



TO: Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410-0500
RE: Docket No. FR-6250-P-01; Affirmatively Furthering Fair Housing
DATE: Apr 24, 2023
FROM: Alliance for Housing Justice

The Alliance for Housing Justice (AHJ) is a coalition of housing justice organizations, formed to address the nation’s affordable housing and displacement crisis, advance tenant rights, and shift housing from a commodity to a human right. We all need a place to call home; affordable, safe housing is a fundamental human need. But our nation’s history of racist and exclusionary policies means that far too many of us have been kept out of quality housing — which is what led to the passage of the Fair Housing Act and the obligation to Affirmatively Further Fair Housing (AFFH).

We are sincerely grateful to HUD for working to produce a proposed rule that will ensure that cities, states and Public Housing Authorities are making — and implementing — plans that will affirmatively further fair housing in every community. We are encouraged by HUD’s commitment to seeing the promise of the Fair Housing Act made real through thorough implementation of the law’s AFFH obligation. However, in order for this rule to be truly effective in affirmatively furthering fair housing, HUD must add some critical components that specifically address the needs of renters.

Renters’ rights are fair housing rights. Current data on renters of protected classes makes it abundantly clear that, to truly affirmatively further fair housing, jurisdictions must enact tenant protections that reduce disparities in evictions, displacement, and access to affordable rental housing.¹ Renters make up more than one-third of American households. However, people of color are more likely to experience homelessness, to be renters, to have lower incomes, and to be rent-burdened. HUD’s office of Policy Development and Research recently reported that “African-American and Latinx renters

¹ Racial disparities also exist among renters alone. 38% of AIAN renter households, 35% of Black renter households, and 28% of Hispanic renter households have extremely low incomes, compared to 22% of white non-Hispanic renter households. Regardless of race, the majority of extremely low-income renters are severely housing-cost-burdened: 71.5% of Hispanic, 70.9% of non-Hispanic Black, and 69.6% of non-Hispanic white extremely low-income renters. 63% of AIAN extremely low-income renters are severely housing-cost-burdened but poor housing conditions are also significant concerns in tribal areas (Pindus et. al., 2017)

(especially women) [...] are at greater risk for eviction.”² Women of color who have children are more likely to be evicted than any other group. It is crystal clear that protecting people in the rental market so that they can find, obtain, and keep housing is one of the most urgent civil rights issues facing our country today. Jurisdictions need direction from HUD on how to address these inequities in rental housing for protected classes. The AFFH rulemaking process is an excellent opportunity to help ensure safe, affordable, and good quality housing for the people who need it most.

In order for this rule to be truly effective in affirmatively furthering fair housing, HUD must require jurisdictions to:

- Explicitly include an assessment and response to lack of permanently affordable units, eviction rates, unstable housing, discrimination patterns, and inadequate rental housing in their Equity Plan
- Add additional community outreach or community engagement sessions, at least one of which specifically includes renters and organized tenants groups. These stakeholders can help identify and prioritize the preservation, production, and renter protections that are most necessary.

HUD should also add language requiring that jurisdictions be responsive to displacement and inadequate housing, including supporting implementation of common sense renter protections (like those proposed by President Biden in the “Blueprint for a Renters Bill of Rights,”) both in the rule and in the accompanying guidance. The examples below are best practices, vetted by fair housing advocates across the country. HUD’s inclusion of these goals will encourage recipients of federal funding to work with their legislatures and administrative departments to implement them.

- **Adopt just cause for eviction protections.** Despite the fact that shelter is a basic human need and that safe, healthy, and affordable housing has been proven time and time again to be the key to health, educational, and economic outcomes, many tenants live in areas where their landlord can evict them for no reason, throwing their lives into chaos. Just (or good) cause eviction protections prohibit landlords from evicting tenants without a specified reason. They are most effective when they include damages for tenants when landlords are found in violation. Just cause protections must be paired with rent stabilization to ensure that landlords do not constructively evict their tenants by raising their rent.
- **Implement anti-gouging and rent stabilization.** Many landlords displace tenants

² PD&R “[Evidence Matters](#)” September 2021

in protected classes by raising their rents. Rent increases far outstrip wage increases across the country. Rising rents disproportionately lead to displacement of communities of color.³ Stabilizing housing costs through anti-gouging and rent stabilization measures is key to stabilizing neighborhoods and families. “Where comprehensive rent control and stabilization have been in effect, renters have experienced more stability and more affordable rent without any depressive impact on production.”⁴

- **Prohibit source-of-income discrimination.** States and municipalities across the country have enacted prohibitions on discrimination based on source of income, preventing housing providers from discriminating against tenants who use governmental assistance to pay their rent. This helps improve access to rental housing in high-resource areas for protected classes. Source-of-income discrimination is often a pretext for discriminating against people in protected classes, who are more likely to use vouchers. This happens most in areas of high opportunity, further entrenching racial segregation. A widespread prohibition on source-of-income discrimination is crucial to combatting covert discrimination.
- **Encourage and facilitate tenants’ right to organize.** There is a clear power imbalance between landlords and tenants. When tenants have a protected right to organize, they have more power to enforce their rights free from retaliation and harassment. HUD recognizes the importance of this right, as there is existing guidance and support for tenant organizations in federally funded properties.⁵ HUD should encourage covered entities to protect tenants’ right to organize without retaliation, in both publicly and privately owned properties, as an important means of affirmatively furthering fair housing.
- **Adopt right to counsel programs.** The power imbalance between landlords and tenants is particularly stark in eviction proceedings where close to 90% of landlords have an attorney, while only around 10% of tenants do. Jurisdictions should provide low-income tenants with the right to counsel or access to counsel during eviction proceedings. Ensuring tenants have an attorney is one of the most effective ways to curb evictions for people in protected classes. For example, in just the first six months of San Francisco’s right to counsel program, two-thirds of tenants who received free legal representation were able to stay in their homes,

³ Urban Displacement, California Housing Partnership, February 2019, “Rising Housing Costs and Re-Segregation in the San Francisco Bay Area”

⁴ Urban Displacement, California Housing Partnership, February 2019, “Rising Housing Costs and Re-Segregation in the San Francisco Bay Area”

⁵ 24 CFR Part 245 “[Tenant Participation in Multifamily Housing Final Rule to Organize](#)”

with the highest success rate (80%) for Black households.

