



WASHINGTON LAWYERS' COMMITTEE
FOR CIVIL RIGHTS AND URBAN AFFAIRS

March 6, 2018

SUBMITTED VIA REGULATIONS.GOV

Office of General Counsel, Regulations Division
U.S. Department of Housing and Urban Development
451 7th Street, SW, Room 10276
Washington, D.C. 20410-0001

**Re: Docket No. FR-5173-N-15 Affirmatively Furthering Fair Housing: Extension of
Deadline for Submission of Assessment of Fair Housing for Consolidated Plan
Participants (Docket ID: HUD-2018-0001)**

Dear Office of General Counsel:

This letter is written on behalf of the Washington Lawyers' Committee for Civil Rights and Urban Affairs (the "Washington Lawyers' Committee" or the "Committee") in response to HUD's Federal Register Notice (the "Notice"), "Affirmatively Furthering Fair Housing: Extension of Deadline for Submission of Assessment of Fair Housing for Consolidated Plan Participants." The Washington Lawyers' Committee is a non-profit 501(c) (3) organization that was established in 1968 to provide pro bono legal services to address discrimination and entrenched poverty in the Washington, D.C. metro area. The Committee is located in Washington, D.C. We write to express our emphatic opposition to HUD's effective suspension of implementation of the Affirmatively Furthering Fair Housing ("AFFH") Rule for local governments until after October 2020, as outlined in HUD's January 5, 2018 Notice. While the Notice applies specifically to local governments, other program participants, such as Public Housing Authorities and States, are not currently required to submit Assessments of Fair Housing ("AFH") because of other delays in HUD's implementation.

HUD's decision represents a major step backward—one that will stall the important momentum that has been building since HUD finalized the Rule in 2015. The decision to revert to the Analysis of Impediments ("AI") process for local governments will greatly hinder efforts to affirmatively further fair housing choice in our local communities. Simply put, the AI lacks the requisite oversight and thoughtful framework that the AFFH Rule provides. Furthermore, the suspension outlined in this Notice sends a harmful message to local governments, other HUD program participants, and other stakeholders: namely, that HUD is no longer committed to seeing the AFFH Rule fully implemented.

The AFH process created by the Rule is a framework that requires local engagement and goal-setting. Central to the AFH process is obtaining feedback from residents, advocates, and other stakeholders. As advocates, we want to ensure that federal dollars are spent at the local level in ways that both serve community needs and advance equal housing opportunity.

Section 3608 of the Fair Housing Act (the "Act") requires HUD and its grantee agencies to "administer the programs and activities relating to housing and urban development in a manner

to further the policies” of the Act.¹ Courts have interpreted this to “reflect a desire that HUD use its grant programs to assist in ending discrimination and segregation, to the point where the supply of genuine open housing increases.”² In the District of Columbia the supply of genuinely open housing has been decreasing in recent years.

There is a real need for a rule that will advance equal housing opportunity. The suburbs surrounding the District of Columbia are almost as exclusively white today as they were in 1970 and within the District African Americans are being pushed into ever narrowing sections of the city.

Between 2000 and 2013 the District’s white population increased dramatically while the African American population decreased greatly. As white newcomers move into the city’s gentrifying central neighborhoods and drive up rent levels long time African American residents are being forced out. In the Analysis of Impediments to Fair Housing prepared by the District in 2012 these gentrifying central city neighborhoods were identified as being at risk of re-segregating as all white. Rather than moving to areas where African Americans are previously under represented displaced residents are moving to already hyper segregated areas because those are the only neighborhoods that where they can find housing that is affordable. The oversight and thoughtful framework provided by the AFFH rule promises to help increase equal housing opportunity.

In response to the trend identified above, the Washington Lawyers’ Committee participated in a challenge to the District of Columbia’s certification of its compliance with the AFFH rule. On September 16, 2016, together with the Equal Rights Center, we submitted a complaint to the HUD Office of Fair Housing and Equal Opportunity and the Office of Community Planning and Development. Our complaint asserted that the District’s contention in its Consolidated Plan that it was in compliance with its obligation to further fair housing was inaccurate. We identified three critical failures by the City:

1. Its failure to identify actions and strategies that address profound and long-standing patterns of racial segregation in the City, despite its own recognition that segregation is an impediment to fair housing choice;
2. Its failure to take actions to preserve affordable housing in the face of gentrification which is inconsistent with its AIs and which does not support the City’s expressed commitment to inclusive and diverse communities; and
3. Its failure to provide for preservation and restoration of affordable three, four and five bedroom units, which are needed by families, particularly those with minor children.

On November 14, 2016, HUD advised the District that its plan was out of compliance with the AFFH rule and requested that the District advise what steps it would take to address the deficiencies.

¹ 42 U.S.C.A. § 3608(e) (5).

² *N.A.A.C.P. v. Secretary of Housing and Urban Development*, 817 F.2d 149, 154-5 (1st Cir. 1987).

In closing, we reiterate our support for HUD's continued implementation of the AFFH Rule, and strongly oppose any efforts to further delay or suspend its implementation. The decision to suspend implementing the Rule announced in the Notice is shortsighted, as it ignores the learning experiences and successes of implementation thus far. Therefore, we respectfully ask that HUD rescind this Notice and immediately work to fully implement the AFFH Rule.

If you have any questions, please contact the Committee's Special Counsel Hannah Lieberman via email at hannah_lieberman@washlaw.org or via telephone at (202) 319-1000 ext. 130.

Sincerely,



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