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Making the Case for Housing Mobility: the CMTO Study in Seattle

Elizabeth Julian

This month Raj Chetty and his research "dream team" continued its groundbreaking, and indeed breathtaking, work on whether and how we might replace poverty with opportunity over the life of a low income child. The release of "Creating Moves to Opportunity: Experimental Evidence on Barriers to Neighborhood Choice" brings us the latest from the Creating Moves to Opportunity research experiment involving low income families in Seattle/King County seeking to use a federal housing choice voucher to obtain housing of their choice.

The research design is both rigorous and straightforward. Using a randomized controlled trial, the CMTO team sought to answer a question that has bedeviled social scientists, advocates and policy makers for decades: why do the vast majority of low income families tend to live in neighborhoods that offer limited opportunities for upward mobility? The researchers note that one common explanation is that low income families *prefer* those locations for individual, personal reasons, such as proximity to family, affordable housing and jobs. An alternative explanation is that they do not move to higher opportunity areas because of barriers to making such moves. Under the research design all families participating in both the control and treatment groups had the option to use their housing voucher in *any* neighborhood within the housing authorities' jurisdictions.

The CMTO experiment concluded, based on an analysis of the quantitative data and qualitative evidence, that low income families live disproportionately in low opportunity areas not because of strong preferences for such areas, but rather because of difficulty overcoming the barriers to accessing housing in higher opportunity locations. The CMTO team concluded that barriers in the housing search process are a "central driver of residential segregation by income," and that those barriers are most effectively and efficiently removed by a high-touch, personal intervention that supports the family in their search for housing in a higher opportunity neighborhood. The moves to high opportunity areas by members of the treatment group, who received the CMTO customized housing search assistance, increased to 54% compared to 14% of those in the control group, who did not receive those services.

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Barriers and Opportunities in the Housing Voucher Program: Insights from a Survey of Boston Area Families

Alexandra M. Curley & Gretchen Weismann

A recent report published by the Federal Reserve Bank of Boston provides new insights about the housing search process, experiences, and location outcomes for families who receive vouchers through the Housing Choice Voucher Program. We found that many families residing in lower-opportunity neighborhoods are not living in areas that match their housing search preferences or priorities, and that families who moved to higher-opportunity neighborhoods (e.g. low poverty, high performing schools) report high neighborhood satisfaction. This article highlights some of the key findings from this important study.

In 2017, fewer than 14% of families with children receiving vouchers in the United States lived in low poverty neighborhoods, and white households were nearly twice as likely as black households to live in such neighborhoods. The story in Massachusetts is similar—voucher utilization remains highly concentrated in high poverty areas, and this concentration is more pronounced for black and Hispanic households than for whites (Sard et al., 2018).

The picture of residential segregation appears even starker at the local level. In a 2016 study of 8,750 Boston Housing Authority (BHA) voucher assisted households in the Boston Metropolitan area, we found that 71% lived in the City of Boston and nearly half (48%) of all BHA voucher holders lived in just three neighborhoods—Roxbury, Dorchester and Mattapan—even though the BHA's voucher administrative area includes 120 cities and towns.

With our colleague and report co-author Erin Graves, we conducted a survey of voucher assisted families in the Greater Boston area to advance understanding about these imbalanced location outcomes. The goal of the research was to better understand housing location outcomes from voucher holders' perspectives and experiences, and to explore how voucher assisted families are locating housing, and whether there are different strategies and barriers to access depending on what types of neighborhoods they search in and move to. We also asked families about the experience of living in their current neighborhood, including the quality of their life for their children, neighborhood safety, schools, neighbors, and whether they plan to remain in the neighborhood for a long time.

Voucher families of all races and ethnicities who located in higher-opportunity areas expressed greater satisfaction with their neighborhoods for themselves and their children.

We conducted an in-person survey of 128 BHA voucher holders with children under 18 who had moved into their unit within the previous three years. The survey sample was drawn from the BHA voucher program data, and families were included from a range of neighborhoods and communities across the Boston Metro area. Addresses of voucher holders were geocoded and linked to census tracts and tract-level measures of neighborhood opportunity using the diversitydatakids.org – Kirwan Institute Child Opportunity Index, a comprehensive measure of community-level resources known to be crucial for healthy child development and positive life outcomes. By sampling two groups of families, those who moved to higher-opportunity neighborhoods and those who moved to lower-oppor-

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Disparate Impact and an Antisubordination Approach to Civil Rights and Urban Policy

Justin Steil

The struggle for civil rights in housing policy has been a long and continuing effort. Congress enacted the Civil Rights Act of 1866 over 150 years ago to ensure that all people in the United States shall have the same right "to inherit, purchase, lease, sell, hold, and convey real and personal property" "as is enjoyed by the white citizens" and, just over a century later, it passed the Fair Housing Act, to provide "for fair housing throughout the United States" (42 U.S.C. § 1981(a); 42 U.S.C. § 3601). The fight to realize these guarantees continues today. Two recent cases from the Supreme Court have made important advances in civil rights in housing, affirming the importance of broad standing and of disparate impact liability under the Fair Housing Act, allowing victims of discrimination to challenge policies that have the effect of denying access to housing if there is a less discriminatory alternative policy available (*Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc.*, 2015; *Bank of Am. Corp. v. City of Miami, Fla.*, 2017). Yet, over the past 18 months, the Department of Housing and Urban Development (HUD) has undertaken several deeply problematic moves backwards, including an effort to undermine the agency rule that governs these disparate impact claims.

In order to contextualize these developments related to disparate impact in housing, I introduce below the distinction between an anticlassification and antisubordination approach to civil rights, review the positive recent developments from the Supreme Court, present the recent HUD proposal, and then discuss the implications of the antisubordination approach for local governments and local housing policy.

