COMMENTS ON THE

DRAFT WHERE WE LIVE NYC REPORT

NYC Department of Housing Preservation and Development

Submitted via email: WhereWeLiveNYC@hpd.nyc.gov

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Fred Freiberg, Executive Director
Britny McKenzie, Policy Coordinator
Marie Winfield, Legal Director
Fair Housing Justice Center
30-30 Northern Boulevard
Long Island City, NY 11101
Introduction: FHJC Mission and Program

The Fair Housing Justice Center (FHJC) is a regional non-profit civil rights organization dedicated to eliminating housing discrimination; promoting policies and programs that foster open, accessible, and inclusive communities; and strengthening enforcement of fair housing laws in New York City and the seven surrounding New York counties. Our service area contains roughly 65% of New York State’s population and 4% of the nation’s population.

The FHJC has assisted over 1500 individuals and organizations with housing discrimination complaints to exercise their fair housing rights. The FHJC also conducts proactive testing investigations to ferret out systemic housing discrimination. FHJC investigations have led to over a hundred legal challenges to discriminatory housing policies and practices. The lawsuits have changed the way many private housing providers and government agencies do business and brought them into compliance with fair housing laws. Our work has opened over 65,000 housing units to previously excluded populations and resulted in a total monetary recovery of nearly $40 million in damages and penalties. In addition, the FHJC advocates for policies and programs that create more open, accessible, and inclusive communities. We also engage in outreach and educational activities to increase awareness of fair housing rights and provide technical assistance, training, and other tools to upgrade and strengthen fair housing enforcement.

As the only full-service fair housing organization based in New York City, the FHJC has a keen interest in ensuring that all local communities and state agencies fulfill their legal obligation to “affirmatively further fair housing” (AFFH). New York City issued its draft report entitled Where We Live NYC after a lengthy process was implemented to conduct an Assessment of Fair Housing (AFH) and identify barriers to housing choice in New York City.

“Segregate, as Usual”

To “segregate, as usual” was a poignant reaction to the news that the Department of Housing and Urban Development (HUD) was suspending the requirement for local governments participating in the Consolidated Plan Program to submit an Assessment of Fair Housing (AFH). The widely shared concern among fair housing advocates was that the federal government was going to, once again, allow local and state governments to shirk their responsibilities by continuing to perpetuate segregation without meaningful involvement or oversight from HUD. While the process received many critiques as municipalities completed assessments in stages, its revocation signaled that the federal government had little or no interest in monitoring the housing and community development policies of states and local governments. Even so, the HUD notice suspending the AFH process, published in January 2018, required local governments to continue to affirmatively further fair housing (AFFH) as per the 2015 rule and the Fair Housing Act. New York City’s initial timeline would have required submitting an AFH in 2019. Most advocates agreed that the timing of this process was opportune, as there were lingering fair housing-related questions about many current New York City housing policies and whether these policies were discriminatory or enabled housing discrimination to flourish. Some of these issues included the City’s involvement in the Broadway Triangle case, the community preference rule for affordable housing, the need for comprehensive planning and “fair share” reform to reduce impacts on environmental justice communities, neighborhood rezonings in low-income communities of color, the impact of the

Mandatory Inclusionary Housing program, and proposed legislation on racial impacts of land-use actions.

The City of New York acknowledges its history and contribution to housing discrimination and segregation in the draft plan, stating the City has an “... obligation to remedy the scars of discrimination, segregation, and concentrated poverty, which shaped New York City.” Throughout the plan, the City seeks “...to address a wide range of challenges, including an affordability crisis and housing shortage that threaten the stability of individuals and families across the city; ongoing discrimination in the housing market; unequal access between neighborhoods to resources and opportunities; and a legacy of segregation that has contributed to disparities by race, ethnicity, disability, and other protected characteristics.” While this acknowledgment evidences an awareness by the City of their statutory obligation to affirmatively further fair housing, the substance and content of the draft Where We Live NYC report suggests otherwise.

In response to the HUD notice on AFH, New York City announced that it would still meet its AFH commitment and the initial timeline provided by HUD even though the City was no longer required to do so. In its press release on Where We Live NYC, the City claimed that “[i]n response to this federal delay, the City will use the same framing and cover the same content as the AFH as part of Where We Live NYC.” The draft Where We Live NYC plan shows no evidence that the City used the same framework and content required by AFH, which defeated the purpose of committing to this process despite the removal of the federal requirement.

The Draft Where We Live NYC Plan Does Not Meet the City’s Commitment to Comprehensive Fair Housing Planning by Failing to Analyze its own Policies and Programs

Sidestepping the AFFH rule and the AFH Process

As provided in the 2015 rule, AFFH requires local governments to take "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. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. The duty to affirmatively further fair housing extends to all of a program participant's activities and programs relating to housing and urban development." Regrettably, HUD is now allowing local recipients of federal funding to revert back to the previous and much discredited Analysis of Impediments (AI) process to comply with the AFFH requirement. But even HUD’s Fair Housing Planning Guide outlines clear and specific goals and defines the AFH process and jurisdictions’ obligations in creating an analysis of impediments (AI) to fair housing choice. It requires:

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2 Where We Live Draft Plan, 7.
• A comprehensive review of a jurisdiction’s laws, regulations, and administrative policies, procedures and practices;
• An assessment on how those laws, etc. affect the location, availability, and accessibility of housing;
• An assessment of conditions, both public and private, affecting fair housing choice.\(^5\)

Generic data items that HUD concluded might be relevant included:

• Public policies, practices and procedures involving housing and housing-related activities
• Zoning and land use policies, tax assessment/abatement practices
• The nature and extent of fair housing complaints/suits or other data that may evidence achievement of fair housing choice
• Results of testing
• Results of Fair Housing Initiative Program (FHIP) grants
• Patterns of occupancy in Section 8, Public and Assisted Housing, and private rental housing.\(^6\)

After reading all two hundred sixteen pages of the draft *Where We Live NYC* plan, we are hard pressed to find that any of the basic, minimum requirements were met for an analysis of impediments to fair housing choice. There is no comprehensive review of NYC’s laws, regulations, and administrative policies, procedures and practices. There is no assessment on how those City laws, regulations and policies affect the location, availability, and accessibility of housing. The report provides no information about FHIP grants in the jurisdiction, NYC’s zoning and land use policies, or the results of systemic testing.

What we do find in the draft *Where We Live NYC* plan is a data dump which sidesteps the purpose of the AFFH rule and the AFH process. In its *Fair Housing Planning Guide*, HUD clearly indicated that "jurisdictions should not waste effort restudying and reanalyzing problems for which good information already exists. Instead, they need to plan and carry out actions to address the problems."\(^7\) But that seems to be exactly what the City has done and intended to do. Using the framing and content of the AFH process required the City to evaluate its own policies and procedures and the impact on New York City residents. *Where We Live NYC* completely fails to do so. Along with further deficiencies discussed below, from community input, pre-planning, to the City’s goals and recommendations, the *Where We Live NYC* process did not live up to its promised standard.

**The City’s Community Participation Process Lacked the Expertise to Provide Meaningful Community Input into the Fair Housing Assessment Process**

NYC provided detailed information on what was an extensive community participation process. But when the *Where We Live NYC* process is compared to other municipalities that completed the AFH process, it is clear that New York City opted to sidestep the central purpose of providing community engagement by failing to provide the necessary expertise on assessing the current state of housing discrimination and fair housing in New York City. The City of New Orleans (NOLA) and its public housing authority partnered with its local fair housing organization, the Greater New Orleans Fair Housing Action

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\(^7\) *Fair Housing Planning Guide*, 2-18.
Center (GNOFHAC) to take the lead in convening stakeholder capacity sessions. Weekly planning group meetings included organizations with intensive experience in and a commitment to fair housing and civil rights, including the Lawyers Committee for Civil Rights under the Law and Enterprise Community Partners (Enterprise). According to the NOLA AFH, “[t]hese sessions targeted smaller community-based and advocacy groups whose fair housing outreach efforts to their constituents would benefit from capacity building and training regarding the purpose and technical aspects of the AFH process.” In addition, the City of Los Angeles (LA) contracted with the Lawyers Committee for Civil Rights and Enterprise as partners in their community participation process for the LA AFH. The local fair housing organization, the Housing Rights Center, helped to convene meetings with the purpose of “identify[ing] barriers to fair housing choice and to develop a list of goals and strategies designed to mitigate or eliminate these barriers” in Los Angeles. In the Philadelphia AFH, the community participation section describes that “[f]air housing advocates and monitors were invited to and attended each session to ensure that the fair housing perspective was included in each meeting.” Each process heavily integrated the involvement of local fair housing groups and civil rights groups with expertise in fair housing issues.

New York City intentionally chose a different path. The AFH process in New York City simply ignored established practices and made the decision to dispense with the use of experts in fair housing and civil rights, or integrating local fair housing organizations into the AFH planning process. In its Fair Housing Planning Guide, HUD recommended any contractors should be “knowledgeable about fair housing and [have] experience in dealing with fair-housing related issues.” As shown in the AFH processes noted above, facilitation and outreach of organizations with demonstrated experience related to fair housing and the technical issues of a fair housing assessment should have been required. Engaging civil rights and fair housing organizations, like the FHJC, with expertise and knowledge about fair housing in roles other than stakeholders would have helped focus the community participation directly on fair housing issues and input from residents on the City’s own policies. This purposeful lapse is indicative of the major deficiencies in the NYC AFH process, which strayed from its purpose: a commitment to examine fair housing in NYC across protected characteristics and evaluate how City policies continue to perpetuate segregation.

The City Failed to Gather, Present, and Analyze Relevant Data on Fair Housing Enforcement and Housing Discrimination Complaints and Litigation in New York City

A look at how other jurisdictions used data on fair housing enforcement and housing discrimination complaints in their AFH clearly shows the deficiencies of the draft Where We Live NYC plan. In the City of Los Angeles, the City included a map of the Housing Rights Center (HRC) enforcement data to visually demonstrate the scope of housing discrimination, as well as narrative on the services HRC provides to the greater LA area, the number of contacts, how many cases opened, the number and percentage of cases where sufficient evidence was gathered to sustain allegations in filed complaints, the nature of those allegations, as well as collaboration on addressing housing discrimination with City services. In the Philadelphia AFH process, the City provided data from multiple organizations with fair housing expertise and information about their activities, including the number of fair housing complaints, the protected characteristic, type of housing issues, and detailed notes on actual complaints from the Housing Equality Center of Pennsylvania over multiple years. The Philadelphia AFH also included testing reports from the Fair Housing Rights Center in Southeastern Pennsylvania for over 5 years, detailing the results of testing.

in rental, sales and design and construction cases. In New Orleans, the City provided information on a fair housing lawsuit filed by GNOFHAC, which overturned a racially discriminatory policy and legal advocacy against attempts to prevent a Low Income Housing Tax Credit (LIHTC) development from being built, two reports by GNOFHAC on the prevalence of housing discrimination against African Americans based on investigative testing and a report on the use of criminal background checks by housing providers, also based on investigative testing. Other municipalities took advantage of the data and expertise provided by local fair housing groups to inform the AFH analysis, while New York City barely acknowledged the existence of the FHJC.

The previous AFFH rule required technical assistance from HUD and other experts. But, in absence of those requirements, New York City’s AFH should have made use of the same level of technical assistance, data and expertise as previous fair housing assessments, which included reporting, data and analysis from local fair housing enforcement organizations. FHJC met several times with NYC HPD during the development of the AFH process, providing HPD staff with a detailed list of its successful fair housing litigation record, identifying protected characteristics, whether the case was supported by testing evidence, and outcomes of cases. See Appendix B. This includes dozens of cases filed since 2005. The FHJC also offered to provide further documentation on over a decade of complaints and investigative testing with assistance from HPD. Along with Enterprise, FHJC released a report entitled “Closing the Divide: Creating Equitable, Inclusive, and Affordable Communities.” The public report, which was shared with City officials, offered specific recommendations on solutions to housing discrimination statewide as part of a regional roundtable of over 30 affordable housing and fair housing advocates. See Appendix C. In addition, the FHJC previously published a report on the distribution of federal low-income housing tax credits in the NYC region. See Appendix D. The City makes no mention of this report or its findings.

While the draft Where We Live NYC plan briefly references a small contract between the FHJC and the City’s Commission on Human Rights where the FHJC provided training to Commission staff and modest testing services to the Commission on source of income discrimination, it is void of any other information or data from the FHJC that might have informed the AFH process or the resulting recommendations.

HUD’s Fair Housing Planning Guide makes clear that “[j]urisdictions should have full knowledge of all of the activities that have recently been completed or are underway to affirmatively further fair housing... this knowledge should extend well beyond [the State or Entitlement jurisdiction] to actions taken by housing industry members, private organizations and foundations, the public housing agency, neighborhood groups, regional organizations, and others to further fair housing activities.” The consequences of dedicating time to the pre-planning process was identified by HUD: “without this information, [the plan] will fall short of measurable results.” As part of previous AIs, the municipality was required to “[i]dentify any local and regional agencies and organizations that provide fair housing information, outreach, and enforcement, including their capacity and the resources available to them.”

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9 The only FHJC case filed that did not result in an entirely successful resolution was due to the fact that New York City failed to design the LINC rental subsidy program in compliance with the State’s Urstadt law, and therefore our requested relief could not be granted and the case was dismissed. This is the only case the FHJC has not prevailed on since its inception.


The information that the FHJC provided to the City should have been used to reply to this relevant question. However, this entire section neither appeared in the draft Where We Live NYC plan or under “Other fair housing enforcement in New York City.” Not a single case brought by the FHJC, our testers, or related bona fide complainants, or cases filed by the US Attorney’s Office based on our testing evidence was mentioned. Unlike other municipalities that included data from local fair housing organizations to demonstrate the magnitude of the impact of housing discrimination in the region, New York City chose to simply ignore relevant facts in its analysis of impediments to housing choice.

The failure to include the above information is an astronomical oversight by New York City and clearly impacted the conclusions and recommendations offered by the draft Where We Live NYC plan. One of the most important aspects of the work that the FHJC does is to obtain injunctive relief, which often includes not only monitoring of buildings where discrimination has occurred but also future development by real estate companies that have violated the law. This relief and FHJC’s work in monitoring compliance with settlements are keys to opening thousands and thousands of units in NYC to residents, in places where it was completely inaccessible before due to race, national origin, disability or other protected characteristics.

Another insight that the City might have gleaned from FHJC’s data is the enduring, systemic, invidious nature of housing discrimination that persists in NYC. Framing conversations about fair housing around compelling, current data seems more useful than focusing on this Administration’s accomplishments to date in tangentially related areas, such as ferry service and artwork in NYC parks. In addition, FHJC’s experience in disability cases involving design and construction or accessibility could have provided an impetus to the City to not almost exclusively focus on race in its analysis and adopt an intersectional approach (see below) in its analysis. As noted below, when reviewing our data on accessibility cases, it becomes clear that the City itself, not private entities over which the City has less control, could play an enormous role in eliminating this type of housing discrimination and barriers to accessible housing, especially in new construction.

The expertise that the FHJC could have added to the City’s AFH process was not just as a stakeholder. As the organization accomplishing the lion’s share of successful fair housing enforcement in NYC and its surrounding region, as well as one of the most active fair housing organizations in the country, FHJC provided data that would have helped the City comply with its own commitments to follow HUD’s AFH process. In any other municipality that completed an AFH, this information was key in informing recommendations and future goals, as well as in evaluating the level of funding the cities provided for fair housing enforcement to local fair housing groups. In New Orleans, the City provided concrete ways in which to provide support to the GNOFHAC, which appeared in the final table of recommendations. In the LA AFH, recommendations include metrics based on the number of complaints per year filed with an enforcement agency by the Housing Rights Center. The Philadelphia AFH included its fair housing stakeholder network as a key partner in many of its goals. After reading the extensive draft Where We Live NYC report, one could conclude that the largest metropolitan region in the US does not have any useful partners in fair housing or a plan to partner with any organizations working to end housing discrimination. As noted below, external fair housing enforcement and advocacy is an integral part of the solution needed to address not only the systemic nature of housing discrimination but in identifying and addressing the City’s own policies, which continue to support historical patterns of segregation in the NYC region.
New York City’s Policies and Programs Perpetuate Barriers to Housing Choice and Impede Progress Toward Creating Open, Accessible, and Inclusive Communities

In order to affirmatively further fair housing, New York City policies and programs should be aimed at expanding housing choice and fostering more open, accessible, and inclusive communities. In 2017, Mayor Bill de Blasio, in answering a question about residential racial segregation, suggested that there was not much he could do. He stated, “We cannot change the basic reality of housing in New York City.” We take serious exception to that statement. There are things the City can do to reduce residential racial segregation.

Unfortunately, the draft plan artfully omits or makes only passing references to many existing City policies, programs, and issues that restrict housing choice, perpetuate segregation, and/or increase concentrated poverty in New York City. Here is a partial list of the policies and issues we identified and would like to see included and addressed in the final report.

1. **Current City policy fails to ensure that new housing is designed and constructed in an accessible manner for people with disabilities.** In 2006, the FHJC conducted a systemic testing investigation into fourteen new multifamily developments that had been constructed in 2005 and 2006 in Manhattan. The investigation yielded evidence that none of the buildings complied with federal accessibility requirements. All of the buildings contained more than 100 units and included some affordable housing units. This evidence was turned over to the U.S. Attorney’s Office of the Southern District of New York (SDNY) and more than a dozen federal fair housing cases were filed against some of the largest developers and architectural firms in New York City alleging fair housing violations for failing to comply with accessibility requirements that had applied to new multifamily housing since 1991. In the years that followed, more investigations were conducted by the FHJC and both the FHJC and the U.S. Attorney’s Office continued to bring cases that demonstrated widespread non-compliance. A list of these cases appears in Appendix B. This information was previously provided to the City.

While the filing of these cases has resulted in some progress toward achieving greater compliance, there remains a stubborn culture of indifference in the industry which persists largely because of a perception that there is little chance violators will be caught. The FHJC has uncovered anecdotal information that the requirement that developments with federal subsidies make 5% of the units fully accessible (UFAS units) under the Rehab Act is also not being complied with despite assurances to the contrary. New York City could change this culture, remove these barriers, and reduce the need for protracted, costly and time-consuming litigation by taking the following actions:

- The Department of Buildings (DOB) should conduct thorough reviews of architectural plans submitted and, additionally, conduct on-site inspections of new developments to ensure that certifications are not fraudulent and that new developments comply with local, state, and federal accessibility requirements.
The City should ban developers from receiving city subsidies, tax benefits, or other discretionary land-use approvals if there is a history of non-compliance with local, state, and federal fair housing accessibility requirements.

2. **The City has failed to address the issue of continuing discrimination in the housing cooperative market.** There are more than 7,000 housing cooperatives in New York City and these co-ops control access to well over 300,000 units of housing. Housing cooperatives continue to be one of the most affordable options for homebuyers in New York City and yet this highly valued commodity is not available on a free and open market. Far too many co-ops continue to operate like “secret societies” rejecting prospective buyers and renters while providing no reasons for the rejections. The FHJC and other public enforcement agencies receive many complaints involving co-ops, but they are virtually impossible to test and very difficult to investigate because of the total lack of transparency. Previous efforts to pass a strong “Co-op Disclosure Law,” which would require co-ops to provide a written reason to any buyer or renter who is rejected, have failed at the City level. In the last attempt and to our total dismay, the City’s Commission on Human Rights even publicly opposed the proposed legislation. The City has been on the wrong side of this issue when it should be protecting homebuyers and renters from the insidious discriminatory practices of many co-op boards. This is a fair housing issue of enormous importance. Not only are individuals and families being discriminated against and having their housing choices limited, but real estate agents and brokers are also losing commissions every time a co-op denies an otherwise qualified consumer who is attempting to purchase or rent a co-op unit. The City should pass its own law and join with advocates, the real estate industry, and other civic organizations to urge State legislators to enact a strong statewide co-op disclosure law.

The City should pass a co-op disclosure law and advocate that the State of New York enact and enforce a strong co-op disclosure law that protects buyers and renters in housing cooperatives.

3. **The City has taken no action to protect people re-entering society from the criminal legal system to ensure that fair housing rights are restored.** Because of a well-documented history of racial disparities in our criminal legal system, Black and brown people are over-represented in our prison system. New York City needs to fully embrace the goals of the restorative justice movement in this country and ensure that people coming out of prison have all of their rights fully restored, not just in voting and employment (currently protected by the City Human Rights law), but also when it comes to housing. Discriminating against people with criminal records in housing disproportionately impacts African American and Latinx populations. The City should follow the progressive lead of Chicago, Seattle, Detroit, and other cities that have enacted laws to protect formerly incarcerated individuals from discrimination in housing. This is also an important fair housing issue and the City should take steps to eliminate this discrimination.
• The City should amend the City Human Rights Law to prohibit housing discrimination based on “arrest and conviction record.”

4. The City currently operates myriad rental subsidy programs in a manner that offer subsidy holders limited housing choice and overall contributes to residential racial segregation and poverty concentration. The Section 8 program operated by the Department of Housing Preservation and Development (HPD) includes a small pilot Mobility Counseling Program that assists tenants with rental subsidies to make moves to lower poverty areas in the City. This program should be substantially expanded and provided greater resources. The program should be opened to other individuals and families using other rental subsidies (e.g., CityFHEPS, SOTA, HASA, NYCHA Section 8, etc.) Again, Chicago, Baltimore, and Dallas are cities that have operated effective large-scale mobility assistance programs for years with tremendous success and outcomes that far exceeded expectations of the program participants. This is a fair housing program that has already demonstrated in other geographic areas that it can expand housing choices and substantially increase the opportunities available to rent-subsidized households.

• The City should expand its mobility assistance program by providing greater financial resources and consider opening the program to households with other city subsidies, providing greater financial incentives that will enable lower-income families with housing subsidies to have greater choices to move within the City, and explore with the State of New York and suburban housing authorities the possibility of creating a regional mobility assistance program that enables families with rental subsidies to move anywhere in the City or surrounding New York suburbs.

5. The City has maintained policies that have resulted in the concentration of most affordable housing for families in high poverty communities of color. Most affordable housing today is constructed using federal Low Income Housing Tax Credits (LIHTC). The FHJC completed a study in 2013 that probed the activities of three tax credit allocation agencies in New York. The report, entitled Choice Constrained, Segregation Maintained: Using Federal Tax Credits to Provide Affordable Housing,” examined ten years of tax credit housing and found, among other things, that most of the tax credit housing for families was developed in high-poverty communities of color. One finding from the study showed that, of the three tax credit agencies examined, 91% of HPD tax credit units were located in communities of color further reinforcing existing patterns of residential racial segregation in the City.

Given the highly segregated nature of New York City, the system of Community Board Preferences also contributes to perpetuating residential racial segregation in many neighborhoods. The City of New York is currently being sued by the Anti-Discrimination Center (ADC) because the preferences frequently discriminate against applicants based on race and national origin. While some advocates have argued that the preferences help to minimize displacement in gentrifying neighborhoods, there is little empirical
evidence to support this position and, most importantly, discrimination must never become an anti-displacement strategy. Other strategies can and should be employed to address displacement in gentrifying neighborhoods without resorting to tactics that exclude others based on race or national origin.

While the City has, in many respects, led the way for the development of mixed-income housing at the national level, the experience has often been plagued with fair housing issues. In 2015, the City allowed a new multifamily mixed-income building to maintain a “poor door” so that the tenants occupying the affordable units would use a separate entrance from the high-end condo owners. After widespread publicity, poor doors were no longer permitted, but the City instead allowed developers to put the affordable units in separate buildings. Complaints in some mixed-income buildings that the tenants in the affordable housing units do not have access to the same amenities and services that market-rate tenants enjoy is a continuing complaint in some buildings. The benefits of mixed-income housing are greatly diminished when affordable units are segregated in separate buildings or tenants, depending upon their socio-economic status, are provided different services and amenities. Too often, market-rate units are occupied by more affluent white non-disabled residents and the affordable units are occupied by people of color and people with disabilities. This is a fair housing issue and the City needs to re-examine its policies to ensure that residents of mixed-income housing are not segregated or treated differently.

In 2016, the zoning text amendment for Mandatory Inclusionary Housing attempted to address this issue but did not go far enough. Currently, MIH requires distribution between market-rate and subsidized units, as well as across apartment unit type. However, as MIH has been implemented within neighborhood rezonings, higher AMI levels included in the affordable housing plan may reach as far as the neighborhood market-rate. Designing 100% subsidized housing developments with the highest AMI bands segregated in one building, (e.g. the proposal for Sendero Verde in East Harlem) creates the same exact situation that the income distribution requirement in MIH attempted to solve. All of the loopholes that allow subsidized housing in New York City to segregate by income and to produce off-site affordable housing need to be closed.

Finally, current land use and environmental review processes are simply ineffective and inappropriate vehicles for addressing systemic patterns of segregation. The current process encourages NYC Council member deference, which allows one individual to impact the distribution of subsidized housing citywide. The ineffective Uniform Land Use Review Procedure requires very little alignment to citywide and community-based goals for approval, often plucking low-hanging fruit from agency strategic plans, existing 197-a plans and community-based planning efforts to justify development which replicates historical patterns. Outdated and inappropriate State and City environmental review methodologies do not allow communities and the City as a whole to effectively evaluate

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11 Mandatory Inclusionary Housing Text Amendment, “Distribution of affordable units,” Zoning Resolution 23-96(b); “Bedroom Mix of affordable units,” Zoning Resolution 23-96(c).
the impact of residential development pipelines. The City’s stated goal to affirmatively further fair housing will never be adequately addressed if the City continues to take the stance that planning for the largest metropolitan region in the US can only happen through disparate strategic planning processes across siloed City agencies. Although ignored by the last Charter Revision Commission, comprehensive planning is needed in New York City to place citywide concerns that impact residents and neighborhoods marginalized in the traditional land use process at the forefront. A comprehensive plan requires measuring the impact of an individual development project against the goals of the plan set for the city and compliance with federal law. It would require the city to commit not only through stated policy but procedurally through concrete ways to affirmatively further fair housing.

