



Headquarters  
Raul Yzaguirre Building  
1126 16th Street, NW, Suite 600  
Washington, DC 20036-4845

TEL 202.785.1670  
FAX 202.776.1792  
www.nclr.org

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VIA ELECTRONIC SUBMISSION

Regulations Division  
Office of General Counsel  
Department of Housing and Urban Development  
451 7<sup>th</sup> Street SW  
Room 10276  
Washington, DC 20410-0500

**Re: Docket No. FR-5173-P-01, Affirmatively Furthering Fair Housing**

Dear Sir/Madam:

On behalf of the National Council of La Raza (NCLR), the largest, national Latino civil rights and advocacy organization in the United States, we welcome the opportunity to comment on the rule proposed by the Department of Housing and Urban Development (HUD) which revises and clarifies the definition of Affirmatively Furthering Fair Housing (AFFH). NCLR has a long history of helping to ensure the interests of Latino families are represented in housing policy debates. The following is a sample of housing-related publications that NCLR has produced on the matter: *Puertas Cerrados: Housing Barriers for Hispanics*; *Jeopardizing Hispanic Homeownership: Predatory Practices in the Homebuying Market*; and *American Dream to American Reality: Creating a Fair Housing System that Works for Latinos*. In addition, NCLR frequently responds to invitations to offer expert testimony on housing reforms, including *Creating a Fair Housing System Available to Hispanic Families* before the National Commission on Fair Housing and *Laying the Foundation for Equal Access to Credit: How Improved Financial Oversight Can Build Wealth for Hispanic Borrowers* before the House Financial Services Committee.

## **Background**

As members of a community that have long experienced discrimination in housing and rental markets, Latino families are among those most vulnerable to fair housing violations. As recently as July 2013, NCLR partnered with the Equal Rights Center (ERC) to release the report *Puertas Cerrados: Housing Barriers for Hispanics*, which indicates that disparate treatment of Latinos in the rental and home sales markets endures. We conducted a match-paired<sup>1</sup> testing investigation in Birmingham, Alabama; Atlanta, Georgia; and San Antonio, Texas to assess areas with burgeoning Latino communities (Birmingham and Atlanta) and a control city where Latino families have long been established (San Antonio). These areas were also selected because of their state-based anti-immigrant legislation, and thus where we sought to assess whether such

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<sup>1</sup> A methodology used, in this case, with Hispanic and White testers who held nearly identical financial profiles in all meaningful respects save for national origin. The pairings sought housing information from the same agents and compared experiences to determine disparities.

bills might engender discrimination in communities. The study indicated that throughout all three cities, Latino testers experienced at least one type of adverse, differential treatment 42% of the time, and two or more types of adverse treatment 16% of the time when contrasted with their match-paired White counterparts.

In a separate investigation conducted by the ERC throughout Virginia, Hispanic applicants seeking rental housing received more adverse treatment in at least one respect than their White counterparts 55% of the time. This adverse treatment included being quoted higher rents or higher fees than White testers, offered later availability dates or fewer available units than those offered to White testers, told about additional application requirements (such as credit checks and/or providing a social security card) which were not told to White testers, and not being offered incentives and specials that were offered to White testers seeking the same housing, often when working with the same agent. Further, a prior ERC investigation in Frederick County, Maryland found similar results, with 79% of Latino testers experiencing some type of disparate, adverse treatment when they sought rental housing.

Historically, these practices have continued with little to no government enforcement, nor has government enforcement been proactive in halting discrimination. In addition, Hispanic families often do not know their housing rights and have cited fear of deportation as reason for not reporting rights violations. The result is an underrepresentation of Latino families in federal cases, litigation, and complaints filed with private fair housing groups. In addition, as is the case among many governmental programs, bilingual and bicultural factors are not properly funded for adequate infrastructure and implementation, which creates additional barriers for families, particularly those with limited English proficiency (LEP).

This can change, and it must. If we eradicate efforts to segregate neighborhoods today, the nation will reap significant benefits in the future. Latino children currently comprise nearly one in four students enrolled in America's public schools, which means that by 2050, one in three American workers and taxpayers will be Latino. Communities of color are critical to future prosperity for all Americans. The rental and housing markets are central to such progress, and HUD can play a major role in ensuring that a large segment of America's workforce has the opportunity for equal housing.

### **Overview**

NCLR commends HUD for the proposed revisions to the 1968 rule to affirmatively further fair housing, an aspect of the Fair Housing Act under Title VIII of the Civil Rights Act of 1968. We believe these revisions will offer better protections for a family's right to obtain adequate and safe housing of one's choosing. It is well documented that this choice dramatically shapes all aspects of life. The right housing location can make the difference between a manageable commute and a twice daily, two-hour bus ride with multiple transfers. It can also decide a child's path to success through a good school with strong teachers, or conversely lead to a school experience where safety concerns overshadow the learning process. Choice of where one lives can also determine one's nutritional health; living near grocery stores stocked with affordable

produce greatly differs from living where one has access only to packaged foods or costly, limited produce.

