



3/16/2020

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

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

To Whom it May Concern,

NALCAB strongly opposes the U.S. Department of Housing and Urban Development's (HUD) proposed changes to the 2015 Affirmatively Furthering Fair Housing Rule (AFFH) that was published on January 14<sup>th</sup>, 2020. The AFFH final rule adopted in 2015 was a critical step in addressing historic and ongoing discrimination. HUD's new proposal effectively guts the 2015 rule, eliminating access to critical data tools that would inform those local officials who seek to Affirmatively Further Fair Housing and would nearly eliminate accountability for those whose actions perpetuate the legacy of housing discrimination in our country. NALCAB urges HUD to withdraw this proposal and fully implement the current rule which was developed after years of careful consideration and with public input from a wide range of constituencies.

The National Association for Latino Community Asset Builders (NALCAB) is a national non-profit organization with a mission to strengthen the economy by advancing economic mobility in Latino communities. NALCAB is the hub of a national network of more than 120 mission-driven organizations, in both urban and rural communities, in 40 states and DC that build affordable housing, address gentrification, support small business growth, and provide financial counseling on issues such as credit building and homeownership. Our vision is to dramatically scale the flow of public and private sector capital that responsibly meets the asset building needs and opportunities in the communities and families we serve. For decades, NALCAB Network members have increased access to affordable housing and economic opportunities in the neighborhoods they serve.

To fully understand the impact of housing discrimination and other barriers to fair housing choice, we must examine individual instances of discrimination, we must analyze data to see patterns across metro areas and regions and we must also consider the macroeconomic implications. It is important for us to recognize that the future strength and competitiveness of the US economy relies on achieving far broader financial inclusion and economic mobility. Ensuring fair housing choice for everyone in our country is a critical element of achieving this goal.

Consider that Hispanics have significantly fewer assets, lower income and strikingly less access to fair housing choice than the non-Hispanic White population, but according to the Census Hispanics make up 18% of the population and are projected to make up 28% of the US population by 2060. It is a pressing macroeconomic concern that such a large, fast growing and young segment of our nation's

population is struggling to access and maintain stable, affordable quality housing. This is the same reality for African Americans, for significant segments of the Asian Pacific-American population, for many working-class Whites and for many residents of rural and tribal communities, among others. When people do not have fair access to affordable housing, they tend to be less economically productive and experience less economic mobility. Said another way, they are less likely to share in the American Dream. Failure to address this challenge across diverse demographic segments and geographic regions will cost the United States in terms of economic growth and global economic competitiveness. This is not a Latino thing, or rural thing, or an African American thing, this is about the future of US economy. We are all in this together.

Housing discrimination is a market distortion; an insidious form of economic inefficiency that threatens our nation's economic future. A lack of quality, affordable housing in any given jurisdiction represents a market failure. Too often, the idea of a free market is confused with the idea of a market without rules or regulations. When local housing markets fail to serve the needs and opportunities of significant segments of the population, the costs are not limited to those people who suffer most immediately. Limited economic mobility, poor health outcomes, and homelessness all result in a market that fails to affirmatively further fair housing choice and these outcomes have enormous short term and long-term costs. This is an "us" problem not a "them" problem. It is critically important that HUD promulgate and enforce clear and consistently applied regulations that support local housing markets to efficiently deliver fair housing choice, especially to those populations that disproportionately experience discrimination and other barriers to quality affordable housing.

In this proposed rule, HUD asserts that its goal is to, "further the spirit and the letter of the Fair Housing Act." It continues by correctly acknowledging that, "housing discrimination still takes place." The Proposed Rule describes changes to the existing Final Rule that are perversely misaligned with the clearly stated goal and acknowledgement of the ongoing problem. Further, the proposed rule fails to describe much of the detail about how HUD will implement the proposed rule, including the central scoring mechanism for determining the compliance of jurisdictions that will be subject to the Rule.

