

# Residential Segregation and Racial Discrimination in Housing: Continuing Harms for Communities of Color in the United States

Report to the  
United Nations Committee on the Elimination of Racial Discrimination  
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Submitted in Response to the  
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# EXECUTIVE SUMMARY

Racial discrimination in housing is a pervasive issue in the United States, present in nearly every city and region in the country. Housing discrimination harms communities and prevents the full realization of other human rights, with negative consequences for minorities regarding the right to education, health and access to healthcare, exposure to crime and violence, and access to employment opportunities. This Shadow Report evaluates the current state of housing discrimination and segregation in the United States and the federal government's failure to fulfill its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).

For decades, de jure segregation at all levels of government was the dominant mechanism of spatially separating Americans into different neighborhoods based on race. Federal, state, and local policies like government enforcement of racially restrictive covenants, the use of zoning ordinances for exclusionary purposes, segregation of public housing, redlining, and explicit racial requirements in the Federal Housing Administration's mortgage insurance program helped to entrench residential segregation in American cities. The historical practices explicitly supporting housing segregation continue to impact the current state of racial discrimination in housing and contribute to concentrated poverty in minority communities.

Today, that system has been replaced with nominally racially neutral policies that nonetheless serve to segregate communities. After the CERD Committee's 2014 Concluding Observations, the United States government began to take steps to come into compliance with CERD and begin to counteract these harmful policies, including issuing guidelines and rules from the Department of Housing and Urban Development (HUD) to affirmatively further fair housing and implementing other policies that promote access to opportunity.

From 2017-2021, the Trump Administration frustrated these efforts by suspending or rescinding some of the most impactful HUD rules and in some cases replaced them with rules that severely undermined attempts to combat racial discrimination in housing.

The Biden Administration has responded by promising to reinstate regulations and increase funding for federal housing programs. While these actions are commendable, they are incomplete and insufficient. Despite the current Administration's push to advance racial equity, the United States has failed to reverse the damage done in the prior years, and to fully redress the continuing harms of racial and economic segregation. Serious steps need to be taken in order for the United States to come into compliance with CERD.

We recommend a number of steps that the United States government can take to fulfill its obligations under CERD:

- Issue a new Affirmatively Furthering Fair Housing (AFFH) rule, building on and improving the 2015 AFFH rule.
- Stricter enforcement of fair housing siting standards to prevent increased segregation and concentration of poverty.
- Meaningful federal intervention to address exclusionary zoning.
- Significantly expand the Housing Choice Voucher program, including sufficient funding for housing mobility services.
- Enact federal protections for source of income (SOI) discrimination.
- Vigorous tenant education and enforcement of the choice mobility obligation in Rental Assistance Demonstration sites.
- Expand the Small Area Fair Market Rents mandate to additional metropolitan areas to give families more opportunity to move into low poverty areas.
- Fully staff HUD’s Office of Fair Housing and Equal Opportunity at a minimum of 1,125 full-time-equivalent employees.
- Add the Low-Income Housing Tax Credit (LIHTC) program to the list of programs covered under the Treasury Department’s Title VI regulation to guarantee protections against discrimination for communities of color in the LIHTC program.

## I. Legal Obligations of the United States and CERD Committee’s 2014 Concluding Observations

The United States government’s obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (CERD)<sup>1</sup> are similar to its obligations under the Fair Housing Act (FHA)<sup>2</sup> and other domestic civil rights laws. The FHA imposes the requirement to “affirmatively further fair housing” on all federal housing agencies and federal grantees.<sup>3</sup> The Act also directs the federal government to take affirmative steps to remedy private discrimination, to avoid governmental policies that perpetuate segregation, and to reverse historical patterns of segregation and discrimination.<sup>4</sup> Additionally, other civil rights laws such as Title VI of the 1964 Civil Rights Act and the Equal Credit Opportunity Act include protections specific to nondiscrimination and fair lending in the housing market.<sup>5</sup>

1 The United States signed and ratified CERD in 1994.

2 42 U.S.C. §§ 3601-3631 (2000).

3 42 U.S.C. § 3608(d).

4 *Id.*

5 42 U.S.C. § 2000d et seq. (prohibiting discrimination on the basis of race in programs receiving federal financial assistance); 15 U.S.C. §§ 1691-1691f, § 1691 (1991) (prohibiting discrimination on the basis of race and other characteristics “with respect to any aspect of a credit transaction”).

However, as noted below, the U.S. government has not yet lived up to its obligations under the CERD treaty or the Fair Housing Act.

