

October 15, 2018

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](http://www.regulations.gov)*

RE: Docket No. FR-6123-A-01

Dear Madam/Sir:

I am writing as a legal academic and practitioner with 25 years of experience in the fair housing field, working first as a staff attorney in a national civil rights organization, second as a director and general counsel of the first FHIP organization in New Orleans, then as a supervising attorney and faculty member at Tulane Law School litigating, teaching, and writing in the area of fair housing and segregation. I directed the Greater New Orleans Fair Housing Action Center when the organization received the contract to write the Analysis of Impediments (AI) for the City of New Orleans in the late 1990s. I was the chief author of the AI.

Based on my full range of experiences as a fair housing administrator, lawyer, and academic, I strongly support HUD's Affirmatively Furthering Fair Housing (AFFH) regulation, and I urge HUD not to revoke or rewrite it. Instead, HUD should immediately restore online access to the Assessment Tool for Local Governments; issue a notice informing local jurisdictions of their obligation to conduct an Assessment of Fair Housing (AFH) in accordance with the AFFH regulation; and resume training and technical assistance for those jurisdictions.

**HUD should consider benefits to HUD housing consumers in its burden analysis:** HUD's 2015 rule is the result of a careful, inclusive, and deliberative rulemaking process. This multi-year process involved the very stakeholders HUD now seeks to re-engage. Turning back the clock and repeating the rulemaking process is a greater waste of government and private resources than implementing the 2015 rule and assisting those who claim to be burdened by it.

The suspension of the AFFH regulation raises the question: who are HUD's primary constituents when allocating its multi-billion-dollar annual budget? Should HUD focus primarily on the next generation of children occupying HUD-assisted housing, people with disabilities, the elderly, low-income women, and families? Are HUD's consumer constituents better off with a data-driven, transparent approach to planning for equity; full community engagement and participation that is fair housing-focused; and an assessment process actually designed to counteract historic segregation and degradation? Or are HUD's consumer constituents better off with a process that has already demonstrated its propensity to perpetuate the status quo?

*In suspending the 2015 AFFH regulation, HUD elevates its concern about regulatory burdens on public sector employees over how the status quo will burden children in neighborhoods with unequal conditions and options.*

Program participants should certainly have a voice in this process, but HUD cannot abdicate its responsibility to further fair housing because it would be easier for the program participants. I daresay that HUD's program participants are better situated to submit online comments complaining of administrative burdens than HUD's consumer constituents are able to voice their need for quality housing in neighborhoods brimming with opportunity.

**Data is essential to understanding the landscape on which HUD spends billions of dollars:**

HUD must consider data and community characteristics if there is to be any possibility for billions of federal funds to be used to counteract isolation of HUD consumers. If HUD does not require its program participants to inform itself of community characteristics, these participants will, regardless of purpose, perpetuate patterns of segregation and isolation. Without data, program participants can neither dismantle barriers to high opportunity neighborhoods nor uplift neighborhoods suffering the effects of disinvestment.

**The Analysis of Impediments to Fair Housing (AI) has not fulfilled HUD's legal obligation:**

Based on my experience authoring an AI in the late 1990s for the City of New Orleans, I have two observations. HUD's 2015 rule provides far greater clarity about what affirmatively furthering actually means; and it also carves out a pathway demonstrating the greatest promise in 50 years for actually achieving HUD's affirmatively furthering mandate.

HUD must be concerned with meeting its legal obligations, not the mere checking of boxes. Despite our wide-ranging testing and research; consultation with private, public, and non-profit groups; and careful drafting and recommendations, our 1998 AI sat in a drawer because there was no meaningful requirement that the impediments be removed. This is not to say that there were not outstanding professionals working for the city at that time. It is just to point out that there were no clear, enforceable parameters governing the jurisdictions' obligations following the AI process. The 2015 rule requirement that jurisdictions take meaningful steps to implement the plans outlined in the AFH will better protect both jurisdictions that are operating in good faith and HUD's consumer constituents seeking to use HUD's programs as a ladder of opportunity.

