



Submitted Electronically

March 13, 2020

Regulations Division, Office of General Counsel
Department of Housing and Urban Development
451 7th St. SW, Room 10276
Washington, DC 20410-0500

Re: HUD's Affirmatively Furthering Fair Housing Notice of Proposed Rulemaking, HUD-2020-0011, RIN 2577-AA97

Dear Sir/Madam:

Catholic Charities USA (CCUSA) and the United States Conference of Catholic Bishops (USCCB) appreciate the opportunity to provide public comment and share our concerns with the Department of Housing and Urban Development (HUD) regarding the above-referenced Notice of Proposed Rulemaking ("proposed rule") concerning Affirmatively Furthering Fair Housing (AFFH), published in the Federal Register on January 14, 2020 (85 Fed. Reg. 2,041). We urge you to withdraw the proposed rule because it weakens the definition of AFFH, fails to address barriers to fair housing, reduces community engagement, and diminishes the role of Public Housing Authorities. Instead, we call for the full implementation of the 2015 Affirmatively Furthering Fair Housing rule.

CCUSA is a national membership organization representing more than 167 diocesan Catholic Charities member agencies. These member agencies operate more than 2,600 service locations across 50 states, the District of Columbia, and five U.S. territories. The diverse array of social services offered by agencies reached more than 12.5 million individuals in need last year. Local Catholic Charities are actively involved at every point in the housing continuum. From providing counseling assistance to building and managing affordable housing projects, the Catholic Charities ministry has wide experience in addressing homelessness and providing housing stability for very low-income households. Last year alone, local Catholic Charities agencies provided services to more than 420,000 individuals experiencing homelessness and provided over 35,000 units of permanent housing. For more than 125 years, the Catholic Charities community has advocated for just and fair housing policies that allow people to access decent, safe, and affordable housing.

USCCB is a nonprofit corporation whose members are the active Catholic Bishops of the United States. USCCB advocates and promotes the pastoral teachings of the U.S. Catholic Bishops in diverse areas of national life. USCCB's Committee on Domestic Justice and Human Development assists the

bishops in advancing the social mission of the Church, including its policy advocacy, education, and outreach in support of the Church's anti-poverty efforts. Additionally, USCCB's Ad Hoc Committee Against Racism seeks to teach about and to witness to the intrinsic dignity of the human person as an antidote to the grave sin of racism. The Committee explores and implements concrete solutions to address the racism that still pervades our society and our Church today and works in collaborative ways to strengthen the response of all people to this evil.

The Right to Fair Housing in Catholic Teaching

Housing is a universal and inviolable right of all persons because it is necessary to live a genuinely human life.¹ This right must be available to all people. The U.S. Catholic Bishops have long expressed concerns about acts that undermine fair housing such as redlining, disinvestment from communities, discriminatory practices in the sale or rental of housing, racial and economic segregation, and other harmful practices that do not respect the inherent dignity of all people.² In the recent pastoral statement, *Open Wide Our Hearts*, the U.S. Bishops call attention to the fact that these policies continue to harm communities of color today. "The poverty experienced by many of these communities has its roots in racist policies that continue to impede the ability of people to find affordable housing, meaningful work, adequate education, and social mobility."³ In fact, 45 years ago, the bishops acknowledged that "an absence of racial discrimination is no longer enough. We must insist upon effective programs to remedy past injustice."⁴ This call to action must be renewed today as we face the reality that there is more work to be done to ensure all people – regardless of race, color, religion, sex, national origin, disability, and familial status – have access to safe, decent, and affordable housing.

The processes of identifying fair housing concerns and setting goals to ameliorate them must be viewed through a moral standard. "Basic justice demands the establishment of minimum levels of participation in the life of the human community for all persons."⁵ Everyone has a right and duty to participate in society. HUD has a responsibility to set up processes which encourage this. The principle of subsidiarity teaches us that decisions and actions should be made at the lowest level of authority possible.⁶ This dictates that as communities identify fair housing concerns and make plans for improvement, they must work with individuals and families to gain insights and create change. "The principle [of subsidiarity] is imperative because every person, family and intermediate group has something original to offer to the community."⁷ Engaging with communities about fair housing not only respects their insights, experiences, and dignity, but empowers them to work toward the common good and call others to do the same. As Pope Francis tells us, subsidiarity "grants freedom to develop the capabilities present at every level of society, while also demanding a greater sense of responsibility for the common good from those who wield greater power."⁸

¹ See, e.g., Second Vatican Council, *Gaudium et Spes: Pastoral Constitution on the Church in the Modern World*, Promulgated by Pope Paul VI, no. 26 (1965).

² United States Catholic Conference, *The Right to a Decent Home: A Pastoral Response to the Crisis in Housing*, no. 31-38 (1975); U.S. Catholic Bishops, *Brothers and Sisters to Us: Pastoral Letter on Racism* (1966).

