

# The Trump Administration's Latest Attack on Civil Rights: HUD's Proposed AFFH Rule

February 13, 2020



[#KeepHousingFair](https://www.facebook.com/KeepHousingFair)

[www.FightForHousingJustice.org](http://www.FightForHousingJustice.org)

# Speakers

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**Debby Goldberg**

National Fair Housing Alliance

**Renee Williams**

National Housing Law Project

**Sonya Acosta**

National Low Income Housing Coalition

# Agenda

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- Affirmatively Furthering Fair Housing and the 2015 rule
- Secretary Carson's Proposed Rule
- Advocacy Strategy

# **Affirmatively Furthering Fair Housing and the 2015 Rule**

Debby Goldberg, National Fair Housing Alliance

# Where you live matters





# A ZIP CODE SHOULD NOT DETERMINE A CHILD'S FUTURE.

Many variables can shape a child's outcome in life—like the zip code where a child grows up. That's because not all neighborhoods have the same opportunities and resources, such as quality schools, transportation, housing, healthcare, food and jobs. The good news is that there are many ways to improve our communities so that everyone has a fair chance to succeed, regardless of zip code. You can play a vital role in your local community.

Find out how at:  
**[hud.gov/fairhousing](http://hud.gov/fairhousing)**



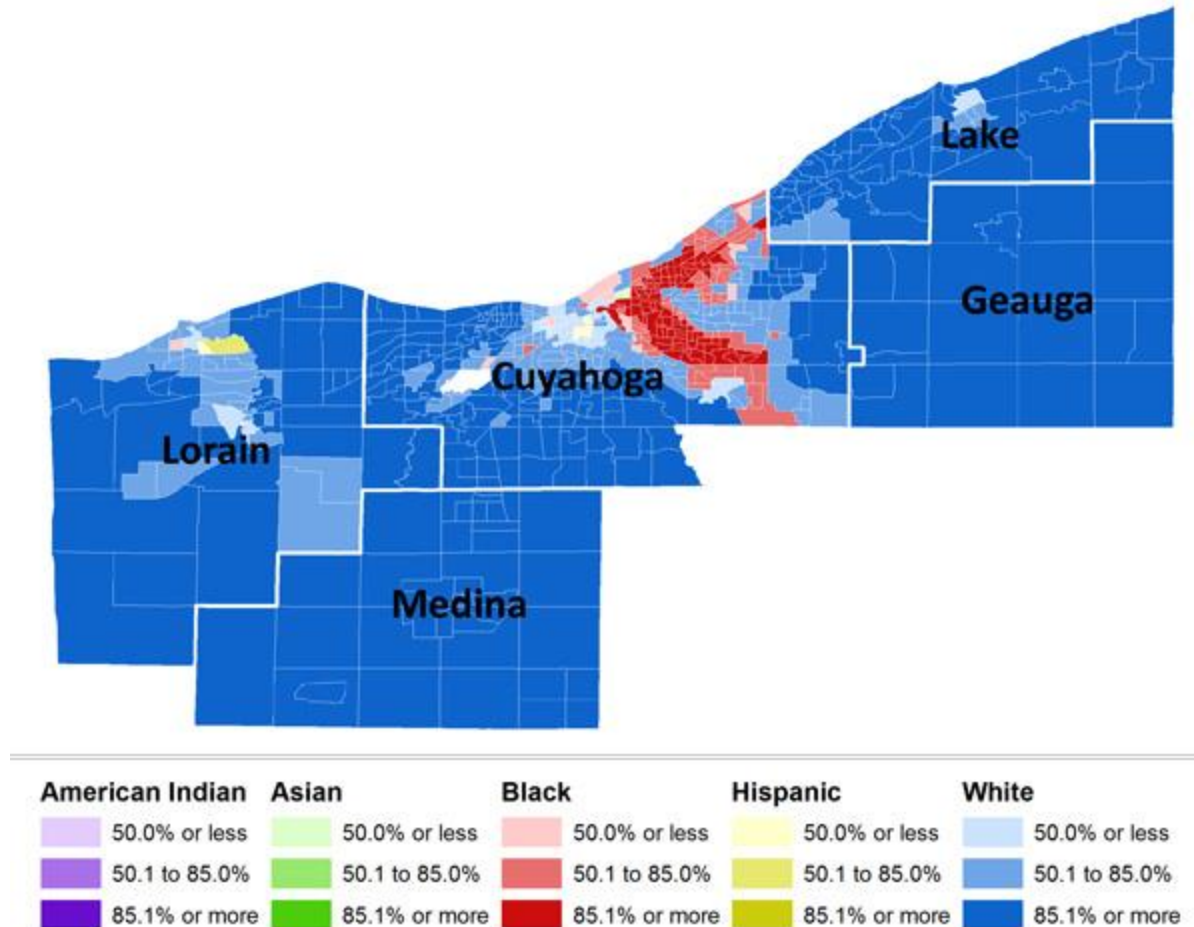
**NFHA**  
National Fair Housing Alliance

**FAIR HOUSING. SHARED OPPORTUNITY IN EVERY COMMUNITY.**

A public service message from the U.S. Department of Housing and Urban Development in partnership with the National Fair Housing Alliance. The federal Fair Housing Act prohibits discrimination because of race, color, religion, national origin, sex, familial status or disability. For more information, visit [www.hud.gov/fairhousing](http://www.hud.gov/fairhousing).