- The City should revise its Qualified Allocation Plan (QAP) to provide greater incentives (points) for new tax-credit housing to be developed in low-poverty, well-resourced areas with little or no affordable housing and with deeper subsidies to reach lower income bands to expand housing opportunities for lower income and marginalized populations.

- The City should voluntarily suspend its Community Board preference policy and commit to more resources to existing effective programs for combatting tenant displacement.

- The City should reevaluate all off-site Inclusionary Housing programs geographic limitations to determine whether this policy affirmatively furthers fair housing.

- The City must amend the Zoning Resolution to revise distribution requirements in its Mandatory Inclusionary Housing program to prohibit segregating entire AMI bands within individual buildings in 100% subsidized housing developments and requiring income band distribution throughout each building.

- HPD must institute an income distribution requirement for individual buildings within all new subsidized developments and commitment from developers that amenities in buildings that require a regulatory agreement with the City must be accessible to all tenants.

- The City must adopt a comprehensive planning process which requires evaluating land use actions for residential developments or mixed-use residential developments within a “affirmatively furthering fair housing” category as part of the approval process.

6. **The City has failed to vigorously and effectively enforce fair housing laws.** To its credit, New York City passed a fair housing law in 1957, long before the State of New York or the federal government passed a fair housing law. The City Human Rights Law also offers protections to many more populations than state or federal fair housing laws
do. But the measure of a strong fair housing law is not merely how many people it
purports to protect, but whether the administration of the law enables people to
effectively exercise their fair housing rights and whether the law is being vigorously
enforced. The track record of the NYC Commission on Human Rights (NYCCHR) has
been, at best, uneven. While the NYCCHR stepped up enforcement under Mayor
David Dinkins, subsequent administrations since 1993 have successfully worked to
dismantle the agency rendering it ineffective. While the current administration
has hired more staff and started to rebuild the agency, our organization routinely hears
from complainants who claim they must wait months for an appointment to meet with
someone at the NYCCHR regarding their discrimination complaints. Long backlogs
and delays are still common. The FHJC has a complaint that has been pending with the
Commission since 2016. To reduce backlogs, the Commission has resorted to
conducting “interventions” in an effort to help people obtain housing, though not
necessarily all of the relief they are entitled to under the law. In 2019, rather than
significantly increase the budget of the Commission, the City decided to cut their budget
request by a third.

In order to efficiently eliminate these barriers to housing choice, increased funding for
enforcement activities are needed. The consistent success of fair housing testing proves
it to be a uniquely effective tool for ferreting out housing discrimination. The City should
increase funding for systemic fair housing testing and other fair housing activities. The
current under-resourced and complaint-driven approach to government fair housing
enforcement in New York fails to address subtle and systemic forms of housing
discrimination. A more proactive, systemic, and well-funded government enforcement
approach – with testing as the centerpiece – is critically needed.

The need for more systemic testing stems from a reality that the nature of housing
discrimination has changed a great deal since fair housing laws were passed. Much of
the housing discrimination based on race and national origin is considerably more
difficult for ordinary consumers to detect and the only way to ferret out this illegal
discrimination is to conduct systemic testing investigations. Many of the fair housing
lawsuits brought by the FHJC over the past 15 years have resulted from systemic testing
investigations and not from complaints. A list of FHJC cases appears in Appendix B.
Also, the recent investigation into real estate sales practices that FHJC assisted Newsday
to conduct on Long Island amply illustrates that widespread racial discrimination
persists but, given the nature of the discrimination uncovered, it would not result in
complaints being filed. Much of the systemic discrimination that persists in the local
housing market can only be documented by conducting proactive testing investigations.
The City of Los Angeles and Los Angeles County provides over $800,000 in funding
annually to the full-service fair housing organization known as the Housing Rights
Center. Apart from a few small contracts for testing services, the FHJC has never
received substantial funding from the City of New York to support its fair housing
investigative and enforcement work. While FHJC’s track record for conducting
investigations and bringing successful enforcement actions rivals any private fair
housing organization in the nation, substantial funding and support from New York City has not been forthcoming.

- The Council should substantially increase funding to the New York City Commission on Human Rights and provide close oversight to make sure that backlogs are eliminated and the process becomes more accessible, efficient, and timely for the effective adjudication of housing discrimination complaints.

- The Council should explore what it would take to make the City Human Rights Law “substantially equivalent” to the federal Fair Housing Act so that the City can take advantage of additional federal funding that would be available.

- The City should provide general financial support to the FHJC, the only full-service fair housing organization based in New York City, to implement systemic testing investigations, carry out training and educational activities, and continue its fair housing enforcement work.

7. **The City Council should enact an Affirmatively Furthering Fair Housing Requirement**

The Fair Housing Act requires state and local jurisdictions that accept federal housing or community development funds to take affirmative steps to further fair housing. Since the federal government is retreating from this obligation, states and local communities need to step up and adopt their own policies. The draft *Where We Live NYC* report, if nothing else, demonstrates that the City finds it very challenging or is reluctant to view its own policies and programs through a fair housing lens. We urge the City to amend its Human Rights Law to require all city agencies engaged in housing and community development activities to “affirmatively further fair housing” and take no action that is materially inconsistent with this obligation.

- The City should amend its Human Rights Law to require all City agencies engaged in housing and community development activities to “affirmatively further fair housing” and take no action that is materially inconsistent with this obligation.

As part of the City’s duty to affirmatively further fair housing, we urge the City to include these seven fair housing issues in the final *Where We Live NYC* report and implement an action plan to address each issue.

**The Draft Where We Live NYC Plan Fails to Examine Fair Housing Issues in a Comprehensive Manner**

Fair housing is a regional issue. Continuing housing discrimination and residential segregation impacts all who reside in the New York City region. Certainly, there is ample evidence that discriminatory policies or practices in suburban communities limit the housing choices available to many populations in the City. Exclusionary land-use and zoning practices, discriminatory residency preferences, resistance to building affordable rental housing, and private market discrimination in the rental, sale, and financing of
housing in the suburbs impair the ability of many City residents to access housing, amenities, and opportunities that many of the surrounding suburban communities have to offer.

Residential racial segregation in the region fuels a vicious self-sustaining cycle of inequality. Separation limits opportunities for inter-group contact that can reduce biases, stereotypes, and prejudices. The spatial mismatch between populations needing work and areas of job growth limits access to employment opportunities. Residential racial isolation frequently results in segregated schools. Unequal access to employment and educational opportunities contribute to disparities in income and wealth accumulation. This cycle continues to inflict harm on African American people and as well as people and communities of color while largely advantaging white people and white communities. This cycle is not merely a City issue or a suburban issue; it is a regional issue and regional solutions are required.

We would like to see these regional fair housing issues discussed in the final Where We Live NYC report with an emphasis on identifying strategies that could advance regional solutions to the problem of housing discrimination and residential racial segregation. The City could play a leadership role not only by implementing the policies and programs identified in our comments that would expand housing choices and reduce residential segregation in New York City but by engaging suburban and State officials in a more collaborative effort to work on regional approaches that advance fair housing and racial equity.

Addressing Barriers to Housing in New York City Requires a Comprehensive, Intersectional Approach

One of the unfortunate deficiencies in the Where We Live NYC framework is the large amount of data provided that does not attempt to address the cumulative impacts of housing discrimination across protected characteristics. Acknowledging that protected characteristics under the federal Fair Housing Act, as well as the State and City’s Human Rights Laws, often impact New York residents cumulatively is an important step in addressing these complex issues. The draft plan seems to only focus on what is noted as the “intersection between poverty and race.” The only reference to intersectional challenges appears in the section on stakeholder recommendations relating to publicly-supported housing, which mentions “other special populations who face intersectional challenges.” The draft plan did not address this further in any section that followed or provide recommendations that could help with barriers to housing, whether “publicly-supported” or not, that impact individuals in multiple ways.

According to studies of 2016 HUD administrative data, 57% of people receiving HUD rental assistance are either elderly or a person with disabilities.14 With over 114,000 homeless students in NYC15, as reported by the New York Times in November 2019, there are many families with children, protected under familial status, trying to leave the shelter system and may qualify for rental assistance. As with the overlap of housing voucher assistance and other protected characteristics, FHJC often uncovers layers of discrimination across multiple protected characteristics, where complainants are faced with

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discriminatory treatment not only because of one characteristic, for example, their race or national origin, but, in addition to their gender identity, sexual orientation, familial status, disability or source of income. Eliminating housing discrimination in New York City requires a comprehensive approach to enforcement and examining the multiple, cumulative barriers that individuals and families face in securing and maintaining a safe home environment. It is imperative that intersectional barriers are not just seen as affecting “special populations” in order to ensure that continuing enforcement efforts, as well as new funding and programs developed as a part of Where We Live NYC, are flexible, comprehensive and highly effective at solving the deeply entrenched patterns of housing discrimination in New York City.

Conclusions

This April will mark the 52nd anniversary of the passage of the federal Fair Housing Act. We have fair housing laws, but we do not have fair housing.

First, fair housing laws have never been vigorously enforced. The passive largely complaint-responsive approach misses much of the illegal discrimination that persists in our housing markets. The testing completed in the real estate market on Long Island by Newsday illustrates this reality. The widespread racial steering and other discriminatory conduct in the sales market would never have been reported by consumers. FHJC’s investigations into racial discrimination in the rental market tell the same story. The widespread failure of developers and architects to construct accessible housing only came to the public’s attention after FHJC conducted a systemic testing investigation. Testing is the only way to uncover and document these subtle and pervasive discriminatory housing practices. There is a need for a new enforcement paradigm that places a much greater emphasis on the proactive enforcement of fair housing laws, with testing as a centerpiece of any enforcement strategy.

Second, the provision of the Fair Housing Act that was intended to repair the harm caused by decades of intentionally racist housing policies and practices has never been fully implemented. The duty to affirmatively further fair housing, to be meaningful, requires that localities and states make an honest and comprehensive assessment of the barriers to housing choice and identify policies and practices that may be perpetuating or reinforcing residential racial segregation. Once these barriers are identified, communities are to develop action plans, with metrics and measurable goals, that implement programs and policies to expand housing choice and reduce residential segregation. As with NYC’s draft Where We Live NYC report, communities often focus their assessments on identifying discriminatory barriers caused by others, most often the private housing industry, or touting existing efforts aimed at advancing a fair housing objective. The heavier lift for most communities is to thoroughly examine existing City policies and programs through a fair housing lens and evaluate whether changes are needed to ensure that these policies or programs are not limiting housing choice or reinforcing segregation. Changes may be necessary, not merely to comply with fair housing laws, but to go beyond what is required by the law to create more open, accessible, equitable, and inclusive communities.

We urge the City to consider these comments as revisions are made to the draft Where We Live NYC report and we are prepared to consider requests for additional data that might be helpful in preparing the final report.
Appendices

Appendix A. Review of FHJC Recommendations
Appendix B. Partial List of FHJC Cases and Investigations
Appendix C. Closing the Divide Report and Recommendations
Appendix D. FHJC Low Income Housing Tax Credit Report
Appendix A

Draft Where We Live NYC Report Recommendations

1. The Department of Buildings (DOB) should conduct thorough reviews of architectural plans submitted and, additionally, conduct on-site inspections of new developments to ensure that certifications are not fraudulent and that new developments comply with local, state, and federal accessibility requirements.

2. The City should ban developers from receiving city subsidies, tax benefits, and other discretionary land-use approvals if there is a history of non-compliance with local, state, and federal fair housing accessibility requirements.

3. The City should pass a co-op disclosure law and advocate that the State of New York enact and enforce a strong co-op disclosure law that protects buyers and renters in housing cooperatives.

4. The City should amend the City Human Rights Law to prohibit housing discrimination based on “arrest and conviction record.”

5. The City should expand its mobility assistance program by providing greater financial resources and consider opening the program to households with other city subsidies, providing greater financial incentives that will enable lower-income families with housing subsidies to have greater choices to move within the City, and explore with the State of New York and suburban housing authorities the possibility of creating a regional mobility assistance program that enables families with rental subsidies to move anywhere in the City or surrounding New York suburbs.

6. The City should revise its Qualified Allocation Plan (QAP) to provide greater incentives (points) for new tax-credit housing to be developed in low-poverty, well-resourced areas with little or no affordable housing and with deeper subsidies to reach lower income bands to expand housing opportunities for lower income and marginalized populations.

7. The City should voluntarily suspend its Community Board preference policy and commit to more resources to existing effective programs for combatting tenant displacement.

8. The City should reevaluate all off-site Inclusionary Housing programs geographic limitations to determine whether this policy affirmatively further fair housing.
9. The City must amend the Zoning Resolution to revise distribution requirements in its Mandatory Inclusionary Housing program to prohibit segregating entire AMI bands within individual buildings in 100% subsidized housing developments and requiring income band distribution throughout each building.

10. HPD must institute an income distribution requirement for individual buildings within all new subsidized developments and commitment from developers that amenities in buildings that require a regulatory agreement with the City must be accessible to all tenants.

11. The City must adopt a comprehensive planning process which requires evaluating land use actions for residential developments or mixed-use residential developments within a “affirmatively furthering fair housing” category as part of the approval process.

12. The Council should substantially increase funding to the New York City Commission on Human Rights and provide close oversight to make sure that backlogs are eliminated and the process becomes more accessible, efficient, and timely for the effective adjudication of housing discrimination complaints.

13. The Council should explore what it would take to make the City Human Rights Law “substantially equivalent” to the federal Fair Housing Act so that the City can take advantage of additional federal funding that would be available.

14. The City should provide general financial support to the FHJC, the only full-service fair housing organization based in New York City, to implement systemic testing investigations, carry out training and educational activities, and continue its fair housing enforcement work.

15. The City should amend its Human Rights Law to require all City agencies engaged in housing and community development activities to “affirmatively further fair housing” and take no action that is materially inconsistent with this obligation.
# PARTIAL LIST OF CASES/OUTCOMES RESULTING FROM FHJC INVESTIGATIONS

