

**Statement for the Record**  
**House Committee on Oversight and Reform**  
**Subcommittee on Civil Rights and Civil Liberties**

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February 5, 2020

On behalf of the National Low Income Housing Coalition (NLIHC), I would like to thank Chair Jamie Raskin (D-MD) and Ranking Member Fred Keller (R-PA) for the opportunity to submit a statement for the record on the February 5 congressional hearing, “A Threat to America’s Children: The Trump Administration’s Proposal to Gut Fair Housing Accountability.”

The National Low Income Housing Coalition is solely dedicated to achieving socially just public policy that ensures people with the lowest incomes in the United States have affordable, accessible, and decent homes. NLIHC members include state and local affordable housing coalitions, residents of public and assisted housing, nonprofit housing providers, homeless service providers, fair housing organizations, researchers, faith-based organizations, public housing agencies, private developers and property owners, local and state government agencies, and concerned citizens. While our members include the spectrum of housing interests, we do not represent any segment of the housing industry. Rather, we work on behalf of and with low-income people who receive and those who need federal housing assistance, especially extremely low-income people and people who are experiencing homelessness.

The Fair Housing Act of 1968 requires the federal government, states, and local communities to work to undo the segregation of communities that federal housing policy created in the first place. Although this legal obligation is enshrined in the law, no meaningful guidance existed until the Affirmatively Furthering Fair Housing (AFFH) rule was published in 2015. After several years of considerable input from a broad array of stakeholders, the 2015 AFFH rule made the strongest effort in decades to reverse harmful patterns of segregation and discriminatory practices in communities across the country. The rule equipped communities with the tools and guidance they needed to meet their obligations under the Fair Housing Act, giving jurisdictions the flexibility to identify fair housing challenges and develop priorities and methods for addressing them.

Housing justice and racial justice are inextricably linked. Today’s housing crisis does disproportionate harm to black and brown people. Most severely cost-burdened and deeply poor renters are people of color, the result of decades of discrimination and disinvestment. The 2015 AFFH rule was a critical step in addressing historic and current discrimination; unfortunately, the Trump administration has completely undermined this work by gutting the 2015 rule and proposing a rule that ignores the legacy of segregation and practically eliminates any accountability.

The Department of Housing and Urban Development (HUD) published on January 14, 2020 a proposed AFFH rule that reverses the 2015 policy before it had even been fully implemented.

The new proposal is not a fair housing rule. It considers housing that might be “affordable” to be the same as housing that is available to people in the Fair Housing Act’s protected classes based on race, color, national origin, sex, familial status, disability, and religion. The proposed rule falsely assumes that an increase in the supply of housing will trickle down to become affordable without any consideration of a jurisdiction’s policies and practices affecting people in the protected classes or a focus on overcoming historic patterns of housing segregation. The Trump administration’s proposal would be worse than the minimal AFFH process that existed from 1994 to 2015, which the Government Accountability Office (GAO) found to be ineffective.

NLIHC is specifically concerned about the following aspects of the proposed AFFH rule:

**1. The proposed rule ignores the legacy of segregation and fails to address barriers to housing choice.**

The Trump administration’s proposed rule centers on the idea that simply increasing the supply of market-rate housing will increase fair housing choice. However, the proposal’s strategies will not necessarily result in housing affordable to low-income – much less extremely low-income – people, and they are even less likely to reduce or eliminate discriminatory policies or entrenched segregation. As part of the proposed process, HUD encourages jurisdictions to pick from a list of pre-approved goals, only three of which pertain to fair housing. The other goals target regulations that the administration considers barriers to housing development, including important environment, labor, and tenant protections. This stands in stark contrast to the 2015 rule which created a data-driven approach to assessing fair housing and planning actions that clearly defined AFFH as a means to address disparities, integrate communities, eliminate concentrated areas of poverty, and encourage compliance with civil rights and fair housing laws. The proposed rule barely mentions segregation and discrimination even though examining and addressing inequities in our communities should be the focus of this rule.

**2. The proposal contains no meaningful enforcement of the AFFH obligation.**

The Trump administration proposes to evaluate jurisdictions’ success with affirmatively furthering fair housing by measuring the adequacy of the supply of affordable housing. HUD would rank jurisdictions on their performance based on nine factors, only two of which relate to fair housing. Other factors focus on affordability, housing quality, and supply. These factors do not provide a meaningful indication of affirmatively furthering fair housing, and using them to rank jurisdictions ignores the unique situations of each place. HUD proposes giving high-ranking jurisdictions preference points for Notices of Funding Availability, a generally insignificant incentive. The proposed process, evaluation, and ranking allows jurisdictions that are uninterested in AFFH to continue ignoring their legal obligation without consequence.

**3. The proposed rule eliminates the AFFH public participation process.**

The 2015 rule required jurisdictions to engage and consult with community stakeholders throughout the assessment process. The proposed rule completely eliminates that separate

process, claiming that the public participation already required in the Consolidated Plan process is sufficient for addressing AFFH-related concerns and issues. The Consolidated Plan's public participation process is designed to obtain input regarding housing and community development needs, assessing which needs among the many have the highest priority in the five-year Consolidated Plan cycle. Identifying and assessing fair housing issues and goals entail different concepts and sometimes require different stakeholders. The 2015 AFFH rule reasonably designed the AFFH public participation process to be separate and precede the decision making associated with the Consolidated Plan and its Annual Action Plan system.

**4. Public housing agencies (PHAs) would not have to participate in the new AFFH certification process.**

The 2015 rule required PHAs to meet their obligation to affirmatively further fair housing by working with a local or state government preparing an Assessment of Fair Housing (AFH), partner with other PHAs for an AFH, or conduct its own AFH. PHAs are important partners for AFFH because of their role administering programs like public housing and Housing Choice Vouchers that increase housing choice. PHAs make decisions regarding project basing of vouchers, implementing Small Area Fair Market Rents, proposals to develop mixed-finance projects, deciding which public housing projects to propose for demolition or disposition, and how the voucher program is administered. Under the proposed rule, a PHA would not have an active role and would only have to state that it consulted with a jurisdiction during the AFFH certification process.

NLIHC believes HUD should retract its proposed rule and fully implement the 2015 AFFH rule.

Thank you for holding this important hearing as well as the opportunity to submit a statement for the record. We look forward to working with you to help create more equitable communities and greater housing choice.