HUD's proposed revisions will modernize and strengthen AFFH and clearly define a region's obligation when seeking federal taxpayer funds. Specifically, the local jurisdiction must uphold the basic principle of equal opportunity through dedicated actions and accountability, and it must take proactive steps to combat discrimination, foster inclusive communities, and facilitate families' access to community assets.

NCLR is encouraged by HUD's effort to achieve more meaningful outcomes; however, the success of these changes is highly dependent on accountability through rigorous outreach and enforcement. If Latino families are not informed of these changes through effective and deliberate outreach, they will continue to believe that they do not have such housing rights. Similarly, if there is no clear enforcement tied to the AFFH changes, then HUD's attempts to fulfill its statutory obligation would be significantly hampered. The following are comments and recommendations on specific aspects of the rule revisions.

### **Assessment of Fair Housing**

NCLR is pleased that the proposed amendment replaces the ambiguous Analysis of Impediments (AI) with an Assessment of Fair Housing (AFH) (section § 5.154/5.152). The new AFH surpasses the original AI by clearly defining requirements for grantees and public housing agencies (PHAs) to meet their AFFH obligations. The amendment proposes that participants take proactive steps to identify, prioritize, and address factors that cause or maintain disparity, segregation, and racially or ethnically concentrated areas of poverty. We welcome these improvements aimed to mitigate systemic disparity.

### **Recommendation**

The AFFH definition is clear, but the requirements for the AFH outlined in the proposed rule do not ensure that grantees and PHAs will engage in the necessary steps to fulfill this AFFH definition. As described in Sec. § 5.154 (d)(4) of the proposed rule, grantees and PHAs are only required to "set and prioritize one or more goals for **mitigating or addressing**" the determinants of fair housing problems in their communities. NCLR recommends that this language be changed to reflect *all* of the components of AFFH described in the definition, and to require grantees and PHAs not just to "mitigate or address" problems, but to overcome them.

### **Require More Robust Community Outreach**

As the rule currently stands, grantees and PHAs are required "to engage in outreach and collect data to meet the obligation to affirmatively further fair housing." In Section § 5.152, the rule articulates outreach capacity as the ability of grantees to conduct proper outreach "to accept complaints of violations of fair housing laws, investigate such complaints, obtain remedies, engage in fair housing testing, and educate community members about fair housing laws and rights and includes any state or local agency that enforces a law substantially equivalent to the Fair Housing Act." Further, the rule language assumes that participants' current outreach is

sufficient; the rule mentions in its cost analysis that outreach should not overburden participants as they are already engaged in outreach activities. This is a false assumption.

Historically, we know that fair housing endeavors have not met a fraction of the needs and complaints reported, and many more are unreported. HUD estimates that only 1% of fair housing violations committed are ever reported, yet more than four million fair housing violations are committed every year against members of protected classes under the Fair Housing Act.<sup>2</sup> Discrimination against Latinos comprises a significant portion of complaints reported and is believed to encompass a large number of unreported incidents. In the past, weak reporting, haphazard outreach with little consideration of cultural and language needs, and lax law enforcement have prevented families from having the justice they deserve, let alone the proper information they need to better understand their rights.

No matter how well conceived a program, if the public is not aware of the program's value, they will not know the extent of their rights. NCLR has witnessed private and government programs fail due to anemic outreach. We have also seen one foreclosure prevention program after another struggle because of confusing or inadequate public communication. Such poor or haphazard outreach has dire effects and can arguably take a portion of the blame for families losing their homes and livelihood. In addition, most outreach continues to be executed solely in English without consideration of cultural or language needs. These are common flaws that HUD can avoid when finalizing this new rule. The public's participation is key to the success of new AFFH approaches. Changes as profound as those proposed must be paired with robust, targeted, deliberate, and specific outreach strategy.

### **Recommendation**

We believe that grantees should receive dedicated resources to deliberately and thoughtfully reach out to community members. Robust outreach will provide a significant return on investment for the provisions' success. Participants should create major marketing campaigns to educate the public about the negative impact of housing discrimination and how to be proactive on the matter. This should all be done with particular sensitivity to historically underserved audiences, keeping cultural and linguistic attributes in mind. Such community members are the very individuals most impacted by the new rule and AFFH issues.

In addition, we believe grantees and PHAs should partner with community-based organizations to reach the public. NCLR knows, from experience running a network of HUD-approved housing counselors for more than a decade, that such local groups are essential to understanding the unique needs of communities throughout the nation and making true improvements based on those interactions. These organizations communicate quickly to families—much faster than any national entity. Their materials for the public are highly culturally competent and in the community's preferred language. Local groups have made the difference between a family

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<sup>2</sup> National Fair Housing Alliance, *The Big Picture: How Fair Housing Organizations Challenge Systemic and Institutionalized Discrimination, 2011 Fair Housing Trends Report* (Washington, DC: National Fair Housing Alliance, 2011).

losing or preserving their home. They stay in touch with families and maintain relationships that have been unmanageable by vast national programs.

