

|
MI
|

TESTIMONY

Submitted to the Subcommittee on Civil Rights and Civil Liberties
Committee on Oversight and Reform
U.S. House of Representatives

HEARING

“A Threat to America’s Children: The Trump Administration’s Proposal
to Gut Fair Housing Accountability”
February 5, 2020

STATEMENT

Michael W. Hendrix
Director, State and Local Policy
Manhattan Institute



Introduction

Good afternoon Chairman Raskin, Ranking Member Roy, and Distinguished Members of the House Oversight and Reform Subcommittee on Civil Rights and Civil Liberties. Thank you for inviting me to participate in today's hearing.

My name is Michael Hendrix, and I am the director of state and local policy at the Manhattan Institute. Along with my colleagues, we seek to advance solutions for the flourishing of America's communities.

My central point today is that **America's housing market is neither free nor fair**. Economic segregation is becoming more entrenched while racial segregation persists as fewer Americans enjoy choice and opportunity in where they live. These burdens often fall hardest on those least able to bear them—our historically disenfranchised communities, working families trying to make a living in pricey cities, and individuals facing prejudice and poverty. The result is an absence of realistic housing options for millions of Americans that reinforces patterns of discrimination.

In 1968, when then-Sen. Walter Mondale was speaking in favor of the Fair Housing Act he helped author, he stated that simply prohibiting discrimination “would not overcome the economic problem of those who could not afford to purchase the house of their choice.”¹ It must be instead, Sen. Mondale continued, that the “laws of supply and demand will take care of who moves into what house in which neighborhood.”

While we cannot regulate or legislate the laws of supply and demand, we can help roll back the exclusionary regulations standing in the way of fairer and free housing markets in this country. We can do so for minority and low-income Americans—and, indeed, for all Americans.

Achieving Sen. Mondale's vision for fair housing must come not only through fighting discrimination but furthering free housing markets. That is why the Department of Housing and Urban Development's (HUD's) recently proposed Affirmatively Furthering Fair Housing (AFFH) rule is an important step in the right direction. It aims, rightly so, to “promote and provide incentives for innovations in the areas of affordable housing supply, access to housing, and improved housing conditions,” while avoiding one-size-fits-all solutions.

¹ <https://www.govinfo.gov/app/details/GPO-CRECB-1968-pt26/GPO-CRECB-1968-pt26-1>

The decline of affordability, accessibility, and quality in many of America's housing markets is rooted in onerous regulations and a lack of innovation. While we must continue protecting Americans from discrimination when purchasing or renting a home, we must also work with jurisdictions across this country to ensure housing is affordable and available no matter one's race, status, color, class, or creed.

Barriers to Housing Choice

As living costs spiral upwards and housing demand outpaces supply for the eighth year in a row, fewer Americans have realistic housing options available to them. This is particularly true for minority and low-income Americans, who tend to spend a larger share of their income on housing. Last year alone, the United States fell 400,000 homes short of the total needed to keep up with population growth.² The rate of new housing units we build every year is more than 20 percent below the average between 1975 and 2000.³ In fact, "The total number of residential housing units permitted in 2018 was roughly the same as the number permitted in 1994, when the country's population was 20 percent less than it is today," according to an analysis of Census data by Apartment List.⁴

As supply fails to keep up with demand, home prices nationwide are rising at twice the rate of incomes and three times the rate of inflation. In pricier metros, such as on the coasts, homes are valued at more than five times annual incomes, and often even higher. Renters meanwhile have seen their rents rise for the past 29 consecutive quarters, the second-longest streak since World War II, and far outpacing general inflation.⁵ The number of households paying more than 30 percent of their incomes on rent has grown by more than 6 million since 2001.

