



★ STATE OF METROPOLITAN HOUSING REPORT ★

2015 A YEAR OF CHANGE



LETTER TO MHC MEMBERS

The Metropolitan Housing Coalition (MHC) knows that where people live, as well as whether the housing is safe and stable, is a major factor in being able to wake up ready for the challenges and opportunities the world has to offer.

It has been an exciting year of change for fair and affordable housing. After five years of work by MHC, homebuilders, and many others, the Louisville Metro Council voted in the first civil rights fair housing ordinance on zoning in 50 years! Only the inclusion of sexual orientation and gender identity as protected classes in housing has been as significant.

Most importantly, this represents a paradigm shift. There is consensus that our old policies in land development played a role in keeping segregation patterns so intense. Every Council Member, even those who did not vote in favor, recognized we must have housing that is affordable to low wage workers in every part of Jefferson County.

In late June of this year, the U.S. Supreme Court rendered an opinion on how a fair housing disparate-impact case can be constructed. Within the Court's opinion are several important points that make Louisville vulnerable to a disparate-impact claim in fair housing: 1) geography matters, 2) where low-income people live can be entwined with racial segregation through statistics, 3) a case can be made without having to prove intent, only impact and causation, and 4) we can look at whether there are other, less discriminatory ways to carry out the activity. Reading this case reaffirms that Louisville is taking the right course of action in regards to fair and affordable housing but that more must be done.

In addition to the Supreme Court's ruling, the U.S. Department of Housing and Urban Development (HUD) released final regulations that require a jurisdiction to do planning which includes other systems that impact the availability of fair housing choice. The regulation requires an analysis to Affirmatively Further Fair Housing (AFFH) by looking at what role housing providers, transportation, clean environment, and other industries and services play in overall process.

Our community needs to start the conversation on how Louisville is positioned in regard to the Fair Housing Act and the AFFH planning mandates. Are we vulnerable? What are our strengths and weaknesses? We need to raise questions that will help us plan for a future of true fair housing choice.

Key accomplishments:

- In 2008, MHC studied how the cost of heat and electricity affected the affordability of housing and we continue to work on this issue. MHC served as an Intervener before the Kentucky Public Service Commission on a 2014 case regarding proposed meter fee increases by Louisville Gas and Electric. Thanks to the advocacy of MHC and our partners, a settlement was reached that minimized the impact to consumers and energy efficient developers.
- Working with the Louisville Human Relations Commission on another initiative, MHC is part of a group conducting a market study of housing need in Louisville, which will be published this year. This is the first time MHC has worked with focus groups and we have learned so much.
- MHC creates financial tools that advance affordable housing. MHC is working with Jewish Family and Career Services to create a U.S. Treasury-certified Community Development Financial Institution (CDFI), focusing on housing and micro-business lending in select lower income areas. MHC is a partner with the Louisville Affordable Housing Trust Fund in identifying a dedicated, renewable,

public source of funding for the trust fund. And, in its 19th year, MHC's loan pool, part of a partnership with Kentucky Housing Corporation, is helping non-profit affordable housing developers to provide the final piece of the funding package to create the housing units our community needs most.

- MHC partnered with Dr. Stacy Deck of Spalding University, Jefferson County Public Schools, and the Coalition for the Homeless in a study funded by HUD looking at the educational impact of different forms of housing stability: homeless, doubled up or housing stable but low-income. That three-year study is complete and the results are provocative. The study will be released next year.
- MHC hosted public forums on critical housing issues, ranging from the impact of the new U.S. Supreme Court decision to the re-use of vacant properties.

The data presented in the 2015 State of Metropolitan Housing Report shows that:

- The majority of public housing units (77 percent) are located in just two Louisville Metro Council districts: 4 and 6. The public housing units located in district council 4 alone account for 55 percent of all occupied public housing units.
- In Louisville/Jefferson County, 24 percent of all families with children have annual incomes below the poverty level. On average, 60 percent of families with children in poverty who live in Louisville/Jefferson County have children ages 6 to 17; in the Louisville MSA, the families with children ages 6 to 17 comprise 62 percent of all families with children who live in poverty.
- Within the Louisville MSA, approximately 85,775 workers hold jobs that do not pay enough wages to afford a two-bedroom unit at Fair Market Rent; this represents 14 percent of the total workforce. More than a third of the entire Louisville MSA workforce do not earn enough to afford a three- or four-bedroom housing unit at Fair Market Rent.
- For all counties of the Louisville MSA, 2014 saw a 33 percent decrease in foreclosures over 2013, but this is still 81 percent more than 2002. It should be noted that black or African-Americans are twice as likely as their white counterparts to face foreclosure.
- During the 2014-15 schoolyear, 7,582 students within the Louisville MSA were considered homeless. This includes 6,483 in Jefferson County Public Schools and includes 518 homeless students in the Indiana counties of the Louisville MSA.

Louisville is beginning to understand and take action to house our work force, our families with children, and our population on fixed incomes, but we have a lot of work to do. One way to codify our goals for fair and affordable housing will be through the work to rewrite the Comprehensive Plan as the current plan, Cornerstone 2020, thankfully expires. All of us can be advocates through that process.

The 2015 State of Metropolitan Housing Report gives our community a protocol for assessing how all our systems should be measured for either promoting or barring progress in fair and affordable housing opportunities.



