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The Honorable Anna Maria Farías  
Assistant Secretary for Fair Housing and Equal Opportunity  
U.S. Department of Housing and Urban Development  
Washington, DC 20410

RE: FR-6123-A-01 Affirmatively Furthering Fair Housing: Streamlining  
and Enhancements

Dear Assistant Secretary Farías:

The NATIONAL ASSOCIATION OF REALTORS®, representing 1.3 million real estate professionals across the United States, welcomes this opportunity to comment on the Department of Housing and Urban Development's (HUD) advance notice of proposed rulemaking on possible amendments to HUD's Affirmatively Furthering Fair Housing (AFFH) regulations. NAR has previously commented on both the regulations and the AFFH implementation tool put forth by HUD. NAR strongly encourages HUD to expeditiously carry out its statutory obligation to affirmatively further fair housing. NAR supports the AFFH rule, but had several concerns with the implementation tool. NAR urges HUD to make changes that will increase implementation of the rule without being prescriptive regarding how a community addresses the fair housing issues it faces.

HUD has defined fair housing issues to include a condition in a program participant's geographic area of analysis that restricts fair housing choice or access to opportunity. This includes such conditions as ongoing local or regional segregation or lack of integration, racially or ethnically concentrated areas of poverty, significant disparities in access to opportunity, disproportionate housing needs, and evidence of discrimination, such as violations of civil rights law and regulations related to housing. Recognizing and addressing these conditions is a key element to affirmatively furthering fair housing.

However, it should be noted that many of today's fair housing issues have roots in both public and private decisions made over at least the past 100 years. Current patterns of segregation can be traced to past public and private policies such as racially restrictive zoning, private restrictive covenants on the land, classification of neighborhoods and redlining, and decisions on investment in and placement of public improvements and infrastructure like highways and schools. Communities should be required to make sure that new decisions on



these past contributing factors are made with an analysis of their impact on fair housing issues.

Per HUD's request for comment, NAR offers the following input on seven specific questions posed by HUD:

*Question 1. What type of community participation and consultation should program participants undertake in fulfilling their AFFH obligations? Do the issues under consideration in affirmatively furthering fair housing merit separate, or additional, public participation and consultation procedures than those already required of program participants in preparing their annual plans for housing and community development (i.e., the Consolidated Plan, Annual Action Plan, or PHA Plan)? Conversely, should public input on AFFH be included as part of the Consolidated Plan/PHA Plan public involvement process?*

Answer: As stated in an earlier NAR comment to HUD, a vigorous community participation process is necessary to understand the extent that a community has ongoing fair housing issues. The participation process will best identify and measure progress on the factors contributing to those issues and the actions that will address those factors. Because fair housing issues are entrenched in most of our communities, these fair housing issues need a specific public discussion with widespread input including REALTORS® and other members from the local housing and real estate community.

*Question 2. How should the rule weigh the costs and benefits of data collection and analysis? Should the proposed rule allow program participants to develop or use the data of their choice? Alternatively, should HUD require the use of a uniform data set by all program participants in complying with their AFFH obligation? Should it vary by the nature of the program participant? Instead of a data-centric approach, should jurisdictions be permitted to rely upon their own experiences? If the latter, how should HUD assess this more qualitative approach?*

Answer: Data can be a tool for identifying factors contributing to fair housing issues and measuring progress on those factors. However, it can be a burden to produce and is susceptible to various interpretations. HUD should establish a baseline of data to be collected and monitored as well as a set of common metrics and techniques to be used. In addition, HUD should allow local authorities, when capable, to bring in additional data to identify which factors contribute to the continued existence of segregation and other fair housing issues. However, HUD should also give weight to qualitative support as well when evaluating a community's AFFH performance. Data alone may not give a full assessment of whether a community is addressing its fair housing issues.

