Dynamics of Housing Development and Federal Funding Relationship: Based on the Study of Housing Discrimination, Fair Housing Act, Disparate Impact Cases and Impact on the African American Population

SPECIAL FOCUS ON TDHCA V. ICP CASE, DALLAS AND LIHTC

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ABSTRACT

Housing Discrimination has a profound and a lasting impact on its victims, as access to housing affects not only where individuals and families live, but the education, employment and other opportunities that are available to them. Neighborhoods and schools that lack diversity because of housing discrimination harm all of us and are inconsistent with the principles upon which the nation was founded (U.S. HUD Annual Report, 2012-13). A house is more than a home – it is an address, and addresses are indicators of social position (Van Dijk and Fransen, 2008; Fildes, 1997). This paper will demonstrate the dynamics of the relationship between housing development and federal funding based on the study of housing discrimination, disparate impact, Fair Housing Act and impact of housing policies on minorities. The methods used in this paper are extensive literature reviews and archival research methods. The motive of this paper is to establish the Right to Housing as a part of basic human needs of food, clothing and shelter. An introduction of the housing problem is presented. The paper evolves to explain why Housing is a right more than a necessity under the U.S. Constitution.

The premise of the paper is first to discuss the relation between Foreclosure Crisis and Disparate Impact. Second, how is it more likely to affect the minority, especially the African American population. Third, the consequences of disparate impact liability on society and effects of disparate impact liability on the insurance markets if disparate impact was enforced the way it should have been. Fourth, how communities of color and low-income can be made more resilient and to discuss possible capacity building strategies with a special focus on the Texas Department of Housing and Community Affairs v. Inclusive Communities Project case and Dallas, Texas. Fifth and last to incite a discussion on why new cases are born and are thriving even with legal implications and
complexities present. This paper will also demonstrate the role of Disparate Impact Liability on Housing Discrimination by critical analysis of the Fair Housing Act and Affirmatively Furthering Fair Housing. United States Housing and Urban Development's Affirmatively Furthering Fair Housing rule provides an effective planning approach to aid program participants in taking meaningful actions to overcome historic patterns of segregation, promote fair housing choice, and foster inclusive communities that are free from discrimination (HUD Exchange). The paper establishes its agenda with 7 landmark disparate impact cases, the TDHCA v. ICP case, opportunity maps and dot density maps of housing segregation and racial segregation.

The scope of housing studies is much wider than housing policy, but policy presents a powerful magnet for those who wish to understand the nature of housing provision. Hence, to understand the nature of housing policy it is appropriate to consider the nature of housing problem. This paper concludes to evaluate questions about the preeminent dangers of an arriving crisis and in turn its adverse impacts in terms of homelessness, extreme poverty and a fall in homeownerships. The paper uses data from peer reviewed journals and organizations with nonpartisan values and high intellectual capacities in their respective fields of research. The paper emphasizes on federal funding reports and allocation data to analyze the funds allocated for housing policy agenda of LIHTC, and the consequential spending. The demand and supply of housing provision is explained with money/costs as a unit to measure discrimination. The paper also concludes with remarks on the future of housing policies under the current administration. Recommendations such as oversight and compliance reviews derived from HUD Reports and peer-reviewed journals on subjects such as Congressional Oversight, Incrementalism, integration of communities and LIHTC are presented. The Incremental Model of public policy formation is proposed, examined and
discussed. The advantages of incrementalism with respect to its associated dangers are discussed. The paper analyses the problem of time and other variants in the implementation of the Incremental Model. It proceeds to explain why *just* Incrementalism. Lastly, this paper will also demonstrate the associated dangers of incrementalism through citing contemporaneous examples and reading references. It discusses feasible recommendation from the implementation and evaluation perspectives.
The American Dream

Segregation by race, ethnicity, and income characterizes the socio-spatial structure of our metropolitan areas and indicates uneven access to social, economic, and educational opportunities. Racial segregation has declined over the past 40 years, but is still significant, especially for African Americans (Charles, 2003). Patterns of racial and economic segregation are widely recognized and documented, but spatial clustering is less so. Moreover, the role that the distribution of housing plays in facilitating these spatial distributions in housing is often overlooked (Galster and Cutsinger, 2007). A house is more than a home – it is an address, and addresses are indicators of social position (Van Dijk and Fransen, 2008). Neighborhoods and schools that lack diversity because of housing discrimination harm all of us and are inconsistent with the principles upon which the nation was founded (U.S. HUD Annual Report, 2012-13).

Studies have also established a relationship between poverty concentrated areas and health problems of the residents located in segregated areas (Thompson v. HUD, 348 F. Supp. 2d 398; D. Md. 2005). Data has overwhelmingly shown that high poverty concentrated areas are also disproportionately minority and subsidized housing concentrated areas are often plagued with maladies such as high crime rates and poor schools (Department of Housing and Community Development - Massachusetts, Affirmative Fair Housing and Civil Rights Policy, 2005). A diverse and inclusive environment not only empowers the minority in terms of opportunities of jobs, education and healthcare, but also enables a better economy for all.

Discrimination enters numerous areas of economic life. Caccavallo says that many markets besides housing are affected by racial discrimination; labor, transportation and economic services (Caccavallo, 1981). In 2014, the American public reported 27,528 complaints of housing
discrimination from around the country, a slight increase over the level in 2013. Private groups of rental markets reported 17,105 complaints. Discrimination on the basis of disability represented 51.8 percent of all complaints, while discrimination on the basis of race represented 22 percent of all complaints. United States Housing and Urban Development’s Affirmatively Furthering Fair Housing rule provides an effective planning approach to aid program participants in taking meaningful actions to overcome historic patterns of segregation, promote fair housing choice, and foster inclusive communities that are free from discrimination (U.S. Housing and Urban Development Exchange Report). Since 1968, the Fair Housing Act has prohibited discrimination in the sale, rental or financing of dwellings and in other housing-related activities based on a race, color, religion, sex, disability, familial status or national origin. The disparate impact rule was added to the Fair Housing Act by the U.S. Department of Housing and Urban Development (HUD) in recent years (Credit Union National Association, 2015). Nikitra Bailey, Executive Vice President at Center for Responsible Lending, said in her statement to the Supreme Court said that disparate impact is an important tool that policymakers and courts can use to address the well-documented and widespread discrimination that continues to persist in the housing and finance markets; eliminating this tool would be tantamount to turning a blind eye to the unfair treatment that many unfortunately experience.