## APPENDIX B

### (By Date Filed)

LIST LAST UPDATED – March 9, 2020

<table>
<thead>
<tr>
<th>#</th>
<th>CASE</th>
<th>BASIS</th>
<th>FHJC TESTING</th>
<th>FILED</th>
<th>RESOLVED</th>
<th>OUTCOMES</th>
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<tbody>
<tr>
<td>1</td>
<td>Joseph Sciammetta v. Franca Aguayo Gallo</td>
<td>Race, National Origin</td>
<td>Yes</td>
<td>Oct. 21, 2005</td>
<td>Temporary Restraining Order – Oct. 27, 2005  Consent Order – Nov. 18, 2005</td>
<td>District Court Judge granted a temporary restraining order. Later signed a consent order that provided 9 months free rent, required compliance with fair housing laws, and asked defendants to correct code violations. The plaintiff alleged that the apartment owner repeatedly harassed him because of the race/national origin of his family members and people associated with family members.</td>
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<td>2</td>
<td>MHANY Management et al. v. Village of Garden City et al.</td>
<td>Race, National Origin</td>
<td>No</td>
<td>May 12, 2005</td>
<td>Finding of Liability – Dec. 6, 2013  Final Order – Mar. 17, 2014  2nd Circuit Decision – Affirmed Mar. 23, 2016  Supplemental Order – Sept. 26, 2017</td>
<td>Second Circuit Court of Appeals affirmed District Court finding of liability based on disparate impact and intentional discrimination against suburban Nassau County Village and order of injunctive relief for five years following bench trial on the merits. Court remanded claims of perpetuation of segregation against Nassau County back to lower court for further consideration in view of ICP Supreme Court decision and Court found the Village’s actions had a disparate impact on African Americans and Latinos. Case alleged Village discriminated against African Americans and Latinos in zoning decision based in part on evidence gathered in FHJC non-testing investigation.</td>
</tr>
<tr>
<td>3</td>
<td>United States v. Kaufman Realty Corp et al.</td>
<td>Disability</td>
<td>No</td>
<td>Mar 2006</td>
<td>Consent Decree – March 2006</td>
<td>The court signed a consent decree requiring a payment of 175,000 for compensatory damages and injunctive relief. Complaint was filed by a non-profit organization called Sinergia alleging that the landlord refused to rent commercial space to the organization after it was learned it would be used for adults with developmental disabilities.</td>
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<td>#</td>
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<td>4</td>
<td>Elizabeth Pritchett v. James Joseph Rigney III</td>
<td>Sex (Sexual Harassment)</td>
<td>No</td>
<td>May 17, 2006</td>
<td>Consent Order – Aug. 29, 2006</td>
<td>Court issued consent order which included a payment to Ms. Pritchett of $17,500 and prohibited Mr. Rigney from further physical and verbal harassment. Complaint filed alleging that Mr. Rigney repeatedly sexually harassed the plaintiff by creating a sexually hostile living environment.</td>
</tr>
<tr>
<td>5</td>
<td>Intranuovo v. Oelkers</td>
<td>Family Status</td>
<td>Yes</td>
<td>Aug. 4 2006</td>
<td>Jul. 2, 2008</td>
<td>$4,900 settlement for damages and attorney’s fees. Complaint filed by the Intranuovos family against landlord alleging that he denied defendants because of their children. Complaint was filed in part on FHJC testing investigation.</td>
</tr>
<tr>
<td>7</td>
<td>Brady v. Leon Goldstein d/b/a Slope Realty and 575 Third Street LLC</td>
<td>Race</td>
<td>Yes</td>
<td>Dec. 12, 2006</td>
<td>Consent Order- Jul. 25, 2007</td>
<td>$20,000 settlement (damages) including injunctive relief. Complaint was filed by an African American couple alleging race discrimination throughout the application process. Complaint was filed in part on FHJC testing investigation.</td>
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<tr>
<td>8</td>
<td>Vargas et al. v. Town of Smithtown et al.</td>
<td>Race, National Origin</td>
<td>Yes</td>
<td>Dec. 13, 2007</td>
<td>Aug. 28, 2009</td>
<td>$925,000 compensation fund for class members that included $200,000 in attorney’s fees and costs. A ten-year consent order that requires Town to 1) restore class members to their original place on the Town’s 2002 and 2006 waiting listings; 2) provide housing vouchers as they become available to each eligible class member; and 3) implement new policies for the future operation of the Town’s Section 8 housing voucher program. Complaint was filed based in part on FHJC testing investigation.</td>
</tr>
<tr>
<td>9</td>
<td>Lee v. Bais Seller Realty et al.</td>
<td>Race, Religion</td>
<td>Yes</td>
<td>June 26, 2008</td>
<td>May 14, 2012</td>
<td>$50,000 settlement (damages and attorney’s fees) with injunctive relief including fair housing training, recordkeeping, and monitoring requirements. An African American woman alleged real estate company refused to provide service to her because of her race and religion.</td>
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<td>10</td>
<td>King v. Meir Weiss and 2129 Cortelyou Road LLC</td>
<td>Disability</td>
<td>Yes</td>
<td>Jul. 25, 2008</td>
<td>Jul. 25, 2008</td>
<td>$7,500 settlement (monetary relief). Case was filed by man against landlord alleging that the landlord refused to rent because he is deaf. Complaint was filed based in part on FHJC testing investigation.</td>
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<td>11</td>
<td>U.S. v. CVPI (Avalon Bay) et al.</td>
<td>Disability</td>
<td>Yes</td>
<td>Aug. 13, 2008</td>
<td>Oct. 15, 2010</td>
<td>$2.2 million settlement (victim fund, accessibility fund and civil penalties) applying to 2,557 rental units in NYC. U.S. filed complaint against developer and architect alleging that 361-unit Manhattan rental building was not designed and constructed in compliance with FHA accessibility requirements. Complaint filed based in part on FHJC testing investigation.</td>
</tr>
<tr>
<td>12</td>
<td>Logan v. 2025 Regent LLC</td>
<td>Source of Income</td>
<td>No</td>
<td>Jul. 2, 2009</td>
<td>Sept. 22, 2009</td>
<td>Settlement required that defendants immediately accept vouchers, create a contract to rent an apartment to the plaintiff, and make necessary renovations to apartment. Complaint filed by plaintiff alleging that defendants refused to rent to her because of her rental subsidy.</td>
</tr>
<tr>
<td>13</td>
<td>FHJC et al. v. Broadway Crescent Realty LLC</td>
<td>Race</td>
<td>Yes</td>
<td>Jan. 2010</td>
<td>Nov. 7, 2011</td>
<td>$341,000 settlement (damages and attorneys' fees) with injunctive relief applying to 1000 rental units in NYC. Agreement included fair housing training, adoption of non-discrimination policy, posting of signs, advertising policies, and recordkeeping. Complaint filed by FHJC and three African American testers alleged owner, management company, and building superintendent discriminated against prospective renters based on race.</td>
</tr>
<tr>
<td>14</td>
<td>Arem v. EDMD Realty LLC et al.</td>
<td>Source of Income</td>
<td>No</td>
<td>Feb. 5, 2010</td>
<td>Feb. 21, 2012</td>
<td>$1,500 settlement (damages) and reduced rent payments for 4 years. Complaint was filed against EDMD Realty LLC, alleging that they refused to accept the plaintiff's voucher to pay for rent.</td>
</tr>
<tr>
<td>15</td>
<td>FHJC et al. v. Edgewater Park Homeowners Corp. et al.</td>
<td>Race</td>
<td>Yes</td>
<td>Feb. 4, 2010</td>
<td>May 1, 2013</td>
<td>$502,000 settlements (damages and attorney's fees) with injunctive relief applying to two Bronx housing cooperatives with 1000 homes including fair housing training, policies, and recordkeeping, as well as elimination of policy requiring home buyers to obtain references from current residents. Note: Defendant real estate broker permanently surrendered real estate license. Complaint filed by FHJC and two African American testers.</td>
</tr>
<tr>
<td>16</td>
<td>Cales and FHJC v. New Castle Hill Realty et al.</td>
<td>Disability, Source of Income</td>
<td>Yes</td>
<td>Apr. 23, 2010</td>
<td>2011-2013</td>
<td>$550,000 in settlements with multiple defendant real estate brokerage firms (damages and attorneys' fees) including injunctive relief. Complaint filed by FHJC and homeless disabled man with rental subsidy who obtained a rent-stabilized apartment in addition to monetary relief.</td>
</tr>
<tr>
<td>17</td>
<td>FHJC v. 1777 Management LLC et al.</td>
<td>Race, National Origin</td>
<td>Yes</td>
<td>May 25, 2010</td>
<td>Jan. 26, 2011</td>
<td>$100,000 settlement (damages and attorneys' fees) with injunctive relief including fair housing training, modification of rental policies, and publicly</td>
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<td>BASIS</td>
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<td>18</td>
<td>U.S. v. Burgundy Gardens et al.</td>
<td>Race</td>
<td>Yes</td>
<td>Dec. 6, 2010</td>
<td>Apr. 17, 2012</td>
<td>$175,000 settlement (victim fund and civil penalty) with injunctive relief including fair housing training, a non-discriminatory policy, recordkeeping and reporting requirements, and other injunctive relief. Complaint filed by U.S. based on testing conducted by FHJC.</td>
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<tr>
<td>19</td>
<td>FHJC v. Town of Yorktown et al.</td>
<td>Race, National Origin</td>
<td>Yes</td>
<td>Dec. 15, 2010</td>
<td>Feb. 2012</td>
<td>$165,000 settlement (damages and attorneys’ fees) with multi-year injunctive relief to eliminate residency preferences by Town in Section 8 and other affordable housing programs. Agreement also include reordering current Section 8 waiting list to give preference to non-residents living in high-poverty areas, training for Town officials, affirmative marketing, informational flyers and rent search logs for voucher holders, landlord recruitment, etc.</td>
</tr>
<tr>
<td>20</td>
<td>U.S. v. Pearl River Garden et al.</td>
<td>Race</td>
<td>Yes</td>
<td>Mar. 10, 2011</td>
<td>June 15, 2011</td>
<td>Civil penalty with admission of liability. Injunctive relief included fair housing training, non-discrimination policy, record-keeping, monitoring, etc. Complaint filed by U.S. based on testing investigation by FHJC.</td>
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<tr>
<td>22</td>
<td>U.S. v. Larkspur et al.</td>
<td>Disability</td>
<td>Yes</td>
<td>Sept. 9, 2011</td>
<td>Oct. 5, 2011</td>
<td>$95,000 settlement (victim fund and civil penalty) with retrofits and modifications, compensation to residents displaced during modifications, and other injunctive relief. Complaint filed by U.S. alleging developer and architect of 116-unit Manhattan rental building failed to design and construct it in compliance with FHA accessibility requirements. Complaint based in part on testing investigation by FHJC.</td>
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<td>FHJC TESTING</td>
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<td>23</td>
<td>U.S. v. Loenthal Silver Riverdale et al.</td>
<td>Race</td>
<td>Yes</td>
<td>Sept. 26, 2011</td>
<td>Oct. 16, 2012</td>
<td>$75,000 settlement (victim fund and civil penalty) with injunctive relief regarding 72-unit Bronx rental building to include fair housing policies, training and recordkeeping. U.S. filed complaint based on testing investigation by FHJC.</td>
</tr>
<tr>
<td>25</td>
<td>U.S. v. 475 9th Ave. Assoc. et al.</td>
<td>Disability</td>
<td>Yes</td>
<td>May 25, 2012</td>
<td>May 25, 2012</td>
<td>$135,000 settlement (victim fund and civil penalty) with injunctive relief including retrofits and employee training. Complaint filed by U.S. against the owner and architect of 259-unit Manhattan rental building alleging failure to design and construct in compliance with FHA accessibility requirements. Complaint based in part on testing investigation by FHJC.</td>
</tr>
<tr>
<td>26</td>
<td>Demech v. NYCHA</td>
<td>Disability-Reasonable Modification</td>
<td>No</td>
<td>Aug. 13, 2012</td>
<td>May 14, 2013</td>
<td>$70,000 settlement (damages and attorney’s fees) with injunctive relief including retrofits and employee training. Complaint filed by three tenants due to accessibility violations under the Fair Housing Act, Rehab Act, and Title II of the Americans with Disability Act.</td>
</tr>
<tr>
<td>27</td>
<td>U.S. v. L&amp;M 93rd St. LLC et al.</td>
<td>Disability</td>
<td>Yes</td>
<td>Sept. 30, 2012</td>
<td>July 22, 2011</td>
<td>$548,300 settlement (victim fund, accessibility fund and civil penalties) with injunctive relief including retrofits and training. U.S. filed complaint against developer and architect of Manhattan rental building for failure to design and construct in compliance with FHA accessibility requirements. Complaint based in part on testing investigation conducted by FHJC.</td>
</tr>
<tr>
<td>28</td>
<td>FHJC et al v. Nasa Real Estate Corp et al.</td>
<td>Race</td>
<td>Yes</td>
<td>Dec. 5, 2012</td>
<td>June 27, 2013</td>
<td>$130,000 settlement (damages and attorney’s fees) with injunctive relief applying to multiple New York City rental buildings (600+ units). FHJC and three African American testers filed complaint alleged discrimination against prospective renters based on race.</td>
</tr>
<tr>
<td>29</td>
<td>FHJC et al v. Kara Realty LLC et al.</td>
<td>Race</td>
<td>Yes</td>
<td>Apr. 18, 2013</td>
<td>Mar. 3, 2014</td>
<td>$212,000 settlement (damages and attorney’s fees) with injunctive relief applying to 16 Brooklyn rental buildings (900+ units). FHJC and four African American testers filed complaint alleged discrimination against prospective renters based on race.</td>
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<td>#</td>
<td>CASE</td>
<td>BASIS</td>
<td>FHJC TESTING</td>
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<td>30</td>
<td>U.S. v. John Buck Company et. al.</td>
<td>Disability</td>
<td>Yes</td>
<td>Apr. 23, 2013</td>
<td>June 11, 2013</td>
<td>$197,000 settlement (victim fund and civil penalty) with injunctive relief including retrofits applying to a 196-unit Manhattan rental building. U.S. filed complaint alleging owner and architect failed to design and construct in compliance with FHA accessibility requirements. Complaint based in part on testing investigation conducted by FHJC.</td>
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<tr>
<td>31</td>
<td>United States v. 2 Gold LLC et al.</td>
<td>Disability</td>
<td>Yes</td>
<td>Apr. 24, 2013</td>
<td>Apr. 24, 2013 (Developer) June 5, 2014 (Architects)</td>
<td>$415,000 settlement (victim funds and civil penalties) with injunctive relief including retrofits applying to 650-unit Manhattan rental building. U.S. filed complaint alleging developer and architect failed to design and construct in compliance with FHA accessibility requirements. Complaint based in part on testing investigation conducted by FHJC.</td>
</tr>
<tr>
<td>32</td>
<td>Chacon/FHJC et al. v. The LeFrak Organization et al.</td>
<td>Disability, Source of Income</td>
<td>Yes</td>
<td>Apr. 25, 2013</td>
<td>Aug. 20, 2014</td>
<td>$262,500 settlement (damages and attorney’s fees) with injunctive relief for FHJC and disabled woman using rental subsidy. Complaint alleged that the owner and management company of more than 12,000 rental units in New York City violated fair housing laws on the basis of disability and source of income by establishing a dual and discriminatory application system which made housing unavailable for persons with rental subsidies, including a subsidy called HASA for persons living with HIV/AIDS. Complaint based on testing investigation conducted by FHJC.</td>
</tr>
<tr>
<td>33</td>
<td>FHJC et al v. Merz Realty Co. et al.</td>
<td>Race</td>
<td>Yes</td>
<td>Apr. 29, 2013</td>
<td>Sept. 27, 2013</td>
<td>$110,000 settlement (damages and attorney’s fees) with injunctive relief applying to a 59-unit Brooklyn rental building. FHJC and three African American testers filed a complaint that alleged racial discrimination against African Americans in rental of housing.</td>
</tr>
<tr>
<td>34</td>
<td>FHJC v. Esplanade Venture Partnership et al.</td>
<td>Disability, Religion, Race</td>
<td>Yes</td>
<td>May 29, 2013</td>
<td>Dec. 11, 2014</td>
<td>$297,500 settlement (damages and attorney’s fees) including injunctive relief regarding a chain of five senior living residences (600+ units) in four counties. FHJC alleged that owners and managers discriminated based on disability, religion, and race. The case was based on a systemic testing investigation conducted by the FHJC.</td>
</tr>
<tr>
<td>35</td>
<td>FHJC et al. v. E. 22nd Towers LLC et al.</td>
<td>Race</td>
<td>Yes</td>
<td>Aug. 2, 2013</td>
<td>May 14, 2014</td>
<td>$120,000 settlement (damages and attorney’s fees) with injunctive relief applying to three Brooklyn rental buildings (48 units). FHJC and four African American testing alleged racial discrimination in rental of housing.</td>
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<td>CASE</td>
<td>BASIS</td>
<td>FHJC TESTING</td>
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<td>36</td>
<td>Vilchez/FHJC v. AVR Realty</td>
<td>Disability</td>
<td>Yes</td>
<td>Aug. 8, 2013</td>
<td>Aug. 27, 2015</td>
<td>$1.3 million settlement (damages, attorney’s fees, and accessibility fund) with injunctive relief including adoption of fair housing policies, training, retrofits, and $400,000 for FHJC to establish the Adele Friedman Housing Accessibility Fund. The lawsuit was filed by FHJC, a disabled woman who uses wheelchair and the woman’s mother alleging developers and architects of two condominium developments in Queens and Dutchess County (465 units) failed to design and construct in compliance with FHA accessibility requirements.</td>
</tr>
<tr>
<td>37</td>
<td>ERASE Racism/FHJC et al. v. LLR LLC et al.</td>
<td>Race</td>
<td>Yes</td>
<td>Aug. 28, 2013</td>
<td>June 12, 2014</td>
<td>$165,000 settlement (damages and attorney’s fees) with injunctive relief applying to 74-unit rental building in Nassau County. FHJC, ERASE Racism, and three African American testers filed the case and alleged racial discrimination in rental of housing.</td>
</tr>
<tr>
<td>38</td>
<td>U.S. v. 61 Main Street Corporation et al.</td>
<td>Race</td>
<td>Yes</td>
<td>Dec. 2, 2013</td>
<td>Dec. 2, 2013</td>
<td>$92,000 settlement (victim fund and civil penalty) with injunctive relief including an admission of liability by defendant regarding 22-unit rental complex (22 units) in Westchester County. U.S. filed complaint that alleged racial discrimination against African Americans based on FHJC testing investigation.</td>
</tr>
<tr>
<td>39</td>
<td>Kramer et al. Chesty Properties LLC</td>
<td>Disability</td>
<td>No</td>
<td>Feb. 28, 2014</td>
<td>Dec. 15, 2015</td>
<td>$24,000 settlement (damages and attorney’s fees) with injunctive relief including advertising and training. Mr. Kramer and Ms. Gottlieb filed compliant alleging that defendant failed to make reasonable accommodations and discriminated against plaintiff because of their disabilities.</td>
</tr>
<tr>
<td>40</td>
<td>United States v. Related</td>
<td>Disability</td>
<td>Yes</td>
<td>Mar. 17, 2014</td>
<td>Dec. 10, 2014</td>
<td>$2,000,000 settlement (victim fund and civil penalty) with injunctive relief regarding two Manhattan rental building (750+ units). U.S. filed complaint that alleged developers and architects failed to design and construct in compliance with FHA accessibility requirement. Complaint is based in part on testing investigation conducted by FHJC.</td>
</tr>
<tr>
<td>41</td>
<td>United States v. Town of Oyster Bay et al.</td>
<td>Race</td>
<td>No</td>
<td>Apr. 10, 2014</td>
<td>Pending</td>
<td>Pending lawsuit filed by U.S. alleges that a Long Island suburban town used a discriminatory residency preference contained in its zoning code to select eligible applicants for affordable housing and that the system discriminated against African Americans. FHJC conducted non-testing investigation and provided evidence to the U.S.</td>
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<td>CASE</td>
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<td>42</td>
<td>United States v. Durst et al.</td>
<td>Disability</td>
<td>Yes</td>
<td>Apr. 16, 2014</td>
<td>Nov. 17, 2015</td>
<td>$570,000 settlement (victim fund and civil penalty) with injunctive relief involving four buildings with over 1700 units of rental housing. U.S. filed complaint that alleged developers and architects failed to design and construct 595-unit Manhattan rental complex in compliance with FHA accessibility requirements. Complaint based in part on testing investigation conducted by FHJC.</td>
</tr>
<tr>
<td>43</td>
<td>FHJC et al. v. J.J.A. Holding Co. et al.</td>
<td>Race</td>
<td>Yes</td>
<td>May 21, 2014</td>
<td>Mar 11, 2015</td>
<td>$200,000 settlement (damages and attorney’s fees) with injunctive relief applying to three rental buildings in the Woodlawn area of the Bronx. Complaint filed by FHJC and three African American testers alleged the owner and manager of multiple Bronx rental buildings involving over 300 units of rental housing discriminated based on race.</td>
</tr>
<tr>
<td>44</td>
<td>LIHS/FHJC v. Village of Great Neck Plaza et al.</td>
<td>Race, Age, Disability</td>
<td>Yes</td>
<td>May 30, 2014</td>
<td>Oct.1, 2015 – Village of GNP Oct. 15, 2016 – NCIDA</td>
<td>$350,000 total monetary settlement: (1) Village of Great Neck Plaza (VGNP) ($200,000) agreed to amend zoning code to eliminate residency preferences and age requirements for affordable housing, expand areas where affordable housing would be permitted and continue affordable housing incentives and (2) Nassau County Industrial Development Agency (NCIDA) ($150,000) agreed to require developers receiving NCIDA financial assistance to attend fair housing training, conduct affirmative marketing, and take other steps to ensure non-discrimination and that NCIDA would modify application process to exclude residency preferences and age requirements, waive application fees for affordable housing developments in GNP, and post information about affordable housing applications on website. Complaint filed by FHJC and Long Island Housing Services alleged discrimination based on race, age, and disability. The case was based, in part, on a joint testing investigation conducted by the plaintiff organizations.</td>
</tr>
<tr>
<td>45</td>
<td>Marcano et al. v. Sandcastle Towers Housing Dev. Fund Corp. et al.</td>
<td>Disability/ Source of Income</td>
<td>Yes</td>
<td>Sept. 30, 2014</td>
<td>Oct. 23, 2015</td>
<td>$207,000 settlement with injunctive relief applying to two large rental buildings resolving a lawsuit filed by two men living with HIV/AIDS who alleged they were discriminated against by owner of buildings based on disability and source of income while searching for housing with a HIV/AIDS Services Administration (HASA) rental subsidy.</td>
</tr>
<tr>
<td>46</td>
<td>Huzzie v. Spadero Real Estate et al.</td>
<td>Race, Source of Income</td>
<td>Yes</td>
<td>Oct. 7, 2014</td>
<td>Jun. 4, 2015</td>
<td>Confidential settlement reached in case. Complaint was filed by Ms. Huzzie alleging that Spadero Real Estate denied rental request because</td>
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<td>47</td>
<td>Spencer/FHJC v. Carnegie Mgmt. et al.</td>
<td>Source of Income</td>
<td>Yes</td>
<td>Oct. 22, 2014</td>
<td>May 12, 2016</td>
<td>$40,000 settlement with injunctive relief. Complainant obtained apartment and was able to use her Section 8 voucher. Lawsuit filed by FHJC and a woman who alleged she was discriminated against based on source of income.</td>
</tr>
<tr>
<td>48</td>
<td>Banks v. Peace of Mind Realty et al.</td>
<td>Source of Income</td>
<td>Yes</td>
<td>Oct. 31, 2014</td>
<td>Pending</td>
<td>Pending lawsuit filed by single working mother who is homeless as a result of repeatedly being discriminated against based on source of income by more than a dozen landlords, real estate companies, and property managers while searching for housing with a Section 8 housing choice voucher.</td>
</tr>
<tr>
<td>49</td>
<td>FHJC et al. v. Horizon Realty et al.</td>
<td>Race</td>
<td>Yes</td>
<td>Nov. 24, 2014</td>
<td>May 18, 2015</td>
<td>$100,000 settlement (damages and atty. fees) with injunctive relief applying to a small real estate company in Queens. Complaint was filed by FHJC, three African American testers, and a white renter who alleged that a reality firm and owners of smaller rental properties in Astoria, Queens were discriminating based on race.</td>
</tr>
<tr>
<td>50</td>
<td>Pitter/FHJC et al. v. Fraken Builders et al.</td>
<td>Race</td>
<td>Yes</td>
<td>Dec. 8, 2014</td>
<td>July 16, 2015</td>
<td>$150,000 settlement (damages and atty. fees) with injunctive relief applying to owners and managers of a 216-unit apartment complex in the Westchester County community of New Rochelle. The complainant who attempted to rent at the complex also obtained an apartment, damages, and two years free rent. Complaint was filed by the FHJC, two African American testers, and an African American applicant alleging discrimination based on race.</td>
</tr>
<tr>
<td>51</td>
<td>FHJC et al. v. FGC 710 Ave. S.</td>
<td>Race</td>
<td>Yes</td>
<td>Jan. 16, 2015</td>
<td>Nov. 24, 2015</td>
<td>$95,000 settlement (damages and attorney’s fees) with injunctive relief applying to owner and manager of 43-unit apartment building. Complaint filed by FHJC and three African American testers alleged the owner of a 43-unit apartment building in the Gravesend neighborhood (Brooklyn) was discriminating based on race.</td>
</tr>
<tr>
<td>52</td>
<td>Estate of Scott Dial et al. v. Werba Realty et al.</td>
<td>Disability/ Source of Income</td>
<td>Yes</td>
<td>Jan. 15, 2015</td>
<td>March 15, 2016 (Werba Realty)</td>
<td>$46,000 settlement with Werba Realty includes fair housing training. Undisclosed settlements with other defendants. Lawsuit filed by a woman and the estate of her son alleging discrimination by numerous real estate companies in Queens.</td>
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<td>53</td>
<td>FHJC et al. v. M&amp;T Bank Corporation et al.</td>
<td>Race/National Origin</td>
<td>Yes</td>
<td>Feb. 3, 2015</td>
<td>Aug. 31, 2015</td>
<td>$485,000 settlement with injunctive relief including agreement not to use racial criteria in any of its residential loan programs, adoption of a bank-wide policy prohibiting steering, posting fair housing policy on website, revision of training program for loan officers and employees and other provisions. The complaint was filed by FHJC and nine African American, Latino, Asian, and white testers who alleged loan officers engaged in racial steering and provided different, misleading, and inaccurate information to prospective homebuyers based on race and national origin. The complaint also alleged that the bank unlawfully used racial criteria in a loan program.</td>
</tr>
<tr>
<td>54</td>
<td>ERASE Racism/FHJC v. Empire Management America Corporation et al.</td>
<td>Race</td>
<td>Yes</td>
<td>Apr. 30, 2015</td>
<td>Feb. 25, 2016</td>
<td>$230,000 settlement with injunctive relief. Lawsuit filed by FHJC, seven African American testers and ERASE Racism who alleged that the owners and managers of a 107-unit apartment complex in Suffolk County were discriminating based on race.</td>
</tr>
<tr>
<td>56</td>
<td>Alston/FHJC et al. v. Starrett City Inc. et al.</td>
<td>Source of Income</td>
<td>Yes</td>
<td>Aug. 31, 2015</td>
<td>Pending</td>
<td>Lawsuit filed by FHJC and two women with rental subsidies who allege that the owners and managers of the 5800-unit Spring Creek Apartments were discriminating based on source of income by refusing to accept a NYC rental subsidy provided to homeless individuals and families. Court decision denied motion to dismiss and granted preliminary injunction resulting in one of the complainants obtaining an apartment at Spring Creek Apartments. State appeals court dismissed case stating LINC Program contained program feature that violated NYS Urstadt Law which prohibits NYC from imposing no rent increases in rent-regulated buildings.</td>
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<td>57</td>
<td>FHJC v. Heatherwood Communities LLC</td>
<td>Disability</td>
<td>Yes</td>
<td>Oct. 30, 2015</td>
<td>Pending</td>
<td>Pending lawsuits filed by the FHJC allege that the developers, architects and engineers failed to design and construct three rental buildings, two 95-unit buildings in Brooklyn and a 142-unit building in Queens. Lawsuit alleges discrimination based on disability.</td>
</tr>
<tr>
<td>58</td>
<td>FHJC v. Allure Rehabilitation Services LLC et al.</td>
<td>Disability</td>
<td>Yes</td>
<td>Nov. 4, 2015</td>
<td>Dec. 15, 2016 – Crown Dec. 15, 2016 – Cliffside/Forest View April 2017 – Engle Burman March 12, 2018 – Sentosa Care Motion to Dismiss Denied Sept. 26, 2017 Nov. 2018 – Allure et al.</td>
<td>$661,675 from settlements and injunctive relief applying to seven operators of 52 nursing homes and 17 assisted living facilities. Lawsuit alleged discrimination based on disability against Deaf elderly persons by failing to provide ASL interpreter services at assisted living and nursing home facilities.</td>
</tr>
<tr>
<td>59</td>
<td>FHJC v. Catholic Managed Long Term Care, Inc. et al.</td>
<td>Disability</td>
<td>Yes</td>
<td>Nov. 4, 2015</td>
<td>July 21, 2016 – Archcare July 28, 2016 – Jewish Home Lifecare Aug. 4, 2016 – Elant Oct. 13, 2016 – Atria Motion to Dismiss Denied</td>
<td>$495,937 settlement and injunctive relief applying to four operators of 9 nursing home facilities and one operator of 18 assisted living facilities in the New York City region. Lawsuit alleged discrimination based on disability against Deaf elderly persons by failing to provide ASL interpreter services at assisted living and nursing home facilities.</td>
</tr>
<tr>
<td>60</td>
<td>United States v. Glenwood Mgmt. et al.</td>
<td>Disability</td>
<td>Yes</td>
<td>Feb. 12, 2016</td>
<td>Feb. 12, 2016</td>
<td>$950,000 settlement ($50,000 civil penalty and $900,000 victim fund), retrofits and injunctive relief applying to nine buildings with more than 2500 rental units. Lawsuit brought by U.S. alleged failure to design and construct housing in compliance with federal accessibility requirements. The FHJC provided testing evidence in this case.</td>
</tr>
<tr>
<td>61</td>
<td>R.H. v. Equity Renaissance Holdings LLC</td>
<td>Disability/ Source of Income</td>
<td>Yes</td>
<td>April 20, 2016</td>
<td>Oct. 6, 2016</td>
<td>$105,000 settlement and injunctive relief including adopting equal housing policy, new policy eliminating monthly income requirement for applicants receiving a 100% rental subsidy or voucher; fair housing training for employees; and a lease on a rent-stabilized apartment for plaintiff. Lawsuit filed by a man living with HIV/AIDS with a HASA rental subsidy who attempted to rent at Flatbush Gardens, a rental complex with 59 buildings and over 2000 rental units.</td>
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<td>62</td>
<td>FHJC et al. v. Kosova Realty Inc. et al.</td>
<td>Race/Source of Income</td>
<td>Yes</td>
<td>May 12, 2016</td>
<td>September 25, 2017</td>
<td>$620,000 settlement and extensive injunctive relief. Lawsuit brought by FHJC, three African American testers and a complainant with a rental subsidy alleged the owner of over 350 units of rental housing was discriminating based on race, color, and source of income.</td>
</tr>
<tr>
<td>63</td>
<td>U.S. &amp; CFPB v. Bancorp South Bank</td>
<td>Race</td>
<td>Yes</td>
<td>June 29, 2016</td>
<td>June 29, 2016</td>
<td>$10.6 million settlement includes $4 million in direct loan subsidies to minority areas in Memphis; $2.78 million in relief to African Americans denied or overcharged for loans, $800,000 in advertising, outreach, and community partnership efforts, and a $3 million civil penalty paid to the CFPB. Complaint against the Mississippi-based bank filed by U.S. and CFPB alleged redlining, discriminatory underwriting policies, and differential treatment of prospective loan applicants based on race. The U.S. and CFPB filed the lawsuit based in part on testing conducted by the FHJC.</td>
</tr>
<tr>
<td>64</td>
<td>U.S. v. Ginsburg Development Companies, LLC</td>
<td>Disability</td>
<td>Yes</td>
<td>Sept. 19, 2016</td>
<td>April 13, 2018</td>
<td>$175,000 settlement includes $125,000 in a victim fund and at $50,000 civil penalty along with retrofits at two multifamily rental developments in Rockland County. The lawsuit was filed by U.S. alleged that a Westchester developer failed to design and construct two properties in Rockland County in compliance with accessibility requirements under the FHA, the Riverside (106 units) and the Parkside (110 units) in Haverstraw, NY. The Court entered a preliminary injunction on 9/28/2016 requiring Defendant to retain an FHA reviewer to analyze all designs for accessibility at four Westchester developments that are still under construction: Saw Mill Lofts (66 units) in Hastings-on-Hudson, Harbor Square Crossings (188 units) in Ossining, and River Tides (330 units) and 1177 Warburton Avenue (55 units) in Yonkers. The FHJC provided testing evidence in this case.</td>
</tr>
<tr>
<td>65</td>
<td>FHJC et al. v. Robert Rankell &amp; Martin Rankell L.P. et al.</td>
<td>Race</td>
<td>Yes</td>
<td>Oct. 27, 2016</td>
<td>June 15, 2017</td>
<td>$107,500 settlement with injunctive relief. Lawsuit filed by FHJC, four African American testers alleged that the owners and manager of a 60-unit apartment building in Brooklyn were discriminating based on race.</td>
</tr>
<tr>
<td>66</td>
<td>FHJC et al. v. Ulster Savings Bank</td>
<td>Race</td>
<td>Yes</td>
<td>Nov. 4, 2016</td>
<td>August 30, 2017</td>
<td>$475,000 settlement ($28,000 for each tester, $191,000 for the FHJC, and attorney’s fees). Lawsuit filed by FHJC and three African American testers alleging that a bank which serves the Hudson Valley and Long</td>
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<td>67</td>
<td>FHJC v. Town of Eastchester</td>
<td>Race/National Origin</td>
<td>Yes</td>
<td>Nov. 21, 2016</td>
<td>Pending Complaint Amended to Allege Intentional Race Discrimination March 16, 2018</td>
<td>Pending lawsuit filed by the FHJC alleging that the Town of Eastchester in Westchester County maintains and enforces discriminatory residency preferences that suppress minority participation in the Town’s Housing Choice Voucher Program and senior housing developments; deny housing opportunities to African Americans and Hispanics; and perpetuate racial segregation. Lawsuit alleges discrimination based on race and national origin.</td>
</tr>
<tr>
<td>68</td>
<td>FHJC v. Parkchester Preservation Company L.P. et al.</td>
<td>Source of Income</td>
<td>Yes</td>
<td>Dec. 5, 2016</td>
<td>Pending</td>
<td>Pending administrative complaint filed with the New York City Human Rights Commission alleging that the owners and managers of Parkchester, a large housing development in the Bronx, discriminate against prospective renters with rental subsidies including Section 8 Housing Choice Vouchers, LINC rental subsidies and HASA rental subsidies. Parkchester is a residential complex with 171 buildings and over 12,000 total housing units, including about 6,000 rental units. Lawsuit alleges discrimination based on source of income.</td>
</tr>
<tr>
<td>69</td>
<td>U.S. v. Webster AV Management LLC (formerly U.S. v. Abraham Strulovitch)</td>
<td>Disability</td>
<td>Yes</td>
<td>Dec. 23, 2016</td>
<td>Dec. 13, 2018</td>
<td>$142,500 settlement includes $105,000 in a victim fund and at $37,500 civil penalty along with retrofits at two multifamily rental developments. The lawsuit Pending lawsuit filed by U.S. alleging that a developer failed to design and construct two rental properties in compliance with accessibility requirements under the FHA, the Riverdale Parc (54 units) in the Bronx and Bluestone Commons (70 units) in Maybrook, NY. The FHJC provided testing evidence in this case.</td>
</tr>
<tr>
<td>70</td>
<td>Cruz v. Grenadier Realty Corp.</td>
<td>Disability/Source of Income</td>
<td>Yes</td>
<td>Jan. 12, 2017</td>
<td>August 23, 2017</td>
<td>$83,000 settlement with injunctive relief. Lawsuit filed by a woman living with HIV/AIDS who attempted to use her HASA rental subsidy to rent an apartment from a property management company that controls 22,000 units of rental housing in New York. The lawsuit alleged disability and source of income discrimination.</td>
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<td>71</td>
<td>U.S. v. Silverstein Properties, et al</td>
<td>Disability</td>
<td>Yes</td>
<td>Jan. 13, 2017</td>
<td>Jan. 13, 2017</td>
<td>$1.1 Million settlement ($50,000 civil penalty and $960,000 victim fund), retrofits and injunctive relief applying to three buildings with more than 2400 rental units. Lawsuit brought by U.S. alleged failure to design and construct housing in compliance with federal accessibility requirements.</td>
</tr>
<tr>
<td>72</td>
<td>U.S. v. Equity Residential et al.</td>
<td>Disability</td>
<td>Yes</td>
<td>Jan. 13, 2017</td>
<td>Pending</td>
<td>Pending lawsuit filed by U.S. alleging that a developer failed to design and construct a 236-unit rental property in Manhattan at 170 Amsterdam Avenue in compliance with accessibility requirements under the FHA.</td>
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<tr>
<td>73</td>
<td>U.S. v. Atlantic Development et al.</td>
<td>Disability</td>
<td>Yes</td>
<td>Jan. 17, 2017</td>
<td>Pending</td>
<td>Pending lawsuit filed by U.S. alleging that a developer failed to design and construct a 331-unit rental property at 33 West End and a 133-unit development at 2 Cooper Square, in Manhattan in compliance with accessibility requirements under the FHA.</td>
</tr>
<tr>
<td>74</td>
<td>U.S. v. Albanese Organization, Inc. et al.</td>
<td>Disability</td>
<td>Yes</td>
<td>Feb. 14, 2017</td>
<td>Feb. 14, 2017</td>
<td>$545,000 settlement ($45,000 Civil Penalty and $500,000 victim fund) retrofits and injunctive relief applying to three Manhattan rental buildings with more than 800 rental units, The Verdesian, The Solaire, and The Vanguard. Lawsuit brought by U.S. alleged failure to design and construct housing in compliance with federal accessibility requirements.</td>
</tr>
<tr>
<td>75</td>
<td>Gonzalez/FHJC v. Parkash 2051 LLC et al.</td>
<td>Source of Income</td>
<td>Yes</td>
<td>April 3, 2017</td>
<td>Pending</td>
<td>Pending lawsuit filed by FHJC and a woman with rental subsidies alleging that a property owner who controls 2700 units of rental housing discriminates based on source of income by refusing to accept federal Section 8 Housing Choice Vouchers.</td>
</tr>
<tr>
<td>76</td>
<td>FHJC v. The Rabsky Group LLC, et al.</td>
<td>Disability</td>
<td>Yes</td>
<td>July 6, 2017</td>
<td>Pending</td>
<td>Pending lawsuit filed by the FHJC alleging that the developers, architects and engineers failed to design and construct three rental buildings in compliance with federal accessibility requirements, including a building in Queens (284 units) and two buildings in Brooklyn (234 units and 211 units). Lawsuit alleges discrimination based on disability.</td>
</tr>
<tr>
<td>77</td>
<td>FHJC et al. v. Town of Bedford et al.</td>
<td>Race</td>
<td>Yes</td>
<td>July 26, 2017</td>
<td>June 27, 2018</td>
<td>$165,000 total monetary settlement. Town of Bedford and Blue Mountain Housing Development Corp. agreed to amend zoning code to eliminate residency and work preferences for middle-income housing, implement affirmative marketing of middle-income housing, offer incentives for the development of additional middle-income housing and other injunctive relief. Complaint filed by FHJC and Westchester Residential</td>
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<td>#</td>
<td>CASE</td>
<td>BASIS</td>
<td>FHJC TESTING</td>
<td>FILED</td>
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<td>78</td>
<td>FHJC et al. v. The Parkoff Organization et al.</td>
<td>Race, Source of Income &amp; Family Status</td>
<td>Yes</td>
<td>Oct.16, 2017</td>
<td>June 20, 2018</td>
<td>Opportunities (WRO), alleged discrimination based on race. The case was based, in part, on a joint testing investigation conducted by the plaintiff organizations.</td>
</tr>
<tr>
<td>79</td>
<td>FHJC/Spooner v. Goldfarb Properties, Inc et al.</td>
<td>Disability/Source of Income</td>
<td>Yes</td>
<td>February 21, 2018</td>
<td>Pending</td>
<td>Pending lawsuit by the FHJC and an older man with disabilities alleging that a company that owns more than 6000 units of rental housing in NYC and the surrounding suburbs has established an income requirement that effectively precludes people with disabilities who use an Olmstead rental subsidy and people with Section 8 Housing Choice vouchers from renting apartments. Lawsuit alleges discrimination on disability and source of income.</td>
</tr>
<tr>
<td>80</td>
<td>FHJC/Sutton v. Patrinely Group, LLC et al.</td>
<td>Disability</td>
<td>Yes</td>
<td>March 9, 2018</td>
<td>Pending Complaint Amended to Allege Intentional Race Discrimination August 5, 2018</td>
<td>Pending lawsuit by the FHJC and a building resident who uses a wheelchair alleging that the owner, builder, and architect of a recently constructed Manhattan apartment building failed to design and construct the building in compliance with accessibility requirements and failed to provide a reasonable accommodation to a disabled resident. The lawsuit alleges discrimination based on disability. The lawsuit was amended to include a retaliation claim after defendants refused to provide services to the individual plaintiff.</td>
</tr>
<tr>
<td>81</td>
<td>NFHA/FHJC et al. v. Facebook, Inc.</td>
<td>Sex, Familiar Status</td>
<td>Yes</td>
<td>March 27, 2018</td>
<td>March, 2019</td>
<td>$1.95 million in monetary recovery, extensive injunctive relief to restructure Facebook’s advertising platform, and $500,000 in advertising credit for the plaintiff organizations, FHJC, the National Fair Housing Alliance (NFHA), Miami HOPE, and the Fair Housing Council of Greater San Antonio (FHCGSAA). Plaintiffs alleged that Facebook provided an advertising platform that enabled housing providers to exclude populations based on sex and family status and other protected characteristics under fair housing laws.</td>
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<td>#</td>
<td>CASE</td>
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<tr>
<td>82</td>
<td><strong>FHJC et al. v. Cuomo, NYS Dept. of Health et al.</strong></td>
<td>Disability</td>
<td>Yes</td>
<td>April 12, 2018</td>
<td>Pending (Preliminary Injunction granted for Jane Doe – Sept. 2018) Motion to Dismiss Denied (Sept. 30, 2019)</td>
<td>Pending lawsuit by the FHJC and two individuals alleging that regulations enforced by New York State and four adult care facilities that have assisted living programs discriminate against persons with disabilities who use wheelchairs. Collectively the adult care facilities house more than 700 residents. The lawsuit alleges discrimination based on disability.</td>
</tr>
<tr>
<td>83</td>
<td><strong>FHJC et al. v. Charm Equities et al.</strong></td>
<td>Race</td>
<td>Yes</td>
<td>Sept. 5, 2018</td>
<td>Sept. 5, 2019</td>
<td>$272,000 total monetary settlement (damages and attorney’s fees) with extensive injunctive relief. Complaint filed by the FHJC and five African American testers alleging that a company that owns and manages eleven apartment buildings with nearly 450 units of housing in Brooklyn discriminates against African American renters.</td>
</tr>
<tr>
<td>84</td>
<td><strong>FHJC et al. v. New Property Associates</strong></td>
<td>Race</td>
<td>Yes</td>
<td>Sept. 20, 2018</td>
<td>July 9, 2019</td>
<td>$182,500 total monetary settlement (damages and attorney’s fees) with extensive injunctive relief. Complaint filed by FHJC and three African American testers and alleged that the owners and managers of a 53-unit rental building located in the Town of Eastchester in Westchester County were discriminating based on race and color.</td>
</tr>
<tr>
<td>85</td>
<td><strong>Campbell v. 165 Sherman LLC et al.</strong></td>
<td>Source of Income</td>
<td>Yes</td>
<td>Oct. 22, 2018</td>
<td>Pending</td>
<td>Pending lawsuit alleges that the owners and managers of rental housing discriminated against a man living with AIDS who was searching for housing using a rental subsidy from the HIV/AIDS Services Administration (HASA). The lawsuit alleges discrimination based on source of income.</td>
</tr>
<tr>
<td>86</td>
<td><strong>FHJC v. JDS Development LLC et al.</strong></td>
<td>Disability</td>
<td>Yes</td>
<td>Feb. 7, 2019</td>
<td>Pending</td>
<td>Pending lawsuit filed by the FHJC alleging that the developers, architects and engineers failed to design and construct two luxury rental buildings in compliance with federal accessibility requirements, including a building in Manhattan (760 units) and a building in Brooklyn (51 units). Lawsuit alleges discrimination based on disability.</td>
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<tr>
<td>87</td>
<td><strong>FHJC v. Gotham Organization, Inc. et al.</strong></td>
<td>Disability</td>
<td>Yes</td>
<td>May 23, 2019</td>
<td>Pending</td>
<td>Pending lawsuit filed by the FHJC alleging that the developers and architects failed to design and construct two luxury rental buildings in compliance with federal accessibility requirements, including The Nicole in Manhattan (145 units) and The Ashland in Brooklyn (563 units). Lawsuit alleges discrimination based on disability.</td>
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<tr>
<td>#</td>
<td>CASE</td>
<td>BASIS</td>
<td>FHJC TESTING</td>
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<tr>
<td>88</td>
<td>FHJC et al. v. ZP Realty Capital LLC et al.</td>
<td>Race, Color, Religion</td>
<td>Yes</td>
<td>July 17, 2019</td>
<td>Pending</td>
<td>Pending lawsuit filed by the FHJC and five African American testers alleging that companies and individuals that own and manage multiple apartment buildings in NYC, including a 48-unit apartment building in Brooklyn discriminates against African American renters.</td>
</tr>
<tr>
<td>89</td>
<td>FHJC v. Bruckner Tower LLP, Carnegie Mgmt. LLC, et al</td>
<td>Disability</td>
<td>Yes</td>
<td>Sept. 17, 2019</td>
<td>Pending</td>
<td>Pending lawsuit filed by the FHJC alleging that the owners, developers, and architects failed to design and construct two buildings in a rental development in compliance with federal accessibility requirements. The buildings are part of a complex known as the Crescendo that contains 130 units of housing. Lawsuit alleges discrimination based on disability.</td>
</tr>
<tr>
<td>90</td>
<td>FHJC v. Brause Realty, Inc. et al.</td>
<td>Disability</td>
<td>Yes</td>
<td>Nov. 13, 2019</td>
<td>Pending</td>
<td>Pending lawsuit filed by the FHJC alleging that the owners, developers, and architects failed to design and construct a luxury rental building in compliance with federal accessibility requirements. The building called The Forge contains 272 apartments. Lawsuit alleges discrimination based on disability.</td>
</tr>
<tr>
<td>91</td>
<td>FHJC et al. v. Kostas Paxis et al.</td>
<td>Race</td>
<td>Yes</td>
<td>Nov. 20, 2019</td>
<td>Pending</td>
<td>Pending lawsuit filed by the FHJC and four African American testers alleging that the owner and agents for Borough Park apartment buildings were quoting higher rents ($50 to $150 per month) to African American prospective applicants when compared to white prospective applicants. Lawsuit alleges discrimination based on race.</td>
</tr>
<tr>
<td>92</td>
<td>FHJC et al. v. 34-08 30th St. LLC et al.</td>
<td>Race</td>
<td>Yes</td>
<td>Jan. 9, 2020</td>
<td>Pending</td>
<td>Pending lawsuit filed by the FHJC and two African American testers alleging that the owner and agents for a 40-unit apartment building in Astoria were discriminating against African American renters. Lawsuit alleges discrimination based on race.</td>
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Closing the Divide

