

KEY AFFH MILESTONES

1968

Congress passes the **Fair Housing Act** and President Lyndon B. Johnson signs it into law. The Act establishes the policy of the United States to provide, within Constitutional bounds, for fair housing for all. In addition to barring discrimination based on race, national origin and other protected characteristics, the Act requires HUD and other federal agencies to administer their housing and community development programs in a manner that “affirmatively furthers” fair housing. (42 U.S.C. §§ 3608(d) and 3608(e)(5))

1970

Shannon v. HUD In this lawsuit, which challenged the siting of assisted housing because it would increase segregation, the court holds that HUD has an obligation to, “utilize some institutionalized method whereby, in considering site selection or type selection, it has before it the relevant racial and socio-economic information necessary for compliance with its duties...” under the Fair Housing Act. The court also says that HUD’s discretion must be exercised to not just prevent discrimination in housing, but to align the federal government “in favor of fair housing.” (*Shannon v. United States Dep’t of Hous. & Urban Dev.*, 436 F.2d 809, 819 (3d Cir. 1970)).

1973

The U.S. Court of Appeals for the Second Circuit issues an opinion in **Otero v. New York City Housing Authority**. This case considers how the balance should be struck between the promises the New York City Housing Authority has made to residents displaced from a project undergoing redevelopment about their right to occupy units in the redeveloped property and the Authority’s obligation to avoid perpetuating or further entrenching racial segregation. The Court holds that the obligation to affirmatively further fair housing requires that, “[a]ction must be taken to fulfill, as much as possible, the goal of open, integrated residential housing patterns and to prevent the increase of segregation, in ghettos, of racial groups whose lack of opportunity the Act was designed to combat.” (*Otero v. New York City Housing Auth., et al.*, 484 F.2d 1122, 1134 (2d Cir. 1973)).

1974

Congress passes the **Housing & Community Development Act of 1974**, which establishes the Community Development Block Grant (CDBG) program, among other provisions. In this act, Congress reaffirms the obligation of HUD’s grantees to affirmatively further fair housing by requiring grantees to certify that they will do so as a condition for receiving CDBG funds. (42 U.S.C. § 5304(b)(2)).

1987

The U.S. Court of Appeals for the First Circuit issues an opinion in **NAACP, Boston Chapter v. HUD**. In this case, the plaintiffs assert that despite the significant housing shortage in Boston, the disproportionate housing needs of Black families as compared to White families, the long and well-documented history of racial discrimination and segregation in Boston, and its obligations under the Fair Housing Act, HUD has failed to use its leverage – “the immense leverage” of federal funds – “to provide desegregated housing so that the housing stock is sufficiently large to give minority families a true choice of location.” The court held that HUD’s obligation to affirmatively further fair housing requires that “HUD do more than simply not discriminate itself”; rather, HUD must “use its grant programs to assist in ending discrimination and segregation, to the point where the supply of genuinely open housing increases.” (*NAACP, Boston Chapter v. HUD*, 817 F.2d 149 (1st Cir. 1987))

1990

Congress passes the **Cranston-Gonzalez National Affordable Housing Act**, requiring jurisdictions receiving HUD funding to develop and submit Comprehensive Housing Affordability Strategies, documenting their residents’ housing needs and describing the strategies they will use to address those needs. In conjunction with these plans, Congress requires that jurisdictions must certify to HUD that they will affirmatively further fair housing, reaffirming the AFFH obligation once again. (42 U.S.C. § 5306(d)(7)(B), § 12705(b)(15))

1995

HUD adopts the first AFFH regulation. It sets out three steps grantees must take to affirmatively further fair housing. These are: 1. Conduct an analysis of impediments to fair housing choice within the jurisdiction; 2. Take appropriate actions to overcome the effects of any impediments identified through that analysis; and 3. Maintain records reflecting the analysis and actions in this regard.” (24 C.F.R. § 91.225(a)(1), § 91.325(a)(1) and § 91.425(a)(1) (1996))

1996

HUD publishes the **Fair Housing Planning Guide**, [volumes 1 and 2](#), to assist its grantees in their fair housing planning efforts.

1998

Congress passes the **Quality Housing and Work Responsibility Act**, which devolves much decision-making about public and assisted housing from the federal government to local public housing authorities. It establishes a requirement for PHAs to create and submit to HUD plans detailing local needs, agency resources and PHA policies in a number of program areas. It also – for the third time – reaffirms the government’s commitment to affirmatively furthering fair housing by requiring PHAs to certify that they will affirmatively further fair housing. (42 U.S.C. § 1437C–1(d)(16))

2005

The US District Court for the District of Maryland issues a decision in **Thompson v. HUD**, a lawsuit concerning segregation in public housing in Baltimore. The court finds that HUD has violated its obligation to affirmatively further fair housing by limiting its efforts to desegregate public housing to areas within the city limits rather than widening its focus to provide housing opportunities throughout the entire Baltimore region. The court orders HUD to craft a regional remedy, noting that the AFFH mandate requires HUD to adopt policies “whereby the effects of past segregation in Baltimore City public housing may be ameliorated by the provision of public housing opportunities beyond the boundaries of Baltimore City.” (*Thompson v. HUD*, 48 F. Supp. 2d 398, 409 (D. Md. 2005))

