



AFFH Fact Sheet

What's at Stake: Crucial Fair Housing Advances Will Be Lost If HUD Adopts Its Proposed New Affirmatively Furthering Fair Housing (AFFH) Regulation

HUD has proposed a new regulation to replace the Affirmatively Furthering Fair Housing (AFFH) rule that it adopted just five years ago, in 2015. The proposed new regulation is fundamentally flawed. Its adoption by HUD would be a major setback to efforts to create communities that are diverse and inclusive, eliminate systemic discrimination based on race and other factors, topple the barriers created by government-sponsored segregation, and ensure that residents of all communities have access to the resources and opportunities they need to thrive.

The 2015 rule contained a number of elements designed to create an effective fair housing planning process, centered on the concerns raised by community members and resulting in concrete strategies for tackling barriers to fair housing. It set the nation on a path toward dismantling the systemic discrimination and deeply entrenched segregation that harm us all. The proposed 2020 rule strips these away.

Here are some of the key elements of the 2015 rule that the proposed new rule would eliminate:

ACCURATE DEFINITION OF AFFH: It's hard to achieve a goal if it's not defined, and for decades, HUD failed provide a clear definition of AFFH that would guide jurisdictions to fulfill their AFFH obligations. For the first time, the 2015 rule included a definition of AFFH that was grounded in the mandate of the Fair Housing Act and clear to the jurisdictions which play a crucial role in fulfilling this mandate. That definition included "taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected classes [under the Fair Housing Act]." (24 CFR §5.152) The definition of AFFH in the proposed 2020 rule makes only passing references to discrimination and does not mention segregation at all. Instead, it confuses fair housing and affordable housing. Rather than focusing on eliminating discrimination and segregation, it focuses on eliminating local housing and land use regulations, supposedly as a way to increase housing supply.

DATA-DRIVEN PROCESS: The 2015 rule established data-driven fair housing planning process, in which HUD provided extensive and relevant data about local demographics, residential patterns, housing needs and costs. The data also highlighted the impact of neighborhood location on residents' access to opportunity in education, employment and transportation, as well as their exposure to environmental hazards and concentrated poverty. Further, the rule required jurisdictions to consider the data and knowledge – including the lived experiences – of community residents. All of these sources of data and information combined to form a basis

for understanding what discrimination and segregation look like in a particular jurisdiction, and then charting a path to overcome them. The proposed 2020 rule sets up a process that does not require jurisdictions to undertake any analysis of these issues or consider any data or information in choosing goals to adopt in order to affirmatively further fair housing.

ELEVATING COMMUNITY VOICES: The 2015 rule elevated community voices, bringing a range of stakeholders into a conversation with local officials that focused on fair housing issues. It armed residents with the data they needed to document the fair housing barriers they face, acknowledged their personal experiences and expertise, and required jurisdictions to respond to their concerns. It gave community residents an opportunity to review and comment on the jurisdiction's draft fair housing plan before it was finalized. All of this community engagement took place in advance of and separately from the community participation process for the jurisdiction's Consolidated Plan. The separate process facilitated a sharp focus on fair housing issues, rather than spending priorities, and because it took place first, the priorities that emerged informed the spending decisions incorporated into the ConPlan. The proposed 2020 rule eliminates any separate, fair housing-focused community engagement process.

EFFECTIVE FRAMEWORK FOR FAIR HOUSING PLANS: The 2015 rule created a framework for identifying local fair housing issues, so that jurisdictions would have the guidance and structure they need to analyze barriers to fair housing effectively. The framework guided jurisdictions to look closely at key aspects of discrimination and segregation within their communities, enabling them to assess their most pressing barriers to fair housing and equity. This kind of structure and focus was missing from many jurisdictions' previous fair housing planning efforts. The 2015 rule's framework was created with extensive input from stakeholders, and field tested in 74 communities. It responded to local officials' requests for better guidance from HUD about how to approach their AFFH obligations, and was clearly aligned with the AFFH mandate of the Fair Housing Act. The proposed 2020 regulation requires no analysis of local fair housing issues, incorporates no analytical framework, and fails to address the fundamental concepts that are embodied in the AFFH provisions of the Fair Housing Act, namely, ending discrimination and dismantling segregation.