**Local discretion is a touchstone of the 2015 rule, but local governments may not opt out of affirmatively furthering fair housing:** The 2015 rule establishes a process precisely to permit local jurisdictions to focus on local input, local problems, and local priorities, thereby allowing them to design local strategies for achieving local goals. In other words, local jurisdictions may decide *how* to further fair housing under the 2015 rule. However, jurisdictions may not decide *whether* to further fair housing. The historical "check the box" approach to the affirmative mandate has too often deferred to local jurisdictions not only on the "how" but also on the "whether." The historical record on this point is overwhelming. *The idea that local governments*

*would eagerly embrace their affirmative mandate to further fair housing if only the 2015 regulation were not in their way is ahistorical and without logic.*

Regardless of HUD's stated purposes in suspending the 2015 rule, the effect is to send a signal to local jurisdictions that they may, as in the past, "opt out" of using federal resources to counteract isolation and segregation erected over many decades. The suspension signals that HUD will be adopting a "business as usual" approach to fair housing, which is to put off compliance with the affirmative mandate indefinitely.

**Early results of the rule reveal the success of the New Orleans effort:**

HUD's characterization of the early results under the 2015 rule appear result-oriented and self-serving. The AFH process undertaken by the City of New Orleans was an outstanding piece of work. If this can be accomplished in New Orleans, it can be accomplished elsewhere. The City undertook robust community engagement efforts; analyzed residential patterns and trends through a fair housing lens; assessed the extent to which members of protected classes had equitable access to important community assets, resources and opportunities; set priorities; and adopted concrete goals. Even more impressively, the City of New Orleans partnered with the Housing Authority of New Orleans. This partnership represents a major step forward and a promising collaboration for the future.

I was part of a team of co-authors who studied the history of housing policy in New Orleans as part of a tricentennial collection of research papers. See Stacy Seicshnaydre, Robert A. Collins, Cashauna Hill, & Maxwell Ciardullo, [Rigging the Real Estate Market: Segregation, Inequality, and Disaster Risk](https://www.datacenterresearch.org/reports_analysis/rigging-the-real-estate-market-segregation-inequality-and-disaster-risk/), available at [https://www.datacenterresearch.org/reports\\_analysis/rigging-the-real-estate-market-segregation-inequality-and-disaster-risk/](https://www.datacenterresearch.org/reports_analysis/rigging-the-real-estate-market-segregation-inequality-and-disaster-risk/). New Orleans is a unique place with unique racial hierarchies and history. However, it is characteristically American in its adoption of 20<sup>th</sup> century segregationist policies. These policies are multi-faceted, reinforcing, compounding, and evolving, laying an unjust foundation we have never dismantled and on which we continue to build. As we state in our paper, at p. 8:

The policies and practices that created a racially separate and unequal housing market in New Orleans, originating at all levels of government and throughout the private market, did not happen overnight. And, racial wealth disparity that has compounded over generations will not be eradicated through isolated policy changes, litigation, or public pronouncements. This is precisely why any redress of historic segregation and inequality requires an unrelenting, coordinated, and singular focus on making our most economically and culturally vibrant neighborhoods equally accessible to everyone.

The 2015 rule represents a serious effort by HUD to redress segregation and inequality and fulfill its affirmative mandate. HUD should preserve the 2015 rule.

**Regionalism is important; HUD should consider the post-Katrina example:**

We saw in the aftermath of Hurricane Katrina the vital importance of regional planning efforts, which we lacked. As half of the rental housing in New Orleans was destroyed following the levee breaches, suburban jurisdictions (which had been havens for working class whites seeking better housing options in earlier decades) took measures to block the development of affordable, rental housing. See Stacy E. Seicshnaydre, How Government Housing Perpetuates Racial Segregation: Lessons from Post-Katrina New Orleans, 60 Catholic L. Rev. 661 (2011), available at <https://scholarship.law.edu/lawreview/vol60/iss3/5/>. These exclusionary zoning efforts are well documented and illustrate that local governments will seek to externalize what they perceive as the costs of affordable rental housing without assurances of a fair share approach in the region. This fair share approach will not happen through isolated efforts to produce more affordable housing, a strategy recently suggested by Secretary Carson. Rather, the path of least resistance will result in the production of affordable housing in the most isolated, economically disadvantaged places. Notably, HUD's prior AI approach has not curbed exclusionary zoning or induced fair share planning.

**Conclusion**

If HUD decides to pursue an approach to furthering fair housing that reverts to the status quo, then the racial wealth gap will continue to widen, zip code will still play an outsized role in determining life outcomes, and we will be left to depend on isolated complaints of discrimination to reverse decades of government-sponsored housing policy establishing segregation as the rule.

The AFH process required under the 2015 AFFH regulation holds promise for directing federal resources to the task of removing barriers to opportunity and uplifting communities harmed by disinvestment. I urge HUD to preserve the existing AFFH regulation and use its resources to ensure effective implementation, oversight and enforcement of that regulation.

Sincerely,

Stacy Seicshnaydre

Professor of Law

Tulane Law School (for identification purposes only)