Under CERD, the United States has accepted the following specific obligations:

- To ensure the compliance of “all public authorities and public institutions, national and local” with the obligation not to engage in racial discrimination.<sup>6</sup>
- To “review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which,” regardless of intent, “have the effect of creating or perpetuating racial discrimination wherever it exists.”<sup>7</sup>
- To “particularly condemn racial segregation” and “undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.”<sup>8</sup> In 1995, the Committee on the Elimination of Racial Discrimination issued a detailed interpretation of Article 3 explaining that the duty to eradicate segregation includes not only the obligation to cease active discrimination, but also the obligation to take affirmative steps to eliminate the lingering effects of past discrimination.<sup>9</sup> It recognized that, although conditions of complete or partial racial segregation may in some countries have been created by governmental policies, a condition of partial segregation may also arise as an intended or unintended consequence of the actions of private persons.
- To “undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of” the right to housing, and the right to own property alone as well as in association with others.<sup>10</sup>

The CERD Committee observed in 2014 that the United States has continued to fail to live up to its obligations under the Treaty with regard to discrimination and segregation in housing. The Concluding Observations included the Committee’s recommendations to reach compliance with CERD and reduce segregation:

Concluding Observation 13: Discrimination and segregation in housing

While acknowledging the positive steps taken by the State party to address discrimination in access to housing and to reverse historical patterns of segregation, the Committee remains concerned at: (a) the persistence of discrimination in access to housing on the basis of race, colour, ethnicity or national origin; (b) the high degree of racial

6 CERD, art. 2 § (1)(a), Dec. 21, 1965, 660 U.N.T.S. 195.

7 *Id.* at art. 2 § (1)(c).

8 *Id.* at art. 3.

9 U.N. Comm. on the Elimination of Racial Discrimination, Aug. 18, 1995, General Recommendation 19, Racial segregation and apartheid (Forty-seventh session, 1995), ¶ 140, U.N. Doc. A/50/18, reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 208 (2003), available at <http://www1.umn.edu/humanrts/gencomm/gen-rexix.htm>. Cf 42 USC 3608.

10 CERD, *supra* note 6, art. 5 §§ (d)(v), (e)(iii)

segregation and concentrated poverty in neighbourhoods characterized by sub-standard conditions and services, including poor housing conditions, limited employment opportunities, inadequate access to health-care facilities, underresourced schools and high exposure to crime and violence; and (c) discriminatory mortgage-lending practices and the foreclosure crisis which disproportionately affected, and continues to affect, racial and ethnic minorities (arts. 3 and 5 (e)).

The Committee urges the State party to intensify its efforts to eliminate discrimination in access to housing and residential segregation based on race, colour ethnicity or national origin, by, inter alia:

- (a) Ensuring the availability of affordable and adequate housing for all, including by effectively implementing the Affirmatively Furthering Fair Housing requirement by the Department of Housing and Urban Development, across all agencies administering housing programmes;
- (b) Strengthening the implementation of legislation to combat discrimination in housing, such as the Fair Housing Act and Title VIII of the Civil Rights Act of 1968, including through the provision of adequate resources and increasing the capacity of the Department of Housing and Urban Development;
- (c) Undertaking prompt, independent and thorough investigation into all cases of discriminatory practices by private actors, including in relation to discriminatory mortgage lending practices, steering and red-lining; holding those responsible to account; and providing effective remedies, including appropriate compensation, guarantees of non-repetition and changes in relevant laws and practices. (CERD/C/USA/CO/7-9)

Noting the impact that housing segregation has on segregation in schools, the Committee's recommendations on segregation in education also acknowledged the need to combat housing segregation:

The Committee recommends that the State party intensify its efforts to ensure equal access to education by, inter alia:

- (a) Developing and adopting a comprehensive plan to address racial segregation in schools and neighbourhoods, with concrete goals, timelines and impact assessment mechanisms; (CERD/C/USA/CO/7-9)

Most recently, the UN Special Rapporteur on adequate housing's 2022 advisory report on "Spatial segregation and the right to adequate housing" identifies land use planning and social, public, and affordable housing policy as a major challenge in addressing spatial segregation.<sup>11</sup> The report specifies a number of policies in the United States which perpetuate segregation, including exclusionary zoning, the targeting of industrial zoning in communities of color

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11 UN Human Rights Council, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in This Context, Balakrishnan Rajagopal*, 4 March 2022, A/HRC/49/48, available at: <https://www.ohchr.org/en/documents/thematic-reports/ahrc4948-spatial-segregation-and-right-adequate-housing-report-special> (June 29, 2022).

resulting in higher levels of pollution, and forced evictions and displacement.<sup>12</sup> The Special Rapporteur found that the persistence of housing segregation is “tied both to the legacies of former segregationist policies” and to current policies and practices “that appear neutral but have a discriminatory effect.”<sup>13</sup> This remains true for the United States.

## II. Period of Progress Followed by Massive Setback

There was significant progress to address housing segregation from 2014-2016 responding in part to the CERD Committee’s 2014 recommendations.

