

October 15, 2018

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

Re: Docket No. FR-6123-A-01
Advanced Notice of Proposed Rulemaking
Affirmatively Furthering Fair Housing: Streamlining and Enhancements

Dear Assistant Secretary Farias:

On behalf of the National Community Reinvestment Coalition (NCRC), thank you for the opportunity to comment on the Department of Housing and Urban Development's (HUD's) advance notice of proposed rulemaking (ANPR) on the Affirmatively Furthering Fair Housing (AFFH) regulations. For more than 25 years, NCRC's mission has been to create opportunities for people and communities to build and maintain wealth. NCRC members include community reinvestment organizations, community development corporations, local and state government agencies, faith-based institutions, fair housing and civil rights groups, minority and women-owned business associations, housing counselors, and social service providers from across the nation.

At the outset, we want to state our unequivocal support for the agency's 2015 final AFFH rule. The rule is the result of years of consultation and careful consideration of both informal input and significant formal rulemaking. HUD received over 1,000 public comments to the proposed rule and the Fair Housing Assessment Tool, for example, underwent two Paperwork Reduction Act 60-day and 30-day public review and comment periods.

The Fair Housing Act of 1968 requires HUD to administer programs and activities relating to housing and urban development in a manner that affirmatively furthers fair housing. The 2015 rule appropriately defines: "affirmatively furthering fair housing," to include meaningful action that "...overcome patterns of segregation and foster inclusive communities..."; and, the scope of the obligation to cover all of a program participant's activities and programs¹. The Assessment of Fair Housing

¹ 24 CFR Sections 5.152 and 91.225, 91.325, 91.425, 570.487, 570.601, 903.7(o), and 903.15(d), as applicable.

(AFH) required by the rule is a data-driven process that no longer allows local governments to ignore the most segregated and impoverished areas in their communities. The AFH process requires program participants to take a meaningful look at historically neglected communities lacking basic resources such as clean water, fresh food, reliable and safe transportation systems, functional education system for their children, adequate housing, and basic commerce. Stakeholders evaluate the lack of public and private investment and its role in exacerbating these issues in communities. The rule ties the release of federal funding to the local government's successful completion of the AFH. For the first time, local community advocates have a seat at the planning table, and the ability to ensure funding is actually creating opportunity in low-income areas.

Prior to the 2015 AFFH final rule, HUD attempted to fulfill the law's mandate by requiring program participants to complete an Analysis of Impediments to Fair Housing Choice (AI). This requirement was poorly administered and lacked uniform structure. Unlike the AFH, the AI was not generally submitted to or reviewed by HUD. A 2009 HUD internal study on AIs and an analysis by the U.S. Government and Accountability Office (GAO) "identified critical deficiencies in these requirements."² In 2010, the GAO recommended that the agency "expeditiously complete its new regulation pertaining to the affirmatively further fair housing (AFFH) requirements."³ As the agency observed, the final rule is informed by "lessons learned in localities across the country, and with program participants, civil rights advocates, other stakeholders, and all commenting to HUD that the AI approach was not as effective as originally envisioned."

The 2015 final rule provides structure to a once flawed process. NCRC and its members have found the Assessment of Fair Housing (AFH) planning process far more effective than the AI process. Unlike the AI, HUD provides communities with data, mapping, and other analytical tools which allow stakeholders to better analyze patterns, trends and conditions and to set fair housing goals, after considering local data and expertise. Many have praised the helpfulness of the AFH mapping and database tools. The City of Seattle, for example, has used these tools to conduct regional comparisons⁴ and build more equitable communities with local partners.

² U.S. Government and Accountability Office. Housing and Community Grants: HUD Needs to Enhance Its Requirements and Oversight of Jurisdictions' Fair Housing Plans. (2010, October 14). Retrieved from <https://www.gao.gov/products/GAO-10-905>

³ Ibid.

⁴ Yost, J. (2018, March 8). Seattle Department of Human Services. Docket No. FR-5173-N-15 Affirmatively Furthering Fair Housing: Extension of Deadline for Submission of Assessment of Fair Housing for Consolidated Plan Participants. Retrieved from <https://www.regulations.gov/document?D=HUD-2018-0001-0051>

The AFH process also facilitates public and private partnerships and better incorporation of fair housing priorities and goals in broader housing and community development decision-making. For example, the comprehensive needs assessment is accessible to banks seeking to make community development investments that meet their obligations under the Community Reinvestment Act (CRA), as well as regulators evaluating whether those investments meet local credit needs.

