

April 23, 2023

Regulations Division  
Office of General Counsel  
Department of Housing and Urban Development  
451 Seventh Street, SW, Room 10276  
Washington, DC 20410-0500

**Re: Affirmatively Furthering Fair Housing, Docket No. FR-6250-P-01**

Dear Colleagues:

We are writing as a group of lawyers and legal scholars with expertise in the history of the Fair Housing Act, and specifically, Fair Housing Act jurisprudence relevant to the proposed Affirmatively Furthering Fair Housing rule. We appreciated the Department's excellent discussion of the case law that has helped to define the AFFH obligation, but we believe that the final rule's discussion of legal authority could go further, to encompass the full range of affirmative goals inherent in the application of the Fair Housing Act.

Specifically, we have identified additional legal authorities that address four areas implicated by the AFFH Rule:

- (1) Regional Analysis: Segregation's regional and intermunicipal impact
- (2) Environmental Injustice: The relationship between housing and environmental inequity
- (3) Education: The connection between school segregation and housing segregation
- (4) Housing Redevelopment: The connection between housing insecurity, redevelopment, and fair housing

These authorities are not necessary to "justify" the rule in any legal sense, but they would add helpful context for certain aspects of the rule and would be a valuable addition to the preamble to the final rule.

**Regional Analysis: Segregation's Regional and Intermunicipal Impact**

Segregation is typically regional in nature, and segregation in one municipal jurisdiction has an intermunicipal impact on other municipalities. The following authorities recognize segregation's regional and intermunicipal impact.

The U.S. Supreme Court has recognized the intermunicipal and regional impacts of discriminatory action. *Hills v. Gautreaux*, 425 U.S. 284, 298-99 (1976). Other federal courts have also acknowledged the necessity of a regional analysis of fair housing impacts. *See, e.g., Thompson v. U.S. Dep't of Hous. & Urb. Dev.*, 348 F. Supp. 2d 398, 409 (D. Md. 2005) (building housing outside the boundaries of a specific municipality is integral to housing desegregation); *Inclusive Cmty. Project, Inc. v. U.S. Dep't Hous. & Urb. Dev.*, 2009 WL 3122610, at \*8 (N.D. Tex. 2009) (intermunicipal fair housing impacts of Section 8 rent caps); *Langlois v. Abington Hous. Auth.*, 207 F.3d 43, 52 (5th

Cir. 2000) (allowing remand to determine if local residency requirement for § 8 recipients is consistent with the AFFH provisions of the FHA); *River Cross Land Co. v. Seminole Cnty.*, 2019 WL 12518729, at \*7 (M.D. Fla. 2019) (alleging segregative effect and disparate impact of rural boundary line—limiting density and provisions of certain urban services in rural areas).

Courts have also recognized the impact of exclusionary zoning on segregation. For instance, in *Mount Laurel*, (decided under a state constitution, not the Fair Housing Act), the New Jersey Supreme Court held that “municipalities may not, by a system of land use regulation, make it physically and economically impossible to provide low- and moderate-income housing in the municipality for various categories of persons who need and want it.” *S. Burlington Cnty. N.A.A.C.P. v. Mt. Laurel*, 67 N.J. 151, 336 A.2d 713 (1975); *see also U.S. v. City of Black Jack, Mo.*, 508 F.2d 1179, 1886 (8th Cir. 1974) (analyzing negative effect of an ordinance on people living in the metropolitan area); *Dews v. Town of Sunnyvale, Tex.*, 109 F. Supp. 2d 526, 566 (N.D. Tex. 2000) (analyzing housing needs in the county, not just the town whose zoning law was in question).

