



Center for Public  
Representation

October 15, 2018

Submitted via Regulations.gov

Office of General Counsel  
Regulations Division  
Rules Docket Clerk  
Department of Housing and Urban Development  
451 7th Street, SW  
Room 10276  
Washington, D.C. 20410-0001

**Re: FR-6123-A-01 Affirmatively Furthering Fair Housing; Streamlining and Enhancements**

Dear Office of General Counsel:

Thank you for opportunity to submit the following comments on behalf of the Center for Public Representation (CPR) regarding the Department of Housing and Urban Development (HUD) August 16, 2018 Federal Register, Advance Notice of Proposed Rulemaking “Affirmatively Furthering Fair Housing; Streamlining and Enhancements.”

CPR is a national legal advocacy organization that promotes the full inclusion of people with disabilities in all aspects of life. Integrated, affordable and accessible housing is critical to making community integration a reality for people with disabilities. CPR strongly supports HUD’s 2015 Affirmatively Furthering Fair Housing (AFFH) Rule and believes that the Rule, if implemented properly, will significantly improve housing opportunities for people most in need, including people with disabilities.

Particularly important to CPR is the Rule’s recognition that affirmatively furthering fair housing includes an opportunity for people with disabilities to live in the most integrated setting appropriate to their needs. This core aspect of non-discrimination has too often been ignored in fair housing planning for people with disabilities. As a result, integrated housing options have typically been the option least available to people with disabilities. For years, under the previous Analysis of Impediments to Fair Housing (AI) process, HUD’s grantees failed to take their fair housing certifications seriously or meaningfully act to eliminate barriers to housing opportunity, including for people with disabilities. HUD’s 2015 AFFH Rule represents an important step forward in providing jurisdictions and communities with new processes and tools to advance the goals of the Fair Housing Act.

For these reasons, CPR has supported robust implementation of the 2015 AFFH rule. We strongly oppose changes to this rule, particularly given that the rule was finalized after extensive

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stakeholder input. Every day that a person with a disability lives in an institutional setting instead of an integrated setting in the community is a lost opportunity. It is a lost opportunity for people with disabilities who are unable to fully participate in their communities and instead remain in institutions. It is a missed chance for state and local governments to benefit from the cost-savings achieved when people with disabilities move from expensive nursing facilities, psychiatric hospitals and other institutions into the community while simultaneously working to comply with their legal obligations under the Supreme Court's *Olmstead* decision to provide opportunities for people with disabilities to live in the most integrated setting in the community. And it is a lost opportunity to build a more enriched and diverse community.

## **Responses to HUD Questions Posed in ANPR**

**Question 1:** *What type of community participation and consultation should program participants undertake in fulfilling their AFFH obligations?*

Response: The AFFH rule's requirement for genuine public participation in drafting an Assessment of Fair Housing (AFH) was a great improvement over the lack of public input under the Analysis of Impediments (AI) to fair housing choice process.

The Consolidated Plan's Annual Action Plan public participation process, designed to obtain input regarding certain key issues, such as housing and community development needs, which needs have priority, and which activities ought to be funded, has not served adequately to identify barriers to people with disabilities securing housing. The AFFH rule provides a specific process for identifying fair housing issues that would greatly improve the identification of fair housing barriers. The AFFH rule reasonably designed the AFFH public participation process to precede and inform the decision-making associated with the Consolidated Plan and its Annual Action Plan system.

**Question 2:** *Should HUD require the use of a uniform data set by all programs participating in complying with their AFFH obligation?*

Response: For the disability community, the combination of a uniform data set paired with local data and knowledge, as provided in the current rule, is both efficient and effective. A uniform data set allows program participants to efficiently and cost-effectively secure data while also providing HUD with objective sources of data to efficiently review program participant progress. Ensuring that participants can round out the picture with local data and knowledge better ensures the community and HUD receive an accurate picture of the community.

**Question 3:** *Should local jurisdictions be required to provide a detailed report of any AFFH analysis, or is a summary of goals is sufficient?*

Response: Details are essential for HUD to determine and reward compliance. While progress may only become apparent over several years, it is crucial for program participants to review and report data annually. An annual schedule will ensure that jurisdictions continue to keep any AFFH issues identified in mind as they develop affordable housing strategies, select projects for funding, etc. from month to month.

**Question 4:** *Should program participants be able to determine the number and types of obstacles to address?*

Response: We believe the AFFH rule does not prescribe the number or types of fair housing obstacles a jurisdiction must address. The AFFH rule leaves it up to each jurisdiction to assess its own community and set its own goals.

**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?*

Response: We believe the AFFH rule provides jurisdictions with autonomy in developing fair housing goals and does not prescribe how jurisdictions set objectives, goals, metrics, or milestones. Indeed, we had submitted comments urging that more specific goals and metrics be required in the final rule.

**Question 6:** *How should HUD evaluate the AFFH efforts of program participants?*

Response: The AFFH rule's absence of "prescription" offers jurisdictions the opportunity to submit, and HUD to accept, an AFH that is tailored to the community. The only consideration should be whether the AFH identifies meaningful goals and activities that relate to genuine fair housing issues.

**Question 7:** *Should the rule provide "safe harbors"?*

Response: We do not believe HUD should provide safe harbors. The AFFH rule does not prescribe specific levels of activity. This is appropriate given varying conditions in communities. Safe harbors would be inconsistent with the statutory language of the Fair Housing Act, which Congress deliberately designed to allow flexibility in addressing a wide range of circumstances, including unanticipated circumstances.

**Question 8:** *Are there any other revisions to the current AFFH regulations that could help further the policies of the Fair Housing Act, etc.?*

Response: While the AFFH rule did not include all of the provisions that disability advocates requested, the final AFFH rule represents a conscientious, lengthy process that took into account the perspectives of a wide array of stakeholders. Implementation of the rule, which is still in its infancy, should be allowed to be tested before the rule is changed. Doing so would afford a much more informed opportunity to understand how effective different aspects of the rule are and what, if any, aspects should be revisited. Therefore, CPR strongly recommends that there be no changes to the AFFH rule until there has been substantial experience by all jurisdictions with the July 16, 2015 rule.

In sum, we oppose efforts to modify the AFFH rule and instead urge HUD to resume full implementation of the 2015 AFFH rule. Thank you again for the opportunity to comment on Docket No. FR-6123-A-01 Affirmatively Furthering Fair Housing; Streamlining and

Enhancements. If you have any questions or would like to discuss these comments, please contact Alison Barkoff at [abarkoff@cpr-us.org](mailto:abarkoff@cpr-us.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Alison Barkoff". The signature is fluid and cursive, with a long horizontal stroke at the end.

Alison Barkoff  
Director of Advocacy  
Center for Public Representation