



**Answers to Questions for the Record from the
U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON OVERSIGHT AND
REFORM
SUBCOMMITTEE ON CIVIL RIGHTS AND CIVIL LIBERTIES**

Regarding

“A Threat to America’s Children: The Trump Administration’s Proposal to Gut Fair Housing
Accountability”

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Jorge Andres Soto

Director of Public Policy

National Fair Housing Alliance

1331 Pennsylvania Ave, Suite 650

Washington, DC 20004

202-898-1661

JSoto@NationalFairHousing.org

1. The Office of Fair Housing and Equal Opportunity (FHEO) is perhaps the most critically underfunded office at the Department of Housing and Urban Development (HUD) and its mission is “eliminate housing discrimination, promote economic opportunity, and achieve diverse, inclusive communities by leading the nation in the enforcement, administration, development, and public understanding of federal fair housing policies and laws.”¹ With respect to the implementation of the Fair Housing Act (the Act), FHEO is responsible for investigating fair housing complaints, ensuring its own programs don’t violate the Act, conducting compliance reviews of grantee’s efforts to affirmatively further fair housing (AFFH), and managing fair housing grants. Each of these functions is important and necessary to ensure that HUD is effectively meeting its responsibilities to carry out the Act and none of them should be removed at the expense of carrying out this mission. HUD has the explicit responsibility to carry out the AFFH provision of the Act. Nowhere in the Fair Housing Act is HUD or the HUD Secretary given the authority to not implement other fair housing responsibilities in order to implement and enforce the AFFH provision.

The National Fair Housing Alliance does support a significant increase of staff at HUD FHEO. However, this is not simply to ensure effective implementation of the 2015 AFFH rule. Instead, it is to make sure that HUD can effectively administer its Fair Housing Act responsibilities. As I mentioned, HUD FHEO has been underfunded, and this has resulted in significant grant administration delays, long case investigation timelines, and a significant drop in morale. FHEO needs a significant increase in staff just to correct those concerns.

Doubling the size of FHEO, with appropriate training, could result in significantly better Fair Housing Act enforcement. Given the critical role that the federal government played in the creation of residential segregation and its associated harms, and its endorsement of housing discrimination up until the passage of the Fair Housing Act, Congress and HUD must do everything in their power to ensure HUD has the resources and capabilities to fully enforce and implement the Act. This includes ensuring that the supply of trained fair housing staff at FHEO can meet the demand from the public to investigate complaints and monitor grantees’ usage of housing and community development dollars.

2. HUD did not place a limit on the length of a grantee’s Assessment of Fair Housing (AFH). Doing so would have been arbitrary and unnecessary. Grantees could voluntarily produce a lengthy Assessment of Fair Housing. In fact, many cities, including Philadelphia, attached maps, tables, reports, and other background information for the reader’s convenience. This choice may significantly contribute to the number of pages, but that was not required by the assessment tool. Many AFHs were considerably shorter and received acceptance from HUD.

With respect to the ability of a small city to successfully conduct an AFH without hiring a consultant, HUD encouraged smaller jurisdictions to work with neighboring government bodies to conduct their AFH. This was both to ameliorate any unnecessary burdens to

¹ See HUD website at https://www.hud.gov/program_offices/fair_housing_equal_opp/aboutfheo.

smaller jurisdictions, but also to encourage collaboration among grantees working in the same housing market, regardless of their political boundaries, to develop regional solutions to fair housing barriers.

NFHA conducted a FOIA request of information related to the implementation of the AFFH rule. HUD's response indicated that 41 grantees received final approval and 19 grantees were still going through the review process as of the January 5, 2018 suspension of the 2015 rule. Each of those grantees ran the intended course of review as contemplated in the rule. HUD had a technical assistance protocol it used to assist grantees during the course of developing their AFHs. The fact that any of those AFHs required back-and-forth between HUD and grantees to receive final approval is not indicative that they had to hire consultants to succeed. Jurisdictions were being asked to conduct an analysis many of them had never done before and this is because the 2015 rule was the first rule that ever required follow-through and held jurisdictions accountable to ensure they comply with the Act. With this in mind, HUD ensured that it didn't simply put out a requirement without any requisite tools or resources. The AFH template was provided to guide grantees in their evaluation of how local fair housing barriers operated and which could inform their decisions concerning possible solutions. The mapping and data set were intended to provide visual and quantitative tools to better understand the relationship between where housing and community development investments were made and the types of opportunities that those placements provide to their constituents.

