



# Fair Housing

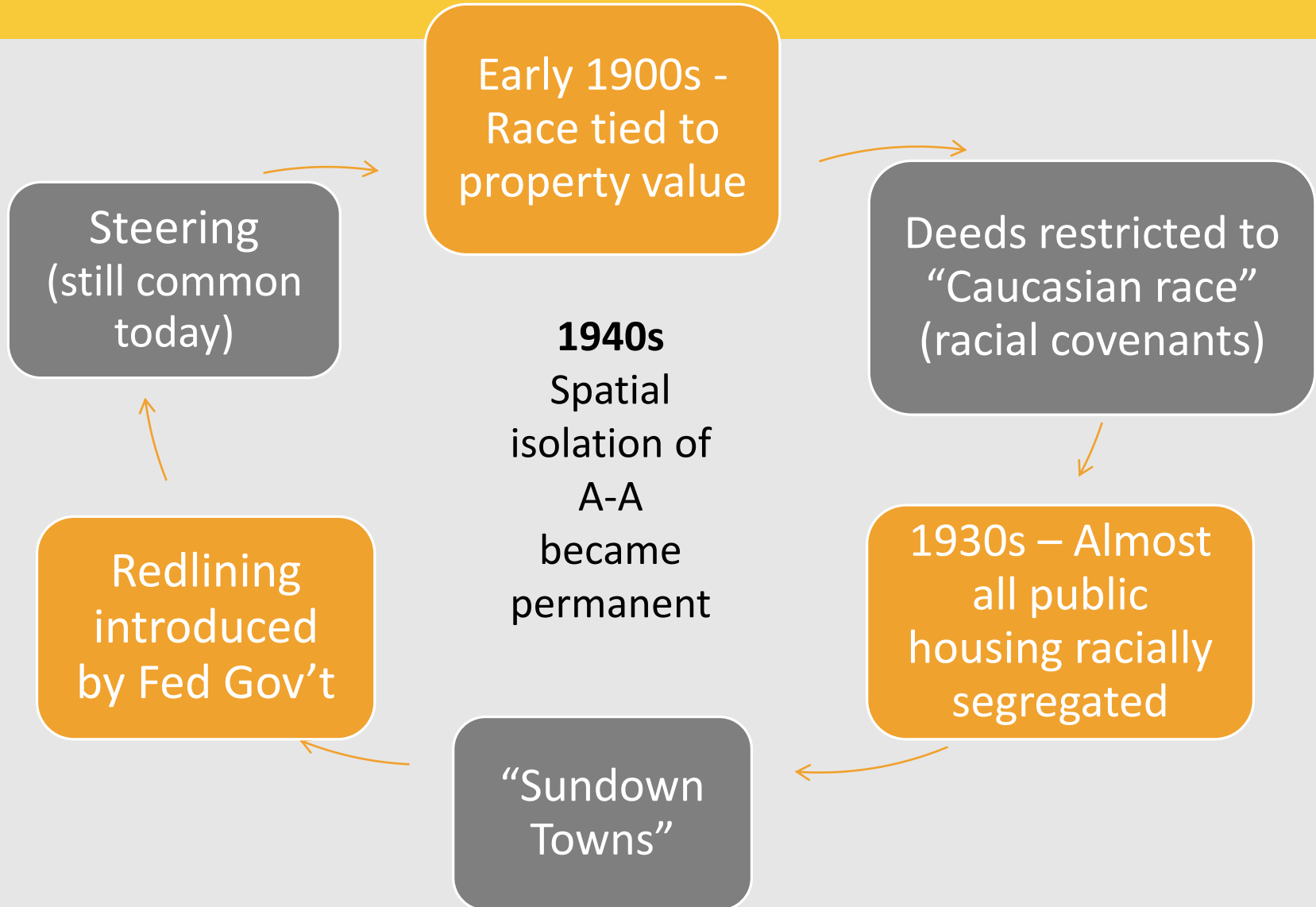
why, what and now

Shelly Goehring  
Program Manager

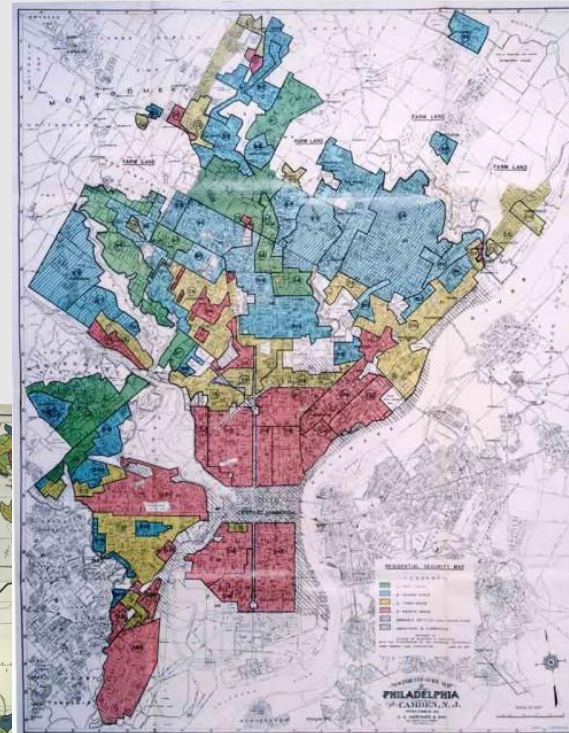
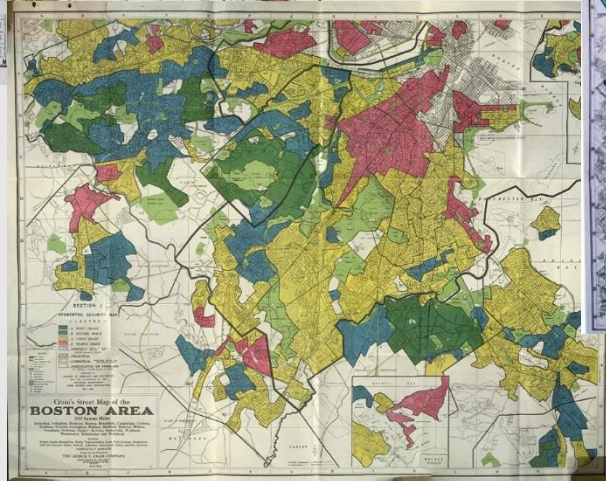
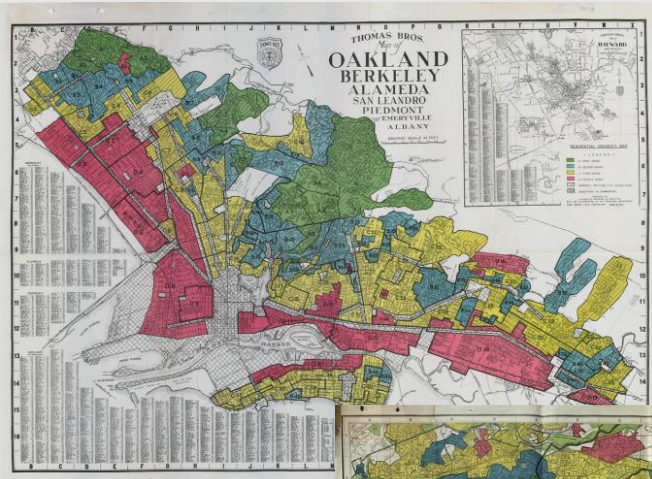




# (un)Fair Housing race



# Federal Government institutionalized racism and segregation -- REDLINING



Home Owners'  
Loan Corporation

## LEGEND

	HOUSING INVENTORY
	BEST
	STILL DESIRABLE
	DECLINING
	HAZARDOUS
	FUTURE DEVELOPMENT
	"
	BUSINESS & INDUSTRY

# FHA Underwriting Manual 1936

## Rating of Location: Protection from Adverse Influences

233. The Valuator should investigate areas surrounding the location to determine whether or not incompatible racial and

Part II  
233-235

### UNDERWRITING MANUAL

social groups are present, to the end that an intelligent prediction may be made regarding the possibility or probability of the location being invaded by such groups. If a neighborhood is to retain stability it is necessary that properties shall continue to be occupied by the same social and racial classes. A change in social or racial occupancy generally leads to instability and a reduction in values. The protection offered against adverse changes should be found adequate before a high rating is given to this feature. Once the character of a neighborhood has been established it is usually impossible to induce a higher social class than those already in the neighborhood to purchase and occupy properties in its various locations.

