



Policy solutions that work for low-income people

March 13, 2020

Secretary Benjamin S. Carson, Sr.
Office of the General Counsel
Rules Docket Clerk
Department of Housing and Urban Development
451 Seventh Street SW, Room 10276
Washington, DC 20410-0001

Electronically submitted to [Regulations.gov](https://www.regulations.gov).

RE: HUD's Affirmatively Furthering Fair Housing Proposed Rule, Docket No. FR-6123-P-02

Dear Secretary Benjamin S. Carson, Sr.,

The Center for Law and Social Policy (CLASP) is grateful for the opportunity to comment on the U.S. Department of Housing and Urban Development's (HUD) proposed rule to reverse the 2015 Affirmatively Furthering Fair Housing (AFFH) regulation. CLASP strongly opposes the proposed rule and urges HUD to withdraw it immediately.

The proposed changes to AFFH would undermine the goals of the Fair Housing Act (FHA)—to prevent housing discrimination based on race, color, national origin, religion, gender, familial status, and disability; and reverse housing segregation—and make it more difficult for jurisdictions and public housing authorities to identify and address harmful patterns of residential segregation, discriminatory housing practices, housing cost burdens, and community disinvestment. If the proposal were to take effect, it would make it harder to desegregate communities; guard against housing discrimination; and narrow disparities in homeownership, income, and wealth for communities of color and other protected classes.

CLASP is a national, non-partisan, anti-poverty non-profit organization committed to promoting racial equity and advancing policy solutions for people who have low incomes. For over fifty years, we have been at the forefront of social change, working at the federal, state, and local levels to fight poverty and promote equity. CLASP has deep expertise about the multitude of systemic barriers that block low-income people from economic justice and financial opportunity. The most devastating and persistent of these barriers arise from our nation's entrenched history of racial injustice. CLASP is opposed to the proposed rule because it would make it more difficult to ensure communities and housing authorities address current and historical housing inequities and unjust policies—allowing housing segregation to remain, discrimination to go unchecked, and further cement racial and other inequities in our society.

Systemic Racism Has Reduced Housing Opportunity for People of Color with Significant Impacts

Access to safe, affordable housing is an essential human need. It has an outsized impact on individual, family and community well-being because it provides not only physical shelter, but can determine access to jobs, education, health care, and more. Housing is a key part of a families' economic stability and children's wellness.¹

Housing segregation, like other forms of segregation in our society, has a long history and it continues to be widespread today.² Importantly, both governmental and non-governmental actors have worked to intentionally segregate and divide communities along racial lines. For instance, the practice of denying mortgages in certain neighborhoods to African Americans and immigrants, also known as "redlining," was encouraged by the federal government for decades.³ Additionally, White homeowners formed block associations to "keep up the neighborhood" by keeping Black people out.⁴

Because of decades of systemic racism in federal, state, and private housing policies, racial disparities exist in all aspects of housing today—from affordability and financing to rates of home ownership. Housing segregation is inextricably linked to housing inequality; when people of color and other protected classes are discriminated against in housing markets, they are often forced into low quality and unaffordable housing as a result.⁵ Housing discrimination and segregation have negative and long-term consequences for entire communities. When communities are segregated, racial disparities in health, wealth, education, among other areas, become more entrenched.⁶ Centers for Disease Control and Prevention analyses show dramatically different health outcomes for residents of different census tracts including life expectancy.⁷ Children are particularly vulnerable to the consequences of housing segregation. For them, living in high-poverty, low-opportunity neighborhoods has been linked to adverse health outcomes, poor academic performance, decreased likelihood of attending college, and lower earnings as an adult.⁸

People of color and people who have low incomes are disproportionately likely to spend more than half of their incomes on housing costs.⁹ The lack of affordable housing can hurt families' abilities to make ends meet.¹⁰ Severely cost-burdened renters are more likely to face difficulty putting food on the table than those with less severe cost burdens.¹¹

