

[ORGANIZATION LETTERHEAD]

[DATE]

Submitted via Regulations.gov

Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 Seventh Street, S.W.
Room 10276
Washington, D.C. 20410-0500

Re: Docket No. FR-6123-P-02: Affirmatively Furthering Fair Housing (RIN 2577-AA97)

Dear Office of General Counsel:

This letter is written on behalf of [YOUR ORGANIZATION'S NAME HERE] in response to HUD's Proposed Rule, "Affirmatively Furthering Fair Housing," dated January 14, 2020. Our organization [INCLUDE LOCATION or SERVICE AREA AND MISSION STATEMENT HERE].

[ORGANIZATION NAME] strongly opposes the adoption of HUD's Proposed Affirmatively Furthering Fair Housing (AFFH) Rule.¹ In our view, the proposed changes to HUD's 2015 AFFH Rule are inconsistent with HUD's statutory obligation to affirmatively further fair housing.² We support the continued implementation of the 2015 AFFH Rule because it creates a fair housing planning framework that emphasizes meaningful community participation, requires HUD review, and provides data and maps to better inform fair housing analysis.

In contrast to the 2015 Rule, it is quite clear that the proposed regulation is not actually a fair housing rule, as core fair housing considerations are only mentioned in passing, if at all. Furthermore, while our organization strongly supports expanding high-quality affordable housing opportunities for our clients and in our communities, the Proposed Rule would not work

¹ Affirmatively Furthering Fair Housing, 85 Fed. Reg. 2,041 (Jan. 14, 2020).

² 42 U.S.C. § 3608.

to accomplish that objective. In short, this proposal is neither a fair housing rule, nor is it an affordable housing rule. Instead, the proposed AFFH Rule simply elevates the Administration's deregulatory agenda at the expense of a meaningful, inclusive fair housing planning process. HUD should withdraw the Proposed Rule and instead focus on fully implementing the 2015 AFFH Rule.

A. The Proposed Rule Ignores Segregation and Paints a Substantially Incomplete Picture Regarding Housing Discrimination within Our Nation's Communities

We strongly oppose HUD's proposal to eliminate any discussion or analysis acknowledging the continuing role that residential segregation plays within communities across the country. In fact, the word "segregation" only appears in the Proposed Rule's preamble description of the 2015 AFFH Rule.

[ADD A FEW SENTENCES HERE THAT DESCRIBE YOUR JURISDICTION/SERVICE AREA'S HISTORY OF SEGREGATION, AND HOW THAT STILL MANIFESTS TODAY]

Pretending that segregation is not a key fair housing issue that must be addressed is wholly inconsistent with the concept of affirmatively furthering fair housing. In *N.A.A.C.P. v. Secretary of HUD*, the court noted that the Fair Housing Act's legislative history "suggests an intent that HUD do more than simply not discriminate itself; it reflects the desire to have HUD use its grant programs to *assist in ending discrimination and segregation*, to the point where the supply of genuinely open housing increases."³ In order to assist in ending discrimination and segregation, HUD must first acknowledge the role that discriminatory policies and practices have historically played, and continue to play, in our nation's communities. **[FOR, EXAMPLE, IN MY COMMUNITY....]**

By requiring that jurisdictions and public housing authorities (PHAs) specifically consider fair housing issues such as segregation, the 2015 Rule ensures that HUD funding recipients are engaged in informed fair housing planning and goal-setting that incorporates HUD data, community input, and local historical context. Under the Proposed Rule, by contrast, a program participant could complete its AFFH certification without addressing (or even mentioning) the impact of housing segregation in a jurisdiction or region.