³ United States Conference of Catholic Bishops, *Open Wide Our Hearts: The Enduring Call to Love - A Pastoral Letter Against Racism*, at 14 (2018).

⁴ *Id.* at no. 38.

⁵ National Conference of Catholic Bishops, *Economic Justice for All: Catholic Social Teaching and the U.S. Economy*, no. 77 (1986).

⁶ Pope Pius XI, *Quadragesimo Anno*, no. 79 (1931).

⁷ Pontifical Council for Justice and Peace, *Compendium of the Social Doctrine of the Church*, no. 187 (2004).

⁸ Pope Francis, *Laudato Si'*, no. 196 (2015).

Historical Perspective

As faith-based organizations committed to advocating for justice, we are concerned that the proposed rule is in conflict with the underlying statute, the Fair Housing Act of 1968, intended to address segregation of communities. As stated by the U.S. Department of Housing and Urban Development, Affirmatively Furthering Fair Housing is a legal requirement that federal agencies and federal grantees strengthen the purpose of the Fair Housing Act. This obligation to affirmatively further fair housing has been in the Fair Housing Act since 1968 (for additional information see Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3608 and Executive Order 12892). HUD's 2015 AFFH rule provides an effective planning approach to aid program participants in taking meaningful actions to overcome historic patterns of segregation, promote fair housing choice, and foster inclusive communities that are free from discrimination. As provided in the rule, AFFH means:

. . . taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. The duty to affirmatively further fair housing extends to all of a program participant's activities and programs relating to housing and urban development.⁹

However, the proposed rule undermines the intention of the 1968 Fair Housing Act of eliminating segregation by removing the genuine assessments of the 2015 affirmatively furthering fair housing rule.

The obligation to affirmatively further fair housing has been in place since the Fair Housing Act of 1968; however, there was no clear guidance and effective accountability system for HUD grantees prior to the 2015 Affirmatively Furthering Fair Housing Rule that instituted a community-centered process to analyze patterns and causes of segregation, address neighborhood disparities, and to take actionable measures to promote greater integration and equity. While the statutory obligation remains in effect, and a number of communities have already benefitted from the fair housing assessment process, the 2015 AFFH rule is currently under suspension.

Therefore, CCUSA and USCCB express the following concerns with the 2020 AFFH proposed rule:

Weak Regulatory Definition of AFFH

The proposed rule minimizes the responsibility of affirmatively furthering fair housing, reducing the very definition of the phrase to “individuals and families’ hav[ing] the opportunity and options to live where they choose, within their means, without unlawful discrimination related to race, color, religion, sex, familial status, national origin, of disability.”¹⁰ The responsibility to ensure fair housing choice is more robust than simply guarding against housing discrimination. The previous definition of AFFH was more holistic and included important elements such as overcoming patterns of segregation and fostering inclusive communities.¹¹ As the bishops stated in their 2018 pastoral letter against racism, *Open Wide Our*

⁹ Department of Housing and Urban Development, *Affirmatively Furthering Fair Housing*, HUD Exchange (2020) <https://www.hudexchange.info/programs/affh/>.

¹⁰ Department of Housing and Urban Development, *Affirmatively Furthering Fair Housing*, 85 Fed. Reg. 2,041, at 2,044 (January 14, 2020).

¹¹ *Id.*

Hearts: The Enduring Call to Love, the nation has “seen years of systemic racism working in how resources are allocated to communities that remain de facto segregated.”¹² The original definition of AFFH recognizes that segregated communities often lead to inadequately resourced minority communities. Both the segregation and the under-resourced nature of these communities are the product of deliberate policies that fostered the same inequities the FHA was designed to remove. The bishops have long been clear about their commitment to desegregation as their 1957 pastoral statement *Discrimination and Christian Conscience* states: “It is a matter of historical fact that segregation in our country has led to oppressive conditions and the denial of basic human rights . . .”¹³ The proposed rule’s reductive definition of AFFH ignores the responsibility to address very specific aspects of structural discrimination caused by deliberately racially biased policies and practices and their ongoing legacies throughout the history of our country, all of which have caused grave harm to human flourishing.

Low Standards in Assessments and Evaluations

The rule proposes shifting from the Assessment of Fair Housing and instead implementing an “AFFH certification” to certify jurisdiction satisfaction. The standards for receiving an “AFFH certification” are far too low and allow jurisdictions the option to disregard housing segregation.