HUD also clearly detailed that it expected the associated AFH template, mapping and data systems, and process would undergo revisions based on future feedback.

Ultimately, local and state governments manage the use of nearly \$2 billion dollars in annual CDBG, HOME, ESG, and HOPWA funding. Their usage of those dollars impacts the ability of their constituents to thrive in whichever neighborhood they choose to live in, their ability to find safe and affordable housing, and their ability to build wealth through homeownership. Local and state governments should demonstrate an ability to fully grasp how their housing and community development investments create opportunities or impede opportunities. It is a simple proposition that exists in nearly every other sphere, whether it be corporate financial management decisions and their impacts on shareholders, a pharmaceutical company's assessment of the risks and side effects any medication they put out in the market will have on everyday people, or whether a car company's safety designs do what they intend to do – keep people safe. The duty to affirmatively further fair housing is a requirement in the usage of housing and community development dollars. HUD has the statutory responsibilities to ensure that its grantees fulfill that obligation.

Again, grantees do not have to hire a consultant to conduct an Assessment of Fair Housing. HUD provided a robust set of resources and technical assistance to ensure jurisdictions could get through the initial learning curve.

3. When HUD suspended the rule, it announced that it would no longer accept AFHs for review. Cities can still follow the procedures and conduct the same analysis – and several have - but they cannot submit them to HUD for review.
4. The proposed rule will result in little-to-no actual enforcement of the affirmatively furthering fair housing provision of the Fair Housing Act. Under the proposed framework, there is no way HUD can possibly review a jurisdiction's AFFH compliance because the proposed rule does not require any analysis grounded in the statutory language, the legislative intent, or the case law of the Fair Housing Act. HUD may choose to focus its oversight and enforcement resources in certain areas for a variety of reasons, but it has the obligation to conduct oversight of all of its grantees.
5. I disagree in part with HUD's statements which you referenced here. The Fair Housing Act's AFFH provision and jurisprudence on the matter affirm that housing and community development dollars are an instrument to affect the goals of the Act. For that reason, it is entirely appropriate and within HUD's authority to review the ways in which a grantee will comply with its AFFH and other civil rights requirements.

Finally, the Act does not decree a specific vision of urban development. However, whatever vision of urban development a grantee chooses to change must conform to the underlying policy goals of the Fair Housing Act. These are to prohibit discrimination against protected classes under the Act and to foster the development of inclusive and integrated communities.

If in a review HUD finds that a jurisdiction has chosen to pursue priorities that will not meaningfully conform to the goals of the Fair Housing Act then HUD is fully within its authority to require a jurisdiction to reassess its priorities if it is to accept federal housing and community development dollars.

6. The 2015 rule was very clear that investing in underserved neighborhoods is a valid and often necessary fair housing strategy. It did not prioritize either mobility or place-based investments. Creating opportunities for residents to move to higher opportunity areas can be one of many ways a jurisdiction can comply with the AFFH provision of the Fair Housing Act. If in the process of conducting outreach in their local community a grantee finds that creating avenues through which residents can move to higher opportunity areas is identified as a major priority by residents and a grantee fails to prioritize that then HUD is within its authority to require a jurisdiction to prioritize that.
 - i. It is not expected that a Washington bureaucrat knows how best to advance fair housing rather than locally elected leaders. However, it is expected that in order to receive housing and community development dollars a jurisdiction must plan to use those funds to advance the goals of the Fair Housing Act. HUD's 2015 rule allowed great flexibility in how a jurisdiction could do that and still be solving for its specific local housing market.

- ii. Moving resources to high opportunity areas is one, but not the only, way to ensure compliance with the AFFH provision of the Fair Housing Act. Reinvesting in historically disinvested neighborhoods that have less opportunity can also be a way to affirmatively further fair housing. Which of those two, or a combination of those two, is a decision a local government must make in consultation with its constituents.
 - iii. The Fair Housing Act does not require better or exclusive benefits to a “select few.” The Fair Housing Act requires that fair housing, regardless of protected characteristics, is available to all. The benefits of residential integration go well beyond the protected classes.
7. No. HUD’s 2015 AFFH rule did not require the same solutions for local fair housing problems. The questions a city has to answer are intended to be a comprehensive guide to better understanding or uncovering potential fair housing issues. A city in California would not be expected to answer the questions in the same way that a city in North Dakota would.
8. The lack of safe and decent housing supply may be a fair housing issue if it specifically affects the ability of protected classes to access that housing. Absent an analysis of how a housing supply affects protected classes, the lack of housing supply is not inherently a fair housing issue.