

The Affirmatively Furthering Fair Housing Rule and Health Equity

THE PROPOSED CHANGE AND WHY IT MATTERS



The U.S. Department of Housing and Urban Development (HUD) has proposed [a revision to the Affirmatively Furthering Fair Housing \(AFFH\) rule](#) — a key tool to address residential segregation in communities across the country. Learn more about why this is a threat to health equity and how your organization can get involved before the March 16, 2020, deadline for comments.

What is the link between fair housing and health equity?

A safe, affordable, and stable home in a community with good schools, fair-paying jobs, and access to healthy foods and green spaces is foundational for well-being. However, housing inequities in this country are pervasive. Currently, [more than 1 in 10 households](#) experience severe housing cost burden, paying 50 percent or more of their income on housing. This rate increases to 1 in 4 among renters and to 1 in 2 among low-income renters.

Compounding affordability concerns is the persistent bias faced by people of color, families with children, and those with disabilities, among others, in the housing sector. A [recent](#) national poll funded by the Robert Wood Johnson Foundation (RWJF) revealed that 45 percent of African Americans, 31 percent of Latinos, and 22 percent of people identifying as lesbian, gay, bisexual, transgender, or queer experienced discrimination when trying to rent an apartment or buy a house.

In fact, past and ongoing housing discrimination in the United States has created widespread segregation by race and by income, fostering our nation's race- and income-based health inequities. This [history](#) includes the practice of redlining enabled by the federally funded Home Owners' Loan Corporation, which denied mortgage refinancing to African Americans during the Great Depression and thereafter; the creation of white-only suburbs from the 1930s to the 1960s through mortgages insured by Federal Housing Administration; and the segregation of once integrated public housing communities in cities across the country. Such segregation was followed consistently and inescapably by public and private sector disinvestment, creating predominantly African-American central cities with few jobs in the formal economy, a weak tax base, and schools starved of resources.

Such [community conditions](#) result in less access to green space and high-quality health care and greater exposure to violence, environmental pollution, and stores selling health-harming products such as tobacco and high-sugar foods and beverages. Black children in more segregated counties [fare worse](#) in rates of child poverty and high school graduation than those in less segregated counties. Over the course of a lifetime, residential segregation limits wealth accumulation and social and economic mobility for people of color and people with low incomes. [Recent research](#) demonstrates that when people move from segregated neighborhoods to those with modestly less segregation, they experience improvements in many health and social outcomes, including lower rates of obesity and diabetes among adults and better school performance and higher incomes in adulthood among children who moved before the age of 13.

An [RWJF-funded analysis](#) makes the connection between housing, segregation, and health abundantly clear. Cities with the highest levels of segregation had the highest levels of place-based (and, by proxy, race-based) differences in life expectancy. Chicago, the city with the highest segregation score, had a 30-year life expectancy difference between the healthiest and least healthy census tracts, the latter of which is 91 percent African-American.

What is the Affirmatively Furthering Fair Housing rule?

In 2015, the U.S. Department of Housing and Urban Development (HUD) adopted the Affirmatively Furthering Fair Housing (AFFH) rule, which sets out a framework for local governments, states, and public housing agencies to act to overcome historic patterns of segregation, promote fair housing choice, and foster inclusive communities that are free from discrimination. [It requires](#) communities receiving HUD funding to undertake a structured planning process every five years to assess the degree of segregation locally and regionally, explore disparities in access to social and economic opportunity and healthy environments, and engage community members and stakeholders from multiple sectors to develop a comprehensive fair housing plan. Accordingly, it calls for “meaningful actions that.. transfor[m] racially and ethnically concentrated areas of poverty into areas of opportunity.”

Prior to 2015 AFFH rule, HUD’s prevailing guidance for promoting fair housing was relatively non-specific and did not include rigorous oversight. In fact, a 2010 Government Accountability Office [study](#) found that the process was ineffective at fostering inclusive communities.

In contrast, studies of 2015 AFFH rule have demonstrated positive effects:

- [Public engagement](#) was much more robust than that done under the prior fair housing guidance with greater efforts to make community participation easier and to collaborate with non-housing agencies, such as health, education, and transportation;
- [Goals](#) were more concrete, measurable, and cross-sectoral, such as improvements in water quality and park access, increased workforce training, and enhanced transportation systems; and
- [More new actions](#) were proposed to achieve these goals, including the central objective of reducing segregation.

Fair Housing Act and AFFH Timeline:

1968: Title VIII of the Civil Rights Act of 1968 ([Fair Housing Act](#)) prohibits discrimination in the sale, rental, or financing of dwellings and in other housing-related activities on the basis of race, color, religion, sex, disability, familial status, or national origin.

The Fair Housing Act (and subsequent laws reaffirming its principles) not only prohibited discrimination in housing-related activities and transactions but also imposed a duty to affirmatively further fair housing.

2010: A Government Accountability Office study found that HUD’s existing process to ensure communities were advancing fair housing goals, known as the Analysis of Impediments (AI) process, was ineffective.

2015: HUD adopted the AFFH rule requiring communities to undertake a structured planning process every five years to assess the degree of segregation locally and regionally, explore disparities in access to social and economic opportunity and healthy environments, and engage community members and stakeholders from multiple sectors to develop a comprehensive fair housing plan.

2018: The administration suspended implementation of the AFFH rule and directed grantees to return to the AI process.