No wonder that once people get a home, they try to keep it. The national vacancy rate is now at its lowest level since the mid-1980s, and households are staying longer in their homes and are less likely to turn over and move to new opportunities.⁶ While this is an understandable impulse, the lack of housing supply sufficient to meet demand in many American housing markets means greater housing insecurity for those with shelter and fewer choices available for those seeking shelter. And as fewer Americans have the financial freedom to move to opportunity, earnings and productivity fall; according to recent estimates, wages are eight to

² <https://www.wsj.com/articles/american-housing-shortage-slams-the-door-on-buyers-1521395460>

³ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3303984

⁴ <https://www.apartmentlist.com/rentonomics/building-permits-vs-job-growth-2019/>

⁵ https://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_Americas_Rental_Housing_2020.pdf

⁶ https://www.multifamilyexecutive.com/business-finance/apartment-turnover-rate-continues-to-fall_o

nine percent below their potential nationwide simply because of land-use restrictions in three of America's largest metros.⁷

Restrictive land-use regulations—such as specifications on density, lot size, parking, setbacks, and more—combined with complicated permitting regimes and various hefty fees reduces the supply of new housing in America and adds pricing pressures on the existing stock of housing. One way to see the cost of these regulations is to look at the growing gap between construction costs and new home prices. This “regulatory tax” accounts for at least a third to one-half of the typical house value in major coastal cities.⁸ A more recent study put the cost share of regulations on new housing nationwide at 24.3 percent—and enormous added burden for low-income households.⁹ Every \$1,000 increase in the price of a house in turn prices out 153,000 households from buying a home and obtaining a mortgage.¹⁰

Every added cost to the construction of a new home makes it harder for both market-rate and affordable housing alike to pencil out. These fees and the cost of wait times quickly adds up. For instance, a survey by Fannie Mae found that permitting times in San Francisco last longer than a year on average.¹¹ Across the Bay in Oakland, the Turner Center for Housing Innovation found median impact fees costing upwards of \$24,000 per unit.¹² And labor costs are dramatically higher in New York, San Francisco, and Chicago due to construction unions.

America's sweeping land-use regulations have built a wall of unaffordability around our most productive cities and many others besides. As the price of these barriers grows, so does the benefit of lowering them—disproportionally so for America's racial minorities. Reducing zoning regulations alone is estimated to lower differences in racial segregation between neighborhoods by more than a third.¹³ Yet, since 2000, the number of black and Hispanic Americans living in high-poverty neighborhoods has risen by nearly 80 percent.¹⁴ We see in a city like Detroit, which is nearly 80 percent black, that nearly three-quarters of its neighborhoods occupy either the highest or lowest tiers in home prices relative to the metro's median, while the surrounding county has the most racially segregated population in the nation.¹⁵

⁷ <https://faculty.chicagobooth.edu/chang-tai.hsieh/research/growth.pdf>; <https://www.nber.org/papers/w26591>

⁸ <https://www.nber.org/papers/w10124.pdf>

⁹ <http://eyeonhousing.org/2016/05/regulation-24-3-percent-of-the-average-new-home-price/>

¹⁰ <http://eyeonhousing.org/2016/12/nahb-releases-the-2016-priced-out-estimates/>

¹¹ https://www.fanniemae.com/resources/file/research/emma/pdf/MF_Market_Commentary_091719.pdf

¹² http://turnercenter.berkeley.edu/uploads/Residential_Impact_Fees_in_California_August_2019.pdf

¹³ <https://academic.oup.com/aler/article-abstract/13/1/290/182611>

¹⁴ <https://tcf.org/content/report/architecture-of-segregation/>

¹⁵ <https://www.trulia.com/research/housing-diversity/>

Artificially high housing costs due to onerous zoning rules also reduce intergenerational mobility. Parents find it harder than ever to move to neighborhoods with more opportunity, better schools, less crimes, and higher-paying jobs. This reality has enormous negative impacts on the life outcomes of children.¹⁶ For those families who remain and try to gain access to good schools, they find that homes are nearly two-and-a-half times more expensive than those near under-performing schools (a form of tuition for “free” public schools).¹⁷ Simply loosening zoning regulations would dramatically narrow the gap between schools in higher-income neighborhoods and those in poorer ones.