Furthermore, HUD's Proposed Rule paints an incomplete picture of the prevalence of housing discrimination within jurisdictions and by PHAs. **[ADD A FEW SENTENCES HERE THAT DESCRIBE WHAT HOUSING DISCRIMINATION LOOKS LIKE IN YOUR SERVICE AREA GENERALLY]**. HUD's proposed "Jurisdictional Risk Analysis" treats the prevalence of housing discrimination in a jurisdiction or PHA service area as an afterthought – to be examined only in the context of being considered an "outstanding AFFH performer." Furthermore, the "Risk Analysis" fails to account for the important role of private fair housing enforcement, as the analysis only considers findings of civil rights violations in cases brought by HUD or the U.S. Department of Justice. Ignoring the role of private enforcement, including lawsuits brought under the FHA by private parties, does not present a complete picture about the state of fair housing in a given jurisdiction. **[ADD IN EXAMPLES OF PRIVATE FAIR HOUSING**

³ 817 F.2d 149, 155 (1st Cir. 1987) (emphasis added).

ENFORCEMENT IN YOUR COMMUNITY, AND WHY SUCH ENFORCEMENT IS SO IMPORTANT.]

Furthermore, the “inherent barriers” to fair housing choice included in the AFFH certification only explicitly mention one protected class – persons with disabilities⁴ -- but make no further attempt to directly connect disparities in access to housing opportunities with longstanding patterns of segregation and discrimination against other protected classes, or to more fully explore housing barriers faced by persons with disabilities.

B. The Proposed Rule Eliminates Important Opportunities for Specific Community Engagement Regarding Fair Housing Issues

We strongly oppose HUD’s proposed elimination of public engagement that specifically focuses on fair housing issues. **[INSERT LANGUAGE ABOUT WHY COMMUNITY ENGAGEMENT IS IMPORTANT FOR YOUR ORGANIZATION/YOUR ORGANIZATION’S PAST ENGAGEMENT WITH PLANNING PROCESSES].**

The Assessment of Fair Housing (AFH) process created by the 2015 AFFH Rule emphasizes local public engagement on important fair housing issues such as segregation, disparities in access to opportunity, and disproportionate housing needs. Strong community participation ensures that program participants’ resulting analysis and goals reflect the input of local stakeholders, including residents who are members of protected classes. As HUD itself states in the *AFFH Rule Guidebook*, “Community participation can have many benefits, including cost-effectiveness, instilling ownership and support of fair housing planning in the broader community, and building trust and relationships throughout the community.”⁵ However, those benefits are essentially ignored by HUD in its Proposed Rule.

[INSERT A FEW LINES ABOUT ANY EXPERIENCE YOUR ORGANIZATION HAS HAD WITH COMMUNITY PARTICIPATION, ESPECIALLY THE AFH, AND THE IMPORTANCE OF HAVING COMMUNITY VOICES IN THESE PROCESSES].

Community participation that focuses on fair housing issues must remain distinct from community participation requirements in other planning processes. Otherwise, jurisdictions and PHAs will likely fail to adequately analyze and adjust policies and practices that create or perpetuate discriminatory housing practices. We support the 2015 Rule’s approach to community engagement because important issues regarding housing discrimination must receive due consideration.

C. HUD’s Approach Declares Local Protections as Inherent Fair Housing Barriers without Explanation or Local Context

In addition to opposing the Proposed Rule’s approach to goal-setting generally, we also strongly oppose HUD’s proposal to designate -- without explanation or context -- certain locally adopted

⁴ See e.g., Proposed 24 C.F.R. § 91.225(a)(1)(i)(B) (local jurisdiction certification).

⁵ HUD, *AFFH Rule Guidebook*, Version 1, at § 3.4 (Dec. 31, 2015).

resident protections as “inherent barriers to fair housing choice.”⁶ Among these “inherent barriers” are “certain types of rent control,”⁷ “[a]rbitrary or unnecessary labor requirements,” and “[u]nduly burdensome wetland or environmental regulations.” These designations in particular appear to be part of advancing the Administration’s overarching deregulatory agenda, and not about increasing affordable housing opportunities for members of protected classes. Furthermore, HUD fails to define key terms (e.g., “labor requirements”), and includes terms that are inherently subjective (“unnecessary,” “unduly burdensome”).

