

1 SUPPORT TRANSPORTATION POLICY TO BUILD DIVERSE, SUSTAINABLE COMMUNITIES

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For 40 years, transportation and infrastructure spending has helped drive both sprawl and inequality in our nation's metropolitan areas. Our wasteful spending on highways and roads in new suburbs and exurbs not only fueled the destruction of green space and expanded automobile dependency, but it has played a major role in the hollowing out of our core cities and the destabilizing of our many older suburbs. As a result, we are left with deep pockets of debilitating poverty and many metropolitan regions segregated by both class and race.

Federal and state highway and infrastructure dollars have continued to reinforce these trends by rewarding communities that have practiced exclusionary zoning and, in some cases, outright discrimination. Because of regional transportation and land use decisions, many of the most exclusive communities have gained the greatest share of their region's business and residential tax wealth while doing the least to promote fair and open housing and school integration.

If transportation policy can drive segregation, it can also play a critical role in reversing these trends by rewarding open housing and pro-integration policies at the local level. In fact, transportation equity must include affirmative efforts to advance integration and the deconcentration of poverty within metropolitan regions if it is to be truly about equity and justice. Promoting more "public transit" is not enough. Transportation access from poor and racially isolated neighborhoods to more affluent, employment-rich communities is not sufficient to improve the life chances of children attending low-performing schools and living in neighborhoods that are often associated with poor health outcomes.

Fair housing policies designed to promote housing and school integration should have as high a priority as other important considerations of smart growth, urban redevelopment and climate change in federal transportation policy.

The following policies would go a long way toward strengthening the important connection between smart growth and fair housing:

Requirements in order to receive transportation funding

- Explicitly apply the obligation to "affirmatively further fair housing¹" to any unit of government or agency that receives or benefits from federal transportation funding (including states, metropolitan planning organizations, and local governments)
 - Require state and local agencies receiving federal transportation funds to execute a certification that the jurisdiction will affirmatively further fair housing as part of the application for, or receipt of, the federal funds.
 - Require state and local agencies receiving federal transportation funds to coordinate their Environment Justice review activities with the fair housing planning activities of their jurisdiction, and to include in their jurisdiction's Analysis of Impediments to Fair Housing an examination of the impact of federally funded transportation projects and service on patterns of residential segregation and on groups protected by the Fair Housing Act.

- Require that when any federal transportation funds are used to benefit or facilitate any housing development or redevelopment, that housing be required to utilize inclusionary zoning methods and principles, and that the entity developing the housing be obligated to “affirmatively market” all housing units to ensure racial and ethnic diversity and full access to the new development for families with children currently living in high poverty neighborhoods.²
- Require specific low and moderate income housing performance goals for each local government receiving federal transportation funding; and specific numerical goals for low income and moderate income housing units to be included in any transit-oriented development location receiving federal funds, along with clear affirmative marketing targets.
- Require that any state receiving federal transportation funds must have a law banning discrimination on the basis of source of income for all rental housing, explicitly including a ban on discrimination against Section 8 or other housing voucher recipients³
- Put all transportation modes (transit, highway, walking, bicycling) on an equal footing with respect to match ratios, project eligibility criteria, and project delivery processes, eliminating the highway capacity bias of the current program.⁴
- In competitive transportation funding processes (i.e. non-formula based programs such as New Starts) require that DOT give highest priority to projects that promote transit-oriented development with a mix of incomes and/or that preserve existing housing affordable to low- and moderate-income households near transportation investments, and that affirmatively market such housing.

Reforms to transportation planning process and MPOs

- Require the recertification of all Metropolitan Planning Organizations (MPOs) within the next review cycle (*i.e.*, within the next four years), and upon recertification require that MPOs have democratic governance structures based upon proportional representation⁵, and include participation of local elected officials representing communities with regionally significant minority populations and entities operating public transportation programs in the region.
- Require that in developing transportation plans and programs, state transportation agencies and MPOs be required to explicitly consider patterns of housing, employment, transportation or other segregation in the area under study (including racially disparate impact as well as intentional discrimination) and methods for ameliorating such disparities.
- Require that in developing Transportation Improvement Plans (TIPs) and State Transportation Improvement Plans (STIPs), priority be given to plans and projects that develop and sustain diverse communities⁶. Such plans and projects could include, but are not necessarily limited to, those that include mixed-income housing, adequate workforce housing, and/or transit oriented development, but that do not dispossess existing community residents. Plans and projects that repair or improve existing infrastructure for diverse communities should also receive priority.⁷
- Reinstate a regional planning tool (such as the A-95 Review process) to require metropolitan planning organizations to establish equity goals and housing plans in each major metropolitan area. These plans would be required to engage every jurisdiction and contain geographic targets for housing, transportation, and economic development and redevelopment, with the goal of expanding opportunity throughout the

region and gradually breaking down historic patterns of segregation and concentrated poverty, and would be required to develop methods to “affirmatively further fair housing” throughout the region.