We support the 2015 AFFH rule and would urge the agency to fully implement it. In response to the questions posed by the agency, we offer the following:

Question 1 on Community Participation: *What type of community participation and consultation should program participants undertake in fulfilling their AFFH obligations? Do the issues under consideration in affirmatively furthering fair housing merit separate, or additional, public participation and consultation procedures than those already required of program participants in preparing their annual plans for housing and community development (i.e., the Consolidated Plan, Annual Action Plan, or PHA Plan)? Conversely, should public input on AFFH be included as part of the Consolidated Plan/PHA Plan public involvement process?*

Answer: The 2015 rule empowers local communities, guaranteeing all stakeholders and community members are provided a seat at the table. The agency must continue to require the significant opportunities for meaningful community participation in developing the AFH and the consolidated plan that are included in the AFFH rule.⁵

Community participation is essential to fair housing planning and equitable development. Protected classes and their advocates must have a seat at the planning table to be able to influence how public funds are allocated. Consolidated plans should also include community participation, but that process should not be in lieu of fair housing planning. Participation in the development of consolidated plans should ensure that fair housing goals are supported and implemented as outlined by the community.

⁵ 24 CFR Sec. 5.158 requires “program participants must give the public reasonable opportunities for involvement in the development of the AFH... should employ communications means designed to reach the broadest audience...” Sec 91.100 requires program participants to consult various public stakeholders, but also “...community-based and regionally-based organizations that represent protected class members, and organizations that enforce fair housing laws.”

Question 2 on Use of Data: *How should the rule weigh the costs and benefits of data collection and analysis? Should the proposed rule allow program participants to develop or use the data of their choice? Alternatively, should HUD require the use of a uniform data set by all program participants in complying with their AFFH obligation? Should it vary by the nature of the program participant? Instead of a data-centric approach, should jurisdictions be permitted to rely upon their own experiences? If the latter, how should HUD assess this more qualitative approach?*

Answer: The 2015 final rule provides for a comprehensive and data-driven process. HUD must continue to provide uniform national data, data and mapping tool and structured questions in the Fair Housing Assessment Tool that local jurisdictions are required to use. Participants should supplement HUD's baseline data with their own local data, knowledge and community input from the planning process to inform areas not effectively addressed by HUD's information.

Using quality data is essential to a successful AFH. Data should be mostly quantitative and it should be relevant, timely, and uniform; it should address poverty, segregation, and discrimination issues in housing, education, nutrition, environment, health, employment, and transportation. Jurisdictions should not be permitted to selectively omit data from their plans.

Question 3 on Reporting: *How should PHAs report their AFFH plans and progress? Should jurisdictions be required to provide a detailed report of the analysis performed or only summarize the goals? How often should program participants be required to report on their AFFH efforts? Should the proposed rule retain or revise the current timeframes for required AFFH submissions? Should program participants continue reporting annually on their AFFH actions and results in their program plans and annual performance reports or, given the long-term nature of many AFFH goals, should the reporting period be longer? Should planning and/or results be integrated into existing report structures, such as Consolidated Plans and Consolidated Annual Performance and Evaluation Reports (CAPERS), or utilize an alternative structure?*

Answer: PHAs should report in coordination and collaboration with their jurisdiction(s). Jurisdiction(s) must report detailed, data-based analysis every 3-5 years, with annual updates on progress. Fair housing plans must be integrated into consolidated plans and CAPERS.

The AI process did not specify a timeline for when a new AI should be conducted and, as the GAO analysis found in 2010, many were outdated.⁶

⁶ Id. at 1. On the basis of 441 AIs reviewed, GAO estimated that 29 percent were outdated, including 11 percent dating back to the 1990s.

Question 4 on Obstacles: *Should the proposed rule specify the types of obstacles to fair housing that program participants must address as part of their AFFH efforts, or should program participants be able to determine the number and types of obstacles to address? Should HUD incentivize program participants to collaborate regionally to identify and address obstacles to affirmatively furthering fair housing, without holding localities accountable for areas outside of their control? Should HUD incentivize grantees and PHAs to collaborate in the jurisdiction and the region to remove fair housing obstacles? What are examples of obstacles that the AFFH regulations should seek to address? How might a jurisdiction accurately determine itself to be free of material obstacles?*

Answer: The final AFFH rule does not mandate specific outcomes for the planning process. Recognizing the importance of local decision-making, the rule sets out basic parameters. It requires that the AFH set goals, identify metrics and milestones, and to identify the contributing factor(s) and related fair housing issues the goal(s) is designed to address.⁷ Jurisdictions must continue to give highest priority to those factors “that limit or deny fair housing choice or access to opportunity, or negatively impact fair housing or civil rights compliance.”⁸ Depending on the locality, the obstacles could include areas of poverty and segregation, affordable housing, education, nutrition, environment, health, employment, and/or transportation. Collaboration among jurisdictions should be supported by HUD.

Question 5 on Local Deference: *How much deference should jurisdictions be provided in establishing objectives to address obstacles to identified fair housing goals, and associated metrics and milestones for measuring progress?*

Answer: While the 2015 final rule requires that the AFH set goals, establish metrics and milestones, it is not “highly prescriptive” as the ANPR claims. The rule defers to local jurisdictions on what those goals, metrics, and milestones should be. The AFH also requires local community participation to inform the planning process.