January 14, 2020: HUD formally [publishes](#) a proposed rule in the Federal Register to redefine AFFH, eliminating its focus on residential segregation.

How does the proposed revision to AFFH compromise health equity?

On January 14, 2020, HUD formally published a [proposed rule](#) in the Federal Register that would drastically change AFFH and limit its effectiveness in promoting fair housing and inclusive communities.

1. It ignores residential segregation and housing discrimination.

First, the proposed rule effectively eliminates any reference to desegregation and creating areas of opportunity and redefines AFFH as “advancing fair housing choice within the program participant’s control or influence.” This change disregards the fact that housing inequities have been created and maintained through law and private sector policies and that ongoing discrimination in rental and mortgage lending practices limits people’s access to stable, safe housing in communities of their choice.

2. It shifts the focus solely to affordability without attention to inclusion.

Second, the proposed rule shifts the overarching goal from fostering inclusive communities to ensuring “an adequate supply of affordable housing throughout the jurisdiction.” While this is a laudable objective, it does not guarantee that people with the lowest incomes will be able to pay their housing costs, as many communities may focus on increasing the supply of housing affordable for those at or near the area median income. Other [government interventions](#), including rental subsidies, production incentives, and inclusionary zoning, are needed to meet the needs of those facing the greatest housing cost burdens. Moreover, even with an adequate supply, many people may not be able to live where they desire. [In 2016](#), there were approximately 28,000 formal complaints of housing discrimination, which, when accounting for systematic under-reporting, suggests more than four million instances of discrimination occurred. More than half of complaints alleged discrimination based on disability status; 20 percent, based on race; and nine percent, based on family status.

3. It threatens policies that can promote housing stability and safety.

Third, the proposed rule allows communities to meet their AFFH obligations by stating their intent to address three of 16 “obstacles” to fair housing as designated by HUD. Most of [these](#) are not related to fair housing but, again, address conditions pertaining to housing production and supply. In addition, some of the so-called obstacles may actually promote fair housing, such as rent stabilization policies and environmental protections.

4. It disempowers the very communities that will be most impacted.

Fourth, the proposed rule removes the requirement for community participation and engagement focused on fair housing issues, including a public hearing and a written comment period. This change reverts to the pre-AFFH era and relies on fair housing issues being raised through a community’s Consolidated Plan process, which is meant to address a broad range of housing and community development issues. Residents and advocates are at a disadvantage in this system. As the [National Low Income Housing](#) coalition notes, “Identifying fair housing issues, assessing priorities among many fair housing issues, and recommending goals entail very different concepts and sometimes even different stakeholders, thereby warranting separate public participation procedures.” [Civic engagement](#) and [building community power](#) are essential to democratic decision-making and advancing health equity.

5. It excludes public housing agencies and the millions of residents who live there.

Lastly, the proposed rule no longer obligates public housing agencies (PHAs) to submit their own fair housing goals and strategies. Rather, they would only have to demonstrate that they consulted with the jurisdiction in which they reside (e.g., city or county) on the jurisdiction-wide fair housing assessment and plan. This change threatens access to fair housing for millions of people that receive housing and housing supports through PHAs. Public and subsidized housing residents face unique barriers to health and well-being and, because of the historical design of these programs, often live in economically and racially segregated communities. In addition, PHAs have specific tools available to them to promote fair housing and desegregation, such as adjusting rental subsidies and providing housing mobility counseling to allow people to access higher opportunity neighborhoods and developing mixed-income, scattered-site housing.

A trend in policymaking that could further entrench segregation

Overall, the proposed rule represents a fundamental shift in HUD's approach to fair housing. As noted by [Enterprise Community Partners](#), it "disregards residential segregation and with it, the immense body of research that demonstrates that communities today continue to be racially segregated with negative health, education, and economic mobility outcomes for its residents."

Unfortunately, this proposed revision to AFFH is not an isolated action. HUD has issued several other regulations in the past three years that limit access to fair housing, including its [proposed reform](#) of the "disparate impact" standard that protects people from housing discrimination; its [proposed](#) rule that would threaten subsidized housing access for families with mixed immigration status, including 55,000 children who are U.S. citizens or green card holders; and its attempt to suspend a [rule](#) aimed at increasing the ability of Housing Choice Voucher holders to afford apartments in more integrated communities.

How to get involved

We encourage organizations, particularly those from the health and health care sectors, to submit comments on this proposed rule **before the comment period closes on Monday, March 16, 2020**. The text above and the resources below can be used in developing your own comments.

Submitting comments accomplishes several goals:

1. It demonstrates to HUD that health and health care organizations see these proposed changes to AFFH as a threat to health equity;
2. It contributes to the volume, quality, and uniqueness of the submitted comments, which could persuade HUD to reconsider or revise the rule and helps to create a strong evidentiary record that can be used in advocacy campaigns and litigation;
3. It reinforces the notion that housing and civil rights are health issues; and
4. It provides an opportunity for health and health care stakeholders to be allied with civil rights, fair housing, and affordable housing advocates.

The proposed rule and a link to submit comments can be found here:

<https://www.regulations.gov/document?D=HUD-2020-0011-0001>

For general advice on submitting federal regulatory comments:

https://www.regulations.gov/docs/Tips_For_Submitting_Effective_Comments.pdf

To learn more about the connection between housing and health:

<https://rwjf.org/housingandhealth>