In 2014, the U.S. Department of Housing and Urban Development (HUD) issued new guidelines improving fair housing access to HUD multifamily properties, including requirements for affirmative marketing to groups least likely to apply for HUD properties because they are not the predominant racial or ethnic group in the neighborhood.<sup>14</sup>

In July 2015, HUD issued a rule to implement the duty to affirmatively further fair housing (AFFH), a legal requirement that federal agencies and federal grantees actively address and work to eliminate housing discrimination and segregation.<sup>15</sup> Although the AFFH requirement has been in the Fair Housing Act since 1968, the rule established the first meaningful process for compliance with AFFH goals for HUD grantees. The 2015 AFFH rule provided funding, tools, and data to HUD grantees to analyze causes and patterns of segregation and set actionable goals to promote greater integration and equity.

HUD issued another new rule in August 2015 on improving the portability process for families with Housing Choice Vouchers (HCVs), making it easier for families in the country’s largest housing program to move to higher opportunity neighborhoods.<sup>16</sup>

In a powerful decision in 2015, the Supreme Court affirmed the reach of the Fair Housing Act to cover disparate impact, including actions that perpetuate segregation.<sup>17</sup>

In 2015-16 Raj Chetty of Harvard University published two major studies analyzing the economic and educational benefits for children who move from high poverty to low poverty areas which had a significant impact on public discourse surrounding housing desegregation.<sup>18</sup>

12 *Id.* at 10, 11.

13 *Id.* at 9.

14 HUD Notice H 2014-16, Nov. 28, 2014. <https://www.hud.gov/sites/documents/14-16HSGN.PDF>

15 24 C.F.R. Parts 5, 91, 92, *et al.* Affirmatively Furthering Fair Housing; Final Rule

16 24 C.F.R. 982. *See also* Housing Choice Voucher Program: Streamlining the Portability Process; Final Rule, 80 Fed. Reg. 50564-01 (Aug. 20, 2015), *available at* <https://www.federalregister.gov/documents/2015/08/20/2015-20551/housing-choice-voucher-program-streamlining-the-portability-process>.

17 *Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 135 S. Ct. 2507, 192 L. Ed. 2d 514 (2015).

18 Chetty, Raj, Nathaniel Hendren, and Lawrence F. Katz, “The Effects of Exposure to Better Neighborhoods on

In 2015 and 2016, the Rental Assistance Demonstration (RAD) launched, which allows some public housing to be converted to project-based rental assistance and included a new choice mobility option. Choice mobility rights provide residents with the option to obtain an HCV from their public housing agencies after a defined period of occupancy, empowering them to move to affordable rental properties of their own selection.<sup>19</sup> Choice mobility promotes access to opportunity and housing desegregation to reduce concentrated poverty.<sup>20</sup>

In one of the most important advances in fair housing for families with federal housing vouchers, HUD issued the Small Area Fair Market Rents rule (SAFMR) in November of 2016, effectively giving HCV recipients access to high opportunity and lower poverty areas.<sup>21</sup>

In 2016, HUD issued guidance on the Application of Fair Housing Act Standards to the Enforcement of Local Nuisance and Crime-Free Housing Ordinances Against Victims of Domestic Violence, Other Crime Victims, and Others Who Require Police or Emergency Services. The guidance recognized that there was an increase in the number of jurisdictions adopting crime-free housing ordinances and nuisance ordinances and raised the need for jurisdictions to examine whether the adoption of such ordinances was being done in a manner that would violate the jurisdiction's obligation to affirmatively further fair housing. While they vary slightly by jurisdiction, crime-free programs typically require or encourage property owners to: (1) utilize a "crime free lease addendum," which require the eviction of the entire household if one tenant is accused of violating the lease addendum (typically by having any contact with the police – convictions and often even arrests are not required); (2) conduct criminal background checks of applicants, as well as ongoing screening for new criminal activity by current tenants; and (3) participate in mandatory training on operating "crime-free housing," which encourage landlords to police their property in potentially discriminatory ways. Nuisance ordinances, which often go hand-in-hand with crime-free programs, single out properties where alleged "nuisance" activity—such as calls for emergency services, alleged misdemeanor or felony criminal activity, or local ordinance violations such as noise disturbances—has occurred.

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Children: New Evidence from the Moving to Opportunity Experiment," The Equality of Opportunity Project (2014), [www.equality-of-opportunity.org/images/mto\\_paper.pdf](http://www.equality-of-opportunity.org/images/mto_paper.pdf); Chetty, Raj, Nathaniel Hendren, Patrick Kline, and Emmanuel Saez. 2014. "Where is the Land of Opportunity? The Geography of Intergenerational Mobility in the United States." *The Quarterly Journal of Economics* 129(4):1553-1623.