The durable racial caste structure of the United States is intertwined with the spatial organization of inequality (Sharkey, 2013). Conceptions of Black threat were central to the making of modern metropolitan areas in the United States, as white homeowners, white landlords, and white real-estate brokers sought at times to exclude and at others to exploit non-white homeseekers. Americans continue today to live in neighborhoods that are largely separate by race and ethnicity and also highly unequal, for instance in access to high performing schools or exposure to environmental hazards (Ellen and Steil, 2019). These separate and unequal neighborhoods are associated with negative effects on health, education, employment, and a host of other outcomes, including socio-economic mobility (see Chetty et. al, 2014). The continuing challenge for public policy and urban planning is how to address these spatial dimensions of inequality, entrenched as they are in custom, jurisdictional boundaries, zoning codes, municipal financing structures, subsidized housing policy, and actual housing units and infrastructure.

> ***The durable racial caste structure of the United States is intertwined with the spatial organization of inequality.***

Antisubordination

Addressing these inequalities requires a sea-change in public policy and regional planning to shift from an antidiscrimination approach to an antisubordination approach to civil rights. An anticlassification or antidiscrimination approach prohibits the use of categories based on seemingly arbitrary characteristics and looks to intent to prevent actions that are consciously motivated by racial or other prohibited animus, what is known as a disparate treatment case. With an anticlassification theory, a policy that adversely impacts a disadvantaged group is permissible so long as it does not distinguish explicitly on the basis of a protected characteristic (such as race, sex, religion, or national origin) and so long as no discriminatory intent can be proven (see *Village of Arlington Heights v. Metropolitan Housing Development Corporation*, 1977). State policies that explicitly distinguish on the basis of a protected characteristic in order to benefit disadvantaged groups are generally prohibited, except to remedy instances where there is convincing evidence of recent intentional discrimination by the governmental unit involved in the policy itself (see *Parents Involved in Community Schools v. Seattle School District No. 1*, 2007).

An antisubordination or antisubjugation theory of equal protection, by contrast, looks not at intent, but at the collective effects of an action and seeks not just to prohibit arbitrary classifications, but to actually address persistent group disparities in a social system in which some are systematically disadvantaged (Balkin and Siegel, 2003; Fiss, 1976). The antisubordination perspective focuses on identifying and prohibiting practices that perpetuate the subordinate position of a disadvantaged group, defined as a social group, that has been in a position of historical subordination, and whose political power is circumscribed (Fiss, 1976). From the perspective of an antisubordination theory, policies or practices that have a disproportionate adverse impact on a disadvantaged

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(DISPARATE IMPACT: Cont. from p.3)

group, known as a disparate impact, should be prohibited, regardless of intent or classification.

The fundamental premise of an antisubordination approach is that equal citizenship cannot be fulfilled in a context of pervasive social stratification and that true equal protection of the laws requires the reformation of institutions or practices that reproduce subordinate social statuses. In the United States, it is essential to take into account the historically specific circumstances that continue to inscribe durable, categorical inequalities along ascriptive, arbitrary lines that have been given social significance, such as sex, gender, sexuality, race, or ethnicity (Tilly, 2009). The dismantling of these asymmetrical structures of power requires more than just an anticlassification approach to planning—it requires an antisubordination approach.

Inclusive Communities and *City of Miami*

Two Supreme Court decisions regarding the Fair Housing Act over the past five years open up some room for a renewed focus on antisubordination in housing.

In *Texas Department of Housing and Community Affairs v. Inclusive Communities Project*, the Court confirmed that the Fair Housing Act prohibits policies or practices that, regardless of intent, have a discriminatory effect on a protected class, if there is a less discriminatory alternative policy available (*Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc.*, 2015).The Court noted with approval that disparate impact liability "permits plaintiffs to counteract unconscious prejudices and disguised animus that escape easy classification as disparate treatment" (*Id.).* Research in psychology has established the ubiquity of implicit biases and the significant effects they have on members of historically excluded groups (*Id.*). Courts, by contrast, have been slow to recognize the importance of these unconscious prejudices in perpetuating discrimination and have instead increasingly limited antidiscrimination laws to a narrow focus on aberrant actors who manifest an explicit intent to discriminate. The recognition of the importance of implicit biases in *Inclusive Communities* creates the potential for renewed attention to the broader antisubordination principle that is the foundation of civil rights statutes such as the Fair Housing Act.

The current administration is taking steps to eviscerate the disparate impact rule that the Department of Housing and Urban Development issued in 2013.

In *Bank of America v. City of Miami*, the plaintiff, the City of Miami, alleged that Bank of America and Wells Fargo issued riskier mortgages on less favorable terms to African-American and Latino borrowers than they issued to similarly situated white borrowers, in violation of the Fair Housing Act. The City of Miami further alleged, among other claims, that this discrimination "impaired the City's goals to assure racial integration and desegregation," "frustrate[d] the City's longstanding and active interest in promoting fair housing and securing the benefits of an integrated community," and disproportionately "cause[d] foreclosures and vacancies in minority communities in Miami," decreasing the City's property tax revenues and forcing the City to spend more on municipal services to address unsafe conditions at properties that were foreclosed because of the banks' discriminatory lending (*Bank of Am. Corp. v. City of Miami, Fla.*, 2017). The Court confirmed that these injuries fall within the zone of interests that the Fair Housing Act protects. The decision left lower courts to consider the question of whether there was a sufficiently direct relation between Miami's injuries and the banks' lending practices.

In both cases, the Court focused on the "results-oriented language" of the Fair Housing Act, recognizing the legal significance of the actual effects that policies have, in addition to the stated intent of the individuals who enacted those policies (*Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc.*, 2015). The Court confirmed that housing providers, lenders, and state and local agencies crafting housing policies should consider potential adverse impacts of their policies by race, color, sex, family status, national origin, religion, or disability.

Efforts to Amend HUD's Disparate Effects Standard

At the same time that the Supreme Court's recent decisions have affirmed the importance of disparate impact liability under the Fair Housing Act, however, the current administration is taking steps to eviscerate the disparate impact rule that the Department of Housing and Urban Development issued in 2013.

