

NATIONAL REVIEW

Attention America's Suburbs: You Have Just Been Annexed

By Stanley Kurtz — July 20, 2015

It's difficult to say what's more striking about President Obama's Affirmatively Furthering Fair Housing (AFFH) regulation: its breathhtaking radicalism, the refusal of the press to cover it, or its potential political ramifications. The danger AFFH poses to Democrats explains why the press barely mentions it. This lack of curiosity, in turn, explains why the revolutionary nature of the rule has not been properly understood. Ultimately, the regulation amounts to back-door annexation, a way of turning America's suburbs into tributaries of nearby cities.

This has been Obama's purpose from the start. In *Spreading the Wealth: How Obama Is Robbing the Suburbs to Pay for the Cities*, I explain how a young Barack Obama turned against the suburbs and threw in his lot with a group of Alinsky-style community organizers who blamed suburban tax-flight for urban decay. Their bible was *Cities Without Suburbs*, by former Albuquerque mayor David Rusk. Rusk, who works closely with Obama's Alinskyite mentors and now advises the Obama administration, initially called on cities to annex their surrounding suburbs. When it became clear that outright annexation was a political non-starter, Rusk and his followers settled on a series of measures designed to achieve de facto annexation over time.

The plan has three elements: 1) Inhibit suburban growth, and when possible encourage suburban re-migration to cities. This can be achieved, for example, through regional growth boundaries (as in Portland), or by relative neglect of highway-building and repair in favor of public transportation. 2) Force the urban poor into the suburbs through the imposition of low-income housing quotas. 3) Institute "regional tax-base sharing," where a state forces upper-middle-class suburbs to transfer tax revenue to nearby cities and less-well-off inner-ring suburbs (as in Minneapolis/St. Paul).

If you press suburbanites into cities, transfer urbanites to the suburbs, and redistribute suburban tax money to cities, you have effectively abolished the suburbs. For all practical purposes, the suburbs would then be co-opted into a single metropolitan region. Advocates of these policy prescriptions call themselves “regionalists.”

AFFH goes a long way toward achieving the regionalist program of Obama and his organizing mentors. In significant measure, the rule amounts to a de facto regional annexation of America’s suburbs. To see why, let’s have a look at the rule.

AFFH obligates any local jurisdiction that receives HUD funding to conduct a detailed analysis of its housing occupancy by race, ethnicity, national origin, English proficiency, and class (among other categories). Grantees must identify factors (such as zoning laws, public-housing admissions criteria, and “lack of regional collaboration”) that account for any imbalance in living patterns. Localities must also list “community assets” (such as quality schools, transportation hubs, parks, and jobs) and explain any disparities in access to such assets by race, ethnicity, national origin, English proficiency, class, and more. Localities must then develop a plan to remedy these imbalances, subject to approval by HUD.

By itself, this amounts to an extraordinary takeover of America’s cities and towns by the federal government. There is more, however.

AFFH obligates grantees to conduct all of these analyses at both the local and regional levels. In other words, it’s not enough for, say, Philadelphia’s “Mainline” Montgomery County suburbs to analyze their own populations by race, ethnicity, and class to determine whether there are any imbalances in where groups live, or in access to schools, parks, transportation, and jobs. Those suburbs are also obligated to compare their own housing situations to the Greater Philadelphia region as a whole.

So if some Montgomery County’s suburbs are predominantly upper-middle-class, white, and zoned for single-family housing, while the Philadelphia region as a whole is dotted with concentrations of less-well-off African Americans, Hispanics, or Asians, those suburbs could be obligated to nullify their zoning ordinances and build high-density, low-income housing at their own expense. At that point, those suburbs would have to direct advertising to potential minority occupants in the Greater Philadelphia region. Essentially, this is what HUD has imposed on Westchester County, New York, the most famous dry-run for AFFH.

In other words, by obligating all localities receiving HUD funding to compare their demographics to the region as a whole, AFFH effectively nullifies municipal boundaries. Even with no allegation or evidence of intentional discrimination, the mere existence of a demographic imbalance in the region as a whole must be remedied by a given suburb. Suburbs will literally be forced to import population from elsewhere, at their own expense and in violation of their own laws. In effect, suburbs will have been annexed by a city-dominated region, their laws suspended and their tax money transferred to erstwhile non-residents. And to make sure the new high-density housing developments are close to “community assets” such as schools, transportation, parks, and jobs, bedroom suburbs will be forced to develop mini-downtowns. In effect, they will become more like the cities their residents chose to leave in the first place.

It’s easy to miss the de facto absorption of local governments into their surrounding regions by AFFH, because the rule disguises it. AFFH does contain a provision that allows individual jurisdictions to formally join a regional consortium. Yet the rule leaves it up to local authorities to decide whether to enter regional groupings — or at least the rule appears to make participation in regional decision-making voluntary. In truth, however, just by obligating grantees to compare their housing to the demographics of the greater metropolitan area, and remedy any disparities, HUD has effectively turned every suburban jurisdiction into a helpless satellite of its nearby city and region.