- 19 "Guidance for Successful Implementation of Rental Assistance Demonstration (RAD) Choice-Mobility," Poverty & Race Research Action Council, August 2020. <http://www.prrac.org/pdf/guidance-implementation-of-rad-choice-mobility.pdf>
- 20 For a synthesis of some of this research, see Barbara Sard, Douglas Rice, Alison Bell, and Alicia Mazzara, "Federal Policy Changes Can Help More Families with Housing Vouchers Live in Higher-Opportunity Areas," Center on Budget and Policy Priorities, September 4, 2018, <https://www.cbpp.org/research/housing/federal-policy-changes-can-help-more-families-with-housing-vouchers-live-in-higher>.
- 21 24 C.F.R. Parts 888, 982, 983, and 985.



While the 2016 HUD guidance focused on the impact of these laws and programs on survivors of domestic violence and other crimes, it also recognized the impact of such laws on racial and ethnic minorities and people with disabilities. In addition, several lawsuits challenging these laws found that racial animus was a central driver for the adoption of these laws and programs.<sup>22</sup> As has been well-documented by researchers such as Professor Deborah Archer, these programs and ordinances have been used to maintain residential segregation and racial boundaries within a community.<sup>23</sup>

At the end of 2016, the Treasury Department issued guidance to states confirming that the Low-Income Housing Tax Credit (LIHTC) statute does not require local support or contribution in state LIHTC plans and tightening the rules on revitalization plans in high poverty census tracts.<sup>24</sup> This guidance was directed at states that had allowed local exclusionary towns to “veto” the presence of tax credit properties in their areas.

Finally, in an action that seemed directly responsive to the Committee’s 2014 recommendations, HUD, the Department of Education, and the Department of Transportation distributed a joint guidance letter urging state and local grantees to work together to advance racial and economic integration and to support HUD’s AFFH rule.<sup>25</sup>

Unfortunately, with a new administration in office in 2017, the United States’ momentum on fulfilling its obligations under CERD was halted and many advances of the previous two years were reversed, placing the U.S. in violation of the CERD treaty.

In August 2017, less than a year after being issued, HUD suspended the mandatory application of the Small Area Fair Market Rent rule (but fortunately, fair housing advocacy groups quickly brought a legal challenge that was successful in reinstating the rule).<sup>26</sup>

In January of 2018, HUD suspended the 2015 AFFH rule, relieving over 900 jurisdictions of the obligation to move forward with the Assessment of Fair Housing planning process. This suspension was also challenged by fair housing groups, but the case was rejected for

22 See *United States v. City of Hesperia et al.*, First Am. Compl. and Demand for Jury Trial, No. 5:19-cv-02298 (C.D. Cal. Sept. 10, 2020); *Somai v. City of Bedford*, No. 1:19-CV-373, Second Am. Compl. (N.D. Ohio Jan. 30, 2020); *Jones v. City of Faribault*, Am. Compl. For Declaratory and Injunctive Relief and Damages, No. 0:18-CV-01643 (D. Minn. June 29, 2018); *HOPE Fair Housing Center v. City of Peoria, IL.*, No. 17-cv-01360, Compl. (C.D. Ill. Aug. 10, 2017).

23 See, e.g., Deborah N. Archer, *The New Housing Segregation: The Jim Crow Effects of Crime-Free Housing Ordinances*, 118 Mich. L. Rev. 173 (2019); Deborah N. Archer, ‘Crime-Free’ Housing Ordinances, Explained, The Appeal (Feb. 17, 2021), <https://theappeal.org/the-lab/explainers/crime-free-housing-ordinances-explained/>.

24 Rev. Rul. 2016-29. <https://www.irs.gov/pub/irs-drop/rr-16-29.pdf>; IRS Notice 2016-77. <https://www.irs.gov/pub/irs-drop/n-16-77.pdf>

25 United States Department of Housing and Urban Development, Department of Education, and Department of Transportation, “Joint Letter on Diverse Schools and Communities,” (June 2016), available at [http://www.prrac.org/pdf/Joint\\_Letter\\_on\\_Diverse\\_Schools\\_and\\_Communities\\_AFFH.pdf](http://www.prrac.org/pdf/Joint_Letter_on_Diverse_Schools_and_Communities_AFFH.pdf).

26 *Open Communities Alliance v. Carson*, 286 F. Supp. 3d 148 (D.D.C. 2017).

lack of standing.<sup>27</sup> The suspension of the AFFH rule undercut the previous administration's efforts to ensure fair housing and reduce segregation.