The 2013 rule requires plaintiffs to meet the initial burden of proving that a challenged practice caused or predictably will cause a discriminatory effect, either a disparate impact on a group of persons protected by the Fair Housing Act or a disparate impact that reinforces, or perpetuates segregated housing patterns because of race, color, religion, sex, handicap, familial status, or national origin (24 C.F.R. § 100.500(a); 24 C.F.R. § 100.500(c)(1)). The burden of proof then shifts to the defendant, who has the burden of proving that the challenged practice is necessary to achieve a substantial, legitimate, nondiscriminatory interest. The plaintiff then bears the burden of proving that the substantial, legitimate, and nondiscriminatory interest could be served by another practice with a less discriminatory effect

Despite the Supreme Court's citation with approval to HUD's dispar-

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Measuring Fidelity to HUD's Small Area Fair Market Rents (SAFMRs) Rule: Lessons from First Year Implementation

Kelly L. Patterson & Robert Mark Silverman

The Department of Housing and Urban Development (HUD) issued its final rule for the implementation of Small Area Fair Market Rents (SAFMRs) in November of 2016 (Federal Register, 2016). In August of 2017, HUD attempted to suspend the SAFMR rule, but in December of 2017 a U.S. District Court judge ordered it to be reinstated (*Open Communities Alliance v. Carson*, 2017). The new rule became effective in January of 2018, with implementation in mandatory areas beginning in April of 2018. There are currently 24 metropolitan areas mandated to implement SAFMRs. The adoption of SAFMRs is voluntary in all other metropolitan areas.

The SAFMR rule is intended to better align the setting of payment standards for the Housing Choice Voucher (HCV) program with the goals of promoting residential choice and mobility. The rule is needed since the traditional method of setting payment standards based on the 40th or 50th percentile of rents in a metropolitan region ("Fair Market Rents or FMRs") has contributed to the concentration of HCVs in low-income and minority neighborhoods. The SAFMR rule bases payment standards on average rents in ZIP codes, a geography more sensitive to rental variation across metropolitan areas. Basing payment standards on SAFMRs is argued to provide voucher holders with greater access to employment, quality schools, transportation, and other desired amenities (i.e. high-opportunity neighborhoods). SAFMRs expand access to housing in ZIP codes where average rents are higher than metropolitan FMRs. They also avoid overpaying landlords in low-rent areas like those examined by Desmond and Wilmer (2019).

SAFMRs were introduced as a tool to promote housing opportunity on a metropolitan-wide scale.

In this article we summarize core findings from the more detailed report we authored for PRRAC about the initial implementation of the SAFMR rule. In particular, we highlight the degree to which the setting of payment standards by public housing authorities (PHAs) falls short of aligning with SAFMR equity goals. At the end of this article, we make recommendations for future HCV program implementation where PHAs use SAFMRs.

The Rationale for Small Area Fair Market Rents

HUD's new SAFMR rule was developed in response to a number of concerns about the effectiveness of the HCV program in deconcentrating poverty and providing low-income households with access to upward mobility. These concerns date back to issues raised in cases like *Gautreaux v. Chicago Housing Authority* (1969), *Walker v. HUD* (1990), and *Thompson v. HUD* (2005). Housing mobility programs were developed as part of the court-ordered remedies in these three cases, permitting recipients of housing vouchers to move out of segregated, high poverty neighborhoods. These programs have continued to thrive in Chicago, Dallas and Baltimore. The development of policies scaling up these programs in other cities has become increasingly salient, since HCVs are one of HUD's primary tools to provide affordable housing to low-income households. For example, there were over 2.2 million rental units subsidized with HCVs in 2017 (U.S. Department of Housing and Urban Development, 2017). HCV units represented over 48% of all rental units subsidized across the eight federal programs designed to subsidize rental housing. Almost 5.3 million people were housed using HCVs in 2017, comprising almost 55% of all renters receiving housing assistance across the eight federal rental subsidy programs.

In addition to programs and policies adopted in response to court decisions, advocates have pressed HUD to pursue administrative rule changes to address shortcomings in HCV implementation. In particular, advocates have long been critical of how the use of metropolitan-wide FMRs, and the calculation of payment standards based on them, impede geographic mobility and housing searches in high-opportunity neighborhoods (Thrope, 2018).

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(SAFMRs:Continued from page 5)

One of the more poignant critiques of metropolitan-wide FMRs is that they fall short of providing tenants with adequate subsidies to rent in high-opportunity neighborhoods. Researchers have identified this as problematic since metropolitan-wide FMRs, whether set at the a 40th or 50th percentile rent, by definition fall below average rents in relatively high cost submarkets in metropolitan areas (Palm, 2018; Treat, 2018; Thrope, 2018). This limitation of FMRs is compounded by data lag, since FMRs are calculated using data from the American Community Survey (ACS) which is released two years from its date of collection. One rationale for HUD allowing PHAs to set payment standards within a 90%-110% range of its published FMRs it to address some of these limitations. However, in many high-opportunity areas the ability to set payment standards at 110% of FMRs still does not close the affordability gap. To address this issue, SAFMRs were introduced as a tool to promote housing opportunity on a metropolitan-wide scale.

The first test of this tool came in 2011 as a result of a court settlement that resolved a complaint charging that payment standards based on FMRs in the Dallas metropolitan areas resulted in the concentration of vouchers in low-income areas (Ellen, 2018; Treat, 2018). Under the settlement, all PHAs in metropolitan Dallas agreed to use SAFMRs when setting payment standards. An early analysis of outcomes in Dallas suggested that the adoption of SAFMRs resulted in improved neighborhood quality for HCV recipients and modest cost savings for PHAs (Collinson & Gannong, 2014). Shortly after the Dallas settlement, HUD created its own SAFMR demonstration program. Five new PHAs along with two PHAs from the Dallas metropolitan area that were already implementing SAFMRs were included in the demonstration program. At the end of the SAFMR demonstration program, HUD released an evaluation report (Dastrup et al., 2018). The report indicated that the switch to SAFMRs made HCV holders slightly more likely to live in high-opportunity ZIP codes. The report also found that the switch to SAFMRs resulted in modest reductions in overall costs for PHAs.

In November of 2016, HUD published the final version of the SAFMR rule and it began implementing it in April of 2018. At that time, PHAs in 24 metropolitan areas were mandated to adopt SAFMRs. Across those metropolitan areas, 180 PHAs administered 413,591 vouchers, which accounted for about 19% of all HUD vouchers (see Table 1).