Creating Equitable, Inclusive, and Affordable Communities

PREPARED BY

Regional Affordable and Fair Housing Roundtable
Acknowledgements

In October 2017, Enterprise Community Partners, Inc. (Enterprise) and the Fair Housing Justice Center (FHJC) launched the Regional Affordable and Fair Housing Roundtable. This cohort, comprised of nearly 30 affordable housing, community development, fair housing, for- and nonprofit organizations, set out to achieve several important goals. The first was to educate affordable housing and fair housing organizations on key areas of concern impacting both sectors, a period of engagement that helped to build trust and provide a basic level of understanding among all participants. The second goal was to identify shared priorities affecting both the affordable and fair housing industries that both sectors could collectively work to advance or support in various ways. The third goal was to create a dynamic working group, enabling both sectors to have candid discussions, sometimes around areas of contention, in order to develop a shared policy platform.

Enterprise Community Partners, Inc. is a national affordable housing intermediary that works to ensure that every family has a safe, affordable home in neighborhoods of opportunity by incubating programs to create solutions to challenging housing problems; investing capital to support the production of affordable housing; and advocating for policies that transform the system and bring more resources to the sector. The Fair Housing Justice Center is a nonprofit, civil rights organization dedicated to eliminating housing discrimination; promoting policies and programs that foster more open, accessible, and inclusive communities; and strengthening enforcement of fair housing laws in the New York City region.

Together, Enterprise and the FHJC co-led the Regional Affordable and Fair Housing Roundtable through a year-long discussion of policy priorities as outlined in this policy agenda. Although there has been broad progress among these organizations, and shared areas of agreement, there are several policies that are still under discussion. This policy agenda is not the end of a conversation, but rather the beginning. It is an opportunity to share the Roundtable’s work with the broader community, to continue to build trust among sectors, and to grow this coalition.

Special thanks to Bennett Brooks from the Consensus Building Institute (CBI), who facilitated the roundtable process in a way that allowed for thoughtful conversation and listening, sometimes around areas of tension, and forged a path for deeper collaboration between the participants. It is also important to acknowledge the staff from Enterprise and the FHJC who worked together to organize the Regional Affordable and Fair Housing Roundtable and to create this policy agenda, specifically Aliya Brown, Lorraine Collins, Fred Freiberg, Katie Garcia, Arnelle Johnson, and Chanera Pierce.

The list below represents the individuals who have participated in the Roundtable process and contributed to the development of this draft. This list is not intended to represent organizational endorsement.
<table>
<thead>
<tr>
<th>Organization</th>
<th>Roundtable Participant</th>
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<tbody>
<tr>
<td>Asian Americans for Equality (AAFE)</td>
<td>Jennifer Sun</td>
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<tr>
<td>Association for Neighborhood &amp; Housing Development (ANHD)</td>
<td>Emily Goldstein, Barika Williams, Spencer Williams</td>
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<tr>
<td>Banana Kelly</td>
<td>Harry DeRienzo</td>
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<td>Bed Stuy Restoration Corp.</td>
<td>Colvin W. Grannum</td>
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<td>Brooklyn Legal Services Corporation A</td>
<td>Shekar Krishnan, Gregory E. Louis</td>
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<td>Center for Independence of the Disabled</td>
<td>Lourdes Rosa-Carrasquillo</td>
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<td>Community Housing Innovations</td>
<td>Alexander (Alec) H. Roberts</td>
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<tr>
<td>Community League of the Heights</td>
<td>Yvonne Stennett</td>
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<tr>
<td>Community Service Society</td>
<td>Thomas J. Waters, Oksana Mironova, Victor Bach</td>
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<td>ERASE Racism</td>
<td>V. Elaine Gross</td>
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<td>Housing Works</td>
<td>Armen H. Merjian</td>
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<td>Legal Aid Society</td>
<td>Robert Desir</td>
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<td>Long Island Housing Partnership, Inc.</td>
<td>Sharon Mullon</td>
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<td>Long Island Housing Services</td>
<td>Ian Wilder</td>
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<tr>
<td>Mutual Housing Association of New York (MHANY)</td>
<td>Ismene Speliotis</td>
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<td>Monadnock Development</td>
<td>Kirk Goodrich</td>
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<td>New York Appleseed</td>
<td>David Tipson</td>
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<td>New York City Alliance for School Integration and Desegregation (nycASID)</td>
<td>Matt Gonzales</td>
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<td>New York Communities for Change</td>
<td>Cea Weaver</td>
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<td>New York Housing Conference (NYHC)</td>
<td>Rachel Fee</td>
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<tr>
<td>New York State Association for Affordable Housing (NYSAFAH)</td>
<td>Patrick Boyle, Jolie A. Milstein</td>
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<tr>
<td>NYU Furman</td>
<td>Jessica Yager</td>
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<td>Project Hospitality</td>
<td>Rev. Terry Troia</td>
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<td>Selfhelp Community Services</td>
<td>Evelyn J. Wolff</td>
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<td>Services &amp; Advocacy for GLBT Elders (SAGE)</td>
<td>Kelly Kent</td>
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<td>Supportive Housing Network Of New York</td>
<td>Laura Mascuch</td>
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<td>University Neighborhood Housing Program (UNHP)</td>
<td>Jim Buckley</td>
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<tr>
<td>Westchester Residential Opportunities (WRO)</td>
<td>Marlene Zarfes, Andrew Smith</td>
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Glossary

Affirmatively Furthering Fair Housing (AFFH): The AFFH is a provision of the Fair Housing Act. It includes a requirement for certain HUD grantees to examine whether there are any barriers to fair housing – housing patterns or practices that promote bias based on any protected class under the Fair Housing Act – and to create a plan to rectify such barriers to fair housing.

Area Median Income (AMI): The Area Median Income is the midpoint of a region's income distribution – half of families in a region earn more than the median and half earn less than the median. For housing policy, income thresholds set relative to the area median income – such as 50% of the area median income – identify households eligible to live in income-restricted housing units and the affordability of housing units to low-income households.

Community/Residency Preferences: Under US Department of Housing and Urban Development (HUD) regulations, a Public Housing Agency (PHA) is permitted to adopt residency preferences that give priority to applicants living or working within the PHA’s jurisdiction provided that such preferences do not discriminate or exclude populations based on race or national origin. However, residency requirements are strictly prohibited.

Concerted Community Revitalization Plans (CCRPs): CCRPs are deliberate, concerted, and locally approved plans or a documented interconnected series of local efforts with local stakeholder support intended to improve and enhance specific aspects of a community or neighborhood.

Rent Guidelines Board (RGB): The Rent Guidelines Board is a nine-member entity in charge of determining yearly rent adjustments to the roughly 1 million rent-stabilized apartments in New York City. The RGB bases its decision on a yearly review of the economic condition of the residential real estate industry in New York City.

Disability Rent Increase Exemptions (DRIE): The Disability Rent Increase Exemption (DRIE, also known as the NYC Rent Freeze Program) is an exemption against future rent increases for eligible disabled persons living in rent-controlled, rent-stabilized, Mitchell-Lama and other eligible apartments. Landlords of DRIE tenants will receive tax credits to make up the difference between the frozen rent and what the DRIE tenants would be paying without the benefit.

Fair Housing Act (FHA): The Civil Rights Act of 1968, known as the federal Fair Housing Act, prohibits discrimination by direct providers of housing, such as landlords, real estate companies, municipalities, banks or other lending institutions, homeowner’s insurance companies, as well as other entities, based on protected characteristics – race, color, religion, sex, national origin, familial status, and disability. State and local governments may include additional protected characteristics within their respective jurisdictions (lawful source of income, arrest and conviction record, military status, etc.)

Housing Choice Voucher Program (HCV or Section 8): The Housing Choice Voucher program is the federal government’s major program for assisting very low-income families, the elderly, and people with disabilities to afford decent, safe, and sanitary housing in the private market. The HCV program is administered locally by Public Housing Authorities.

Individual Apartment Improvements (IAIs): Individual apartment improvements refer to the right of the landlord to add new equipment and improvements to an apartment, usually during a vacancy. The owner can increase the rent following these improvements by 1/40 or 1/60 of the costs of the improvements, depending upon the size of the building.

Low-Income Housing Tax Credit (LIHTC) Program: The LIHTC program is an indirect federal subsidy used to finance the construction and rehabilitation of low-income affordable rental housing. The LIHTC gives investors a dollar-for-dollar reduction in their federal tax liability in exchange for providing financing to develop affordable rental housing. Investors receive tax credits paid in annual allotments, generally over 10 years.

Major Capital Improvements (MCI): A major capital improvement is the right of the landlord to
building-wide improvements or to replace a major building system such as windows, boilers, roofs or other work affecting the entire building. MCI permanently increases rent in rent-stabilized or rent-controlled apartments, based on money spent by the landlord. The landlord must apply for the MCI rent increase from the New York State Division of Housing and Community Renewal (DHCR).

**Mandatory Inclusionary Housing (MIH):** MIH is a zoning tool developed by the Department of City Planning and the Department of Housing Preservation and Development, which requires developers to include affordable housing in areas that are rezoned to allow for more housing development.

**New York’s Environmental Quality Review Act (SEQR):** New York’s State Environmental Quality Review Act (SEQR) requires all state and local government agencies to consider environmental impacts equally with social and economic factors during discretionary decision-making. These agencies must assess the environmental significance of all actions to avoid or reduce adverse environmental impacts related to a proposed action.

**Not In My Backyard (NIMBY):** NIMBY describes the phenomenon in which residents of a neighborhood designate a new development (e.g. shelter, affordable housing, group home) or change in occupancy of an existing development as inappropriate or unwanted for their local area. The opposition to affordable, supportive or transitional housing is usually based on the assumed characteristics of the population that will be living in the development.

**Public Housing Authorities (PHAs):** PHAs are government entities that own and manage low-income housing. The New York City Housing Authority (NYCHA) is the largest public housing authority in North America.

**Racially/Ethnically-Concentrated Areas of Poverty (R/ECAP):** Developed by HUD, R/ECAPs involve a racial/ethnic concentration threshold. A neighborhood can be a R/ECAP if it has a poverty rate that exceeds 40% or is three or more times the average tract poverty rate for the metropolitan/micropolitan area, whichever threshold is lower. Census tracts with this extreme poverty rate that satisfy the racial/ethnic concentration threshold are deemed R/ECAPs.

**Senior Citizen Rent Increase Exemption (SCRIE):** SCRIE or NYC Rent Freeze Program freezes the rent for head-of-household seniors 62 and older who live in rent-regulated apartments. Eligible seniors must have a household income of $50,000 or less. Landlords are given a property tax abatement credit applied to their property tax bill in the same amount as the increase that the tenant is exempted from paying.

**Source of Income (SOI):** Source of income refers to the government assistance or non-wage income an individual or family might use to pay for their rent. SOI protections prohibit housing providers from discriminating against individuals who use non-wage income or funds from federal, state or local governmental entities to pay for all or part of their housing.

**US Department of Housing and Urban Development (HUD):** HUD is a U.S. government agency created in 1965 to support community development and homeownership. HUD does this by improving affordable homeownership opportunities, increasing safe and affordable rental options, reducing chronic homelessness, fighting housing discrimination by ensuring equal opportunity in the rental and purchase markets, and supporting vulnerable populations.

**Yes, In My Backyard (YIMBY):** YIMBY is the phenomenon to counter NIMBY. Essentially, YIMBY refers to encouraging new development (e.g. shelter, affordable housing, group home) of all varying levels of affordability close to job centers, so people can participate in the city’s economy.
Introduction

Regional Affordability Challenges

Our country is in the midst of a housing affordability crisis, one that is uniquely felt in the New York City metropolitan region. This crisis can be attributed to several factors including, but certainly not limited to, the loss of affordable units within the City, a lack of affordable units in the suburbs, wage stagnation, rising rents, low rental vacancy rates, a lack of tenant protections, and rapid population growth within the region.

In the early- and mid-20th century, New York City enacted rent control and rent stabilization laws to help many New Yorkers afford their housing, safeguarding households from drastic rent increases. However, over the last two decades, the State has continuously reformed its rent laws, eroding renter protections and subjecting tenants to larger rent increases. Additionally, under vacancy decontrol, once a landlord raises the rent of a unit to $2,774.76, upon vacancy, the unit permanently exits the regulatory system and there is no limit to rent increases that the landlord can institute at each lease renewal.

Some bad-acting landlords of rent regulated apartments will exploit loopholes in the rent to make units unaffordable and take them out of regulation. Building owners can intentionally create hostile living environments for their current residents, using intimidation tactics like expensive unit renovations and tenant harassment, to displace long-time, working-class residents. These practices allow landlords to justify rent increases, speeding up the process to deregulate a unit. Displaced households may end up in homeless shelters and other temporary housing, overcrowded households with other families, or out of the City altogether.

Our supply of rental housing is also not keeping up with the metropolitan region’s rapidly increasing demand. The lack of suburban rental units further complicates mobility for residents. New York City is a majority rental housing market, with about 66% of households renting within the City, contrasting heavily to the larger region in which only 31% of suburban households are renters. This supply and demand mismatch further constrains housing choice, making housing unaffordable for low-income families to move inside, around, and outside of the City.

Additionally, average rents are soaring throughout the region, and wages cannot keep up with the rising cost of living. For example, Long Island ranks in the top ten of national housing markets that are experiencing this phenomenon. This rise is acutely felt within the City’s limits, outpacing the rise of rents within suburbs. Low-income families are being priced out of the City and are forced to look for housing within suburban communities. This presents a rather unique challenge for those households within the region if suburbs do not address the exclusionary zoning and land-use barriers that continue to prevent these communities from becoming open, accessible, and inclusive to all.

The high cost of living throughout the New York City metropolitan region forces many households to use income that could otherwise cover healthcare, transportation, food, and other important goods to cover their housing costs. According to NYU’s Furman Center, a greater percentage of New Yorkers now classify as moderately rent burdened (using between 30%-50% of their total income to cover housing costs) or severely rent burdened (using more than 50% of their total income to cover housing costs). 85% of extremely low-income households, 77% of low-income households, and 55% of moderate-income households fall within either category. This high cost burden does not stop at the City’s limits.

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2. NYU Furman Center. (2016, March 8). Renting In America’s Largest Metropolitan Areas (Rep.).
4. NYU Furman Center. (2016, March 8). Renting In America’s Largest Metropolitan Areas (Rep.).
24% of Westchester County’s households are moderately rent burdened and 27% are severely rent burdened. On Long Island, more than 56% of renters are rent burdened. A high share of rent burdened households are families of color, which comes with stark racial implications within the New York City metropolitan area. The Furman Center’s State of New York City’s Housing and Neighborhoods in 2017 reports that Asian, Black, and Hispanic families are more likely be rent burdened than white families.

Regional Fair Housing Challenges

The 1968 passage of the Fair Housing Act, spurred by the assassination of Dr. Martin Luther King, Jr., represented a crossroads in the history of segregation in the United States. Racial discrimination and segregation, enshrined in law and culture, had locked populations of color in central city neighborhoods and reserved the American dream of homeownership, upward mobility and greater opportunity for white people. Redlining and other discriminatory mortgage practices dating from the Roosevelt administration, such as racially restrictive covenants, rampant housing discrimination, and the local home rule, insured that the trillions of dollars in wealth generated from the suburban housing boom flowed almost exclusively to white Americans.