When it comes to opportunity,  
not all neighborhoods are equal

# Cleveland, OH



Source: [http://www.salon.com/2011/03/29/most\\_segregated\\_cities/](http://www.salon.com/2011/03/29/most_segregated_cities/)



# METROPOLITAN CLEVELAND

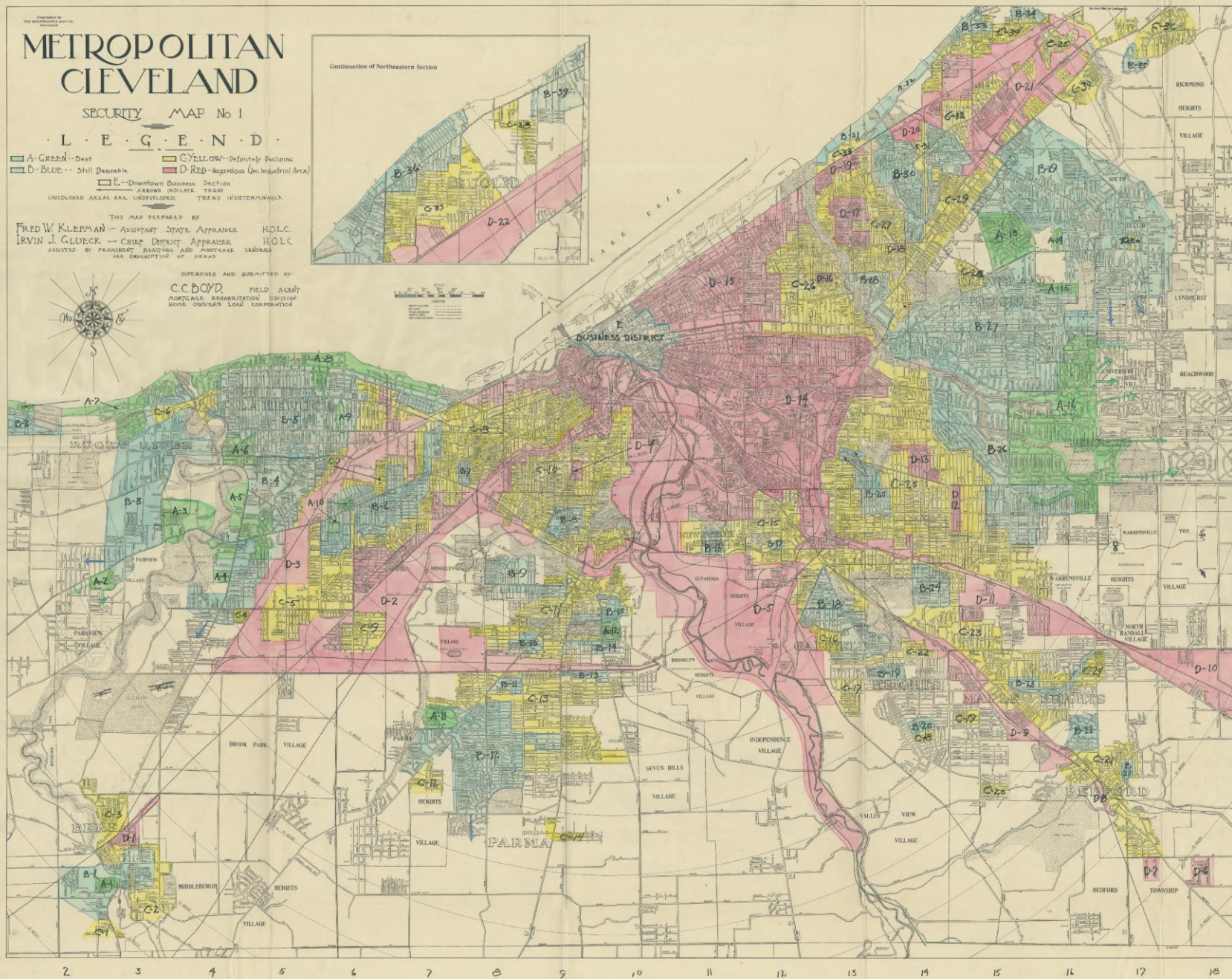
SECURITY MAP No 1

L · E · G · E · N · D ·

- A-GREEN-Desert
- B-BLUE-Still Desirable
- C-YELLOW-Definitely Declining
- D-RED-Hazardous (Inc. Industrial Area)
- E-Downtown Business Section
- ARROWS INDICATE TRAFFIC
- UNCOLORED AREAS ARE UNDEVELOPED
- TREES INDETERMINABLE

THIS MAP PREPARED BY  
 FRED W. KLEPMAN - ASSISTANT STATE APPRAISER HOLC  
 IRVIN J. GLOECK - CHIEF DISTRICT APPRAISER HOLC  
 ASSUMED BY PROMINENT RAILROADS AND PORTAGE LINES  
 SEE DESCRIPTION OF AREAS

SUPERVISED AND SUBMITTED BY  
 C. C. BOYD FIELD AGENT  
 MORTGAGE REHABILITATION DIVISION  
 HOME OWNERS LOAN CORPORATION



# FHA Underwriting Manual (1936)

229. Usually the protection against adverse influences ... include(s) prevention of the infiltration of business and industrial uses, lower- class occupancy, and **inharmonious racial groups**...
233. The Valuator should investigate areas surrounding the location to determine whether or not **incompatible racial and social groups** are present...