The Trump administration issued a new disparate impact rule in 2020, replacing the existing disparate impact standard first codified as a regulation in 2013 to guide HUD's fair housing enforcement.<sup>28</sup> The 2020 rule effectively nullifies the ability to seek redress for policies with a discriminatory impact by creating a series of new hurdles for victims of discrimination at the pleading stage as well as adding unprecedented new defenses. Most egregiously, the rule eliminates "perpetuation of segregation" as a basis for liability under the Act. The rule also contradicts the 2015 Supreme Court decision in *ICP v. Texas*.<sup>29</sup> Fair housing groups obtained a preliminary injunction to halt the rule's implementation, but there is still a legal void that needs to be filled by reissuance of the original or some version of the original disparate impact rule.<sup>30</sup>

### III. Persisting Patterns of Residential Segregation in the United States

Despite the increasing racial and ethnic diversity of the United States, racial and socioeconomic residential segregation has shown little improvement since the last 2014 report.<sup>31</sup> While the national black-white Dissimilarity Index has decreased by four percent between the years of 2010 and 2020, the level of racial segregation remains at a moderate to high range.<sup>32</sup> In addition, around one in four metropolitan areas experienced worsening residential isolation during the same time frame.<sup>33</sup> Research on racial segregation has indicated that residents of minority-concentrated neighborhoods experience a disproportionate level of exposure to harmful environmental toxins, experience lower levels of educational attainment due to insufficient school funding and resources, and often lack vital neighborhood resources such as grocery stores and public transportation.<sup>34</sup>

27 *National Fair Housing Alliance v. Carson*, 330 F. Supp. 3d 14 (D.D.C. 2018).

28 24 C.F.R. 100; *see also* 78 Fed. Reg. 11460 (Feb. 15, 2013), *available at* <http://portal.hud.gov/hudportal/documents/huddoc?id=discriminatoryeffectrule.pdf>.

29 *Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 135 S. Ct. 2507, 192 L. Ed. 2d 514 (2015).

30 *Massachusetts Fair Housing Center v. United States Department of Housing and Urban Development*, 496 F.Supp.3d 600 (D.Mass., 2020).

31 John R. Logan and Brian Stults. "The Persistence of Segregation in the Metropolis: New Findings from the 2020 Census." Diversity and Disparities Project, Brown University, 2021. <https://s4.ad.brown.edu/Projects/Diversity/Data/Report/report08122021.pdf>.

32 Stephen Menendian, Samir Gambhir, and Arthur Gales. *The Roots of Structural Racism Project: Twenty-First Century Racial Residential Segregation in the United States*. Othering & Belonging Institute, June 21, 2021. [https://belonging.berkeley.edu/roots-structural-racism#footnote56\\_t4dxz0e](https://belonging.berkeley.edu/roots-structural-racism#footnote56_t4dxz0e)

33 *Id.*

34 Danyelle Solomon, Connor Maxwell, and Abril Castro, "Systemic Inequality: Displacement, Exclusion, and Segregation," Center for American Progress, August 7, 2019, <https://www.americanprogress.org/issues/race/reports/2019/08/07/472617/s>.

Just as racially segregated neighborhoods have seen only a slight decline over the past decade, high levels of poverty concentration in residential neighborhoods remains a ubiquitous issue with additional implications for racial inequality. African American children were seven times more likely to live in neighborhoods with concentrated poverty, or areas with a poverty rate over 30%, than white children between 2013 and 2017.<sup>35</sup> Neighborhood conditions can have drastic consequences on the academic performance and the earning potential of students. Children residing in lower-poverty neighborhoods benefit from higher academic performance, substantially greater chances at attending a college or university, and higher annual job earnings while their peers residing in high-poverty neighborhoods are almost twice as likely to drop out of high school.<sup>36</sup>

Because housing is a major contributor in amassing wealth, barriers to homeownership for black families worsens the continued racial wealth gap. Based on data from the Survey of Consumer Finances in 2019, the average white family has accumulated eight times the wealth of the average black family and five times the wealth of the average Hispanic family.<sup>37</sup> In 2019, an almost 30% discrepancy between young white and black family homeownership persists, a figure nearly identical to the homeownership gap following the passage of the Fair Housing Act in 1968.<sup>38</sup> Research has also found evidence for systemic racial bias in the home appraisal process, causing homes in predominately Black and Hispanic neighborhoods to be undervalued.<sup>39</sup> The Brookings Institution found a 23% discrepancy in housing devaluation between white and black neighborhoods despite the homes having similar qualities—resulting in a total loss of \$156 billion nationally in 2018.<sup>40</sup>

Instances of housing discrimination and harassment based on race, sex, and disability status continue to act as a barrier to equitable housing. According to the National Fair Housing Alliance (NFHA) 2021 Fair Housing Trends Report, reports of housing discrimination and harassment are persistent, and in some cases, increasing.<sup>41</sup> Harassment complaints based on sex and disability increased by 40% in 2020 from the previous year, reaching the highest number

35 The Annie E. Casey Foundation. Sept. 24, 2019. “Children Living in High-Poverty, Low-opportunity Neighborhoods.” Baltimore, MD. Retrieved from <https://www.aecf.org/resources/children-living-in-high-poverty-low-opportunity-neighborhoods>

36 Patrick Sharkey. 2013. *Stuck in Place: Urban Neighborhoods and the End of Progress toward Racial Equality*. Chicago: Univ. of Chicago Press.