- *The Proposed Rule discourages data analysis that would inform local policy and investment decisions needed to AFFH.* The proposed rule would eliminate the requirement that local jurisdictions develop and obtain HUD approval on a data-driven Assessment of Fair Housing. At the same time, HUD proposed to eliminate a critical mapping tool that supports local jurisdictions in analyzing fair housing choice in their market. Instead, the proposed rule requires a Certification that would include goals statements for AFFH but would not require any data analysis. Jurisdictions would no longer need to conduct a data-driven analysis of the housing barriers in their communities. Jurisdictions would not be required to examine barriers to housing for immigrants and would not be required to address historic and ongoing patterns of discrimination, segregation, or disinvestment based on race or other protected classes. In fact, the proposed rule explicitly states, "The certification would not have to address all fair housing obstacles." By eliminating requirements to conduct analysis of housing discrimination and other barriers to fair housing choice, the Proposed Rule fails to advance its stated goal to, "further the spirit and the letter of the Fair Housing Act."
- *The Proposed Rule virtually eliminates accountability for jurisdictions that do not seek to AFFH.* The new Fair Housing Certification described in the proposed rule establishes a structure that will make it nearly impossible to hold local jurisdictions accountable for failing to actively AFFH. In the

Certification, local jurisdictions would have to identify three goals and provide a narrative justification, without any requirement that the goals be supported with solid market data. The proposed rule states, “HUD would review these goals or obstacles for completeness and verify they use concrete and measurable standards, but HUD would not require that the goals cover specific areas or reach certain thresholds.” The proposed rule reduces HUD’s role to ensuring minimal compliance with an already minimal standard. Further, HUD encourages jurisdictions to choose from a list of 16 pre-approved goals, many of which are only loosely connected to fair housing choice, if at all. If a jurisdiction picked from the pre-approved list the proposed rule states, “jurisdictions would not need to include an explanation of why the jurisdiction is pursuing solutions to these barriers.” That is to say, no data, nor even an explanatory note, would need to be provided to justify why the local jurisdiction picked a given goal. For example, a jurisdiction could list addressing the following three pre-approved conditions as their AFFH goals, without describing why these have been chosen:

- Unduly burdensome wetland or environmental regulations;
- Tax policies which discourage investment or reinvestment;
- Arbitrary or unnecessary labor requirements.

This approach is a drastic departure from the 2015 AFFH rule, which created a data-driven approach to assessing fair housing and planning actions that clearly defined AFFH as a means to address disparities, integrate communities, eliminate concentrated areas of poverty, and encourage compliance with civil rights and fair housing laws.

- *The Proposed Rule reduces opportunities for public input.* Also troubling the proposed rule eliminates the separate AFFH public participation process, claiming that the public participation required in the Consolidated Plan process is sufficient. The 2015 AFFH rule intentionally designed the AFFH public participation process to be separate from the decision making associated with the Consolidated Plan and its Annual Action Plan system. The separate community participation process ensures that people who are most impacted by the fair housing consequences of housing and community development decisions have a voice in the planning process – eliminating this opportunity for public input deprives the communities most impacted by housing discrimination of a critical opportunity to express their point of view.
- *The Proposed Rule cannot be effectively implemented because it fails to describe the central scoring mechanism that would be used to rate participating jurisdictions.* The Rule states, “To determine each jurisdiction's success at furthering fair housing choice, HUD would develop a scoring system based on quantitative data generated by publicly available datasets.” This as yet undeveloped scoring system is the central implementation mechanism in the proposed rule. By failing to describe this scoring system in any useful detail, HUD has not provided the public a true opportunity to comment on its intended approach and cannot reasonably move to a final rule based on what has been published. Despite the fact that HUD previously sought input through an Advanced Notice of Proposed Rulemaking (ANPR), the current proposed rule reads more like an ANPR in its lack of specificity and abundance of open-ended questions.

Simply put, the proposal that HUD has put forth is not a fair housing rule. NALCAB urges HUD to abandon the approach that is only partially described in this Proposed Rule and to fully implement the existing 2015 AFFH Final Rule.

Respectfully submitted,

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Executive Director