A change in social or racial occupancy generally leads to instability and a reduction in values...



# Restrictive Covenant (Seattle, WA 1935-1944)

or owners of property in Innis Arden No. 2, or to a corporation or association formed by residents or owners of Innis Arden, for community purposes, in the activities of which corporation or association residents of Innis Arden No. 2 shall have the right to participate, subject to reasonable restrictions and requirements imposed by such corporation or association.

14. *RACIAL RESTRICTIONS*...No property in said addition shall at any time be sold, conveyed, rented or leased in whole or in part to any person or persons not of the White or Caucasian race. No person other than one of the White or Caucasian race shall be permitted to occupy any property in said addition or portion thereof or building thereon except a domestic servant actually employed by a person of the White or Caucasian race where the latter is an occupant of such property.

15. *ANIMALS*. No hogs, cattle, horses, sheep, goats, or or similar livestock shall be permitted or maintained on said property at any time. Chicken hens, pigeons, rabbits and other similar small livestock, not exceeding a total of twenty-five in number, shall be permitted but must be kept on the premises of the owner. Not more than one dog and cat may be kept for each building site. No pen, yard, run, hutch, coop or other structure or area for the housing and keeping of the above described poultry or animals shall be built or maintained closer

# Restrictive Covenant (Washington, DC 1930s-1940s)

None of the said lands, interests therein or improvements thereon shall be sold, resold, conveyed, leased, rented to or in any way used, occupied or acquired by any person of Negro blood or to any person of the Semitic race, blood, or origin which racial description shall be deemed to include Armenians, Jews, Hebrews, Persians or Syrians.

JEWISH  
HISTORICAL SOCIETY OF  
GREATER WASHINGTON

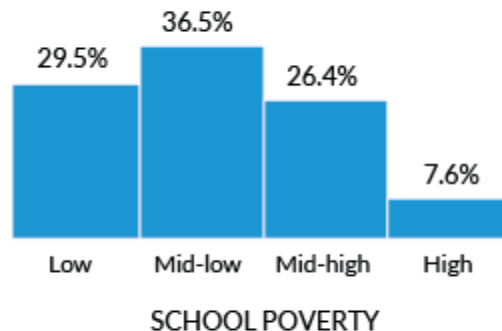
# McMichael's Appraising Manual

1. English, Germans, Scotch
2. North Italians
3. Bohemians or Czechs
4. Poles
5. Lithuanians
6. Greeks
7. Russians, Jews (lower class)
8. South Italians
9. Negroes
10. Mexicans

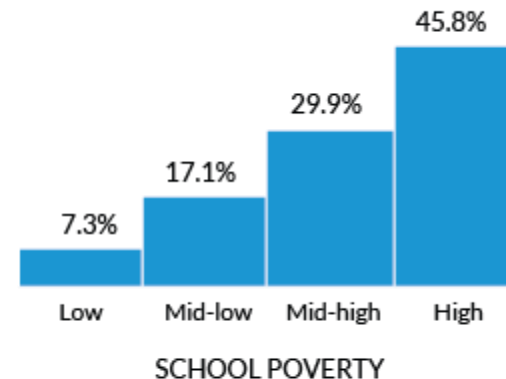
The impacts of  
systemic discrimination  
and segregation are  
both deep and long-lasting.