However, with the passage of this historic piece of legislation came the promise that, “[F]air housing for all — all human beings who live in this country — is now a part of the American way of life.” Yet, fifty years later, this promise remains unfulfilled.

Today, housing discrimination and residential segregation are pervasive across the country and the New York City metropolitan region. New York City has the distinction of being the third most segregated city for African Americans and the second most segregated city for Asian Americans and Latinos in the United States. And this segregation in housing contributes to many of the inequalities that continue to divide our nation. When people are restricted to living in certain areas, vulnerable, minority and disability populations become isolated, poverty becomes concentrated, and generations of families continue to be deprived of opportunities to advance. Housing discrimination and residential segregation also contribute to homelessness, neighborhood divestment, and disparities in homeownership and the accumulation of personal wealth. And, while reinforcing feelings of privilege and advantage among some, housing discrimination and residential segregation leave others in despair that they are relegated to an inherently inferior status in American society.

There are several reasons why we have not moved further towards advancing fair housing, regionally and nationally. One is that enforcement of fair housing laws during the past fifty years has been passive and uneven at best. The effort to segregate our society along racial lines required an extraordinary amount of coordinated effort between the federal government and the private real estate industry. Therefore, breaking down the historic and systemic barriers that have prevented us from moving towards a more integrated society requires the same level of extraordinary effort. But without adequate resources to enforce these laws, we will not be able to truly break down these barriers and create integrated, accessible, and inclusive communities.

Another reason why we have not moved further is that the nature of housing discrimination has changed over time. While housing discrimination fifty year ago was often overt, a literal slammed door in people’s faces, housing discrimination today is often far more subtle and difficult for ordinary home-seekers to

detect. For example, we have seen New York City suburban communities use facially neutral exclusionary zoning measures that have a disparate impact on communities of color and maintain patterns of racial residential segregation.\textsuperscript{11} As a result, the current complaint-responsive enforcement model is unable to fully capture and address these systemic forms of housing discrimination. Instead, more strategic, proactive enforcement methods, such as testing, are required to root out the housing discrimination we see today.

Over the last several years, additional gains were made to address some of these more systemic forms of discrimination. The Supreme Court ruling in Texas Department of Housing and Community Affairs v. Inclusive Communities Project regarding disparate impact claims and the Affirmatively Furthering Fair Housing (AFFH) rule, which laid out a process for local governments to assess fair housing needs and to examine the barriers to ending residential segregation in their jurisdictions, gave fair housing advocates new tools to advance fair housing across the country.\textsuperscript{12}

However, with the election of President Trump and the appointment of U.S. Department of Housing and Urban Development (HUD) Secretary Ben Carson, housing advocates now face new struggles. HUD is actively rolling back some of these recent gains, most notably the AFFH rule, and is effectively stifling current enforcement efforts. Therefore, it is more important than ever that local fair housing organizations, housing nonprofits, affordable housing groups, and advocates come together to advance fair housing in our region.

\textbf{Purpose of this Roundtable and Policy Agenda}

The New York City government is taking actions to address the housing affordability crisis and housing inequality within the city. We applaud the ongoing “Where We Live NYC” process, which is a collaborative planning approach to the AFFH rule led by NYC’s Department of Housing Preservation and Development (HPD), in partnership with the New York City Housing Authority (NYCHA) and 28 other organizations, to mitigate housing discrimination and create a policy blueprint to address structural, historic, and institutional barriers that limit housing choice and opportunity for every New Yorker. We also applaud Mayor de Blasio’s housing plan to build and preserve 300,000 affordable housing units in the coming years. Our efforts are not meant to overshadow the work that is already happening, but rather to supplement and strengthen this critical work.

As the data suggests, our current housing issues are regional issues, and it will take a regional collaboration for us to holistically address housing affordability, quality, residential segregation and discrimination, and the inequalities spurred by the region’s residential settlement patterns. Therefore, we were intentional in creating a collaborative working-group with representatives who had unique perspectives based in different parts of the region. We utilized the passion and expertise of our Roundtable to think critically about how we can improve regional tenant protections, rethink the siting of affordable housing and municipal amenities, address exclusionary zoning and other land-use barriers, increase density within the region, create real mobility for rental assistance subsidy households, protect justice-involved families and people using different types of income to pay for housing within the housing market, combat education inequity through housing policy, and continue the conversation regarding the use of community/residency preferences within affordable housing.

\textsuperscript{12} Texas Department of Housing and Community Affairs ET AL. V. Inclusive Communities Project, Inc., ET AL.,No. 13-371 slip op. at 1 (June 25, 2015).
Improving Tenant Protections Throughout the Metropolitan Region

The New York City metropolitan region, as well as smaller metro regions across New York State, are changing on a scale not seen since the large migrations of the mid-twentieth century. Affluent families are moving into city neighborhoods historically occupied by working-class, communities of color. Inversely, those lower-income families are increasingly pushed into more suburban areas historically occupied by white families. Without thoughtful intervention, these movements of people and resources will not be conducive to integration, but rather will repeat the cycles of racial and economic segregation all too familiar to us from the twentieth century.

As noted in a recent report by Councilmember Brad Lander’s office, which outlined twelve steps toward the desegregation of New York City, strong rent regulation is a critical tool for integration without displacement. Unfortunately, however, New York State’s rent regulation laws – which protect over a million households in New York City and a smaller number in Nassau, Rockland and Westchester counties – have been weakened over time and are currently inadequate to the scale of the challenge. The changes to rent laws, which have dramatically undermined the rent regulation system, were put in place by legislative actions by both New York City and New York State in the 1990s and 2000s. Moreover, the introduction of rent law loopholes has sped up the pace of the loss of these units – more than 284,000 apartments have been deregulated in New York City since 1994. We need far stronger protections to allow lower-income families to remain in their homes as their neighborhoods gentrify.

Policy Priorities

1. **End the “eviction bonus.”** The vacancy allowance in the current law allows an automatic rent increase of 20% when a rent stabilized apartment is vacated. Because apartments have a high-rent deregulation threshold, the vacancy allowance provides an incentive for landlords to encourage tenant turnover through legal and illegal means, such as unjust evictions. Moreover, the vacancy bonus causes the stock of rent stabilized units to become increasingly unaffordable to many families by allowing for large rent increases anytime an apartment is vacated. This mechanism alone explains 49% of the citywide total increase in stabilized rents above inflation between 2011 and 2014.

2. **End vacancy deregulation.** If a rent stabilized apartment reaches a rent of $2,774.76, upon vacancy, it can be permanently deregulated. This means that all future tenants of that apartment will not be protected against sudden rent increases and will not have the security of tenure that comes with the right to a lease renewal. The high rent threshold, when paired with the vacancy bonus and preferential rent, incentivizes tenant turnover through legal and illegal means.

3. **Protect preferential rents.** When a landlord rents a rent stabilized apartment for less than the regulated maximum (known as the “legal rent”), it is known as “preferential rent.” About one third of rent stabilized apartments in New York City have preferential rents. Under the rent stabilization laws as amended in 2003, a landlord can withdraw a preferential rent at the end of the lease (while a tenant is still in place) and charge up to the legal rent, plus any Rental Guidelines Board (RGB) increases. Due to the vacancy bonus, other rent increase avenues like major capital improvements (MCIs) and individual apartment improvements (IAIs), and high RGB rent increases during Mayor’s

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Bloomberg’s tenure, stabilized rents in many neighborhoods with relatively low rents, including many neighborhoods of color, have risen more quickly than the market.

This provision has led opportunistic buyers to snap up properties with preferential rents in areas they consider ripe for displacement and increased appeal for renters. Brokers use preferential rents to market properties to predatory buyers, encouraging unjust evictions and speculation. To address this issue, the rent laws should be amended back to the system that was in place before 2003: that a landlord could only raise preferential rents to the legal rent when an apartment is vacated. Additionally, lifting the look back period under preferential rents and making the landlord, not the tenant, responsible for burden of proof would assist in protecting tenants living in units with preferential rents.

4. **Fix the incentive structure around major capital improvement.** Current laws allow landlords to raise rents when they make major capital improvements or individual apartment improvements, but lack safeguards to prevent abuse. Coupled with the vacancy allowance, unchecked MCIs significantly raise regulated rents, create significant financial incentives for tenant turnover, and drive displacement. The Legislature should reform the provisions governing the vacancy allowance, major capital improvement, and individual apartment improvement increases in a way that reduces excessive rent hikes while ensuring that owners are adequately compensated for investing in their building to provide safe and decent housing.

5. **Regulate rents statewide.** Today, rent-stabilization laws apply only to New York City and to some localities in Nassau, Rockland, and Westchester Counties. We need a statewide law, such as “just cause” eviction protections, to apply to all municipalities where rising rents threaten the housing security of families, while allowing some flexibility for more localized, unique conditions.

6. **Inform tenants of their rights.** Given the amount of tenant harassment and displacement in rent regulated buildings, it is important that tenants are aware of their rights. All tenants living in rent regulated units should be provided with information about their rights during the initial lease execution. This information should also include the rights of tenants in the event they experience eviction.

7. **Increase enforcement of existing laws.** Stronger protections in our laws alone cannot fully stop unscrupulous landlords from escaping rent regulation. An increase in funding for enforcement of our rent regulation laws is necessary to prevent units from leaving the system illegally.
Removing Exclusionary Zoning and Other Land Use Barriers to Promote Accessible, Integrated, and Affordable Housing

In addition to maintaining segregation and effectively preventing families of color from accessing housing opportunities in many areas, the gap between the supply and demand of housing has contributed to homelessness and been a factor in the exodus of young people from the suburbs to the cities. Therefore, the challenge is figuring out how to stimulate more development of affordable housing in affluent, white neighborhoods and suburban communities. How do we allow for and encourage development of affordable housing in a home rule state where many predominantly white suburban localities and their volunteer boards serve as gatekeepers?

The history of our segregated suburbs can help us understand the housing patterns and the resistance to affordable housing and integration we see today. In a confidential memo to his staff, former HUD Secretary George Romney described America’s housing patterns as a “high-income white noose” around the black inner city. His “Open Communities” initiative, a program designed to integrate the suburbs, was squashed by the Nixon administration when Romney was appointed to ambassador to Mexico.

Romney recognized, as did suburban America, that reducing the supply and raising the price of housing could serve the same role as racial discrimination. Thus, suburban construction, especially in the North, slowed to a trickle with local land-use boards controlling zoning to increase lot sizes and severely limit multifamily housing to maintain the status quo.

Ironically, the most segregated metro areas today are in northern states. New York’s Environmental Quality Review Act (SEQR) added to the local boards’ ability to delay or destroy multifamily projects. In metro areas like New York, the act succeeded, and numerous studies have linked segregation to the most restrictive land use laws. However, while discrimination is a sharp tool, exclusionary zoning is a blunt instrument that affects young families and seniors on fixed incomes, regardless of race, national origin, disability, sexual orientation, or other protected characteristics. These boards wield enormous power to exclude all forms of affordable housing, often due to community opposition from neighbors.

It is important to learn from history, in which previous attempts to educate the public about the benefits of development of affordable housing have largely failed. There has been a flurry of legislation nationwide to address the lack of affordable housing. However, it has been met with mixed success. For example, California last year passed the most comprehensive affordable housing legislation, with 15 bills designed to stimulate more affordable housing and preserve existing projects.

Within the New York City region, the recent collapse of a federal consent decree in Westchester County exposed the continued local resistance to affordable housing, even in the face of a federal court order. Despite a 2009 settlement order between HUD and Westchester County to address exclusionary zoning and create 750 “fair and affordable” units in overwhelmingly white areas over seven years, HUD and the federal monitor were barely able to satisfy the 750-unit requirement – 107 units per year in a county nearly as large as all five boroughs of New York City combined. Today, the consent decree has faded without attaining its promise of systemic change. While the population has grown more diverse, residential segregation in Westchester and throughout the New York metropolitan region remains among the most persistent in the country.

The New York Home Rule gives localities jurisdiction over discretionary land-use decisions. It is all too easy to exclude affordable housing development based upon rationales such as contextuality, infrastructure limitations, school over-crowding, increased traffic congestion, lack of public transportation, and other frequently used excuses. As a result, local regulatory bodies can purport to be working to maintain the character of their neighborhood, while effectively excluding people based on race, national origin, or disability.

Despite attempts to implement “fair share” requirements through the Mt. Laurel decision in New Jersey,
and to a much lesser extent with Berenson in New York State, attempts to impose minimum affordable housing goals on suburban localities have been met with limited success. As one activist said, “Ten percent of nothing is still nothing.” Restricting the location of affordable housing also limits the housing choices available to lower-income New Yorkers and perpetuates poverty concentration and segregation.

Therefore, the challenge is to develop government regulation and processes that will allow the market to respond to the need for housing of all types, equally accessible to and integrated with all populations, with the understanding that local government regulation often restricts the affordable housing supply.

Policy Priorities

1. Create a State-wide Equitable Share Housing Plan and establish a minimum affordable housing goal for every community. This proposed legislation would mandate that every community work to ensure that at least 10% of its existing housing stock is affordable (reaching populations with income at or below 60% of the Area Median Income for rentals and 80% AMI for homeownership). In the case of high property tax suburban areas, it is likely that property tax abatements would be required to achieve home ownership. Levels of affordability should be flexible so that the needs of lower income families and individuals are reached. For example, as is done now in the Low-Income Housing Tax Credit (LIHTC) Program, the rent affordability may be averaged so that a rental unit at 80% AMI and a unit at 40% AMI would be allowed. More affordable housing and deeper affordability levels that go beyond the baseline should be actively encouraged.

In jurisdictions with 100,000 or more in population, the plan would establish the same goal for neighborhoods, as well as encourage the development of affordable housing in all areas, expanding housing choice and preventing poverty concentration and segregation. The program would offer financial incentives to develop housing that reaches lower income bands as well as supportive, accessible, and integrated housing opportunities for people with disabilities and those who are experiencing homelessness. Success will require proper messaging to explain the benefits for communities accepting an equitable share of affordable housing, along with providing successful examples of various types of affordable housing developments (e.g., mixed-income, supportive housing, accessible, etc.).

2. Create a statewide Housing Appeals Board (HAB). The HAB would have the authority to 1) override local zoning decisions when it appears a decision is effectively limiting or excluding viable affordable housing proposals from being developed; and 2) fast-track viable affordable housing proposals that have zoning as-of-right but meet with costly or unreasonable delays, often fueled by local opposition. The HAB would be appointed by the New York State Legislature and shall include representatives of populations utilizing affordable housing, including homeless populations, people with disabilities, etc. One measure the HAB would consider is whether the neighborhood or community involved in the dispute has met its minimum goal under the NYS Equitable Share Housing Plan. The HAB could also look at the supply of affordable housing within a neighborhood or community.

3. Create a statewide Vacant Apartment Acquisition Program (VAAP). This proposed legislation would authorize state funding to test a new concept, in which a lump sum payment would be made available to the owners of existing apartments in return for making an apartment affordable for 30 years. With new suburban affordable housing units requiring public subsidies of $250,000 to $300,000 on average for each one or two-bedroom apartment, and with several years spent in the approval and construction process, the VAAP could quickly produce affordable units at less cost and reduce market rents to affordable levels.

Such a program could reduce rents even more than affordable rents in LIHTC projects. For example,
the fair market rent in Westchester County for a two-bedroom apartment is currently $1,687. The "affordable rent" for a household with income at or below 60% of the Area Median Income (the LIHTC standard) is $1,580, or only $107 per month less. Based on recent LIHTC developments in Westchester, the average public subsidy to create each unit is $300,000. Thus, the public is paying $300,000 to reduce the fair market rent by only $107. An “affordable” studio apartment in these projects may rent for $50 more than fair market rent in Westchester County.

The VAAP would present the public with a housing program that offers a greater rent reduction at lower cost. This program would enable lower income households to access housing in high-opportunity areas, where the average rent for a 2-bedroom is $2,000. By restricting VAAP to wealthier, higher opportunity city neighborhoods and suburban areas, the program would affirmatively further fair housing and reduce segregation in housing and schools. It would also be an ideal tool used in conjunction with a mobility assistance program that is tasked with locating affordable housing units for voucher holders in more affluent city neighborhoods or suburban areas. In addition, VAAP could be used by any multifamily property owners, from existing two- and three-family homes to large apartment buildings. To avoid a concentration of affordable units, landlords of rental buildings of more than four units could not reserve more than 25% or 25 units, depending on which is less, of their building’s apartments for VAAP.

The program would target naturally occurring vacancies (“novacans”) so as not to encourage removal of existing tenants, and the landlord would have to demonstrate that the tenant vacated the apartment voluntarily, which is routinely done in the acquisition of federally subsidized units, or was evicted for good cause, such as non-payment of rent. The subsidy would be secured by a performance mortgage and deed restriction placed on the property for 30 years, insuring that the unit would remain affordable. The rent would be adjusted annually based on the HUD rent guidelines for units at the targeted AMI. Details regarding the criteria for high-opportunity areas where the program would focus VAAP resources, tenant selection, affirmative marketing, unit inspections, etc. would need to be fleshed out.

Maximizing Density to Address Affordable Multifamily Housing Development Needs Throughout the Region

Political opposition to housing development is often fueled by concerns about density. This plays out in various forms in communities across the region. Opposition is sometimes based on fears that zoning changes or new developments will alter the “character” of a neighborhood, due to increased height or bulk. It can also stem from concerns that an influx of new residents will increase traffic, crowd sidewalks, or overburden local schools and other services. Existing homeowners may also be concerned that increased density will hurt their property values. Increasingly, opposition to development can also stem from fears that new development will drive up prices and result in displacement for existing renters and homeowners. There is growing concern about speculation driving up prices in areas where the city has announced future neighborhood rezoning.

Nonetheless, affordable and fair housing groups feel strongly that more density is needed to meet the New York City metropolitan region’s affordable housing needs. Density can be used as a vehicle for achieving equity through economic integration. Thoughtful planning and inclusive conversations with communities are needed to address concerns about development.

Policy Priorities

1. Encourage increased density for affordable multifamily housing. New York City and the surrounding suburban counties and localities should maximize zoning opportunities for affordable multifamily housing, especially in high-cost, low-density neighborhoods. Increasing the supply of affordable housing in high-cost neighborhoods will foster residential diversity and integration in the highly-segregated neighborhoods of the New York City metropolitan region.

There are several ways to encourage such increased density, including:

- Reducing barriers to multifamily development and other impediments identified to affirmatively further fair housing in the most recent AFFH review;
- Strictly enforcing rent stabilization laws and anti-harassment laws, and exploring additional mechanisms to protect tenants against illegal evictions to mitigate displacement of low-income renters;
- Ensuring that multifamily housing development includes retail/commercial/community facilities for local businesses, small business owners or community groups/non-profits when possible to maintain the fabric of the neighborhood and to fill any gaps in services in the community; and
- Proactively engaging communities in planning for density by meaningfully addressing community concerns where possible and involving community members in the process of planning for the future of the neighborhood. Examples of such activities include:
  - Initiating public education campaigns with value-focused messaging to appeal to common aspirations to help deter local opposition to development; and
  - Discouraging the use of terms like Not In My Backyard or Yes In My Backyard, which can be counterproductive when encouraging new development and preservation.

2. Maximize the benefits of Mandatory Inclusionary Housing (MIH) in New York City. Leverage the private market to produce affordable, accessible housing, especially in low-poverty neighborhoods, to create more mixed-income communities by:

- Upzoning high-rent neighborhoods to maximize the creation of new affordable housing units where land costs are prohibitive;
- Ensuring that any upzoning is supported by the transit system;
• Providing an additional incentive for affordable housing, specifically in high-rent areas; and
• Incentivizing developers in every private rezoning application triggering MIH to determine if they are willing to alter their proposal to provide greater affordability or more units than required by law without any additional subsidy.

3. **Create incentives from New York State to encourage multifamily housing development.** The State should use financial and other incentives to spur counties and localities to create more multifamily development opportunities. The State should identify local infrastructure needs that can be met while expanding opportunities for multifamily housing development and transit-oriented development.

4. **Streamline zoning approvals in suburban counties and localities.** Lengthy approval processes are a barrier to development with a financial consequence for developers. Streamlining the zoning approval process is essential to encouraging density.

5. **Expand housing supply by legalizing basement apartments and increasing accessory dwelling units within suburban areas.** NYC’s Basement Conversion Program project can be expanded across the five boroughs and serve as a model for other localities in the region to create new affordable units at a reduced cost. The Citizens Housing Plan Council’s (CHPC New York City) Making Room project identifies innovative ways to expand accessory dwelling units for modern living within existing and typical housing typology.
Expanding Statewide Source of Income Protections

Many families and individuals face discrimination when they attempt to use some form of government assistance or non-wage income to pay their rent. This discrimination constrains their housing choice and limits their opportunities. Source of income discrimination is pervasive in New York State and is often a proxy for illegal discrimination against protected classes already covered under existing fair housing laws, such as race and disability. Without uniform statewide source of income protection and local enforcement, we inevitably concentrate poverty and reinforce residential segregation among our most vulnerable communities.

The current laws are not uniform in protections nor effectiveness, meaning it is now more important than ever to ensure that consistent, statewide and local protections are in place. The ability to expand lawful source of income protections statewide is particularly critical now, when demand for apartments affordable to low-income households is far higher than the supply. Nationally, only one in four eligible households receive rental assistance, and enacting source of income protection would promote true housing choice for New York’s lowest income families.

Policy Priorities

1. **Advance the work of the Statewide Source of Income Coalition.** The Statewide Source of Income Coalition, originally organized in 2016 by ERASE Racism, is a vast network of advocates that supports amending the New York State Human Rights Law and expanding the protected classes to include “Lawful Source of Income.” Although the coalition supports the individual efforts to create SOI protection at the county and municipality levels in places such as Buffalo, Erie County, Hamburg, Nassau County, New York City, Rochester, Suffolk County, Syracuse, Westchester and West Seneca, we need uniform statewide source of income protection to extend coverage to all New Yorkers regardless of their geographic location. Currently led by Enterprise, ERASE Racism, the FHJC, and the New York Housing Conference, the Coalition would support the passage of a 2019 bill offering source of income protections, amended to include uniform statewide exemptions that are consistent with current exemptions in the State Human Rights Law (i.e., owner-occupied two family or less).

2. **Increase resources for enforcement of source of income protections.** While the statewide coalition aims to secure a statewide source of income law, opportunities to improve the existing source of income laws should still be explored. In New York City, landlords continue to largely ignore this law. The majority of impoverished and low-income New Yorkers who suffer this discrimination either do not know that their rights have been violated or find it difficult or impossible to secure legal representation and file a lawsuit. Consistent with this, overworked and underfunded legal service providers find it difficult or impossible to bring lawsuits to enforce the law. Landlords and brokers of any size view the law as a nuisance and are not deterred by the small fines or damages typically imposed by the Commission and the courts. There are several potential solutions, which will not only assist rental assistance recipients, but inform efforts to strengthen a statewide source of income law, including:

- Appropriating money for fair housing testing, since testing is essential to ensuring vigorous enforcement of fair housing laws;
- Undertaking outreach and education efforts to inform voucher/subsidy recipients of their rights, and their avenues of recourse;
- Appropriating money to ensure access to legal services for indigent and low-income recipients who lack access to legal representation; and
- Establishing stronger penalties for violation of the SOI law, including minimum penalties/damages and stricter consequences for license holders, including suspension and/or revocation of real estate/broker licenses.
Increasing Protections for Justice-Involved Individuals

We must critically examine the barriers vulnerable populations face within the housing market while healing from the trauma of incarceration, addressing physical health concerns, managing any mental health needs, or engaging in substance treatment. It is necessary, both as a matter of public health and public safety, that we work to identify opportunities to expand safe and affordable housing choices for such individuals and their families. Despite some limitations in state law and HUD guidance, landlords can legally disqualify a prospective tenant if they have a prior arrest or conviction record. Public Housing Authorities (PHAs) can legally choose to deny tenants and their family members who may have previous arrests or conviction records, and evict an entire household based on a new arrest or conviction of one member.

Discrimination based on arrest or conviction record can have a disproportionate effect on people with mental health disorders given the high number of people with mental health disorders in the prison population. Additionally, it is believed that 85% of individuals incarcerated in the NYC jail system have a substance use disorder. In the State prison system, the Department of Corrections and Community Supervision estimates that 80% of incarcerated individuals are in need of substance use disorder treatment. Additionally, New York has the highest income inequality in the nation, as measured by the Gini index. One study found that, in 2014 dollars, incarcerated people across the country had a median annual income of $19,185 prior to their incarceration, which is 41% less than non-incarcerated people of similar ages.

Additionally, given the country’s current era of mass incarceration and New York City’s legacy of over-policing in communities of color, efforts to prevent further collateral consequences and discrimination are necessary and timely. Today, African American adults are five times more likely to be imprisoned than White Americans. Discrimination based on arrest or conviction record has a disparate impact on Black and Brown families, which further constrains housing choice, perpetuates residential segregation, and isolates families of color from resources that could improve their lives.

Policy Priorities

1. Expand state and local protected classes to include “Arrest and Conviction Records.” New York State and New York City have both undertaken significant efforts to eliminate the barriers that justice-involved people face upon reintegration into the community and thereby increase public safety. New York City passed the Fair Chance Act (FCA), a law that took effect on October 27, 2015 and affected public and private employers’ advertising, application, screening, interview, and hiring practices. Governor Cuomo signed an executive order to restore voting rights to individuals on parole, recognizing the impact civic engagement can have during a person’s reentry process. Mayor de Blasio started a jail diversion program for people with low-level offenses and expanded reentry

services through the “jails to jobs” initiative. The time is ripe to expand housing protections to those with arrest and conviction records.