Adam Hall
MHC Board President

Cathy Hinko
Executive Director
Metropolitan Housing Coalition

CONTENTS

TO BE UPDATED

LOUISVILLE METRO FAIR HOUSING LEGAL LANDSCAPE UPDATE

Two key events in 2015 will shape how communities address fair housing issues at local, regional and state levels. These are the United States Supreme Court decision *Texas Department Of Housing And Community Affairs Et Al. V. Inclusive Communities Project, Inc., Et Al. Certiorari To The United States Court Of Appeals For The Fifth Circuit* No. 13–1371, argued January 21, 2015–decided June 25, 2015, and the U.S. Department of Housing and Urban Development's (HUD) Final Rule on Affirmatively Furthering Fair Housing (AFFH). The focus topic of the 2015 *State of Metropolitan Housing Report* lays out key local implications of these two important federal actions and provides an update on the legal landscape of Louisville Metro Fair Housing. These two actions have national repercussions by empowering fair housing advocates with tools to identify practices that produce unfair housing outcomes and to develop paths toward addressing those practices.

Why the Supreme Court Case and the U.S. Department of Housing and Urban Development's New Affirmatively Furthering Fair Housing Rule Matter

Continued residential segregation by race and ethnicity, and the continued trend of increased housing costs that outpaces median income, sets the foundation for housing policy in the U.S. Research that tracks the trends in residential segregation by race and ethnicity across the country indicate that since 1970, black-white segregation is decreasing while Hispanic-white segregation is increasing. The decrease in black-white segregation shows progress, however, the level of segregation is still high over all; there are studies that document that middle-class blacks are not integrating into middle-class white areas and are more likely to live in neighborhoods with higher negative characteristics (Massey 2015, Adelman 2004). Studies that rank cities on racial and ethnic dissimilarity and isolation indices show that many metropolitan areas, Louisville/Jefferson County Metropolitan Statistical Area (MSA) included, continue to rank high on these measures even as they show overall declines. This demonstrates the continued need for attention to housing segregation patterns (Adelman 2004, Domina 2006, Massey 2015). While racial and ethnic housing patterns have been a primary focus of housing research, there are also recent studies that demonstrate that gay and lesbian households (Hayslett and Kane 2011) and families living in poverty (Fry and Taylor 2012, Bischoff and Reardon 2013) are highly concentrated across our communities as well.

As communities continue to contend with segregation by race and document uneven distribution of other protected classes, they are also confronted with continued lack of affordable housing overall. Fair market rents are consistently out of reach for workers making minimum wage, median household income

has dropped for both homeowners and renters since 2008 (Massey 2015), the number of cost-burdened home owners and renters remain high. Cost-burdened renters are experiencing a new high with close to half being considered cost-burdened in 2013 (JCHS 2015:30). The new AFFH rule empowers communities to assess their local state of affordable fair housing, examine the distribution of their population by protected classes and income levels, identify impediments to achieving fair access to affordable housing, and develop plans that specify how they intend to spend HUD-funded programs such as Community Development Block Grants (CDBG) to address these issues.

The Texas decision means that the data from an assessment can be used to hold agencies and decision makers accountable if it can be shown that their policies or programs serve as impediments to fair housing or serve to perpetuate patterns of residential segregation and isolation. This decision provides teeth to the policies or investment priorities that communities develop to address unfair housing patterns identified in a fair housing assessment. An important link between the AFFH rule and the Texas decision is the requirement of community engagement as part of the AFFH assessment process. The Texas decision reinforces the value of documenting patterns of exclusion and unfair outcomes and thus empowers other stakeholders who participate in the assessment process to both contribute and bring a critical eye to the analysis.

The 2015 *State of Metropolitan Housing Report* continues to document nine measures related to the state of affordable housing in Louisville Metro and the surrounding counties in the MSA. Since MHC began tracking these measures in 2003, it is clear that attention to policies and institutional practices that limit access to affordable housing remains important as evidenced in the documented demographic patterns. The uneven distribution of affordable housing and the racially and ethnically concentrated areas of poverty persist.

The Texas decision affirms that disparate impacts of a policy or practice can be documented using statistical data analysis. Demonstrating intent is not required. The causal link between the policy or program and the unequal outcomes for protected classes can be done using statistical analysis. The AFFH rule provides a community with direction for how to understand data that documents unfair housing outcomes that might be shown through documentation of residential housing patterns, lending patterns, appraisal and assessment data, rental application processes, access to transportation, employment, healthy food, schools, services, and environmental benefits. In sum, the Texas decision reaffirms that data can be used to demonstrate a problem such as disparate impact and the AFFH rule provides a path for how a community, agency, or region can address that problem.

What follows is a brief summary of the Texas decision and a description of key elements of the AFFH rule with particular emphasis on how these two federal actions impact Louisville Metro and the surrounding area.

A Landmark Court Decision

On June 25, 2015, the U.S. Supreme Court issued an opinion in *Texas Department of Housing and Community Affairs, et al. v. Inclusive Communities Project, Inc., et al.*, confirming the way disparate-impact fair housing cases can be proved. The original allegation was that the state of Texas allocated federal Low-Income Housing Tax Credits (LIHTC) in a manner which continued segregated housing in poor, black, inner-city areas. The case relied on statistical evidence to establish that there was a negative disparate-impact on a protected class.