# Black Students Are Far More Likely to Attend High-Poverty Schools

White students



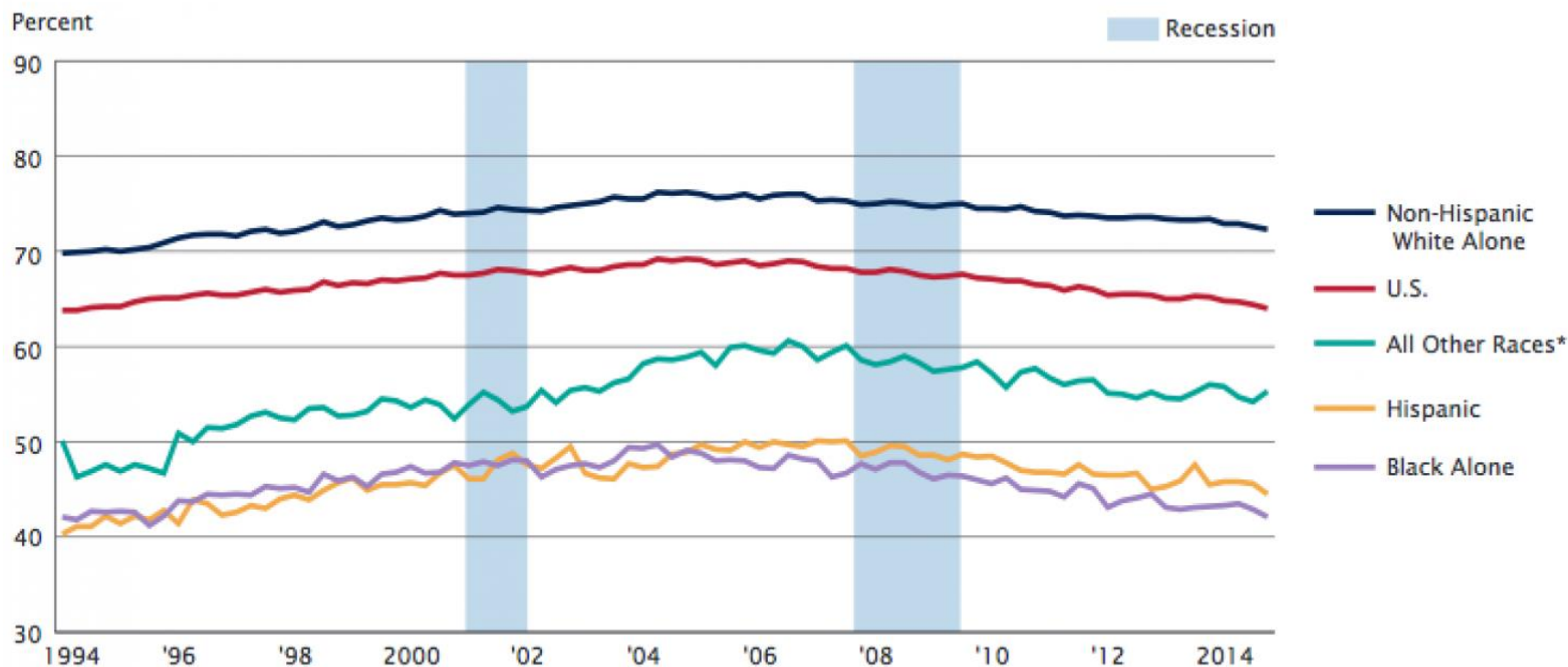
Black students



**Note:** Poverty based on a school's share of students eligible for free and reduced price lunch (FRPL). Low-poverty: 0%–25% FRPL. Mid-low poverty: 26%–50% FRPL. Mid-high poverty: 51%–75% FRPL. High poverty: 76%+ FRPL.



## Quarterly Homeownership Rates by Race and Ethnicity of Householder for the United States: 1994-2014



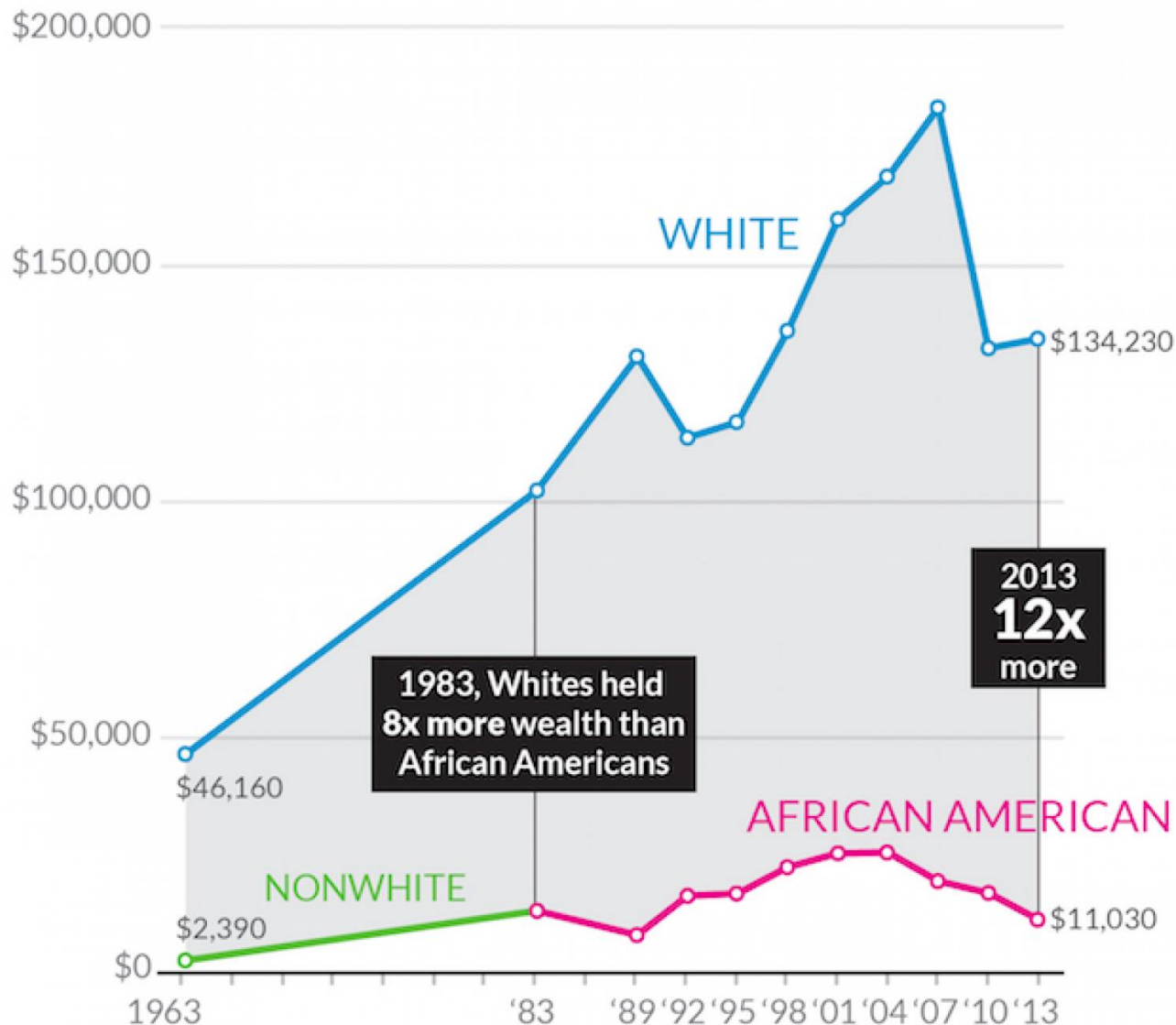
\*Includes Asian, Native Hawaiian or Other Pacific Islander, or American Indian or Alaska Native, and two or more races.

