

January XX, 2018

The Honorable Ben Carson, M.D.  
U.S. Department of Housing and Urban Development  
451 7th Street SW,  
Washington, DC 20410

Secretary Carson:

On January 5, 2018, the Department of Housing and Urban Development (HUD) announced that it will effectively delay implementation of the Affirmatively Furthering Fair Housing rule (AFFH) until 2025. We are very concerned about this decision because the AFFH is critical to ensuring that our communities have a path forward and the tools necessary to comply with the Fair Housing Act of 1968.

The Fair Housing Act not only makes it unlawful for jurisdictions to discriminate, it also requires that they take actions to dismantle historical patterns of segregation, which continue to limit the housing choices and opportunities of protected classes, including people of color, people with disabilities, families with children and religious groups. Despite the law's passage 50 years ago, segregation still plagues our communities, resulting in inequities in all aspects of life, including education, health and income. The AFFH rule reaffirms the strongly held American belief that your zip code should not determine your access to opportunity.

The final rule was carefully crafted after receiving the input of numerous civil rights and housing groups, elected officials and staff of state and local government housing and community development agencies, representatives of public housing authorities, as well as an extensive public comment period. Unfortunately, HUD has abruptly decided to push back implementing this rule without input from these stakeholders and has not justified the agency's actions in any convincing manner.

We, the undersigned members of Congress, request that you provide us with answers to the following questions by February 28, 2018:

1. Why did HUD choose to delay the AFFH rule for the vast majority of jurisdictions until October 2025? Did you consider any additional ways to achieve the stated goal of the suspension? For example, did you take any specific actions to correct the challenges you cite in the notice?
2. What were the major problems and issues that caused HUD to fail to accept and return AFHs to jurisdictions? Were they substantive or technical? Since the release of the AFFH rule, what is the total number of AFHs received and what was the total number of pass-backs? How many jurisdictions were able to cure their AFHs so that HUD accepted them?
3. How many AFHs were ultimately/conclusively rejected? What caused them to be so deficient that HUD was not able to accept them?
4. By what authority, both administratively and legally, did HUD delay the rule?

5. Was HUD's regulatory reform taskforce involved in the decision to delay the AFFH rule? If so, what was the position and recommendation of the taskforce on delaying the rule?
6. Was any report, evaluation or other documentation developed, examined or reviewed in connection with the decision to delay the AFFH Rule? If so, who was involved in the development, examination and/or review of the documentation? If so, please provide copies of this documentation.
7. Were any other federal agencies, executives or staff beyond those at HUD consulted regarding the decision to delay the AFFH Rule? If so, please provide a list of such entities, persons, etc. along with titles and/or positions. Please include the feedback and/or recommendations received from each.
8. Since the onset of the HUD AFFH training for program participants, how many HUD program participants have participated? Of the evaluations you collected during those trainings, what have been the general responses, opinions and experiences of HUD grantees related to value of the training?
9. What steps does HUD intend to take to address the problems that it has identified and to reinstate the requirement for its grantees to submit AFHs? What is the timeline for completing that effort?
10. HUD's notice states that grantees that do not have an accepted AFH will be required to complete an Analysis of Impediments to Fair Housing Choice (AI), as mandated by the pre-2015 regulations. Yet, in 2010, the U.S. Government Accountability Office (GAO) found major shortcomings in the AI process. Many of the AIs that the GAO reviewed were incomplete, their recommendations were routinely ignored, and they had no impact on the uses to which grantees put HUD funds and other housing and community development resources. What steps does HUD plan to take to address those shortcomings, and ensure that the AI process will result in grantees taking meaningful steps to end discrimination and overcome segregation?

As a country, we must be doing everything we can to ensure equal access to opportunity—central to this is housing equity. It has been 50 years since the Fair Housing Act was enacted as Title III of the Civil Rights Act. We must protect the AFFH rule and continue with its timely implementation.

Thank you for your attention to our request, and we look forward to receiving your response.

Sincerely,

PRAMILA JAYAPAL  
Member of Congress

KEITH ELLISON  
Member of Congress