**Housing is Opportunity**

In 1968 and today, people of color are too often geographically isolated from opportunities like good schools, decent jobs, and quality health care. The Fair Housing Act was designed to topple the arbitrary obstacles that lead to that social isolation, whether by design or in practice. When those obstacles fall, our entire nation benefits through greater and more equal opportunity and
socio-economic status. A fortification of the FHA would foster higher economic growth if discrimination was measured in terms of human capital and money/costs variables (Gary Becker, Noble Prize Economist). Gary Becker and Jacob Mincer say that human capital refers to the stock of knowledge, habits, social and personality attributes, including creativity, embodied in the ability to perform labor so as to produce economic value.

**A House Is More Than A Home**

Recent efforts to better understand the mechanisms underlying socioeconomic inequalities in health have lead to the development of some innovative area level indicators that use aspects of housing. For example, a “broken windows” index measured housing quality, abandoned cars, graffiti, trash, and public school deterioration at the census block level in the USA (Cohen D, Spear S, Scribner R. et al., 2000). Similarly, an indicator of the “social standing of the habitat” combined characteristics of the building, their immediate surroundings and the local neighborhood of residential buildings can be used to assign SEP (Galobardes B, Morabia A. 2003).

Socio-economic indicators are mainly markers of material circumstances. Housing is generally the key component of most people's wealth, and accounts for a large proportion of the outgoings from income. Housing (and its context) is an important, multifaceted and sometimes difficult to interpret indicator of socio-economic position (SEP). As discussed above, some housing characteristics may be direct exposures or markers of exposures for specific diseases. Housing characteristics and amenities are extensively used as measures of SEP. They are
comparatively easy to collect and may also provide some indications of specific mechanisms linking SEP to particular health outcomes (for example, crowding).

A robust and effective Fair Housing Act is right for America in the 21st century

The amended law for disparate impact is the bedrock of strengthening housing choice secured with stronger economic prosperity and therefore a robust and effective Fair Housing Act is right for America in the 21st century. The more inclusive communities the better the result to enable people of different groups to live, work, and play together in ways that strengthen our country. Justice Kennedy has, in other cases, recognized the fundamental importance of that goal to America’s future. In a 2007 school integration case, he wrote that “this nation has a moral and ethical obligation to fulfill its historic commitment to creating an integrated society that ensures equal opportunity for all of its children.” That goal can only be achieved through a fully effective Fair Housing Act (Jenkins, 2015).
The Racial Dot Map Reference: Racial Segregation, by University of Virginia, Weldon Cooper Center for Public Service
The Housing Problem

Over the past few years, the United States has faced several economic crises that have and will continue to have vast effects on the opportunities, well-being, and wealth-building potential of current and future generations. Beginning in 2006, the United States was beset by the worst financial crisis since the Great Depression. One of the main causes of the crisis was a housing bubble that was, in large measure, created by predatory lending in the subprime mortgage market. A large share of subprime loans were designed to fail and federal regulators chose not to purge them from the market until after the housing market’s collapse. Rather than acknowledging this reality and assisting borrowers who had been exploited by predatory loans, the conventional market targeted both the individual borrowers and their communities for additional fees (Carr, Zonta, 2016). While the financial crisis resulted in the demise of the subprime market, its residual consequences continue to affect the United States in the form of delinquent mortgages and foreclosures that have scarred thousands of communities with boarded up and deserted homes. In 2010, a staggering forty percent of all subprime loans in the United States were either delinquent or in foreclosure. Overall, four million families have lost their homes and another four-and-a-half million remain delinquent, with nearly eleven trillion dollars in household wealth lost as a result (Nier III, Cyr, 2011).

In the arena of housing, for example, between January 1, 2007, and May 30, 2011, more than 10.5 million properties went into foreclosure (RealtyTrac 2008, 2009, 2010, 2011a, 2011b, 2011c, 2011d), and up to 12 million more foreclosures were projected from the fourth quarter of 2008 to 2014 (Center for Responsible Lending, n.d. based on Goldman Sachs Global ECS Research). As of December 12, 2010, 1,762,694 borrowers were seriously delinquent (i.e., over
60 days delinquent, or over 30 days delinquent in case of bankruptcy) (Office of the Comptroller of the Currency and Office of Thrift Supervision, 2011). The total equity lost by families with recently foreclosed properties is estimated at $5.6 trillion (The New York Times, 2011). In addition, an estimated $502 billion in property value has been lost due to nearby foreclosures (Center for Responsible Lending, n.d. based on CRL, Credit Suisse, and Moody’s Economic.com).

The effects of the economic crisis have been enormous, both nationally and globally, and the confidence Americans once had in homeownership as a path to wealth has been shaken. Current and future generations will be impacted for decades to come (Carr, Zonta, 2016). The resulting negative spillover on other aspects of savings, as a result of the consequent severe economic downturn, has also been dramatic. Assets in retirement accounts, for example, totaled about $8.7 trillion in the third quarter of 2007 (Butrica and Issa, 2011), but had fallen to $5.9 trillion by the end of the first quarter of 2009. Within 18 months, $2.7 trillion, or 31 percent, had been wiped out. Other sources report a loss of household net wealth of $17 trillion between 2007 and 2009, due to the financial crisis (Heflin, 2010).

Table 1: Estimated 2007-2009 Foreclosures of Recent First-Lien Owner-Occupied Mortgage Originations (2005-2008), by Borrower Race and Ethnicity.

<table>
<thead>
<tr>
<th>Borrower Group</th>
<th>Share of Originations</th>
<th>Completed Foreclosure Rate</th>
<th>Share of Completed Foreclosures</th>
<th>Disparity Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-Hispanic White</td>
<td>65.9%</td>
<td>4.5%</td>
<td>56.1%</td>
<td>1.00</td>
</tr>
<tr>
<td>Black/African American</td>
<td>7.8%</td>
<td>7.9%</td>
<td>11.6%</td>
<td>1.76</td>
</tr>
<tr>
<td>Hispanic/Latino</td>
<td>11.2%</td>
<td>7.7%</td>
<td>16.2%</td>
<td>1.71</td>
</tr>
<tr>
<td>Asian</td>
<td>3.9%</td>
<td>4.6%</td>
<td>3.3%</td>
<td>1.02</td>
</tr>
<tr>
<td>American Indian</td>
<td>0.4%</td>
<td>5.9%</td>
<td>0.4%</td>
<td>1.31</td>
</tr>
<tr>
<td>Hawaiian/Pacific Islander</td>
<td>0.4%</td>
<td>6.3%</td>
<td>0.5%</td>
<td>1.40</td>
</tr>
<tr>
<td>Other</td>
<td>10.5%</td>
<td>6.0%</td>
<td>11.8%</td>
<td>1.33</td>
</tr>
<tr>
<td>Total</td>
<td>100.0%</td>
<td>5.3%</td>
<td>100.0%</td>
<td>1.18</td>
</tr>
</tbody>
</table>