Table 1: Metropolitan Areas Mandated to Use SAFMRs (N=24)

Metropolitan Area	*Total PHAs*	*Average HCVs Leased Q1 2017*
Atlanta-Sandy Springs-Roswell, GA	12	41,011
Bergen-Passaic, NJ	10	10,881
Charlotte-Concord-Gastonia, NC-SC	6	8,151
Chicago-Joliet-Naperville, IL	13	71,275
Colorado Springs, CO	2	2,512
Dallas, TX	11	29,467
Fort Lauderdale, FL	6	11,529
Fort Worth-Arlington, TX	5	12,308
Gary, IN	3	3,097
Hartford-West Hartford-East Hartford, CT	21	19,183
Jackson, MS	2	5,641
Jacksonville, FL	2	7,250
Monmouth-Ocean, NJ	9	5,314
North Port-Sarasota-Bradenton, FL	3	2,773
Palm Bay-Melbourne-Titusville, FL	3	2,714
Philadelphia-Camden,Wilmington, PA-NJ-DE-MD	19	37,610
Pittsburgh, PA	8	17,087
Sacramento-Roseville-Arden,Arcade, CA	4	12,837
San Antonio-New Braunfels, TX	6	15,095
San Diego-Carlsbad, CA	6	28,458
Tampa-St. Petersburg-Clearwater, FL	8	19,290
Urban Honolulu, HI	2	6,040
Washington-Arlington,Alexandria, DC-VA-MD	14	37,379
West Palm Beach-Boca Raton, FL	5	6,689

Source: U.S. Department of Housing and Urban Development, Voucher Management System (VMS), retrieved by the Poverty and Race Research Action Council.

The Alignment of Payment Standards with SAFMR Goals

One of our goals in this research was to assess how faithful PHAs were to the goals of the SAFMR rule in their local implementation. Under the new rule, PHAs can set payment standards between 90% and 110% of SAFMRs. In part, this range allows PHAs to account for local market conditions when adjusting payment standards. For example, in areas where fair market rents are changing rapidly and published SAFMRs are not in line with current trends, the 90%-110% range gives

PHAs flexibility to address data lag issues. The 90% to 110% range also gives PHAs flexibility to pursue more aggressive strategies to expand renters' access to high-opportunity areas, particularly if they adopted payment standards at 90% in low-rent ZIP codes and payment standards at 110% in high-rent ZIP codes. This approach to setting payment standards incentivizes moves to high-opportunity areas since it tilts the ceiling for subsidies in the manner described by Collinson and Ganong (2014). Tilting the ceiling for subsidies entails setting subsidies below FMRs in low-rent ZIP codes and setting subsidies above FMRs in high-rent ZIP codes.

While taking these issues into consideration, at minimum, one would expect payment standards to cluster near 100% of published SAFMRs if a PHA has fidelity to the equity goals of the new rule. Under this scenario, a PHA would strike a metropolitan-wide balance between ZIP codes where SAFMRs were less than metropolitan-wide FMRs and ZIP codes where SAFMRs were greater than metropolitan-wide FMRs. This is an important balance to strike, since it generates program cost savings in low-rent ZIP codes, removes incentives for voucher concentration in low-rent ZIP codes, and frees up resources needed to enhance HCVs in high-rent ZIP codes. Striking this balance is critical to maintaining a PHA's volume of HCVs while expanding housing options in opportunity areas.

If a PHA diverges from payment standards clustering near 100% of published SAFMRs, how payment standards are set can be viewed as an indication of relatively high or low fidelity to the new rule. In instances where there is high fidelity, a PHA would set payment standards in low-rent ZIP codes closer to 90% of SAFMRs while setting payment standards closer to 110% of SAFMRs in high-rent ZIP codes. Setting payment standards in this manner would maximize the incentive for tenants to move to high-opportunity areas while reducing possible overpayments to landlords in low-rent ZIP codes. In contrast, low fidelity would be most pronounced in instances where a PHA sets payment standards in low-rent ZIP codes closer to 110% of SAFMRs while setting payment standards closer to 90% of SAFMRs in high-rent ZIP codes. Setting payment standards in this manner would minimize the incentive for tenants to move to high-opportunity areas while increasing overpayments to landlords in low-rent ZIP codes. This scenario would effectively undercut the equity goal of the SAFMR rule by bringing payment standards back in line with something approximating metropolitan-wide FMRs.

Our analysis suggests that* in the aggregate *PHAs in the 24 metropolitan areas had low fidelity to the equity goals of the SAFMR rule.

Our analysis suggests that *in the aggregate* PHAs in the 24 metropolitan areas had low fidelity to the equity goals of the SAFMR rule. Although average payment standards hovered around 100% of published SAFMRs, there was a divergence between the setting of payment standards in low-opportunity and high-opportunity areas. In low-opportunity areas, payment standards were consistently above 100% of published SAFMRs. In high-opportunity areas payment standards were consistently below 100% of published SAFMRs. This reflected the opposite pattern of setting payment standards that would be predicted if PHAs had high fidelity to the equity goals of the SAFMR rule. Setting payment standards in this manner creates disincentives for moves to high-opportunity neighborhoods and reinforces existing patterns of HCV concentration in low-opportunity areas. Moreover, setting payment standards in this manner increases the likelihood that landlords will be overpaid in low-rent areas and PHAs will forego cost-savings that can be used to enhance payment standards in high-opportunity ZIP codes. This reinforces existing geographic patterns of voucher distribution and results in the use of fewer HCVs in high-rent ZIP codes. It is important to note, of course, that there

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Table 2: Payment Standards as a Percent of SAFMRs (N=5,501)

	0 Bedroom	*1 Bedroom*	*2 Bedroom*	*3 Bedroom*	*4 Bedroom*
All Payment Standards Reported in the 24 Metropolitan Areas	100.57	100.85	100.58	100.31	100.04
Payment Standards in Low-Opportunity ZIP Codes[1]	102.81	103.02	102.77	102.51	101.94
Payment Standards in High-Opportunity ZIP Codes[2]	98.71	98.09	98.82	98.29	98.13

[1] Low-Opportunity ZIP Codes = ZIP codes with SAFMR < 100% Area FMR

[2] High-Opportunity ZIP Codes = ZIP codes with SAFMR > 100% Area FMR

(SAFMRs: Continued from page 7

was variation in the degree to which payment standards diverged between high-opportunity and low-opportunity ZIP codes in individual metropolitan areas.