High housing costs—and the large gap between poor families' incomes and housing costs—contribute to high rates of housing instability among low-income individuals, which in turn is linked to severe negative outcomes that often exacerbate poverty. This has long-lasting and significant negative effects, particularly on children.¹²

Black and Hispanic families at every income level have higher rates of debt, lower rates of homeownership, and less wealth compared to White families.¹³ In 2018, the real median household income for Black families was \$41,361, compared to \$51,450 for Hispanics, and \$70,642 for White families, according to the U.S. Census Bureau.¹⁴ Median family wealth for Black families is just \$17,600 compared to \$171,000 for White families.¹⁵ This means that many Black and Hispanic families are economically insecure and it affects their ability to cover unexpected expenses, transition between jobs, and save for retirement.

The 2015 AFH Is Crucial in Providing Necessary Guidance and Accountability to Fulfill the Intent of the FHA

In 1968, Congress recognized that making housing discrimination illegal was insufficient on its own to address entrenched residential segregation. This segregation was caused by federal laws and policies across the United States. Consequently, lawmakers included in the Fair Housing Act a duty to affirmatively further fair housing (AFFH); in other words, to take positive action to undo historic patterns of segregation and other types of discrimination—promoting fair housing choice and fostering inclusive communities for people of color, people with disabilities, and others. The AFFH obligation requires all federal agencies, including HUD and their funding recipients, to proactively address segregation in programs and activities related to housing and community development. But the AFFH did not provide specific guidance on how to address segregation. Lack of clear regulations prior to 2015 meant that the specific actions that housing agencies and communities were supposed to take were unclear, slowing progress. A 2010 Government Accountability Office report found that, due to HUD’s limited regulations and insufficient oversight, many communities didn’t have plans, hadn’t updated them recently, or had plans that were incomplete or lacked benchmarks for implementing their proposed strategies.¹⁶

In 2015, after nearly four years of broad public input from the civil rights community, state and local governments, and housing agencies, HUD issued the Assessment of Fair Housing (AFH). The AFH is the document to be used by jurisdictions and public housing agencies (PHAs) to demonstrate their compliance with the Fair Housing Act’s obligation to affirmatively further fair housing. The AFH provides a standardized road map that jurisdictions and PHAs can use, eliminating the lack of guidance and subsequent uncertainty that many jurisdictions and PHAs complained about regarding the Analysis of Impediments (AI) process. Under the AI process, there was no public input, no opportunity to identify fair housing issues or to suggest reasonable actions and policies to address those fair housing issues. The 2015 AFFH rule fixed the lack of public input by requiring there be genuine public participation in drafting an AFH.¹⁷

The AFH regulation requires the appropriate entities to complete a robust analysis of segregation and fair housing disparities in their communities in order to receive HUD funds. Jurisdictions and housing authorities must identify the policies, practices, or conditions that shape disparities in access to housing and broader opportunities for communities of color, persons with disabilities, and other groups protected by the FHA. These entities must also identify meaningful goals to address issues such as residential segregation and housing cost burdens.

HUD's Proposal Sets Back Progress in Addressing Segregation—Further Entrenching Housing Segregation and Continuing Harm for Communities of Color and Other Protected Groups

The Trump Administration has halted implementing the 2015 rule, and seeks to create an AFFH that ignores decades of segregation and housing discrimination; minimizes oversight and accountability for entities that receive federal housing dollars; discounts the importance of public housing authorities' policies; attacks protections for tenants, workers, and the environment; and eliminates a key opportunity for local resident input.

In place of the AFH, HUD proposes to rigorously tie AFFH compliance to a significantly altered meaning of AFFH certification. The 2015 AFFH rule defined AFFH certification to mean that a jurisdiction “will take meaningful actions to further the goals of the AFH ... and that it will take no action that is materially inconsistent with the obligation to affirmatively further fair housing.”