2009

A \$62.5 million settlement is announced in a 2006 **False Claims Act case against Westchester County, NY** filed by the Anti-Discrimination Center (ADC), the first such case under the Act. ADC asserts that Westchester had falsely certified to HUD that it would affirmatively further fair housing because the County failed to consider impediments to fair housing choice that were based on race. Further, ADC alleges that the County failed two other prongs of the AFFH regulation by not identifying and taking steps to overcome these impediments and not keeping the required records documenting its efforts. The judge in the case finds that an interpretation of AFFH that excluded race would be “absurd.” Under the terms of the settlement, Westchester County is required to spend \$52 million to develop at least 750 units affordable housing in areas within the County with small African American and Latino populations. (*U.S. ex rel. Anti-Discrimination Ctr. v. Westchester Cnty*, 668 F. Supp. 2d 548 (S.D.N.Y. 2009))

2010

GAO publishes a report assessing HUD's grantees' compliance with the 1995 AFFH rule and whether the rule itself, as well as HUD's oversight, need to be strengthened. The report finds significant shortcomings in both the rule and HUD's administration of it. Among other things, the report recommends that HUD set standards and a format for AIs, including a timeframe for implementing recommendations, that grantees be required to submit their AIs to HUD routinely for review, and that HUD assess grantees' progress in addressing identified impediments. GAO's review found that some grantees' plans are very old, perfunctory or non-existent and that it is not clear that the plans have the buy-in from local officials that is necessary to ensure they will actually be implemented. GAO urged HUD to move quickly to adopt a new, more effective AFFH regulation. (U.S. Gen. Accounting Office, [GAO-10-905](#), *Housing and Community Grants: HUD Needs to Enhance Its Requirements and Oversight of Jurisdictions' Fair Housing Plans*. (2010))

2015

HUD issues a new AFFH rule. The rule responds to GAO's critiques of the 1995 AFFH rule and includes a number of key elements. These include a regular schedule for submission, a requirement for HUD to review and accept the required Assessment of Fair Housing (AFH), a robust community engagement process, a standardized but flexible framework for analyzing fair housing issues, a data-driven analysis of local conditions and an explicit link between the AFH and other plans. The rule covers entities that are required to submit Consolidated Plans and also public housing authorities (PHAs). It is accompanied by a data and mapping tool that consolidates a range of housing, demographic and other data for easy analysis, and by an Assessment Tool (an on-line framework for developing and submitting the AFH). The formal requirement for states and PHAs to submit AFHs never takes effect because the necessary Assessment Tool and data are not finalized before the rule is suspended in 2018, although many of the jurisdictions that conduct AFHs do so in collaboration with PHAs. (*Affirmatively Furthering Fair Housing*, 80 Fed. Reg. 42352-42371 (July 16, 2015))

2016

The first Assessments of Fair Housing under the 2015 rule are submitted, beginning in October. HUD accepts AFHs from 49 jurisdictions before it suspends the rule in 2018.

2018

HUD effectively dismantles the 2015 AFFH regulation and eliminates the obligation for jurisdictions to undertake any kind of meaningful fair housing planning.

In January, HUD extends the deadline by which jurisdictions must submit their Assessments of Fair Housing, effectively suspending the fair housing planning process for 4-5 years. While HUD says that jurisdictions must still comply with existing AFFH obligations, it instructs them to revert to the AI process created under the 1995 AFFH rule, which GAO, HUD grantees, fair housing advocates and HUD itself had deemed inadequate and ineffective. HUD goes on to state it will no longer accept or review fair housing plans, including any that were in process at that point. (See *Affirmatively Furthering Fair Housing: Extension of Deadline for Submission of Assessment of Fair Housing for Consolidated Plan Participants*, 83 Fed. Reg. 683 (Jan. 5, 2018), available at [FR-5173-N-15](#)) In May, HUD withdraws the Assessment Tool that grantees must use to develop and submit their AFHs and reiterates that it will no longer accept or review AFHs, effectively suspending the 2015 rule. (See *Affirmatively Furthering Fair Housing: Withdrawal of Assessment Tool for Local Governments*, 83 Fed. Reg. 23922, (May 23, 2018), available at [FR-5173-N-17](#)).

2020

In January, HUD **proposes a new AFFH rule** that is inconsistent with the statutory mandate of the Fair Housing Act. Among other elements, the rule conflates affordable housing and fair housing, allows jurisdictions to avoid any fair housing planning process or public engagement around fair housing issues and eliminates any requirement for PHAs to engage in fair housing planning. HUD later abandons this proposed rule.

In August, HUD **adopts the [Preserving Community and Neighborhood Choice \(PCNC\)](#) rule** using a somewhat obscure regulation related to its grantmaking authority that does not require any advance notice or comment period. The rule defines AFFH as taking “any action rationally related to promoting any attribute or attributes of fair housing...” Fair housing is defined as housing that, “among other attributes, is affordable, safe, decent, free of unlawful discrimination, and accessible as required under civil rights laws.” This rule weakens the AFFH obligation so severely that a jurisdiction that holds a poster contest for Fair Housing Month in April of each year could certify that it is affirmatively furthering fair housing.

2021

In July, HUD adopts an [Interim Final Rule](#), “Restoring Affirmatively Furthering Fair Housing Definition and Certifications,” revoking the PCNC rule and restoring the definition of AFFH and most of the certification requirements from the 2015 rule. In conjunction with the IFR, HUD announces its intention to promulgate a new AFFH regulation.

2022

In June, HUD finalizes the proposed AFFH new rule and sends it to OMB for review. On December 27, OMB releases the rule, clearing the way for HUD to send it to the relevant Congressional committees for a mandatory 15-day review period before it can be published for comment in the Federal Register.

2023

HUD released [a new rule](#) on January 19, 2023, and the 60-day public comment period will begin when the rule is published in the Federal Register.