March 16, 2020

The Honorable Ben Carson  
Secretary  
U.S. Department of Housing and Urban Development  
451 7th Street S.W.  
Washington, D.C. 20410

Re: Affirmatively Furthering Fair Housing  
Docket No. FR-6123-P-02

Dear Secretary Carson:

The Robert Wood Johnson Foundation (RWJF) is pleased to have the opportunity to comment on the proposed rule regarding Affirmatively Furthering Fair Housing (AFFH).

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. People of color, families with children, and those with disabilities, among others, face persistent bias in the housing sector. Moreover, past and ongoing housing discrimination has created widespread segregation by race and by income, fostering our nation’s race- and income-based health inequities. The proposed rule would significantly alter the definition and core objectives of AFFH, effectively eliminating its focus on desegregation and thereby curbing its power to promote fair housing and inclusive communities. Therefore, the U.S. Department of Housing and Urban Development (HUD) should preserve AFFH in its current form and support states, cities, and public housing authorities (PHAs) in planning, implementing, and enforcing fair housing strategies.

A Safe, Affordable, and Stable Home is Essential to Good Health

RWJF is the nation's largest philanthropy dedicated to improving health and health care in the United States. We are working alongside others to build a national Culture of Health that provides everyone in America a fair and just opportunity for health and well-being. RWJF has long recognized the importance of well-built and well-maintained housing for preventing children’s exposure to lead paint and asthma triggers such as mold, dust, and cockroaches; and the value of subsidized housing for people who are chronically ill and chronically homeless.¹

More recently, RWJF along with many other health organizations, have come to recognize that other dimensions of housing are just as influential on health. For example, when people must devote a substantial portion of their income to housing, it squeezes their ability to pay for other essentials.
including health care, food, and transportation. 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. Severely cost-burdened renters are 23 percent more likely than those with less severe burdens to face difficulty purchasing food and are more likely to forgo needed medical care. Housing affordability is closely related to stability. When people are forced to move because of rapidly increasing rents, unscrupulous landlords, or predatory high-interest loans, their health suffers. Housing instability is associated with increased risks of pregnancy, drug use, and depression among teens; absenteeism and poor school performance among children; and billions in avoidable health care and education costs.

Residential Segregation is a Root Cause of Today’s Health Inequities

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, weak tax bases, 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.
The Existing AFFH Systems is Showing Promise

In 2015, the U.S. Department of Housing and Urban Development adopted the Affirmatively Furthering Fair Housing 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... transform 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.
- **More new actions** were proposed to achieve these goals, including the central objective of reducing segregation.

The Proposed Rule Drastically Alters AFFH and Limits its Power to Promote Inclusive Communities and Fair Housing

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.

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.

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 actually 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.

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.

Lastly, the proposed rule no longer obligates 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 who 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.

The Proposed Rule Reflects 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 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.  

Ensuring that everyone has a fair and just opportunity for health in this country will require bold, evidence-based strategies for increasing access to safe, affordable, and stable housing in communities with access to good schools, fair-paying jobs, grocery stores, and green spaces. RWJF believes this proposed rule will undermine achieving this vision and asks that HUD preserve the current AFFH system.

We appreciate the opportunity to submit our comments.

Sincerely,

Richard E. Besser, MD
President and CEO
Robert Wood Johnson Foundation

References