Quoting the opinion of the Court, “[t]he underlying dispute in this case concerns where housing for low-income persons should be constructed in Dallas, Texas – that is, whether the housing should be built in the inner city or in the suburbs” (*Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.* 2015).

The critical legal point that the Court affirmed is that disparate-impact claims are cognizable under the Fair Housing Act. The proof may be statistical and does not require proving motive. The proof must show that the activity causes the fair housing violation and that it has a disparate, negative impact on fair-housing protected classes. Once that is established, a second consideration is whether there are other less discriminatory practices that can be used.

Within the Court’s opinion are several important points that make a policy vulnerable to a disparate-impact claim in fair housing: 1) geography matters; 2) where low-income people live can be entwined with racial segregation through statistics; 3) a case can be made without having to prove intent, only impact and causation; and 4) other, less discriminatory ways to carry out the activity or policy in question can be considered.

Also important to note is that the Low-Income Housing Tax Credit Program (LIHTC) that was the subject of the case, is under the U.S. Treasury; it is not a HUD program. Nor is it a fair housing specific program; the intended



beneficiaries are low-income households. This means that policies that are used to assist in housing or shape access to housing regardless of the agency, are subject to the Fair Housing Act. It highlights the fact that there is a link between where we place low-income housing and how we create fair housing opportunities and that link is important. The decision supports the use of research to demonstrate disparate impact that results from a policy or practice. Earlier research such as Oakley (2008) documented that the Qualifying Census Tract (QCT) bonus within LIHTC served to concentrate LIHTC projects in areas of high poverty and concentrated minority populations by providing incentives to investors who develop low-income housing in areas defined as difficult to develop.

To understand their potential liability and responsibilities under this ruling, communities must ask what other housing-related policies have disparate impact and sustain or create isolated low-income and /or racially segregated residential areas. Key topics communities and States must examine in their policies and program implementation include: zoning laws that outright prohibit or discourage multi-family housing or condensed smaller units in wealthy, predominantly white areas; lack of housing choice or protections for Section 8 Housing Voucher recipients; uneven distribution of investments or incentives to build affordable housing; and regulation of predatory or unfair lending practices. One could also argue that agencies that make decisions about investments in transportation and other types of public infrastructure need to pay attention to how those public investments contribute to perpetuating segregated neighborhoods and areas of concentrated poverty.



Summary of the Affirmatively Furthering Fair Housing Rule

History

The Fair Housing Act (Title VIII of the Civil Rights Act of 1968) requires HUD to administer its programs in ways that *affirmatively furthers fair housing*. This has meant that agencies who receive HUD funding have been required to justify their activities by assessing impediments to fair housing (AI) and reporting to HUD progress made in addressing those impediments. The AI has never had consistent standards or guidelines. Furthermore, what AFFH actually means has been contested. However, over the years, case law has helped to specify what AFFH means, and amendments to the act, notably amendments of 1988, have provided HUD with more support for enforcement and justification for empowering program recipients with tools to meet fair housing goals. Now with the new AFFH Rule comes better definitions of what constitutes actions HUD funded agencies can and should take to actively encourage fair housing.

An initial pilot that was a precursor to the new rule and encouraged communities to integrate fair housing into regional planning processes was implemented through the HUD Sustainable Communities Initiative in 2010 and 2011. Regional planning grant recipients under this program were asked to complete a Fair Housing Equity Assessment (FHEA) that would be used to inform their regional planning process and final plan. This process was new on many levels as it required that broad consortiums across jurisdictional boundaries participate in the FHEA and ensured the inclusion of meaningful community engagement with groups that were often underrepresented in regional planning activities. Additionally, it asked agencies that may not have had experience with or willingness to do so, to examine the ways in which their historical practices contributed to residential segregation and the creation of areas of racially and ethnically concentrated poverty. Finally, it was intended to encourage grantees to engage in a Regional Analysis of Impediments (RAI) rather than AIs for individual jurisdictions by outlining the few extra elements beyond the FHEA that would be required to forgo separate jurisdiction AIs. The analysis grantees were asked to perform was framed as an understanding of access to opportunity. The grantees provided significant feedback to HUD regarding the FHEA that assisted in the refining of the AFFH rule.

What is Affirmatively Furthering Fair Housing in a Nutshell?

The AFFH rule empowers states and municipalities who receive funding from HUD to perform an assessment of fair housing and set goals for achieving fair housing. Progress toward those goals are measured in four areas: 1) overcoming historic segregation by improving integration; 2) reducing concentrated poverty in minority neighborhoods; 3) reduction of uneven distribution of neighborhood quality by race and/or ethnicity; and 4) better responses to the housing needs of those with mental and physical disabilities (Massey, 2015:583). The rule is intended to help communities use their HUD funds from CDBG, HOME Investment Partnership Program, and public housing allocations in ways that are directly aligned with their Consolidated Plans.

Two Key Measures Required by the Assessment of Fair Housing

Racially/ethnically concentrated areas of poverty (RCAPs/ECAPs)

The Assessment of Fair Housing (AFH) Tool requires that local programs measure and map racially/ethnically-concentrated areas of poverty (RCAPs/ECAPs). HUD defines RCAP/ECAP areas as those where one or more census tracts contain either (1) a family poverty rate that is greater than or equal to 40 percent or (2) a family poverty rate that is greater than or equal to three times the metropolitan/micropolitan statistical area's tract average, whichever threshold is lower. Additionally, RCAP/ECAP also includes the census tracts where the non-white population is greater than 50 percent. Communities use the interactive mapping tool and table generator to identify these areas and then must discuss determinants that produce and maintain these concentrations and develop plans to address those determinants.