There were four main trends observed at the metropolitan level. The first was in metropolitan areas where payment standards followed a similar pattern to the aggregate data reflected in Table 2, or "low fidelity" to the goals of the SAFMR rule. Eleven of the 24 metropolitan areas fell into this category. They included the following metropolitan areas: Atlanta-Sandy Springs-Roswell, Colorado Springs, Fort Lauderdale, Fort Worth-Arlington, Hartford-West Hartford-East Hartford, Jacksonville, Monmouth-Ocean, Pittsburgh, Sacramento-Roseville-Arden-Arcade, Tampa-St. Petersburg-Clearwater, and Urban Honolulu.

The second trend in payment standards involved eight metropolitan areas where payment standards were at or above 100% of SAFMRs in both high-opportunity and low-opportunity zips codes. This trend was found in the following metropolitan areas: Charlotte-Concord-Gastonia, Chicago-Joliet-Naperville, Dallas, Gary, Jackson, North Port-Sarasota-Bradenton, Philadelphia-Camden-Wilmington, and Washington-Arlington-Alexandria. These metropolitan areas exhibited a relatively high degree of fidelity to the equity goals of the SAFMR rule in the sense that they erred on the side of adopting payment standards that were at or higher than 100% of SAFMRs across the board.

The third trend in payment standards involved five metropolitan areas where payment standards were below 100% of SAFMRs in both high-opportunity and low-opportunity zips codes. This trend was found in the following metropolitan areas: Bergen-Passaic, Palm Bay-Melbourne-Titusville, San Antonio-New Braunfels, and San Diego-Carlsbad. These metropolitan areas exhibited a relatively low degree of fidelity to the equity goals of the SAFMR rule in the sense that they adopted payment standards that were below 100% of SAFMRs across the board. This may have the effect of encouraging the concentration of HCVs in low-opportunity areas, particularly in metropolitan areas with tightening rental markets.

The Alignment of Tenant and Landlord Notification Materials with SAFMR Goals

Notification materials were used in our analysis to measure how well information conveyed to tenant and landlords aligned with SAFMR goals. Tenant notification materials were provided by 22 PHAs. Landlord notification materials were provided by 12 PHAs. Findings indicated that the thrust of tenant notifications was to alert tenants about the upcoming reductions in payment standards in low rent neighborhoods, and to what extent they would be held harmless if payment standards were reduced in their area due to the adoption of SAFMRs.

The successful implementation of SAFMRs hinges on the degree to which PHA administrators show fidelity to the equity goals of the SAFMR rule, and notify tenants about their new opportunities under the rule.

In addition to notifying tenants that SAFMRs were being adopted and that this may impact their level of rental assistance in the future, nine PHAs also included language explaining the equity goals of the new policy, but this type of notice appeared to be the exception rather than the rule. A good example was the Sacramento Housing and Redevelopment Agency's notification that, "with the SAFMRs you will be able to use your voucher in more places than would have been possible before—including neighborhoods that have high-performing schools, reduced crime, access to grocery stores, parks, medical facilities, child care, transportation, and other amenities."

The Alignment of HUD Monitoring with SAFMR Goals

In addition to issues related to the setting of payment standards and notification materials, our analysis found that the implementation of the SAFMR rule was hampered by a lack of proactive monitoring by HUD. For example, PHAs are not required to submit their administrative plans, payment standards, or materials used to notify tenants and landlords about SAFMRs to HUD. Instead, they are expected to keep these records in-house and available if HUD requests to inspect them. This is problematic, since there is no central repository where these materials are stored and made publically available for inspection. This impedes researchers and advocacy groups from accessing information about the implementation of the SAFMR rule and shifts the burden of public disclosure from HUD to members of the general public. The lack of a public repository for implementation materials also hinders the free flow of information between PHAs interested in identifying best practices to adopt when planning their implementation strategies.

Recommendations for PHAs that use SAFMRs

The successful implementation of SAFMRs hinges on the degree to which PHA administrators show fidelity to the equity goals of the SAFMR rule, and notify tenants about their new opportunities under the rule. These goals focus on setting payment standards that create incentive structures to enable moves to high-opportunity neighborhoods, while removing incentives to move to or stay in low-opportunity neighborhoods. Importantly, the

reduction of payment standards in low-rent areas provides PHAs with the cost savings needed to pay for higher payment standards in high-rent areas. The reduction in payment standards in low-rent areas also corrects for the tendency to overpay landlords when FMRs are used. In essence, payment standards based on SAFMRs bring HCV subsidies in line with market based rents across a metropolitan area.

The results presented in this article indicate that PHA administrators lack high levels of fidelity to the equity goals of the SAFMR rule. This has led to less than optimal implementation. Despite these findings, there are signs that once PHAs gain experience in the use of SAFMRs they apply the policy with greater efficacy. For example, some of the highest levels of fidelity to SAFMRs were found in the place with the most experience using them to set payment standards, the Dallas metropolitan area. Still, there is a need to fine tune the SAFMR rule in anticipation of its use by a larger group of PHAs in the future. To this end, we offer the following three recommendations.*

Recommendation #1: HUD must enhance its emphasis on the equity goals of SAFMRs. To foster this commitment to promoting HCV holders' mobility, HUD must invest more resources in educating PHAs, tenants, and landlords about these goals and their relationship to the setting of payment standards in high-rent and low-rent areas. In addition, using SAFMRs to set payment standards that promote residential choice and mobility should be the central focus of the tenant notification process. At minimum, materials circulated during the tenant notification process should include information about the availability of housing units and quality of neighborhood amenities in high-opportunity neighborhoods.