Source: Bocian et al. (2010). Bocian et al calculated a disparity ratio based on the non-Hispanic White share of originations (65.9%) and their share of completed foreclosures (56.1%) (disparity ratio = 1.00). In comparison to non-Hispanic Whites, Blacks/African Americans have a disproportionate share of completed foreclosures to originations of 1.76, along with Hispanics/Latinos (1.71).
At 44.8 and 46.8 percent, the homeownership rates for Blacks/African Americans and Hispanics/Latinos are at their lowest levels in over a decade (U.S. Bureau of the Census, n.d.). While the foreclosure crisis has had vast consequences throughout the United States, it has had a disproportionate impact on persons of color. It is estimated that nearly eight percent of both Blacks/African Americans and Hispanics/Latinos had been foreclosed upon, compared to 4.5 percent of non-Hispanic Whites, controlling for differences in incomes among the groups (Bocian et al., 2010). These proportions are especially striking considering that the foreclosure rates of Black/African American and Hispanic/Latino homeowners are disproportionately high compared to their share of mortgage originations. It was expected that the homeownership rate for Black/African American and Hispanic/Latino families will drop even further, to a range of 40 to 42 percent in the future (USA Realty Group, 2010). A return to this level of homeownership would wipe out over 15 years of gains in homeownership rates for people of color (Carr, Anacker, Mulcahy, 2011).
The Lost Story of Civil Rights

While the financial crisis has been examined in great detail, lost in the story is the civil rights crisis that it has left in its wake. The representation of African Americans in the subprime mortgage market was disproportionately high. As a result, the subprime crisis wiped out a generation of accumulated wealth in the African American community. Tens of thousands of African Americans have lost their homes through foreclosures linked to predatory mortgage loans, and even those...
African Americans who have avoided foreclosure remain locked in high-cost subprime loans that impede their ability to accumulate wealth. Reverse redlining is one of the reasons for such disproportionate representation of African Americans in the subprime market. Predatory lenders, taking advantage of the historic pattern of redlining that denied African Americans access to credit, filled the credit vacuum by targeting African Americans for predatory mortgage loans. As the consequences of such lending became clear, civil rights advocates turned to the Fair Housing Act as a weapon to stem the tide of the crisis. In 2000, courts began to recognize reverse redlining as a cause of action under the FHA.

“Intentional Targeting of African Americans” – FHA. Hargraves v. Capital City Mortgage Corp.

Since that time, courts have utilized a number of different analytical models to evaluate such claims, resulting in significant confusion and inconsistencies. The article by Nier and Cyr in 2011, has sought to examine such inconsistencies. It presents four clear analytical models for addressing predatory lending and reverse redlining under the FHA. Hargraves v. Capital City Mortgage Corp. and its progeny are best understood as establishing two distinct analytical models for establishing a reverse redlining cause of action. (Nier, Cyr, 2011). First, the intentional targeting of African Americans for predatory or unfair mortgages may constitute reverse redlining. Such a model is premised upon establishing discriminatory intent through direct or circumstantial evidence of targeting (e.g., advertising directed towards African Americans). Second, while Hargraves mentions disparate impact, it is clear that the court was articulating a systemic disparate treatment model premised primarily on the statistical analysis set forth in International Brotherhood of
Teamsters v. United States and Hazelwood School District v. United States. Under such a model, reverse redlining may be established if a lender’s mortgages are disproportionately concentrated in African American neighborhoods and there is evidence demonstrating that the lender’s mortgage loans were unfair and predatory. Third, while Matthews v. New Century Mortgage Corp. correctly provides for a disparate treatment model premised upon the standard comparative analysis articulated in McDonnell Douglas Corp. v. Green, it erects a prima facie case that is ill-suited for the functional reality of predatory lending. Courts have been clear that McDonnell Douglas is not a rigid tool but is adaptable depending upon the circumstances. As applied to reverse redlining cases, a prima facie case under McDonnell Douglas should entail the following elements: (1) that the borrower is a member of a protected class; (2) that the borrower received a loan; (3) that the loan contained grossly unfavorable terms; and (4) that the lender continues to provide loans to other applicants, outside the protected class, on significantly more favorable terms.

Finally, courts have also recently analyzed reverse redlining claims under the more traditional disparate impact framework. Such cases have identified a specific policy—discretionary mortgage pricing—which is reflected in the pricing disparities found in Home Mortgage Disclosure Act data. While the model has some limitations, it represents a possible vehicle to challenge specific, identifiable policies that produce unfavorable terms and conditions of mortgages for African Americans. Predatory lending is complex and manifests in a myriad of ways in the mortgage market. The four analytical models for proving lending discrimination outlined above seek to provide an effective means for addressing its most common iterations. The severity of the crisis confronting the African American community necessitates the utilization of

*Prima Facie. adj. Latin for "at first look," or "on its face," referring to a lawsuit or criminal prosecution in which the evidence before trial is sufficient to prove the case unless there is substantial contradictory evidence presented at trial.
such tools to avert the continued wealth stripping caused by predatory loans and foreclosures (Nier, Cyr, 2011).

Consequences of Disparate-Impact Liability on Society

The American Civil Rights Union (“ACRU”), as amicus supporting TDHCA, cautions that disparate-impact liability under the FHA would prohibit necessary practices in our society. For example, the ACRU explains, that there are many housing qualifications that are correlative to race, including credit scores, crime records, and financial accumulations. In fact, amicus the Consumer Data Industry Association, a service that screens prospective tenants’ financial information, argues that imposing disparate-impact liability would undermine responsible landlord screening that ensures a safe living environment. On the other hand, the NAACP Legal Defense and Educational Fund (“NAACP LDEF”), writing as an amicus supporting Inclusive Communities, counters that disparate-impact liability is necessary to further the FHA’s aims to root out and eliminate housing discrimination. Specifically, the NAACP LDEF focuses on socioeconomic data highlighting the effects of segregated neighborhoods on social mobility and community health. Because intentionally discriminatory laws are unlikely to exist, the NAACP continues, disparate-impact liability targets the social conditions that promote racial segregation. Indeed, the NAACP concludes, disparate-impact liability is a fair and workable standard because the burden-shifting legal framework protects fair policies while eliminating unjust ones.