Dissimilarity Index: Measuring Residential Segregation

The AFH Tool asks communities to use a Racial/Ethnic Dissimilarity Index as a measure of residential segregation for a jurisdiction or region. This index uses U.S. Census data to calculate the percentage of people in any one racial or ethnic category who would need to move into another census tract to reach a representative distribution of that racial or ethnic category across all census tracts in the area under consideration.

The index only measures the relative degree of segregation between two groups; examples include Non-White and White, or Black and White, or Hispanic and White. A typical use would be as a benchmark to compare to other communities or to see if there have been changes over time. The table the AFH Tool generates provides measures for decennial census years 1990, 2000, and 2010 allowing a longitudinal measure of change over time. It does not represent spatial patterns of segregation but provides an overall picture of segregation in a specific geographic area.



AFFH Community Resources:

HUD

- HUD Summary of AFFH Final Rule and associated resources <https://www.hudexchange.info/programs/affh/>
- HUD AFH Beta Test Mapping Tool <http://affht.vsolvit.com/>

PolicyLink

- Advancement for Equity: The Game Changing Rule Coming from HUD <https://www.youtube.com/watch?v=1pesQyN8Bfo>
- A Pivotal Step Toward Opportunity: The Affirmatively Furthering Fair Housing Rule <https://www.youtube.com/watch?v=LjL8E9eJS04>
- **with Kirwan Institute**
- Implementing the Fair Housing and Equity Assessment: Advancing Opportunity Through the Low-Income Housing Tax Credit http://kirwaninstitute.osu.edu/wp-content/uploads/2015/06/01_2014_LIHTC_FHEA-Policy-Brief-for-SCI-Grantees.pdf

Key Requirements and Guidance

HUD's AFFH rule has five key elements:

1. It replaces the previously required Assessment of Impediments to Fair Housing (AI) that was not well defined or standardized with an Assessment of Fair Housing (AFH) that is more standardized.
2. HUD now provides data to funded agencies that they are asked to consider in their assessment of the state of fair housing and in establishing goals toward achieving fair housing.
3. Planning processes such as state and local consolidated plans and public housing authority plans required by HUD program recipients now explicitly incorporate fair housing planning.

4. The rule encourages regional approaches and allows for cross jurisdictional and cross-public housing authority collaboration.
5. Importantly it requires community participation in the fair housing assessment process in order to ensure the inclusion of voices from those in the protected classes.

What does not change are rules and guidance about how HUD program monies, such as Community Development Block Grant (CDBG), can be spent, but the spending plans must now be directly connected to plans developed in the AFH and use a fair housing lens.

What is the Affirmatively Furthering Fair Housing Tool?

These new requirements are undoubtedly daunting for those agencies who have never had to engage in a fair housing assessment or who have done the minimum required to report the status of fair housing in the areas they serve. The AFFH Assessment Tool that accompanies the rule is intended to guide program recipients through the required Assessment of Fair Housing (AFH), the national uniform data they must consider in that assessment, and suggests a clear method for how to connect their planning documents to fair housing goals by requiring specificity on how their HUD resources will be used to achieve those goals. Finally the new rule is intended clarify HUD review standards of the AFH and make technical assistance available ("Final Rule on Affirmatively Furthering Fair Housing" U.S. Department of Housing and Urban Development 2015 p.14). Separate tools for States and Insular Areas will be developed by HUD. The Assessment Tool HUD currently provided is for entitlement jurisdictions and collaborations between entitlement jurisdictions and PHAs where the entitlement jurisdiction is the lead entity in the collaboration.

Who Submits an Assessment of Fair Housing and when is it Submitted?

Jurisdictions who submit Consolidated Plans for CDBG, Emergency Solutions Grants (ESG), HOME, and Housing Opportunities for Persons With Aids (HOPWA) programs and for PHAs will be required to submit an AFH. Eventually all communities and nonprofits who administer CDBG funds will have to submit an AFH. This encompasses entitlement communities¹, non-entitlement² and rural communities who as CDBG recipients received \$500,000 or less in fiscal year 2015, both qualified and non-qualified PHAs³, and states and insular areas. The deadline for the initial submission will be delayed in some cases and phased in for others. Not until 30 days after the federal Office of Management and Budget (OMB) has approved the AFH tools and published them in the Federal Register will the deadlines be officially set. The earliest deadline for submissions will be 270 days prior to the start of a program year. Since HUD will develop separate AFH tools for states and insular areas that will need their own approval process, these entities will have a later submission deadline for their first AFH.

Louisville MSA Government Agencies and Entities Obligated under the new Affirmatively Furthering Fair Housing Rule

Entities in the Louisville MSA⁴ who will need to comply with the new AFFH rule are listed below. The exact deadlines for each will depend on when the AFH Tool is approved by OMB and published in the Federal Register. The rule states that consolidated plan participants should submit their first AFH 270 days prior to the program year that begins on or after January 1, 2017 for which a new consolidated plan is due (AFFH Rule p. 321). For instance, because Louisville Metro Government recently submitted their 2015–2019 Consolidated Plan and completed an AI in 2015, the first AFH will not be required until 2020. There are also phase in dates for small CDBG grant recipients, states, insular areas and PHAs.