37 Neil Bhutta & Andrew C. Chang & Lisa J. Dettling & Joanne W. Hsu, 2020. “Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances,” FEDS Notes 2020-09-28-2, Board of Governors of the Federal Reserve System (U.S.). <https://www.federalreserve.gov/econres/notes/feds-notes/disparities-in-wealth-by-race-and-ethnicity-in-the-2019-survey-of-consumer-finances-20200928.htm>.

38 *Id.*

39 Freddie Mac, “Racial and Ethnic Valuation Gaps in Home Purchase Appraisals.” Sept. 20, 2021. <https://www.freddie.com/research/insight/20210920-home-appraisals>. Accessed June 9, 2022.

40 Andre Perry, Jonathan Rothwell, and David Harshbarger. “The Devaluation of Assets in Black Neighborhoods”, The Brookings Institution, 2018. <https://www.brookings.edu/research/devaluation-of-assets-in-black-neighborhoods/>.

41 Lindsay Augustine, Cathy Cloud, Sherrill Frost-Brown, et al. 2021. “Fair Housing Trends Report.” National Fair Housing Alliance. [https://nationalfairhousing.org/wp-content/uploads/2021/07/2021-Fair-Housing-Trends-Report\\_FINAL.pdf](https://nationalfairhousing.org/wp-content/uploads/2021/07/2021-Fair-Housing-Trends-Report_FINAL.pdf).

of reports since the first NFHA data report in 2012, likely due to the widespread financial insecurity faced by many due to the COVID-19 pandemic.<sup>42</sup>

## IV. Positive Developments but Deficiencies Remain in United States Response

Since President Biden’s administration took office in 2021 there has been progress on housing desegregation, but given the current dire conditions, the administration has not acted with the urgency needed.

President Biden issued an Executive Order and an Executive Memorandum within a week of his inauguration promising a policy of racial equity for the entire federal government and acknowledging the federal role in redlining, housing segregation, and community disinvestment, and pledging to redress these impacts.<sup>43</sup> The Executive Order directed each federal agency to conduct an Equity Assessment to evaluate “whether underserved communities and their members face systemic barriers in accessing benefits and opportunities available pursuant to those policies and programs,” as well as committing the federal government to “allocat[ing] resources to address the historic failure to invest sufficiently, justly, and equally in underserved communities, as well as individuals from those communities.” The Executive Memorandum, addressed to the HUD Secretary, announced that it is the policy of the administration to end housing discrimination and confirmed the pledge to reinstate HUD’s Affirmatively Furthering Fair Housing rule and the Disparate Impact rule. Although President Biden’s expressed intention to restore these rules is commendable, a full 18 months into his administration, we have still yet to see the Disparate Impact and AFFH rules return with the force of law.

Pursuant to the racial equity Executive Order, HUD recently released its “Equity Action Plan,” which focuses on equity in procurement, increased funding for HUD’s fair housing office, the racial homeownership gap, and reducing homelessness.<sup>44</sup> Notably, the plan did not address efforts to reduce racial segregation or how its programs can affirmatively further fair housing. Although the HUD racial equity plan has important goals, it falls short by not addressing the issues raised in Committee’s 2014 Concluding Observations and recommendations.

Other shortcomings of the administration’s efforts to come into compliance with CERD include failings in the LIHTC program and the Small Area Fair Market Rents rule. LIHTC

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42 *Id.*

43 “Executive Order On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.” *The White House*. Jan. 20, 2021. <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>; “Memorandum on Redressing Our Nation’s and the Federal Government’s History of Discriminatory Housing Practices and Policies.” *The White House*. Jan. 26, 2021. <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-on-redressing-our-nations-and-the-federal-governments-history-of-discriminatory-housing-practices-and-policies/>.

44 HUD, “Equity Action Plan” U.S. Department of Housing and Urban Development. <https://www.hud.gov/sites/dfiles/PA/documents/HUDEquity508compliant.pdf>.

remains excluded from the Treasury Department's list of programs covered by its Title VI regulation (prohibiting Treasury-funded programs from taking discriminatory action), despite the 2016 regulation leaving open the possibility that LIHTC might be added to the list at a later date.<sup>45</sup> Similarly, the 2016 SAFMR rule indicated that in 2021 the number of regions using SAFMRs would be expanded.<sup>46</sup> New metropolitan SAFMR area designations have not yet occurred at HUD.<sup>47</sup>

Nevertheless, the Biden administration has had success combatting racial segregation in housing in some respects. In June of 2021, the President announced the creation of an interagency task force to address the racial disparities in home appraisals.<sup>48</sup> The Interagency Task Force on Property Appraisal and Valuation Equity (PAVE) published an action plan in March of 2022 which “outlines the historical role of racism in the valuation of residential property, describes how government and industry stakeholders will advance equity through concrete actions and recommendations,” and proposes 21 agency actions to eliminate discrimination in home appraisals.<sup>49</sup>

There have also been promising developments in the Housing Choice Voucher program, as the 2022 appropriations bill includes \$25 million for housing mobility services in HUD's HCV program.<sup>50</sup> The President's proposed budget for 2023 also calls for an expansion of the HCV program and \$445 million in additional funding for mobility-related services to help families with vouchers make successful moves to low-poverty areas.<sup>51</sup>

## V. Recommendations

There are a number of steps the United States can take to reduce segregation in housing and come into compliance with CERD, and a strong statement from the CERD Committee would

45 31 C.F.R. 22.