While jurisdictions are not required to select HUD’s pre-selected sixteen “inherent barriers,” it is clear that many jurisdictions will be incentivized to do so because no additional explanation is required when one of the pre-selected “barriers” is chosen by a jurisdiction.⁸ This will leave local residents without any explanation as to how certain goals would address fair housing issues in their communities and in response to local circumstances.

[INSERT A FEW LINES ABOUT HOW RENT CAPS/LABOR PROTECTIONS/ENVIRONMENTAL PROVIDE BENEFITS TO CLIENTS/ RESIDENTS].

Local laws and policies should instead be examined in their proper local context. For example, rent stabilization laws in a particular community may help prevent the displacement of communities of color or persons with disabilities. We reject HUD’s approach of designating locally adopted resident protections as “inherent” barriers to fair housing choice. Instead, HUD should instead continue implementing the 2015 AFFH Rule, which takes the general approach of examining fair housing issues, contributing factors, and fair housing goals within local context and with the benefit of strong local community engagement.

D. HUD’S Proposed Rule Ignores the Important Role of PHAs in Expanding Housing Opportunities for Members of Protected Classes

PHAs play a critical role in providing housing opportunities to members of protected classes.

[INSERT A FEW LINES ABOUT HOW CLIENTS ARE SERVED BY PHA PROGRAMS]

The 2015 AFFH Rule rightly requires PHAs to conduct a fair housing assessment to determine the extent to which their policies and practices were consistent with the PHA’s overall AFFH obligation. Furthermore, the 2015 Rule requires that PHAs devise goals to address identified fair housing issues and contributing factors. Under the Proposed Rule, PHAs are not required to undertake a meaningful fair housing analysis to be submitted to HUD, nor are they required to devise goals and strategies to combat segregation and housing discrimination.

The proposed changes disregard how PHA policies and practices impact the ability of PHA program participants to access and maintain housing opportunities – including members of protected classes. Housing authorities set Voucher payment standards, evaluate reasonable accommodation requests, adopt admissions preferences, serve limited English proficient

⁶ See e.g., Proposed 24 C.F.R. § 91.225(a)(1)(i) (local jurisdictions).

⁷ Proposed 24 C.F.R. § 91.225(a)(1)(i) (local jurisdictions). Regulations for states and consortia use the language “rent controls.” Proposed 24 C.F.R. § 91.325(a)(1)(i)(I) (states); Proposed 24 C.F.R. § 91.425(a)(1)(i)(A)(9) (consortia).

⁸ See e.g. Proposed 24 C.F.R. § 91.225(a)(1)(i) (local jurisdictions).

individuals and families, and serve survivors of domestic and sexual violence – among many other functions. Such decisions and policies, and how the public housing and the Housing Choice Voucher programs are administered, directly affect participating families, including members of protected classes. HUD’s proposal simply discounts the importance of these PHA policies. These proposed changes are unacceptable.

* * *

In closing, we reiterate our strong support for HUD’s 2015 AFFH Rule and strongly oppose HUD’s proposed replacement of the 2015 Rule.

[OPTIONAL - IF YOUR ORGANIZATION PARTICIPATED IN THE AFH PROCESS]

Our organization participated in the AFH process in [CITY/COUNTY/REGION]. [INCLUDE 3-4 SENTENCES (OR MORE) TO DESCRIBE ASPECTS OF THIS EXPERIENCE AND OUTCOMES. IF POSSIBLE, FOCUS ON COMMUNITY-BASED ENGAGEMENT AND OUTCOMES].

The 2015 AFFH Rule provides HUD program participants with much-needed guidance and direction. HUD must ensure that meaningful fair housing analysis, informed by data and community participation, as well as the goal-setting resulting from that analysis, continues. Instead of focusing agency resources on implementing a new, substantially less effective Rule, HUD should instead resume full implementation of the 2015 AFFH Rule.

If you have any questions, please contact [CONTACT PERSON AND INFORMATION FOR YOUR ORGANIZATION].

Sincerely,

[NAME]
[ORGANIZATION]