Effects of Disparate-Impact Liability on the Insurance Market

In support of the TDHCA, several insurance groups suggest that inferring a disparate-impact liability framework in the FHA would impose additional costs that would create uncertainty in the
insurance market, which requires predictive risk assessment. In particular, the insurance groups maintain that risk classification is race neutral, but calculating risk necessarily contemplates statistical information that would be undermined by disparate-impact liability under the FHA. However, the NAACP and Milwaukee Branch of the NAACP, in support of Inclusive Communities, argue that the disparate-impact claims will not necessarily be taxing on the insurance industry.

**Evidence & Findings**

**Reverse Redlining**

The U.S. Department of Housing and Urban Development issued a regulation on “disparate impact,” codifying a long-used legal precedent that says the Fair Housing Act prohibits practices that result in discrimination “regardless of whether there was an intent to discriminate.” (U.S. Department of Housing). Obama administration formalized the legal standard it has used to enforce fair housing laws and hold banks accountable for their role in a foreclosure crisis that hit black and Latino homeowners the hardest. After decades of being denied credit, many minority communities were victim to “reverse redlining” during the foreclosure crisis, as mortgage companies pushed risky loans in hopes of profiting from their higher interest rates and fees. With the disparate impact standard, the Department of Justice was able to argue that the disproportionate harm to communities of color put predatory lenders in violation of the Fair Housing Act and the Equal Credit Opportunity Act. Now, the Supreme Court is considering hearing a challenge to the disparate impact standard. Some say HUD’s new guideline could be “the deciding factor” in whether the standard will withstand the Supreme Court’s scrutiny.
The Seven Landmark Disparate Impact Cases

Following are the seven landmark disparate impact cases used for this research study:

I. **United States v. Countrywide Corporation, Countrywide Home Loans and Countrywide Bank**

Countrywide, a now-defunct mortgage company owned by Bank of America, gave subprime loans to 10,000 Hispanic and African-American borrowers, while providing prime loans for white borrowers with similar financial situations. (Subprime loans come with higher interest rates to mortgage companies themselves, with violating the Fair Housing Act). A Bank of America spokesperson said the DOJ reviewed loans made before Bank of America purchased Countrywide in July 2008. As reported, the DOJ reached a $335 million settlement, the US’ largest fair lending settlement on record, using the disparate impact standard. Countrywide did not admit to any discriminatory practice.

II. **United States v. Wells Fargo**

The DOJ case against Wells Fargo over violation of the Fair Housing Act is the second largest fair lending settlement in the DOJ’s history, after the lawsuit against Countrywide Financial. Brokers at the country’s largest mortgage lender were found to have raised interest rates and broker fees for more than 30,000 minority customers. According to lending data, African-American customers in the Chicago area paid on average $2,937 more in broker fees than similarly situated white customers. Hispanic borrowers were charged $2,187 more. Black and Hispanic homeowners also were encouraged to take on riskier subprime loans. Wells Fargo agreed to a $175 million settlement in July, though the company denies any wrongdoing and says they settled to avoid a “costly legal fight.”
III. Adkins et.al v. Morgan Stanley

The ACLU, along with the National Consumer Law Center and the law firm of Lieff, Cabraser, Heimann & Bernstein, filed a lawsuit in October against Morgan Stanley claiming the financial services firm encouraged lenders to push high-risk mortgage loans on African-American borrowers. The case centers on Detroit, where from 2004 to 2006, African Americans were 70 percent more likely to receive a subprime loan than white borrowers with the same income and credit background. The case was the first to charge the secondary mortgage market, and not just mortgage companies themselves, with violating the Fair Housing Act. The plaintiffs contend that Morgan Stanley encouraged now-defunct New Century Financial Corporation to sell predatory loans, which targeted predominantly black communities. Morgan Stanley profited by bundling and selling those loans to investors, allegedly knowing borrowers were likely to default.

IV. United States v. SunTrust Mortgage Inc.

The DOJ found that SunTrust Mortgage allowed its brokers and loan officers considerable leeway in determining a customer’s interest rate, resulting in discriminatory prices for minorities. They were charged with violating both the Fair Housing Act and the Equal Credit Opportunity Act in charging more than 20,000 black and Hispanic customers with higher interest rates and fees between 2005 and 2009. SunTrust denied any wrongdoing, but settled for $21 million in May of the following year.

V. United States v. C&F Mortgage Corporation
The Justice Department charged C&F Mortgage with violating the FHA and ECOA by raising interest rates for black and Hispanic mortgage customers. C&F did not require its loan officers to document reasons for changing a customer's interest rate from the standard rate, and increased compensation for loan officers who charged higher loan prices. Though C&F denied allegations of discrimination, they settled for $140,000 and began reviewing employees' compliance with nondiscrimination standards, specifically their justification for large interest rate adjustments. The company also agreed to institute new pricing policies and employee training policies.

VI. Greater New Orleans Fair Housing Action Center et.al v. HUD and Paul Rainwater, Executive Director of the Louisiana Recovery Authority

In 2008, New Orleans housing organizations and local homeowners accused HUD and the Louisiana Recovery Authority of discriminating against black homeowners in the aftermath of Hurricanes Katrina and Rita. The Road Home program was supposed to provide storm victims with funding to rebuild their homes, but based their compensation on their house’s original value rather than the cost of damage. Houses in black neighborhoods that were identical to houses in white neighborhoods were given far less money to rebuild. In 2011, HUD agreed to pay roughly $62 million under a new Blight Reduction Grant Adjustment program. The funding will serve 1,460 eligible homeowners in four parishes that suffered the most damage.

VII. United States v. PrimeLending

The Department of Justice found that PrimeLending regularly set higher loan prices for African American borrowers. As one of the country’s biggest Federal Housing Authority lenders,
PrimeLending provides mortgage loans to low-income customers that are guaranteed by the FHA or the Department of Veterans Affairs. PrimeLending incentivized increasing “overages” (higher interest rates) by providing higher compensation for loan officers. The mortgage company settled for $2 million in 2010, and set new loan pricing policies and employee training requirements. (Thompson, C. (2013, February 9). Disparate Impact and Fair Housing: Seven Cases You Should Know. Retrieved from: https://www.propublica.org/article/disparate-impact-and-fair-housing-seven-cases-you-should-know)

CASE

Texas Department of Housing and Community Affairs v. The Inclusive Communities Project (2015). This case was initiated by a lawsuit filed in Texas federal court in 2008 by the Inclusive
Communities Project (ICP), a nonprofit organization. ICP sued the Texas Department of Housing and Community Affairs (the TDHCA), claiming the TDHCA engaged in intentional and disparate-impact discrimination with respect to the allocation of LIHTCs.

