

March 6, 2018

Secretary Ben Carson
c/o Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th St, SW Room 10276
Washington, D.C. 20410-0500

Docket No. FR-5173-N-15- Affirmatively Furthering Fair Housing: Extension of Deadline for Submission of Assessment of Fair Housing for Consolidated Plan participants

The National Housing Conference (NHC) welcomes the opportunity to comment on HUD's plan to extend the deadline for submission of Assessments of Fair Housing (AFH) until 2020. NHC strongly supports the obligation to affirmatively further fair housing (AFFH) and HUD's effort to effectively implement the obligation. The requirement created by the Fair Housing Act affects important operational features of housing and community development programs. It also represents a federal commitment to ensuring equal opportunity not only in housing but also in the health, educational, employment, and other social dimensions that housing affects directly. Our strong preference is that HUD continue to implement the rule and not institute a delay. Since HUD believes a delay is necessary, we urge HUD to fully engage with stakeholders during the delay in order to move implementation forward in the future.

I. About the National Housing Conference

Everyone in America should have equal opportunity to live in a quality, affordable home in a thriving community. The National Housing Conference educates decision makers and the public about housing policies and practices to move housing forward together. NHC convenes and collaborates with our diverse membership and the broader housing and community development sectors to advance our policy, research and communications initiatives to effect positive change at the federal, state and local levels. Founded in 1931, we are a nonpartisan, 501(c)3 nonprofit organization.

II. NHC suggestions to strengthen AFFH implementation

During this extension period, NHC advises HUD to take a number of actions to strengthen the AFH process and reduce the burden for state and local governments:

- HUD should be clear in its communication to state and local communities that their requirement to affirmatively further fair housing continues and is not impacted by this extension. In 2015, the Supreme Court ruled that, "recognition of disparate-impact claims is consistent with the Fair Housing Act's central purpose" and that, "The Court acknowledges the Fair Housing Act's continuing role in moving the Nation toward a more integrated society."¹ This legal decision establishes important precedent as HUD moves forward with AFFH implementation. Communities have been required to affirmatively further fair housing since the 1968 Fair Housing Act became law. The 2015 AFFH rule simply clarified how communities should approach their housing planning to meet that requirement. It did not impose new requirements. As communities better prepare for the

¹ Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project, INCP. 576-U.S. 13-371. (U.S. Supreme Court 2015). P. 17, 24, retrieved online: https://www.supremecourt.gov/opinions/14pdf/13-1371_8m58.pdf

new process during the extension, HUD needs to ensure they understand the continued requirement to affirmatively further fair housing.

- HUD should provide more technical assistance and trainings to states and local communities to build their capacity to complete the AFH.
- HUD should maintain and update the data and maps available through the Assessment Tool so communities can draft more robust Analyses of Impediments during the extension period. The data HUD has provided to local and state jurisdictions through tables and maps in the Assessment Tool helps them better understand their housing trends and needs, and this data is not easily available in a consolidated/streamlined manner through other sources. NHC and its members value the data HUD has made available through this process.
- HUD should allow communities that want to submit an AFH to do so, and HUD should review and score them. The stated goal of the extension is to provide participants with additional time and technical assistance to adjust to the new AFFH process and complete AFH submissions that can be accepted by HUD. By allowing communities to submit AFHs and by having HUD staff review them, HUD will be able to determine if communities are gaining a better understanding of the AFH process, where persisting issues are, and HUD staff can gain a better understanding of how to make the review process more efficient. NHC has heard from several communities that still want to complete the AFH because they see value in the new process, the data, and a regional approach. HUD should encourage this kind of leadership and work with those communities through the process as well as completing a review and providing feedback on these AFHs. By having communities voluntarily submit AFHs, HUD will be able to develop best practices that other communities can deploy. This also has the added benefit of allowing time for HUD to staff up their AFH review team to prepare for the coming submissions and gain an accurate sense of the staff capacity that will be required to review AFHs.
- Public participation has been an ongoing concern of NHC, and communities have struggled with how to generate and incorporate feedback from the community. HUD should explore resources it could provide to communities that will help develop a robust public participation process. HUD can also lift up examples from other communities that have completed AFHs, where they had strong and diverse public participation.
- HUD should address its own capacity to review and process the Assessments of Fair Housing. HUD does not currently have enough staff to review and approve every AFH from every recipient in a timely way, were it not for the extension. If left unaddressed, this mismatch between desired review and agency capacity may result in formulaic reviews that result in approvals for form rather than substance or bottlenecks that delay community planning. HUD needs sufficient funds to enforce the rule, and should include funding for enforcement in future budget requests. In the absence of such resources, HUD should ensure staff are well-trained on the requirements for an acceptable AFH as well as receive training on how to work with communities to improve any deficiencies in their AFHs. HUD should also experiment and craft a review process that is efficient as well as provides a thorough review.

NHC encourages HUD to use this extension period to pursue how to improve the AFH process and then move towards complete implementation of the AFFH rule and the AFH requirement.

III. Conclusion

NHC appreciates the opportunity to comment on HUD's plan to extend the deadline for the submission of AFHs. The AFHs will help make progress toward addressing residential segregation and empowering communities to think creatively about their investments to better support communities. NHC encourages HUD to not institute a delay and continue to implement the rule as originally designed. In absence of that, NHC encourages HUD to use this extension period constructively so that the goal for the AFH can be achieved. Everyone in America should have access to safe, decent, and affordable housing in communities that offer the opportunities we all desire.

Sincerely,



David M. Dworkin
President and CEO