# (un)Fair Housing disability

1800s

**People w/  
disabilities  
seen as:**

Tragic  
Pitiful  
Unfit &  
unable to  
contribute to  
society

**Forced into  
institutions**

1930s

New  
technolog  
y + gov't  
assistance  
=  
greater  
self  
sufficiency

1940/50s

WWII vets  
put  
pressure  
on gov't for  
more  
support

**Still no  
access:**

Public  
transit  
Telephone  
Bathrooms  
Stores

1973

**Rehabilitation  
Act was  
passed**

1<sup>st</sup> time civil  
rights of  
people  
w/disabilities  
were  
protected by  
law

1975

**Education  
for all  
Handicapped  
Children Act  
passed**

In 1990,  
renamed  
Individuals  
w/Disabilities  
Education Act

Approx.  
1,000,000  
children were  
excluded from  
public school

1990

**Americans  
with  
Disabilities  
Act (ADA)  
was passed**

Broad civil  
rights act  
for people  
with  
disabilities

# Accessible units

**2011**  
**740,000**  
persons with  
disabilities of  
all types living  
in MA

Source: Census estimates



**Assisted  
Housing**  
**8,307** units  
for mobility  
**3,969** units  
for sensory

Source: 2011 MA  
Housing Data Collection



# (un)Fair Housing





# Policy efforts to reverse discrimination

**1968** Federal Fair Housing Act

**1969** MA Chapter 40B

**1977** Community Reinvestment Act



# A Renewal of Fair Housing:

Current Developments and Considerations



# Key Fair Housing Laws – Protected Classes

## **Federal (Fair Housing Act)**

- Race
- Color
- National Origin
- Religion
- Sex
- Familial Status
- Disability

## **State (M.G.L. c. 151B)**

All federal bases plus:

- Ancestry
- Age
- Marital Status
- Source of Income/Public Assistance
- Sexual Orientation
- Gender Identity
- Veteran History/ Military Status
- Genetic Information

# Recent Landmark Fair Housing Developments

- The Discriminatory effects/disparate impact legal theory for housing discrimination, historically recognized by federal courts and codified by HUD in 2013, has been affirmed by the U.S. Supreme Court and the Massachusetts Supreme Judicial Court.
- HUD imposed and expounded on the duty to Affirmatively Further Fair Housing through new federal regulations.

# HUD Discriminatory Effects Rule

## Key analysis:

- Is it likely that the policy or practice will negatively impact members of a protected class?
- Does the policy or practice have a necessary and manifest relationship to legitimate, non-discriminatory interests?
- Could those interests be served by another policy or practice that has a less discriminatory effect?

[See HUD's "Implementation of the Fair Housing Act's Discriminatory Effects Standard," Final Rule (February 15, 2013) for further discussion and the complete discriminatory effects standard]

# Key Recent Cases on Disparate Impact

## *Texas Department of Housing & Community Affairs v. The Inclusive Communities Project, Inc.* (2015)

- Case involving Texas' allocation of Low Income Housing Tax Credits in racially and ethnically concentrated areas and the disparate impact on racial/ethnic minorities was reviewed by the Supreme Court, which upheld the disparate impact theory of discrimination under the federal Fair Housing Act.
- The Supreme Court noted that the language of the FHA recognizes disparate impact and that the purpose of the FHA “was ... to eradicate discriminatory practices within a sector of our Nation’s economy.”
- The court specifically identified “zoning laws and other housing restrictions” as “unfairly ... exclud[ing] minorities from certain neighborhoods without any sufficient justification” as a core example of disparate impact and a practice that the FHA sought to prevent.
- The court also stated that if the defendant offers a legitimate business justification, a plaintiff must prove that “there is ‘an available alternative ... practice that has less disparate impact and serves the [entity’s] legitimate needs.”