Source: U.S. Census Bureau, Current Population Survey/Housing Vacancy Survey, Series H-111

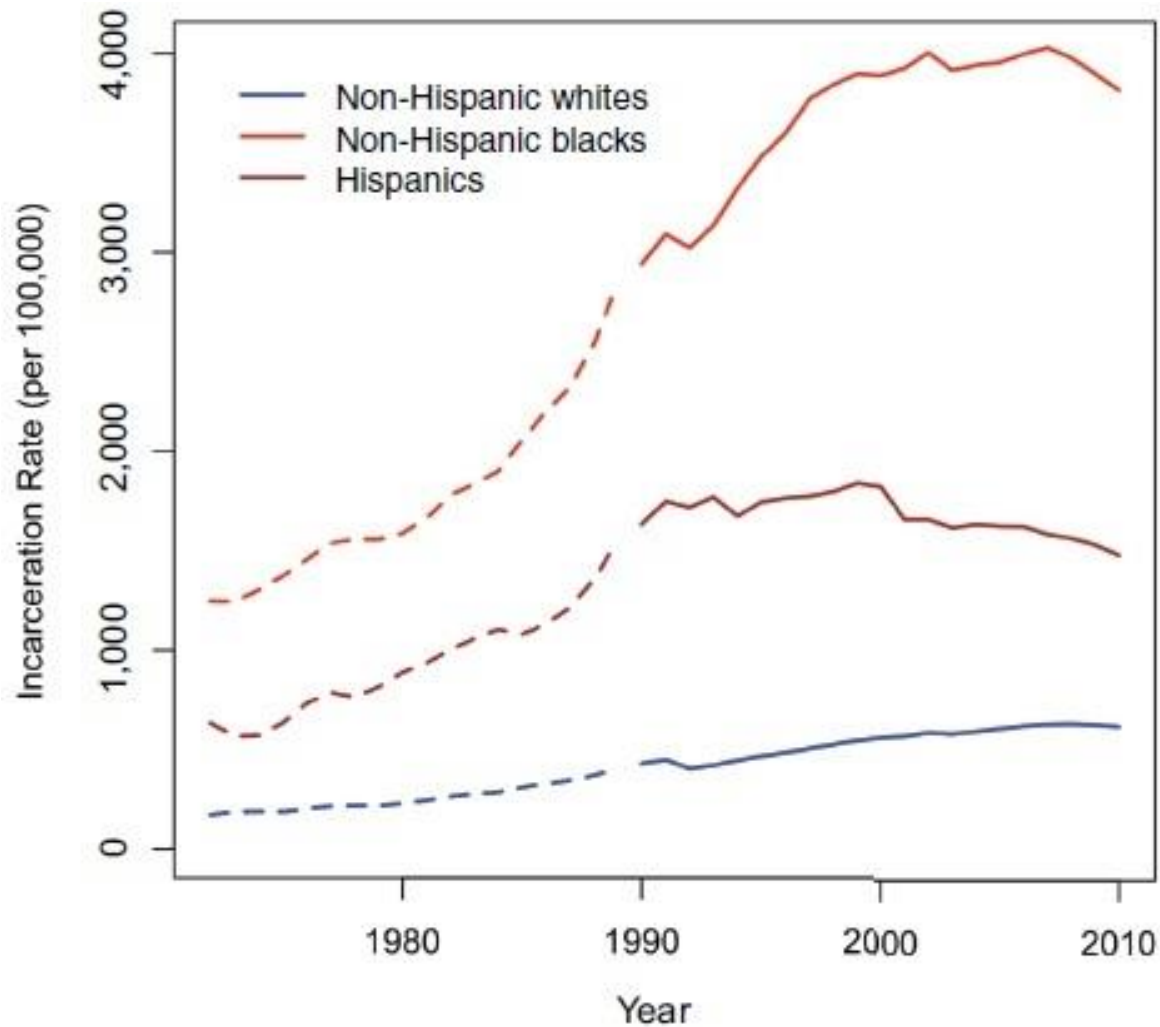
National Bureau of Economic Research, Inc., Cambridge, MA 02138 <[www.nber.org](http://www.nber.org)>