In fact, we believe the rule should be more prescriptive when jurisdictions are addressing segregation and areas of extreme poverty (RECAPS). Jurisdictions should be required to set goals and meet those goals using uniform metrics. This would ensure funding is allocated appropriately and being used consistent with fair housing goals.

⁷ 24 CFR 5.154(d)(4)(iii)

⁸ 24 CFR 5.154(d)(4)(ii)

Question 6 on HUD Evaluations: *How should HUD evaluate the AFFH efforts of program participants? What types of elements should distinguish acceptable efforts from those that should be deemed unacceptable? What should be required of, or imposed upon, jurisdictions with unacceptable efforts (other than potential statutory loss of Community Development Block Grant, HOME, or similar funding sources)? How should HUD address PHAs whose efforts to AFFH are unacceptable?*

Answer: Jurisdictions should be evaluated on their investment in people and communities that have been harmed by discrimination and a lack of public investment. Among other steps, the agency should continue to review and accept AFH plans and require certifications as provided under the 2015 rule. Federal funding should be delayed until the jurisdiction submits an acceptable AFH plan addressing the needs of protected classes.

Question 7 on Safe Harbors: *Should the rule specify certain levels of effort on specific actions that will be deemed to be in compliance with the obligation to affirmatively further the purposes and policies of the Fair Housing Act (i.e., “safe harbors”), and if so, what should they be?*

Answer: We vehemently oppose “safe harbors” because they do not require program participants affirmatively further fair housing and can exacerbate segregation, discrimination, and areas of extreme poverty. The final AFFH rule provides program participants with a more effective way of meeting their AFFH obligation. Nonetheless, whether a jurisdiction meets its statutory obligation should continue to depend upon the actions a program participant takes to affirmatively further fair housing, not the actions a program participant states that it plans to take in its AFH, HUD’s acceptance of an AFH, or what a program participant or jurisdiction certifies.

Question 8 on Further Changes: *Are there any other revisions to the current AFFH regulations that could help further the policies of the Fair Housing Act, add clarity, reduce uncertainty, decrease regulatory burden, or otherwise assist program participants in meeting their AFFH obligations?*

Answer: Under any circumstances, a new rule designed to meaningfully and effectively carry out the statute’s AFFH obligation would require significant change to longstanding practice and would involve a learning curve. The 2015 rule is the product of careful and extensive deliberation and any further change should come after substantial experience by program participants with the current rule. The agency should keep and improve the AFFH Mapping tool and provide more timely data for participants to use in the planning process. The AFFH rule must continue to prioritize serving RCAPS/ECAPS and providing individuals of protected classes access

to opportunities.

Conclusion

HUD should continue implementing the 2015 AFFH rule. NCRC believes it is imperative for the fair housing planning process to be data driven. We support an AFH process that focuses on driving investment and creating opportunities in impoverished communities. For an AFH plan to truly be effective, community participation must be robust during both the fair housing and consolidated planning processes. Jurisdictions should be held accountable, and they should be required to address housing impediments in an effective and efficient way.

If you have any questions, please contact Gerron Levi, Director of Policy & Government Affairs at (202) 464-2708 or glevi@ncrc.org.

Sincerely,

National Community Reinvestment Coalition
727 Mgt. LLC
Affordable Homeownership Foundation Inc.
CAARMA Consumer Advocates Against Reverse Mortgage Abuse
California Reinvestment Coalition
CASA of Oregon
Chicago Community Loan Fund
City of Gary, Indiana
City of Toledo
Collective Empowerment Group
Community Development Corporations Association of Greater Cincinnati
Community Housing Fund
Community Reinvestment Alliance of South Florida
Community Service Network
CONSUMER ACTION
Fair Finance Watch
Georgia Advancing Communities Together, Inc.
Greater New Orleans Fair Housing Action Center
Harlingen CDC
Hawai'i Alliance for Community-Based Economic Development
Home Repair Resource Center
Housing Action Illinois
Housing Assistance Council
Housing Authority of the City of High Point

Housing Education & Economic DEVELOPMENT

HousingWorks RI

Jericho Road Episcopal Housing Initiative

Maryland Consumer Rights Coalition

Metropolitan Milwaukee Fair Housing Council

Metropolitan St. Louis Equal Housing and Opportunity Council

MIDTOWN COMMUNITY LAND TRUST

NAACP

National Housing Counseling Agency

Neighborhood Housing Services of Waterbury

New Jersey Community Capital

Northwest Fair Housing Alliance

PathStone Enterprise Center

REBOUND, Inc.

S J Adams Consulting

Solita's House, Inc.

The Greenlining Institute

The Institute

Urban Economic Development Association of Wisconsin (UEDA)

Working In Neighborhoods