Kentucky

- ▶ Louisville Jefferson County Metropolitan Government (Entitlement Community)
- ▶ Louisville Metro Housing Authority (Non-Qualified PHA)
- ▶ Eminence Housing Authority (Qualified PHA)
- ▶ Shelbyville Housing Authority (Qualified PHA)
- ▶ Kentucky Housing Corporation (for the State)
- ▶ The Kentucky Department for Local Government would submit an AFH to cover Kentucky non-entitlement cities/towns and counties awarded CDBG funds through that department.

Indiana

- ▶ City of New Albany (Entitlement Community)
- ▶ New Albany Housing Authority (Non-Qualified PHA)
- ▶ Charlestown Housing Authority (Qualified PHA)
- ▶ Jeffersonville Housing Authority (Qualified PHA)
- ▶ Indiana Office of Community and Rural Affairs (OCRA) would submit an AFH to cover Indiana non-entitlement cities/towns and counties awarded CDBG funds through that department.

Broader Institutional Impacts

The impacts of the court case and the new AFFH rule will be felt by governmental and non-governmental agencies and organizations because many have direct and indirect impacts on access to fair housing. Numerous agencies at the state and local levels have control over the distribution of federal program funds or incentives that shape access to fair housing. Localities that are entitlement communities also have a certain amount of control over how their allocations beyond CDBG funds contribute to fair housing initiatives in an affirmative manner as required by HUD. In Kentucky, local governments have limited control over many funds since their taxing authority comes from the state legislature. They do however have control over items such as bond issues and tax increment financing once enabled by the state and, of course, allocations from their general funds. There are also many non-governmental and private organizations whose policies and practices impact fair housing outcomes. All are now empowered to examine whether those practices and policies have disparate impacts. Some are closely monitored by HUD such as the entitlement communities and public housing authorities, others are not such as real-estate agencies, mortgage lenders and underwriters, and insurance companies. The Texas case and the new AFFH rule empower communities and agencies to regularly review overall trends in the use of any tool used to create or provide access to housing and ensure that it meets fair housing review. A few examples of relevant policy and professional practices and the appropriate decision-making bodies are discussed below to demonstrate areas that deserve ongoing oversight or raise questions for further research.

Louisville Metro Government

The Louisville Metro Government (LMG) 2015 AI contractually promises HUD that a Fair Housing Assessment will be used to “review all actions by all parts of government” (Louisville Metro Government 2015 p. 31). Therefore, in addition to requirements under the AFFH Rule and the Texas decision, Louisville Metro, through its 2015 AI, makes it advisable that agencies assess the value of each project using a fair housing lens. Louisville Metro’s DEVELOP LOUISVILLE houses many but not all government agencies and decision makers who can support this requirement to use a fair housing lens in decision making.





Louisville at a Planning Crossroads

The publication of the new HUD AFFH rule coincides with a critical moment in planning Louisville's future. In 2015, Louisville Metro Government (LMG) developed two important policy reports that guide effective policy action for removing local barriers to fair and affordable housing – the 2015-2019 Consolidated Plan and the *2015 Analysis of Impediments to Fair Housing Choice in Louisville Metro* (AI). The Consolidated Plan fulfills Louisville Metro's obligation to HUD for receiving federal block grant program funding (e.g. Community Development Block Grant (CDBG) Program, HOME Investment Partnerships (HOME) Program, etc.) by identifying priorities for programs on a wide range of activities including housing rehabilitation and development, public improvements, economic development, public services, maintaining and improving neighborhoods, and homeless support. The AI identifies policies, plans, and agencies that impact the inclusion and distribution of fair housing in the community, including the Comprehensive Plan and the regional transportation planning of the Kentuckiana Regional Planning and Development Agency (KIPDA), Louisville's Metropolitan Planning Organization. The Consolidated Plan and AI are developed by the Office of Housing and Community Development within the Develop Louisville agency.

While the comprehensive plan and KIPDA transportation plans are not mandated to address items within the new ruling, HUD does recognize that local jurisdictions that coordinate these efforts to further fair housing efforts are “not necessarily at odds with the planning requirements in this regulation” (“Final Rule on Affirmatively Furthering Fair Housing” U.S. Department of Housing and Urban Development 2015). Therefore, LMG and KIPDA will have an opportunity to incorporate assessment tools and data into other planning processes and help further the effort to address the factors that lead to segregation and concentrated poverty.

LMG recently submitted its 2015-2019 Consolidated Plan to HUD and therefore will not be required to update for at least another five years. At that time, they will be required to perform an Assessment of Fair Housing (AFH) which will replace the current AI. Meanwhile, LMG, through Develop Louisville, has the opportunity to evaluate the elements required in the AFH as part of the update process for its comprehensive plan, due for a major update in 2018. The AFH Tool developed by HUD includes questions and indicators that examine data related to patterns of integration and segregation, racially and ethnically concentrated areas of poverty, disproportionate housing needs, and disparities in access to opportunity.

The mechanisms outlined within the AFFH rule provide LMG an opportune moment to proactively align a variety of programs, policies, and plans that will more effectively identify and address the factors that contribute to the creation or perpetuation of fair and affordable housing issues. Equipped with the data and technical resources HUD provides, LMG has the opportunity to apply this approach in other planning processes, including using a fair housing lens as part of the comprehensive plan update.

What is the Role of the Comprehensive Plan?