- Hold MPOs accountable in recertification and future funding for actual reductions in concentrated poverty and reduction racial and economic segregation in the region.
- Other reforms to make MPOs more democratic, independent of state politics and state Departments of Transportation, and to guarantee enforceability of civil rights goals through the recertification and annual funding process.

Accountability to the public

- Ensure transparency of all studies, reports and plans in the transportation planning process.
- Ensure that substantive and procedural requirements for the transportation planning process are broadly enforceable by the intended beneficiaries (e.g., organizations representing minority communities)

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NOTES

¹Existing federal rules impose this obligation on states receiving Community Development Block Grants. The obligation is more fully explained as follows:

24 C.F.R. Sec. 570.487: Affirmatively furthering fair housing. . . . The certification that the State will affirmatively further fair housing shall specifically require the State to assume the responsibility of fair housing planning by:

- (1) Conducting an analysis to identify impediments to fair housing choice within the State;
- (2) Taking appropriate actions to overcome the effects of any impediments identified. . .
- (3) Maintaining records reflecting the analysis and actions in this regard; and
- (4) Assuring that units of local government funded by the State comply with their certifications to affirmatively further fair housing.

The obligation to affirmatively further fair housing also applies to local CDBG recipients, public housing agencies, HUD, and others.

²Affirmative marketing is also a concept already applicable to recipients of funding from many federal housing programs (such as HOME funds). *See, e.g.*, 24 C.F.R. Sec. 92.351(a) (emphases added):

Affirmative marketing; minority outreach program.

(a) Affirmative marketing. (1) Each participating jurisdiction must adopt affirmative marketing procedures and requirements for rental and homebuyer projects containing 5 or more HOME-assisted housing units. Affirmative marketing steps consist of actions to provide information and otherwise attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, sex, religion, familial status or disability. . .

(2) The affirmative marketing requirements and procedures adopted must include:

- (i) Methods for informing the public, owners, and potential tenants about Federal fair housing laws and the participating jurisdiction's affirmative marketing policy (e.g., the use of the Equal Housing Opportunity logotype or slogan in press releases and solicitations for owners, and written communication to fair housing and other groups);
- (ii) Requirements and practices each owner must adhere to in order to carry out the participating jurisdiction's affirmative marketing procedures and requirements (e.g., use of commercial media, use of community contacts, use of the Equal Housing Opportunity logotype or slogan, and display of fair housing poster);
- (iii) Procedures to be used by owners to inform and solicit applications from persons in the housing market area who are not likely to apply for the housing without special outreach (e.g., use of community organizations, places of worship, employment centers, fair housing groups, or housing counseling agencies);
- (iv) Records that will be kept describing actions taken by the participating jurisdiction and by owners to affirmatively market units and records to assess the results of these actions; and
- (v) A description of how the participating jurisdiction will annually assess the success of affirmative marketing actions and what corrective actions will be taken where affirmative marketing requirements are not met.

³ Banning “source of income” discrimination prevents landlords from rejecting prospective tenants on the basis of their paying all or part of their rent through federal Section 8 housing vouchers. Certain federal housing assistance programs, such as Low Income Housing Tax Credits, Mark to Market, and multifamily units purchased from HUD, ban “source of income” discrimination in their implementation. States that have already enacted such laws are California, Connecticut, Maine, Massachusetts, Minnesota, New Jersey North Dakota, Oklahoma, Oregon, Utah, Vermont, and Wisconsin plus the District of Columbia, Chicago, Montgomery County, MD and several California communities.

⁴This recommendation is from Transportation for America; in combination with these other proposals it could be a big help to minority communities.

⁵ “In the top 50 metropolitan areas, 29 percent of board votes represent urban jurisdictions, . . . [y]et 56 percent of residents in these metropolitan areas live in urban jurisdictions . . .” Wolf, James, et al., “MPOs In the Post-ISTEA Era: What Went Wrong?” (2007 Forum on the Future of Urban Transportation). There potentially could be consideration given to electing MPO representatives.

⁶ “Diverse” here is intended to include racially as well as economically diverse communities, and those that provide meaningful housing opportunities for persons with disabilities, and other underrepresented groups.

⁷ Because these entities would benefit from federal transportation spending, the obligations to affirmatively further fair housing and affirmatively market any housing that is developed should also apply.