This policy reform is picking up traction across the nation. Cities like Seattle, San Francisco, and Washington, DC, modified their municipal codes to include language that supports the removal of barriers individuals with previous arrest and conviction records face as they attempt to access housing. The New York State Homes & Community Renewal (NYSHCR) agency has issued guidance for applying New York State’s antidiscrimination policies when assessing applicants for state-funded housing who have criminal convictions. We encourage our policymakers to examine the barriers our justice-involved populations face within the housing market and implement policies that encourage their mobility and stability within our communities. Protecting individuals with arrest and conviction records from illegal housing discrimination is a practical first step that we should take.

31. Mayor de Blasio Announces Re-Entry Services for Everyone in City Jails by End of This Year. (2017, March 29).
Bolstering True Mobility Throughout the Region

The Housing Choice Voucher (HCV) Program is a significant source of affordable housing for New Yorkers. However, voucher holders face substantial barriers finding housing in well-resourced neighborhoods. In New York City, it is difficult for new HCV recipients to obtain housing in the allotted time (120 days) once they receive their voucher. NYCHA often extends the time-period for new HCV recipients to search for housing. Nearly a quarter of HCV recipients each year search for but are unable to find an affordable unit with their voucher within the initial time-period. It can take voucher holders up to a year to find a unit. Therefore, it is evident that a sizeable proportion of HCV holders in New York are encountering challenges finding a housing unit. The 95% of HCV holders in New York City who do find a housing unit often end up living in communities with more than 10% living in poverty. The same patterns of segregation are visible, yet only slightly less pronounced throughout Westchester, Nassau, and Suffolk Counties. According to an analysis by the Poverty Race & Research Action Council, 54% of HCV holders live in neighborhoods where poverty is greater than 10% within Nassau and Suffolk Counties compared to 73% of HCV holders within Westchester County.

In addition to structural barriers, like low vacancy rates and a shortage of affordable housing, residents face other barriers to finding housing, including:

- Lack of Access to Information about Affordable Housing – It is difficult to access up-to-date and streamlined information about available rental properties.
- Source of Income Discrimination – Although New York City, Westchester, Nassau and Suffolk Counties have laws against source of income discrimination, landlords continue to refuse to accept tenants with HCVs.
- Financial Planning and Credit Building – Building a good credit history and learning more about saving and budgeting is essential when searching for an apartment.

One potential solution to overcoming these barriers is mobility counseling. Mobility counseling is an intervention to help voucher holders utilize their vouchers in well-resourced neighborhoods. Mobility counseling has been effective in helping residents move into and stay stably housed in cities across the country by providing a variety of support services to assist those families and individuals in preparation for their apartment search, during their apartment search, and through mediation and follow-up after transitioning into their new communities, as well as by expanding landlord outreach. For example, the Baltimore Regional Housing Partnership (BRHP) developed a mobility counseling program that provides pre-move counseling services to prepare voucher holders for moves with budgeting and financial counseling, housing search assistance to help navigate the rental housing market, and post-move counseling services to ensure residents remain stably housed and to mediate any conflicts or challenges voucher holders may have with their landlord. BRHP pioneered a regional approach in which they coordinate with the surrounding counties of Baltimore city to engage with housing authorities and landlords to help voucher holders access higher opportunity neighborhoods in the counties.

Policy Priorities

1. Launch mobility counseling pilot programs across the state. Through this program, we propose that the City and State work together to fund two to four Housing Choice Voucher mobility programs statewide to expand the options for low-income families with HCVs to live in high-quality homes. The Housing Choice Voucher program requires housing units to meet specified quality and

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36. HUD’s Proposed Rule on Small Area Fair Market Rents for the Section 8 Program, 1-9 (2016) (testimony of NYCHA Executive President for Leased Housing Cathy Pennington and HPD Deputy Commissioner Eva Trimble).
37. Mobility in New York City (Caldwell, DeHuff, Kramer) (Unpublished)
accessibility standards for a family to live there. Landlords statewide have indicated that they would participate in the program, but do not have the resources to bring the unit up to standards. This program would support the creation or expansion of existing mobility programs to bring more housing units up to quality standards that enable them to be eligible for families with vouchers by offering funding to landlords to make necessary quality improvements. Entities providing this support should be publicly available on City and State agency websites. The program would also support residents who want to move to high-quality homes in well-resourced neighborhoods. This program would be particularly beneficial to persons with disabilities, who often rely on subsidies for housing, are subject to housing conditions that do not adequately support their needs, and who sometimes have difficulty securing employment. We propose that this program be piloted for a 3-year period and expanded thereafter to serve individuals and families for a period of 5 years or more.

2. **Expand resources for rental assistance like Housing Stability Plus.** Across the state, there are not enough subsidies for low to extremely-low income individuals who are rent burdened or extremely rent burdened. Not having enough existing subsidies for these individuals makes it much harder to achieve fair housing and affordable housing goals. Therefore, new subsidies or the expansion of existing subsidies are warranted.
Confronting School Segregation Through Housing Policy

Our efforts will invariably expand educational opportunities. Where you live often dictates what opportunities and resources you will have access to, impacting the long-term trajectory of you and your family’s lives. Families living in high-poverty, racially-isolated communities often face social and economic disadvantages that do not properly equip their children to succeed in the classroom. Additionally, these very same children are often overrepresented in lower-performing, under-resourced schools due to exclusionary school assignment policies, widening the achievement gap and limiting their future mobility. We must confront the obstacles that undermine better integrating our communities and our schools.

As previously stated, families of color still face significant barriers when attempting to move to areas of opportunity so that their children can attend high-performing schools. Because of the high level of residential segregation in New York City, New York State is the home to the most segregated public-school districts in the country. In New York State, Black and Latino students are most likely to be enrolled into intensely segregated schools (schools with less than 10% of white students enrolled). If we look across the New York City metropolitan region, only 20% of our school districts are considered racially “diverse,” and of those districts only one third of them are considered racially stable.39 On Long Island, the share of white students enrolled in Nassau and Suffolk Counties’ public schools decreased by almost 18%, from 81% in 1989-90 to 63% in 2010-2011, according to the Civil Rights Project. With increasingly more Black and Latino students represented in the public-school system, we are seeing a decrease in resources and opportunities within those schools, which feeds low graduation rates among minority students. More than 60 years since the landmark Brown v. Board of Education of Topeka decision, our schools remain separate and unequal.

It is clear to us that residential segregation compounds school segregation. Therefore, it is imperative that we rethink our approach to education policy by addressing it in tandem with housing providers so that we may create and sustain inclusive, high-performing schools in every neighborhood.

Additionally, as housing advocates we can learn from school integration advocates about how to effectively reframe the call for housing integration from a solely moral argument to a more self-interest-based argument. Recent school integration efforts have used self-interest-based arguments, and those arguments resonate with their target audiences. Parents are increasingly aware of how exclusive, majority-white schools will not prepare their children for the challenges of the twenty-first century. This drives the conversations surrounding school integration. We need to identify and stress the economic and societal benefits of diverse neighborhoods to make our case for integrated communities.

Policy Priorities

1. Increase development of affordable housing in high-performing school districts. Policymakers should use development scoring criteria (as in the federal Low-Income Housing Tax Credit Program’s Qualified Allocation Plan) or “neighborhood performance standards”40 to increase affordable housing development in high-performing, low-poverty school attendance zones and school districts and New York City community school districts. Local housing jurisdictions can tailor their criteria according to the types of development they wish to incentivize. Jurisdictions can incentivize proposals sited in higher-opportunity, low-poverty school zones or community school districts, to integrate areas and their schools.

Additionally, it is imperative that fair housing and affordable housing advocates and government officials better understand school assignment policies in New York City and take them into account when prioritizing the siting of affordable housing (and of housing generally). There is widespread misinformation, as well as outdated assumptions, about New York City’s student-assignment policies. For example, for its Final Environmental Impact Statements for rezonings, the City studies the area one half mile from the rezoning area to evaluate the effects of the rezoning on schools without regard for student-assignment policies, which may effectively prevent projected residents of the rezoned area from attending the schools in the study area. Likewise, in some community school districts less than half of all elementary-school students attend their zoned school. Without a basic understanding of student-assignment policies in different areas of the city, housing officials are unlikely to increase access to opportunity through the siting of affordable housing.

2. Encourage intentional collaboration between new development and local school districts. In communities with concerted community revitalization plans (CCRPS), we should encourage a connection between developers and local school districts to ensure that the school administration serves as primary stakeholders. Developers should be encouraged to consult with the local schools/districts and identify meaningful ways that their development could support them. For example, engaging school administrators, principals, teachers, and students in the stakeholder engagement process can lead to actionable results, such as increasing resources for working with students with disabilities, talent recruitment/retention, school supplies, smart labs, etc.

In New York City, we must question the impulse to build more schools near new residential development in already segregated community school districts where many schools are in fact undersubscribed. In many cases, new development should be the impetus not for a new school, but for crafting better student-assignment policies that promote both school diversity and efficient use of school facilities.

3. Target housing discrimination enforcement, such as testing investigations, in areas where access to high-performing schools is limited by residence. Private and public enforcement agencies should identify community school districts and suburban school districts where access to high-performing schools (particularly high schools) is limited by residence. Targeted enforcement can expose illegal practices within the housing market. This can also highlight how consequential our housing policies are for school integration efforts and the unfairness of high school priority for residence when residential opportunities aren’t open to all. (How can you rationalize school preferences within predominantly white, affluent communities?)

43. Ibid.
Siting Locally Unwanted Land Use (LULUs)

The siting of municipal facilities, community amenities, and undesirable land uses has a major impact on opportunity and access to public resources. Both undesirable land uses – such as prisons, roads, factories, landfills, garbage transfer stations, and highways – and desirable land uses – such as parks, libraries, public transportation access, schools, and health-care facilities – affect the health, opportunities, and life chances of the people who live near them. Many other developments often occur in low-income communities of color and can have a negative and harmful impact on the surrounding area. A truly fair, inclusive, and affordable city and region will ensure that municipal facilities and other land uses are balanced fairly across all communities.

We encourage our policymakers and development partners to lead inclusive and transparent community-engagement processes that not only encourage, but value and apply community input as it pertains to the siting and construction of locally unwanted land use and ensure that we equitably distribute municipal facilities across all communities.
Driving the Community/Residency Preferences Conversation to a Productive End

The community/residency preference policy was a strong point of contention among many of the affordable and fair housing organizations represented at the Roundtable. Affordable housing advocates believed that the policy could be used as an anti-displacement tool to address rental affordability by allowing residents to remain in their neighborhoods amidst the pressures of gentrification; whereas fair housing advocates say that evidence demonstrates that this policy effectively drives segregation and does not produce units at the affordability range necessary for the community it serves, harming the very people the policy aims to support. The 2015 Winfield v. City of New York lawsuit challenging the policy highlighted those tensions, drawing attention to the need for policymakers to evaluate the policy and examine whether preferences are an effective tool to mitigate gentrification and displacement. Our colleagues around the table saw this as an opportunity to be productive, even in the face of disagreements, as we strived for broader collaboration.

The co-convening groups and Roundtable participants understood that community/residency preferences would be the most controversial issue that we would discuss. We recognized that we would not resolve the issue during our year-long process, but we knew it would be a worthy discussion. As one of our Roundtable participants noted, and others agreed, it would be wrong to stay silent on the matter. However, having a robust and nuanced conversation with participants who held strong views regarding this policy required attention, care, and time. We designed a Roundtable process to facilitate this conversation, with an aim to identify: 1) what is the problem that community/residency preferences seek to address; 2) what are the varying perspectives on this policy; 3) what additional information are we missing to better inform our stance on this policy; and 4) what are other viable policy solutions that could address our concerns?

Although residency and community preferences may help to build support for affordable and supportive housing development and, in some cases, lower the effects of gentrification by providing affordable housing for residents, there is no doubt that these community preferences, when applied in neighborhoods, towns, villages, etc. that are not racially diverse, may perpetuate residential segregation. This is particularly true in the more affluent, white communities on Long Island, in Westchester County and in some parts of New York City, as well as in some of the historically underserved communities in East New York, Mott Haven and other neighborhoods of color in New York City. We cannot hide behind the rhetoric of community/residency preference in the City or the region if it furthers racist exclusionary policies or increases segregation throughout the region. Rather we should be using existing resources to advance policies and potential solutions that would maximize the inclusion of all populations without regard to race, national origin, disability, and other protected characteristics.

Policy Priorities

1. Strengthen the story and message going forward. Displacement is a serious concern that requires a commitment of funding, policies, deep analysis, and enforcement to adequately address. Policymakers should clearly connect displacement with other public goods and services (i.e. education, economic development, transportation). Some ways policymakers could approach this include:
   - Identifying visible champions who can personify and help amplify the message; and
   - Using enlightened landlords to help make the case.

2. Join forces to tackle displacement. We must set aside tensions over community/residency preferences (mend the “divide and conquer” mindset) to call out and tackle the underlying causes
of displacement; build on and extend the learning that has taken place over the Roundtable process to share that learning with a broad range of industry stakeholders; and recognize the power in "one voice" unifying affordable and fair housing advocates.

3. **Undertake a strategic assessment.** We should identify key information gaps within policy and enforcement and develop a community needs assessment. From there, we can build actionable and prioritized steps that interested stakeholders can jointly pursue to stabilize and prevent displacement of communities of color within rapidly gentrifying neighborhoods. It is imperative that organizations work together to pool knowledge.

4. **Push for more affordable housing.** Industry stakeholders should press for more affordable housing in high-opportunity areas, regardless of community/residency preferences.
Conclusion

This Roundtable experience transformed many of our participants’ perspectives, allowing them to deepen their understanding of the work that others represented at the table do and develop an appreciation for our respective commitments to expanding housing choice and opportunity for our most vulnerable populations across New York City, Westchester, and Long Island. Throughout this year-long process, we worked through areas of disagreement to identify commonalities, birthing a plan that we think can shift the trajectory of inequality throughout many of the neighborhoods and communities that we serve. It is our hope that this learning and shared appreciation does not stop here. We wish to share the process and information we have gathered throughout our respective networks to confront the affordability crisis and the discriminatory barriers that inhibit housing choice.

The work does not end with this policy agenda; this is only the beginning. We anticipate building a wider coalition of like-minded partners throughout our region to advance this work within our respective communities. If any of these policy issues resonate with you, we encourage you to reach out to Enterprise Community Partners or the Fair Housing Justice Center to learn more about how you can get involved.
Citations/References


HUD’s Proposed Rule on Small Area Fair Market Rents for the Section 8 Program, 1-9 (2016) (testimony of NYCHA Executive President for Leased Housing Cathy Pennington and HPD Deputy Commissioner Eva Trimble).


Suggested Resources

Affirmative Fair Housing Marketing Plan Form - Multifamily Housing and Single-Family Housing:

All applicants for participation in Federal Housing Agency (FHA) subsidized and unsubsidized multifamily housing programs with five or more units (see 24 CFR 200.615) must complete this Affirmative Fair Housing Marketing Plan (AFHMP) form as specified in 24 CFR 200.625, and in accordance with the requirements in 24 CFR 200.620. The purpose of this AFHMP is to help applicants offer equal housing opportunities regardless of race, color, national origin, religion, sex, familial status, or disability. The AFHMP helps owners/agents (respondents) effectively market the availability of housing opportunities to individuals of both minority and non-minority groups that are least likely to apply for occupancy. Affirmative fair housing marketing and planning should be part of all new construction, substantial rehabilitation, and existing project marketing and advertising activities.

Affirmative Fair Housing Marketing Plan (AFHMP) - Multifamily Housing (PDF)  
Affirmative Fair Housing Marketing Plan (AFHMP) - Single Family Housing (PDF)  
Affirmative Fair Housing Marketing Plan – Fair and Equitable Housing Office, New York State Homes & Community Renewal

Fair Housing Toolkit (http://www.bbcfairhousing.org/toolkit/)

The Fair Housing Toolkit was created by the Fair Housing Justice Center to educate diverse religious communities and faith-based organizations about fair housing and to inspire and equip those communities to advocate for fair housing in their community. This toolkit can be used as an educational resource about our nation’s history of segregation, current fair housing issues, and fair housing rights. The toolkit also identifies ways in which people of faith can become more involved in promoting fair housing.


This report highlights the ways in which NFHA and its partners have invested the $27 million in community support funds in neighborhoods that were harmed by the discriminatory treatment during and after the foreclosure crisis. Section I offers background on NFHA's investigation of REO properties and the details of the resulting conciliation agreement with Wells Fargo. Section II describes the major strategies that the 14 fair housing partners used to invest community support funds in disinvested neighborhoods that were hit hard by the REO crisis, including examples of actual families and communities that benefited from these funds. Finally, Section III lifts a few key takeaways and lessons learned throughout this neighborhood investment process.

Making Room (http://chpcny.org/research/making-room/)

A long-term research initiative conducted by the Citizens Housing Planning Council (CHPC) titled the “Making Room” explores how demographic change is affecting ‘the household’ and how different housing typologies (the design and layouts of housing units) can be used as a tool to satisfy emerging housing needs.

National Fair Housing Alliance Educational Resources (https://fairhousingresourcecenter.wordpress.com/)

This website includes educational materials on housing discrimination and the promotion of fair housing. It includes printable PSA’s, brochures, TV and radio ads available for download by the public.

NYC Alliance for School Integration and Desegregation (ASID) Policy Platform (https://www.nycasid.com/platform/)

The ASID policy platform calls on the City of New York to engage the community in developing ambitious goals and benchmarks toward integrating its schools. These efforts should align to IntegrateNYC’s “5 R’s of Real Integration,” as laid out in the Student Constitution on Real Integration.
• Define Integration and set goals: All entry grades reflect the demographics of their home district within 3 years, and their whole borough within 6 years.
• Review and Revise Admissions: End the use of discriminatory enrollment screens and practices.
• Forge New, Inclusive Educational Models: End Gifted & Talented programs and provide comprehensive support for English Language Learners and Students with Disabilities.
• Establish and Office of Integration and Equity: Empowered to develop, implement, and enforce a long-term school desegregation and integration strategy.
• Conduct a Citywide Equity Assessment of districts and zones, choice and finance policies, curriculum, staffing, and discipline.

Regional Planning Association (RPA) Fourth Regional Plan (http://fourthplan.org/about/executive-summary)
In 2018, RPA released its Fourth Regional Plan. The Plan is guided by four action areas to improve housing access and affordability across the New York tristate area. The plan includes 61 recommendations to achieve greater equity, shared prosperity, better health, and sustainability.

Resources on Inclusionary Zoning in NYC (https://www1.nyc.gov/site/planning/zoning/districts-tools/inclusionary-housing.page)
New York City’s Inclusionary Housing programs aim to promote neighborhood economic diversity in the City’s highest-density districts and in neighborhoods planned for significant residential growth. The City’s voluntary programs – the R10 and the Designated Area programs – offer an optional floor area bonus in exchange for creation or preservation of affordable housing. Mandatory Inclusionary Housing, or MIH, requires affordable housing as part of all residential development above a certain size in applicable areas.

Sociodemographics of Rent Stabilized Tenants, Published 2018 (https://www1.nyc.gov/assets/hpd/downloads/pdf/about/rent-regulation-memo-1.pdf)
Tenants in rent stabilized units and tenants in unregulated units in New York City are distinct groups that vary beyond just their type of housing. In this report, HPD utilized data from the 2017 NYCHVS to examine and compare these groups across several sociodemographic dimensions.

The Fight for Fair Housing brings together the nation’s leading fair housing activists and scholars (many of whom are in both camps) to tell the stories that led to the passage of the Fair Housing Act, its consequences, and the implications of the act going forward.

Policy Briefs & Reports on Fair Housing
Addressing Patterns of Resegregation in Urban and Suburban Contexts: How to Stabilize Integrated Schools and Communities Amid Metro Migration (http://www.jchs.harvard.edu/sites/default/files/A_shared_future_addressing_patterns_of_resegregation.pdf)
As part of a national symposium hosted by the Harvard Joint Center for Housing Studies, this paper examined how patterns of residential segregation by income and race in the United States are changing and the consequences of residential segregation for individuals and society and sought to identify the most promising strategies for fostering more inclusive communities in the years to come.

This report developed by the Center for Budget and Policy Priorities briefly reviews research on why the type of neighborhood in which children grow up matters to their future and current data on where children in families that have vouchers live. It then describes four sets of interrelated federal policy changes that would help more families in the Housing Choice Voucher program live in higher-opportunity neighborhoods.

This analysis by the Center for Budget Policy and Priorities discusses the potential benefits that LIHTC developments in low-poverty areas can provide to poor families, reviews data on the characteristics of neighborhoods where LIHTC developments are located today (with state-by-state data on the share of LIHTC units in low-poverty neighborhoods listed in the Appendix), and describes steps policymakers could take to improve LIHTC's performance in expanding opportunity.

This report is the National Fair Housing Alliance's annual trend report for 2018, which lays out the most recent trends in fair housing and legal action taken in the affordable and fair housing fields.

Produced by the Furman Center on Housing Policy at New York University, this policy brief highlights the benefits and challenges to implementing inclusionary zoning practices.

Fair Housing News

Exclusionary Zoning (https://prrac.org/?s=exclusionary+zoning)
The Poverty and Race Research Action Council provide newsletters and reports about exclusionary zoning and fair housing.

Fifty Years of "The People vs. HUD": A HUD 50th Anniversary Timeline of Significant Civil Rights Lawsuits and HUD Fair Housing Advances, Updated in February 2018 (https://prrac.org/pdf/HUD50th-CivilRightsTimeline.pdf)
Developed by the Poverty and Race Research Action Council, this article illustrates how HUD provides a detailed yet selective timeline of significant civil rights law suits and advocacy measures that has helped create a foundation for many of HUD's important regulatory guidelines.


Mapping Inequality (https://dsl.richmond.edu/panorama/redlining/#loc=4/36.71/-96.93&opacity=0.8)
These newly released maps by Mapping Inequality illustrate how housing discrimination happened. A new online collection of documents shows historical bigotry in banking and real estate.

HUD Guidance

This Joint Statement provides guidance regarding the persons, entities, and types of housing and related facilities that are subject to the accessible design and construction requirements of the Act.

The Department of Justice has taken an active part in much of this litigation, often following referral of a matter by the Department of Housing and Urban Development ("HUD"). This joint statement provides an overview of the Fair Housing Act’s requirements in this area. Specific topics are addressed in more depth in the attached Questions and Answers section of the statement.

HUD and DOJ Joint Statement on Reasonable Accommodations, Published May 2004 (https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/joint_statement_ra.pdf)
HUD and DOJ frequently respond to complaints alleging that housing providers have violated the Act by refusing reasonable accommodations to persons with disabilities. This Statement provides technical
assistance regarding the rights and obligations of persons with disabilities and housing providers under the Act relating to reasonable accommodations.

HUD and DOJ frequently respond to complaints alleging that housing providers have violated the Act by refusing reasonable modifications to persons with disabilities. This Statement provides technical assistance regarding the rights and obligations of persons with disabilities and housing providers under the Act relating to reasonable modifications.

This notice explains certain obligations of housing providers under the Fair Housing Act and Americans with Disabilities Act with respect to animals that aid individuals with disabilities.

Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records, Published April 2016 (https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTDANDCR.PDF)
This guidance concerns itself with how the Fair Housing Act applies to the use of criminal history by providers or operators of housing and real-estate related transactions.

The Guidance on Fair Housing Act Protections for Persons with Limited English Proficiency discusses how the Fair Housing Act applies to a housing provider's consideration of a person's limited ability to read, write, speak or understand English.

This rule amends HUD's definition of “gender identity” to more clearly reflect the difference between actual and perceived gender identity and eliminates the prohibition on inquiries related to sexual orientation or gender identity.

Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity Published, February 2012 (https://www.federalregister.gov/documents/2012/02/03/2012-2343/equal-access-to-housing-in-hud-programs-regardless-of-sexual-orientation-or-gender-identity)
This rule follows a January 24, 2011 proposed rule, which noted evidence suggesting that lesbian, gay, bisexual, and transgender (LGBT) individuals and families are being arbitrarily excluded from housing opportunities in the private sector.
Choice Constrained, Segregation Maintained: Using Federal Tax Credits to Provide Affordable Housing

A Report on the Distribution of Low Income Housing Tax Credits in the New York City Region

Simon Kawitzky
Fred Freiberg
Diane L. Houk
Salimah Hankins

AUGUST 2013
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Executive Summary

Government policies that regulate the location or siting of affordable housing opportunities have an impact on the range of housing choices, neighborhood amenities, and other life opportunities that are available to lower-income families who qualify for such housing. Likewise, the placement of affordable housing can have an adverse or positive impact on public policy efforts aimed at deconcentrating poverty and reducing residential racial segregation. This report explores how one federal program, the Low Income Housing Tax Credit (LIHTC) program, has provided affordable rental housing opportunities in the New York City region. A major premise of this report is that where affordable housing opportunities are located matters.

An examination of the location of more than 52,000 low-income rental units produced under the federal LIHTC program between 1998 and 2007 in New York City and seven surrounding New York counties yielded the following key findings:

- Most LIHTC affordable housing units (71%) were located in areas of high or extreme poverty concentration.
- Most LIHTC affordable housing units (77%) were located in minority neighborhoods.
- LIHTC housing units were concentrated in higher-poverty and minority areas regardless of whether they involved the rehabilitation or new construction of multifamily housing.
- Roughly half (49%) of LIHTC affordable housing units in suburban areas were elderly units. Nearly two-thirds (63%) of all suburban elderly units were located in low-poverty neighborhoods, but only one-quarter (25%) of suburban family units were located in these areas. Similarly, nearly three-quarters (74%) of all suburban elderly units were developed in white or predominantly white areas, while less than one-third (31%) of all family units were located in these communities.¹
- More than half of all affordable housing units developed in the study area received tax credits from New York City’s Department of Housing Preservation and Development, the largest municipal developer of affordable housing in the nation. Only 2% of these units were located in low-poverty areas, and only 9% were located in white or predominantly white areas in New York City.