### **Environmental Injustice: The Relationship between Housing and Environmental Justice**

Housing influences nearly every aspect of a person’s life, including access to a healthy or toxic environment. Housing justice and environmental justice are inextricably intertwined. The following authorities recognize the racial impacts of environmental decisions in segregated communities:

*S. Camden Citizens Action v. N.J. Dep’t of Env’t Prot.*, 145 F. Supp. 2d 446, 491–93 (D.N.J. 2001) (air pollution permit for cement processing facility would have a racially discriminatory impact), *rev’d on other grounds*, 274 F.3d 771 (3rd Cir. 2002), *remanded to*, 254 F. Supp. 2d 486 (D.N.J. 2003) (holding plaintiffs “stated a claim of intentional discrimination under Title VI and Equal Protection Clause”), *rev’d on other grounds*, 274 F.3d 771 (3d Cir. 2001); *Californians for Renewable Energy v. U.S. EPA*, 2018 WL 1586211, at \*1 (N.D. Cal. 2018) (granting summary judgment claims regarding “decisions by state and local agencies to grant permits approving operation of environmentally hazardous facilities in minority communities violate the Title VI’s prohibition against discrimination by public funders”); *Franks v. Ross*, 293 F. Supp. 2d 599, 605–07 (E.D.N.C. 2003) (Title VI claim alleging landfill predominately affected African American communities); *Rosemere Neighborhood Assoc. v. U.S. EPA*, 581 F.3d 1169 (9th Cir. 2009) (claiming EPA failed to timely process a complaint alleging the city’s failure to use EPA funds to address the environmental needs in racially concentrated areas of poverty).

### **Education: The Connection between School Segregation and Housing Segregation**

Housing discrimination and school segregation are closely linked. In many parts of the country, school district boundaries and school assignment zones are drawn to serve local children, reinforcing intra- and inter-district segregation. The following authorities are just a few of the cases recognizing the relationship between school segregation and housing segregation.

*Keyes v. Sch. Dist. No. 1, Denver, Colo.*, 413 U.S. 189, 202–03 (1973) (citing *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 20–21 (1971)) (school assignment policies and school siting, “may have a profound reciprocal effect on the racial composition of residential neighborhoods within a metropolitan area, thereby causing further racial concentration within the schools.”); *U.S. v. Yonkers Bd. of Educ.*, 837 F.2d 1181, 1226–33 (2d Cir. 1987) (school board’s neighborhood school policy and city’s segregated housing practices contributed to school segregation); *see also, Booker v. Bd. of Educ. of City of Plainfield, Union Cnty.*, 212 A.2d 1, 6 (1965); *Holland v. Bd. of Pub. Instruction of Palm Beach Cnty.*, 258 F.2d 730, 732 (5th Cir. 1958) (public school districts that mirror racial housing patterns causes racial segregation in schools); *Dowell v. Sch. Bd. of Okla. City Sch.*, 244 F. Supp. 971, 975 (W.D. Okla. 1965) (housing patterns resulting from racially discriminatory zoning ordinances lead to racially segregated schools), *aff’d, Bd. of Educ. of Okla. City v. Dowell*, 375 F.2d 158 (10th Cir. 1967).

### **Public Housing Redevelopment**

The following authorities address the application of the affirmatively furthering fair housing principle to redevelopment and related displacement.

*Garrett v. Hamtramck*, 503 F.2d 1236, 1247–48 (6th Cir. 1974); *Resident Advisory Bd. v. Rizzo*, 564 F.2d 126, 139–46 (3rd Cir. 1977); *Sanders v. U.S. Dep’t of Hous. & Urb. Dev.*, 872 F. Supp. 216, 239–44 (W.D. Pa. 1994); *Darst-Webbe Tenant Ass’n Bd. v. St. Louis Hous. Auth.*, 339 F.3d 702, 712–14 (8th Cir. 2003); *Wallace v. Chi. Hous. Auth.*, 289 F. Supp. 2d 710, 718–19 (N.D. Ill. 2003), *on reconsideration of other issues*, 321 F. Supp. 2d 968 (N.D. Ill. 2004).

We encourage HUD to include these legal authorities in its final AFFH rule as additional context and support for the rule’s purpose and breadth. Thank you for your consideration.

Sincerely,

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