

March 16, 2020

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

Submitted electronically via www.regulations.gov

RE: Docket No. FR-6123-P-02 Affirmatively Furthering Fair Housing

To Whom It May Concern:

I am writing on behalf of the Metropolitan Planning Council (MPC) in response to the Proposed Rule: Affirmatively Furthering Fair Housing, published in the Federal Register on January 14, 2019. MPC is an independent non-profit policy change organized based in Chicago, IL. For more than 80 years, MPC has made the Chicago region a better place to live and work by partnering with businesses, communities and governments to address the area's toughest planning and development challenges. We have also conducted significant research and analysis on segregation and related fair housing issues. In 2017, MPC co-authored the [Cost of Segregation](#) report, a 2017 study that concluded Chicago's deep racial and economic segregation costs the city an [estimated \\$4.4 billion](#) each year.

The Metropolitan Planning Council strongly urges HUD to immediately retract the currently proposed rule and resume implementation of the 2015 Affirmatively Furthering Fair Housing rule and dedicate the necessary department resources for effective implementation and enforcement of the rule.

Should HUD move forward with the rule as proposed, the Chicago region will face severe and lasting consequences. This is not just a matter of effective public policy but of remediating past harms and moving the needle on racial equity.

The 1968 Fair Housing Act (the Act) was a direct response to the racial upheaval of the time and the murder of Dr. Martin Luther King Jr. The Kerner Commission Report, released that same year, unequivocally identified institutional racism and residential segregation as the root causes of the riots that broke out in many major cities across the country. The mandate to Affirmatively Further Fair Housing within the Act was in many ways a declaration of the responsibility to repair past harms caused by racist public policy. Although we have witnessed ebbs and flows in the enforcement of this mandate over time, the current HUD proposal would invalidate decades of housing and racial justice work. This is particularly problematic for Chicago- a City that is witnessing the loss of black residents for many reasons, not the least of those due to residential segregation: "While the contemporary exodus of Chicago's black residents is driven in part by the ongoing consequences of a long history of injustice, it is also driven by current, ongoing policy decisions that negatively affect Black Chicagoans."¹

¹ Between the Great Migration and Growing Exodus: the Future of Black Chicago. Institute for Research on Race and Public Policy. University of Illinois at Chicago. 2020

By ignoring our history, we limit ourselves to the status quo

The current proposed rule provides local governments and public housing authorities a virtual blank slate, a “free pass” to ignore our legacy of segregation and the systems that uphold it today. Because the new rule drastically reduces reporting requirements for entitlement jurisdictions and removes requirements for PHAs entirely, the obligation to remedy historic wrongs is removed, leaving our communities, particularly our Black and Brown communities, susceptible to the unassessed and unaddressed systemic forces that create grave inequities based on race and national origin.

By prioritizing profits over people, we inhibit anti-racist public policy.

Much of the HUD rule is simply geared toward deregulating those who profit off the provision of affordable housing, while at the same time walking back requirements to engage community members (particularly those most impacted by housing policy) in these critical discussions. A blatant example of this deregulation framework falls under the 16 obstacles HUD has defined as “inherent barriers to fair housing choice” within the proposed rule. HUD’s list of *obstacles* prioritizes the profitability concerns of developers such as, construction permitting procedures, building codes, rent control, labor protections, energy and water efficiency policies, and wetland and environmental rules. The *obstacles* barely mention discrimination, racial segregation, or the protected classes under the Fair Housing Act: race, color, religion, sex, national origin, familial status, or disability. Moreover, these obstacles directly contradict the organizing work of Black and Brown communities fighting for rent control, environmental justice, and fair labor standards. We cannot rely on a deregulation agenda to solve the race-based inequities that prompted the passage of the Fair Housing Act. This work requires intentional anti-racist policies to deconstruct the harms of the past.

By removing oversight and accountability, we lower the bar on fair housing expectations tied to taxpayer dollars.

The 2015 AFFH rule definition meant “taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living pattern, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws.” This definition addressed both the segregation of people *and* the segregation of resources that we struggle with in our region. Alternatively, the current proposed AFFH rule speaks only to the provision of affordable housing and completely ignores equitable community investment. Moreover, the proposed definition even further narrows the impact of AFFH by stating: “HUD proposes changing the definition of AFFH to ‘advancing fair housing choice *within the program participants control or influence.*’” Local governments and PHAs could therefore attribute shortcomings on fair housing to a lack of “control or influence” over the issues. This definition reversal significantly diminishes accountability measures.

By eliminating public participation requirements, we weaken the potential for meaningful solutions that are driven by residents most impacted by issues of segregation and fair housing.

Finally, data alone is not the only factor that localities should consider in developing an AFFH strategy. Stakeholder input through meaningful public engagement activities must be required. In our work, we have seen the meaningful impact that true community engagement can have when it is built on shared power and acknowledgement of the ways power has been stripped from communities of color in the past. It is essential for HUD to ensure through AFFH that all people have access to housing and opportunity and that HUD fulfill its statutory responsibilities. We do not support the proposal to consolidate the public participation planning requirements into the Consolidated Plan process since it

limits the ability for stakeholders to solicit feedback on developing meaningful AFFH priorities and will most likely result in less robust goals.

In sum, up until the 2015 rule, jurisdictions around the nation operated at a status quo established in 1968 due to insufficient guidance and enforcement on the AFFH regulation. It often required legal actions by private citizens or organizations to compel jurisdictions to take meaningful steps to further fair housing. The 2015 rule was an investment in our nation's commitment to Civil Rights, and like any big investment, the highest costs are upfront. HUD cannot retreat from the steps it took to address segregation, discrimination, and disinvestment.

For all of the reasons listed herein, and because our communities have long suffered unjust and immutable segregation and the resulting inequities in life outcomes, **we strongly urge the Administration to rescind its new AFFH proposed rule that would weaken how HUD furthers fair housing including its ability to enforce its statutorily required AFFH responsibilities.**

Sincerely,

Juan Sebastian Arias, Manager
Metropolitan Planning Council