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What You Need to Know about the Trump Administration's Attack on Affirmative Marketing

On June 3, 2025, the U.S. Department of Housing and Urban Development ("HUD") published a notice of proposed rulemaking ("proposed rule") in the Federal Register entitled "Rescission of Affirmative Fair Housing Marketing Regulations." If finalized, the proposed rule would eliminate the longstanding and historically noncontroversial requirement that owners of federally-assisted housing target advertising and outreach regarding their properties to communities that otherwise might not have learned about the opportunity to live there. Public comments on the proposed rule are due July 3 and can be submitted at this link. Here is what civil rights advocates, tenants, housing justice organizers, and affordable housing developers should know about affirmative marketing and the proposed rule:

- **Affirmative marketing requirements direct HUD-assisted property owners to market their units to the populations that are "least likely to apply."** The existing affirmative marketing requirements direct owners of federally-assisted properties to identify which groups that are protected from discrimination by the Fair Housing Act (on the basis of protected characteristics like race, national origin, familial status, and disability status) are the "least likely to apply" to their units. Then, owners must select methods of outreach and advertising, like placing an advertisement in a Black-owned newspaper or informing a disability services organization about the opening of a waiting list, that are designed to reach those communities. Often, the populations that are the least likely to apply are those that are underrepresented in the area where the property is located. Nothing in the requirements dictates which tenants an owner must select for a unit, and nothing prohibits landlords from advertising through other channels that reach different populations, as well.

- **HUD's affirmative marketing requirements date back to the 1970s and have never been challenged in court.** HUD has both the statutory duty and the constitutional authority to require developers that benefit from HUD assistance to engage in affirmative marketing. Affirmative marketing is entirely consistent with the Equal Protection component of the Due Process Clause. The practice does not grant or deny housing to anyone based on their race, it is simply designed to level the playing field for everyone in the housing market. In the leading court decision relating to policy interventions like affirmative marketing, a conservative panel of the U.S. Court of Appeals for the Seventh Circuit upheld analogous practices in 1991 in *South-Suburban Housing Center v. Board of Realtors*. Nothing in the Supreme Court's 2023 decision in *Students for Fair Admissions v. President & Fellows of Harvard College* undermined the basis of that decision.

- **Affirmative marketing is needed to foster inclusive communities that are free from discrimination.** Because of a combination of implicit bias, intentional discrimination, and disparities in access to information fueled by word-of-mouth networks, affirmative marketing is necessary to ensure that Black and Latinx residents of high-poverty neighborhoods have a fair opportunity to apply to affordable housing that is developed in low-poverty areas. Requiring affirmative marketing reduces the likelihood that those owners will discriminate against prospective tenants in ways that are difficult to detect.

- **HUD-assisted property owners are able to comply with the existing requirements with minimal burden.** Because HUD's existing requirements are longstanding and because property owners have a practical need to engage in some marketing activities no matter what, property owners have developed systems for efficiently complying with the requirements. Accordingly, rescinding the requirements will not ease any meaningful regulatory burden on property owners. Ironically, since developing an affirmative marketing plan can help property owners identify and eliminate discriminatory policies and practices before they occur, the rescission will place property owners at greater risk of Fair Housing Act liability.

- **A 30-day public comment period is patently inappropriate for a rulemaking of this magnitude.** By regulation, it is the policy of HUD to allow 60 days for the submission of public comments on proposed rules. However, HUD is only allowing for a 30-day public comment period for this proposed rule. Although HUD has some authority to waive requirements like the one providing for a 60-day public comment period for good cause, no such cause exists here. HUD has presented no argument for why there is good cause to shorten the public comment period beyond its plainly specious substantive arguments for why the existing requirements are unlawful and impose undue regulatory burden. There is no credible case to be made that the repeal of requirements that have existed since the 1970s is so urgent that it necessitates forcing the wide range of stakeholders affected by the rescission to scramble to put together their comment letters, many of which will present complex legal and factual arguments, in such a compressed period of time.

- **It is critical that civil rights advocates, tenants, housing justice organizers, and affordable housing developers unite to fight back against the proposed rule.** This proposed rule is not just an attack on an important but low-profile piece of civil rights regulatory policy. It is also an attack on the ability of all levels of government to advance racial equity in a manner that is consistent with existing Supreme Court precedent. The Trump Administration has been engaged in similar attacks on policies across multiple federal agencies that are informed by the consideration of racial and ethnic demographic data but that do not assign concrete benefits or burdens to individuals or families based on their race. It is critical that we unite across sectors to oppose harmful changes that are being pursued on a cross-sector basis.

From its watering down of the definition of the Fair Housing Act's affirmatively furthering fair housing mandate to its abdication of its responsibility to enforce rules prohibiting discrimination on the basis of sexual orientation and gender identity in federally-funded homeless shelters and its assault on the disparate impact standard of proof under various civil rights statutes, including the Fair Housing Act, the Trump Administration has been working to reverse decades of progress in the fight for civil rights, both at HUD and at other agencies. The proposed rescission of HUD's affirmative marketing requirements is the latest in that series of similar attacks.

Please consider submitting a comment letter opposing the proposed rule by the Thursday, July 3, 2025 deadline at this link.