



SeniorLAW Center

Protecting the Rights of Older Pennsylvanians

March 16, 2020

Submitted via Regulations.gov

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

Re: Docket No. FR-6123-P-02: Affirmatively Furthering Fair Housing (RIN 2577-AA97)

To Whom It May Concern:

We write to you today on behalf of SeniorLAW Center in response to the Department of Housing and Urban Development's Proposed Rule, "Affirmatively Furthering Fair Housing."

Our organization is a Philadelphia-based independent legal services agency dedicated to seeking justice for older people by using the power of the law, educating the community and advocating on local, state and national levels. SeniorLAW Center has serious concerns about the adoption of HUD's Proposed Affirmatively Furthering Fair Housing ("AFFH") Rule. In particular, we are concerned that the proposed rule will not adequately combat segregation in Philadelphia and across the nation, will discount local involvement, and will provide for insufficient data collection. It represents a step back from the AFFH Rule that was adopted in 2015 after extensive analysis and public input.

A. The Proposed Rule Does Not Adequately Address the Problem of Segregation

SeniorLAW Center opposes the proposed redefinition of fair housing.¹ We are deeply concerned that the proposed rule fails to address the legacy of residential segregation and redlining in our communities. The current definition emphasizes the importance of addressing segregation, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and addressing disparities in housing needs and access to opportunity. The proposed definition emphasizes "housing choice" without addressing the systemic barriers to those choices.

¹ Department of Housing and Urban Development, 24 CFR Parts 5, 91, 92, 570, 574, 576, 903, 905, Docket No. FR 6123-P-02, RIN 2577-AA97, Page 15.

Residential segregation continues to play a role in communities across the country, including here in Philadelphia. According to a statistical analysis, Philadelphia is the fourth most segregated city in the country,² and historically redlined neighborhoods not only experience the highest levels of violence, but continue to be the most disadvantaged neighborhoods of the city today.³ The new proposal defines housing choice as allowing families the opportunity to live where they choose, within their means, without unlawful discrimination on the basis of race or other specified characteristics. While this is a start, it is not an adequate substitute for the current definition's explicit commitment to combating segregation.

In order to end discrimination and segregation, HUD must first acknowledge the historic and continuing role of discriminatory practices and policies in our communities. Under the 2015 Rule, jurisdictions and public housing authorities are required to specifically consider fair housing issues such as segregation in order to receive funding. Under the Proposed Rule, programs would be able to complete AFFH certification without even mentioning how housing segregation impacts their regions. Furthermore, the proposed Jurisdictional Risk Analysis fails to give sufficient treatment to the prevalence of housing discrimination in the jurisdictions when deciding whether to designate a jurisdiction as "outstanding." The Risk Analysis also fails to account for the role of private enforcement actions. It considers civil rights violations cases brought by the Department of Justice or by HUD, but does not consider lawsuits brought under the Fair Housing Act private parties. Consequently, the Analysis is likely to substantially underestimate the prevalence of civil rights violation acts in a jurisdiction.

Philadelphia seniors deserve to live in communities free of racial segregation. It is vitally important that the history of residential segregation be addressed, and that accurate data on civil rights violations today be collected.

B. The Proposed Rule Limits Opportunities for Community Engagement Regarding Fair Housing Issues and Treats Legitimate Local Housing Protections as Inherent Barriers to Fair Housing

The assessment process under the 2015 Rule emphasized the importance of the local public, the people who actually live in a community, participating in the AFFH grant evaluation process by providing feedback on their concerns about fair housing. The goal of this participation was to make sure that the assessment accurately reflected the goals and priorities of community members. As explained in the *AFFH Rule Guidebook*, "Community participation can have many benefits, including cost-effectiveness, instilling ownership and support of fair housing planning in the broader community, and building trust and relationships throughout the community."⁴ The new proposed rule limits local community involvement in the planning process. It lacks an adequate emphasis on community engagement specifically focused on fair housing.

² Nate Silver, "The Most Diverse Cities Are Often The Most Segregated", *FiveThirtyEight*, (May 1, 2015), <https://fivethirtyeight.com/features/the-most-diverse-cities-are-often-the-most-segregated/>.

³ "Mapping the Legacy of Structural Racism in Philadelphia", *Office of the Controller*, (Jan. 23, 2020), <https://controller.phila.gov/philadelphia-audits/mapping-the-legacy-of-structural-racism-in-philadelphia/>.

⁴ HUD, *AFFH Rule Guidebook*, Version 1, at § 3.4 (Dec. 31, 2015).

Under the new proposed rule, “certain types of rent control,”⁵ “[a]rbitrary or unnecessary labor requirements,” and “[u]nduly burdensome wetland or environmental regulations” would be designated as “inherent barriers to fair housing choice.”⁶ Designating these as inherent barriers without examining them in their local context will limit the ability of communities to address local problems using the laws and policies they have chosen. Instead, local regulations should be examined in the context of the communities where they were created. More case-by-case analysis should be used in determining whether a particular local regulation is a genuine response to local problems rather than an “inherent barrier” to housing choice.

C. The Proposed Rule Would Inappropriately Limit Data Collection

In the Proposed Rule, HUD has criticized the data collection required by the 2015 Rule. It states that the previous evidence-rich AFFH process “risked violating the organizational management maxim that if everything is a priority, nothing is a priority.” Yet the new approach of limiting data will result in the opposite problem: overlooking things that ought to be prioritized. The rigorous collection of data is what makes it possible to identify trends that would otherwise go unnoticed. It increases the chances that when information about a certain statistic is needed, it can be easily found. Choosing to collect less information as part of a streamlining effort means that when a problem arises, the government will not have high quality, easily accessible information concerning that problem. We support a continuation of the 2015 Rule’s approach.

D. Conclusion

The 2015 AFFH Rule provided HUD program participants with much-needed guidance and direction. HUD must continue to ensure meaningful fair housing analysis, informed by data and community participation. Under the proposed Rule, SeniorLAW Center is concerned that segregation will be inadequately addressed, community engagement will be discounted, information will be lost, and fair housing will suffer. We urge HUD to withdraw the new proposal and resume full implementation of the 2015 AFFH Rule.

Sincerely,



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⁵ Proposed 24 C.F.R. § 91.225(a)(1)(i) (local jurisdictions). Regulations for states and consortia use the language “rent controls.” Proposed 24 C.F.R. § 91.325(a)(1)(i)(I) (states); Proposed 24 C.F.R. § 91.425(a)(1)(i)(A)(9) (consortia).

⁶ See e.g., Proposed 24 C.F.R. § 91.225(a)(1)(i) (local jurisdictions).