

Federal fair housing rule threatens local control



New regulation for adding diversity to suburbs and towns is social engineering, critics say

By Dave Daley

First, President Barack Obama went after the country's health insurance, turning the system on its head with his controversial Obamacare. Now, in the closing days of his presidency, critics say he is going after something just as dear — the neighborhoods you live in.

The Obama administration is rolling out a new federal housing rule that detractors warn could mean catastrophe for suburbs and small cities, dictating how many low-income high-rises a community must build and even moving the big-city poor into suburbs



Housing

deemed too white.

The new rule goes under the unwieldy name Affirmatively Furthering Fair Housing, or AFFH, and will require communities across the country to proactively find ways — affirmatively further — what in the end is an income-based method of bringing ethnic and racial balance to their suburbs and towns, according to critics.

AFFH is scheduled for implementation in Milwaukee County, Wauwatosa and West Allis in 2018 and the city of Milwaukee in 2019.

Opponents are apoplectic in their denunciation of the 377-page rule — social engineering, big-government overreach and annexation of suburbs by metropolitan cities are a few of the more printable descriptions they toss out.

U.S. Rep. Glenn Grothman (R-Wis.) is scathing in his denunciation: “The Affirmatively Furthering Fair Housing policy is an ill attempt by the Obama administration to create a utopian society,” Grothman chides. “The president believes he can use government agencies like HUD to bully American communities into handing over zoning decisions, which should be made by local governments, to the federal government.”

“This is bad policy,” he continues. “Washington should not be making local decisions about neighborhoods and housing. Government agencies should definitely not be threatening to take away important grants meant to better communities from communities if they refuse to comply. Unfortunately, that’s exactly what we see happening across the U.S.”

Dubuque is targeted

Critics point to the small city of Dubuque, Iowa, one of the first cities the new rule has targeted. That city is now required to seek low-income residents from Chicago to fill Dubuque’s public housing units under a federal interpretation of the AFFH rule that lumps Chicago and Dubuque into the same region for demographic purposes.

Earlier this year, *National Review* published a story on the new rule under the headline, “How Obama Stole Dubuque.” Writer Stanley Kurtz excoriated the rule’s impact on the small river city in Iowa 200 miles west of Chicago: “The feds have essentially commandeered Dubuque to solve Chicago’s public housing shortage.”

How can that happen?

At the heart of the complex rule is a requirement that any community taking U.S. Housing and Urban Development funds must complete a so-called Assessment of Fair Hous-

ing (AFH), which analyzes the community’s occupancy data on factors such as race, color, religion, English proficiency and national origin. The community then must analyze factors that contribute to an imbalance of living patterns among low-, middle- and upper-middle income families, and finally devise a plan for HUD approval to mitigate any imbalances found.

The genesis of the new policy is a line in the 1968 federal Fair Housing Act that requires recipients of federal housing funds to “affirmatively further fair housing.” Over the past 45 years, that meant cities and suburbs looked for discrimination in its housing and found ways to combat any discrimination found.

But housing policy-makers in the Obama administration have reinterpreted those words and are pushing well beyond that approach. The AFFH regulation, finally adopted by HUD in July 2015, requires fund recipients to “address significant disparities in housing needs and access to opportunity, replace segregation with truly integrated and balanced living patterns, and transform racially/ethnically concentrated areas of poverty into areas of opportunity.”

HUD advocates of the new rule downplay critics’ warnings that AFFH will lead to a de facto annexation of suburbs by nearby big cities. But the pattern of AFFH implementation in Dubuque, Baltimore County in Maryland and Westchester County in New York tells a different story.

HUD is requiring Baltimore County to spend \$30 million over 10 years to come up with 1,000 affordable housing units that will be dispersed to 116 relatively affluent census tracts around the city of Baltimore. The requirement is part of a settlement of a lawsuit against the county by the Baltimore County branch of the NAACP and four other litigants.

According to a HUD press release, the settlement requires Baltimore County to

“proactively market the units to potential tenants who are least likely to apply, including African-American families and families with a member who has a disability.”

The story is the same in affluent Westchester County, north of New York City. There, HUD is requiring the county to build 750 low-income units in 31 of the county’s mostly white communities.