# Median Family Wealth by Race/Ethnicity



# Incarceration rates by race/ethnicity



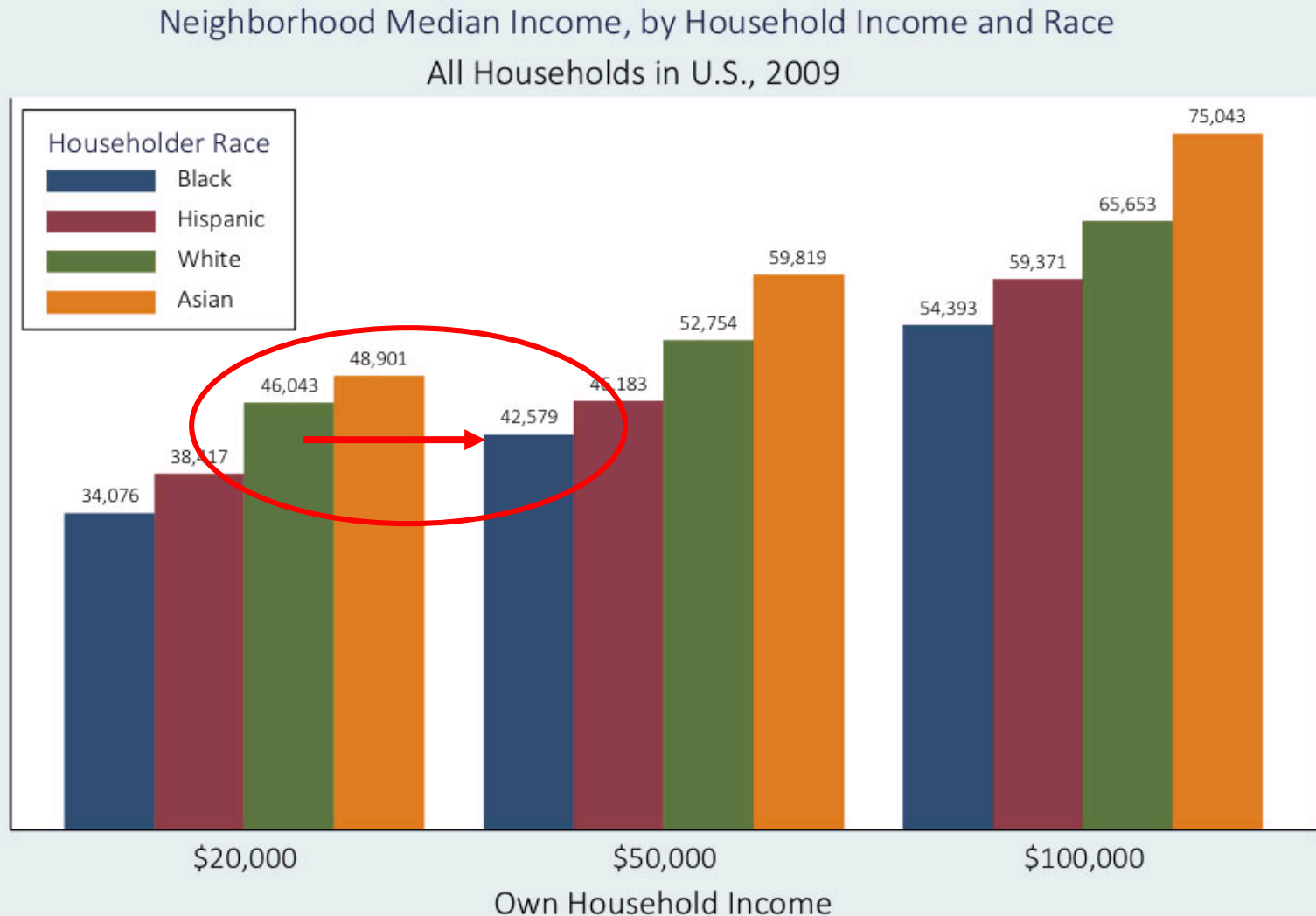
Jeremy Travis, Bruce Western, and Steve Redburn, Editors, "The Growth of Incarceration in the United States: Exploring Causes and Consequences." National Research Council, 2014.

# Metro Map: New Orleans, Louisiana

The average life expectancy for babies born to mothers in New Orleans can vary by as much as 25 years across neighborhoods just a few miles apart.



# It's Not Just About Raising Incomes



Source: S.F. Reardon, L. Fox, J. Townsend. (2015). *Neighborhood Income Composition by Household Race and Income*, 1990-2009.

# It's Not Just About Race



# The Fair Housing Act\* prohibits housing discrimination based on:

- Race
- Color
- Religion
- National origin
- Sex
- Familial status
- Disability

\*42 U.S. Code § 3601 et. seq.

The Fair Housing Act also says:

**(e) Functions of Secretary** The Secretary of Housing and Urban Development shall—

(5) administer the programs and activities relating to housing and urban development **in a manner affirmatively to further** the policies of [the Fair Housing Act].

42 U.S.C. Sec. 3608(e)(5)

# What does that mean?

“Where a family lives, where it is allowed to live, is inextricably bound up with better education, better jobs, economic motivation, and good living conditions.”

Sen. Phillip Hart, Fair Housing Act floor manager, *114 Cong. Rec.* 2707 (1968)

“Congress intended HUD to do more than simply not discriminate itself; it reflects the desire to have HUD use its grant programs to assist in ending discrimination and segregation, to the point where the supply of genuinely open housing increases.”