Recommendation #2: HUD must strengthen the guidelines for setting payment standards so they are in line with the equity goals of the SAFMR rule, which includes the goals of enhancing the cost effectiveness of SAFMRs. These guidelines should be more explicit about the value of lowering payment standards over time in low-rent areas for new tenants (while holding existing tenants harmless) and to increase payment standards in high-rent areas. Revised guidelines should emphasize setting payment standards in a manner that tilts the ceiling for subsidies as described by Collinson and Ganong (2014). In other words, guidelines should encourage PHAs to set subsidies at 90% of SAFMRs in low-rent ZIP codes and set subsidies at 110% of SAFMRs in high-rent ZIP codes. These types of guidelines can be reinforced with incentives to PHAs, such as awarding additional vouchers and funding for mobility counseling to authorities that adopt this strategy.

Recommendation #3: HUD must increase its monitoring and reporting requirements for implementation of the SAFMR rule. Under its current administrative practices, PHAs are not required to submit their administrative plans, payment standards, or materials used to notify tenants and landlords about their internal implementation policies related to the SAFMR rule to HUD. A central repository needs to be created where these materials are stored and made publically available for inspection. This repository can be used as a resource: by HUD when monitoring the implementation of the SAFMR rule, by researchers and advocacy groups, by PHAs interested in identifying best practices, and by the general public. ❏

* More detailed recommendations are found in our PRRAC report titled, "Small Area Fair Market Rents (SAFMRs): An analysis of first year implementation in mandatory metropolitan areas and barriers to voluntary implementation in other areas."

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(CMTO Study: Continued from page 1)

The CMTO also looked at the efficacy of more standardized policy interventions such as increasing voucher payment standards in higher opportunity areas or informational interventions, and concluded that, at least in the Seattle area, the impacts were much smaller than that of the customized assistance in housing search provided in the experiment (though the reports notes that increased payment standards "may be necessary to facilitate such moves through CMTO-style programs, especially in expensive housing markets"). I would note that the Collison Ganong research on implementation of SAFMRs in the Dallas area show a more robust impact of such policy interventions, suggesting that tools that can be used to remove the barriers to voucher mobility choice are perhaps as multifaceted as the barriers themselves.

As part of a community that has been working in and around housing mobility for decades, both as a remedial tool for racial segregation in the public housing and Section 8 programs and as an anti-poverty/anti-economic segregation strategy since the mid-90s, I am thrilled to see the attention the Chetty team's work has engendered across a wide swath of public awareness. As an old-time civil rights lawyer, I know how helpful it is to have both the law and the facts on your side. It is even more helpful for policy makers to have solid, persuasive evidence about what works and what doesn't upon which to base their decisions as they go about the difficult task of redressing the racial and economic segregation that has blighted the life chances of so many children.

The intervention that the CMTO team found so effective is not a foreign one to mobility practitioners, particularly in the three largest and longest running mobility programs in Chicago, Dallas, and Baltimore. Indeed, it would be fair to say that the concept of the personalized assistance to remove barriers to a client being able to find housing in higher opportunity areas is at the core of the "mobility counselor's" work. While other "barrier removal" strategies can and do have an important effect, particularly if tailored to the particular circumstances of a housing market in which the families are searching, I am not surprised to see that the most important "assist" is one tailored to the individual families' needs, from providing emotional support and encouragement, to brokering with landlords to take a chance on the family and/or the program, to short term move-related financial assistance. Indeed, at a recent gathering at the Center for Budget Policy and Priorities to hear about the HUD Mobility Demonstration, a mobility counselor from the Baltimore program, who had been a participant in the program herself, spoke to that fact. In response to a question about the most important part of the program from her perspective as a participant, she cited the personal counseling and support at crucial times in her journey. While the research continues to identify and refine the most effective interventions to support a mobility move, the work being done by the non-experimental mobility programs will continue to add to the understanding of how barriers work and the tools that can be used to remove them in a variety of contexts. By my count, the three programs mentioned above, while not the product of a well-designed research experiment such as CMTO is undertaking, have helped over 10,000 low income families, most of whom are families of color, make moves to areas designated as 'high opportunity" using a menu of opportunity metrics developed for those particular geographies. The effort to come up with the best way to define "opportunity areas" for anti-poverty purposes is an ongoing one, and the CMTO work is also adding tremendous value to that discussion, as will the experiences of the long running mobility programs who have been operating in particular housing markets over several decades.

The effort to come up with the best way to define "opportunity areas" for anti-poverty purposes is an ongoing one.

Given the powerful research of the past five years that shows that that low income children who are able to move to and grow up in better resourced, higher opportunity neighborhoods will have significantly improved life chances, the predictive tools identifying the locations that are likely to offer those chances are as important as is understanding the most impactful strategies to getting them to those places. The Opportunity Atlas, developed by Chetty and his team based on their analysis of data for virtually every U.S. census tract and comparisons to the data from the HUD Moving to Opportunity experiment, has added a valuable perspective to the effort to insure that the resources that are devoted to helping families achieve the benefits of an opportunity move are the right ones, and are effectively and efficiently used. Moving forward, it is important for mobility advocates to understand and appreciate the valuable contribution that the Chetty team, and

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other researchers, have made and will continue to make as we work to redress the scourge of segregation in the lives low income children in our communities. Thanks to that work, an expanding cohort of mobility programs can move forward refining and improving the delivery of their services secure in the knowledge of the positive impact on the lives of the children who are afforded access to neighborhoods with greater opportunity. To use the language of the social impact investor, the Chetty research has moved a high opportunity move from an "output" to an "outcome", and the implications for policy and practice at the intersection of race and poverty cannot be overstated. ❑

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(DISPARATE IMPACT: Cont. from p.4)

ate impact rule and its decision consistent with that rule in *Inclusive Communities*, HUD in June of 2018 proposed to amend the rule (83 Fed. Reg. 28560), and the formal proposed rule was released this month (84 Fed. Reg. 42854).