We can see this, because the final version of AFFH includes much more than just the provisions of the rule itself. The final text of the regulation incorporates summaries of the many public comments on the preliminary rule, along with replies to those comments by HUD. This amounts to a running dialogue between leftist housing activists trying to make the rule more controlling, local bureaucrats overwhelmed by paperwork, a public outraged by federal overreach, and HUD itself.

Read carefully, the section of the rule on “Regional Collaboration and Regional Analysis” (especially pages 188–203), reveals one of AFFH’s key secrets: It doesn’t really matter whether a local government decides to formally join a regional consortium or not. HUD can effectively draft any suburb into its surrounding region, just by forcing it to compare its demographics with the metropolitan area as a whole.

At one point (pages 189–191), for example, commenters directly note that the obligation to compare local and regional data, and remedy any disparities, amounts to forcing a

jurisdiction to ignore its own boundaries. Without contradicting this assertion, HUD then insists that all jurisdictions will have to engage in exactly such regional analysis.

Comments from leftist housing activists repeatedly call on HUD to pressure local jurisdictions into regional planning consortia. At every point, however, HUD declines to demand that local governments formally join such regional collaborations. Yet each time the issue comes up, HUD assures the housing activists that just by compelling local jurisdictions to compare their demographics with the region as a whole, suburbs will effectively be forced to address demographic disparities at the total metropolitan level (e.g., page 196).

When housing activists worry that a suburb with few poor or minority residents will argue that it has no need to develop low-income housing, HUD makes it clear that the regulation as written already effectively forces all suburbs to accommodate the needs of non-residents (pages 198–199). Again, HUD stresses that the mere obligation to analyze, compare, and remedy demographic disparities at the local and regional levels amounts to a kind of compulsory regionalism.

HUD's language is coy and careful. The Obama administration clearly wants to avoid alarming local governments, so it underplays the extent to which they have been effectively dissolved and regionalized by AFFH. At the same time, HUD wants to tip off its leftist allies that this is exactly what has happened.

At one level, then, the apparatus of formal and voluntary collaboration in a regional consortium is a bit of a ruse. AFFH amounts to an annexation of suburbs by cities, whether the suburbs like it or not. Yet the formal, regional groupings enabled by the rule are far from harmless.

Comments from housing advocates (pages 194–197), for example, chide HUD for failing to include a mention in AFFH of the hundreds of federally-funded regional plans already being developed by leftist activists across the country (the “Sustainable Communities Regional Planning Grant” program). These plans entail far more than imposing low-income housing quotas on the suburbs. They embody the regionalist program of densifying housing in suburb and city alike, and they structure transportation spending in such a way as to make suburban living far less convenient and workable. HUD replies that these plans can indeed be used by regional consortia to fulfill their obligations under AFFH.

So a city could formally join with some less-well-off inner-ring suburbs and present one of these comprehensive regionalist dream-plans as the product of its consortium. At that point, HUD could pressure reluctant upper-middle-class suburbs to embrace the entire plan on pain of losing their federal funds. In this way, AFFH could force the full menu of regionalist policies—not just low-income housing quotas—onto the suburbs.

There are plenty of ways in which HUD can pressure a suburb to bend to its will. The techniques go far beyond threats to withhold federal funds. The recent Supreme Court decision in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project* has opened the door to “disparate impact” suits against suburbs by HUD and private groups alike. That is, any demographic imbalance, whether intentional or not, can be treated by the courts as de facto discrimination.

Just by completing the obligatory demographic analysis demanded by AFFH—with HUD-provided data, and structured according to HUD requirements—a suburb could be handing the government evidence to be used in such a lawsuit. Worse, AFFH demands that suburbs account for their demographic disparities, and forces them to choose from a menu of HUD-provided explanations. So if a suburb follows HUD’s lead and formally attributes demographic “imbalances” to its zoning laws, the federal government has what amounts to a signed confession to present in a disparate-impact suit seeking to nullify local zoning regulations. With a (forced) paper “confession” from nearly every suburb in the country in hand, HUD can use the threat of lawsuits to press reluctant municipalities to buy into a regional consortium’s every plan.

Regionalists consider the entire city-suburb system bigoted and illegitimate, so there are few local governments that HUD would not be able to slap with a disparate-impact suit on regionalist premises. It’s unlikely that any suburb has a perfect demographic and “asset” balance in every category. All HUD has to do is decide which suburban governments it wants to lean on. With every locality vulnerable to a suit, every locality can be made to play the regionalist game.

Leftist housing activists worry that AFFH never specifies the penalties a suburb will face for imbalances in its housing patterns. These activists just don’t get it. A thoughtful reading of AFFH, including its extraordinary “dialogue” section, makes it clear that HUD can go after any suburb, any time it wants to. The controlling consideration will be politics. HUD has got to boil the frog slowly enough to prevent him from jumping.

It will take time for the truth to emerge. Just by issuing AFFH, the Obama administration has effectively annexed America's suburbs to its cities. The old American practice of local self-rule is gone. We've switched over to a federally controlled regionalist system. Now it's strictly a question of how obvious Obama and the Democrats want to make this change — and when they intend to bring the hammer down. The only thing that can restore local control is joint action by a Republican president and a Republican congress to rescind AFFH and restrict the reach of disparate impact litigation. We'll know after November 8, 2016.

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