# Key Recent Cases on Disparate Impact

*Burbank Apartments Tenant Association v. Kargman* (SJC 2016)

- Massachusetts Supreme Judicial Court affirmed the dismissal of Plaintiff's discrimination claim against Burbank Apartments for failing to renew its project-based Section 8 housing assistance payments contract with HUD. The tenant and waiting list applicants were disproportionately comprised of racial/ethnic minority group members.
- The court recognized the disparate impact theory of discrimination under the state law, M.G.L. c. 151B.
- However, the court found that the claim in this case was speculative and indefinite and failed to meet the "robust causality requirement," citing to the Supreme Court's *Inclusive Communities* decision.

# Inferring Discriminatory Intent of Government Action from Community Opposition

*MHANY Management, Inc. v. County of Nassau* (2<sup>nd</sup> Cir. 2016)

- Federal appeals court upheld the ruling of intentional discrimination against Garden City. In response to community opposition, Garden City enacted a zoning change in favor of townhouses and single-family homes, rather than the originally proposed multifamily housing.
- This case reaffirms that municipalities can be held liable for intentional discrimination when acting in response to community opposition that is rooted in discriminatory animus.



# Inferring Discriminatory Intent of Government Action from Community Opposition

- The court noted that discriminatory animus may be proven through circumstantial evidence, including the use of code words.
  - The court cited to research revealing that "people believe that the majority of public housing residents are people of color, specifically, African-American" and that that "[o]pponents of affordable housing provide subtle references to immigrant families when they condemn affordable housing due to the fear it will bring in 'families with lots of kids.'"
  - The court also cited to statements of Garden City residents urging the local Board of Trustees to "keep Garden City what it is" and to "think of the people who live here."

# Common local practices that may have exclusionary and discriminatory effects:

- Excluding multifamily housing entirely
- Restricting multifamily housing to seniors only
- Large minimum lot size (1 or 2 acres) per dwelling unit
- Restricting number of bedrooms in dwelling units to 2 bedrooms or less
- Small maximum total gross floor area per lot of residential dwellings and accessory buildings
- Local preferences
- Excessive fees for multifamily housing, often imposed in the form of:
  - Large comprehensive permit fees, disproportionate to other fees for permit applications
  - High fees for special permits relating to housing development
  - Development impact fees disproportionate to actual impact of development on community

# Affirmatively Furthering Fair Housing

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

Affirmatively Furthering Fair Housing Final Rule June 16, 2015

# AFFH Final Rule

Certification to AFFH means:

1. Will take meaningful goals identified in AFH
2. Will take no action that is materially inconsistent with obligations in AFFH
3. Will assure units of local government funded by state comply with their certifications (state jurisdictions)

