



March 16, 2020

Office of the General Counsel
Rules Docket Clerk
Department of Housing and Urban Development
451 Seventh Street SW, Room 10276
Washington, DC 20410-0001

Via regulations.gov

RE: HUD's Affirmatively Furthering Fair Housing Proposed Rule, Docket No. FR-6123-P-02

I am writing on behalf of The Leadership Conference on Civil and Human Rights to express opposition to HUD's proposed changes to the 2015 Affirmatively Furthering Fair Housing rule. The Leadership Conference strongly urges HUD to withdraw the proposed rule and fully implement the 2015 rule, which was developed over several years with considerable input from a wide variety of stakeholders.

The Leadership Conference on Civil and Human Rights is a coalition of more than 220 national civil and human rights organizations dedicated to building an America as good as its ideals. Founded in 1950 by Arnold Aronson, A. Philip Randolph, and Roy Wilkins, The Leadership Conference seeks to further the goal of equality under law through legislative advocacy and public education, and was involved in the enactment of the Fair Housing Act as well as every other major civil rights law since 1950. The Leadership Conference has continued to grow since then, and today our organizations represent people of color, women, children, organized labor, persons with disabilities, the LGBTQ community, older adults, and major religious groups.

The Importance of The Fair Housing Act's "Affirmatively Furthering Fair Housing" Requirement:

Upon signing the Fair Housing Act of 1968, President Lyndon Baines Johnson observed that the bill "proclaims that fair housing for all – all human beings who live in this country – is now a part of the American way of life." Along with several other major civil rights laws enacted in the following years – most notably the Equal Credit Opportunity Act, the Home Mortgage Disclosure Act, and the Community Reinvestment Act – the enactment of the Fair Housing Act represented a significant turning point in our nation's history, and a promise to do better in fighting discrimination and its effects than we had done in the past. These laws have undoubtedly been helpful in fighting the most overt and intentional forms of discrimination in housing and home lending that had plagued our nation for decades before their enactment, from government-sanctioned "redlining" maps to individual-level refusals to sell or rent housing to people of color.

Yet fifty-one years after the enactment of the Fair Housing Act, the racial gap in homeownership – and the corresponding racial wealth gap, in part due to the role that homeownership plays in building and maintaining wealth – remains staggering. The

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homeownership rate for African Americans now stands at approximately the same low level that existed before the passage of the Fair Housing Act. While homeownership rates for non-white Hispanic households have recovered slightly in recent years, they continue to lag far behind white households, and people of color have lost significantly more wealth in the wake of the financial crisis than their white counterparts.

Many of the causes of this ongoing racial gap in homeownership and wealth – including lasting disparities in employment, education, environmental regulation, health care, transportation, the justice system, restrictionist immigration policies, and of course the lasting impact of decades of government-sanctioned discrimination that occurred prior to the enactment of new civil rights protections – cannot be fixed solely by the Fair Housing Act’s explicit prohibitions on discrimination. This is why the Fair Housing Act demands more: its “Affirmatively Furthering Fair Housing” (AFFH) provisions require HUD and its grantees to proactively work to undo the legacy of housing segregation.

The 2015 AFFH rule made critical improvements in the ability of the Fair Housing Act to accomplish this work. It implemented the creation of an assessment tool that communities (with appropriate public input) could use to identify and understand ongoing barriers to fair housing, a review by HUD, and the incorporation of this assessment into HUD block grant planning processes.

Why The Newly-Proposed AFFH Rule Must Be Rejected:

The newly-proposed rule would gut the carefully-crafted, data-driven approach of the 2015 rule, creating new procedures that largely ignore the legacy of segregation, and eliminating the accountability over HUD grant recipients to address it. Despite being promulgated under the Fair Housing Act, the new rule does not even mention segregation, and barely makes any mention of discrimination. Instead, it asks jurisdictions to pick from a list of 16 pre-approved goals, only three of which directly address fair housing.

We find several aspects of the proposed rule especially problematic:

First, the proposed rule is heavily centered on the notion – an unproven one at that – that simply increasing the supply of market-rate housing will increase fair housing choice. Regardless of the merits of increasing housing supply overall, there is little evidence to show that such an approach will result in making housing more affordable to low-income – much less very low-income – people, or that it will reduce or eliminate discriminatory policies or entrenched segregation. Even worse, HUD’s targeting of regulations that the administration considers barriers to housing supply, such as environmental, labor, and tenant protection regulations, have an important role to play in advancing the overall well-being of communities that have been affected by segregation.

Second, the proposed rule contains no meaningful enforcement of Affirmatively Furthering Fair Housing obligations. Jurisdictions that do not wish to meet their responsibilities under the law will be able to do so without consequence. HUD’s evaluation of each jurisdiction’s compliance with the law would be based primarily on the supply of affordable housing, which should not be conflated with actual housing opportunities for members of protected classes such as women and people with disabilities. Of the nine factors that HUD would use to rank jurisdictions, only two of them relate to fair housing. Other factors such as affordability, housing quality, and supply, while important in their own right, do not tell us whether a jurisdiction’s housing policies are successfully eradicating past discrimination or preventing it

in the future. For communities that do not live up to their responsibility to further the goals of the Fair Housing Act, there are no real consequences under the proposed rule.

Third, the proposed rule completely eliminates the 2015 requirement that the public be allowed to participate in the AFFH process from the start. HUD claims that the public participation already required in the Consolidated Plan process is sufficient for addressing AFFH-related concerns and issues. But the Consolidated Plan's public participation opportunities come later in the process, a process that is designed to a) obtain input regarding housing and community development needs across the board and b) assess which needs among the many have the highest priority in the five-year Consolidated Plan cycle. Lumping in fair housing issues, priorities, and goals only within this process does it a disservice, as fair housing entails different concepts and may require different stakeholders. Having a separate community participation process, as the 2015 rule provided, would ensure that people who are most impacted by the fair housing consequences of housing and community development decisions have a meaningful voice in the planning process.

Fourth, the proposed rule would eliminate the meaningful participation of public housing agencies (PHAs) in the AFFH process. Under the proposed rule, a PHA would not have an active role in the planning process and would only have to state that it consulted with a jurisdiction regarding their common fair housing issues. The 2015 rule, by contrast, required PHAs to meet their obligation to affirmatively further fair housing by working directly with a local or state government to prepare an Assessment of Fair Housing (AFH), partner with other PHAs to prepare an AFH, or conduct its own AFH. PHAs are vital partners in ensuring the success of the Fair Housing Act's requirements because of their role administering programs that increase housing choice among those who are most vulnerable, like public housing and Housing Choice Vouchers, but this proposed rule would significantly reduce their role.

Finally, the proposed rule would reduce the use of data-driven analyses of fair housing barriers in jurisdictions. Without adequate data, there is little reason to believe that housing choices for members of protected classes under the Fair Housing Act will be increased. Jurisdictions will ultimately not be required to address the severe shortage of accessible homes or other barriers to independence for people with disabilities, they will not be required to examine barriers to housing for immigrants, they will not be required to address historical and ongoing patterns of racial discrimination, they will not be required to identify barriers to housing for families with children, and they will not be required to ensure that survivors of domestic violence have access to safe, suitable housing.

For the above reasons, we strongly urge you to abandon this proposed rule and reinstate the 2015 rule. Thank you for your consideration.

Sincerely,

Rob Randhava
Senior Counsel