*Question 4. Should the proposed rule specify the types of obstacles to fair housing that program participants must address as part of their AFFH efforts, or should program participants be able to determine the number and types of obstacles to address? Should HUD incentivize program participants to collaborate regionally to identify and address obstacles to affirmatively furthering fair housing, without holding localities accountable for areas outside of their control? Should HUD incentivize grantees and PHAs to collaborate in the jurisdiction and the region to remove fair housing obstacles? What are examples of obstacles that the AFFH regulations should seek to address? How might a jurisdiction accurately determine itself to be free of material obstacles?*

Answer: HUD has identified the fair housing issues and communities should address them. However, fair housing issues impact each community differently and community governments have varying levels of resources available to address those issues. Communities should be allowed to prioritize the factors that contribute to those issues and how to address them.

A community's analysis of factors contributing to its continued fair housing issues must include discussion on the history of zoning, neighborhood classification, redlining, and other government infrastructure decisions as well as private actions in the real estate market, including but not limited to racially restrictive covenants on the land. The community must assess whether and how these factors impact the community's fair housing issues and if they do, what actions the community will take to address those factors. Community input is critical in this process.

*Question 5. How much deference should jurisdictions be provided in establishing objectives to address obstacles to identified fair housing goals, and associated metrics and milestones for measuring progress?*

Answer: A community should retain the ability to establish measurable objectives to address factors contributing to fair housing issues. HUD's measurement of progress should not be on whether they meet those self-defined objectives, but on whether they positively impact the fair housing issues. A community should be free to determine how to address those issues, and if their efforts do not positively address those fair housing issues. The burden must be on the community to explain whether the factors they identified were correct and why their efforts did or did not succeed in addressing the fair housing issues. The community should also state what new or additional factors they will address or additional actions they will take.

*Question 6. How should HUD evaluate the AFFH efforts of program participants? What types of elements should distinguish acceptable efforts from those that should be deemed unacceptable? What should be required of, or imposed upon, jurisdictions with unacceptable efforts (other than potential statutory loss of Community Development Block Grant, HOME, or similar funding sources)? How should HUD address PHAs whose efforts to AFFH are unacceptable?*

Answer: The evaluation should be based on the following:

- a. Has there been an improvement in the fair housing issues HUD has identified?
- b. Has the community determined whether current or past zoning and land use policies, neighborhood classifications, redlining, and investment in infrastructure and program contribute to the continued existence of the fair housing issues HUD has identified?
- c. Has the community articulated how factors it is addressing impact the fair housing issues and how it will measure the actions it is taking?
- d. Has the community included a summary of all public input? Particularly input it has rejected regarding which factors contribute to its fair housing issues or the actions the community will take, and if so, has it explained why it has rejected that comment or suggestion?
- e. If the community's actions have not resulted in an improvement in one or more of the fair housing issues, has the community determined whether it adequately addressed the identified factor or whether additional factors need to be addressed?

- f. Has a community examined the fair housing impact of newly enacted or implemented zoning and land use policies, and investment in infrastructure and programs to ensure they are designed and implemented so as not to adversely impact fair housing?

*Question 7. Should the rule specify certain levels of effort on specific actions that will be deemed to be in compliance with the obligation to affirmatively further the purposes and policies of the Fair Housing Act (i.e., "safe harbors"), and if so, what should they be?*

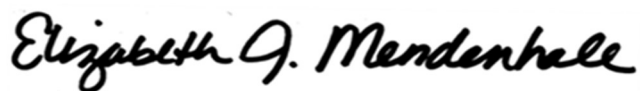
Answer: The primary measure to determine compliance should be improvements in the fair housing issues. Any safe harbor should be focused on whether the community has taken steps to address any fair housing impact of past, current or new zoning and land use policies, neighborhood classifications, redlining, investment in infrastructure and program.

*Question 8. Are there any other revisions to the current AFFH regulations that could help further the policies of the Fair Housing Act, add clarity, reduce uncertainty, decrease regulatory burden, or otherwise assist program participants in meeting their AFFH obligations?*

Answer: The AFFH regulations do little to require HUD to examine its own programs and policies to determine their impact on fair housing. A community should have the opportunity to include its own analysis recommendations for changes to HUD programs if those programs, or how they are being implemented, contribute to the continued fair housing issues in their communities.

NAR appreciates your consideration of these comments.

Sincerely,



Elizabeth Mendenhall  
2018 President, National Association of REALTORS®