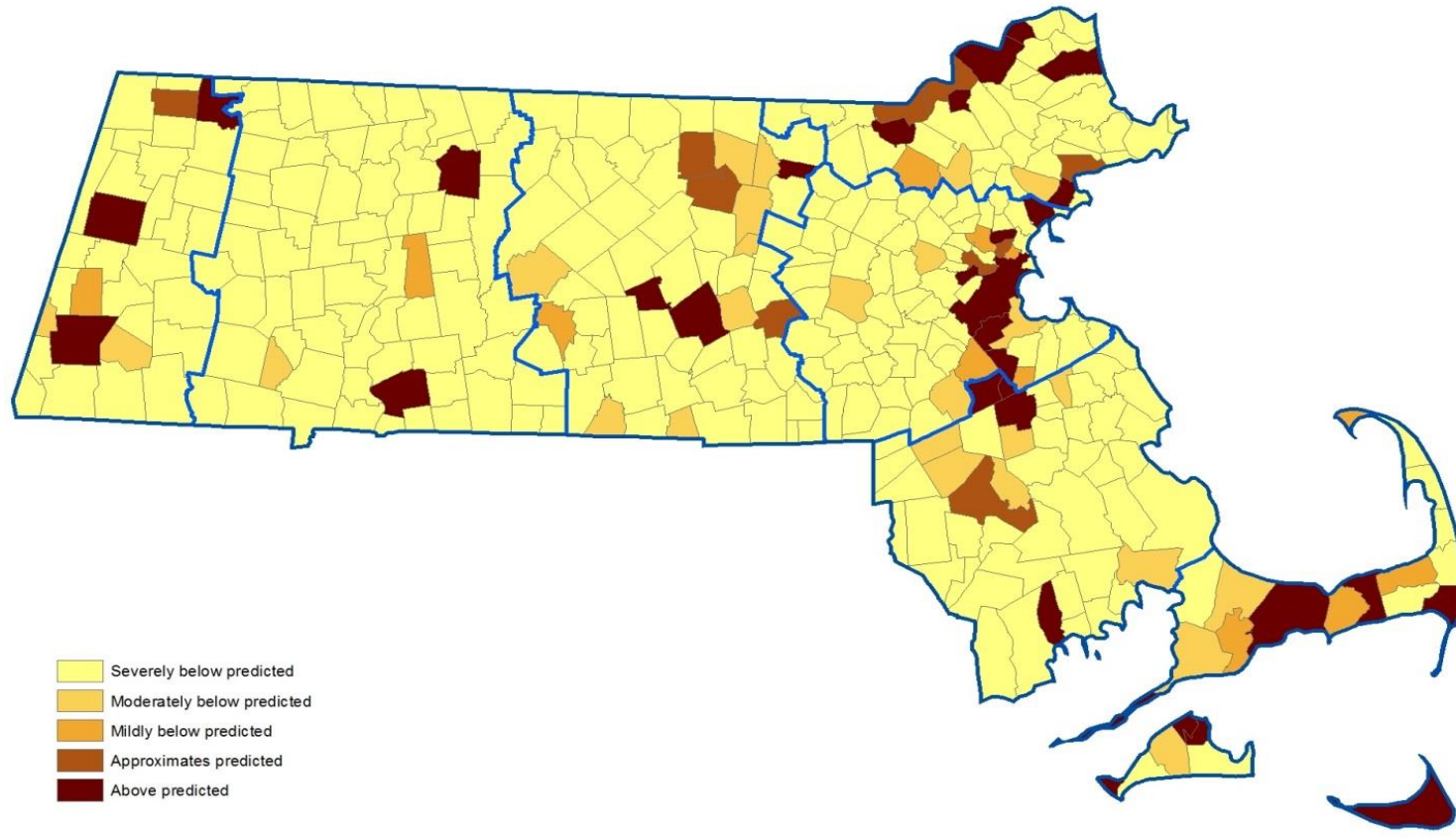
# AFFH Final Rule

## Assessment of Fair Housing:

- Demographic Summary
- Fair Housing Issues (and contributing factors)
  - Segregation/Integration
  - Racially and Ethnically Concentrated Areas of Poverty
  - Disparities in Access to Opportunity
  - Disproportionate Housing Needs
- Publicly Supported Housing
- Disability and Access
- Fair Housing Enforcement, Outreach Capacity, and Resources