First, the proposal will make it virtually impossible for plaintiffs to pass the very first burden of establishing a prima facie case of discrimination. The proposal erects multiple obstacles to making out a prima facie case by creating five new elements plaintiffs must establish: 1) that "the challenged policy is arbitrary, artificial, and unnecessary to achieve a valid interest"; 2) that there is a "robust causal link between the challenged policy or practice and a disparate impact on members of a protected class which shows the specific practice is the direct cause of the discriminatory effect"; (3) that the disparity has an adverse effect on members of a protected class; (4) that the disparity caused is significant; and (5) that there is "a direct link" between the disparate impact and the injury. Although the *Inclusive Communities* opinion strongly affirms the importance of disparate impact liability, Justice Kennedy in dicta expressed some concerns about possible "abuse" and, quoting the employment case, *Griggs v. Duke Power*, 401 U.S. 424, 431 (1971), wrote that "[d]isparate-impact liability mandates the 'removal of artificial, arbitrary, and unnecessary barriers,' not the displacement of valid governmental policies." HUD seeks to twist these the words in *Inclusive Communities* to undermine disparate impact liability. Justice Kennedy's quotation from *Griggs* implies that disparate impact liability appropriately re-

The rule then, would essentially collapse all disparate impact cases into disparate treatment cases, exactly the opposite of what the Court in* Inclusive Communities *actually held.

quires the removal of artificial policies, arbitrary policies, and unnecessary policies that have an adverse effect on members of a protected class. The safeguard in the existing HUD rule requiring a plaintiff to establish a less-discriminatory alternative that accomplishes the same legitimate ends already ensures that disparate impact liability can only be used to challenge policies that are either arbitrary, artificial, or that have an unnecessary adverse impact and does not displace valid governmental priorities. Having to establish, as HUD now seeks to require, that a challenged policy is "arbitrary, artificial, *and* unnecessary" (emphasis added) defeats the purpose of disparate impact liability because the only cases that are likely to be able to meet this are truly disparate "treatment cases," in which a defendant intentionally created a policy that is arbitrary, and artificial, *and* unnecessary in order to discriminate. The rule then, would essentially collapse all disparate impact cases into disparate treatment cases, exactly the opposite of what the Court in *Inclusive Communities* actually held. In *Inclusive Communities*, which HUD cites as the justification for this rule change, the Court states that disparate impact liability "permits plaintiffs to counteract unconscious prejudices and disguised animus that escape easy classification as disparate treatment" and that "disparate-impact liability may prevent segregated housing patterns that might otherwise result from covert and illicit stereotyping" (*Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc.*, 2015). As the Court suggests, unconscious prejudices escape easy classification as disparate treatment exactly because they are embedded in policies

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(DISPARATE IMPACT: Cont. from p.11)

that appear reasonable and necessary. When those seemingly reasonable, necessary policies advancing valid interests have a disparate impact on the basis of race and there is a less discriminatory alternative that could accomplish the same valid interests, however, the Fair Housing Act requires that those policies be struck down. This proposed additional element would frustrate the purposes of the Fair Housing Act that the rule is supposed to implement. Further, the vague and ambiguous additional requirements of pleading a "robust causal link" and establishing that the challenged practice is the "direct cause" of the disparity, as well as the requirement that there be "a direct link" between the disparity and the injury, both threaten to raise the requirements necessary to meet a prima facie case so much that many or most victims of actual discrimination will be unable at the filing stage to pass these tests.

Second, the proposal seeks to place many forms of algorithmic bias and discrimination above the law. Where a victim of discrimination alleges that the cause of the discrimination is "a model used by the defendant, such as a risk assessment algorithm," and the defendant "[p]rovides the material factors which make up the inputs used in the challenged model and shows that these factors do not rely in any material part of on factors which are substitutes for or close proxies for protected classes under the Fair Housing Act," the defendant is protected and the victim is without recourse. If that defense is unavailing for the defendant, the defendant can alternatively show that the model is either produced, or maintained, or distributed by a third party "that determines industry standards" and again evade responsibility. If both of those defenses fail, the defendant can instead show "that the model has been subjected to critical review and has been validated by an objective and unbiased neutral third party."

These capacious defenses against disparate impact claims essentially create a safe harbors for discrimination for those using algorithms to set prices for housing related products, including homes, home loans, home insurance, and more. The proposed defenses are also contrary to the holding in *Inclusive Communities* and the text and intent of the Fair Housing Act. Including in an algorithm variables to identify protected class members and adversely impact them is already prohibited under a disparate treatment analysis, and close proxies are arguably already prohibited by disparate treatment as well. As above, HUD is again creating limitations that limit disparate impact cases to those that could be brought under a disparate treatment theory, which again would be inconsistent with the holding of *Inclusive Communities*. Creating a defense for a policy or practice simply because it is an "industry standard" is inconsistent with the decision in *Inclusive Communities* and would surely have permitted many of the white supremacist industry standards that the Fair Housing Act was enacted to prohibit, such as denying home loans because of the race of the borrower or the racial composition of the borrower's neighborhood. Creating defenses specifically for the increasingly common use of algorithms or models is highly likely to calcify the "unconscious prejudice" that the Court sought to dislodge in *Inclusive Communities* (*Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc.*, 2015). It is widely acknowledged that using unrepresentative seed data for a machine learning model will lead to biased results, yet HUD seeks to give that kind of systemic bias a free pass. Disparate impact liability is so important exactly because systemic discrimination, whether created by algorithmic bias or not, is almost impossible to challenge without an analysis of the differential effects by sex or disability or race or other protected characteristics of a policy or a model. Without disparate impact analyses, substantial discrimination, by being written in computer code would suddenly be exempt from the legal code. HUD's effort to effectively use revisions to the disparate impact rule in order to overturn the Supreme Court's decision in *Inclusive Communities* would undermine crucial protections in the Fair Housing Act that are essential for creating a minimum of equal access to housing, to credit, and to insurance.

While the federal government continues to erode our basic civil rights protections, however, some cities are enacting local policies that operationalize what an antisubordination approach to policy-making could look like on the ground.

Groups such as the NAACP Legal Defense Fund, the National Fair Housing Alliance, the National Community Reinvestment Coalition, the Poverty & Race Research Action Council, and others have all written letters opposing this dangerous rule change. As the proposed rule changes have now moved from review by the Office of Information and Regulatory Affairs to the proposed rulemaking stage, widespread public comment and mobilization in opposition to the undermining of this essential rule is necessary.