**FACTS**

The Petitioner, Texas Department of Housing and Community Affairs (“TDHCA”), is a state agency that allocates Low Income Housing Tax Credits (“LIHTCs”) to housing developers. The TDHCA allocates tax credits based on its Qualified Allocation Plan, prioritizing, in descending order, the development’s financial feasibility, community support, tenant income levels, along with other criteria.

The Respondent, Inclusive Communities Project, Inc., (“Inclusive Communities”) is a non-profit organization in Dallas that works to integrate low-income, racially diverse families into Dallas’s predominantly Caucasian, suburban neighborhoods. Specifically, Inclusive Communities locates families eligible for the Dallas Housing Authority’s “Section 8” Housing Choice Vouchers. Under the LIHTC program, developments receiving tax credits are not permitted to refuse housing to Section 8 voucher holders on that basis alone. Because of this restriction, where LIHTC-funded developments are located in the Dallas area is important to the individuals that are aided by Inclusive Communities.

Inclusive Communities argued that TDHCA gave tax credits to developments built in primarily minority-dominated areas, thus fostering racially segregated communities in violation of the Fair Housing Act (“FHA”). The district court found that TDHCA’s allocation practices created a
**disparate-impact** and ordered an opportunity for the TDHCA to create a remedial plan. The TDHCA created a remedial plan, which the district court adopted in part. (**Oral argument**: January 21, 2015)

ICP based its claim on a disparate impact theory, stating in its complaint that the Department had approved credits for 49.7% of applications in neighborhoods that were less than 10% Caucasian but only 37.4% of applications in areas that were 90-100% Caucasian, and that 92.9% of subsidized units in the City of Dallas were located in minority-majority neighborhoods. ICP claimed that these patterns perpetuated racial segregation in violation of the FHA, and brought claims under sections 804(a) and 805(a) of the FHA (42 U.S.C. §§ 3604(a) and 3605(a)).

**ISSUE**

**Questions as Framed for the Court by the Parties**

1. Are disparate-impact claims cognizable under the Fair Housing Act?
2. If disparate-impact claims are cognizable under the Fair Housing Act, what are the standards and burdens of proof that should apply?

*NOTE: The Supreme Court limited its inquiry to Question 1.*

**Holding:** Disparate-impact claims are cognizable under the Fair Housing Act.

**Judgment:** Affirmed and remanded, 5-4, in an opinion by Justice Kennedy on June 25, 2015. Justice Thomas filed a dissenting opinion. Justice Alito filed a dissenting opinion, in which Chief Justice Roberts and Justices Scalia and Thomas joined.
RULE

Title VIII of the Civil Rights Act of 1968, commonly known as the Fair Housing Act, prohibits discrimination in the sale, rental, and financing of dwellings based on race, color, religion, sex, or national origin.

The U.S. Supreme Court, in a 5-4 decision, held that disparate impact discrimination claims are cognizable under the Fair Housing Act, 82 Stat. 81, as amended, 42 U.S.C. § 3601 et seq. (the “FHA”). A disparate impact claim posits that a defendant’s policies or practices, while not intentionally discriminatory, have a “disproportionately adverse effect on minorities,” and are “otherwise unjustified by a legitimate rationale”. A disparate impact claim typically is grounded in statistical evidence regarding the effects of the defendant’s policies or practices on a protected class. Id. at *15.

In prior decisions, the Court had found that disparate impact liability was contemplated in the area of employment discrimination under Title VII of the Civil Rights Act of 1964 (“Title VII”) and the Age Discrimination in Employment Act of 1967 (“ADEA”). The Court now has extended this reasoning to housing discrimination claims under the FHA. The decision is particularly relevant to the residential mortgage industry, where the FHA – along with the Equal Credit Opportunity Act, 15 U.S.C. 1691 et seq. (the “ECOA”) – are the basis for discrimination claims under federal law. The Inclusive Communities decision did not address the question of whether the ECOA similarly permits disparate impact claims. The decision could, however, support the conclusion that disparate impact claims may be brought under the ECOA as well.
Prior to the *Inclusive Communities* decision, every federal court of appeals to address the issue had found that the FHA was intended to open the door to claims based upon the use of disparate impact evidence. Thus, while disappointing to the industry, the Court’s decision does not change the existing law in this area. At the same time, the opinion includes a number of statements regarding the dangers of improper disparate impact litigation and the need for special vigilance by lower courts in guarding against such abuses. These statements can potentially aid defendants.

The TDHCA argues that the text of the FHA unambiguously establishes that a plaintiff may only bring a claim if there has been intentional discrimination, and therefore, HUD’s interpretation is not entitled to *Chevron* deference because the text is not ambiguous. The TDHCA points to the phrase “because of race” in the FHA, and argues that in a case where there is no discriminatory intent, but only a disparate-impact, the alleged infringer has not discriminated “because of race.” To impose liability under the FHA in that situation, the TDHCA therefore concludes, would be inconsistent with the plain language of the statute.

Inclusive Communities further asserts that the text of the FHA does not require proof of intent to establish a discriminatory housing practice and therefore allows for an interpretation of the statute permitting disparate-impact claims. According to Inclusive Communities, there are several instances in which Congress has explicitly used the word “intent” to establish an intent requirement, but did not choose to do so in this instance. Therefore, Inclusive Communities concludes that Congress did not intend for a requirement of proof of intent and the Court should not read such a requirement into the statute. Inclusive Communities argues that judicial authority

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*Chevron Deference. A principle of administrative law requiring courts to defer to interpretations of statutes made by those government agencies charged with enforcing them, unless such interpretations are unreasonable.*
and precedent establish that the HUD’s interpretation is reasonable. Specifically, Inclusive Communities argues that the Court’s opinion in a Title VII case, Griggs, supports allowing disparate-impact liability under the FHA. The statute at issue in Griggs contained the language “because of race.” In Griggs, the Court determined that the plaintiff did not need to show intent in order for the court to find discrimination.

