

NEW YORK HOUSING CONFERENCE

March 13, 2020

Regulations Division
Office of General Counsel
U.S. Department of Housing and Urban Development
451 7th Street SW, Room 10276
Washington, DC 20410-0500

Submitted Electronically

RE: Docket No. HUD-2020-0011, Docket ID FR-6123-P-02, Affirmatively Furthering Fair Housing

I am writing on behalf of New York Housing Conference (NYHC) in response to the Notice of Proposed Rulemaking (NPRM) seeking comments regarding HUD's proposed changes to the Affirmatively Furthering Fair Housing (AFFH) rule. NYHC is a nonprofit affordable housing policy and advocacy organization. We represent a statewide coalition of affordable housing practitioners, advocates and experts in real estate, finance and community development. Our mission is to advance City, State and Federal policies to support the development and preservation of decent and affordable housing for all New Yorkers.

NYHC urges HUD to abandon its proposed changes to the AFFH Rule and immediately reinstate and implement the 2015 version of the regulation. The purpose of the 2015 AFFH rule was to assist localities in meeting their long standing requirement to Affirmatively Further Fair Housing set forth in the Fair Housing Act of 1968 by providing them with guidance and resources to support their planning success. It should be seen as a useful and powerful tool to overcome historic patterns of segregation, promote fair housing choice, and foster inclusive communities that are free from discrimination. Instead of protecting it, HUD has proposed changes to significantly diminish it. The proposed changes in NPRM fail to address and would not effectively mitigate this nation's historic and ongoing patterns of racial segregation and housing discrimination, which was the intent behind the creation of the AFFH rule.

Housing choice and fair and equitable access to opportunity are intractably linked. In New York, where NYHC is located, racial inequities continue to persist and they impact access to housing and opportunity. Minorities are more than twice as likely to be in poverty than white residents.¹ Additionally, black and Latino New Yorkers are almost seven times as likely to live in high poverty neighborhoods as white New Yorkers.² People who live in high-poverty neighborhoods often lack access to high-quality education, employment opportunities, public transit, services, safe streets, and other essential ingredients necessary to create pathways for success for residents.

Despite HUD's 2018 suspension of its Assessment of Fair Housing (AFH) requirement, for the past two years, in response to these persistent disparities, NYC local leaders have worked tirelessly on its own

¹ National Equity Atlas. 2018. Percent People Below Poverty by Race/Ethnicity: New York, 2015.

https://nationalequityatlas.org/indicators/Poverty/Trend%3A40241/New_York/false/Poverty_Level%3A100

² National Equity Atlas. 2018. Percent Living in High-Poverty Neighborhoods by Race/Ethnicity: New York, 2015.

https://nationalequityatlas.org/indicators/Neighborhood_poverty

AFH assessment, called the Where We Live NYC initiative, and have recently released their draft plan. The Where We Live NYC initiative is a multiagency partnership to engage community stakeholders and review existing policies to ensure robust, data-driven planning as the City seeks to fulfill its responsibility to further fair housing and provide more housing choice for New Yorkers. While NYC has taken its own step forward towards reducing fair housing discrimination, the federal government, with this proposed rule, is considering taking a drastic step back. NYHC urges the federal government to retract this proposed rule and implement the 2015 rule as it is a more comprehensive and direct approach than the NPRM's proposed changes to promote fair housing discrimination and provide access to opportunity for all communities.

Given this, NYHC offers the following comments in response to the NPRM:

Proposed Changes Do Not Address Fair Housing Issues and Weakens Fair Housing Standards

The proposed rule weakens the overall scope, purpose and standards of the AFFH regulation and is a significant departure from the 2015 rule. The proposed rule does not even acknowledge systemic segregation and barely mentions discrimination. If the proposed changes are implemented, then the AFFH rule will no longer be a genuine means to address housing discrimination in this country.

