have Housing Vouchers*. <http://www.cbpp.org/research/index.cfm?fa=topic&id=139>.
- Chetty, Raj, Nathaniel Hendren, Patrick Kline, and Emmanuel Saez. 2014. Where Is the Land of Opportunity? The Geography of Intergenerational Mobility in the United States. Working Paper No. 19843. <http://www.nber.org/papers/w19843>.
- Chetty, Raj, Nathaniel Hendren, and Lawrence Katz. 2015. "The Effects of Exposure to Better Neighborhoods on Children: New Evidence From the Moving to Opportunity Project." <http://scholar.harvard.edu/hendren/publications/effects-Exposure-Better-Neighborhoods-Children-New-Evidence-Moving-Opportunity>.
- Collinson, Robert, Ingrid Ellen, and Jens Ludwig. 2015. Low-Income Housing Policy. <http://www.nber.org/papers/w21071>.
- Collinson, Robert, and Peter Ganong. 2014. The Incidence of Housing Voucher Generosity. <http://dx.doi.org/10.2139/ssrn.2255799>.
- Daniel, Tamica. 2010. "Bringing Real Choice to the Housing Choice Voucher Program: Addressing Voucher Discrimination Under the Federal Fair Housing Act," *The Georgetown Law Journal* 98: 769–794.
- Dastrup, Samuel, Ingrid Ellen, Anna Jefferson, Max Weselcouch, Deena Schwartz, and Karen Cuenca. 2015. *The Effects of Neighborhood Change on New York City Housing Authority Residents*. Report prepared for NYC Center for Economic Opportunity.
- De La Roca, Jorge, Ingrid Ellen, and Katherine O'Regan. 2014. "Race and Neighborhoods in the 21st Century: What Does Segregation Mean Today?" *Regional Science and Urban Economics* 47: 138–151.
- DeLuca, Stefanie. 2014. *Why Don't More Voucher Holders Escape Poor Neighborhoods?* <http://furmancenter.org/research/iri/deluca>.
- Devine, Deborah J., Robert W. Gray, Lester Rubin, and Lydia B. Taghavi. 2003. *Housing Choice Voucher Location Patterns: Implications for Participants and Neighborhood Welfare*. Washington, DC: U.S. Department of Housing and Urban Development.

- Ellen, Ingrid G., Keren M. Horn, and Amy E. Schwartz. 2014. "Do Housing Choice Voucher Holders Live Near Good Schools?" *Journal of Housing Economics* 23: 28–40.
- Ellen, Ingrid G., Keren M. Horn, Yiwei Kuai, Roman Pazuniak, and Michael Williams. 2015. *Effect of QAP Incentives on the Location of LIHTC Properties*. Washington, DC: U.S. Department of Housing and Urban Development.
- Galvez, Martha M. 2010. *What Do We Know About Housing Choice Voucher Program Location Outcomes? A Recent Review of Literature*. What Works Collaborative. <http://www.urban.org/uploadedpdf/412218-housing-choice-voucher.pdf>.
- Gayles, Ebony, and Silva Mathema. 2014. *Is the HOME Program Affirmatively Furthering Fair Housing?* Washington, DC: Poverty and Race Research Action Council.
- Goering, John. 2007. "The Effectiveness of Fair Housing Programs and Policy Options." In *Fragile Rights Within Cities: Government, Housing, and Fairness*, edited by J. Goering. Plymouth, United Kingdom: Rowman & Littlefield: 253–286.
- Hartung, John M., and Jeffrey R. Henig. 1997. "Housing Vouchers and Certificates as a Vehicle for Deconcentrating the Poor: Evidence from the Washington, D.C., Metropolitan Area," *Urban Affairs Review* 32 (3): 403–419.
- Hollar, Michael K. 2015. *Understanding Whom the LIHTC Program Serves: Tenants in LIHTC Units as of December 31, 2012*. Washington, DC: U.S. Department of Housing and Urban Development.
- Horn, Keren M., and Katherine M. O'Regan. 2011. "The Low Income Housing Tax Credit and Racial Segregation," *Housing Policy Debate* 21 (3): 443–473.
- Johnson, Olatunde. 2011. "The Last Plank: Rethinking Public and Private Power to Advance Fair Housing," *University of Pennsylvania Journal of Constitutional Law* 13: 1191.
- Kingsley, G. Thomas, Jennifer Johnson, and Kathryn L. S. Pettit. 2003. "Patterns of Section 8 Relocation in the HOPE VI Program," *Journal of Urban Affairs* 25 (4): 427–447.
- Lawyers Committee for Civil Rights, National Fair Housing Alliance, and Poverty and Race Research Action Council. 2013. *Affirmatively Furthering Fair Housing at HUD: A First Term Report Card, Part II*. <http://www.prrac.org/pdf/HUDDFirstTermReportCardPartII.pdf>.
- Lev, Steven. 1981. "HUD Site and Neighborhood Selection Standards: An Easing of Placement Restrictions," *Urban Law Annual* 22 (1): 199–225.