These and other findings support the argument that 10 years of LIHTC allocations by New York’s three housing finance agencies to expand the supply of affordable housing opportunities in the region effectively reinforced, rather than reduced, residential racial segregation and poverty concentration. By locating the vast majority of low-income family developments in poor and predominantly minority neighborhoods, mostly in New York City, the tax credit allocation agencies also failed in their duty to affirmatively further fair housing. During the time period studied, the housing choices of eligible lower-income minority families were largely constrained and restricted to poor and minority neighborhoods.

The authors of this report understand that there are a constellation of factors that contribute to decisions about

¹ In this report, “family” housing refers to housing that is open to all households, including families with children, single persons, elderly households, etc. “Elderly” units are those intended for occupancy by older persons and housing that is exempt from renting to families with children under the FHA. This includes housing developments where all residents are 62 years of age and older, as well as housing developments where at least 80% of the households include at least one person who is 55 years of age or older.
Executive Summary

where affordable housing will be developed, but there is no evidence that the New York allocating agencies studied here monitored the extent to which their actions were perpetuating segregation, or took steps to prevent the segregative outcome documented in this report.

The report contains two sets of recommendations. First, the report recommends that the U.S. Department of Treasury promulgate civil rights regulations to govern Treasury programs that finance the development of affordable housing, such as the LIHTC program. These regulations would, among other things, provide guidance on affirmative marketing and tenant selection to ensure nondiscrimination, mandate the collection of racial occupancy data by site, encourage the development of affordable housing in low-poverty areas, and define the essential elements of concerted community revitalization plans. The report also recommends that the federal departments of Treasury, Justice, and Housing and Urban Development implement all provisions of the interagency “Memorandum of Understanding” on the LIHTC program signed by the agencies in August 2000.

Second, the report recommends that the three tax credit allocation agencies in New York State conduct an annual review of all family and elderly developments based on area poverty rates and racial composition; maintain and analyze occupancy data by race, national origin, and the number of households using Housing Choice Vouchers; conduct on-site inspections of newly constructed affordable housing to ensure compliance with accessibility requirements; and utilize testing to monitor compliance with fair housing laws. In addition, it is recommended that the tax credit allocation agencies incorporate three threshold criteria into their tax credit application process: (1) a prohibition on residency or community board preferences unless an analysis demonstrates that such preferences will not discriminate and/or perpetuate residential racial segregation; (2) a submission of a detailed affirmative marketing plan designed to attract populations least likely to apply; and (3) an assurance that an application will be considered even if local officials state their opposition to or fail to indicate their support for a particular project. The report also recommends that each allocation agency incorporate substantial scoring incentives and provide a multiplier to a project’s qualified basis to encourage the development of:

- Family housing in low-poverty and non-minority areas;
- Mixed-income housing (market-rate and low-income units);
- Family housing in areas with no concentration of LIHTC family housing or other subsidized family housing units; and
- Family housing in areas where land costs are higher.

The report also advocates that each allocation agency eliminate scoring incentives provided for local government support and limit scoring incentives provided for the development of affordable housing in higher-poverty areas called qualified census tracts.

This report answers an important question concerning where LIHTC housing opportunities were created in the New York City region over a 10-year period. Most of the affordable housing produced with federal tax credits was located in predominantly minority areas with higher poverty rates. Given the concentration of low-income units in poor and minority neighborhoods, eligible minority families had few opportunities to move to low-poverty areas, areas that may provide greater educational, employment, and other opportunities. The most serious question raised by this report is whether the Department of Treasury and the three New York tax credit allocation agencies have been meeting their duty to affirmatively further fair housing. The data presented in the report suggests that the LIHTC program has maintained, rather than reduced, residential racial segregation and has constrained, rather than expanded, housing choice for lower-income minority families.
Introduction

The federal Low Income Housing Tax Credit program, created by Congress in 1986, provides a critical source of funding for the construction and rehabilitation of low-income rental housing in the United States. Since its inception, the LIHTC program has been responsible for creating and preserving over 2.2 million units of affordable rental housing nationally. According to the National Council of State Housing Agencies, approximately 90% of all affordable rental housing produced annually is financed through the LIHTC program. In 2010, half of all multifamily starts were financed in part by the LIHTC program, according to the National Association of Home Builders.

This report examines LIHTC developments produced in the New York City region (“region” or “study area”) between January 1, 1998, and December 31, 2007. The region, as defined in this report, includes all five boroughs of New York City plus the seven suburban New York counties of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester. Since the report focuses on LIHTC housing placed in service over the 10-year period from 1998 to 2007, the analysis primarily relies on 2000 census data, as opposed to 2010 census data. The report’s goal is to examine the relationship between (1) the location of LIHTC housing and (2) poverty concentration and residential racial segregation in the region.

The region in context

The 12-county New York City region is home to more than 12 million people, who account for more than 65% of the population of New York State and approximately 4% of the population of the United States. The majority of residents (more than eight million people) live in New York City, while approximately 4.5 million reside in the suburban New York counties.

According to the 2000 census, the region as a whole is one of the most racially and ethnically diverse in the nation, yet the suburban counties are vastly more homogeneous than New York City. For instance, African American, Hispanic, and Asian populations in New York City collectively exceed 60% of the total population, while non-Hispanic whites comprise 74% of the suburban population.

Despite the presence of diverse population groups, residential segregation based on race and national origin persists throughout the region. According to a recent study, which applied a dissimilarity index to 50 metropolitan areas with the largest minority populations (based on the 2010 census), New York is the third most segregated metropolitan area for African Americans and the second most segregated for Latinos and Asian Americans.

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2. This number includes units that were placed in service between 1987 and 2010. See “Low-Income Housing Tax Credits” at the HUD website: http://huduser.org/portal/datasets/lihtc.html (2012).
4. Ibid.
Introduction

Population in Study Area (2000)

- New York City: 63%
- Suburbs: 37%

TOTAL: 12,689,665

Figure 1

Race/Ethnicity in Study Area (2000)

- White: 50%
- Hispanic or Latino: 21%
- Black or African American: 19%
- Asian: 7%
- Other: 3%

TOTAL: 12,689,665

Figure 2

Race/Ethnicity in Suburban Counties (2000)

- White: 74%
- Hispanic or Latino: 11%
- Black or African American: 9%
- Other: 2%

TOTAL: 4,681,387

Figure 3

Race/Ethnicity in New York City (2000)

- White: 35%
- Hispanic or Latino: 24%
- Black or African American: 10%
- Asian: 9%
- Other: 7%

TOTAL: 8,008,278

Figure 4

Source: U.S. Census, 2000
In 2007, the Fair Housing Justice Center (FHJC) analyzed 2000 census data for the entire New York City region to determine where households with incomes below the poverty level resided by race and level of neighborhood poverty concentration. The analysis revealed that low-income whites were far more likely to live in low-poverty neighborhoods than low-income African Americans and Latinos, who were much more likely to reside in areas of high or extreme poverty concentrations.

In the report, entitled *Increasing Access to Low-Poverty Areas by Creating Mixed-Income Housing*, the FHJC outlined the myriad adverse consequences that result when housing choice is restricted and people are isolated or balkanized by race or national origin, as follows:

Separation limits opportunities for inter-group contact that can reduce biases, stereotypes, and prejudices. The spatial mismatch between populations needing work and areas of high job growth severely limits access to employment opportunities. Residential racial isolation frequently results in segregated schools. Unequal access to employment and educational opportunities contributes to disparities in income and wealth accumulation. Residential racial segregation fuels a vicious, self-sustaining cycle of inequality and contributes to the racialization of poverty.

The persistence of segregation and attendant inequalities in the New York City region prompt this examination of the LIHTC program.

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7. The FHJC is a New York City-based regional civil rights organization dedicated to eliminating housing discrimination; promoting open, accessible, and inclusive communities; and strengthening enforcement of fair housing laws.

Racial Composition of New York City Region (Study Area)

Percent Non-Hispanic White Population

- <20%
- 20–50%
- 50–80%
- >80%

Map 2

Source: U.S. Census, 2000

Location of Populations Below the Poverty Level by Race and Poverty Concentration of Census Tracts (New York City Region)

- White
- Black or African American
- Hispanic or Latino

Figure 5

Source: U.S. Census, 2000
Historically, federal and state governments created and sustained residential racial segregation. In the late 1930s and 1940s, both public housing and veterans’ housing were operated by the federal government on a racially segregated basis. During this same period, racial segregation was reinforced by the proliferation of local race-restrictive covenants on property deeds. These were enforced by state courts and often required as a condition of receiving financing insured by the federal government through the Federal Housing Administration.

Even after the Supreme Court held that race-restrictive covenants were unenforceable, many local suburban communities throughout the 1950s and 1960s thwarted efforts to locate public housing or other subsidized rental housing within their jurisdictions. Suburban municipalities employed exclusionary zoning techniques (e.g., requiring large minimum lot sizes, prohibiting multifamily rental housing, etc.), restrictive building codes, aesthetic boards, and other exclusionary devices. At the same time, local urban officials often restricted public housing “projects” to poor and minority neighborhoods. Some scholars have referred to public housing as a “federally funded, physically permanent institution for the isolation of black families by race and class [and] an important structural cause of concentrated poverty in U.S. cities.”

Between 1968 and the early 1970s, Congress enacted the Fair Housing Act (FHA) and created many federally-assisted housing programs. However, by staving off proposals to build affordable rental housing in their neighborhoods, white suburban communities prevented lower-income minority families from moving to these areas. Even where affordable rental housing opportunities existed in low-poverty, predominantly white neighborhoods, the use of residency preferences and requirements, site-based waiting lists, and private market discrimination effectively worked to keep most minority families from accessing such housing opportunities.

One example of how public and assisted housing programs were operated during these years on a racially segregated basis can be found in the City of Yonkers, a Westchester County suburb north of New York City. In 1985, a federal court found that Yonkers discriminated on the basis of race in violation of the FHA when it approved 34 of 36 subsidized rental housing developments in Southwest Yonkers, a predominantly African American and Latino area, between 1949 and 1982. The court found that of the two housing sites approved outside of Southwest Yonkers, one was elderly housing that excluded families with children, and the other was only approved after the U.S. Department of Housing and Urban Development (HUD) threatened to discontinue the city’s urban renewal funds unless subsidized family housing was built outside of Southwest Yonkers.

During 30 years of housing siting decisions by the City of Yonkers, proposed public and assisted housing locations outside of Southwest Yonkers met with opposition from white residents and were routinely rejected by the City Council. Consequently, by 1980, more than 6,000 subsidized housing units were located in Southwest Yonkers.

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12. Gotham, 68.
15. 42 U.S.C. § 3601 et seq. (Title VIII of the Civil Rights Act of 1968, also known as the Fair Housing Act), as amended in 1988, makes housing discrimination illegal because of race, religion, color, sex, national origin, familial status, and disability.
19. Ibid., 1300, 1326-1327.
20. Ibid., 1294-1296.
Yonkers, where only 38% of the city’s total population resided but whose population was 81% minority.\(^{21}\) By contrast, the total minority population of Yonkers was less than 20% in 1980.\(^{22}\)

Based on this stark pattern of segregation and other direct evidence of racially discriminatory housing decisions, the court held that the City of Yonkers had intentionally created and maintained racial segregation in both its housing and schools in violation of the Constitution, the FHA, and other federal civil rights laws.\(^{23}\) Regarding the plaintiffs’ housing claims, the court found that “race has had a chronic and pervasive influence on decisions relating to the location of subsidized housing in Yonkers.”\(^{24}\) Subsequently, a federal appeals court affirmed the trial court’s determination, holding that it is unlawful for a local government to site subsidized housing only in areas “in which minority residence is already concentrated, thereby enhancing and perpetuating racial segregation.”\(^{25}\)

A year after the City of Yonkers was held liable under the Fair Housing Act for perpetuating racial segregation by concentrating subsidized housing in one quadrant of the city, Congress created the Low Income Housing Tax Credit.\(^{26}\)

### LIHTC PROGRAM OVERVIEW

Since 1986, the Department of Treasury has allocated tax credits to states for the acquisition, rehabilitation, and construction of affordable rental housing under the LIHTC program. In turn, housing finance agencies have awarded the tax credits to housing developers through a competitive application process. Property owners who receive the tax credits can use them to offset taxes on other income or, more typically, sell the credits to investors to raise funds for the initial development costs of a project. The LIHTC allocation process is governed by selection criteria contained in each housing finance agency’s Qualified Allocation Plan (QAP).

Tax credits are provided for a period of 10 years, and LIHTC-subsidized units must be rented to low-income households at restricted rent levels for at least 30 years.\(^{27}\) Within this general framework, developers may choose to create housing where: (1) at least 20% of the units are rented to households whose income is 50% or less of area median income (AMI), or (2) at least 40% of the units are for renters with income less than 60% of AMI.\(^{28}\) Annual rents for LIHTC units, referred to as “qualified units,” are limited to 30% of the elected 50% or 60% of AMI.\(^{29}\)

The specific amount of tax credits awarded to a particular housing project is based on the tax credit rate and the project’s “qualified basis,” which factors in development cost (excluding land and some non-depreciable costs) and the proportion of qualified low-income units.\(^{30}\) Housing finance agencies provide either a 4% or 9% tax credit rate.\(^{31}\) In New York, eligible projects financed by government bonds are offered the 4% credit “as of right” on an ongoing, or rolling, basis.\(^{32}\) In contrast, the 9% credit is allocated each year to projects via a competitive application process governed by each agency’s QAP.

The amount of a project’s qualified basis can be increased by raising the percentage of qualified units

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\(^{21}\) Ibid., 1290-1291.
\(^{22}\) Ibid.
\(^{23}\) Ibid., 1288.
\(^{24}\) Ibid., 1376.
\(^{26}\) Public Law (PL) 99-514.
\(^{29}\) Ibid.
\(^{30}\) Ibid.
\(^{31}\) Ibid.
in a development or by locating the development in a “qualified census tract” (QCT) or “difficult development area” (DDA), as defined by HUD.\textsuperscript{33} In general, QCTs are census tracts with higher poverty rates, and DDAs are either metropolitan areas or non-metropolitan counties with higher housing development costs.\textsuperscript{34} While any project in a QCT can receive a basis boost, the LIHTC statute limits scoring preferences for projects in QCTs to those that are covered by a “concerted community revitalization plan.”\textsuperscript{35} The statute, however, does not define what elements are required for a revitalization plan to be considered “concerted,” and Treasury has not promulgated any regulations or guidance concerning this requirement.\textsuperscript{36} States have largely accommodated this rule by providing points to projects in redeveloping neighborhoods that have some sort of plan, regardless of what opportunities or investments exist or are proposed for the community. Consequently, as currently applied, these incentives encourage developers to propose LIHTC housing projects that: (1) contain 100% qualified low-income units (as opposed to a mix of market-rate and low-income units) and (2) are located in high-poverty urban neighborhoods.

While the LIHTC program has produced a relatively large number of rental housing units, concerns have been raised that the geographic distribution of LIHTC housing has exacerbated poverty concentration and racial segregation. For example, one recent study showed that of all rental units produced nationally between 1995 and 2006, 13% were located in areas with at least a 30% poverty rate, while more than 20% of LIHTC units were located in these areas.\textsuperscript{37} Similarly, 41% of all rental units were in low-poverty census tracts (those with less than 10% poverty), while only 33% of LIHTC units were in low-poverty areas.\textsuperscript{38} When looking at central cities, the study found that the pattern becomes even more pronounced: 35% of LIHTC units were found to be located in census tracts with over 30% poverty, while only 21% of all rental units were found in similar locations.\textsuperscript{39} LIHTC units in DDAs are more likely to be in high-poverty census tracts than all rental units in DDAs.\textsuperscript{40}

With respect to race and national origin, a greater percentage of LIHTC units (51%) were found to be sited in minority neighborhoods (i.e., where at least 40% of the population is non-white) compared to all rental units (40%).\textsuperscript{41} During the same period, 39% of all rental units were located in areas with a 20% minority population, while only 29% of LIHTC units were located in predominantly white communities.\textsuperscript{42} In central city areas, 61% of LIHTC units were located in minority neighborhoods, compared to 45% of all rental units.\textsuperscript{43} Studies have found that during the first 10 years of the LIHTC program, it was “used much more often to provide better housing in poor neighborhoods rather than to provide affordable housing in higher-income neighborhoods.”\textsuperscript{44} Consequently, neighborhoods with LIHTC units have “considerably higher poverty rates, lower median incomes, and lower median home values than typical metropolitan neighborhoods.”\textsuperscript{45} For example, LIHTC neighborhoods during the 1990s had disproportionately high African American populations compared to metropolitan neighborhoods overall, as well as higher poverty rates.\textsuperscript{46} This trend does not appear to have changed over the course of the second decade of the LIHTC program.\textsuperscript{47}

In contrast, a working paper issued by the Furman Center in 2011 concluded that there is “no evidence that the

\begin{thebibliography}{99}
\bibitem{Abt Associates} Abt Associates, 48.
\bibitem{Ibid.} Ibid.
\bibitem{Ibid.} Ibid.
\bibitem{Abt Associates 2} Abt Associates, 59.
\bibitem{Ibid.} Ibid. 56.
\bibitem{Ibid.} Ibid. 59.
\bibitem{Ibid.} Ibid. 61.
\bibitem{Ibid.} Ibid. 57.
\bibitem{Ibid.} Ibid. 59.
\bibitem{Ibid.} Ibid. 59.
\bibitem{Ibid.} Ibid, 7.
\bibitem{Pfeiffer} Pfeiffer, Deirdre. December 2009. The Opportunity illusion: Subsidized Housing and Failing Schools in California, The Civil Rights Project, 15.
\end{thebibliography}
LIHTC program is associated on average with greater racial segregation for minorities [but] rather, evidence of the reverse.”

This finding stems from a premise that lower-income minority neighborhoods and tenants would be no less segregated than if the LIHTC program had never existed. The report arrives at this finding without making any distinction between elderly and family housing, and it cites anecdotal instances in two states where LIHTC housing located in predominantly minority neighborhoods had a slightly lower minority population than the surrounding neighborhoods. While the working paper stops short of concluding that the program actually had a desegregative impact in these areas, its findings seem to suggest that LIHTC developments have, in fact, contributed to maintaining existing racial segregation.

**DUTY TO AFFIRMATIVELY FURTHER FAIR HOUSING**

State tax credit allocation agencies are governed by the Fair Housing Act’s duty to “affirmatively further fair housing” (AFFH), which obligates them to (1) evaluate the impact of LIHTC siting decisions on residential segregation and (2) adopt policies to ensure that LIHTC developments do not create or maintain segregation. Since its enactment in 1968, Section 3608 of the Fair Housing Act has provided that “all executive departments and agencies shall administer their programs and activities relating to housing and urban development... in a manner affirmatively to further the purposes of [Title VIII] and shall cooperate with the [HUD] Secretary to further such purposes.”

In a leading case, *NAACP, Boston Chapter v. Secretary of Housing and Urban Development*, a federal appellate court found that:

> [The FHA’s congressional] supporters saw the ending of discrimination as a means toward truly opening the nation’s housing stock to persons of every race and creed... This broader goal suggests an intent that HUD 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.

The court went on to hold that HUD’s duties under Section 3608 were, thus, greater than simply refraining from discrimination.

Since passage of the FHA in 1968, two executive orders have been issued interpreting Section 3608 and authorizing sanctions for noncompliance. In 1980, President Carter issued Executive Order 12259, defining the programs and activities covered by Section 3608 to include those “operated, administered or undertaken by the Federal government; grants; loans; contracts; insurance; guarantees; and Federal supervision or exercise of regulatory responsibility.”

Further clarification of this duty was set forth in Executive Order 12892, issued by President Clinton in 1994, which states:

> The head of each executive agency is responsible for ensuring that its programs and activities relating to housing and urban development are administered in a manner affirmatively to further the goal of fair housing...

In addition, the 1994 executive order authorized federal agencies to impose sanctions if entities such as states and local governments “participating in, or supervised or

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regulated under” a federal housing program or activity did not comply with the order.55

While most of the country’s federal housing programs are overseen by HUD, the Treasury Department has had the statutory responsibility for oversight of the LIHTC program since Congress created it in 1986. Treasury Department regulations regarding the LIHTC program reference the agency’s duty to affirmatively further the goals of the FHA. For example, Treasury regulations specify that to be eligible for tax credits, a residential unit in a building must be rented to the general public in a manner consistent with housing policy governing nondiscrimination, as evidenced by HUD rules or regulations.56 This includes, by reference, HUD’s “site and neighborhood standards” for public housing development, which require that projects must not be located in:

An area of minority concentration unless (A) sufficient, comparable opportunities exist for housing for minority families, in the income range to be served by the proposed project, outside areas of minority concentration, or (B) the project is necessary to meet overriding housing needs which cannot otherwise feasibly be met in that housing market area.57

Additionally, this HUD regulation requires that the “site must promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low income persons.”58 Thus, HUD regulations, and by reference, Treasury Department regulations, generally require federally funded, administered, supervised, or regulated housing projects, such as LIHTC developments, to be sited in a manner that increases housing choice, decreases racial segregation, and deconcentrates poverty.

State and local housing finance agencies that allocate tax credits are subject to the “affirmatively furthering” requirement of the FHA, and their QAPs should be consistent with the requirement’s obligations.59 This duty encompasses more than a responsibility not to engage in any discriminatory practices; it also requires an agency to consider the civil rights impact of housing and development decisions, such as whether the siting of new housing developments will increase or perpetuate segregation.60

In Inclusive Communities Project, Inc. v. Texas Department of Housing and Community Affairs, et al., a Dallas-based civil rights organization challenged the state tax allocation agency’s practice, over the course of 10 years, of approving tax credit applications for low-income, non-elderly housing developments in minority neighborhoods at a higher rate than in predominantly white areas.61 In 2012, the court found that TDHCA’s practices had violated the Fair Housing Act’s prohibitions against making housing unavailable and discriminating in the provision of financial assistance for the construction of housing based on race.62 Specifically, the court found that TDHCA could have provided, but did not provide, additional scoring incentives in its QAPs to encourage the development of LIHTC units in high-opportunity areas.63 Ultimately, the court held that TDHCA failed to show there was no alternative course of action that would serve its legitimate interests of providing affordable housing with a less discriminatory impact.64 The court adopted a five-year remedial plan to reduce the discriminatory impact of future LIHTC allocations by amending the agency’s QAP scoring criteria to promote the siting of housing in a manner that would promote residential racial integration.65

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55. Ibid.
56. 26 C.F.R. § 1.42-9(a).
58. Ibid.
62. Ibid.
63. Ibid.
64. Ibid.
NEW YORK QUALIFIED ALLOCATION PLANS

This section of the report describes key provisions related to the siting of LIHTC projects from the 2008 QAPs used by the three New York tax credit allocating agencies: the New York State Division of Housing and Community Renewal (DHCR), the New York State Housing Finance Agency (HFA), and the New York City Department of Housing Preservation and Development (HPD). This description is meant to provide a snapshot of the basic framework utilized by each agency and does not purport to reflect the varying QAP criteria used by the agencies throughout the 10-year period for which LIHTC housing development location data was collected.

To what extent do the QAPs contain selection criteria aimed at expanding housing choice, increasing the supply of open housing, and fostering more inclusive communities? Do the QAPs incorporate criteria to ensure that LIHTC siting decisions do not increase or perpetuate residential segregation? In short, do the QAPs enable the credit allocating agencies to meet their legal duty to affirmatively further fair housing?

New York's Tax Credit Allocating Agencies

Statewide, DHCR and HFA are responsible for allocating federal tax credits to finance the construction and rehabilitation of affordable housing. DHCR is the lead housing tax credit agency for New York State and oversees the allocation of federal tax credits to housing developers through an annual competitive process it operates according to its QAP. HFA also operates at a statewide level; it allocates 4% tax credits available "as of right" when bond financing is used for housing development, as well as a portion of the state’s allocated 9% tax credits through an annual competitive application process governed by its QAP.

In New York City, LIHTC housing is financed by HPD, the principal municipal housing development agency, in addition to DHCR and HFA. Each year, HPD awards a portion of the federal 9% credits allocated to New York State via a competitive process; the precise amount of HPD’s authority is negotiated annually with the state.

2008 QAP Scoring Criteria

In 2008, the three housing finance agencies utilized separate QAPs, but each contained similar scoring criteria that provided points based on factors related to the location of a proposed project. Overall, these criteria offered limited points for projects in areas that would promote the geographic dispersion of low-income housing.

DHCR’s 2008 QAP offered up to 15 points (out of 100) for projects proposed to be developed in geographic areas that met certain criteria. Of the four locational criteria presented, the applicant only needed to meet three in order to obtain the maximum 15 points. One of the criteria provided points if the proposed project would be located in an area with “limited or no subsidized affordable housing production and an unmet demand for affordable housing in the past 10 years.” The remaining three options were:

- The primary market area for the project has a vacancy rate of less than 5% for comparable units;
- The proposed project is part of a comprehensive community revitalization plan; and

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66. In 2009, the State of New York created an umbrella agency called New York State Homes and Community Renewal. The agency consists of DHCR, HFA, and other housing and community renewal agencies. See NYS HCR’s “Agency Description;” http://www.nysnhcr.org/AboutUs/AgencyDescription.htm (2012).
67. In addition, this report does not analyze modifications made by the agencies to their QAPs since 2008.
69. NYS HCR. October 5, 2012. “Stand-Alone As of Right LIHTCs: Allocation of As of Right LIHTC to Projects Financed by Bonds from an Issuer Other than NYSHFA;” http://www.nysnhcr.org/topics/developers/lowincome/stand-aloneasofrightlihtcs.htm.
71. 2008 DHCR QAP, Section 2040.3(f).
72. 2008 DHCR QAP, Section 2040.3(f)(1)(c).
- The proposed project is supported by significant local measures, including but not limited to infrastructure improvements, real property tax relief, and rezoning.\textsuperscript{73}

As long as a housing application met these three criteria, it could be awarded the maximum 15 points allowed for this scoring category—regardless of whether the area in which the project would be located already had high levels of subsidized affordable housing.