*NAACP, Boston Chapter v. HUD* (817 F.2d at 154)

“[A]ction must be taken to fulfill, as much as possible, the goal of open, integrated residential housing patterns and to prevent the increase of segregation, in ghettos, of racial groups whose lack of opportunity the Act was designed to combat.”

*Otero v. New York City Housing Authority* (484 F.2d at 1134)



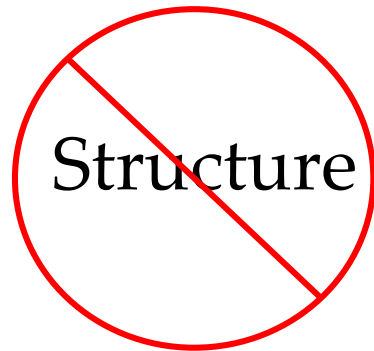
How has HUD done that?

1968 – 1995:

1995 – 2015:

Analysis of Impediments to Fair Housing  
Choice (AI), a fair housing plan.

# AIs did not work.





July 16, 2015

- HUD issued a new AFFH regulation
- 24 CFR § 5.150 et. seq.
- <https://www.hudexchange.info/resources/documents/AFFH-Final-Rule.pdf>

How the AFFH rule worked

The rule defined AFFH:

*“Affirmatively furthering fair housing means taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics.”*

24 CFR § 5.152

## **Steps in the AFH Process**

1. Grantees (including PHAs) developed an Assessment of Fair Housing (AFH)
2. HUD provided analytical framework (Assessment Tool)
3. HUD provided data and mapping tools
4. Robust community engagement required
5. Grantees submitted the AFH to HUD
6. AFH was linked to ConPlan or PHA Plan



The bottom line:

*No AFH*  *No \$\$\$*

AFH was a plan

AFFH required  $\vee$  action  
(meaningful)

# AFFH = Both/And Approach

- Investment in neighborhood revitalization or stabilization (place-based)
- Promoting greater mobility and access to areas offering vital assets (quality schools, employment, transportation, etc.)

# Community Voices Were Central

(a) General. (1) When preparing the AFH and the consolidated plan, the jurisdiction *shall consult with*:

- other public and private agencies that provide
  - assisted housing,
  - health services, and
  - social services (including those focusing on services to children, elderly persons, persons with disabilities, persons with HIV/AIDS and their families, homeless persons),
- community-based and regionally-based organizations that represent protected class members, and
- organizations that enforce fair housing laws.

# Promising early results (2016-17)

- 41 jurisdictions with accepted AFHs
- More (and better) community participation
- More specific goals
- Metrics and timelines
- Connections between housing & opportunity
- Public housing agencies joining in
- Regional collaborations

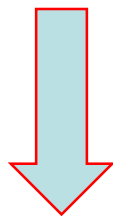
January 5, 2018



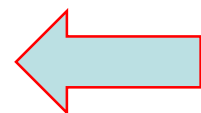
# 1/14/2020: HUD proposes new AFFH rule

FR-6123-P-02 Affirmatively Furthering Fair Housing,  
available here:

<https://www.regulations.gov/docket?D=HUD-2020-0011>



**Comments are due March 16, 2020**



# The Proposed Rule

Renee Williams, National Housing Law Project



# Key Takeaways Regarding the Proposed Rule

- **Ignores** the role of segregation & **minimizes** the role of housing discrimination in housing policy
- **Scraps** a key fair housing planning process (the Assessment of Fair Housing, “AFH”)
  - Significantly reduces what is required of jurisdictions & PHAs
    - Requires *less* than the prior Analysis of Impediments (AI) process
    - PHAs have very minimal requirements under the Proposed Rule

# Key Takeaways Regarding the Proposed Rule (cont'd)

- **Conflates** “fair housing” and “affordable housing”
  - Emphasizes affordable housing supply, but no meaningful focus on low-income or very-low income housing
  - No focus on eliminating segregation
- **Eliminates** key opportunities for fair housing-specific public input
- **Attacks** rent control and labor/environmental standards as “inherent barriers” to fair housing choice

# HUD's AFFH Proposed Rule

- Published in Federal Register on January 14, 2020
  - 85 Fed. Reg. 2041
  - Comments due **March 16, 2020**
- Concerning changes to key concepts
  - HUD *may* consider a failure to AFFH a violation of program requirements.
  - Fair housing choice = people have the “opportunity and options to live where they choose, within their means, without unlawful discrimination” (proposed 24 C.F.R. § 5.150(a)(2))

# HUD's AFFH Proposed Rule (cont'd)

- Instead of the Assessment of Fair Housing (AFH), HUD proposes focusing on two areas:
  - AFFH Certification
  - Scoring and Ranking Jurisdictions (“Jurisdictional Risk Analysis”)

# New Proposed AFFH Certification

## For local jurisdictions:

- Must certify that they will AFFH “by addressing at least three goals towards fair housing choice or obstacles to fair housing choice, identified by the jurisdiction”
  - Goals/obstacles must have “concrete and measurable outcomes or changes”
  - Jurisdictions must provide a “brief explanation” of how meeting the goals/addressing the obstacles affirmatively furthers fair housing
  - ***But***, if jurisdiction chooses 1 of 16 “inherent barriers” to fair housing choice, ***no explanation required***