Comprehensive planning is a process and policy tool city governments use to combine their long-range aspirations and actions to create a livable, just, and sustainable future for their jurisdictions. The comprehensive plan is the official instrument local governments develop, adopt, and update through legislative action that integrates long- and short-range perspectives on functional elements such as land use, transportation, housing, economic development, public health, and sustainability. Through the integration of these items into a single accessible document, the plan officially serves to guide and coordinate subsequent policies, plans, and programs developed by community leaders and decision makers.

In Kentucky, KRS 100 is the official state statute that provides the legal authority and minimum requirements for local governments and their planning commissions in developing the contents of a comprehensive plan. Local jurisdictions vested with this authority must develop a series of studies analyzing the trends and conditions of a community, a statement of official goals, objectives, and policies addressing the required plan elements. This plan typically serves a 20-year period of guidance, however they must be reviewed and amended every five years by the local planning commission to be current under state law. During that time, comprehensive plans guide decisions on public and private land development proposals, public fund (capital) expenditures on infrastructure, and issues of pressing concern such as affordable housing, farmland preservation, and more recently, issues such as sustainability, public health, and climate change adaptation.

DEVELOP LOUISVILLE

Louisville Metro's current comprehensive plan is Cornerstone 2020. Adopted in June 2000, the plan articulates the vision and direction for the community's future growth through its goals and objectives. The plan directs the way the built environment emerges, plot by plot and area by area. The current *Cornerstone 2020* plan excluded fair housing, affordable housing and sustainability as specific goals. *Cornerstone 2020* had limited vision for transit and for environmental amenities. Louisville Metro will begin the public process of updating the Comprehensive Plan soon and participation is open to all residents and organizations. The Office of Advance Planning and other agencies who will approve this plan are now empowered to make fair housing needs a top priority given the Texas decision and the AFFH rule.

Zoning

Zoning ordinances shape what gets built and where things get built. Louisville Metro's Land Use Development Code can be audited for regulations that impede the fair distribution of affordable housing and revised to address identified obstacles. If a zoning ordinance has a disparate impact on a protected class, that ordinance should be addressed in light of the Texas decision. Louisville has begun this task. See the discussion below regarding new incentives to build multi-unit housing in areas where it was previously prohibited.

Public Infrastructure Investments

As Louisville Metro and associated agencies make infrastructure investments in areas such as transportation, drinking, waste and stormwater systems, and green space, they are now empowered to examine what impacts those investments have on housing accessibility and whether those impacts are disparate. They are also empowered to examine if they assist or hinder Louisville Metro in meeting their requirement to affirmatively further fair housing.

Use of Tax Increment Financing

The Kentucky Cabinet for Economic Development describes Tax Increment Financing (TIF) as enabled under K.R.S. 424.130, 65.7041 to 7083 and 154.30, as a tool to finance needed infrastructure improvements by capturing the future value of an improved property to pay for the current costs of those improvements. Typically used for commercial development for businesses, a TIF can finance residential development. Even though there is no mandate built into the TIF law to focus on affordable or fair housing, a question can be raised about whether the ways in which TIFs are implemented have disparate impact protected by the Fair Housing Act. Furthermore, the AFH identifies patterns of investment (public or private) in affordable housing as possible determinants of segregation that communities should examine. If tax increment financing is a funding mechanism that funds, among other things, construction of some residences, questions should be asked that reveal how often has this been used to generate affordable housing of the times that it has been used to generate housing? In Louisville, there are no elements of affordable housing included in the over \$2 billion on the 2015 list of Louisville Metro TIF projects that have State participation. If Louisville continues to use TIF as a development tool, it is now empowered to call for a careful study as to whether the projects create impediments to affordable housing or if there are disparate impacts that are tied to each project.

The Kentucky Housing Corporation and The Indiana Housing and Community Development Authority

The Kentucky Housing Corporation oversees the allocation of LIHTCs and controls the state Affordable Housing Trust Fund allocations. The Indiana Housing and Community Development Authority administers LIHTC in Indiana.

As mentioned previously, attention to LIHTC outcomes is necessary to ensure there are not unintentional disparate impacts occurring as a result of how those tax credits and other resources get distributed. Because LIHTC allocations are based on applications and are project based, any review of the outcomes must be multi-year since some areas may put in applications some years but not others, and some may get priority after a year or so of not receiving any distributions. The questions that the Texas case raises about how distributions of these tax credits have the potential to perpetuate concentration of minorities and low-income residents means the process for allocation need continual oversight and review.

Real Estate Practitioners

Appraisers

Appraisals are used when people are looking to sell, buy, and refinance their homes. It is common knowledge that appraisal values are lower in some areas for reasons that are not always transparent and are thus difficult to evaluate. Commissioned by LMG, the Vacant and Abandoned Property Neighborhood Revitalization Study, published in 2013, looked at challenges to increasing real estate value through reuse of vacant properties in segregated neighborhoods in West Louisville. The study notes that establishing value has been a challenge for several reasons. The study states: "With the highest proportion of non-arm's length sales since 2009 and the lowest sales price per square foot before or after the recession, the West Louisville neighborhoods have the most notable real estate market challenges in Jefferson County" (pp. 6-17). This poses a unique challenge for appraisers, yet there has not been an intentional response to ensure proper valuation of real estate in these neighborhoods. The Texas decision opens the door to ask the appraisal industries to be more transparent in their valuation process. This would require an answer from the appraisal industry to account for

why appraisals are substantively lower in certain neighborhoods, such as West Louisville, and develop an intentional process to address this disparate outcome.