HUD proposes to eliminate the requirement that jurisdictions conduct an assessment of affirmatively furthering fair housing—replacing such an assessment with a supply-side assessment of the availability of housing. By doing so, HUD equates an increased supply of housing with fair housing choice. However, increasing the supply of housing will not necessarily result in affordable housing for low-income (much less extremely low-income) people. Furthermore, it will not reduce or eliminate discriminatory attitudes, policies, practices, or entrenched segregation.

HUD's proposal would not require jurisdictions and housing authorities to directly examine or address the legacy of unequal housing opportunities in communities. Instead, HUD's proposal deprioritizes fair housing and eliminates discussion about a systemic lack of equal housing opportunities with directly affected parties, namely people of color and people with disabilities. HUD's proposal also will not require communities to consider whether their policies advance housing opportunities for groups that have historically experienced housing discrimination.

Housing authorities can greatly impact fair housing opportunities within programs such as public housing or the Section 8 Voucher program. Despite this, HUD's proposal excuses housing authorities from conducting any substantive fair housing analysis. HUD's proposal specifically identifies rent control as a potential obstacle to fair housing choice, while leaving out critical issues such as displacement of communities of color in tight rental markets. Furthermore, the proposal tries to use this rule to attack labor and environmental standards under the guise of making housing affordable.

Furthermore, HUD's 2015 AFH regulation requires communities and housing authorities to have a robust public hearing and comment opportunity specifically focused on fair housing issues. This proposal eliminates the separate hearing and comment requirement, meaning that fair housing issues will not receive the individualized attention they deserve.

Conclusion

At a time when the housing crisis disproportionately impacts low-income people of color, the racial wealth gap grows,¹⁸ Black homeownership declines below levels when discrimination was legal,¹⁹ and people with disabilities struggle to find accessible homes,²⁰ fulfilling the promise and obligations of the Fair Housing Act are more important than ever.

HUD should withdraw its proposed rule, commit to ensuring there are effective tools to desegregate communities, and promote a vision of housing that accomplishes the goals of the FHA. The proposal does not seek to achieve any of those ends and, therefore, should be withdrawn.

CLASP is committed to eliminating discriminatory policies and practices wherever they exist. Instead of weakening the effort to eliminate housing segregation and unfair, discriminatory housing practices, we implore the federal government to fight discrimination, promote civil rights, and advance equity.

Our comments include citations to supporting research and documents for the benefit of HUD in reviewing our comments. We direct HUD to each of the items cited and made available to the Department through active

hyperlinks. We request that those citations—along with the full text of our comments—be considered part of the formal administrative record of this proposal for purposes of the Administrative Procedures Act.

Thank you for considering CLASP’s comments. Contact Darrel Thompson (dthompson@clasp.org) with any questions.

All sources were accessed during March 2020.

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² Joseph Williams, “Segregation’s Legacy: Fifty Years After the Fair Housing Act Was Signed, America Is Nearly As Segregated As When President Lyndon Johnson Signed the Law,” *U.S. News and World Report*, April 2018, <https://www.usnews.com/news/the-report/articles/2018-04-20/us-is-still-segregated-even-after-fair-housing-act>.

³ Terry Gross, “A Forgotten History of How the U.S. Government Segregated America,” *NPR*, 2017, <https://www.npr.org/2017/05/03/526655831/a-forgotten-history-of-how-the-u-s-government-segregated-america>.

⁴ Ta-Nehisi Coates, “The Case for Reparations,” *The Atlantic*, June 2014, <https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/>.

⁵ Nancy McArdle and Dolores Acevedo-Garcia, *Consequences of Segregation for Children’s Opportunity and Wellbeing*, Harvard Joint Center for Housing Studies, 2017, https://www.jchs.harvard.edu/sites/default/files/a_shared_future_consequences_of_seggregation_for_children.pdf.

⁶ Brian Smedley and Rachel Davis, “The Effects of Housing Discrimination on Health Can Reverberate for Decades,” *The Hill*, August 2019, <https://thehill.com/opinion/civil-rights/458899-the-effects-of-housing-discrimination-on-health-can-reverberate-for>.