ANALYSIS/APPLICATION

The parties in this case disagree about the interpretation of the text of the Fair Housing Act (“FHA”)’s discrimination rules. The TDHCA argues that the FHA’s text cannot reasonably be interpreted the way that HUD has interpreted it—to allow for disparate-impact liability—and that the Court must therefore reject that interpretation. The TDHCA further contends that the Supreme Court precedent and the FHA’s legislative history support disparate-impact liability under the FHA. In opposition, Inclusive Communities argues that the U.S. Department of Housing and Urban Development (“HUD”)’s interpretation of the text is a reasonable interpretation, and the Court should defer to that interpretation. Additionally, Inclusive Communities maintains that Supreme Court precedent and the FHA’s legislative history actually counsels against allowing for disparate-impact liability under the FHA.

THE SUPREME COURT’S REASONING

First, the Court focused on the language of the statute. Section 804(a) of the FHA states that it is unlawful “[t]o refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.” See 42 U.S.C. § 3604 (emphasis
added). The Supreme Court held that the phrase “otherwise make unavailable” “refers to the consequences of an action rather than the actor’s intent.” The Court explained that the phrase is equivalent in function and purpose to Title VII and the ADEA’s language, “otherwise adversely affect.” *Id.* Section 805(a) of the FHA states that it is unlawful “to discriminate against any person in making available [a residential real estate-related transaction], or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin.” *See* 42 U.S.C. § 3605. The Court noted that it had previously “construed statutory language similar to § 805(a) to include disparate-impact liability.” *See Inclusive Communs.*, 2015 WL 2473449 at *10 (citing *Board of Ed. of City School Dist. of New York v. Harris*, 444 U.S. 130, 140–141 (1979)).

Second, the Court noted that, in 1988, Congress enacted certain amendments to section 805 of the FHA (which only uses the term “discriminate” rather than “otherwise make unavailable”) and section 807 of the FHA. When Congress enacted these amendments, a number of Courts of Appeal already had concluded that the FHA encompassed disparate impact claims. However, the amendments did not prohibit such litigation. Thus, the Court found that Congress’s decision to amend the FHA “while still adhering to the operative language in §§ 804(a) and 805(a)” supported the conclusion that Congress “recognized that disparate-impact liability arose under § 805(a)” and generally “ratified disparate-impact liability” under the FHA. *See Inclusive Communs.*, 2015 WL 2473449 at *11-12. The Court also reasoned that the substance of the amendments would have been superfluous if Congress had not agreed that disparate impact liability could exist under the FHA.
Third, the Court held that “[r]ecognition of disparate-impact claims is consistent with the FHA’s central purpose,” namely “to eradicate discriminatory practices within a sector of our Nation’s economy.” *Id.* at 12. Specifically, disparate impact litigation “permits plaintiffs to counteract unconscious prejudices and disguised animus that escape easy classification as disparate treatment.” *Id.* at *13.

On appeal, the United States Court of Appeals for the Fifth Circuit (“Fifth Circuit”) reversed, holding that the U.S. Department of Housing and Urban Development’s (“HUD”) then-newly promulgated regulations allowing for disparate-impact housing discrimination cases controlled. Specifically, the Fifth Circuit ruled that district court applied the wrong legal test for assessing disparate-impact claims and remanded for further proceedings, but still acknowledged that the FHA allows for disparate-impact liability. The Fifth Circuit’s reversal also eliminated the TDHCA’s remedial plan. The TDHCA then filed a petition for a [*writ of certiorari*](https://en.wikipedia.org/wiki/Writ_of_certiorari), which was granted by the [Supreme Court](https://en.wikipedia.org/wiki/Supreme_Court_of_the_United_States) on October 2, 2014.

**CONCLUSION**

**Opinion of the Court** - Justice Anthony Kennedy delivered the opinion of the Court, which in a 5-4 decision held that disparate impact claims are cognizable under the Fair Housing Act. Justice Kennedy began his analysis by reviewing the historic development of disparate impact claims in federal law and concluded that Congress specifically intended to include disparate impact liability in a series of amendments to the Fair Housing Act that were enacted in the year 1988. Justice Kennedy also argued that "recognition of disparate-impact liability under the FHA also plays a role in uncovering discriminatory intent: It permits plaintiffs to counteract unconscious prejudices
and disguised animus that escape easy classification as disparate treatment." However, Justice Kennedy also held that housing authorities and private developers should have an opportunity to defend against disparate impact claims by stating and explaining "the valid interest served by their policies." Justice Kennedy also cautioned that "a disparate-impact claim that relies on a statistical disparity must fail if the plaintiff cannot point to a defendant’s policy or policies causing that disparity."

**Dissenting opinions** - Justice Samuel Alito issued a dissenting opinion, joined by Chief Justice John Roberts, Justice Antonin Scalia, and Justice Clarence Thomas. Justice Alito argued that the Fair Housing Act never authorized such disparate impact claims in 1968, when the law was enacted, "and nothing has happened since then to change the law's meaning". Justice Thomas also issued a separate dissenting opinion in which he questioned Justice Kennedy's reliance upon *Griggs v. Duke Power Co.* to support the conclusion that the Fair Housing Act permits disparate impact

**The Potential Impact on HFAs** - In recognizing that disparate-impact claims may be brought under the FHA, the Supreme Court arguably opened the door to a new level of scrutiny to be applied to the policies and procedures, including QAPs, of housing finance agencies (HFAs). It is not necessary that overt discrimination be present to challenge a housing policy or procedure. On the other hand, writing for the majority, Justice Kennedy was clear that disparate-impact liability must be limited so those entities, like HFAs, are able to “carry out their business” and continue to make decisions based upon the public interest.

**Unanswered Questions**

The *Inclusive Communities* decision leaves a number of difficult questions unanswered with
respect to the nature of disparate impact claims. Three such questions are likely to come front and center as lower courts grapple with the likely flood of disparate impact claims following the *Inclusive Communities* decision.

- First, on a practical basis, how should a lower court go about determining whether the plaintiff has identified a relevant “statistical disparity” as part of the plaintiff’s *prima facie* case?
- Second, will the Court’s reasoning determine the question of whether disparate impact claims are cognizable under the ECOA?
- Third, it is unclear how courts will interpret and apply the standard of review for disparate impact claims.