Mortgage Lenders and Underwriters

The Home Mortgage Disclosure Act (HMDA) makes information about mortgage approvals at the local level. This data can be used to examine whether there are uneven outcomes based on protective class status. Similar to national trends, the HMDA 2014 data for the Louisville MSA show disparity in both the percent of the black/African-American population applying for mortgages (8 percent) and in the outcome of getting a mortgage (29 percent of those who applied were denied). For Hispanics/Latinos, the data show a higher percentage of applications at 34 percent but also a higher rate of denial (24 percent) than the 18 percent denial rate of white applicants. While there may be many reasons for this, in light of the Texas decision, this disparity warrants exploration and inquiry into policies and practices that produce this outcome.

National Mortgage Patterns

"According to 2013 HMDA data, 12 percent of applicants for home purchase loans were denied financing. The rate was especially high (20 percent) for African-American applicants—nearly twice that for white borrowers. Hispanics fared slightly better, with a 17 percent denial rate. Meanwhile, low-income borrowers were denied purchase loans 2.5 times more often than upper-income borrowers." JOINT CENTER FOR HOUSING STUDIES OF HARVARD UNIVERSITY, 2015 State of the Nation's Housing, page 24

Home Mortgage Disclosure Act Data for Louisville 2014

	All Groups	White	Black	Latino
Total Population	597337	421719	136,790	26,880
% of Total		71%	32%	20%
Total Applications	50845	37224	3,152	1,083
% of Total		73%	8%	34%
Origination	24743	22660	1,481	602
% of Total		45%	3%	1%
Denials		6635	912	255
% of total		13.0%	1.8%	0.5%
% of total applications approved within race		61%	47%	56%
% of total applications denied within race		18%	29%	24%

Source: Federal Financial Institutions Examination Council (FFIEC)
<http://www.ffiec.gov/Hmda/hmdaraw.htm>
 and U.S. 2010 Census Data.

Lenders might also examine if their policies related to fees for required services have a disparate impact. For instance, do they require all prospective borrowers to pay for a parcel survey and if not, under what circumstances is that requirement waived? Are there geographic variations in the determination of which fees the borrower must pay? These are difficult for outsiders to the industry to monitor, thus it is the industry that must demonstrate that their internal practices and policies are not perpetuating segregated housing.

Insurance Industry

The rates for insurance in geographic areas with high concentrations of people in protected classes under the Fair Housing Act can slip into a de facto red line increasing rates in areas. A challenge to the insurance industry is to examine the actuarial factors to determine if there is any adjustment possible. For instance, intense home ownership counseling has decades of proven effectiveness in lowering default rates (Smith et. al. 2014). Yet the insurance industry has not recognized this effect in lowering rates.

Any homeowner or renter insurance program or requirement can be subject to examination to see if there are geographic concentrations of higher rates that have a disparate impact on those living in areas with higher concentrations of minorities and those living in poverty. If there is an alternative measure of risk assessment that the industries can use that would decouple geographic variables, the Texas case makes that a viable option.

Examples of How Louisville Agencies are Currently Addressing Their Obligations

The Louisville Metro Human Relations Commission funded two recent projects that provide considerable relevant information that could be included in a future AFH, the *20-Year Action Plan* published in 2014 and *Searching for Safe, Fair, and Affordable Housing: Learning from Experiences, An Analysis of Housing Demand in Louisville Metro* released in 2015. The *20-Year Action Plan* provides a robust history of housing segregation in Louisville along with a set of clear steps that need to be taken to address current obstacles to furthering fair housing. The new AFFH rule specifically requires communities to address their specific history and develop clear goals related to furthering fair housing and strategies to meet those goals. That this plan has been adopted means that Louisville is a step ahead in fulfilling the requirements of the new AFH Tool. The *Analysis of Housing Demand* fulfills a gap in our knowledge about specific obstacles individuals face in accessing fair and affordable housing. A key finding in that report is that most people interviewed like their current neighborhoods but would like to feel safer and have better access to amenities, schools, and work. This connects to the portions of the AFH tool that require communities to examine determinants of access such as public transportation, proximity to grocery stores, schools, and safe infrastructure. The report empowers Louisville with justification to link planning for these amenities and needed services to planning for investments in fair housing.

Louisville Metro's 2015 Analysis of Impediments⁵ was submitted to HUD as part of the Consolidated Plan in June of 2015 and is awaiting final

approval. This HUD-mandated document is part of a series of promises to HUD to govern spending of federal housing dollars in Louisville. This AI is what will be replaced by the new AFH. The usual term of the AI is five years, which means it expires in 2020. Louisville Metro is already ahead of the curve with their 2015 AI as it contains similar analysis required by the new AFH and has clear recommendations to AFFH. Since it was recently submitted, this gives Louisville Metro time to plan ahead for the new requirements that might not be easy to implement, especially those related to community engagement that moves beyond the typical public hearing/notice/request for feedback, one-way communication model.