CONCRETE PLAN FOR ACHIEVING FAIR HOUSING GOALS: Given a clear definition, relevant data, stakeholder input and a focused analytical framework, the 2015 rule guided jurisdictions to create a fair housing plan with clear priorities, metrics and timelines for achieving the goals. Those goals were then carried over to the jurisdiction's ConPlan, in which they were required to spell out the strategies that would be used to achieve those goals, including the allocation of resources from HUD and other sources, and any other steps the jurisdiction intended to take. Jurisdictions were to report on the progress made in each annual performance report, and any necessary adjustments to the fair housing plan would be incorporated into the jurisdiction's annual action plan. The proposed 2020 rule mimics some of these provisions. However, it eliminates any requirement for analyzing local fair housing issues and creating a plan to address them, and it focuses on affordable housing rather than fair housing. As a result, it will not lead jurisdictions toward the creation or implementation of any meaningful fair housing goals.

FLEXIBILITY AND LOCAL CONTROL: The 2015 rule laid out a process flexible enough to allow jurisdictions to set their own goals and develop their own strategies, based on local priorities

and capacity. It ensured that their fair housing plans were concrete, and focused on actual barriers to fair housing, but it did not spell out any specific steps that any particular jurisdiction would be required to take to achieve its goals. Nor did it say how many goals (other than “at least one”) jurisdictions were required to adopt. It left those decisions to local communities. Jurisdictions that went through the process adopted numerous goals, and each jurisdiction’s goals were matched to its specific circumstances. In contrast, the proposed 2020 rule identifies 16 specific issues that HUD deems “inherent barriers to fair housing.” Jurisdictions would be required to pick three goals, and if they choose from HUD’s pre-approved list, would not have to provide any explanation or justification for their choices. Rather than putting control in the hands of the local community, the 2020 rule would eliminate flexibility and put HUD in the driver’s seat to determine which barriers make the list, whether or not they are relevant to a particular community’s circumstances.

MEANINGFUL FAIR HOUSING PLANNING BY PHAs: The 2015 rule required public housing authorities (PHAs) to undertake meaningful fair housing planning, using a similar framework, data, and community engagement as local jurisdictions, but focused on their role in the local community and the resources under their control. Under the proposed 2020 rule, PHAs must only participate in the ConPlan process – a long-standing requirement that has not historically led PHAs to take meaningful steps to eliminate fair housing barriers – and then certify that they have consulted with their local jurisdictions on fair housing and will comply with fair housing laws – a meaningless “check the box” approach to fair housing.

REGIONAL COLLABORATION: The 2015 rule recognized that many fair housing problems are region-wide, and encouraged regional collaboration among jurisdictions to address those problems. The proposed 2020 rule not only abandons this approach, its proposed ranking of jurisdictions according to their AFFH performance may actually pit them against one another, as jurisdictions seek to be distinguished from their neighbors in order to obtain extra benefits and avoid penalties.

TECHNICAL ASSISTANCE AND MEANINGFUL OVERSIGHT: The 2015 rule was accompanied by a robust program of technical assistance and training for jurisdictions, designed to ensure they understood the rule and its requirements and got the help they needed to create effective fair housing plans. HUD provided several other forms of technical assistance, including a guide to help jurisdictions through the fair housing planning process, access to individualized expert assistance, and a web portal through which questions could be submitted, among others. In addition, the 2015 rule included a series of accountability measures to ensure that jurisdictions, the public and HUD could all measure the progress that was being made, make course corrections where needed, and apply enforcement tools if needed. HUD is not proposing to provide any training or technical assistance under the 2020 rule, and its oversight mechanisms are so weak as to make its enforcement provisions meaningless.

If the provisions of the proposed 2020 AFFH regulation go into effect, it will be a major setback in our country’s efforts to eliminate discrimination from our housing programs and housing markets, dismantle the barriers of segregation that undermine our vitality and prosperity, and create communities that are diverse and inclusive.