While the federal government continues to try to erode our basic civil rights protections, however, some cities are enacting local policies that operationalize what an antisubordination approach to policymaking could look like on the ground.

Municipal Racial Equity Initiatives

Groups such as the Center for Social Inclusion and the Government Alliance on Race and Equity have made significant efforts in recent years to push public agencies towards a focus on equity, consistent with an antisubordination approach. These collaborations have influenced a growing number of urban policies. For

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instance, the City of Seattle, Washington created a Race and Social Justice Initiative in 2005 to bring together city department heads to create and track annual work plans on advancing racial equity in Seattle's policies, programs, and budget decisions. Seattle's Race and Social Justice Initiative describes itself as a "citywide effort to end institutionalized racism and race-based disparities in City government" (City of Seattle, 2015). The City of Seattle now requires all city departments to conduct a racial equity analysis of every budget request and to post online annual work plans to advance racial justice so that the public can view goals and progress by city department and by neighborhood

One outcome of the Race and Social Justice Initiative was the Seattle 2035 Growth and Equity report, analyzing impacts on both displacement and opportunity related to Seattle's growth strategy and development policies. The Growth and Equity Report asked (1) whether the intensity of development in neighborhoods across the city would be likely to have an impact on the displacement of marginalized populations; (2) whether the intensity of development would be likely to affect marginalized populations' access to key determinants of physical, social, and economic well-being; and (3) what strategies and investments can mitigate the impacts of development and maximize equitable outcomes (Seattle 2035). Seattle's Office of Planning and Community Development created a Displacement Risk Index and an Access to Opportunity Index to analyze how different alternative strategies for updating Seattle's Comprehensive Plan would affect groups in the city that had historically been marginalized and used that analysis to shape the ultimate Comprehensive Plan to guide future development. Other cities, such as Minneapolis, MN; Madison, WI; and Portland, OR have subsequently established their own racial equity initiatives. In New York City, several City Council members and the Public Advocate are advocating for bills that would require environmental impact statements to include analyses of how proposed development or land use changes would affect the population by race and ethnicity and assess whether the proposed action would affirmatively further fair housing.

These efforts to incorporate attention to racial equity into municipal policy are important steps towards an antisubordination approach to urban planning and policy. Such an approach should include community-engaged planning that foregrounds a focus on disparities in access to opportunity across durable categories of inequality, that recognizes institutionalized asymmetries of power and unconscious biases that perpetuate those disparities, and that prioritizes policies that reduce inequality even if they may have higher costs than policies that exacerbate it (Steil, 2018). ❑

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(BOSTON AREA SURVEY: from page 2)

tunity areas, the survey sought to develop greater insight into the factors that support and constrain housing choices for voucher holders in the current housing market.

The survey explored how housing search factors such as information, preferences and priorities, and discrimination impact voucher holders' search process and experiences while conducting a housing search, where they use their vouchers, and how they assess their current housing and neighborhood environment.

Housing Mobility in Massachusetts

Massachusetts is the site of two important efforts to support greater housing and neighborhood choice for families with housing vouchers. The first is a pilot program launched by the **Massachusetts Department of Housing and Community Development** in 2018, to create a comprehensive housing mobility program in the offices of two regional Housing Choice Voucher administering offices in the Lowell and Springfield metropolitan regions. The state is using a customized housing locator tool and opportunity maps based on the DiversityDataKids Child Opportunity Index, and applying Small Area Fair Market Rents in designated opportunity areas. The local agencies are providing housing mobility counseling, streamlined administrative processes, tenant supports and landlord incentives. The state hopes to expand the program over the next two years. The second effort, recently launched by the **Boston Housing Authority**, is not a traditional housing mobility program, but involves the wholesale voluntary adoption, with some local modifications, of HUD Small Area FMRs throughout the BHA's area of operation in eastern Massachusetts (giving families a much wider range of options in the 120 cities and towns that BHA serves).

Findings

Residential location outcomes did not align with housing search preferences: We find that regardless of location outcomes, when looking for housing, families shared similar preferences for neighborhood characteristics. The survey indicates that most voucher assisted households want the same types of neighborhoods—safe places with good schools and neighbors from a mix of economic and racial backgrounds.

Discrimination by race and source of income: More than seven in ten voucher holders reported experiencing a problem with one or more types of discrimination during their last housing search. The process of looking for apartments, experience with housing providers and property owners, and location outcomes also varied by race, with black families experiencing the greatest access barriers to diverse communities. Compared with other families, black families used more search strategies and sought out more apartments, but they had less success and experienced more discrimination during the search process, especially in higher-opportunity areas.

Source of and span of information mattered: Families who lived in higher-opportunity areas were three times as likely as lower-opportunity movers to have searched in a higher-opportunity neighborhood and more likely to have searched for housing outside of the City of Boston and in places they had never heard of. Those who moved to higher- opportunity areas were also much more likely to have used the internet to search for and find units in these neighborhoods, compared to families who relied on family and friends or housing agencies and lists of apartment rentals provided by housing agencies during their housing search.

Higher-opportunity movers are much more satisfied with their neighborhoods and want to remain in their neighborhoods: One important survey finding is that voucher families of all races and ethnicities who located in higher-opportunity areas expressed greater satisfaction with their neighborhoods for themselves and their children. They are also much more likely to report that their neighborhoods are safe and good environments for their children (87% v. 55%) and indicate that they would like to stay in their neighborhood for a long time (75% v. 46%).

In summary, the voucher assisted families we surveyed want access to a range of communities, and they are working very hard to find housing that meets their priorities and the program requirements. But in that process they are encountering barriers that extend beyond the economic competitiveness of the rental market. The families describe discrimination as a barrier in both low- and high-opportunity neighborhoods—with black families experiencing more difficulty while getting the least reward for their extensive efforts.

These findings provide evidence of the importance of enforcing fair housing laws but also of educating the community—voucher assisted households, landlords, property owners, housing counselors, and neighbors—about fair housing, the effort that families are making and what is working, and about preferences and information gaps that limit access and perpetuate residential segregation.

The full report of survey findings and policy recommendations can be found at https://www.bostonfed.org/ under "publications." ❑

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