Changes to Louisville Metro Land Development Code

The Louisville Metro Land Development Code, or zoning as it is referred to, is a series of laws governing how every parcel of land in Louisville Metro can be used. This control has led to the exclusion of techniques that deliver affordable housing (small lot sizes or multi-family) in over 70 percent of the land that is zoned for residential use. In August 2015,, the Louisville Metro Council approved the first step to removing the remaining legal barriers to fair housing opportunities in zoning. The ordinance allows, and provides incentives to encourage mixed housing types and mixed-income levels in the over 60 percent of acreage zoned for single-family homes on large lot sizes; a barrier to affordable housing techniques. The zoning districts are R-4 which requires 9,000 square feet per single-family lot and R-5 which requires 6,000 square feet per lot. The incentive provides a modestly increased allowable density (i.e. in R-4 a density of 4.84 units per acre could increase to 6.05 units per acre) in exchange for allowing a mix of multi-family and single-family housing units and requires that some of the units be affordable for those in the lowest 40 percentile of income levels in Louisville. The ordinance also allows smaller lot sizes for single-family homes, and requires compatibility of design.

The Louisville CARES program⁶ was proposed in 2015 as a vehicle administered by Louisville Metro's Office of Housing and Community Development to provide gap financing for the development of multi-family rental properties that are affordable to households making 80 percent or less of area median income. Developers will often not see the benefit of including affordable housing in the projects they design. This incentive is intended to get them past that obstacle. The proposed manual and guidelines were open for community comment until November 4, 2015. Once launched, the program intends to assist in financing up to 750 units.

Louisville Affordable Housing Trust Fund

Created in 2008, the Louisville Affordable Housing Trust Fund makes grants, loans and technical assistance available to builders and developers to construct affordable housing when other lending options are not available or do not make up for the risks. They currently administer a revolving loan fund and the HOMEBuyer Program⁷. The funds for their activities come from Louisville Metro Government, the 2012 National Mortgage Settlement fund, corporations, and individual donors. The agency continues to seek a source of ongoing dedicated revenue.



TOWARD FAIR HOUSING

There are positive impacts of reducing inequality and housing segregation. Regions across the U.S. that weathered tough economic times and have better long-term measures of economic growth also have lower measures of residential segregation and income inequality (Benner and Pastor, 2012). By following the Texas decision and taking HUD's AFFH rule seriously, Louisville Metro and the surrounding region are poised to provide a stronger foundation for longer term economic growth.

Louisville Metro and the surrounding communities have made strides in furthering fair housing. While the area has much room for improvement in regard to residential segregation, there are important efforts underway being led by government and non-profit agencies alike. The effort to revise the Louisville Metro Land Use Development Code, the creation of the Louisville

CARES program, the Louisville Affordable Housing Trust Fund, investments in local affordable housing developers, and support of research that documents that progress are all indications that there continues to be progress made. The Texas case and the new AFFH rule both empower agencies and those working to address inequality to fulfill their missions and draw on support from decision makers in agencies that indirectly impact access to fair and affordable housing. The broader impact of the Texas decision has yet to be felt. Other funding or incentive programs that impact housing segregation can now be assessed and held accountable using analysis that documents levels of disparate impact. The new HUD AFFH rule and its associated AFH Tool provide a clear and powerful set of instructions for performing such an assessment.

1 The U.S. Department of Housing and Urban Development (HUD) defines 'entitlement communities' as metropolitan cities and urban counties that are *entitled* to receive annual grants. Metropolitan cities are principal cities of Metropolitan Areas (MAs) or other cities within MAs that have populations of at least 50,000. Urban counties are within MAs and have a population of 200,000 or more (excluding the population of metropolitan cities within their boundaries). http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/communitydevelopment/programs <http://portal.hud.gov/hudportal/documents/huddoc?id=HUDPrograms2013-4.pdf>

2 Non-Entitlement Communities: "Forty-nine states and Puerto Rico are entitled to receive grant funds for distribution to non-entitlement units of government (those that are not metropolitan cities or part of an urban county). Hawaii has elected not to administer funding under the state CDBG program. In Hawaii, HUD awards the funds

directly to the three eligible non-entitled counties using statutorily determined formula factors." <http://portal.hud.gov/hudportal/documents/huddoc?id=HUDPrograms2013-6.pdf>

3 HUD standards for a qualified Public Housing Authority (PHA) is that it has a combined unit total of 550 or less public housing units and section 8 vouchers; is not designated troubled under section 6(j)(2) of the 1937 Act, the Public Housing Assessment System (PHAS), as a troubled public housing agency during the prior 12 months; and does not have a failing score under the Section 8 Management Assessment Program (SEMAP) during the prior 12 months. Qualified PHAs are required to submit a 5-year PHA Plan but is exempt from submitting an Annual Plan. PHAs that do not meet the criteria of a qualified PHA are required classified as Non-Qualified PHAs and required to submit a PHA Annual Plan (http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/pha).

4 This report traditionally addresses the state of affordable housing in the Louisville MSA which in 2015 includes seven counties in Kentucky (Bullitt, Henry, Jefferson, Oldham, Shelby, Spencer, and Trimble) and five in Indiana (Clark, Floyd, Harrison, Scott, and Washington).

5 Louisville Metro 2015 *Analysis of Impediments*: https://louisvilleky.gov/sites/default/files/housing_community_development/draft_analysis_of_impediments_to_fair_housing_choice.pdf

6 Louisville CARES Program: <https://louisvilleky.gov/government/housing-community-development/louisville-cares>

7 HOMEBuyer Program: <https://louisvilleky.gov/government/housing-community-development/louisville-affordable-housing-trust-fund>