- National Commission on Fair Housing and Equal Opportunity. 2008. *The Future of Fair Housing: Report of the National Commission on Fair Housing and Equal Opportunity*. http://www.civilrights.org/publications/reports/fairhousing/future_of_fair_housing_report.pdf.
- Norman, Stephen. 2014. Children and Housing Vouchers: A Practitioner's Perspective. <http://furmancenter.org/research/iri/norman>.
- Office of Management and Budget. 2015. Budget Authority. <https://www.whitehouse.gov/sites/default/files/omb/budget/fy2016/assets/budauth.xls>.
- Orfield, Myron, Thomas F. Luce, Jr., Will Stencil, and Eric Myott. January 2014. *Reforming Subsidized Housing Policy in the Twin Cities to Cut Costs and Reduce Segregation*. Institute on Metropolitan Opportunity.
- Pearl, Laurence D. 2014. "Community Development and Fair Housing: A Work Still in Progress," *Housing Policy Debate* 24 (1): 288–296. Pendall, Rolf. 2000. "Why Voucher and Certificate Users Live in Distressed Neighborhoods," *Housing Policy Debate* 11 (4): 881–909.
- Piketty, Thomas and Emmanuel Saez. 2003. "Income Inequality in the United States, 1913–1998," *Quarterly Journal of Economics* 118 (1): 1–39 (Tables and Figures updated to 2013 in Excel format, January 2015).
- Popkin, Susan J., Bruce Katz, Mary K. Cunningham, Karen D. Brown, Jeremy Gustafson, and Margery A. Turner. 2004. *A Decade of HOPE VI: Research Findings and Policy Challenges*. Washington, DC: Urban Institute. http://www.urban.org/UploadedPDF/411002_HOPEVI.pdf.
- Poverty & Race Research Action Council (PRRAC). 2013a. *Affirmatively Furthering Fair Housing at HUD: A First Term Report Card, Part I*. <http://www.prrac.org/pdf/HUDDFirstTermReportCard.pdf>.
- . 2013b. *Expanding Choice: Practical Strategies for Building a Successful Housing Mobility Program*. Appendix B, updated 2015. http://www.prrac.org/full_text.php?item_id=13718&newsletter_id=0&header=Current%20Projects.
- . 2011. *Opportunity and Location in Federally Subsidized Housing Programs*. <http://www.prrac.org/pdf/OpportunityandLocationOctober2011.pdf>.
- . n.d. *Fifty Years of "The People v. HUD": A HUD 50th Anniversary Timeline of Significant Civil Rights Lawsuits and HUD Fair Housing Advances*. <http://prrac.org/pdf/HUD50th-CivilRightsTimeline.pdf>.

- Reardon, Sean F., and Kendra Bischoff. 2014. *No Neighborhood Is an Island*. <http://furmancenter.org/research/iri/reardonbischoff>.
- Roisman, Florence W. 2008. "Living Together: Ending Racial Discrimination and Segregation in Housing," *Indiana Law Review* 41, 507.
- Rosenbaum, James E., and Stefanie DeLuca. 2008. "Does Changing Neighborhoods Change Lives?" In *Social Stratification*, edited by D. Grusky. Philadelphia, PA: Westview: 393–399.
- Rothstein, Melissa, and Megan K. Whyte. 2012. *Teeth in the Tiger: Organizational Standing as a Critical Component of Fair Housing Act Enforcement*. (Issue Brief). http://www.acslaw.org/sites/default/files/Rothstein_and_Whyte__Organizational_Standing1.pdf.
- Sard, Barbara, and Douglas Rice. 2014. *Creating Opportunity for Children: How Housing Location Can Make a Difference*. <http://www.cbpp.org/cms/index.cfm?fa=view&id=4211>.
- Schill, Michael H. 2007. "Implementing the Federal Fair Housing Act: The Adjudication of Complaints." In *Fragile Rights Within Cities: Government, Housing, and Fairness*, edited by J. Goering. Plymouth, United Kingdom: Rowman & Littlefield: 143–176.
- . 1993. "Distressed Public Housing: Where Do We Go From Here?" *University of Chicago Law Review* 60: 497–554.
- Schill, Michael H., and Susan M. Wachter. 1995. "The Spatial Bias of Federal Housing Law and Policy: Concentrated Poverty in Urban America," *University of Pennsylvania Law Review* 143 (1285): 1285–1342.
- Schuck, Peter H. 2003. *Judging Remedies: Judicial Approaches to Housing Segregation*. 37 Harv C.R.-C.L. L. Rev. 289.
- Schwartz, Alex F. 2014. *Housing Policy in the United States* (3rd ed.). New York, NY: Routledge.
- Schwartz, Amy E., Ingrid G. Ellen, Ioan Voicu, and Michael H. Schill, 2006. "The External Effects of Subsidized Housing," *Regional Science and Urban Economics* 36: 679–707.
- Schwemm, Robert G. 2014. Housing Discrimination Law and Litigation §§ 21:2 and 21.7. www.westlaw.com.
- . 2011–2012. "Overcoming Structural Barriers to Integrated Housing: A Back-to-the-Future Reflection on the Fair Housing Act's 'Affirmatively Further' Mandate," *Kentucky Law Journal* 100 (1): 125–176.