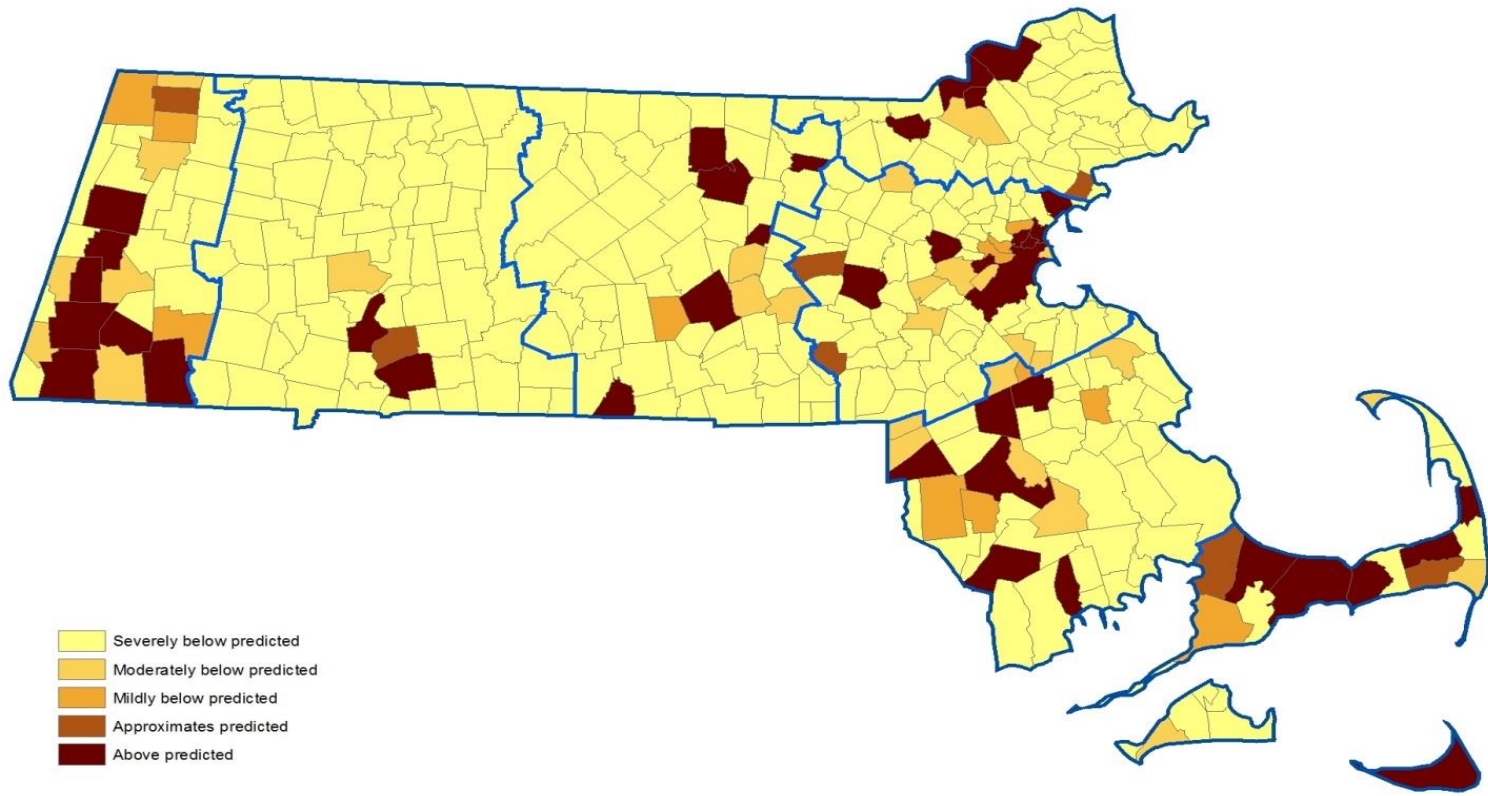
# Actual v. Predicted Share of Population, African American

2010 Census; 2005 - 2009 CHAS tabulations



# Actual v. Predicted Share of Population, Latino

2010 Census; 2005 - 2009 CHAS tabulations



# AFFH Final Rule

## Examples of contributing factors to Fair Housing Issues:

- Community opposition
- Displacement of residents due to economic pressures
- Lack of community revitalization strategies
- Lack of private investments and public investments in specific areas
- Lack of State, regional, or other inter-governmental cooperation
- Land use and zoning laws
- Location of affordable housing
- Availability of affordable units in a range of sizes
- Admissions and occupancy policies and procedures, including method of selection and preferences in publicly supported housing



# AFFH Final Rule

- Examples of contributing factors to Fair Housing Issues:
  - Access to publicly supported housing and transportation for persons with disabilities
  - Lack of affordable, accessible housing in a range of sizes
  - Location of accessible housing
  - Lack of affordable, integrated housing for individuals who need supportive services
  - Inaccessible government facilities or services
  - Lack of fair housing enforcement/enforcement resources
  - Private discrimination, including lending discrimination

# AFFH and Affordable Housing

- Providing affordable housing does not by itself AFFH and cannot purport to if fair housing protected classes are not taken into account.
- However, the provision of affordable housing is often necessary to address the disparate impact that limited affordable and multifamily housing has on protected classes and housing choices available to them.
- Other considerations, e.g.: affirmative fair marketing, use of local preference, diversity of housing types (design as well as households to be served served)

# AFFH and Affordable Housing

Case in point: *U.S. ex rel. Anti-Discrimination Center of Metro New York, Inc. v. Westchester County* (2009)

- Consideration merely of need for affordable housing for low-income households is inadequate (county certified AFFH but failed to address racial/ethnic segregation in its Analysis of Impediments to Fair Housing and to take steps to overcome it).
- \$30 million settlement with U.S. government included remedy for development of 750 units of affordable housing in 31 mostly White communities over 7 years.