- **Ban crime-free housing ordinances and programs.** Many municipalities have enacted so-called “crime-free” housing ordinances and programs, supposedly to reduce crime. In practice, they exclude and break up the families of anyone who has come in contact with the criminal legal system from obtaining housing by evicting those who have come into contact with law enforcement — even if the interaction doesn’t result in a conviction. Given the disproportionate harm wrought by our criminal legal system on people of color, combined with longstanding prejudice about what criminals look like, these ordinances disproportionately harm Black and Latino individuals, as well as people experiencing disabilities. Further, nuisance and crime-free laws and policies may consider incidents of domestic violence – or a certain number of calls for police or emergency assistance—as “nuisance” activities. Nuisance and crime-free laws, along with related programs and policies, impose unreasonable choices on survivors of domestic and sexual violence – making them have to choose between calling for emergency assistance or losing their home. Such ordinances also negatively impact persons experiencing disabilities.⁶
- **Standardize and enforce universal habitability requirements.** The shortage of quality affordable housing forces many tenants into dangerous and uninhabitable conditions, despite state and common law requirements. Low-income and undocumented tenants with no other options are most at-risk, given the alternative is homelessness or deportation. Some landlords purposefully allow conditions to deteriorate in hopes of pushing out their existing tenants, renovating the units, and re-renting to higher-income tenants. HUD should require more robust habitability standards throughout all programs. Given the obvious connection between habitability conditions and displacement of low-income tenants, HUD should make it clear that a failure to require private landlords to maintain their properties may render the jurisdiction(s) in violation of their AFFH commitments.

Thirdly, HUD should provide equity guidance for any jurisdictions that may include zoning reform as a component of their Equity Plans. While it is undoubtedly true that many current zoning restrictions, nationwide, were enacted with racist intent, just peeling those laws back without care and planning can exacerbate racial inequities, drive displacement of vulnerable people, and fail to provide habitable, affordable, and secure housing units for those who are most in need. In fact, gentrification is exacerbating

⁶ If you need a citation, you can cite NHLP’s letters or pull a citation from one of the letters. <https://www.nhlp.org/initiatives/nuisance/>

re-segregation to the point that earlier gains in integrating communities in the aftermath of passage of the Fair Housing Act are being reversed. AHJ has produced a set of [Principles for Equitable Zoning Reform](#) (attached) that we encourage HUD to include in its new rule. Removing barriers without setting intentions to undo the harm that they have done to Black and Brown households is the mentality (approach?) that led to the need for AFFH in the first place, and these same considerations must be included in policy conversations about zoning reform.

Finally, the goal of the Fair Housing Act and AFFH to ensure that every person has a safe, affordable, healthy, and stable place to live will remain elusive as long as our housing system remains a housing “market.” This current system, where the priority is placed not on providing for the fundamental human need for a home, but on the speculative profits that can be gleaned by investors, will never be able to meet that need. Our public investments in affordable housing programs are falling behind and are unable to meet our needs.⁷ Rents are rising too fast for our inadequate subsidies to cover. In addition, we are actually losing existing affordable housing due to their demolition and disposition without required replacement and expiring affordability requirements. Much of the housing that is being built is not even truly affordable, since projects are designed primarily to provide a return on investment. We have to get off the merry-go-round and invest instead in permanently affordable, community-controlled housing. HUD should include social housing models (such as community land trusts, public, and tenant owned cooperative housing) as a priority for the acquisition, rehabilitation, and construction of affordable housing in their Equity Plans. AHJ and our partners have identified the following key requirements for social housing:

- It must be off the speculative (profit-driven) market.
- It must be permanently affordable for all — preferencing those at the lowest income levels but available to residents with both low and moderate incomes.
- It must be actively anti-racist and anti-discriminatory.
- Residents must have a meaningful say in how their homes are operated and managed.
- It must be climate resilient, eco-friendly, and energy efficient.
- It must be safe, well-maintained, and adequate to the needs of its residents, including people with disabilities, families with children, and seniors.

⁷ According to the National Low Income Housing Coalition, no state has an adequate supply of affordable, available housing for the lowest income renter. Nat'l Low Income Hous. Coal., The Gap (2023), <https://nlihc.org/gap>.

The process of revitalizing AFFH is a major opportunity to advance the letter and spirit of the Fair Housing Act and to truly affirmatively further fair housing so every community across the country can create and implement the best plan to make high-quality affordable housing a reality for everyone.

Sincerely,

Liz Ryan Murray on behalf of the Alliance for Housing Justice

The Alliance for Housing Justice includes: Action Center on Race and the Economy, Center for Popular Democracy, Housing Justice for All New York, Lawyers' Committee for Civil Rights Under Law, Liberation in a Generation, National Housing Law Project, PolicyLink, Poverty & Race Research Action Council, PowerSwitch Action, Public Advocates, Right to the City Alliance

Enclosures:

- June, 2021 AHJ & Allies letter to President Biden, Secretary Fudge and Congressional Leadership RE: Equitable Zoning
- October, 2021 AHJ & Allies letter to Secretary Fudge RE: AFFH
- January, 2023 AHJ & Allies letter to President Biden and Secretary Fudge re Budget Priorities