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**Conclusion**

The poorer people are, the greater the influence street-level bureaucrats tend to have over them. Indeed, these public workers are so situated that they may well be taken to be part of the problem of being poor. Consider the welfare recipient who lives in public housing and seeks the assistance of a legal services lawyer in order to reinstate her son in school. He has been suspended because of frequent encounters with the police. She is caught in a net of street level bureaucrats with conflicting orientations toward her, all acting in what they call her “interest” and “the public interest.” The significant losses in wealth experienced by black households will likely create ripple effects, hampering the ability of the next generations of black households to catch up to whites in terms of total wealth and home equity values.
Nevertheless, Housing Discrimination Persists

The scope of housing studies is much wider than housing policy, but policy presents a powerful magnet for those who wish to understand the nature of housing provision. Hence, to understand the nature of housing policy it is appropriate to consider the nature of housing problem. In the housing sphere, a recent study on behalf of the Department of Housing and Urban Development found that black and Asian home seekers are shown or told about 15 to 19 percent fewer homes than whites with similar credit qualifications and housing interests. During the subprime lending boom, African Americans with good credit scores were 3.5 times as likely as whites with good credit scores to receive higher-interest-rate loans, and Latinos were 3.1 times as likely to receive such loans. And the Federal Reserve found that in 2009, African Americans were twice as likely to be denied a loan, even controlling for income and other qualifying criteria.

Housing Policy under the administration of President Trump

Nonprofits and funders aiming to improve access to housing and financial assets for low-income people are closely watching a showdown in the Supreme Court on "disparate impact." At issue is the question of whether disparate impact claims can be recognized under the Fair Housing Act (FHA), which bars discrimination in housing. Disparate impact is a way to find liability under the FHA even if a defendant did not have a discriminatory intent, but its actions or policies resulted in a disparate impact of a group protected by the FHA. The issue is even more complicated, since the stakes go beyond the FHA. Disparate impact is an important tool that policymakers and courts can use to address the well-documented and widespread discrimination that continues to persist in the housing and finance markets; eliminating this tool would be tantamount to turning blind eye to the
unfair treatment that many unfortunately experience. Few groups have done more than the center to document the pervasive and negative effects of disparate impact. (*Disparate Impact: A Key Fight Over Housing and Finance, and the Funding Behind It, Kiersten Marek*)

**Recommendations**

**Affirmatively Furthering Fair Housing Rule**

HUD's AFFH rule provides an effective planning approach to aid program participants in taking meaningful actions to overcome historic patterns of segregation, promote fair housing choice, and foster inclusive communities that are free from discrimination (HUD Exchange).

**Oversight of HUD Funds**

HUD conducts compliance reviews to determine whether a recipient of HUD funds is in compliance with applicable civil rights laws and their implementing regulations. HUD may initiate a compliance review whenever a report, complaint, or any other information indicates a possible failure to comply with applicable civil rights laws and regulations. HUD initiates most compliance reviews based on risk analyses, issues raised during a limited monitoring review, or when a civil rights problem is detected through HUD program monitoring. HUD monitors state and local government agencies and private entities that receive HUD funds to ensure that they comply with civil rights statutes and civil rights-related program requirements. HUD reviews the programs by: (1) investigating complaints alleging discrimination or failure to comply with civil rights requirements by a recipient of HUD funds and (2) conducting compliance reviews of such
recipients. HUD also monitors HUD-funded recipients to determine their performance under the civil rights-related program requirements of HUD’s Office of Community Planning and Development, Office of Public and Indian Housing, and Office of Housing. The major portion of the above stated housing issue can be resolved with higher emphasis on congressional oversight policy implementation procedures and practices. We are need in affordable housing now more than ever at the advent of the foreclosure crisis triggering rapid homelessness and poverty for the American population. HUD should conduct stronger compliance reviews to determine whether a recipient of HUD funds is in compliance with applicable civil rights laws and their implementing regulations. A central function of the United States Congress is oversight of the executive branch. Congressional oversight, as exercised from the beginning of the nation, was and remains an essential tool in making the separation of powers real by empowering Congress to check the executive. The number of oversight hearings (excluding appropriations committees) dropped from 782 in the first six months of 1983 to 287 in the first six months of 1997. And the decline in the Senate was similar. (Kamarck 2016).

**Low-Income Housing Tax Credit (LIHTC)**

The Low-Income Housing Tax Credit (LIHTC), which was established by the Tax Reform Act of 1986, is the nation’s largest subsidy for the construction of affordable rental housing for low-income households. The revenue forgone as a result of the Low-Income Housing Tax Credit is projected to be $7.9 billion in 2016 (National Low Income Housing Coalition, Housing Tax Expenditures - FY16 Budget Documents). Between 1987 and 2014, 43,092 LIHTC developments with approximately 2.78 million units were placed into service across the country (HUD Dataset, Low-Income Housing Tax Credits). Even though agencies that administer LIHTC funds have
flexibility to implement the program, certain practices may need greater oversight. According to a report from the U.S. Government Accountability Office, Low-Income Housing Tax Credit: Some Agency Practices Raise Concerns and IRS Could Improve Noncompliance Reporting and Data Collection, the current administrator of LIHTC funds, the IRS, could improve their oversight over allocating agencies. The authors recommend appointing HUD as a joint administrator due to its expertise as an agency with a housing mission. New ideas about how to reform the LIHTC program. U.S. Senator Maria Cantwell’s (D-WA) report, “Addressing the Challenges of Affordable Housing & Homelessness: The Housing Tax Credit”, recommends LIHTC expansion and reform. These reforms include expanding the annual LIHTC allocation by 50%, promoting broader income mixing in LIHTC projects, and allowing states more flexibility in financing projects targeting homeless individuals or extremely low-income families (Furman Center for Real Estate and Urban Policy, 2016).

Establishment of Disparate Impact

The Fair Housing Act plays an important role in addressing housing discrimination against many groups, including families with children. Disparate impact claims are essential to protect families from unlawful discrimination due to the presence of children under the age of 18 (Berry, 2015). The Supreme Court should continue to recognize disparate impact claims under the Fair Housing Act. In 1988, Congress revised the list of protected classes under the Fair Housing Act to include “familial status.” Facialy-neutral occupancy policies typically lack an obvious intent to discriminate, yet they exact an enormous amount of harm against families. Because of this discrepancy between discriminatory intent and discriminatory effect, the availability of disparate impact claims under the Fair Housing Act is necessary to remedy families’ harm. The Supreme
Court should recognize this need, uphold the existence of disparate impact claims, and grant families autonomy over their housing choices. Housing discrimination remains a significant problem in the United States, and we must take strategic steps to empower every neighborhood to be a welcoming and supportive environment for all. The nation’s economic success depends on the opportunities available to every person.