- Schwemm, Robert G., and Sara K. Pratt. 2009. *Disparate Impact Under the Fair Housing Act: A Proposed Approach*. <http://www.nationalfairhousing.org/portals/33/disparate%20impact%20analysis%20final.pdf>.
- Spence, Lewis H. 1993. "Rethinking the Social Role of Public Housing," *Housing Policy Debate* 4 (3): 355.
- Steil, Justin. 2011. "Innovative Responses to Foreclosures: Paths to Neighborhood Stability and Housing Opportunity," *Columbia Journal of Race and Law* 1 (1): 63–117.
- Steil, Justin, Jorge De la Roca, and Ingrid G. Ellen. 2015. "Desvinculado y Desigual: Is Segregation Harmful to Latinos?" *Annals of the American Academy of Political and Social Sciences* 660 (1), 57–76.
- Tegeler, Philip D. 2005. "The Persistence of Segregation in Government Housing Programs." In *The Geography of Opportunity: Race and Housing Choice in Metropolitan America*, edited by X. N. De Souza Briggs with foreword by W. J. Wilson. Washington, DC: Brookings Institution Press: 197–216.
- The Opportunity Agenda. 2010. *Public Policy Brief: Reforming HUD's Regulations to Affirmatively Further Fair Housing*. http://opportunityagenda.org/files/field_file/2010.03ReformingHUDRegulations.pdf.
- U.S. Department of Housing and Urban Development (HUD). 2015b. *Affirmatively Furthering Fair Housing Final Rule*. June 30. http://www.huduser.org/portal/sites/default/files/pdf/AFFH_Final_Rule.pdf. (Referred to in the text as "HUD, 2015b")
- . 2015a. HUD Secretary Julián Castro Statement on Ruling in *Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc.*, June 25. http://portal.hud.gov/hudportal/HUD?src=/press/speeches_remarks_statements/2015/Statement_062515. (Referred to in the text as "HUD, 2015a")
- . 2014. *Resident Characteristics Report*. <https://pic.hud.gov/pic/RCRPublic/rcrmain.asp>.
- . 2000. *Section 8 Tenant-Based Housing Assistance: A Look Back After 30 Years*. Washington, DC: Author. <http://www.huduser.org/Publications/pdf/look.pdf>.
- . n.d. *Mission*. <http://portal.hud.gov/hudportal/HUD?src=/about/mission>. (Referred to in the text as "HUDa")
- . n.d. *Preserving Multifamily Properties*. http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/presrv/presmfh. (Referred to in the text as "HUDb")

- . n.d. *SEMAP Frequently Asked Questions*. http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/hcv/semmap/semmap. (Referred to in the text as “HUDc”)
- . n.d. *Substantial Equivalence Certification*. http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/partners/FHAP/equivalency. (Referred to in the text as “HUDd”)
- . n.d. Picture of Subsidized Households. <http://www.huduser.org/portal/datasets/picture/yearlydata.html>. Accessed on 6/23/2015. (Referred to in the text as “HUDe”)
- U.S. Government Accountability Office. 2010. *HUD Needs to Enhance its Requirements and Oversight of Jurisdictions’ Fair Housing Plans*. Washington, DC: Author. <http://www.gao.gov/assets/320/311065.pdf>.
- Vale, Lawrence J. 2000. *From the Puritans to the Projects: Public Housing and Public Neighbors*. Cambridge, MA: Harvard University Press.
- Vernarelli, Michael J. 1986. “Where Should HUD Locate Assisted Housing?” In *Housing Desegregation and Federal Policy*, edited by J. M. Goering. Chapel Hill: University of North Carolina Press: 214–234.
- Ware, Leland B. 1993. “New Weapons for an Old Battle: The Enforcement Provisions of the 1988 Amendments to the Fair Housing Act,” *American University Administrative Law Journal* 7: 59.
- Watson, Tara. 2009. “Inequality and the Measure of Residential Segregation by Income in American Neighborhoods,” *Review of Income and Wealth* 55 (3): 820–844.
- Wood, Michelle, Jennifer Turnham, and Gregory Mills. 2008. “Housing Affordability and Family Well-Being: Results From the Housing Voucher Evaluation,” *Housing Policy Debate* 19 (2): 367–412.

Cases

- Texas Dep’t of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. ____ (2015).
- United States v. Starrett City Associates*, 840 F.2d 1096 (2d Cir. 1988).