46 24 C.F.R. 888.113(c)(4).

47 Additionally, as result of the COVID-19 pandemic, the rental housing market across the United States has been under extreme stress. Even with SAFMRs, families have been having difficulty moving into low poverty areas, as SAFMRs have not kept up with rapidly increasing rental costs.

48 “FACT SHEET: Biden-Harris Administration Announces New Actions to Build Black Wealth and Narrow the Racial Wealth Gap.” *The White House*. June 1, 2021. <https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/01/fact-sheet-biden-harris-administration-announces-new-actions-to-build-black-wealth-and-narrow-the-racial-wealth-gap/>.

49 Interagency Task Force on Property Appraisal and Valuation Equity (PAVE), *Action Plan to Advance Property Appraisal and Valuation Equity: Closing the Racial Wealth Gap by Addressing Mis-valuations for Families and Communities of Color*, March 24, 2022. <https://pave.hud.gov/actionplan>.

50 Text - H.R.2471 - 117th Congress (2021-2022): Consolidated Appropriations Act, 2022, H.R.2471, 117th Cong. (2022), <http://www.congress.gov/>. This funding builds upon the progress from 2019 when Congress approved funds for HUD's Housing Choice Voucher Mobility Demonstration. Inspired by the Chetty reports published in 2015, the HUD funding bill appropriated \$28 million to fund the Voucher Mobility Demonstration, including \$20 million for housing mobility support services and operating regional mobility programs, \$5 million for 500 new vouchers for families with children participating in the Demonstration, and \$3 million for research to determine the most cost-effective program components.

51 “Budget of the U.S. Government: Fiscal Year 2023” *The White House Office of Management and Budget*. March 28, 2022. <https://www.whitehouse.gov/omb/budget/>.

be extremely helpful in building the political will to adopt these policies. Some steps require Congressional action while others can be enacted by the executive branch under President Biden. All the recommendations are achievable, if President Biden and Congress demonstrate they have the political will to ensure fair housing and reduce segregation.

## A. RECOMMENDATIONS FOR CONGRESSIONAL ACTION

Congress should pass legislation to address exclusionary zoning. The federal government can require that states and localities that receive block grants for community development, transportation or other infrastructure funding develop plans that reduce barriers to building affordable housing and provide for a fair share of regional low income housing needs.<sup>52</sup> Any legislation should mandate that local governments undertaking zoning changes carefully analyze the anticipated effects of zoning changes on communities of color through a process informed by robust community input.<sup>53</sup>

Congress should enact federal protections for source of income (SOI) discrimination. Twenty-one states and dozens of local jurisdictions have passed laws to protect voucher families from discrimination. However, enforcement is inconsistent and SOI laws face challenges at the state level. Passing a national source of income discrimination law and providing funding to state and local legal services organizations to engage in active enforcement would go a long way toward reducing housing segregation.

Congress should adopt the Administration's proposals for a significant expansion of the Housing Choice Voucher program, and sufficient funding for housing mobility services so that all families living in high poverty neighborhoods can have access to a wider range of neighborhoods, including communities with high performing schools.

Congress should appropriate enough funding to fully staff HUD's Office of Fair Housing and Equal Opportunity at a minimum of 1,125 full-time-equivalent employees.

## B. RECOMMENDATIONS FOR EXECUTIVE ACTION

HUD recently restated the scope of the duty to affirmatively further fair housing in its interim rule<sup>54</sup> and began the rulemaking process for a separate rule to "build upon and further improve the 2015 AFFH rule."<sup>55</sup> To fulfill the United States' obligations under CERD, the new rule

52 See S.3342 - 115th Congress (2017-2018): Housing, Opportunity, Mobility, and Equity Act of 2018, S.3342, 115th Cong. (2018), <http://www.congress.gov/>. See also Solomon Greene and Ingrid Gould Ellen, *Breaking Barriers, Boosting Supply: How the Federal Government Can Help Eliminate Exclusionary Zoning*, Urban Institute (Sept. 25, 2020), <https://www.urban.org/research/publication/breaking-barriers-boosting-supply>.