**Towards ‘better’ Incrementalism**

Analysts who think in the older conventional way about problem solving pretend to synopsis; but knowing no way to approximate it, they fall into worse patterns of analysis and decision than those who, with their eyes open, entertain the guiding ideal of strategic analysis (Lindblom, 1979). Furthermore, a fast-moving sequence of small changes can quickly accomplish a drastic alteration of the status quo that can an only infrequent major policy change (Lindblom, 1959). The advantages of incrementalism over other formal systems is that no time is wasted planning for outcomes which may not occur. We also note that the systemic tendency to incrementalism reproduces itself in each stage of the policy cycle, especially at budgeting, not just at formulation. We will examine here how it occurs in both phases of the policy formulation process, analysis and politics as these processes are conceptually distinct, but reinforce each other.

**Systemic Overhaul v. Increments & Gradualism**

Incrementalism should be pursued as an alternative to the pursuit of conventional scientific analysis. (Lindblom, 1979). In the “The Science of Muddling Through”, Lindblom states that when the Rational Model (Think Tap Root) is attempted for complex social problems, the first and
foremost difficulty that arises is that on many critical values or objectives, citizens disagree, congressmen disagree and public administrators disagree. The idea that values should be clarified, and in advance of the examination of alternative policies, is appealing. True enough, the literature is well aware of limits on man's capacities and of the inevitability that policies will be approached in some such style as incrementalism. Consider, for example, the conflict with respect to locating public housing, described in Meyerson and Banfield's study of the Chicago Housing Authority disagreement which occurred despite the clear objective of providing a certain number of public housing units in the city (Lindblom, 1959).

**Creeping Incrementalism in Housing Policy?**

The State Planning Act - New Jersey's State Planning Act 6 became effective in January 1986. The State Planning Act was one of two statutes adopted by the state legislature in response to the state supreme court's decision in Southern Burlington County N.A.A.C.P. v. Township of Mount Laurel. In that landmark decision, the court emphasized that the periodic revision of the State Development Guide Plan would be necessary for this purpose. Some analysts describe incrementalism as muddling through, in contrast to the ideal of the rational comprehensive model of policy planning (Public Policy Web, 2002). According to Lindblom, many critics have a belief that doing better usually means turning away from incrementalism.

**Time Is Of the Essence**

Time and money that can be allocated to a policy problem is limited, as is always the case. The advantages of incrementalism over other formal systems is that no time is wasted planning for
outcomes which may not occur. For example, after Congress set up a national space agency in 1958 and consented to back President Kennedy’s space goals, it made “incremental” additional commitments for several years. Initially, however, a fundamental decision had been made. While the initial space budget was relatively small, the very act of setting up a space agency amounted to subscribing to additional budget increments in future years. With respect to the variant of Time, incrementalism in politics is not, in principle slow moving and is not necessarily a tactic of conservatism. While it might be suggestive of an “Irrational” theory, but it produces decisions only marginally different from past practice (Lindblom, 1959). Incremental decision-making is claimed to be both a realistic account of how the American polity and other modern democracies decide and the most effective approach to societal decision-making, i.e., both a descriptive and a normative model. Simplicity, gradual changes, flexibility and conflict preparedness are few of the other advantages of incrementalism.

**Incrementalism Isn’t Enough**

Policies are the outcome of a give-and-take among numerous societal “partisans.” The measure of a good decision is the decision makers’ agreement about it (Etzioni, 1967). A wise policy-maker, as Lindblom says, consequently expects that his policies will achieve only part of what he hopes and at the same time will produce unanticipated consequences he would have preferred to avoid. We observe that poor decisions are those which exclude actors capable of affecting the projected course of action; decisions of this type tend to be blocked or modified later. Lindblom summarized the primary requirements of this model. Firstly, the problem confronting the decision-maker is continually redefined: Incrementalism allows for countless ends-means and means-ends adjustments which, in effect, make the problem more manageable. Secondly, thus there is no one
decision or “right” solution but a “never-ending series of attacks” on the issues at hand through serial analyses and evaluation. As such, incremental decision-making is described as remedial, geared more to the alleviation of present, concrete social imperfections than to the promotion of future social goals. The danger is that any solutions reached will involve only relatively insignificant changes for the existing conflict situation and that these changes will be made "only at the margin." It is basically a stealthy way to undertake radical changes that were not initially intended with a comprehensive analysis of policies included. Radical innovations may be lost if parties are overly cautious in their attempts to come to an agreement. For example, some suggest that the incremental approach may actually have created problems and credibility issues for the peacemaking process in the Middle East. The effective implementation of incremental model in policy formulation practices and decision-making matters simplifies the subject but time way be wasted dealing with immediate problems and no overall strategy is developed. Also known as a slippery slope, it could be limited by characteristics such as multiple pressures at the same time, and that it does not account for change.

**Community Integration Practices**

A development embracing the concept of community integration encourages interaction and participation on two levels by: 1) creating opportunities for neighbors within the property to interact and engage and 2) providing tenants with access and links to the larger community and its resources. The community accepts and values the development and its tenants. Traditionally, components of a development related to community integration were thought to be property location, physical design and use of space. In this Toolkit, community integration is expanded beyond traditional measures to also include interaction among tenants and neighbors and
encourage access to resources in the development and the local community. Property owners and managers should make information known to all tenants regarding opportunities to connect with community resource such as local parks, public libraries, cultural and civic institutions, faith communities, and more. Specific to supportive housing tenants, a key tactic to enable integration is for property management and service partners to identify opportunities for tenants to feel connected to their neighbors and surrounding community. This may include hosting or leasing space for community events that market to the surrounding neighborhood or identifying specific tenant interests or goals and supporting a connection within the community. Lastly, developments should include Universal Accessibility features in the supportive housing and affordable housing units. These features broaden the range of disabilities that be served in the development promoting integration for individuals in the community that have limited housing choices.

**Public Mortgage Corporation**

Immergluck (2011) suggest a model based on the advantages of government authority centralization, standardization, and transparency. A government-owned corporation—call it the Public Mortgage Corporation, or PMC—with a public purpose would purchase mortgages and issue securities. This corporation would have no private shareholders and would return any excess earnings to the U.S. Treasury, much the way the Federal Reserve does. The corporation would be prohibited from lobbying and be governed by a presidentially appointed governing body including members from the financial services and housing industries as well as individuals with backgrounds in consumer protection, community development, and other areas.
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