*Each jurisdiction would be required to submit at least three measurable, concrete goals it plans on reaching in the upcoming years or obstacles to fair housing choice it plans to address, within its scope of influence, to increase fair housing choice. HUD would expect these submissions to provide a brief and direct explanation of how pursuing each goal or alleviating each obstacle would further fair housing choice in their jurisdiction.*¹⁴

The proposed rule allows jurisdictions to waive the explanation if they choose to select one of HUD’s 16 predetermined inherent barriers, in effect encouraging jurisdictions to choose these barriers in order to make the certification process easier. Those barriers are primarily focused on access to affordable housing and not on race-based housing segregation. Further, the barriers overemphasize deregulation and suggest that jurisdictions should undermine protections for tenants, labor, and the environment under the guise of promoting housing development. Once jurisdictions choose their goals and submit their consolidated plans, they will be subject to the revised review process. The proposed rule states the following regarding evaluating consolidated plans:

*Outstanding jurisdictions will, for the 24-month period following the approval of the jurisdiction’s consolidated plan, be eligible for potential benefits, including additional points in funding competitions and eligibility for additional program funds due to reallocations of recaptured funds as may be provided in NOFAs. Low-ranking jurisdictions may have their AFFH certifications questioned under 24 CFR part 91.*¹⁵

If a jurisdiction only chooses HUD’s inherent barriers, therefore providing no explanation for any of their goals, then scoring that jurisdiction’s consolidated plan becomes more difficult.

Another potential issue to the evaluation process is pitting jurisdictions against one another. This could further expand the federal resource gap by providing advantages to certain communities, while

¹² *Open Wide Our Hearts*, *supra* note 3, at 6.

¹³ National Conference of Catholic Bishops, *Discrimination and Christian Conscience*, no. 16 (1958).

¹⁴ HUD, *Affirmatively Furthering Fair Housing*, *supra* note 2, at 2,045.

¹⁵ *Id.* at 2,054.

other lower performing communities — the ones arguably most in need — receive reduced federal support. The proposed rule itself says it *“would establish a uniform reporting process that respects the unique needs and difficulties faced by individual jurisdictions by assessing program participants on the concrete actions they take to AFFH and by leveraging objective metrics for fair housing choice to assist HUD’s evaluation of such actions.”*¹⁶ HUD should respect that each jurisdiction is unique and that local economic shifts significantly influence affordable housing. They should not punish jurisdictions making a good faith effort to implement the proposed rule by prioritizing Community Development Block Grant funds for better performing jurisdictions.

Failure to Address Barriers

The proposed rule emphasizes housing supply and deregulation at the cost of addressing barriers to housing choice. In the justification for the proposed rule, HUD emphasizes its desire for increasing fair housing choice through greater housing supply and raises concerns about restrictive zoning regulations, but makes little mention of other barriers to housing choice.¹⁷ Increasing housing supply is one proactive step towards addressing housing affordability, but only if the new supply is targeted and truly affordable to low-income and very low-income families and individuals. However, fair housing must not be conflated with affordable housing. Any affirmatively furthering fair housing rule must meaningfully address barriers to housing based on race, color, national origin, sex, familial status, disability, or religion – the protected classes of the Fair Housing Act.

Lack of Community Engagement

The proposed rule would diminish community participation around fair housing issues. While the 2015 rule required a robust community engagement process, where grantees proactively sought input from stakeholders in their community, the proposed rule simply rolls any public engagement around fair housing into the consolidated plan process. It is necessary and valuable to bring people to the table who are most affected by fair housing problems in order to ensure a just process that results in meaningful changes. The separate process required by the 2015 rule is not duplicative. Fair housing problems are complex and worthy of their own engagement process. A separate hearing for communities to voice their concerns and propose solutions is not only reasonable but essential.

Diminished Role of Public Housing Authorities

Public Housing Authorities (PHA) remain a critical conduit for addressing housing segregation, but the proposed rule drastically reduces their involvement. The proposed rule strips away the 2015 requirement for PHAs to take “meaningful actions” to address housing segregation. Instead, the proposed rule only requires PHAs to consult with the jurisdiction regarding overlapping AFFH obligations. The decision to reduce PHAs involvement to a consultative role drastically minimizes the voice of local experts contributing their ideas and disempowers them to address housing segregation.

Conclusion

Addressing housing segregation must remain a high priority for HUD. Housing segregation has a series of cascading effects that lead toward generational poverty. Where one lives dictates the access to quality education, food, healthcare, clean water and air, and transportation. There is no denying that the United States has a history of discriminatory housing practices and public policies. These discriminatory practices necessarily led to the passage of the 1968 Fair Housing Act in an attempt to address the problem. Fair housing regulations remain one of the key tools for addressing long standing inequities and

¹⁶ *Id.* at 2,041.

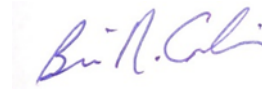
¹⁷ *Id.* at 2,043.

historical disadvantages. Notwithstanding that, we know that housing discrimination persists, some still overt and much more in covert ways even in the face of current fair housing rules and regulations. Therefore, we urge you to withdraw the proposed rule and fully implement the 2015 Affirmatively Furthering Fair Housing rule.

Sincerely,

Handwritten signature of Anthony R. Picarello, Jr. in blue ink.

Anthony R. Picarello, Jr.
Associate General Secretary
and General Counsel
United States Conference of Catholic Bishops

Handwritten signature of Brian Corbin in purple ink.

Brian Corbin
Executive V.P. for Member Services
Catholic Charities USA