Additionally, the QAP locational criteria just described provided points in the application process for housing that is part of a community revitalization plan. Areas in need of revitalization are more commonly found in QCTs for which the LIHTC statute already includes a preference. Providing additional scoring points in the QAP for applications that propose housing as part of a community revitalization plan increased the likelihood developers would only propose housing in high-poverty neighborhoods.

Moreover, the 2008 DHCR criteria provided points for projects that had already secured local public support, whether through infrastructure improvements, property tax relief, or rezoning. These forms of public assistance have often been harder for LIHTC developers to obtain for developments in low-poverty neighborhoods where low-income housing does not already exist and where local resistance to such housing may be strong.\textsuperscript{74}

The 2008 QAP utilized by HPD also appears to include a preference for housing located in low-income and blighted areas.\textsuperscript{75} HPD awarded up to 23 points (out of 115) for projects located in “targeted areas,”\textsuperscript{76} which included: (1) HPD-designated slums and blight areas; (2) census tracts where 51% or more of families have incomes below 80% of AMI; and (3) QCTs where the project contributed to a concerted community revitalization plan.\textsuperscript{77} Points were also available for the rehabilitation of existing housing and projects intended for eventual tenant ownership.\textsuperscript{78}

By contrast, HFA was the only tax credit agency in New York in 2008 with scoring criteria that provided points for the geographic dispersion of low-income housing.\textsuperscript{79} Specifically, the QAP included a maximum of five out of 100 points for “project location” if the project fostered “the geographic dispersion of low income housing” by siting housing in “an area with few such units.”\textsuperscript{80} These same five points were also available if the location was deemed “suitable” for the intended tenant population.\textsuperscript{81} To acquire the five points for suitability under this subsection, the QAP required an evaluation of the proximity of schools, medical and recreational facilities, mass transit, social services, and employment opportunities.\textsuperscript{82}

Overall, however, HFA’s scoring criteria did not provide a consistent or strong incentive for applicants to build LIHTC units outside of high-poverty areas.\textsuperscript{83} The QAP provided up to 10 points for projects in QCTs where the development would contribute to a community revitalization plan.\textsuperscript{84} Five points were offered for projects with support from state or local officials or community groups, which could be shown by: (1) the award of a locally administered grant, subsidy, or tax abatement; (2) reference to a formally adopted local development plan; or (3) statements from local officials or community group leaders.\textsuperscript{85} Nonetheless, and more so than DHCR and HPD, HFA’s criteria allowed developers to receive competitive

\textsuperscript{73} 2008 DHCR QAP, Section 2040.3(Y)(1)(ii) – (iv).
\textsuperscript{74} Houk, et al. 2007. 75-78.
\textsuperscript{75} While HPD’s most recent QAP (2012) changes some of its scoring criteria related to the points above, the new project location criteria seem to do little to encourage development outside of high-poverty segregated census tracts. Particularly, the new NYCHA category appears to incentivize developers to create LIHTC projects adjacent to existing public housing, which may only serve to further concentrate low-income rental units in areas that are already high-poverty and racially segregated. No incentive is provided to create mixed-income housing under HPD’s new project location criteria. 2012 HPD QAP, Section VI(C)(1).
\textsuperscript{76} 2008 HPD QAP, Section VI(C)(1).
\textsuperscript{77} Ibid.
\textsuperscript{78} 2008 HPD QAP, Section VI(C)(3) and (4).
\textsuperscript{79} 2008 HFA QAP, Section 2188.6.
\textsuperscript{80} 2008 HFA QAP, Section 2188.6(a)(1).
\textsuperscript{81} 2008 HFA QAP, Section 2188.6(a)(2).
\textsuperscript{82} Ibid.
\textsuperscript{83} The HFA revised its QAP in 2010 with nominal changes to Section 2188.6, which includes points for projects that prioritize energy efficiency and the rehabilitation of historic structures.
\textsuperscript{84} 2008 HFA QAP, Section 2188.6(k).
\textsuperscript{85} 2008 HFA QAP, Section 2188.6(d)(2).
scores with proposals for mixed-income LIHTC housing in low-poverty areas where few low-income housing opportunities existed.

If the criteria utilized by the three New York tax credit agencies in previous years were similar to those found in their 2008 QAPs, then the selection process would not appear to have effectively rewarded or incentivized a geographic dispersion of LIHTC housing overall. Worse yet, the credit-allocating process used in the region may have directly or indirectly favored housing proposals that located affordable LIHTC housing in poor and minority neighborhoods.86

* * *

Long before Congress created the LIHTC program, pronounced patterns of racial and economic segregation were already in place in most metropolitan regions in the United States. Nonetheless, those who are charged with deciding how to allocate tax credits to support the development of affordable housing opportunities, such as New York’s three housing finance agencies, should be mindful of their legal duty to affirmatively further fair housing and to avoid contributing to poverty concentration and residential racial segregation.

In view of the agencies’ civil rights obligations, it is appropriate to ask where LIHTC housing opportunities have been created in the New York region. Are New York’s LIHTC allocating agencies living up to their duty to affirmatively further fair housing? Has the LIHTC program expanded or constrained housing choices for lower-income families? Has it increased, perpetuated, or reduced residential racial segregation? Do the policies established and implemented by New York’s allocating agencies lead to more or less concentrated poverty?

86. Court testimony in 2011 by HPD’s director of marketing points to the notion that the way that HPD allocated its tax credits contributed to the saturation of LIHTC projects in certain low-income neighborhoods. The director testified, “In the South Bronx the predominant product that we build there and finance there is usually pegged at 60 percent AMI, and there’s an awful lot of construction there in Bronx Community Boards 1, 2 and 3 that have that particular status, and it’s like too much of one thing in a particular area.” When asked whether the concentration of units with rents at 60% of the area median income was created by utilizing the LIHTC program, he replied, “Correct.” Broadway Triangle Community Coalition v. Bloomberg, Index. No. 112799/09 (Sup. Ct. N.Y. County)(Hearing Transcript, July 20, 2011, p. 69, lines 9-25).
The data for this report came from the three tax credit allocating agencies in the State of New York: DHCR, HFA, and HPD. The data includes information on LIHTC-subsidized developments placed into service between January 1, 1998, and December 31, 2007.

Using New York State’s Freedom of Information Law, the FHJC requested and obtained data on LIHTC developments from all three tax credit allocation agencies. The following six categories of information were requested for every LIHTC development placed in service during the specified 10-year period:

- Total number of units
- Total number of low-income units
- Whether rehabilitation or new construction development
- Whether family or elderly housing
- Whether 4% or 9% tax credits
- Street address of the development

There are two qualifications or limitations on the data obtained that require some explanation. First, to the extent that a small number of developments were categorized as “special needs housing” (e.g., homeless, disabled, etc.), these developments were counted as family developments for this analysis. Second, HPD informed the FHJC that it does not maintain data on whether its LIHTC developments are family or elderly housing. While this means that the report does not contain a breakdown of all elderly and family units in New York City, the breakdown of family and elderly housing is complete for the seven suburban counties. For the purposes of this report, all HPD units are characterized as “family” units in the following maps.

Using a geographic information system (GIS), the address of each LIHTC development was geo-coded and cross-referenced with tract-level data on race and poverty obtained from Summary File 3 of the 2000 census. Census tracts were categorized according to poverty concentration and racial/ethnic compositions, defined by the FHJC for the purposes of this report as follows:
**Poverty Concentration**

- “Low poverty” tract: less than 10% of the population lives in poverty
- “Moderate poverty” tract: between 10% and 20% of the population lives in poverty
- “High poverty” tract: between 20% and 30% of the population lives in poverty
- “Extreme poverty” tract: more than 30% of the population lives in poverty

**Racial/Ethnic Composition**

- “Minority” tract: less than 20% of residents are non-Hispanic whites
- “Predominantly minority” tract: between 20% and 50% of residents are non-Hispanic whites
- “Predominantly white” tract: between 50% and 80% of residents are non-Hispanic whites
- “White” tract: more than 80% of residents are non-Hispanic whites
DATA OVERVIEW

According to the data obtained by the FHJC from New York’s three allocating agencies, over 1,200 LIHTC properties were placed into service during the 10-year period between 1998 and 2007.\textsuperscript{87} In total, these projects comprise 69,276 housing units, of which 52,246, or 75%, are low-income units.\textsuperscript{88} Units referenced in the below analysis, in tables and on maps, are low-income units, unless otherwise specified.

Here are some key facts about the data on LIHTC units in the New York City region:

- Three quarters, or 39,011, of all low-income units were developed in New York City, and the remaining 25%, comprising 13,235 units, were created in the suburban counties.

- Almost half of all low-income units created in the suburban counties were reserved for elderly residents.\textsuperscript{89}

- Just under half of all low-income units were financed with competitive 9% tax credits, while 56% were financed with “as of right” 4% credits paired with tax-exempt bond financing.

\textsuperscript{87} In some cases, multiple “properties” may be considered part of a single development project.

\textsuperscript{88} Some sites have a mix of market-rate and low-income units.

\textsuperscript{89} As noted above, HPD, which allocates the majority of tax credits in New York City, did not provide data distinguishing elderly units from family units. Therefore, the siting of elderly versus family units is only reported here for the suburban counties.
Approximately half of all low-income units were developed as part of new construction projects, and half were rehabilitation projects.

Over half (52%) of all low-income units were financed with tax credits awarded by HPD for projects in New York City. DHCR provided credits for 32% of all low-income units, while HFA allocated credits for 16%.
The vast majority (71%) of low-income units placed into service during the study period were found to be located in areas of “high” or “extreme” poverty concentrations: 52% were in extreme-poverty tracts, and 19% were in high-poverty tracts. The remaining 29% were split equally between areas of “moderate” and “low” poverty concentration throughout the region. High- and extreme-poverty areas with the lion’s share of LIHTC units include the New York City neighborhoods of Bedford-Stuyvesant, Brownsville, Harlem, the Lower East Side, and the South Bronx, as well as parts of Hempstead, Newburgh, Poughkeepsie, and Yonkers in the suburban counties. Low- and moderate-poverty areas with substantial LIHTC developments include Chelsea and Midtown West in Manhattan, while LIHTC developments in the suburbs appear to be relatively dispersed.
NYC vs. Suburbs

The pattern is more pronounced in New York City, where 83% of all low-income units were created in high- or extreme-poverty neighborhoods, and a mere 4% were developed in low-poverty neighborhoods. By contrast, 44% of low-income units in the suburbs were sited in low-poverty neighborhoods, and only 37% were in areas of high or extreme poverty.

Family vs. Elderly

Part of the reason that the siting of LIHTC units in the suburban counties appears so much more dispersed than in New York City is due to the overwhelming number of elderly units that were developed in low-poverty suburban neighborhoods during this period. Over 60% of all suburban low-income units restricted to elderly tenants were created in low-poverty neighborhoods, while only 14% of suburban elderly units were developed in areas of high or extreme poverty. By comparison, only 25% of suburban family units were sited in low-poverty tracts, and 59% were in high- or extreme-poverty tracts.

New Construction vs. Rehabilitation

Newly constructed low-income family units were distributed similarly to family units that were part of rehabilitation projects. More than 75% of new construction family units and 80% of rehab family units were sited in areas of high or extreme poverty, while less than 25% of each type of unit was located in low- or moderate-poverty neighborhoods.

** Figures 10–14: Location of LIHTC Units by Area Poverty Concentration**

- **Total LIHTC Units**
- **NYC vs. Suburbs**
- **Family vs. Elderly**

<table>
<thead>
<tr>
<th>Population Living in Poverty in Census Tract</th>
<th>Low-Income Housing Units</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; 10%</td>
<td>7,542</td>
<td>14.4%</td>
</tr>
<tr>
<td>10-20%</td>
<td>7,505</td>
<td>14.4%</td>
</tr>
<tr>
<td>20-30%</td>
<td>9,822</td>
<td>18.8%</td>
</tr>
<tr>
<td>&gt; 30%</td>
<td>27,377</td>
<td>52.4%</td>
</tr>
<tr>
<td>TOTAL</td>
<td>52,246</td>
<td>100%</td>
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</table>

<table>
<thead>
<tr>
<th>Population Living in Poverty in Census Tract</th>
<th>NYC</th>
<th>%</th>
<th>Suburbs</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; 10%</td>
<td>1,746</td>
<td>4.5%</td>
<td>5,796</td>
<td>43.8%</td>
</tr>
<tr>
<td>10-20%</td>
<td>4,997</td>
<td>12.8%</td>
<td>2,508</td>
<td>18.9%</td>
</tr>
<tr>
<td>20-30%</td>
<td>6,488</td>
<td>16.6%</td>
<td>3,334</td>
<td>25.2%</td>
</tr>
<tr>
<td>&gt; 30%</td>
<td>25,780</td>
<td>66.1%</td>
<td>1,597</td>
<td>12.1%</td>
</tr>
<tr>
<td>TOTAL</td>
<td>39,011</td>
<td>100%</td>
<td>13,235</td>
<td>100%</td>
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</table>

<table>
<thead>
<tr>
<th>Population Living in Poverty in Census Tract</th>
<th>Low-Income Housing Units (Suburbs Only)</th>
<th>Family</th>
<th>%</th>
<th>Elderly</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; 10%</td>
<td>1,723</td>
<td>25.4%</td>
<td>4,075</td>
<td>63.1%</td>
<td></td>
</tr>
<tr>
<td>10-20%</td>
<td>1,049</td>
<td>15.5%</td>
<td>1,459</td>
<td>22.6%</td>
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</tr>
<tr>
<td>20-30%</td>
<td>2,653</td>
<td>39.2%</td>
<td>681</td>
<td>10.5%</td>
<td></td>
</tr>
<tr>
<td>&gt; 30%</td>
<td>1,351</td>
<td>19.9%</td>
<td>246</td>
<td>3.8%</td>
<td></td>
</tr>
<tr>
<td>TOTAL</td>
<td>6,776</td>
<td>100%</td>
<td>6,459</td>
<td>100%</td>
<td></td>
</tr>
</tbody>
</table>
Allocating Agencies

Differences in how New York’s three allocating agencies awarded tax credits over the 10-year period are evident, as well. Compared to DHCR and HFA, HPD made the highest proportion of its allocations in poor neighborhoods: 86% of its total low-income units were developed in areas of high or extreme poverty, and only 2% of HPD units were built in low-poverty neighborhoods. By contrast, 35% of HFA’s units were developed in low-poverty tracts, and 42% were in high- or extreme-poverty areas. DHCR fell somewhere in the middle, with 62% of its units in high- or extreme-poverty tracts and 25% in low-poverty tracts.

<table>
<thead>
<tr>
<th>Population Living in Poverty in Census Tract</th>
<th>Low-Income Housing Units (Family Only)</th>
<th>Population Living in Poverty in Census Tract</th>
<th>Low-Income Housing Units</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>New %</td>
<td>Rehab %</td>
<td>HPD %</td>
</tr>
<tr>
<td>&lt; 10%</td>
<td>2,562</td>
<td>12.9%</td>
<td>907</td>
</tr>
<tr>
<td>10-20%</td>
<td>2,383</td>
<td>12.0%</td>
<td>3,265</td>
</tr>
<tr>
<td>20-30%</td>
<td>2,297</td>
<td>11.6%</td>
<td>6,470</td>
</tr>
<tr>
<td>&gt; 30%</td>
<td>12,618</td>
<td>63.5%</td>
<td>13,915</td>
</tr>
<tr>
<td>TOTAL</td>
<td>19,860</td>
<td>100%</td>
<td>24,557</td>
</tr>
</tbody>
</table>

Figure 13

<table>
<thead>
<tr>
<th>Population Living in Poverty in Census Tract</th>
<th>Low-Income Housing Units</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>HPD %</td>
</tr>
<tr>
<td>&lt; 10%</td>
<td>556</td>
</tr>
<tr>
<td>10-20%</td>
<td>3,292</td>
</tr>
<tr>
<td>20-30%</td>
<td>4,527</td>
</tr>
<tr>
<td>&gt; 30%</td>
<td>18,893</td>
</tr>
<tr>
<td>TOTAL</td>
<td>27,268</td>
</tr>
</tbody>
</table>

Figure 14
Housing Finance Agency Allocations by Area Poverty Concentration (New York City)

1 Dot = 1 LIHTC Property
- HPD-Financed
- DHCR-Financed
- HFA-Financed

Percent of the Population Living in Poverty
- <10%
- 10–20%
- 20–30%
- >30%

Source: U.S. Census, 2000; DHCR; HFA; HPD

Map 7
Over three-quarters, or 77%, of all low-income units placed into service during the study period were located in census tracts defined for the purposes of this study as “minority” or “predominantly minority”: 65% were in minority and 12% were in predominantly minority neighborhoods. Less than 8% of all low-income units were developed in “white” neighborhoods.

Map 8

Source: U.S. Census, 2000; DHCR; HFA; HPD
Housing Finance Agency Allocations by Area Racial Composition (New York City)

1 Dot = 1 LIHTC Property
- HPD-Financed
- DHCR-Financed
- HFA-Financed

Percent Non-Hispanic White Population
- <20%
- 20–50%
- 50–80%
- >80%

Source: U.S. Census, 2000; DHCR, HFA, HPD

Map 10
NYC vs. Suburbs

The pattern is amplified in New York City, where 88% of all low-income units were developed in minority or predominantly minority neighborhoods. Less than 2% of low-income units were created in white tracts, and less than 11% were developed in predominantly white tracts. In the suburban counties, by contrast, LIHTC units were more evenly distributed, with 54% of all low-income units developed in white or predominantly white neighborhoods and 46% in minority or predominantly minority tracts.

States that collect racial occupancy data report that the percentage of racial minorities residing in LIHTC units is significantly higher than the percentage of racial minorities in the general population. There is no reason to believe the pattern is any different in the New York City region. This is particularly true in New York City, where developers are required by HPD to apply a preference for renting 50% of low-income units to current residents of the community district where the housing is located. Since nearly 90% of the LIHTC units created in New York City from 1998 through 2007 were located in minority or predominantly minority areas, it is reasonable to conclude that low-income minority renters are likely to occupy a majority of these units. These families have few options to live outside of high-poverty, minority areas.

Family vs. Elderly

Again, while the siting of LIHTC units in the suburbs appears more evenly dispersed than in New York City, this observation must be qualified by the fact that most of the low-income units that were developed in white or predominantly white suburban neighborhoods were

Figures 15–19: Location of LIHTC Units by Area Racial/Ethnic Composition

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90. Horn and O’Regan. 2011. 21-23, Table 3.
elderly units. Approximately 74% of all elderly low-income units were created in white or predominantly white suburban tracts. The inverse is true for family units, where 36% of family units were created in white or predominantly white suburban tracts and 64% were located in minority or predominantly minority tracts.

**New Construction vs. Rehabilitation**

As in the analysis by poverty concentration, there was little distinction between the siting of newly constructed family units and rehabilitation family units. More than three-quarters of both project types were sited in minority or predominantly minority tracts. Less than 20% of new family units and only about 15% of family rehab units were created in white or predominantly white areas.

**Allocating Agencies**

The vast majority (91%) of HPD units were sited in minority or predominantly minority areas, and 9% were located in white or predominantly white neighborhoods. By contrast, just over half of HFA’s units were developed in white or predominantly white tracts. DHCR’s allocations again split the middle: more than two-thirds of its units were in minority or predominantly minority tracts, and nearly a third were created in white or predominantly white tracts.
Conclusions and Recommended Action Steps

This report finds that affordable family housing units produced with Low Income Housing Tax Credits in the 12-county region were concentrated in poor and predominantly minority neighborhoods, mostly in New York City. This is problematic for two reasons. First, government policies that intentionally or effectively limit housing choices available to lower-income minority families, maintain residential racial segregation, and increase poverty concentration run afoul of the duty to affirmatively further fair housing under the Fair Housing Act. Second, apart from the need to comply with civil rights laws, the growing body of evidence in social science research indicates that public policies are needed to provide lower-income minority families with greater choice, including the opportunity to access housing in low-poverty areas that frequently offer greater employment opportunities, high-quality educational opportunities, access to better healthcare, and a host of other life opportunities, benefits, and amenities.

Specific policies maintained by the U.S. Department of Treasury and New York’s three housing finance agencies should be reviewed and amended to ensure that the LIHTC program operates in a manner that:

1. Complies with the federal Fair Housing Act and the duty to affirmatively further fair housing;
2. Expands housing choice for lower-income and minority family households;
3. Deconcentrates poverty and reduces residential racial segregation;
4. Proactively identifies and eliminates barriers to developing tax credit housing for families in low-poverty areas; and
5. Provides incentives to promote the development of mixed-income housing that includes both affordable and market-rate units.

The following recommendations contain both procedural and substantive advice, while some are also remedial. Given the extent to which the placement of LIHTC developments has limited the housing and locational choices available to low-income minority families in the past, corrective steps must be taken in the future to produce a more balanced distribution of affordable housing units throughout the region.

RECOMMENDATIONS FOR U.S. DEPARTMENT OF TREASURY

Treasury needs to promulgate civil rights regulations to govern its programs that finance the production of affordable housing, including the Low Income Housing Tax Credit program. These regulations should:

- Encourage the siting of family developments so that they expand housing choices available to lower-income families, by ensuring that affordable housing is developed in low-poverty areas.
• Mandate the use of affirmative marketing and tenant selection plans to ensure that affordable housing developed under Treasury programs is operated in an inclusive and nondiscriminatory manner that, among other things, attracts populations least likely to apply.  

• Impose a duty on each housing finance agency to collect and maintain occupancy data by site on race and national origin, as well as the number of households using Housing Choice Vouchers.

• Require that each housing finance agency establish and maintain an enforcement mechanism to ensure that LIHTC developments are not refusing to rent to applicants with Housing Choice Vouchers.

• Define the essential elements of a “concerted community revitalization plan.” Any plan should place a high burden on the developer to show how the proposed housing will contribute to revitalization and explain how it is objectively achievable within a specific time frame.

Treasury should also work with HUD and the Department of Justice to fully implement all provisions of the interagency Memorandum of Understanding (LIHTC MOU) on the Low Income Housing Tax Credit program that was signed in August 2000.

RECOMMENDATIONS FOR NEW YORK TAX CREDIT ALLOCATION AGENCIES

The three tax credit allocation agencies that serve the New York City region need to:

• Maintain records showing whether affordable housing developments that have been awarded federal and/or state tax credits are family or elderly housing.

• Review data on the location of federal and state LIHTC family and elderly developments based on area poverty rates and racial composition, on an annual basis, to evaluate whether the LIHTC programs are affirmatively furthering fair housing. Conduct a similar review of the location of housing developments supported by the state affordable housing trust fund.

• Require owners of affordable housing developments awarded federal and/or state tax credits to collect and maintain occupancy and applicant data by race and national origin, as well as the number of households using Housing Choice Vouchers.

• Review occupancy and applicant data collected by owners to evaluate whether LIHTC housing is being provided on a nondiscriminatory basis and whether the LIHTC programs are affirmatively furthering fair housing.

• Conduct on-site inspections of newly constructed affordable housing developments to ensure compliance with state and federal accessibility requirements.

92. For a more detailed discussion of recommendations for marketing and tenant selection in the LIHTC program, see Megan Haberle, Ebony Gayles, and Philip Tegeler, December 2012, Accessing Opportunity: Affirmative Marketing and Tenant Selection in the LIHTC and Other Housing Programs, PRRAC Policy Brief.

93. The LIHTC MOU commits the three federal agencies to enhanced and coordinated FHA enforcement activities: fair housing training for state housing finance agencies, developers, tax credit syndicators, architects, and others; interagency cooperation on research, technical assistance, and eliminating unlawful barriers to housing choice voucher holders; annual interagency meetings to discuss efforts to increase civil rights compliance; and other similar activities. Letters sent to Treasury, HUD, and Justice in recent years by civil rights organizations indicate that the agencies have failed to fulfill these commitments. See “Civil Rights Mandates in the Low Income Housing Tax Credit Program” at http://www.prrac.org/full_text.php?text_id=1035&item_id=9104&newsletter_id=0&header=Current%20Projects (2013).
• Utilize fair housing testing to monitor compliance with fair housing laws.

• Incorporate threshold criteria into each QAP\textsuperscript{94} that:
  - Prohibits the use of residency preferences or community board preferences unless a demographic analysis provided by the developer demonstrates that the application of such preferences will not discriminate and/or perpetuate residential racial segregation;
  - Requires applications to include a detailed affirmative marketing plan designed to attract populations least likely to apply; and
  - Ensures an application will be considered even if local officials state their opposition to or fail to indicate their support for a particular project.

• Incorporate substantial scoring incentives in each QAP and provide a multiplier as part of a project’s qualified basis to encourage the development of:
  - Family housing in low-poverty and non-minority areas;
  - Mixed-income housing (market-rate and low-income units);
  - Family housing in areas with no concentration of LIHTC family housing or other subsidized family housing units; and
  - Family housing in areas where land costs are higher.

• Eliminate scoring incentives for local government approval or support.

• Limit scoring incentives for affordable housing developments in QCTs, and include a revitalization component with a very high threshold, to make it unlikely that such housing would further concentrate poverty or perpetuate residential racial segregation.

It is also strongly recommended that the three tax credit allocation agencies in New York meet periodically to share information, analyze aggregate data on affordable housing developments by poverty and racial composition of areas, and assess their progress in affirmatively furthering fair housing in the region.

* * *

Most of the affordable housing units produced between 1998 and 2007 with federal tax credits in the New York City region were located in predominantly minority areas with higher poverty rates. Given this concentration, eligible minority families were presented few opportunities to move to low-poverty areas that may have provided greater educational, employment, and other opportunities. A central question raised by this report is whether the Department of Treasury and the three New York tax credit allocation agencies have been meeting their duty to affirmatively further fair housing. The report provides no evidence that the LIHTC program has reduced residential racial segregation or expanded the range of housing choices available to lower-income minority families.

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