# What HUD Considers to be Inherent Barriers to Fair Housing Choice...

- Lack of sufficient supply of decent, safe, and sanitary affordable housing.
- Lack of sufficient supply of decent, safe, and sanitary affordable housing accessible to people w/ disabilities.
- Concentration of substandard housing in a particular area.
- Not “in derogation of applicable federal law or regulations,” inflexible or unduly rigorous design standards/similar barriers that unreasonably increase cost of construction or rehabilitation of low- to mid price housing/impede development or implementation of innovative approaches to housing.
- Lack of effective, timely, & cost-effective means for clearing title issues (if prevalent).
- Source of income restrictions on rental housing.
- Administrative procedures that restrict/otherwise materially impede approval of affordable housing development.
- High rates of lead poisoning in housing.
- Artificial economic restrictions on long-term creation of rental housing, “such as certain types of rent control.”
- Unduly prescriptive/burdensome building & rehab codes.
- Arbitrary or excessive energy & water efficiency mandates.
- Unduly “burdensome wetland or environmental regulations.”
- Unnecessary manufactured housing regulations/restrictions.
- Cumbersome/time-consuming construction or rehabilitation permitting and review procedures.
- Tax policies that discourage investment or reinvestment.
- “Arbitrary or unnecessary labor requirements.”

*(Proposed 24 C.F.R. § 91.225 – local governments)*

# New Proposed AFFH Certification (cont'd)

For PHAs:

- Required to certify that the PHA consulted with the local jurisdiction on satisfying their shared AFFH obligations.
- Must include steps that PHA is taking to address findings of civil rights violations with the certification.
- A fair housing analysis and/or goal-setting by the PHA itself not required in order to complete AFFH certification, representing a ***significant rollback*** from the 2015 Rule.

*(Proposed 24 C.F.R. § 903.7 – PHAs)*

# New Proposed Scoring and Ranking of Jurisdictions

- HUD proposes to conduct an annual analysis, scoring, and ranking of jurisdictions.
- HUD will use metrics to find “which jurisdictions are especially succeeding” at AFFH, and which should receive “enhanced” review/need additional assistance.
  - “Outstanding” jurisdictions will receive benefits such as additional points in funding competitions, additional funding eligibility
  - Low-performing jurisdictions *may* have their AFFH certifications questioned.



# New Proposed Scoring and Ranking of Jurisdictions (cont'd)

- Nine data metrics for scoring outlined in the proposed rule.
- While not an exhaustive list, metrics included largely focus on housing quality and affordability, and do not reference the role of housing segregation in housing policy.

# New Proposed Scoring and Ranking of Jurisdictions (cont'd)

- Jurisdictions cannot be designated as an “outstanding” jurisdiction if the jurisdiction, local gov’t within the jurisdiction, or PHA has been found in violation of civil rights law in case brought by/on behalf of HUD or by DOJ.
  - Only place where civil rights violations come into play for scoring.
    - Ignores role of private fair housing enforcement.
  - Unlikely that incentives offered for “outstanding” jurisdictions will incentivize exclusionary jurisdictions to change their policies.
  - Should be incentivizing collaboration among jurisdictions to tackle regional fair housing issues.
    - Instead, scoring/ranking pits jurisdictions against one another.

The Proposed Rule represents a **significant retreat** from both Obama Administration's approach to AFFH, AND pre-2015 Analysis of Impediments process.

We need **your help** to oppose the Proposed Rule.

# How can we oppose this rule?

Sonya Acosta, National Low Income Housing Coalition

# Fight for Housing Justice

- Comment portal
- Resources
  - Talking points
  - Comment templates
  - Summaries
- News and media
- Congressional updates



[www.FightForHousingJustice.org](http://www.FightForHousingJustice.org)

# Submit Comments by March 16



## Comment

- Make your comments unique
- Discuss how AFFH intersects with your organization's mission, your experiences, etc.
- Share potential impacts on your community
- Highlight important aspects of the 2015 AFFH rule
- Submit individual and organizational comments

# Engage Your Network



## Educate

- Encourage others to submit comments
- Use hashtags #KeepHousingFair and #FightForHousingJustice
- Submit an op-ed or Letter to the Editor to your local news outlet
- Host a comment party

# Engage with Elected Officials

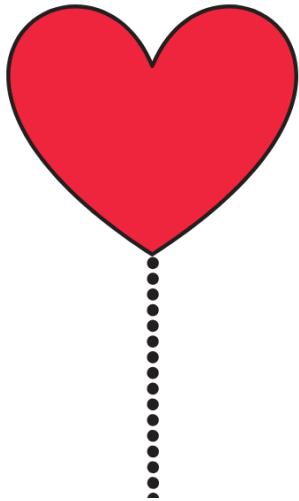


## Advocate

- Contact your members of Congress and urge them to express their opposition
- Reach out to state and local officials and encourage them to speak out



# Send HUD a Valentine



ROSES ARE RED  
VIOLETS ARE BLUE  
FAIR HOUSING LAWS  
WILL PROTECT YOU



Valentine's Day Social Media Kit available on resources page  
Use [#KeepHousingFair](#) and the trending Valentine's Day hashtag!

# Questions

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# Thank you!

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