One way to get out from under the hammer of AFFH is to simply refuse HUD funds. Westchester County is now taking that path.



“This is bad policy. Washington should not be making local decisions about neighborhoods and housing.”

— Glenn Grothman,
Wisconsin congressman

"It's not worth it because of the threat of lawsuits, the strings attached and the control that Washington can then exert over you," Westchester County Executive Robert P. Asorino told *The Washington Post*. "You get involved with the federal government, and you can't get out of bed with them."

New Berlin case was precursor

While the AFFH rule isn't scheduled for implementation in southeastern Wisconsin until 2018, there is already significant debate over what the impact will be there. Six years ago, a similar situation in New Berlin in Waukesha County may have been an unknowing precursor to what the new Obama policy, fully implemented, can bring to a community. In 2010, responding to opposition from some residents, the City of New Berlin balked at a plan to construct buildings that included so-called workforce apartments — low-income units — in its City Center neighborhood.

Some residents argued that the workforce housing did not reflect the original concept of City Center as higher-end condominiums and specialty retail shops, and could lead to increased crime and reduced property values in the neighborhood.

The developer, MSP Real Estate Inc., of St. Louis Park, Minn., sued the city for nearly \$13 million, alleging that residents' opposition was really "racial hostility to minority group members who might become tenants."

Unlike Westchester County, the New Berlin case involved the developer taking tax credits to develop low-income housing, not the city directly taking HUD funds to build affordable housing. But the federal government — similar to how critics say it will act under AFFH — saw an opportunity to impose its view of what the community should look like.

Alleging racial discrimination by New Berlin, the U.S. Justice Department asked a judge to intervene in 2011.

New Berlin officials denied racial bias and said the denial was due to the developer's failure to comply with city ordinances and guidelines on things such as parking and storm water management. But the city ultimately settled both lawsuits in 2012 and agreed to a Justice Department demand that it establish a \$75,000 trust fund to finance projects that promote "affordable housing, residential integration and equal housing opportunity."

More pointedly, a Justice Department press release noted, the city was required to develop a plan "to encourage tenants and developers of affordable housing to come

to New Berlin" and "take affirmative steps to provide for future affordable housing."

State Sen. Duey Stroebel (R-Cedarburg) is a staunch opponent of the AFFH rule. The rule goes well beyond the legislative intent of the Fair Housing Act, says Stroebel, who owns a real estate business. "The intent used to be to serve a need within a community," he says. "With this (rule), you're doing this in a community that doesn't have a need (but) for social engineering purposes."

Ironically, with the way HUD is using the AFFH rule, communities with higher incomes, lower unemployment and better schools will be targeted for the low-income housing projects, Stroebel adds. "It's a shame, because this rule is an overreach that goes into every little community in the country."

Advocates minimize effect

Although the AFFH rule is not scheduled for implementation in the city of Milwaukee until 2019, Milwaukee will work


with Milwaukee County, Wauwatosa and West Allis as the rule is rolled out in those areas in 2018, says Kori Schneider Peragine of the Metropolitan Milwaukee Fair Housing Council.

Once the rule is implemented and refined over time to work out the kinks, critics will see that the current alarm over AFFH's impact are greatly overblown, she adds.

That the rule will lead to big cities effectively annexing suburbs and mean the wholesale moving of minorities into high-income neighborhoods is preposterous, Peragine says.

"I would like to think (the AFFH rule) is the answer to segregation as we know it, but I don't think that is going to happen. Nothing is really going to change much," she adds.

AFFH, say housing advocates, is simply an attempt to fully implement the language of the Fair Housing Act that broadly prohibits discrimination in housing.

"It has been decades in coming," says Bethany Sanchez, in charge of the lending program at the Metropolitan Milwaukee Fair Housing Council. "Finally, this is a way to implement the language of the Fair Housing Act. All I can say is we're happy for it — it's going to be a good thing." 

Dave Daley is the reporter for WPRI's Project for 21st Century Federalism Project, of which "Federal Grant\$anding" is a part. A journalist for 30 years, Daley covered the statehouse in Madison for The Milwaukee Journal and the Milwaukee Journal Sentinel.



"It's a shame, because this rule is an overreach that goes into every little community in the country."

— Duey Stroebel,
state senator from Cedarburg