⁷ Centers for Disease Control and Prevention, *U.S. Small Area Life Expectancy Estimates Project (USALEEP)*, National Center for Health Statistics, 2018, <https://www.cdc.gov/nchs/nvss/usaleep/usaleep.html>.

⁸ *Ibid.*, 5.

⁹ Andrew Aurand, Dan Emmanuel, Diane Yentel, et al., *The Gap: A Shortage of Affordable Homes*, National Low Income Housing Coalition, March 2018, https://reports.nlihc.org/sites/default/files/gap/Gap-Report_2018.pdf; David Montgomery, “The Neighborhoods Where Housing Costs Devour Budgets,” *CityLab*, April 2019, <https://www.citylab.com/equity/2019/04/affordable-housing-map-monthly-rent-home-mortgage-budget/586330/>; “The Problem,” *National Low Income Housing Coalition*, n.d., <https://nlihc.org/explore-issues/why-we-care/problem>.

¹⁰ Lauren Taylor, “Housing and Health: An Overview of the Literature,” *Health Affairs*, June 2018, <https://www.healthaffairs.org/doi/10.1377/hpb20180313.396577/full/>.

¹¹ *The State of the Nation’s Housing*, Joint Center for Housing Studies of Harvard University, 2017 http://www.jchs.harvard.edu/sites/default/files/harvard_jchs_state_of_the_nations_housing_2017.pdf.

¹² Douglas Rice, Stephanie Schmit, and Hannah Matthews, *Child Care and Housing: Big Expenses with Too Little Help Available*, Center for Law and Social Policy, Center on Budget and Policy Priorities, April 2019, <https://www.clasp.org/sites/default/files/publications/2019/04/Child%20Care%20and%20Housing%20Big%20Expenses%20with%20Too%20Little%20Help%20Available%20.pdf>; Terry Gross, “First Ever Evictions Database Shows: ‘We’re in the Middle of a Housing Crisis,’” *NPR*, April 2018, <https://www.npr.org/2018/04/12/601783346/first-ever-evictions-database-shows-were-in-themiddle-of-a-housingcrisis#targetText=Sociologist%20Matthew%20Desmond%20estimates%20that,rate%20of%20four%20every%20minute.&targetText=%22Eviction%20is%20a%20direct%20cause,%5Band%5D%20community%20instability.%22>.

¹³ Angela Hanks, Denyelle Soloman, and Christian Weller, *Systemic Inequality: How America’s Structural Racism Helped Create the Black-White Wealth Gap*, Center for American Progress, February 2018, <https://www.americanprogress.org/issues/race/reports/2018/02/21/447051/systematic-inequality/>.

¹⁴ Jessica Semega, Melissa Kollar, John Creamer, et al., “Income and Poverty in the United States: 2018,” *U.S. Census Bureau*, September 2019, <https://www.census.gov/library/publications/2019/demo/p60-266.html>.

¹⁵ Trymaine Lee, “The 1619 Project,” *The New York Times Magazine*, August 2019, <https://www.nytimes.com/interactive/2019/08/14/magazine/racial-wealth-gap.html>.

¹⁶ Orice Williams Brown, *Housing and Community Grants: HUD Needs to Enhance Its Requirements and Oversight of Jurisdictions’ Fair Housing Plans*, U.S. Government Accountability Office, September 2010,

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¹⁸ Emanuel Nieves, Chuck Collins, and Josh Hoxie, *The Road to Zero Wealth: How the Racial Wealth Divide is Hollowing Out America's Middle Class*, Prosperity Now, September 2017, <https://prosperitynow.org/resources/road-zero-wealth>.

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²⁰ Gillian White, "Nowhere to Go: The Housing Crisis Facing Americans With Disabilities," *The Atlantic*, December 2015, <https://www.theatlantic.com/business/archive/2015/12/renting-with-a-disability/420555/>.