Proposed Rules Discard a Powerful Fair Housing Assessment for a Misguided Certification Process

The proposed rule would abandon the 2015 rule's Assessment of Fair Housing (AFH), which was developed after years of consultation and broad public engagement to provide jurisdictions with uniform guidance regarding how to meet their AFFH obligation. NYHC believes the AFH, which is a locally-driven and data-focused planning process, is a critical tool to help communities make strides to overcome persistent and growing challenges related to disparities in opportunity, fair housing choice and racially concentrated poverty for all protected classes.

HUD proposes replacing the robust AFH with an AFFH certification which appears to be more focused on reducing barriers to affordable housing development than fair housing ones. For the new certification, a jurisdiction would have to pick three goals and explain how addressing those goals would address fair housing. However, if the jurisdiction picks their goals from a list of sixteen obstacles that HUD considers inherent barriers to fair housing choice, no description would be required. It is important to note that thirteen out of the sixteen obstacles provided by HUD are not actually direct obstacles to fair housing and are focused on increasing housing supply. The proposed rule seems to confuse and conflate fair housing and affordable housing, which are two different issues, but have some overlap. While making it easier to build additional affordable housing is critical and would help alleviate our nation's affordable housing crisis, it does not guarantee improved fair housing choice nor does it prevent discrimination. The conflation of the two issues and ability to opt out of a justification if you choose a HUD-provided obstacle seemingly steers apathetic jurisdictions to simply choose from the list and unfortunately will not help advance fair housing initiatives in these communities.

The proposed rule also reduces PHA's meaningful involvement and leadership in the AFFH process. Based on the 2015 rule, a PHA was obligated to work with their local or state government in preparing an AFH, collaborate on an AFH with other PHAs or conduct one on its own. According to the proposed rule, a PHA now would only need to certify: that it consulted with a jurisdiction regarding their common fair housing issues, is seeking to affirmative further fair housing in programs and areas specifically under its "sphere of influence", and carry out its plans in conformity with civil rights laws. PHAs will no longer be required to have an active role in the planning process, despite the fact that PHAs are the agencies

administering the jurisdiction's HUD programs and should be a leader and key stakeholder in the entire process. HUD programs, such as public housing and Housing Choice Vouchers, directly increase housing choice and PHAs also create policies and procedures that impact access to housing, both of which clearly impact fair housing issues in the jurisdiction. This change will also disincentivize PHA collaboration with other PHAs, state and local government partners.

Proposed Method to Evaluate Jurisdictions is Arbitrary and Does Not Measure AFFH

HUD proposes to annually evaluate and rank jurisdictions on their affirmatively furthering fair housing performance based on nine data-based indicators, only two of which pertain to fair housing. The others concentrate on housing quality, supply and affordability. Similar to the AFFH certification, while affordable housing supply and quality are certainly important, it seems misguided to have so few of the metrics actually measure fair housing in an assessment of fair housing. This evaluation approach will not appropriately measure a jurisdiction's affirmatively furthering fair housing performance and ranking the jurisdictions against each other ignores the unique conditions of each area and will only produce arbitrary results.

Proposal Greatly Diminishes Necessary Public Participation in AFFH Process

The proposed rule eliminates the separate AFFH public participation process required by the 2015 rule that was designed to identify fair housing problems, set priorities and develop strategies to address them. The proposed rule would only require community participation in the Consolidated Plan process, which has different objectives and often involves different stakeholders. This community consultation is focused on seeking input regarding how the jurisdiction's chosen AFFH goals will inform the priorities and objectives of the jurisdiction's Consolidated Plan. It does not seek public participation in the planning process, unlike the 2015 rule. It is critical to have distinct community participation process that is specifically focused on fair housing issues and precedes the Consolidated Plan process to help the jurisdiction acknowledge and identify actual fair housing barriers and allow fair housing stakeholders to assist in the creation of plans and goals to remediate them.

For the above reasons, adoption of the proposed changes would constitute a substantial step back by HUD in tackling systemic housing discrimination, dismantling segregation, and ensuring fair and equitable access to opportunity. NYHC strongly believes HUD should discard this proposal, reinstate the 2015 AFFH rule and immediately resume implementation of that rule.

Sincerely,



Rachel Fee
Executive Director, New York Housing Conference