# AFFH and State Policies

- The state must consider whether policies AFFH and whether they perpetuate segregation or disparately impact protected classes.
- Policies can help communities further mutual fair housing obligations and goals.

# State Action and AFFH: Qualified Allocation Planning

- ▶ Priority funding categories under the Low Income Housing Tax Credit Qualified Allocation Plan include family projects located in an “area of opportunity” (i.e., a neighborhood or community with a relatively low concentration of poverty that offers access to opportunities such as jobs, health care, higher performing school systems, higher education, retail and commercial enterprise, and public amenities).
- ▶ To ensure a balanced approach, projects in low-income communities will also be prioritized where housing development is demonstrably part of a larger effort to expand access to jobs, education, transportation and other amenities to enhance residents’ access to opportunity.

# State Action and AFFH: DHCD Affirmative Fair Housing Marketing and Resident Selection Plan Guidelines

Privately (state) assisted housing and/or housing for inclusion on DHCD's SHI must have an affirmative fair housing marketing and resident selection plan consistent with DHCD guidelines.

Examples: developments under 40B, 40R, or inclusionary zoning approved and/or financed through DHCD, MHP, MassHousing, or MassDevelopment (HUD also requires AFHMPs for projects it funds).

[<http://www.mass.gov/hed/docs/dhcd/legal/comprehensivepermitguidelines.pdf> (section III of Comprehensive Permit guidelines); also available at <http://www.mass.gov/hed/docs/dhcd/hd/fair/afhmp.pdf> ]

# State Action and AFFH: Three Bedroom Policy

Diversity of bedrooms sizes in development is needed to ensure that families with children are adequately served.

The state expanded housing opportunities for families with children by incorporating a 3 bedroom requirement into housing funding programs through an Interagency Agreement ([http://www.mass.gov/hed/docs/dhcd/hd/fair/family\\_housing\\_interagencyagreement.pdf](http://www.mass.gov/hed/docs/dhcd/hd/fair/family_housing_interagencyagreement.pdf) ). Generally, 10% of units must have 3+ bedrooms under the agreement.

# Local Action and AFFH: Preventing Disparate Impact

- Avoid zoning bylaws that limit the number of 3+ bedroom units or that limit the number of bedrooms by unit rather than by development or lot.
- Consider the need for unrestricted housing, including regional need, when making zoning and permitting decisions and/or pursuing age-restricted housing.
- Refrain from seeking unlimited local residency preferences (or preferences that are not limited to have the least discriminatory effect) for affordable housing development in communities that are not representative of protected classes compared to the region and state.
- Ensure planning or zoning approval processes provide for accessibility in development rather than mandating or prioritizing townhouses or housing types that would be exempt from accessibility code requirements.



# Local Action and AFFH: Planning and Practice

- Assess determinants of fair housing issues and develop fair housing goals and priorities
- Analyze rules, policies and procedures, including conditions on zoning permits, for potential disparate impact or perpetuation of segregation
- Integrate regional needs and fair housing considerations into municipal planning to foster a more inclusive community
- Rethink conditions on zoning permits
- Prioritize local resources and leverage regional resources to further housing opportunities for protected classes
- Ensure that civic engagement is inclusive of protected classes in the community and the regional area



# Are we welcoming to “absolutely everyone?”

**"Massachusetts has a history of being a welcoming community for absolutely everyone.**

We have a chance to once again clearly and loudly proclaim that everyone is welcome here in Massachusetts."