Policymakers have yet to deliver a family-friendly urban agenda, and we see the signs of that reality across America. Derek Thompson, in a recent *Atlantic* essay, wrote about how “America’s urban rebirth is missing a key element: births.”¹⁸ In Manhattan, where I live, our infant population is projected to fall by half over the next 30 years. This is culmination of a long trend of families struggling to raise their children in cities, and in particular our places of highest opportunity. Across the country, the share of children under 20 living in big cities has been falling for 40 years. High-density cities are losing families with children over age six, while growing their populations of college-educated residents without children. There are now more roommate households than nuclear families in New York City.¹⁹ Families need what cities are struggling to provide today, such as good schools and public order—but most of all, more choices in affordable, quality housing.

More Housing, Not More Paperwork

With the state of housing in America, and the recently proposed AFFH rule, it is reasonable to ask whether the Fair Housing Act is achieving its goals five decades on. Title VIII of the Civil Rights Act, which passed in 1968 and became known as the Fair Housing Act, aimed for “replacing segregated living patterns with truly integrated and balanced living patterns” as Sen. Mondale put it. It then took HUD 47 years to attempt to fulfill the purpose of this law in its rulemaking—the result was AFFH.

¹⁶

https://obamawhitehouse.archives.gov/sites/default/files/page/files/20151120_barriers_shared_growth_land_use_regulation_and_economic_rents.pdf

¹⁷ <https://www.brookings.edu/research/housing-costs-zoning-and-access-to-high-scoring-schools/>

¹⁸ <https://www.theatlantic.com/ideas/archive/2019/07/where-have-all-the-children-gone/594133/>

¹⁹ https://twitter.com/michael_hendrix/status/1176134608544555008

The prior AFFH rule, finalized in 2015 under President Barack Obama, did little to loosen the grip of restrictive housing policies that led to residential segregation and disparate opportunity in the first place. Rather than making housing more affordable and accessible, it was simply more paperwork for cities and the consultants who authored hundreds of pages of toothless assessments.

President Obama’s HUD simultaneously asked too much and too little of communities. Cities and counties had to submit extensive and costly reports on the scope of segregation across their jurisdictions along with lengthy plans for reform. The typical submission (there were 49 in total) ran an average of 204 pages, while Philadelphia’s assessment came in at a door-stopping 832 pages.²⁰ These reports admirably contained extensive documentation of segregated living patterns and barriers to fair housing, along with plans for improvement. Yet for all of this paperwork, few federal, state, or local officials were empowered to follow through on these plans. Kansas City could be HUD compliant simply by saying that it would “develop model zoning codes” for denser development without achieving that or any other goal in its report.²¹

All of this symbolic paperwork on fair housing was simultaneously obfuscating HUD’s backdoor rulemaking. HUD staff were allowed to assert themselves into local governance through denial letters—communications with jurisdictions informing them they had failed to meet their fair housing criteria and suggesting ways they could pass muster. Sixty-three percent of jurisdictions that submitted an AFFH assessment were denied by Obama’s HUD or had their submissions sent back for revision,²² and many received far-reaching replies extending into issues far beyond housing. Dauphin County in Pennsylvania, for instance, was urged to “consider the limitations of local transit when planning for future development.” It was also told to examine its school enrollment policies, along with other parts of its educational system. Farther south in Clayton County, Georgia, HUD officials told the jurisdiction it had failed to consider the “location of proficient schools,” and advocated moving students.²³

All jurisdictions reviewed under the 2015 AFFH—no matter their size, shape, status, or capacity—had to complete the same inflexible 92 question survey. As Mercatus’ Salim Furth and Emily Hamilton have noted, “Jurisdictions were required to consider and provide extensive documentation for every question, regardless of whether the question or the expected answer advanced the jurisdiction’s duty to AFFH or was relevant to the needs of the jurisdiction.”²⁴ This

²⁰ <https://www.hud.gov/sites/dfiles/GC/documents/Pre-PubPropRule1-7-20.pdf.pdf>

²¹ <https://www.marc.org/Regional-Planning/Housing/pdf/ExecutiveSummaryFinal.aspx>