### **Set Higher Standards of Performance**

The new AFFH rule clearly defines the pathways participants must take to design their fair housing strategy; however, there are no established benchmarks for follow-up reporting. NCLR appreciates the unique circumstances of each region and thus the flexibility needed by grantees to create their own plans. For example, as cited in section § 5.158, community participation and consultation are required in drafting the new AFH to ensure that the AFH is informed, meaningful, and fully adopted by community members. We appreciate this community engagement and other precautions taken to outline an effective strategy.

Beyond designing a front-loaded plan that aims to, in theory, stem segregation, there are no established parameters for expected outcomes. It is promising that the fair housing plan is explicitly tied to funding streams, yet it appears only to be tied to the creation and submission of a plan and not to the action of carrying out the submitted plan. Once grantees and PHAs file their plans, it appears they are free to implement a robust approach or to allow it to collect dust.

As mentioned, one potential point of concern found in § 5.154 Paragraph (d) I 4 ii is that the new AFH mandates that grantees set and prioritize one goal at minimum to address discrimination and improve housing opportunities. While one substantive goal may be enough for some participants, this could set a troublingly low bar for others. There must be effective benchmarks to measure a goal's progress.

The original AFFH rule was established more than 40 years ago, and the nation has waited decades to see substantial improvement. To set one goal every five years (the proposed window of time for joint-plan filings outlined in § 5.156) without a standard or annual reporting might require communities to continue to wait many more decades for substantial improvements.

### **Recommendation**

We believe the final rule should require that grantees and PHAs establish quantifiable benchmarks in the AFH to enable measurement of annual progress toward realizing fair housing goals. Furthermore, additions should be made to the Consolidated Plan and PHA Plan performance reporting requirements to include AFH outcomes; the final rule's existing progress report has not been modified to accommodate the new AFH plan. Since the two plans and outcomes are now integrated, it is appropriate for progress to be tracked in the same report. Annual performance reports should be required to verify actions carried out to address each of the goals in the AFH, describing the results of those actions and specifying which fair housing issues were impacted and how they were impacted.

### **Make Enforcement a Priority**

The new rule offers potential for meaningful oversight. However, it fails to outline distinct enforcement processes and consequences for those who violate their statutory obligation. After a documented history of widespread non-enforcement of fair housing rules, this should be a top

priority. Any laudable rule or regulation can be undermined by a lack of enforcement. The AFFH anti-discrimination provisions laid out are not matched by rigorous monitoring. The rule defines monitoring in section § 91.230: “The plan must describe the standards and procedures that the jurisdiction will use to monitor activities carried out in furtherance of the plan, including strategies and actions that address the fair housing issues and goals identified in the AFH, and that the jurisdiction will use to ensure long-term compliance with requirements of the programs involved, including civil rights related program requirements, minority business outreach and the comprehensive planning requirements.”

As the rule stands, grantees are their own monitors. A rule that is all carrot and no stick; this lack of provision for enforcement is insufficient. Transparent enforcement and true accountability is paramount to successful rules and regulations. A lack of enforcement has persistently plagued the AFFH provisions, and Latino families have suffered as a result. Absent a robust system of checks and balances, those who violate fair housing laws have little incentive to implement fair renting and sales practices.

### **Recommendation**

In the new AFFH rule, HUD should capitalize on the opportunity to establish a strong enforcement system within and beyond the provisions. To prosecute fair housing violations, they should be willing to exhaust all the tools at their disposal. A stronger enforcement system with rigorous testing and even a national scorecard could finally bring to light the extent of housing violations in our nation. In addition, the current rule does not articulate the ability to take private right of action. We believe and recommend that parties should have private right of action to address failures to affirmatively further fair housing.

In addition, as stated earlier, we believe that HUD and participating AFFH groups should partner with local service-providers to improve the quality of both outreach and enforcement efforts. They can gather real-time evidence for enforcement in specific, high-impact localities. Despite the reality that Latino community-based organizations are trusted sources of information and therefore best equipped to reach their communities, the percentage of HUD fair housing grants to groups who serve Hispanics is only 13%.<sup>3</sup> HUD should ensure that funding for and partnerships with local, Latino-serving organizations covers not only fair housing outreach but also enforcement activities.

### **Conclusion**

NCLR recognizes the immense potential of this new rule. After such a history of failed AFFH provisions—and certainly while on the heels of the housing crisis and all its ramifications—now is the time to install lasting programs. Latino families represent a rapidly growing segment of the changing workforce and housing market. It is critical that measures like the AFFH rule address an extensive history of discrimination and thus remove roadblocks to economic progress for all Americans.

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<sup>3</sup> National Council of La Raza and The Equal Rights Center, (Washington, DC: National Council of La Raza and The Equal Rights Center, 2013).

Before finalizing this rule, we ask HUD to clearly carve out the critical checks and balances of proper benchmarks, sophisticated outreach, and sound enforcement. The success of the AFFH rule is entirely reliant on making these aspects a prominent part of a comprehensive solution.

Thank you for your attention to these comments. If you have questions, please feel free to contact me at (202) 776-1754 or [nwilberg@nclr.org](mailto:nwilberg@nclr.org).

Sincerely,  
Nancy Wilberg Ricks  
Senior Policy Communications Strategist  
Wealth-Building Policy Project  
National Council of La Raza