**"There is no sentiment in this chamber that would harbor, condone or accept discrimination against any member of this commonwealth or of our society."**

# (un)Fair Landscape in 2016

Toyota will compensate borrowers to settle bias in

How Toyota May Have Started Overcharging

Zoning discrimination ruling against Garden City affirmed

Updated March 23, 2016 5:36 PM

Court restores claim that Yu housing plan for racial reasons



Local zoning undermines affordability, perpetuates segregation

Real Estate Special Report

Bankruptcy: Fed's rap Fifth Third for car loans, credit cards

mortgage refinancing

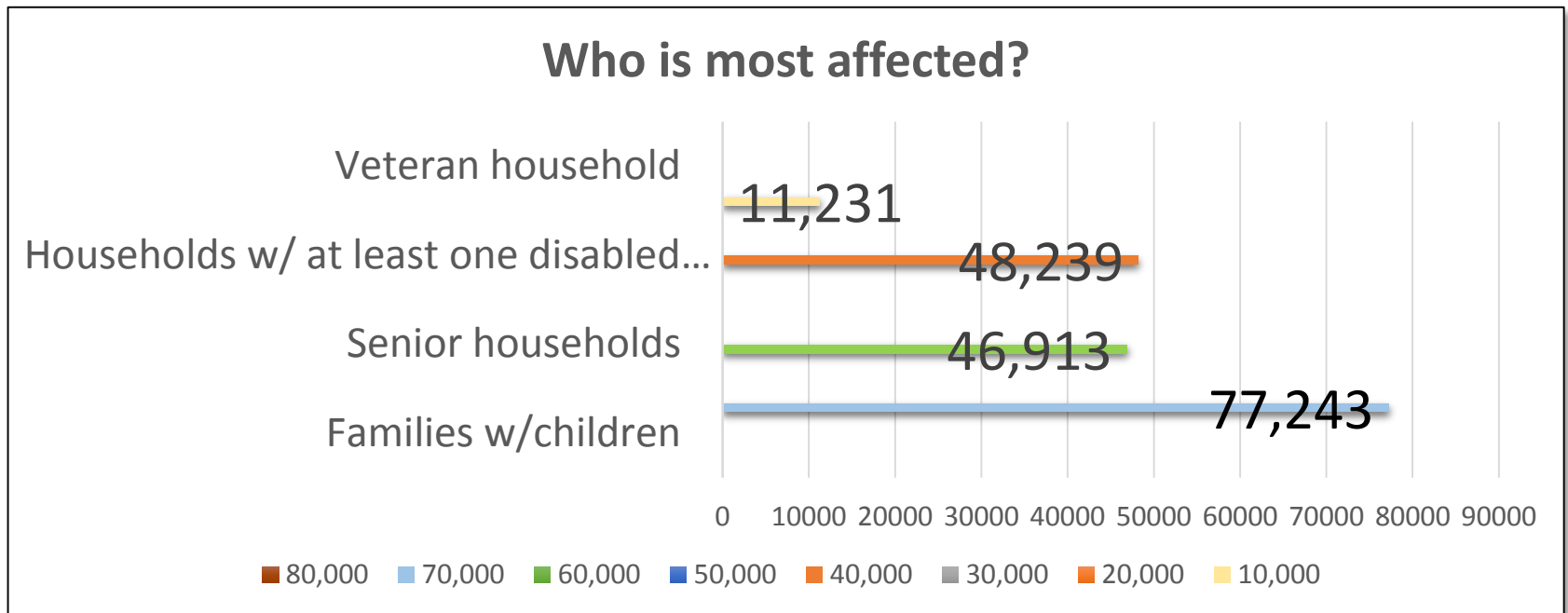


Alexander Coolidge, [acoolidge@enquirer.com](mailto:acoolidge@enquirer.com)

11:13 a.m. EDT September 29, 2015

# Make Room

26% of MA renter population pays at least half of income on rent.



# “The need for workers...it’s epidemic”

Acton



Staffing one of  
biggest challenges



Hiring for all  
positions, but host



Hourly workers

Low local  
unemployment



Pulling from  
20 min away



Transportation  
costs



Difficult to fill  
hourly  
positions

# Top 5 jobs for MA distressed renters



29,170  
office and admin.  
workers



24,723  
food service  
employees



19,445  
building and  
maintenance workers



18,258  
personal care and  
child care workers



18,153  
transportation  
workers



# Human created = Human solutions

**"History is a harsh judge, but the history of civil rights in this state and frankly in this country is fairly clear – it is a slow and steady, sometimes faltering, sometimes hard struggle forward."**





# Questions?

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