²² <https://www.hud.gov/sites/dfiles/GC/documents/Pre-PubPropRule1-7-20.pdf.pdf>

²³ <https://www.city-journal.org/trump-fair-housing>

²⁴ <https://www.hud.gov/sites/dfiles/GC/documents/Pre-PubPropRule1-7-20.pdf.pdf>

same one-size-fits-all requirement covering more than 3,000 jurisdictions—many of which lacked relevant expertise absent costly consultants—was in turn meant to be reviewed by a HUD staff that lacked its own capacity. Of the 528 full-time employees required to fully implement the 2015 rule, HUD’s Office of Fair Housing and Equal Enforcement employed 430 nationwide and just 96 employees in its Washington, DC, headquarters.²⁵

We can—and must—do better to affirmatively further fair housing choice in America.

Fairer Housing Choice in America

The recently proposed AFFH rule put forward by Secretary Ben Carson represents a concrete improvement to his department’s enforcement of the Fair Housing Act. For instance, it updates and streamlines HUD’s reporting process for jurisdictions while requiring them to demonstrate concrete progress in furthering fair housing. This results-based approach ideally allows for a more effective and less burdensome reporting process for grantee jurisdictions as well as for HUD itself. In turn, HUD funding can be scored to actual progress in promoting affordability, accessibility, and quality in housing. Simpler requirements should in practice not only help jurisdictions better comply with their obligations under their Fair Housing Act, but ensure HUD’s scrutiny lands on the worst offenders.

Removing barriers to affordable housing must ultimately occur at the state and local levels. But the federal government can use its influence to help address the very real concerns around affordability and availability of housing in America. HUD also has an important role in encouraging innovation in housing development, such as with modular construction,²⁶ and sharing best-practices between jurisdictions. Significantly, localities should demonstrate actual progress in, say, righting the wrongs of redlining through zoning reform. And as part of AFFH, HUD should set clearly defined and simple metrics to rank jurisdictions, evaluate the lower performers, and determine the consequences for these bottom tiers. Community reporting can be simple and outcome-based, with mayors competing for federal dollars and national prestige—and ideally with such competition helping spur innovation. While HUD has yet to define these metrics, they could include, for instance, appropriately weighted data on new home prices relative to construction costs,²⁷ vacancy rates,²⁸ or growth in supply.

²⁵ <https://www.hud.gov/sites/dfiles/GC/documents/Pre-PubPropRule1-7-20.pdf.pdf>

²⁶ <https://www.nationalreview.com/magazine/2019/03/25/modular-housing-is-affordable-housing/>

²⁷ <https://www.newyorkfed.org/medialibrary/media/research/epr/03v09n2/0306glae.pdf>

²⁸ <https://magazine.realtor/daily-news/2019/03/08/your-city-ranked-on-housing-vacancies>

HUD's Community Development Block Grant (CDBG) funding can be tied to the affordability and availability of local housing markets. Nearly 1,300 states, counties, cities and towns receive CDBG funds to pay for things such as infrastructure upgrades and redevelopment projects, and these flexible dollars enjoy a broad popularity among the local leaders. But if the communities receiving these grants have restrictive—and de facto segregationist—zoning and land-use rules impoverishing their residents, what good are these dollars? As it stands, federal funds subsidize communities with exclusionary zoning rules that suppress housing supply and jack up the price of entrance into neighborhoods of opportunity. This not only harms the ability for historically disenfranchised Americans to afford a roof over their head, but acts as back-door segregation in schooling, employment opportunities, public services, and social mobility.

Conclusion

In passing the Fair Housing Act, Sen. Walter Mondale stated that black America in particular should know that “they are free—if they have the money and the desire—to move where they will.” But as an increasing number of localities exclude Americans and deny them a real choice in where they live due to inflated home prices and constrained housing supplies, there are more reasons than ever for the U.S. Department of Housing and Urban Development to empower jurisdictions to affirmatively further fair housing choice with concrete reforms. Freer and fairer housing markets depend not only on countering discrimination, but in removing the barriers to more affordable and available housing for all Americans. By improving the Affirmatively Furthering Fair Housing rule, Housing and Urban Development is taking an important step in the right direction of upholding this country's commitment to the spirit and letter of the Fair Housing Act.