



Pennsylvania Advisory Committee to the U.S. Commission on Civil Rights

Affirmatively Furthering Fair Housing: An Analysis of Fair Housing & Zoning Practices in Pennsylvania

The Fair Housing Act (FHA)¹ of 1968 prohibits discrimination in the sale, rental, and financing of housing based on race, color, religion, sex, national origin, familial status, or disability. It also requires federal agencies to take proactive and meaningful action to “affirmatively further the purposes” of fair housing.² The U.S. Department of Housing and Urban Development (HUD) is the federal agency charged with interpreting and enforcing the FHA.³ Importantly, in this role, HUD “has long interpreted the Act to prohibit practices with an unjustified discriminatory effect, regardless of whether there was an intent to discriminate.”⁴

In 2022 and 2023, the Pennsylvania Advisory Committee to the U.S. Commission on Civil Rights conducted a study analyzing fair housing access and zoning practices in Pennsylvania. The resulting report⁵ identified several ongoing concerns, including the availability of and access to affordable housing; the impact of housing challenges on community wellbeing and quality of life; and the continued legacy of historical policies that were explicitly created to further racial and economic segregation.

How does housing impact other measures of community wellbeing and quality of life?

Housing both directly and indirectly impacts many quality-of-life outcomes. Where a person lives can determine everything from access to quality schools and job opportunities, to health care and freedom from environmental contamination and other health hazards.⁶ Housing and homeownership opportunities can also have a long-lasting, intergenerational impact on family wealth and economic mobility.⁷

Key Points:

- Access to affordable housing has a significant impact on overall community wellbeing and quality of life.
- Public investment in affordable housing is insufficient to meet community need, and has declined over the past decades.
- The dearth of affordable housing in the U.S. and Pennsylvania was created and perpetuated in large part by housing policies that were explicitly designed to further racial and economic segregation.
- Homeownership in the U.S. drives development of intergenerational wealth and economic mobility, yet demonstrates stark racial disparities.
- Persistent structural barriers make it especially difficult for people who face discrimination on account of intersecting identities of race, gender, disability, and economic status to access safe and affordable housing.

What does “Affirmatively Furthering Fair Housing” mean, and why does it matter?

Affirmatively Furthering Fair Housing (AFFH) means that simply prohibiting overt discrimination is not enough. Instead, local governments, states, and public housing agencies must take proactive “meaningful actions” to “overcome historic patterns of segregation, promote fair housing choice, and foster inclusive communities that are free from discrimination.”⁸ While progress has been made, much of the racial and economic segregation still evident

¹ 42 U.S.C. § 3601 et seq.

² 42 U.S. Code § 3608(d) & (e)(5).

³ Implementation of the Fair Housing Act’s Discriminatory Effects Standard, A Rule by the Housing and Urban Development Department (February 2013), at: <https://www.federalregister.gov/d/2013-03375/p-3>.

⁴ Ibid.

⁵ Report available at:

<https://www.usccr.gov/reports/2023/affirmatively-furthering-fair-housing-analysis-fair-housing-access-zoning-practices>.

⁶ See Committee report discussion in Finding 1.

⁷ See Committee report discussion Finding 2.

⁸ 24 C.F.R. §5.152; See also: U.S. Department of Housing and Urban Development, AFFH Fact Sheet, at: <https://www.hud.gov/sites/dfiles/FHEO/documents/AFFH-Fact-Sheet.pdf>.

in American cities can be directly or indirectly tied to explicit, racialized housing discrimination established and perpetuated by government institutions of the past.⁹ As part of their AFFH obligations, agencies receiving federal funding must complete regular reviews to uncover present fair housing issues and barriers, and develop plans for proactive measures to address them.¹⁰

Housing discrimination has been illegal for years, so why is it still a problem?

Despite the importance of fair access to affordable housing, current resources available for enforcing and monitoring AFFH obligations are not sufficient to achieve fair housing goals.¹¹ HUD may not have the resources to thoroughly investigate the large number of claims, and it is not always feasible for individual parties to rely on litigation to resolve unattended complaints.

Most housing discrimination today is covert, and people may not even know (or be able to prove) that they were subject to discrimination. Housing providers, lenders, and other institutions may not be aware that some of their policies or practices are having a discriminatory impact. For example, current data show ongoing racial disparities in home appraisal values and lending practices. Robust, systemic testing is therefore critical to uncovering patterns of discriminatory practice. Training housing providers on their fair housing obligations, as well as educating the public about their fair housing rights, are also critically important to achieving fair housing goals.

Who is still impacted by housing discrimination today?

Fair housing impacts everyone! Some specific areas of ongoing concern include:

- It is currently legal in much of Pennsylvania and the U.S. for landlords to deny housing to tenants simply because they rely on housing choice vouchers to pay their rent.
- There is a severe shortage of affordable housing that is also accessible to people with disabilities.
- Many municipalities still maintain “nuisance” ordinances that permit or even require landlords to

evict tenants for making too many calls for emergency services – jeopardizing the housing of women experiencing domestic violence and other victims of violent crime.

- People named in eviction filings are routinely denied housing, even if the court never filed a judgement ordering the eviction. There is currently *no right to counsel* for individuals or families facing eviction, giving landlords a significant advantage over their tenants in these proceedings.
- People with arrest records or criminal histories are routinely denied housing access. In conjunction with ongoing racial disparities in the U.S. justice system, such barriers likely undermine goals for racial equity in housing.

Recommendations (selected)

The U.S. Congress should:

- (1) Renew public investment in affordable housing.
- (2) Allocate additional resources to enforce the Fair Housing Act more vigorously.
- (3) Eliminate federal law that denies access to federally assisted housing for a minimum of three years for the entire household if any member has been evicted for a drug related crime.

The Pennsylvania Legislature should:

- (1) Incentivize inclusionary zoning on local levels.
- (2) Increase the use of mediation to address and avoid foreclosures and evictions.
- (3) Codify a right to counsel for individuals facing foreclosure or eviction.

The U.S. Department of Housing and Urban Development should:

- (1) Develop state and local partnerships to increase testing and enforcement activities.
- (2) Develop and disseminate educational materials for mortgage lenders, landlords, municipal governments, and consumers regarding AFFH obligations.

⁹ See Committee report discussion Finding 3.

¹⁰ See Committee report discussion Finding 4.

¹¹ See Committee report discussion Finding 4.

The United States Commission on Civil Rights maintains 56 Advisory Committees, one for each state and territory, and the District of Columbia. Each committee is composed of citizen volunteers familiar with local and state civil rights issues. The members assist the Commission with its factfinding, investigative, and information dissemination functions.

This policy brief is the work of the Pennsylvania Advisory Committee to the U.S. Commission on Civil Rights. The brief may rely on testimony, studies, and data generated from third parties. Advisory reports are reviewed by Commission staff only for legal sufficiency and procedural compliance with Commission policies. The views, findings, and recommendations expressed in this report are those of a majority of the Pennsylvania Advisory Committee, and do not necessarily represent the views of the Commission, nor do they represent the policies of the U.S. Government. For more information, please contact Melissa Wojnaroski at mwojnaroski@usccr.gov or 202-618-4158.