53 See Alliance for Housing Justice et al., "Letter to President Biden, Secretary Fudge, Speaker Pelosi, Majority Leader Schumer, Chair Waters, Chair Brown, Chair Price and Chair Schatz, re: Proposed federal incentives to address restrictive zoning" (June 21, 2021), *available at* [https://dcae2b80-057e-471e-a7e0-da1c65936db9.usr-files.com/ugd/dcae2b\\_1589b7d850bf4dbb9b875dc262af4c1e.pdf](https://dcae2b80-057e-471e-a7e0-da1c65936db9.usr-files.com/ugd/dcae2b_1589b7d850bf4dbb9b875dc262af4c1e.pdf).

54 Restoring Affirmatively Furthering Fair Housing Definitions and Certifications, 86 Fed. Reg. 30779 (June 10, 2021).

55 HUD Notice 2021-098, "HUD Restores Affirmatively Furthering Fair Housing Requirement," June 10, 2021. [https://www.hud.gov/press/press\\_releases\\_media\\_advisories/HUD\\_No\\_21\\_098](https://www.hud.gov/press/press_releases_media_advisories/HUD_No_21_098).

should include, at a minimum, each of the major provisions of the 2015 rule, along with enforcement provisions to empower community based advocacy groups to hold grantees to their promises. HUD can also improve upon the 2015 rule by increasing the effectiveness of the Assessment Tool by requiring additional specificity regarding goals and benchmarks, including the identification of potential policy changes and funding sources and specific steps (with a timeline) that the program participant will take toward achieving its goals.<sup>56</sup> The previous assessment of fair housing tool for local governments identified crime-free programs and nuisance property ordinances as a contributing factor of segregation. HUD should require jurisdictions that have existing or proposed crime free housing programs or nuisance ordinances to complete the Assessment Tool.

HUD and the Department of Treasury should adopt stricter enforcement standards for siting of government-assisted housing, to expand choices for low-income families and to prevent increasing segregation and concentration of poverty.<sup>57</sup>

In 2021, HUD committed to recodify the 2013 Disparate Impact rule implementing the disparate impact principles of the Fair Housing Act.<sup>58</sup> The disparate impact standard is a powerful tool to combat housing discrimination. The “perpetuation of segregation” standard of liability is particularly powerful and should be fully restored. As the Committee’s 1995 interpretation of Article 3 of CERD noted, parties to the treaty have an obligation to take affirmative steps to remedy the lingering effects of past segregation. The interpretation also recognized that segregation may arise as an unintended consequence of the actions of private persons.<sup>59</sup> Recodifying the 2013 Disparate Impact rule as soon as possible enables HUD to ensure fair housing regardless of the intent of the actors engaging in housing discrimination.

The Treasury Department should add LIHTC to the list of programs covered under its Title VI regulation to guarantee protections against discrimination for communities of color in the LIHTC program. The LIHTC program can also be improved to better reflect civil rights best practices through improved siting requirements and incentives, improved standards for community revitalization plans that include LIHTC support, demographic data reporting, and strong affirmative marketing requirements.

HUD should immediately expand the Small Area Fair Market Rents mandate to additional metropolitan areas to give families more opportunity to move into low poverty areas and make

56 See Megan Haberle, Peter Kye, and Brian Knudsen, “Reviving and Improving HUD’s Affirmatively Furthering Fair Housing Regulation: A Practice-Based Roadmap” (PRRAC, December 2020). <https://www.prrac.org/pdf/improving-affh-roadmap.pdf>.

57 See “A Vision for Federal Housing Policy in 2021 and Beyond,” Poverty & Race Research Action Council, June 2020. <https://prrac.org/pdf/vision-for-federal-housing-policy-2021-beyond.pdf>.

58 Reinstatement of HUD’s Discriminatory Effects Standard, 86 Fed. Reg. 33,590 (June 25, 2021).

59 U.N. Comm. on the Elimination of Racial Discrimination, Aug. 18, 1995, General Recommendation 19, Racial segregation and apartheid (Forty-seventh session, 1995), ¶ 140, U.N. Doc. A/50/18, reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 208 (2003), available at <http://www1.umn.edu/humanrts/gencomm/genrexix.htm>.

the voucher program more cost effective, thus allowing more families access to affordable housing.<sup>60</sup>

HUD should commit to vigorous tenant education and enforcement of the choice mobility obligation in Rental Assistance Demonstration sites.<sup>61</sup>

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60 For additional discussion of the benefits of SAFMRs for low-income families, see Will Fischer, “Trump Administration Blocks Housing Voucher Policy that Would Expand Opportunity and Reduce Costs,” Center on Budget and Policy Priorities, September 7, 2017, <https://www.cbpp.org/research/housing/trump-administration-blocks-housing-voucher-policy-that-would-expand-opportunity>.

61 See “Guidance for Successful Implementation of Rental Assistance Demonstration (RAD) Choice-Mobility,” Poverty & Race Research Action Council, August 2020. <http://www.prrac.org/pdf/guidance-implementation-of-rad-choice-mobility.pdf>.





